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

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

SCOTT LEE PETERSON,
Defendant.

San Mateo County Case No.
SC055500A
Stanislaus County Related Case No.
1056770
First District Court of Appeal Case No.
A167615

**PEOPLE'S OPPOSITION TO
MOTION FOR POST-
CONVICTION DISCOVERY (PEN.
CODE § 1054.9)**

Date: July 15, 2024
Time: 9:00 a.m.
Dept. 12
The Honorable Elizabeth M. Hill

Comes now the People of the State of California, by and through their attorney, JEFF LAUGERO, Stanislaus County District Attorney, BIRGIT FLADAGER, Special Prosecutor, and DAVID P. HARRIS, Special Prosecutor, and submits their Opposition to defendant Peterson's Motion for Post-Conviction Discovery (Pen. Code § 1054.9).

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**PEOPLE'S OPPOSITION TO MOTION FOR POST-CONVICTION DISCOVERY
(PETERSON SC055500A)**

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 5/20/2024
By /s/ Carl Saffold
Deputy Clerk

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1 **INTRODUCTION**

2 At the time of this filing, it will be 21 years, 4 months and 27 days since Laci's family
3 faced the worst day of their lives on Christmas Eve 2002. Little did they know that was just the
4 beginning of their nightmare.

5 In late December 2002, the defendant murdered his wife Laci Denise Peterson who was
6 then eight months pregnant with their child Conner. Laci's family reported her missing on
7 Christmas Eve and they searched tirelessly for Laci and Conner for the next 116 days. The week
8 of Easter 2003, Laci's body washed ashore in the San Francisco Bay. Conner had been found
9 nearby the day before on April 13th. The defendant was subsequently arrested on April 18, 2003
10 and charged with their murders in violation of Penal Code §187 with a multiple murder special
11 circumstance in violation of Penal Code section 190.2, subdivision (a)(3).

12 Soon after his arraignment, the defendant, through his counsel, sought an order preventing
13 Laci's and Conner's bodies from being released to Laci's family until the defendant conducted
14 his own independent autopsy. The court granted the order on July 24, 2003. (DSC - JNE Exh.1,
15 Order Permitting Defense to Examine Remains.)

16 Laci's family thought the nightmare was coming to an end after a five-month long jury
17 trial and Scott Peterson was convicted of two counts of murder on November 12, 2004. Instead,
18 the defendant filed a Motion for a New Trial which was litigated and denied. (DSC - JNE Exh.2,
19 Defense Motion for New Trial.) At sentencing, Laci's family had an opportunity to address the
20 court with their victim impact statements. During the defendant's (then appellant) appeal, he
21 argued a wrongful conviction was obtained based on purported sightings of Laci, the Medina
22 burglars and investigation, and the denial of his motion for a new trial based on the Aponte tip.
23 (DSC - JNE Exh. 3 – 2012 Defendant/Appellant's Opening Brief in Automatic Appeal in Supreme
24 Court.)

25 In 2011, the defendant (then petitioner) filed his first Motion for Post-Conviction
26 Discovery pursuant to Penal Code §1054.9 which was litigated in 2011 through 2012. (DSC -

JNE Exh. 4 – 2011 Defense Motion for Post Conviction Discovery.) During one of the hearings, defendant's counsel requested and was given access to examine the barnacles on clothing and duct tape that had been found on Laci's body. (DSC - JNE Exh. 5 – Oct. 20, 2011 Reporter's Transcript of Motion for Post-Conviction Discovery, p. 194.) However, defendant's counsel was reminded that defense already had Forensic Science Associates in Richmond previously examine the tape and after their examination returned the following items:

- Item 1: Envelope labeled "Removed from tarp by Mark G ... ' bug'"
- Item 2: Plastic material marked "debris from # 1-1 O"
- Item 3: Exam paper labeled "debris from defense viewing 03/19/2004"
- Item 4: Envelope labeled "debris from viewing on 08/14/2004"
- Item 5: Large piece of clear plastic, with colored logo
- Item 6: Tape sealed box, Duct tape (BFS Item G82)
- Item 7: Envelope labeled "CG VPD #1 cutting from duct tape"
- Item 8: Envelope labeled "#47 carpet samples"
- Item 9: Bag labeled "UPD-1" "sm blk tarp w tape on it"

(DSC - JNE Exh. 6 – Jan. 6, 2012 Reporter's Transcript of Status Conference and Motion for Post-Conviction Discovery p. 210, including the reference to Bates 42983.)

The nightmare for Laci's family continued. In 2013, the defendant filed his first Motion for DNA Testing seeking to test a pubic hair located on the duct tape attached to Laci's remains and a second pubic hair found on Laci's body after she had been submerged in the Bay's salt water for nearly four months. (DSC - JNE Exh. 7 - 2013 Defendant's Motion for DNA Testing.) The People opposed his motion but the court granted it and permitted the defendant's DNA testing. (DSC - JNE Exh. 8 – 2013 People's Opposition to Motion for DNA Testing, Reporter's Transcript of Hearing on Motion for DNA Testing and Court's Ruling on Motion for DNA Testing.) As expected, the results indicated that the pubic hairs were consistent with Laci's mitochondrial DNA. (DSC - JNE Exh. 9 – 2013 Results of Post-Conviction DNA Testing.)

The defendant filed his first Habeas Corpus petition in 2015. (DSC - JNE. Exh. 10 – 2015 Defendant's Petition for Writ of Habeas Corpus, Defendant's Memorandum of Points and Authorities in support of Petition for Writ of Habeas Corpus and Select Exhibits from Defendant's

Petition for Writ of Habeas Corpus.) In 2016, the defendant’s (petitioner’s) habeas corpus counsel informally requested additional discovery involving an arson of an orange van after an investigative reporter completed a public records act request. The supplemental reports and six color photos requested were provided to counsel in 2016.

Subsequently, the defendant wanted to exhaust his latest third-party culpability theory that the person(s) who stole the orange van from a business in Ceres and later set it on fire on December 25, 2002 was/were somehow involved in kidnapping Laci. Although the arson and theft of the van was completely unrelated to Laci’s murder investigation, the Attorney General and the People, hoping to spare the family further litigation and harassment, agreed to limited DNA testing of stains on a dirty mattress that had presumptively tested positive for blood. (DSC - JNE. Exh. 11 – 2019 Joint Stipulation for Post-Conviction Examination of Physical Evidence.) The defendant’s counsel recognized that if the genetic profile of the blood was male then testing would cease as there is no reasonable argument that the van had any rational connection to Laci’s disappearance. On the other hand, if the genetic profile were female, the parties agreed that further testing would be done to determine if it matched Laci. *Id.* Per the report dated September 20, 2019, the results of the genetic profile were male. (DSC - JNE Exh. 12- 2019 Results of Post-Conviction DNA Testing.)

In August 2020, the California Supreme Court unanimously affirmed the defendant’s convictions outright. (DSC - JNE Exh. 13 – *People v. Peterson* (2020) 10 Cal.5th 409.) The Court found in addition to the trailing dog evidence that, “*there was considerable other circumstantial evidence incriminating Peterson.*” The Court’s opinion summarized this considerable amount of evidence against the defendant.¹ (DSC - JNE Exh. 13 at p. 417 [“[W]e also see no reasonable possibility the jury would have returned a different verdict had the scent trailing evidence been excluded.”])

¹ The summarized evidence, and evidence not included in the summary, is discussed in detail in the Statement of Facts in the People’s Opposition to DNA filed on April 22, 2024. (People’s Opp. DNA Testing, p. 3 – 196.)

1 Beginning in March 2023, Ms. Paula Mitchell agreed that she would investigate
2 potentially exculpatory DNA evidence in the defendant’s case. According to Ms. Mitchell’s
3 declaration, the defendant’s prior counsel was contacted and the defendant’s case materials in
4 their custody, possession and control were obtained. At her direction and under her supervision,
5 Ms. Mitchell’s staff attorneys began assembling the “voluminous discovery (over 40,000 pages)
6 and the trial and appellate record in the defendant’s case in an effort to recreate the police
7 investigation file, related crime lab reports and trial counsel files.” (Def. Exh. 1, Mitchell Dec.
8 1:17-25.)

9 On April 19, 2023, defendant Peterson filed a *pro se* Petition for a Writ of Habeas Corpus
10 in the California Court of Appeal, First Appellate District, Case No. A167615, asserting many of
11 the same state and federal constitutional violations he had claimed in his prior appeal and habeas
12 petition. (DSC - JNE Exh. 14 – 2023 Defendant’s Second Petition for Writ of Habeas Corpus.)

13 On November 13, 2023, Ms. Paula Mitchell was substituted in to represent the defendant in his
14 second pending habeas proceedings. The following day, Ms. Mitchell requested the Court of
15 Appeal to suspend the informal briefing schedule while she filed simultaneous post-conviction
16 discovery and DNA motions. The Court of Appeal granted the defendant’s request on December
17 1, 2023.

18 On January 17, 2024, the defendant, through counsel, filed in the San Mateo Superior
19 Court, case SC055500A, simultaneous motions for post-conviction DNA testing pursuant to Penal
20 Code §1405 and a motion for post-conviction discovery pursuant to Penal Code §1054.9. This is
21 the defendant’s *second* post-conviction discovery motion and his *third* request for post-conviction
22 DNA testing. In the defendant’s Reply to People’s Opposition to DNA Testing,² he argues his

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24 ² In the defendant’s Reply to Opposition for DNA Testing filed on May 6, 2024, he conflates Penal Code
25 § 1054.9 with Penal Code § 1405. The defendant seeks post-conviction discovery to meet his §1405
26 burden. These are two separate statutory schemes with two different purposes and scopes. The defendant
27 argues the Court should stay the ruling on his DNA motion until the §1054.9 motion is granted because he
28 needs evidence and chain of custody logs to meet his § 1405 burden and show the evidence he seeks to

1 statutory right to both motions. His mentality is that he should have post-conviction discovery
2 and his third opportunity at DNA testing because “what can it hurt?”

3 “If the SCDA is concerned about further traumatizing the victims’ family, as they
4 contend, all the SCDA had to do was stipulate to the requested DNA testing and
5 the Rocha and Peterson families would both have been spared further publicity
6 surrounding these proceedings.” (Def. Reply Opp. DNA Testing 16: 6-13.)

7 What can it hurt? Aside from the abuse of our judicial system with successive writs and
8 motions, it hurts Laci’s family and friends. There is repeated and compounded traumatization
9 and anxiety for Laci’s family and friends each and every time they have to relive this terrifying
10 nightmare, over and over again. When will it end?

11 During the trial, Laci’s family and friends testified about their 27-year-old
12 daughter/sister/friend. Sharon Rocha, Laci’s mother, described how troubled she was when
13 Laci’s and Conner’s bodies were finally returned to the family so they could have their burial
14 service. Sharon explained, “I knew that I needed to spend some time with her and to have the
15 opportunity to say good-bye to her alone. And I knew she was in the casket and I knew her baby
16 was there, but I knew she didn’t have arms to hold him either. She should have had her arms
17 and her head on her entire body. It just haunts me all the time. I just hope she didn’t know what
18 was happening.” (RT 21017: 1-10.) Laci’s family has the right to grieve and heal in private.

19 As the defendant’s endless petitions, motions and hearings continue, so does the
20 unfairness and disrespect for the privacy and dignity of Laci, Conner and their family by the
21 defendant’s abuse of our criminal justice system. He has had an appeal, he has had a writ petition,
22 he has had a discovery motion, and he has had a DNA motion. When will it stop?

23 It is for this very reason that the voters of California passed the Victims’ Bill of Rights
24 Act of 2008: Marsy’s Law and amended the state constitution to expand the legal rights of crime

25 test is available and in a condition that would permit DNA testing. Furthermore, the defendant – who
26 posted a picture of the MPD Evidence/Property Record from the Medina burglary on page 66 of his Reply
27 – did not have a good faith belief to request some of the items such as the gloves and hammer when the
28 reports and evidence logs contained within the defendant’s current trial file never indicated that these items
were ever collected.

1 victims that guaranteed victims of crime have constitutional rights on the same level as those
2 accused or convicted of crimes. Laci's family has enumerated rights under Marsy's Law. The
3 California Constitution Article I, §28, section (b) provides they should be treated with fairness
4 and respect for their privacy and dignity and to be free from intimidation, harassment and abuse
5 throughout the criminal justice process. (Cal. Const. Art. I, §28 (b).)

6 The family of Laci and Conner is still seeking finality over 20 years after the defendant's
7 convictions. They respectfully petition this court to enforce their constitutional rights—even
8 though the defendant asserts that Marsy's Law does not apply to Laci's family. (See Defendant's
9 Reply to People's Opposition to Motion for DNA Testing ("Def. Reply Opp. DNA Testing") p.
10 11, 74-79.)

11 This is, as the defendant admits, his second Penal Code §1054.9 motion. His first §1054.9
12 motion was litigated October 2011 to January 2012. He now brings a new §1054.9 motion 12
13 years after the end of his first motion and 20 years after his trial. As the People will address
14 throughout this Opposition, we think this delay is unreasonable:

15 "Section 1054.9 provides no time limits for making the discovery motion or
16 complying with any discovery order. We believe the statute implies that the
17 motion, any petition challenging the trial court's ruling, and compliance with
18 a discovery order must all be done within a reasonable time period. We will
19 consider any unreasonable delay in seeking discovery under this section in
20 determining whether the underlying habeas corpus petition is timely. (See
21 generally *In re Robbins* (1998) 18 Cal.4th 770; *In re Clark* (1993) 5 Cal.4th
22 750.) We would consider a petition for writ of mandate challenging the trial
23 court's order filed within 20 days after that order to be filed within a
reasonable time for these purposes. Moreover, as we are directing in this
case, any discovery ordered pursuant to section 1054.9 should be provided
within a reasonable time, which might vary depending on the nature of the
order. We will also consider the date of compliance with the order in
considering the timeliness of any petition for writ of habeas corpus that might
be filed in light of the discovery."

24 (*In re Steele* (2004) 32 Cal.4th 682, 692, footnote 2.)

25 When will it stop?

26 Ms. Mitchell is investigating Mr. Peterson's claim of innocence. (Def. Reply Opp. DNA
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1 Testing, p. 1:1.) Ms. Mitchell stated the purpose for the post-conviction discovery request is so
2 that defense can conduct its *investigation* into Mr. Peterson’s innocence claim in a timely manner.
3 (Def. Exh. 1, Mitchell Dec. 4:1-5 (emphasis added).) However, the defendant has been
4 conducting his investigation for almost 22 years. Days after murdering Laci and Conner, the
5 defendant hired his own private investigator and his investigation has continued ever since.

6 In an effort to support the defendant’s request for post-conviction discovery and DNA
7 testing, he attached several exhibits with heavily redacted information claiming “new evidence”
8 of the real killer. In sum, his “newly discovered evidence” is that someone allegedly told
9 someone else who allegedly overheard that someone (D.M.) allegedly confessed to the murders
10 of Laci and Conner. This “new information” was never reported to the police. Instead, it was
11 reported to one of the defendant’s family members via Facebook and followed up by the
12 defendant’s private investigator beginning in November 2022. (Def. Mtn. DNA Testing, Exh.
13 16 [Jason Dewitt 04/10/2023 declaration].)

14 The defendant’s declarations and statements provide initials only and he repeatedly
15 refuses to identify any of these hearsay declarants, thereby denying the People their constitutional
16 right to Due Process. "In a criminal case, the people of the State of California have the right to
17 due process of law and to a speedy and public trial." (Cal. Const., art. I, § 29.) The defendant has
18 not shown any justification to categorically bar the People from the identity of these hearsay
19 declarants. Even when the defendant’s investigator interviewed D.M., the alleged “real killer,”
20 in September 2023, D.M. forcefully denied the accusations. (Def. Mtn. DNA Testing, Exh. 30
21 [Jason Dewitt 12/13/23 declaration].) The People are unable to assess the credibility of the
22 declarants and have any meaningful opportunity to be heard. The defendant likely realizes that
23 the trustworthiness and reliability of his “new evidence” is questionable at best and that is why he
24 continues to violate the People’s Due Process rights. Therefore, the Court should strike these
25 unnamed hearsay declarations and not consider the defendant’s “new evidence.”

26 Furthermore, the defendant’s claims are not “new evidence.” The defense theory has
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1 always been third-party culpability and, specifically, that the individuals who burglarized the
2 Medina residence were responsible. At trial, the defendant argued the same defenses that he
3 argues now: that Laci was alive after he left for his fishing expedition, the Medina burglars and
4 others were responsible for kidnapping Laci in broad daylight, they used a van to kidnap Laci and
5 the real killers dumped Laci's body in the San Francisco Bay to frame the defendant. Here, the
6 unreliable and inadmissible declarations merely substitute a new name (or initials) for Steven
7 Todd as the person who is now "really responsible" for Laci's and Conner's murders.

8 Speculative evidence linking a third party to the crime is insufficient to trigger
9 admissibility of the defendant's "new evidence." Third-party culpability evidence is admissible
10 if it is "capable of raising a reasonable doubt of the defendant's guilt" (*People v. Hall* (1986) 41
11 Cal.3d 826, 833.) There must be direct or circumstantial evidence linking the third person to the
12 actual perpetration of the crime. (*Id.*) Despite his decades-long ongoing investigation, the only
13 direct and circumstantial evidence linking anyone to the murders of Laci and Conner implicates
14 the defendant.

15 The defendant is on another baseless fishing expedition. More importantly, the evidence
16 of his guilt was compelling and undeniable. The California Supreme Court provided express and
17 implied findings regarding the evidence of the defendant's guilt presented at trial and its rejection
18 of the related habeas claims on the merits, including those based on third-party culpability. (DSC
19 - JNE Exh. 13.) Thus, having failed to convince a jury, the Superior Court and our California
20 Supreme Court – now over 20 years after his conviction – the defendant wants more DNA testing
21 and post-conviction discovery so he can continue his investigation. This "new evidence" has been
22 previously litigated. The Court should deny his requests in their entirety based on the doctrines of
23 res judicata and collateral estoppel.

24 The defendant's first motion for post-conviction discovery pursuant to Penal Code
25 §1054.9 was filed by his habeas counsel Mr. Lawrence Gibbs on October 10, 2011. Unlike the
26 defendant's pending request before this court, Mr. Gibbs's 2011 post-conviction discovery motion

1 indicated that he had reviewed over 160,000 pages of documents in this case and made seven
2 specific requests for post-conviction discovery.

3 In that motion, Mr. Gibbs filed a declaration stating that he had “obtained and examined
4 the trial record in Mr. Peterson’s case, including the reporter’s and clerk’s transcripts, the
5 discovery provided to trial counsel by the prosecution, and trial counsel’s trial files.” (Def. Exh.
6 3, defense first Motion for Post Conviction Discovery filed Oct. 20, 2011, page 5 marked as
7 SLP404624.) He also attached his letter to the prosecution which stated, “I have obtained from
8 Mark Geragos all of his trial files in the case, and after a thorough search, have not located the
9 below items in those files.” (Def. Exh. 3, marked as SLP404625.) The items in his letter and
10 motion were made in preparation to file the defendant’s first habeas claims and related to expert
11 testimony involving Gregory DeVore, Alison Galloway, Ralph Cheng, Eloise Anderson, Ron
12 Seitz, any computer experts, any marine biologist, BMCS Paul Andieu, and items relating to the
13 polygraph of Steven Todd and Glenn Pearce. It appeared from defense counsel’s declarations and
14 requests that the defendant had all other discovery and his case file was otherwise complete.

15 The California Supreme Court’s decision in *In re Steele* (2004) 32 Cal.4th 682 (*Steele*)
16 limited the scope of discovery materials available to petitioners under Penal Code §1054.9. *Steele*
17 restricted post-conviction discovery to the following three categories: (1) materials the prosecutor
18 provided at time of trial but have since become lost to the defendant, (2) materials the prosecution
19 should have provided at time of trial, or (3) materials the defendant would have been entitled to
20 at time of trial had the defendant specifically requested them. (*Id.*)

21 The People have indicated that they have no problem providing the defense with any
22 missing pages of discovery for file reconstruction (within reason based on the prior motion).
23 However, the People previously explained that it would take longer to gather the documents due
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1 to the defendant's repeated false accusations³ that the People are suppressing evidence. The
2 People further explained that now we must defend ourselves and provide the corresponding
3 discovery receipt with any missing Bates page to show that defense counsel had received
4 everything. The People recognize a defendant's right to reconstruct his or her case file. However,
5 the question is -- how many times?

6 A motion for post-conviction discovery under Penal Code §1054.9 must identify the
7 materials sought with reasonable specificity. (*Steele* 32 Cal.4th at p. 688.) In the defendant's
8 first § 1054.9 motion, Mr. Gibbs stated with specificity the seven types of items he was seeking
9 *and his basis or reason for believing each item existed.* (DSC - JNE Exh. 4.)

10 In sharp contrast, the defendant's pending post-conviction motion is extremely broad
11 requesting no fewer than *645 items*. Ms. Mitchell declares, "in the course of LAIP's review and
12 *after some preliminary investigation*, it became apparent to me that numerous items referred to
13 throughout the police reports in Mr. Peterson's case were not included in the discovery that was
14 provided to the defense at the time of trial and that a motion for post-conviction discovery
15 pursuant to Penal Code section 1054.9 would need to be filed." (Def. Exh. 1, Mitchell Dec. 2: 3-
16 7.) In addition to the defendant's overbroad requests, Ms. Mitchell has not provided sufficient
17 reason for believing the hundreds of items she requests actually exist. Many of the items the
18 defendant requests involve materials that are not in the possession of the prosecution and law
19 enforcement team, other items have been previously requested and denied during the first post-
20 conviction motion, while other items have been litigated during a motion for new trial, and yet
21 other requests involve cases unrelated to Laci's disappearance.

22 The defendant filed this pending Motion for Post-Conviction Discovery on January 17,
23 2024. In the defendant's Reply to the People's Opposition to DNA Testing, dated May 6, 2024,

24 ³ In the defendant's moving papers for Motion for DNA Testing, Reply to Opposition to DNA Testing and
25 Motion for 1054.9 Discovery and corresponding attachments, the defendant has accused the People of
26 refusing, suppressing and withholding evidence and/or prosecutorial misconduct no fewer than 45 separate
27 times. Defendant also accuses the People of "losing" evidence.

1 the defendant indicated that they had found some of their lost discovery. In footnote 9 on page
2 34, the defendant states the following:

3 Counsel discovered that several items appeared to have become lost,
4 including a box that contained media (CDs, CVCs, videotapes, audiotapes,
5 and other items) and was labeled Box 1261. Counsel reached out to several
6 of Mr. Peterson’s prior attorneys in an effort to locate the missing Box 1261.
7 After searches proved fruitless, counsel asked the attorneys at Habeas Corpus
8 Resource Center to please go look again. Finally, in November 2023, Box
9 1261 was located and provided to LAIP.

10 (Def. Reply Mtn. Opp. DNA Testing, p.34 fn. 9; see also Exh. 2 [Mitchell May 6, 2024
11 declaration].)

12 According to Ms. Mitchell’s declaration, it appears that the missing box of discovery was
13 recovered in November 2023, the week after the defendant sent the People a 54-page letter
14 informally requesting post-conviction discovery. (See Def. Mtn. Post-Conviction Disc. Exh. 1-A
15 [Def. Informal Disc. Letter].) The defendant never addressed this fact in his initial §1054.9
16 motion filed in January 2024 but only brought it to light in his Reply in May 2024. Despite the
17 defendant’s counsel locating the missing box of discovery that contains “CDs, CVCs, videotapes,
18 audiotapes and other items,” Ms. Mitchell’s newest declaration did not make any amendments or
19 modifications to the defendant’s 645 items of requested discovery. Rather, the defendant
20 continued to accuse the People of suppressing the six colored photos, which were provided to the
21 defendant’s habeas counsel in 2016.

22 Moreover – for the first time – the defendant brings forth more “*newly found*” evidence in
23 his reply brief by attaching defendant’s private investigator Carl Jensen’s declaration (who was a
24 trial witness for the defense in 2004) and two more redacted declarations claiming two new
25 unidentified persons have information on the real killer. The defendant has been aware of the first
26 alleged witness for *seven* years; he withheld the information until May 2024 when he filed his
27 response to the People’s Opposition to DNA Testing. It should be further noted that Gary Ermoian
28

1 did not include this interview in either of his declarations.⁴

2 During his ongoing investigation, 13 years after the defendant's convictions, the
3 defendant's private investigator Gary Ermoian met with a person identified as D.L.B.⁵ who
4 claimed to have information in the Scott Peterson case. (Def. Reply to Opp. DNA Testing, p.85.)
5 This person admits that he/she learned of Ermoian after watching a defense favorable
6 documentary. (Def. Reply to Opp. DNA Testing, Ex. 4, P. 11-12.) During Ermoian's 2017
7 interview, D.L.B claimed that a co-worker told him he had been in the county jail with another
8 man who told him that the defendant was innocent and he was part of robbing the house across
9 the street. (Def. Reply to Opp. DNA Testing, Exh. 4 [Declaration of D.L.B.) This person even
10 went so far as to Facebook messenger Janey Peterson in 2019 and continued to messenger her for
11 the next two years. (*Id.* at p. 13-14.)

12 The People are addressing this new statement only to advise the court of the inappropriate
13 way in which the defendant has attempted to get this material before the court. This information
14 was obtained in 2017—*prior to* the Supreme Court's Order regarding the First Writ, prior to filing
15 the Second Writ and prior to filing either the DNA or Discovery motions; however, he chose not
16 to include any of the information until after the People had objected to his anonymous witnesses
17 who claimed they heard from D.M. about involvement in the case. This new claimant (D.L.B) is
18 passing on what another person (supposedly Chapman – who is dead) was told by another person
19 (supposedly D.M.) that the last speaker (D.M.) admitted some responsibility in the Medina crime
20 and Laci's abduction. As our DNA opposition stated and mentioned above, D.M., according to
21 the defense's own attachments, has denied involvement and making any such statements and we
22 moved to strike such statements and objected to their hearsay introduction. Now the defendant

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24 ⁴ Furthermore, the People **do not concede any point** unless so stated and do not agree to the admission of
25 this new claim/evidence – the People will address the claimed new facts from the DNA Reply in an attempt
to anticipate as many claims as possible.

26 ⁵ Defense counsel claims these hearsay witnesses are “new evidence” but continues to withhold
27 information and refuses to disclose their identity to the People.
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1 makes this “new claim” in his reply brief *and* attempts to justify withholding the names of these
2 so-called witnesses, stating “... the actual names of the witnesses are not relevant to the
3 proceedings in this court.” (Def. Reply to Opp. DNA Testing, p.85.) He is wrong.

4 "Richardson's statements were properly excluded on the ground that they were
5 insufficiently trustworthy and therefore unreliable. In ruling on Masters's motion
6 to sever his trial from Johnson's and Woodard's, the trial court expressed doubt
7 about “the time element” with Richardson's statements: “It wasn't made within a
8 few days or a few weeks of the incident, it was made a year and a half, a year
9 later ... so that its reliability is questionable in that respect.” *The significant*
10 *passage of time is a relevant circumstance to be considered when determining a*
11 *statement's reliability.* In fact, Richardson did not make his statements until after
12 these charges had been filed. (Cf. *Valdez*, supra, 55 Cal.4th at pp. 94, 139
13 [affirming introduction of gang member's statement against penal interest that
14 was made three months before the victims' bodies were discovered].) As the trial
15 court noted, “Every prisoner who's testified has said they heard about the crime
16 within hours or days of the crime itself and it went around the prison like wildfire
17 which one would expect would happen.” Yet Richardson waited for over a year
18 to make these statements to prison authorities. Thus, Richardson's statements did
19 not necessarily show his personal knowledge of the crime, as he had ample
20 opportunity to learn the details from other inmates. ¶ Masters nonetheless
21 contends that no reasonable person in Richardson's position would have falsely
22 confessed to planning Sergeant Burchfield's murder because the statements
23 could have subjected Richardson not only to criminal prosecution but also to
24 possible retaliation by the BGF. But Richardson could have decided to provide
25 false statements to prison officials for various possible reasons—for example, in
26 exchange for a benefit, to weaken the prosecutor's case against his fellow gang
members by spreading disinformation, or because he thought the statements
would convince the prison authorities about his desire to leave the BGF. ¶
Masters notes that Richardson unsuccessfully sought to maintain the
confidentiality of his statements and also refused to cooperate with the
defendants, from which he infers that Richardson believed the information was
accurate. Richardson's desire to maintain the confidentiality of his statements,
however, could have been motivated by his desire to prevent the defendants or
other inmates from learning the very fact that he had collaborated with prison
officials. His efforts to conceal his statements did not necessarily vouch for the
veracity of what he had told the prison officials. ¶ Moreover, Richardson was a
convicted felon, a circumstance of which the trial court was undoubtedly aware
when determining the reliability of his statements. (See Evid.Code § 788 [a
witness's credibility may be impeached by his or her felony convictions].)
Richardson's status as a convicted felon was another possible factor upon which
the trial court could have relied upon in determining that his statements were
incredible and therefore unreliable."

27 (*People v. Masters* (2016) 62 Cal.4th 1019, 1057 (emphasis added))

1 "In determining whether a statement is truly against interest within the meaning
2 of Evidence Code section 1230, and hence is sufficiently trustworthy to be
3 admissible, the court may take into account not just the words but the
4 circumstances under which they were uttered, the possible motivation of the
5 declarant, and the declarant's relationship to the defendant.' [Citation.] ... [¶] A
6 trial court's decision to admit or exclude evidence is a matter committed to its
7 discretion ' "and will not be disturbed except on a showing the trial court
8 exercised its discretion in an arbitrary, capricious, or patently absurd manner that
9 resulted in a manifest miscarriage of justice." ' [Citation.]" (*People v. Geier*
10 (2007) 41 Cal.4th 555, 584–585, overruled on other grounds by *Melendez–Diaz*
11 *v. Massachusetts* (2009) 557 U.S. 305.) ¶ The trial court did not abuse its
12 discretion in excluding Bales's extrajudicial statements as hearsay. It is
13 undisputed that Bales's statements were against his penal interest and his
14 invocation of his privilege against self-incrimination at the evidentiary hearing
15 made him unavailable as a witness. (See Evid. Code, § 240, subd. (a)(1).)
16 Turning to reliability, we agree with the court's finding that Bales's statements
17 were unreliable. One of the more obvious indicators of their unreliability was the
18 circumstance that Bales initially denied abducting Piceno, then confessed to
19 doing so, and then almost immediately recanted."

20 (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1108–1109.)

21 These cases show that names are indeed relevant for this Court; also, knowing who the
22 declarants are is mandatory to determine what convictions they may have, especially since this
23 "new" conversation is supposed to have occurred in a jail. Lastly, since D.M. recanted/denied
24 what he was told others had said he had stated, his statements are deemed inadmissible under
25 Evidence Code §1230 per *McCurdy*.

26 But more importantly for this Court's consideration is the unfairness of "sandbagging" the
27 People with new claims that could have been presented previously which prevents the People
28 from responding:

Withholding a point until the reply brief deprives the respondent of an
opportunity to answer it, however. Hence, a point raised for the first time
therein is deemed waived and will not be considered, unless good reason is
shown for failure to present it before. (*People v. Speegle* (1997) 53 Cal.App.4th
1405, 1418, fn. 8; *Neighbours v. Buzz Oates Enterprises* (1990) 217
Cal.App.3d 325, 335, fn. 8; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal,
§616, pp. 647–648.) No good cause is shown here. In any event, defendants'
position is untenable."

(*People v. Baniqued* (2000) 85 Cal.App.4th 13, 29; see also *People v. Adams* (1990) 216

1 Cal.App.3d 1431, 1441, fn.2.)

2 Furthermore, the defendant's instant § 1054.9 motion fails to address his prior claims for
3 discovery items and why he is once again requesting the *same* items which had been previously
4 denied. Here, the defendant requests numerous items relating to evidence that was excluded at
5 trial pursuant to the defendant's own request as well as items the defendant has previously
6 requested. These items include materials related to the scent dogs and their handlers for searches
7 conducted in Modesto and searches conducted in the San Francisco Bay and other searches at the
8 Berkeley Marina.

9 In defendant's first post-conviction discovery motion, the defendant requested a wide
10 range of scent dog materials. The trial court found that any material relating to Eloise Anderson
11 and her dog Trimble and Ron Sietz and his dog TJ concerning the search on December 28th at
12 the Berkeley Marina was relevant. However, during the first §1054.9 motion the court ruled that
13 the water dog investigation was not material, because those dogs were investigating what was in
14 the water as opposed to contradicting what another dog may have found during the scent search
15 in the Berkeley Marina parking lot. The court acknowledged that law enforcement and
16 volunteers investigated and searched a lot of areas and places in an effort to locate Laci, but this
17 was not material. Unless the defendant could show the court that the water dog [or any other
18 dog search] contradicts something that is in the record at the boat ramp, then it was deemed not
19 material. (See Reporter's Transcript 180-181.)

20 During the 2012 §1054.9 hearing, there was discussion regarding the CARDA records
21 which had been subpoenaed by the People (and the defense) and provided in discovery at Bates
22 25222 - 25853. The defendant confirmed he had these. Mr. Gibbs was going to check his own
23 records as Geragos may have made some of the same or additional subpoena requests since the
24 defendant's trial counsel had a binder of material with him when he conducted his examination
25 of witnesses Cindee Valentin and Eloise Anderson during the 402 hearing prior to trial regarding
26 excluding the scent dog evidence. (In defendant's New Trial Motion at page 102, he admitted he

1 had subpoenaed the CARDA records. (DSC - JNE Exh. 2.)) In the defendant's current moving
2 papers, he does not address why he is requesting this discovery again.

3 Additionally, that court rejected the defendant's request for discovery materials relating
4 to polygraph evidence and the polygraph examiner's notes regarding Steven Todd and Glenn
5 Pearce. The court found that this evidence is not material as it was not admissible in trial. Yet,
6 the defendant requests the same items once again in his moving papers. DSC - JNE Exh. 15 –
7 2012 Minute Order re Court's Ruling on Defendant's First Motion for Post-Conviction
8 Discovery.)

9 The final category of items discoverable under §1054.9 are "materials the defendant would
10 have been entitled to at the time of trial had the defendant specifically requested them." (*Steele*,
11 *supra*, 32 Cal.4th at p. 688.) "[I]t is *the defendant* who must show that the materials he is
12 requesting are materials to which he would have been entitled at the time of trial to obtain a
13 discovery order pursuant to section 1054.9." (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th
14 359, 366, italics in original.) Under *Steele*, to request Category 3 materials the defendant must
15 demonstrate that he has a good faith basis to believe the materials exist. Again, the defendant
16 fails to show that he would have been entitled to the hundreds of items he requested at the time of
17 trial and the defendant has not provided a good-faith basis why he believes the hundreds of items
18 exist.

19 Based on the defendant's procedural posture and the fact the defendant has previously
20 brought a post-conviction discovery motion, he should no longer even have a statutory "right" to
21 discovery, only the ability to request such discovery subject to the court's discretion. For these
22 and all the reasons outlined below, the People respectfully request the Court give Laci's family
23 and friends the finality that they deserve and are guaranteed under Marsy's Law and deny the
24 defendant's motion for post-conviction discovery in its entirety.

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STATEMENT OF FACTS

I. INTRODUCTION

The People request this Court to take judicial notice of the People's Opposition to Defendant's Motion for DNA Testing (Pen. Code §1405) filed on April 22, 2024 and hereby incorporate by reference the Statement of Facts found on pages 3–196, with the below modifications.

Page 85, lines 7-9 and lines 15-16 should state the name Terri Western, not Kim Western.

- “Laci’s friends’ makeshift volunteer center at 523 Coven Avenue was getting too big due to too many people so Stacey Boyers’s mother, **Terri** Western, and Kim McNeeley got a room at the Red Lion Hotel on December 26, 2002. (RT 10518; 10556; 10577-10578; 16416.)”
- “**Terri** Western and Lori Ellsworth were there daily from when it opened until it closed. (RT 10557; 16417.)”

Page 94, line 24 should say 2002 instead of 2022

- “People’s Exhibit 79 shows the defendant’s 2003 Two-Day Sport Fishing License on the front side and the **2002** Ocean Enhancement Sport Fishing Stamp on the backside.”

Page 141, line 19 should state Sunday not Saturday

- “B. Baby Conner is Found on **Sunday** April 13, 2003”

Page 143, line 13 should state Monday not Sunday

- “C. Laci’s Remains Recovered on **Monday** April 14, 2003”

Page 170, footnote 95 should state Stanislaus County District Attorney Investigator Bill Grogan not Modesto Police Department Detective Stough and cite to court record 18503-18504.

- ⁹⁵ “Detective **Craig** Grogan had never spoken with Homer Maldonado. Instead, Maldonado had been interviewed by **Stanislaus County District Attorney Investigator Bill Grogan. (RT 18503-18504.)**” ⁶

⁶ Homer and Helen Maldonado, collectively, spoke with members of the Modesto Police Department on five different occasions. On January 1, 2003 at 4:40 p.m., Homer Maldonado called the MPD tipline and spoke with Sgt. K. Blom. (Bates 14865; 14941 [duplicate].) On January 3, 2003 at 10:00 a.m., Homer and Helen Maldonado met with Sgt. Cloward at the MPD Command Post. (Bates 41004.) At 5:00 p.m., Homer and Helen Maldonado returned to the Command Post and again met with Sgt. Cloward. (Bates 41006.) Homer and Helen Maldonado went to MPD on January 26, 2003 and spoke with CSO C. Castro. (Bates 21564.) On March 10, 2003, Helen Maldonado called the MPD tipline to report a new tip. (Bates 15533.) On July 29, 2004, District Attorney Investigator Bill Grogan interviewed Homer and Helen Maldonado. (Bates 41912-41915.)

Page 175, line 12 should state 2004 not 2003.

- “On July 29, **2004**, a DA investigator followed up with Freitas. **(RT 18480.)**”

In the prior pleading, the People summarized the facts that were introduced at trial and the evidence that was put before the jury including, but not limited to, the defense’s theories that Laci was alive on December 24, 2002 because some people thought they saw her walking in the neighborhood after the defendant left their house, that the Medina burglars and a suspicious van were involved in the kidnapping of Laci and that the real perpetrator was involved in pawning Laci’s Croton watch after her disappearance. Even though the jury heard and rejected each of these theories, the defendant continues to assert them by picking bits and pieces of facts from the investigation without providing the whole picture. Below are relevant facts from the record and investigation which are contained in the defendant’s case file.⁷

II. WHILE THE DEFENDANT TRIES TO INTERFERE WITH THE POLICE INVESTIGATION, THE SCENT DOGS INDICATE LACI LEFT HER HOUSE IN A VEHICLE AND TRACK HER SCENT TRAIL FROM THE DEFENDANT’S WAREHOUSE TO THE BERKELEY MARINA

The defendant asserts in his statement of facts and argument that Cindee Valentin’s trailing dog Merlin tracked Laci’s scent at the intersection of Santa Barbara and La Loma Avenue, exactly where Tony Freitas reported he saw Laci walking her dog at 10:00 a.m. on December 24, 2002. (Def. Mtn. DNA Testing, p-27-28.) Furthermore, the defendant argues this evidence could have been allowed to come in at trial but for Detective Brocchini calling off the scent search too early instead of investigating whether Merlin actually did detect Laci’s scent on a route from the Petersons’ home south into the Airport District where the Medina burglars Steve Todd and Glenn Pearce lived and in an area where an orange van was set on fire on December 25. (Def. Mtn. DNA Testing, p. 29-30.)

⁷ While the defendant asserts that he is missing some Bates pages, all the facts outlined here are contained within the defendant’s case file and are not from the “missing” Bates pages he referenced in his motion.

1 The defendant cannot have it both ways. At trial, the defendant argued extensively that
2 the court *should not allow any* of the dog tracking evidence in trial, period. (RT 1980-1985;
3 1996-1998.) On the other hand, the People argued that *all* the dog tracking evidence should
4 come in. (RT 1985-1996; 1998-1999.) The court was satisfied with Cindee Valentin's
5 qualifications and that her trailing dog Merlin was reliable in tracking after conducting the 402
6 hearing. (RT 1376; 1456.) However, the court was not persuaded that any of the evidence that
7 was presented by the dogs and the handlers in and around Modesto could be sufficiently
8 corroborated to let the matter go to the jury. (RT 2001.) The court found that the dog tracking
9 evidence at the Berkeley Marina on December 28, 2002 was sufficiently substantiated and
10 corroborated because Laci washed up on shore two and a half miles from the marina and allowed
11 the evidence of Eloise Anderson and her trailing dog Trimble to come in at trial. (RT 2002-2003.)

12 As discussed below, neither of the defendant's above assertions are accurate. First,
13 Merlin trailed Laci's scent consistent with her being in a vehicle rather than walking. Second,
14 Laci's scent trail started from her driveway – near where the defendant's pickup had been parked
15 – and traveled in a direction consistent with going to the defendant's warehouse, westbound on
16 Yosemite Blvd., before Merlin lost the trail at Santa Rosa Ave. Furthermore, Merlin picked up
17 Laci's scent leaving the defendant's warehouse (and not heading back towards Covena) in a
18 vehicle. The dog continued to track Laci's scent traveling in a direction towards the Bay all the
19 way to Intestate 580, taking the same path the defendant told detectives he drove to go fishing
20 on December 24, 2002. This track could also not have been on Scott's scent because the dog
21 track occurred after the defendant had been to the warehouse several times and driven home or
22 other locations that were not the Bay. (See scent theory testimony below.) Below are the
23 *complete details* of the scent dog searches that were before the court at the 402 hearing.

24 **A. Laci's Scent is Detected Leaving from Her House in a Vehicle**

25 As indicated in the People's Opposition to DNA Testing, Modesto Police Department put
26 out a mutual aid request for assistance from other law enforcement agencies for trailing dogs and

1 cadaver dogs. (People's Opp. DNA Testing, p. 87.) Contra Costa County Sheriff's Department
2 Capt. Christopher Boyer and California Rescue Dog Association (CARDA) handlers Cindee
3 Valentin and Eloise Anderson responded to the Peterson house on December 26, 2002. (RT 1290-
4 1291; 1338; 1378.) With the defendant present, they collected two scent items belonging to Laci,
5 a pair of sunglasses inside a case and a pink slipper, and one scent item, a brown slipper,
6 belonging to the defendant. (RT 1339-1341.)

7 After collecting the items, handler Cindee Valentin presented her trailing dog Merlin with
8 the scent from Laci's sunglasses and gave him the command to search for Laci while at 523
9 Covenia Avenue. (RT: 1297; 1299; 1339; 1341-1342.) Merlin immediately responded. (RT
10 1342.) Merlin took off across the front of the property and headed north on Covenia. (RT 1342.)
11 To dog handlers, finding an exit trail is important during a search and rescue mission because
12 they are trying to determine if the missing person had left the property and, in this case, Merlin
13 immediately caught an exit trail from the southern edge of the property at 523 Covenia Avenue.⁸
14 (RT 1342-1343; 1345.) From there, Merlin went north on Covenia Avenue, turned west onto
15 Highland Dr. in which he went down the driveway and into the backyard of 1326 Highland. (RT
16 1345.) The backyard of 1326 Highland is kitty-corner to and behind the Petersons' property at
17 523 Covenia Avenue. (RT 1345.) Merlin circled around the backyard⁹ and then walked out of the
18 backyard to the street where he continued west onto Highland Drive. (RT 1345-1346.) Merlin
19 crossed Santa Barbara and headed south. (RT 1346.) He crossed several intersections and came
20 to the intersection of Santa Barbara and La Loma Avenue at which point Merlin turned southeast

21 ⁸ Evidence was introduced at trial that the defendant parks his truck in the driveway which is on the
22 southern edge of the property. (See People's Trial Exh. 1-E, also pictured on page 5 of People's Opp. DNA
23 Testing.)

24 ⁹ Valentin explained that due to the close proximity of Laci's backyard being kitty-corner to the backyard
25 at 1326 Highland, Merlin likely detected what she called a "scent pool" which could have been created by
26 either Laci being in that yard or coming from her own home which was very close to that yard. This did
not change Valentin's expert opinion that Laci left 523 Covenia Avenue in a vehicle versus on foot. (RT
1452-1453.)

1 on La Loma. (RT 1346.) Merlin continued tracking on La Loma until he got to Yosemite Blvd.¹⁰
2 where he went west. (RT 1346.) Merlin trailed west on Yosemite Blvd. until he reached Santa
3 Rosa Avenue and headed south to the dead end. (RT 1346.) At this point, Valentin stopped
4 Merlin on Santa Rosa because Merlin's behavior indicated that he had lost Laci's trail and he
5 was not giving a strong pull on his harness after he turned onto Santa Rosa. (RT 1346-1347;
6 1461.)

7 Valentin described that Merlin's reaction was consistent with a vehicle trail and not a foot
8 trail, meaning that Laci had been taken away from her house in a vehicle rather than walking
9 away. (RT 1348.) Valentin explained that, with vehicle trails, Merlin tends to run in the center
10 of the road and sometimes side-to-side on the road. If the person is walking, they tend to walk on
11 the sidewalk and not on the Botts Dots down the center of the road. (RT 1348.) Here, Merlin
12 was, in part, running in the middle of the street as he followed Laci's scent rather than running on
13 the sidewalk. (RT 1348.) Furthermore, Merlin is trained to find the freshest trail and was
14 following Laci's freshest trail from her driveway away from her house, in contrast to a prior trail.
15 (RT 1396-1399; 1455-1456.) The path Merlin took was consistent with the direction the
16 defendant would drive to get to his warehouse located at 1027 North Emerald Ave. Below is a
17 copy of People's 402 Hearing Exhibit 9 showing the map of the area which Valentin used to
18 illustrate the route Merlin took from Laci's driveway to westbound Yosemite Blvd. before losing
19 the trail at Santa Rosa Avenue. (RT 1460-1461; People's 402 Hrg. Exh. 9, also known as Bates
20 25853.)

21 ///

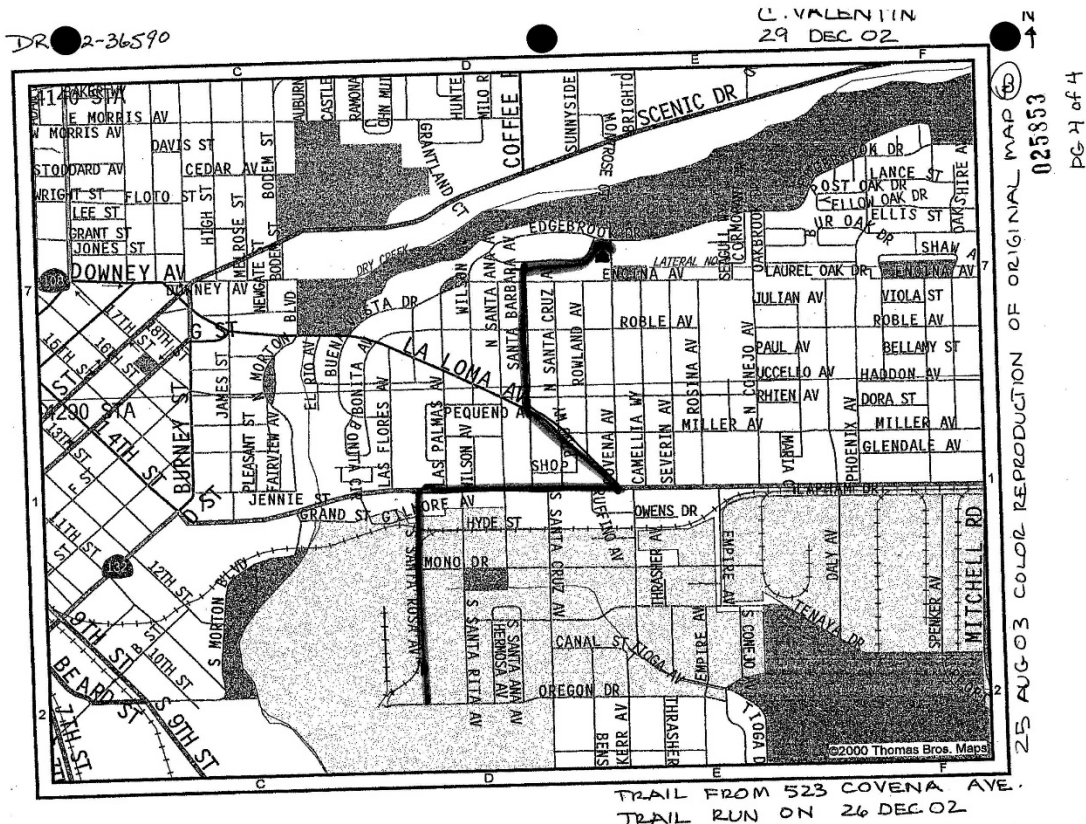
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26 ¹⁰ Yosemite Blvd. is also known as Hwy 132.
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B. Trailing Dog Merlin Detected Laci's Scent Leaving Defendant's Warehouse and Traveling to Westbound Hwy 132 in a Vehicle

At 8:30 p.m., handler Cindee Valentin was asked by detectives to see if her trailing dog could pick up Laci's scent at the defendant's warehouse. (RT 1349; 1457.) Valentin did not want the detective to take her to the defendant's warehouse or to know where his business was located but wanted to go to an intersection nearby. From there, she would work Merlin to see if he could pick up the trail that led to somewhere, possibly to the warehouse. (RT 1349.) Detective Brocchini, who was not familiar with how scent dogs worked, had them start at the corner of Kansas Avenue and Emerald Avenue. (RT 1350.) Merlin sniffed Laci's sunglasses and was given the command to search. (RT 1351.) Merlin immediately picked up a trail heading south on North Emerald Avenue, which was moving in a direction away from the defendant's warehouse. (RT 1351.) The detective stopped her and asked if the bloodhound would pick up

1 the freshest scent. Valentin told Detective Brocchini that Merlin was picking up Laci's freshest
2 trail, which is the strongest trail, over an older trail. (RT 1351; 1457.) This would be consistent
3 with Laci being driven away from the warehouse, making this part of the trail the freshest.

4 At that point, the detective asked if Merlin could go to the defendant's warehouse at 1027
5 North Emerald and see where it would lead. (RT 1351-1352.) Merlin started at the warehouse
6 door where Valentin scented Merlin using Laci's sunglasses. (RT 1352.) Merlin immediately
7 took the trail heading out of the warehouse area to North Emerald and turned south onto North
8 Emerald Avenue. (RT 1352.) Merlin continued across Kansas – just as he had done moments
9 before – and trailed Laci's scent to Maze Blvd. where he turned west. (RT 1352; 1458.) Merlin
10 continued westbound on Maze Blvd., which turns into Hwy 132, for a quarter mile before they
11 terminated the search due to it being night and heavy traffic. (RT 1353-1354; 1427.) Valentin
12 explained that she believed Laci was in a vehicle because the police had stopped traffic to allow
13 Merlin to run on his own and Merlin was constantly going to the center of the road to check those
14 Botts Dots for Laci's scent, which was consistent with a vehicle trail. (RT 1354-1355; 1426.)

15 Merlin tracked Laci for 1.1 miles before authorities stopped him. He detected Laci's scent
16 on the exact same route that the defendant indicated was the route he took to drive to the Bay to
17 go fishing. Pictured below is People's 402 Hearing Exhibit 10, also known as Bates 25815, a
18 map Valentin used to show the route Merlin took from the defendant's warehouse door to
19 westbound Hwy 132. (RT 1349-1350; People's 402 Hrg. Exh. 10, also known as Bates 25815.)

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1 sunglasses to scent Merlin and they began to work from the intersection, drop trailing¹¹ from that
2 intersection through and to 580. (RT 1354-1355.)

3 At that same time, dog handler Eloise Anderson and her trailing dog Trimble were
4 working the same trail with Valentin, from Hwy 132 to Interstate 580. However, Anderson was
5 checking for the presence of Scott Peterson's scent and direction of travel at key intersections
6 along the route. (RT 1357-1358.) Anderson used the defendant's brown slipper to scent Trimble.
7 (RT 1358.) The results of this search are noted in Section G below.

8 Merlin tracked Laci's scent at each intersection westbound on Hwy 132 and he took the
9 ramp to Interstate 580, pulling hard on his harness. Merlin continued to track Laci's scent out
10 onto 580 to the point where the merge lane onto 580 ended and she stopped him. (RT 1358.)
11 Valentin stopped Merlin for safety reasons because her back up team was having trouble
12 controlling traffic on the interstate. (RT 1359.) Valentin gave her expert opinion that Merlin was
13 tracking Laci's scent in a vehicle. (RT 1359.) Both Valentin and Anderson explained that a live
14 person has a distinct human scent and, after the person dies, the live scent will dissipate and the
15 person will have a cadaver scent. However, the live signature scent or human scent a trailing dog
16 is following consists of skin rafts. (RT1546-1547.) These skin rafts can stay with a person who
17 is deceased and a trailing dog can detect a deceased person giving off skin rafts if that trailing
18 dog is scented on that person's scent. (RT 1441-1444; 1546-1547; 1589.) Here, Merlin detected
19 Laci's scent intermittently along Hwy 132 westbound to Interstate 580 which meant she could
20 have been alive or recently deceased. (RT 1445-1446.)

21 In summary, Valentin indicated that Merlin had followed Laci's freshest trail leaving her
22 house in a vehicle and Merlin also tracked Laci's freshest trail leaving in a vehicle from the door

23 ¹¹ Drop trailing is the process of trailing where the handler takes a scent dog to an intersection, drops them
24 there, and allows the dog to see if there is a scent. If the dog "trails" in a particular direction from the
25 intersection, the handlers will run for a distance and then stop and transport the dog forward up the road to
26 the next intersection and continue. This process saves the dog from needlessly walking/running great
27 distances on vast roadways. If the dog is unable to pick up the scent on a subsequent intersection the dog
28 is returned to the prior positive intersection and the trail followed from that point until it stops or is lost.
(RT 1356-1357; 1524-1525.)

1 of the defendant's warehouse at 1027 North Emerald Avenue all the way onto the 580 freeway.
2 (RT 1456-1458.)

3 **D. Cadaver Dog Alerts to Shed Containing the Blue Tarp at Peterson's House**

4 On December 27, 2002, Modesto Police detectives requested a cadaver¹² dog to come to
5 Laci's house while they were still conducting a search warrant. (RT 1596.) Capt. Boyer and
6 handler Eloise Anderson returned to the 523 Covenia residence. (RT 1596.) Anderson deployed
7 her certified cadaver dog named Twist in the house, giving her minimal direction. (RT 1472;
8 1596.) Twist showed mild interest in a duffle bag that had been put in the nursery closet but did
9 not alert. Twist also spent several seconds checking out a spot on the carpet in the living room
10 and at one point after she moved around the room she alerted, however, when Anderson directed
11 Twist to "show me," Twist could not pinpoint a location. Twist then barked in frustration. Twist
12 had no other alerts in the house.

13 Anderson took Twist outside to search the backyard in the same fashion as she did the
14 house. Anderson allowed Twist to check the yard on her own, including the garden areas and
15 under the house and two sheds. Twist showed no interest in any of the areas in the backyard
16 except for a shed outside the covered patio, next to the bar-b-que. Twist worked into the shed
17 and crawled over a blue tarp¹³ that was on top of the lawn mower and alerted. Anderson gave
18 Twist the command to "show me" and Twist responded by hitting a backpack style sprayer that
19 appeared to contain liquid fertilizer or weed killer which was sitting on the tarp. Anderson picked
20 up the sprayer and removed it from the shed before she gave Twist a second command to "show
21 me." (RT 1598.) Twist again alerted in the shed and the blue tarp, which appeared to have some
22 brown fluid on it. (RT 1598.) Anderson removed the blue tarp from the shed and asked Twist

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24 ¹² A cadaver dog is a dog that is trained to go out and find the remains of a person, either buried or on the
surface or disarticulated, meaning scattered around. (RT 1285:17-20)

25 ¹³ Detective Brocchini observed this blue tarp wrapped around three patio umbrellas and on top of a
26 crumpled up tan boat cover in the bed of the defendant's pickup on December 24, 2002, the night when
Laci's family had reported her missing. (People's Opp. DNA Testing p. 59-60.)

1 to check again. (RT 1598.) Twist alerted a third time by lying down next to the lawn mower,
2 which had been underneath the blue tarp. (RT 1598.) Although Twist alerted to the shed three
3 times, Anderson could not, under these circumstances with combined scents, definitively tell if
4 Twist was alerting on the scent of a dead or decomposing body or on the container of fertilizer
5 which was present and spilled on the tarp. (RT 1598.)

6 **E. Cadaver Dog Search is Difficult in Cluttered Warehouse Full of Chemicals**

7 Before going to the warehouse, Anderson took Twist to La Loma Park to search, however
8 Twist had no alerts. (RT 1596-1597.) Next, Anderson and her cadaver dog Twist searched the
9 defendant's warehouse. (RT 1529-1530; 1597.) The search was challenging for the cadaver dog
10 due to the overwhelming chemical smell emanating from the pallets of fertilizer and the massive
11 amount of clutter in the warehouse which made it difficult for Twist to access locations. (RT
12 1530-1531; 1533; 1597.) Anderson put Twist inside the boat where she showed interest on the
13 starboard (right) side, however due to the chemical smell contamination, Anderson could not
14 testify with certainty that Twist had a full alert. (RT 1531-1533; 1599.) Twist was also interested
15 in three milk crates located under a small workbench and retrieved a box of Ziploc baggies when
16 Anderson gave her the command to "show me." (RT 1533; 1599-1600.) Detective Brocchini
17 examined the contents of the milk crates and found one contained a large roll of shrink-wrap and
18 the other two crates contained tie down straps. (Bates 1058.) Twist demonstrated frustration by
19 barking but did not go into her full alert or pinpoint a particular spot. (RT 1533; 1601.)

20 **F. Laci's Scent Detected in the Berkeley Marina Parking Lot Leading Down**
21 **Boat Ramp and to the Water**

22 As indicated in the statement of facts in People's Opposition to Defense Motion for DNA
23 Testing, on December 28, 2002 Trimble detected Laci's scent from the parking lot at the
24 Berkeley Marina, down the boat launch ramp to the pylon, stopping at the water's edge and
25 looked out. (People's Opp. Mtn DNA Testing, p. 113-114; RT 1519-1521.)

26 If a trailing dog comes across an intersection where the scent possibly crossed because
27

1 the person being trailed was there the day earlier, the dog will always follow the strongest scent
2 trail. (RT 1308-1309.) This is important because in the opinion of the dog handler, as indicated
3 above, Laci's scent trail was leaving in a vehicle from her residence and not on foot. It is also
4 important because Laci's freshest scent trail was leaving the defendant's warehouse and going
5 towards Hwy 132 rather than arriving at his warehouse. Laci's scent was followed to Interstate
6 580. And, at the marina, Laci's strongest scent was from the parking lot, down the boat ramp
7 and to the water.

8 **G. Defendant Disrupts the Scent Tracking Dog Investigation**

9 As indicated above, on January 4, 2003 Eloise Anderson used her trailing dog Trimble at
10 the same time Valentin used her dog Merlin to conduct a drop trail on Hwy 132. While Valentin's
11 dog Merlin tracked Laci's scent, Trimble was tracking the defendant's trail. (RT 1515; 1522;
12 1524.) Anderson scented Trimble with the defendant's brown slipper that had been collected on
13 December 26, 2002. (RT 1522.) Starting from Hwy 132 and N. Carpenter Rd. in Modesto,
14 Trimble picked up the defendant's scent and trailed it west on Hwy 132 until she reached the
15 Hwy 33 interchange. (RT 1522-1523.)

16 While the dog trailing investigation was happening, plain-clothed law enforcement
17 officers in unmarked units were continuing to surveil the defendant and his activities. (Bates
18 4024.) The officers observed the defendant driving Laci's Land Rover from his house at about
19 1:10 p.m. to his attorney's office. (Bates 4024.) The defendant left his attorney's office at about
20 1:45 p.m. and immediately drove Laci's Land Rover westbound on Hwy 132.¹⁴ (Bates 4024.)
21 The defendant stopped and put up a couple missing poster signs on the posts located at the
22 overpass of Hwy 33 and Hwy 132. (Bates 4024.)

23 Undercover investigators watched as the defendant then took the Hwy 33 access ramp to
24 Hwy 33 and continued to drive northbound on Hwy 33. (Bates 4024.) The defendant stopped

25 ¹⁴ The dog handlers had stopped at the San Joaquin River on Hwy 132 – located east of the Hwy 132 and
26 Hwy 33 interchange – to give their trailing dogs (Merlin and Trimble) a break while Anderson and Valentin
27 worked the cadaver dogs around the river. (Bates 3394.)

1 and posted a couple more missing person posters before he took the northbound on-ramp at
2 Interstate 5. (Bates 4024.) He stopped on the on-ramp and hung one more sign before getting
3 onto the interstate. (Bates 4024.) The defendant drove northbound on I-5 to the next exit and
4 exited onto Kasson Road. (Bates 4024.) He did not stop to hang up any other signs. (Bates
5 4024.) Instead, the defendant essentially made a U-turn. He immediately got back on the
6 interstate and drove southbound on I-5 where he took the Hwy 33 exit. (Bates 4025.) The
7 defendant turned southbound on Hwy 33 – the exact same way he had just come minutes before
8 – and drove back to the Hwy 33 and Hwy 132 interchange. (Bates 4025.)

9 By this time, Modesto Police had set up the roadblock, preventing traffic from entering
10 Hwy 132 while the dog trailing investigation continued. (RT 1826-1827.) The defendant could
11 see that a road was blocked by a Modesto Police Department patrol car, preventing access to
12 Hwy 132. However, he turned onto the access ramp in Laci's Land Rover anyway. (RT 1826-
13 1827.) The marked patrol car was positioned perpendicular or sideways blocking the access lane
14 and Officer Applegate was sitting in the passenger seat of the patrol car. (RT 1832.) The
15 defendant drove up to the patrol car with his front bumper facing the passenger side of the patrol
16 car and he rolled down his window. (RT 1827, 1832.) Officer Applegate motioned with his
17 hand to move along, indicating that the road was closed, but the defendant continued to just sit
18 in the vehicle with his window down. (RT 1827.)

19 From their vantage point at the base of the access ramp, Officer Applegate could see the
20 handlers and their trailing dogs, Merlin and Trimble, were still working on the dog scent
21 investigation and walking westbound on Hwy 132. They were approximately 40 to 50 yards
22 away from the interchange. (RT 1833.) Officer Applegate again motioned with his hand to turn
23 around, but the defendant continued to just sit in the vehicle. (RT 1827.) Officer Applegate got
24 out of his patrol car, walked over to the Land Rover and told the defendant that the highway was
25 closed. (RT 1828.) The defendant asked Officer Applegate, "What is the quickest way back to
26 Modesto?" (RT 1828.) Officer Applegate gave the defendant directions and the defendant then
27
28

made a U-turn and drove away. (RT 1828.) The defendant never identified himself, however the officer recognized him. (RT 1827-1828.)

The defendant turned around and drove northbound onto Hwy 33 and got back onto I-5 north – the same road he had just traveled moments before – but this time he drove straight back to Modesto to the Red Lion Hotel. (Bates 4025.) He did not make any additional stops to hang up missing person posters. (Bates 4025.) It appeared to surveilling units that the defendant was purposely tainting the search effort in the dog scent investigation by being in Laci’s vehicle and driving and stopping along the route in front of the search dogs. (Bates 1248.)

The defendant’s efforts to throw off the scent dogs worked, in part. Ten to fifteen minutes after the defendant had stopped at the base of the roadblock, trailing dogs Merlin and Trimble reached the interchange. (RT 1828.) Initially, Trimble continued going west on Highway 132 (to the location where the defendant had hung up a missing poster), but then stopped and followed the defendant’s freshest scent. Trimble turned around and circled back, going down the access ramp to Highway 33, while Merlin, who was tracking Laci’s freshest scent, continued westbound on Hwy 132 towards I-580. (RT 1526; 1528; 1833.) Trimble continued trailing the defendant’s scent towards the Modesto Police patrol car at the base of the access ramp. (RT 1527; 1828.) Anderson stopped Trimble before reaching the bottom. The officers told her that the defendant had just been there moments before. Trimble’s behavior of going down the access ramp towards Hwy 33 was consistent with following the defendant’s freshest scent since that was the path the defendant had just traveled in Laci’s Land Rover. (RT 1525-1526; 1528; Bates 25849-25850.)

III. DEFENDANT HAS CONDUCTED HIS OWN INVESTIGATION SINCE DECEMBER 2002

Days after murdering¹⁵ Laci and Conner, the defendant hired a private investigator to

¹⁵ After examining the evidence and hearing the facts outlined in the People’s Opposition to DNA Testing Statement of Facts, a jury convicted the defendant of one count of first-degree premeditated murder for the death of Laci and one count of second-degree murder for the death of baby Conner on November 12, 2004. The California Supreme Court upheld those convictions in its 2020 opinion. (*People v. Scott Lee Peterson* (2020) 10 Cal.5th 409.)

1 begin his own investigation and he has been conducting this investigation since then. In late
2 December 2002, Kirk McAllister and Gary Ermoian met with the defendant and his father Lee
3 Peterson. The defendant hired defense attorney McAllister to represent him regarding the missing
4 person investigation of his wife Laci. Gary Ermoian¹⁶ was hired as a private investigator. (RT
5 813.)

6 Undercover surveillance officers observed the defendant on January 7, 2003 meeting with
7 a person whose vehicle registration returned to Gary Ermoian. (RT 16198; 16200.)

8 On January 20, 2003, an electronic wiretap interception was made between the defendant
9 and Amber Frey during which the defendant told Amber that the defendant knew the National
10 Enquirer had hired a private investigator because “[the defendant’s] private investigator” had told
11 him [defendant] that the National Enquirer was trying to hire him as a private investigator. (Bates
12 21577.)

13 During a monitored phone call between the defendant and his parents, Jackie and Lee
14 Peterson, on January 26, 2003, the defendant’s parents asked the defendant if he still had his
15 “hired guy” working for him. (Bates 21577.) The defendant responded by asking them if they
16 meant “Gary?” (Bates 21577.) Jackie and Lee responded they did and the defendant confirmed
17 Gary was still working for him. (Bates 21577.)

18 On January 29, 2003, an electronic wiretap interception occurred between Scott Peterson
19 and his mother Jackie Peterson. Jackie asked the defendant if he wanted her to pay his
20 “detective.” (Bates 21578.) The defendant told his mom yes and that his private detective’s
21 name was “Gary.” (Bates 21578.) Jackie began paying for the defendant’s investigator. (See
22 Def. DNA Mtn. Exhibit #9 – H [Gary Ermoian Investigations invoice for services dated
23

24 ¹⁶ Gary Ermoian was indicted in United States District Court for the Eastern District of California, case
25 CR-F-92-5252 EDP, and subsequently convicted of Conspiracy to Submit False Statements, a violation of
26 Title 18 Section 371, in 1988. (People’s Discovery Opp. Exh. 1 – Certified Record - Defense Investigator
27 Ermoian’s 1993 Conviction for Conspiracy to Submit False Statements – Eastern District of California
28 Case No. CR-F-92-5152.)

02/14/03-03/03/03 and attached check, note and envelope from Jackie Peterson].) Unlike most defendants, Scott Peterson had the resources to conduct his own investigation and did so.

As discussed further below, Gary Ermoian continued to conduct an investigation for the defendant throughout the police investigation. When the defendant was arrested on April 18, 2003, he was in possession of four cell phones. (Bates 1607.) Gary Ermoian's name and phone number was in one of the defendant's cell phone's recent calls received call history. (Bates 1610.) After the defendant's arrest, Ermoian and Carl Jensen were hired by Mark Geragos as defense investigators to continue the investigation on behalf of the defendant during preparations for and during trial. Both Ermoian and Jensen have continued to investigate for Scott Peterson post-conviction.

As discussed above, thirteen years after the defendant's convictions and on his behalf, Gary Ermoian met with a person identified as D.L.B.¹⁷ who claimed to have information in the Scott Peterson case. (Def. Reply to Opp. DNA Testing, p.85.) This person admits that he/she learned of Ermoian after watching a defense favorable documentary. (Def. Reply to Opp. DNA Testing, Ex. 4, P. 11-12.) During Ermoian's 2017 interview, D.L.B claimed that a co-worker told him he had been in the county jail with another man who told him that the defendant was innocent and he was part of robbing the house across the street. (Def. Reply to Opp. DNA Testing, Exh. 4 [Declaration of D.L.B].)¹⁸ This person even went so far as to Facebook messenger the defendant's sister-in-law in 2019 and continued to messenger her for the next two years. (Def. Reply to Opp. DNA Testing, Exh. 4, p. 13-14.) As indicated in the introduction, the People are

¹⁷ Defense counsel claims this and other hearsay witnesses are "new evidence" but continues to withhold information and refuses to disclose their identities of these persons to the People.

¹⁸ Although the defendant has been aware of this alleged witness for seven years, he withheld the information until May 2024 when he filed his response to the People's Opposition to DNA Testing. It should be further noted that Ermoian did not include this interview in either of his declarations attached to either of the defendant's motions.

only addressing this statement to show the defendant has been investigating his alleged “innocence” for over twenty years.¹⁹

IV. DEFENDANT HAS INVESTIGATED LACI SIGHTINGS SINCE 2003

To support his request for hundreds and hundreds of items listed in his Post-Conviction Discovery motion, the defendant continues to argue that he needs these things (much of which he already has or does not exist) in order to conduct an investigation because the defendant continues to claim law enforcement failed to adequately investigate and follow-up on the 10,000 tips that were received in this case and the jury never heard from a single one of these witnesses. (Def. Reply to Opp. DNA Testing, p. 12.) Like he did at trial, the defendant’s pleadings continue to name the same handful of people who allegedly saw Laci walking on or after December 24, 2002. (See People’s Opp. DNA Testing p. 168-176; 206-207.) Defendant made the same argument in his first Petition for Writ of Habeas Corpus asserting ineffective assistance of counsel because these alleged eyewitnesses were not called to testify. The defendant/petitioner’s argument was rejected. (DSC - JNE. Exh. 10.) The California Supreme Court denied this claim outright on October 14, 2020. (DSC - JNE Exh. 13.)

On December 30, 2003, after an order by the court, the defendant provided reciprocal discovery including the names and addresses of persons he intended to call at trial and some of the written or recorded statements of those persons. (See People’s Discovery Opp. Exh. 2 – Defense Witness List and Reciprocal Discovery dated December 30, 2003.²⁰) Upon review of the defendant’s private investigator’s witness statements – and what is relevant here – is that it is clear that the defendant has been *fully aware* of these people who claim to have either seen

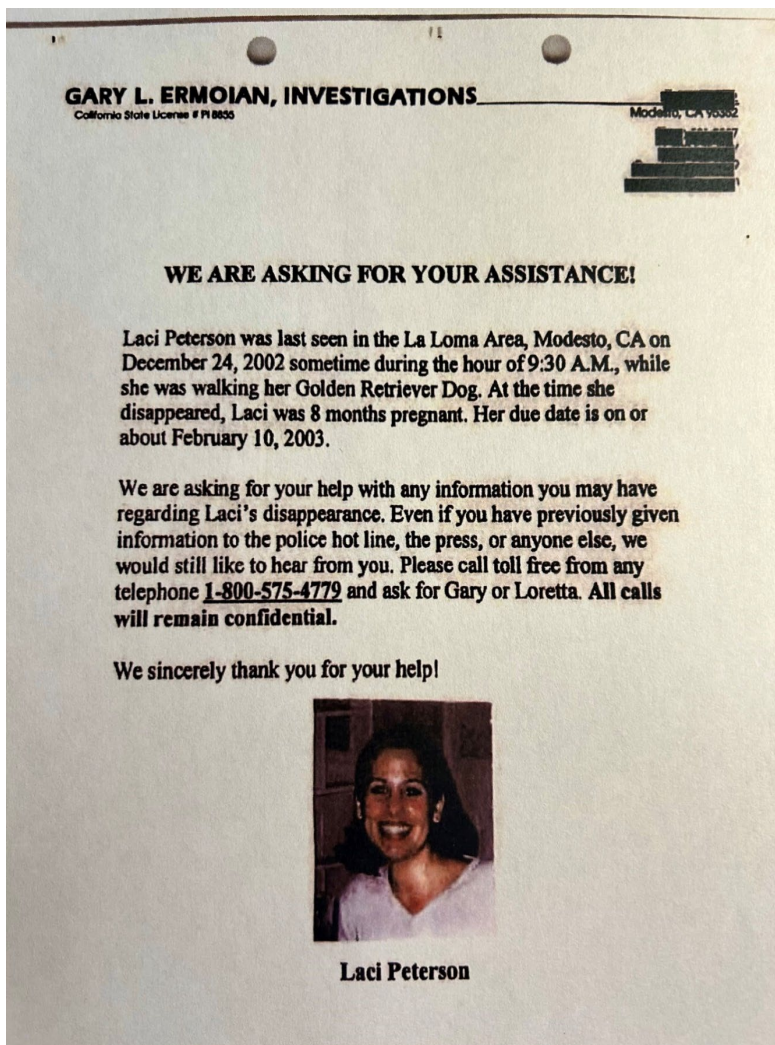
¹⁹ Again, the People do not concede any point unless so stated and *do not agree* to the admission of this “new claim/evidence” – the People will address the claimed “new facts” from the DNA Reply in an attempt to anticipate as many claims as possible. The People did not have an opportunity to formally respond to the new information raised in the Defense Reply to the People’s Opposition to DNA testing.

²⁰ The inadmissible hearsay has been redacted from the statements except for the first sentence that shows conduct, i.e. the investigator conducted an interview.

Laci walking or a suspicious van not only prior to his arrest but, most importantly, before his trial.

A. Defendant Creates His Own Missing Person Flyers

Paid for by Jackie Peterson, the defendant's private investigator, Gary Ermoian, created his own Missing Person flyer with Laci's picture. He listed a phone number for people to call Ermoian directly with information to aid in their investigation. (Def. Mtn. for Post-Conviction Disc. Exh. 6 - G [Defendant's Missing Person flyer].) The flyer, depicted below, did not provide the Modesto Police Department's tip line number or indicate who "WE" represented, such as the defendant as opposed to Laci's family. More notably, the defendant's flyer promised "confidentiality."



1 In January 2003, Ermoian began to canvas the neighborhoods for any witnesses who
2 would support the defendant's claim that Laci was seen alive after the defendant left his house
3 on Christmas Eve morning. During his canvas, Ermoian contacted Martha Aguilar on January
4 10, 2003. (See People's Discovery Opp. Exh. 2 [Aguilar interviewed 01/10/03].)²¹ That same
5 day, on January 10, 2003, Gary Ermoian contacted Homer and Helen Maldonado at their
6 residence. Ermoian would follow up with Homer Maldonado again on May 16, 2003.
7 (RT18494-18495; See People's Discovery Opp. Exh. 2 [Maldonado interviewed 01/10/03 and
8 05/16/03].) The defendant, through his private investigator, contacted many of the witnesses that
9 he continues to claim the police failed to investigate. (See People's Discovery Opp. Exh. 2 [Tony
10 Freitas interviewed 01/20/03]; [Vivian Mitchell interviewed 02/27/03].)

11 The defendant never called the police to report any of these Laci sightings that Ermoian
12 had discovered even though Laci was still missing and had only been missing for less than three
13 weeks when his investigator spoke to the first couple witnesses. This was in sharp contrast to
14 when Laci's family and friends canvassed the neighborhood and park on Christmas Day and
15 found a potential witness named Michael Chiavette who believed he had seen Laci's dog. Then,
16 with family and friends present, the defendant immediately contacted Detective Brocchini. (RT
17 18284-18285; Bates 1047.) Police responded and Officer Nicolai interviewed Chiavette. (RT
18 18286; Bates 1048; 2721.)

19 In May 2003, one month after the defendant's arrest and a year before his trial began,
20 Gary Ermoian continued to look for eyewitnesses and located Grace Wolf who claimed to have
21 seen Laci walking her dog on Christmas Eve. (See People's Discovery Opp. Exh. 2 [Grace Wolf
22 interviewed May 16, 2003]; see also [Diane Campos interviewed Jun. 13, 2003].) Grace Wolf
23 had not contacted the police department to make a report, but Ermoian took her report. (RT
24 18774.) In 2009, Wolf submitted a declaration for the defendant's attorneys repudiating her prior

25 ²¹ Martha Aguilar never made a report to the police.
26
27
28

claim; she stated, “I did not see Laci walking on December 24th, only on December 23rd.” (DSC - JNE. Exh. 10, Petn. Exh. 16 [HCP-000348].)

As mentioned above, Geragos also hired a second defense investigator named Carl Jensen to assist with their defense at trial. On June 28, 2004, Geragos provided the People a letter with an amended witness list and additional discovery, including other witness statements. (See People’s Discovery Opp. Exh. 3 - Defense Reciprocal Discovery Letter dated June 28, 2004.) Defense Investigator Carl Jensen²² interviewed other witnesses including Tommie Harshman and Diane Jackson before trial. (People’s Discovery Opp. Exh. 3 [Tommie Harshman interviewed May 28, 2004]; [Diane Jackson interviewed June 10, 2004].)

In summary, the defendant has been conducting his investigation since December 2002. He has been aware of these people who claimed to have seen Laci from the very beginning and prior to his trial. Many of these people were named on the defendant’s witness list and subject to testify.²³

B. Defendant Creates His Own Laci Tip Line

Not only did the defendant create his own missing person flyers that promised

²² On August 2, 2004, Detective Grogan sent trial witness Chris Van Sandt a copy of defense investigator Carl Jensen’s report recapping Jensen’s interview with Van Sandt on 06/25/04 and asked if there were any discrepancies. Van Sandt indicated that his name was spelled incorrectly and that Van Sandt told Jensen that the woman he saw in the park on December 24, 2002 was not Laci Peterson, but that information had been left out of the defense investigator’s report. (Bates 41658.)

²³ The defendant wants to re-argue that his investigation should continue because the jury never heard from any of these witnesses. This was clearly a calculated, strategic and tactical decision by defense counsel to not call these eyewitnesses but get their statements in through Detective Grogan. Had the defendant called these witnesses, each one would have been subjected to cross-examination and the jury would have seen their inconsistencies and the impossibility that Laci Peterson, who was 8 months pregnant with swollen feet, tired easily, and was no longer walking per her doctors’ recommendations, could *not* have been in all the locations and at the times that these people placed her. Even the defendant recognizes the discrepancies with these people’s statements. In his Reply to People’s Opposition for DNA Testing, the defendant states, “The prosecution’s argument that the eyewitnesses did not need to be interviewed because “the sightings were spread out quite a distance away from one another and the time that it would take someone to walk that distance,” (Opp’n. at p. 175), *also fails because it erroneously assumes that (i) every eyewitness who reported seeing Laci was correct as to the time they estimated seeing her, and, (ii) every witness who reported Laci did, in fact, see her.*” (Def. Reply to Opp. DNA Testing, p. 27, emphasis added.)

1 confidentiality, but he also created a tip line separate from the police tip line. (RT 17816.)
2 Besides promoting this “Laci-Info line” during his belated press interviews, the defendant made
3 another flyer requesting the public’s help and included his own tip line to provide information.
4 (Bates 410.)

5 These calls and tips were not going to the police. An answering service would answer
6 the phone calls and fax the tip sheets to Jackie Peterson and the defendant. (RT 17840; 17849-
7 17850.) The police made pre-text calls into this tip line to see if the defendant would share the
8 information with authorities; he did not. (RT 17841; Bates 507; 537.) After repeated requests
9 from Detective Grogan, Jackie Peterson faxed some of the Laci-Info line tips to Modesto Police
10 Lt. Aja. (Bates 550, 600.) There was a total of 30 pages from “a simple solution” calling center.
11 (Bates 600.) Of the 30 pages, 10 pages were duplicate copies of another page in the stack. (Bates
12 600.) The tips began on February 17, 2003 at 6:23 p.m. and ended on February 20, 2003 at 9:56
13 a.m. One tip, #182, had been deleted entirely and the numbers skipped from #181 to #183.
14 (Bates 600.) Excluding that tip, the tips that were provided were numbered 140 through 250.
15 (Bates 600.) The two pretext tips made by Detective Brocchini and a Department of Justice
16 agent were not included. (Bates 506, 601, 1374, RT 18022.)

17 Still, out of the 10,000 tips the police received including the statements from the
18 defendant’s “eyewitnesses,” not one single person saw Laci get kidnapped.

19 **V. DEFENDANT HAS INVESTIGATED THE MEDINA BURGLARS SINCE**
20 **2003**

21 **A. Defendant’s Investigation Does Not Lead to Any Credible Leads**

22 According to the defendant’s concurrent motions, he is requesting post-conviction
23 discovery so that he can conduct an investigation into his “innocence” because, he claims, the
24 police failed to properly investigate whether (1) Steven Todd and Glenn Pearce along with others
25 could have been responsible for Laci’s kidnapping and murder and (2) the jewelry recovered
26 during the burglary investigation could have belonged to Laci Peterson. (See Def. Mtn. DNA

Testing, Def. Mtn. 1054.9, filed 01/17/24, and Def. Reply to Opp. DNA Testing filed 05/06/24.)
As discussed below, the facts indicate that the defendant has been investigating this Medina
burglar theory since he hired a private investigator and defense attorney days after Laci's
disappearance.

On December 28, 2002, as part of his investigation, the defendant contacted Karen Servas
and asked her to pinpoint a more precise time for when she found McKenzie on Christmas Eve
day. (People's Opp. to DNA Testing p. 35 fn. 36; 176; RT 9460.) The defendant's private
investigator, Gary Ermoian, called Karen Servas on January 4th and 5th wanting to interview her.
(Bates 236-237; 1668.) Servas returned the call on January 5, 2003 and told Ermoian that she had
told the police everything she knew and did not have anything to add. (Bates 237.) Servas thought
it was unusual and she did not understand why someone would hire a private investigator if their
wife was missing. (Bates 1668.)

Ermoian met with and interviewed Susan Medina on January 7 and then again on the 21st.
(People's Discovery Opp. Exh. 2 [Susan Medina interviewed Jan. 7, 2003 and Jan. 21, 2003].)
On January 10, 2003, Ermoian met with Robert Nickerson, the city building inspector, and took
his statement. (People's Discovery Opp. Exh. 2 [Robert Nickerson interviewed Jan. 10, 2003].)

Despite the defendant's almost 22-year ongoing investigation, the evidence continues to
show that the burglary occurred in the early morning hours of December 26, before 6:30-7:00
a.m. when Glenn Pearce drove Steven Todd back to the house where they retrieved the safe from
the bushes and discarded the handcart in the front yard. As noted above, the People incorporate
by reference the facts set forth in our prior pleading and only add the additional relevant facts
from the case file below.

**B. Rodolfo's Power Tools in the Backyard Shed and Other Items, Mostly
Located in the Safe, Were Stolen from the Medinas' Bedroom During the
Burglary**

Susan Medina and her husband Rodolfo Cortes Medina were surprised to find their street
lined with media trucks and police officers on Thursday, December 26, 2002. (RT 9624.) Upon

1 returning home, Rodolfo Cortes Medina immediately reported to Modesto Police Officer Wend
2 that his house, located at 516 Coven Avenue, had been burglarized. Rodolfo explained that at
3 about 4:30 p.m. he and his wife Susan returned home from visiting their children for two days
4 and when they got home Rodolfo saw that his side gate was standing open. (Bates 4090.)
5 Rodolfo noticed some of his power tools, such as his leaf blower and trimmer, were near the gate
6 and out of place. (Bates 4090-4091.) Rodolfo also saw his dolly/handcart in his front yard.²⁴
7 (Bates 4091.) Rodolfo walked through the open gate and into his backyard where he saw that
8 his back door was standing open and a muddy footprint was on the white painted door. (Bates
9 4091.)

10 Rodolfo walked into his house and noticed someone had been in their master bedroom.
11 (Bates 4091.) Several items from their master bedroom closet had been taken from the top shelf
12 and placed on their bed. (Bates 4091.) Rodolfo also noticed that their Costco safe, which was
13 approximately 3'x 2-1/2' x 2-1/2,' was missing. The safe contained several pieces of valuable
14 jewelry, a Tech 9mm firearm and a Beretta .380 pistol. (Bates 4091, 20328.) In the master
15 bathroom, Rodolfo observed the drawers had been opened and a small jewelry box was on the
16 counter which had been in the drawer. (Bates 4091.) Several hundred dollars was missing from
17 one of the nightstands in the master bedroom. (Bates 4091.) Rodolfo indicated that he would sit
18 down with Susan and complete an itemized list of what was missing. (Bates 4091.)

19 Officer Wend observed that the only room slightly ransacked was the master bedroom.
20 (Bates 4091.) There were valuables in the kitchen and converted garage that were not touched.
21 (Bates 4091.) It did not appear that the perpetrator(s) had entered the converted garage because
22 the TV, VCRs, and a vase containing \$800.00 remained. (Bates 4092.) Additionally, the keys

23
24 ²⁴ As indicated in the prior pleading, Laci's family and friends began their door-to-door canvas on
25 Christmas Eve as they searched for any sign of Laci. Her family and friends met at 523 Coven (their
26 makeshift volunteer center) and resumed their neighborhood canvas handing out missing person flyers on
27 Christmas morning. At the same time, Modesto Police officers scoured the neighborhood, conducting
28 their own search and door-to-door canvas of Laci's neighborhood on December 25. Not a single person
reported seeing the handcart lying in the Medinas' front yard.

1 to the Medinas' Mercedes were still hanging in the kitchen and the car was not taken. (Bates
2 4092.) Officer Wend observed that the perpetrator had entered the backyard and kicked open
3 the side door. It appeared that the perpetrator used the Medinas' dolly to remove the safe, leaving
4 the handcart on the front yard near the curb. (Bates 4091.)

5 CSO Lovell processed the scene for physical evidence and located a partial latent print
6 on the outside door which later returned to a Medina family member. Lovell also processed a
7 chair which had been moved by the burglar and developed a fabric pattern impression in the
8 shape of two gloved fingers. Susan Medina told Lovell that her husband's gloves had been
9 moved from a drawer and discarded in another location in the house. Lovell processed several
10 boxes and containers and three empty envelopes²⁵ which Susan Medina said had been opened
11 and emptied by the burglar but Lovell found no other identifiable latent prints. (Bates 20385.)

12 Susan Medina corroborated Officer Wend's assessment of the burglary. The defendant's
13 private investigator, Gary Ermoian, interviewed Susan Medina on January 7, 2003 at her house.
14 (Def. Post-Conviction Disc. Exh. 6.) Susan testified at trial that the defendant was with Ermoian
15 during this interview and she authorized the defendant and Ermoian to retrieve the safe from the
16 Modesto Police Department. (See People's Opp. DNA Testing, pg. 179 [RT 9607-9608; 9633-
17 9635].) Susan did not believe that the burglars were in her house for long because there were
18 many things in plain view that were not taken or tampered with. Susan said that, for the most
19 part, nothing was messed up in her home. (Def. Post-Conviction Disc. Exh. 6-Q [Susan Medina
20 statement].)

21 Susan Medina provided an itemized list of property that had been taken during the
22 burglary. This included multiple pieces of jewelry, jewelry box, \$3000²⁶ cash in \$100 bills, 2

23 ²⁵ With Susan Medina's permission, CSO Lovell took the three envelopes for destruction after the
24 chemically treated envelopes had been processed with ninhydrin to test for prints. (Bates 20385.)

25 ²⁶ In his Reply to Opposition to DNA Testing, the defendant's claim that the Medinas' safe contained guns,
26 jewelry and approximately \$50,000 in cash is an inaccurate statement. (Def. Reply to Opp DNA Testing,

1 firearms, camera and lens, purses, power tools and a safe. (Bates 20329; 20331-20360.) She
2 indicated most all the jewelry was in a jewelry box which had been located inside the safe with
3 the exception of her Gucci watch, Citizen watch and pearl earrings that were on top of the armoire
4 in her bedroom. (RT 9631-9632.) Pictured below is a photo Susan Medina provided to the police
5 of the safe the Medinas purchased from Costco in June 1999 for \$189.99 plus tax. (Bates 20360.)



23 p. 52.) Susan Medina reported the burglars took \$3,000.00 cash in increments of \$100 bills. (Bates 20329.)
24 Rodolfo Medina indicated this money was taken from the bedroom nightstand. (Bates 4091.) On the other
25 hand, Defense Trial Exhibit I was the Medinas' insurance claim which reported only a \$500 coin collection
26 was stolen. In Susan Medina's declaration dated July 29, 2023, she states there was roughly \$30,000 cash
in her safe at the time of the burglary. (Def. Mtn. DNA Testing, Exh. C p. 5.) Here, the discrepancies in
the facts are one example of how memories fade after 20 plus years.

1 **C. The Physical Evidence Found Corroborates Pearce's and Todd's**
2 **Confessions**

3 On January 2, 2003, Detective Stough received information pertaining to the Medina
4 burglary. (Bates 20361.) After he confirmed the information, members of the Modesto Police
5 Department put together two teams of officers and at 6:00 p.m. on January 2, 2003 they made
6 contact with the people at 1406 Tenaya and 1407 Tenaya and simultaneously conducted searches
7 of both properties. (Bates 20632.)

8 Steven Todd and Glenn Pearce were located at the two properties and provided statements.
9 Todd's girlfriend, Nicole E., was wearing a piece of jewelry and provided officers with two other
10 pieces of jewelry that she had received from Todd. These items were seized and later taken to
11 Susan Medina who identified them as pieces of her stolen jewelry from their burglary. (Bates
12 20363.) The owner of the house, Dalora W., told officers that when she came home on December
13 27, 2002, Todd had given her an expensive bracelet that had light red stones and some white
14 stones that looked like diamonds. Dalora said she had no idea it was stolen and indicated that the
15 bracelet was at another residence, but she would retrieve it and bring it to the police. Dalora
16 confirmed that it came in the white Wards Jewelers box that had been found in the house. (Bates
17 20363.)

18 Inside a trailer at 1406 Tenaya, Detective Banks found the stolen wooden jewelry box in
19 the shape of a book underneath some clothing on a waterbed. (Bates 20381.) The white safe was
20 located outside the trailer inside an old wooden chest that was lying in the driveway. (Bates
21 20381.) The safe had been heavily damaged and appeared it had been pried open with some type
22 of object. (Bates 20364; 20383.) Although the police found stolen property (multiple pieces of
23 jewelry, the jewelry box and safe – all of which belonged to the Medinas) still at Todd's and
24 Pearce's residences one week after the burglary, the police found absolutely no evidence of Laci
25 Peterson.

26 The word was out that the police had arrested Todd and Pearce for the burglary that
27 occurred across the street from Laci's house. At about 11:30 p.m. that same day, someone

1 dumped a bag containing a bunch of jewelry and a .380 caliber handgun off at the Modesto Police
2 Department. (Bates 20365.) The serial number matched Rodolfo's stolen handgun and the
3 jewelry appeared to be consistent with the description of items provided by Susan. (Bates 20365.)

4 On January 3, 2003, Detective Stough met with Dalora W. at 1407 Tenaya and she
5 provided the bracelet and some other jewelry, including a small medallion that had two fish on
6 it and a necklace. (Bates 20365.) Parole Officers had also recovered the Medinas' stolen Tech
7 9 firearm, extended magazine and hard plastic case. (Bates 20365.)

8 On January 7, 2003, Detective Stough and Detective Banks met with Rodolfo and Susan
9 Medina at the police evidence building. (Bates 20382.) A safe, two handguns, a gas-powered
10 weed trimmer and jewelry had been recovered. Rodolfo examined the weed trimmer and
11 indicated that was not his. (Bates 20382.) The Medinas also advised that they no longer wanted
12 the safe because it had been rendered useless. (Bates 20382.) The two firearms and jewelry were
13 returned to Medinas. (Bates 20382.)

14 Steven Todd and Glenn Pearce were interviewed separately and confessed to the
15 burglary. Their individual statements corroborated all the physical evidence at the crime scene,
16 at their residences and all the witnesses' statements. They denied any involvement with Laci's
17 disappearance and no evidence was found to indicate they had any involvement. (See People's
18 Opp. DNA Testing, p. 177-179.) Todd and Pearce agreed to participate in polygraph
19 examinations and the results of both their examinations indicated they were telling the truth.
20 (Bates 20365.)

21 VI. DEFENDANT HAS INVESTIGATED MYSTERY VANS SINCE 2003

22 A. The Medinas' Next-Door-Nighbor, Amie Krigbaum's White Full Size 23 Work Van was Parked On The Street In Front of Her House On December 24 24, 2002

25 The suspicious van theory is not "new evidence". On December 27, 2002, Diane Jackson
26 stopped at 523 Coven Ave. to speak with Modesto Police Officer M. Callahan. (Bates 20389.)
27 Jackson said that on December 24, 2002, at 11:40 a.m., she drove by 516 Coven (the Medina
28

1 residence) and reported seeing three dark-skinned males standing near a white van that was in
2 front of 516 Coven. (Bates 20389.) Jackson could not recall any details about the van other than
3 it was white. (Bates 20389.)

4 Beginning in January 2003, the defendant's private investigator began following up on
5 the theory that the real kidnappers and killers were affiliated with a van. On January 16, 2003,
6 Gary Ermoian contacted and interviewed Jackson. (Bates 2100; (People's Discovery Opp. Exh.
7 2 [Diane Jackson interviewed Jan. 16, 2003].) Ermoian also interviewed other persons who
8 reported van sightings. (See also People's Discovery Opp. Exh. 2 [Patty Ringler interviewed
9 05/27/03]; [Kathy Albert interviewed 06/14/03].)

10 Yet, the evidence from the people who lived on Coven. Ave. still does not support the
11 defendant's "mystery van" theory. On the morning of December 25, 2002, Detective Buehler
12 met with Karen Servas at her residence while Detective Brocchini completed other interviews in
13 that block. (Bates 1614-1615.) Servas recalled returning home between 11:45 a.m. and noon
14 and did not see anything suspicious. (RT 9458-9459; Bates 1614.) Servas testified at trial that
15 when she returned home at 11:45 a.m., the only thing she noticed was a package from the
16 mailman that had been delivered and was sticking out of the Petersons' mailbox and that Laci's
17 vehicle was in the driveway. (RT 9465.)

18 On the morning of January 2, 2003, Detective Grogan went to the residence of Amie
19 Krigbaum and Terra Venable who lived next door to Susan and Rodolfo Medina. (Bates 4123.)
20 He observed a white panel van parked in front of their residence. (Bates 4123.) Krigbaum said
21 that was her work vehicle, a white, full-size 2002 Astrovan and it was parked in front of their
22 residence all day on December 24, 2002. (RT 9497-9499; Bates 4123.)

23 On January 10, 2003, Detective Reid also interviewed Robert Nickerson, the Modesto
24 city building inspector [the same day that Ermoian interviewed him]. (Bates 2443.) Robert
25 Nickerson indicated that he was at the Medina residence on December 24, 2002 from 8:20 a.m.
26 until 9:20-9:25 a.m. (Bates 2443.) When he left the Medinas' house, he got in his own vehicle

1 and remembered pulling around a large, white Econo-van type vehicle that appeared to be a work
2 vehicle and had some type of ladder on top and the paint was chipping on the back windows.
3 (Bates 2444.) Nickerson did not see anything unusual while he was there. (Bates 2443.)

4 On January 28, 2003, Detective Buehler had followed up with Karen Servas and asked
5 her about any suspicious vehicles in the neighborhood. (Bates 1716.) Servas advised she could
6 not recall any suspicious vehicles in the neighborhood in and around the time of Laci's reported
7 disappearance. (Bates 1717.) Servas added that she would have most likely noticed any
8 suspicious vehicles and reported this when Detective Buehler had originally interviewed her on
9 December 25th. (Bates 1717.) He asked Servas about any suspicious vans such as gray, tan,
10 beige or brown type vans in the neighborhood and she could not recall any vehicle such as this.
11 (Bates 1717.)

12 On January 30, 2003, Detective Brocchini followed up with Krigbaum and Venable and
13 they said the same thing as Servas. (Bates 1240.) Neither of them recalled any strange vehicles
14 parked on Covenia on December 24, 2002. (Bates 1240.) Krigbaum said she was awakened by
15 her neighbor's dog barking at about 10:38 a.m. that morning. (RT 9499; Bates 1240.) She got
16 up and took her dog outside to go to the bathroom in the front yard. (RT 9500; Bates 1240.)
17 Krigbaum saw no unusual vehicles parked in front of her residence or her neighbors' residences.
18 (Bates 1240.)

19 Krigbaum's statement to Detective Brocchini was consistent with Krigbaum's testimony
20 at trial and her statement to Detective Grogan when he asked her about suspicious vans on
21 January 2, 2003. (RT 9501.) In the interview with Detective Grogan, Krigbaum was positive
22 there were no vans, other than her white work van, in front of her house or her neighbor's house
23 on December 24 from 10:40 a.m. to 1:00 p.m. (RT 9497-9499; Bates 1240, 4123.) Krigbaum
24 was working in the kitchen preparing her turkey for Christmas Eve dinner and doing dishes and
25 only saw Laci's car in the Petersons' driveway. (RT 9531; Bates 1240.) Their kitchen window
26 faces out onto Covenia and she did not see any unusual vans stopping in front of her house or
27

1 nearby. (Bates 1240.) Venable indicated the same thing. (Bates 1240.)

2 **B. Defendant Aware of the Arson Involving the Orange Van Since 2003**

3 **1. Police Investigated the Orange Van and Found No Correlation to the**
4 **Medina Burglary**

5 As stated above, the People incorporate by reference the statement of facts provided in
6 the People's prior pleading but add the additional relevant facts as they relate to the orange van.

7 On December 25, 2002, former Modesto Fire Investigator Bryan Spitulski interviewed
8 Terry Borden regarding his 1989 orange Chevrolet van. Borden owns a crane business in Ceres
9 and he told Spitulski that he had another vehicle stolen two weeks earlier. Borden indicated that
10 he did not have insurance on the van other than liability. On December 31, 2002, Spitulski and
11 Modesto Police Detective Shipley met with Borden at his business in Ceres. Borden's employee,
12 R. Smith, who drove the van last, consented to a search of his residence and person. Detective
13 Shipley called Detective Banks to respond to the search. Detective Banks had been assigned to
14 assist Detective Stough with the investigation of the burglary at 516 Covenia and with the report
15 of a possible suspicious van reported in the area. (Bates 33635.) After conducting a search of all
16 of R. Smith's property, they did not locate any evidence related to the Medina burglary or the
17 disappearance of Laci.²⁷ (See Def. DNA Motion, Exh. 32 [Det. C. Grogan Mar. 18, 2016 Vehicle
18 Fire Investigation Reports].)

19 **2. Police Investigated the Orange Van and Found No Connection to the**
20 **Medina Burglary**

21 The defendant continues to misrepresent the facts and accuse the People of suppressing
22 evidence regarding the orange van despite the fact the defendant has the complete case file. (See
23 Def. Reply to Opp. For DNA Testing, pg. 51: 25-28.)

24 ²⁷ In his Reply to Opposition for DNA Testing at page 56, the defendant's claim that Modesto Police
25 Department failed to investigate whether any property found at Borden's employee R. Smith's residence
26 belonged to the Medinas or Laci Peterson is false.

1 The arson investigation reports involving the orange van, Bates pages 4095-4110, were
2 provided to the defense prior to trial on May 2, 2003 and the corresponding discovery receipt
3 was signed by William Pavelic. (Bates 4095-4110.) On August 27, 2015, G. Michael Gudgell,
4 who has been working with the defendant's counsel²⁸ also received a copy of case file MP02-
5 142687 from the Modesto Police Department pursuant to a California Public Records Act request
6 dated August 14, 2015. (People's Discovery Opp. Exh. 4 - MPD's reply to Gudgell's CPRA
7 request.) Gudgell received the "six colored photos that were checked into MPD evidence." These
8 six color photos are depicted on page 11 of Gudgell's declaration. Gudgell goes on to say that
9 he "later provided a copy of these photos to a member of Mr. Peterson's legal team" because he
10 wanted to make sure the information he had was known to the defense and could be made part
11 of the record. (Def. Mtn. DNA Testing, Exh. 2 p. 12.) In turn, habeas corpus counsel Lawrence
12 Gibbs contacted Deputy Attorney General Donna Provenzano requesting the complete case file
13 regarding the orange van. In response to his informal discovery request, the People reached out
14 to Modesto Police Department, Modesto Fire Department and the Department of Justice to obtain
15 any supplemental reports or photos related to the stolen van and arson, including the requested
16 six color photos taken by Lovell. As indicated below, these requested items were provided to
17 defense in 2016.

18 The defendant has attached and referenced in his pleadings District Attorney Investigator
19 Craig Grogan's supplemental report in 2016 which also contained the entire case including all
20 supplemental reports and the six colored photos CSO Lovell took on December 31, 2002 when
21 Lovell examined one of several vans. (See Def. DNA Motion, Exh. 32 [Det. C. Grogan Mar. 18,
22 2016 Vehicle Fire Investigation Report].) At the time, the defendant's habeas counsel Lawrence
23 Gibbs requested the colored photos taken by Spitulski, which were attached as black and white
24 photos to the original report (Bates 4107-4108), and the photos that CSO Lovell took. The report

25
26 ²⁸ Gudgell indicated in his declaration that in 2003 he contacted Gary Ermoian regarding the defendant's
27 case and Gudgell began investigating the orange van in 2003. (Def. Exh. 2 p. 2, 9-10.) Gudgell has
28 continued to work with the defendant's attorneys and provide them with his information.

1 and photos CSO Doug Lovell took were emailed by Deputy Attorney General Donna Provenzano
2 to Mr. Gibbs on October 12, 2016 and Mr. Gibbs acknowledged receipt on October 13, 2016.
3 (People’s Discovery Opp. Exh. 5 - Email from Mr. Gibbs to DAG Provenzano.) The defendant
4 has all the discovery, even though he – through his counsel – continues to make baseless
5 accusations that the People are withholding evidence. “Even then, the prosecution *still* refused to
6 turn over the six photos of the burned van and blood-stained mattress that was part of a “Missing
7 Person Investigation.” (Def. Reply to Opp. For DNA Testing, pg 52, fn. 12.)

8 While continuing to accuse the People of suppressing and withholding evidence, the
9 defendant’s attorney Paula Mitchell has indicated in her newest sworn declaration that she
10 discovered that several items of discovery appeared to have become lost, including a box labeled
11 by prior counsel as Box 1261 that contained media and included CDs, CVCs, videotapes,
12 audiotapes and other items. Ms. Mitchell reached out to the defendant’s prior attorneys for
13 missing Box 1261, including counsel at HCRC. The box of lost discovery – which had been in
14 the defendant’s possession the entire time – was located and provided to Ms. Mitchell *in*
15 *November 2023*. (Def. Reply to Opp. For DNA Testing, p. 34 footnote 9.)

16 “In reviewing Mr. Peterson’s case file, I discovered that several items appeared to
17 have become lost, including a box that contained media that included CDs, CVCs,
18 videotapes, audiotapes, and other items. The box had been labeled by prior counsel
19 as Box 1261. ¶ I reached out to several of Mr. Peterson’s prior attorneys in an
20 effort to locate missing Box 1261. After searches over the course of several weeks
21 proved fruitless, in October 2023, I asked Mr. Peterson’s prior counsel at HCRC
22 to please look again at its various facilities for the missing box. **In November**
23 **2023, Box 1261 was located by Mr. Peterson’s counsel at HCRC and its**
24 **contents were provided to me and LAIP.** ¶ Box 1261 contained files, notes,
25 and other materials related to the investigation Carl Jensen conducted on behalf of
26 the defense in 2004 and 2005—materials I had not seen anywhere else in Mr.
27 Peterson’s case materials. ¶ In March 2024, I traveled to Mr. Jensen’s home on
28 the east coast to review additional case materials he has in his possession and
interview him about the investigation he conducted in Mr. Peterson’s case, at
which time *I obtained copies of additional case materials that were not previously*
part of the trial file provided to me by Mr. Peterson’s prior counsel.” (Emphasis
added.)

(Def. Reply to Opp. For DNA Testing, Exh. 3 [Declaration by Paula Mitchell].)

1 Despite this, Ms. Mitchell has not made any amendments to the defendant's copious
2 requests for post-conviction discovery to indicate that she has a complete case file, including the
3 six color photos that were not only given to the defendant's counsel by Gudgell but that were also
4 provided by the Attorney General to Mr. Gibbs in 2016.

5 Finally, the defendant offers former Modesto Fire Investigator Bryan Spitulski's
6 declaration as support in his moving papers for both DNA testing and post-conviction discovery.
7 Spitulski's declaration is composed of personal opinions and assertions to which the People have
8 lodged these objections. (See Addendum p. 16-17.) The defendant further argues that Spitulski
9 was a member of the "prosecution team" that investigated that van and its possible connection to
10 the disappearance of Laci Peterson. (Def Reply to Opposition to Motion for DNA Testing, pg.
11 53, fn. 13.) Spitulski investigated the incendiary fire on December 25, 2002 pursuant to MFD
12 case #02-19142 / MPD case #02-142687. The People do not concede that Spitulski was part of
13 the prosecution team for the investigation into the murder of Laci and Conner Peterson and have
14 stated many times why he was not (unrelated investigation). However, if the court sees this
15 differently, then the People would state that there is information as to the credibility of Spitulski
16 relating to his employment as a Fire Investigator and the defendant should follow the proper
17 procedures pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 if he wishes to inquire
18 further.²⁹

19 VII. DEFENDANT HAS INVESTIGATED THE CROTON WATCH SINCE 2003

20 Among the hundreds of items that the defendant requests in post-conviction discovery,
21 several relate to an old Croton watch pawned by Deanna Renfro on December 31, 2002 and
22 Laci's diamond bezel Croton watch inherited from her grandmother. (People's Opp. DNA
23 Testing, p. 19.) The defendant requests post-conviction discovery because he wants to investigate
24 the missing Croton watch which he claims Laci was wearing when she was kidnapped. However,

25 ²⁹ Bryan Spitulski's personnel file may or may not contain relevant material pursuant to *Brady v. Maryland*
26 (1963) 373 U.S. 83 and its progeny.

1 like all the others, this is not a new theory. The defendant has been investigating the theory of
2 Laci's missing Croton watch since 2003.

3 **A. Laci's Croton Watch Had a Dead Battery**

4 As stated above, the People incorporate by reference the statement of facts in their prior
5 pleading, including the fact that neither Amy nor Laci wanted to keep their grandmother's Croton
6 watch. (See People's Opp. DNA Testing, pp. 19-20, 24, 26, 95-98.) The People add the
7 following relevant facts below to provide the court with the complete details of the investigation.
8

9 Depending on which officer the defendant spoke to and which date, he claimed that Laci
10 was wearing a variety of jewelry as she mopped the floor barefoot that Christmas Eve morning.
11 (Bates 728.) The defendant told Officer Evers Laci was wearing "diamond ring, diamond
12 earrings, and diamond necklace." (Bates 728.) On Christmas, the next day, the defendant told
13 Detective Grogan that Laci was wearing "diamond earrings, a necklace with a diamond solitaire
14 and a wristwatch that had diamonds around the face." (Bates 728.) On December 26, 2002, the
15 defendant told Contra Costa Sheriff Capt. Boyer that Laci was wearing a diamond solitaire
16 necklace, a bracelet with blue stones and diamonds, diamond earrings and diamond watch.
17 (Bates 728.) That same day, the defendant told Detective Grogan that Laci was wearing diamond
18 screw-on earrings, a diamond solitaire on a gold chain and a watch with diamonds around the
19 face. (Bates 728)

20 After the defendant gave several conflicting accounts of the various items of jewelry Laci
21 was wearing when he last saw her, Detective Grogan seized Laci's jewelry during a search
22 warrant executed on December 26th through the 27th and attempted to account³⁰ for each item of
23 Laci's jewelry through interviewing her family and friends. (RT 17808; 17822; Bates 163, 392,
24 419-424, 480-483, 497-499, 695, 717-719.) After the interviews, the only two items Detective

25 ³⁰ Detective Grogan learned Laci and Scott Peterson had pawned jewelry consisting of gold chains at
26 Brooks Jewelers in Modesto. (Bates: 691.) This jewelry, consisting primarily of gold chains, had also been
27 collected by the police. (Bates: 691.)

Grogan could not account for were the screw-back diamond earrings and a Croton diamond watch. (RT 17809.)

During the investigation, a videotape from Laci and the defendant's 8mm video camera was examined and Detective Grogan observed clips of various items on the video that were posted on eBay for auction by the defendant. (RT 10828; People's Trial Exh. 279B.) For instance, the video contained a recording of a Delta Mortising Attachment, screenshot pictured below, which had been posted for sale by the defendant on December 1, 2002.



The images that were posted in the advertisements on eBay were still shots taken from Laci's and the defendant's 8mm camera recordings, including the Croton watch with diamonds around the face. (RT 10828-10829; 17839; People's Trial Exh. 279B.)

Detective Grogan reviewed several segments of video on the same videotape. He heard Laci's and the defendant's voices talking in the background as they rearranged four watches which included the Croton watch. (RT 10829; 17839-17840; People's Exh. 279B.) The three different segments of video lasted over the course of minutes and the time never changed on the Croton watch. (RT 10829; People's Exh. 279B.) It appeared that the Croton watch had a dead battery since the time did not change during any of the recordings. (RT 18029.) Pictured below are still shots for Laci's diamond Croton watch which was posted for sale on eBay and the posting was admitted into evidence during trial as People's Trial Exh. 4. (People's Exh. 279B; Bates 18492-18493.)



To confirm the watch was not serviced, Detective Grogan followed up with Maryanna Felix and Jeff Schumacher at Edwards Jewelers. (RT 17824; Bates 433.) Laci had brought several items of jewelry into their shop to be cleaned, appraised or worked on including her wedding ring because she wanted her grandmother's wedding ring to be incorporated into her wedding ring. (Bates 433-438.) On November 20, 2002, Laci had brought in one watch that she inherited from her grandmother to be fixed because it was not keeping time. (RT 17824-17825.) This was a gold and diamond Geneve watch which Laci wore frequently afterwards. (RT 17825.) After reviewing photos of Laci's jewelry and the photo of the Croton watch posted on eBay, Felix and Schumacher were positive that Laci never brought in the Croton watch to their business. (RT 17825.) They provided Detective Grogan with a list of Bob and Helen Rocha's jewelry and receipts. (Bates 441-455.)

///

1 **B. Defendant Tries to Sell Laci's Croton Watch on eBay**

2 In addition to the brand-new Delta Mortiser Attachment, the defendant's eBay records
3 indicated that he posted four watches on eBay for sale. (RT 17823-17824; Bates 18485.) One of
4 these watches was Laci's Croton watch, described as an "Amazing Diamond Bezel Ladies Watch
5 Croton." (RT 14450; 17824; People's Trial Exh. 4; Bates 18492-18493.) Amy confirmed that
6 this Croton watch which had been placed on the eBay auction was the same watch Laci had
7 inherited from her grandmother Helen Rocha and neither of them had any interest in keeping it.
8 (RT 8872; 8902.)

9 The jury was shown the defendant's eBay advertisement for the lady's diamond bezel
10 Croton watch that he placed for sale on eBay on two separate auctions (marked as People's Trial
11 Exh. 4.)³¹ Although the police were not able to locate Laci's Croton watch, the jury heard
12 evidence at trial that the defendant participated in private sales and exchanged emails about selling
13 items outside of the eBay platform.

14 People's Trial Exh. 187-A was an email regarding a private sale of a high-capacity
15 magazine between the defendant and a user identified as Barrett. In the email, Barrett advised
16 that eBay will not allow the defendant to sell a high-capacity magazine on their website and that
17 was the reason they terminated the defendant's auction. However, Barrett told the defendant there
18 was no problem for them to do a private sale and Barrett wanted to purchase the item. (RT 14447-
19 14449; People's Trial Exh. 187-A.)

20 Similarly, after the second auction for Laci's Croton watch ended on December 15, 2002
21 at 9:45 p.m., the defendant had independent and private email exchanges with users regarding
22 selling Laci's watch. People's Trial Exhibit 187-B was an email dated Monday, December 16,
23 2002 at 18:42 hours, from the defendant asking "Which watch?" and signed "Scott." (RT 14449,

24 _____
25 ³¹ On December 1, 2002, the defendant listed an Amazing Diamond Bezel Ladies Watch, Croton, for \$100
26 on eBay. The auction expired on December 8, 2002. Defendant relisted the same watch for auction on
December 8th and that expired on December 15, 2002. (RT 14391-14395; 16637-16639; 17824; 18024;
18027.)

1 People's Exh. 187-B.) Below that was the original message from user roddyr#earthlink.net to
2 slpete1@email.msn.com with the Subject: Question from eBay member." (RT 14449.) People's
3 Trial Exhibit 187-C was a separate email dated December 17, 2002 at 6:41 a.m. to
4 Chrissy0424@aol.com where he described the watch, "It is a solid gold, rope chain, very high
5 quality. Sorry can't go less on the price. Scott." (RT 14450, People's Trial Exh. 187-C.)

6 It is unknown if the defendant sold Laci's Croton watch in a private sale.

7 Searching Modesto Police Department pawn records, the authorities found one pawn
8 receipt for a "Croton" watch pawned by Deanna Renfro for \$20.00 on December 31, 2002.
9 (Bates 691.) The pawn slip did not indicate the Croton watch had any diamonds. (Bates 691.)
10 None of the local pawn stores listed a watch fitting Laci's Croton watch description. Police
11 confirmed, after further follow up, that the watch Renfro pawned twice was not Laci's diamond
12 bezel watch.

13 **C. Deanna Renfro and James Broyer's Description of their Croton Watch**
14 **Does Not Match Laci's Diamond Bezel Watch**

15 **1. Pawn Shop Owner Says Renfro's Croton Watch Did Not Have**
16 **Diamonds**

17 During the week of June 14, 2004, defense attorney Mark Geragos presented a pawn slip
18 for a Croton watch to a witness during the defendant's trial. (RT 18027-18028; Bates 42674.)
19 The jury heard and dismissed the defense's theory regarding the pawned Croton watch. Despite
20 this, the defendant attempts to re-raise the issue repeatedly even though the evidence (and police
21 reports provided in discovery) clearly shows that the yellow gold, scratched-up watch pawned
22 by Deanna Renfro was not Laci's grandmother's diamond watch.

23 District Attorney Lieutenant Mark Smith contacted Sam Newnam, the owner of The
24 Pawn Shop, regarding the pawn slip. (Defense Trial Exh. N; Bates 699.) Newnam's computer
25 records indicated the watch was pawned on December 31, 2002 by Deanna Renfro for \$20.00.
26 (Bates 42674.) The computer showed that on January 9, 2003, Deanna returned to The Pawn

1 Shop and redeemed the watch for \$26.00. (Bates 42674.) The pawn slip described the watch as:
2 “1 14k YELLOW GOLD QUARTZ WATCH WITHG SCRATCHES USED” (sic).

3 The pawn business is highly regulated and inspected routinely by the police. (Bates
4 42674.) Newnam said they are required to thoroughly describe the items they take in. (Bates
5 42674.) If the watch that Deanna pawned had diamonds on it, then the pawn slip would have
6 reflected that it had diamonds in the description. (Bates 42674.) Newnam explained they have
7 a diamond detection device that his employees are required to use. If the watch that Deanna
8 brought in had diamonds, the results from the device would have been noted on the pawn slip.
9 (Bates 42674.) Newnam reiterated that a watch with diamonds would have diamonds listed on
10 the pawn slip. (Bates 42674.)

11 Lt. Smith showed Newnam a picture of Laci Peterson’s watch that was pictured on the
12 printout of the eBay website. (Bates 42674.) Newnam said that the watch in the eBay picture
13 was clearly an expensive watch. If that watch had come into his pawn shop, his jeweler who
14 comes in on a regular basis would have appraised the watch and reported back to Newnam its
15 value. (Bates 42674.) That did not happen. (Bates 42674-42675.)

16 **2. Deanna Renfro**

17 Authorities tracked Renfro down in Oklahoma. Chief Investigator Mark D. Sanders of
18 the Ardmore District Attorney’s Office in Oklahoma interviewed Deanna Renfro pursuant to Lt.
19 Smith’s request.³² (Bates 42675.)

20 Chief Inv. Sanders took statements from Deanna Renfro and James Broyer separately on
21 July 6 and 7, 2004. (Bates 42679.) During the interviews, Deanna indicated that the watch she
22 had pawned was given to her by her boyfriend James Broyer in November of 2002. (Bates
23 42675; 42679.) Broyer had given her the watch as a gift and she pawned it on December 31,
24 2002 and received \$20.00. (Bates 42679-42680.) Deanna looked at the pawn slip dated

25
26 ³² This interview was tape recorded and provided to the defense along with the supplemental reports on
September 15, 2004 and signed by Pat Harris.

1 December 31, 2002 and confirmed that was hers. (Bates 42680.)

2 Deanna's sister lent her the money and she retrieved the watch. (Bates 42685.) Deanna
3 said that she pawned the watch a second time at The Pawn Shop on February 14, 2003 and never
4 went back to redeem it. (Bates 42675; 42680.) Her initial intention was to pawn the watch for
5 money to make Broyer a Valentine's Day meal, however, she and her friend used the money to
6 buy alcohol which they drank together. (Bates 42685.) At that time, Deanna did not have any
7 identification with her which is required to pawn an item, so the watch was pawned under the
8 name Anthony Scarlata who was the friend that was with her. (Bates 42675; 42680.)

9 Deanna looked at the eBay picture of Laci's Croton watch and immediately stated that
10 was not the same watch she pawned. (Bates 42675; 42680.) Deanna described the watchband
11 as being a skinny design which was smoother in texture than Laci's watch depicted in the photo.
12 (Bates 42686.) She added that her watch had a broken clasp and the clasp was a slide type
13 mechanism with a locking hook. (Bates 42686.)

14 **3. James Broyer**

15 Next, Chief Inv. Sanders interviewed James Broyer who confirmed Deanna's story of
16 how she obtained the watch she pawned.³³ (Bates 42675; 42682.) Broyer purchased the 14-karat
17 gold watch sometime between August 2002 and Thanksgiving 2002 from a female named Jenny
18 as a gift for Deanna. (Bates 42682, 42684.)

19 Broyer also looked at the photo of Laci's diamond Croton watch and immediately said
20 that was not the watch he purchased from Jenny. (Bates 42683.) Broyer described the watch as
21 having a *rectangular face* with a band that did not flare out like in the photo but the links extended
22 straight without tapering in. (Bates 42683.) Broyer also indicated that the watch's brand name
23 was written just below the 12 on the face of the watch and that the watch was the size of a dime
24 coin, *just rectangular shaped*. (Bates 42683.)

25
26 ³³ This interview was tape recorded and provided to defense along with the supplemental reports on
September 15, 2004 and signed by Pat Harris.

1 **4. Pawn Shop Owner Adamant Renfro's Croton Watch Did Not**
2 **Have Diamonds**

3 Lt. Smith contacted Sam Newnam at The Pawn Shop again and inquired about Renfro's
4 claim of pawning the watch a second time. Newnam checked his records and confirmed that on
5 February 14, 2003 Anthony Scarlata pawned the watch for \$20.00. (Bates 42676.) Newnam's
6 records indicated that the watch was never redeemed by anybody. The computer indicated that
7 the watch would have been foreclosed on June 14, 2003 and the watch would have been placed
8 in a cabinet for public sale. (Bates 42676.) Although it was a year later, Newnam checked and
9 confirmed the watch was no longer in the display case and he said there would be no way to track
10 who purchased the watch. (Bates 42676.)

11 Newnam provided Lt. Smith with a copy of Anthony Scarlata's pawn slip from February
12 14, 2003. (Bates 42678.) The description on this pawn slip described the watch as "14KT Y/G
13 WATCH USED AMD WORN" (sic). (Bates 42678.) There was no brand or make listed for the
14 watch and there was no mention of diamonds around the face of the watch. (Bates 42678.)

15 Newnam was adamant that the watch they received was not the Croton diamond watch
16 depicted in the eBay photo. (Bates 42677.) He indicated there was no chance the watch Renfro
17 and Scarlata pawned had diamonds because it would have been listed and his jeweler would have
18 examined the watch. (Bates 42677.)

19 **D. The Mortiser, an Instruction Manual, and an Alibi**

20 During the investigation, the police tried to account for the defendant's whereabouts from
21 December 23rd at 8:30 p.m. (the last time anyone spoke to Laci) until December 24th at 10:30
22 a.m. (the time when his work computer was accessed) as they investigated the defendant's
23 story.³⁴ Detective Brocchini interviewed the defendant at the Modesto Police Department at

24 ³⁴ Among the misrepresentations in the defendant's Reply to Opposition to DNA Testing and clearly an
25 effort to manipulate the facts is the defendant's claim that the People concede that the defendant's work
26 computer was turned on at approximately at 10:00 a.m. based on a sentence in Detective Grogan's police
report. (Def. Reply Opp DNA Testing, p. 26.) As indicated above, the People do not concede anything

1 about midnight on December 25, 2002. (See People's Trial Exhs. 68 and 68A.) During the
2 interview, the defendant said he left his residence at 9:30 a.m. and drove directly to his warehouse
3 at 1027. N. Emerald Ave. where he logged onto his business computer and checked his email
4 and sent one email. (RT 11019.) The defendant claimed that he assembled a mortiser, then
5 hooked up his boat and left to go fishing at the Berkeley Marina. (See People's Trial Exhs. 68
6 and 68A; RT 11015; 11021.)

7 Just before the interview the defendant had shown Detective Brocchini his warehouse and,
8 while there, the defendant specifically pointed out the mortiser machine which was sitting on the
9 back of a flatbed trailer. (RT 11016-11017; Bates 1241.) From viewing the mortiser, Detective
10 Brocchini could not tell if it had been built that morning or on another day. (Bates 1241.) The
11 defendant claimed he had just received the mortiser and put it together before he went fishing that
12 morning. (RT 11018; 11020.) The box the mortiser came in and the Styrofoam packaging was
13 nearby. (RT 11018; 11020.)

14 As mentioned above, the police contacted people working at eBay and obtained a list of
15 the defendant's transactions, both sales and purchases, and posts on their site. (RT 17823; Bates:
16 18485-18566.) In addition to the Croton watch, the police also inquired about the defendant's
17 mortiser purchase.

18 Detective Brocchini spoke with sales manager Zachary Sanasac who remembered the
19 transaction with the defendant because there had been an issue with shipping. (Bates 1241.) The
20 defendant purchased a reconditioned MM-300 Mortiser machine on November 18, 2002,
21 however, they were out of reconditioned mortisers at that time. (Bates 1241.) Due to the delay,

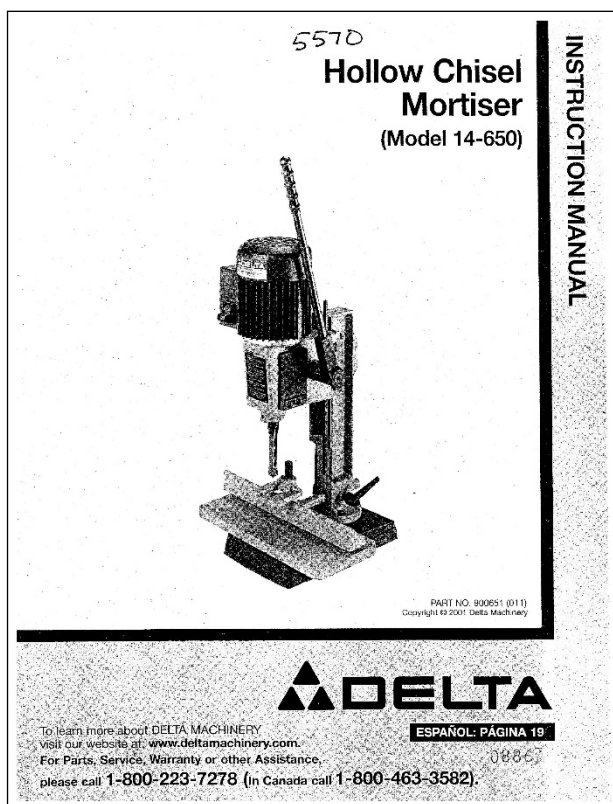
22 _____
23 unless so stated. The defendant is taking a statement out of context. On January 10, 2003, Detective
24 Grogan attended a briefing with tactical patrol to discuss the period which the defendant could travel in an
25 attempt to account for possible locations he could have dumped Laci's body. Det. Grogan was giving an
26 approximation of time between 8:30 p.m. on December 23 and approximately 10:00 a.m. on December
27 24, before his work computer was turned on at his warehouse. (Bates 251.) As stated, the forensic
28 examination shows the defendant's work computer was first accessed at 10:30 a.m. and the last file was
created at 10:56 a.m. (Bates 37053.)

eBay sent the defendant a brand-new Delta Hollow Chisel Mortiser Model 14-650 instead of a reconditioned one along with a new Mortiser Attachment³⁵. (Bates 1241.)

In researching the transactions, Sanasac identified a couple abnormalities. (Bates 1246.) Sanasac indicated that the defendant paid nearly \$32.40 more than the asking price for the reconditioned mortiser. Sanasac explained that it is not unusual for someone to overpay but it struck Sanasac as odd that the defendant would overpay especially based on the defendant's amount of experience on eBay. (Bates 1246.) Sanasac also noted that the defendant had sold the attachments for the mortiser (pictured above) on eBay ten days after purchasing the mortiser. Sanasac found this odd because the tool is generally much more useful with attachments than without them. (Bates 1246.) The brand new mortiser was shipped to the defendant on December 9, 2002 and arrived on December 16, 2002. However, someone asked twice for the item to be held at UPS. The defendant picked up the mortiser from UPS on December 20, 2002 - four days before Christmas Eve. (RT 11028-11029; Bates 4202.) Sanasac agreed to send Modesto Police an identical Delta Hollow Chisel Mortiser that they had shipped to defendant. (Bates 1241-1246.)

On February 12, 2003, the same Delta Hollow Chisel Mortiser that eBay shipped to the defendant arrived at the Modesto Police Department. (Bates 1332.) Det. Brocchini videotaped and photographed the tool as he opened the packaging to see how much assembly was required. (Bates 1332.) He found that the mortiser machine appeared nearly completely assembled, except for some accessory parts. (Bates 1332.) Additionally, the machine came with an Instruction Manual, pictured below, that included step-by-step assembly instructions with photos and directions on how to use the mortiser. (Bates 8867-8882.) This instruction manual was located on the defendant's desk during the execution of the search warrant at the defendant's warehouse on December 27, 2002. (Bates 8859; 8867-8882; 22233.)

³⁵ The Mortiser Attachment was shipped to the defendant prior to the Mortiser due to a stocking issue with the Mortiser machines.



At trial, the jury heard evidence that the computer located at the defendant's warehouse, DELL Work PC4, was seized and a forensic examination was done. (RT 14421-14422.) The work computer was accessed from 10:30 a.m. until 10:56 a.m. on December 24, 2002. (RT 14421; 15753; 15760; Bates 37053.) The defense introduced the defendant's two-page Internet Explorer browsing history for December 24, 2002 (marked as Defense Trial Exhibit P).³⁶

Defense Trial Exhibit P showed that the defendant first accessed his msn email account at 10:32 a.m. (RT 11023; Def. Trial Exh. P.) The forensic examiner found that the user was accessing websites, including conducting internet searches for a Delta tool and directions or instructions for a mortiser and how to assemble a mortiser. (RT 14421-14422; 15761.) At 10:44:34 was the first instance where the Yahoo! search was conducted for "Delta + machinery + help." (RT 15762.) This resulted in 20 hits with a list of different links pertaining to that

³⁶ The Defendant's Internet Explorer Browsing History was also Bates 2933-2934.

1 search request. (RT 15762.) The defendant also went to other sites such as at 10:45 a.m., he
2 visited the website
3 <http://images.trafficmp.com/tmpad/content/RobertKennedy/RobertKennedypub.html>. (See
4 Def. Exh. O.) After that, the defendant accessed the www.DeltaWoodworking.com website at
5 10:49 a.m. – before he drove approximately 90 miles to the Berkeley Marina. (RT 11019.)
6 When the defendant’s work computer was turned on at 10:30 a.m. through 10:56 a.m., for 36
7 minutes, the defendant’s Internet Explorer Browsing History showed that he only accessed 13
8 sites which included his email and website searches.³⁷ (RT 15761-15762; Def. Trial Exh. O.)

9 Although the defendant possessed the actual Instruction Manual for the mortiser on
10 December 24, 2002, he conducted internet searches on his work computer for how to put the
11 mortiser together before he left to go to the Berkeley Marina in an effort to create an alibi.³⁸

12 **VIII. INMATES AND OTHER QUESTIONABLE SOURCES HAVE COME** 13 **FORWARD WITH TIPS SINCE 2003**

14 **A. Inmate J. Romano**

15 On October 18, 2004, J. Romano, an inmate at the Stanislaus County Public Safety

16 ³⁷ Computers work with different access methods, like dial-up or high speed, graphics may load in front
17 or behind the webpage or the actual document file. (RT 14366.) In 2002, the defendant had a dial-up
18 modem connection to the internet. (RT 14464.) The speed of the connection on the computer would
19 determine the length of time it would take for a website page to load, including the various images and
20 gifs. (RT 14463-14464.) Sometimes a gif image would load before the web page populated and other
21 times the graphics would load after because it took longer for a website to come up. (RT 14464.)

22 ³⁸ At one point during the investigation, Detective Brocchini spoke to defendant’s friend Aaron Fritz.
23 (Bates 1198.) Fritz indicated that the defendant had been at his house earlier in the day and they watched
24 FOX News when newscaster Mark Fuhrman came on and reported that there was a 51-minute time gap in
25 the defendant’s alibi and account of events. (Bates 1198.) After the piece aired, the defendant told Fritz
26 that there was no time lapse since the police had his computers. (Bates 1198.) The defendant told Fritz
27 that this would show that the defendant was on the computer during that time, sending emails and receiving
28 emails. (Bates 1198.) The defendant told Fritz that the police had his boat receipt, which showed the time
he arrived, and that it took the defendant over an hour to drive from his warehouse to the boat marina.
(Bates 1198.) The defendant informed Fritz that afterwards he made phone calls on the way home from
the marina, which would refute any 51-minute gap that Mark Fuhrman was reporting. (Bates 1198.) The
defendant knew the police would check his computer and his cell phone records for timeframes and
locations. Detective Brocchini explained that the defendant’s alibi is not accounted for from 8:30 p.m. on
December 23, 2002 until 10:08 a.m. on December 24, 2002. (Bates 1198.)

Center, wanted to report several tips. (Bates 42986.) Romano had been sentenced on his drug-related charges and was waiting to be transported to prison. (Bates 42986.) Modesto Police Detective Dodge Hendee interviewed Romano. Initially, Romano did not want any deals but later asked Hendee, because he was coming forward, Romano wanted a recommendation to his parole officer so that Romano could get into truck driving school. (Bates 42986.)

Romano said his neighbor Tim Spencer's mother and Laci Peterson's mother went to the same church and after Laci disappeared that Spencer asked Romano to "look into it" because of Romano's street contacts. (Bates 42987.) At that point as a favor to Spencer, Romano said he began to look into Laci's disappearance. (Bates 42987.)

Romano indicated that in February 2003 Deanna Harbin³⁹ and Tony Scarlata came to his house and asked if he wanted to buy a lady's watch. (Bates 42987.) The watch had an oval face, not circular, with a silver or white gold watchband that was 6-7mm in width and about 20-40 stones that were possibly diamonds. (Bates 42987.) Romano thought the watch looked expensive. Romano told Deanna and Scarlata that he was not interested in buying the watch. Deanna and Scarlata left and he believed that they pawned the watch at The Pawn Shop on Oakdale Road for \$20.00. (Bates 42987.) They came back to his house with alcohol and cigarettes. (Bates 42987.) Deanna asked Romano not to tell her boyfriend James Broyer that she pawned the watch. (Bates 42987.) Romano agreed, but when Broyer asked Romano about the watch the next day, Romano told Broyer that Deanna pawned it. (Bates 42987.) Romano thought Broyer received the watch from his grandmother and he was unsure if Romano ever retrieved it from the pawn store. (Bates 42987.)

Romano heard a rumor that the watch may have belonged to Laci Peterson. (Bates 42988.) He could not recall who told him this rumor and thought it may have been Scarlata. (Bates 42987.) He could not remember if he heard the rumor at his house or at Curtis Shriver's house. (Bates 42988.) At that time, Deanna and Broyer rented a room from Shriver. (Bates

³⁹ Denna Renfro's maiden name was Deanna Harbin. (Bates 42685.)

1 42988.) Romano blew it off until he heard that Denna and Broyer were going to move to
2 Oklahoma and now he was wondering if it was all connected. (Bates 42987.) Romano had
3 recently seen Deanna's picture on "Court TV." (Bates 42988.)

4 Romano continued to tell Detective Hendee about several other rumors he had heard.
5 This included a rumor that Scott Peterson owed money to the Border Brothers and that could
6 explain Laci's disappearance. (Bates 42989.) He also heard a rumor from someone who had
7 heard from a girl that supposedly there was a brown van involved in the burglary and supposedly
8 during the burglary Laci approached the brown van and told them to get out of there or she would
9 call the cops. (Bates 42989.) Romano thought it may have been a group of 5-6 guys talking
10 about it in Micheline Potter's garage. (Bates 42989.) Romano did not know any of these men
11 and could not even put a face or voice to them and indicated Potter likely did not hear the rumor.
12 (Bates 42989.) Romano also indicated that he heard another rumor from a different unidentified
13 source that it was possible the Hells Angels could be responsible for Laci's disappearance, but
14 he doubted that rumor. (Bates 42989.)

15 On October 19, 2004, Detective Hendee contacted James Broyer over the phone. (Bates
16 42989.) Broyer explained that he had already been contacted about the watch and that Chief
17 Investigator Mike Sanders showed him pictures of Laci's watch which was not the watch he
18 owned. (Bates 42989.) Broyer again provided a description of his watch as having a *square face*,
19 no diamonds, gold in color and it had a square looking linking watchband. (Bates 42989.) Broyer
20 denied that his grandmother gave him the watch and said that he bought it from a girl named
21 Jenny. (Bates 42989.)

22 Detective Hendee also followed up with Micheline Potter on October 20, 2004 regarding
23 the rumors Romano had heard. (Bates 42989.) Potter indicated that Romano has been to her
24 house and in her garage on several occasions. (Bates 42990.) She has no recollection whatsoever
25 of Romano ever telling her anything about this "Laci comment" and she has not had five or six
26 men in her garage. Potter indicated the most men that she ever recalled being in her garage was

1 maybe three who were repairmen that she hired out of the phonebook and had nothing to do with
2 Romano. (Bates 42990.) Potter had never heard this rumor and had no knowledge of anyone
3 being connected to the Medina burglary or to Laci's disappearance. (Bates 42990.)

4 After investigation, none of the tips provided by J. Romano could be substantiated. (Bates
5 42990.)

6 **B. Lt. Xavier Aponte**

7 On January 22, 2003, at 10:59 a.m., Lt. Xavier Aponte from the California Rehabilitation
8 and Correctional facility called the Modesto Police Department tipline to report that he received
9 information from inmate Shawn Tenbrink. (Bates 15311.) Lt. Aponte reported that Shawn
10 Tenbrink spoke to his brother Adam who said Steve Todd said Laci witnessed him breaking in.
11 He could not give dates or time. Lt. Aponte had further information. (Bates 15311.)

12 The defense was aware of this tip prior to trial and has tried to pin the disappearance of
13 Laci Peterson on the Medina burglars since 2003. (Bates 15311.) Defense investigator Carl
14 Jensen interviewed both Lt. Xavier Aponte and Adam Tenbrink. To support his motion for a
15 new trial filed on February 25, 2005, the defendant claimed a *Brady* violation had occurred
16 because Lt. Aponte could not locate the recording of a prison phone call made by an inmate to
17 his brother allegedly discussing Medina burglar Steven Todd and others as being responsible for
18 the murder of Laci and Conner. (JNE Exh. 2, p. 4-5.) To support his claim, the defendant attached
19 Jensen's declaration relaying the reported interview with Lt. Aponte of the California
20 Department of Corrections and the fact the recording could not be located. (JNE Exh. 2, p. 6.)
21 As indicated in the procedural history provided above, the People filed their opposition and the
22 court rejected the defendant's *Brady* violation accusation and request for a new trial. The court
23 found that the defendant had the Aponte tip as of May 14, 2003 and it was in their possession
24 prior to trial. (Court Reporter's Transcript of Motion for New Trial, Mar. 16, 2005, RT 21787.)

25 **C. Inmate C. Carver**

26 On April 20, 2004, Charles Carver reported he had information regarding the Scott
27

Peterson case. (Bates 40517.) He had current charges pending in Sacramento and reported to an investigator at the Sacramento County District Attorney's Office that when Carver was in custody at the El Dorado County Jail another inmate told him that Scott Peterson had hired the Nazi Low Riders (NLR) to kidnap and kill Laci. (Bates 40517-40518.) Members of the NLR used a van to kidnap Laci and kept her dead body someplace in Modesto. (Bates 401518.) The inmate's brother was a lieutenant in the NLR gang and serving time in Pelican Bay. (Bates 40518.) When the defendant did not pay the NLR, his brother ordered that Laci's body be dumped in the San Francisco Bay in order to frame the defendant. (Bates 40518.) The NLR cut up the van in order to eliminate any evidence. (Bates 40518.) Carver did not know the inmate's name or the inmate's brother's name. Although Carver provided specific details, the El Dorado County Jail could not identify any inmate who fit the description provided by Carver. (Bates 40519.)

D. Other Tips from Questionable Sources

The defendant is claiming that he has "new evidence" from individuals⁴⁰ who spoke to someone who heard from someone else information on who the real killer is, however, the defendant refuses to identify any of these alleged witnesses and has heavily redacted their names and content in his pleadings and attachments. Because the defendant refuses to identify these alleged witnesses who spoke with his investigators and investigative journalists, the People cannot evaluate whether they have been interviewed by police and/or are contained within one of the thousands of tips or 40,000 plus pages of discovery. Until the identities of these persons are disclosed and the information unredacted, their credibility and substance are unreliable and without merit and should not be considered.

⁴⁰ Again, the defendant's claim that police failed to investigate a suspect identified in an AMW tip who was an associate of Steven Todd and allegedly bragged that he committed Laci's murder is untrue. (Def. Reply Opp. DNA Testing p. 44.) The police did complete the investigation and confirmed the person was in custody on December 24, 2002. Attached as an exhibit is a certified jail roster that shows the alleged suspect was in custody and serving time at the Stanislaus County Honor Farm. (People's Discovery Opp. Exh. 6 – Certified Prisoner Roster of December 24, 2002 and People's Discovery Opp. Exh. 7 – Certified Booking Register.)

1 on the 24th that he had been golfing that day. The logical conclusion is that he planned to have
2 golf as his initial alibi so no one would know that he had a boat or made a trip to the San Francisco
3 Bay. (RT 8860; 17784.)

4 The fact that the defendant put three patio umbrellas – which are the same height as Laci
5 – in the back of his pickup, wrapped in a blue tarp. (RT 17784; People’s Opp. DNA Testing, p.
6 59.)

7 The fact that the defendant had virtually no activity on his phone the morning of the 24th
8 which was inconsistent with his normal communications. (RT 17786.)

9 The fact that the defendant goes fishing 180 miles round-trip to a location where he’d
10 never fished before, in a boat he had never put in the water before, where there is a deep water
11 current nearby and which was the exact same location where he had been researching and looking
12 at maps on his computer for deep water current in that area. (RT 17787; People’s Opp. DNA
13 Testing, p.67, 78.)

14 The fact that the defendant didn’t know what he was fishing for when initially asked on
15 December 24, 2002. (People’s Opp. DNA Testing, p. 50, 108.)

16 The fact that the defendant’s cell phone and cell towers show the defendant is in Berkeley
17 near the Marina. (People’s Opp. DNA Testing, p. 77.)

18 The fact that at around 2:00 p.m. he started to make phone calls as he was leaving the
19 Bay and left a message at his house that he is going to be late coming home. (RT 17786.)

20 The fact that, on the way back, the defendant calls his father and a friend and never tells
21 them that he just finished fishing in the San Francisco Bay for the first time with his recently
22 purchased boat. (People’s Opp. DNA Testing, p. 20, 77.)

23 The fact that the defendant immediately washes only the clothes that he is wearing when
24 he gets home despite a full clothes hamper. (People’s Opp. DNA Testing, p. 49-50.)

25 The fact that the defendant told the initial detective that there was no electricity in his
26 warehouse so they could not turn on lights and see the mess from making multiple concrete
27

anchors on his flatbed trailer. (RT 17785; People’s Opp. DNA Testing, p.60-62.)

The fact that the cement debris in the warehouse, in several visible voided circle patterns on the flatbed trailer, was consistent with the size of the single “homemade anchor” found in the defendant’s boat. (RT 17782; People’s Opp. DNA Testing, p 105-108.)

The fact that the concrete debris collected from the defendant’s warehouse floor, trailer, bottom of the defendant’s boat, on the boat cover, in the back of his pickup truck and on the dining room floor were consistent and had the same composition. (People’s Opp. DNA Testing, p. 108.)

The fact that Laci’s hair is mashed between the jaws of a pair of needle-nose pliers found in the defendant’s boat. (People’s Opp. DNA Testing, p. 101-105.)

The fact that the boat cover was wadded up in the back of the truck on the 24th. (RT 17787; People’s Opp. DNA Testing, p. 59.)

The fact that the boat cover is located on the 26th wadded up in a shed on the far side of the house underneath a leaking gas leaf blower, with gas spilled on it – the day after the defendant asked if the police were going to use cadaver dogs. (RT 17787; People’s Opp. DNA Testing, p 92-94.)

The fact that on January 11th, when everyone was waiting to learn the results of the search of an unidentified object, similar to the shape of a body, that was picked up on side scan sonar in the San Francisco Bay which turned out to be a boat anchor, the defendant was heard giving a whistle (during an electronic intercepted wiretap communication) when he listened to the voice mail Sharon Rocha had left to excitedly let him know the divers reached it and it was just a boat anchor (RT 17783; People’s Opp. DNA Testing, p. 123.)

Just prior to that, the defendant had been driving erratically and doing countersurveillance on the undercover officers the day that divers were trying to identify the object (found to be an anchor), in the Bay. (RT 17787; People’s Opp. DNA Testing, p 122.)

The fact that the defendant made several covert trips in vehicles unrelated to him to the

1 Berkeley Marina 90 miles away and stayed only minutes after looking out at the water and then
2 leaving. (RT 17783; People's Opp. DNA Testing p. 118-123.)

3 The fact that on January 31, the defendant received a call/message from his mother Jackie
4 which was captured by the wiretap regarding a possible sighting of Laci in Longview,
5 Washington and, at the end of playing the message back, the defendant can be heard chuckling.
6 (People's Trial Exhs. 207D and 207D5 1.31.2003 at 8:35.56.)

7 The fact that the defendant sold Laci's Land Rover and tried to sell the house and its
8 contents less than a month from the date she was missing. (People's Opp. DNA Testing 135-
9 136.)

10 The fact that a trailing dog tracked Laci's scent at the Berkeley Marina parking lot leading
11 to the boat ramp launch area and to the water's edge. (RT 17783; People's Opp. DNA Testing,
12 p113-114.)

13 The fact that Laci and Conner wash up on shore approximately a mile from where the
14 defendant says he was fishing. (People's Opp. DNA Testing p 144-145.)

15 The fact that the evidence shows that Laci is wearing the same Motherhood Maternity
16 pants that she wore on December 23. (People's Opp. DNA Testing, p. 161-162.)⁴¹ During the
17 investigation, Amy told Detective Grogan that Laci was wearing a thin, black shirt with cream-
18 colored flowers, a cream-colored scarf, which was fuzzy with tassels, and a black pea coat style
19 jacket that sat below her waist. She was wearing creamy-colored stretch pants that appeared to
20 be maternity pants and black shoes with a strap over the top and a buckle. (Bates 234-235; 421.)

21 Amy's testimony was consistent at trial. She testified that Laci was wearing a black
22 blouse with cream colored polka dots or cream little flowers. (RT 8846.) Amy identified
23 People's Trial Exhibit 10 as being the maternity blouse that looked familiar to her and was most

24
25 ⁴¹ In the defendant's Reply to Opposition for DNA Testing, he again picks only some facts and
26 misrepresents the entire picture when he argues that Amy Rocha twice told police that the pants depicted
in a photo were not the pants found on her remains. (See Def. Reply Opp. DNA Testing, p. 22-26.)

1 similar to the shirt Laci had been wearing although she explained to the jury that she could not
2 be one hundred percent certain it was the exact shirt. (RT 8857.) Amy indicated that she located
3 this shirt in the top left-hand side of Laci's dresser drawer on February 18, 2003.⁴² (RT 8863;
4 8866; 8868; 18017.) The shirt was wadded up and the sleeves were inside out; she turned them
5 from outside in to look at it. (RT 8867; 18017.) Amy identified it as the shirt that Laci most
6 likely wore on December 23rd when Amy last saw her at Salon Salon. (RT 18017.) Amy also
7 identified this as the shirt that was pictured hanging out of the top of Laci's clothes hamper in
8 People's Trial Exhibit number 7, a photograph taken on December 26th. (RT 8867.) During the
9 February 18th search, Amy also looked at a pair of tan or cream colored pants that were hanging
10 in Laci's closet, however, these pants were a cream color GAP size 5 pants and not maternity
11 pants. (RT 18017; Bates 22170.)

12 Amy also selected a soft cream-colored scarf which she identified as the scarf Laci was
13 wearing on the 23rd which was hanging on a nail in Laci's closet as depicted in People's Trial
14 Exh. 9. (RT 8851-8852; 8857; 8869; 8944; 18017.) Amy testified that Laci was wearing black
15 shoes that had a black strap and buckle across the top, which she confirmed were like flat Mary
16 Janes. (RT 8846-8847.) Amy also explained to the jury that Laci's jacket fell past her waist and
17 covered the top of her pants. (RT 8851-8856.) Amy indicated that the coat that Laci was wearing
18 was most similar to the coat pictured in People's Trial Exh. 5. (RT 8851; 8855.)

19 Amy told the jury that Laci was wearing, without a doubt, cream-colored pants. (RT
20 8846-8847.) The pants were fitted around her stomach and were a cotton stretchy material. (RT
21 8850-8851.) The pants were capri length and she explained that because she and Laci are short
22 and the same height, five-one, the pants fell just above her ankle.⁴³ (RT 8848-8845.) Amy
23 examined People's Trial Exh. 11, a pair of maternity pants that had been subsequently ordered

24 ⁴² Detective Grogan obtained a search warrant for the defendant's residence at 523 Coven Avenue on
25 February 18, 2003 and received authorization from the judge to bring Amy to the home to try and locate
26 clothing that she remembered Laci wearing on the 23rd. (RT 8864; 17844-17845.)

27 ⁴³ At trial, Amy who was also wearing capri pants was asked to stand up and show the jury the length
28 where the capri pants fell; it was slightly above the ankle. (RT 8849-8850.)

1 from Motherhood Maternity and identified these pants as being the same creamy-color pant and
2 same stretchy cotton spandex material that she remembered Laci wearing on December 23rd.
3 (RT 8892-8893.) These were the same pants that Laci was still wearing when her remains washed
4 ashore on April 14, 2003. (RT 12724; see also People's Trial Exhibit depicted on page 9 of
5 People's Opp. DNA Testing.)

6 The defense attempted to discredit Amy by confronting her with a videotape taken on
7 February 18, 2003 when she was interviewed by Detective Grogan and shown three pictures,
8 which were later marked at trial as People's Trial Exhs. 15-A, 15-B and 15-C. (RT 8956-8958.)
9 At trial, Amy explained to the jury that she was never able to pick out one pair of pants. (RT
10 8957.) Amy did not recall pointing to photos and saying "but definitely not these two," however,
11 conceded that if the video showed she said that, then she said that. (RT 8856-8858.) Amy
12 explained that she was examining the photos, one-by-one, for their color, length and style, taking
13 steps to exclude the ones that did not match. (RT 8941-8944.) For instance, Amy told the jury
14 that the pant pictured in photo 15-A had a similar color but she did not recall the pants Laci was
15 wearing having drawstrings on the bottom or cargo-y pockets on the side and the length was too
16 long, so she was able to eliminate photo 15-A. (RT 8943.) In photo marked as 15-B, Amy said
17 the color was a little darker, like a khaki, and the length was longer than she remembered. (RT
18 8943.) When she looked at photo 15-C, Amy indicated she was able to choose what the length
19 and color looked like and that picture had the same length of capri pant that Laci wore and was
20 the same creamy color. (RT 8957-8958.) Amy testified that while the color and length were
21 right, she could not remember exactly the cuffs and if there was a line in them. (RT 8944; 8893.)
22 When she indicated (to Detective Grogan on February 18, 2003) that it was not those pants
23 pictured in 15-C, she was referring to the style because she did not remember exactly the cuffs
24 and if there was a line in them. (RT 8944; 8893.) Amy confirmed that the pant in People's 15-
25 C was the similar color as the Motherhood Maternity pants she examined in People's Trial Exh.
26 11. (RT 8944.)

1 Hence, according to Amy's testimony, Laci was still wearing the same Motherhood
2 Maternity pants that she wore on December 23, 2002 when her body was recovered in April
3 2003. (People's Opp. DNA Testing, p. 161-162.)

4 The fact that Laci's body had been in the water for three to six months. (People's Opp.
5 DNA Testing, p. 50-51.)

6 The fact that the evidence showed that she died while still pregnant and that Conner was
7 protected in her womb. (People's Opp. DNA Testing, 148.)

8 The fact that that within three days after Laci and Conner were found washed ashore in
9 the Bay, the defendant had bleached his hair and was located in San Diego driving a recently
10 purchased (under an alias) used car and in possession of multiple credit cards (including from
11 his sister and mother), over \$14,000 in cash, his brother's driver's license, camping gear,
12 considerable extra clothing and multiple cell phones. (People's Opp. DNA Testing, p. 140.)

13 How about the fact that he never called the police—or Sharon Rocha--when the bodies
14 were initially recovered a day apart in the Bay or after their identities were confirmed?

15 Notwithstanding the massive amount of inconsistencies and lies the defendant has told
16 throughout the investigation, the defendant wants this Court to ignore all the evidence
17 summarized above and outlined in the People's Opposition for DNA Testing which was
18 introduced to the jury at trial and have this Court grant post-conviction discovery so that he can
19 continue his nearly 22- year investigation into his claim of innocence.

20 **WHILE THE COURT MAY TAKE JUDICIAL NOTICE OF PREVIOUSLY FILED**
21 **PETITIONS FOR RELIEF BY DEFENDANT, THE STATEMENTS FROM WITHIN**
22 **THESE PETITIONS ARE INADMISSIBLE HEARSAY;**
23 **REQUEST FOR JUDICIAL NOTICE**

24 The defendant has a second Petition for a Writ of Habeas Corpus (Petition) pending before
25 the California Court of Appeal, First Appellate District, Case No. A167615, filed April 19, 2023,
26 asserting violations of various claimed rights including his claim of newly discovered evidence.

1 The defendant asks this Court to incorporate by reference each of the facts he has alleged in his
2 Petition; he also requests this Court to take judicial notice of all pleadings and filings in *People v.*
3 *Peterson*, San Mateo County Superior Court Case Number SC055500A, *People v. Peterson*, Case
4 Number S132449, and *In re Peterson*, Case Number S230782.

5 While this Court may take judicial notice of the legal history of this case, including the
6 defendant's conviction, the prior Supreme Court rulings against his legal and factual claims and
7 the denial of his prior Writ Petition, it may not accept his claimed facts in pleadings as evidence
8 in this proceeding.

9 In *People v. Tolbert* (1986) 176 Cal.App.3d 685, 690, the court held:

10 Judicial notice may be taken of the records of a court of this state (Evid.Code, §
11 452, subd. (d); *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914). This is not to say,
12 however, that judicial notice may be taken of the truth of facts asserted in every
13 document in a court record. (*Day*, at p. 904; *People v. Rubio* (1977) 71 Cal.App.3d
14 757, 766, 139 Cal.Rptr. 750.) Ordinarily a court may notice the existence of
15 another court's findings of fact and conclusions of law in support of a judgment,
16 because they are conclusive and uncontrovertible in character and not reasonably
subject to dispute. **But judicial notice cannot be taken of hearsay allegations as
being true, even those made by a judge-declarant, just because they are part
of a court record or file** (*Day*, 50 Cal.App.3d at p. 914.; *Rubio*, 71 Cal.App.3d at
p. 766; see also Jefferson, Cal. Evidence Benchbook (2d ed. 1982) Judicial Notice,
§ 47.2, at pp. 1757–1759.)

17 (Boldface added.)

18 We encourage this Court to take judicial notice as appropriate, as we requested in the DNA
19 Opposition.

20 “A court cannot take judicial notice of hearsay allegations as being true, just because they
21 are part of a court record or file.” (*People v. Sur. Ins. Co.*, (1982) 136 Cal. App. 3d 556, 564;
22 citations omitted.)

23 “As was stated in *Day v. Sharp* (1975) 50 Cal.App.3d 904, 914, (a) trial court may
24 properly take judicial notice of the records of any court of record of any state of
25 the United States. But, as is stated in Jefferson, California Evidence Benchbook
26 (1972) Judicial Notice, section 47.3, at page 840: Caveat: Limitations on judicial
27 notice of court records. What is meant by taking judicial notice of court records?
28 There exists a mistaken notion that this means taking judicial notice of the
existence of facts asserted in every document of a court file, . . . a court *cannot*

1 take judicial notice of Hearsay allegations as being true, just because they are part
2 of a court record or file. . . ." (*People v. Rubio*, (1977) 71 Cal. App. 3d 757, 766,
3 disapproved of on other grounds in *People v. Freeman* (1978) 22 Cal. 3d 434;
internal quotations and citations omitted; Italics in original.)

4 The People hereby ask this Court to take judicial notice pursuant to Evid. Code, §451 –

5 Judicial notice shall be taken of the following: (a) The decisional, constitutional,
6 and public statutory law of this state and of the United States and the provisions of
7 any charter described in Section 3, 4, or 5 of Article XI of the California
Constitution;"

8 Evid. Code, §452:

9 (a) The decisional, constitutional, and statutory law of any state of the United
10 States and the resolutions and private acts of the Congress of the United States and
of the Legislature of this state; ****

11 (d) Records of (1) any court of this state or (2) any court of record of the United
12 States or of any state of the United States;

13 And Evid. Code, §453:

14 The trial court shall take judicial notice of any matter specified in Section 452 if a
15 party requests it and: (a) Gives each adverse party sufficient notice of the request,
16 through the pleadings or otherwise, to enable such adverse party to prepare to meet
the request; and (b) Furnishes the court with sufficient information to enable it to
take judicial notice of the matter.

17 The People ask this Court to take judicial notice of the Supreme Court's decision in
18 Supreme Court No. S132449 (DSC - JNE Exh. 13 affirming defendant's conviction); the Supreme
19 Court's opinion in Supreme Court No. S230782 (JNE Exh. 14, denial of defendant's Petition for
20 Habeas Corpus); the defendant's first Petition for Habeas Corpus and related pleadings to allow
21 this court to review the issues raised by the defendant and the Attorney General's Return/Reply
22 to the Petition (DSC - JNE Exh. 10) and the court file of this instant matter case number
23 SC055500A which includes the trial record (including all transcripts of all proceedings which
24 were previously provided on a disk) and accompanying exhibits (being lodged with this Court
25 this date). "The trial court takes judicial notice of its own records in the proceeding on trial."
26 (*People v. Rhodes* (1934) 137 Cal.App. 385, 391.)

1 We are again attempting to identify matters for which judicial notice does not seem to be
2 in dispute (considering the lack of objections from the defendant to our requests within the DNA
3 Opposition), by marking the items with “JNE” before the assigned exhibit number. To avoid
4 confusion, we are using the actual trial numbers whenever possible. We will use the same disk
5 process of lodging the exhibits with the court as done with the DNA Opposition; we will also use
6 the same transcript we have previously provided to the court and counsel and of which we
7 requested judicial notice.

8 **LAW AND ARGUMENT**

9 **I.**

10 **DUE PROCESS**

11 "In a criminal case, the people of the State of California have the right to due process of law and
12 to a speedy and public trial." Cal. Const., Art. I, § 29.

13 The People have previously provided the Court and defendant Peterson’s counsel notice
14 of their intent to move to strike any statements and/or declarations made by, or based on, any
15 anonymous witnesses in support of defendant’s Motion for Post-Conviction Discovery as the
16 People are unable to verify, corroborate and/or determine the credibility of the witnesses. The
17 People’s position was also raised by the Attorney General in his Informal Reply to the defendant’s
18 second Petition before the First District Court of Appeal where defendant filed the Petition for
19 Writ of Habeas Corpus supported by many of these kinds of declarations from unnamed
20 individuals.

21 It is the People’s position that the defense’s use of anonymous witnesses to bolster his
22 claims violates the People’s Right to Due Process:

23 "We further agree with the People that disclosure of the identity of the subpoenaed
24 party and the nature of the records sought may, in many circumstances, effectuate
25 the People's right to due process under the California Constitution. (Cal. Const.,
26 art. I, § 29; cf. *Alford v. Superior Court*, *supra*, 29 Cal.4th at p. 1044, (lead opn. of
27 Werdegarr, J.) [discussing “general due process principles” governing the People's
28 role when the defense seeks confidential records of a peace officer].) Discovery
proceedings involving third parties can have significant consequences for a
criminal prosecution, consequences that may prejudice the People's ability even to

1 proceed to trial. For example, a third party's refusal to produce documents
2 requested by the defense can potentially result in sanctions being applied against
3 the People. (*Department of Corrections v. Superior Court*, *supra*, 199 Cal.App.3d
4 at p. 1093, citing *Dell M. v. Superior Court* (1977) 70 Cal.App.3d 782, 788.)
5 Protracted ex parte proceedings may result in delays, thereby interfering with the
6 People's right to a speedy trial. (Cal. Const., art. I, § 29; Pen. Code § 1050.) The
7 People, even if not the target of the discovery, also generally have the right to file
8 a motion to quash “so that evidentiary privileges are not sacrificed just because the
9 subpoena recipient lacks sufficient self-interest to object” (*M.B. v. Superior Court*
10 (2002) 103 Cal.App.4th 1384, 1392) or is otherwise unable to do so. (See *People*
11 *v. Superior Court (Humberto S.)*, *supra*, 43 Cal.4th at p. 743.) Even where the
12 People do not seek to quash the subpoena, the court may desire briefing and
13 argument from the People about the scope of the third party discovery. (*Id.* at pp.
14 750–751.) [footnote omitted.] Indeed, “a canvass of the underlying proceedings in
15 reported cases suggests trial courts regularly permit prosecutorial participation in
16 third party discovery.” (43 Cal.4th at p. 750.) It is difficult to see how the People
17 can have a meaningful opportunity to be heard if they are categorically barred from
18 learning the identity of the subpoenaed party or the nature of the documents
19 requested. (See *ibid.*) We therefore reject the Court of Appeal's contention that
20 “[n]o statutory or constitutional authority permits disclosure to the prosecution of
21 the names of the third parties to whom defense subpoenas have been issued or the
22 nature of the records produced.””

23 (*Kling v. Superior Court* (2010) 50 Cal.4th 1068, 1078–1079, as modified (Nov. 17, 2010) holding
24 modified by *Facebook, Inc. v. Superior Court of San Diego County* (2020) 10 Cal.5th 329.)

25 It is self-evident that Due Process means nothing if a party is not given an opportunity to
26 be heard and to respond. When one party can proceed by withholding evidence from the other
27 side any hearing is equivalent to an ex parte process. The defendant, who has the burden of proof,
28 is simply asking us and the court to take his word for whatever claim he cares to make and in
many circumstances the claim is that of a witness who claims that someone else said something.
As all attorneys learned in law school, hearsay is an out of court statement that is offered to prove
the truth of the matter asserted. (Evid. Code § 1200.) The United States Supreme Court found that
“an unavailable witness's out-of-court statement may be admitted so long as it has adequate indicia
of reliability—i.e., falls within a “firmly rooted hearsay exception” or bears “particularized
guarantees of trustworthiness.” (*Crawford v. Washington* (2004) 541 U.S. 36, 42.) Here,

1 defendant presents neither an exception to the hearsay rule nor any semblance of trustworthiness
2 as there is no way to establish the credibility or motives of the alleged attesting declarants.

3 Statutes and case law are replete with conditions where the identities of confidential
4 informants and/or confidential victims may be withheld prior to trial and even just before their
5 testimony at trial. (Evid. Code §§ 1040 and 1041; see also *People v. Valdez* (2012) 55 Cal.4th
6 82,107; *Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1151.) There has been no showing of
7 any justification to allow the People's Due Process Rights to be trampled on. If the defendant
8 continues to insist that the names of the declarants remain confidential and withhold the names of
9 other persons who are claimed to form his 'new evidence' from the prosecution, the People ask
10 this Court to strike all declarations and/or statements of these unnamed declarants in defendant's
11 pleadings.

12 The People request that this Court protect our Due Process rights by striking from the
13 pending motions and/or exhibits all references to these individuals, their statements, declarations
14 or claims attributed to them as inadmissible hearsay without any exception and without a
15 showing of any degree of trustworthiness in an unnamed witness.

16 II.

17 DEFENDANT'S NEW EVIDENCE CLAIMS WERE OR COULD HAVE BEEN 18 PREVIOUSLY LITIGATED

19 Defendant Peterson has alleged throughout his Discovery Motion (and in his DNA
20 motion) that new evidence supports his discovery request, stating: (1) Laci was walking when
21 defendant Peterson left for the Bay, (2) the Medina house was burglarized on December 24, 2002,
22 (3) Laci confronted the Medina burglars, (4) Laci was not killed on December 24, 2002, (5) police
23 failed to investigate a van fire on December 25, 2002, (6) there was no body in defendant
24 Peterson's boat when he launched it into the Berkeley Marina, and (7) Laci was placed in the Bay
25 miles north of where defendant Peterson reported to be. By the time this motion is litigated, this
26 Court will have heard the defendant's DNA motion; the People request that this Court incorporate

1 the People's response to that motion in this response as well. The very factually specific response
2 by the People in the DNA motion also dovetails into this motion due to the fact that the defendant
3 has previously brought a Penal Code §1054.9 Discovery motion; he should no longer have even
4 a statutory "right" to discovery, only the ability to request such discovery subject to the court's
5 discretion. In this case, the exercise of the court's discretion is also impacted by the fact that the
6 California Supreme Court has already reviewed and denied several, if not all, of his "new
7 evidence" claims during defendant Peterson's automatic appeal and in his first Petition for Writ
8 of Habeas Corpus making it impossible for these items to be exculpatory.

9 **A. Law of the Case**

10 Defendant Peterson claims to be innocent after a jury of 12 unanimously convicted him
11 based on the overwhelming evidence of his murder of Laci and his unborn son, Conner, to include
12 his planning and premeditation. Not surprisingly, many convicted murderers deny their guilt years
13 and years after their crimes. Just because an inmate says he is innocent does not make it so. In
14 fact, the evidence of defendant Peterson's guilt was and remains substantial beyond the reasonable
15 doubt standard. Furthermore, defendant Peterson's third party culpability claims were raised at
16 trial, then again during defendant Peterson's motion for new trial, then once again on appeal, and
17 also during defendant Peterson's first Petition for Writ of Habeas Corpus. At each event, his
18 claims were found lacking. His claims remain meritless because he killed Laci and Conner.

19 The evidence conclusively proved that, weeks before Laci went missing, defendant
20 Peterson told Shawn Sibley that he had "lost" his wife, then later he told Amber Frey he had "lost"
21 his wife and this would be his first holiday without her (his wife). (RT 11724:1-7; RT 14620:3-
22 14623:25, People's Trial Exh. 195R, starting at page 2.)

23 Defendant Peterson then bought a boat and hid it at his warehouse. (DSC-JNE Exhibit
24
25
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28

13,⁴⁴, p. 452.) Even before he bought the boat, defendant Peterson searched online for currents, nautical charts and maps for the Berkeley Marina and San Francisco Bay, including the area around Brooks Island. *Id.* Defendant Peterson told others he would be golfing on Christmas Eve. Based on the golfing story, defendant Peterson even offered to collect a gift basket for his sister-in-law, Amy Rocha, from a fruit stand not too far from defendant Peterson's golf course. Amy Rocha testified during trial that she recalled what Laci was wearing the night before Christmas Eve-- a black floral blouse and cream-colored capri pants which, for shorter females (like Laci who was 5'1"), rested on Laci's ankles. (RT 8846:12- 8850:10.) When Laci's remains were found on the rocks at Point Isabel, she was wearing a bra and the remnants of cream-colored capri pants. The black blouse was found in the bedroom hamper. (RT 17398:24-17400:16, 17414:1-17417:21.)

Defendant Peterson's behavior upon returning from the Bay demonstrated consciousness of guilt. After discovering his 8-month pregnant wife's car in the driveway, his dog loose in the backyard with his leash attached, the side door to the house unlocked, the lights off, Laci's purse still there, and the fact she had failed to answer the phone for hours, Peterson did not immediately contact anyone when he found Laci was not at home. Instead, he took a shower, washed his clothes, ate pizza and only then called Laci's mother to say she was "missing" (DSC - JNE Exh. 13, p.418.)

Within a short period of time, even though Laci and Conner had not been found, defendant Peterson sold Laci Peterson's vehicle, tried to sell their home (furnished) and turned Conner's nursery into a storage room. (DSC - JNE Exh. 13, p. 422.) Almost four months after Laci went

⁴⁴ "And the trailing testimony aside, there was considerable other circumstantial evidence incriminating Peterson, from the simple fact that Laci's and Conner's bodies washed ashore 90 miles from their home but within sight of where Peterson admitted he went fishing the day they disappeared; to the research Peterson did on bay currents in the weeks preceding her disappearance and **the fishing boat he bought but mentioned to no one**; to Peterson's inability to explain what he was fishing for in the middle of the day; to his repeated subsequent surreptitious trips to the marina in the weeks after her disappearance; to the many steps he took in the weeks after she went missing — selling her car, exploring sale of the house, turning the nursery into a storage room — that indicated he already knew Laci and Conner were never coming back." (DSC - JNE Exh. 13, p. 452; bold added.)

1 missing and within three days after Laci and Conner were found washed ashore in the Bay,
2 defendant Peterson had bleached his hair and was located in San Diego driving a recently
3 purchased (under an alias) used car and in possession of multiple credit cards (including from his
4 sister and mother), over \$14,000 in cash, his brother's driver's license, camping gear, considerable
5 extra clothing and multiple cell phones (DSC - JNE Exh. 13, p. 423; RT 19103:2-19104:26;
6 People's Trial Exhs. 293-2, 293-37, 293-38, 293-41, 293-44.)

7 *(1) Defense Claim re: Reports of Laci Walking (Previously litigated)*

8 The People will address each discovery request as a group or individually if necessary,
9 however it is important for this Court to recall the legal position of this case when it exercises its
10 discretion. Many of the requests in this subsequent discovery motion consist of multiple parts and
11 dozens, if not hundreds, of subparts; a large portion of items relate to matters which have already
12 been legally resolved against the defendant.

13 Defendant Peterson lists multiple reports of Laci walking after he left for the San Francisco
14 Bay. (Defense motion, p. 23-38.) However, the reports, when reviewed in their entirety, mostly
15 identify a female wearing black pants. (Dean T., Bates 14750; Homer Maldonado, Bates 41913;
16 Vivian Mitchell, Bates 15510⁴⁵; Grace Wolf, Bates 41915; and John Brazil, Bates 2106-2107.
17 (Brazil stated the woman he saw wore dark colored sweatpants but could not identify the woman's
18 age or any other details about her description.) As noted in the Supreme Court Opinion, Laci was
19 found in the Bay wearing light-colored (i.e., tan/cream/beige) "Motherhood Maternity" capris on
20 April 14, 2003. (DSC - JNE Exh. 13, p. 422.) Defendant Peterson's trial counsel also presented
21 evidence of many of these tips at trial. (RT 18489:2-18491:10 (Freitas); RT 18492:5-18504:8
22 (Homer Maldonado, Defense Trial Exh. M-1; RT 18494:25-18495:2 (Helen Maldonado).)

23 ⁴⁵ Ms. Mitchell not only reported this event to law enforcement, but also to the Modesto Bee. That article
24 was also discovered to defense counsel at Bates 13802. (However, members of law enforcement also
25 learned from neighbors of Ms. Mitchell that she had a tendency to confuse individuals with one another.
26 Bates 30866-30871.)

1 In defendant Peterson’s first Petition for Writ of Habeas Corpus, he not only claimed that
2 he received ineffective assistance of counsel due to failure of counsel to present exculpatory
3 evidence - sightings of Laci Peterson after defendant Peterson was believed to have left for the
4 Berkeley Marina – but that Steven Todd, one of the burglars of the Medina residence, also saw
5 Laci Peterson after defendant Peterson left for the Berkeley Marina. DSC - JNE. Exh. 10, Claim
6 9 at p. 186 and Claim 10 at p. 200.) Defendant Peterson argued this in part was supported by the
7 tip by Lt. Aponte.

8 In his first Petition for Writ of Habeas Corpus, counsel for defendant Peterson listed
9 several sightings of Laci that were allegedly not presented at trial; however, their claims were not
10 entirely accurate. At trial, Detective Brocchini testified there were over 10,000 tips many of which
11 were Laci sightings across the world (RT 11474:3-18, RT18078, People’s Trial Exhs. 267, 268A,
12 and 268B). Detective Grogan said there were more than 90 Modesto sightings of Laci Peterson
13 on or about December 24th. (RT 17761:1-17766:18.) Also at trial, the People presented several
14 charts depicting those sightings in People’s Trial Exhs. 267, 268A and 268B. *Id.*

15 The California Supreme Court denied each of these claims outright on October 14, 2020,
16 and authorized further evidentiary hearing only as to the claim involving Juror No. 7. (DSC - JNE
17 Exh. 13.)

18 *(2) / (3) Defense Claim re: Medina Burglary/Aponte Tip (Previously litigated)*

19 Defendant Peterson was permitted to elicit evidence regarding the Medina burglary during
20 trial. DSC - JNE Exh. 13, p. 425.)

21 In his motion for new trial filed three months after his conviction, defendant Peterson
22 attempted to claim the evidence of a burglary near Laci Peterson’s residence and a phone call
23 made by an inmate allegedly implicated others in the murder of Laci and Conner. (DSC - JNE
24 Exh. 2, p. 4-5.) Enclosed with defendant’s motion was Defense Exhibit 29 prepared by Carl Jensen
25 relaying a reported interview with Lieutenant (“Lt.”) Xavier Aponte of the California Department
26 of Corrections.

1 Contained within defendant's motion for new trial was the acknowledgement that the
2 recording of the phone call could not be located at CDC. (DSC - JNE Exh. 2, p. 6, lines 1 through
3 7.) In response to defendant Peterson's motion, the People submitted to the court a declaration of
4 Lt. Xavier Aponte under penalty of perjury that further stated the recording of the inmate could
5 not be located. (DSC - JNE Exh. 17 – 2005 People's Opposition to Motion for New Trial.) Also
6 included in the People's Opposition was a declaration of an employee of the Office of the District
7 Attorney who had discovered to staff of defendant's previous counsel the tip sheet related to Lt.
8 Aponte's phone call to Modesto Police Department. (DSC - JNE Exh. 17, Exhibit 1 to People's
9 Opposition.)

10 In denying defendant Peterson's motion for new trial based on the claim related to Lt.
11 Aponte's tip, the court found that the evidence of the tip was presented to defense counsel on May
12 14, 2003 and was in their possession. (Court Reporter's Transcript of Motion for New Trial, Mar.
13 16, 2005, (RT 21787:6-13.) The court also doubted the "trustworthiness" of an inmate at the
14 Department of Corrections. (RT 21788:3-23.) Following arguments at the hearing on the new
15 trial motion, the trial court denied defendant Peterson's claims. The Aponte tip issue was also
16 raised in the first Writ and denied. (DSC - JNE Exh. 16.) Discovery can serve no valid legal
17 purpose.

18 *(4) Defense Claim re: Laci and Conner Were Not Placed in the Bay by Defendant Peterson*
19 *(Previously litigated)*

20 Laci died while pregnant. (DSC - JNE Exh. 13, p. 422.) When recovered, Laci's remains
21 were found with barnacles attached (JNE Exh. 13, Supreme Court Opinion, p. 422).

22 When the California Supreme Court affirmed defendant Peterson's conviction, they
23 denied error relating to the admission of the scent trailing evidence, but also found:

24 The trailing evidence did not add much beyond what could already be inferred
25 from other evidence. It also did not rule out the defense's theory "that somebody
26 [else] abducted her" and then disposed of her in the bay. And the trailing testimony
27 aside, **there was considerable other circumstantial evidence incriminating**
28 **Peterson**, from the simple fact that Laci's and Conner's bodies washed ashore 90
miles from their home but within sight of where Peterson admitted he went fishing

1 the day they disappeared; to the research Peterson did on bay currents in the weeks
2 preceding her disappearance and the fishing boat he bought but mentioned to no
3 one; to Peterson's inability to explain what he was fishing for in the middle of the
4 day; to his repeated subsequent surreptitious trips to the marina in the weeks after
5 her disappearance; to the many steps he took in the weeks after she went missing
6 — selling her car, exploring sale of the house, turning the nursery into a storage
7 room — that indicated he already knew Laci and Conner were never coming back.
8 Even under the most stringent harmlessness standard, for federal constitutional
9 error (*Chapman v. California* (1967) 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d
10 705), it is clear beyond a reasonable doubt exclusion of the limited dog-trailing
11 evidence admitted by the trial court would have had no impact on the jury's
12 determination that Peterson was guilty.

13 (DSC - JNE Exh. 13, p. 452.)

14 “The doctrine of ‘law of the case’ deals with the effect of the *first appellate*
15 *decision* on the subsequent *retrial or appeal*: The decision of an appellate court,
16 stating a rule of law necessary to the decision of the case, conclusively establishes
17 that rule and makes it determinative of the rights of the same parties in
18 any subsequent retrial or appeal in the same case.” (9 Witkin, Cal. Procedure (4th
19 ed. 1997) Appeal, § 895, p. 928.)

20 (*Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 491.)

21 “The law-of-the-case doctrine rests on a simple premise: ‘the *same* issue presented a
22 second time in the *same case* in the *same court* should lead to the *same result*.’ *LaShawn A. v.*
23 *Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996) (en banc).” (*Kimberlin v. Quinlan* (D.C. Cir. 1999)
24 199 F.3d 496, 500.)

25 “[W]here an appellate court states a rule of law necessary to its decision, such rule ‘ “must
26 be adhered to” ’ in any ‘ “subsequent appeal” ’ in the same case, even where the former decision
27 appears to be ‘ “erroneous” ’ ” (*People v. Boyer* (2006) 38 Cal.4th 412, 441, citing *People v. Whitt*
28 (1990) 51 Cal.3d 620, 638 (*Whitt*), quoting *People v. Shuey* (1975) 13 Cal.3d 835, 841.)

It has long been the rule that absent a change in the applicable law or the facts, the
court will not consider repeated applications for habeas corpus presenting claims
previously rejected. [Citations.] The court has also refused to consider newly
presented grounds for relief which were known to the petitioner at the time of a
prior collateral attack on the judgment. [Citations.] The rule was stated clearly in

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1 "There are limits, however, on the authority of one superior court judge to set aside
2 the order of another judge of the same court. "[U]nder article VI, section 4, of the
3 California Constitution, 'one [judge or] department of the superior court cannot
4 enjoin, restrain, or otherwise interfere with the judicial act of another [judge or]
department of the superior court.' " (*Konow*, at p. 1019.) This rule prevents a trial
court judge from acting as a " 'one-judge appellate court' over another judge." "

5 (*People v. Waldon* (2023) 14 Cal.5th 288, 306.)

6 **B. Collateral Estoppel**

7 As generally understood, "[t]he doctrine of *res judicata* gives certain *conclusive*
8 *effect* to a *former judgment* in subsequent litigation involving the same
9 controversy." (7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 280, p. 820.)
10 The doctrine "has a double aspect." (*Todhunter v. Smith* (1934) 219 Cal. 690, 695,
28 P.2d 916.) "In its primary aspect," commonly known as claim preclusion, it
11 "operates as a bar to the maintenance of a second suit between the same parties on
the same cause of action. [Citation.]" (*Clark v. Leshner* (1956) 46 Cal.2d 874, 880,
299 P.2d 865.) "In its secondary aspect," commonly known as collateral estoppel,
12 "[t]he prior judgment ... 'operates' " in "a second suit . . . based on a different cause
of action . . . 'as an estoppel or conclusive adjudication as to such issues in the
13 second action as were actually litigated and determined in the first action.'
[Citation.]" (*Ibid.*) "The prerequisite elements for applying the doctrine to either
14 an entire cause of action or one or more issues are the same: (1) A claim or issue
raised in the present action is identical to a claim or issue litigated in a prior
15 proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and
16 (3) the party against whom the doctrine is being asserted was a party or in privity
with a party to the prior proceeding. [Citations.]" (*Brinton v. Bankers Pension*
17 *Services, Inc.* (1999) 76 Cal.App.4th 550, 556, 90 Cal.Rptr.2d 469.)

18 (*People v. Barragan* (2004) 32 Cal.4th 236, 252-253.)

19 Defendant Peterson's prior claims of innocence were heard during his jury trial, in his
20 motion for new trial, appeal and in his Petition for Writ of Habeas Corpus. The uncalled witnesses,
21 the Medina burglary, the "new" scientific evidence (dates of death of Laci and Conner and their
22 placement in the Bay) and IAC (ineffective assistance of counsel) have all been resolved against
23 the defendant by a higher court. Claim Three of defendant Peterson's first Petition for Writ of
24 Habeas Corpus offered yet another expert's opinion on Conner's age (DSC - JNE. Exh. 10, Pet.
25 Exh. 7, HCP-000050.) There is nothing new here.

26 ///

C. Third Party Culpability

In *People v. Robinson* (2005) 37 Cal.4th 592, the California Supreme Court reflected on its previous holdings related to third party culpability finding:

With regard to third-party culpability, we note that *Sandoval, supra*, 4 Cal.4th 155, 176, 14 Cal.Rptr.2d 342, 841 P.2d 862, and *Alcala, supra*, 4 Cal.4th 742, 792, 15 Cal.Rptr.2d 432, 842 P.2d 1192, both followed *People v. Hall* (1986) 41 Cal.3d 826, 226 Cal.Rptr. 112, 718 P.2d 99 (*Hall*). In *Hall*, we recognized that third-party culpability evidence is admissible if it is “capable of raising a reasonable doubt of [the] defendant's guilt,” but also observed: “[W]e do not require that any evidence, however remote, must be admitted to show a third party's possible culpability.... [E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime.” (*Hall, supra*, 41 Cal.3d at p. 833, 226 Cal.Rptr. 112, 718 P.2d 99, italics added.)

(*People v. Robinson* (2005) 37 Cal.4th 592, 625.) (Boldface added.)

Applying the *Hall* standard, courts have frequently concluded that evidence providing only a possible motive or opportunity to some third party is insufficient to raise a reasonable doubt of guilt and, thus, properly excluded under Evidence Code section 352. (See, e.g., *People v. Casares* (2016) 62 Cal.4th 808, 830; *People v. Linton* (2013) 56 Cal.4th 1146, 1201-1202.) Similarly, marginal or speculative evidence linking a third party to the crime is insufficient to trigger admissibility under *Hall*. (See, e.g., *People v. Lewis* (2001) 26 Cal.4th 334, 373; *People v. Kerley* (2018) 23 Cal.App.5th 513, 572-574.) Finally, “[t]hird party culpability evidence that does not identify a possible suspect is properly excluded.” (*People v. Brady* (2010) 50 Cal.4th 547, 559.)

Otherwise inadmissible evidence does not become admissible because it might establish a third party’s culpability. Rejecting evidence of a third party’s alleged admission, the appellate court in *People v. Huggins* (1986) 182 Cal.App.3d 828 ruled: “... *Hall* did not undertake to repeal the Evidence Code. Incompetent hearsay is as inadmissible as it always was.” (*Id.* at p. 833,) Thus, for example, mere evidence of a third party’s propensity for violence is insufficient to justify admission under Evidence Code section 1101 as proof of that person’s identity as the perpetrator

1 of a murder. “Such evidence does not amount to direct or circumstantial evidence linking the third
2 person to the actual perpetration of the crime.” (*People v. Davis* (1995) 10 Cal.4th 463, 501; see
3 also *People v. McWhorter* (2009) 47 Cal.4th 318, 372-373.) Similarly, prior similar crimes that
4 are not sufficiently distinctive for admission to prove identity under Evidence Code section 1101,
5 are not admissible to establish third party culpability. (*People v. Elliott* (2012) 53 Cal.4th 535,
6 580-581.)

7 This will be at least the fourth time that a court has heard about potential burglar
8 involvement in the disappearance of Laci Peterson – the first time was during the actual trial of
9 defendant Peterson. (RT 10177:1-14, 10334:23-10336:24, 20014:18-20023:15, 20049:14-
10 20060:4.) The jury did not believe it at trial, the trial court did not believe it at the motion for new
11 trial, and the California Supreme Court did not believe it during its review on appeal nor during
12 its Habeas Corpus review.

13 “[I]n the absence of strong justification, any issue that was *actually* raised and
14 rejected on appeal cannot be renewed in a petition for a writ of habeas corpus.” (*In*
15 *re Harris* (1993) 5 Cal.4th 813, 829, 21 Cal.Rptr.2d 373, 855 P.2d 391, italics in
16 original.) **** Hence, because there is no showing that the claims to which the
discovery is purportedly relevant are cognizable on habeas corpus, the discovery
itself is not material to future habeas corpus litigation.”

17 (*Hurd v. Superior Court* (2006) 144 Cal.App.4th 1100, 1114.)

18 The People submit that defendant Peterson’s claims were resolved by the California Supreme
19 Court and there is no cause to revisit them any further. As such, requests for discovery that would
20 contravene the California Supreme Court should be denied as a matter of law and fact.

21 III.

22 SUCCESSIVE WRITS

23 It has long been the rule that absent a change in the applicable law or the facts, the
24 court will not consider repeated applications for habeas corpus presenting claims
25 previously rejected. [Citations.] The court has also refused to consider newly
26 presented grounds for relief which were known to the petitioner at the time of a
prior collateral attack on the judgment. [Citations.] The rule was stated clearly in
In re Connor [(1940)] 16 Cal.2d 701, 705: "In this state a defendant is not permitted
27 to try out his contentions piecemeal by successive proceedings attacking the

validity of the judgment against him." (*In re Clark*, (1993) 5 Cal.4th 750, 767-768.)

(*In re Martinez* (2009) 46 Cal.4th 945, 956.)

"It is, of course, the rule that a petition for habeas corpus based on the same grounds as those of a previously denied petition will itself be denied when there has been no change in the facts or law substantially affecting the rights of the petitioner.' [Citations.] In this case, the petition is not only barred as successive but also because it is repetitive."

(*In re Martinez* (2009) 46 Cal.4th 945, 950, fn. 1.)

"This court has never condoned abusive writ practice or repetitious collateral attacks on a final judgment. Entertaining the merits of successive petitions is inconsistent with our recognition that delayed and repetitious presentation of claims is an abuse of the writ."

(*In re Clark, supra*, 5 Cal.4th at p. 769; see *In re Reno*, (2012) 55 Cal.4th 428, 455, superseded by statute on another ground as stated in *In re Friend, supra*, 11 Cal.5th 720.)

IV.

THE CALIFORNIA CONSTITUTION GUARANTEES THE VICTIMS' FAMILY THE RIGHT TO FINALITY OF JUDGMENT AND NO HARASSMENT

[F]inality, "the idea that at *some* point a criminal conviction reaches an end, a conclusion, a termination, 'is *essential* to the operation of our criminal justice system.' " *Prost v. Anderson*, 636 F.3d 578, 582 (C.A.10 2011). ...But if the rule of law means anything, it means the final result of proceedings in courts of competent jurisdiction *establishes* what is correct "in the eyes of the law." *Herrera v. Collins*, 506 U.S. 390, 399–400, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993).

(*Edwards v. Vannoy* (2021) 593 U.S. 255, 290–291, J. Gorsuch and Thomas concurring.)

Victims and their families are entitled to the rights provided under the California Constitution. "The rights of victims . . . include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials." (Cal. Const. art. I, § 28(a)(4)). "Marsy's Law clearly demands a broad interpretation protective of victims' rights." (*Santos v. Brown* (2015) 238 Cal.App.4th

398, 418.) An individual right of the victim provided by Marsy’s Law guarantees, inter alia, “a prompt and final conclusion of the case and any related post-judgment proceedings.” (Cal. Const. Art. I, § 28(b)(9).)

The California Supreme Court has found the inception of Marsy’s Law was supported by grievances due to:

the failure to build adequate prisons and jails, the early release of inmates “after serving as little as 10 percent of the sentences imposed” (Prop. 9, Findings, ¶ 4, West’s Ann. Cal. Const., *supra*, at p. 9), the pain caused victims’ families by frequent parole hearings, the failure of the criminal justice system to give victims “notice of important hearings in the prosecutions of their criminal wrongdoers, failure to provide them with an opportunity to speak and participate, failure to impose actual and just punishment upon their wrongdoers, and **failure to extend to them some measure of finality to the trauma inflicted upon them by their wrongdoers.**” (*Id.*, ¶ 9; see *id.*, ¶ 5.) Among the measure’s stated purposes are to “[p]rovide victims with rights to justice and due process” (Prop. 9, § 3, ¶ 1 (Prop. 9, Purposes)), and to “eliminat[e] parole hearings in which there is no likelihood a murderer will be paroled....” (*Id.*, ¶ 2.) According to the measure, “ ‘Helter Skelter’ inmates Bruce Davis and Leslie Van Houghton, two followers of Charles Manson convicted of multiple brutal murders, have had 38 parole hearings during the past 30 years.” (Prop. 9, Findings, ¶ 6.)

(*In re Vicks* (2013) 56 Cal. 4th 274, 282.) (Boldface added.)

Defendant Peterson murdered Laci and Conner in December of 2002. Laci and Conner were not discovered until April of 2003 following months where friends and family members of Laci and Conner searched and searched for them in the hope that they would both be found unharmed and safe.

Defendant Peterson was convicted of the offenses in 2004 following testimony of over 180 witnesses including several of Laci’s and Conner’s family and friends.

In 2020, the California Supreme Court affirmed defendant Peterson’s convictions and denied all but one of defendant Peterson’s claims on Habeas Corpus. To protect the victims’ family from further protracted proceedings, the People declined to retry the penalty phase.

Prior to defendant Peterson’s resentencing to life without the possibility of parole in December 2021, Laci Peterson’s family addressed the Court once more. The San Mateo County

1 Superior Court reviewed defendant Peterson’s claim of juror misconduct and denied his Petition
2 for Writ of Habeas Corpus in December of 2022, almost twenty years after defendant Scott
3 Peterson murdered Laci and Conner.

4 The following quote from a court when discussing the use of Penal Code §1405 is
5 illustrative of the problem before this court:

6 "In view of these facts, even if a blood sample were collected and preserved and
7 tied to Starla Baker by DNA testing, how would the test results “raise a reasonable
8 probability that, in light of all the evidence, [petitioner's] verdict or sentence would
9 have been more favorable if the results of DNA testing had been available at the
time of conviction”? (§ 1405, subd. (f)(5).) Based on the testimony of Baker and
petitioner, one would have expected to find Baker's blood at the crime scene.

10 We have elaborated on our prior opinion to illustrate that the instant request is the
11 start of a “wild goose chase” that will, in all probability, lead to absolutely nothing.
12 In another context, we have said: “Somewhere along the line, litigation must
13 cease.” (*In re Marriage of Crook* (1992) 2 Cal.App.4th 1606, 1613.) Petitioner's
14 judgment is long final and there is something to be said for the sanctity of final
15 judgments. The State of California has a “powerful interest in the finality of its
16 judgments. This interest is particularly strong in criminal cases, for ‘[w]ithout
17 finality, the criminal law is deprived of much of its deterrent effect.’ [Citations.]”
(*In re Harris* (1993) 5 Cal.4th 813, 831.) In light of the deference owed to final
judgments, at the very least prisoners should be required to make some showing
that DNA evidence would raise a reasonable probability of more favorable
treatment in the trial court before counsel is appointed. This is the original purport
of section 1405 before Senate Bill No. 83 was enacted in 2001. (See, *ante*, p. 804.)

18 The Legislature has apparently made a value judgment that prisoners such as
19 petitioner should have counsel appointed to investigate and, if appropriate, file a
20 motion for DNA testing. The Legislature has given such prisoners more rights than
21 a person filing a petition for extraordinary relief, who is not entitled to appointed
22 counsel as a matter of right. (E.g., *People v. Shipman* (1965) 62 Cal.2d 226, 232;
23 see also *People v. Chavez* 243 Cal.App.2d 761, 767.) To be sure, there have been
24 instances where DNA evidence has exonerated a convicted prisoner, and these
25 cases have been sensationalized in the press. However, the vast majority of
26 prisoners are in fact guilty and have been convicted and sentenced consistent with
27 the full panoply of constitutional and statutory safeguards. Such prisoners have
28 one traditional appeal as a matter of right and an unfettered ability to file petitions
for extraordinary relief in the trial and appellate courts. In our view, these
safeguards are sufficient to ensure that a truly innocent person is not unjustly
convicted or sentenced. In the rare case where DNA evidence may exonerate a
prisoner or reduce the prisoner's sentence, it is not too much to ask that he or she
make some showing to that effect before counsel is appointed.

1 In enacting the 2001 amendment to section 1405, the Legislature “apparently
2 succumbed to the discredited ‘ideal of perfectibility’ which is ‘the concept that
3 with the expenditure of sufficient time, patience, energy, and money it is possible
4 eventually to achieve perfect justice in all legal process.’ Such a ‘noble ideal has
consistently spawned results that can only be described as pandemoniac’ in our
criminal justice system.” (*In re Pratt* (1980) 112 Cal.App.3d 795, 890, fn. 45,
quoting Fleming, *The Price of Perfect Justice* (1974) p. 3.)"

5
6 (*In re Kinnamon* (2005) 133 Cal.App.4th 316, 324–325.)

7 In addition to a guarantee of finality, the California Constitution also provides that victims
8 shall “be treated with fairness and respect for his or her privacy and dignity and to be free from
9 intimidation, harassment and abuse, throughout the criminal or juvenile justice process.” If this
10 constant duplicative barrage of post-conviction pleadings is not harassment and a violation of
11 finality in judgment, then the People do not know what would meet the Constitution’s definition.

12 **V.**

13 **THERE IS NO SUBSTANTIVE CONSTITUTIONAL RIGHT**
14 **TO POST-CONVICTION DISCOVERY**

15 The People note at the outset that there is no constitutional entitlement to post-conviction
16 discovery.

17 "Postconviction discovery is governed by section 1054.9, which provides a limited
18 statutory right to discovery for defendants sentenced to a term of 15 years or
19 more.[footnote omitted] A defendant may file a discovery motion in connection
20 with pending or prospective habeas corpus proceedings and motions to vacate a
judgment. (§ 1054.9, subd. (a).) Upon a showing of good faith but unsuccessful
efforts to obtain discovery materials from trial counsel, a defendant shall be
provided reasonable access to any discovery materials he would have been entitled
to at trial. (§ 1054.9, subds. (a), (c).)"

21
22 (*Box v. Superior Court* (2022) 87 Cal.App.5th 60, 71.)

23 The fact that the defendant only has a limited statutory right to discovery, and has previously
24 exercised that right, should then be weighed against Marsy’s Law which established
25 Constitutional Rights for victims as a factor in this Court’s exercise of its discretion.

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VI.

THE REQUIREMENTS OF PENAL CODE §1054.9

To start our analysis, we must look to the statute in question, Penal Code §1054.9:

"(a) In a case in which a defendant is or has ever been convicted of a serious felony or a violent felony resulting in a sentence of 15 years or more, upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment, or in preparation to file that writ or motion, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (b) or (d), order that the defendant be provided reasonable access to any of the materials described in subdivision (c).

(b) Notwithstanding subdivision (a), in a case in which a sentence other than death or life in prison without the possibility of parole is or has ever been imposed, if a court has entered a previous order granting discovery pursuant to this section, a subsequent order granting discovery pursuant to subdivision (a) may be made in the court's discretion. A request for discovery subject to this subdivision shall include a statement by the person requesting discovery as to whether that person has previously been granted an order for discovery pursuant to this section.

(c) For purposes of this section, "discovery materials" means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.

(d) In response to a writ or motion satisfying the conditions in subdivision (a), the court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. The procedures for obtaining access to physical evidence for purposes of postconviction DNA testing are provided in Section 1405, and this section does not provide an alternative means of access to physical evidence for those purposes.

(e) The actual costs of examination or copying pursuant to this section shall be borne or reimbursed by the defendant.

(f) This section does not require the retention of any discovery materials not otherwise required by law or court order.

(g) In criminal matters involving a conviction for a serious or a violent felony resulting in a sentence of 15 years or more, trial counsel shall retain a copy of a former client's files for the term of that client's imprisonment. An electronic copy is sufficient only if every item in the file is digitally copied and preserved.

1 (h) As used in this section, a “serious felony” is a conviction of a felony
2 enumerated in subdivision (c) of Section 1192.7.

3 (i) As used in this section, a “violent felony” is a conviction of a felony enumerated
4 in subdivision (c) of Section 667.5.

5 (j) Subdivision (g) only applies prospectively, commencing January 1, 2019.”

6
7 Pen. Code § 1054.9

8 **A. Penal Code §1054.9 Is Not Designed To Provide “Free-Floating” Post Conviction**
9 **Discovery**

10 The California Supreme Court has interpreted and limited the scope of §1054.9. In *In re*
11 *Steele* (2004) 32 Cal.4th 682 the Court held that “section 1054.9 does provide only limited
12 discovery.” (*Id.* at p. 695.) “It does not allow ‘free-floating’ discovery asking for virtually anything
13 the prosecution possesses.” *Ibid.* In other words, “section 1054.9 provides only for specific
14 discovery and not the proverbial ‘fishing expedition’ for anything that might exist” (*Barnett*
15 *v. Superior Court* (2010) 50 Cal.4th 890, 894.)

16 Finally, as with any defense request for discovery, when ruling on a §1054.9 motion, the
17 court should refuse to grant discovery if the burdens placed on the prosecution and on third parties
18 substantially outweigh the demonstrated need for such discovery. (See generally *People v. Jenkins*
19 (2000) 22 Cal.4th 900, 957; *People v. Kaurish* (1990) 52 Cal.3d 648, 686; see also *People v.*
20 *Jackson* (2003) 110 Cal.App.4th 280, 286; *People v. Littleton* (1992) 7 Cal.App.4th 906, 910;
21 *Lemelle v. Superior Court* (1978) 77 Cal.App.3d 148, 164-165.)

22 **B. A Petition Is “Being Prepared” Within the Meaning of Penal Code §1054.9 and *Steele***
23 **Only If the Defendant Can Specify the Grounds Upon Which He Intends to Seek Relief**

24 The statute in question specifies that the defendant must prove that he is “in preparation
25 to file” such a petition or motion to be eligible for discovery under Penal Code §1054.9,
26 subdivision (a). (See also *In re Steele* (2004) 32 Cal.4th 682, 691 (*Steele*).) At a minimum, this
27 means the defense must prove that a writ petition is not just contemplated, but more importantly
28 it also means the defense has identified and can articulate specific, proper grounds for relief. In

1 the instant matter, Peterson has filed a petition so we may ascertain what claims he is raising,
2 despite his counsel's insistence that there are no claims pending before this Court and that they
3 are merely investigating potential grounds for relief.

4 The requirements for a proper petition for writ of habeas corpus are well established:

5 To satisfy the initial burden of pleading adequate grounds for relief, an application
6 for habeas corpus must be made by petition, and "[i]f the imprisonment is alleged
7 to be illegal, the petition must also state in what the alleged illegality consists." (§
8 1474, subd. 2.) The petition should both (i) state fully and with particularity the
9 facts on which relief is sought [citations] [and] (ii) include copies of reasonably
10 available documentary evidence supporting the claim, including pertinent portions
11 of trial transcripts and affidavits or declarations. [Citation.] "Conclusory
12 allegations made without any explanation of the basis for the allegations do not
13 warrant relief, let alone an evidentiary hearing." [Citation.] We presume the
14 regularity of proceedings that resulted in a final judgment [citation]

15 (*People v. Duvall* (1995) 9 Cal.4th 464, 474 (*Duvall*).)

16 As stated in *Steele*, the purpose of §1054.9 is only "to assist in stating a prima facie case
17 for relief." (*Steele, supra*, 32 Cal.4th at p. 691.) It cannot be said a petition is "in preparation" if
18 the defense is seeking discovery merely to identify potential grounds for relief. Section 1054.9,
19 as interpreted by *Steele*, may advance habeas discovery to the pre-filing stage, but it does not do
20 away with the basic need to identify the grounds upon which relief is being sought. "This process
21 of defining the issues is important because issues not raised in the pleadings need not be
22 addressed." (*Duvall, supra*, 9 Cal.4th at p. 478.) If the defense is simply exploring or investigating
23 possible grounds for post-conviction relief, then under §1054.9, their motion for post-conviction
24 discovery must be denied.

25 In other words, as its placement within the pretrial discovery provisions of Proposition
26 115 implies, §1054.9 is a discovery tool for specified criminal litigants. It is not an investigatory
27 tool to allow defendants or their counsel free-floating post-conviction access to the files of the
28 prosecution or the law enforcement agencies which investigated the case. As one appellate case
noted, §1054.9 is simply "an aid in stating a prima facie claim for relief." (*Board of Prison Terms*
v. Superior Court (2005) 130 Cal.App.4th 1212, 1241.) Section 1054.9 does not change the basic

principle that “there is no post-conviction right to ‘fish’ through official files for belated grounds of attack on the judgment, or to confirm mere speculation or hope that a basis for collateral relief may exist.” (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1259-1260.) Habeas corpus “is not a device for investigating possible claims, but a means for vindicating actual claims.” (*Id.* at p. 1260.) “The state may properly require that a defendant obtain some concrete information on his own before he invokes collateral remedies against a final judgment.” *Ibid.*

In the instant case, the defendant’s counsel states in her declaration to this motion for discovery:

On November 13, 2023, the Court of Appeal granted Mr. Peterson's request that I be substituted in to represent him in the pending habeas proceedings and, on November 14, 2023, I filed a request in the Court of Appeal asking that informal briefing in the pending habeas proceedings be suspended *to allow counsel sufficient time to conduct further investigation into the claims raised therein*, including the need to file a post-conviction discovery motion pursuant to Penal Code section 1054.9, which the Court of Appeal granted on December 1, 2023. (Exhibit #1, DECLARATION OF PAULA M. MITCHELL, page 2, paragraph 7. Italics added.)

Unless the defense can articulate a cogent theory that would entitle the defendant to some form of post-conviction relief, this Court must assume they are not “in preparation to file” a petition within the meaning of subdivision (a) of §1054.9. Without the ability to identify “a prima facie case for relief” there is nothing for the “discovery materials” under §1054.9 to “aid” or “assist.” The court should not order any discovery under §1054.9 without solid proof the defense needs the information to bolster the post-conviction claims they have made or intend to make. Finally, the stated purpose for this second Penal Code §1054.9 request is for investigation and is not in the aid or assistance of a writ.

C. A Penal Code § 1054.9 Discovery Request Must Be Denied Unless the Defense Explains How the Specified Items Support the Proffered Theory of Post-Conviction Relief

The purpose of Penal Code §1054.9 is only “to assist in stating a prima facie case for relief.” (*Steele, supra*, 32 Cal.4th at 691.) Neither the prosecution, nor the court, can properly analyze what “discovery materials” would “assist” the defense unless their §1054.9 discovery

1 request identifies how the requested discovery would support the specific theory which they
2 believe would entitle the defendant to some form of post-conviction relief. Usually this would not
3 present a problem for a defendant who has already filed their petition for writ of habeas corpus or
4 motion to vacate their judgment which identifies their theory of relief. But it is vital that a
5 defendant who claims to be merely “in preparation to file” a writ or motion under subdivision (a)
6 of §1054.9 to specify their theory of post-conviction relief and how the requested material would
7 support this theory. Otherwise there is no rational basis for determining what information would
8 be reasonably necessary to assist the defendant in stating a prima case for relief under *Steele*.

9 The common law rules governing non-section 1054.9 habeas discovery support this
10 limitation. “[T]here is no discovery jurisdiction as to issues ‘upon which the petition fails to state
11 a prima facie case for relief.’ (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1261.) It follows that
12 the discovery in a habeas corpus proceeding must be relevant to the issues upon which the petition
13 states a prima facie case for relief and an order to show cause has issued.” (*Board of Prison Terms*
14 *v. Superior Court* (2005) 130 Cal.App.4th 1212, 1243.) Although subdivision (a) of §1054.9 may
15 advance habeas discovery to the pre-filing stage in some cases, it does not do away the basic
16 requirement that the discovery being ordered “be relevant to the issues.”

17 This was the holding in *Hurd v. Superior Court* (2006) 144 Cal.App.4th 1100. Petitioner
18 Hurd was convicted of murder and sentenced to LWOP. Relying on §1054.9, as interpreted by
19 *Steele*, he made a pre-filing motion for discovery of peace officer personnel records for several
20 officers involved in the investigation of the case. The appellate court found the request came
21 within the scope of §1054.9. (*Id.* at pp. 1106-1110.) But the court also held “a criminal defendant
22 who makes such a motion without having made one during the original prosecution must show
23 that the records are material to the habeas corpus claims he or she proposes, and that those
24 proposed claims are cognizable on habeas corpus.” (*Id.* at p. 1105.)

25 We deem the litigation to which the discovery must be material within the meaning
26 of [Evidence Code] section 1043 to be the habeas corpus proceeding that has been
or will be initiated by petitioner’s habeas corpus petition. We deem the scope of

Pitchess discovery available under section 1054.9 to be that justified by such current materiality to claims cognizable on habeas corpus.

(*Id.* at p. 1111.)

A similar approach was taken in *Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359:

Additionally, to obtain discovery under section 1054.9 of materials within the scope of section 1054.1(e) and/or *Brady*, a defendant must do more than simply assert, as Kennedy does here, that the materials he seeks might include “evidence of third party culpability” or “evidence that could have been used to impeach [certain] prosecution witnesses.” Where the defendant seeks to justify a discovery request based on a theory of third party culpability, the defendant must—at the very least—explain *how* the requested materials would be relevant to show someone else was responsible for the crime. Likewise, where the defendant seeks to justify a discovery request on the ground the requested materials would have been relevant to impeach a prosecution witness, the defendant must—at the very least—explain what that witness’s testimony was and how the requested materials could have been used to impeach that testimony.

(*Id.* at p. 372, italics in original.)

D. A Motion for Post-Conviction Discovery Under Penal Code § 1054.9 Must Identify the Materials Sought with Reasonable Specificity

A motion for post-conviction discovery under Penal Code section 1054.9 must identify the materials sought with reasonable specificity. *In re Steele* (2004) 32 Cal.4th 682 starts with a summary of the California Supreme Court’s holdings, including “we conclude that section 1054.9’s discovery includes, and is limited to, specific materials the prosecution or law enforcement authorities involved in the case currently possess” (*Id.* at p. 688.) This theme is carried throughout the opinion. The Court’s analysis concludes that a motion for discovery under Penal Code §1054.9 must be “reasonably specific.” (*Id.* at p. 702.) The motion should be “a focused request for specific information,” otherwise it is outside the scope of §1054.9 as “just a free-floating request for anything the prosecution has that may be relevant to the case.” (*Ibid.*) The importance of this use of the term “specific” was noted in a subsequent California Supreme Court opinion. “In discussing what materials beyond file reconstruction defendants were entitled to obtain, we repeatedly used the word ‘specific.’ ” (*Barnett v. Superior Court* (2010) 50 Cal.4th 890, 899 (*Barnett*)). In *Barnett*, the defense requested “any information in the government’s hands

1 regarding any of its witnesses' motives to lie or biases for the State or against Mr. Barnett." The
2 California Supreme Court characterized this as "a proverbial fishing expedition for anything that
3 might exist." (*Id.* at p. 898.)

4 The defense in *Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359 made the following
5 requests:

6 ... Kennedy requested "[a]ny and all other records, of any kind and in any form,
7 not covered by the requests above that would tend to exonerate or exculpate
8 [Kennedy] as to guilt or punishment, diminish or reduce any personal culpability
9 for the charged offenses, or constitute information that the defense might use to
10 impeach or contradict prosecution witnesses" [¶] Kennedy also requested
11 "[a]ny other relevant discovery materials covered under the statute of which
12 petitioner is not yet aware, whether due to the State's concealment or its oversight."

13 (*Id.* at pp. 397-398.) The appellate court found these were properly denied:

14 We find no abuse of discretion. [¶] The two requests at issue here are exactly the
15 sort of "free-floating" requests the *Steele* court disapproved. In effect, they ask for
16 anything to which Kennedy is entitled under section 1054.9 that is not
17 encompassed in his previous requests. Because they are not focused requests for
18 specific information, the trial court did not abuse its discretion in denying them.

19 (*Id.* at p. 398.)

20 **E. Rather than Parse Overbroad Penal Code § 1054.9 Discovery Requests, the Court**
21 **Should Deny Such Requests In Their Entirety**

22 The court is not required to parse overbroad Penal Code §1054.9 requests looking for
23 subsets of discoverable items. Instead, the court should deny such requests in their entirety.

24 Instead of requesting specific materials and showing how those materials fell
25 within the prosecution's constitutional duty of disclosure under *Brady* [*Brady v.*
26 *Maryland* (1963) 373 U.S. 83] and/or the statutory duty of disclosure under section
27 1054.1(e), Kennedy has requested a broad array of materials regarding his
28 activities in the 10 days before the murder and asserted, without further
explanation, that some of those materials might contain information that would
provide evidence of third party culpability or evidence that could have been used
to impeach certain prosecution witnesses. This assertion falls far short of showing
that Kennedy would have been entitled to the requested materials at time of trial.
Although the materials Kennedy requested *might* include evidence favorable to
him, they would also likely include evidence that was entirely neutral and might
even include evidence unfavorable to him. Since neutral and unfavorable materials
are clearly not materials to which Kennedy would have been entitled at time of

trial even under the broadest reading of section 1054.1(e) and *Brady*, Kennedy’s request does not describe materials to which he would have been entitled at time of trial and thus it is overbroad. The trial court was under no obligation to parse Kennedy’s request and issue a discovery order for some subset of materials encompassed by his request. If Kennedy’s request, taken as a whole, did not ask for materials to which he would have been entitled at time of trial, then the trial court was justified in denying it.

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 371-372, original italics included.)

F. Defendants Seeking Penal Code § 1054.9 Discovery, Beyond Recovering What the Prosecution Had Provided Before Trial, Must Show a Reasonable Basis to Believe that the Requested Materials Actually Exist

“[W]hen trying to reconstruct files, defendants need not identify all missing discovery materials that the prosecution had previously provided to the defense or show that they are still in the prosecution’s possession.” (*Barnett v. Superior Court* (2010) 50 Cal.4th 890, 898 (*Barnett*).) But, “[b]ecause [Penal Code] section 1054.9 provides only for specific discovery and not the proverbial ‘fishing expedition’ for anything that might exist, defendants seeking discovery beyond recovering what the prosecution had provided to the defense before trial must show a reasonable basis to believe that specific requested materials actually exist.” (*Id.* at p. 894.)

As we have explained, the Legislature was primarily concerned with preventing the problems that occur when the trial attorney’s files no longer exist through no fault of the defendant. This concern, together with the Legislature’s evident intent to make section 1054.9 an efficient method of discovery, causes us to conclude that section 1054.9 requires defendants who seek discovery beyond file reconstruction to show a reasonable basis to believe that other specific materials actually exist. Otherwise, a discovery request can always become ... a free-floating request for anything the prosecution team may possess.

(*Id.* at p. 899.)

Requiring defendants to show they have reason to believe specific materials actually exist does not place an onerous burden on them. Defendants have access to the trial record and to the discovery materials the prosecution provided to the defense before trial. Defendants may obtain those materials either from trial counsel or through file reconstruction. As the Attorney General notes, a person could use these resources “to make the necessary showing. For example, if a witness testifies about a particular report that the petitioner does not possess, the petitioner would have sufficient evidence to justify a request for that report under section 1054.9. It would also be appropriate for a petitioner to seek access to a

report he or she does not possess that is cross-referenced in a police report possessed by the petitioner. Similarly, if evidence in the record indicates that a particular witness was interviewed three times and the petitioner has reports documenting only two interviews, that petitioner could make the necessary showing, based on the record, that a third report likely exists.”

(*Id.* at p. 900.)

G. The Definition of “Discovery Materials” Under Subdivision (c) of Penal Code § 1054.9 Is Limited to the Three *Steele* Categories

The California Supreme Court’s decision in *In re Steele* (2004) 32 Cal.4th 682 (*Steele*) placed significant limitations on the scope of discovery available to petitioners under Penal Code §1054.9. In addition to procedural issues, the Court also discussed the scope of materials that would be subject to disclosure under §1054.9. In the introductory paragraphs of the *Steele* opinion, the Court summarized the specific materials covered by §1054.9 as limited to three categories:

Substantively, we conclude that section 1054.9’s discovery includes, and is limited to, specific materials the prosecution or law enforcement authorities involved in the case currently possess that the defendant can show fall into any of these categories: (1) materials the prosecutor provided at time of trial but have since become lost to the defendant, (2) materials the prosecution should have provided at time of trial, or (3) materials the defendant would have been entitled to at time of trial had the defendant specifically requested them.

(*Id.* at p. 688.)

But in the final analysis in *Steele*, the Court expanded this list to four categories of materials:

Accordingly, we interpret section 1054.9 to require the trial court, on a proper showing of a good faith effort to obtain the materials from trial counsel, to order discovery of specific materials currently in the possession of the prosecution or law enforcement authorities involved in the investigation or prosecution of the case that the defendant can show either (1) the prosecution did provide at time of trial but have since become lost to the defendant; (2) the prosecution should have provided at time of trial because they came within the scope of a discovery order the trial court actually issued at that time, a statutory duty to provide discovery, or the constitutional duty to disclose exculpatory evidence; (3) the prosecution should have provided at time of trial because the defense specifically requested them at that time and was entitled to receive them; or (4) the prosecution had no obligation to provide at time of trial absent a specific defense request, but to which the defendant would have been entitled at time of trial had the defendant specifically

requested them.

(*Id.* at p. 697.)

Essentially, the second category in the introduction was split into the second and third categories in the conclusion. For purpose of analysis below, the People will refer to the three categories of *Steele* from the opinion’s introduction.

Although §1054.9’s “main focus was to permit reconstruction of lost files” (Category 1 materials) this was not its only function. (*Steele, supra*, 32 Cal.4th at p. 694.) The statute, as interpreted by the Court in *Steele*, “does not limit the discovery to materials the defendant possessed to the exclusion of materials the defense should have possessed.” (*Id.* at p. 693, italics in original.)

Although the Court identified three categories of materials subject to discovery, the *Steele* case only involved the last category of materials: those that would have been subject to discovery if the defendant had made a specific request at trial. The relatively narrow scope of the opinion has left several important issues unresolved regarding the application of §1054.9 to the other categories, specifically the second category which was not involved in *Steele*.

Nonetheless one thing is clear, “it is *the defendant* who must show that the materials he is requesting are materials to which he would have been entitled at the time of trial to obtain a discovery order pursuant to section 1054.9.” (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 366, italics in original.)

1. *Steele* Category 1 Materials.

The first category of items discoverable under §1054.9 are “materials the prosecution provided at the time of trial but have since become lost to the defendant.” (*Steele, supra*, 32 Cal.4th at p. 688.)

Accordingly, we interpret section 1054.9 to require the trial court, on a proper showing of a good faith effort to obtain the materials from trial counsel, to order discovery of specific materials currently in the possession of the prosecution or law enforcement authorities involved in the investigation or prosecution of the case

1 that the defendant can show either (1) the prosecution did provide at time of trial
2 but have since become lost to the defendant ...

3 (*Id.* at p. 697.)

4 The first *Steele* category is designed to assist the defense in “file reconstruction” which is
5 the main purpose of the statute. (*Barnett v. Superior Court* (2010) 50 Cal.4th 890, 897; *Steele*,
6 *supra*, 32 Cal.4th at p. 693.) “[S]ection 1054.9 clearly permits record reconstruction; thus, the
7 defendant is entitled to materials the prosecution provided at trial but that the defendant can show
8 have since been lost.” (*Id.* at p. 695.)

9 In the instant case, this court is confronted with a different situation than a traditional “file
10 reconstruction” matter since this is the defendant’s *second* Penal Code §1054.9 motion. His first
11 motion was filed in 2011 by Lawrence Gibbs. In that motion, Mr. Gibbs filed a declaration stating
12 that he had “obtained and examined the trial record in Mr. Peterson’s case, including the reporter’s
13 and clerk’s transcripts, the discovery provided to trial counsel by the prosecution, and trial
14 counsel’s trial files.” (Defense Exh. 3, Defense first 1054.9 motion, page 5 marked as
15 SLP404624.) He also attached his letter to the prosecution stating, “I have obtained from Mark
16 Geragos all of his trial files in the case, and after a thorough search, have not located the below
17 items in those files.” (Defense Exh. 3, marked as SLP404625.) Those items in his letter and
18 motion related to Gregory DeVore, Alison Galloway, Ralph Cheng, Eloise Anderson, Ron Seitz,
19 any computer experts, any marine biologist, BMCS Paul Andrieu, and items relating to the
20 polygraph of Steven Todd and Glenn Pearce.

21 Each of these items was litigated in court and the court’s ruling has been provided as an
22 exhibit. Nowhere and at no time did Mr. Gibbs ever claim to have been missing the vast amounts
23 of discovery that the defendant now claims he “never” received.

24 The defendant was represented at trial by Mark Geragos and Pat Harris; his appellate
25 attorney was Cliff Gardner; his first Habeas Counsel was Lawrence Gibbs; he was also
26 represented by attorneys from the Habeas Corpus Resource Center (who continued to represent
27 him during the Juror No. 7 hearing); Pat Harris was reappointed for the first habeas and potential

1 retrial; then Coreen Ferrentino was appointed on his second habeas; now his current counsel have
2 filed this motion. He is on his fifth (or arguably sixth) attorney post-conviction and, 12 years after
3 the court ruled on his last 1054.9 “file reconstruction” motion, he wants another shot. If all these
4 items were missing, Mr. Gibbs would certainly have sought the assistance of the court at some
5 point in time. If Mr. Gibbs were unsatisfied with the trial court’s ruling, his remedy was to appeal
6 or writ that court – not wait until 2024 and attempt to start from scratch. To ignore this history
7 would allow, if not encourage, defendants to replace counsel over and over in the hope that items
8 would become lost and the whole 1054.9 process could be started anew. “Somewhere along the
9 line, litigation must cease.” (*In re Kinnamon*, *supra*, 133 Cal.App.4th 316, 324–325.)

10 **2. Steele Category 2 Materials.**

11 The second category of items discoverable under §1054.9 are “materials the prosecution
12 should have provided at the time of trial.” (*Steele*, *supra*, 32 Cal.4th at p. 688.)

13 Accordingly, we interpret section 1054.9 to require the trial court, on a proper
14 showing of a good faith effort to obtain the materials from trial counsel, to order
15 discovery of specific materials currently in the possession of the prosecution or
16 law enforcement authorities involved in the investigation or prosecution of the case
17 that the defendant can show ... the prosecution should have provided at time of
18 trial because they came within the scope of a discovery order the trial court actually
19 issued at that time, a statutory duty to provide discovery, or the constitutional duty
20 to disclose exculpatory evidence ... [or] because the defense specifically requested
21 them at that time and was entitled to receive them ...

22 (*Steele*, *supra*, at p. 697.)

23 We believe [section 1054.9] also includes materials to which the defendant was
24 actually entitled at time of trial, but did not receive. This category includes specific
25 materials that the defendant can show the prosecution should have provided (but
26 did not provide) at the time of trial **because they came within the scope of a
27 discovery order the trial court actually issued at time of trial or a statutory
28 duty** to provide discovery. (See Pen. Code § 1054 et seq.) Additionally, “The
prosecution has a duty under the Fourteenth Amendment’s due process clause to
disclose evidence to a criminal defendant” that is “both favorable to the defendant
and material on either guilt or punishment.” (*In re Sassounian* (1995) 9 Cal.4th
535, 543 ...; see also *Brady v. Maryland* (1963) 373 U.S. 83 ...) [emphasis added.]

(*Steele*, *supra*, 32 Cal.4th at p. 695.)

1 Since defendant Peterson has not specified any such discovery orders as a basis for his
2 claimed entitlement to the requested discovery, the People must assume he is claiming that the
3 material is owed due to a statutory duty. The People will discuss the statutory requirements more
4 specifically below.

5 **3. *Steele* Category 3 Materials.**

6 The final category of items discoverable under §1054.9 are “materials the defendant would
7 have been entitled to at the time of trial had the defendant specifically requested them.” (*Steele*,
8 *supra*, 32 Cal.4th at p. 688.)

9 Accordingly, we interpret section 1054.9 to require the trial court ... to order
10 discovery of specific materials currently in the possession of the prosecution or
11 law enforcement authorities involved in the investigation or prosecution of the case
12 that the defendant can show ... the prosecution had no obligation to provide at time
of trial absent a specific defense request, but to which the defendant would have
been entitled at time of trial had the defendant specifically requested them.

13 (*Steele, supra*, 32 Cal.4th at p. 697.)

14 This category does not involve an alleged discovery violation by the prosecution because
15 “the duty to disclose exculpatory evidence cannot extend to evidence the prosecution had no
16 reason to believe the defense would consider exculpatory.” (*Id.* at p. 700.) If anything, this
17 category involves a failure by trial counsel to make a specific request for discovery of exculpatory
18 evidence.

19 The rationale for creating this last category was explained by the California Supreme
20 Court:

21 Use of the conditional perfect tense—“would have been”—indicates the
22 Legislature intended broader discovery than just materials to which the defendant
23 was entitled. This gives rise to another category of materials we believe the statute
24 covers: materials that the prosecution would have been obligated to provide had
there been a specific defense request at trial, but was not actually obligated to
provide because no such request was made. These are materials to which the
defendant *would have been entitled* had he or she requested them.

25 (*Steele, supra*, 32 Cal.4th at p. 696, italics in original.)

26 In some circumstances, the obligation to disclose evidence favorable to the
27
28

1 defendant may require the prosecution to provide materials that the defendant
2 specifically requests as potential exculpatory materials even if their potential
3 exculpatory nature would not otherwise be apparent to the prosecution.

4 (*Steele, supra*, 32 Cal.4th at p. 700.)

5 The Court recognized that a specific defense request could alert the prosecution to the
6 potential exculpatory nature of the evidence that was unrelated to the crime. (*Ibid.*)

7 The *Steele* decision demonstrates the proper use of §1054.9 to request Category 3
8 materials that the defendant had a good faith basis to believe existed.

9 A defendant is entitled to materials to which he would have been entitled at trial,
10 whether or not he possessed those materials at the time of trial. (*In re Steele* (2004)
11 32 Cal.4th 682, 693, 695-696, 10 Cal.Rptr.3d 536, 85 P.3d 444 (*Steele*); § 1054.9,
12 subd. (b).) This includes materials the prosecution did not provide at trial because
13 there was no specific defense request but would have been obligated to provide
14 had there been one. (*Steele*, at pp. 696-697, 10 Cal.Rptr.3d 536, 85 P.3d 444.) The
15 defendant bears the burden of demonstrating the materials requested are ones to
16 which he would have been entitled to discovery at the time of trial. (See *Kennedy*,
17 *supra*, 145 Cal.App.4th at p. 366, 51 Cal.Rptr.3d 637.)

18 (*People v. Superior Court (Jones)* (2019) 34 Cal.App.5th 75, 79, *aff'd* and remanded (2021) 12
19 Cal.5th 348.)

20 **H. Good Cause Must Be Shown**

21 "Under section 1054.9, subdivision (a) (section 1054.9(a)), upon a showing of
22 good faith but unsuccessful efforts to obtain discovery materials from trial counsel,
23 the court shall order that the defendant "be provided reasonable access to any of
24 the materials described in subdivision (c)." In essence, "[i]f that showing is made,
25 the defendant is entitled to discovery." (*Catlin v. Superior Court* (2011) 51 Cal.4th
26 300, 305, 120 Cal.Rptr.3d 135, 245 P.3d 860.) Subdivision (c) defines " 'discovery
27 materials' " as "materials in the possession of the prosecution and law enforcement
28 authorities to which the same defendant would have been entitled at time of trial."
29 (§ 1054.9, subd. (c) (section 1054.9(c)).) Reading these provisions together, we
30 have explained that the discovery contemplated under section 1054.9(a) applies
31 only to those materials "currently *in the possession of the prosecution or law*
32 *enforcement authorities* involved in the investigation or prosecution of the case."
33 ([*People v. Superior Court (Morales)*], *Morales, supra*, 2 Cal.5th at p. 534, 213
34 Cal.Rptr.3d 581, 388 P.3d 811, *italics added*; accord, *In re Steele* (2004) 32 Cal.4th
35 682, 695, 697, 10 Cal.Rptr.3d 536, 85 P.3d 444.)

36 A defendant's right to access such discovery materials is expressly qualified,

1 however, by section 1054.9, subdivision (d), which states: “In response to a writ
2 or motion satisfying the conditions in subdivision (a), the court may order that the
3 defendant be provided access to physical evidence for the purpose of examination,
4 including, but not limited to, any physical evidence relating to the investigation,
5 arrest, and prosecution of the defendant only upon a showing that there is good
6 cause to believe that access to physical evidence is reasonably necessary to the
7 defendant's efforts to obtain relief.” "

8 (*Satele v. Superior Court* (2019) 7 Cal.5th 852, 858 [249 Cal.Rptr.3d 562, 565–566, 444 P.3d 700,
9 703–704].)

10 "In short, section 1054.9 requires a defendant to show good cause to access
11 “discovery materials” (§ 1054.9(a)), i.e., “materials in the possession of the
12 prosecution and law enforcement authorities ...” (§ 1054.9(c))."

13 (*Satele v. Superior Court* (2019) 7 Cal.5th 852, 860.)

14 **I. Penal Code § 1054.9 Applies Only to Materials that Were Discoverable “At the Time of 15 Trial”**

16 Penal Code §1054.9 is, at its core, a remedial statute—designed to place the petitioner in
17 the same position he or she would have been at trial, assuming proper discovery occurred. In *In*
18 *re Steele* (2004) 32 Cal.4th 682, the California Supreme Court concluded that “the statute is
19 limited to materials to which the defendant would have been entitled *at the time of trial*.” (*Id.* at
20 p. 695, original italics.) Thus, section 1054.9 is backward-looking in that it only applies to
21 materials that would have been subject to discovery “at time of trial.” (Subd. (c).) “[T]he
22 defendant must show the trial court [hearing the section 1054.9 motion] he would have been
23 entitled to the materials he is requesting at time of trial. ...” (*Kennedy v. Superior Court* (2006)
24 145 Cal.App.4th 359, 363.)

25 Thus, any materials that the prosecution and law enforcement authorities did not possess
26 at trial are outside the scope of §1054.9. That is not to say the prosecution does not have
27 constitutionally-imposed post-conviction discovery obligations. “[A]fter a conviction the
28 prosecutor ... is bound by the ethics of his office to inform the appropriate authority of ...
information that casts doubt upon the correctness of the conviction.” (*Imbler v. Pachtman* (1976)
424 U.S. 409, 427, fn. 25; see also *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1261.) But as to

1 information not available “at time of trial,” this obligation is separate and independent from, and
2 therefore not enforceable under, §1054.9.

3 To the extent Kennedy is suggesting he had a right under *Brady* independent of
4 section 1054.9, to obtain a court order for discovery to assist him in prosecuting
5 his habeas corpus petition, he has failed to offer any authority supporting that
6 suggestion. Certainly, if Kennedy is able to identify materials to which he would
7 have been entitled at time of trial under *Brady*, and he has requested discovery of
8 those materials in the present motion, then he is entitled to an order for discovery
9 of those materials under section 1054.9 (assuming he has satisfied all other
10 requirements for obtaining such an order). But he has not shown any right to such
11 a discovery order based on *Brady* alone, independent of section 1054.9.

12 (*Kennedy, supra*, 145 Cal.App.4th at p. 369.)

13 "Because the only permissible focus under *Brady* is the fairness of, and potential
14 effect of undisclosed information upon, the underlying trial, petitioner would not
15 be entitled to discover complaints alleging misconduct that occurred after
16 petitioner's trial. Petitioner could not have introduced evidence of later-occurring
17 misconduct in his trial for the simple reason that such conduct had not yet occurred.
18 Thus, the failure to disclose complaints of later-occurring misconduct could not
19 have had any effect upon petitioner's trial."

20 (*Eulloqui v. Superior Court* (2010) 181 Cal.App.4th 1055, 1068.)

21 In addition, the amount of material available for discovery “at time of trial” under
22 subdivision (c) of §1054.9 is governed by the passage of Proposition 115.

23 **1. Post-Proposition 115 Trials**

24 Any trial of a case occurring on or after June 5, 1990 was governed by the discovery
25 provision of Proposition 115, including §1054.1. These statutory procedures were enacted by the
26 Legislature “[t]o provide that no discovery shall occur in criminal cases except as provided by
27 this chapter, other express statutory provisions, or as mandated by the Constitution of the United
28 States.” (§ 1054, subd. (e).) Section 1054, et seq., “set forth an almost exclusive procedure for
discovery in criminal cases.” (*People v. Jordon* (2003) 108 Cal.App.4th 349, 357.) The new
statutory scheme limited defense discovery in many ways. For example:

Under section 1054.9 ... it is not sufficient for the defendant to simply offer a
plausible justification for disclosure of information he has described with some
specificity. ... Thus, when a defendant seeks discovery under section 1054.9, he

1 must identify those materials with sufficient specificity to show that he *would*, in
2 fact, have been entitled to those materials at time of trial.

3 (*Kennedy, supra*, 145 Cal.App.4th at p. 371, original italics.)

4 **J. Penal Code § 1054.9 Only Applies to Discovery Sought from the “Prosecution Team”**
5 **Within the Meaning of Penal Code § 1054.5(a)**

6 Post-conviction discovery under Penal Code section 1054.9, subdivision (c), is limited to
7 materials in the current possession of the “prosecution and law enforcement authorities.” The
8 phrase “law enforcement authorities” has been construed to be similar to the definition of the
9 phrase “investigating agencies” in Penal Code §1054.1. (*Barnett v. Superior Court* (2010) 50
10 Cal.4th 890, 902.) Thus, the California Supreme Court in *In re Steele* (2004) 32 Cal.4th 682
11 limited the right to discovery under section 1054.9 to the law enforcement agencies who
12 investigated and prosecuted the case (the “prosecution team”). In making this determination, the
13 Court adopted a three-part test from the federal courts.

14 A federal court that had to decide whether an agency was part of the prosecution
15 team for *Brady* [*Brady v. Maryland* (1963) 373 U.S. 83] purposes considered three
16 relevant questions: “ ‘(1) whether the party with knowledge of the information is
17 acting on the government’s “behalf” or is under its “control”; (2) the extent to
which state and federal governments are part of a “team,” are participating in a
“joint investigation” or are sharing resources; and (3) whether the entity charged
with constructive possession has “ready access” to the evidence.’ ” [Citations.]

18 (*Barnett, supra*, 50 Cal.4th at p. 904.)

19 The statute also presents the question of exactly who must possess the materials
20 for them to come within its scope. Section 1054.9, subdivision (b) [now subd. (c)],
21 refers to “materials in the possession of the prosecution and law enforcement
22 authorities” Thus, the materials include not only those the prosecution itself
23 possesses but those that law enforcement authorities possess. The discovery
24 obligation, however, does not extend to all law enforcement authorities
25 everywhere in the world but, we believe, only to law enforcement authorities who
26 were involved in the investigation or prosecution of the case. ... Section 1054.9
27 does not require that the prosecutor know the materials are in the possession of the
28 investigating agencies, but we believe the reference to “law enforcement
authorities” in section 1054.9, subdivision (b), must be read in light of these other
provisions. At trial, these discovery obligations do not extend to materials
possessed by law enforcement agencies that were not involved in investigating or
preparing the case against the defendant. Section 1054.9, subdivision (b), should

1 not be read as creating a broader *postconviction* discovery right.

2 (*Steele, supra*, 32 Cal.4th at p. 696, original italics.)

3 Thus, the prosecution is responsible not only for evidence in its own files but also
4 for information possessed by others acting on the government's behalf that were
5 gathered in connection with the investigation. But the prosecution cannot
6 reasonably be held responsible for evidence in the possession of *all* governmental
7 agencies, including those not involved in the investigation or prosecution of the
8 case. "Conversely, a prosecutor does not have a duty to disclose exculpatory
9 evidence or information to a defendant unless the prosecution team actually or
constructively possesses that evidence or information. Thus, information
possessed by an agency that has no connection to the investigation or prosecution
of the criminal charge against the defendant is not possessed by the prosecution
team, and the prosecutor does not have the duty to search for or to disclose such
material." (*People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1315.)

10 (*Steele, supra*, 32 Cal.4th at p. 697, italics added; see also *People v. Ervine* (2009) 47 Cal.4th
11 745, 768.)

12 Outside the scope of §1054.9, therefore, are materials which the prosecution obtains either
13 voluntarily or by court order from law enforcement agencies not involved in the investigation and
14 prosecution of the case at the time of trial. For example, the capital murder in *Barnett* was
15 investigated and prosecuted by local law enforcement in Butte County. In preparing for the penalty
16 phase, the prosecution asked several out-of-state law enforcement agencies to provide reports
17 relating to previous criminal conduct by the defendant. Some of the agencies perhaps also
18 interviewed a few potential witnesses. The California Supreme Court held these out-of-state
19 agencies were not involved in the investigation and prosecution of the case within the meaning of
20 §1054.9 and *Steele*. (*Barnett, supra*, 50 Cal.4th at pp. 903-906.) "Section 1054.9 does not govern
21 materials in the possession of out-of-state law enforcement agencies that merely provided the
22 prosecution with information or assistance under the circumstances of this case." (*Id.* at p. 894.)
23 "Accordingly, we conclude the prosecution is not required to provide discovery of materials from
24 the out-of-state law enforcement agencies of this case that the prosecution does not itself possess."
25 (*Id.* at p. 906.)

26 As to private parties who assist in the prosecution of the case, among the important

1 considerations are whether the third party performed investigative duties, acted under the
2 direction of the prosecutor, or aided the prosecution in crafting trial strategy. (*Bracamontes v.*
3 *Superior Court* (2019) 42 Cal.App.5th 102, 115; *People v. Superior Court (Dominguez)* (2018)
4 28 Cal.App.5th 223, 234-235.) “The standard ... is whether the private party is acting on the
5 government’s behalf and assisting in investigation and prosecution of the crime, such that it is
6 reasonable to impute the private party’s knowledge to the prosecution. [Citations.]” (*Bracamontes*
7 *v. Superior Court, supra*, 42 Cal.App.5th at p. 116 [private DNA testing companies helping to
8 investigate murder were part of prosecution team, but private experts hired to render opinions at
9 trial were not].)

10 **K. The Prosecution Has No Duty to Either Gather or to Create New Discovery or to**
11 **Reconstruct Allegedly Missing or Destroyed Discovery Under Penal Code § 1054.9**

12 Penal Code §1054.9 “does not require the retention of any discovery materials not
13 otherwise required by law or court order.” (Subd. (f).) Instead, §1054.9 is designed to restore the
14 defense to the state of discovery to which they would have been entitled “at time of trial.” (Subd.
15 (c).) Moreover, subdivision (c) of §1054.9 “includes only materials ‘in the possession of the
16 prosecution and law enforcement authorities.’ ” (*In re Steele* (2004) 32 Cal.4th 682, 695.) The
17 California Supreme Court in *Steele* interpreted this “to mean in their possession currently.” (*Ibid.*,
18 italics in original.) Thus, §1054.9 is limited to discovery “currently” in the possession of the
19 prosecution or the law enforcement agencies involved in the investigation of the case. “The statute
20 imposes no preservation duties that do not otherwise exist. It does not impose a duty to search for
21 or obtain materials not currently possessed.” (*Steele, supra*; see also *Barnett v. Superior Court*
22 (2010) 50 Cal.4th 890, 901.)

23 **L. All Privileges As Well As All Statutory or Constitutional Restrictions Precluding**
24 **Discovery Apply to Penal Code § 1054.9**

25 Even if discovery is ordered under Penal Code §1054.9, this does not mean the defense is
26 automatically entitled to all “discovery materials.” §1054.9 does not authorize discovery of
27 information subject to claims of privilege or other statutory or constitutional restriction. Penal
28

Code §1054.6, in the same chapter of the Penal Code as §1054.9, states: “Neither the defendant nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (a) of section 2018.030 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision, or are privileged as provided by the Constitution of the United States.”

For example, some or all the requested “discovery materials” may be subject to the official information privilege. (Evid. Code, § 1040 et seq.) Similarly, Penal Code §1054.2 prohibits a criminal defendant from gaining access to the addresses and telephone numbers of all victims and witnesses absent a strong showing of good cause. Penal Code §1054.2 is in the same chapter of the Penal Code as §1054.9. According to §1054: “This chapter shall be interpreted to give effect to all the following purposes: [¶] ... (d) To protect victims and witnesses from danger [and] harassment” In addition, the prosecution’s discovery obligation for victim/witness address and telephone records to which the defendant was entitled “at time of trial” under §1054.9 derives from section 1054.1. Section 1054.2 modifies §1054.1. Thus, if any discovery materials are ordered disclosed under §1054.9, it is imperative that the defendant be precluded from learning the addresses and telephone numbers of all victims and witnesses. This is especially true if a proper defendant is making the §1054.9 request as allowed by *Burton v. Superior Court* (2010) 181 Cal.App.4th 1519. Therefore, the court should not order the disclosure to the defendant of the addresses and telephone numbers of any victims and witnesses absent a strong showing of good cause. Any defense attorney or licensed private investigator assisting the defendant should be similarly ordered not to disclose such information to the defendant.

M. The Defendant Is Only Entitled to “Reasonable Access” to Physical Evidence Under Penal Code § 1054.9, Except for DNA Testing Under Penal Code § 1405

Penal Code § 1054.9 states in pertinent part:

(d) In response to a writ or motion satisfying the conditions in subdivision (a), the court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is

1 reasonably necessary to the defendant's effort to obtain relief. The procedures for
2 obtaining access to physical evidence for purposes of postconviction DNA testing
3 are provided in Section 1405, and this section does not provide an alternative
4 means of access to physical evidence for those purposes.

5 Several principles emerge from subdivision (d).

6 First, the defendant must overcome all the hurdles for obtaining discovery under
7 subdivision (a) of section 1054.9. This includes, for example, explaining how and why he or she
8 was unsuccessful in obtaining the necessary information related to the physical evidence from
9 trial counsel.

10 Second, under subdivision (d) the defendant is not entitled to gain access to the
11 prosecution's physical evidence except "upon a showing that there is good cause to believe that
12 access to physical evidence is reasonably necessary to the defendant's effort to obtain relief." This
13 means, for example, the defendant must proffer the specific grounds upon which he or she is
14 seeking relief (particularly if the defendant is still "in preparation to file" a post-conviction writ
15 or motion). Otherwise, the court is not in position to find "good cause to believe" that access to
16 the physical evidence is "reasonably necessary" to support the defendant's effort to obtain relief.

17 Third, subdivision (d) requires the defendant to explain why there is no satisfactory
18 alternative besides gaining direct access to the physical evidence. For example, the defendant may
19 have to explain why taking photographs or making videotapes of the physical evidence would be
20 inadequate.

21 Finally, § 1054.9 and its "good cause" requirement does not apply when the physical
22 evidence is in the possession of the court rather than the prosecution or law enforcement. (*Satele*
23 *v. Superior Court* (2019) 7 Cal.5th 852.)

24 **1. Prosecution discovery obligations are limited by statute**

25 With the exception of evidence that tends to exculpate a defendant or reduce penalty, the
26 Due Process clause of the Fourteenth Amendment imposes no burden of discovery upon the
27 prosecution. (*Wardius v. Oregon* (1973) 412 U.S. 470, 474.) Under the United States Constitution,

1 there is no general constitutional right to discovery in a criminal case. (*Weatherford v. Bursey*
2 (1977) 429 U.S. 545, 559.)

3 With the adoption of Proposition 115, the Crime Victims Justice Reform Act, criminal
4 discovery is now governed by constitutional and statutory enactment. Article I, section 30,
5 subdivision (c), of the California Constitution provides: “In order to provide for fair and speedy
6 trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or
7 by the people through the initiative process.”

8 Proposition 115 also added a chapter to the Penal Code setting forth both substantive and
9 procedural rules for discovery. One of the stated purposes of this chapter is, “[t]o provide that no
10 discovery shall occur in criminal cases except as provided by this chapter, other express statutory
11 provisions, or as mandated by the Constitution of the United States.” (Pen. Code § 1054, subd.
12 (e).) Similarly, Penal Code section 1054.5, subdivision (a), states:

13 No order requiring discovery shall be made in criminal cases except as provided
14 in this chapter. This chapter shall be the only means by which the defendant may
15 compel the disclosure or production of information from prosecuting attorneys,
16 law enforcement agencies which investigated or prepared the case against the
defendant, or any other persons or agencies which the prosecuting attorney or
investigating agency may have employed to assist them in performing their duties.

17 (See also, *In re Littlefield* (1993) 5 Cal.4th 122, 129 [“all court-ordered discovery is governed
18 exclusively by—and is barred except as provided by—the discovery chapter newly enacted by
19 Proposition 115”].) Hence, prior decisions of the California appellate courts no longer have force
20 where inconsistent with the California Constitution and statutes regarding discovery in criminal
21 cases.

22 At the time of the defendant’s trial, Pen. Code § 1054.1 required:

23 "The prosecuting attorney shall disclose to the defendant or his or her attorney all
24 of the following materials and information, if it is in the possession of the
25 prosecuting attorney or if the prosecuting attorney knows it to be in the possession
of the investigating agencies:

26 (a) The names and addresses of persons the prosecutor intends to call as witnesses
27 at trial.

- (b) Statements of all defendants.
- (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.
- (d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.
- (e) Any exculpatory evidence.
- (f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial."

2. Prosecution need only supply discovery from the prosecution team

Penal Code §1054.1 specifically defines the matters the district attorney must disclose to the defendant. The prosecutor's obligation extends under this statute only to information "in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies." (*Ibid.*)

Section 1054 et seq. dictates "an almost exclusive procedure for discovery in criminal cases" in this state. [Citations.] It provides "the only means for [a] defendant to compel discovery 'from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the defendant, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties.' " [Citation.] However, "[t]hese provisions do not regulate discovery from third parties," which must be sought by way of subpoena duces tecum. [Citations.]

(*People v. Superior Court (Dominguez)* (2018) 28 Cal.App.5th 223, 233.)

Hence, the prosecutor has no general obligation to seek out information from other agencies or sources for the benefit of the defense. (*In re Littlefield* (1993) 5 Cal.4th 122, 135; see, e.g., *Rezek v. Superior Court* (2012) 206 Cal.App.4th 633 [defense may use *Pitchess* procedure to obtain witness statements in police personnel files when prosecutor does not possess them].) This limitation is certainly supported by the reasoning of cases which have addressed this issue before the adoption of Proposition 115:

From an examination of the record of the hearing on the motion, it appears that the prosecution did not have such information; however, the defense in essence argued that it would be easier for the prosecution to obtain it and transfer it to the defense. Thus, had defendant's motion been granted, compliance would have required the

1 prosecution to prepare the case for the defense. This is an obligation not imposed
2 by the law.

3 (*People v. Gurtenstein* (1977) 69 Cal.App.3d 441, 449; similarly, see *People v. Cohen* (1970) 12
4 Cal.App.3d 298, 323.)

5 The prosecutor has no duty to actively investigate the facts and circumstances of the case
6 or gather all potential evidence for the benefit of the accused. (*People v. Perez* (1979) 24 Cal.3d
7 133, 145; *People v. Gurtenstein, supra*, 69 Cal.App.3d at p. 449.) Nor are the People required to
8 make a complete and detailed accounting to the defense of all police investigative work on a case.
9 (*Moore v. Illinois* (1972) 408 U.S. 786, 795; *People v. Nation* (1980) 26 Cal.3d 169, 175.)

10 Finally, Penal Code §1054.1 is consistent with the prosecution’s constitutional duties
11 under *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*). The prosecution is responsible only for that
12 material in their possession or in the possession of the investigating agency. (*Kyles v. Whitley*
13 (1995) 514 U.S. 419.) “There is no reason to assume the ... statutory phrase [“in the possession of
14 the prosecuting attorney or ... investigating agencies” (§1054.1)] assigns the prosecutor a broader
15 duty to discover and disclose evidence in the hands of other agencies than do *Brady* and its
16 progeny.” (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1133-1134; see also *People v. Aguilera*
17 (2020) 50 Cal.App.5th 894, 913-914.) The California Supreme Court has “recognized that:

18 ‘ “[I]nformation possessed by an agency that has no connection to the
19 investigation or prosecution of the criminal charge against the defendant is not
20 possessed by the prosecution team’ ” with respect to the prosecution’s duty to
disclose exculpatory information under the federal constitution and state discovery
rules. (*In re Steele* (2004) 32 Cal.4th 682, 697.)”

21 (*People v. Ervine* (2009) 47 Cal.4th 745, 768; see e.g., *People v. Superior Court (Dominguez)*,
22 *supra*, 28 Cal.App.5th at pp. 235-240 [company that supplied DNA testing equipment and
23 software to police laboratory not part of prosecution team].)

24 Similarly, there is no statutory or *Brady* obligation to obtain physical evidence from third
25 parties, only a duty to make such available to the defense if it comes into the prosecutor’s
26 possession. (*People v. Sanchez* (1998) 62 Cal.App.4th 460, 474.)

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In contrast to witness statements, subdivision (b) requires disclosure of all the statements of all defendants. (*People v. Jackson* (2005) 129 Cal.App.4th 129, 168-172.) As to unrecorded statements of the defendant, however, the defense is only entitled to be notified of statements known to the prosecutor. (*People v. Campbell* (1972) 27 Cal.App.3d 849, 858.)

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1 limited questioning regarding witness's sexual activities in civil case].)

2 The Court of Appeal in the *Kennedy* case was tasked with reviewing a trial court's denial
3 of a similar broad, burdensome and all-encompassing defense request as exists in this case. The
4 court started by going through the procedural flaws in the defendant's motion:

5 "To the extent Kennedy is suggesting he had a right under *Brady*, independent of
6 section 1054.9, to obtain a court order for discovery to assist him in prosecuting
7 his habeas corpus petition, he has failed to offer any authority supporting that
8 suggestion. Certainly, if Kennedy is able to identify materials to which he would
9 have been entitled at time of trial under *Brady*, and he has requested discovery of
10 those materials in the present motion, then he is entitled to an order for discovery
11 of those materials under section 1054.9 (assuming he has satisfied all other
12 requirements for obtaining such an order). But he has not shown any right to such
13 a discovery order based on *Brady* alone, independent of section 1054.9."

14 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 369, as modified on denial of reh'g (Jan.
15 2, 2007).)

16 The court then examined the impact of Proposition 115 on a post-conviction request:

17 "We conclude Kennedy has failed to show he would have been entitled to the
18 requested materials at time of trial, either under *Brady* or section 1054.1(e).
19 Essentially, Kennedy is requesting a broad category of materials—those
20 concerning his activities in the 10 days before the murder—because he contends
21 those materials might include some otherwise unidentified evidence that would
22 have been favorable to him by somehow showing someone else committed the
23 murder or by somehow serving to impeach certain prosecution witnesses.

24 This justification for Kennedy's discovery request might have sufficed under the
25 California case law that governed discovery in criminal proceedings before the
26 adoption of Proposition 115 in 1990, but it does not suffice under section 1054.9.
27 Under that case law, a criminal defendant was generally entitled to discovery of
28 information that would assist in his defense or be useful for impeachment or cross-
examination of adverse witnesses. (*People v. Memro* (1985) 38 Cal.3d 658, 677.)
In making a motion for discovery, the defendant was required to describe only the
information sought with some specificity and to provide a plausible justification
for disclosure. (See *People v. McPeters* (1992) 2 Cal.4th 1148, 1171.)

Under section 1054.9, however, it is not sufficient for the defendant to simply offer
a plausible justification for disclosure of information he has described with some
specificity. Instead, as the Supreme Court explained in *Steele*, "section 1054.9's
discovery ... is limited to, specific materials ... that the defendant can show fall into
any of the[] categories" of materials to which the defendant would have been

entitled at time of trial. (*In re Steele, supra*, 32 Cal.4th at p. 688.) Thus, when a defendant seeks discovery under section 1054.9, he must identify those materials with sufficient specificity to show that he would, in fact, have been entitled to those materials at time of trial.

Kennedy has not done that here. Instead of requesting specific materials and showing how those materials fell within the prosecution's constitutional duty of disclosure under *Brady* and/or the statutory duty of disclosure under section 1054.1(e), Kennedy has requested a broad array of materials regarding his activities in the 10 days before the murder and asserted, without further explanation, that some of those materials might contain information that would provide evidence of third party culpability or evidence that could have been used to impeach certain prosecution witnesses. This assertion falls far short of showing that Kennedy would have been entitled to the requested materials at time of trial. Although the materials Kennedy requested might include evidence favorable to him, they would also likely include evidence that was entirely neutral and might even include evidence unfavorable to him. Since neutral and unfavorable materials are clearly not materials to which Kennedy would have been entitled at time of trial even under the broadest reading of section 1054.1(e) and *Brady*, Kennedy's request does not describe materials to which he would have been entitled at time of trial and thus it is overbroad. The trial court was under no obligation to parse Kennedy's request and issue a discovery order for some subset of materials encompassed by his request. If Kennedy's request, taken as a whole, did not ask for materials to which he would have been entitled at time of trial, then the trial court was justified in denying it. [footnote omitted.]

Additionally, to obtain discovery under section 1054.9 of materials within the scope of section 1054.1(e) and/or *Brady*, a defendant must do more than simply assert, as Kennedy does here, that the materials he seeks might include “evidence of third party culpability” or “evidence that could have been used to impeach [certain] prosecution witnesses.” Where the defendant seeks to justify a discovery request based on a theory of third party culpability, the defendant must—at the very least—explain how the requested materials would be relevant to show someone else was responsible for the crime. Likewise, where the defendant seeks to justify a discovery request on the ground the requested materials would have been relevant to impeach a prosecution witness, the defendant must—at the very least—explain what that witness's testimony was and how the requested materials could have been used to impeach that testimony.

Kennedy has not offered any such explanation here. Specifically, Kennedy does not explain how materials concerning his activities in the 10 days before the murder would show that someone else committed the murder or could be used to impeach prosecution witnesses Doreen Westbrook, John Hancock, and Ron Woods. Indeed, in arguing these materials could have been used for impeachment purposes, Kennedy does not even attempt to explain who these witnesses were or

1 what role they played in the case. In his introduction to his petition, Kennedy
2 provides some information about Doreen Westbrook and characterizes her as “the
3 prosecution's star witness.” However, this is far from sufficient to explain how the
4 requested materials could have been used to impeach her trial testimony. [footnote
5 omitted.]

6 Absent a specific explanation of how the requested materials could have been used
7 for impeachment purposes or to show third party culpability, Kennedy has failed
8 to show that materials regarding his activities in the 10 days before the murder
9 were materials to which he would have been entitled at time of trial, either under
10 *Brady* or section 1054.1(e), and thus he has failed to show an abuse of discretion
11 by the trial court in its ruling on this request."

12 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 370–373, as modified on denial of reh'g
13 (Jan. 2, 2007).)

14 In the instant case, defendant Peterson, like *Kennedy*, asks for much but explains little.
15 The first thing he fails to explain is Judge Steffen’s ruling regarding the first 1054.9 motion back
16 on November 18, 2011. The defendant asked for post-conviction discovery, the matter was
17 litigated and the court ruled. The Minute Order is included as part of the defendant’s motion (Exh.
18 #3 of defendant’s motion] and, as will be discussed below, the defendant is now asking again for
19 the same materials. He did not appeal or writ Judge Steffen’s Order. The items covered during
20 that motion were raised as part of his first Petition for a Writ and the Supreme Court ruled against
21 him. Instead, the defendant chooses to gloss over facts and merely make claims that “the police
22 would be expected to” do one thing or another. He fails to specifically articulate how these matters
23 aid his writ and instead seeks the proverbial “fishing” trip for records. The *Kennedy* court
24 addressed the lack of specificity:

25 "Again, Kennedy has failed to show an abuse of discretion by the trial court. Like
26 most of the previous requests, this request was overbroad. Beyond that, Kennedy
27 fails to explain how materials concerning Doreen Westbrook's arrests in Colusa
28 County before the murder could show she was responsible for Chambers's murder,
fails to explain how such materials could have been used to impeach the testimony
of the specified witnesses, fails to address the materiality element of the
constitutional duty of disclosure, and fails to show he would have been entitled to
these materials under section 1054.1(e). [footnote omitted.]

On the impeachment issue, Kennedy's argument also fails for another reason. Whether premised on *Brady* or section 1054.1(e), Kennedy's discovery request relies on the proposition that records concerning Doreen Westbrook's arrests could have been used to impeach her. However, that is not necessarily true. Certainly evidence of charges pending against a prosecution witness at the time of trial is relevant for impeachment purposes. (See *People v. Coyer* (1983) 142 Cal.App.3d 839, 842–843 [pending charges may tend to show a witness is seeking leniency through testifying, regardless of any express promises of leniency or immunity].) The problem here is that Kennedy has not suggested whether Doreen Westbrook's arrests in Colusa County before the murder resulted in charges, let alone whether those charges were still pending at the time of his trial. Nor has he offered any reason for believing that the fact or details of her arrests would have been relevant to her credibility as a witness.

Under these circumstances, Kennedy has again failed to show the trial court abused its discretion in denying his discovery request."

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 379, as modified on denial of reh'g (Jan. 2, 2007).)

VII. DEFENSE DISCOVERY REQUESTS

Without question, the burden is on the defendant to show he is entitled to discovery that is something other than file reconstruction. He must show how the materials would further the writ he is seeking. Further, since this is his second/successive writ and second discovery motion, he must overcome the finality of the judgment against him, the rights of the victims and all the sound and compelling prohibitions to his requested relief.

The People will now address the specific discovery requests of the defense using the numbering and lettering system in their motion.

A. Medina Burglary

Discovery requests relating to the Medina burglary are clearly not in aid of a future writ since this issue has been fully litigated. In the opinion of the Supreme Court affirming the defendant's conviction they state:

"The defense argued the police had not diligently pursued whether a person or persons other than Peterson were more likely responsible for Laci's disappearance and murder. *The defense presented evidence that a burglary had occurred on the Petersons' street the week of her disappearance and argued that the police failed*

adequately to follow up on whether that burglary had any connection to Laci's disappearance. It also presented evidence that a stranger had gone to several houses on December 23 asking for money and, one neighbor thought, casing houses for burglaries, and so might have had something to do with her disappearance. Testimony was presented that the same neighbor, walking with a police officer on Christmas Day to look for the stranger, had seen a pair of sandals lying in the road 150 feet from the Petersons' home; the neighbor wondered at the time if they might have any connection to Laci's disappearance, but the officer just left them there. To support the possibility of a third party's involvement, the defense challenged the prosecution's theory that Conner died December 23 or 24, presenting its own expert who testified based on ultrasounds and other evidence that Conner lived until after Christmas."

(DSC - JNE Exh. 13, p. 425. [Italics added.])

The defense went further with this claim in the first Petition for a Writ of Habeas Corpus

(DSC - JNE. Exh. 10). In Claim Ten, the defendant stated:

Petitioner Was Deprived Of His Fifth, Sixth, Eighth And Fourteenth Amendment Rights By Counsel's Failure To Present Exculpatory Evidence That Steven Todd Saw Laci in Modesto After Scott Left For The Berkeley Marina. (DSC - JNE. Exh. 10, p. 200.)

17. If Steven Todd saw Laci alive while he was burglarizing the Medina home on December 24, 2002, then there is reasonable doubt as to Scott's guilt. Scott left home to go fishing at 10:08 a.m. Todd's burglary would have been committed after the Medinas left their home at 10:35 a.m. .. Diana [sic] Jackson saw evidence of the burglary at 11:40 a.m. Thus, Todd would have seen Laci alive in Modesto more than an hour after Scott left the house.

34. As previously alleged, the defense team had created a witness file for each potential witness in the case. (See Claim Eight, above.) There was such a witness file for Steven Todd. In the Todd witness file, there appears a copy of Bates stamped page 15311 from the discovery. This page contains the Aponte tip, described above.

35. The fact that the Aponte tip was contained in the Steven Todd witness file establishes that defense counsel not only possessed the Aponte tip, but fully appreciated that it pertained to a statement from Steven Todd regarding Todd seeing Laci alive on December 24.

The Supreme Court held on October 14, 2020 that "Claims 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 in the petition are denied on the merits." (DSC - JNE Exh. 16.)

1 The defendant cannot successfully bring another writ on these grounds; since no writ can
2 be taken on these grounds, no discovery relating to these grounds would be in aid of his writ and
3 this request should be denied. Even if this Court were inclined to grant his request, the specifics
4 do not warrant any discovery. The defendant has asked for the following broad categories and
5 approximately 116 subparts of item A:

6 *“A complete copy of the Modesto Police Department’s investigation into the*
7 *burglary of the Medinas’ home at 516 Cavena Avenue (Medina burglary), located*
8 *directly across the street from the Petersons’ home, which occurred sometime*
9 *between December 24, 2002, and December 26, 2002. (Modesto Police*
Department Case No. 02-143025.) The items requested include but are not limited
to the following:”

10 **Response** – The Medina burglary was a separate and unrelated crime (Bates page 4090).
11 The jury in this case made a factual determination that it was unrelated, the Supreme Court found
12 it was not related and it therefore has no exculpatory value. The facts of the Medina burglary were
13 submitted to the jury by the defense and rejected. It is therefore subject to the rule of collateral
14 estoppel/law of the case and of third-party discovery as set out above; moreover, the defense had
15 the discovery related to this matter to which they were entitled.

16 *“1. Audio and video recordings of the interviews MPD conducted with Steven Todd*
17 *and Donald Glenn Pearce at the Modesto Police Department the evening of*
18 *January 2, 2003, concerning their involvement in the Medina burglary. Mr.*
Peterson also requests any available transcripts of those interviews.”

19 **Response** – The People incorporate by reference all the previous legal reasons why this
20 item is not discoverable. Furthermore, neither of these individuals was called as a witness, so
21 under §1054.1 the defendant was not entitled to any recordings or statements. However, as stated
22 above these individuals’ statements were used by the defense to question police officers about
23 what Todd and Pearce said, confirming that the content of their statements had been provided to
24 the defense.

25 *“2. All MPD investigation and other police reports memorializing the steps MPD*
26 *took to “verify” the alibis of Steven Todd and Donald Glenn Pearce, establishing*
27 *their whereabouts on December 24, 2002, including all interviews conducted*
28 *with “independent witnesses” who confirmed their alibis, including audio and*

1 *video recordings thereof, as well as written transcripts.*”

2 **Response** – The People incorporate by reference all the previous legal reasons why this
3 item is not discoverable. This is not actually a request for discovery but a demand for an
4 accounting of what the police did. "We know of no constitutional requirement that the prosecution
5 make a complete and detailed accounting to the defense of all police investigatory work on a
6 case." (*Moore v. Illinois* (1972) 408 U.S. 786, 795.) As stated above, since the Medina burglary
7 was not exculpatory and related to a third-party issue, the defendant has failed to meet his burden
8 of proof. He has also failed to offer any discovery order from the court that would have compelled
9 the production of such an accounting:

10 *"Hitch* does not “affirmatively require[] the police to employ specific investigative
11 techniques” (*People v. Cooper* (1979) 95 Cal.App.3d 844, 850), nor impose a “duty
12 to affirmatively exert effort to discover potential evidence ... for the purpose of
13 preserving such evidence for the defense” (*People v. Maese* (1980) 105 Cal.App.3d
14 710, 720), nor a duty “to test the evidence in the absence of a defense request...”
15 (*People v. Newsome*, *supra*, 136 Cal.App.3d at p. 1006.) Moreover, “[t]he
prosecution is not required to engage in foresight and gather up everything which
eventually might prove useful to the defense.” (*People v. Watson* (1977) 75
Cal.App.3d 384, 400; see also *People v. McNeill* (1980) 112 Cal.App.3d 330, 338.)

16 In this case, Mr. Streeter was not sure the blood at the scene of the crime could
17 have been typed if it had been preserved, although he would have expected to be
18 able to. Sergeant Herron, who was responsible for gathering evidence at the scene,
19 believed the blood in the bedroom was the victim's and may have felt the amount
20 of blood at the point of entry was not sufficient to yield useful test results. Although
21 the blood stains were potentially material, and the prosecution would doubtless
22 have been required to preserve them had they actually been collected, to require
23 law enforcement officers in the first instance to collect blood stains at the scene of
a crime which may or may not yield useful results would compel them to “gather
and collect everything which, with fortuitous foresight, might prove useful to the
defense” (*People v. McNeill*, *supra*, 112 Cal.App.3d at p. 238), and improperly
“cast upon the prosecution the burden of preserving what may only be termed
‘potential’ evidence....” (*People v. Maese*, *supra*, 105 Cal.App.3d at p. 720.)

24 This case is different from the *Hitch* situation where raw data (breath) was
25 collected, tested, and destroyed. Destruction of the raw data precluded defendant
26 from himself testing it, thereby denying him the opportunity to impeach the
27 incriminating test results. Nor is this case like *People v. Nation*, *supra*, 26 Cal.3d
28 169, where collected evidence (semen) was retained but not adequately preserved
to allow defendant to test it. In each case, evidence was actually collected by law

1 enforcement officers. But, as *Hogan, supra*, points out, neither case imposed a duty
2 to obtain such evidence in the first instance. (*Hogan, supra*, 31 Cal.3d at p. 851.)
[footnote omitted.]

3 Against these and other cases cited, we have found no cases of precedential value
4 which squarely hold that the prosecution's duty to preserve material evidence
5 encompasses an initial duty to affirmatively collect or gather or seize potentially
material evidence in the course of an investigation for defendant's use."

6 (*People v. Bradley* (1984) 159 Cal.App.3d 399, 405–406.)

7
8 "3. All police reports, audio and video recordings, and other relevant materials
9 indicating that MPD verified "the truthfulness" of the statements of Steven Todd
and Donald Glenn Pearce provided and cleared them of any involvement in the
disappearance of Laci Peterson."

10 **Response** – The People incorporate by reference all the previous legal reasons why this
11 item is not discoverable. This is not actually a request for discovery but a demand for an
12 accounting of what the police did. "It is clear that the Constitution does not require the prosecution
13 to make a complete and detailed accounting to the defendant of all police investigatory work on
14 a case." (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, since the Medina burglary
15 was not exculpatory and related to a third-party issue, the defendant has failed to meet his burden
16 of proof. He has also failed to offer a court discovery order that would have compelled the
17 production of such an accounting. Lastly, the defendant is using "truthfulness" in an attempt to
18 circumvent Judge Steffen's ruling in 2011 where he stated "The results of the polygraph
19 examinations are not admissible. (Evid. Code, §351.1.) The validity of the polygraph examiner's
20 conclusions are irrelevant, and could not lead to admissible evidence. Therefore, the graphs that
21 were the subject of the polygraph examiner's conclusions are not discoverable."

22 The defendant has attempted in these first several requests above to reach for all possible
23 (and imaginary) items that can be thought of – often referred to as "Catch-All Requests."
24 Returning to the *Kennedy* case, this court can quickly see that such broad requests are not allowed:

25 In his discovery motion, Kennedy requested "[a]ny and all other records, of any
26 kind and in any form, not covered by the requests above that would tend to
27 exonerate or exculpate [Kennedy] as to guilt or punishment, diminish or reduce

any personal culpability for the charged offenses, or constitute information that the defense might use to impeach or contradict prosecution witnesses, including but not limited to [¶] a. evidence that tends to negate any element of the crimes [of] which Mr. Kennedy was convicted; [¶] b. evidence that any party other than Mr. Kennedy was culpable of the robbery and murder of Glenn Chambers; [¶] c. evidence that could have been used to undermine the credibility of a prosecution witness, including evidence of past inaccurate statements, prior inconsistent statements, non-felony conduct involving moral turpitude, misdemeanor convictions involving moral turpitude that could have assisted the defendant in obtaining direct evidence of the misdemeanor misconduct, criminal charges pending against a witness anywhere in the state, the probationary status of witnesses, any other evidence reflecting on the credibility of material witnesses, including reduced sentences, avoiding prosecution of criminal charges, previous informant status, benefits received for cooperation with law enforcement in prior cases; [¶] d. evidence that would have supported the defense motion to suppress the testimony of Janet Madsen.”

Kennedy also requested “[a]ny other relevant discovery materials covered under the statute of which petitioner is not yet aware, whether due to the State's concealment or its oversight.”

The trial court denied these requests in their entirety.

Kennedy contends that “to the extent that th[ese] requests w[ere] denied based on Section 1054.5 or Evidence Code [section] 664, the denial was an abuse of discretion.”

We find no abuse of discretion. In *Steele*, the Supreme Court interpreted section 1054.9 “to require the trial court, on a proper showing of a good faith effort to obtain the materials from trial counsel, to order discovery of *specific materials*....” (*In re Steele, supra*, 32 Cal.4th at p. 697, italics added.) The court approved of the request at issue there because it was “not just a free-floating request for anything the prosecution has that may be relevant to the case, but a focused request for specific information.” (*Id.* at p. 702.)

The two requests at issue here are exactly the sort of “free-floating” requests the *Steele* court disapproved. In effect, they ask for anything to which Kennedy is entitled under section 1054.9 that is not encompassed in his previous requests. Because they are not focused requests for specific information, the trial court did not abuse its discretion in denying them.”

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 397–398, as modified on denial of reh’g (Jan. 2, 2007).)

“4. All reports, notes, computer generated data and results, Informed Consent

1 *Forms and/or Polygraph Examination Waiver Forms and/or Polygraph*
2 *Examination Statement of Consent Forms and/or Miranda Waiver Forms and/or*
3 *signed confessions by Todd and Pearce, related to the investigation by MPD and/or*
4 *California DOJ Polygraph Examiner Jeannie Overall's polygraph examinations*
5 *of Steven Todd and Donald Glenn Pearce conducted on January 3, 2003."*

6 **Response** – The People incorporate by reference all the previous legal reasons why this
7 item is not discoverable. This is not actually a request for discovery but a demand for an
8 accounting of what the police did. "It is clear that the Constitution does not require the prosecution
9 to make a complete and detailed accounting to the defendant of all police investigatory work on
10 a case." (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, since the Medina burglary
11 was not exculpatory and related to a third-party issue, the defendant has failed to meet his burden
12 of proof. Furthermore, neither of these individuals were called as witnesses, so under §1054.1 the
13 defendant was not entitled to any of these items because they could not be used for possible
14 impeachment. Defendant Peterson has failed to offer a court discovery order that would have
15 compelled the production of such an accounting. In fact, the defense ignores the last portion of
16 Judge Steffen's ruling in 2011 where he stated "The results of the polygraph examinations are not
17 admissible. (Evid. Code, §351.1.) The validity of the polygraph examiner's conclusions are
18 irrelevant, and could not lead to admissible evidence. Therefore, the graphs that were the subject
19 of the polygraph examiner's conclusions are not discoverable." Peterson is asking this Court to
20 overrule another Superior Court judge.

21 In their footnote no. 3, the defendant attempts in one last gasp to claim this material is
22 "*Brady*." It is easy to make *Brady* claims, but much more difficult for the defendant to prove them
23 after his trial. The Seventh Circuit stated:

24 "The *Brady* rule does not apply to evidence not in the possession of the government
25 that a defendant would have been able to discover himself through reasonable
26 diligence. See, e.g., *id.*, *Grintjes*, 237 F.3d at 880; *Crivens v. Roth*, 172 F.3d 991,
27 996 (7th Cir.1999); *United States v. Dimas*, 3 F.3d 1015, 1018–19 (7th Cir.1993).
28 This court has held many times that *Brady* does not require the government to
 gather information or conduct an investigation on the defendant's behalf. See, e.g.,
 United States v. Senn, 129 F.3d 886, 893 (7th Cir.1997). The government did not
 suppress evidence in this case, and in fact, during pre-trial discovery tendered to

1 Tadros a letter from a Prudential employee to the Federal Bureau of Investigation
2 which disclosed, among other things, that Prudential had begun recording
3 conversations with its insureds in late 1995. The government did not obtain any of
4 these recordings for itself and did not have the duty to gather the tapes and tender
5 them to the defendant. *Brady* prohibits suppression of evidence, it does not require
6 the government to act as a private investigator and valet for the defendant,
7 gathering evidence and delivering it to opposing counsel. *Senn*, 129 F.3d at 893.
8 Tadros has offered no explanation for failing to procure the tapes himself and has
9 never argued that he was somehow unable to obtain those recordings on his own.

10 Although the government's tender of the Prudential letter and the fact that the
11 evidence was available to the defendant should resolve any issue regarding a
12 potential *Brady* violation, we note that Tadros failed to meet any other of the
13 requirements for a successful *Brady* claim. He has offered no evidence whatsoever
14 to establish that the tapes would have been favorable to his defense. In fact, during
15 oral argument, defense counsel conceded that the record was devoid of any
16 evidence that would indicate that the tapes would be helpful to Tadros. Nor did the
17 defendant offer any evidence that the information on the tapes would be material
18 to an issue at trial. The district court did not abuse its discretion in finding that the
19 government had not withheld audiotapes in violation of *Brady*."

20 (*U.S. v. Tadros* (7th Cir. 2002) 310 F.3d 999, 1005.)

21 California is in accord with the Seventh Circuit:

22 "Defendant contends that the prosecution violated its *Brady* obligations by failing
23 to provide discovery regarding Conya L.'s whereabouts. But defendant cites no
24 case that has held that the prosecution's refusal to disclose a witness's address,
25 without more, constitutes a *Brady* violation, and he acknowledges that none of the
26 cases he cites "explicitly discuss[es] the prosecution's failure to provide access to
27 potentially material information." The absence of any authority supporting
28 defendant's position is not surprising. "There is no general constitutional right to
discovery in a criminal case, and *Brady* did not create one...." (*Weatherford v.*
Bursey (1977) 429 U.S. 545, 559; see *Wardius v. Oregon* (1973) 412 U.S. 470,
474["[T]he Due Process Clause has little to say regarding the amount of discovery
which the parties must be afforded...."].) Moreover, "*Brady* does not require the
disclosure of information that is of mere speculative value" (*People v. Gutierrez*
(2003) 112 Cal.App.4th 1463, 1472), and defendant himself concedes that "it
remains speculative as to what might have been discovered." He acknowledges
that there is no way to know "if disclosure of [Conya L.'s] address would be helpful
or harmful to [defendant's] defense." Because defendant has not shown that the
prosecution withheld evidence that was both "favorable and material" to the
defense (*In re Bacigalupo*, supra, 55 Cal.4th at p. 333, his claim is without merit."

(*People v. Williams* (2013) 58 Cal.4th 197, 258–259.)

1 Much like the *Tadros* defendant, Peterson did not subpoena all the third-party records he
2 now wants. However, he had all the essential information available to him for use at trial. He fails
3 to establish what would have been on the tapes or in the materials or to prove how that information
4 would have changed the outcome of the trial. Unlike the *Tadros* defendant, Peterson was able to
5 accuse the third parties (Todd and Pearce) of the crime and submit the question of the burglary to
6 the jury. The jury ruled against him with their verdicts, thus making it impossible to show a
7 possible *Brady* violation as was the case in *Williams*. Lastly, since the defendant has already
8 sought a §1054.9 order which was denied for this material, he is estopped from asking for it again.

9 “5. A complete copy of the handwritten notes and all other materials generated by
10 or located within the files of CA DOJ Polygraph Examiner Jeannie Overall related
11 to the polygraph examinations of Todd and Pearce on January 3, 2003, including
12 notes or reports explaining the basis for the examiner’s decision not to ask either
13 Todd or Pearce whether they had any information about other individuals involved
in the Medina burglary, or whether any of their associates participated with them
in the Medina burglary, or whether they had any knowledge of anyone else who
was or may have been involved in the abduction of Laci Peterson.”

14 **Response** – The People incorporate by reference all the previous legal reasons why this item
15 is not discoverable. This is not actually a request for discovery but a demand for an accounting of
16 what the police did. "It is clear that the Constitution does not require the prosecution to make a
17 complete and detailed accounting to the defendant of all police investigatory work on a case."
18 (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, since the Medina burglary was not
19 exculpatory and related to a third-party issue, the defendant has failed to meet his burden of proof.
20 Furthermore, neither of these polygraphed individuals were called as witnesses, so under §1054.1
21 the defendant was not entitled to any of these items because they could not be used for possible
22 impeachment. The examiner herself was not a witness and her thought process seems to fall within
23 Judge Steffen’s prior order as set out above. Defendant Peterson has failed to offer a court
24 discovery order that would have compelled the production of such an accounting. Peterson is
25 again asking this court to overrule another Superior Court judge.

26 In the prior §1054.9 discovery motion heard by Judge Steffen, the defense sought as part
27

of that motion item #6 “Notes, charts, videos and reports regarding the polygraph examinations given to Steven Todd and Glenn Pearce.” The People responded in our Opposition to the Motion, “Response - The reports documenting these two polygraphs were provided to the defense (4161 to 4164). The videotapes were provided as discovery as video #V27 and #V28 which were signed for by the defense on September 12, 2003. There are no known notes other than what is in the final reports.” This response was not challenged by the defense in 2011. More importantly, Bates pages 4161-4164 are not within the claimed missing pages cited by the defendant below. Logic dictates that if a very specific list of missing pages is given, then every other page *not* included in that list is possessed. This theme will present itself again throughout this motion.

“6. Identification of the MPD vehicles in which Todd and Pearce were interviewed on January 2, 2003, prior to being transported to the MPD, and whether those vehicles were equipped with audio and/or video recording capability on that date. If the vehicle was equipped with recording devices, Mr. Peterson requests the audio and/or video recordings of those interviews.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. None of these items are required by §1054.1, by *Brady* or were ever requested. This request is absolutely a fishing expedition. To justify this fishing request the defendant, once again, claims in a footnote a half-truth:

As is apparent from other witness interviews in this case, critical and exonerating information provided by witnesses to law enforcement was not included or, in Det. Brocchini's words, was "excised" when witness statements were memorialized in written reports. (See RT 11191- 11192 [explaining that Det. Brocchini excised critically important exculpatory information provided by witness Peggy O'Donnell from his written report].) Accordingly, Mr. Peterson is requesting production of all audio and/or video recordings of witness statements, even where written reports of those statements have been provided.

(Defense motion footnote 4, page 14.)

As Paul Harvey used to say... “And now, for the rest of the story.” Before trial due to delays in the typing of police reports, the defense was given the dictation tapes of the officers. This provided the defense with the raw, unedited or corrected versions of “police reports” prior to the usual transcription, correction and approval process. During the trial, attorney Geragos was

1 able to masterfully make Det. Brocchini look bad for editing one of his reports, when he excised
2 facts that were already in another police report. What Mr. Peterson fails to mention was the rest
3 of the circumstances, the statements and the redirect examination of the detective that explained
4 what actually happened, starting with Geragos's cross-examination:

5 Q. Did that indicate to you, both your notes, the phone conversation and this
6 information, that Laci had been at the warehouse on December 23rd?

7 A. That's documented in a police report.

8 Q. Yeah. In your police report?

9 A. No, in -- in another police report. (RT 11192.)

10 The impression that Geragos was attempting to foster (and Mr. Peterson seeks to further
11 exploit) related to a claim by a witness that Laci had been at the TradeCorp warehouse the week
12 before her disappearance. Det. Brocchini removed a paragraph from his report of August 2003
13 that included reference to an interview of that witness that had taken place eight months before.
14 The reference stayed in his notes and on his dictation tape and as stated above was documented
15 in another police report. During re-direct the background was explained:

16 MR. DISTASO:

17 Q. The -- let's -- detective, let's move on a little bit. ¶ Do you remember that last
18 Thursday Mr. Geragos asked you about some information that was contained in your
19 report?

20 [DET. BROCCCHINI] A. Yes.

21 Q. And, or I should say some information that was omitted from your report, right?

22 A. Edited, right.

23 Q. Now was that information contained in another detective's report?

24 A. Yes.

25 Q. Let's go through that in detail about exactly what happened. The reports you wrote
26 was an interview of what person?

27 A. Greg Smith.

28 Q. And why did you interview Mr. Smith?

A. He called in a tip to the D.A.'s Office regarding an incident that happened at the
warehouse that Scott Peterson used to rent or lease for TradeCorp.

1 Q. Let me show you this tip and see if this is the information that was called in. ¶
2 (Showing witness)

3 A. It is.

4 Q. The date of this tip on the top here is June 29th '03, right?

5 A. Yes.

6 Q. I don't know what this date on the bottom is, but make sure the jury sees all of the
7 information. This is something on the bottom of this that says Wednesday, June 25th,
8 2003?

9 A. Yes.

10 Q. Do you know what date that this tip was actually called in, the 29th or the 25th?

11 A. No. I think it was the 29th, but I don't know for sure.

12 Q. It says John Gould, and that's someone in my office, right?

13 A. Yes.

14 Q. Asked info to her, who is I guess is Carla Tias?

15 A. Yes.

16 Q. Greg Smith, a realtor who was showing Peterson building as the lease. Called
17 Brazelton, who's the D.A., right?

18 A. Yes.

19 Q. Knows him from Lions Club. To apprise us of the following: As he knows important -
20 - someone be made aware of what happened. Investigators from the Peterson family
21 picked up a water bottle out of the seat of a forklift that was in the building, right?

22 A. Yes.

23 Q. Smith told them they shouldn't take it as it didn't belong to them. So we're talking
24 about Greg Smith here, right?

25 A. Yes.

26 Q. And said to them, how would you like it if you were showing the building. Because
27 he was showing this building to rent it?

28 A. Right.

Q. And someone did that. Right?

A. Yes.

Q. They didn't seem to care and took it anyway. Right?

A. Yes.

1 Q. He has no business card and the names are William Pavelic, Investigative Consultant,
2 right?

3 A. Right.

4 Q. Right?

5 A. Yes.

6 Q. And Matt Dalton, a lawyer with the firm of Geragos & Geragos, right?

7 A. Yes.

8 Q. And do you know those two individuals to be associated with Mr. Geragos' office?

9 A. Yes.

10 Q. Okay. So that's the original tip that came in, right?

11 A. Yes.

12 Q. And that's the one that you later followed up on?

13 A. Yes.

14 Q. Okay. Is there any information in the original tip about Peggy O'Donnell and Laci
15 using her bathroom?

16 A. No.

17 Q. Now, let's look at your report of that incident. Is that a copy of your report?

18 A. Yes.

19 Q. And it says -- that has the tip number, right?

20 A. Yes.

21 Q. People's 86, there's an I.D. number on the top, right?

22 A. Yes.

23 Q. And that says 10097?

24 A. Yes.

25 Q. Which what you put in your report?

26 A. Yes.

27 Q. And it says on 6/29 the real or Greg Smith called and he said basically the
28 information I just told you?

A. Yes.

Q. On 8/13, on August 13th you spoke to Greg Smith?

1 A. Yes.

2 Q. And he told you this information, right?

3 A. Yes.

4 Q. Let's go through exactly what he told you. ¶ In March 2003, Smith met with Scott
Peterson regarding subleasing that warehouse?

5 A. Yes.

6 Q. And the warehouse we're talking about is the one that has been at issue here in trial,
7 right?

8 A. Yes.

9 Q. That Scott Peterson had vacated the warehouse?

10 A. Yes.

11 Q. He said the family had hired some new lawyers and she wanted to know if Smith
could show the lawyers the warehouse?

12 A. Yes.

13 Q. Smith agreed and arranged to meet them on June 29th?

14 A. Yes.

15 Q. Smith said that Matt Dalton and William Pavelic were outside. Pavelic with several
photographs, right?

16 A. Yes.

17 Q. Smith said they wanted Smith in the photographs, however, he refused?

18 A. Right.

19 Q. Smith said he opened the office door leading into the small office inside the
warehouse, right?

20 A. Yes.

21 Q. Where there was a fax machine on the floor, right?

22 A. Yes.

23 Q. And do you remember seeing the fax machine on the floor?

24 A. It was there, there was one on the floor when I was there.

25 Q. And several faxes that had come through, right?

26 A. Yes.

27 Q. Smith said Pavelic, who was the defense investigator --

1 A. Yes.

2 Q. -- told him that he was going to take all the faxes?

3 A. That's what he said.

4 Q. Smith told them that he couldn't take them, right?

5 A. Right.

6 Q. The investigator, Pavelic, told him we're Peterson's attorney so we can take anything
7 that belongs to Peterson?

8 A. Right.

9 Q. Smith told Pavelic that this is TradeCorp's building, not Peterson's, so he didn't feel
10 that it was right for them to take anything. Smith and Pavelic had spread out all the
11 papers on the floor, which included about 20 pages, took pictures of them?

12 A. Yes.

13 Q. After they went in the warehouse, Smith said -- I mean Dalton told Smith, I don't see
14 what I'm looking for, do you?

15 A. Right.

16 Q. Smith replied he didn't know what they were looking for, then Dalton said we're
17 looking for debris of cement that was possibly used when making anchors?

18 A. Yes.

19 Q. Smith said it was sounding like Dalton was referring to something that he read in a
20 police report?

21 A. Yes.

22 Q. Smith told Dalton that the warehouse was packed several months ago, but ever since
23 then it's been empty so he was too late to see what was in the warehouse?

24 A. Right.

25 Q. Smith said as he and Dalton were near the back of the warehouse where the bathroom
26 is, Pavelic began hollering at Dalton to hurry and come over?

27 A. Yes.

28 Q. Smith said Pavelic held up something that Pavelic found on a forklift. Pavelic was
holding up something that resembled a water bottle, however, he couldn't be sure?

A. Yes.

Q. And Pavelic, again, the defense investigator?

A. Yes.

1 Q. Dalton was one of the defense attorneys?

2 A. Yes.

3 Q. And Greg Smith was the realtor?

4 A. Yes.

5 Q. By the time Smith and Dalton got over to where Pavelic was, Pavelic had concealed
the item so Smith couldn't see it?

6 A. Yes.

7 Q. Smith said Pavelic seemed to think whatever he found was significant. Pavelic told
8 Smith I am not asking you, I'm taking this.

9 A. Yes.

10 Q. Smith told Dalton and Pavelic, if I were representing you, I wouldn't let anyone take
anything out of the office while I was there without your permission, right?

11 A. Yes.

12 Q. And Smith said he was upset at whatever Pavelic took?

13 A. Yes.

14 Q. Okay. Smith said he couldn't be sure of what the item was Pavelic had taken from the
warehouse, other than Smith remembering it looked something like a water bottle with a
15 photograph?

16 A. Yes.

17 Q. Right. ¶ Now this next paragraph is the paragraph that you edited that information
out?

18 A. Yes.

19 Q. You took out of the information about Peggy O'Donnell seeing Laci at her bathroom,
20 right?

21 A. Yes.

22 Q. Let's look exactly what that information was that you took out. ¶ Now, this is what
you took out, once they were outside, Smith pointed out a neighboring building or a
23 neighboring warehouse, right?

24 A. Yes.

25 Q. And advised Dalton and Pavelic that Peggy had allowed Laci to use the restroom on
12/23/02?

26 A. Yes.

1 Q. Smith said Dalton and Pavelic drove out of the warehouse parking lot without
2 contacting Peggy?

3 A. Right.

4 Q. Smith said Peggy, period, I don't know what that is. ¶ He had spoken to Peggy several
5 times regarding Laci using Peggy's restroom on 12/23?

6 A. Yes.

7 Q. And Peggy told Smith she had already been interviewed by law enforcement?

8 A. Yes.

9 Q. So Smith told you that he told the defense attorneys about this, right?

10 A. Yes.

11 Q. That he told the defense investigator about this?

12 A. Yes.

13 Q. That they drove through the warehouse parking lot without contacting her?

14 A. Yes.

15 Q. And that she had already been interviewed by law enforcement?

16 A. Yes.

17 Q. Now, let me show you this report from -- and your interview of Smith, Greg Smith,
18 was on August 13th, 2002?

19 A. 2003.

20 Q. I'm sorry, 2003?

21 A. Yes.

22 Q. Now, now are you familiar with Detective Holmes' report where he personally
23 interviewed Peggy O'Donnell?

24 A. Yes.

25 MR. DISTASO: So I'm going to mark this, judge.

26 THE COURT: People's next in order, that be No. 86.

27 MR. GERAGOS: 87.

28 MR. DISTASO: I'm sorry. The tip was 86, Your Honor.

THE COURT: That's all right. Sorry. 86 was the tip. 87 is Holmes' police report?

MR. DISTASO: Yes.

1 THE COURT: What's the date?

2 MR. DISTASO: December 30th, 2002.

3 (People's Exhibit 87, Detective Holmes report, was marked for identification.)

4 MR. DISTASO:

5 Q. So your interview took place in August of 2003?

6 A. Yes.

7 Q. All right. Now are you aware that in December of 2002, after Laci Peterson went
8 missing, there was a canvas of the warehouse area where Scott Peterson had his shop?

9 A. Yes.

10 Q. Now let me show you what -- now, here's this report we're looking at right now, is this
11 an interview of Peggy O'Donnell?

12 A. Yes.

13 Q. And this report says on December 30th, 2003 [sic], right?

14 A. Yes.

15 Q. At about 1438 hours I interviewed Peggy O'Donnell at her business?

16 A. Yes.

17 Q. Detective Holmes wrote that he personally spoke to Peggy O'Donnell?

18 A. Yes.

19 Q. I showed her photographs of both Laci and Scott Peterson?

20 A. Yes.

21 Q. So this report was taking place eight months prior to yours?

22 A. Yes.

23 Q. She was familiar with both of them.

24 A. That's what she said, yes.

25 Q. She said she had seen Scott Peterson on one occasion when he let her business use his
26 forklift to move some property?

27 A. Yes.

28 Q. And Peggy O'Donnell has one of the warehouses in the complex where Scott Peterson
did?

A. Yes.

1 Q. She said Laci Peterson had come to her business and asked to use the bathroom on
2 either 12/20 or 12/23?

3 A. Yes.

4 Q. She believes this was late afternoon, however, she could not be sure?

5 A. Yes.

6 Q. So what Peggy says is that Laci had come to her, her shop and asked to use the
7 bathroom?

8 A. Yes.

9 Q. Was there anywhere that you saw in Detective Holmes' report that said that Laci
10 Peterson had used the bathroom at Scott's shop?

11 A. No.

12 Q. O'Donnell said she had only talked to Scott Peterson on one occasion, right?

13 A. Yes.

14 Q. However, she believed she has seen his truck several times either late morning or late
15 afternoon?

16 A. Yes.

17 Q. I showed her a picture of the boat, she said she had never seen the boat.

18 A. Yes.

19 Q. Okay. And to your knowledge both of these reports, yours and Detective Holmes,
20 were discovered to the defense attorneys?

21 A. Along with my notes and my dictation tape.

22 Q. Okay. The notes of the interview, do your notes contain the information about Peggy
23 O'Donnell and the bathroom, Laci using the bathroom?

24 A. On the 23rd, yes.

25 Q. And your dictation tape is what Mr. Geragos played in court regarding this
26 information being omitted from your report?

27 A. Yes.

28 Q. So you retained those two documents, your notes and the dictation tape?

A. Yes.

Q. And did you provide those -- that information to the defense in discovery?

A. I provided it to the D.A.'s Office who discovered it to the defense.

(RT 11495 – 11507.)

1 7. *Handwritten notes taken by MPD officers who interviewed Steven Todd and*
2 *Donald Glenn Pearce on January 2, 2003, while Todd and Pearce were seated in*
3 *in the back of a police patrol vehicle giving explicit details concerning their*
4 *involvement in the Medina burglary the evening of January 2, 2003.*

5 **Response** – The People incorporate by reference all the previous legal reasons why this
6 item is not discoverable. This is not actually a request for discovery but a demand for an
7 accounting of what the police did. "We know of no constitutional requirement that the prosecution
8 make a complete and detailed accounting to the defense of all police investigatory work on a
9 case." (*Moore v. Illinois* (1972) 408 U.S. 786, 795.) As stated above, since the Medina burglary
10 was not exculpatory and related to a third-party issue, the defendant has failed to meet his burden
11 of proof. He has also failed to offer a court discovery order that would have compelled the
12 production of such an accounting. Lastly, the defense has not even bothered to explain that these
13 notes exist and were not incorporated into police reports that they already possess. Since neither
14 of these witnesses testified, the notes cannot be used for impeachment. This is just a clever attempt
15 to ask for the same items as in the catch-all Medina burglary request that is Item A.

16 8. *All other interviews, recordings, and contacts made by MPD and/or other law*
17 *enforcement with Todd and Pearce during the 18 hours they were in custody,*
18 *between the commencement of the raid at the 1406–1407 Tenaya Drive properties*
19 *commencing around 5:30 p.m. on January 2, 2003, and the recorded polygraph*
20 *examinations that started at 11:30 a.m. on January 3, 2003, apart from the*
21 *discovery already requested above.*

22 **Response** – The People incorporate by reference all the previous legal reasons why this
23 item is not discoverable. This is another claimed request for discovery but once again attempts to
24 demand that the police explain what they did. "The wording describing the material sought to be
25 discovered renders the motion to inspect such material fatally defective. Appellants sought not
26 only evidence in possession of the prosecution but also evidence which could be found by the
27 exercise of due diligence. Compliance with a discovery order phrased in the terms of the motion
28 would have required the prosecution to prepare the case for the defense." (*People v. Cohen* (1970)
12 Cal.App.3d 298, 323.) In fact, the defense does not even attempt to justify this request, instead

1 merely stating that given “the high-profile nature” of this case it is “implausible they [Todd and
2 Pearce] were not further interviewed by MPD after their arrest.” In the instant case, the defendant
3 – through Geragos- was given the opportunity to question the detectives involved with the arrest
4 and questioning of Todd and Pearce. Assuming that other statements were obtained, there has
5 been no showing how the statement(s) would have any relevance since neither Todd nor Pearce
6 was called as a witness. This identical kind of request has been rejected before:

7 "In his discovery motion, Kennedy requested “[a]ny and all records, of any kind
8 and in any form, of contacts or communications between Doreen Westbrook and
9 the Colusa County Sheriff’s Department and/or the Colusa County District
10 Attorney’s Office between March 15, 1993 4:30 AM and March 16, 1993 10:20
11 PM.” ¶ The trial court denied this request in its entirety.

12 Kennedy contends the trial court abused its discretion in denying this request
13 because “this information could have been used to impeach the trial testimony of
14 prosecution witnesses Westbrook, Markss, Bell and Shadinger” because “[i]f such
15 contacts occurred, then they would clearly contradict the trial testimony of” those
16 witnesses.

17 Even assuming materials regarding contacts or communications between Doreen
18 Westbrook and the Colusa County Sheriff’s Department and/or the Colusa County
19 District Attorney’s Office in the specified time period would have contradicted the
20 testimony of the specified witnesses, we find no abuse of discretion in the trial
21 court’s denial of this request for two reasons. First, Kennedy fails to show how he
22 would have been entitled to the requested evidence under *Brady* because he fails
23 to address the materiality of any such evidence, that is, he fails to show a
24 reasonable probability of a different result if such evidence had been disclosed to
25 him at time of trial. Second, Kennedy fails to show he would have been entitled to
26 the evidence under section 1054.1(e). Under these circumstances, Kennedy has
27 again failed to show the trial court abused its discretion in denying his discovery
28 request."

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 382, as modified on denial of reh'g (Jan.
2, 2007).)

"9. All MPD and other law enforcement agency reports, notes, statements, and/or
other documents related to Steven Todd’s release from custody and re-arrest on
January 6, 2003, including, but not limited to:

a. All reports and/or documents related to Steven Todd’s apparent posting
of bail for release after his arraignment on January 6, 2003;

- 1 *b. The report from the arresting officer;*
2 *c. All reports and information regarding the basis for Todd's re-arrest;*
3 *d. All notes, reports, and/or audio and video recordings of statements made*
4 *by Todd at the time of his rearrest, or while otherwise in MPD and/or Stanislaus*
5 *County Sheriff's Department custody;*
6 *e. All investigative efforts into whether Todd utilized cash stolen from the*
7 *Medina property to post his bail bond on January 6, 2003."*

8 **Response** – The People incorporate by reference all the previous legal reasons why this
9 item is not discoverable. None of these items fall within Pen. Code §1054.1 and were not
10 originally discoverable. This request has less of an attempt to justify itself as a request that should
11 have been granted than the previous above-mentioned item... the defense merely cites to a single
12 Bates page. What they don't share is that the Bates page is an NCR form showing that Aladdin
13 Bail Bonds surrendered Todd into the Sheriff's custody.

14 *"10. Booking photos for Steven Todd and Donald Glenn Pearce taken upon their*
15 *arrest on January 2, 2003, and all prior arrests. Photos documenting any physical*
16 *injuries on the persons of Todd and/or Pearce at the time of their arrest on January*
17 *2, 2003. Fingerprints (10 print cards) and palm prints for Todd and Pearce*
18 *collected by MPD on January 2, 2003. All recordings of phone calls made by*
19 *Steven Todd and Donald Glen Pearce while they were in custody from the time of*
20 *their arrests on January 2, 2003, until the time they were transferred to state*
21 *prison."*

22 **Response** – The People incorporate by reference all the previous legal reasons why this
23 item is not discoverable. None of these items fall within Pen. Code §1054.1 and were not
24 originally discoverable. This request does not really attempt to justify itself; it simply suggests
25 that the items are expected to exist. Booking information, fingerprint cards and jail calls are not
26 discoverable items since they are part of the institutional process of a Sheriff incarcerating
27 inmates. The Sheriff is not part of the prosecution team in these circumstances. (*See People v.*
28 *Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1318 holding modified by *Facebook, Inc.*
v. Superior Court of San Diego County (2020) 10 Cal.5th 329 - "*Barrett* is trying to obtain material
from a third party." The booking photo for the Medina burglary was attached as an exhibit by the
defense to their Motion for DNA as page 220 of 880 (and provided as Bates page 42).

11. All audio and/or video recordings and written witness interview reports showing that MPD interviewed Susan and Rudy Medina about what they witnessed on the morning of December 24, 2002, prior to leaving town, and whether they saw any suspicious activity on their street, including whether either was shown photographs of Steven Todd and/or Donald Glenn Pearce in attempt to identify whether they had seen either man on Coven Avenue that morning.

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. As mentioned above many times, the Medina burglary is a third-party issue and Pen. Code §1054.1 does not mandate the disclosure of anything related to that investigation. However, Susan Medina testified twice during Peterson’s trial and the defendant was provided with reports related to her testimony. It is important to note that Ms. Medina testified as a defense witness for the defendant during the penalty phase to relate to the jury how she became close to the defendant and her friendship with Mrs. Peterson, the defendant’s mother (RT 21505-21507.) Ms. Medina asked the jury to spare his life. She has now provided a declaration (signed in 2023) for the defense claiming to have seen a suspicious man on a bicycle on her street that morning that made her feel uncomfortable. (DNA Motion Exhibit 3, page 3-4.) However, when she testified during trial (in 2004) she was asked:

Q. Okay. Now, when you're leaving, you're coming out of the driveway, you're going down the street, did you -- did you notice anything out of the ordinary?

A. Nothing unusual. (RT 9594.)

It is also important to note how very specific this request is and, based on Medina’s trial testimony, the existence of the information is questionable at best.

“12. All reports, interviews, audio and/or video recordings following up on information provided by Lillian V., who reported to MPD on January 1, 2003, that on December 24, 2002, she had seen “a man on a bicycle” on Coven between the park and Encina, about 10:15–10:20 a.m., whom she described as “5’8”, white male, weathered face, long blunt hair to ears, turned his head away, bicycle was loaded with saddle bags, transient type person, relatively well groomed didn’t respond to her saying hello,” including whether Lillian V. was shown photographs of either Steven Todd or Donald Glenn Pearce to see whether she could identify either of them as the man she reported seeing.”

Response – The People incorporate by reference all the previous legal reasons why this

1 item is not discoverable as well as our prior response to the DNA motion that relates to this person
2 and their claimed information. This is not actually a request for discovery but a demand for an
3 accounting of what the police did. "Thus, had defendant's motion been granted, compliance would
4 have required the prosecution to prepare the case for the defense. This is an obligation not imposed
5 by the law." (*People v. Gurtenstein* (1977) 69 Cal.App.3d 441, 449.) As stated above, since the
6 Medina burglary was not exculpatory and related to a third-party issue, the defendant has failed
7 to meet his burden of proof. He has also failed to offer a court discovery order that would have
8 compelled the production of such an accounting. Lastly, the defense has not bothered to explain
9 how a tip about an unknown third-party in the general park area at about the time the defendant
10 left his house would exculpate him which shows there is no discoverable materials here. Since
11 this person did not testify, any reports or notes or audio or video could not be used for
12 impeachment. This is just an attempt to ask for the same items as in the catch-all Medina burglary
13 request that is Item A.

14 *"13. All reports, notes, interviews, recordings, and/or any other documents related*
15 *to the information provided to MPD by the teacher of Steven Todd's son, including*
16 *statements that the mother of Steven Todd's child had a history of selling babies in*
17 *open adoptions, and indications from Steven Todd's son about violent acts on a*
pregnant woman, and any subsequent investigation based on the information
provided."

18 **Response** – The People incorporate by reference all the previous legal reasons why this
19 item is not discoverable. This is not a request for discovery but a request for a fiction writer to
20 attempt to explain how the son and/or mother of said child of a third-party can turn him into a
21 viable suspect. This information comes from a tip by Gail P. (Bates page 15031) and from current
22 defense claims but there is no attempt to show any direct legal connection to Laci's murder. The
23 defense has taken the statement in the tip – "The mother of this child has been a surrogate mother
24 and sold babies twice before" and turned it into that she "had a history of selling babies." Since
25 the mother in question was a prior surrogate mother, Laci's pregnancy had no relevance to this
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claim. Moreover, according to this defense discovery motion, Exhibit A⁴⁶, in footnote #4 at page 7 of the informal discovery request, it states this child was 4 years old when he relayed information to this anonymized witness. Yet again, the Medina burglary was not exculpatory and related to a third-party issue, and the defendant has failed to meet his burden of proof. He has also failed to offer a court discovery order that would have compelled the production of such items if they were somehow shown to exist. This is just another attempt to ask for the same items as in the catch-all Medina burglary request that is Item A.

“14. MPD’s reports, notes, and other records documenting the investigative steps taken to determine the status of Steven Todd’s methamphetamine use on December 24–26, 2002, which would have compromised his ability to recall dates and times of events that week.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. This is not a request for discovery but a request for an accounting of what the police did. "It is clear that the Constitution does not require the prosecution to make a complete and detailed accounting to the defendant of all police investigatory work on a case." (*People v. Nation* (1980) 26 Cal.3d 169, 175.) Todd was not a witness, even though he could have been called by the defense at trial, so he could not be impeached with this information. The defense admits that they were communicating with Todd before the completion of the trial. Pen. Code §1054.1 does not mandate the disclosure of anything related to this request and it could not have been granted. We are returned to the fact the Medina burglary was not exculpatory and related to a third-party issue; the defendant has failed to meet his burden of proof. He has also failed to offer a court discovery order that would have compelled the production of such items if they were somehow shown to exist. This is just another attempt to ask for the same items as in the catch-all Medina burglary request that is Item A.

“15. Cell phone records obtained by law enforcement for Donald Glenn Pearce, Steven Todd, and/or any other suspect in the Medina burglary investigation for the

⁴⁶ The informal request for discovery was withdrawn by the petitioner during the Motion to Seal; however, he has made no attempt to withdraw it from this motion. The People object to the admission of that letter as will be addressed later.

process. (*Susan S. v. Israels* (1997) 55 Cal.App.4th 1290, 1301-1302; see also *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1.)

The defendant fails to even attempt to show how this item would have been discoverable in his case; we are left to speculate what, if anything, could have resulted from viewing a receipt. As one court has put it:

"Defendants primarily contend that E.G. may have made exculpatory or inconsistent statements during his DEA interview. But the existence of such statements is entirely speculative—and it would be equally speculative to conclude that E.G. made additional inculpatory or consistent statements, thereby bolstering the prosecution's case at trial. Even if E.G. made exculpatory or inconsistent statements, the significance of any such statements at trial is unknown, both because the statements themselves are unknown and because the evidence to be introduced at trial is also unknown. (See, e.g., *Kwan Fai Mak v. FBI* (9th Cir. 2001) 252 F.3d 1089, 1094.) E.G.'s credibility may not be a dispositive issue. Or, if it is, other evidence may be introduced that impeaches him more effectively than any statements made to the DEA. We note, in this context, that the transcript of the preliminary hearing shows that defendants have ample grounds on which to impeach E.G. At this stage, defendants have not established a constitutional violation."

(*People v. Aguilera* (2020) 50 Cal.App.5th 894, 917.)

This was not and is not discoverable under Pen. Code §1054.1.

"17. MPD police investigation reports, arrest reports, notes, recordings, and/or other documents detailing Officer Mike Hicks's prior contacts with Donald Glenn Pearce and Stephen Todd as indicated in Det. Stough's and Det. Hicks's reports."

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. The Medina burglary was not exculpatory and is therefore a third-party discovery issue, which has been litigated; the defendant has failed to meet his burden of proof. He has also failed to offer a court discovery order that would have compelled the production of such items. This request goes even further than surface level requests by seeking priors of the two non-testifying subjects – there is no basis legally for this discovery. This would not have been traditionally discoverable to even the attorneys for Todd or Pearce unless they served as a basis for the prosecution to use as Evidence Code §1101 type of evidence.

1 *“18. All recordings, interview memoranda, audio and video recordings, and*
2 *transcripts thereof, and/or other notes of communications between representatives*
3 *of the Stanislaus County District Attorney’s Office, and other law enforcement,*
4 *with suspects Todd and Pearce, related to their role in the Medina burglary,*
5 *including but not limited to plea negotiations, incentives offered, charges to be*
6 *brought in the criminal complaints, plea agreements entered into, the factual basis*
7 *for the pleas entered into, abstracts of judgments, and custody records for Steve*
8 *Todd and Donald Glenn Pearce.”*

9 **Response** – The People incorporate by reference all the previous legal reasons why this
10 item is not discoverable. The Medina burglary was not exculpatory and is therefore a third-party
11 discovery issue, which has been litigated; the defendant has failed to meet his burden of proof.
12 He has also failed to offer a court discovery order that would have compelled the production of
13 such items. This request is a *Kennedy* catch-all request and, as that court pointed out, a trial court
14 can deny outright such request and not feel obligated to parse out possible items (*Kennedy v.*
15 *Superior Court, supra*, 145 Cal.App.4th 359, 371-372) This request is also more than a surface
16 level request by seeking abstracts (court records equally obtainable by the defense) and custody
17 records (also obtainable by the defense). (*People v. Superior Court (Barrett), supra*, 80
18 Cal.App.4th 1305, 1318 holding modified by *Facebook, Inc. v. Superior Court of San Diego*
19 *County* (2020) 10 Cal.5th 329.)

20 *“19. All reports, notes, interviews, audio/video recordings and transcripts thereof,*
21 *photographs, and/or any other documents relating to the January 2, 2003 searches*
22 *MPD conducted pursuant to warrants issued in the Medina burglary investigation,*
23 *including but not limited to the addresses located in the Airport District that MPD*
24 *searched in connection with the investigation into the Medina burglary, as well as:*

25 *a. The warrants issued and returns filed on the above-described properties,*
26 *including descriptions and photographs of all items of evidence found including,*
27 *but not limited to stolen items recovered and identified as not belonging to the*
28 *Medinas;*

b. Property destruction and/or release forms for all items collected,
 identified as the Medinas’ property, and turned over to their possession;

c. Photographs of all locations searched and all items recovered, including
 the Medinas’ safe, jewelry, tools, and money wrappers;

d. Interviews or reports documenting whether the Medinas were shown any
 jewelry collected during the above-referenced searches that did not belong to
 them;

e. Interviews or reports documenting whether Scott Peterson was shown

1 *any jewelry collected during the above-referenced searches to see whether he*
2 *could identify it as having belonged to Laci;*

3 *f. Audio/video recordings and transcripts thereof, notes, reports, or any*
4 *other documents relating to all interviews conducted, or statements obtained,*
5 *during the above-referenced searches;*

6 *g. Notes, reports, correspondence, or other documents authored by all*
7 *officers present for and involved in the above-referenced searches, including, but*
8 *not limited to the following MPD personnel: Sgt. Cloward, Officer Kelley, Officer*
9 *Gonzales, Officer Intorf, Officer Pimentel, Det. Grogan, Officer Meyer, Agt.*
10 *Brodie, Sgt. Helton, Det. Hicks, Officer Locke, Officer Fainter, Officer Ramirez,*
11 *Lt. Watts, Agt. Suazo, Officer Sanchez, and Officer Garcia.”*

12 **Response** – The People incorporate by reference all the previous legal reasons why this
13 item is not discoverable. This is not actually a request for discovery but a demand for an
14 accounting of what the police did. "It is clear that the Constitution does not require the prosecution
15 to make a complete and detailed accounting to the defendant of all police investigatory work on
16 a case." (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, since the Medina burglary
17 was not exculpatory and related to a third-party issue, the defendant has failed to meet his burden
18 of proof. He has also failed to offer a court discovery order that would have compelled the
19 production of such an accounting. To avoid repetition any more than required by the defense
20 motion, the People will just briefly refer to the subsets in this subpart by the stated letter and
21 incorporate all our previously applicable responses:

22 **Response** – (a) search warrants are public records unless sealed – if sealed, Peterson could
23 have asked for the records from the court at any time during the period prior to filing his first writ.

24 **Response** – (b) Susan Medina, the victim of the burglary, has been repeatedly interviewed
25 by the defense. She has provided the defense with waivers in the past. However, her case is not
26 this case and no discovery order may be granted as set forth in Proposition 115.

27 **Response** – (c) This is another request for an accounting – the defendant doesn’t even
28 attempt to prove any such items exist. He also fails to show how they would be discoverable in
29 his case. His only claim is a footnote where he states that they are “material” but he neglects to
30 show the rest of the *Brady* component that requires an impact on the outcome of the case. Here,

much like the *Aguilera* case above, he can only speculate. That is insufficient to warrant discovery. (*People v. Aguilera, supra*, 50 Cal.App.5th 894, 917.)

Response – (d) This is another request for an accounting – the defendant doesn’t show any such items exist, even though Bates page 20394 (Cloward report) and 20381 (Banks report) has some of this information. He still fails to show how such items would be discoverable in his case. In a footnote, where he does not even state the items are “material” only that Ms. Medina looked at items that she did not recognize, he still neglects to show the rest of the *Brady* component that requires an impact on the outcome of the case.

Response – (e) If there were statements from the defendant relating to his case, they would have to be provided under Pen. Code §1054.1. All the defendant’s statements were provided in one form or another. The defendant is also aware of any statement he may have made. The defendant’s statements regarding Laci’s jewelry were testified to at trial. He has been provided the discovery to which he is entitled.

Response – (f) This is a *Kennedy* catch-all request and should be denied. Defendant has failed to meet his burden.

Response – (g) Under the discovery rules enacted as part of Proposition 115, the prosecutor is required to provide to the defendant only those statements of the defendants, witnesses whom the prosecutor intends to call at trial, or any exculpatory evidence. (Pen. Code §1054.1.) Even under prior law, the defendant was not entitled to statements of all witnesses. (*Joe Z. v. Superior Court* (1970) 3 Cal.3d 797, 806; *People v. Cooper* (1960) 53 Cal.2d 755, 770.) This is also a *Kennedy* catch-all request since the defendant identifies seventeen specific witnesses (and doesn’t limit his request to just those) but neglects to show that they were or were not trial witnesses or that the items even exist and his request should be denied. Defendant has failed to meet his burden.

“20. Reports, notes, photographs, audio/video recordings and transcripts thereof, results of forensic testing, and/or other documents related to the gun and jewelry anonymously dropped off at the Modesto Police Department on January 2, 2003, including but not limited to:

1 a. *Digital copy of videotaped surveillance footage from the Modesto Police*
2 *Department lobby taken at approximately 1:10 a.m. on January 3, 2003, depicting*
3 *a white male adult, late 20s–30s, 5’8” tall, approximately 150 pounds, coming into*
4 *the lobby carrying a blue plastic shopping bag, and telling the officer in the callbox*
 he wanted to turn in some stolen property, which was later determined to be
 jewelry and a gun from the Medina burglary. (Bates page 4131.)

5 b. *All reports, notes, photographs, audio and video recordings and*
6 *transcripts thereof, and other documents regarding any investigation into the*
 identity of the person or persons who anonymously dropped off items stolen in the
 Medina burglary to the MPD station.

7 c. *Officer Serratos’ report documenting the recovery of the gun inside the*
 shopping bags delivered to the MPD referenced above;

8 d. *Photographs of recovered property taken by CSO Hodson.”*

9 **Response** – The People incorporate by reference all the previous legal reasons why this
10 item is not discoverable. This is not actually a request for discovery but a demand for an
11 accounting of what the police did. "It is clear that the Constitution does not require the prosecution
12 to make a complete and detailed accounting to the defendant of all police investigatory work on
13 a case." (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, since the Medina burglary
14 was not exculpatory and related to a third-party issue, the defendant has failed to meet his burden
15 of proof. He has also failed to offer a court discovery order that would have compelled the
16 production of such an accounting. To avoid repetition any more than required by the defense
17 motion, the People will just briefly refer to the subsets in this subpart by the stated letter and
18 incorporate all our previously applicable responses:

19 **Response** – (a) Todd/Pearce were arrested on January 2, 2003 at approximately 1830
20 hours (6:30 p.m.) well before the unknown male showed up at MPD. (Bates pages 20319 -20320).
21 Todd and Pearce admitted their involvement in the Medina burglary (which facts were presented
22 to the jury) and described what they had done with the Medinas’ property. They denied that
23 another person was involved. There can be no dispute that this unknown person is a “third-party”
24 within the meaning of the rules of discovery. The defense has failed to meet their burden of proof
25 to show how they would be entitled to this evidence assuming it existed at this time.

26 **Response** – (b) This is a *Kennedy* catch-all request and should be denied. The defendant
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1 here wants this Court to ignore the fact that the Medina burglary had been solved – Todd and
2 Pearce were caught with the safe, confessed to their crime and helped the police recover the stolen
3 property. As one court has said - "Defendant was arrested leaving the scene of the crime shortly
4 after its commission, with the stolen goods in hand. Under such circumstances, it would not be
5 reasonable for the police to conduct an in-depth scientific investigation of the crime or to preserve
6 every piece of evidence that might possibly be relevant. The police cannot be required to preserve
7 evidence which is neither necessary to the investigation of the crime nor likely to benefit the
8 defendant. " (*People v. Perez* (1979) 24 Cal.3d 133, 145.) Defendant has failed to meet his burden
9 of showing how this request falls within Pen. Code §1054.1.

10 **Response – (c)** "It is clear that the Constitution does not require the prosecution to make
11 a complete and detailed accounting to the defendant of all police investigatory work on a case."
12 (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, since the Medina burglary was not
13 exculpatory and related to a third-party issue, the defendant has failed to meet his burden of proof.
14 He has also failed to offer a court discovery order that would have compelled the production of
15 such an accounting. More importantly, Serratos was dealing with an unknown person who was
16 not Todd or Pearce and Serratos did not testify. There is no legally permissible discovery here.

17 **Response – (d)** "We know of no constitutional requirement that the prosecution make a
18 complete and detailed accounting to the defense of all police investigatory work on a case."
19 (*Moore v. Illinois* (1972) 408 U.S. 786, 795.) As stated above, since the Medina burglary was not
20 exculpatory and related to a third-party issue, the defendant has failed to meet his burden of proof.
21 He has also failed to offer a court discovery order that would have compelled the production of
22 such an accounting.

23 *"21. Police reports and/or notes documenting investigative steps taken in the*
24 *investigation of the Medina burglary concerning eyewitnesses who reported to*
25 *MPD that they saw a van and three men located on the street outside the Medinas'*
home on December 24, 2002, including but not limited to:

26 *a. Reports, interviews, audio and video recordings and transcripts thereof*
27 *(other than the hypnosis video which has already been provided to the defense),*
28 *written statements, or other documents related to the eyewitness account provided*

1 by Diane Jackson indicating that she saw three suspicious men with a van outside
2 the Medina home or in the La Loma neighborhood on December 24, 2002,
including but not limited to:

3 i. Any attempted identifications by Ms. Jackson of the men she
4 reported seeing, and/or whether she saw Steven Todd, Donald Glenn
Pearce, and/or any other suspects potentially involved in the Medina
burglary;

5 ii. Any attempted identification of the van Ms. Jackson saw parked
6 on Covena Avenue on December 24, 2002, other than the Martinez van,
which she stated was not the van she saw;

7 iii. Internal memoranda and/or correspondence regarding the
MPD's decision to hypnotize Diane Jackson;

8 iv. Reports regarding contacts with Ms. Jackson indicating that
9 MPD's decision to hypnotize her on January 17, 2003, was a planned
10 hypnosis interview and not a "cognitive" interview that inadvertently
11 resulted in hypnosis by an interviewer, who was not qualified to conduct
hypnosis, as MPD later claimed in response to the defense's Trombetta
motion, July 8, 2003."

12 **Response** –To avoid repetition any more than required by the defense motion, the People
13 will just briefly refer to the subsets in this subpart by the stated letter and incorporate all our
14 previously applicable responses for the various legal reasons why this item is not discoverable.
15 This is not actually a request for discovery but a demand for an accounting of what the police did.
16 "It is clear that the Constitution does not require the prosecution to make a complete and detailed
17 accounting to the defendant of all police investigatory work on a case." (*People v. Nation* (1980)
18 26 Cal.3d 169, 175.) As stated above, since the Medina burglary was not exculpatory and related
19 to a third-party issue, the defendant has failed to meet his burden of proof. He has also failed to
20 offer a court discovery order that would have compelled the production of such an accounting.

21 **Response** – (a)(i), (ii) and (iii) All this information was provided to the defense before
22 trial. The admissibility of Diane Jackson's statements was the subject of at least two motions. As
23 stated in our DNA response:

24 Diane Jackson did not testify, but the defense was allowed to enter her pre-
25 hypnotized statement into evidence because the trial judge felt it was exculpatory.
26 The court stated in part – "As far as I'm concerned that evidence has to be admitted
27 in this case, notwithstanding the fact that Miss Jackson was in fact improperly
28 hypnotized. So I'm of the opinion, and it's going to be the court's ruling, that the
defense interview of Miss Jackson can be presented as evidence. Mr. Geragos can

1 refer to it as -- in his opening statement and deal with it that way.” (RT 8385.)
2 Which he did.

3 The evidence of Ms. Jackson came in repeatedly (and was argued to the jury by
4 both sides), as one example:

5 “Q. Officer Hicks, perhaps the answer is not given, your last
6 answer. You are also not familiar with the report that Diane Jackson
7 made -- you are not familiar with the report that Diane Jackson
8 made at 10:30 in the morning on December 27th where she talks
9 about seeing three dark-skinned males near a white van. She reports
10 seeing this at 11:40 in the morning. She didn't recognize the men.
11 It was a white van with no markings. Men were not wearing
12 uniforms. She couldn't remember what they were wearing. She
13 could not recall any details about the van, other than what was
14 white. She gave no other information than that. You don't know
15 with that report either?

16 A. Actually I am familiar with that one, yes.”

17 (RT 20060-20061.)

18 In closing, Geragos stated:

19 All of those things lead me to believe -- and you've got Diane Jackson, and the
20 judge let it in for the truth of the matter, with a van that's never been found, with
21 three people that have never been found, that do not fit the description of the two
22 people who were arrested for the burglary across the street.

23 (RT 20512-20513).

24 Although Ms. Jackson did not testify herself, her statement was told to the jury, and was
25 argued to the jury. This is not new evidence and was explained away by just a few of the other
26 witnesses mentioned previously.

27 Further, as stated by the court, the defense had conducted their own interviews with Ms.
28 Jackson and there would have been no need for the prosecution to conduct their investigation for
them. None of these three items would have been discoverable except for the court's statement
that he felt her statement could be exculpatory triggering Pen. Code §1054.1(e), and which was
provided to the jury. Having been produced at trial there can be no showing of *Brady* and therefore
no additional discovery is appropriate. The defense admits in his request that he has already

brought a *Trombetta* motion relating to item (iii) and lost. As we stated in our DNA response, at footnote 16:

The trial judge stated at the time... I've already ruled that there was a violation of the -- of the code section 795 of the Evidence Code, so we're not letting in Ms. Dempewolf's testimony. I'm not going to revisit that issue because the burden is different between the prosecution and the defense. ¶ The Constitution doesn't provide the prosecution with the same specific right to present witnesses as they do the defense. ¶ Number one, I'm not accusing the prosecution of bad faith, I'm not accusing the prosecution of misconduct. As I said before at the time that this hypnotization or hypnosis sessions took place, there was a noble purpose behind it, and that was to see if they could find some way of recovering the -- finding the body of Laci Peterson or whoever was responsible. So I don't find any misconduct on the part of the prosecution. (RT 8382- 8383.)

This is also an issue raised during the first habeas proceeding; as stated above under A, Medina Burglary, where the defendant filed Claim Ten as part of his First Habeas. As stated above, his Writ was denied on the merits by the Supreme Court and cannot be relitigated here.

"b. All reports, interviews, audio and video recordings and transcripts thereof, statements, or other documents related to the information provided by Linda Chilles, wife of former MPD Det. Nick Chilles who worked with Det. Brocchini, indicating that around 9:30 a.m. on December 24, 2002, she saw three men, "S1 was WMA, 30-40s, 5'11", shoulder length dark brown greasy hair, mustache, dark quilt type jacket. S2 was WMA 30-40 balding, medium build, flannel shirt. S3 she did not see well," and a van parked outside the Medina residence, and that the men acted suspicious, including but not limited to:

i. All efforts MPD made to see if Ms. Chilles could identify the men she reported seeing, and/or whether she saw Steven Todd, Donald Glenn Pearce, and/or any other suspects potentially involved in the Medina burglary;

ii. All efforts MPD made to see if Ms. Chilles could identify the van she saw parked on Cavena Avenue in front of the Medinas' home the morning of December 24, 2002;

iii. All reports, notes, or other documentation regarding Linda Chilles's contact with Det. Doug Ridenour on December 31, 2002, at which time she made a second attempt to report the suspicious activity she saw."

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. This is not actually a request for discovery but a request for an accounting of what the police did. "It is clear that the Constitution does not require the prosecution to make a complete and detailed accounting to the defendant of all police investigatory work on a case."

1 (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, since the Medina burglary was not
2 exculpatory and related to a third-party issue, the defendant has failed to meet his burden of proof.
3 He has also failed to offer a court discovery order that would have compelled the production of
4 such an accounting. To avoid repetition any more than required by the defense motion, the People
5 will just briefly refer to the subsets in this subpart by the stated letter and incorporate all our
6 previously applicable responses:

7 **Response** – (b)(i), (ii) and (iii) Ms. Chilles called in a tip (Bates page 14786) and reported
8 seeing a van on Christmas Eve at 0930 hours. In a later interview, she said it was “parked in front
9 of the Medina’s home with three men standing around it.” (Def Ex. 2, paragraph 16 of DNA
10 motion.) We know from the facts produced at trial that the defendant was still home at this time,
11 the Medinas had not yet left and did not testify to seeing a van in front of their house when they
12 did leave. What was also established at trial was that the Medinas had a City Building Inspector
13 at their house from around 0834 until 1033 hours. Ms. Medina would testify she and her husband
14 left around 1033 hours. (Susan Medina’s testimony RT 9588-9590.) This is not new evidence.
15 Since Chilles puts the mystery van in front of the burglary victims’ house *before* the victims’ left
16 she is factually wrong and her information cannot establish a direct connection for a third-party
17 claim. If Chilles were accurate, then it would also mean that the suspected burglars would have
18 been waiting in the front yard until seen by Ms. Jackson at 11:40 a.m., over an hour later. And that
19 the van and the three suspects would have been in plain view when the defendant drove onto the
20 street facing the Medinas’ house at 10:08 which was never reported by the defendant. Lastly, Amie
21 Krigbaum, who lived on Covenia across the street from Peterson and next door to the Medinas,
22 testified at trial that she had a white Chevy van parked in front of her house during the time of
23 this sighting. She also took her dog out into her front yard between 10:30 and 10:40 and saw
24 “nothing going on.” (RT 9497- 9502.) This area is not appropriate for discovery assuming
25 anything relating to an unrelated case still exists... which the defense leaves us to guess.

26 *“c. All reports, interviews, audio and video recordings and written transcripts*
27 *thereof, statements, or other documents related to the tip provided by Niniv T.,*

1 *indicating that he saw three Hispanic males 20s–30s, standing outside near an*
2 *older 1975–1980 van, white, full-sized, no windows, possibly a Chevy van parked*
3 *on the east side of Coven Avenue in the afternoon on December 24, 2002,*
4 *including but not limited to:*

5 *i. All efforts MPD made to see if this witness could identify the men he*
6 *reported seeing, and/or whether he saw Steven Todd, Donald Glenn Pearce, and/or*
7 *any other suspect involved in the Medina burglary on Coven Avenue the morning*
8 *of December 24, 2002;*

9 *ii. All efforts MPD made to see if this witness could identify the van he saw*
10 *parked on Coven Avenue in front of the Medinas' home on December 24, 2002,*
11 *which he described in very specific detail.”*

12 **Response** – The People incorporate by reference all the previous legal reasons why this
13 item is not discoverable. This is not actually a request for discovery but a request for an accounting
14 of what the police did. "It is clear that the Constitution does not require the prosecution to make
15 a complete and detailed accounting to the defendant of all police investigatory work on a case."
16 (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, since the Medina burglary was not
17 exculpatory and related to a third-party issue, the defendant has failed to meet his burden of proof.
18 He has also failed to offer a court discovery order that would have compelled the production of
19 such an accounting. To avoid repetition any more than required by the defense motion, the People
20 will just briefly refer to the subsets in this subpart by the stated letter and incorporate all our
21 previously applicable responses:

22 **Response** – (c)(i), and (ii) Niniv T. reported a tip on 12/28/2002. (Bates page 14791.) He
23 said on December 24, 2002 at about 1145 hours on Coven he “saw an older 75-80 van (chevy?)
24 White full size no windows, parked on east side of street. Three HMA 's 20-30 standing near
25 vehicle.” Amie Krigbaum, who lived on Coven, testified at trial she had a white Chevy van
26 parked in front of her house during the time of this sighting. (RT 9497- 9502.) On a trial exhibit,
27 People’s Trial Exh. 31, Krigbaum drew where her white van was parked, in front of/next to the
28 Medina house and directly across the street from the Peterson house (RT 9495-9502). A map
depicting her house and the relationship to the Medina and Peterson residences was marked as
People’s Trial Exh.12 at trial (her house is identified with her partner’s name – Venable).

1 Krigbaum testified that the van was in that spot until 12:30 or 1:00 (RT 9502.) Niniv. T.’s tip is
2 clearly not new evidence, is not an orange van and has no legal connection to this case. The
3 defendant has failed to show how he is entitled to any discovery under Pen. Code §1054.1.

4 “d. All reports, interviews, recordings, statements, or other documents related to
5 the eyewitness account provided by Sean M., indicating that around 3:30 p.m. on
6 December 24, 2002, he saw three men wearing stocking caps and sunglasses
7 driving an older 70s van that drove past his home in the La Loma neighborhood
8 multiple times, and he saw the men looking into windows of homes like they were
9 looking for homes to burglarize, including but not limited to any attempted
10 identifications of the van he observed.”

11 **Response** – The People incorporate by reference all the previous legal reasons why this
12 item is not discoverable. This is not actually a request for discovery but a demand for an
13 accounting of what the police did. "It is clear that the Constitution does not require the prosecution
14 to make a complete and detailed accounting to the defendant of all police investigatory work on
15 a case." (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, since the Medina burglary
16 was not exculpatory and related to a third-party issue, the defendant has failed to meet his burden
17 of proof. He has also failed to offer a court discovery order that would have compelled the
18 production of such an accounting. This is a request to make the People investigate a completely
19 unrelated speculative tip:

20 "To demonstrate a plausible justification for seeking a particular document or
21 category of documents, the requesting party must “present[] specific facts
22 demonstrating” that the material is admissible (or might lead to admissible
23 evidence) and “will reasonably ‘assist’ ” the party in preparing its case.
24 ([*Facebook, Inc. v. Superior Court of San Diego County* (2020) 10 Cal. 5th 329]
Id. at p. 345, 267 Cal.Rptr.3d 267, 471 P.3d 383.) When assessing the strength of
the requesting party's showing, the trial court should “measure” the requesting
party's stated justification for acquiring the information “against the legal claims
... pursuant to which the [party] urged the information would be relevant.” (*Id.* at
p. 349, 267 Cal.Rptr.3d 267, 471 P.3d 383.) The purpose of the plausible
justification factor is to ensure that the subpoena does not amount to an
“impermissible ‘fishing expedition.’ ”

25 (*Lunsted v. Superior Court of Riverside County* (2024) 100 Cal.App.5th 138 [318 Cal.Rptr.3d 795,
26 803].)

1 This is also a *Kennedy* catch-all request and should be denied. Defendant has failed to meet his
2 burden.

3 *"e. All reports, interviews, audio and video recordings and transcripts thereof,*
4 *statements, or other documents related to the eyewitness account provided by Kim*
5 *V., who told police on January 1, 2003, that she saw an older "two-toned beige*
6 *van," associated with three Hispanic men, who frequently sold what appeared to*
7 *her to be stolen goods from their van at the corner of Yosemite Boulevard and*
8 *Sante Fe Avenue, roughly two miles from the Petersons' home. This witness further*
9 *reported that she had been the victim of a burglary on December 21, 2002, and*
10 *that she suspected the van she described seeing might have been involved, and that*
11 *after the disappearance of Laci Peterson, the van she had seen at that corner*
12 *stopped showing up soon thereafter."*

13 **Response** – The People incorporate by reference all the previous legal reasons why this
14 item is not discoverable. This is not actually a request for discovery but a demand for an
15 accounting of what the police did. "It is clear that the Constitution does not require the prosecution
16 to make a complete and detailed accounting to the defendant of all police investigatory work on
17 a case." (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, this tip isn't even
18 connected to the Medina burglary and is nothing but a third-party issue for which the defendant
19 has failed to meet his burden of proof. (See *Lunsted, supra.*) He has also failed to offer a court
20 discovery order that would have compelled the production of such an accounting. This is also a
21 *Kennedy* catch-all request and should be denied. Defendant has failed to meet his burden.

22 *"22. Reports, notes, audio and video recordings and transcripts thereof,*
23 *photographs, chain of custody logs, and/or other documents relating to the*
24 *processing of the Medina residence crime scene, collection of forensic evidence*
25 *therefrom, and any subsequent examination of that evidence, including but not*
26 *limited to:*

27 *a. The chain of custody and present status of the gloves the Medinas*
28 *pointed out to Evidence ID Technician Doug Lovell and described as having been*
29 *handled by the person or persons responsible for burglarizing their home;*

30 *b. The chain of custody and present status of any swabs collected from the*
31 *gloves described in (1) above;*

32 *c. Destruction orders for (1) and (2), in the event those items have been*
33 *destroyed;*

34 *d. Photographs of the Medina residence and of any evidence collected*
35 *therefrom;*

36 *e. Fingerprint examination reports by Evidence ID Technicians Doug*

Lovell and Joy Smith and/or any other DNA, biological, or forensic evidence collected from the Medina residence and/or their recovered property;

f. Hairs, fibers, and/or other trace evidence, collected from the Medina home;

g. Laboratory request forms or other correspondences requesting any forensic testing on any evidence collected in relation to the Medina burglary;

h. Lab reports and other reports, notes, and/or any documents associated with forensic testing conducted on any evidence collected in relation to the Medina burglary;

i. Destruction orders for all evidence collected in relation to the investigation of the Medina burglary.”

Response – As stated above under A, the Medina burglary was a separate and unrelated crime. The jury in this case made a factual determination that it was unrelated, the Supreme Court found it was not related and it therefore has no exculpatory value. The facts of the Medina burglary were submitted to the jury by the defense and rejected. It is therefore subject to the rule of collateral estoppel/law of the case and of third-party discovery as set out above; moreover, the defense had the discovery related to this matter to which they were entitled. This issue has been settled by the law of the case doctrine and abuse of the writ as raised above. It doesn't matter how many times or how many ways the defendant asks for more or different items, the rules still apply and Pen. Code §1054.1 doesn't help him.

Response – (a) through (i) To avoid repetition any more than required by the defense motion, the People will just briefly refer to the subsets in this subpart by the stated letter and incorporate all our previously applicable responses for the various legal reasons why this item is not discoverable. This is not actually a request for discovery but a demand for an accounting of what the police did. As stated above, since the Medina burglary was not exculpatory and related to a third-party issue, the defendant has failed to meet his burden of proof. He has also failed to offer a court discovery order that would have compelled the production of such an accounting.

(a) As shown in his DNA motion the defense cannot even state that the gloves were seized. He wants us to go and search for him.

(b) through (i) The defendant has never been entitled to these items; even if they were

1 related to his case, he would have had to have made a request or obtained an order. He speculates
2 that there are swabs, but he alternately states he doesn't have any evidence that any were used.
3 This is a *Kennedy* fishing expedition. Lastly, the defendant's request here and in several other
4 requests for destruction information is an implicit admission that he knows that the items have
5 been destroyed because they are not related to his case – such as the safe that Geragos argued
6 about to the jury during the trial.

7 *“23. All reports, notes, interviews, audio and video recordings and transcripts*
8 *thereof, and/or other documents containing information regarding the identity of*
9 *all confidential informants utilized by law enforcement in the investigation of the*
10 *Medina burglary, who may have information regarding additional individuals*
11 *associated with the Medina burglary, including but not limited to:*

- 12 *a. Informant referenced in Off. Helton's report (at Bates 2391[sic]);*
13 *b. Informant referenced in Off. Helton's report (at Bates 2392);*
14 *c. Informant referenced in Det. Stough's report (at Bates 20361);*
15 *d. Informant referenced in Det. Stough's report (at Bates 20365);*
16 *e. Informant referenced in Agt. Brodie's report (at Bates 20397); and,*
17 *f. Informant referenced in Det. Cloward's report (at Bates 20393).”*

18 **Response** – (a) through (f) To avoid repetition any more than required by the defense
19 motion, the People will just briefly refer to the subsets in this subpart by the stated letter and
20 incorporate all our previously applicable responses for the various legal reasons why this item is
21 not discoverable. This is again not actually a request for discovery but a demand for an accounting
22 of what the police did. "It is clear that the Constitution does not require the prosecution to make
23 a complete and detailed accounting to the defendant of all police investigatory work on a case."
24 (*People v. Nation* (1980) 26 Cal.3d 169, 175.) This is a third-party discovery request since the
25 defendant excludes the crime he has been convicted of and only wants to know if there are
26 informants who know of a third person involved in the Medina burglary. He has failed to meet his
27 burden of proof. Worse, the defense should know that informants are *not* added to the witness list
28 simply because he asks for them – they are protected by Evidence Code §§ 1040 and 1041. The
defendant doesn't even bother to ask for an order, even though his trial counsel did. The law
requires:

1 "It is, however, the burden of the defendant to make a sufficient showing that the
2 unnamed informer does have information which would be material to the
3 defendant's guilt. [citations omitted] This burden is met only where the defendant
4 demonstrates through "some evidence" [citations omitted] that there exists a
5 "reasonable possibility that the anonymous informant whose identity is sought
6 could give evidence on the issue of guilt which might result in defendant's
7 exoneration.""

8 (People v. Hardeman (1982) 137 Cal.App.3d 823, 828.)

9 There has been no showing that any informant(s) can provide any information related to this
10 defendant must less any information that might result in his exoneration.

11 *"24. Reports, notes, audio and video recordings and transcripts thereof, and/or
12 other documents produced by MPD Off. Shawn Kelley and/or Off. John Sanchez
13 related to the drive taken with the confidential informant, in which the CI identified
14 residences 1406 and 1407 Tenaya Avenue and Stephen Todd and Donald Glenn
15 Pearce as being involved in the Medina burglary."*

16 **Response** – See #23 above.

17 *"25. All reports, notes, audio and video recordings and transcripts thereof, and/or
18 other documents related to the anonymous person who provided Oscar Souza [sic]
19 and Mike Brodie with the Tech 9 and 30-round magazine which had been stolen
20 during the Medina burglary, including but not limited to information identifying
21 the anonymous person."*

22 **Response** - Pen. Code §1054.1 controls and the People cannot think of any legal basis
23 how this item would be discoverable. We are incorporating all our previously applicable responses
24 for the various legal reasons why this item is not discoverable. This is not really a request for
25 discovery but a demand for an accounting of what the police did. This is a third-party discovery
26 request of an anonymous person who somehow might be related to an unrelated other crime, other
27 than the one for which the defendant has been convicted.

28 *"26. MPD Reports and other information confirming that Ralph G. is the MPD
confidential informant who notified the police on January 2, 2003, that Steven
Todd, Donald Glenn Pearce, and possibly one additional suspect named "Mark,"
were responsible for the Medina burglary, including but not limited to:*

- a. Ralph G. 's status as an MPD informant;*
- b. Information related to whether Ralph G. received a reward for the
information he provided to MPD regarding suspects in the Medina burglary;*
- c. Ralph G. 's criminal history;*

1 *d. Ralph G. 's arrest report of January 3, 2002, and related booking photos,*
2 *custodial statements Ralph G. made to MPD, and audio and video recordings and*
3 *transcripts thereof, concerning Ralph G. 's knowledge of the individuals involved*
4 *in the Medina burglary and/or Laci Peterson's disappearance.*

5 *e. Ralph G. 's charging documents related to his arrest on January 3, 2003,*
6 *for the receipt of stolen property, plea negotiations with MPD and the Stanislaus*
7 *County D.A. 's office, the factual basis for the plea Ralph G. entered, and abstract*
8 *of judgment related to his guilty plea."*

9 **Response** – (a) through (e) To avoid repetition any more than required by the defense
10 motion, the People will just briefly refer to the subsets in this subpart by the stated letter and
11 incorporate all our previously applicable responses for the various legal reasons why this item is
12 not discoverable. This is again not actually a request for discovery but a demand for an accounting
13 of what the police did. This is a third-party discovery request and the defendant wants to know if
14 someone is an informant or not. As stated above, this information is protected by Evidence Code
15 §§ 1040 and 1041. The defendant doesn't even bother to ask for an order. The law requires:

16 "It is, however, the burden of the defendant to make a sufficient showing that the
17 unnamed informer does have information which would be material to the
18 defendant's guilt. [citations omitted] This burden is met only where the defendant
19 demonstrates through "some evidence" [citations omitted] that there exists a
20 "reasonable possibility that the anonymous informant whose identity is sought
21 could give evidence on the issue of guilt which might result in defendant's
22 exoneration.""

23 *(People v. Hardeman (1982) 137 Cal.App.3d 823, 828.)*

24 There has been no showing that any informant can provide any information related to this
25 defendant must less any information that might result in his exoneration. This is a *Kennedy* catch-
26 all as well since the defense can obtain abstracts just as easily as the People.

27 *"27. MPD Reports, notes, audio and video recordings and transcripts thereof,*
28 *and/or other documents related to the information Det. Stough received about the*
29 *possible involvement of a "Mark" and other suspects, as indicated in Sgt. Helton's*
30 *reports, including but not limited to:*

31 *a. Reports or other documentation relating to all MPD officers' prior*
32 *contact with or knowledge of Mark T., which led them to suspect the tip that a*
33 *"Mark" was involved in the burglary was referring to Mark T.;*

34 *b. Reports, notes, photographs, recordings, search warrant(s), if any, and*
35 *other documents relating to the referenced "raid" of Mark T., including any search*

warrant obtained and executed, and the return associated therewith;

c. Reports, notes, and/or other documents regarding the individual listed as “first name Gregg” interviewed by Agent Brodie, including his full name and identifying information;

d. Reports, notes, interviews, recordings, and/or other documents related to suspect “Vironi.”

e. Stanislaus County Jail Roster showing where Jason N. was in custody from October 30, 2002–January 3, 2003.”

Response – (a) through (e) To avoid repetition any more than required by the defense motion, the People will just briefly refer to the subsets in this subpart by the stated letter and incorporate all our previously applicable responses for the various legal reasons why this item is not discoverable. This is again not actually a request for discovery but a demand for an accounting of what the police did. This is a third-party discovery request since the defendant is referring to unconnected persons who may or may not have been involved in the Medina burglary or who may or may not have assisted law enforcement or talked to law enforcement. He has failed to meet his burden of proof. It is unclear if this request includes the informant(s) for whom he has previously sought information. If it is, that information is protected by Evidence Code §§ 1040 and 1041. The defendant doesn’t even bother to attempt to justify his request. To repeat again, the law requires:

"It is, however, the burden of the defendant to make a sufficient showing that the unnamed informer does have information which would be material to the defendant's guilt. [citations omitted] This burden is met only where the defendant demonstrates through “some evidence” [citations omitted] that there exists a “reasonable possibility that the anonymous informant whose identity is sought could give evidence on the issue of guilt which might result in defendant's exoneration.”"

(*People v. Hardeman* (1982) 137 Cal.App.3d 823, 828.)

There has been no showing that any informant(s) can provide any information related to this defendant must less any information that might result in his exoneration. (See #24 and #26 above.) He hasn’t explained how anything is controlled by *Steele* or Pen. Code §1054.1; he just wants information relating to everyone who has a name (or who is anonymous).

Under *Steele*, it is the defendant who must show that the materials he is requesting are materials to which he would have been entitled at time of trial to obtain a discovery order pursuant to section 1054.9. (See *In re Steele*, *supra*, 32 Cal.4th at p. 688 [“section 1054.9's discovery ... is limited to, specific materials ... that the defendant can show fall into any of these categories”]; see also *ibid.* at p. 697.) Thus, the defendant must persuade the trial court that he would have been entitled to the materials he seeks at time of trial, e.g., because the materials came within the scope of a discovery order the trial court actually issued at time of trial or because they came within the prosecution's constitutional or statutory duty to disclose exculpatory evidence."

(*Kennedy v. Superior Court*, *supra*, 145 Cal.App.4th 359, 365–366, as modified on denial of reh'g (Jan. 2, 2007).)

The defendant has utterly failed to meet his duty.

“28. A complete copy of the MPD and Stanislaus County District Attorney’s Office case files related to the December 24, 2002 burglary of the Medina home at 516 Coven Avenue (MPD Case #02-142591), including all audio and videotaped recordings and transcripts of those recordings, reports, notes, interviews, evidence logs, correspondence and/or other investigatory documents not yet requested above and not yet provided to Mr. Peterson, including but not limited to:

- a. Diane Jackson
- b. Linda Chilles
- c. Niniv T.
- d. Sean M.
- e. Lillian V.
- f. Kim V.
- g. Robert Nickerson
- h. Susan Medina
- i. Rudy Medina
- j. Steven Todd
- k. Donald Glenn Pearce
- l. Fred M.
- m. Roy S.
- n. Audrey N.
- o. Lisa S.
- p. Nicole E.
- q. Elwin (Earl) D.
- r. Delora W.
- s. Paula C.
- t. Eldon M.
- u. Gregg C. or Gregg K.
- v. Mark T.
- w. Margaret P.
- x. Kelly R.

1 y. *Ralph G.*
2 z. *Buddy H.*
3 aa. *Cliff K.*
4 bb. *“Sanjeet”*
5 cc. *Telesia Koen*
6 dd. *Melissa M.*
7 ee. *Jason N.*
8 ff. *Richard C.*
9 gg. *Deanna R.*
10 hh. *Anthony S.”*

11 **Response** – (a) through (hh) To avoid repetition any more than required by the defense
12 motion, the People will just briefly refer to the subsets in this subpart by the stated letter and
13 incorporate all our previously applicable responses for the various legal reasons why this item is
14 not discoverable. Once again, the defendant doesn’t attempt to hide his failure to follow the law
15 or meet his burden of tailored discovery. This is another example of an overbroad and unfocused
16 request for discovery. This is exactly what the court has forbidden:

17 The two requests at issue here are exactly the sort of “free-floating” requests the
18 Steele court disapproved. In effect, they ask for anything to which Kennedy is
19 entitled under section 1054.9 that is not encompassed in his previous requests.
20 Because they are not focused requests for specific information, the trial court did
21 not abuse its discretion in denying them.”

22 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 397–398, as modified on denial of reh'g
23 (Jan. 2, 2007).)

24 The request for this item and the subparts (a) through (hh) are prohibited by *Steele* and
25 *Kennedy*, do not further his writ and are far outside the realm of what is allowed by Pen. Code
26 §1054.1. For all the reasons given throughout these various responses the People ask the court to
27 deny all discovery related to any Medina matter; the defendant is estopped and cannot overcome
28 the prior decisions of the trial judge, the prior 1054.9 judge or the California Supreme Court.

29 **B. Lt. Xavier Aponte Reports**

30 Discovery requests relating to the Lt. Xavier Aponte tip are not in aid of a future writ since
31 this issue has been fully litigated as part of his claim in the first Petition for a Writ of Habeas
32 Corpus. In Claim Ten, the defendant stated:

Petitioner Was Deprived Of His Fifth, Sixth, Eighth And Fourteenth Amendment Rights By Counsel's Failure To Present Exculpatory Evidence That Steven Todd Saw Laci in Modesto After Scott Left For The Berkeley Marina. (DSC - JNE. Exh. 10, Claim 10 at p. 200.)

15. On 10:59 a.m. on January 22, 2003, a corrections officer at CRC Norco, Lieutenant Xavier Aponte, telephoned the Modesto Police Department hotline which has been established to receive tips related to the disappearance of Laci Peterson. The hotline log states the following:

Lt. Aponte 909-2732901 CRC-Norco - received info from Shawn Tenbrink (inmate) he spoke to brother Adam who said Steve Todd said Laci witnessed him breaking in. Could not give dates or time. Aponte has further info. ¶ (Exh. 28 at HCP-000416.)

16. This hotline telephone log containing this tip from Lt. Aponte was provided to the defense in discovery on May 13, 2003, and bears a Bates stamp number 15311. (20 CT 6380.)

17. If Steven Todd saw Laci alive while he was burglarizing the Medina home on December 24, 2002, then there is reasonable doubt as to Scott's guilt. Scott left home to go fishing at 10:08 a.m. Todd's burglary would have been committed after the Medinas left their home at 10:35 a.m. .. Diana [*sic*] Jackson saw evidence of the burglary at 11 :40 a.m; Thus, Todd would have seen Laci alive in Modesto more than an hour after Scott left the house.

21. Notes from the file of Mr. Geragos's investigator, Carl Jensen, reveal that the defense team found out about the Aponte tip as early as June 25, 2004. (Exh. 35 [06/25/04 Notes on Aponte's Tip] at HCP~000434.) That same day, Mr. Geragos's investigator contacted CRC Norco and spoke to a Lieutenant Wright. (*Ibid.*) Lt. Wright informed defense counsel's investigator that he would attempt to speak to Shawn Tenbrink- as well as Lt. Aponte and call counsel's investigator back in the morning. (*Ibid.*)

22. Even after learning of Lt. Aponte's tip in June, defense counsel failed to contact or interview Lt. Aponte until more than one month after the jury returned guilty verdicts. (See 20 CT 6261-6263.)

23. On February 25, 2005, following the guilty verdicts, Mr. Geragos filed a motion for new trial. The motion was based in part on purportedly newly discovered evidence relating to the Aponte tip. According to the motion for new trial, the defense did not contact Lt. Aponte until the prosecution provided the defense with a letter from an inmate in the Stanislaus County Jail. (20 CT 6254.) This inmate provided a defense investigator with various names, which the defense

1 then "ran through the discovery database." (20 CT 6254-6255.) As the Motion for
2 New Trial describes:

3 "One of the names, hereafter referred to as AT [Adam Tenbrink],
4 led to a small notation in the hundreds of pages of tip sheets
5 provided by the Modesto Police. In the notation, AT was talking
6 with his brother, hereafter referred to as ST [Shawn Tenbrink], who
7 was imprisoned at the California Rehabilitation Center facility
8 commonly known as Norco. The notation stated that in a phone call
9 four weeks after Laci' s disappearance, AT had told-ST that Laci
10 had walked up on Steven Todd while he was burglarizing the house
11 next door and that he had verbally threatened her." ¶ (20 CT 6255.)

12 24. The tip from Lt. Aponte, described by Mr. Geragos as a "small notation" in the
13 tip sheets in the previous paragraph, is the tip contained in Exhibit 28.

14 25. On December 1, 2004, more than five months after his telephone call with Lt.
15 Wright regarding the Aponte tip, defense investigator Carl Jensen interviewed Lt.
16 Aponte at Norco. That interview was memorialized in a three page report, with
17 each page initialed by Lt. Aponte. (20 CT 6261-6263.) In that interview, Lt. Aponte
18 stated that the telephone call between Adam Tenbrink and his brother, Shawn
19 Tenbrink, was recorded. (20 CT 6261.) Lt. Aponte stated that, following his call to
20 the tip line, a Modesto detective called him back. Aponte listened to the recording
21 of the phone call. "To the best of his recollection, [name redacted] talked to [name
22 redacted] about Laci Peterson missing and -- mentioned that Laci happened to walk
23 up while Steve Todd was doing the burglary and Todd made some type of verbal
24 threat to Laci." (20 CT 6262.)

25 ***

26 27. In a declaration submitted on behalf of the People in opposition to the motion
27 for new trial, Lt. Aponte admitted that "the only information possessed by me, that
28 an inmate (Shawn Tenbrink) had spoken to someone I believed to be his brother
(Adam) who had said that someone (I believe to be Steve Todd) said Laci
witnessed him breaking in." (20 CT 6435.)

29 29. Lt. Aponte has stated that the tape recording of the telephone call between
30 Adam and Shawn Tenbrink has been lost. (20 CT 6435.)

31 30. In his Motion for New Trial, Mr. Geragos maintained that the defense "could
32 not have discovered the evidence [pertaining to the Todd statements] no matter
33 how diligent its efforts." (20 CT 6257.)

34 34. As previously alleged, the defense team had created a witness file for each
35 potential witness in the case. (See Claim Eight, above.) There was such a witness

1 file for Steven Todd. In the Todd witness file, there appears a copy of Bates
2 stamped page 15311 from the discovery. This page contains the Aponte tip,
described above.

3 35. The fact that the Aponte tip was contained in the Steven Todd witness file
4 establishes that defense counsel not only possessed the Aponte tip, but fully
5 appreciated that it pertained to a statement from Steven Todd regarding Todd
seeing Laci alive on December 24.

6 ***

7 47. Defense counsel's failure to investigate the Aponte tip, whether through a
8 failure to find the tip or through a failure to appreciate its significance, fell below
9 an objective standard of reasonableness within the meaning of *Strickland v.*
Washington. Had defense counsel have done so, he would have presented
exculpatory evidence to the jury.

10 The Supreme Court held on October 14, 2020 that "Claims 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11
11 in the petition are denied on the merits."

12 It has long been the rule that absent a change in the applicable law or the facts, the
13 court will not consider repeated applications for habeas corpus presenting claims
14 previously rejected. [Citations.] The court has also refused to consider newly
15 presented grounds for relief which were known to the petitioner at the time of a
prior collateral attack on the judgment. [Citations.] The rule was stated clearly in
16 *In re Connor* [(1940)] 16 Cal.2d 701, 705: "In this state a defendant is not permitted
to try out his contentions piecemeal by successive proceedings attacking the
17 validity of the judgment against him." (*In re Clark*, (1993) 5 Cal.4th 750, 767-
768.)

18 (*In re Martinez* (2009) 46 Cal.4th 945, 956.)

19 "'It is, of course, the rule that a petition for habeas corpus based on the same
20 grounds as those of a previously denied petition will itself be denied when there
has been no change in the facts or law substantially affecting the rights of the
21 petitioner.' [Citations.] In this case, the petition is not only barred as successive but
also because it is repetitive."

22 (*In re Martinez* (2009) 46 Cal.4th 945, 950.)

23 "This court has never condoned abusive writ practice or repetitious collateral
24 attacks on a final judgment. Entertaining the merits of successive petitions is
25 inconsistent with our recognition that delayed and repetitious presentation of
claims is an abuse of the writ."

26 (*In re Clark, supra*, 5 Cal.4th at p. 769; see *In re Reno*, (2012) 55 Cal.4th 428, 455, superseded by
27

statute on another ground as stated in *In re Friend*, supra, 11 Cal.5th 720.)

The defendant cannot successfully bring another writ on these grounds; since no writ can be taken on these grounds, no discovery relating to these grounds would be in aid of his writ and this request should be denied. Even if this court were inclined to consider his request, the specifics do not warrant any discovery. The defendant has asked for the following broad categories and related subparts of item B:

A complete copy of the MPD investigation into the exculpatory information CDCR Lt. Xavier Aponte provided to MPD regarding Laci Peterson witnessing Steven Todd committing the Medina burglary on December 24, 2002 (MPD Case No. 02-143025).

Response – The defense has all the materials regarding this matter to which he is entitled. The trial court denied the new trial motion based on the fact that the tip had been provided to the defense prior to the trial. The prosecution submitted declarations from Lt. Aponte and Det. Grogan explaining what had been found prior to the new trial motion. It is interesting to note that the claim by trial counsel that it "could not have discovered the evidence [pertaining to the Todd statements] no matter how diligent its efforts" (Claim Ten, paragraph 30) is undercut by Habeas Counsel's statement (Claim Ten, paragraph 21) that the defense had the tip as early as June of 2004. This request is therefore subject to the rule of collateral estoppel and law of the case as set out above; moreover, the defense had the discovery related to this matter to which they were entitled.

"1. All audio recordings and transcripts of all calls Lt. Aponte made to MPD, or any other law enforcement agency involved in the search for Laci Peterson, including but not limited to the two calls Lt. Aponte described making in January–February 2003."

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. This is a request for an accounting of what the police did since Habeas Counsel has already stated (Claim Ten, paragraph 29) that no tapes have been found. "We know of no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case." (*Moore v. Illinois* (1972) 408 U.S. 786,

1 795.)

2 “a. All MPD and other law enforcement agency reports, handwritten and typed
3 notes, call logs, audio and/or video recordings, voicemail recordings, investigative
4 materials, and/or any other documents regarding the calls Lt. Aponte made to
MPD, including but not limited to the two calls Lt. Aponte described making in
January–February 2003.”

5 **Response** – The People incorporate by reference all the previous legal reasons why this
6 item is not discoverable. This is a request for an accounting of what the police did and is clearly
7 a *Kennedy* catch-all claim:

8 The two requests at issue here are exactly the sort of “free-floating” requests the
9 *Steele* court disapproved. In effect, they ask for anything to which *Kennedy* is
10 entitled under section 1054.9 that is not encompassed in his previous requests.
11 Because they are not focused requests for specific information, the trial court did
not abuse its discretion in denying them.”

12 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 397–398, as modified on denial of reh'g
13 (Jan. 2, 2007).)

14 The request for this item is prohibited by *Steele* and *Kennedy*, does not further his writ and
15 are far outside the realm of what is allowed by Pen. Code §1054.1.

16 “b. All telephone calls recorded between inmate Shawn Tenbrink, while he was in
17 custody in 2003, and his brother Adam and/or anyone in the Tenbrink family,
including but not limited to the call Lt. Aponte described in his report to MPD.”

18 **Response** – The People incorporate by reference all the previous legal reasons why this
19 item is not discoverable. As this request states, Shawn Tenbrink was an inmate at CDCR. CDCR
20 was not part of the prosecution team and under Pen. Code §1054.1 this is a matter for which the
21 defense would be required to pursue an SDT.

22 “Conversely, a prosecutor does not have a duty to disclose exculpatory evidence
23 or information to a defendant unless the prosecution team actually or
24 constructively possesses that evidence or information. Thus, information
25 possessed by an agency that has no connection to the investigation or prosecution
26 of the criminal charge against the defendant is not possessed by the prosecution
team, and the prosecutor does not have the duty to search for or to disclose such
material.”

27 (*People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1315.)

1 The *Barrett* case has been cited by *In re Steele* (2004) 32 Cal.4th 682, 697 relating to post-
2 conviction discovery and is another reason why discovery is not available in this matter.

3 “c. All investigative actions MPD took in response to receiving the information Lt.
4 Aponte reported in his two calls to MPD, and any reports and/or documents related
thereto, including but not limited to:

5 i. The identity of the “unnamed” MPD detective who interviewed Shawn
6 Tenbrink in late January or early February 2003 about Laci Peterson having seen
Steven Todd while the Medina burglary was in progress and who thereafter
7 directed Lt. Aponte to monitor Mr. Tenbrink’s telephone calls;”

8 **Response** – The People incorporate by reference all the previous legal reasons why this
9 item is not discoverable. As stated above both Lt. Aponte and Det. Grogan submitted declarations
10 as part of the new trial motion explaining what information was known. That matter was litigated
11 and the defense lost; then it was raised during the first habeas Petition, and he again lost. The
12 People have no duty to create additional materials for the defense now.

13 “ii. Phone records, reports, notes, audio recordings, email and other written
14 communications, and any other record documenting every contact ever made
15 between Lt. Aponte and Det. Grogan and/or any other MPD detective and/or MPD
investigator and/or DA Investigator and/or any other law enforcement officer,
between January 2003 and today, regardless of who initiated the contact;”

16 **Response** – The People incorporate by reference all the previous legal reasons why this
17 item is not discoverable. As stated above, both Lt. Aponte and Det. Grogan submitted declarations
18 as part of the new trial motion explaining what information was known. This is another demand
19 for an accounting of what the police did. "It is clear that the Constitution does not require the
20 prosecution to make a complete and detailed accounting to the defendant of all police
21 investigatory work on a case." (*People v. Nation* (1980) 26 Cal.3d 169, 175.) This request is so
22 over-broad as to run afoul of *Kennedy* as well since it covers over twenty years and any possible
23 subject. Lastly, post-conviction generated information cannot change the outcome of the trial, and
24 therefore is not admissible in a writ. (See *Eulloqui v. Superior Court* (2010) 181 Cal.App.4th
25 1055, 1068.) In simple terms, that means post-conviction generated material (that is not *Brady*) is
26 not discoverable.

1 *“iii. Reports, notes, and/or audio/video recordings and transcripts thereof*
2 *documenting the contents of a call, or calls, made by the “unnamed” detective of*
3 *the MPD, or any other law enforcement representative, to Lt. Aponte or California*
4 *Rehabilitation Center (CRC) in Norco, in late January or early February 2003,*
5 *per Lt. Aponte’s signed statements, or any time thereafter;”*

6 **Response** – The People incorporate by reference all the previous legal reasons why this
7 item is not discoverable. Det. Grogan’s declaration submitted as part of the new trial motion
8 covered this request.

9 *“iv. Reports, notes, and/or audio and video recordings and transcripts thereof of*
10 *interviews by MPD and its representatives, or any other law enforcement*
11 *representative or agent with Shawn Tenbrink when he was incarcerated at the*
12 *California Rehabilitation Center (CRC) in Norco, California, regarding any issue,*
13 *including statements related to an individual with knowledge of or confessing to*
14 *committing the crimes for which Mr. Peterson was convicted;”*

15 **Response** – The People incorporate by reference all the previous legal reasons why this
16 item is not discoverable. A request for information from anyone talking to Shawn Tenbrink
17 “regarding any issue” is patently overbroad and burdensome. Would this require the People to go
18 and interview the defense investigators who have interviewed Tenbrink? This is why *Kennedy*
19 said such requests may be denied:

20 Because they are not focused requests for specific information, the trial court did not
21 abuse its discretion in denying them."

22 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 397–398, as modified on denial of
23 reh'g (Jan. 2, 2007).)

24 *“v. Reports and/or notes regarding the phone call placed by Shawn Tenbrink to his*
25 *mother indicating that he was interviewed by police while incarcerated at CRC in*
26 *Norco, as indicated by Lt. Aponte’s December 1, 2004 statement, and any other*
27 *calls related to the Medina burglary or Laci Peterson;”*

28 **Response** – The People incorporate by reference all the previous legal reasons why this
item is not discoverable. Det. Grogan’s declaration submitted as part of the new trial motion
covered this request. However, the latter half of the request for “any other calls” triggers other
legal prohibitions – CDCR was not part of the prosecution team and under Pen. Code §1054.1
this is a matter for which the defense would be required to pursue an SDT:

1 “Conversely, a prosecutor does not have a duty to disclose exculpatory evidence
2 or information to a defendant unless the prosecution team actually or
3 constructively possesses that evidence or information. Thus, information
4 possessed by an agency that has no connection to the investigation or prosecution
5 of the criminal charge against the defendant is not possessed by the prosecution
6 team, and the prosecutor does not have the duty to search for or to disclose such
7 material.”

8
9 (*People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1315.)

10 The *Barrett* case has been cited by *In re Steele* (2004) 32 Cal.4th 682, 697 relating to post-
11 conviction discovery and is another reason why discovery is not available in this matter.

12
13 *“vi. Reports and/or notes regarding the monitoring and/or surveillance of Shawn
14 Tenbrink’s calls, mail, visits and/or other activities while he was in custody at
15 NORCO, as indicated by Lt. Aponte in his signed statement of December 1, 2004.”*

16 **Response** – The People incorporate by reference all the previous legal reasons why this
17 item is not discoverable. A fascinating issue arises from this request, as the defense refers to “a
18 signed statement” of Lt. Aponte. However, what is not mentioned is that said statement is actually
19 a three-page report written by defense investigator Carl Jensen who interviewed Lt. Aponte at
20 Norco. (See first writ, Claim Ten, paragraph 25 above.) The only signed statement that the People
21 are responsible for is the declaration that Lt. Aponte executed as part of the new trial motion (DSC
22 - JNE Exh. 8, Opposition Exh. #2) and nowhere in that declaration is there any indication that
23 ongoing “monitoring and/or surveillance” will be occurring [other than the inference that all
24 inmates are monitored while in the institution].

25
26 *“2. All materials related to Det. Craig Grogan’s search for materials related to the
27 Aponte reports, as detailed in Det. Grogan’s March 9, 2005 affidavit, including but
28 not limited to:*

29 *a. A complete and thorough description of all locations within the MPD’s
30 systems for cataloguing and storing reports, communications, evidence, and other
31 materials in serious felony cases, including descriptions of how the above-
32 described items are systematically managed and preserved for retrieval, in
33 compliance with law enforcement’s discovery responsibilities and Brady
34 obligations;”*

35 **Response** – The People incorporate by reference all the previous legal reasons why this
36 item is not discoverable. Det. Grogan’s declaration submitted as part of the new trial motion

covered this request. The defense just wants more, but fails to show how a search of records after the trial would exonerate the defendant. "We know of no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case." (*Moore v. Illinois* (1972) 408 U.S. 786, 795.) Neither §§1054.1 nor 1054.9 mandate that documents be created, which is exactly what this request is — a description of various unspecified items. This violates *Steele*, *Kennedy* and *Eulloqui* and should be denied.

"b. A complete and thorough description of all "computerized files" Det. Grogan searched for "the tip listing Shawn Tenbrink referred to by the defense," and the search terms he used, as referenced in his March 9, 2005 affidavit;"

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. See 2(a) Response above.

"c. A complete copy of all information and documents collected as a result of a broad and complete search of all MPD systems, including but not limited to which "computerized files" Det. Grogan searched and what search terms were used in responding to the defense's request for Brady material, to which the defense is entitled. For example, searching for the terms such as: Aponte, NORCO, Tenbrink, Adam, Shawn, Todd, among many others, would be far more likely to return responsive results than searching for precise language not designed to return responsive information, as it appears Det. Grogan did."

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. See 2(a) Response above.

"3. A complete and thorough description of all "handwritten reports" that were searched and reviewed by Det. Grogan for "reports mentioning Aponte or Tenbrink," as referenced in his March 9, 2005 affidavit."

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. See 2(a) Response above.

"4. All of the actual communications, correspondence, emails, voicemails, recorded messages, and any other forms of requests Det. Grogan sent to Modesto Police Department "detectives, officers, and supervisors involved in the Peterson investigation" requesting "information about an interview between an officer or detective and Shawn Tenbrink," as referenced in Det. Grogan's March 9, 2005 affidavit."

Response – The People incorporate by reference all the previous legal reasons why this

item is not discoverable. See 2(a) Response above.

“5. All of the actual communications, correspondence, emails, voicemails, recorded messages, and any other forms of responses Modesto Police Department personnel or any other law enforcement entity sent to Det. Grogan in response to his request for “information about an interview between an officer or detective and Shawn Tenbrink,” as referenced in Det. Grogan’s March 9, 2005 affidavit.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. See 2(a) Response above. Additionally, Det. Grogan’s declaration (cited by defense) states:

I sent an e-mail to detectives, officers and supervisors involved in the Peterson investigation requesting information about an interview between an officer or detective and Shawn Tenbrink. I have not received any information from any investigator as a result of that e-mail. (New Trial Motion Opposition, Ex. 3, page 2.)

“6. All of the actual correspondence between Det. Grogan and “supervisors in the Investigative Services Unit” regarding whether the Modesto Police Department conducted any interviews at the Norco facility related to the Laci Peterson case, as referenced in Det. Grogan’s March 9, 2005 affidavit.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. See 2(a) Response above. Additionally, Det. Grogan’s declaration (cited by defense) states:

I did not go to the California Rehabilitation Center in Norco at any point during this investigation, nor did any other officer or detective to my knowledge. I have inquired with supervisors in the Investigative Services Unit and they do not recall any officer being sent to that facility for an interview related to the Laci Peterson case. (New Trial Motion Opposition, Ex. 3, page 2.)

“7. All communications and correspondence between the Modesto Police Department and Lt. Aponte of CRC Norco, including but not limited to:

a. The actual fax, including any cover sheet and other information Det. Grogan communicated to Lt. Aponte when he faxed him a copy of the “tip sheet” in 2005, as referenced in Det. Grogan’s March 9, 2005 affidavit;”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. See 2(a) Response above. It is unclear how a fax cover sheet would be discoverable under the provisions of §1054.1. Additionally, Det. Grogan’s declaration (cited by

1 defense) states:

2 “I faxed a copy of the tip sheet (Bates number 15311) to Lt. Aponte to make sure
3 it was the same tip he had called in.” (DSC - JNE Exh. 8, Opposition, Exh. 2, page
4 2-3.)

5 Lt. Aponte states in his declaration:

6 In February, 2005 I have confirmed with Det. Craig Grogan of the Modesto Police
7 Department that my tip was received by them on January 22, 2003 and included in
8 a tip sheet. The tip sheet bears a bates page number of 15255 at the top and 15311
9 at the bottom. (DSC - JNE Exh. 8, Opposition, Exh. 2, page 3.)

10 *“b. Lt. Aponte’s actual response(s) to Det. Grogan’s 2005 fax, referenced in (1),
11 whether by email, voicemail, fax, or any other means, as indicated in Lt. Aponte’s
12 March 3, 2005 declaration;”*

13 **Response** – The People incorporate by reference all the previous legal reasons why this
14 item is not discoverable. See previous answer for 7(a) Response above.

15 *“c. A digital copy and written transcript of the voicemail message(s) left by Lt.
16 Aponte with the Modesto Police Department tipline for the investigation of the
17 Laci Peterson case as referenced in Lt. Aponte’s March 3, 2005 declaration.”*

18 **Response** – The People incorporate by reference all the previous legal reasons why this
19 item is not discoverable. The defense was provided with the tip before trial, interviewed the
20 Lieutenant before the end of trial and had all his information before filing a new trial motion and
21 the first writ. There is no showing that he doesn’t have the information and no attempt to establish
22 that the item might even exist.

23 *“8. All communications and correspondence between the Modesto Police
24 Department and the CRC Norco regarding any of the following:*

25 *a. The information Lt. Aponte provided to MPD regarding Steven Todd
26 seeing Laci Peterson on the morning of December 24, 2002;”*

27 **Response** – The People incorporate by reference all the previous legal reasons why this
28 item is not discoverable. This has been asked for in various ways above, he has received the tip
and Lt. Aponte’s declaration.

*“b. All recorded conversations between Shawn and Adam Tenbrink, and recorded
conversations between Shawn Tenbrink and his mother;”*

1 **Response** – The People incorporate by reference all the previous legal reasons why this
2 item is not discoverable. This has been asked for in various ways above. Lt. Aponte’s declaration
3 explains the status of one recording and the others require the defense to contact CDCR as a third
4 party.

5 *“c. All interviews—telephonic, in-person, or otherwise—conducted with Shawn*
6 *Tenbrink, and audio and video recordings and transcripts thereof;”*

7 **Response** – The People incorporate by reference all the previous legal reasons why this
8 item is not discoverable. This has been asked for in various ways above; he has received the tip
9 and Lt. Aponte’s declaration.

10 *“d. Any other matter related to the Laci Peterson case or the Medina burglary.”*

11 **Response** – The People incorporate by reference all the previous legal reasons why this
12 item is not discoverable. This is another attempt to obtain anything and everything despite what
13 the law allows. The defendant fails to follow the law or meet his burden of tailored discovery; he
14 simply states he wants “Any other matter related ...” As stated before, this is exactly what the
15 court has forbidden:

16 The two requests at issue here are exactly the sort of “free-floating” requests the
17 *Steele* court disapproved. In effect, they ask for anything to which Kennedy is
18 entitled under section 1054.9 that is not encompassed in his previous requests.
Because they are not focused requests for specific information, the trial court did
not abuse its discretion in denying them.”

19 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 397–398, as modified on denial
20 of reh'g (Jan. 2, 2007).)

21 The request for this item B and the subparts are prohibited by *Steele* and *Kennedy*, does
22 not further his writ and is far outside the realm of what is allowed by Pen. Code §1054.1. For all
23 the reasons given throughout these various responses, the People ask the court to deny all
24 discovery related to any Aponte matter. The defendant is also estopped and cannot overcome the
25 prior decisions of the trial judge or the California Supreme Court. His remedy was an appeal or a
26 writ to a higher court, not a second discovery request. Further, a second writ on this same topic is
27

1 prohibited and therefore there is no reason for additional discovery on this topic.

2 **C. Croton Watch**

3 The Croton Watch is a classic fantastical example of why third-party issues are subject to
4 exclusion unless the defense can show an actual connection to the charged crime.

5 In this case, Laci inherited some jewelry (RT 8999). One of the items was a Croton watch
6 (RT8902). Laci did not like the watch and tried to sell it on eBay. Laci's Croton watch had a round
7 face and was encircled with diamonds (of some kind). (See People's Trial Exh. 4, page 2.) Laci
8 listed the item as an "Amazing Diamond Bezel Ladies Watch, Croton" for \$100.00 (RT 16637).
9 An eBay custodian (Nils Myers) testified about the watch listing. (The eBay records were People's
10 Trial Exh. 221, and a separate People's Trial Exh. 4 for the Croton watch.) According to Myers,
11 Laci tried to sell the watch twice in December of 2002 (RT 16639). Laci also provided a
12 photograph of the watch as part of the listing (RT 16642). To create the photo, either the defendant
13 or Laci videotaped the watch to create a screenshot – the video of the watch was played for the
14 jury (People's Trial Exh. 279B, RT 18045). A computer forensic expert testified that the screen
15 shot was created on the defendant's "home" Dell laptop on December 8th, 2002, at 9:46:54 p.m.
16 (RT 14393). Det. Grogan reviewed the videotape and determined that the Croton watch was not
17 running indicating that the battery was dead. (RT 18029). Det. Grogan confirmed with Laci's
18 jeweler that she had not brought in the Croton watch for repairs or a new battery, but she had
19 brought in another different watch to be fixed (RT 17824-17825).

20 [E]Bay charges fees for people to sell on their site so some people circumvent the process
21 by contacting the sellers directly. One example of this was an email between the defendant and
22 someone wanting to purchase gold chains he had offered on eBay. (People's Trial Exh. 187C).
23 Another email exchange with the defendant selling an item is found in People's Trial Exh.186.
24 One email exchange to the defendant stated –

25 "Hello, Do you want to sell the watch outright? If so, tell me how much. Thanks,
26 Rob." (People's Trial Exh. 187B, RT 14449).

27 Laci's Croton watch was not recovered after her disappearance. As part of the standard
28

1 investigation, Modesto Police Department Pawn Detail searched under Scott and Laci Peterson's
2 names at the onset of the investigation and discovered that jewelry had been pawned at "Brooks
3 Jewelers" prior to Laci's disappearance. That jewelry, primarily gold chains, had been collected
4 as evidence. (RT 10459, Bates 691). The pawn shop owners that pawned the items for Scott (with
5 Laci present) testified to the transaction at trial. (RT 10465).

6 On March 6, 2003, Modesto Police Department Pawn Detail conducted a second search
7 this time for the "Croton" watch to see if it was listed as an item pawned. A pawn slip for one
8 "Croton" watch was located. (RT 18027-18028, Bates 691). The watch was pawned by a Deanna
9 Marie Renfro for \$20.00. The description of the watch made no mention of diamonds and was
10 pawned on 12-31-2002. Det. Grogan stated in his report (and testified at trial) that the pawn slip
11 did not mention the diamonds and did not appear to match the description of the "Croton" watch
12 belonging to Laci (RT 18027-18028, Bates 691).

13 During trial, Geragos had a copy of the pawn slip marked as Def. Trial Exh. N (RT 10469).
14 His suggestion was that there was only one Croton watch in the world. (See Def. Trial Exh. N,
15 Bates page 699). The defense did not call Renfro at trial and, instead, offered the exhibit over
16 objection and through the testimony of the owners of Brooks Jewelers. The defense was allowed
17 to do this in spite of the fact that the Croton watch had been pawned at a different pawn shop. (RT
18 10462, 10466-10469).

19 To address this claim, Renfro was tracked down in Oklahoma and shown a photo of Laci's
20 watch from the eBay site and Renfro denied that her watch was Laci's watch...she said that "was
21 not the same watch that she pawned." (Bates page 42675.) Renfro went further and stated she had
22 pawned the watch a second time. Renfro said she did not have any identification with her at the
23 time so the watch was pawned under the name of Anthony Scarlata who was with her and had his
24 ID. (Bates page 42675). James Broyer, Jr. was also interviewed since he gave the watch
25 (purchased used) to Renfro as a present. (Bates page 42682, 42684). Broyer was shown the eBay
26 watch photo and stated that was not the watch he had purchased. He said the watch he bought for

1 Renfro had a “face of the watch as being rectangular.” (Bates page 42683). Trial Exhibit #4 shows
2 Laci’s watch having a round face.

3 On July 6, 2004, Sam Newnam at The Pawn Shop, the place where Exhibit N came from,
4 was contacted. He was asked to check if the watch was pawned a second time, this time under the
5 name of Anthony Scarlata. Newnam checked in his computer and located a pawn slip for Scarlata.
6 The pawn slip showed that Scarlata pawned the watch on February 14, 2003. (This matches what
7 Renfro told Investigator Sanders). (Bates page 42676) The watch was pawned for \$20.00.
8 Newnam printed out a computerized copy of the pawn slip and provided a copy. (See Bates page
9 42678). Newnam further stated the computer shows the watch was never redeemed by anybody.
10 He stated his computer indicated the watch would have been foreclosed on June 14, 2003. On that
11 date the watch would have been placed out in the cabinet for sale to the public. (Bates page 42676)

12 The second pawn slip item description states, "14KT Y/G WATCH USED AMD <sic>
13 WORN." There is no brand or make listed for the watch or mention of diamonds around the face
14 of the watch. Based on this new information and second pawn, Newnam was able to say there
15 was no chance this watch was the same as the one in the picture from the eBay website. He said
16 his employees are required to describe jewelry better and if the watch had diamonds they would
17 have been listed. Newnam further said that since it was the second time the watch was pawned
18 and it was not redeemed, that he would have known if they had a watch with real diamonds on it.
19 He said his jeweler would have also examined the watch. He checked with his jeweler and he did
20 not remember any lady’s watch with diamonds around the face coming through the store. (Bates
21 page 42677).

22 After a jailhouse tip was received from an inmate who claimed he “heard from someone,
23 who had heard from a girl that was supposedly in the brown van” (Bates page 42988) and the tip
24 was shared with the defense, Geragos (on Oct. 25, 2004) acknowledged to the court that Anthony
25
26
27
28

Lewis Scarlata⁴⁷ was the gentleman who the pawn slip was switched over to on the second transaction for the Croton watch at the pawn shop. (RT 19903).

“1. A complete copy of the MPD and Stanislaus County District Attorney Office’s investigation into the Croton watch that was pawned on December 31, 2002, by Deanna R., and a watch that was pawned on February 14, 2003, by Anthony S.”

Response – The defense has all the materials regarding this matter to which he is entitled. The only item of evidence is the pawn slip which was used during the trial. He cannot show any evidence that he would be entitled to under Penal Code §1054.1. As described above, any connection to Laci is based on utter and profound speculation and is even further removed from the Medina burglary.

" At the same time, we do not require that any evidence, however remote, must be admitted to show a third party's possible culpability. As this court observed in *Mendez*, evidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime."

(*People v. Hall* (1986) 41 Cal.3d 826, 833.)

"We find no abuse of discretion in the court's ruling in this case. Notably absent is any evidence creating a reasonable inference that Davis was somehow involved in the murders committed in the Douglas or Vigil shootings. The proffered evidence merely suggested that Davis might have been in the area of the shootings, was an Altadena Blocc Crips member, and had a motive to target PDL members. Nothing suggested he was actually involved in any of the relevant events of the two shootings. (See *Lewis, supra*, 26 Cal.4th at p. 373 ["evidence is irrelevant if it produces only speculative inferences"]; *Turner, supra*, 10 Cal.5th at p. 817 ["[w]e have repeatedly upheld the exclusion of third party culpability evidence when the third party's link to a crime is tenuous or speculative"]; accord, *People v. Panah* (2005) 35 Cal.4th 395, 481, *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1135–1137.) Further, even had the evidence somehow connected Davis to the shootings, there was nothing to show how his supposed involvement had a tendency in reason on the entire record—including the exceptionally strong evidence linking appellant Lee to both shootings, and appellants Robinson and Barnes to the Vigil shooting—to exonerate appellants."

(*People v. Lee* (2022) 81 Cal.App.5th 232, 236, review filed (July 11, 2022), as modified (July

⁴⁷ In the reporter’s transcript, Anthony Scarlata’s last name is spelled “Scarlotto.”

1 15, 2022).)

2 The defense argued to the jury “I’ll ask you about coincidences. What is the coincidence
3 of having a Croton watch pawned in Modesto on December 31st?” (RT 20423.) As stated above,
4 the defense implies that only one Croton watch exists, so therefore this must have been stolen
5 from Laci and the same mystery dark-skinned males (who were not African American) who were
6 able to avoid detection somehow turned into a female who put her thumbprint and driver’s license
7 number on a pawn slip. If it weren’t those three men who killed Laci and Conner, then it was
8 Todd and Pearce (who are Caucasians), except they are not Renfro, Broyer or Scarlata. There is
9 zero evidence to connect this watch to the burglary, much less the murder of Laci and Conner.
10 Absent any valid basis for moving his writ forward and changing the outcome of his verdict, there
11 is nothing discoverable here:

12 "Despite the ruling, the only evidence that would potentially link Foust to the crime
13 was adequately placed before the jury: his knowledge of intimate details of the
14 murder, the presence of “waffle-stomper” prints in the victim's home, and his left-
15 handedness. In closing argument, after putting all these circumstantial indications
of Foust's possible guilt together, the defense clearly and repeatedly proposed that
Foust, not defendant, committed the murder."

16 (*People v. Hall* (1986) 41 Cal.3d 826, 835.)

17 “2. All notes, reports, correspondence, and communications including written
18 correspondence, emails, voicemail recordings, faxes, photos, audio and video
19 recordings, and written transcripts thereof, related to the MPD’s (and/or any other
20 law enforcement agency’s) 2004 investigation into the Croton watch Deanna R.
pawned on December 31, 2002, and February 14, 2003.”

21 **Response** – The defense has all the materials regarding this matter to which they are
22 entitled. This is a request for an accounting of what the police did and that is not allowed or
23 required. This is clearly a third-party issue and does not fall within any of the three *Steele*
24 categories. The defendant has failed to meet his burden of proof. To aid in his perfection of his
25 writ, he must show how this requested evidence would show a reasonable probability of an
26 exoneration.

27 “3. All notes, reports, correspondence, photos, audio and video recordings, and
28

1 *written transcripts thereof, photographs, and/or other documents related to law*
2 *enforcement's interview(s) with Deanna R. and James B. regarding the Laci*
3 *Peterson investigation, including but not limited to:*

4 *a. All reports and statements made by James B. and Deanna R. to law*
5 *enforcement regarding the Croton watch from 2003 to the present date, including*
6 *but not limited to their statements describing the watch that was pawned before*
7 *they were shown a photo of Laci's Croton watch, and the interview Inv. Mark*
8 *Sanders conducted with James B. and Deanna R. when he showed James B. a*
9 *photograph of a watch and Deanna R. a photograph of a watch;"*

10 **Response** – The People incorporate by reference all the previous legal reasons why this
11 item is not discoverable. None of these items is required by §1054.1, by *Brady* or was ever
12 requested. This request is absolutely a fishing expedition. The defense has all the materials
13 regarding this matter to which they are entitled and the Bates pages are set forth above. This is a
14 request for an accounting of what the police did and that is not allowed or required. This is clearly
15 a third-party issue and does not fall within any of the three *Steele* categories.

16 *"b. All reports, notes, correspondence between Lt. Mark Smith and Inv. Marc*
17 *Sauders [sic] regarding the investigation into the Croton watch Deanna R.*
18 *pawned;"*

19 **Response** – The People incorporate by reference all the previous legal reasons why this
20 item is not discoverable. None of these items is required by §1054.1, by *Brady* or was ever
21 requested. This request is absolutely a fishing expedition. The defense has all the materials
22 regarding this matter to which they are entitled and the Bates pages are set forth above. This is a
23 request for an accounting of what the police did and that is not allowed or required. This is clearly
24 a third-party issue and does not fall within any of the three *Steele* categories.

25 *"c. All photographs of watches Inv. Sanders showed to James B. and Deanna R.,*
26 *including but not limited to the Croton watch."*

27 **Response** – The People incorporate by reference all the previous legal reasons why this
28 item is not discoverable. None of these items is required by §1054.1, by *Brady* or was ever
requested. This request is absolutely a fishing expedition. The defense has all the materials
regarding this matter to which they are entitled and the Bates pages are set forth above. This is a

request for an accounting of what the police did and that is not allowed or required. This is clearly a third-party issue and does not fall within any of the three *Steele* categories.

“4. All notes, reports, correspondence, photos, audio and video recordings, and written transcripts thereof, related to the February and/or early March 2003 interview MPD or any other law enforcement agency conducted with Deanna R. at her residence on Rimrock, Modesto, or at any other interview at any other time.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. None of these items is required by §1054.1, by *Brady* or was ever requested. The defense has all the materials regarding this matter to which they are entitled and the Bates pages are set out above. This is a request for an accounting of what the police did and that is not allowed or required. This is clearly a third-party issue and does not fall within any of the three *Steele* categories. In *Barnett*, the defense requested “any information in the government’s hands regarding any of its witnesses’ motives to lie or biases for the State or against Mr. Barnett.” The California Supreme Court characterized this as “a proverbial fishing expedition for anything that might exist.” (*Barnett v. Superior Court* (2010) 50 Cal.4th 890, 898.) Here the request is even broader – any other interview at any time.

“5. All notes, reports, correspondence, photos, audio and video recordings, and written transcripts thereof, related to the surveillance MPD and/or other law enforcement performed at Deanna R.’s Rimrock residence in 2003, including but not limited to surveillance conducted by Officer Hicks.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. None of these items is required by §1054.1, by *Brady* or was ever requested. The defense has all the materials regarding this matter to which they are entitled and the Bates pages are set forth above. This request isn’t even tailored to this case – it is just a “we want it” request.

First, Kennedy fails to show how he would have been entitled to the requested evidence under *Brady* because he fails to address the materiality of any such evidence, that is, he fails to show a reasonable probability of a different result if such evidence had been disclosed to him at time of trial. Second, Kennedy fails to show he would have been entitled to the evidence under section 1054.1(e). Under

1 these circumstances, Kennedy has again failed to show the trial court abused its
2 discretion in denying his discovery request."

3 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 382, as modified on denial of reh'g
4 (Jan. 2, 2007).)

5 "6. Identify the "confidential reliable informant (CRI), known as 'X,'" Officer
6 Hicks used to enter Deanna R.'s residence at Rimrock and purchase
methamphetamine from Deanna R."

7 **Response** – The People incorporate by reference all the previous legal reasons why this
8 item is not discoverable. This request is even further afield than the prior request. None of these
9 items is required by §1054.1, by *Brady* or was ever requested. As stated repeatedly, the defense
10 has shown zero justification for the disclosure of any informant information. Renfro was not a
11 witness and cannot be impeached with any of these facts.

12 "7. All notes, reports, correspondence, photos, audio and video recordings, and
13 written transcripts thereof, and/or other documents related to law enforcement's
14 interactions with Sam N., and/or The Pawn Shop, between 2003 and the present
date, regarding the Croton watch Deanna R. pawned on December 31, 2002, and
15 February 14, 2003, under the name of Anthony S."

16 **Response** – The People incorporate by reference all the previous legal reasons why this
17 item is not discoverable. None of these items is required by §1054.1, by *Brady* or was ever
18 requested. The defense has all the materials regarding this matter to which he is entitled, and the
19 Bates pages are set forth above. In fact, as explained above, the information provided from The
20 Pawn Shop proved that the Renfro watch was not Laci's watch, making this request absolutely
21 prohibited and useless.

22 "8. All notes, reports, correspondence, photos, audio and video recordings, and
23 written transcripts thereof, and/or other documents related to the information
James Romano provided to the Modesto Police Department in 2004 regarding the
24 abduction of Laci Peterson, including, but not limited to:

25 a. All statements made by James Romano to law enforcement officers
and/or correctional facility staff regarding information he had relating to the Laci
Peterson investigation, including, but not limited to, his statements made to:

26 i. Modesto Police Clerk Lisa McOwen;

27 ii. Stanislaus County Sheriff Dep. Terry Johnson;

28 iii. Modesto Police Department Det. Dodge Hendee;

1 *iv. Stanislaus County Sheriff Sgt. Campbell;*
2 *v. Deputy Safford; and,*
3 *vi. Deputy Johnson.”*

4 **Response** – The People incorporate by reference all the previous legal reasons why this
5 item is not discoverable. None of these items is required by §1054.1 or by *Brady*. The defense has
6 all the materials regarding this matter to which they are entitled and the Bates pages are set forth
7 above. Romano is the person who claimed he “heard from someone, who had heard from a girl
8 that was supposedly in the brown van” (Bates page 42988) as well as saying the abduction was
9 rumored to be by the “Hells Angels” (Bates page 42989), that Scott owed the “Border Brothers”
10 money which may have led to the abduction (Bates 42989), heard a rumor that the watch was
11 Laci’s and saw Deanna’s picture on CourtTV (Bates 42987-88) and wanted a recommendation to
12 be made to his parole officer (Bates page 42986). The report documenting this tip was shared with
13 the defense. On October 25, 2004, Geragos acknowledged to the court that he had the Romano
14 tip, had done his own follow-up interviews but was trying to get additional information. (Def.
15 Motion Exh. #35, RT 19902-19903). To avoid repetition any more than required by the defense
16 motion, the People will just briefly refer to the subsets in this subpart by the stated letter and
17 incorporate all our previously applicable responses.

18 Requests (i) and (iii) involve MPD employees and the reports showing their involvement
19 was provided (as acknowledged by Geragos); (ii), (iv), (v) and (vi) are Sheriff custodial
20 employees and not part of the prosecution team. As noted above, the defense must seek discovery,
21 if any is appropriate, from that third party.

22 *“9. All reports, memoranda, or other documents authored by individuals relating
23 to the information James Romano provided to law enforcement.”*

24 **Response** – The People incorporate by reference all the previous legal reasons why this
25 item is not discoverable. None of these items is required by §1054.1 by *Brady* or was ever
26 requested. The defense has all the materials regarding this matter to which they are entitled, and
27 the Bates pages are set forth above. Moreover, subdivision (c) of section 1054.9 “includes only
28

1 materials ‘in the possession of the prosecution and law enforcement authorities.’ ” (*In re Steele*
2 (2004) 32 Cal.4th 682, 695.) The California Supreme Court in *Steele* interpreted this “to mean in
3 their possession *currently*.” (*Ibid.*, italics in original.) Thus, section 1054.9 is limited to discovery
4 “currently” in the possession of the prosecution or the law enforcement agencies involved in the
5 investigation of the case and does not mandate the creation of new reports if none exist.

6 “10. All notes, reports, statements, or other investigatory documents relating to
7 subjects named by James Romano in the report(s) he provided to law enforcement,
including, but not limited to:

8 a. James Romano;

9 b. James B.;

10 c. Micheline P.;

11 d. Anthony S.;

12 e. Curtis S.;

13 f. Tim S.;

14 g. Rayborn S.;

15 h. Deanna R.;

16 i. Jimmie G.”

17 **Response** – The People incorporate by reference all the previous legal reasons why this
18 item is not discoverable. None of these items is required by §1054.1, or by *Brady*. The defense
19 has all the materials regarding this matter to which they are entitled and the Bates pages are set
20 out above. To avoid repetition any more than required by the defense motion, the People will just
21 briefly refer to the subsets in this subpart by the stated letter and incorporate all our previously
22 applicable responses:

23 **Response** - (a) This is duplicative of the last few requests.

24 (b) through (i) - "We know of no constitutional requirement that the prosecution make a
25 complete and detailed accounting to the defense of all police investigatory work on a case."
26 (*Moore v. Illinois* (1972) 408 U.S. 786, 795.) The defendant makes no attempt to justify this
27 request... it is just a fishing expedition and for all the reasons above is not allowed under Penal
28 Code §1054.9.

“11. All audio and/or video recordings of interviews with James Romano, James
B., and Micheline P., and/or any other witness named in the information James
Romano provided to law enforcement;”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. None of these items is required by §1054.1 or by *Brady*. The defense has all the materials regarding this matter to which they are entitled and the Bates pages are set forth above. This is duplicative of the last few requests; "Thus, had defendant's motion been granted, compliance would have required the prosecution to prepare the case for the defense. This is an obligation not imposed by the law." (*People v. Gurtenstein* (1977) 69 Cal.App.3d 441, 449.) The defendant makes no attempt to justify this request... it is just a fishing expedition and for all the reasons above is not allowed under Penal Code §1054.9. It is also a "catch-all" request prohibited by *Steele* and *Kennedy* due to the "and/or any other witness request."

"12. All internal correspondence by and between law enforcement officers and/or correctional facility staff regarding the information James Romano provided, including, but not limited to:

a. Sgt. Mike Zahr's request to Lisa McOwen to have Det. Hendee interview James Romano;

b. Lisa McOwen's request to Det. Hendee to interview James Romano;

c. Sgt. Campbell's request to Deputy Safford to interview James Romano;

and,

d. Det. Dodge Hendee's conversation with Det. George Stough regarding his investigation into the Medina burglary."

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. None of these items is required by §1054.1 by *Brady* or was ever requested. The defense has all the materials regarding this matter to which he is entitled and the Bates pages are set forth above. To avoid repetition any more than required by the defense motion, the People will just briefly refer to the subsets in this subpart by the stated letter and incorporate all our previously applicable responses:

Response - (a) (b) and (d) involve MPD employees and the reports showing their involvement was provided (as acknowledged by Geragos); (c) involved Sheriff employees and not part of the prosecution team – as set out above the defense must seek discovery, if any is appropriate, from this third-party. Additionally, since none of these items can move a writ forward, they are inappropriate requests. A request for internal communications is definitely a fishing

1 expedition.

2 *“13. All reports, copies of correspondence, and other records documenting the*
3 *surveillance of James Romano’s outgoing mail while incarcerated at Stanislaus*
4 *County Public Safety Center between 2003–2004, including any letters in which*
5 *James Romano indicated to “Friends Outside” that he had information relating to*
6 *the Laci Peterson investigation.”*

7 **Response** – The People incorporate by reference all the previous legal reasons why this
8 item is not discoverable. There is no showing that this information exists, how it would be relevant
9 or how it would be discoverable. This is by definition third-party discovery materials.

10 *“14. Booking photos of Anthony S., Curtis S., Deanna H., and James B. and the*
11 *“CDL photograph” of Michilene P. shown to James Romano on October 19,*
12 *2004.”*

13 **Response** – The People incorporate by reference all the previous legal reasons why this
14 item is not discoverable. There is no showing that this information exists, how it would be relevant
15 or how it would be discoverable. This is by definition third-party discovery materials.

16 *“15. All reports, communications, correspondence, photos, notes, audio and video*
17 *recordings and transcripts thereof, and/or other documents relating to all contacts*
18 *between MPD personnel and James B. in relation to the Laci Peterson*
19 *investigation, including but not limited to the incident in which he provided law*
20 *enforcement with a pawn ticket for a watch made out to Anthony S.”*

21 **Response** – The People incorporate by reference all the previous legal reasons why this
22 item is not discoverable. This is a duplicate of 3(a) above and/or a new twist on the same request.
23 None of these items is required by §1054.1 by *Brady* or was ever requested. This request is
24 absolutely a fishing expedition. The defense has all the materials regarding this matter to which
25 they are entitled to and the Bates pages are set forth above. This is a request for an accounting of
26 what the police did and that is not allowed or required. This is clearly a third-party issue and does
27 not fall within any of the three *Steele* categories.

28 *“16. All reports, notes, correspondence, or other documents regarding any*
contacts of MPD or other law enforcement related to the investigation into “The
Pawn Shop,” located at 1612 Oakdale Road, where James Romano indicated
Deanna H. had pawned a watch, in or around February 2003.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. This is a duplicate of several of the previous requests merged together to form a new request. None of these items is required by §1054.1 by *Brady* or was ever requested. This request is absolutely a fishing expedition. The defense has all the materials regarding this matter to which they are entitled and the Bates pages are set forth above. This is a request for an accounting of what the police did and that is not allowed or required. This is clearly a third-party issue and does not fall within any of the three *Steele* categories.

"17. All reports, records, notes, correspondence, or other documents describing all efforts made by law enforcement to identify a man who was in possession of items jewelry from the Medina burglary and goes by the street name "Fireman.""

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. None of these items is required by §1054.1 by *Brady* or was ever requested. This request is absolutely a fishing expedition. The defense has all the materials regarding this matter to which they are entitled and the Bates pages are set forth above. This is a request for an accounting of what the police did and that is not allowed or required.

More importantly, this request relates to the tip Det. Hendee documents in his October 21, 2004 report, as set out in our Response to No. 8 above, relating to the Romano tip (which starts at Bates page 42984, and is transcribed at Def DNA Motion Ex. #35 at page 19698-19700 where it was discussed with the trial court) and the information relating to Fireman and various Romano claims were provably false. Romano claimed that a person by the name of Smith told him that jewelry ended up at Glenn's house. Romano then said that Smith said the police went to Glenn's house but failed to find any jewelry. Romano then said that Smith said that after the police left Glenn called the Fireman and he 'reportedly' disposed of the jewelry before the police got to his house (Bates page 42988), However, at trial Sgt. Helton testified to jewelry being recovered from Glenn Pearce's house (RT10337) and Pearce didn't get to call the Fireman because the police didn't leave and they arrested Pearce. This request does not fall within any of the three *Steele* categories.

1 *“18. All statements by James Romano in his October 18, 2004 interview identifying*
2 *someone named “Coyle” as having been involved in the Medina burglary, as*
3 *indicated in his October 19, 2004 interview.”*

4 **Response** – The People incorporate by reference all the previous legal reasons why this
5 item is not discoverable. This information was provided in Det. Hendee’s report (Bates page
6 42989) which Geragos acknowledged receiving. (RT 19902).

7 *“19. All records, reports, or other documents related to and/or describing or*
8 *summarizing James Romano’s criminal case history, including sentencing*
9 *proceedings at the time he came forward with information regarding the*
10 *disappearance of Laci Peterson in 2004, as represented to the Court by DDA*
11 *David Harris at RT 19699.”*

12 **Response** – The People incorporate by reference all the previous legal reasons why this
13 item is not discoverable. None of these items is required by §1054.1, or by *Brady*. This request is
14 absolutely a fishing expedition. The defense has all the materials regarding this matter to which
15 they are entitled and the Bates pages are set forth above and acknowledged by trial counsel. This
16 request does not fall within any of the three *Steele* categories since Romano was not a witness and
17 definitely not a witness the People intended to call. Geragos had his investigator Carl Jensen deal
18 with this, since Geragos said he was the “expert on this area” (RT 19699- 19700). Since this
19 witness did not testify no information was necessary for impeachment purposes. Lastly, this court
20 can take judicial notice that the defense did not call Mr. Romano as a witness at trial – this means
21 that the defense made a tactical choice to keep him off the stand.

22 **D. December 25, 2002 Van Fire in Airport District**

23 The defense is wanting an accounting of a separate and totally unrelated vehicle theft and
24 arson of an “orange van” in the airport district⁴⁸ because it happened the day after Laci went

25 ⁴⁸ According to City-Data.com the Airport neighborhood in Modesto, California (CA), 95351, 95354,
26 95357 detailed profile, consists of an area of 5.405 square miles, and population of approximately 5,341.
27 (<https://www.city-data.com/neighborhood/Airport-Modesto-CA.html>) The entire City of Modesto has
28 an area of 36.87 square miles.
29 (<https://www.census.gov/quickfacts/fact/table/modestocitycalifornia/LND110210#LND110210>).
30 That means that the Airport District comprises approximately 14% of Modesto (The City of Modesto was
31 ranked as the 15th largest city in the state as stated in our DNA Opposition.) Trial Ex 224D is a map of the
32 general area.

1 missing. The best the defense can claim to show any connection to the defendant's case is that the
2 police report documenting the stolen/burned "orange van" was cross-referenced to the Peterson
3 case because early on the police were looking into the sighting of a tan or white van. The People
4 have shown above how throughout the trial witnesses described vans in the neighborhood and
5 none of them was orange. Amie Krigbaum, set out more extensively above, testified that she
6 drove a white Chevy Astro van which would be parked on the street across from the defendant's
7 house (RT 9498). Russell Graybill testified there was a white van parked across the street from
8 the defendant's house most days. (RT 9577.) In the People's Opposition to the DNA motion, we
9 pointed out that in 2002 Modesto was in the top ten metropolitan areas for auto theft. It was not
10 uncommon for vehicles to be stolen and the defense cannot make a connection to this case of
11 every vehicle that was stolen. In fact, they fail to mention to this Court that the victim of the
12 orange van theft, the owner of a business by the name of Borden & Son's Crane and Rigging, had
13 a second vehicle stolen "from his yard about two weeks" before this theft (Bates page 4103).
14 Therefore, the orange van is not relevant to the defendant's Writ because that crime cannot raise
15 a reasonable probability of a more favorable result.

16 To try and make it "relevant," the defense has attached a declaration from a journalist,
17 George Michael Gudgell, who interprets things he has been told in his search for his truth. His
18 declaration is rank speculation, for example:

19 49. When I asked him [Borden] about his van that was stolen and set on fire on
20 Christmas in 2002, Borden indicated that it was an "inside job" meaning that one
21 of his own employees had stolen the vehicle. This struck me as significant in that
22 if the van was taken by one of Borden's own employees, the logical reason for
23 setting the van on fire would be to destroy evidence in it in order to cover up a
crime it was used in the commission of since, if evidence inside it were to be
discovered, it could easily be linked back to one of the employees.

24 50. I later learned that a man named Phillip Lout was part of the criminal network
25 associated with burglaries in La Loma, including Todd and others I suspected may
26 have been involved in the Medina burglary. I learned that Lout was the son-in-law
of Terry Borden. I attempted to interview Lout but was unable to do so; he was in

1 prison in Oklahoma. Lout is now deceased.⁴⁹

2 Gudgell, as a journalist, has a First Amendment privilege not to disclose what information
3 he has.⁵⁰ It is apparent in his declaration he skips over foundational elements, such as how he
4 learned of Lout and a “criminal network” which so happens to also be connected to the Medina
5 burglary, and how to call the police and share this information. Gudgell also neglects to explain
6 that Bordon’s business is in Ceres – the next town over from Modesto (Bates 4102), but a fact he
7 should be aware of since he says he went to the business. Gudgell doesn’t stop there; he continued
8 on his quest to find something orange to make this van relevant and according to him, he found
9 it:

10 51. In 2017, after learning more about the orange van that was intentionally set on
11 fire in the Airport District on December 25, 2002, and reviewing a police report
12 documenting an interview with Mike Chiavetta, who told police on December 26,
13 2002, that two days earlier, on the morning of December 24, 2002, he was out
14 running in the East La Loma Park and recalled seeing an orange "Cal Trans" blazer-
type vehicle parked near the tennis courts, I contacted Mr. Chiavetta and
interviewed him. ***

15 54. Mr. Chiavetta told me that no one from the police department ever contacted
16 him to follow up on his report about seeing the orange van in the park on December
24, 2002.

17 What is not mentioned is that Chiavetta was interviewed as part of the neighborhood
18 canvas, in person, by Off. Lance Nicolai. At Bates page 2721, Nicolai wrote:

19 Chiavette [*sic*] said on 12/24/02, he went running in the park at around 09:15 hours.
20 At the end of his run, around 10:15 hours, he was walking near the olive grove at
21 the south edge of the park. He was letting his dog run around off the leash for a
22 few minutes. The olive grove borders the footpath where the north end of Coven
23 dead-ends. Chiavette [*sic*] noticed Peterson's dog on the footpath walking east. He
thought there were tow [*sic*] [two] people walking with the dog but was not sure.
He was watching the dog because his was off the leash. I asked why he thought it

24 ⁴⁹ The People do not accept Gudgell’s declaration as it consists almost entirely of hearsay or double-
hearsay, speculation and improper opinions. It is entirely objectionable – and the People do.

25 ⁵⁰ The defense is well aware of this because the defense attempted to call another journalist at the habeas
26 reference hearing involving Juror No.7. That witness, Shareen Anderson, provided information readily to
27 the defense based on her discussions with Juror No.7 during the making of an A&E docuseries. However,
when called as a witness to verify her claims, Ms. Anderson invoked her journalist privilege.

1 was her dog and he said he had seen it before and it was an old dog. Chiavette did
2 not know Peterson, but she was familiar in the neighborhood. ¶ Chiavette also
3 mentioned noticing a bright orange Blazer type vehicle in East La Loma Park. He
4 said it was at least 15 years old and had square headlights. The Blazer was
5 noticeable because of the bright orange color, which reminded him of a Cal Trans
6 vehicle. A "gang banger" type hispanic male got out of the vehicle and went into
7 the restroom. Chiavette was running east toward El Vista when he noticed the
8 Blazer. He also noticed it when he went back west toward home. He did not have
9 any more information about the vehicle.

10 Chiavetta's initial statement to the police is significant because he says he thought there
11 were two people walking the dog and that the time of his observation was 10:15 a.m. Two walkers
12 eliminate this being Laci, unless the defendant changes his story once again and claims to have
13 gone walking with Laci. Additionally, the evidence showed that the defendant left the house at
14 10:08 and Servas found the dog at 10:18. That would then require, if the defendant told the truth,
15 that Laci in her medical condition would have to finish mopping (mops were outside), change her
16 clothes from the black pants (discussed above, and noted by the Supreme Court that she was in
17 the tan pants), get the dog, walk down the street, down the hill into the park, head east on the
18 footpath, find a friend to walk with *and* have the dog escape (which wasn't seen by Chiavetta)
19 and the dog run back home and be found by Servas — all in seven minutes. It is not possible.

20 Chiavetta, in 2002 also mentioned an orange Blazer - type of vehicle with a single male
21 "gang banger" type going into the restroom. According to Gudgell:

22 53. I asked Mr. Chiavetta where in the park he saw the van, and he explained that
23 it was near the tennis courts on the east end of the park. ***

24 People's Trial Exh. 22 is an aerial view of the park and the surrounding area. Circled in
25 red is the location of the defendant's house, the word Covenia is written to locate the street, and a
26 trail is drawn to the tennis courts at the far east portion of the park. The court can see for itself
27 that it is at least half a mile from the Peterson house to the tennis courts and restroom. The tennis
28 courts are marked as t/c on the exhibit. People's Trial Exh. 62 was a "fly-over" video of the area,
which was narrated for the jury by Sgt. Cloward who also provided distances between the various
geographic features that were displayed (RT 10199-10203). There are no roads in the park going

1 between the tennis courts/restrooms and where Chiavetta saw a dog. It is therefore even more of
2 an impossibility for this orange Blazer to somehow be connected to Laci.

3 But Gudgell didn't stop there. He said that when he talked to Chiavetta, Chiavetta "did not
4 describe the vehicle as a "blazer," but, instead, as a "van." He said that there were three men that
5 he described as "gang bangers" around the "van." Somehow, a Blazer has become a van and one
6 man turned into three men – 15 years later. In the immortal words (paraphrased) of Miss Mona
7 Lisa Vitto (Marisa Tomei's character) in "My Cousin Vinny," a van could never be confused with
8 the Blazer. The orange van cannot be connected to this murder case by direct or circumstantial
9 evidence. It also cannot be connected even if the defense proffered a valid declaration from
10 Chiavetta himself and not the hearsay Gudgell version.

11 This assertion doesn't just depend on the facts above. We know that DNA testing was done
12 on one of the items from the van and only a male profile was developed. There is *no* legitimate
13 DNA test that will turn the male profile into a match for Laci. This is nothing more than a fishing
14 expedition which the courts have warned against.

15 Although the materials Kennedy requested might include evidence favorable to
16 him, they would also likely include evidence that was entirely neutral and might
17 even include evidence unfavorable to him. Since neutral and unfavorable materials
18 are clearly not materials to which Kennedy would have been entitled at time of
19 trial even under the broadest reading of section 1054.1(e) and *Brady*, Kennedy's
20 request does not describe materials to which he would have been entitled at time
21 of trial and thus it is overbroad. The trial court was under no obligation to parse
Kennedy's request and issue a discovery order for some subset of materials
encompassed by his request. If Kennedy's request, taken as a whole, did not ask
for materials to which he would have been entitled at time of trial, then the trial
court was justified in denying it. [footnote omitted.]

22 Additionally, to obtain discovery under section 1054.9 of materials within the
23 scope of section 1054.1(e) and/or *Brady*, a defendant must do more than simply
24 assert, as Kennedy does here, that the materials he seeks might include "evidence
25 of third party culpability" or "evidence that could have been used to impeach
26 [certain] prosecution witnesses." Where the defendant seeks to justify a discovery
27 request based on a theory of third party culpability, the defendant must—at the
28 very least—explain *how* the requested materials would be relevant to show
someone else was responsible for the crime. Likewise, where the defendant seeks
to justify a discovery request on the ground the requested materials would have

1 been relevant to impeach a prosecution witness, the defendant must—at the very
2 least—explain what that witness's testimony was and how the requested materials
3 could have been used to impeach that testimony.

4 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 371-372, italics in original.)

5 The People will now address the specific defense requests individually:

6 “A complete copy of Modesto Police Department Case No. 02-142687 and
7 Modesto Fire Department (MFD) Case No. SMF02019142, concerning the
8 investigation of an incendiary fire of an orange van containing a mattress with
9 apparent bloodstains, located in the alley between 612 Thrasher and 607 Empire,⁵¹
10 less than one mile from the Petersons’ home, in the early morning of December 25,
11 2002, the day after Laci Peterson was reported missing. The items requested
12 include but are not limited to the following:”

13 **Response** – The People incorporate by reference all the previous legal reasons why this
14 item is not discoverable. This is another claimed request for discovery that, once again, attempts
15 to demand that the police explain what they did. The defense only offers the greatest of speculation
16 such as a cousin of Todd may live near the alley where the van was found – which proves nothing:

17 "Section 1054.9 allows a defendant to seek discovery of materials “to which [he]
18 would have been entitled at time of trial.” (§ 1054.9, subd. (b).) As the Supreme
19 Court explained in *In re Steele* (2004) 32 Cal.4th 682, 10 Cal.Rptr.3d 536, 85 P.3d
20 444, while this language is broad enough to make section 1054.9 more than just “a
21 ‘file reconstruction statute,’ ” at the same time the statutory language “does not
22 allow ‘free-floating’ discovery asking for virtually anything the prosecution
23 possesses.” (*Steele*, at pp. 693, 695, 10 Cal.Rptr.3d 536, 85 P.3d 444.) Instead,
24 section 1054.9 “provide[s] only limited discovery;” specifically, “the statute is
25 limited to material to which the defendant would have been entitled at the time of
26 trial.” (*Steele*, at p. 695, 10 Cal.Rptr.3d 536, 85 P.3d 444.)

27 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 365, as modified on denial of reh'g (Jan.
28 2, 2007).)

29 " [T]he law does not impose upon law enforcement agencies the requirement that
30 they take the initiative, or even any affirmative action, in procuring ... evidence
31 deemed necessary to the defense of an accused.” [Citation.]” (*People v. Newsome*
32 (1982) 136 Cal.App.3d 992, 1006; see e.g., *In re Michael L.* (1985) 39 Cal.3d 81,
33 86–87 (no duty to seize victim's videotape of robbery); *People v. Hogan* (1982) 31
34 Cal.3d 815, 851; *People v. McNeill* (1980) 112 Cal.App.3d 330, 338 (no duty to

35 ⁵¹ Per Google Maps - the distance for walking from either of these addresses to Covena is approximately
36 1.2 - 1.3 miles and the distance for driving is 1.4-1.5 miles.

1 seize fingernail scrapings of victim); *People v. Ventura* (1985) 174 Cal.App.3d
2 784, 794–795 (no duty to take and preserve intoxication test at time of arrest);
3 *People v. Kane* (1985) 165 Cal.App.3d 480, 485 (no duty to impound victim's
4 automobile); *People v. Bradley* (1984) 159 Cal.App.3d 399, 404–408 (no duty to
5 seize blood-stained articles at crime scene); *People v. Maese* (1980) 105
6 Cal.App.3d 710, 719–720 (no duty to take fingerprints); *People v. Flores* (1976)
7 62 Cal.App.3d Supp. 19, 23 (no duty to obtain names of witnesses).) “The police
8 cannot be expected to ‘gather up everything which might eventually prove useful
9 to the defense.’ [Citations.]” (*People v. Hogan* (1982) 31 Cal.3d 815, 851; see
10 *People v. McNeill* 112 Cal.App.3d at p. 338.)”

11 (*People v. Callen* (1987) 194 Cal.App.3d 558, 561–562.)

12 “1. Digital copies of all 911 calls reporting the incendiary vehicle fire in the alley
13 between 612 Thrasher and 607 Empire in Modesto the morning of December 25,
14 2002.”

15 **Response** – The People incorporate by reference all the previous legal reasons why this
16 item is not discoverable. Assuming that such items exist, the defendant would not be entitled to
17 them since, as stated above, this call is not related to the crime for which Peterson was convicted.
18 It is a third-party issue, of which the defendant has failed to meet his burden of proof. (See
19 *Lunsted, supra.*) He has also failed to offer a court discovery order that would have compelled the
20 production of such an accounting. He fails to show he meets any of the *Steele* categories or how
21 under 1054.1 he would be entitled to the call. Defendant has failed to meet his burden.

22 “2. A complete color copy of the DOJ Central Valley Crime Laboratory file,
23 including but not limited to all bench notes, diagrams, DNA reports including
24 electronic data, gas chromatograms, photos, lab request forms, all documents
25 regarding the examination and forensic testing of all items of evidence collected
26 from the van, including but not limited to the mattress cutting, the rag collected
27 from the fuel tank, any fingerprints and/or palm prints lifted from the scene.”

28 **Response** – The People incorporate by reference all the previous legal reasons why this
item is not discoverable. Assuming that such items exist, the defendant would not be entitled to
them since, as stated above, this case is not related to the crime for which Peterson was convicted.
From the defendant’s own motion, he has shown that no one has been charged with this crime.
Since no one has been charged, Peterson must show more than a mere desire for the items. He

1 clearly cannot show any plausible *Brady* issue. To further his writ and obtain discovery, he must
2 show how these items would result in a probable change of outcome in his case.

3 “3. All reports, notes, correspondence, communications, audio and video
4 recordings and transcripts thereof, concerning the fire department and/or law
5 enforcement’s decision to send the stained mattress fabric found in the back of the
6 van to the DOJ Central Valley Crime Lab for forensic testing in 2003.”

7 **Response** – The People incorporate by reference all the previous legal reasons why this
8 item is not discoverable. Assuming that such items exist, the defendant would not be entitled to
9 them since, as stated above, this case is not related to the crime for which Peterson was convicted.
10 As cited many times above, this is a request for an accounting – the defense wants to know why
11 a decision was made. This is not discoverable under any post-conviction standard.

12 “Just as there is no duty to preserve all notes, there is no duty to make notes in the
13 first place.” (*People v. Alexander* (1983) 140 Cal. App. 3d 647, 659 [disapproved
14 on other grounds in *People v. Swain*, (1996)12 Cal.4th 593, 602].

15 “4. All documents relating to the collection of fingerprints, palm prints, and/or
16 latent prints from the van, as requested in the Incident History Report and any
17 subsequent examination, analysis, or comparisons of that print evidence.”

18 **Response** – The People incorporate by reference all the previous legal reasons why this
19 item is not discoverable. Assuming that such items exist, the defendant would not be entitled to
20 them since, as stated above, this case is not related to the crime for which Peterson was convicted.
21 He clearly is in possession of these items and has access to the former fire investigator so “... so
22 he should be able to establish what is necessary to comply with §1054.9.

23 “...the requirements of section 1054.9 is a discovery tool for specified criminal
24 litigants. It is not an investigatory tool to allow defendants or their counsel free-
25 floating post-conviction access to the files of the prosecution or the law
26 enforcement agencies which investigated the case. As one appellate case noted,
27 section 1054.9 is simply “an aid in stating a prima facie claim for relief.”

28 (*Board of Prison Terms v. Superior Court* (2005) 130 Cal.App.4th 1212, 1241.)

Section 1054.9 does not change the basic principle that “there is no postconviction right
to ‘fish’ through official files for belated grounds of attack on the judgment, or to confirm mere
speculation or hope that a basis for collateral relief may exist.” (*People v. Gonzalez* (1990) 51

Cal.3d 1179, 1259.) Habeas corpus “is not a device for investigating possible claims, but a means for vindicating actual claims.” (*Id.* at p. 1260.) “The state may properly require that a defendant obtain some concrete information on his own before he invokes collateral remedies against a final judgment.” (*Ibid.*)

Unless the defense can articulate a cogent theory that would entitle the defendant to some form of post-conviction relief, this Court must assume they are not “in preparation to file” a petition within the meaning of subdivision (a) of section 1054.9. Without the ability to identify “a prima facie case for relief,” there is nothing for the “discovery materials” under section 1054.9 to “aid” or “assist.” The court should not order any discovery under section 1054.9 without solid proof the defense needs the information to bolster the post-conviction claims they intend to make.

“5. A complete color copy of MFD Fire Investigator Bryan Spitulski’s entire investigation file in Modesto Fire Department Case No. SMF02019142.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. Assuming that such items exist, the defendant would not be entitled to them since, as stated above, this case is not related to the crime for which Peterson was convicted. The Modesto Fire Department was not part of the prosecution team for the murder case against the defendant and under Pen. Code §1054.1 this is a matter the defense would be required to pursue through SDT:

“Conversely, a prosecutor does not have a duty to disclose exculpatory evidence or information to a defendant unless the prosecution team actually or constructively possesses that evidence or information. Thus, information possessed by an agency that has no connection to the investigation or prosecution of the criminal charge against the defendant is not possessed by the prosecution team, and the prosecutor does not have the duty to search for or to disclose such material.”

(*People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1315.) [See also *In re Steele* (2004) 32 Cal.4th 682, 697.]

Finally, Penal Code §1054.1 is consistent with the prosecution’s constitutional duties under *Brady v. Maryland* (1963) 373 U.S. 83. The prosecution is responsible only for that material

1 in their possession or in the possession of the investigating agency. (*Kyles v. Whitley* (1995) 514
2 U.S. 419.) “There is no reason to assume the ... statutory phrase [“in the possession of the
3 prosecuting attorney or ... investigating agencies” (§1054.1)] assigns the prosecutor a broader
4 duty to discover and disclose evidence in the hands of other agencies than do *Brady* and its
5 progeny.” (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1133-1134; see also *People v. Aguilera*
6 (2020) 50 Cal.App.5th 894, 913-914.) The California Supreme Court has “recognized that ‘
7 “information possessed by an agency that has no connection to the investigation or prosecution
8 of the criminal charge against the defendant is not possessed by the prosecution team’ ” with
9 respect to the prosecution’s duty to disclose exculpatory information under the Federal
10 constitution and state discovery rules. (*In re Steele* (2004) 32 Cal.4th 682, 697.)” (*People v. Ervine*
11 (2009) 47 Cal.4th 745, 768; see e.g., *People v. Superior Court (Dominguez)*, *supra*, 28
12 Cal.App.5th at pp. 235-240 [company that supplied DNA testing equipment and software to police
13 laboratory not part of prosecution team].) Similarly, there is no statutory or *Brady* obligation to
14 obtain physical evidence from third parties, only a duty to make such available to the defense if
15 it comes into the prosecutor’s possession. (*People v. Sanchez* (1998) 62 Cal.App.4th 460, 474.)

16 “6. Color copies of all “photographs” and “scene diagrams” created of the
17 orange van, the scene where it was located, and any/all evidence collected
therefrom, including but not limited to:”

18 **Response** – The People incorporate by reference all the previous legal reasons why this
19 item is not discoverable. This is not actually a request for discovery but a demand for an
20 accounting of what the police did. “It is clear that the Constitution does not require the prosecution
21 to make a complete and detailed accounting to the defendant of all police investigatory work on
22 a case.” (*People v. Nation* (1980) 26 Cal.3d 169, 175.) As stated above, this arson relates to a
23 third-party issue. The defendant has failed to meet his burden of proof. He has also failed to offer
24 a court discovery order that would have compelled the production of such an accounting. To avoid
25 repetition any more than required by the defense motion, the People will just briefly refer to the
26 subsets in this subpart by the stated letter and incorporate all our previously applicable responses:

1 “a. Full-sized, color copies of the black and white thumbnails, titled
2 PC240013.jpg–PC240041.jpg;
3 b. All “scene diagrams” created by Fire Investigator Bryan Spitulski and/or by
4 any other investigator;
5 c. Color copies of all photographs of the orange van and its contents, including
6 the stained mattress, concrete cinder blocks, metal cans, and other items located
7 inside the van taken at the tow yard and MPD evidence locker during the
8 examination and collection of evidence from the van;
9 and,
10 d. Photographs depicting the cutting and sampling of the mattress fabric at the
11 “covered secure area.””

12 **Response** – The People incorporate by reference all the previous legal reasons why this
13 item is not discoverable. See no. 5 above for (a) through (d). To obtain any of this discovery, the
14 defendant would have to prove that it would further his writ, not just that he wants it. Speculation
15 is not a substitute for the required proof:

16 “[T]he Due Process Clause has little to say regarding the amount of discovery
17 which the parties must be afforded....”].) Moreover, “*Brady* does not require the
18 disclosure of information that is of mere speculative value” (*People v. Gutierrez*
19 (2003) 112 Cal.App.4th 1463, 1472), and defendant himself concedes that “it
20 remains speculative as to what might have been discovered.” He acknowledges
21 that there is no way to know “if disclosure of [Conya L.’s] address would be helpful
22 or harmful to [defendant’s] defense.” Because defendant has not shown that the
23 prosecution withheld evidence that was both “favorable and material” to the
24 defense (*In re Bacigalupo, supra*, 55 Cal.4th at p. 333, his claim is without merit.”

25 (*People v. Williams* (2013) 58 Cal.4th 197, 258–259.)

26 “7. Property and Evidence logs and records, including chain of custody from
27 December 25, 2002, to the present, detailing the current location and condition of
28 the following items of evidence, and, where applicable, color photographs of the
29 packaging, for the following items:

30 a. The burned orange van with license plate number 6S66512;
31 b. The mattress fabric sample and other mattress material samples
32 collected from the above-described burned orange van;
33 c. The glass vile used for presumptive testing of the mattress fabric sample,
34 which tested presumptively positive for the presence of blood as indicated in color
35 photographs;
36 d. The red fuel container, metal fuel container, and yellow fuel containers
37 observed in the burned-out orange van;
38 e. The towel found sticking out of the gas tank of the burned-out van
39 described above;

- 1 *f. The gas cap found lying on the ground near one of the tires of the burned-*
2 *out van described above;*
3 *g. The cement cinder blocks found inside the burned van;*
4 *h. The fabric cut from the “pillow”;*
5 *i. All other items collected from the van and/or the surrounding areas not*
6 *listed above.*
7 *j. All destruction orders associated with the van and/or evidence collected*
8 *therefrom.”*

9 **Response** – See response to #6 above.

10 “8. MPD Policy and Training Manuals in effect in 2002–2005, including Homicide
11 Detective Manuals, Police Investigation Manuals, and any other policy and
12 procedures in effect governing the following:

- 13 *a. Documentation, collection, and preservation of physical evidence;*
14 *b. Procedures for interviewing witnesses and suspects, including the*
15 *recording and documenting of such interviews;*
16 *c. The utilization and administration of hypnosis on eyewitnesses;*
17 *d. Avoiding confirmation bias and other biases in police investigations;*
18 *e. Documentation and disclosure of incentives offered to prosecution*
19 *witnesses in exchange for testimony;*
20 *f. All policies and procedures pertaining to the administration,*
21 *documentation, and recording of polygraphs, including pre-polygraph and post-*
22 *confession interviews; and*
23 *g. All policies and procedures pertaining to the use of confidential*
24 *informants, documentation of the identities of confidential informants, decisions*
25 *to offer leniency and/or deals in exchange for cooperation with law enforcement,*
26 *evaluation of Brady and discovery obligations when using informants, and all*
27 *other documents governing the use of confidential informants.”*

28 **Response** – The People incorporate by reference all the previous legal reasons why this
item is not discoverable. To avoid repetition, the People will respond to all subsets in this subpart
either as a group or by the stated letter if necessary:

This is a catch-all *Steele* request and oddly was snuck in with the requests for an unrelated
crimes. It should be denied under the many cited provisions of *Steele* (not just because it is in the
wrong place) because it is overly broad and unfocused as it relates to a pending writ. Additionally,
these manuals would only be discoverable directly from the prosecution if they contained
exculpatory (see Pen. Code §1054.1(e)) or *Brady* evidence since they do not fall under any other
statutory category. Even assuming that the defense could make such a showing, but have failed

1 to attempt, there would still be no discovery obligation on the part of the prosecution because the
2 preparation and/or use of such manuals is a training function and not an investigatory function of
3 the police department, meaning the training manuals are properly viewed as outside the possession
4 of prosecution team. (See *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1310,
5 1317 1318 [even though the Department of Corrections was the investigating agency in a prison
6 assault, the prosecutor’s duty to disclose information favorable to the defense did not extend to
7 policy and procedure manuals for the administrative segregation unit relating to the Department’s
8 non investigatory functions].)

9 These manuals are also “official information” as defined in Evidence Code § 1040. (See
10 Evid. Code, § 1040 [“information acquired in confidence by a public employee in the course of
11 his or her duty and not open, or officially disclosed, to the public prior to the time the claim of
12 privilege is made”].) The case of *Suarez v. Office of Administrative Hearings (Bennett)* (2004)
13 123 Cal.App.4th 1191 has explained this before. The Department of Real Estate (“DRE”) was
14 attempting to revoke the real estate license of a broker for engaging in fraud. Bennett asked for
15 the DRE’s “Audit Manual and Enforcement Deputy Manual.” Bennett argued the manuals were
16 relevant because “a good portion of the concerned accusation deals with an alleged violation of
17 trust account record keeping and fund management. This alleged violation was purportedly
18 discovered by [the DRE] during an audit under the guidelines provided by the Department of Real
19 Estate. Thus the specific steps and procedures used by [the DRE] pursuant to the DRE Audit
20 Manual will necessarily affect the outcome of his audit.” After an in camera review of the
21 manuals, the administrative judge ordered most of the manuals revealed. (*Id.* at p. 1192 1193.)

22 The DRE challenged that order by way of a writ in Superior Court claiming the manuals
23 were protected under Evidence Code § 1040. The Superior Court also reviewed the manuals in
24 camera and agreed with the DRE, finding that the manuals were privileged, confidential, and not
25 subject to discovery, and that the disclosure order was an abuse of discretion. The Superior Court
26 found that the manuals were “official information” and contained:

1 ...confidential investigative training materials that describe investigative
2 techniques and game plans for ferreting out violations of law. They include
3 information to help investigators identify ‘red flags’ and techniques dealing with
4 protection of the public from unscrupulous real estate businesses. If the
5 information in the manuals, or even parts of the manuals, was disclosed to
6 [Bennett] and/or the public in general, it would compromise the effectiveness of
7 the investigations because licensees could devise methods to avoid detection of
8 violations of the law. Disclosure of the manuals, or any part thereof, is against the
9 public interest.

10 (*Id.* at pp. 1193 1194.)

11 The Superior Court also found that all but one manual was completely irrelevant, and most of the
12 other manual was irrelevant, to the issues before the Administrative Law Judge. (*Id.* at p. 1194.)

13 The appellate court agreed with the Superior Court that the information constituted official
14 information and, under the balancing test of Evidence Code § 1040(b), should not have been
15 ordered disclosed. (*Id.* at p. 1195.)

16 Request (e) is a perfect example of the overbroad nature of these requests since there were
17 no witnesses who testified during this trial for a “deal.”

18 Although the materials Kennedy requested *might* include evidence favorable to
19 him, they would also likely include evidence that was entirely neutral and might
20 even include evidence unfavorable to him. Since neutral and unfavorable materials
21 are clearly not materials to which Kennedy would have been entitled at time of
22 trial even under the broadest reading of section 1054.1(e) and *Brady*, Kennedy’s
23 request does not describe materials to which he would have been entitled at time
24 of trial and thus it is overbroad. The trial court was under no obligation to parse
25 Kennedy’s request and issue a discovery order for some subset of materials
26 encompassed by his request. If Kennedy’s request, taken as a whole, did not ask
27 for materials to which he would have been entitled at time of trial, then the trial
28 court was justified in denying it.

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 371-372, italics in original.)

“9. MPD and MFD forensic evidence collection policies and procedures in effect
in 2002 and 2003.”

Response – See previous response. Additionally, MFD was not part of the prosecution
team.

“10. The initial report(s) that MPD Evidence ID Tech Lovell’s “Supplemental

1 *Report” supplements.”*

2 **Response** – This request presupposes that they have ID Tech Lovell’s “Supplemental
3 Report.” Lovell assists others (that was his assignment) so his reports would be “supplemental
4 reports” to those other personnel.

5 *“11. All notes, reports, emails, voicemail recordings, and/or other internal*
6 *communications between MPD and/or MFD personnel on December 31, 2002,*
7 *regarding the presumptive positive blood test result from the mattress fabric*
8 *cutting, about which the police chief, fire chief, and city manager were all informed*
9 *and who then responded to the evidence locker to view the evidence.”*

10 **Response** – The People incorporate by reference all the previous legal reasons why this
11 item is not discoverable. They have the statement from the *former* investigator who claims this
12 happened (which the People do not concede). However, to obtain any of this discovery the
13 defendant would have to prove that it would further his writ, not just that he wants it. Speculation
14 is not a substitute for the required proof:

15 “[T]he Due Process Clause has little to say regarding the amount of discovery
16 which the parties must be afforded....”].) Moreover, “*Brady* does not require the
17 disclosure of information that is of mere speculative value” (*People v. Gutierrez*
18 (2003) 112 Cal.App.4th 1463, 1472), and defendant himself concedes that “it
19 remains speculative as to what might have been discovered.” He acknowledges
20 that there is no way to know “if disclosure of [Conya L.’s] address would be helpful
21 or harmful to [defendant’s] defense.” Because defendant has not shown that the
22 prosecution withheld evidence that was both “favorable and material” to the
23 defense (*In re Bacigalupo, supra*, 55 Cal.4th at p. 333, his claim is without merit.”

24 (*People v. Williams* (2013) 58 Cal.4th 197, 258–259.)

25 *“12. All MPD and MFD reports, notes, photos, audio and video recordings and*
26 *transcripts thereof, documenting and/or memorializing all investigatory actions*
27 *taken in relation to sightings of a similar van in the La Loma neighborhood,*
28 *immediately prior to it being reported on fire the morning of December 25, 2002,*
29 *including but not limited to:*

30 *a. Mike Chiavette’s [sic] interview with MPD reporting that he saw a*
31 *“bright orange Blazer type vehicle in East La Loma Park” that resembled the*
32 *color of a “Cal Trans” van with suspicious looking men standing nearby, and he*
33 *also saw a dog he recognized as the Petersons’ dog, McKenzi [sic], in the park on*
34 *the morning of December 24, 2002;”*

35 **Response** – The People incorporate by reference all the previous legal reasons why this

item is not discoverable. As discussed extensively above, the defense has Off. Nicolai's report.

"b. The report called in by Patty R., who informed MPD that on December 25, 2002, at 6:30 a.m., a "rust colored" van stalled out on her street in front of her home on Highland Drive, within 1,000 feet of the Petersons' home, and a woman knocked on her door asking for gas, which her husband provided to her;"

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. This was a tip reported at Bates page 14791. The tip goes on to say that the "Occupants were 2 women." Not the three "gang banger" type Hispanic males, nor the three dark-skinned (but not African American) men, nor any other version of third-parties the defense has referred to.

"c. All reports related to any investigatory efforts to obtain information related to an "orange Blazer," as indicated by the information called in by Hession H., and all information and/or witness statements obtained pursuant to those efforts."

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. In fact, this tip is even *less* discoverable than the prior tip. At Bates page 14775, it is documented that on December 27, 2002 Hession called and "said an officer came to her residence earlier today regarding an orange Blazer, to see if she had seen one. She just saw an orangish red pickup, possibly Toyota, with camper shell, lower to ground. Female driver with long dark hair drive by her residence." According to the defense, much like Gudgell, now a van is like a Blazer which is like a pick-up when it comes to "sightings of a similar van."

"13. All MPD and MFD reports, notes, photos, audio and video recordings and transcripts thereof, documenting and/or memorializing all investigatory actions taken regarding the theft of the orange van, prior to its burning, including, but not limited to:

a. Interviews with all witnesses, including but not limited to:

i. Terry Borden;

ii. Dorth Borden;

iii. Mark F.;⁵²

⁵² In his motion the petitioner has a "footnote 15" connected to this name which states, "The name "Mark F." and a date of birth is listed as a name "to appear" in MFD Fire Inspector Spitulski's December 31, 2002 report. However, there is no mention of that name in the body of the report." Spitulski goes on to state in Exhibit #9, P. 20, "I do not recall who this individual was or what his connection to the case was." If the

- iv. Robert S. AKA Bobby R.; and,
v. Any of the other individuals encountered at the Borden property on December 31, 2002.
- b. All reports submitted by all MFD personnel present on the scene, including but not limited to Bryan Spitulski, Matthew Curless, Michael Peterson, Django Valledor, and Delbert Jolly;
- c. Police and fire reports, notes, interviews, and/or other documents concerning the theft of another vehicle or trailer from the Borden's business property roughly two weeks prior to the van fire on December 25, 2002, as Terry Borden relayed to Fire Investigator Bryan Spitulski;
- d. Investigation into all individuals who had access to the Borden van prior to its apparent theft, including but not limited to a list of Borden's employees;
- e. Investigation into whether the key to the van was with the van and/or whether a copy of the key was in the possession of anyone associated with the van;
- f. Investigation into Robert S.'s (AKA Bobby R.) criminal history, including the burglary he was on probation for, which rendered him searchable, as indicated in Det. Shipley's January 23, 2003 report;
- g. All documents, audio and video recordings, inventory of evidence collected related to MPD's search of Robert S.'s residence, located on River Road, on December 31, 2002, or any other date, in connection with the investigation into the disappearance of Laci Peterson, the Medina burglary, and/or the intentionally set van fire referenced above the morning of December 25, 2002, including but not limited to the "miscellaneous tools, safe, and additional items" found in Robert S.'s possession on December 31, 2002."

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. To avoid repetition, the People will respond to all subsets in this subpart either as a group or by the stated letter if necessary.

These requests relate to an unrelated car theft and arson case; the second theft from the same victim in two weeks. The defense explains *nothing* as to how any of this material, if it exists, would be of sufficient help to change the outcome of this case – he can only speculate.

"We know of no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case." (*Moore v. Illinois* (1972) 408 U.S. 786, 795.) As stated above, since the vehicle theft/arson was not exculpatory and

petitioner's own witness, who wrote the original report didn't document anything in the report and now doesn't remember anything about this person, how are the people expected to "discover something" for him?

1 related to a third-party issue, the defendant has failed to meet his burden of proof. He has also
2 failed to offer a court discovery order that would have compelled the production of such an
3 accounting.

4 "Hitch does not "affirmatively require[] the police to employ specific investigative
5 techniques" (*People v. Cooper* (1979) 95 Cal.App.3d 844, 850), nor impose a "duty
6 to affirmatively exert effort to discover potential evidence ... for the purpose of
7 preserving such evidence for the defense" (*People v. Maese* (1980) 105 Cal.App.3d
8 710, 720), nor a duty "to test the evidence in the absence of a defense request...."
9 (*People v. Newsome, supra*, 136 Cal.App.3d at p. 1006.) Moreover, "[t]he
prosecution is not required to engage in foresight and gather up everything which
eventually might prove useful to the defense." (*People v. Watson* (1977) 75
Cal.App.3d 384, 400; see also *People v. McNeill* (1980) 112 Cal.App.3d 330, 338.)

10 In this case, Mr. Streeter was not sure the blood at the scene of the crime could
11 have been typed if it had been preserved, although he would have expected to be
12 able to. Sergeant Herron, who was responsible for gathering evidence at the scene,
13 believed the blood in the bedroom was the victim's and may have felt the amount
14 of blood at the point of entry was not sufficient to yield useful test results. Although
15 the blood stains were potentially material, and the prosecution would doubtless
16 have been required to preserve them had they actually been collected, to require
17 law enforcement officers in the first instance to collect blood stains at the scene of
a crime which may or may not yield useful results would compel them to "gather
and collect everything which, with fortuitous foresight, might prove useful to the
defense" (*People v. McNeill, supra*, 112 Cal.App.3d at p. 238), and improperly
"cast upon the prosecution the burden of preserving what may only be termed
'potential' evidence...." (*People v. Maese, supra*, 105 Cal.App.3d at p. 720.)

18 This case is different from the *Hitch* situation where raw data (breath) was
19 collected, tested, and destroyed. Destruction of the raw data precluded defendant
20 from himself testing it, thereby denying him the opportunity to impeach the
21 incriminating test results. Nor is this case like *People v. Nation, supra*, 26 Cal.3d
22 169, where collected evidence (semen) was retained but not adequately preserved
to allow defendant to test it. In each case, evidence was actually collected by law
enforcement officers. But, as *Hogan, supra*, points out, neither case imposed a duty
to obtain such evidence in the first instance. (*Hogan, supra*, 31 Cal.3d at p. 851.)
[footnote omitted.]

23 Against these and other cases cited, we have found no cases of precedential value
24 which squarely hold that the prosecution's duty to preserve material evidence
25 encompasses an initial duty to affirmatively collect or gather or seize potentially
26 material evidence in the course of an investigation for defendant's use."

27 (*People v. Bradley* (1984) 159 Cal.App.3d 399, 405–406.)

1 There is no requirement now, or in the past, to produce the amount of imaginary items that
2 the defendant thinks he wants that have no relevance to his case.

3 " '[T]he law does not impose upon law enforcement agencies the requirement that
4 they take the initiative, or even any affirmative action, in procuring ... evidence
5 deemed necessary to the defense of an accused.' [Citation.]" (*People v. Newsome*
6 (1982) 136 Cal.App.3d 992, 1006; see e.g., *In re Michael L.* (1985) 39 Cal.3d 81,
7 86–87 (no duty to seize victim's videotape of robbery); *People v. Hogan* (1982) 31
8 Cal.3d 815, 851; *People v. McNeill* (1980) 112 Cal.App.3d 330, 338 (no duty to
9 seize fingernail scrapings of victim); *People v. Ventura* (1985) 174 Cal.App.3d
10 784, 794–795 (no duty to take and preserve intoxication test at time of arrest);
11 *People v. Kane* (1985) 165 Cal.App.3d 480, 485 (no duty to impound victim's
12 automobile); *People v. Bradley* (1984) 159 Cal.App.3d 399, 404–408 (no duty to
13 seize blood-stained articles at crime scene); *People v. Maese* (1980) 105
14 Cal.App.3d 710, 719–720 (no duty to take fingerprints); *People v. Flores* (1976)
15 62 Cal.App.3d Supp. 19, 23 (no duty to obtain names of witnesses).) "The police
16 cannot be expected to 'gather up everything which might eventually prove useful
17 to the defense.' [Citations.]" (*People v. Hogan* (1982) 31 Cal.3d 815, 851; see
18 *People v. McNeill* 112 Cal.App.3d at p. 338.)"

19 (*People v. Callen* (1987) 194 Cal.App.3d 558, 561–562.)

20 Request (g) is a perfect example of another overly broad, all inclusive, repetitive request
21 where the defendant doesn't attempt to hide his failure to follow the law or meet his burden of
22 tailored discovery. He simply states he wants everything related to the investigation "on
23 December 31, 2002, or any other date, in connection with the investigation into the disappearance
24 of Laci, the Medina burglary, and/or the intentionally set van fire ..." This is exactly what the
25 court has forbidden.

26 The two requests at issue here are exactly the sort of "free-floating" requests the
27 *Steele* court disapproved. In effect, they ask for anything to which Kennedy is
28 entitled under section 1054.9 that is not encompassed in his previous requests.
Because they are not focused requests for specific information, the trial court did
not abuse its discretion in denying them."

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 397–398, as modified on denial of reh'g
(Jan. 2, 2007).)

 The request for this item and all the subparts is prohibited by *Steele* and *Kennedy*, does
not further his writ and is far outside the realm of what is allowed by Pen. Code §1054.1. For all

1 the reasons given throughout these various responses, the People ask the court to deny all
2 discovery related to the arson matter.

3 *“14. All reports, notes, recordings, or other documents detailing statements made*
4 *by witnesses at the scene of the van fire, including but not limited to the name and*
5 *full statement made by the reporting party, who stated that the van was not present*
in the alleyway when he went to sleep the night before.”

6 **Response** – The People incorporate by reference all the previous legal reasons why this
7 item is not discoverable. It appears the defense has the statement so it is unclear what more is
8 wanted.

9 *“15. A complete and thorough description of all locations within the MFD and*
10 *MPD’s systems for cataloguing and storing reports, evidence, photos, and*
11 *communications that Det. Grogan searched for discovery that is responsive to Mr.*
Peterson’s request in 2016 for investigation materials related to the van fire,
including but not limited to:

12 *a. All correspondence, including but not limited to email communications,*
13 *by and between District Attorney Birgit Fladager and Det. Craig Grogan*
14 *requesting a search for evidence related to the incendiary van fire, as referenced*
in Det. Grogan’s 2016 report;

15 *b. The complete MFD case file related to the investigation of the van fire,*
16 *MFD Case No. 02-19142, as referenced in Det. Grogan’s 2016 report;*

17 *c. The complete MPD case filed [sic] related to the investigation of the van*
18 *fire, MPD Case No. 02-142687, as referenced in Det. Grogan’s 2016 report;*

19 *d. Correspondence by and between Det. Grogan and the Department of*
20 *Justice Central Valley Crime Laboratory regarding the mattress cuttings, as*
21 *referenced in Det. Grogan’s 2016 report;*

22 *e. A complete copy of the Central Valley Crime Laboratory report*
23 *regarding the examination and forensic testing of the mattress cuttings, including*
24 *but not limited to serology testing and reports, bench notes, color photographs,*
25 *and all internal and external correspondence concerning the testing of those items,*
26 *as referenced in Det. Grogan’s 2016 report.”*

27 **Response** – The People incorporate by reference all the previous legal reasons why this
28 item is not discoverable. To avoid repetition, the People will respond to all subsets in this subpart
either as a group or by the stated letter if necessary:

This is a catch-all *Steele* request and isn’t even asking for discovery but wants a “behind
the scenes look” at how agencies store their information. This request isn’t even for something
related to the crime for which the defendant was convicted but for an event in 2016. This is not

1 allowed by Prop. 115 or Penal Code §1054.1 — it should be denied under the many cited
2 provisions of *Steele* because it is overly broad and unfocused as it relates to a pending writ.
3 Additionally, these materials, just like the manuals requested above, would only be discoverable
4 directly from the prosecution if they contained exculpatory (see Pen. Code, §1054.1(e)) or *Brady*
5 evidence since they do not fall under any other statutory category. Even assuming that the defense
6 could make such a showing, but have failed to even attempt, there would still be no discovery
7 obligation on the part of the prosecution because the preparation and/or use of such storage
8 systems is not an investigatory function of the police department, meaning the training manuals
9 are properly viewed as outside the possession of prosecution team. (See *People v. Superior Court*
10 (*Barrett*) (2000) 80 Cal.App.4th 1305, 1310, 1317 1318.)

11 These materials are also “official information” as defined in Evidence Code §1040. (See
12 Evid. Code, § 1040 [“information acquired in confidence by a public employee in the course of
13 his or her duty and not open, or officially disclosed, to the public prior to the time the claim of
14 privilege is made”].) (See *Suarez v. Office of Administrative Hearings (Bennett)* (2004) 123
15 Cal.App.4th 1191).

16 Requests (b), (c) and (e) are duplicative requests. The remainder of the requests are for an
17 event in 2016, 14 years after the crime for which the defendant stands convicted. He doesn’t
18 bother to explain what might be in those materials that could assist in his writ. That failure has
19 repeatedly been shown:

20 Although the materials Kennedy requested *might* include evidence favorable to
21 him, they would also likely include evidence that was entirely neutral and might
22 even include evidence unfavorable to him. Since neutral and unfavorable materials
23 are clearly not materials to which Kennedy would have been entitled at time of
24 trial even under the broadest reading of section 1054.1(e) and *Brady*, Kennedy’s
25 request does not describe materials to which he would have been entitled at time
26 of trial and thus it is overbroad. The trial court was under no obligation to parse
Kennedy’s request and issue a discovery order for some subset of materials
encompassed by his request. If Kennedy’s request, taken as a whole, did not ask
for materials to which he would have been entitled at time of trial, then the trial
court was justified in denying it.

27 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 371-372, italics in original.)

1 For all the many and various reasons noted above, the People request that any discovery
2 related to the arson be denied.

3 **E. Eyewitnesses Who Reported Seeing Laci on or After December 24, 2002**

4 Defendant Peterson lists multiple alleged reported sightings of Laci walking after he left
5 for the San Francisco Bay, as he did in his DNA motion (p. 23-38.) However, the reports when
6 reviewed in their entirety, mostly identify a female wearing black pants. (Dean T., Bates 14750;
7 Homer Maldonado, Bates 41913; Vivian Mitchell, Bates 15510⁵³; Grace Wolf, Bates 41915; and
8 John Brazil, Bates 2106-2107 (Brazil stated the woman he saw wore dark colored sweatpants but
9 he could not identify the woman's age or any other details about her description.) As noted in the
10 Supreme Court Opinion upholding the defendant's guilty verdict, Laci was found in the Bay
11 wearing light-colored (i.e., tan/cream/beige) "Motherhood Maternity" capris on April 14, 2003.
12 (DSC - JNE Exh. 13, p. 422.) Defendant Peterson's trial counsel also presented evidence of many
13 of these tips at trial. (98 RT 18489-18491 (Freitas); 98 RT 18492-18508 (Homer Maldonado,
14 Defense Trial Exhibit M-1; 98 RT 18484-18508 (Helen Maldonado).)

15 After being convicted, the defense filed his first Petition for a Writ of Habeas Corpus in
16 2015. In Claim Nine, the defendant stated:

17 Petitioner Was Deprived Of His Fifth, Sixth, Eighth And Fourteenth Amendment
18 Rights By His Counsel's Ineffective Assistance In Failing To Present Exculpatory
19 Evidence (DSC - JNE. Exh. 10, Page 198)

20 ***

21 [In Claim Nine, habeas counsel sets forth the exculpatory evidence claimed to have not been used
22 by Geragos during the trial. The following paragraph numbers list the names of the witnesses
23 discussed.]

24 15. Diana Campos worked as a custodian at Stanislaus County Hospital in
25 Modesto, California. (DSC - JNE. Exh. 10, Petn. Exh. 12 at HCP-000331.)

26 ***

27 18. Frank Aguilar - who worked at tomato cannery for 30 years –

28 ⁵³ Ms. Mitchell not only reported this event to law enforcement, but also to the Modesto Bee. That article
was also discovered to defense counsel at Bates 13802. (However, members of law enforcement also
learned from neighbors of Ms. Mitchell that she had a tendency to confuse individuals with others. Bates
30866-30871.)

1 ***

2 21. William Mitchell has lived in Modesto since 1949

3 ***

4 22. Mr. Mitchell recalls Christmas Eve morning "very well." (*Id.* at Petn. Exh. 14,
5 HCP-000339.) He was at home with his now-deceased wife, Vivian. Vivian was
6 doing the dishes at the kitchen sink, which is at a window facing La Sombra Ave.
7 Vivian drew Mr. Mitchell's attention to a "beautiful lady ...

8 ***

9 29. Anita Azevedo lived in Modesto in 2002.

10 ***

11 30. But Azevedo was not alone in seeing Laci walking the dog on the morning of
12 December 23, 2002. Thus, Grace Wolf,

13 ***

14 46. The failure of Mr. Geragos to introduce the testimony of the many witnesses
15 who saw Laci Peterson walking her dog on December 24, 2002, constituted
16 ineffective assistance. Because that evidence was exculpatory, it was prejudicial
17 and undermined confidence in the outcome of the trial.

18
19 The Supreme Court held on October 14, 2020 that "Claims 2, 3, 4, 5, 6, 7, 8, 9, 10 and
20 11 in the petition are denied on the merits."

21 It has long been the rule that absent a change in the applicable law or the facts, the
22 court will not consider repeated applications for habeas corpus presenting claims
23 previously rejected. [Citations.] The court has also refused to consider newly
24 presented grounds for relief which were known to the petitioner at the time of a
25 prior collateral attack on the judgment.[Citations.] The rule was stated clearly in
26 *In re Connor* [(1940)] 16 Cal.2d 701, 705: "In this state a defendant is not permitted
27 to try out his contentions piecemeal by successive proceedings attacking the
28 validity of the judgment against him." (*In re Clark*, (1993) 5 Cal.4th 750, 767-
768.)

(*In re Martinez* (2009) 46 Cal.4th 945, 956.)

The defendant has previously litigated the issue of witnesses who claimed to have seen
Laci, both in the trial court⁵⁴ and the Supreme Court; he has lost both times. This request for
discovery relating to the same grounds is barred.

⁵⁴ Despite the defendant's claims about the jury not hearing about the so-called eyewitnesses, he fails to explain the exhibits presented to the jury – People's Trial Exh. 267 a map of Modesto depicting every sighting of Laci on or around December 24, 2002 (there are approximately 35 on this chart); People's Trial Exh. 268A a map of California depicting sightings of Laci on or around December 24, 2002 (there are approximately 40 not including Modesto's); and People's Trial Exh. 268B a map of the USA and a few other countries depicting sightings of Laci after Dec. 24 (over 100 displayed). Det. Grogan described these tips while explaining the exhibits (RT 17761 – 17766; 18078 – 18079).

1 "It is, of course, the rule that a petition for habeas corpus based on the same
2 grounds as those of a previously denied petition will itself be denied when there
3 has been no change in the facts or law substantially affecting the rights of the
4 petitioner.' [Citations.] In this case, the petition is not only barred as successive but
5 also because it is repetitive."

6 (*In re Martinez* (2009) 46 Cal.4th 945, 950, fn. 1.)

7 "This court has never condoned abusive writ practice or repetitious collateral
8 attacks on a final judgment. Entertaining the merits of successive petitions is
9 inconsistent with our recognition that delayed and repetitious presentation of
10 claims is an abuse of the writ."

11 (*In re Clark, supra*, 5 Cal.4th at p. 769; see *In re Reno*, (2012) 55 Cal.4th 428, 455, superseded
12 by statute on another ground as stated in *In re Friend, supra*, 11 Cal.5th 720.)

13 The defendant cannot successfully bring another writ on these grounds; since no writ can
14 be taken on these grounds, no discovery relating to these grounds would be in aid of his writ and
15 this request should be denied. Even if this court were inclined to consider his request, the specifics
16 do not warrant any discovery. The defendant has asked for the following broad categories and
17 related subparts of item E:

18 "1. All reports, audio and video recordings and transcripts thereof, photos, notes,
19 and/or other documents detailing investigative actions taken in response to
20 eyewitness accounts reporting sightings of Laci Peterson on or after December 24,
21 2002, including, but not limited to:"

22 **Response** –The facts of the possible Laci sightings were submitted to the jury by the
23 defense and rejected. It is therefore subject to the rule of collateral estoppel/law of the case and
24 the defense had the discovery related to these matters to which they were entitled. Therefore, if it
25 doesn't relate to file reconstruction (set forth below), then he is barred.

26 a. Maps of search areas, the names of officers assigned, and the search areas
27 assigned to each officer. Materials developed or used by law enforcement in 2002
28 and/or early 2003 while Laci was missing to note or track possible December 24,
29 2002 neighborhood sightings of Laci, McKenzie [sic], or of a woman walking a
30 dog.

31 **Response** – The People incorporate by reference all the previous legal reasons why this
32 item is not discoverable. This is another request for an accounting of what the police may or may

1 not have done almost 22 years ago. The request does not fall within *Steele* or §1054.1.

2 “[T]he federal Constitution does not confer a general right to criminal discovery.”
3 (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1258.) Under the discovery rules
4 enacted as a part of Proposition 115, the prosecutor is required to provide to the
5 defendant only those statements of the defendants, witnesses whom the prosecutor
6 intends to call at trial, or any exculpatory evidence. (Pen. Code § 1054.1.) Even
7 under prior law, the defendant was not entitled to statements of all witnesses. (*Joe*
8 *Z. v. Superior Court* (1970) 3 Cal.3d 797, 806; *People v. Cooper* (1960) 53 Cal.2d
9 755, 770.) Of course, the prosecution has the duty to disclose those statements
10 which are required to be disclosed as defined in *Brady v. Maryland* (1963) 373
11 U.S. 83. But, “[t]here is no general constitutional right to discovery in a criminal
12 case, and Brady did not create one. ...” (*Weatherford v. Bursey* (1977) 429 U.S.
13 545, 559; see also *Gray v. Netherland* (1996) 518 U.S. 152, 168.)

14 The defendant also does not show how any of this material, if it exists, would aid his
15 successive (and barred) writ. Nothing in this material could impact the outcome of his case.

16 “b. All reports reflecting any interview(s) by Det. Reid or any other officer with
17 **Colleen F.**, who reported to MPD on December 30, 2002, that “[o]n 12/24
18 between 1000–1030 hrs she was backing out of her driveway when she saw
19 someone that looked like Laci.” ”

20 **Response** – The People incorporate by reference all the previous legal reasons why this
21 item is not discoverable. This tip is at Bates page 14828. It appears to be dot #16 on trial Exhibit
22 #267.

23 “c. All reports reflecting any interview(s) regarding information Homer and/or
24 Helen Maldonado provided to Sgt. Ron Cloward on January 3, 2003, while Laci
25 was still missing, that Mr. Maldonado saw Laci Peterson walking her dog in the
26 La Loma neighborhood on December 24, 2002, and all reports reflecting any
27 follow up interview regarding that same information Homer and/or Helen
28 Maldonado provided to MPD Chaplain Crocker on January 14, 2003.”

29 **Response** – The People incorporate by reference all the previous legal reasons why this
30 item is not discoverable. Homer described Laci as wearing black pants and a white top. (Ex. 6 of
31 defense DNA motion, Ermoian report attached as Ex. B to Paige McGrail’s declaration). Both
32 witnesses provided copies of their trial subpoena to the current defense team. Both witnesses were
33 discussed during trial - 98 RT 18492-18508 (Homer Maldonado, Defense Trial Exhibit M-1; 98
34 RT 18484-18508 (Helen Maldonado).) The defendant is collaterally estopped from attacking this

1 issue, and therefore barred from additional discovery.

2 *“d. All reports reflecting any interview(s) while Laci was still missing with Tony*
3 *Freitas, who reported to MPD on December 30, 2002, that he “[s]aw Laci on 12-*
4 *24-02 about 10:00 a.m.” walking the dog in a northwest direction on La Loma,*
5 *near the location where Homer Maldonado reported seeing Laci around that same*
6 *time.”*

7 **Response** – The People incorporate by reference all the previous legal reasons why this
8 item is not discoverable. Freitas described the woman (referring to Laci) as “wearing dark
9 clothing.” (Ex. C of Freitas declaration attached to DNA motion.) Freitas also said it was at least
10 0945 when he saw the woman; in his initial tip he said it was 1000. Freitas admitted seeing the
11 missing person flyer and Laci’s picture on the news. Aside from the obvious question as to why
12 someone would recall a random unknown person walking on the street as you drive by, the
13 location where Freitas described seeing Laci is over five blocks from the Covenia house. Scott
14 Peterson, by his own admission, did not leave the house until after hearing a statement on an
15 episode of Martha Stewart at either 0945 or 0946 (RT 18769). Mary Anderson, an expert with
16 AT&T, testified that the defendant retrieved a voice mail at 1008 hours while pinging off the cell
17 tower for his house. (RT 14994.) Inv. Steve Jacobson tested the cell tower location of the
18 voicemail proving that the call originated at the defendant’s address at 1008 hours. (RT 15388-
19 15390.) Thus, making it impossible for Mr. Freitas to see Laci five blocks away before the
20 defendant even left the home.

21 Since Freitas was not called as a witness, allowable discovery would have been limited.
22 Since his testimony would relate to Claim Nine, it is barred and cannot now be re-litigated in a
23 lower court.

24 *“e. All reports reflecting any interview(s) while Laci was still missing by Det.*
25 *Grogan or any other officer to interview Sharon P., who reported she “might have*
26 *seen Laci Peterson” on La Loma just south of the bridge “on Christmas Eve, not*
27 *far from the location where Maldonado and Freitas reported seeing Laci, the*
28 *morning of December 24, 2002.”*

Response – The People incorporate by reference all the previous legal reasons why this

1 item is not discoverable. This witness's tip is documented at Bates page 15095; the defense
2 included it as part of McGrail's declaration in the DNA attachments. (Def. Exh. 7, p.3.) Sharon
3 described the person she saw as wearing "all black." Since Sharon P. was not called as a witness,
4 allowable discovery would have been limited. Since her testimony would relate to Claim Nine, it
5 is barred and cannot now be re-litigated in a lower court.

6 *"f. All reports reflecting any interview(s) while Laci was still missing with Rebecca*
7 *J., who reported on December 26 and 27, 2002 that her neighbors at 215 Coven*
8 *saw the "missing person walking her golden retriever west on La Loma Ave near*
Santa Barbara."

9 **Response** – The People incorporate by reference all the previous legal reasons why this
10 item is not discoverable. This was a face-to-face interview during the canvas (Bates page 2745)
11 where Rebecca J. reported a neighbor had relayed seeing Laci and she was wearing a white T-
12 shirt with no coat. (The description put out by the defendant to the police and the media.) This
13 person isn't even a witness, unless the defense called the neighbor who then testified and then
14 Rebecca J. might be able to impeach said neighbor. However, the defense has not shown that to
15 have happened.

16 *"g. All reports reflecting any interview(s) while Laci was still missing with Frank*
17 *and Martha Aguilar at 215 Coven.*"

18 **Response** – The People incorporate by reference all the previous legal reasons why this
19 item is not discoverable. Frank Aguilar was discussed in paragraph 18 of the Habeas Petition.
20 Martha Aguilar was interviewed by the defense according to their reports in 2003. Ms. Aguilar
21 was driving down a street (several blocks from the Peterson home). Ms. Aguilar admitted to seeing
22 photos of Laci and never reported her sighting to the police. The defense report only states that
23 Aguilar said the person matched the description of Laci – Frank said that the person was wearing
24 a "white blouse and black pants." No declarations have been provided; Ms. Aguilar, according to
25 her husband, suffered a heart attack in 2007 that badly affected her memory. It should also be
26 noted that Ms. Aguilar claimed to be able to see an ankle tattoo while driving past in a moving
27 car. Since Mr. Aguilar was part of Claim Nine, any discovery related to him is barred and cannot

1 now be re-litigated in a lower court. Ms. Aguilar would be covered by the same principles.

2 *“h. All reports reflecting any interview(s) while Laci was still missing with Vivian*
3 *(“Reagean” [sic]) Mitchell who called MPD on January 1, 2003, to report that on*
4 *December 24, 2002, between 10:00 and 10:30 a.m., she “saw a lady who fits the*
5 *description of Laci who was walking a golden retriever.””*

6 **Response** – The People incorporate by reference all the previous legal reasons why this
7 item is not discoverable.

8 This witness is deceased. However, she was interviewed by the defense in 2003 and was
9 on the defense witness list for trial. During her defense interview, she admitted to seeing photos
10 of Laci and described the person she claimed was Laci as “wearing a white top with long sleeves
11 and black slacks.” The “sighting” was claimed to be between 1000 and 1030 hours (page 4 of
12 defense interview included with DNA motion.) This witness was also part of Claim Nine,
13 paragraph 22. This cannot be relitigated.

14 *i. All reports reflecting any interview(s) while Laci was still missing by Inv.*
15 *Bertalotto or other officer with Gene Pedrioli who reported to MPD that he saw*
16 *Laci the morning of her disappearance on the west side of the park with her dog.*

17 **Response** – The People incorporate by reference all the previous legal reasons why this
18 item is not discoverable.

19 This witness is deceased. Mr. Pedrioli’s tip is documented at Bates page 13586/15933 and
20 an interview at page 38571; the tips have been available to the defense since 2003. Pedrioli said
21 he saw “Laci” between 9:45 and 10:00 (before the defendant left home). Pedrioli also said he was
22 interviewed by defense attorney Matt Dalton who was an attorney on this case. Pedrioli’s wife
23 told the investigator that her husband had “quite an imagination and she usually doesn’t put much
24 stock in what he says.” (Bates page 38572). That might be why he wasn’t called as a witness.
25 Since Pedrioli was not called as a witness, the allowable discovery would have been limited. Since
26 his testimony would relate to Claim Nine, it would be barred and cannot now be re-litigated in a
27 lower court.

28 *“j. All reports reflecting any interview(s) while Laci was still missing with Rachel*
29 *B., who reported seeing a woman walking her dog on Wilson Avenue and “was*

1 *yelling at her dog to ‘Come back, [c]ome back’ because the dog had gotten away*
2 *from her.’”*

3 **Response** – The People incorporate by reference all the previous legal reasons why this
4 item is not discoverable. A tip was called in by Rachel B.’s landlord (Bates page 15052). Rachel
5 B. was then interviewed (Bates page 4556/15831 duplicate). Rachel told the officer that at
6 approximately 10 a.m. she was awakened by a “WFA, mid 20's wearing black pants and a white
7 T-shirt walking her dog on Wilson Ave.” Rachel also said to the officer that it could have been
8 her neighbor, only known to her as Julie. (Bates page 15831). Even if this were a more substantive
9 sighting, it occurred before the defendant left his residence so it is impossible.

10 *“k. Det. Grogan’s notes or report detailing his December 26, 2002 interview with*
11 *Mike Chiavette [sic], as referenced by Detective Brocchini. Chiavette [sic]*
12 *reported seeing the Peterson’s dog being walked on the footpath where Coven*
13 *dead-ends.”*

14 **Response** – The People incorporate by reference all the previous legal reasons why this
15 item is not discoverable. This person’s observations were discussed extensively under “D. Orange
16 Van” and the People incorporate those facts/statements herein. The rest of this request is the
17 defense asking for something they know doesn’t exist; at trial, the following discussion took place
18 between Geragos and Det. Grogan:

19 Q. Okay. And he had told you about a gentleman by the name of Mike Chiavette
20 [sic]?

21 A. Correct.

22 Q. Okay. And you talked to Chiavette [sic]?

23 A. I did not.

24 Q. Okay. One of the -- you researched that interview; is that correct?

25 A. Correct.

26 Q. Okay. And he said he saw two people with the dog he believed to be the
27 Peterson's dog?

28 A. Correct.

1 Q. And he said he had seen the dog before?

2 A. Yes.

3 Q. And that he didn't know Peterson but he had apparently seen her before in the
4 neighborhood; is that correct?

5 A. Yes.

6 Q. Okay. Is that not -- that -- is there any way to either verify or not verify that
7 information?

8 A. Whether he saw McKenzi [sic] or some other dog?

9 Q. Right. Did anybody show him a picture of McKenzi [sic] or anything, did a
10 photo lineup of McKenzi [sic] and some of these other dogs that pictures were
11 taken of?

12 A. No, that was never done.

13 Q. Okay. You did have -- obviously the Modesto PD had the capability to take
14 pictures of these other dogs, because there's at least 15 or 20 pictures of dogs in
15 the discovery that's been provided, correct?

16 A. Yes.

17 Q. Okay.

18 A. When we were following up with other people that were walking in the area,
19 we took photographs of their dogs.

20 Q. Okay. Now, the -- specifically did you interview Chiavette [sic]?

21 A. No.

22 Q. Okay. Do you see a report by Brocchini where -- and this is -- once again it says
23 9/18 where Brocchini says that you and Officer Nicolai interviewed Chiavette
24 [sic]?

25 A. Yes, I see that.

26 Q. Okay. So that's not true, what's contained in Brocchini's report about you
27 actually interviewing this particular gentleman?

28 A. No, I didn't talk to him. (RT 18284 – 18286.)

1 *"l. All reports reflecting any interview(s) while Laci was still missing by Det.*
2 *Grogan or any other officer on the December 29, 2002 call from city worker John*
3 *Brazil, who reported seeing a white, pregnant woman walking a dog in La Loma*
4 *Park the morning of December 24, 2002."*

5 **Response** – The People incorporate by reference all the previous legal reasons why this
6 item is not discoverable. Brazil's tip was documented at Bates page 2106. In this tip, he claimed
7 that he saw a pregnant woman (could not tell her age or any other details about her description)
8 and she was walking a dog. He said the dog got away and the lady "was walking pretty fast. It
9 was not a leisurely walk" to go after the dog. (Part of Paige McGrail's declaration attached to
10 DNA motion.) He said she had on "dark colored sweatpants." Brazil said this occurred when he
11 was picking up trash in the park between 0830-1000 hours." Besides the inaccurate description,
12 this sighting was impossible because of the timeline described above. As a Claim Nine request, it
13 is barred and cannot now be re-litigated in a lower court.

14 *"m. All reports reflecting any interview(s) while Laci was still missing with*
15 *Thomas ("Tom") Harshman, who reported to MPD on December 28, 2002, that*
16 *he had just seen a pregnant woman fitting Laci's description."*

17 **Response** – The People incorporate by reference all the previous legal reasons why this
18 item is not discoverable. Trial counsel was able to get all Harshman's story before the jury without
19 him being subjected to cross-examination. Harshman's claim was that he was driving by when he
20 saw a pregnant Laci leaning up against a fence urinating, and then someone helped her/pulled her
21 into a tan van on December 28th. (RT 18504 – 18511; 18513 – 18523, 18693.) [Trial Exhibit
22 268B (RT 18693) provided a visual representation of the Harshman sighting.] Harshman also
23 described the woman as wearing "a red shirt and black pants." (RT 18511.)

24 Taken from the Prosecution closing argument at trial:

25 "The defense put an exhibit in. I wrote it in my notes here. D7Q. It was a map of
26 these alleged witness sightings. And I think it included Tony Freitas, and Grace
27 Wolf, and Homer Maldonado. I'm pretty sure those were the people. If I'm wrong,
28 just look at the testimony, look at the map itself. Not a single one came in to testify.
Why do you think that was? This is a very experienced defense team. They are
very good lawyers. They obviously know how to prove facts if they want to. Why

1 do you think they didn't bring in a single witness to testify that they saw Laci
2 Peterson walking that day? Remember, you heard a bunch of evidence about Tom
3 Harshman. Remember that whole thing with the fence, and the woman urinating,
4 and the van, and all that crazy story? How come Tom Harshman didn't get up here
5 on the stand? Let's hear what he has to say if that's true. None of those people came
6 in and testified. You know why? You can assume because that what they were
7 going to say was not credible, that's why."

8 (RT 20322-20323.)

9 The defense had this discovery and used it during the trial. There is nothing more to see
10 here.

11 *"n. Any photos of Laci Peterson or other women used during interviews with
12 eyewitnesses to determine whether they saw Laci, or in the alternative, identified
13 another woman."*

14 **Response** – The People incorporate by reference all the previous legal reasons why this
15 item is not discoverable. This is not actually a request for discovery but a demand for an
16 accounting of what the police did. "It is clear that the Constitution does not require the prosecution
17 to make a complete and detailed accounting to the defendant of all police investigatory work on
18 a case." (*People v. Nation* (1980) 26 Cal.3d 169, 175.) Is the defense suggesting that MPD should
19 have done a photo line-up of the missing person? That is not a basis for discovery before trial,
20 much less after conviction.

21 *"o. Any photos of the Peterson dog, McKenzi [sic], or other dogs that were used
22 during eyewitness interviews to determine whether they saw McKenzi [sic], or in
23 the alternative, identified another dog."*

24 **Response** – The People incorporate by reference all the previous legal reasons why this
25 item is not discoverable. As stated in Det. Grogan's testimony above – this was not done.

26 *"p. The identity of "two other pregnant women walking that day," as described by
27 Det. Brocchini in his interview with Fox News Correspondent Laura Ingle that
28 aired March 30, 2023."*

Response – The People incorporate by reference all the previous legal reasons why this
item is not discoverable. The defense is requesting a statement made by a retired officer 19 years
after the trial. He is no longer part of the prosecution team.

1 To the extent Kennedy is suggesting he had a right under *Brady* independent of
2 section 1054.9, to obtain a court order for discovery to assist him in prosecuting
3 his habeas corpus petition, he has failed to offer any authority supporting that
4 suggestion. Certainly, if Kennedy is able to identify materials to which he would
5 have been entitled at time of trial under *Brady*, and he has requested discovery
6 of those materials in the present motion, then he is entitled to an order for discovery
7 of those materials under section 1054.9 (assuming he has satisfied all other
8 requirements for obtaining such an order). But he has not shown any right to such
9 a discovery order based on *Brady* alone, independent of section 1054.9.

10 (*Kennedy, supra*, 145 Cal.App.4th at p. 369.)

11 "Because the only permissible focus under *Brady* is the fairness of, and potential
12 effect of undisclosed information upon, the underlying trial, petitioner would not
13 be entitled to discover complaints alleging misconduct that occurred after
14 petitioner's trial. Petitioner could not have introduced evidence of later-occurring
15 misconduct in his trial for the simple reason that such conduct had not yet occurred.
16 Thus, the failure to disclose complaints of later-occurring misconduct could not
17 have had any effect upon petitioner's trial."

18 (*Eulloqui v. Superior Court* (2010) 181 Cal.App.4th 1055, 1068.)

19 "q. Notes of interviews with any eyewitnesses who reported seeing Laci Peterson
20 alive on December 24, 2002, in the possession of and/or created by the Stanislaus
21 County District Attorney's Office."

22 **Response** – The People incorporate by reference all the previous legal reasons why this
23 item is not discoverable. These were not the People's witnesses so there is no Penal Code §1054.1
24 duty to make the notes or make them available assuming they exist. Lastly, since this is a Claim
25 Nine request, it is barred and cannot now be re-litigated in a lower court.

26 **F. Eyewitnesses Who Reported to MPD that They Had Seen the Petersons' Dog, McKenzie,
27 Alone and Unattended in the La Loma Neighborhood the Morning of December 24, 2002**

28 *1. All reports, audio and video recordings and transcripts thereof, reflecting any
interview(s) while Laci was still missing, with the following witnesses who called
MPD and reported seeing a dog fitting McKenzi's [sic] description walking alone,
unattended in the La Loma neighborhood the morning of December 24, 2002:*

*a. Leora Garcia reported to the MPD on January 7, 2003, that she was a
driving instructor and was in the La Loma neighborhood the morning of December
24, when she saw an older orange dog, by itself. The dog had a leash. On January
10, 2003, MPD Officer Hicks reported that he called Ms. Garcia and spoke to her
on the phone (i.e., without showing her a photo of McKenzi [sic]) and he
"determined [over the phone] that the dog was not the same dog belonging to the*

Peterson.” Mr. Peterson has received no discovery explaining on what basis the MPD determined the dog Ms. Garcia saw was not McKenzie [sic]. [On December 18, 2003, Officer Hicks conducted a follow up interview with Ms. Garcia. Although Mr. Peterson is in possession of an audio recording of the interview, no report documenting the circumstances of that interview or any follow up investigation into the information provided in that interview, including an additional description of the van she saw and a partial license plate number, have been provided to the defense. Accordingly, Mr. Peterson requests that the report corresponding to the December 18, 2003 interview and any related subsequent investigation be provided.]

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. The best that can be said about this person is that she is mistaken; to understand, the actual tip and report must be evaluated.

On January 7, 2003 at 1500 hours – tip:

Leora Garcia [phone number, address and date of birth redacted]. On 12/24, between 1025-1035 hrs, she was instructing a student driver. They were on River Road and turned by DMV, either B Street or D Street, and she saw the truck from the news releases, Dodge newer model, unk # of doors, unk bed of truck, pulling a fishing boat. The boat was aluminum with black and red motor, outboard style and it had a fishing seat. Unk what the driver looked like. He was at D Street headed onto 9th Street unk direction of travel. ¶ Leora then drove into the La Loma area and went by the park when she saw an older, orange, dog by itself. The dog had a leash with white around. She did not see the color of the lease. ¶ Leora said she noticed one to two blocks away that there was a vehicle pulled to the side of the road. She said she noticed a long coat hanging out and then it sped off. She only got a few possible letters of the plate and that it was a Texas plate. GH4 . . . ¶ She said the student driver was Noah [phone number redacted]

(Bates page 15905/15063) [This tip is copied at Bates page 4567 with handwritten notes that read “1-10-03, 1112 hours. Called left message with Garcia. and Noah. 1-10-03, Closed See report.”]

On January 10, 2003, Det. Hicks wrote a follow-up report:

On 01-10-2003, I was requested by Sgt. Tim Helton from the Modesto police department to conduct follow up on a tip received in the Laci Peterson Case. ¶ The tip [sic] was received from a Leora Garcia who stated she is a driving instructor for Luvs driving school. Leora stated on 12-24-02, at approximately 1030 Hrs., she noticed a vehicle matching the description of the one driven by Scott Peterson. Leora Garcia also stated that Scott Peterson's vehicle was towing a small aluminum boat also matching the description of the one belonging to Scott Peterson. At the time Leora Garcia notice the vehicle and boat she was providing drivers training

1 for a student around the DMV located on Burney St. ¶ Leora Garcia stated the first
2 time she noticed the vehicle and boat on River Rd. and eventually made a NIB turn
3 onto 9th St. The vehicle was eventually last seen driving towards the La Loma
4 area. ¶ A short time later Leora Garcia also noticed an older orange dog also in the
5 same area of the DMV. Leora Garcia stated the dog was older and walking in the
6 area with a leash around its neck. ¶ After speaking with Leora Garcia and
7 questioning her about the vehicle and the dog she described I determined that the
8 vehicle was not the same vehicle belonging to Scott Peterson. I also determined
9 that the dog was not the same dog belonging to the Peterson family. ¶ I also spoke
10 with the student driver who was in the vehicle with Leora Garcia. When I spoke
11 with the student driver about the incident he had no knowledge of what Leora
12 Garcia was talking about. The student driver was unable to provide me with any
13 information.

14 (Bates page 4566).

15 According to Ms. Garcia, she saw Peterson towing his boat at either “1025-1035 hrs” or
16 “1030” hrs. Even though Ms. Garcia was a driving instructor with a student trainee in her car, she
17 was able to provide a very detailed description of the boat Peterson was towing that she had seen
18 in the “news releases.” However, there are two problems – 1) the direction Ms. Garcia describes
19 the defendant driving would be towards his warehouse. The undisputed trial testimony was that
20 the defendant was keeping the boat at the warehouse making it impossible for Ms. Garcia to see
21 the boat; 2) we also know from the trial testimony that Det. Wall (a computer expert as will be
22 discussed later) testified to the time that the defendant used his warehouse computer on December
23 24, 2002, stating:

24 Q. Was there any additional computer usage on the Dell Home that day?

25 A. Not after 8:45 a.m.

26 Q. Was there other computer activity?

27 A. Yes, there was.

28 Q. What computer was that?

A. That would be on the Dell Work PC 4. *That computer activity started at
approximately 10:30 a.m. and ended at 10:56 a.m.*

(RT 14421 emphasis added; Bates page 37053).

According to the trial testimony of Karen Servas, she found the Petersons’ dog at approximately

1 10:18 a.m. (RT 19050) and the front gate of the Peterson house was locked and the side gate was
2 ajar. (RT 9424-9425.) She walked around the backyard, saw nothing, left the dog, shut the gate
3 and left. (RT 9428.)

4 The People are now forced to address another extreme example of “sandbagging”⁵⁵ by the
5 defendant contained in the DNA Reply filed on May 6, 2024 which takes form in part from a new
6 48-page exhibit (marked as Ex. # 2 DNA Reply) from Carl Jensen. At page 43 of this exhibit in
7 paragraph 191, Jensen attacks Karen Servas and her timeline. The People anticipate that the same
8 false information put forth there will be used again here. Jensen’s falsehood is summarized in the
9 following two paragraphs:

10 *202. I was unable to locate anything in the discovery provided to the defense*
11 *indicating that investigators ever checked the accuracy of the time stamps from the*
12 *Austins’ cash registers, before the prosecution built its entire case against Scott*
13 *Peterson around the time Karen Servas stated she put the Petersons’ dog in the*
14 *their backyard, was in turn based entirely on the time stamp of the receipt from a*
15 *purchase she made at Austins the morning of December 24, 2002.*

16 *203. In my opinion, based on my experience as a criminal investigator and based*
17 *on the importance of that particular item of evidence to the prosecution’s overall*
18 *case, the time stamp on Ms. Servas’s receipt should have been verified by MPD*
19 *when they obtained it from Karen Servas on January 3, 2003.*

20 To start with, Karen Servas was asked by Scott Peterson on December 28th to try and
21 narrow down the timeframe when she found the dog – he left her a voicemail making the request.
22 (RT 9438.) After the defendant asked her to do this, Servas re-enacted her steps... with a watch.
23 (RT 9437.) Servas verified her timeframe by using a receipt she obtained from Austin’s Christmas
24

25 ⁵⁵ “Withholding a point until the reply brief deprives the respondent of an opportunity to
26 answer it, however. Hence, a point raised for the first time therein is deemed waived and
27 will not be considered, unless good reason is shown for failure to present it before. (*People*
28 *v. Speegle* (1997) 53 Cal.App.4th 1405, 1418, fn. 8; *Neighbours v. Buzz Oates Enterprises*
(1990) 217 Cal.App.3d 325, 335, fn. 8; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §
616, pp. 647–648.) No good cause is shown here. In any event, defendants' position is
untenable.”

(*People v. Baniqued* (2000) 85 Cal.App.4th 13, 29; see also *People v. Adams* (1990) 216 Cal.App.3d 1431,
1441, fn.2.)

1 store. (People’s Trial Exh. 28.)

2 The owner of Austin’s Christmas store, William Austin, testified that he was shown
3 Servas’s receipt from his store by a Modesto Police detective. (RT 9485, People’s Trial Exh. 28.)
4 Austin testified that when the register was set up for the holiday season an employee called the
5 phone company to obtain the accurate time (RT 9493.) The time set in the register is verified. (RT
6 9486.) Austin confirmed that the time on Servas’s receipt was accurate for the Christmas shop
7 from the 24th late morning at 10:34 a.m. (RT 9485.) Carl Jensen, the investigator for defendant,
8 was in the courtroom during this testimony and Geragos asked him to stand up. (RT 9488.)

9 But Servas didn’t stop there, she also obtained her phone records because she had made a
10 call during her errands. (Trial Ex. #29, RT 9477.) The time stamp from the phone call matched
11 the Austin’s receipt timeframe and the timed reenactment. (RT 9434, 9477.) Servas then wrote a
12 note/memo to Det. Buehler documenting her steps and findings. This was marked as trial exhibit
13 #30. (RT 9477, Bates page 1649.)

14 Det. Buehler obtained the receipt from Servas to keep for the case; he also used it to show
15 to Austin employees. (Bates 40809.) Buehler interviewed William Austin about the receipt’s
16 accuracy. (Bates 30373.) The court may take note that neither Bates page 30373 nor 40809 is
17 claimed to be a page that the defense is missing. Despite Jensen’s claim, Servas’s timeline was
18 developed to help the defendant, not the police and was verifiably accurate – she found the
19 Petersons’ dog at approximately 10:18 a.m.

20 Krigbaum testified that she got up between 10:30 and 10:40 a.m. and almost immediately
21 took her dog out into her front yard to use the “restroom” while Krigbaum stood on the porch and
22 “saw nothing going on.” (RT 9499-9501).

23 Returning to the second component of Garcia’s tip – the dog sighting. Garcia said the dog
24 was “also in the same area of the DMV.” The Modesto DMV office Ms. Garcia referred to would
25 have been at 124 Burney St., Modesto, CA (matching her statement of “located on Burney St.”).
26 The distance from the Peterson house to the DMV is 1.4 miles (using the shortest distance on
27 Google maps). For Garcia to see the dog at around 10:30 would mean that the dog would have to

1 have been able to escape once before Servas found him and then escape a second time (or open
2 the gate himself), travel at least 1.4 miles in less than 12 minutes to be seen by Garcia and then
3 return back to his house and close the gate behind him for the defendant to be able to find the dog
4 in the backyard later that day – all without being seen by the Medinas, the mailman or Krigbaum.
5 Also, the student driver was unable to confirm anything Garcia said.

6 The defendant complains he “has received no discovery explaining on what basis the MPD
7 determined the dog Ms. Garcia saw was not McKenzi [sic]” but all he had to do was read the
8 reports he has. The defendant also states that on:

9 “December 18, 2003, Officer Hicks conducted a follow-up interview with Ms.
10 Garcia. Although Mr. Peterson is in possession of an audio recording of the
11 interview, no report documenting the circumstances of that interview or any follow
12 up investigation into the information provided in that interview, including an
additional description of the van she saw and a partial license plate number, have
been provided to the defense.”

13 The defendant concedes he possesses the recording of the interview but wants more. As
14 this is post-conviction discovery it is his burden to prove how he would be entitled to more. Garcia
15 was not a witness and was not called by the defense even though known before trial so he cannot
16 meet his burden.

17 *“b. Victoria Pouches reported to MPD Officer R. Beffa on December 25, 2002,*
18 *that she was jogging in the park the day before between 9:30 and 10:00 a.m. on*
19 *December 24, and she saw a gold-colored dog with a leash on. The dog was on*
20 *the north side of Dry Creek, pacing back and forth and barking “like crazy.”*
21 *Pouches was contacted again on January 1, 2003, by an officer doing a door-to-*
door canvas and she again reported that she saw a large yellowish dog running
loose in the park, north of the Coven dead end (which is near the Petersons’
home).”

22 **Response** – The People incorporate by reference all the previous legal reasons why this
23 item is not discoverable. The defense has this tip (Bates page 2716, 2426), has talked to this person
24 and it is unclear what the defense is even asking for. The report also states:

25 POUCHES said between 0910 hours and 1000 hours, she saw a large yellowish
26 dog running loose in the park, north of the Coven dead end. The dog had a collar

1 and leash attached, but there was no one in the area attempting to control the
2 animal.

3 As repeated before, the defendant did not leave until 10:08 so this sighting, even if
4 accurate, is unrelated to this case. There can be no additional discovery obligations.

5 *“c. Barbara B. called the MPD and reported that she had seen a golden retriever-
6 type dog with a red leash walking by itself at approximately 11:30 a.m.”*

7 **Response** – The People incorporate by reference all the previous legal reasons why this
8 item is not discoverable. This person called in a tip on December 26, 2002 (Bates page 14752).
9 Penal Code § 1054.9 “does not require the retention of any discovery materials not otherwise
10 required by law or court order.” (Subd. (f).) Instead, § 1054.9 is designed to restore the defense to
11 the state of discovery to which they would have been entitled “at time of trial.” (Subd. (c).)
12 Moreover, subdivision (c) of § 1054.9 “includes only materials ‘in the possession of the
13 prosecution and law enforcement authorities.’ ” (*In re Steele* (2004) 32 Cal.4th 682, 695.) The
14 California Supreme Court in *Steele* interpreted this “to mean in their possession currently.” (*Ibid.*,
15 italics in original.) Thus, § 1054.9 is limited to discovery “currently” in the possession of the
16 prosecution or the law enforcement agencies involved in the investigation of the case. “The statute
17 imposes no preservation duties that do not otherwise exist. It does not impose a duty to search for
18 or obtain materials not currently possessed.” (*Steele, supra*; see also *Barnett v. Superior Court*
19 (2010) 50 Cal.4th 890, 901.) The tip was provided to the defense before trial so nothing more is
20 required, especially since this witness did not testify.

21 *“d. John H. called MPD on December 27, 2002, to report that “a couple of days
22 ago,” he saw a large golden dog running around loose in the Haddon area and
23 that the dog was wearing a collar but he did not notice a leash.”*

24 **Response** – The People incorporate by reference all the previous legal reasons why this
25 item is not discoverable. This person called in a tip on December 27, 2002. (Bates page 14775.)
26 See response to F(c), the prior answer above.

27 *“e. Linda S. called MPD on December 27, 2002, and reported that she was out
28 walking her dog two or three days prior and saw a golden retriever with a collar*

1 *and tags. The dog ran away from her.”*

2 **Response** – The People incorporate by reference all the previous legal reasons why this
3 item is not discoverable. There is no matching tip from a “Linda S.⁵⁶” however there is a person
4 who called in a tip on December 27, 2002 by the name of Linda and gave her address. (Bates page
5 14768.) See response to F(c), the answer above.

6 **G. Missing Bates Pages**

7 The defense in his motion makes the following claims:

8 *“There were at least two Bates numbering systems used in the discovery for this*
9 *case, so many discovery pages have two Bates stamps—one at the bottom right*
10 *and one at top center. The Bates number on the bottom right became the controlling*
11 *Bates number and exceeded over 43,000 pages. Generally, the top center Bates*
12 *was used by MPD for internal reports or documents filed with internal reports.*
13 *Based on this, please provide the following discovery, which has never to date been*
14 *provided to Mr. Peterson.”*

15 The Bates stamp number found in the lower right corner was the official Bates page
16 number and on pages that were turned sideways the numbers may appear on the side of the page.
17 The claim that numbers on the top center of the page were for “internal reports or documents filed
18 with internal reports” is false, as will be demonstrated with the below requests. The other claim
19 that the defendant has never received the rest of the below discovery is also false.

20 It is important to note that this is the defendant’s *second* Penal Code §1054.9 motion. His
21 first motion was filed in 2011 by Lawrence Gibbs. In that motion, Mr. Gibbs filed a declaration
22 stating that he had “obtained and examined the trial record in Mr. Peterson’s case, including the
23 reporter’s and clerk’s transcripts, the discovery provided to trial counsel by the prosecution, and
24 trial counsel’s trial files.” (Def. Exh. 3, defense first Motion for Post Conviction Discovery filed
25 Oct. 20, 2011, page 5 marked as SLP404624.) He also attached his letter to the prosecution which
26 stated, “I have obtained from Mark Geragos all of his trial files in the case, and after a thorough

27 ⁵⁶ Without full names it is very difficult to search for items and sometimes impossible to verify the
28 information. Depriving the People of full and complete information violates the People’s rights and does
not further the Constitutional right of the victims for finality.

1 search, have not located the below items in those files.” (Def. Exh. 3, marked as SLP404625.)
2 The items in his letter and motion related to Gregory DeVore, Alison Galloway, Ralph Cheng,
3 Eloise Anderson, Ron Seitz, any computer experts, any marine biologist, BMCS Paul Andrieu,
4 and items relating to the polygraph of Steven Todd and Glenn Pearce.

5 Each of these items was litigated in court and the court’s ruling has been provided as an
6 exhibit. In the minute order, the Judge stated that counsel were missing “pages 26792 through
7 27087” and those pages were to be provided to the defense. Nowhere and at no time did Mr. Gibbs
8 or Mr. Cliff Gardner ever claim to have been missing the additional and vast amounts of discovery
9 that the defendant now claims he “never” received.

10 The defendant was represented at trial by Mark Geragos and Pat Harris; his appellate
11 attorney was Cliff Gardner; his first Habeas Counsel was Lawrence Gibbs; he was also
12 represented by attorneys for the Habeas Corpus Resource Center (who continued to represent him
13 during the Juror No. 7 hearing); Pat Harris was reappointed; then Coreen Ferrentino was appointed
14 on his second habeas, and now his current counsel have filed this motion. He is on his fifth (or
15 arguably sixth) attorney post-conviction and 12 years after the court ruled on his last 1054.9 “file
16 reconstruction” motion and he wants another shot. If all these items were missing, certainly Mr.
17 Gibbs or Mr. Gardner would have sought the assistance of the court at some point in time. If the
18 defendant was unsatisfied with the trial court’s ruling, his remedy was to appeal or writ that court,
19 not wait until 2024 and start from scratch. “Somewhere along the line, litigation must cease.” (*In*
20 *re Kinnamon*, *supra*, 133 Cal.App.4th 316, 324–325.) However, to assist this Court, the People
21 provide the following answers for the claimed missing reports.

22 **1. Pages that have a TOP CENTER Bates stamp number:**

23 It is important to note that an automated search via the Adobe software system cannot
24 search handwritten letters or numbers. To search each Bates page by hand with a record of over
25 40,000 pages would be unduly burdensome. The top center numbering format is not the Bates
26 stamp system used for discovery by the District Attorney’s Office now or during trial.

Judge Delucchi.

2. Pages that have a BOTTOM RIGHT Bates stamp number:

“a. 4759 (likely has handwritten 4751 at top center)”

The claimed missing Bates page was discovered in batch file 4501 – 5000. It does have the handwritten note on the top as noted by the defense, which does cause one to speculate how the defense would know that number without having the report. The defense also *claims* that “Generally, the top center Bates was used by MPD for internal reports or documents filed with internal reports. Based on this, please provide the following discovery, which has never to date been provided to Mr. Peterson...” (Def motion page 46.) Bates page 4759A concerned a tip provided by a psychic from Florida. The psychic also called in a second tip (or 4th depending how counted) located at Bates page 5013.

“b. 5300–5309”

This batch of discovery was documented in the discovery log and signed for by defense which included disk C-3, pages 5300 to 7800. A memo documenting pages that were skipped in the Bates stamp process accompanied the discovery log and specifically identified 5300-5309 as pages that were skipped.

“c. 10147”

This Bates page was discovered. It was a part of a TradeCorp document from the defendant’s business; it appears to be the backside of 10146 which was a FedEx payment stub.

“d. 10652”

This page number is part of the TradeCorp business and phone records that were gathered and it was previously discovered.

“e. 10681–10684”

A memo documenting pages that were skipped in the Bates stamp process, specifically identified as “10691 [*sic*] through 10684” as pages that were skipped was provided to the defense.

“f. 15821”

Although the numbers at the top of the page are not the Bates pages used by the parties

1 they do allow us to note the sequence of documents; in this instance, Bates page 15820 has a
2 “center number” of 15766 and the very next page has the “center number” of 15767 with the Bates
3 page of 15822; it appears 15821 was skipped but the page was actually provided.

4 *“g. 16220”*

5 Although the numbers at the top of the page are not the Bates pages used by the parties
6 they do allow us to note the sequence of documents; in this instance, Bates page 16219 has a
7 “center number” of 16165 and the very next page has the “center number” of 16166 with the Bates
8 page of 16221; it appears Bates number 16220 was skipped but the page was actually provided.

9 *“h. 16505–16509”*

10 These pages were discovered and are marked as Rap, DMV and data for Joe Silva, Jr.
11 These pages were placeholders for the actual rap sheet materials.

12 *“i. 16523–16544 (likely has Bates 16469–16491 at top center)”*

13 These pages were discovered to the defense and, as suggested by the defense, have Bates
14 16469 through 16491 at the top center.

15 *“j. 17272”*

16 This Bates page does not exist; it was apparently skipped. It falls within a series of pages
17 that contain photos taken of the recovery sites. Photos are marked by number sequence starting at
18 P4140631 (Bates page 17246) and running through P4140664 (Bates page 17280). All photos are
19 present, but a Bates page was skipped.

20 *“k. 20323–20324”*

21 Although the numbers at the top of the page are not the Bates pages used by the parties
22 they do allow us to note the sequence of documents; in this instance, Bates page 20322 has a
23 “center number” of 20247; the very next page has the “center number” of 20248 with the Bates
24 page of 20325, and the next page has the “center number” of 20249 with the Bates page of 20326.
25 No pages are missing; Bates numbers 20323-20324 were skipped but the pages were actually
26 discovered. This is consistent with the memo that was provided to defense in the discovery stating

1 these pages were skipped. Additionally, this information is the CLETS information relating to the
2 Medinas' handgun.

3 *"l. 21696–21697 (likely has Bates 21303–21304 at top center)"*

4 Both pages were discovered but are blank except for the Bates pages and number at the
5 top.

6 *"m. 22527"*

7 At Bates page 22526 a phone tip is received regarding Skates restaurant. The tip is
8 followed up and documented at Bates page 20089. Bates 22526 is the last page of that batch of
9 discovery. The next page starts at Bates page 22528. Bates page 22528 is the first page of a report
10 regarding draft transcripts. It appears that Bates 22527 was skipped.

11 *"n. 22871"*

12 Part of Frey/Peterson transcript marked JB-25, consisting of 51 pages. Bates page 22871
13 is skipped but the transcript is sequential with page 7 of 51 marked as Bates 22870 and page 8 of
14 52 marked as Bates 22872.

15 *"o. 23908–23909"*

16 Bates 23908 through 23909 were discovered. Bates 23908 was an envelope from the San
17 Francisco City Attorney's Office containing a letter and a photograph related to the Evelyn
18 Hernandez case and Bates 23909 was the letter. The photograph of the label on the clothing did
19 not have a Bates number but as noted in the letter had been released to the public.

20 *"p. 25029"*

21 Part of Frey/Peterson transcripts; this was a Frey/Peterson call from February 7th, 2003 at
22 2243 hours. The transcript is 13 pages long but skips page 12 of 13 (page 11 is at Bates 25027
23 and page 13 is at Bates page 25028.) However, a transcript containing this same call had
24 previously been discovered beginning at Bates 23226 and the content that would have been
25 included in the skipped page 12 was contained beginning at the fourth line down from the top on
26 Bates 23238 and ending at the second line down from the top on Bates 23239.

1 The Bates machine clearly skipped Bates 25029. Bates 25030 is the call that is transcribed
2 immediately after the previous call on Bates 25028 and that can be confirmed in looking at the
3 third line down from the top on Bates 23239. Moreover, this call was played and a transcript was
4 provided to the jury as Exhibit 201B (RT 14857.)

5 *“q. 25315”*

6 This was part of a record subpoenaed from the Contra Costa Sheriff’s Department. The
7 records were submitted pursuant to the subpoena (the Bates pages start at 25222, the cover page
8 does not have a bates number.) Bates page 25315 was skipped but the documents are sequential
9 in that Bates page 25314 is for a one-page summary training log of December 2001, and the next
10 page (Bates 25316) is the one-page log for January 2002.

11 *“r. 26313–26314;”*

12 This was one of the first arriving officer’s reports – Off. Derrick Letsinger. It is a two-page
13 report and was provided in batch 26313-26314. This report was also discovered as Bates page
14 33090 which was referred to by Geragos during trial (RT 9791.)

15 *“s. 26511;”*

16 Part of a Bird/Peterson phone call/transcript. The transcript starts at Bates page 26507 and
17 is 8 pages long. Bates page 26510 is page 4 of 8, and Bates page 26512 is page 5 of 8. Therefore,
18 Bates page 26511 was skipped but the transcript is sequential.

19 *“t. 26771–26778;”*

20 These are copies of GPS maps used to demonstrate what a tracking device displayed
21 regarding a Dodge Dakota used by the defendant. These were batched as 26771-26778 and
22 discovered to defense. The Dakota map was also included in trial Exhibit 234J.

23 *“u. 32850;”*

24 This page was skipped but it appears to be a place holder for a rap for a David Moore
25 which covers Bates page 32851 to 32863 – the page is a place holder.

26 *“v. 32892;”*

27 This Bates page number was skipped after Officer T. Musto’s report where he attached

one page of his notes; the sequence then skipped to another separate report. Off. Musto's report is at Bates page 32889 and ends at page 32890; attached to the report at Bates 32891 is the handwritten note copied onto a scanned page. The very next page is Bates stamp 32893 which begins a new report by Det. Ray Coyle.

"w. 33770;"

This page was skipped but it appears to be a place holder for a rap for "Amanda" which covers Bates page 33771 to 33777 – the page is a place holder.

"x. 34030–34031;"

These pages were discovered under these Bates numbers and are screen printouts of the defendant's eBay activity. The records were also subpoenaed for the trial. The testimony related to the defendant's eBay activity can be found (one reference) at RT 16628; People's Trial Exh. 221. [As a side note, when documents were received by the court pursuant to a subpoena the parties sometimes stipulated to the People making copies of the records for both parties – see, for example, CTA volume 17, page 5465 minute order of Feb. 9, 2004, page 3.]

"y. 35082;"

This Bates page was discovered and it is part of the defendant's AT&T phone records which were subpoenaed to the court which start at Bates page 34720 and end at page 35086.

"z. 35088–35089;"

These two Bates pages were skipped but they are part of Sprint phone records and data which was subpoenaed to the court and start at Bates page 35087 and end at page 35294. (See People's Trial Exh. 249A&B.)

"aa. 37005;"

This Bates page was discovered and is part of Dr. DeVore's curriculum vitae.

"bb. 38181"

This is a DOJ report identified as DOJ CV-02-010941-0017 and it is 40 pages long. Bates page 38180 is listed as page 25 of 40 and the next page is listed as page 26 of 40 with a Bates page of 38182. Bates page 38181 was skipped but the report is still sequential.

1 defense. Anything post-trial would not be discoverable under the framework of Penal Code
2 §1054.9.

3 Footnote 4 "Section 1054.9, added to the Penal Code in 2003, affords convicted
4 defendants in certain categories of cases, and under certain conditions, a right to
5 limited discovery "upon the prosecution of a postconviction writ of habeas corpus
6 ... or in preparation to file that writ" (§ 1054.9, subd. (a).) Discovery under this
7 provision includes only "materials to which the defendant would have been
8 entitled at the time of trial" (*In re Steele* (2004) 32 Cal.4th 682, 695, 10
9 Cal.Rptr.3d 536, 85 P.3d 444.) **Section 1054.9 thus does not authorize discovery
10 of evidence generated or uncovered after trial**, such as new expert reports and
11 new witness statements, which may be most relevant to the habeas corpus
proceeding. Indeed, our Supreme Court has stated the criminal discovery
provisions, which are similar in scope to section 1054.9, "are a bad fit for habeas
corpus" because the issues raised on habeas corpus "may or may not relate to any
of the evidence presented or not presented in the underlying criminal trial."
(*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 572, 107 Cal.Rptr.3d
265, 227 P.3d 858 (Pearson).)"

12 (*Jimenez v. Superior Court* (2019) 40 Cal.App.5th 824, 830. [Bold added.])

13 "jj. 43214 and above"

14 See item ii. above.

15 **H. Gene Ralston Reports, Videos, and Other Data Related to Bay Searches**

16 The Bay searches produced no evidence (which under no circumstance makes the absence
17 *Brady* information) until the bodies were washed ashore. That evidence, the condition of the
18 bodies and the proximity to where the defendant had placed himself, as cited by the Supreme
19 Court above, was significant; even the first Habeas attorney had to admit as much... with a twist
20 (Habeas Petition, page 156):

21 9. The location of Brooks Island, and the locations where the bodies were
22 discovered, are depicted on People's Exhibit 284, which is attached to this petition
as Exhibit 26.

23 10. As Exhibit 284 shows, Conner's body was found approximately 2,000 yards
24 north of the southern tip of Brooks Island. [footnote omitted.] Laci' s body was
25 found approximately 3,000 yards northeast of the southern tip of Brooks Island.
26 Apart from the general proximity of Brooks Island and the points where the bodies
washed ashore, there was no evidence connecting the bodies to the place where
Mr. Peterson was fishing.

1 Many pages of the People’s Opposition to the DNA motion addressed Ralston and the Bay
2 searches; the People incorporate those responses here as well (Page 61-64).

3 *“1. Any reports or notes authored by MPD Sgt. Cloward, and/or correspondence*
4 *between Gene Ralston and Sgt. Cloward, regarding their mid-February 2003*
5 *discussion about an object captured by sonar imaging on January 24, 2003, that*
6 *measured 5.3 feet in length and appeared to have two small objects on opposite*
7 *sides of one end, referenced in Gene Ralston’s 2003 report.”*

8 **Response** – The People incorporate by reference all the previous legal reasons why this
9 item is not discoverable. As stated in the DNA response, Sgt. Cloward was a witness at trial and
10 subject to cross examination (his reports were provided⁵⁷); Ralston was not called, but his report
11 starts at Bates page 26850:

12 Under *Steele*, it is the defendant who must show that the materials he is requesting
13 are materials to which he would have been entitled at time of trial to obtain a
14 discovery order pursuant to section 1054.9. (See *In re Steele, supra*, 32 Cal.4th at
15 p. 688 [“section 1054.9’s discovery ... is limited to, specific materials ... that the
16 defendant can show fall into any of these categories”]; see also *ibid.* at p. 697.)
17 Thus, the defendant must persuade the trial court that he would have been entitled
18 to the materials he seeks at time of trial, e.g., because the materials came within
19 the scope of a discovery order the trial court actually issued at time of trial or
20 because they came within the prosecution’s constitutional or statutory duty to
21 disclose exculpatory evidence.”

22 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 365–366, as modified on denial of
23 reh’g (Jan. 2, 2007).)

24 *“2. All names of CARDA personnel and animals that “responded during the*
25 *weekend of March 6 and 7” to assist Ralston & Associates with searches, and all*
26 *reports, notes, logs, photos, and audio or video recordings detailing the searches*
27 *and alerts that occurred during this search.”*

28 **Response** – The People incorporate by reference all the previous legal reasons why this
item is not discoverable. CARDA was a volunteer organization and not part of the prosecution
team; their records were subpoenaed to court (subpoena and records start at Bates page 34489).
Moreover, dog search/tracking/scent has been addressed by the Supreme Court:

⁵⁷ The defense commented about having a “large binder” of reports from this witness (RT 10143) and used them (RT 10249).

1 "While we see no error in the admission of Trimble's scent trailing, we also see no
2 reasonable possibility that the jury would have returned a different verdict had the
3 scent trailing evidence been excluded. Peterson contends that the evidence was
4 crucial because the prosecution relied heavily on it. But the prosecutor devoted
5 only a few sentences to the subject in the course of closing and rebuttal arguments
6 that stretched for 150 pages of transcript. If credited by the jury, the trailing
7 evidence would have shown Laci was at the Berkeley Marina in late December
8 2002. The jury, however, already knew Laci's body had been deposited in the San
9 Francisco Bay months before she washed ashore in April 2003, and there were a
10 limited number of access points, among which the Berkeley Marina was closest to
11 where she was found. The trailing evidence did not add much beyond what could
12 already be inferred from other evidence. It also did not rule out the defense's theory
13 "that somebody [else] abducted her" and then disposed of her in the bay. And the
14 trailing testimony aside, there was considerable other circumstantial evidence
15 incriminating Peterson, from the simple fact that Laci's and Conner's bodies
16 washed ashore 90 miles from their home but within sight of where Peterson
17 admitted he went fishing the day they disappeared; to the research Peterson did on
18 bay currents in the weeks preceding her disappearance and the fishing boat he
19 bought but mentioned to no one; to Peterson's inability to explain what he was
20 fishing for in the middle of the day; to his repeated subsequent surreptitious trips
21 to the marina in the weeks after her disappearance; to the many steps he took in
22 the weeks after she went missing — selling her car, exploring sale of the house,
23 turning the nursery into a storage room — that indicated he already knew Laci and
24 Conner were never coming back. Even under the most stringent harmlessness
25 standard, for federal constitutional error (*Chapman v. California* (1967) 386 U.S.
26 18, 24), it is clear beyond a reasonable doubt exclusion of the limited dog-trailing
27 evidence admitted by the trial court would have had no impact on the jury's
28 determination that Peterson was guilty."

(*People v. Peterson* (2020) 10 Cal.5th 409, 452.)

This means that none of this evidence would be in aid of a writ and is therefore not discoverable assuming it still exists.

"3. Any photos or video footage obtained when Ralston suggested "the video camera be used to tape the monitor output" that members of the search team viewed of the ROV aboard the boat."

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. As stated in the DNA response, Ralston stated in his own report (which the defense attached to the DNA motion) that an attempt to videorecord the computer was unsuccessful because they did not "sync."

1 “4. All video recordings made of Targets 1 and 2, referenced in the Ralston report.”

2 **Response** – The People incorporate by reference all the previous legal reasons why this
3 item is not discoverable. See the prior response.

4 “5. All screen captures, photos, or other images of the video images or video of
5 the object Gene Ralston considered to be of a human body at Target 1 or any other
6 location.”

7 **Response** – The People incorporate by reference all the previous legal reasons why this
8 item is not discoverable. As stated in the DNA response, according to Ralston he provided photos,
9 which were discovered on CD100. Ralston has also advised the defense he has copies of all his
10 photos.

11 Under *Steele*, it is the defendant who must show that the materials he is requesting
12 are materials to which he would have been entitled at time of trial to obtain a
13 discovery order pursuant to section 1054.9. (See *In re Steele, supra*, 32 Cal.4th at
14 p. 688 [“section 1054.9's discovery ... is limited to, specific materials ... that the
15 defendant can show fall into any of these categories”]; see also *ibid.* at p. 697.)
16 Thus, the defendant must persuade the trial court that he would have been entitled
to the materials he seeks at time of trial, e.g., because the materials came within
the scope of a discovery order the trial court actually issued at time of trial or
because they came within the prosecution's constitutional or statutory duty to
disclose exculpatory evidence.”

17 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 365–366, as modified on denial of
18 reh'g (Jan. 2, 2007).

19 “6. Copies of any computer hard drives and/or computer files that contain the
20 images displayed by the ROV employed in connection with Gene Ralston's
21 searches in the bay referenced in his 2003 Report.”

22 **Response** – The People incorporate by reference all the previous legal reasons why this
23 item is not discoverable. The prosecutor has no duty to actively investigate the facts and
24 circumstances of the case or gather all potential evidence for the benefit of the accused. (*People*
25 *v. Perez* (1979) 24 Cal.3d 133, 145; *People v. Gurtenstein, supra*, 69 Cal.App.3d at p. 449.) Nor
26 are the People required to make a complete and detailed accounting to the defense of all police
27 investigative work on a case. (*Moore v. Illinois* (1972) 408 U.S. 786, 795; *People v. Nation* (1980)
28 26 Cal.3d 169, 175.) The defendant offers no proof that a computer hard drive from 2003 is still

1 in existence.

2 The trial court was under no obligation to parse Kennedy's request and issue a
3 discovery order for some subset of materials encompassed by his request. If
4 Kennedy's request, taken as a whole, did not ask for materials to which he would
have been entitled at time of trial, then the trial court was justified in denying it.

5 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 371-372.)

6 "7. Video of the Klamath County, Oregon, search locating victims which Ralston
7 believed resembled "the form and substance observed in the video of Target 1. "'"

8 This request borders on the absurd. In Ralston's report, he states:

9 We recently reviewed underwater video obtained from the Klamath County Sheriff
10 (Oregon) which was taken during the recovery of three drowning victims which
we located in 2002, using side scan sonar.

11 (Bates at page 26855).

12 Is it really the defense request that the People obtain a video from another state from a
13 completely different investigation having *nothing* to do with this case except that a third-party
14 civilian witness viewed the tape and, based on viewing that tape, claims that he is able to form
15 opinions about what he saw, even though they failed to call him as a witness?

16 "...a prosecutor does not have a duty to disclose exculpatory evidence or
17 information to a defendant unless the prosecution team actually or constructively
18 possesses that evidence or information. Thus, information possessed by an agency
19 that has no connection to the investigation or prosecution of the criminal charge
against the defendant is not possessed by the prosecution team, and the prosecutor
does not have the duty to search for or to disclose such material."

20 (*People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1315.)

21 "8. Gene Ralston's images and search data referenced in Det. Hendee's report
22 dated July 31, 2003."

23 **Response** – The People incorporate by reference all the previous legal reasons why this
24 item is not discoverable. This report is at Bates page 22019. The image depicting what Ralston
25 claimed was a body is attached to Det. Hendee's report at Bates page 22023.

26 "9. The 18 or 19 images sent to Clayton Fenn of Interspace Exploration, including
27 images from March 12–13, 2003, that Ralston thought were images of a body,
referenced in Det. Hendee's report dated July 31, 2003."

1 **Response** – The People incorporate by reference all the previous legal reasons why this
2 item is not discoverable. This is a request for an accounting:

3 Nor are the People required to make a complete and detailed accounting to the
4 defense of all police investigative work on a case.

5 (*Moore v. Illinois* (1972) 408 U.S. 786, 795.)

6 More importantly, the report mentioned above states “Fenn confirmed for me that he had
7 viewed all of 18 or 19 images that Gene Ralston sent him.” Hendee never possessed the files.
8 Since neither Fenn nor Ralston were called as witnesses, this is also not potential impeachment.

9 Although the materials Kennedy requested *might* include evidence favorable to
10 him, they would also likely include evidence that was entirely neutral and might
11 even include evidence unfavorable to him. Since neutral and unfavorable materials
12 are clearly not materials to which Kennedy would have been entitled at time of
13 trial even under the broadest reading of section 1054.1(e) and *Brady*, Kennedy’s
14 request does not describe materials to which he would have been entitled at time
15 of trial and thus it is overbroad. The trial court was under no obligation to parse
16 Kennedy’s request and issue a discovery order for some subset of materials
17 encompassed by his request. If Kennedy’s request, taken as a whole, did not ask
18 for materials to which he would have been entitled at time of trial, then the trial
19 court was justified in denying it.

20 (*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 371-372, italics in original.)

21 “10. All side scan sonar images and video taken on March 28 and 29, 2003
22 referenced in Gene Ralston’s 2003 report.”

23 **Response** – The People incorporate by reference all the previous legal reasons why this
24 item is not discoverable. This is a request for an accounting. “Nor are the People required to make
25 a complete and detailed accounting to the defense of all police investigative work on a case.”
26 (*Moore v. Illinois* (1972) 408 U.S. 786, 795.) Since Ralston was never called as witness this is
27 also not potential impeachment.

28 Although the materials Kennedy requested *might* include evidence favorable to
him, they would also likely include evidence that was entirely neutral and might
even include evidence unfavorable to him. Since neutral and unfavorable materials
are clearly not materials to which Kennedy would have been entitled at time of
trial even under the broadest reading of section 1054.1(e) and *Brady*, Kennedy’s

request does not describe materials to which he would have been entitled at time of trial and thus it is overbroad. The trial court was under no obligation to parse Kennedy's request and issue a discovery order for some subset of materials encompassed by his request. If Kennedy's request, taken as a whole, did not ask for materials to which he would have been entitled at time of trial, then the trial court was justified in denying it.

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 371-372, italics in original.)

"11. All communications and correspondence from January 1, 2003, to date, including but not limited to email correspondence and text messages, between MPD, including Sgt. Ron Cloward, and Gene or Sandra Ralston, concerning any evidence in this case and the search for Laci Peterson."

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. This is a request for an accounting, and under *Kennedy* is not allowed. It also seeks post-conviction materials without attempting to show how they would aid in the furtherance of his writ.

We find no abuse of discretion. In *Steele*, the Supreme Court interpreted section 1054.9 "to require the trial court, on a proper showing of a good faith effort to obtain the materials from trial counsel, to order discovery of *specific materials*...." (*In re Steele, supra*, 32 Cal.4th at p. 697, italics added.) The court approved of the request at issue there because it was "not just a free-floating request for anything the prosecution has that may be relevant to the case, but a focused request for specific information." (*Id.* at p. 702.)

The two requests at issue here are exactly the sort of "free-floating" requests the *Steele* court disapproved. In effect, they ask for anything to which Kennedy is entitled under section 1054.9 that is not encompassed in his previous requests. Because they are not focused requests for specific information, the trial court did not abuse its discretion in denying them."

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 397–398, as modified on denial of reh'g (Jan. 2, 2007).)

"12. All communications and correspondence from January 1, 2003, to date, including but not limited to email correspondence and text messages, between any personnel from other agencies and/or other parties involved in the San Francisco Bay searches and Gene or Sandra Ralston. (See Exh. 5 to the Motion for DNA Testing [Decl. of Paige McGrail] ¶ 4, Exh. A [Gene Ralston's 2003 report, referencing "intermittent contact with several other officers and detectives throughout the investigation"].)"

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. See above response; this is duplicative of #12 above.

“13. All MPD reports, notes, memoranda, and communications with other law enforcement agencies involved in underwater searches in San Francisco Bay, discussing the merits of Mr. Ralston’s opinion that Laci Peterson’s body was not deposited in the location MPD and the prosecution claimed and the reasons for rejecting his opinion. Mr. Peterson has received no discovery regarding this topic.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. This is another request for an accounting, and under *Kennedy* is not allowed. The defendant makes no attempt to show this request would have been allowed under Penal Code §1054.1 much less 1054.9.

I. All Reports, Videos, and Other Data Related to Bay Searches

The defense is asking for reports from specific officers during this timeframe. However, the People discovered reports to defense related to events on March 11, 2003 – March 19, 2003. (Bates 733-734 [Det. Grogan, Mar. 11, 2003]; Bates 767 [Det. Grogan, Mar. 12, 2003]; Bates 779-780 [Det. Grogan, Mar. 13, 2003]; Bates 830 [Det. Grogan, Mar. 17, 2003]; Bates 832 [Det. Grogan, Mar. 18, 2003; Bates 838 [Det. Grogan, Mar. 19, 2003].)

“1. MPD Sgt. Ron Cloward’s report detailing his activities at the San Francisco Bay on March 11, 2003.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. The prosecutor has no duty to actively investigate the facts and circumstances of the case or gather all potential evidence for the benefit of the accused. (*People v. Perez* (1979) 24 Cal.3d 133, 145; *People v. Gurtenstein*, *supra*, 69 Cal.App.3d at p. 449.) Nor are the People required to make a complete and detailed accounting to the defense of all police investigative work on a case. (*Moore v. Illinois* (1972) 408 U.S. 786, 795; *People v. Nation* (1980) 26 Cal.3d 169, 175.) There is no requirement that an officer detail his activities. See also the response to H#1 above. Upon a search of the electronic database, the People are unable to locate

1 a report from this officer for this date.

2 “2. MPD Det. Owen’s report detailing his activities at the San Francisco Bay on
3 March 11, 2003, as referred to in Det. Grogan’s report.”

4 **Response** – The People incorporate by reference all the previous legal reasons why this
5 item is not discoverable. The prosecutor has no duty to actively investigate the facts and
6 circumstances of the case or gather all potential evidence for the benefit of the accused. (*People*
7 *v. Perez* (1979) 24 Cal.3d 133, 145; *People v. Gurtenstein*, supra, 69 Cal.App.3d at p. 449.) Nor
8 are the People required to make a complete and detailed accounting to the defense of all police
9 investigative work on a case. (*Moore v. Illinois* (1972) 408 U.S. 786, 795; *People v. Nation* (1980)
10 26 Cal.3d 169, 175.) Upon a search of the electronic database, the People are unable to locate a
11 report from this officer for this date.

12 “3. Report obtained from Deputy Rick Rutherford of Tuolumne County detailing
13 his activities at the San Francisco Bay on March 11, 2003.”

14 **Response** – The People incorporate by reference all the previous legal reasons why this
15 item is not discoverable. The prosecutor has no duty to actively investigate the facts and
16 circumstances of the case or gather all potential evidence for the benefit of the accused. Upon a
17 search of the electronic database, the People are unable to locate a report from this officer for this
18 date.

19 Moreover, “*Brady* does not require the disclosure of information that is of mere
20 speculative value” (*People v. Gutierrez* (2003) 112 Cal.App.4th 1463, 1472), and
21 defendant himself concedes that “it remains speculative as to what might have been
22 discovered.” He acknowledges that there is no way to know “if disclosure of
23 [Conya L.’s] address would be helpful or harmful to [defendant’s] defense.”
24 Because defendant has not shown that the prosecution withheld evidence that was
25 both “favorable and material” to the defense (*In re Bacigalupo*, supra, 55 Cal.4th
26 at p. 333, his claim is without merit.”

27 (*People v. Williams* (2013) 58 Cal.4th 197, 258–259.)

28 “4. MPD Det. Phil Owen’s report detailing the activities at the San Francisco Bay
on March 17, 18, and 19, 2003.”

1 **Response** – The People incorporate by reference all the previous legal reasons why this
2 item is not discoverable. The prosecutor has no duty to actively investigate the facts and
3 circumstances of the case or gather all potential evidence for the benefit of the accused. Upon a
4 search of the electronic database, the People are unable to locate a report from this officer for
5 these dates.

6 *“5. All of MPD Det. Grogan’s communications with the FBI regarding underwater*
7 *searches conducted in San Francisco Bay.”*

8 **Response** – The People incorporate by reference all the previous legal reasons why this
9 item is not discoverable. The prosecutor has no duty to actively investigate the facts and
10 circumstances of the case or gather all potential evidence for the benefit of the accused; there is
11 no explanation how this is discoverable material. There is also no showing the items exist.

12 *“6. All photos, images, video, reports taken by John Demille from Marine Sonic*
13 *on May 22, 2003. [Mr. Peterson has received discovery labeled Day 1 through Day*
14 *3 and Day 5, but is missing anything related to Day 4 or May 22, 2003 from John*
15 *Demille.]”*

16 **Response** – The People incorporate by reference all the previous legal reasons why this
17 item is not discoverable. The prosecutor has no duty to actively investigate the facts and
18 circumstances of the case or gather all potential evidence for the benefit of the accused:

19 Moreover, “*Brady* does not require the disclosure of information that is of mere
20 speculative value” (*People v. Gutierrez* (2003) 112 Cal.App.4th 1463, 1472), and
21 defendant himself concedes that “it remains speculative as to what might have been
22 discovered.” He acknowledges that there is no way to know “if disclosure of
[Conya L.’s] address would be helpful or harmful to [defendant’s] defense.”
Because defendant has not shown that the prosecution withheld evidence that was
both “favorable and material” to the defense (*In re Bacigalupo, supra*, 55 Cal.4th
at p. 333, his claim is without merit.”

23 (*People v. Williams* (2013) 58 Cal.4th 197, 258–259.)

24 There is also no showing the items exist.

25 *“7. All reports from law enforcement personnel or others assisting law*
26 *enforcement in the San Francisco Bay searches, including from the following*
27 *personnel who were present during the searches, none of whom have provided any*
28 *reports to Mr. Peterson about their search activities:”*

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. The prosecutor has no duty to actively investigate the facts and circumstances of the case or gather all potential evidence for the benefit of the accused:

Moreover, “*Brady* does not require the disclosure of information that is of mere speculative value” (*People v. Gutierrez* (2003) 112 Cal.App.4th 1463, 1472), and defendant himself concedes that “it remains speculative as to what might have been discovered.” He acknowledges that there is no way to know “if disclosure of [Conya L.’s] address would be helpful or harmful to [defendant’s] defense.” Because defendant has not shown that the prosecution withheld evidence that was both “favorable and material” to the defense (*In re Bacigalupo, supra*, 55 Cal.4th at p. 333, his claim is without merit.”

(*People v. Williams* (2013) 58 Cal.4th 197, 258–259.)

Subdivisions (f) of Penal Code §1054.1 require the prosecutor to disclose to the defendant the written or recorded statements or reports of the statements of witnesses who will be called at trial. This obligation includes disclosure of relevant oral statements communicated to the prosecutor directly by the witness or indirectly through a third party. It does not include a duty, at the defendant’s request, to prepare notes of conversations not presently reduced to writing. (*Roland v. Superior Court* (2004) 124 Cal.App.4th 154, 165-167; *People v. Alexander* (1983) 140 Cal.App.3d 647, 659-660.)

J. Computer Forensics

“*Mr. Peterson requests all reports, notes, communications, analysis, and other discovery regarding Det. Grogan’s determination that Mr. Peterson turned his computer on at the office in his warehouse at approximately 10:00 a.m. on December 24, 2002. Mr. Peterson was not provided with any computer forensic reports indicating what time he turned his work computer on at his office on December 24, 2002.*”

Response – Det. Grogan was not a computer expert in this case and relied on MPD computer experts and/or the High-Tech Task Force computer experts who performed the analysis. Det. Kirk Stockham and Det. Lydell Wall testified to their evaluations of the defendant’s computers. Both prepared reports. (Stockham’s reports start at Bates 4190.) The reports were used as the basis for testimony and multiple exhibits came from the data recovered from the defendant’s

computers (such as the eBay files discussed above, emails and web activity). Det. Wall testified to the time that the defendant turned on his warehouse computer on December 24, 2002.

Q. Was there any additional computer usage on the Dell Home that day?

A. Not after 8:45 a.m.

Q. Was there other computer activity?

A. Yes, there was.

Q. What computer was that?

A. That would be on the Dell Work PC 4. That computer activity started at approximately 10:30 a.m., and ended at 10:56 a.m.

(RT 14421; Bates page 37053 is Det. Wall's report that contains this information.)

The defendant had the information before trial (See for example People's Trial Exh. 179 and subparts, RT 14360) and his claim that he was not provided with specific information is false.

K. Scent Dogs

Discovery requests relating to issues with "scent dogs" is even more of an abuse of the writ than the request for information regarding the Medina burglary. Such discovery would not be in aid of a future writ since this issue has been fully litigated. In the opinion of the Supreme Court affirming the defendant's conviction the court specifically reviewed this issue:

"C. Admission of Dog Scent Trailing Evidence

Before trial, the court held an Evidence Code section 402 hearing to determine whether to admit the prosecution's evidence of dogs trailing Laci's scent from her home in Modesto, in and around Peterson's warehouse in Modesto, on highways leaving Modesto, and at the Berkeley Marina. After extensive testimony from and cross-examination of various dog handlers concerning their training, as well as their dogs' training and past performance, the court excluded all dog scent trailing evidence as lacking in sufficient foundation and corroboration, except for evidence of scent trailing at the Berkeley Marina. The court explained that all the dog-trailing evidence in and around Modesto lacked sufficient independent corroboration that Laci had ever been where dogs purported to trail her scent. The Berkeley Marina evidence differed because there was corroborating evidence that Laci had been present in the area — namely, that Laci's remains washed ashore on the edge of the San Francisco Bay, very near the marina.

Consistent with the trial court's ruling, dog handler Eloise Anderson, a member of the Contra Costa County Sheriff's Department search and rescue team, testified at trial about scent trailing she conducted at the Berkeley Marina with her dog Trimble. Anderson reported to the marina with Trimble on December 28, 2002, four days after Laci's disappearance. Anderson was provided a glasses case containing a pair of Laci's sunglasses and asked to work with her dog to determine whether any trail of Laci's scent could be detected. The marina harbor had two separate access points where someone might enter, so Anderson had Trimble check each entry point. Wearing rubber gloves to conceal her own scent, Anderson opened the glasses case to expose the sunglasses inside, presented the case with the sunglasses to Trimble, and gave a trailing command. In the first location, Trimble responded with a "no scent trail" signal. In the second location, Trimble "lined out," pulling her harness line taut, with level head, and taking Anderson from an area near the parking lot down one of the marina piers to a pylon on the pier where a boat could have been tied, then giving Anderson an "end of trail" signal.

Peterson argues admission of this evidence of dog trailing at the Berkeley Marina was error because the trial court failed to require a hearing under *People v. Kelly* (1976) 17 Cal.3d 24, 130 Cal.Rptr. 144, 549 P.2d 1240 (*Kelly*), and the prosecution failed to establish the legally required foundation. We disagree."

(*People v. Peterson* (2020) 10 Cal.5th 409, 443–444.)

The defense went further with this claim in the first Petition for a Writ of habeas. In Claim Four, he stated:

Presentation of False Evidence, In Violation Of The Fifth, Sixth, Eighth And Fourteenth Amendments And Penal Code section 1473, By The State's Introduction Of False Evidence Regarding A Trailing Dog's Detection Of Laci's Scent At The Boat Ramp In The Berkeley Marina. (DSC - JNE. Exh. 10, at Page 123)

J. Despite the fact that Scott handled Laci's sunglasses, and Valentin had transferred Scott's scent from his slippers to the sunglasses, Anderson did not conduct what is called a "missing member" test prior to commanding Trimble to work. (85 RT 16133.) (DSC - JNE. Exh. 10, at Page 127)

W. Eloise Anderson and Trimble were not the only team the police called to search at the Berkeley Marina. Ron Seitz, whose dog was also certified by CARDA, was called to search the marina. (9 RT 1774.) (DSC - JNE. Exh. 10, at Page 131)

1 ***

2 19. The testimony given by Eloise Anderson regarding her dog's detection of
3 Laci's scent at the Berkeley Marina was material and probative on the issue of
4 petitioner's guilt and punishment. The evidence was false and prejudicial in that
5 there was a reasonable probability that the trier of fact would have arrived at a
6 different verdict in the absence of Anderson's testimony. The writ should
7 therefore issue.

8 The Supreme Court held on October 14, 2020 that "Claims 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11
9 in the petition are denied on the merits."

10 It has long been the rule that absent a change in the applicable law or the facts, the
11 court will not consider repeated applications for habeas corpus presenting claims
12 previously rejected. [Citations.] The court has also refused to consider newly
13 presented grounds for relief which were known to the petitioner at the time of a
14 prior collateral attack on the judgment. [Citations.] The rule was stated clearly in
15 *In re Connor* [(1940)] 16 Cal.2d 701, 705: "In this state a defendant is not permitted
16 to try out his contentions piecemeal by successive proceedings attacking the
17 validity of the judgment against him." (*In re Clark*, (1993) 5 Cal.4th 750, 767-
18 768.)

19 (*In re Martinez* (2009) 46 Cal.4th 945, 956.)

20 "'It is, of course, the rule that a petition for habeas corpus based on the same
21 grounds as those of a previously denied petition will itself be denied when there
22 has been no change in the facts or law substantially affecting the rights of the
23 petitioner.' [Citations.] In this case, the petition is not only barred as successive but
24 also because it is repetitive."

25 (*In re Martinez* (2009) 46 Cal.4th 945, 950, fn. 1.)

26 "This court has never condoned abusive writ practice or repetitious collateral
27 attacks on a final judgment. Entertaining the merits of successive petitions is
28 inconsistent with our recognition that delayed and repetitious presentation of
claims is an abuse of the writ."

(*In re Clark, supra*, 5 Cal.4th at p. 769; see *In re Reno*, (2012) 55 Cal.4th 428, 455, superseded
by statute on another ground as stated in *In re Friend, supra*, 11 Cal.5th 720.)

The defendant cannot successfully bring another writ on these grounds; since no writ can
be taken on these grounds, no discovery relating to these grounds would be in aid of his writ and
this request should be denied. Even if this court were inclined to consider his request, the specifics
do not warrant any discovery. The defendant has asked for the following broad categories and

related subparts of item K:

“Mr. Peterson requests all notes, reports, communications, memoranda, audio and video recordings, and other records documenting MPD’s use of scent dogs in the search for Laci Peterson in 2002 and 2003, including but not limited to the following:

1. All notes, audio and video recordings, photos, drawings, maps, reports, recorded radio transmissions, voicemails, and other communications between MPD and Contra Costa Sheriff’s Department Search and Rescue scent dog handler Cindee Valentin related to her scent dog Merlin’s search on the evening of December 26, 2002, that commenced at 523 Coven Avenue and was terminated in the Airport District.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. Not only has the Supreme Court ruled (twice) in this case against the defendant, the trial court excluded this evidence after an Evidence Code section 402 hearing brought by the defense. (*People v. Peterson, supra*, at page 443.) Clearly, the defense has possessed these materials and cannot now gain any further relief, meaning no discovery is appropriate.

“2. All audio and video recordings, photos, drawings, maps, reports, recorded radio transmissions, voicemails, and other communications between MPD and Contra Costa Sheriff’s Department Search and Rescue dog handler Cindee Valentin related to her scent dog Merlin’s search on the evening of December 26, 2002, that occurred in the vicinity of 1027 N. Emerald Avenue.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. See response to K#1 above.

“3. All audio and video recordings, photos, drawings, maps, reports, recorded radio transmissions, voicemails, and other communications between MPD and Contra Costa County Sheriff’s Department Search and Rescue dog handler Eloise Anderson related to her cadaver dog Twist’s search of Mr. Peterson’s truck on December 27, 2002, and Det. Hendee’s decision that a cadaver dog should not be put into the Petersons’ truck as part of MPD’s investigation into Laci Peterson’s disappearance, despite law enforcement’s suspicion that Mr. Peterson transported his wife’s body in the back of his truck.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. See response to K#1 above.

1 *“1. MPD policy manuals, human resources policies and procedures for employees,*
2 *and all other information setting forth the policies in place in 2002–2005 requiring*
3 *that management be notified of any personal and/or romantic relationship with*
4 *another member of law enforcement, including employees of the Stanislaus County*
5 *District Attorney’s Office, for purposes of avoiding a conflict of interest.”*

6 **Response** – The People incorporate by reference all the previous legal reasons why this
7 item is not discoverable. These manuals, assuming a twenty-year old policy would exist, would
8 only be discoverable directly from the prosecution if they contained exculpatory (see Pen. Code
9 §1054.1(e)) or *Brady* evidence since they do not fall under any other statutory category. Even
10 assuming that the defense could make such a showing, but don’t even bother to try with any
11 admissible evidence⁵⁸, there would still be no discovery obligation on the part of the prosecution

12

⁵⁸ Instead, the defense has offered the statement of Gudgell, the investigative reporter, discussed above
13 relating to the “orange” van. The People, as raised above, object to Gudgell’s declaration as containing
14 hearsay, speculation, lacking foundation, improper opinion, conclusions and, as will be shown below,
15 stated under an agreement not to be required to reveal his sources. Gudgell’s statement, as would be
16 expected of a media broker, consists of overhearing others (using his words) “speculating,” that there were
17 “rumors” and finally he was told by an anonymous source. (Ex 8 – Gudgell, page 18). And we know the
18 source is anonymous because the Los Angeles Innocence Project attorneys promised Gudgell that he could
19 keep it that way – “We agreed I would not reveal the names of any sources who spoke to me off the record
20 and/or asked to remain anonymous.” (*Id.* at page 4.) The courts have said this is not evidence that must be
21 addressed: *U.S. v. Agurs* (1976) 427 U.S. 97, 110, footnote 16, holding modified by *U.S. v. Bagley* (1985)
22 473 U.S. 667 (“It is not to say that the State has an obligation to communicate preliminary, challenged, or
23 speculative information.”); *Smith v. Stewart* (9th Cir. 1998) 140 F.3d 1263, 1273 (Prosecution not
24 required to share that “police had heard about a rumor.”) Gudgell’s motivation must also be questioned
25 since he states (page 18) that he moved into the same hotel as the prosecution team to try and establish a
26 relationship (which could only mean a source) knowing full well that a “gag”/Protective Order was in
27 place (RT 363). The People do not admit, concede or accept any of his claims occurring during this trial
28 but offer the following to show its irrelevance:

 “Hogue contends that the prosecutor and the circuit judge were in an intimate relationship
 during the time of his trial yet he fails to demonstrate how that relationship even qualifies
 as evidence and, if considered as evidence, whether that evidence is material, much less,
 exculpatory. Moreover, the court is not required to accept at face value the allegations of
 the petition. *Chatmon v. State*, 2015 Ark. 417, at 2 (per curiam). Hogue’s allegations are
 conclusory, and he offers no factual substantiation that any specific, particular evidence
 was hidden from the defense at the time of trial, nor does he identify any specific motions
 or rulings that favored the prosecution or a specific extra preemptory strike and how the
 outcome of the trial would have been different had any particular evidence been disclosed.

(*Hogue v. State* (2017) 2017 Ark. 126, 4–5 [516 S.W.3d 261, 264].)

1 because the preparation and/or use of such manuals is a training function and not an investigatory
2 function of the police department, meaning the training manuals are properly viewed as outside
3 the possession of prosecution team. (See *People v. Superior Court (Barrett)* (2000) 80
4 Cal.App.4th 1305, 1310, 1317 1318 [even though the Department of Corrections was the
5 investigating agency in a prison assault, the prosecutor's duty to disclose information favorable
6 to the defense did not extend to policy and procedure manuals for the administrative segregation
7 unit relating to the Department's non investigatory functions].)

8 These manuals are also "official information" as defined in Evidence Code § 1040. (See
9 Evid. Code, § 1040 ["information acquired in confidence by a public employee in the course of
10 his or her duty and not open, or officially disclosed, to the public prior to the time the claim of
11 privilege is made"].) The case of *Suarez v. Office of Administrative Hearings (Bennett)* (2004)
12 123 Cal.App.4th 1191 cited above controls this request.

13 "2. Stanislaus County District Attorney's Office policy manuals, human resources
14 policies and procedures for employees, and all other information setting forth the
15 policies in place in 2002–2005 requiring that management be notified of any
16 personal and/or romantic relationship with another member of law enforcement,
including employees of MPD, for purposes of avoiding a conflict of interest."

17 **Response** – The People incorporate by reference all the previous legal reasons why this
18 item is not discoverable. These manuals, assuming they exist, would not have been discoverable
19 for the reasons stated above but also because they do not fall within any provision of Penal Code,
20 §1054.1. Additionally, a defendant is not allowed to discover policies from the prosecution.

21 "The one piece of information to which Spirko points that, at first blush, might give us
22 pause, is his claim that one of the prosecution's witnesses, Debbie Young, the sister of
23 John Willier, was intimately involved during the trial with the prosecution's chief
24 investigator. On closer review, however, this information is no more exculpatory or
impeaching than any other that Spirko proffers as evidence that the state violated the
25 requirements of *Brady*."
(*Spirko v. Mitchell* (6th Cir. 2004) 368 F.3d 603, 613.)

Petitioner was properly denied discovery of information “policy and procedures⁵⁹” pertaining to prosecutorial decisions to charge special circumstances in a murder case.

(*Keenan v. Superior Court* (1981) 126 Cal.App.3d 576, 581. [*“Keenan I was correctly decided by a court with subject matter jurisdiction.”* (*People v. Keenan* (1988) 46 Cal.3d 478, 505, as modified (Sept. 22, 1988), as modified (Oct. 31, 1988).])

“3. Policies in place at MPD and/or the Stanislaus County District Attorney’s Office from 2002–2005 governing the handling of conflicts of interest, including the disclosure to defendants of personal and/or romantic relationship between a member of law enforcement investigating a defendant’s case and a trial prosecutor, including but not limited to the notification requirement when a trial prosecutor is involved with an investigating officer she calls to the stand and examines as part of the prosecution’s case in chief.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. Policies, assuming they exist, would not have been discoverable for the reasons stated above but also because they do not fall within any provision of Penal Code, §1054.1.

“4. All disclosures provided and waivers sought by MPD and/or Stanislaus County District Attorney’s Office informing Mr. Peterson’s defense of any conflicts of interest among trial prosecutors and testifying MPD officers.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. These materials would not have been discoverable for the reasons stated above and because they do not fall within any provision of Penal Code, §1054.1.

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⁵⁹ "In petitioner's motion to compel discovery of the San Francisco District Attorney's records regarding policy and procedures in charging special circumstances petitioner's counsel declared that in six and a half years as a criminal attorney he had never heard of any formal or informal standards applicable to the prosecution's decision of whether or not to seek the death penalty and to the best of his knowledge no such standards exist."

(*Keenan v. Superior Court* (1981) 126 Cal.App.3d 576, 590 Dissent by J. Miller.)

M. Any New Reports, Leads, Evidence, or Tips Received by MPD or Any Other Law Enforcement Agency Since the Date of Mr. Peterson’s Conviction Identifying Individuals Other than Mr. Peterson as Possibly Involved or Responsible for the Disappearance and Deaths of Laci and Conner

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable.

Under *Steele*, it is the defendant who must show that the materials he is requesting are materials to which he would have been entitled at time of trial to obtain a discovery order pursuant to §1054.9. (See *In re Steele, supra*, 32 Cal.4th at p. 688 [“section 1054.9's discovery ... is limited to, specific materials ... that the defendant can show fall into any of these categories ...”]; see also *ibid.* at p. 697.) Thus, the defendant must persuade the trial court that he would have been entitled to the materials he seeks at time of trial, e.g., because the materials came within the scope of a discovery order the trial court actually issued at time of trial or because they came within the prosecution's constitutional or statutory duty to disclose exculpatory evidence.

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 365–366, as modified on denial of reh'g (Jan. 2, 2007).)

Any materials that the prosecution and law enforcement authorities did not possess at trial are outside the scope of section 1054.9. That is not to say the prosecution does not have constitutionally-imposed post-conviction discovery obligations. “[A]fter a conviction the prosecutor ... is bound by the ethics of his office to inform the appropriate authority of ... information that casts doubt upon the correctness of the conviction.” (*Imbler v. Pachtman* (1976) 424 U.S. 409, 427, fn. 25; see also *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1261.) But as to information not available “at time of trial,” this obligation is separate and independent from, and therefore not enforceable under, §1054.9.

To the extent Kennedy is suggesting he had a right under *Brady* independent of section 1054.9, to obtain a court order for discovery to assist him in prosecuting his habeas corpus petition, he has failed to offer any authority supporting that suggestion. Certainly, if Kennedy is able to identify materials to which he would have been entitled at time of trial under *Brady*, and he has requested discovery of those materials in the present motion, then he is entitled to an order for discovery of those materials under section 1054.9 (assuming he has satisfied all other

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requirements for obtaining such an order). But he has not shown any right to such a discovery order based on Brady alone, independent of section 1054.9.

(*Kennedy, supra*, 145 Cal.App.4th at p. 369.)

N. Audio and Video Recordings of MPD Interviews With and Surveillance of Scott Peterson and Transcripts Thereof, Not Yet Provided

Mr. Peterson requests the following:

“1. All audio and video recordings of MPD’s interviews with Mr. Peterson beginning December 24, 2002, through April 30, 2003, including but not limited to the following:”

Response –This is not actually a request for discovery but a demand for an accounting of what the police did. "It is clear that the Constitution does not require the prosecution to make a complete and detailed accounting to the defendant of all police investigatory work on a case." (*People v. Nation* (1980) 26 Cal.3d 169, 175.) The trial record demonstrates this fact since any absence or failure of recording equipment was utilized by the defense. Additionally, this trial took place in 2004 and audio-cassettes were being used... there were *no body cameras*. There was no requirement to videotape just as there was no requirement to gather evidence:

In his discovery motion, Kennedy requested “[a]ny and all other records, of any kind and in any form, not covered by the requests above that would tend to exonerate or exculpate [Kennedy] as to guilt or punishment, diminish or reduce any personal culpability for the charged offenses, or constitute information that the defense might use to impeach or contradict prosecution witnesses, including but not limited to [¶] a. evidence that tends to negate any element of the crimes [of] which Mr. Kennedy was convicted; [¶] b. evidence that any party other than Mr. Kennedy was culpable of the robbery and murder of Glenn Chambers; [¶] c. evidence that could have been used to undermine the credibility of a prosecution witness, including evidence of past inaccurate statements, prior inconsistent statements, non-felony conduct involving moral turpitude, misdemeanor convictions involving moral turpitude that could have assisted the defendant in obtaining direct evidence of the misdemeanor misconduct, criminal charges pending against a witness anywhere in the state, the probationary status of witnesses, any other evidence reflecting on the credibility of material witnesses, including reduced sentences, avoiding prosecution of criminal charges, previous informant status, benefits received for cooperation with law enforcement in prior cases; [¶] d. evidence that would have supported the defense motion to suppress the testimony of Janet Madsen.”

Kennedy also requested “[a]ny other relevant discovery materials covered under the statute of which petitioner is not yet aware, whether due to the State’s concealment or its oversight.”

The trial court denied these requests in their entirety.

Kennedy contends that “to the extent that th[ese] requests w[ere] denied based on Section 1054.5 or Evidence Code [section] 664, the denial was an abuse of discretion.”

We find no abuse of discretion. *In Steele*, the Supreme Court interpreted section 1054.9 “to require the trial court, on a proper showing of a good faith effort to obtain the materials from trial counsel, to order discovery of *specific materials....*” (*In re Steele, supra*, 32 Cal.4th at p. 697, italics added.) The court approved of the request at issue there because it was “not just a free-floating request for anything the prosecution has that may be relevant to the case, but a focused request for specific information.” (*Id.* at p. 702.)

The two requests at issue here are exactly the sort of “free-floating” requests the Steele court disapproved. In effect, they ask for anything to which Kennedy is entitled under section 1054.9 that is not encompassed in his previous requests. Because they are not focused requests for specific information, the trial court did not abuse its discretion in denying them.”

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 397–398, as modified on denial of reh’g (Jan. 2, 2007).)

“a. Interviews various MPD officers conducted with Mr. Peterson on December 24, 2002, beginning at approximately 6:30 p.m. up to Det. Brocchini’s videotaped interview with him at MPD, which has been provided to the defense. This request includes recordings made in Det. Brocchini’s official vehicle while he was driving Mr. Peterson around Modesto on the evening of December 24, 2002, and interviewing him throughout that time;”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. Just because the defendant says something, doesn’t make it true. The burden is on the defendant to show these items exist and, in addition, how these items would further his preparation for his second writ.

“b. Interviews MPD officers, including Det. Craig Grogan, conducted with Mr. Peterson on December 25, 2002, while Mr. Peterson was at the MPD located in various rooms, including interview rooms. This request includes all recordings of the pre-polygraph interview Doug Mansfield conducted, or attempted to conduct, on that date.”

1 **Response** – The People incorporate by reference all the previous legal reasons why this
2 item is not discoverable. It is Peterson’s burden to show these items exist. He also needs to show
3 how these items would further his preparation for his second writ.

4 *“c. Video recordings made by cameras at the MPD lobby, captured at*
5 *approximately 4:00–5:00 p.m. on December 25, 2002, showing Lee and Jackie*
6 *Peterson asking for their son to be released from custody;”*

7 **Response** – The People incorporate by reference all the previous legal reasons why this
8 item is not discoverable. This is clearly not discoverable under Penal Code §1054.9 or §1054.1.

9 *“d. Interviews MPD officers, including Chris Boyer, Craig Grogan, Allen*
10 *Brocchini, and others, conducted with Mr. Peterson at his home prior to*
11 *executing search warrants on his property on December 26, 2002;”*

12 **Response** – The People incorporate by reference all the previous legal reasons why this
13 item is not discoverable. These interviews are documented in various reports and there has been
14 no showing that cameras were even available.

15 *“e. Interviews MPD officers, including Det. Craig Grogan, conducted with Mr.*
16 *Peterson on January 3, 2003, while he was in various interview rooms at MPD.”*

17 **Response** – The People incorporate by reference all the previous legal reasons why this
18 item is not discoverable. These interviews are documented in various reports and there has been
19 no showing that cameras were even available or if they were available that the batteries in the
20 microphone worked.

21 *“f. Interviews MPD officers, including Det. Craig Grogan, conducted with Mr.*
22 *Peterson on January 3, 2003, while he was being transported to and from a facility*
23 *to provide biological samples, and while he was being searched, fingerprinted, and*
24 *photographed pursuant to a search warrant.”*

25 **Response** – The People incorporate by reference all the previous legal reasons why this
26 item is not discoverable. These events are documented in various reports. The search warrant
27 return documents photos that were taken (Bates page 22112).

28 *“2. All audio and video recordings of MPD’s surveillance of Mr. Peterson*
beginning December 24, 2002, through April 30, 2003, not yet provided, including
but not limited to video recordings captured by the pole camera MPD

1 *surreptitiously placed outside the Petersons' home in December 2002–January*
2 *2003."*

3 **Response** – The People incorporate by reference all the previous legal reasons why this
4 item is not discoverable. This is a fishing expedition. Geragos inquired about the pole camera at
5 the preliminary hearing and during trial with multiple witnesses (see for example RT 934).
6 Defendant has not explained how video surveillance of his house would lead to a different
7 outcome of his case. Absent some showing of materiality this request does not further a potential
8 claim in furtherance of a writ.

9 **O. Tracy Tip**

10 *"All audio and video recordings of the call MPD received on January 10, 2003,*
11 *reporting as follows (Bates 15137): All investigation reports, police reports,*
12 *witness statements, recorded statements, photographs, and any other information*
13 *obtained by San Joaquin County law enforcement who looked for the location*
14 *described in the tip. Mr. Peterson is requesting any and all reports from San*
15 *Joaquin County Sheriff's Department Deputies M. Smith, S. Steward, and R.*
16 *Gillingwater; San Joaquin County Sheriff's Department Air One flyover using the*
17 *heat sensor; and Alameda County Sheriff's Department Deputy Hesselein."*

18 **Response** – The People incorporate by reference all the previous legal reasons why this
19 item is not discoverable. This is a fishing expedition. This issue was raised at trial. In fact, Off.
20 Eric Beffa read the tip that he was assigned to on January 10, 2003 into the record:

21 A. The tip reads as follows. It was an anonymous call from a cell phone. The tip
22 reads, eastbound 205 at Tracy. Take the first exit, which is the first bridge, which
23 is a county area, and turn right. Said this was not a populated area of town, but
24 rather a county area. Does not know the name of the road. Go down four to five
25 miles. You will see two white houses on left side of the road. In front of the second
26 house is an old abandoned white pickup. Behind the house is a van, as he
27 explained, where you can store feed for horses. They have a pregnant woman there.
28 And he states he recognized her to be Laci. Caller lives two to three hours away
from there. Wanted to remain completely anonymous. Doesn't want the reward
money. Just wants her to be found. Claims they are abusing and hurting her. Says
he saw Laci's picture on the missing persons poster. Just wanted to save her.

(RT 16379.)

Beffa explained the caller never called back and never provided any contact information

1 (RT 16380). Various officers from various agencies looked into this tip, but nothing ever came of
2 it so the defense argued:

3 Are they connected? I don't know. Was Laci up in Tracy? I don't know. But they
4 certainly did not search that. I mean the first thing that came out about Tracy was,
5 you remember, when Helton was on the stand, Helton said We went up there and
6 we spent three days chasing weeds. ¶ Then they bring Beffa in and Beffa says,
7 Well, I was up there for 46 hours. Then they bring Mears in, and Mears says Well,
8 we were here for two hours, but we didn't go out to search, and then in 15 minutes
9 they were called back somewhere else, and I never went back to that specific
10 location, the one where we went over the area with the heat radiating device, the
11 FLIR device, to see what was going on. ¶ Was Laci there? I don't know. We don't
12 know because they didn't go up there.

13 (RT 20513).

14 The jury heard the actual testimony from San Joaquin County Sheriff Deputy Paul Mears
15 (starting at RT16391; Bates page 3022) who testified that after he met with Beffa regarding the
16 “Tracy” tip he talked to his supervisors and:

17 A. *** They told me to go ahead and check the area. And then when I had several
18 entrances that were possible, to go ahead pick up my trainee at the time Mr.
19 Gillingwater and another officer, Deputy Stewart and his trainee, they would go
20 back to those houses and search the area.

21 Q. Did you do that?

22 A. Yes, we did. For four days.

23 Q. For four days? And then did you find anything during those searches that was
24 related to the Laci Peterson investigation?

25 A. No, I did not. (RT 16394).

26 "We know of no constitutional requirement that the prosecution make a complete and
27 detailed accounting to the defense of all police investigatory work on a case." (*Moore v. Illinois*
28 (1972) 408 U.S. 786, 795.) That is especially compelling here when the defense used the
information at trial, known since 2003, and cannot show any reason for the requested information
other than speculation.

The prosecutor has no duty to actively investigate the facts and circumstances of the case

or gather all potential evidence for the benefit of the accused. (*People v. Perez* (1979) 24 Cal.3d 133, 145; *People v. Gurtenstein, supra*, 69 Cal.App.3d at p. 449.) Nor are the People required to make a complete and detailed accounting to the defense of all police investigative work on a case. (*Moore v. Illinois* (1972) 408 U.S. 786, 795; *People v. Nation* (1980) 26 Cal.3d 169, 175.)

P. Current Evidence/Property and Chain of Custody Logs for All Evidence Items

“Mr. Peterson requests current Property & Evidence Logs, Inventory Logs, Chain of Custody Logs, and all other related documents reflecting the status and custody of all evidence items collected in this case from December 24, 2002, to the present.”

Response – The People incorporate by reference all the previous legal reasons why this item is not discoverable. The prosecutor has no duty to actively investigate the facts and circumstances of the case or gather all potential evidence for the benefit of the accused. (*People v. Perez* (1979) 24 Cal.3d 133, 145; *People v. Gurtenstein, supra*, 69 Cal.App.3d at p. 449.) Nor are the People required to make a complete and detailed accounting to the defense of all police investigative work on a case. (*Moore v. Illinois* (1972) 408 U.S. 786, 795; *People v. Nation* (1980) 26 Cal.3d 169, 175.)

Although the materials Kennedy requested *might* include evidence favorable to him, they would also likely include evidence that was entirely neutral and might even include evidence unfavorable to him. Since neutral and unfavorable materials are clearly not materials to which Kennedy would have been entitled at time of trial even under the broadest reading of section 1054.1(e) and *Brady*, Kennedy’s request does not describe materials to which he would have been entitled at time of trial and thus it is overbroad. The trial court was under no obligation to parse Kennedy’s request and issue a discovery order for some subset of materials encompassed by his request. If Kennedy’s request, taken as a whole, did not ask for materials to which he would have been entitled at time of trial, then the trial court was justified in denying it.

(*Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 371-372, italics in original.)

Finally, as with any defense request for discovery when ruling on a §1054.9 motion, the court should refuse to grant discovery if the materials were not available at the time of trial – this request by definition is asking for “current” logs; also, this attempts to shift the burden to the prosecution and on third parties which substantially outweigh the demonstrated need for such

discovery. (See generally *People v. Jenkins* (2000) 22 Cal.4th 900, 957; *People v. Kaurish* (1990) 52 Cal.3d 648, 686; see also *People v. Jackson* (2003) 110 Cal.App.4th 280, 286; *People v. Littleton* (1992) 7 Cal.App.4th 906, 910; *Lemelle v. Superior Court* (1978) 77 Cal.App.3d 148, 164-165.) Defense has shown no reason for this information above and beyond what has previously been provided.

CONCLUSION

Post-conviction discovery in California criminal cases is exceedingly limited. Penal Code §1054.9 permits a defendant convicted of a serious or violent felony resulting in a sentence of 15 years or more to obtain post-conviction discovery if he is pursuing a post-conviction petition for writ of habeas corpus. (Pen. Code §1054.9, subd. (a); see *Pearson, supra*, 48 Cal.4th at pp. 571-573.)

Defendant Scott Peterson is in a unique posture, unlike most all other petitioners who request post-conviction discovery for the purposes of filing a habeas petition. Defendant Peterson has already filed and litigated a motion for new trial, an appeal, a motion for post-conviction discovery, a motion for post-conviction DNA testing, a habeas petition and a second request for DNA testing in his case. After nearly 22 years, Laci's family and friends have yet to receive finality and had to endure traumatization by his successive motions, petitions and writs.

The California Supreme Court has denied his appeal and habeas claims and upheld his convictions. Still, the defendant filed his second habeas petition in 2023 raising the same previously litigated claims and defense theories under the guise of "new evidence." Now, the defendant makes his *second* §1054.9 motion and *third* request for post-conviction DNA testing. When will it end?

The defendant's justification for both motions is to *investigate* his claim of innocence based on "new evidence." However, the defendant has been conducting his investigation for nearly 22 years on the same defense theories that have been put forth to the jury at his trial and before our highest court – which both rejected. In his Reply to Opposition for DNA Testing, the

1 defendant requests post-conviction discovery to support his §1405 motion. (Def. Reply to Opp.
2 DNA Testing, pp. 10; 13; 63-65.)

3 Penal Code §1405, California’s statutory mechanism for post-conviction DNA testing,
4 was enacted as an isolated exception to the general rule that “[n]o order requiring discovery shall
5 be made in criminal cases except as provided in this chapter [i.e., Pen. Code §§1054 et seq.]”
6 (Pen. Code, §1054.5, subd. (a).) Significantly, §1054.9 does not overlap with Penal Code §1405
7 and cannot be used to obtain postconviction DNA testing. (Pen. Code, §1054.9, (subd. (d) [“The
8 procedures for obtaining access to physical evidence for purposes of postconviction DNA testing
9 are provided in Section 1405 and this section does not provide an alternative means of access to
10 physical evidence for those purposes”]; see *Satele, supra*, 7 Cal.5th 852, at p. 858, fn. 3.)
11 Therefore, the defendant has no right to post-conviction discovery to establish the requisite eight
12 fact-based criteria enumerated in Penal Code §1405(g) and, as such, the Court should deny his
13 motion.

14 The California Supreme Court restricted post-conviction discovery materials to the
15 following three categories: (1) materials the prosecutor provided at time of trial but have since
16 become lost to the defendant, (2) materials the prosecution should have provided at time of trial,
17 or (3) materials the defendant would have been entitled to at time of trial had the defendant
18 specifically requested them. (*Steele, supra*, 32 Cal.4th at pp. 688, 695, 697.) The permitted
19 discovery is limited to material in the possession of the prosecution or law enforcement to which
20 he would have been entitled at the time of trial. (Pen. Code, §1054.9; *Jimenez, supra*, 40
21 Cal.App.5th at p. 830 (habeas discovery still provides for work-product protection).) The
22 California Supreme Court has held that defendants who seek to employ this provision must first
23 prove that the evidence actually exists. (*Barnett, supra*, 50 Cal.4th 890, 901.)

24 While the People maintain a *Brady* obligation, the information subject to disclosure under
25 *Brady* is that which is readily available to the prosecution and not accessible to the defense.
26 (*Sanchez, supra*, 62 Cal.App.4th at p. 474.) Moreover, the prosecution does not have a general

1 duty to seek out, obtain and disclose all evidence that might be beneficial to the defense. (*Lee*,
2 *supra*, 81 Cal.App.5th at 236, citing *People v. Panah* (2005) 35 Cal.4th 395; *People v. Gutierrez*
3 (2002) 28 Cal.4th 1083, 1135-1137.)

4 The defendant's second §1054.9 motion requests no fewer than 645 items, is extremely
5 broad, lacks specificity and fails to demonstrate that the materials he is requesting are materials
6 to which he would have been entitled at the time of trial considering this motion falls on the heels
7 (albeit 12 years later) of petitioner's prior counsel's motion. The defendant has not shown any
8 reasonable set of facts or basis for the disparity between Mr. Gibbs's motion and this one, nor
9 even a good faith belief that these 645 items exist. In fact, the defendant has failed to show he has
10 reviewed all the discovery within his possession, custody, and control. It is the People's
11 contention that, having previously brought a post-conviction discovery motion, the defendant
12 should no longer even have a statutory "right" to discovery, only the ability to request such
13 discovery subject to the court's discretion. Furthermore, the court's discretion is legally prescribed
14 by the defendant's prior appellate and Petition claims. We request the court exercise that
15 discretion and deny this motion.

16 For all the above reasons, the People respectfully request this Court give Laci's family
17 and friends the finality that they are owed and deserve under the California constitution and deny
18 the defendant's motion for post-conviction discovery in its entirety.

19 Dated this 20th day of May 2024, at Modesto, California.

20 Respectfully submitted,

21 JEFF LAUGERO
22 DISTRICT ATTORNEY

23 

24 DAVID P. HARRIS
25 Special Prosecutor
26
27
28

1 **ADDENDUM**

2 **EXHIBIT/ DOCUMENT OBJECTIONS⁶⁰**

3 The People object to the defendant's attachments to his motion. It is his burden to prove
4 the admissibility of each item; the People do not concede that any item is admissible unless we
5 affirmatively so state. The objections below are made to assist this Court in excluding the
6 proffered items. A failure to raise a specific objection to any paragraph does not amount to an
7 admission/concession of admissibility over hearsay and foundation objections or a waiver of any
8 other objections.

9 Affidavits or declarations may not be used in evidence unless permitted by statute, by
10 stipulation of the parties, or by failure to object. (*Estate of Fraysher* (1956) 47 Cal.2d 131, 135;
11 *Houghtaling v. Superior Court* (1993), 17 Cal.App.4th 1128, 1149-1150; *People v. Dickinson*
12 (1976) 59 Cal.App.3d 314, 319.) Such affidavits or declarations are hearsay because they are
13 prepared without the opportunity to cross-examine the affiant. (*Windigo Mills v. Unemployment*
14 *Insurance Appeals Board* (1979) 92 Cal.App.3d 586, 597.) Even in situations where an affidavit
15 or declaration may be an acceptable method for the defense to make factual allegations, "the trial
16 court retains the discretion to permit the prosecutor to cross-examine a declarant [and] [i]f the
17 declarant refuses to testify or answer, the trial court may strike the declaration. (*People v. Estrada*
18 (2003) 105 Cal.App.4th 783, 794.)

19 It is elementary that inadmissible hearsay must be stricken on objection and must be
20 disregarded by the court. (*Ziegler v. Reuze* (1945) 27 Cal.2d 389, 398-399; *Houghtaling v.*
21 *Superior Court* (1993) 17 Cal.App.4th 1128, 1149-1150.) Thus, defense declarations and
22 affidavits offered to prove disputed facts are hearsay and are inadmissible under Evidence Code
23 section 1200. Such a declaration of a defendant was offered in *People v. Williams* (1973) 30
24 Cal.App.3d 502 in support of a pretrial motion. The appellate court ruled: "It is a commonly

25 _____
26 ⁶⁰ This Addendum includes the People's objections to the defense Reply to the People's Opposition to the
27 Motion for DNA Testing.

known rule that no witness, even a defendant in a criminal case, will be permitted to testify concerning a matter while refusing cross-examination as to the same matter. In such situations the constitutional privilege against self-incrimination as to the subject matter of his direct examination is deemed waived.” (*Id.* at p. 510.)

The People object to factual statements made in the defense pleadings, attachments and exhibits that are not supported by the trial records and we object to all declarations based on hearsay, lack of foundation, lack of personal knowledge, improper opinion and relevance as a starting point. Newly added exhibits and declarations are inadmissible hearsay, of which judicial notice may not be taken of post-conviction claims except as related to legal issues that have already been adjudicated. The People will address our hearsay objections, evidentiary issues, and collateral estoppel claims below as it relates to particular items offered by the defendant.

EXHIBIT 1 Declaration of Paula M. Mitchell

Paragraph (¶) 1 – Irrelevant;

¶ 2 (I have assisted...) Hearsay, argumentative, lack of foundation, improper conclusion, improper lay opinion, irrelevant;

¶ 5 Hearsay, argumentative, lack of foundation, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 6 Hearsay, argumentative, speculation, lack of foundation, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 8 Hearsay, argumentative, speculation, lack of foundation, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 9 Hearsay, argumentative, speculation, lack of foundation, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 11 Hearsay, irrelevant;

¶ 12 Hearsay, argumentative, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 14 Irrelevant;

Exhibit A (letter to District Attorney) – This letter appears to be a copy of the letter that was part of the sealing motion and was withdrawn. It should be

1 withdrawn here as well. It is a letter drafted by counsel, not under oath, that
2 contains massive amounts of hearsay, inadmissible material and insinuations
3 instead of actual facts. It is also argumentative, contains speculation, lacks
4 foundation, contains improper conclusions, improper legal opinions, improper lay
5 opinions, is irrelevant and violates Evidence Code §352;

6 Exhibit B (emails) – These emails have no independent admissibility and
7 are just a back-door attempt to get inappropriate arguments before the court. They
8 are hearsay, argumentative, contain speculation, lack foundation, contain improper
9 conclusions, improper legal opinions, improper lay opinions, are irrelevant and
10 violate Evidence Code §352;

11 **EXHIBIT 2 Declaration of Scott Peterson**

12 Unlike the DNA motion which requires a statement from the defendant, this motion does
13 not.

14 ¶ 2 Hearsay, argumentative, improper conclusion, improper legal opinion, improper
15 lay opinion, irrelevant;

16 ¶ 3 Hearsay, argumentative, improper conclusion, improper legal opinion, improper
17 lay opinion, irrelevant;

18 ¶ 4 Hearsay, argumentative, speculation, improper conclusion, improper legal
19 opinion, improper lay opinion, irrelevant;

20 ¶ 5 Hearsay, argumentative, speculation, improper conclusion, improper legal
21 opinion, improper lay opinion, irrelevant;

22 ¶ 6 Hearsay, argumentative, speculation, improper conclusion, improper legal
23 opinion, improper lay opinion, irrelevant. [Also, the defendant's statement that he
24 "cooperated fully with the police when I discovered Laci was missing" is false due to his
25 repeated denials of the affair with Amber Frey including his admission of such to Det.
26 Grogan during a captured phone call (RT 17805-17806; Ex #270A transcript page 2)];

27 ¶ 7 Hearsay, argumentative, speculation, improper conclusion, improper legal
28 opinion, improper lay opinion, irrelevant [Also, the defendant's statement that "no
physical or direct evidence implicating me in the killing of my family was ever found" is
false due to the recovery of the boat cover soaked in gasoline, the blue tarp contaminated
with fertilizer, computer searches documenting his plans to go to the bay, blood on the
comforter and truck door, recovered jewelry, Laci's missing pants that she was later

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found in, the wiretap calls with Amber Frey, and clandestine trips to the bay in rented vehicles (See Statement of Facts incorporated by reference here from the DNA Opposition)];

¶ 8 Hearsay, argumentative, speculation, improper conclusion, improper legal opinion, improper lay opinion, irrelevant [Also, the defendant's statement that "none of the evidence obtained through the extensive surveillance of my movements implicated me" is false, as stated by the California Supreme Court... "there was considerable other circumstantial evidence incriminating Peterson" including "his repeated subsequent surreptitious trips to the marina in the weeks after her disappearance..." *People v. Peterson, supra*, 10 Cal.5th 409, 452. See also the Statement of Facts incorporated by reference here from the DNA Opposition];

¶ 9 Hearsay, argumentative, speculation, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 10 Hearsay, argumentative, speculation, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 12 Hearsay, argumentative, speculation, improper conclusion, improper legal opinion, improper lay opinion, irrelevant. [Also, the defendant's statement that the prosecution "presented no physical, forensic, or direct evidence linking me to the deaths of my wife and son" is false. This Court will note that he deliberately omits the word "circumstantial" because, as stated by the California Supreme Court, "... there was considerable other circumstantial evidence incriminating Peterson..." (*People v. Peterson, supra*, 10 Cal.5th 409, 452. See also the Statement of Facts incorporated by reference here from the DNA Opposition];

¶ 14 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 16 Hearsay, argumentative, speculation, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 17 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 18 Hearsay, lack of foundation, irrelevant;

¶ 19 Hearsay, argumentative, speculation, lack of foundation, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 20 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

¶ 21 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper legal opinion, improper lay opinion, irrelevant;

EXHIBIT 3 2011 1054.9 Pleadings and Order

These are records of this case and the court may take judicial notice of the records as we have set forth in our position previously. Hearsay statements from the defense do not become independently admissible just because they are filed with the court.

EXHIBIT 4 Declaration of Susan Medina

¶ 2 Hearsay, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant;

¶ 3 Hearsay, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant;

¶ 4 Irrelevant;

¶ 5 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant;

¶ 6 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant;

¶ 7 Argumentative, improper conclusion, improper lay opinion, irrelevant;

¶ 9 & 10 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant [These paragraphs reference photos of a mailbox taken after the time in question and do not accurately reflect the events of December 24, 2002. The statements are also inconsistent with Medina's trial testimony where she said:

Q. And I think we've heard a description of the mailbox. If it's my understanding, when you were pulling out of the driveway the day you were leaving to go to Los Angeles, your husband got out of the car and took some outgoing mail and placed it in the mailbox; is that correct? A. Correct. (RT 9614, 6-10-2004)]

¶ 11 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant [Additionally, in this declaration (signed in 2023) for the defense, her claim to have seen a suspicious man on a bicycle on her street that morning who made her feel uncomfortable is inconsistent with her trial testimony:

Q. Okay. Now, when you're leaving, you're coming out of the driveway, you're going down the street, did you -- did you notice anything out of the ordinary? A.

Nothing unusual. (RT 9594.)]

¶ 12 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant;

¶ 13 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant;

¶ 14 Hearsay, irrelevant;

¶ 17 Hearsay, irrelevant;

¶ 18 Irrelevant;

¶ 19 Hearsay, lack of foundation, lack of personal knowledge, irrelevant;

¶ 20 Irrelevant;

¶ 21 Hearsay, argumentative, irrelevant, Evid. Code §352;

¶ 22 Hearsay, argumentative, speculation, improper lay opinion, irrelevant, §352 [this topic was also covered during the trial where Medina admitted the defendant cried when there was a defense investigator present with him during the conversation (RT 9635)];

¶ 23 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant;

¶ 26 Hearsay, lack of foundation, lack of personal knowledge, irrelevant;

¶ 27 Hearsay, argumentative, irrelevant;

¶ 28 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant;

¶ 29 Hearsay, argumentative, speculation, lack of foundation, lack of personal knowledge, improper conclusion, improper lay opinion, irrelevant;

Attachment A – Irrelevant, Evid. Code §352 (no showing the backyard is visible from the street)

Attachment C – Improper re-creation (the photo states the mailbox has been relocated), lack of foundation, Evid. Code §352;

Attachment D - Hearsay, irrelevant;

EXHIBIT 5 Declaration of Carl Jensen

This declaration was signed in 2015 for a different proceeding – the first Habeas proceeding. The claim this declaration was used for has been litigated, resulting in a determination against the defendant – he is collaterally estopped from using the same materials.

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1 **The People move to strike this declaration based on issue preclusion since the**
2 **Supreme Court has ruled against the defendant using this same declaration in his first**
3 **Petition.**

4 ¶ 3 Hearsay, lack personal knowledge, lack of foundation, conjecture, speculation,
5 argumentative, improper lay opinion evidence, irrelevant;

6 ¶ 4 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
7 argumentative, improper lay opinion evidence, irrelevant;

8 ¶ 5 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
9 argumentative, improper lay opinion evidence, irrelevant;

10 **EXHIBIT 6 Declaration of Gary Ermoian**

11 This was one of the defense investigators before, during and after the trial. He is also the
12 investigator Diane Campos accused of trying to get her to change her statement as set out in the
13 People's Opposition to the DNA motion. Further, Mr. Ermoian has previously been convicted of
14 a Federal offense for Conspiracy to Submit False Statements. (See attached People's Discovery
Opp. Exh. 1).⁶¹ His declaration is almost all hearsay:

15 ¶ 2, 3, 4, 5, 6 Irrelevant;

16 ¶ 8 Hearsay, speculation, lack of personal knowledge, lack of foundation, improper
lay opinion, conjecture, argumentative, irrelevant;

17 ¶ 9 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation,
18 improper lay opinion, argumentative, irrelevant;

19 ¶ 10 Hearsay, lack of foundation, irrelevant;

20 ¶ 11 Hearsay, lack of foundation, irrelevant;

21 ¶ 12 (Tips) Hearsay, conjecture, speculation, lack of personal knowledge, lack of

22 ⁶¹ Courts have repeatedly held that a hearsay declarant may be impeached:

23 "Evidence Code section 1202 provides, in relevant part: "Any other evidence offered to attack or
24 support the credibility of the declarant is admissible if it would have been admissible had the
25 declarant been a witness at the hearing.'" (*People v. Carkhum-Murphy* (2019) 41 Cal.App.5th 289,
26 294.) The non-testifying defendant in the *Carkhum* case offered an inculpatory hearsay statement
27 through another witness, which the trial court found triggered the prosecution's ability to impeach
28 the statement with the defendant's prior convictions, stating, "Defendant's theft conviction
involves moral turpitude and dishonesty (*People v. Wheeler* (1992) 4 Cal.4th 284, 297 as does his
conviction for providing false information to a police officer." (*People v. Carkhum-Murphy* (2019)
41 Cal.App.5th 289, 297–298.)

foundation, improper lay opinion, argumentative, irrelevant;

¶ 13 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, argumentative, irrelevant;

¶ 14 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 15 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 16 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, argumentative, irrelevant;

¶ 17 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant;

¶ 18 Hearsay, lack of foundation, irrelevant;

¶ 19 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant;

¶ 20 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant;

¶ 21 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 22 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant;

¶ 23 Hearsay, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant;

¶ 25 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, argumentative, irrelevant;

¶ 26 Irrelevant;

¶ 27 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 28 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 29 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 30 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 31 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, argumentative, irrelevant;

¶ 32 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 33 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 34 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

- ¶ 36 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- ¶ 37 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- ¶ 38 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, argumentative, irrelevant;
- ¶ 39 Hearsay, conjecture, speculation, lack of personal knowledge, lack of foundation, improper character evidence, improper lay opinion, argumentative, irrelevant; but more importantly, "Since at least 1982, it has been the law that a witness, whether lay or expert, cannot testify to an opinion that another person is telling the truth. (*People v. Sergill* (1982) 138 Cal.App. 3d 34, 39-40.)" *People v. Bratton* (2023) 95 Cal.App.5th 1100, 1127;
- ¶ 40 Conjecture, speculation, argumentative, irrelevant;
- ¶ 41 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- ¶ 42 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- ¶ 43 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- ¶ 44 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;
- ¶ 45 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper character evidence, irrelevant, and violates the *Sergill/Bratton* rule cited above;
- ¶ 46 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper character evidence, irrelevant;
- ¶ 47 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, irrelevant;
- ¶ 48 Hearsay, lack of personal knowledge, irrelevant;
- ¶ 49 Hearsay, lack of personal knowledge, irrelevant. Also, the requirements of Evidence Code § 795 have not been met;
- ¶ 50 (Cordova [There is no declaration from Cordova]) Hearsay, lack of personal knowledge, irrelevant;
- ¶ 51 Hearsay, lack of personal knowledge, irrelevant;
- ¶ 52 Hearsay, lack of personal knowledge, irrelevant;
- ¶ 53 Hearsay, lack of personal knowledge, irrelevant;
- ¶ 54 Hearsay, lack of personal knowledge, improper opinion, irrelevant;
- ¶ 55 Hearsay, lack of personal knowledge, irrelevant;

¶ 56 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper character evidence, improper lay opinion, improper expert opinion, irrelevant;

¶ 57 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper character evidence, irrelevant;

¶ 58 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper opinion evidence, irrelevant;

¶ 59 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper character evidence, improper opinion, irrelevant;

¶ 60 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper lay/expert opinion evidence, irrelevant;

¶ 62 Hearsay, lack of foundation, speculation, argumentative, irrelevant;

Exh. A Ilvesta report – Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

Exh. B Johnson report and attachments – Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

Exh. C Casey report – Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

Exh. D Clinton report – Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

Exh. E Faria report – Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

Exh. F email – Hearsay;

Exh. I Maldonado report – Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

Exh. J Aguilar report – Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

Exh. K Freitas report – Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

Exh. M Mitchell report – Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

Exh. N Wolf report – Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

1 Exh. O –Not attached to motion Hearsay, lack of personal knowledge, lack of
2 foundation, irrelevant;

3 Exh. P Garcia report and attachment – Hearsay, lack of personal
4 knowledge, lack of foundation, irrelevant;

5 Exh. Q Medina report – Hearsay, lack of personal knowledge, lack of
6 foundation, irrelevant;

7 Exh. R Nickerson report – Hearsay;

8 Exh. S Jackson report – Hearsay, does not meet Evidence Code section
9 795 requirements;

10 Exh. T Cordova report – Hearsay, lack of personal knowledge, lack of
11 foundation, irrelevant;

12 Exh. U Ringler report – Hearsay, lack of personal knowledge, lack of
13 foundation, irrelevant;

14 Exh. V Albert report – Hearsay, lack of personal knowledge, lack of
15 foundation, irrelevant;

16 Exh. W Ulrich report – Hearsay, lack of personal knowledge, lack of
17 foundation, irrelevant;

18 Exh. X Reed report – Hearsay, lack of personal knowledge, lack of
19 foundation, irrelevant;

20 Exh. Y Fritz report – Hearsay, lack of personal knowledge, lack of
21 foundation, irrelevant;

22 **EXHIBIT 7 Declaration of Paige McGrail**

23 ¶ 1 Irrelevant;

24 ¶ 2 Irrelevant;

25 ¶ 5 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

26 ¶ 6 Irrelevant;

27 ¶ 8 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

28 ¶ 9 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
argumentative, improper opinion evidence, irrelevant;

¶ 10 Hearsay, irrelevant;

¶ 11 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation,
argumentative, improper opinion evidence, irrelevant;

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¶ 12 Irrelevant;

¶ 14 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 15 Hearsay, lack of personal knowledge, lack of foundation, irrelevant⁶²;

¶ 16 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 17 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 19 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper opinion evidence, irrelevant;

¶ 21 Hearsay, lack of personal knowledge, lack of foundation, conjecture, speculation, argumentative, improper opinion evidence, irrelevant;

¶ 22 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

EXHIBIT 8 Declaration of George Michael Gudgell

¶ 1, 2, 3 (background) Irrelevant;

¶ 5 (Reporting) Hearsay, lack of foundation, speculation, improper opinion and improper conclusion;

¶ 6 (Thoughts) Hearsay, improper opinion, lack of personal knowledge, lack of foundation, improper legal conclusion [ignores Supreme Court precedent on this case], irrelevant;

¶ 7 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶ 8 (Character) Improper foundation, lack of personal knowledge, conclusory, improper lay opinion, irrelevant;

¶ 9 (Opinion) Hearsay, speculation, improper foundation, conclusory, improper lay opinion, irrelevant;

¶ 10 (Others said) Hearsay, lack of personal knowledge, irrelevant; (Promise to conceal witnesses) Violates the People's Due Process Right;

¶ 11 Hearsay, irrelevant, lack of personal knowledge, speculation, lack of foundation, conclusion, improper lay opinion;

¶ 12 (Burglars) Hearsay, lack of foundation, lack of personal knowledge, speculation, conclusion, improper lay opinion;

⁶² Susan Aquino, Laci's aunt, and her husband returned to the defendant's house on Christmas morning. A police officer knocked on the defendant's door and told the defendant that there were two witnesses who saw Laci walk over the walking bridge in the park. Susan was excited about the news and asked the defendant what he thought. Defendant replied, "It wasn't Laci, she doesn't go that way." (RT 9548.)

- ¶13 (two or more) Hearsay, lack of foundation, lack of personal knowledge, speculation, conclusion, improper lay opinion⁶³;
- ¶14 (opinion) Hearsay, lack of foundation, lack of personal knowledge, speculation, conclusion, improper lay opinion;
- ¶15 (initial statement of Jackson) Hearsay, lack of foundation, lack of personal knowledge, speculation, improper lay opinion, irrelevant; (interview with Jackson) Hearsay, lack of personal knowledge, violates trial judge's ruling regarding E.C. § 795, and that section itself;
- ¶16 (interview) Hearsay, lack of personal knowledge;
- ¶17 (interview) Hearsay, lack of personal knowledge, improper impeachment;
- ¶18 (interview) Hearsay, lack of personal knowledge, speculation;
- ¶19 (reading reports) Hearsay, lack of foundation, lack of personal knowledge, improper lay opinion, speculation;
- ¶20 (reported by colleagues) Hearsay, lack of foundation, lack of personal knowledge, improper lay opinion, speculation, irrelevant;
- ¶21 (on the street) Speculation, vague, improper lay opinion, irrelevant;
- ¶22 (Pearce) Hearsay – Pearce is dead, so no foundation can be laid; (opinion) Speculation, improper lay opinion, irrelevant; (Screenshot) Hearsay, lack of foundation;
- ¶23 (opinion) Speculation, improper lay opinion, irrelevant;
- ¶24 (property) Hearsay, argumentative, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant;
- ¶25 (plausible scenario) Hearsay, argumentative, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant, violates E.C. § 795 ;
- ¶26 (Statement) Hearsay, lack of personal knowledge, lack of foundation, irrelevant; (interview of Koen and van) Hearsay, argumentative, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant;
- ¶27 (his investigation) Hearsay, speculation, lack of personal knowledge, lack of

⁶³ The People wish to point out just one of the absurdities of this reporter's claims, where he states, "My investigation also revealed evidence that there were more than two individuals involved in burglarizing the Medinas' home, and that it took place over more than one day." The unquestioned evidence has shown that the Medinas did not leave their home until after 10:30 a.m. on the 24th meaning that for Gudgell's statement to be true, the burglars who were so afraid of being found out kidnapped Laci "because she caught them in the act" and then despite such fear returned to the very same scene of the crime the next day.

foundation, improper lay opinion, irrelevant;

¶28 (interview Stough) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶29 (Stough cont'd.) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶30 (Todd) Hearsay, double-hearsay, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant; (Sources) violation of Due Process, hearsay;

¶31 (Opinion) Hearsay, vague, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant;

¶32 (his investigation) Hearsay, double hearsay, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, improper legal conclusion, irrelevant;

¶33 (Chapman statement) Hearsay – this person per the defense is dead, so no foundation can be laid; (D.M.) Violation of Due Process – **People move to strike**, Hearsay [one of the persons the defense will not disclose]; hearsay, double hearsay, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant;

¶35 (interview) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, violation of Due Process [one of the people the defense will not disclose] – **People move to strike**;

¶36 (Ralph) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture;

¶37 (conjecture) Hearsay, double-hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture [This issue has also previously been litigated⁶⁴];

¶38 (orange van) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture;

¶39 (interview) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶40 (interview cont'd.) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

⁶⁴ “In any event, as we have noted, petitioner's proposed habeas corpus claims were raised and rejected on direct appeal, and are not cognizable on habeas corpus review. Thus, as a matter of law, the discovery cannot be material to his expected habeas corpus proceeding.” (*Hurd v. Superior Court* (2006) 144 Cal.App.4th 1100, 1114–1115.)

¶41 (interview cont'd.) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶42 (interview cont'd.) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶43 (interview cont'd.) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion, conjecture;

¶44 (interview cont'd.) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶45 Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶46 Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion, violates the People's Due Process [an anonymous source] –**People move to strike**;

¶47 Irrelevant;

¶48 (van interview) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶49 (van interview cont'd.) Hearsay, double hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶50 (later learned) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion [also, stated that the involved party is now deceased – **People move to strike**;

¶51 (reviewing report) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶52 (interview) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion, improper character opinion;

¶53 (interview cont'd.) Hearsay, lack of personal knowledge, lack of foundation;

¶54 (interview cont'd.) Hearsay, lack of personal knowledge, lack of foundation, irrelevant;

¶55 (opinion) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶56 (opinion cont'd.) Hearsay, vague, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶57 (dog scent) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶58 (dog scent cont'd.) Hearsay, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶ 59 (dog scent cont'd.) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶ 60 (dog scent cont'd.) Hearsay, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶ 61 (option) Hearsay, lack of personal knowledge, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion;

¶62 (conclusion) Hearsay, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion, argumentative, assumes facts;

¶ 63 (sighting claims) Hearsay, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion, argumentative;

¶ 64 (Garcia claim) Hearsay, lack of foundation, irrelevant, speculation, conjecture, improper lay opinion, argumentative, improper character evidence and violates the *Sergill/Bratton* rule cited above (no human lie detector);

¶65 (Pouches) Hearsay, lack of foundation, speculation, conjecture, improper lay opinion;

¶ 66 (Brazil) Hearsay, lack of foundation, speculation, conjecture, improper lay opinion;

¶ 67 (Pedrioli) Hearsay, lack of foundation, speculation, conjecture, improper lay opinion [according to the defense this person is deceased] – **People move to strike;**

¶ 68 (trial) Irrelevant;

¶ 69 (trial cont'd.) Hearsay, speculation, conjecture, improper lay opinion, Due Process violation for failing to disclose sources – **People move to strike;**

¶ 70 (trial cont'd.) Hearsay, speculation, conjecture, improper lay opinion, Due Process violation for failing to disclose sources – **People move to strike;**

EXHIBIT 9 Declaration of Bryan Spitulski

¶ 10 – (Statement of neighbor) Hearsay; (Neighborhood) lack of foundation, speculation and improper opinion;

¶14 (Investigation) Lack of foundation, speculation, hearsay, improper opinion;

¶ 22 (Other people's knowledge) Speculation, lack of personal knowledge;

¶23 (Det. Shipley's statements) Hearsay;

¶25 (Borden's statements) Hearsay, lack of personal knowledge;

¶ 26 Hearsay;
¶ 28 (Anxiety) Irrelevant, argumentative, conclusion and speculation;
¶ 29 Hearsay, lack of foundation;
¶ 31 Irrelevant;
¶ 34 Hearsay, lack of foundation, speculation, chain of custody [admits in next paragraph he did not take the included photo and had to be told it was from a test in 2019];
¶ 35 (Told by attorneys) Hearsay;
¶ 39 (Ballistic) Speculation, argumentative, lack of foundation, improper conclusion, lay opinion and irrelevance;
¶ 40 (MPD case) Speculation, lack of personal knowledge, lack of foundation;
¶ 43 Hearsay, lack of foundation, irrelevant;
¶ 44 (Opinion) Improper opinion, lack of personal knowledge, lack of foundation, speculation, conclusion and irrelevant;
¶ 45 (Opinion) Improper opinion, lack of foundation, speculation, conclusion and irrelevant;

EXHIBIT 10 Declaration of Homer Maldonado

¶ 12 (wife said) Hearsay; (Later) speculation, conjecture, irrelevant;
¶ 20 Hearsay;
¶ 21 (Det. said) Hearsay;
¶ 24 (Ermoian report) Hearsay;
¶ 25 Hearsay;
¶ 26 Hearsay;
¶ 27 (others said) Hearsay;
¶ 28 (report) Hearsay, relevance;
¶ 29 (Dalton) Hearsay, irrelevant;
¶ 33 Hearsay;
¶ 34 Hearsay, irrelevant;
¶ 35 Improper opinion, speculation, conjecture, irrelevant;
¶ 36 Improper opinion, speculation, conjecture, irrelevant;

A17

Exh. E Argumentative, improper opinion;
Exh. H Hearsay, lack of foundation, irrelevant;
Exh. J Hearsay, lack of foundation, lack of personal knowledge, irrelevant;
Exh. K Hearsay, lack of foundation, lack of personal knowledge, irrelevant;
Exh. L (Ermoian report) Hearsay, irrelevant;
Exh. M (newspaper) Hearsay, lack of foundation, lack of personal knowledge, irrelevant;
Exh. N (Ermoian report follow-up) Hearsay, irrelevant;
Exh. P (police report) Hearsay, irrelevant;

EXHIBIT 11 Declaration of Tony Freitas

¶ 6 (reviewed report) Hearsay, lack of foundation, irrelevant;
¶ 8 Hearsay;
¶ 10 Hearsay, compound, vague, irrelevant;
Exh. A Hearsay, lack of foundation, lack of personal knowledge, irrelevant;
Exh. C (Ermoian report) Hearsay, lack of foundation, lack of personal knowledge, irrelevant;
Exh. E. (Grogan report) Hearsay, lack of foundation, lack of personal knowledge, irrelevant;
Exh. G Hearsay, irrelevant⁶⁵.

Objections to Reply to DNA Opposition

In the event petitioner attempts to introduce any of his “new claims” from his DNA motion – the People object. The items are inadmissible hearsay. The People also object unless and until the witnesses are produced for cross examination. As stated elsewhere, the People also object to redacted or anonymous witness statements and move to strike them, as set forth in the pleadings:

Moreover, Richardson was a convicted felon, a circumstance of which the trial court was undoubtedly aware when determining the reliability of his statements. (See Evid.Code § 788 [a witness's credibility may be impeached by his or her felony convictions].) Richardson's status as a convicted felon was another possible

⁶⁵ As part of this document in paragraph 9, Freitas states: “When I appeared on the date of the subpoena, I was interviewed by Mr. Geragos and several others from the defense team. They questioned me about the morning of December 24. After this period of questioning, we took a break and they came back and told me ‘We aren't going to use you.’” The People do not object to this statement.

factor upon which the trial court could have relied upon in determining that his statements were incredible and therefore unreliable.

(*People v. Masters* (2016) 62 Cal.4th 1019, 1057.)

Names matter.

Defense Reply Exhibit #1 Declaration of C H?

Hearsay – this person is not identified, so no foundation can be laid, violation of Due Process – **People move to strike** – double hearsay, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant; [There is also no explanation for this witness’s emergence in March of 2024 after an absence since 2002. He describes a female with black pants who is going down a hill into the park whom he only sees from behind, but can identify her 22 years later. He magically returns a “short time” later to see a white van parked on the east side of the street with three guys around it. He claims he is able to see through the windshield, but it is not explained how he can see through Amy Krigbaum’s van which would have been parked in front of this van according to trial testimony. This mystery witness also implies that something nefarious is going on in the back of the van (an abduction?) but the three men politely allow him to ride his bike past them within just a few feet. He then claims that three or four days later (the 27th or 28th) he was taken to the police station. The mystery witness just so happens to find the defense-vilified detective Brocchini standing outside with numerous officers and reporters. When the witness tries to tell what he saw, he is brushed off in front of numerous reporters... and none of them want his story either. A handwritten portion of his statement adds that “a day or two later” from the brush off (28th to 30th?) the police announced they caught the burglars. However, the police announcement that Todd and Pearce had been arrested occurred on January 3rd (Bates 5054). Assuming that any of this is true, which the People do not concede, that means that his timeframe is off by as many as six days. However, he then moves away and is not able to share his information since he is too “focused on other things.” He also can’t remember the names of any witness who could possibly corroborate his story.

Defense Reply Exhibit #2 Declaration of Carl Jensen

The People object to this May 5, 2024 declaration in its entirety as hearsay, and inappropriately filed...sandbagging the People. This statement is an attempt to offer an “expert’s opinion” but it lacks foundation, detail, expertise and violates *People v. Sanchez* (2016) 63 Cal.4th 665, 686. This statement is full of conjecture, speculation, lacks personal knowledge, lacks foundation, includes improper character evidence, improper lay opinion, is argumentative, irrelevant, and also violates the *Sergill/Bratton* rule, “Since at least 1982, it has been the law that a witness, whether lay or expert, cannot testify to an opinion that another person is telling the truth. (*People v. Sergill* (1982) 138 Cal.App. 3d 34, 39-40.)” (*People v. Bratton* (2023) 95 Cal.App.5th 1100, 1127.)

Jensen starts out saying on page 3 that the statement is a SUMMARY OF CONCLUSIONS he has made. Jensen then discusses his review of reports related to the Medina burglary. This is old news and has been rejected by the California Supreme Court. These “new” retreaded

claims/opinions cannot prevent the law of the case from barring discovery related to these matters. Paragraph 43 is a perfect example of Jensen's twisted logic (like the Karen Servas claims discussed earlier). He claims he interviews Pearce in 2004 (before the trial started) and Pearce is claimed, by Jensen, to have said that he (Pearce) drove Todd to the Medinas' house on the 25th, not the 26th. Pearce was on the witness list but not called by the defense. This fact begs the question, why not? Jensen claims that Pearce was "forthcoming" ignoring the *Sergill/Bratton* rule just mentioned above. Then in his expert opinion he claims that Pearce's statement was a declaration against his interest, notwithstanding that Pearce had already been convicted of the burglary and had denied any involvement with Laci's abduction. (since she was already gone by the time Jensen claims Pearce's new statement sets the date of the burglary). Jensen's claim would mean that the safe was taken in Pearce's car leaving Todd to abduct Laci on his bicycle. However, we have already cited to two occasions that Jensen's recitation of facts has been inaccurate at best, perjurious at worst.

Jensen next tries to blame other parties by using third-hand redacted witnesses who claim they were told something by someone who knew something... where have we heard this before? These witnesses do not appear to be the anonymous witnesses that claimed that D.M. abducted Laci with Todd and Pearce. These two claimed that a man named Seidel told them that he had information about who kidnapped Laci to steal her baby. They were interviewed by both MPD and DA Investigators. Their information amounted to rumors. However, the detectives tracked Seidel down after he went to Reno and then was arrested. (Bates 21687). Seidel repeatedly denied knowing anything about others being involved and admitted that he sometimes exaggerates.

The next area Jensen complains about is the "lost sandal" in an attempt to show Laci was walking the dog in a pair of flip flops. Jensen, throughout this section, uses the plural for the one man that knocked on Cordova's door late at night on December 23, 2002. Cordova was suspicious of what the man may have been doing but Jensen states it as a fact that the "men" were casing the homes to burglarize. Instead of allowing Jensen to editorialize, it is easier for us to look at the trial record since Cordova testified about the flip flops at the trial:

Q. And can you describe them for us?

A. They were platform flip-flops that were probably an inch and a half, two inch heels with maybe an inch soles on them that were an orange flower pattern.

Q. Okay. Do you remember telling Detective — or Investigator Bertalotto, you had an interview with him in June of 2003, that they did not look like a pair of walking shoes, certainly not a pair of walking shoes for a woman who was well along in her pregnancy would wear walking on an uneven route?

A. I — I don't believe that I told him that. I think I was -- that was suggested to me by someone else, but — and I may have said that to him, but that was — I — I didn't know if she was wearing those shoes or not.

Q. Okay. Because as you sit there today, and back in December of 2000 and 2, you had no indication at all that these sandals had anything to do with Laci Peterson, correct?

A. That's correct.

A20

1 Q. And you — they're sort of like summer sandal kind of shoes? Is that how you
2 remember them being?

3 A. Yes.

4 Q. And this is in December at this time, 2002?

5 A. Yes, ma'am. (RT 1753-19754).

6 Jensen next claims special insight regarding the Croton watch. The People object as
7 speculation and improper opinion as well as all the above reasons. This topic has been discussed
8 elsewhere.

9 Next is the Romano tipster. This occurred during trial and has been described elsewhere.
10 Romano was an inmate wanting Det. Hendee to cut him a deal and talk to his parole officer so he
11 could go to truck driving school. Jensen describes this as doing it for the right reason. This is all
12 hearsay and totally inadmissible.

13 Moving to Aponte and Tenbrink. This is as old as the trial, yet Jensen provides a new spin
14 admitting he had the information on the tip in June 2004. Again, this is hearsay that we have
15 addressed and objected to elsewhere.

16 Ulrich – Jensen claims that somehow Scott didn't make an anchor. This is contradicted by
17 the wiretap call, the police interview and the cement expert witness. Jensen is wildly speculating
18 and all this is hearsay and excludable.

19 Servas – this was previously addressed and should be stricken; it is hearsay and lacks any
20 foundation, is filled with improper opinion and is EC. 352.

21 Confirmation Bias – There is no adequate showing how Jensen would be allowed to testify
22 as an expert in Psychology. This entire section is inadmissible opinion, lacks foundation and is
23 hearsay.

24 **Exhibit A** – resume is hearsay and irrelevant.

25 **Exhibit B** – police reports are hearsay, not allowed as a business record, lacks
26 foundation and is irrelevant.

27 **Exhibit 3 Paula Mitchell**

28 This is entirely hearsay, lacks foundation and contains improper opinions. The only item
of interest is Ms. Mitchell's claim about a tip and her claimed CPRA response. The People have
submitted certified jail records that disprove this hearsay claim. (We are providing a redacted
version as it is mandatory to protect the personal identifying information outside the name. We
are providing Ms. Mitchell and her attorneys an unredacted copy and the original certified hard
copy will be provided to this Court.)

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Exhibit 4 Declaration of D.L.B.

This is a claimed statement from an anonymous person who claims to have been told something. We have addressed this above, but to be clear this is double hearsay, without foundation or knowledge. DLB claims that he was told by inmate Chapman (who is conveniently now dead) that Chapman's cellmate told him things about the crime. This is the worst kind of violation of the People's Due Process rights— **People move to strike** — Hearsay [one of the persons the defense will not disclose]; hearsay, double hearsay, speculation, lack of personal knowledge, lack of foundation, improper lay opinion, irrelevant.

The People also want to ensure the defendant understands – the People object to all his exhibits and attachments unless specifically stated otherwise. It is his burden to produce the evidence to prove his claims. The People's silence on any issue does not substitute for proof.

**EXHIBITS TO PEOPLE’S OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (DISK 1)**

People’s Discovery Opp. Exh. 1 – Certified Record - Defense Investigator Ermoian’s 1993
Conviction for Conspiracy to Submit False Statements – Eastern District of California Case No.
CR-F-92-5152

People’s Discovery Opp. Exh. 2 – Defense Witness List and Reciprocal Discovery Letter dated
December 30, 2003

People’s Discovery Opp. Exh. 3 - Defense Reciprocal Discovery Letter dated June 28, 2004

People’s Discovery Opp. Exh. 4 - MPD’s reply to Gudgell’s CPRA request

People’s Discovery Opp. Exh. 5 - Email from Mr. Gibbs to DAG Provenzano

People’s Discovery Opp. Exh. 6 – Certified Prisoner Roster of December 24, 2002

People’s Discovery Opp. Exh. 7 – Certified Booking Register

DISK 1

EXHIBITS LODGED - OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (PETERSON SC055500A)

**JUDICIALLY NOTICED EXHIBITS IN PEOPLE'S OPPOSITION TO MOTION FOR
POST-CONVICTION DISCOVERY (DISK 2)**⁶⁶

DSC - JNE Exhibit 1 – 2003 Order Permitting Defense to Examine Remains

DSC - JNE Exh. 2 - 2005 Defendant's New Trial Motion

DSC - JNE Exh. 3 – 2012 Defendant/Appellant's Opening Brief in Automatic Appeal in
Supreme Court

DSC - JNE Exh. 4 – 2011 Defense Motion for Post Conviction Discovery

DSC - JNE Exh. 5 – Oct. 20, 2011 Reporter's Transcript of Motion for Post-Conviction
Discovery

DSC - JNE Exh. 6 – Jan. 6, 2012 Reporter's Transcript of Status Conference and Motion for
Post-Conviction Discovery

DSC - JNE Exh. 7 - 2013 Defendant's Motion for DNA Testing

DSC - JNE Exh. 8 – 2013 People's Opposition to Motion for DNA Testing, Reporter's
Transcript of Hearing on Motion for DNA Testing and Court's Ruling on Motion for DNA
Testing

DSC - JNE Exh. 9 – 2013 Results of Post-Conviction DNA Testing

DSC - JNE. Exh. 10 – 2015 Defendant's Petition for Writ of Habeas Corpus, Defendant's
Memorandum of Points and Authorities in support of Petition for Writ of Habeas Corpus, Select
Exhibits from Defendant's Petition for Writ of Habeas Corpus:

Exh. 4 at HCP-000031- Mark Geragos

Exh. 7 at HCP-000050 - Philippe Jeanty

Exh. 12 at HCP-000331 - Diane Campos

Exh. 14 at HCP – 000339 - William Mitchell

Exh. 16 at HCP – 000346 - Grace Wolf

⁶⁶ The People note the JNE corresponding to their Opposition to the Discovery Motion is neither numbered the same nor does it contain all the same exhibits as listed in the People's Opposition to the DNA Motion.

DISK 2 – JNE 1

EXHIBITS LODGED - OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (PETERSON SC055500A)

**JUDICIALLY NOTICED EXHIBITS IN PEOPLE’S OPPOSITION TO MOTION FOR
POST-CONVICTION DISCOVERY (DISK 2) (CONT’D.)**

Exh. 28 at HCP-000416 - Aponte Tip

Exh. 35 at HCP~000434 –Shawn Tenbrink

DSC - JNE. Exh. 11 – 2019 Joint Stipulation for Post-Conviction Examination of Physical
Evidence

DSC - JNE Exh. 12- 2019 Results of Post-Conviction DNA Testing

DSC - JNE Exh. 13 – *People v. Peterson* (2020) 10 Cal.5th 409

DSC - JNE Exh. 14 – 2023 Defendant’s Second Petition for Writ of Habeas Corpus – First
District Court of Appeal

DSC - JNE Exh. 15 – 2012 Minute Order re Court’s Ruling on Defendant’s First Motion for
Post-Conviction Discovery

DSC - JNE Exh. 16 – 2020 Supreme Court’s Order to Show Cause – *In re Peterson*

DSC - JNE Exh. 17 – 2005 People’s Opposition to Motion for New Trial

DISK 2 – JNE 2

EXHIBITS LODGED - OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (PETERSON SC055500A)

**TRIAL EXHIBITS REFERENCED IN PEOPLE’S OPPOSITION TO MOTION FOR
POST-CONVICTION DISCOVERY (DISK 3)**

People’s Trial Exh. 1-E
People’s Trial Exh. 4
People’s Trial Exh. 5
People’s Trial Exh. 7
People’s Trial Exh. 9
People’s Trial Exh. 10
People’s Trial Exh. 11
People’s Trial Exh. 12
People’s Trial Exhs. 15-A, 15-B and 15-C
People’s Trial Exh. 22
People’s Trial Exh. 28
People’s Trial Exh. 29
People’s Trial Exh. 30
People’s Trial Exh. 31
People’s Trial Exh. 39
People’s Trial Exh. 62
People’s Trial Exh. 87
People’s Trial Exh. 179
People’s Trial Exh. 186
People’s Trial Exh. 187-A
People’s Trial Exh. 187-B
People’s Trial Exh. 187-C
People’s Trial Exh. 195R
People’s Trial Exh. 201B

DISK 3 – TRIAL EXHIBITS

EXHIBITS LODGED - OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (PETERSON SC055500A)

**TRIAL EXHIBITS REFERENCED IN PEOPLE’S OPPOSITION TO MOTION FOR
POST-CONVICTION DISCOVERY (DISK 3) (CONT’D.)**

People's Trial Exh. 207D and 207D5

People’s Trial Exh. 221

People’s Trial Exh. 234J

People’s Trial Exh. 249A and B

People’s Trial Exh. 267

People’s Trial Exh. 268A

People’s Trial Exh. 268B

People’s Trial Exh. 270A

People’s Trial Exh. 279B

People’s Trial Exh. 284

People’s Trial Exhs. 293-2, 293-37, 293-38, 293-41, 293-44

Defense Trial Exh. I

Defense Trial Exh. M-1

Defense Trial Exh. N

Defense Trial Exh. O

DISK 3 – TRIAL EXHIBITS

EXHIBITS LODGED - OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (PETERSON SC055500A)

**BATES REFERENCED IN PEOPLE’S OPPOSITION TO MOTION FOR POST-
CONVICTION DISCOVERY (DISK 4)**

DISK 4 – Bates (All Bates include their corresponding Discovery Logs)

42
163
234-237
251
253-254
392-395
410
419-424
433-438
441-455
480-483
497-499
505-507
513-514, 517
537-538
550
600, 601
691-695
699
717-719
728
733-734
767
779-780
829-830
832-834
838
1038-1041
1047-1048
1054-1056
1058
1061-1062
1143
1151
1198
1240-1246
1248

DISK 4 - BATES

EXHIBITS LODGED - OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (PETERSON SC055500A)

**BATES REFERENCED IN PEOPLE'S OPPOSITION TO MOTION FOR POST-
CONVICTION DISCOVERY (DISK 4) (CONT'D.)**

1249-1250
1332
1374
1470
1607
1610
1614-1615
1649
1668
1716-1717
1847-1848
1713
2100
2106-2107
2154-2161
2187
2390-2392
2394-2395
2426
2443-2444
2524A
2716
2721
2745
2926-2927
2930
2933-2934
2940-2941
3022
3394
4024-4025
4090-4093
4095-4110
4123-4124
4131-4137
4161-4164
4190
4202
4556
4566-4567

DISK 4 - BATES

EXHIBITS LODGED - OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (PETERSON SC055500A)

**BATES REFERENCED IN PEOPLE'S OPPOSITION TO MOTION FOR POST-
CONVICTION DISCOVERY (DISK 4) (CONT'D.)**

4759A-4760
5013
5054
5310
5554
7253-7254
8859, 8867-8882
10146-10147
10652-10654
10680
10685
13586
13802
14685
14750
14752
14768
14775
14786
14791
14791
14828
14865
14941
15031
15052
15063
15095
15137
15311
15379
15510
15533
15820, 15822
15831
15905
15933
16219, 16221
16505-16509
16523-16544

DISK 4 - BATES

EXHIBITS LODGED - OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (PETERSON SC055500A)

**BATES REFERENCED IN PEOPLE'S OPPOSITION TO MOTION FOR POST-
CONVICTION DISCOVERY (DISK 4) (CONT'D.)**

20089
17246-17280
18485-18566
20319-20320
20322, 20325
20323-20324
20328
20329, 20331-20360
20361-20365
20381-20382
20383
20385-20389
20393-20395
20396-20397
21177
21564
21577
21578
21687
21696-21697
22019-22023
22112-22132
22168-22176
22233
22526
22528-22530
22870
22872
23226-23239
23900-23907
23908-23909
23910
25027-25030
25221-25853
26000-26003
26313-26314
26507-26515
26771-26778
26850-26855
30373

DISK 4 - BATES

EXHIBITS LODGED - OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (PETERSON SC055500A)

**BATES REFERENCED IN PEOPLE'S OPPOSITION TO MOTION FOR POST-
CONVICTION DISCOVERY (DISK 4) (CONT'D.)**

30866-30871
32848-32863
32889-32891, 32893
33090-33091
33635
33771-33777
34030-34031
34489-34532
35082
35087, 35090
37005
37053
38180
38182
38484-38485
38571-38573, 15933
38626, 38630
40517-40519
40809
41004
41006
41071-41072
41195
41296
41602-41603
41658
41737-41747
41912-41915
42544-42546
42673-42686
42857-42859
42860-42903
42983
42986-42990

DISK 4 - BATES

EXHIBITS LODGED - OPPOSITION TO MOTION FOR POST-CONVICTION
DISCOVERY (PETERSON SC055500A)

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COUNTY OF STANISLAUS)

That I am over the age of 18 years and am not a party to this action and I am employed by the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto, California.

Paula Mitchell
Los Angeles Innocence Project
Attorney for Scott Peterson
1800 Paseo Rancho Castilla
Los Angeles, CA 90032

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of May 2024, at San Mateo, California.


Declarant

Case No. SC055500A
People v. Peterson
Hearing: 5/29/24
Dept. 12