SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR <Name> COUNTY

STATE OF WASHINGTON, v. ,	NO. MOTION STRIKE JURY PANEL BECAUSE IT FAILS TO REPRESENT A FAIR CROSS SECTION OF THE COMMUNITY

[Mr. Client] is a Black American. When this trial first convened, the Court summoned <number of jurors> prospective jurors. Only one juror, Juror <number>, appeared to be Black or African American. After this juror was excused for hardship, no Black or African American jurors remain.

The court should strike the current jury panel and summon a new jury panel to secure an impartial jury drawn from a fair cross section of the community, as guaranteed by the Sixth and Fourteenth Amendments of the United States constitution and Article I, Sections 21 and 22 of the Washington state constitution.

I. The Court Should Strike the Jury Panel Because It Fails to Reflect a Fair Cross Section of the Community

A. Diverse Juries Are Essential to Fair Trials

Jury diversity is central to a fair and democratic system of justice, as diverse juries bring broader perspectives that foster rich deliberations and lead to better-informed decisions. *State v. Rivers*, 533 P.3d 410, 415 (2023). "Fully representational jury pools and fairly selected juries are required ... to make our trials fair, our judgments legitimate, and our democracy inclusive." *Rocha v. King County*, 195 Wash.2d 412, 438, 460 P.3d 624 (2020) (González, J., dissenting).

Research demonstrates that diverse juries spend more time deliberating, engage in more thorough and detailed deliberations, are more willing to discuss racial bias, and make fewer factual errors. Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCH. 597, 606-08 (2006) [https://perma.cc/29WP-SL7U]. Conversely, "[w]hen any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable." *Peters v. Kiff*, 407 U.S. 493, 503, 92 S. Ct. 2163, 33 L. Ed. 2d 83 (1972) (Marshall, J.) (plurality opinion).

B. The Right to a Fair Jury Begins with a Representative Jury Pool

The Sixth and Fourteenth Amendments of the United States Constitution guarantee a criminal defendant the right to be tried by "an impartial jury drawn from a cross-section of the community." *Berghuis v. Smith*, 559 U.S. 314, 319, 130 S.Ct. 1382, 176 L.Ed.2d 249 (2010) (*citing Taylor v. Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690(1975)). Washington State Constitution Article I, sec. 21 guarantees that "[t]he right of trial by jury shall remain inviolate." Section 22 promises that an accused shall have the right to "a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed." The core of this right is "the selection of a petit jury from a representative cross-section of the community." *Taylor*, 419 U.S. at 528. It is essential that "jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." *Duren v. Missouri*, 439 U.S. 357, 363-64, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979). A jury must be "drawn from sources reflecting a cross section of the community." *Berghuis*, 539 U.S.at 319.

To establish that the fair cross-section requirement has been violated, a party must show:

> (1) that the group alleged to be excluded is a "distinctive" group in the community (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury selection process.

Duren, 439 U.S. at 364; *State v. Cienfuegos*, 144 Wn.2d 222. 232, 25 P.3d 1011 (2001). Once the defense has made a prima facie showing of these factors, the burden then shifts to the State to justify the jury selection processes underlying the underrepresentation, i.e., the State must demonstrate that "a significant state interest be manifestly and primarily advanced by those aspects of the jury-selection process...." *Duren*, 439 U.S. 367-68; *In re Yates*, 177 Wn.2d 1, 19, 296 P.3d 872 (2013).

C. Washington Courts Have Both the Authority and the Responsibility to Address Racial Disparities in Jury Selection

In *State v. Rivers*, 533 P.3d 410 (Wash. 2023), the seminal case on this issue, the Washington Supreme Court considered whether King County's practice of dividing the County into two jury pools, and thus creating one jury pool that is more racially diverse than the other, constituted a systematic exclusion of Black jurors. Attached as Exhibit A. While the Court declined to so find based on the record before it, it noted that the issue of jury diversity is ripe for reform: "Our holding today does not foreclose the judiciary or the legislature from taking new and different steps toward eradicating systemic barriers to jury service in order to maximize jury diversity in Washington. We acknowledge the legislature's efforts on this front to date, but we recognize that more can and must be done." *Id.* at 426.

In his concurrence, Justice González decried "the unworkable legal framework set forth in *Duren* and the inadequate steps we have taken to make our jury pools represent a fair cross section of our communities." *Id.* at 432. He went on to encourage judicial

officers to right the wrong created by white-washed juries: "*Duren* has failed and we have failed. We—judges, court clerks, and the legislature—must do more." *Id.*

Mr. X is asking that this Court heed Justice González's call. While the *Rivers* Court declined to grant the defendant in that case a new trial based on the appellate record, it is firmly within this Court's discretion to take steps in advance to secure a more diverse venire.

D. The Underrepresentation of Black Jurors in This Panel Is Substantial and Unacceptable

Here, the first two *Duren* factors are easily established. First, Black and African American residents of <name> County are, for purposes of the *Duren* test, a distinctive subsection of the community. *See Rivers*, 533 P.3d at 427. Second, *Rivers* adopted the following rule for determining whether the relevant subsection is underrepresented: "[t]he results of any statistical method must be examined in the context of the likely, actual, real-life impact on the jury pool at issue. As we have observed in earlier cases, we look to people not percentages." *Id.* (Citing *United States v. Hernandez-Estrada*, 749 F.3d 1154, 1165 (9th Cir. 2014)) (Internal quotations omitted). Thus, whether a court employs a comparative or absolute disparity analysis, the focus must be on the effect underrepresentation has on the actual jury pool and thus on the fair administration of justice. *Id.*

In this case, out of the <number> potential jurors who responded to the summons for jury service in this case, only <number> was Black or African American. That

represents just <> % of the venire. As of 202_, the <name> County Census reports that people who are Black or African American represent <>% of the <name> County Population. *See* Exhibit _, <name> County Census Report. Had this jury panel represented a fair cross-section of the community, <do the math> of the jurors would have been Black or African American. Once jurors were excused for hardship, there remained 0 jurors identifying as Black or African Americans, or no representation whatsoever.

This leaves the third *Duren* factor, a requirement Justice González calls an "impossible burden." *Rivers*, 533 P.3d at 432 (González, C.J., concurring).[1] Unfortunately, Mr. <Client>, like the accused in *Rivers*, must endeavor to show (in the middle of trial) that a jury pool that fails to reflect a fair cross section of the community is the result of systematic exclusion of Black and African American jurors.

E. Inadequate Juror Compensation Creates Barriers to Jury Service That Disproportionately Exclude People of Color

Low juror pay also contributes to the lack of racial diversity in <name> County jury pools. In <name> County, jurors are paid just $10 per day for jury service, a rate that is well below minimum wage. Members of our Supreme Court have acknowledged this shockingly low compensation has a direct impact on the ability of minority jurors to serve. See, *Rocha v. King Cnty.*, 195 Wn.2d 412, 433, 460 P.3d 624 (2020) (Yu, J.,

[1]"Long-standing precedent puts the burden on the defendant to show that the pool of potential jurors does not represent a fair cross section of the community. While this accords with the regular course of judicial review, the truth is that the defendant does not have access to the information that would allow them to meet that burden." *Id.*

concurring in part and dissenting in part) ("All too often inadequate juror compensation is a barrier to jury service that disproportionately impacts low income and minority populations. I would hold that the system *is* exclusory, but the remedy for this exclusion lies with the legislature, not with the courts." (emphasis added)); *id.* at 440 (González, J., dissenting) (concluding the court should imply a cause of action for higher juror pay because King County's "low pay and low reimbursement rate amounts to an exclusion on the basis of economic status, denying such jurors the opportunity to serve….").

Inadequate juror compensation creates significant barriers to jury service and contributes to the systematic underrepresentation of Black and African American jurors. These barriers are particularly consequential for prospective jurors who cannot afford to miss work or absorb the financial costs of jury service. The Washington State Minority and Justice Commission's Jury Diversity Task Force recognized these barriers in its 2019 Interim Report, recommending increased statewide juror compensation and exploration of tax credits or deductions for jury service. These systemic barriers are relevant to the third *Duren* factor and must be considered in determining whether the underrepresentation of Black and African American jurors results from systematic exclusion in the jury selection process.

II. **The Court Should Strike the Current Panel and Summon a New Jury**

While this Court does not have the ability to single-handedly right the systematic disparities inherent to our county's jury selection process, it can prevent this injustice from tainting this trial. This Black American is facing a charge of <name of charge>, a

charge for which Black and African Americans are disproportionately convicted. The import of a jury pool that represents a fair cross-section of the community cannot be overstated in this case. As it stands, Mr. <Client> will not receive a trial by a jury of their peers. Accordingly, this Court should strike the current jury panel and summon a new jury.

Respectfully submitted on _____, 202_,

_____
Attorney for Mr./Ms. _____