

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. __ CRS _____

STATE OF NORTH CAROLINA

v.

DEFENDANT

**NOTICE OF INTENT TO OBJECT TO THE USE OF ANY PEREMPTORY
CHALLENGES IN VIOLATION OF THE LAW AND REQUEST THAT THE COURT
TAKE JUDICIAL NOTICE OF PRIOR FINDINGS IN RACIAL DISPARITIES IN JURY
SELECTION IN NORTH CAROLINA CRIMINAL TRIALS**

COMES NOW THE DEFENDANT, by and through undersigned counsel, and respectfully provides notice to the State of Defendant's intent to object to the use of any peremptory challenges in violation of the Constitutions of the United States or of the State of North Carolina, or otherwise in violation of the law. *See Batson v. Kentucky*, 476 U.S. 79 (1986); *Miller-El v. Cockrell (Miller-El I)*, 537 U.S. 322 (2003); *Miller-El v. Dretke (Miller-El II)*, 545 U.S. 231 (2005); *Snyder v. Louisiana*, 552 U.S. 472 (2008); *Foster v. Chatman*, 136 S.Ct. 1737 (2016); and *State v. Cofield*, 320 N.C. 297, 302, 357 S.E.2d 622, 625 (1987) ("The people of North Carolina have declared that they will not tolerate the corruption of their juries by racism . . . and similar forms of irrational prejudice.").

Further, Defendant requests that the court take judicial notice of the following studies showing racial disparities in jury selection North Carolina criminal cases, including capital cases. These studies include:

- A 2010 Michigan State University (MSU) study of North Carolina capital cases from 1990-2010. The MSU researchers analyzed more than 7,400 peremptory strikes made by North Carolina prosecutors in 173 capital cases tried between 1990 and 2010. The study showed prosecutors struck 53 percent of eligible African-American jurors and only 26 percent of all other eligible jurors in those capital proceedings. The researchers found that the probability of this disparity occurring in a race-neutral jury selection was less than one in 10 trillion. After adjusting for non-racial characteristics that might reasonably affect strike decisions, for example, reluctance to impose the death penalty, researchers found prosecutors struck black jurors at 2.5 times the rate they struck all other jurors. The study findings are described in Grosso, Catherine and O'Brien, Barbara, *A Stubborn Legacy: the Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials*, 97 Iowa L. Rev. 1531 (2012), a copy of which is attached to this notice as Exhibit A.
- A 2017 study conducted by Wake Forest University School of Law professors found that in North Carolina felony trials in 2011– which included data on nearly 30,000 potential jurors in just over 1,300 cases – prosecutors struck non-white potential jurors at a disproportionate rate. In these cases, prosecutors struck non-white jurors about twice as often as they excluded white jurors. The Wake Forest findings are discussed in Wright, Ronald F. and Chavis, Kami, Parks, Gregory Scott, *The Jury Sunshine Project: Jury Selection Data as a Political Issue* (June 28, 2017), a copy of which is attached as Exhibit B.
- A 1999 study of the use of peremptory strikes in Durham County showed that African Americans were much more likely to be excused by the State. Approximately 70 percent of African Americans were dismissed by the State, while less than 20 percent of whites were struck by the prosecution. The Durham findings are detailed in Mary R. Rose, *The Peremptory Challenge Accused of Race or Gender Discrimination? Some Data from One County*, 23 LAW & HUM. BEHAV. 695, 698-99 (1999), a copy of which is attached as Exhibit C.

Respectfully submitted this ____ day of _____.

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that Defendant's Notice of Intent to Object to the Use of Any Peremptory Challenges in Violation of the Law Request that the Court Take Judicial Notice of Prior Findings of Racial Discrimination in Jury Selection in North Carolina Criminal Trials has been duly served by first class mail upon _____, Office of District Attorney, _____, by placing a copy in an envelope addressed as stated above and by placing the envelope in a depository maintained by the United States Postal Service.

This the _____ day of _____.

COUNSEL FOR DEFENDANT