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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DEAN PHILLIP CARTER,

Petitioner,

vs.

MICHAEL MARTEL, Acting Warden of
the California State Prison at San Quentin,

Respondent.

CASE No. 06cv1343-BEN(CAB)
DEATH PENALTY CASE

**ORDER DENYING PETITIONER'S
MOTION FOR DISCOVERY
[Doc. No. 118]**

On January 13, 2011, Petitioner filed a Motion for Discovery, requesting leave to serve subpoenas duces tecum for 247 document requests from over twenty-five agencies and to depose eighteen individuals, asserting that the discovery will provide support for his federal habeas claims. Respondent has filed an Opposition to the Motion and Petitioner has filed a Reply. Based on a review of the materials and pleadings, the Court finds this issue appropriate for disposition without oral argument.

Upon consideration of the issues raised in the filings, and for the reasons outlined below, the Court **DENIES** Petitioner's Motion for Discovery.

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1 **I. BACKGROUND**

2 Petitioner was convicted in the San Diego County Superior Court on May 22, 1991, of one count
3 of first degree murder, two counts of robbery, one count of burglary, one count of forcible rape, and one
4 count of forcible oral copulation in the murder of Janette Cullins and the attack on Barbara S. People
5 v. Carter, 36 Cal. 4th 1215, 1220 (2005). The jury also found true the special circumstance allegations
6 that the murder was committed while lying in wait, that the murder was committed while Petitioner was
7 engaged in the commission or attempted commission of a robbery, and that the murder was committed
8 while Petitioner was engaged in the commission or attempted commission of a burglary. (RT 6980.)
9 At the conclusion of the penalty phase, the jury returned a verdict of death and the court entered
10 judgment accordingly. Carter, 36 Cal. 4th at 1221. The conviction and sentence was upheld on appeal
11 to the California Supreme Court, with the exception of the lying in wait special circumstance, which was
12 set aside. Id. at 1281. The California Supreme Court denied Petitioner’s state habeas petition on June
13 28, 2006, and amended the order denying the petition on September 13, 2006.

14 Petitioner initiated his federal habeas action on June 29, 2006, by filing a motion for appointment
15 of counsel pursuant to Local Civil Rule HC.3(d)(1). The Court filed an order appointing counsel on
16 September 22, 2006. On December 6, 2006, Petitioner filed a Protective Petition, and on June 20, 2007,
17 filed a mixed Petition for Writ of Habeas Corpus with this Court, asserting seventeen (17) claims for
18 relief, with eight (8) claims comprised of numerous sub-claims. On July 6, 2007, Petitioner and
19 Respondent filed a Joint Stipulation and Motion to Stay Federal Proceedings pending the resolution of
20 a state exhaustion petition, and on July 13, 2007, the Court granted the Motion.

21 On June 22, 2007, Petitioner filed a second state habeas petition containing the unexhausted
22 claims. Petitioner also filed a third state habeas petition on February 16, 2010, based on newly
23 discovered evidence. The second and third state habeas petitions were both denied by the California
24 Supreme Court without an evidentiary hearing on June 17, 2010.

25 On July 12, 2010, Petitioner filed a Second Amended Petition [“SAP”]. On October 18, 2010,
26 Respondent filed an Answer, and on December 8, 2010, Petitioner filed a Traverse.

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1 The instant motion for discovery was filed on January 13, 2011.¹ On February 1, 2011,
2 Respondent filed an Opposition, and on February 16, 2011, Petitioner filed a Reply.

3 III. DISCUSSION

4 Petitioner's motion contains 247 enumerated document requests, seeking information from
5 "over 25 state agencies, spread across 4 different counties in 2 different states, relating to 5 murders and
6 2 rapes." (Reply at 2.) Petitioner also moves to depose eighteen individuals, including the trial jurors
7 and alternate jurors, the trial prosecutors and the trial judge.

8 Respondent objects to the motion in its entirety, asserting that Petitioner fails to establish good
9 cause for the requested documents and depositions. (Opp. at 6.) Respondent also generally asserts that
10 the requests are "overbroad, speculative, and evidences no more than a fishing expedition." (Id. at 8.)

11 A. Discovery in Habeas Proceedings - Generally

12 A habeas petitioner is not entitled to discovery "as a matter of ordinary course." Bracy v.
13 Gramley, 520 U.S. 899, 904 (1997). Instead, Rule 6 of the Rules Governing Section 2254 Cases reads
14 as follows:

- 15 (a) Leave of Court Required. A judge may, for good cause, authorize a party to
16 conduct discovery under the Federal Rules of Civil Procedure and may limit the
17 extent of discovery. If necessary for effective discovery, the judge must appoint
an attorney for a petitioner who qualifies to have counsel appointed under 18
U.S.C. § 3006A.
- 18 (b) Requesting Discovery. A party requesting discovery must provide reasons for
19 the request. The request must also include any proposed interrogatories and
requests for admission, and must specify any requested documents.
- 20 (c) Deposition Expenses. If the respondent is granted leave to take a deposition, the
21 judge may require the respondent to pay the travel expenses, subsistence
expenses, and fees of the petitioner's attorney to attend the deposition.

22 To determine whether discovery is appropriate, a court must consider the petitioner's claim and evaluate
23 whether "specific allegations before the court show reason to believe that the petitioner may, if the facts
24 are fully developed, be able to demonstrate that he is ... entitled to relief." Bracy, 520 U.S. at 904, 908-
25 09, quoting Harris v. Nelson, 394 U.S. 286, 300 (1969). Even if a court grants discovery, "the scope
26 and extent of such discovery is a matter confided to the discretion of the District Court." Bracy, 520

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28 ¹ In citing to the filings on this Motion, the Court uses the pagination found in the Southern District's
electronic docket, in which all page numbers are located on the top right-hand side of each document.

1 U.S. at 909. Courts should not permit a petitioner to “use federal discovery for fishing expeditions to
2 investigate mere speculation.” Calderon v. United States Dist. Ct. for the Northern Dist. of Cal.
3 (Nicolaus), 98 F.3d 1102, 1106 (9th Cir. 1996); see also Rich v. Calderon, 187 F.3d 1064, 1067 (9th Cir.
4 1999), quoting Aubut v. Maine, 431 F.2d 688, 689 (1st Cir. 1970) (“Habeas corpus is not a general form
5 of relief for those who seek to explore their case in search of its existence.”)

6 Moreover, the United States Supreme Court recently held that, for claims previously decided on
7 the merits by a state court, the Court’s “review under § 2254(d)(1) is limited to the record that was
8 before the state court that adjudicated the claim on the merits.” Cullen v. Pinholster, 563 U.S. ___, 131
9 S.Ct. 1388, 1398 (2011). The Supreme Court also noted that “[a]lthough state prisoners may sometimes
10 submit new evidence in federal court, AEDPA’s statutory scheme is designed to strongly discourage
11 them from doing so.” Id. at 1401. Thus, pursuant to Pinholster, it may not serve the interests of judicial
12 economy to consider allowing discovery prior to conducting a review under § 2254(d). In any event,
13 the Court need not address the potential implications of Pinholster on this issue because, as discussed
14 below, Petitioner’s request is overbroad and lacks a showing of good cause.

15 **B. Petitioner’s Discovery Requests**

16 Petitioner seeks the production of documents and leave to depose witnesses regarding his claims
17 of ineffective assistance of counsel, prosecutorial misconduct, Brady violations, jury misconduct,
18 allegations of police failure to preserve evidence, alleged partiality of the trial judge, and denial of a full
19 and fair suppression hearing. (See SAP Claims 1, 2, 3, 6, 7, 9, 11, 15.)

20 Petitioner generally states that he seeks discovery for two reasons: (1) “to compare discovery
21 that trial counsel obtained at the time of trial with that material that trial counsel should have
22 uncovered,” asserting that “[a]ny discrepancy between what was in trial counsel’s possession provides
23 further support for Petitioner’s allegation that trial counsel was ineffective at both the guilt and penalty
24 phases of trial,”² and (2) “to ensure that the State fulfilled its duty of providing counsel with material

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26 ² As a general matter, the Court notes that the record reflects instances demonstrating trial counsel’s
27 pursuit of extensive discovery on behalf of Petitioner. (See e.g. Lodgment No. 33, Mot. Hrg. 9/4/87 at 73-96 (trial
28 court and counsel discuss defense discovery motion, including but not limited to, a list of potential witnesses, the
criminal records or “rap” sheets of potential witnesses, lab reports on testing performed on evidence, photos and
slides, potential mitigating evidence, and teletypes or other law enforcement communications); Lodgment No.
5, Mot. for Discovery dated 1/25/91, CT 680-712 (containing 127 enumerated requests, including but not limited
to requests relating to Petitioner, law enforcement personnel, lay witnesses, the victim(s), informants, physical

1 evidence, *see Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct 1194, 10 L. Ed. 2d 215 (1963), and that the
2 State fully complied with state discovery laws.”³ (Mot. at 12.) Petitioner states that once he receives
3 the requested discovery, “he will be able to fully ascertain if there were additional instances of state
4 misconduct and ineffective assistance of counsel.” (Reply at 4.)

5 For the reasons detailed in the discussion below, it is the Court’s conclusion that Petitioner’s
6 motion for discovery, as currently constituted, is a fishing expedition. Petitioner requests documentation
7 from every agency even remotely involved in the investigation or prosecution of his case, and in many
8 instances clearly duplicating prior efforts of trial counsel. (See footnotes 2, 3.) The extremely wide
9 scope of discovery sought indicates to the Court that Petitioner’s request is aimed at reinvestigating
10 every aspect of his prosecution, including extensive requests regarding the background of every witness,
11 potential witness, and other individuals with any connection to his case, rather than to develop “specific
12 allegations before the court.” Bracy, 520 U.S. at 904. As such, Petitioner fails to demonstrate good
13 cause to warrant what would undoubtedly amount to a complete reinvestigation of the two charged
14 crimes and five “other crimes” introduced into evidence at Petitioner’s San Diego trial.

15 1. Document Requests 1-51

16 At Petitioner’s guilt phase trial, the prosecution presented “other crimes” evidence regarding the
17 rape of Jennifer S. in Ventura County. Carter, 36 Cal. 4th at 1226. The prosecution also introduced the
18 rape conviction as aggravating evidence during the penalty phase. Id. at 1236.

19 Petitioner seeks leave to serve subpoenas duces tecum to command the production of any
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23 evidence, and lab testing).)

24 ³ An examination of the trial record also reflects the government’s compliance with discovery in
25 Petitioner’s case. (See e.g. Lodgment No. 20 PHRT 215 (defense counsel states that he previously received
26 approximately 334 pages of discovery materials regarding the San Diego investigation, and had more recently
27 received 670 pages of discovery); Lodgment No. 19 PHRT 102 (Prosecutor states that the 670 pages of discovery
28 were brought to him from Los Angeles the day before he turned the materials over to defense counsel); Lodgment
No. 33, Mot. Hrg. 9/4/87 at 74-75, 89 (Prosecution voices a lack of objection to defense discovery requests 1-10,
14-33, 36-39, expresses the need for discussion on requests 11-13, 18-21, 34-36, and during discussion states that
“they [defense counsel] are going to get everything I have got.”); Lodgment No. 33 at 100 (prosecuting attorney
states that “There is -- I have made every effort to obtain everything I can from the other law enforcement
agencies and the other District Attorneys -- prosecuting agencies -- from other jurisdictions. They have been
fairly cooperative, and everything I have gotten, I have turned over to Mr. Bumer.”))

1 documents from various city, county and state agencies⁴ relating to the rape of Jennifer S., including
2 requests for the entire police and prosecution case files,⁵ potential Brady and/or witness impeachment
3 materials,⁶ statements, interviews, and current location of any individual identified as a potential
4 witness,⁷ criminal histories of the witnesses,⁸ the substance abuse and mental health records of the
5 witnesses,⁹ and documentation on communication between the various agencies.¹⁰

6 Petitioner contends that “[t]o fully investigate the extent of trial counsel’s ineffective assistance
7 of counsel, Petitioner’s counsel must examine all of the discovery that was or should have been provided
8 to trial counsel.” (Mot. at 40.) This assertion presumes that either the prosecution failed to comply with
9 Brady, or that trial counsel failed to request all they should have requested from the relevant agencies.
10 However, Petitioner fails to demonstrate a likelihood that either situation occurred in his case, as he fails
11 to identify any discovery that may have been withheld and fails to indicate any specific items that trial
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13 ⁴ These agencies include the Ventura County District Attorney’s Office, Ventura Police Department,
14 Ventura City Attorney’s Office, Ventura County Sheriff’s Department, the California Department of Corrections
15 and Rehabilitation, Ventura County Behavioral Health Department, Los Angeles County District Attorney’s
16 Office, Los Angeles Police Department, Los Angeles City Attorney’s Office, Los Angeles County Sheriff’s
17 Department, Los Angeles County Department of Mental Health, San Diego County District Attorney’s Office,
18 San Diego Police Department, San Diego City Attorney’s Office, San Diego County Sheriff’s Department, and
19 the San Diego Health and Human Services Agency.

20 ⁵ This includes the entire case files of the Ventura County District Attorney’s Office (document request
21 1), Ventura Police Department (document request 2), Los Angeles County District Attorney’s office (document
22 request 18), Los Angeles Police Department (document request 19), San Diego District Attorney’s Office
23 (document request 35), and San Diego Police Department (document request 36) relating to Petitioner’s
24 prosecution in their respective jurisdictions, as well as files the non-Ventura County agencies maintained relating
25 to Petitioner’s prosecution in Ventura County.

26 ⁶ This includes requests for documentation on prior inconsistent, false or biased statements by witnesses
27 (document requests 4, 21, and 38), prior statements in which one witness statement is inconsistent with that of
28 another witness (document requests 5, 22, and 39), offers for or agreements on potential consideration to a witness
or potential witness (document requests 6, 23, and 40), documentation relating to the prosecution and/or plea
bargains with any potential witness (document requests 7, 24, and 41), and any other favorable, impeachment or
other exculpatory material (document requests 3, 20 and 37).

⁷ Document requests 8, 9, 25, 26, 42 and 43. Additionally, in document requests 15, 32 and 49, Petitioner
separately and specifically requests any documentation on the “names, addresses, and present whereabouts of each
person identified or interviewed” by multiple law enforcement or prosecutorial agencies in connection with the
instant case.

⁸ Document requests 10-14, 27-30, and 44-47.

⁹ Document requests 14, 31, and 48.

¹⁰ Document requests 16, 17, 33, 34, 50 and 51.

1 counsel should have, but did not, obtain. Instead, Petitioner generally asserts that “[t]o the extent
2 Petitioner is unable to specifically enumerate a document, file, record, and/or note that is in the
3 investigating and prosecuting agencies’ files, it is only because of the exact thing Petitioner complains
4 about in his Second Amended Petition: Trial counsel’s ineffective assistance and improper governmental
5 conduct has deprived him of the opportunity to compile a full and complete record.” (Mot. at 14-15.)

6 The request is overbroad, and Petitioner fails to demonstrate good cause for any discovery in this
7 category, much less the extremely expansive scope of discovery he requests. As an initial matter,
8 Petitioner fails to indicate any specific documents he suspects are missing. He instead requests *each*
9 *and every* document potentially related to the rape of Jennifer S. in order to “fully investigate” trial
10 counsel’s allegedly ineffective assistance. (See Mot. at 40.) There is no indication that Petitioner has
11 been unable to obtain the listed documents and materials through other sources, such as through prior
12 counsel.¹¹ Instead, the instant request evidences an intention to gather material that would support
13 additional claims of ineffective assistance or Brady violations. To the extent this is the case, the request
14 is unrelated to an existing claim, and thus speculative. The Court will not allow Petitioner to conduct
15 discovery in order to investigate “mere speculation.” Calderon (Nicolaus), 98 F.3d at 1106.

16 Petitioner also specifically requests any favorable, impeachment or exculpatory evidence from
17 Ventura County (document request 3), Los Angeles County (document request 20) and San Diego
18 County (document request 37) regarding the Jennifer S. case despite the fact that Petitioner’s federal
19 petition does not include a Brady claim which alleges violations regarding any aspect of the Jennifer
20 S. rape. As such, these requests¹² appears to be calculated to obtain potential documents or information

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24 ¹¹ Petitioner generally alleges that “the incomplete state of trial counsel’s files are indicative of their
25 failure to thoroughly investigate and discover evidence in this case.” (Reply at 4.) Based on the allegations in
26 the instant motion, Petitioner fails to offer any support to a conclusion that trial counsel’s files are bereft of the
material Petitioner now requests.

27 ¹² The same reasoning applies to request for documentation on any “contemplated prosecution” or
28 “possible plea bargain” made with witnesses prior to their testimony at Petitioner’s Ventura County trial
(document request 7), Los Angeles trial (document request 24), and San Diego trial (document request 41).
Among the witnesses listed in document request 7 are James Helverson M.D., Detective William Ragsdale,
Officer Robert Dasper, and Detective Gary McEwen.

1 that could support a new and separate Brady claim.¹³ Accordingly, as the requested materials do not
2 relate to “specific allegations before the court,” the request is speculative and Petitioner fails to show
3 good cause for his request.

4 Petitioner additionally asserts that this discovery “will also allow postconviction counsel to fully
5 assess the significance of the discrepancies between the Ventura trial and the San Diego trial.” (Mot.
6 at 40.) The Court is unpersuaded that this is an appropriate reason for the requested discovery. It is
7 apparent from the record that the Ventura case involved Petitioner’s trial for the rape of Jennifer S., and
8 the crime was introduced at the San Diego trial as other crimes evidence and in penalty phase
9 aggravation. It is not unreasonable that the witness lists would differ between the two jurisdictions. Yet
10 Petitioner asserts that “[a]t least to the extent they [the witness lists] differed because the respective
11 prosecutors chose not to rely on certain witnesses because of impeachment issues with those witnesses,
12 trial [sic] counsel should be allowed to discover that evidence.”¹⁴ (Mot. at 41.) This is a purely
13 speculative assertion, and utterly fails to establish good cause for the requested discovery.

14 As a related matter, the Court agrees with Respondent’s contention that “[n]ot one of the claims
15 Carter asserts this discovery is necessary to establish even discusses the Jennifer S. rape.” (Opp. at 10.)
16 Petitioner contends that document requests 1-51 are relevant to Claims 2 and 3 of the SAP, but the only
17 mention of the Jennifer S. rape is contained in Petitioner’s allegation that trial counsel’s opening and
18 closing statements were deficient for failing to “offer any meaningful argument that did not ‘fit the
19 theory’ of the government as to charges and allegations in the Mills, Knoll, Guthrie, Kim, [Jennifer S.],
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21 ¹³ Not only does Petitioner request information on prior inconsistent statements (document request 4),
22 or statements inconsistent with a statement provided by other witnesses (document request 5), but also requests
23 information related to “reward, compensation, or inducement to provide evidence or information” for each witness
24 that testified in the Ventura trial (document request 6), listing both lay witnesses such as Jennifer S. and Vincent
25 Stapleton, and *police and expert witnesses* such as James Helverson M.D., Detective William Ragsdale, Officer
26 Robert Dasper, and Detective Gary McEwen. The unsupported intimation that law enforcement and medical
27 expert witness were provided with inducement or compensation to secure their testimony is but one example of
28 the overbroad nature of the instant discovery motion.

26 ¹⁴ For instance, Petitioner requests criminal history information, (document request 11), arrest and
27 incarceration records (document requests 12 and 13), and mental health records (document request 14) for several
28 witnesses who testified at Petitioner’s Ventura County trial and did not testify at the San Diego trial proceedings,
including James Helverson M.D., Detective William Ragsdale, Officer Robert Dasper, and Detective Gary
McEwen, to name a few. Petitioner’s suggestion that the mental health and correctional records of these
individuals could provide a reason that they were not called to testify at the San Diego trial is wholly without
basis in the record.

1 [Barbara S.] and Cullins cases.” (SAP at ¶ 278.) A review of the arguments posed in Claims 2 and 3
2 reveals that the crime against Jennifer S. is not discussed in a substantive manner in either claim.
3 Accordingly, document requests 1-51 are not reasonably calculated to produce relevant evidence in
4 support of the cited claims as alleged in the SAP, and Petitioner fails to show good cause for the
5 requested discovery.

6 2. Document Requests 52-68

7 In addition to the robbery and murder of Janette Cullins, Petitioner was charged with and
8 convicted of robbery, burglary, forcible rape and forcible oral copulation in the attack against Barbara
9 S. in San Diego. Carter, 36 Cal. 4th at 1221. The trial court imposed a sentence of 21 years 8 months
10 for the crimes against Barbara S., to be served consecutively to the death sentence imposed for the
11 murder of Janette Cullins. Id.

12 As with the requests relating to the crime against Jennifer S., Petitioner seeks leave to serve
13 subpoenas duces tecum to command the production of any documents from various city, county and
14 state agencies¹⁵ relating to the attack against Barbara S., including but not limited to the complete police
15 and prosecution case files,¹⁶ potential Brady and/or witness impeachment materials,¹⁷ statements,
16 interviews, and current location of any individual identified as a potential witness,¹⁸ substance abuse and
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21 ¹⁵ These agencies include the San Diego County District Attorney’s Office, San Diego Police Department,
22 San Diego City Attorney’s Office, San Diego County Sheriff’s Department, San Diego Health and Human
23 Services Agency, and the California Department of Corrections and Rehabilitation.

24 ¹⁶ This includes the case files of the San Diego District Attorney’s Office (document request 52) and San
25 Diego County Police Department (document request 53) relating to Petitioner’s prosecution.

26 ¹⁷ This includes requests for documentation on prior inconsistent, false or biased statements by witnesses
27 (document request 55), prior statements in which one witness statement is inconsistent with that of another
28 witness (document request 56), offers for or agreements on potential consideration to a witness or potential
witness (document request 57), documentation relating to the prosecution and/or plea bargains with any potential
witness (document request 58), and any other favorable, impeachment or other exculpatory material (document
request 54).

¹⁸ Document requests 59-60. Additionally, in document request 66, Petitioner separately and specifically
requests any documentation on the “names, addresses, and present whereabouts of each person identified or
interviewed” by multiple law enforcement or prosecutorial agencies in connection with the instant case.

1 mental health records of the witnesses,¹⁹ witness criminal histories,²⁰ as well as any communications
2 between various agencies about the investigation and prosecution of Petitioner in the instant case.²¹

3 Again, Petitioner asserts that “[t]o fully investigate the extent of trial counsel’s ineffective
4 assistance of counsel, Petitioner’s counsel must examine all of the discovery that was or should have
5 been provided to trial counsel.” (Mot. at 53.) Petitioner’s assertions in support of these document
6 requests are speculative. For instance, Petitioner contends that the evidence against him regarding the
7 rape of Barbara S. was “extremely weak” and notes that “[t]here is little, if any, indication in the record
8 of how ...[the victim]... went from being a person who did not even consider Petitioner a suspect to then
9 identifying him at trial as the man who raped her. Discovery may provide insight into this marked
10 transformation.” (Id.) He asserts that “discovery may prove the extent to which Petitioner was
11 prejudiced by the joinder of the [Barbara S.] rape with the Cullins homicide,” and “may show” that a
12 reasonable investigation by counsel “could have uncovered evidence to further support his motion to
13 sever.” (Id. at 54.) However, there is no indication what evidence Petitioner reasonably expects to
14 obtain from law enforcement, court files, or communication between these entities that will support the
15 claims in the SAP. As stated above, the Court will not allow Petitioner to conduct discovery in order
16 to investigate “mere speculation.” Calderon (Nicolaus), 98 F.3d at 1106. Petitioner also intimates that
17 “[d]iscovery may also show that the prosecutor purposely misrepresented at least two facts to the trial
18 court,” regarding the testimony of witness Polly Haisha and whether Petitioner possessed a key
19 belonging to Barbara S., and “may show that the prosecutor misrepresented facts to secure the joinder”
20 of the Barbara S. rape and Cullins homicide. (Id. at 54-55.) These suggestions are also speculative and
21 do not warrant discovery.

22 In a related matter, Respondent contends that the argument regarding the testimony of Polly
23 Haisha was barred by the California Supreme Court under the California contemporaneous objection
24 rule. (Opp. at 14); see Carter, 36 Cal. 4th at 1264. Several circuit courts have held, and this Court
25 agrees, that a petitioner cannot show good cause for discovery on a procedurally defaulted claim. See

26 ¹⁹ Document request 65.

27 ²⁰ Document requests 61-64.

28 ²¹ Document requests 67-68.

1 Rucker v. Norris, 563 F.3d 766, 771 (8th Cir. 2009); Williams v. Bagley, 38 F.3d 932, 975 (6th Cir.
2 2004). Accordingly, as this Court has not yet ruled on procedural default in the instant case, it would
3 be premature to consider allowing discovery on a claim that may be procedurally defaulted.

4 In sum, the broad discovery sought is not reasonably calculated to the discovery of material
5 pertinent to these claims. Instead, Petitioner has evidently requested *each and every* document
6 potentially related to the investigation and prosecution of Petitioner for the crimes against Barbara S.
7 For the reasons discussed here, in addition to those discussed in relation to document requests 1-51,
8 Petitioner's request is overbroad, speculative, and fails to show good cause for discovery.

9 3. Document Requests 69-110

10 At Petitioner's guilt phase trial, the prosecution presented "other crimes" evidence regarding the
11 murders of Susan Knoll and Jillette Mills in Los Angeles County. Carter, 36 Cal. 4th at 1226.

12 As with the requests relating to the Jennifer S. and Barbara S. assaults, Petitioner seeks leave
13 to serve subpoenas duces tecum to command the production of any documents from various city, county
14 and state agencies²² relating to the burglary and murders of Susan Knoll and Jillette Mills and the rape
15 of Mills, including but not limited to the complete police and prosecution case files for each case,²³ the
16 coroner's file,²⁴ potential Brady and/or witness impeachment materials,²⁵ statements, interviews, and
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18 ²² These agencies include the Los Angeles County District Attorney's Office, Los Angeles Police
19 Department, Culver City Police Department, West Los Angeles Police Department, Los Angeles County Coroner,
20 Los Angeles County Sheriff's Department, Los Angeles City Attorney's Office, California Department of
21 Corrections and Rehabilitation, Los Angeles County Department of Mental Health, San Diego County District
Attorney's Office, San Diego Police Department, San Diego City Attorney's Office, San Diego County Sheriff's
Department, and San Diego County Health and Human Services Agency.

22 ²³ This includes the case files of the Los Angeles County District Attorney's Office (document request
23 69), Los Angeles Police Department (document request 70), Culver City Police Department (document request
24 71), West Los Angeles Police Department (document request 72), San Diego District Attorney's Office
(document request 93) and San Diego Police Department (document request 94) relating to Petitioner's
prosecution in their respective jurisdictions, as well as files each of those agencies maintained relating to
Petitioner's prosecution outside their jurisdiction.

25 ²⁴ Document request 73.

26 ²⁵ This includes requests for documentation on prior inconsistent, false or biased statements by witnesses
27 (document requests 75 and 96), prior statements in which one witness statement is inconsistent with that of
28 another witness (document requests 76 and 95), offers for or agreements on potential consideration to a witness
or potential witness (document requests 77 and 98), documentation relating to the prosecution and/or plea
bargains with any potential witness (document requests 78 and 99), and any other favorable, impeachment or
other exculpatory material (document requests 74 and 95).

1 current location of any individual identified as a potential witness,²⁶ substance abuse and mental health
2 records of the lay and expert witnesses,²⁷ lay and expert witness criminal histories,²⁸ prior complaints
3 and/or discipline against certain expert and law enforcement witnesses,²⁹ any documents or other
4 evidence discussing or relating to Ronald Tulio in connection with these crimes,³⁰ as well as any
5 communications between law enforcement and prosecutorial agencies about the investigation and
6 prosecution of Petitioner in the instant case.³¹

7 For the same reasons relating to Petitioner’s discovery requests regarding the Jennifer S. and
8 Barbara S. assaults, the instant request is overbroad and speculative. Here, Petitioner repeats the
9 contention that “[t]o fully investigate the extent of trial counsel’s ineffective assistance of counsel,
10 Petitioner’s counsel must examine all of the discovery that was or should have been provided to trial
11 counsel.” (Mot. at 80.) Yet again, this assertion presumes that either the prosecution failed to comply
12 with Brady, or that trial counsel failed to request all they should have requested from the relevant
13 agencies, but Petitioner fails to demonstrate a likelihood that either situation occurred in his case. As
14 stated previously, the Court will not allow Petitioner to conduct discovery in order to investigate “mere
15 speculation.” Calderon (Nicolaus), 98 F.3d at 1106.

16 Here, Petitioner does indicate certain specific items that he seeks in discovery, such as a police
17 report written by Detective White regarding Officer Bloor’s identification of Ronald Tulio as a man
18 Bloor spoke to on the night of the Knoll/Mills homicides. (See Mot. at 80.) Petitioner insists “[t]hat
19 report should be turned over to Petitioner’s counsel,” and asserts that it would be contained in the
20 investigating or prosecuting agencies’ files. (Id.) However, the Court’s review of the record

22 ²⁶ Document requests 79, 80, 100, and 101. Additionally, in document requests 86 and 107, Petitioner
23 separately and specifically requests any documentation on the “names, addresses, and present whereabouts of each
24 person identified or interviewed” by multiple law enforcement or prosecutorial agencies in connection with the
25 instant case.

26 ²⁷ Document requests 85 and 106.

27 ²⁸ Document requests 81-84 and 102-105.

28 ²⁹ Document requests 90-92.

³⁰ Document requests 87 and 108.

³¹ Document requests 88, 89, 109 and 110.

1 demonstrates that trial counsel was in possession of the police report during the trial proceedings.
2 During an examination of Detective Cantrell outside the presence of the jury, lead counsel Bumer asked
3 numerous questions regarding Bloor’s photo identification of Tulio. Mr. Bumer introduced and quoted
4 extensively from a police report in the possession of the defense, which he described as “a copy of a
5 Culver Police Department report signed by Keith White.” (RT 5965-68.) Later in the trial proceedings,
6 Mr. Bumer again used the same report during an in-court examination of Officer Bloor. (See RT 6142-
7 44.) As the trial record indicates that this particular report was in the possession of defense counsel, it
8 appears likely that the report is contained in trial counsel’s files. As such, Petitioner’s counsel fails to
9 explain why he seeks discovery from prosecutorial and law enforcement agencies for production of this
10 document when it appears that these agencies are not in the sole possession of the report, and it would
11 likely be more efficient to review trial counsels’ files to obtain the report.

12 In general, as with the prior requests, Petitioner’s assertions in support of the expansive
13 document requests are largely speculative in nature. For instance, Petitioner asserts that “discovery may
14 lead to evidence that could further undermine the questionable forensic evidence presented by” evidence
15 technicians Dolan and Buchanan, criminalist Le, and medical examiner Dr. Sathyavagiswaran. (Mot.
16 at 80.) In the SAP, Petitioner alleges that trial counsel failed to properly challenge the forensic
17 testimony presented at trial, either through cross-examination and argument or by retaining and utilizing
18 alternate forensic experts. (See SAP at ¶¶ 238-42.) Petitioner generally alleges that trial counsel failed
19 to have wine glasses tested for blood and saliva, failed to challenge the evidence presented regarding
20 the alleged sexual assault of Jillette Mills, and failed to adequately present evidence regarding a lack
21 of physical evidence tying Petitioner to the crime scene.³² He also asserts that the testimony regarding
22 the location of Mills’ white nightgown was contradictory, “thus suggesting that it could have been
23 contaminated by evidence technicians, including, but not limited to, those technicians who testified at
24 trial.” (Mot. at 77.) Yet, Petitioner fails to indicate how discovery of records on prior arrests, detention
25 or incarceration of the forensic witnesses (document requests 81-84 and 102-105), their mental health
26 or substance abuse records (document requests 85 and 106), and prior complaints and/or discipline

28 ³² This includes the fact that twenty (20) usable latent prints were found in the Knoll/Mills apartment, only one of which was identified as Petitioner’s, and hairs collected at the scene were not matched to Petitioner.

1 (document requests 90-92) are reasonably likely to assist him in developing his claims of ineffective
2 assistance of counsel. These assertions, as currently constituted, are too broad and unsupported to
3 evidence anything more than a fishing expedition.

4 Petitioner also requests any documentation regarding Ronald Tulio, the ex-boyfriend of Susan
5 Knoll, asserting that “[d]iscovery may also lead to evidence that could cast considerable doubt on the
6 prosecution’s theory that Petitioner was responsible for the Knoll/Mills murders.” (*Id.* at 80.) In Claim
7 2 of the SAP, Petitioner asserts that trial counsel failed to investigate and present evidence of third party
8 culpability, contending that “[c]ounsel was also in possession of police reports that suggested that
9 Ronald Tulio (Ms. Knoll’s former boyfriend) was involved in the Culver City murders. But counsel
10 failed to investigate this evidence.” (SAP at ¶ 252.) With respect to these allegations, it is unclear why
11 Petitioner’s counsel seeks to discover material that he may already possess via trial counsels’ files.

12 Finally, as with the prior requests, Petitioner asserts that discovery “will also provide clarity to
13 certain discrepancies that exist between the case-in-chief, as it was presented by the Los Angeles
14 prosecution, and the case-in-chief, as it was presented by the San Diego prosecution.” (Mot. at 80.)
15 Petitioner contends that “[t]o the extent the San Diego prosecution’s decision not to call James V. Gatlin
16 and/or Danita Schaumann was based on impeachment evidence not disclosed to trial counsel, then
17 Petitioner should be allowed to access that material now.” (*Id.*) Petitioner fails to indicate the basis for
18 his speculative assertion, and the Court is unpersuaded that Petitioner posits an appropriate reason for
19 the requested discovery. It is apparent from the record that the Los Angeles case involved Petitioner’s
20 trial for the murders of Jillette Mills and Susan Knoll (and Bonnie Guthrie, discussed below) and these
21 murders were introduced at the San Diego trial as other crimes evidence and in penalty phase
22 aggravation. It is not unreasonable that the witness lists regarding each crime would differ between the
23 two jurisdictions. At any rate, Petitioner fails to offer an indication that the difference in the witness
24 lists is relevant to the claims in his federal petition, as the SAP does not contain any claim alleging that
25 the prosecution withheld impeachment evidence regarding Gatlin or Schaumann, or that trial counsel
26 was ineffective for failing to request impeachment evidence regarding these witnesses, neither of whom
27 testified at Petitioner’s San Diego trial.

28 In sum, the broad discovery sought is not reasonably calculated to lead to the discovery of

1 material pertinent to these claims. Instead, Petitioner has evidently requested each and every document
2 potentially related to the investigation and prosecution of him for the murders of Susan Knoll and Jillette
3 Mills in Los Angeles and the introduction of the murders at the San Diego trial. For the reasons
4 discussed here, in addition to those discussed in relation to the prior groups of document requests,
5 Petitioner's request is overbroad, speculative, and fails to show good cause for discovery.

6 4. Document Requests 111-147

7 At Petitioner's guilt phase trial, the prosecution presented "other crimes" evidence regarding the
8 murder of Bonnie Guthrie in Los Angeles County. Carter, 36 Cal. 4th at 1227.

9 As with the requests discussed above, Petitioner seeks leave to serve subpoenas duces tecum to
10 command the production of any documents from various city, county and state agencies³³ relating to the
11 rape, burglary and murder of Bonnie Guthrie, including but not limited to the complete police and
12 prosecution case files for the case,³⁴ the coroner's file,³⁵ potential Brady and/or witness impeachment
13 materials,³⁶ statements, interviews, and current location of any individual identified as a potential
14 witness,³⁷ substance abuse and mental health records of the lay and expert witnesses,³⁸ lay and expert

16 ³³ These agencies include the Los Angeles County District Attorney's Office, Los Angeles Police
17 Department, Culver City Police Department, West Los Angeles Police Department, Los Angeles County Coroner,
18 Los Angeles County Sheriff's Department, Los Angeles City Attorney's Office, California Department of
19 Corrections and Rehabilitation, Los Angeles County Department of Mental Health, San Diego County District
20 Attorney's Office, San Diego Police Department, San Diego City Attorney's Office, San Diego County Sheriff's
21 Department, and San Diego County Health and Human Services Agency.

22 ³⁴ This includes the case files of the Los Angeles County District Attorney's Office (document request
23 111), Los Angeles Police Department (document request 112), Culver City Police Department (document request
24 113), West Los Angeles Police Department (document request 114), San Diego District Attorney's Office
25 (document request 131) and San Diego Police Department (document request 132) relating to Petitioner's
26 prosecution in their respective jurisdictions, as well as files each of those agencies maintained relating to
27 Petitioner's prosecution outside their jurisdiction.

28 ³⁵ Document request 115.

³⁶ This includes requests for documentation on prior inconsistent, false or biased statements by witnesses
(document requests 117 and 134), prior statements in which one witness statement is inconsistent with that of
another witness (document requests 118 and 135), offers for or agreements on potential consideration to a witness
or potential witness (document requests 119 and 136), documentation relating to the prosecution and/or plea
bargains with any potential witness (document requests 120 and 137), and any other favorable, impeachment or
other exculpatory material (document requests 116 and 133).

³⁷ Document requests 121, 122, 138 and 139. Additionally, in document requests 128 and 145, Petitioner
separately and specifically requests any documentation on the "names, addresses, and present whereabouts of each
person identified or interviewed" by multiple law enforcement or prosecutorial agencies in connection with the

1 witness criminal histories,³⁹ as well as any communications between law enforcement and prosecutorial
2 agencies about the investigation and prosecution of Petitioner in the instant case.⁴⁰

3 For the same reasons relating to Petitioner’s previously discussed discovery requests, the instant
4 request is overbroad and speculative. Petitioner again repeats his contention that “[t]o fully investigate
5 the extent of trial counsel’s ineffective assistance of counsel, Petitioner’s counsel must examine all of
6 the discovery that was or should have been provided to trial counsel.” (Mot. at 101.) Again, this
7 assertion presumes that either the prosecution failed to comply with Brady, or that trial counsel failed
8 to request all they should have requested from the relevant agencies, but Petitioner fails to demonstrate
9 a likelihood that either situation occurred in his case. As stated previously, the Court will not allow
10 Petitioner to conduct discovery in order to investigate “mere speculation.” Calderon (Nicolaus), 98 F.3d
11 at 1106.

12 Petitioner asserts that “discovery may allow Petitioner to discover evidence that would have
13 impeached or otherwise undermined the testimony of the prosecution’s witnesses at guilt or penalty,”
14 stating that “[f]or instance, discovery may lead to evidence that could further undermine the
15 questionable forensic evidence presented by Dr. Sathyavagiswaran, Marcus Kellman, and Lynn Herold.”
16 (Mot. at 100.) However, he fails to specifically indicate what questionable forensic evidence he seeks
17 to undermine, nor does Petitioner indicate how any records on prior arrests, detention or incarceration
18 of these witnesses (document requests 123-26 and 140-43) or the mental health or substance abuse
19 records of these individuals (document requests 127 and 144)⁴¹ will assist him in developing his claims
20 of ineffective assistance of counsel.

21 Petitioner also generally asserts that “[d]iscovery may also lead to evidence that could cast even
22 more doubt on the prosecution’s theory that Petitioner was responsible for the Guthrie murder,” noting

23 _____
24 instant case.

25 ³⁸ Document requests 127 and 144.

26 ³⁹ Document requests 123-126 and 140-143.

27 ⁴⁰ Document requests 129, 130, 146 and 147.

28 ⁴¹ Petitioner’s suggestion that the mental health and/or criminal histories of these individuals will provide
evidence that could undermine their trial testimony is conclusory and speculative, and does not appear to have
any basis in the record.

1 that fingerprint and hairs found at the scene were not matched to Petitioner, and asserting that “[i]t is
2 critical that Petitioner discover whether the prosecution tested that forensic evidence, and if so, what
3 were the results of that testing.” (Mot. at 100.) Petitioner maintains that “[w]ithout discovery, [he]
4 lacks sufficient information to ensure that the prosecution complied with its duty to provide Petitioner
5 with material exculpatory or impeachment evidence.” (Id.) Yet the record clearly indicates that the
6 physical evidence was tested and was not matched to Petitioner. (See e.g. RT 5022 (Detective
7 Zolkowsky, questioned on whether latent prints were lifted from the Guthrie apartment, replied “None.
8 None other than the victim’s.”)) In fact, Respondent does not contest Petitioner’s assertion that seminal
9 material contained in Guthrie’s pantyhose and rape kit slides was not tested, and concedes that hair and
10 fingerprints found at the crime scene were not matched to Petitioner. Moreover, the trial record contains
11 exchanges between the trial court and counsel indicating that the prosecution turned over reports on the
12 testing of forensic evidence regarding the Guthrie homicide. (See e.g. RT 5057-60, 5070-74.)

13 Petitioner asserts that “discovery may also explain the discrepancies in the Los Angeles and San
14 Diego prosecutions’ cases-in-chief,” noting that Ronald Mancini, the victim’s boyfriend, was called as
15 a witness at the Los Angeles trial and not in San Diego, and that Dan Clark and Manny Gliberman were
16 called as witnesses in the San Diego proceeding but were not called in Los Angeles. (Mot. at 101.) As
17 stated above, it is apparent from the record that the Los Angeles case involved Petitioner’s trial for the
18 murders of Ms. Mills, Ms. Knoll, and Ms. Guthrie, and that these three murders were later introduced
19 at the San Diego trial in a more limited manner - as “other crimes” evidence and in penalty phase
20 aggravation. Thus, it is not unreasonable that the witness lists regarding each crime would differ
21 between the two jurisdictions. Petitioner also fails to offer any indication that the difference in the
22 witness lists is relevant to the claims in his federal petition, as the SAP does not contain any claim
23 alleging a constitutional violation emanating from the differences in the witness lists between the two
24 proceedings, and Petitioner fails to identify which claim in his SAP the discovery of such evidence
25 would develop. As such, Petitioner fails to show good cause for the requested discovery.

26 In sum, the broad discovery sought is not reasonably calculated to the discovery of material
27 pertinent to these claims. Instead, Petitioner has evidently requested each and every document
28 potentially related to the investigation and prosecution of the murder of Bonnie Guthrie in Los Angeles

1 and the introduction of the murder at the San Diego trial. For the reasons discussed here, in addition
2 to those discussed in relation to the prior groups of document requests, Petitioner's request is overbroad,
3 speculative, and fails to show good cause for discovery.

4 5. Document Requests 148-195

5 At Petitioner's guilt phase trial, the prosecution presented "other crimes" evidence regarding the
6 robbery and murder of Tok Kim in Alameda County. Carter, 36 Cal. 4th at 1226.

7 As with the requests discussed above, Petitioner seeks leave to serve subpoenas duces tecum to
8 command the production of any documents from various city, county and state agencies⁴² relating to the
9 robbery and murder of Tok Kim including but not limited to the complete police and prosecution case
10 files for the case,⁴³ the coroner's file,⁴⁴ potential Brady and/or witness impeachment materials,⁴⁵
11 statements, interviews, and current location of any individual identified as a potential witness,⁴⁶
12
13

14
15 ⁴² These agencies include the Alameda County District Attorney's Office, Oakland Police Department,
16 Alameda County Coroner's Office, Los Angeles County District Attorney's Office, Los Angeles Police
17 Department, Culver City Police Department, West Los Angeles Police Department, Los Angeles County Sheriff's
18 Department, Los Angeles City Attorney's Office, California Department of Corrections and Rehabilitation, Los
19 Angeles County Department of Mental Health, San Diego County District Attorney's Office, San Diego Police
20 Department, San Diego County Medical Examiner, San Diego City Attorney's Office, San Diego County
21 Sheriff's Department, and San Diego County Health and Human Services Agency.

22 ⁴³ This includes the case files of the Alameda County District Attorney's Office (document request 148),
23 Oakland Police Department (document request 149), Los Angeles County District Attorney's Office (document
24 request 156), Los Angeles Police Department (document request 157), Culver City Police Department (document
25 request 158), West Los Angeles Police Department (document request 159), San Diego District Attorney's Office
26 (document request 177) and San Diego Police Department (document request 178) relating to Petitioner's
27 prosecution in their respective jurisdictions. In requests 148 and 149, Petitioner also requests documents, records,
28 files and notes from the Alameda County District Attorney and Oakland Police Department relating to the crimes
committed against Susan Knoll, Jillette Mills, Bonnie Guthrie, and Janette Cullins.

⁴⁴ Document requests 151 and 179.

⁴⁵ This includes requests for documentation on prior inconsistent, false or biased statements by witnesses
(document requests 153, 162 and 181), prior statements in which one witness statement is inconsistent with that
of another witness (document requests 163 and 182), offers for or agreements on potential consideration to a
witness or potential witness (document requests 164 and 183), documentation relating to the prosecution and/or
plea bargains with any potential witness (document requests 165 and 184), and any other favorable, impeachment
or other exculpatory material (document requests 150, 160 and 180).

⁴⁶ Document requests 152, 166, 167, 185 and 186. Additionally, in document requests 173 and 192,
Petitioner separately and specifically requests any documentation on the "names, addresses, and present
whereabouts of each person identified or interviewed" by multiple law enforcement or prosecutorial agencies in
connection with the instant case.

1 substance abuse and mental health records of several lay, police, and expert witnesses,⁴⁷ lay, police and
2 and expert witness criminal histories,⁴⁸ prior complaints and/or discipline against the prosecuting
3 attorney,⁴⁹ any documents or other evidence discussing or relating to Ray Blevins in connection with
4 this crime,⁵⁰ as well as any communications between law enforcement and prosecutorial agencies about
5 the investigation and prosecution of Petitioner in the instant case.⁵¹

6 For the same reasons relating to the previously discussed discovery requests, the instant request
7 is overbroad and speculative. Here, Petitioner contends that “[t]o fully investigate the extent of trial
8 counsel’s ineffective assistance of counsel and the improper conduct of the investigating and
9 prosecuting agencies involved in this case, Petitioner’s counsel must examine all of the discovery that
10 was or should have been provided to trial counsel.” (Mot. at 127.) Again, this assertion presumes that
11 either the prosecution failed to comply with Brady, or that trial counsel failed to request all they should
12 have requested from the relevant agencies, but Petitioner fails to demonstrate a likelihood that either
13 situation occurred in his case. As stated previously, the Court will not allow Petitioner to conduct
14 discovery in order to investigate “mere speculation.” Calderon (Nicolaus), 98 F.3d at 1106.

15 With respect to the crimes against Ms. Kim, Petitioner asserts that his discovery requests could
16 not only support his claims of ineffective assistance of counsel (Claims 2 and 3 of the SAP), but could
17 also support Claims 6 and 7, in which he contends that the prosecution committed misconduct and
18 withheld material, exculpatory evidence from defense counsel. (SAP ¶¶ 289-426; 499-520.) Petitioner
19 argues that the Los Angeles prosecution “failed to timely disclose a 1986 laboratory report from the
20 Oakland Police Department, which eliminated Petitioner as a donor of semen found on a bedspread in
21 Tok Kim’s apartment.” (Mot at 124.) He maintains that the “exculpatory evidence was available to the
22 State in January 1986, yet only came into the possession of the defense on or about June 15, 1989, the
23 first week of trial.” (Id.) However, Petitioner appears to be referring to the first week of the Los

24
25 ⁴⁷ Document requests 172 and 191.

26 ⁴⁸ Document requests 168-71 and 187-90.

27 ⁴⁹ Document request 161.

28 ⁵⁰ Document requests 174 and 193.

⁵¹ Document requests 154, 155, 175, 176, 194 and 195.

1 Angeles trial, as Petitioner’s San Diego trial took place in 1991, over two years after the report was
2 evidently provided to the defense. In the SAP, Petitioner argues that had the report excluding Petitioner
3 as a source of the semen been timely disclosed to the Los Angeles defense counsel, counsel “would have
4 been justified in obtaining a court order for a blood sample from Mr. Blevins’s [sic] on the ground that
5 he was a viable third-party suspect. And that evidence would have been presented in the San Diego
6 case.” (SAP at ¶ 515.) Notably, this statement presupposes that the trial court would have granted a
7 request for a blood sample for Mr. Blevins, that there would have been a match to the sample on the
8 Kim bedspread, and that the evidence would have been admissible at trial. Even if all three of these
9 assumptions prove true, the allegations, as currently constituted, are wholly conclusory and do not
10 establish good cause for the broad discovery sought by Petitioner.

11 As a related matter, Petitioner specifically asserts that document request 161, in which he seeks
12 to discover any prior complaints or discipline against the prosecuting attorney in Los Angeles, “would
13 establish whether the Los Angeles District Attorney had a history of *Brady* violations or other
14 infractions.” (Mot. at 125.) Respondent persuasively notes that “[i]t is not clear how the Los Angeles
15 prosecutor’s history of misconduct is in any way relevant to [Petitioner’s] claims relating to the San
16 Diego trial.” (Opp. at 25.) Indeed, Petitioner fails to indicate how discovery regarding the Los Angeles
17 prosecutors would support the claims alleged in the SAP regarding the performance of the San Diego
18 trial defense counsel or the allegations of misconduct by the San Diego prosecutors, other than in the
19 conclusory manner asserted above.

20 Petitioner also generally asserts that discovery “may lead to evidence that could further
21 undermine the questionable forensic evidence presented by Drs. Rogers and Blackbourne” and “may
22 also lead to evidence that could cast even more doubt on the prosecution’s theory that Petitioner was
23 responsible for the Kim death.” (Mot. at 125.) At trial, Dr. Rogers testified that he performed the Kim
24 autopsy, but could not conclusively determine the time of death or cause of death, yet stating that
25 strangulation was a possible cause of death. (RT 5369-75.) Dr. Blackbourne testified that after
26 reviewing the Kim autopsy photos and report, he concluded it was possible that her death was caused
27 by asphyxiation from ligature strangulation. (RT 5541-51.) Yet, Petitioner fails to identify any
28 evidence sought that is reasonably expected to undermine the expert testimony of these witnesses. There
is no

1 evidence to indicate that the production of arrests, detention or incarceration records of these witnesses
2 (document requests 168-71 and 187-90), or the mental health or substance abuse records of these
3 individuals (document requests 172 and 191)⁵² even exist, much less that such records will assist
4 Petitioner in developing his claims of ineffective assistance of counsel.

5 Petitioner also asserts that “[f]ingerprints and hairs found at the scene were not identified as
6 belonging to Petitioner,” and alleges that “[i]t is critical that [he] discover whether the prosecution tested
7 that forensic evidence and, if so, what were the results of that testing and the discussion that followed.”
8 (Mot. at 125.) The record indicates that the fingerprint evidence, including the fact that Petitioner’s
9 prints were not found in Kim’s home, was introduced at trial. (RT 4257-61.) Moreover, Respondent
10 does not contest Petitioner’s assertion that the hair or semen collected did not match Petitioner. (Opp.
11 at 24.) It is also evident that Petitioner (or prior counsel) possesses at least some of the reports he
12 currently seeks; Petitioner repeatedly asserts that the Los Angeles prosecutor failed to timely provide
13 the report regarding the semen stain on Kim’s bedspread, in doing so acknowledging that the report was
14 turned over to the defense in 1989. Again, Petitioner fails to indicate any specific documents or
15 evidence he seeks to discover, instead requesting *every document* relating to this case. Petitioner fails
16 to provide good cause to justify such a broad discovery request.

17 Petitioner also requests material (document requests 174 and 193) that would allow him to
18 “discover the full extent of the prosecution’s investigation into Ray Blevins’s role as the murderer in
19 Tok Kim’s case.” (Mot. at 126.) However, as previously noted regarding the allegations concerning
20 the testimony of Polly Haisha, the California Supreme Court imposed state procedural bars on several
21 claims in the SAP concerning Mr. Blevins’ involvement in the murder of Tok Kim. (See Supp.
22 Lodgment No. 1; Lodgment No. 113.) Because this Court has not yet ruled on procedural default in this
23 case, it would be premature to consider allowing discovery on claims that may prove to be procedurally
24 barred from federal review. See Rucker, 563 F.3d at 771; Williams, 38 F.3d at 975.

25 Petitioner also asserts that “the materials requested will also help explain the discrepancies in
26 the Los Angeles and San Diego prosecutions’ case-in-chiefs,” stating that:

27
28 ⁵² Petitioner’s suggestion that the mental health and/or criminal histories of these individuals will provide
evidence that could undermine their trial testimony is conclusory and speculative, and does not appear to have
any basis in the record.

1 It is unclear why the San Diego prosecution decided not to call Alfredo D. Lopez, Vinay
2 Brasad, and Ingrid Maleska-King, and not introduce the testimony of Ray Blevins. It is
3 also unclear why the San Diego prosecution chose to call Jeffrey Eddis and Polly Haisha
but the Los Angeles prosecution did not.

4 (Mot. at 126-27.) This assertion is inaccurate. The state trial record clearly shows that Alfredo D.
5 Lopez (see RT 4213-30) and Ingrid Maleska-King (see RT 386-4400) testified at the San Diego trial
6 and shows that the prosecution introduced the transcript of Ray Blevins' prior testimony (see RT 4271-
7 81) at that proceeding. Aside from the inaccuracies, Petitioner fails to offer any indication that the
8 difference in the witness lists is relevant to the claims in his federal petition. The SAP does not contain
9 a claim alleging a constitutional violation arising from differences in the witnesses called at each
10 proceeding, and Petitioner fails to allege which claim in his SAP this discovery would develop.

11 In sum, the broad discovery sought is not reasonably calculated to lead to the discovery of
12 material pertinent to any claim in the SAP. Instead, Petitioner appears to have requested each and every
13 document potentially related to the investigation of Petitioner for the murder of Tok Kim and the
14 introduction of the murder at the San Diego trial. For the reasons discussed here, in addition to those
15 discussed in relation to the prior groups of document requests, Petitioner's request is overbroad,
16 speculative, and fails to show good cause for discovery.

17 6. Document Requests 196-235

18 Petitioner was charged with and convicted of the robbery and murder of Janette Cullins and the
19 burglary of her residence. Carter, 36 Cal. 4th at 1220. After the penalty phase, the jury returned a
20 verdict of death for the murder, and the trial court later imposed a death sentence. Id. at 1221.

21 As with the requests discussed above, Petitioner seeks leave to serve subpoenas duces tecum to
22 command the production of any documents from various city, county and state agencies⁵³ relating to the
23 robbery and murder of Janette Cullins, including but not limited to the complete police and prosecution
24
25

26
27 ⁵³ These agencies include the Los Angeles County District Attorney's Office, Los Angeles Police
28 Department, Culver City Police Department, West Los Angeles Police Department, Los Angeles County Sheriff's
Department, Los Angeles City Attorney's Office, California Department of Corrections and Rehabilitation, Los
Angeles County Department of Mental Health, San Diego County District Attorney's Office, San Diego Police
Department, San Diego County Medical Examiner, San Diego City Attorney's Office, San Diego County
Sheriff's Department, and San Diego County Health and Human Services Agency.

1 case files for the case,⁵⁴ the coroner's file,⁵⁵ potential Brady and/or witness impeachment materials,⁵⁶
2 statements, interviews, and current location of any individual identified as a potential witness,⁵⁷
3 substance abuse and mental health records of the lay and expert witnesses,⁵⁸ lay and expert witness
4 criminal histories,⁵⁹ prior complaints and/or discipline against the prosecuting attorneys and certain law
5 enforcement witnesses,⁶⁰ personnel documents relating to prosecutor Pippin's prior role as colleague
6 and/or supervisor to Judge Melinda Lasater,⁶¹ as well as any communications between law enforcement
7 and prosecutorial agencies about the investigation and prosecution of Petitioner in the instant case.⁶²

8 As with prior requests, Petitioner asserts that in order "[t]o fully investigate the extent of trial
9 counsel's ineffective assistance of counsel, petitioner's counsel must examine all of the discovery that
10 was or should have been provided to counsel." (Mot. at 154.) Yet again, Petitioner's request is
11 overbroad, the arguments advanced in support of the discovery request are speculative and conclusory,
12 and the Court will not allow Petitioner to conduct discovery in order to investigate "mere speculation."
13 Calderon (Nicolaus), 98 F.3d at 1106.

14
15 ⁵⁴ This includes the case files of the Los Angeles County District Attorney's Office (document request
16 196), Los Angeles Police Department (document request 197), Culver City Police Department (document request
17 198), West Los Angeles Police Department (document request 199), San Diego County District Attorney's Office
18 (document request 215), and San Diego Police Department (document request 216) relating to Petitioner's
19 prosecution in their respective jurisdictions and in San Diego.

18 ⁵⁵ Document request 217.

19 ⁵⁶ This includes requests for documentation on prior inconsistent, false or biased statements by witnesses
20 (document requests 201 and 221), prior statements in which one witness statement is inconsistent with that of
21 another witness (document requests 202 and 222), offers for or agreements on potential consideration to a witness
22 or potential witness (document requests 203 and 223), documentation relating to the prosecution and/or plea
23 bargains with any potential witness (document requests 204 and 224), and any other favorable, impeachment or
24 other exculpatory material (document requests 200 and 218).

23 ⁵⁷ Document requests 205, 206, 225 and 226. Additionally, in document requests 212 and 232, Petitioner
24 separately and specifically requests any documentation on the "names, addresses, and present whereabouts of each
25 person identified or interviewed" by multiple law enforcement or prosecutorial agencies in connection with the
26 instant case.

25 ⁵⁸ Document requests 211 and 231.

26 ⁵⁹ Document requests 207-10 and 227-30.

27 ⁶⁰ Document requests 219 and 233.

28 ⁶¹ Document request 220.

⁶² Document requests 213, 214, 234, and 235.

1 For instance, Petitioner alleges that “discovery may lead to evidence that could further
2 undermine the questionable forensic evidence presented at trial,” stating that as “[f]ingerprints and hair
3 found at the scene were not identified as belonging to Petitioner,” and asserting that “[i]t is critical that
4 Petitioner discover whether the prosecution tested that forensic evidence and, if so, what were the results
5 of that testing and the discussion that followed.” (Mot. at 153.) Petitioner maintains that “[w]ithout
6 discovery, [he] lacks sufficient information to ensure that the prosecution complied with its duty to
7 provide Petitioner with material exculpatory or impeachment evidence.” (Id.) A review of the state
8 record indicates that hair and fingerprint evidence was tested and was not matched to Petitioner. (See
9 e.g. RT 6112-16 (Criminalist William Loznycky testified that fibers found inside the hand of Ms.
10 Cullins were not a match to those from a sweater worn by Petitioner, and hairs from several blankets
11 and sheets in her residence were not a match to hair samples taken from Petitioner).) In fact,
12 Respondent does not contest Petitioner’s assertions that (1) no tool was identified in support of the
13 prosecution’s argument that there was forced entry into Ms. Cullins’ apartment, (2) there was no
14 evidence that Ms. Cullins was sexually assaulted, and (3) while blood stains were found to be similar
15 to Petitioner’s blood, no significant wounds were found on Petitioner. (Opp. at 27.) The trial record
16 also contains exchanges between the trial court and counsel indicating that the prosecution turned over
17 reports on the testing of forensic evidence regarding the crimes against Ms. Cullins. (See e.g. RT 5397-
18 5400, 6112.)

19 Petitioner also asserts that certain discovery requests concerning the Cullins case could provide
20 support for Claim 6 in the SAP, in which he contends that the prosecution committed misconduct, and
21 Claim 11, in which he contends that the trial judge was not impartial. Petitioner states that document
22 request 219 would provide information on “whether the district attorneys had a history of engaging in
23 such unlawful and prejudicial behavior,” and that document request 220 would assist in establishing
24 “whether the relationship between deputy district attorney Pippin and Judge Lasater was even more
25 extensive and prejudicial to Petitioner than was already established at trial.” (Mot. at 153.) Both
26 requests appear to be nothing more than a fishing expedition. “Ordinarily, we presume that public
27 officials have ‘properly discharged their official duties.’” Bracy, 520 U.S. at 909, quoting United States
28 v. Armstrong, 517 U.S. 456, 464 (1996). Petitioner’s unsupported assertions to the contrary are
speculative and do not establish good cause for discovery.

1 Petitioner also requests discovery regarding his claim that the prosecutor committed misconduct
2 in insinuating that Petitioner abused his children, contending that there was no evidence before the trial
3 court indicating abuse. Petitioner indicates it is his intention to determine whether the prosecutor was
4 in possession of any evidence of abuse prior to making that insinuation, and maintains that he “has
5 reason to believe that no such evidence will be in the prosecution’s possession, thus supporting his
6 claim” of misconduct. (Mot. at 154.) Respondent notes that “[f]or purposes of Carter’s claim, it has
7 been assumed that there are no documents in the prosecutor’s file that Carter abused his children.”
8 (Opp. at 28.) Petitioner fails to demonstrate good cause to conduct a review of the prosecution’s file
9 in search of an absence of documentation.

10 Petitioner additionally asserts that it is “critical that [he] discover the full extent of prosecution’s
11 investigation into the lying in wait charges,” asserting that there are “major discrepancies” in the
12 evidence presented regarding wood chips collected from outside the victim’s apartment, which were not
13 preserved as evidence. (Mot. at 153.) He maintains that documentation regarding the wood chips
14 would support Claim 9 of the SAP, in which he alleges that his “Constitutional Rights Were Violated
15 When Secondary Evidence of Purported Forced Entry to the Cullins Apartment Was Admitted at His
16 Trial, Where Police Failed to Preserve “Wood Chips” that Were Allegedly Observed By Officers at the
17 Crime Scene.” (Id. at 150.) Petitioner seeks an explanation as to “what happened to this critical
18 evidence” and to “establish whether the officers who abrogated their duties had a history of such
19 failures.” (Id. at 153.) However, the direct appeal opinion clearly states that the lying in wait special
20 circumstance was set aside. See Carter, 36 Cal. 4th at 1281. Moreover, Petitioner does not limit his
21 request to records on prior complaints and/or discipline, but requests documentation on prior arrests,
22 detention or incarceration of these witnesses as well as the mental health or substance abuse records of
23 these individuals, speculating that this information exists and that it would support his federal claims.⁶³
24 These conclusory assertions do not establish good cause for the broad discovery sought. See Calderon

25
26 ⁶³ Petitioner has also requested criminal history records (document request 207-10 and 227-30) and
27 mental health and/or substance abuse records (document request 211 and 231) regarding Mr. George Cullins, the
28 father of victim Janette Cullins. Mr. Cullins is mentioned only briefly in the SAP, in Claim 6 (which alleges that
the prosecutor committed misconduct by improperly introducing Mr. Cullins to the jury during voir dire), and
it is unclear what relevance these records would have to developing Claim 6, or any of Petitioner’s other federal
claims. This appears to be yet another example of the overbroad and speculative nature of Petitioner’s motion
for discovery.

1 (Nicolaus), 98 F.3d at 1106.

2 Petitioner also maintains that the requested discovery “may also explain the discrepancies in the
3 cases-in-chiefs as they were presented by the Los Angeles and San Diego prosecutions,” stating that
4 “[n]otably, the Los Angeles prosecution did not present the testimony of individuals who testified about
5 the ‘wood chips.’ With discovery, Petitioner will be able to determine if that strategic decision was
6 made because the evidence was questionable.” (Mot. at 154.) He highlights additional differences
7 between the witnesses called at the two trial proceedings, stating that:

8 Thus, in contrast to the Los Angeles prosecution, the San Diego prosecution chose not
9 to introduce the testimony of Judith Elaine Adams and Rodney Beverly, both of whom
10 testified that Petitioner used Jannette Cullins’s ATM card after her death. Also in
11 contrast to the Los Angeles prosecution, the San Diego prosecution introduced the
12 testimony of Charles Edward Byron and Bruce Allen Furnice, both of whom had
13 appointments with Jannette Cullins which she never met; David Susi, who identified
14 Petitioner as being in San Diego around the time of the murder; Fred Dreis and Dannis
15 G. Nucholls, both of whom worked for the San Diego Police Department, and whom
16 were called to establish that Petitioner committed the murder while lying in wait; and
17 Sandra Homewood of the San Diego County District Attorney’s Office, who compared
18 a handwriting exemplar.

19 (Id. at 144.) As a related matter, Petitioner’s account of the proceedings is again inaccurate, as a review
20 of the trial record shows that Mr. Beverly did in fact testify at the San Diego trial. (See RT 4904-13.)

21 Petitioner’s assertion that the questionable quality of certain evidence resulted in differing
22 prosecutorial decisions at the Los Angeles and San Diego trials is also speculative. In fact, there are any
23 number of reasons why the witnesses and evidence may have differed between the two proceedings.
24 For instance, the San Diego proceeding took place several years after the one in Los Angeles, and the
25 investigation into the charged crimes likely continued to develop after the conclusion of the Los Angeles
26 case. Additionally, and more likely, the witness lists and evidence differed because in Los Angeles, the
27 death of Ms. Cullins by strangulation was offered as other crimes evidence, while in the San Diego
28 proceeding, Petitioner was on trial for the robbery and murder of Ms. Cullins, and the burglary of her
home.⁶⁴ See People v. Carter, 36 Cal. 4th 1114, 1132-33 (2005) (Los Angeles convictions and
sentence); Carter, 36 Cal. 4th at 1220 (San Diego convictions and sentence). Moreover, for the reasons
stated above in the discussion of the prior requests, Petitioner fails to offer any indication that the

⁶⁴ Petitioner acknowledges that witnesses Dreis and Nucholls were called to establish the lying in wait
special circumstance charges with respect to Ms. Cullins’s murder. (See Mot. at 144.) Again, the San Diego
proceedings would necessarily differ from Los Angeles, as the special circumstances charged and found true in
Los Angeles were rape, burglary and multiple murder. See Carter, 36 Cal. 4th at 1127.

1 difference in the witness lists bears any relevance to the claims in his federal petition.

2 In sum, the broad requests at issue here are not reasonably calculated to the discovery of material
3 pertinent to any claim in the SAP. Instead, Petitioner has evidently requested *each and every* document
4 potentially related to the investigation and prosecution of Petitioner for the robbery and murder of
5 Janette Cullins and the burglary of her home. For the reasons discussed, Petitioner’s request is
6 overbroad, speculative, and he fails to show good cause for discovery.

7 7. Document Requests 236-245

8 Petitioner requests documents pertaining to his April 17, 1984 arrest in Yavapai County,
9 Arizona, and the subsequent search of the vehicle he was driving when arrested. The clothing Petitioner
10 was wearing at the time of his arrest and contents of the vehicle were introduced into evidence at his
11 guilt phase proceedings. See Carter, 36 Cal. 4th at 1233-34. Specifically, Petitioner seeks all
12 documents (1) relating to his traffic stop, detention, arrest and evidence collection,⁶⁵ (2) relating to
13 complaints or disciplinary action against Officer Dasper and Detectives McEwen and White,⁶⁶ and (3)
14 incident reports, investigative reports and communications between the Arizona Department of Public
15 Safety and numerous agencies in California regarding Petitioner’s arrest in Arizona.⁶⁷ (Mot. at 155-57.)

16 As with prior requests, Petitioner generally asserts that in order “[t]o fully investigate the extent
17 of trial counsel’s ineffective assistance of counsel, petitioner’s counsel must examine all of the
18 discovery that was or should have been provided to counsel.” (Id. at 159.) Petitioner contends that he
19 “can then compare that evidence to the discovery that was in trial counsel’s files. Similarly, to fully
20 investigate the extent of prosecutorial misconduct, Petitioner must discover whether the prosecutor knew
21 that the car had been illegally searched.” (Id.) Petitioner’s request for all documents related to his
22 detention, arrest, and the personnel involved is overbroad, not reasonably calculated to the discovery
23 of materials relevant to Petitioner’s claims, and based on speculative assertions.

24 Petitioner asserts that this discovery is relevant to Claims 2 (Ineffective Assistance of Counsel
25 at the Guilt Phase), 3 (Ineffective Assistance of Counsel at the Penalty Phase), 6 (Prosecutorial
26

27 ⁶⁵ Document requests 236, 239, 241, and 244.

28 ⁶⁶ Document requests 237 and 243.

⁶⁷ Document requests 238, 240, 242 and 245.

1 Misconduct), and 15 (Denial of a Full and Fair Suppression Hearing) of the SAP. (Id. at 159.)
2 Petitioner states that the requested discovery “will allow Petitioner to determine whether investigating
3 agencies in this case should have obtained a warrant before searching the car,” and “may also establish
4 that the detectives and officers involved in his stop, arrest, and warrantless search and seizure had a
5 history of committing these types of violations.” (Id. at 161-62.) However, Petitioner fails to offer any
6 “specific allegations” to rebut the Court’s presumption that the public officials cited here “properly
7 discharged their official duties.” Bracy, 520 U.S. at 909. Petitioner fails to explain how discovery on
8 all aspects of his arrest in Arizona are reasonably calculated to the production of material that would
9 support his claims as detailed in the SAP. The overbroad discovery evidences a fishing expedition.
10 Accordingly, Petitioner fails to show good cause for the requested discovery.

11 8. Document Requests 246-247

12 In Claim 1 of the SAP, Petitioner asserts that incidents of juror misconduct violated his right to
13 a fair trial by an impartial jury, in part due to the jurors’ viewing extrinsic evidence in the jury room,
14 namely, a stocking concealed in another piece of evidence, discovered by the jury during deliberations
15 in the jury room. (SAP at ¶¶ 112-228.) Petitioner requests documents relating to the jurors’ viewing
16 of extrinsic evidence in his case. (Mot. at 162-63.)

17 Petitioner requests all documentation, records, files and notes from the California Bureau of
18 Investigation (document request 246) and the California Attorney General’s Office (document request
19 247) relating to the jurors’ viewing of extrinsic evidence. As both parties acknowledge, this claim was
20 raised after the Attorney General’s Office provided Petitioner with a letter regarding: 1) a conversation
21 that prosecuting attorney Pippin had with a trial juror regarding an item the jury viewed during
22 deliberations that was not marked as an exhibit, and 2) the investigation undertaken by the California
23 Bureau of Investigation at the request of the Attorney General’s Office, including interviews with trial
24 prosecutors Pippin and Eichler. (See id. at 164; Opp. at 32.)

25 Petitioner asserts that he has “thus far been denied full access to the Attorney General Office’s
26 and California Bureau of Investigation and Intelligence’s files relating to this case and their
27 investigation of James Pippin and Robert Eichler,” and requests discovery in order to obtain “all
28 relevant information pertaining to the State’s investigation of the serious impropriety that occurred in
this case.” (Mot. at

1 165.) Yet the record reflects, and the parties acknowledge, that Petitioner is already in possession of
2 materials regarding this investigation. (See id. at 163-64; Opp. at 32; Exs. 95, 99 to SAP.) Moreover,
3 Respondent asserts that, in addition to the materials already provided, he “will be providing forthwith
4 an audiotape of an interview with Deputy District Attorney Robert Eichler that was referenced in the
5 materials already provided.” (Opp. at 32.) While Petitioner speculates that there is additional relevant
6 evidence that has not been provided to him, the Court finds nothing to indicate this is the situation. As
7 stated previously, the Court will not allow Petitioner to conduct discovery in order to investigate “mere
8 speculation.” Calderon (Nicolaus), 98 F.3d at 1106.

9 9. Depositions 1-15

10 Petitioner seeks to depose fifteen jurors and alternate jurors, including the twelve jurors who
11 rendered the guilt and penalty decisions in Petitioner’s case, one juror who was removed by the Court,
12 and two individuals who served as alternate jurors on his case. (Mot. at 165-66.) Petitioner asserts that
13 these depositions are relevant to Claim 1 of the SAP, in which he alleges that jury selection and
14 instances of juror misconduct violated his right to a fair trial by an impartial jury. (Id. at 166.)

15 Petitioner asserts that the depositions would allow him to investigate four incidents of juror
16 misconduct, stating that:

- 17 (1) Depositions 1-15 would “allow Petitioner to demonstrate that Juror Cigainero
18 was actually biased” when he sat as a member of Petitioner’s trial jury, adding
19 that “this jury was a particularly tight-knit group, thus making it likely that Juror
20 Cigainero shared his thoughts and biases with the other jurors.” (Id. at 168.)
- 21 (2) Depositions 1-15 will also allow Petitioner “to determine exactly what was
22 discussed at the clandestine meeting between Mr. McAlpine and the other jurors
23 at a location away from the courthouse,” stating that “[b]ecause the trial court
24 issued a ‘no-contact’ order, Petitioner has been unable to properly investigate
25 this claim. (Id. at 168-69.)
- 26 (3) Depositions 1-15 will allow him to “determine the exact scope of the jurors’
27 diminished sense of responsibility” resulting from their assumption that
28 Petitioner had already been sentenced to death in Los Angeles County. (Id. at
169;167.)
- (4) Depositions 1-13 will allow him to “determine which juror originally found the
extrinsic evidence,” “how many jurors viewed that evidence,” and “how the
jurors used the extrinsic evidence in reaching their verdicts.” (Id. at 169.)

27 However, Petitioner’s request to depose these fifteen individuals is overbroad and based on speculative
28 assertions.

1 First, Petitioner’s request to depose all members of the jury panel in support of his claim that
2 Juror Cigainero was a biased juror is based on the speculative assertion that because the jury in this case
3 was a particularly “tight-knit group,” it was likely that Juror Cigainero shared his feelings on the death
4 penalty with the other jurors. Petitioner offers no indication that any juror or alternate juror (other than
5 Juror Cigainero, who Petitioner already interviewed in 2008 and 2009)⁶⁸ is likely to have discoverable
6 information regarding this allegation, and as such, Petitioner fails to show good cause to depose the
7 fifteen named individuals.

8 Regarding the second allegation of jury misconduct, Petitioner repeatedly refers to a
9 “clandestine” meeting between former juror McAlpine and the other jurors “at a location away from the
10 courthouse,” and asserts that these individuals may have spoken to Mr. McAlpine about improper
11 matters. (Id. at 169-69.) In fact, the “clandestine” meeting was a juror potluck, which was approved
12 by the trial court and both parties, that former Juror McAlpine attended only after being contacted and
13 invited by another juror, and prior to which the court admonished the jurors and Mr. McAlpine to refrain
14 from discussing anything related to the case. (RT 7608-10; 8016-19; 8033-36.) Petitioner’s assertion
15 that deposing the jurors would reveal improper discussions the jurors had at the potluck is conclusory
16 and speculative. Petitioner fails to show good cause to warrant deposing fifteen individuals on this
17 speculative basis.

18 Petitioner’s third allegation is based upon statements made by Juror Ridge, who was interviewed
19 by counsel for Petitioner and Respondent in 2008 and 2009. In the 2008 interview, Mr. Ridge stated
20 that articles after the trial regarding Petitioner’s Los Angeles death sentence “confirmed everything that
21 we kind of thought we knew, but we didn’t discuss it.” (Ex. 94 to SAP at 1084.) In the same interview,
22 Mr. Ridge was also specifically asked “Did you know that Mr. Carter had already been convicted in a
23 separate prosecution in Los Angeles county at the time of the San Diego trial?” to which he answered
24 “No,” stated that he found out “[s]ometime afterwards,” and added “I don’t remember exactly when,
25 but it wasn’t known during the deliberations.” (Id. at 1083-84.) Based on these statements, Petitioner
26 requests leave to depose all fifteen jurors, which includes the alternates and the removed juror, in order
27 to discover the “exact scope” of the jury’s diminished sense of responsibility. However, Mr. Ridge’s
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⁶⁸ See Exhibits 94 and 96.

1 statements are equivocal at best, and Petitioner's conclusory assertions based on these statements are
2 insufficient to show good cause for discovery.

3 Petitioner's final allegation of juror misconduct concerns extrinsic evidence that was evidently
4 concealed in a tear in Petitioner's jacket, which was in evidence at trial, and which was discovered by
5 an unidentified juror during deliberations. To date, three trial jurors have already been questioned at
6 length regarding this incident. Petitioner presently requests leave to depose thirteen individuals on this
7 incident - the twelve deliberating jurors and removed juror McAlpine.

8 Several reasons inform the Court's decision denying the requested discovery. First, Petitioner
9 fails to provide a reason for re-interviewing Jurors Ridge, Hughes and Cigainero, as these individuals
10 have already been subject to extensive interviews on the record regarding this case, and regarding this
11 incident in particular. None of these three individuals have indicated that the additional evidence played
12 any role in deliberations. As such, Petitioner's assertion that discovery will allow him to determine
13 "how the jurors used the extrinsic evidence in reaching their verdicts" appears to be purely speculative
14 and conclusory. Second, removed Juror McAlpine appears wholly unconnected to this allegation of
15 error. The record indicates that jury deliberations began on May 21, 1991, the same day that Juror
16 McAlpine was excused from service. (CT 2651.) However, Juror McAlpine was excused at 11:54 a.m.
17 and the record reflects that the exhibits were placed in the deliberation room by 1:36 p.m. (Id.)
18 Moreover, the trial court issued concluding jury instructions and placed Juror Pinto on the jury in place
19 of departed Juror McAlpine at 2:02 p.m., and the jury began deliberations at 2:25 p.m. (CT 2651-52.)
20 Therefore, there is no indication that Juror McAlpine was ever in the jury deliberation room at the same
21 time as the exhibits, and as he was replaced prior to the commencement of deliberations, there is no
22 evidence that he would have been privy to the discovery of extrinsic evidence as indicated in the
23 materials submitted by Petitioner.

24 Generally, with respect to the requested juror depositions, the parties agree that a protective
25 order remains in place, prohibiting Petitioner from contacting the trial jurors without the consent of the
26 state trial court. On several prior occasions, Petitioner petitioned this Court for permission to interview
27 the trial jurors (see doc. nos. 18, 45), and the Court declined to issue such an order, recommending that
28 Petitioner raise the issue with the trial court. (See Doc. Nos. 38, 47.) Petitioner thereafter sought the

1 trial court's consent and as a result, both parties to the instant action and the trial judge conducted
2 interviews with three jurors in November 2008 and October 2009, at which the jurors were questioned
3 about the matters discussed here. Petitioner has already received discovery on this matter, and fails to
4 demonstrate good cause for additional inquiry. At any rate, Petitioner fails to offer the Court a "reason
5 to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is ...
6 entitled to relief" on this claim. Bracy, 520 U.S. at 908-09. Accordingly, discovery is not warranted.

7 10. Depositions 16-17

8 Petitioner seeks to depose James Pippin and Robert Eichler, who prosecuted his case as San
9 Diego County Deputy District Attorneys. (Mot. at 170.) Petitioner contends that the depositions could
10 offer support for several claims alleged in the SAP: Claim 1 (Juror Misconduct- Viewing of Extrinsic
11 Evidence), Claim 6 (Prosecutorial Misconduct), Claim 7 (Failure to Disclose Exculpatory Evidence and
12 Allow Inspection of Evidence) and Claim 11 (Impartiality of the Trial Judge).

13 Regarding Claim 1, Petitioner asserts that he seeks discovery to discern "among other thing,
14 whether Robert Eichler also knew about this juror's post-trial conversation with James Pippin and why
15 it took James Pippin so long to disclose this improper instance of juror misconduct." (Id. at 171.) Yet
16 as stated above in the discussion of document requests 246-47 (see section II.8, supra), the record
17 reflects, and the parties acknowledge, that Petitioner is already in possession of reports regarding this
18 investigation. (See id. at 163-64; Opp. at 32; Exs. 95, 99 to SAP.) Respondent also states an intention
19 to provide Petitioner with an audiotape of the interview with Mr. Eichler. (See Opp. at 32.) This
20 audiotape would, in all likelihood, reveal whether Mr. Eichler possessed any knowledge of the
21 conversation. With respect to the timing of Mr. Pippin's disclosure of the conversation, Petitioner fails
22 to state what relevance this has on the juror misconduct claim, and fails to demonstrate that there is
23 additional information that the trial prosecutors could reasonably provide in support of this claim.

24 Regarding Claim 6, Petitioner reiterates the contentions advanced in the SAP, which includes
25 allegedly improper actions, motions, questions to witnesses, arguments to the jury, and false or
26 misleading statements to the trial court regarding witnesses and evidence, and generally asserts that
27 discovery will "allow Petitioner to gather additional support for this claim." (Id. at 171-72.) This vague
28 assertion fails to provide good cause for the requested discovery. For Claim 7, Petitioner repeats the
allegation that because the prosecution failed to timely disclose evidence of testing that eliminated him

1 as a source of semen found on Tok Kim’s bedspread, he was unable to properly investigate a theory of
2 third party liability. (Id. at 173.) Here too, Petitioner fails to indicate how discovery would aid in the
3 development of this claim.

4 In Claim 11, Petitioner reiterates that prosecutor Pippin had a “uniquely close relationship” with
5 Judge Melinda Lasater, asserts that the defense motion to recuse Judge Lasater should have been
6 granted, and states that “[d]eposing James Pippin will allow Petitioner to further develop this claim.”
7 (Id. at 173.) Again, Petitioner fails to provide good cause for discovery based only on the vague and
8 conclusory assertion that deposing Mr. Pippin will aid in developing his habeas claim.

9 11. Deposition 18

10 Petitioner seeks to depose the Honorable Melinda Lasater, the trial judge in his case. (Mot. at
11 173.) Petitioner asserts that the deposition is relevant to Claim 11 in his SAP, in which he alleges that
12 the trial judge who presided over his case was not impartial. (Id.)

13 The state record reflects that prior to trial, Petitioner’s defense counsel filed a motion to
14 disqualify Judge Lasater from presiding over his case, alleging that prosecutor James Pippin had known
15 Judge Lasater for a long time, had supervised her for a short time when both were employed at the San
16 Diego District Attorney’s Office, and had participated in Pippin’s daughter’s wedding. The defense also
17 argued that Judge Lasater had a preconceived opinion on the constitutionality of the death penalty. (CT
18 247.) Another San Diego Superior Court judge heard and denied the motion to disqualify Judge Lasater
19 from Petitioner’s case. (RT 50-53.) In support of this deposition request, Petitioner reiterates that
20 prosecutor Pippin supervised Judge Lasater at the District Attorney’s office, and repeats several
21 instances of social contact between Judge Lasater and prosecutor Pippin or his family members, all of
22 which is currently contained in the state court record. Petitioner maintains that “[a]llowing this
23 deposition will allow Petitioner to further develop this claim.” (Id. at 174.) However, Petitioner
24 provides no support, other than his own speculation, that this deposition would result in relevant
25 evidence in support of his claim. As such, Petitioner fails to demonstrate good cause for discovery.

26 **III. CONCLUSION**

27 Petitioner fails to demonstrate good cause for the overbroad discovery sought which, if granted,
28 would likely amount to a complete reinvestigation of the two charged crimes and five other crimes

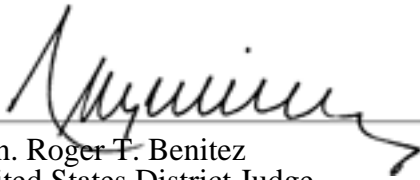
1 introduced into evidence at Petitioner's San Diego trial.

2 Petitioner requests that "if this Court denies Petitioner's motion to conduct discovery but grants
3 the motion for evidentiary hearing, Petitioner requests leave to file a motion for discovery narrowly
4 tailored to those claims on which an evidentiary hearing is being held." (Mot. at 10.) This request
5 appears reasonable.

6 Accordingly, Petitioner's Motion for Discovery is **DENIED** without prejudice.

7 **IT IS SO ORDERED.**

8 DATED: July 25, 2011

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10 _____
11 Hon. Roger T. Benitez
12 United States District Judge

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