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**SUPREME COURT  
FILED**

JUL 15 2014

**Frank A. McGuire Clerk**

**Deputy**

**In the Supreme Court of the State of California**

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

Plaintiff and Respondent,

v.

**PAUL NATHAN HENDERSON,**

Defendant and Appellant.

**CAPITAL CASE**

Riverside County  
Superior Court, Case  
No. S098318

Appellate District,  
Case No. INF027515

**RESPONSE TO APPELLANT'S REQUEST FOR JUDICIAL  
NOTICE**

Appellant Paul Nathan Henderson seeks judicial notice of Exhibit A to his request filed on July 1, 2014. In his request, Henderson indicates non-opposition to the motion filed in this matter by Respondent on March 20, 2013, seeking judicial notice of the autopsy report that is relevant to this Court's consideration of Appellant's Argument VIII in his pending appeal wherein he alleges a violation of the Confrontation Clause. Appellant asks

**DEATH PENALTY**

that in addition to the report that is the subject of Respondent's judicial notice request, this Court take judicial notice of the "entire Coroner's file" and proffers Exhibit A which consists of 33 pages. Pages 6 through 13 of Exhibit A to Henderson's request replicates the autopsy report that is the subject of the People's Judicial Notice request. Accordingly, both parties are requesting this Court take judicial notice of pages 6-13 to Exhibit A. (See, *People v. Dungo* (2012) 55 Cal.4<sup>th</sup> 608, 615, citing *People v. Castillo* (2010) 49 Cal.4<sup>th</sup> 145, 157 [a court may take judicial notice of a public record when it does not consider the record for the truth of matters stated therein]; *Dixon v. Superior Court* (2009) 170 Cal.App.4<sup>th</sup> 1271, 1278 [an autopsy report is a public record].) As for the remaining pages of Exhibit A, i.e., pages 1-5 and 14-33, the People oppose judicial notice. A precondition to the taking of judicial notice in either its mandatory or permissive form is that any matter to be judicially noticed must be relevant to a material issue. (*People ex rel Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4<sup>th</sup> 415, 422, fn. 2.) While the testifying pathologist, Dr. Cohen, reviewed the autopsy protocol and associated notes, i.e. the autopsy report prepared by Dr. Garber, the pathologist who performed the autopsy (See, XV RT 3231), there is no basis for concluding that he reviewed, let alone, relied upon any of the additional content in the "entire Coroner's file." Instead, the record shows Dr. Cohen reviewed Dr. Garber's autopsy report, Detective Wolford's police report, and photographs from the autopsy and crime scene. (See, XV RT 3231-3235.) None of the additional materials beyond the autopsy report in Exhibit A to Henderson's request are relevant to considering his Confrontation Clause challenge to Dr. Garber's trial testimony.

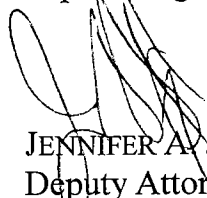
Additionally, while Henderson's counsel represents in the Request filed with this Court that Exhibit A is a true and correct copy of the entire Coroner's file, Henderson fails to provide a declaration or other

certification attesting to the authenticity of the documents that are the subject of Henderson's judicial notice request. The Attorney General's Office does not have a copy of the Coroner's file as it was never admitted into evidence at trial, nor is it relevant to the Confrontation issue raised in Henderson's direct appeal. Accordingly, counsel for Respondent has not verified the authenticity of pages 1 through 5 and 14 through 33 of Exhibit A to Henderson's pending request. Consequently, the People generally object to the request for judicial notice of the uncertified documents contained in pages 1-5 and 14-13<sup>1</sup>, and specifically opposes judicial notice on relevancy grounds.

Dated: July 14, 2014

Respectfully submitted,

KAMALA D. HARRIS  
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HOLLY D. WILKENS  
Supervising Deputy Attorney General



JENNIFER A. NADOVITZ  
Deputy Attorney General  
*Attorneys for Respondent*

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<sup>1</sup> It is the responsibility of counsel for Henderson to ensure that documents submitted for public filing with the Court have certain "identifiers" redacted. (See, Cal. Rule of Ct., Rule 1.20 (b)(2)(3).) Unfortunately, Exhibit A to the Request for Judicial Notice includes "identifiers" that have not been redacted as required by Rule 1.20. (See, Ex. A. at pp. 14-16, 19-22.) Accordingly, Respondent respectfully requests that counsel for Henderson be required to comply with Rule 1.20 with respect to his Request for Judicial Notice.

**DECLARATION OF SERVICE BY OVERNIGHT COURIER**

CASE NAME:           **PAUL NATHAN HENDERSON**  
CAPITAL CASE NO.:   **S098318**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On **July 14, 2014**, I served the attached: **RESPONSE TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE**, by placing a true copy thereof enclosed in a sealed envelope with the **FED EX**, addressed as follows:

Martin H. Dodd, Esq.  
Futterman Dupree Dodd Croley Maier LLP  
180 Sansome Street, 17th Floor  
San Francisco, CA 94104

***FED EX Tracking No. 804092751237***  
***Counsel for appellant***  
***2 copies***

Riverside County Superior Court  
Presiding Judge of Dept. N-3  
Indop Larson Justice Center  
46-200 Oasis Street  
Indio, CA 92591

***FED EX Tracking No. 804092751248***

Governor's Office, Legal Affairs Secretary  
State Capitol, First Floor  
Sacramento, CA 95814

***FED EX Tracking No. 8040 9274 3695***

California Appellate Project  
101 Second Street, Suite 600  
San Francisco, CA 94105-3672

***FED EX Tracking No. 804092751260***

Mary Jameson  
Automatic Appeals Unit Supervisor  
Supreme Court of the State of California  
350 McAllister Street, 1st Floor  
San Francisco, CA 94102-7303

***FED EX Tracking No. 804092751259***

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **July 14, 2014**, at San Diego, California.

Claudia Chavez-Estrada

Declarant



Signature

AMENDED DECLARATION OF SERVICE BY OVERNIGHT COURIER

CASE NAME: PEOPLE v. PAUL NATHAN HENDERSON  
CAPITAL CASE NO.: S098318

JUL 16 2014

Frank A. McGuire Clerk

I declare:

Deputy

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

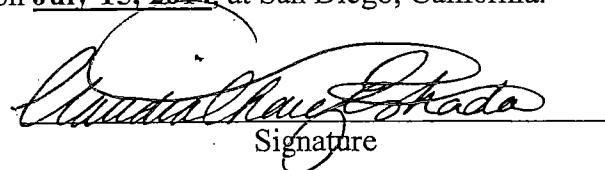
On July 15, 2014, I served the attached **RESPONSE TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with the **FED EX**, addressed as follows:

Habeas Corpus Resource Center  
303 Second Street  
Suite 400 South  
San Francisco, CA 94107  
*FED EX Tracking No. 8040 9275 1156*

Michael R. Snedeker, Esq.  
PMB 422  
4110 S.E. Hawthorne Boulevard  
Portland, OR 97214  
*FED EX Tracking No. 8040 9275 1167*  
*Counsel for appellant*  
*2 copies*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 15, 2014, at San Diego, California.

Claudia Chavez-Estrada  
Declarant



Signature

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DEATH PENALTY