

1 [Attorney's name, bar number,
2 address and telephone number]

3 Attorney for Appellant
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8 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF _____
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11 PEOPLE OF THE STATE
12 OF CALIFORNIA,

13 Plaintiff/respondent,

14 v.
15 _____,

16 Defendant/appellant.
17

Superior Court No. []

Court of Appeal No. A[]

Date:
Time:
Dept:

18 **EX PARTE REQUEST**
19 **TO UNSEAL DISCHARGED JUROR'S IDENTIFYING INFORMATION;**
20 **DECLARATION AND POINTS AND AUTHORITIES IN SUPPORT**
(Code Civ. Proc. § 206; *id.*, § 237)

21 Defendant and appellant, _____, by and through his counsel on appeal, _____,
22 _____, hereby requests that the court unseal and provide to counsel the identifying
23 information in the court's files of the juror identified in the record on appeal as Juror No. _____,
24 [describe pertinent identifying facts].

25 In accordance with the provisions of subdivision (b) of section 237, of the Code of Civil
26 Procedure, appellant requests the court set the matter for hearing and provide counsel with the
27 date, time and place of the hearing based upon the showing of good cause established in the
28 attached declaration.

1 DATED: _____

Respectfully submitted,

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By: _____
[attorney's name]

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DECLARATION IN SUPPORT

I, _____, declare the following:

1. I am an attorney in good standing with the State Bar of California, and I have been appointed counsel for _____ by the Court of Appeal of the State of California, First Appellate District;

2. I have reviewed the record on appeal, and I am informed thereby and believe the following:

a. [describe factual background pertinent to the need for the juror’s identifying information] . . .

b. . . .

c. . . .

I declare under penalty of perjury that the foregoing is true and correct of my own knowledge, and as to those matters alleged on information and belief, I declare I have been so informed and do believe them to be true. Executed this ____ day of _____, 20__ in _____, California.

[declarant]

1 sustained. . . . The court may require the person to whom disclosure is made, . . . ,
2 to agree not to divulge jurors' identities to others. . . .

3 In order to establish good cause for the release of juror information, counsel must "set
4 forth with specificity 'statements made, or conduct, conditions, or events occurring, either within
5 or without the jury room, of such a character as is likely to have influenced the verdict
6 improperly.'" (*People v. Rhodes* (1989) 212 Cal.App.3d 541, 554; *People v. Granish* (1996) 41
7 Cal.App.4th 1117, 1122-1123 [affidavits of non-jurors that husband of juror in audience spoke
8 with juror about case sufficient to require release of information as to single juror affected].)
9 Here,

10 Further, the record on appeal does not disclose any "compelling interest" against
11 disclosure of this single jurors' identifying information. (Compare, *Townsel v. Superior Court*
12 (1999) 20 Cal.4th 1084, 1097 [defendant was convicted of murdering one victim because she
13 was a witness to another crime, and hence there were serious concerns about juror safety].)
14 Therefore, appellant requests that the court set the matter for hearing and notify counsel and the
15 juror of the date, time and place of the hearing.

16 **III. THE REQUESTED INFORMATION IS NECESSARY TO VINDICATE
17 APPELLANT'S RIGHTS TO AN IMPARTIAL JURY AND DUE PROCESS.**

18 The right of a criminal defendant to due process and a fair trial before an unbiased jury is
19 secured by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and by
20 Article I, Sections 7, 15 and 16 of the California Constitution. The Sixth Amendment right to a
21 jury trial "guarantees to the criminally accused a fair trial by a panel of impartial 'indifferent'
22 jurors." (*Irvin v. Dowd* (1961) 366 U.S. 717, 722; *Tinsley v. Borg* (9th Cir. 1990) 895 F.2d 520,
23 523, cert. den., 111 S.Ct. 974.) "Even if 'only one juror is unduly biased or prejudiced,' the
24 defendant is denied his constitutional right to an impartial jury." (*United States v. Eubanks* (9th
25 Cir. 1979) 591 F.2d 513, 517.)

26 There is a strong public interest in the ascertainment of truth in jury deliberations.
27 (*People v. Rhodes, supra*, 24 Cal.App.4th at p. 468; *People v. Atkins* (1988) 203 Cal.App.3d 15,
28 27.) "Lifting the veil of post-verdict secrecy to expose juror misconduct . . . tend[s] to diminish

1 such practices and to purify the jury room by rendering such improprieties capable and probable
2 of exposure and consequently deterring jurors from resorting to them.” (*People v. Rhodes*,
3 *supra*, 24 Cal.App.4th at p. 550.) The “questions of life and liberty involved” in criminal
4 prosecutions “outweigh the limited and narrow intrusion of releasing the names and addresses of
5 jurors.” (*People v. Atkins, supra*, 203 Cal.App.3d at pp. 27-28.)

6 Further, appellant has a due process right to post-verdict review. (*Honda Motor Co., Ltd.*
7 *v. Oberg* (1994) 512 U.S. 415, 434-35 [129 L.Ed.2d 336, 114 S. Ct. 2331].) Penal Code section
8 1473, subdivision (a) states: “Every person unlawfully imprisoned or restrained of his liberty,
9 under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of
10 such imprisonment or restraint.” In cases where an issue related to the appeal requires evidence
11 from outside the record, the petition for habeas corpus may be pursued with the appeal. (See,
12 e.g., *People v. Westmoreland* (1976) 58 Cal.App.3d 32, 36, and cases cited; *People v. Pope*
13 (1979) 23 Cal.3d 412, 426, fn. 17.)

14 This case presents a question whether . . . [specify basis for constitutional violation, if
15 applicable], constituting misconduct in violation of appellant’s rights to an impartial jury under
16 the Sixth Amendment and in violation of his right to due process and a fair trial under the
17 Fourteenth Amendment to the U.S. Constitution. (*Sheppard v. Maxwell* (1966) 384 U.S. 333,
18 350-351 [16 L.Ed.2d 600, 86 S.Ct. 1507]; *Chicago, B. & Q. Ry. Co. v. City of Chicago* (1897)
19 166 U.S. 226, 240 [41 L.Ed. 979, 17 S.Ct. 581]; *People v. Karis* (1988) 46 Cal.3d 612, 642.)

20 Defendant seeks the requested information to develop information relating to the vindication of
21 those rights. It is well recognized that juror misconduct issues are a lawful purpose of a petition
22 for habeas corpus. (See, e.g., *In re Hitchings* (1993) 6 Cal.4th 97 [granting petition for habeas
23 corpus based on juror misconduct]; *In re Stankewitz* (1985) 40 Cal.3d 391 [same].) Denial of the
24 requested information will prevent appellant from presenting for judicial scrutiny a claim that his
25 trial did not comport with constitutional provisions regarding trial by jury and with fundamental
26 fairness. Therefore, appellant requests this court to disclose the identifying information of Juror
27 No. ____.

1 DATED: _____

Respectfully submitted,

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By: _____
[Attorney name]