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CASE NUMBER:
RG20051805

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF ALAMEDA**

10 CITY OF OAKLAND PUBLIC EHTICS
11 COMMISSION,

12 Petitioner,

13 v.

14 PHUC HONG TRAN,

15 Defendant.

Case No. RG20051805

RESPONDENT’S OPPOSITION TO
PETITIONS TO ENFORCE SUBPOENAS
FOR DOCUMENTS AND IN-PERSON
INTERVIEW; EXHIBITS

Judge: The Hon. Patrick McKinney
Dept.: 511

16 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

17 Respondent Phuc Hong Tran hereby submits his Opposition to (1) the Petition to Enforce
18 Investigative Subpoena filed on January 24, 2020 (the “Records Petition” or “Records Pet.”); and (2)
19 the Petition to Enforce Investigative Subpoena for In-Person Interview filed on July 28, 2020 (the
20 “Testimony Petition” or “Testimony Pet.,” and, together with the Records Petition, the “Petitions”).

21 This Opposition is based upon Mr. Tran’s right under the Fifth Amendment to the United States
22 Constitution to be free from being compelled to incriminate himself and his right under the Fourth
23 Amendment to the United States Constitution to be free from unreasonable searches and seizures.

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1 This Opposition is based upon the complete files and records in this action, the following
2 Memorandum of Points and Authorities, the attached exhibits, and any documentary and/or oral
3 evidence as may be presented at the time of the hearing of the Petition.

4 Dated: September 1, 2020

THE STOUT FIRM

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7 By: THOMAS D. STOUT
8 Attorney for Respondent PHUC
9 HONG TRAN
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On August 27, 2020—while these Petitions were pending and after publicly and baselessly
3 accusing Mr. Tran of being a high-level participant in a supposed “campaign money laundering”
4 scheme—Oakland City Attorney Barbara Parker personally called Mr. Tran for the purpose of
5 securing “the support of the Vietnamese Chamber [of Commerce] and community” and to connect
6 him to the fundraiser for her re-election campaign.¹ Ms. Parker likely did so for the same reason
7 other politicians seek his support—he is a successful local community leader and has a valuable voice.

8 Ms. Parker’s solicitation of Mr. Tran undermines the Commission’s claim that its Subpoenas are
9 relevant. The Commission hopes the Court will draw questionable inferences from factual allegations
10 that are alternatively innocuous, conclusory, and vague to the point of meaningless. All the
11 Commission has succeeded in showing through its petition is that Mr. Tran is friends with David
12 Duong and engages in political activity that is routine, legitimate, and actively solicited by local
13 politicians, including Ms. Parker. This is a far cry from even the low bar of relevance the Fourth
14 Amendment requires of administrative subpoenas. Due to the Commission’s failure to show
15 relevance and the unauthorized, unduly burdensome, and indefinite nature of its demands, the
16 Records Subpoena is an unreasonable search and seizure in violation of the Fourth Amendment.

17 Finally, although the Commission is unable to provide any facts supporting its assertions that Mr.
18 Tran is a participant in a scheme to launder campaign contributions, it accuses him in unusually
19 strong terms and appears convinced that he is a target of its investigation. As violations of the
20 Oakland Campaign Reform Act are punishable as crimes, Mr. Tran faces the very real danger that the
21 Commission will refer him to law enforcement, who may attempt to use any statements or testimonial
22 actions against him. For that reason, and because compliance with the Records Subpoena would
23 necessarily require Mr. Tran to acknowledge that he possesses inherently incriminating
24 communications, Mr. Tran can and does exercise his Fifth Amendment right to refuse the Subpoenas.

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27 ¹ On September 1, 2020, the City Attorney’s Office informed the undersigned that the City of
28 Oakland has retained outside counsel with respect to the Petitions. Mr. Tran reserves the right to
seek any remedies available to him as a result of this inappropriate communication.

1 **I. BACKGROUND**

2 **A. Phuc Hong Tran**

3 Mr. Tran is a prominent and respected local businessman who owns and operates an insurance
4 and financial services company in Oakland. Mr. Tran has served for years as the president of the
5 Oakland Vietnamese Chamber of Commerce. As a community leader, Mr. Tran is politically active in
6 Oakland. Candidates for city office—such as City Attorney Barbara Parker—often personally seek his
7 support because of his influential voice and leadership role. Mr. Tran has been the romantic partner
8 of Anna Wong, another subpoena recipient, for approximately eleven years.

9 **B. The Public Ethics Commission Investigation**

10 According to the Petitions, the City of Oakland Public Ethics Commission (the “Commission”) is
11 conducting an investigation of a “suspected campaign money laundering activity.” (Records Pet. at.
12 1:26). Although the Commission has provided a broad overview of the alleged scheme in conclusory
13 terms, (Records. Pet. at 1:26–2:7), as discussed below, the Commission provides scant detail regarding
14 Mr. Tran’s supposed participation in any illicit activity.

15 On August 15, 2019, the Commission issued a Subpoena for Testimony (the “Testimony
16 Subpoena”), a copy of which is attached hereto as Exhibit A, and a Subpoena for Records (the
17 “Records Subpoena”), a copy of which is attached hereto as Exhibit B.

18 **C. City Attorney Barbara Parker Directly Contacts Mr. Tran while the Petition is
19 Pending.**

20 On August 27, 2020, City Attorney Barbara Parker—during a re-election campaign—personally
21 contacted Mr. Tran by phone. When he did not answer, she left the following voicemail:

22 Hi, this is Barbara Parker, Oakland City Attorney, I hope you’re
23 doing well. I’m calling because I’m running for re-election and it
24 would be my greatest honor to have the support of the Vietnamese
25 Chamber and community. I am working very hard for Oakland
26 and doing such wonderful work to protect the interests of people
27 in Oakland including people in the Chinatown area and other Asian
28 and Pacific Islander communities. So, um, if—when you get this
message, if you could give me a ring back at [phone number
omitted], so we can talk further, that would be great, and I can tell
you more about my work. Um, my fundraiser, Laurie Earp, I don’t
know if she has your email address, she says she does, and she will
send you a link to my website and some information so you can
take a look at that and I think you’ll see that I’m clearly the person

1 who needs to remain in this office to continue to protect the
2 interests of the people of Oakland. Ok? Thanks. Bye-bye.²

3 **II. THE COURT SHOULD NOT ENFORCE THE SUBPOENAS.**

4 Powers of state and local governments to compel evidence and testimony through administrative
5 subpoenas have limits. Agencies cannot compel individuals to incriminate themselves in violation of
6 the Fifth Amendment to the United States Constitution, and the Fourth Amendment to the United
7 States Constitution requires a subpoena to be (1) within the jurisdiction of the demanding agency; (2)
8 not too indefinite; and (3) reasonably relevant to the agency's investigation. *See Brovelli v. Super. Ct.*, 56
9 Cal. 2d 524, 529 (1961).

10 For the reasons discussed below, the Commission ignored these limitations when it issued the
11 Subpoenas, and this Court should thus decline to enforce them.

12 **A. The Subpoenas Violate Mr. Tran's Fourth Amendment Rights.**

13 Although agencies may obtain records via administrative subpoena, "the Fourth Amendment
14 requires that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in
15 directive so that compliance will not be unreasonably burdensome." *See v. City of Seattle*, 387 U.S. 541,
16 544 (1967); *Cal. Rest. Ass'n v. Henning*, 173 Cal. App. 3d 1069, 1075-76 (1985). Furthermore, the
17 agency's demand must be one it is "authorized to make." *Brovelli*, 56 Cal. 2d at 529. "The gist of the
18 protection is in the requirement . . . that the disclosure sought shall not be unreasonable." *United*
19 *States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950).

- 20 1. The Commission fails to explain relevance of the Subpoenas to a legitimate
21 investigation.

22 The Court should "not allow the [agency] to bootstrap itself when justifying an investigation into
23 every record and document [the subject] possesses. A legitimate, proper purpose and relevancy are
24 required. The burden lies with the [agency]." *Sunshine Gas Co. v. Dep't of Energy*, 524 F. Supp. 834, 841
25 (N.D. Tex. 1981). Here, the Petition contains a great deal of "bootstrapping," but very little of
26 substance. Relevance may be a low bar, but the Commission fails to clear it.

27 _____
28 ² A copy of this voicemail has been provided to the Oakland City Attorney's Office and will be
available for the Court's review at the hearing on the Petitions.

1 The Commission cannot identify a single reimbursement that Mr. Tran has either made or
 2 received for a political contribution. The Commission cannot identify any instance in which Mr. Tran
 3 contributed in a name other than his own or aided anyone else in doing so. The City cannot identify
 4 a single instance in which Mr. Tran has violated any provision of the Act. Apparently lacking any
 5 facts implicating Mr. Tran, the Commission instead argues guilt by association or by simple
 6 declaration of the Commission. Each fact the Commission alleges is either irrelevant, innocent, or
 7 consists of wholly conclusory vouching, and fails to establish relevance for the following reasons:

Fact Alleged	Deficiency
<p>8 9 10 11 12 13 14 15 16 17</p> <p>“Respondent was the President of the Vietnamese Chamber of Commerce at least as of 2016, and his daughter Jennifer Tran is currently the Executive Director there and was previously its Director of External Affairs.” (Records Pet. at 3:15–17).</p>	<p>This allegation describes entirely innocent conduct.</p>
<p>18 19 20 21 22 23 24 25</p> <p>“Jennifer Tran was also a campaign consultant to Sheng Thao For Oakland City Council 2018, a committee with a suspect cluster in this case, which includes a contribution from KHVC that we know to be laundered.” (Records Pet. at 3:17–19).</p>	<p>The Commission utterly fails to explain: (1) how it “knows” a contribution from KHVC was laundered; or (2) what connection that has to Mr. Tran or his daughter. The notion that every staffer or consultant for a political campaign that receives a suspicious contribution is, based on nothing more, also a legitimate subject of investigation is preposterous.</p>
<p>26 27 28</p> <p>Tran’s \$5,000 contribution to the McElhaney Legal Defense committee was made on the same day as the KHVC laundered contribution and the (likely laundered) contributions from Marvin Thang and Arda, LLC.” (Records Pet. at 3:19–21).</p>	<p>The Committee again fails to explain how it “knows” the KHVC contribution was laundered. It further fails to explain: (1) who Marvin Thang is; (2) what Arda, LLC is; (3) why it believes those contributions were laundered; or (4) what connection this has to Mr. Tran. There are numerous innocuous explanations for unrelated political contributions to be made on the same day, such as multiple unrelated individuals attending the same fundraiser or receiving—and thus responding to—a solicitation for funds that is widely, and simultaneously, distributed.</p>
<p>“Note that Phuc Hong Tran’s contributions to the Guillen (in 2018), Thao, Kalb, and Brooks committees are also part of suspect clusters at issue in this case.” (Records Pet. at 3:21–22.)</p>	<p>The Committee fails to explain how it defines “suspect cluster.” Without defining this inherently vague term or explaining how the Commission determines a contribution is part of a “suspect cluster,” this allegation is meaningless.</p>

Fact Alleged	Deficiency
<p>“There are indications that Phuc Hong Tran may not only be making laundered contributions, but also might have a more prominent role in the Duong laundering scheme (perhaps as a facilitator, like Andy Duong).” (Records Pet. at 3:22–24).</p>	<p>The Commission asks the Court to simply accept its conclusory assertion of “indications” without explaining what it considers to be an “indication.” Vague and conclusory allegations like this prevent the Court from conducting a meaningful Fourth Amendment review.</p>
<p>“The handwriting on Phuc Hong Tran’s checks matches that on the checks from Anna Wong and Kim Tuyen Thi Tran to the Kalb committee, and from Anna Wong to the Guillen committee.” (Records Pet. at 3:25–26).</p>	<p>The Commission fails to disclose to the Court that Mr. Tran has been Ms. Wong’s romantic partner for over a decade. It is unremarkable—and far from incriminating—that he would assist her in writing a check. It is also unremarkable that, as a civic leader in a community with many non-English speakers, Mr. Tran would be called upon to assist with writing on behalf of others from time to time. As the Commission fails to make these allegations, presumably these checks were drawn from separate accounts belonging to these individuals and there is no evidence the individuals received any reimbursement for them.</p>
<p>“According to the Kalb committee’s records, all of the potentially laundered checks it received were given in a single bundle directly to Dan Kalb during something called ‘Phuc Lunch’ (probably referring to Phuc Hong Tran). There were no contributor cards to go along with those checks.” (Records Pet. at 3:27–4:2).</p>	<p>There is nothing inappropriate about hosting a fundraising lunch for a candidate or the candidate collecting contributions during that lunch. The Commission fails to provide any facts suggesting Mr. Tran engaged in any misconduct. The Committee does not explain how it knows any checks collected were laundered, how many contributions were collected at this lunch, or what portion of checks collected at this lunch were allegedly laundered. The Kalb campaign’s alleged failure to maintain appropriate documentation is not fairly attributable to Mr. Tran.</p>
<p>“Phuc Hong Tran has a Facebook page, on which his only “friend” is David Duong (Andy Duong’s father and owner of California Waste Solutions, where Andy works).” (Records Pet. at 4:3–4).</p>	<p>This allegation describes entirely innocent conduct.</p>

Through this series of allegations that are, in turn, innocuous, conclusory, or vague to the point of meaningless, the Commission casts nebulous aspersions on Mr. Tran and his legitimate and valuable political activity. At the same time, however, as discussed above, the City Attorney herself recognizes the value, legitimacy, and lawfulness of Mr. Tran’s political support and is actively soliciting it contemporaneously with this investigation. By personally asking Mr. Tran to secure “the support of

1 the Vietnamese Chamber and community” for her re-election campaign, City Attorney Parker
2 acknowledged that community leaders generally play—and Mr. Tran specifically plays—an important
3 role in martialing and coordinating community support. Coordination of political activity and
4 collective decision-making about which candidates to support and contribute to is not probative of
5 unlawful “laundering” of contributions; it is a vital way for communities to exert legitimate influence
6 over the political process. The Commission’s effort to establish relevance is wanting, and the Court
7 should decline to enforce the Records Subpoena.

8 2. The Records Subpoena is well beyond the scope of the Commission’s
9 authority.

10 Assuming that the Commission were able to establish Mr. Tran’s relevance to its investigation,,
11 the Records Subpoena is nevertheless unenforceable because the Commission demands records
12 pertaining both to political campaigns that are outside its jurisdiction and substantive conduct outside
13 its jurisdiction. The Act authorizes the Commission to oversee compliance with the Act by (1)
14 referring criminal violations of the Act to “the appropriate law enforcement agency;” (2) filing civil
15 enforcement actions in Superior Court; or (3) initiating civil administrative enforcement proceedings
16 before the Commission. Oakland Municipal Code §§ 3.12.260(A), 3.12.270. The Commission has no
17 authority to oversee or enforce any other state or federal campaign finance law or enforce any
18 contribution limitation for any candidate’s political campaign other than a candidate for City Office.³

19 Disregarding its jurisdictional limitations, the Commission asks this Court to compel Mr. Tran to
20 provide communications pertaining to *all* campaign contributions made in his name or the name of
21 his “associates,” and pertaining to “payment or reimbursement” for *all* campaign contributions. In
22 other words, the Records Subpoena on its face requires Mr. Tran to produce communications
23 pertaining to all of his federal, state, county, and city campaign contributions (and any contributions
24 made to a candidate for office in a different city) and all such contributions of all of his associates.
25 The Commission has no lawful authority to inspect records pertaining to any candidate other than a
26

27 ³ The Act defines “City Office” as the Mayor of Oakland, the City Attorney of Oakland, the City
28 Auditor of Oakland, any Oakland City Councilmember, or any member of the Oakland School
Board. Oakland Municipal Code § 3.12.040(D).

1 candidate for Oakland City Office. As the Commission is not authorized to demand the records it
2 seeks, the Records Subpoena constitutes an unreasonable search and seizure barred by the Fourth
3 Amendment.

4 The Commission also attempts to reach conduct beyond its jurisdiction. The Records Subpoena
5 demands communications pertaining to “*proposed* and actual” campaign contributions of Mr. Tran and
6 his associates. The Act, however, does not prohibit conspiracies or agreements to circumvent
7 campaign contribution limits or “launder” contributions. The Act speaks only to completed offenses
8 in the form of principal and aider and abettor liability. *See* Oakland Municipal Code § 3.12.270.
9 Accordingly, the Commission lacks jurisdiction to oversee any activity that does not rise to a
10 completed violation of the Act and has no authority to demand records of any merely proposed
11 campaign contribution that was not actually made.

12 As the Records Subpoena demands documents pertaining to non-city campaigns and conduct
13 that is beyond its power to oversee, the Records Subpoena constitutes an unreasonable search and
14 seizure and enforcement is barred by the Fourth Amendment. *See Brovelli*, 56 Cal. 2d at 529; *Resolution*
15 *Trust Corp. v. Thornton*, 41 F. 3d 1539, 1545–48 (D.C. Cir. 1994) (finding administrative subpoena used
16 for unauthorized purpose unenforceable); *E.E.O.C. v. ABM Janitorial-Midwest, Inc.*, 671 F. Supp. 2d
17 999, 1005 (N.D. Ill. 2009) (refusing to enforce EEOC subpoena seeking records from a party outside
18 its jurisdiction).

19 3. The directive of the Records Subpoena is too indefinite.

20 Furthermore, the Records Subpoena is so indefinite as to constitute an undue burden on Mr.
21 Tran in violation of the Fourth Amendment. The Commission demands communications relating to
22 campaign contributions of “family, friends, or associates” of Mr. Tran. While Mr. Tran is
23 undoubtedly able to identify members of his family and can decide who his friends are, it is entirely
24 unclear what the Commission means by “associate.” By “associate,” the Commission could mean any
25 person ranging from someone with whom Mr. Tran has regular recurring contact to literally anyone
26 he has ever met. The Commission effectively places no discernable limit on persons with whom it
27 views Mr. Tran as having responsive communications. The Records Subpoena thus fails as
28 unreasonably vague or, if taken to its broadest possible definition of requiring communications with

1 everyone Mr. Tran knows, unreasonably burdensome. In either event, the Records Subpoena fails
2 the standard of the Fourth Amendment.

3 4. The scope of the Records Subpoena is not reasonable, and compliance would
4 impose a substantial, unjustified burden.

5 Finally, the Records Subpoena imposes a tremendous and unreasonable burden. “A summons
6 will be deemed unreasonable and unenforceable if it is overbroad and disproportionate to the end
7 sought.” *United States v. Theodore*, 479 F. 2d 749, 754 (4th Cir. 1979) (“The Government cannot go on
8 a ‘fishing expedition’ through appellants’ records.”). The Records Subpoena demands that Mr. Tran,
9 a small business owner with no employees, take the time to search through four years of email, text,
10 and other written communications with potentially every single person with whom he corresponded
11 in that time for any sliver of a reference to a contribution to a candidate for any office, whether an
12 Oakland City Office or otherwise. Though the Records Subpoena seeks communications dating back
13 to January 1, 2016, the Commission fails to identify in even conclusory terms any suspected illicit
14 contributions associated with Mr. Tran and anyone connected to him before or after 2018. The
15 Commission thus seeks three years of communications that have no alleged relevance to its
16 investigation, or 75% of the period for which it demands communications. The impossibly time-
17 consuming task of searching for such records is in no way justified by the wholly conclusory
18 allegations the Commission has made in the Petitions and is unreasonable under any view of the
19 Fourth Amendment, regardless of whether the Commission has otherwise met its burden.
20 Particularly given the Commission’s paltry showing as to the relevance of the Records Subpoena,
21 there is a substantial danger that the Commission is attempting exactly the sort of “fishing
22 expedition” against which the Fourth Amendment is designed to protect. Compliance would
23 undoubtedly “threaten the normal operation of [Mr. Tran’s] business” and the Court should not
24 require it. *EEOC v. Quad/Graphics, Inc.*, 63 F. 3d 642, 645 (7th Cir. 1995) (“A subpoena will not be
25 enforced if the demand is ‘excessively burdensome,’ that is, if ‘compliance would threaten the normal
26 operation of a respondent’s business.’”).

1 **B. The Subpoenas Violate Mr. Tran’s Fifth Amendment Rights.**

2 The Supreme Court has recognized that the privilege against self-incrimination “can be asserted in
3 any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory; and it
4 protects against any disclosures which the witness reasonably believes could be used in a criminal
5 prosecution or could lead to other evidence that might be so used.” *Kastigar v. United States*, 406 U.S.
6 441, 444–45 (1972); *Warford v. Medeiros*, 160 Cal. App. 3d 1035, 1042 (1984). Although the privilege
7 “protects against real dangers, not remote and speculative possibilities,” *Zicarelli v. New Jersey State*
8 *Comm’n of Investigation*, 406 U.S. 472, 478 (1972), when a witness “can show any possibility of
9 prosecution which is more than fanciful, he has demonstrated a reasonable fear of prosecution
10 sufficient to meet constitutional muster.” *Warford*, 160 Cal. App. 3d at 1044.

11 The Commission has made clear that the danger to Mr. Tran is very real, however ill-conceived or
12 unfounded. Without producing—or even discussing—an iota of evidence, the Commission has
13 publicly announced that Mr. Tran has made “suspicious” campaign contributions and “*might* have a
14 more prominent role in the Duong laundering scheme⁴ (*perhaps* as a facilitator, like Andy Duong).”
15 (Pet. at 3:22–24 [emphasis added]). Despite being unable to articulate a single illegal act committed
16 by Mr. Tran, the Commission has chosen to publicly impugn his reputation, assert in purely
17 conclusory fashion that he has broken the law, and haul him before this Court. The Commission’s
18 allegations, particularly as to what they believe his role to be in the purported “laundering scheme,”
19 make clear that the Commission views Mr. Tran as a target of its investigation. The Commission,
20 moreover, is authorized by the Act to forward information pertaining to criminal violations of the Act
21 “to the appropriate law enforcement agency.” Oakland Municipal Code § 3.12.270. Given the strong
22 language of the Petitions and the Commission’s mandate to uncover and refer criminal violations, Mr.
23 Tran faces a very real danger of criminal prosecution that is in no way remote or speculative.
24 Accordingly, he can avail himself of his Fifth Amendment rights against compelled statements and
25 intends to do so.

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28 ⁴ The Commission does not bother to define the “Duong laundering scheme,” explain its alleged operation or scope, or identify its participants.

1 1. Producing any documents in response to the records subpoena would be
2 tantamount to an incriminating factual admission.

3 The Supreme Court has long recognized that the act of producing records in response to a
4 subpoena may be testimonial and thus protected by the Fifth Amendment’s guarantee against self-
5 incrimination. See *United States v. Doe*, 465 U.S. 605, 610 (1984); *United States v. Hubbell*, 530 U.S. 27, 36
6 (2000). “A witness’ production of documents in response to a subpoena may have incriminating
7 testimonial aspects . . . ; [b]y producing records in compliance with a subpoena, the witness admits
8 that the documents exist, are in his possession or control, and are authentic.” *In re Grand Jury*
9 *Subpoena*, 383 F. 3d 905, 909 (9th Cir. 2004). Such admissions “implicitly communicate statements of
10 fact that may lead to incriminating evidence.” *Id.* The state thus may not compel a person to
11 produce records where “the act of production itself would be testimonial.” *United States v. Sideman &*
12 *Bancroft, LLP*, 704 F. 3d 1197, 1201 (9th Cir. 2013) (citing *Doe*, 465 U.S. at 691). In order to compel
13 production of records where the act of production would effective concede potentially incriminating
14 facts such as authenticity of and control over records, the government has the burden of showing that
15 the “‘existence and location’ of the documents under subpoena are a ‘foregone conclusion’ and the
16 witness ‘adds little or nothing to the sum total of the Government’s information by conceding that he
17 in fact has the documents.” *In re Grand Jury Subpoena*, 383 F. 3d at 910 (quoting *Fisher v. United States*,
18 425 U.S. 391, 401 (1976)).

19 Due to the language the Commission chose in describing the categories of communications
20 demanded, Mr. Tran cannot produce responsive communications without acknowledging the
21 existence of inherently incriminating records, his possession of such records, and that such records
22 are genuine. The Records Subpoena seeks communications discussing or referencing: “(i) proposed
23 or actual campaign contributions made in the name of Phuc Hong Tran; or (ii) proposed or actual
24 campaign contributions made in the name of family, friends or associates of Phuc Hong Tran; or (iii)
25 payment or reimbursement for campaign contributions.” (Ex. B at 2). The Commission could have
26 chosen any number of neutral, yet relevant, ways to describe the requested communications. Instead,
27 the Commission chose to define these communications by reference to whether they referred to a
28 crime. By producing records that discuss or refer to “payment or reimbursement for campaign

1 contributions,” Mr. Tran would in effect be admitting that he participated in potentially criminal
2 violations of Oakland Municipal Code §§ 3.12.050, 3.12.065, and based on the described nature of the
3 investigation, Oakland Municipal Code § 3.12.140. Admitting to possession of communications
4 pertaining to campaign contributions made “in the name of” Mr. Tran or his associates gives rise to
5 the implication that the true source of the contribution was someone other than the individual in
6 whose name it was made. The Commission cannot compel Mr. Tran to implicate by describing
7 documents in inherently criminal terms and compelling him to respond.

8 2. Mr. Tran has a Fifth Amendment right to refuse to testify in response to the
9 Testimony Subpoena.

10 For reasons that are unclear, the Commission appears very certain that Mr. Tran violated the Act,
11 believes that Mr. Tran was a high-level participant in a scheme to violate the Act, and is intent on
12 proving that Mr. Tran has criminal liability for these violations. Accordingly, the Commission will
13 likely seek to use Mr. Tran’s against him and may very well provide those statements to law
14 enforcement agencies who may use them in criminal proceedings. Mr. Tran thus has a Fifth
15 Amendment right to refuse to answer questions from the Commission, which he intends to invoke.
16 Mr. Tran thus cannot be compelled to respond to the Testimony Subpoena.

17 **III. CONCLUSION**

18 The Records Subpoena requires a potentially self-incriminating act of production in violation of
19 Mr. Tran’s Fifth Amendment rights and is an unreasonable search and seizure in violation of his
20 Fourth Amendment rights. Similarly, the Testimony Subpoena seeks to compel testimony from Mr.
21 Tran that the Commission seeks to use to incriminate Mr. Tran in violation of his Fifth Amendment
22 rights. Accordingly, the Court should refuse to enforce both Subpoenas.

INDEX OF EXHIBITS

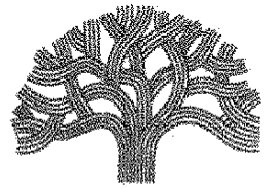
EXHIBIT NO.	DESCRIPTION
A	PEC Subpoena for Records to Phuc Hong Tran issued August 15, 2019, #PEC-190014-95
B	PEC Subpoena for Testimony to Phuc Hong Tran issued August 15, 2019, #PEC-190014-96

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EXHIBIT A

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION



In the Matter of:

Preliminary Investigation/Audit

PEC Case No.

19-14

SUBPOENA FOR RECORDS # PEC-190014-95

(Subpoena Duces Tecum)

THE CITY OF OAKLAND PUBLIC ETHICS
COMMISSION IS ISSUING THIS SUBPOENA
TO:

Phuc Hong Tran

1. You are hereby commanded, business and excuses being set aside, to do the following:

- Produce all of the records listed in Attachment 1 ("List of Records Being Sought")
- Fill out, sign, and return either a copy of Attachment 2 ("Declaration of Custodian of Records") or provide your own Declaration of Custodian of Records, signed under penalty of perjury, with substantially the same information as that in Attachment 2

2. The records must be received by the Public Ethics Commission no later than:

(date) 10/1/19, at (time) 4 PM

3. You may deliver the records in any of the following ways:

- Scan and e-mail them to srussell@oaklandca.gov (*preferred*);
- Mail hard copies to PEC Investigator Simon Russell at 1 Frank Ogawa Plaza, Room 104, Oakland, CA 94612;
- Deliver them in-person to the PEC at Oakland City Hall (1 Frank Ogawa Plaza, Room 104, Oakland, CA 94612), M-F 8:30-5:00; or
- Make them available for inspection and copying at your place of business, residence, or another location agreed upon by you and the Public Ethics Commission.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT OF COURT
IN THE MANNER PRESCRIBED BY LAW**

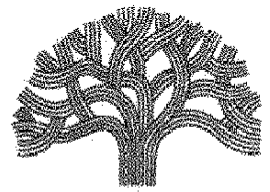
4. This subpoena is being issued pursuant to the Public Ethics Commission's subpoena power as provided by the Oakland City Charter, section 603, and the Oakland Municipal Code, section 2.24.030(B); see Attachment 3.

5. IF YOU HAVE ANY QUESTIONS ABOUT THIS SUBPOENA, OR WISH TO REQUEST A REASONABLE EXTENSION OF THE DEADLINE LISTED ABOVE, CONTACT PEC INVESTIGATOR **SIMON RUSSELL** AT (510) 238-2213 OR srussell@oaklandca.gov. Any extension requires PEC staff approval and will only be granted for good cause.

(Date Issued) 8/15/19 (Signature of Authorizing Official)

(Printed Name) Whitney Barazoto (Title) Executive Director, Public Ethics Commission

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION



In the Matter of:

Preliminary Investigation/Audit

PEC Case No.

19-14

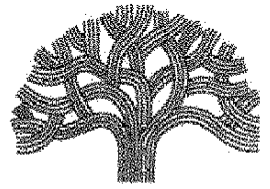
SUBPOENA FOR RECORDS # PEC-190014-95
ATTACHMENT 1: LIST OF RECORDS BEING SOUGHT

The following records shall be provided to the City of Oakland Public Ethics Commission in the manner described on the preceding page:

1. All written correspondence that meets all of the following criteria:
 - a. it was sent or received to/from any person;
 - b. it was sent or received on or after January 1, 2016; and
 - c. it contains any discussion of, or reference to, any of the following:
 - i. proposed or actual campaign contributions made in the name of Phuc Hong Tran, or
 - ii. proposed or actual campaign contributions made in the name of family, friends or associates of Phuc Hong Tran; or
 - iii. payment or reimbursement for campaign contributions.

For purposes of this subpoena, **“written correspondence”** includes any written communication in either paper or electronic form, including but not limited to e-mail, e-mail attachments, text messages, or letters, regardless of whether that communication was sent or received to/from a personal or business address, account or phone number. (Screenshots of text messages may be submitted in response to this subpoena). You may redact/blackout portions of the correspondence dealing with purely personal matters unrelated to campaign contributions or the reimbursement thereof, unless doing so would affect the reader’s ability to read or understand the portion concerning campaign contributions or the reimbursement thereof.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION



In the Matter of:

Preliminary Investigation/Audit

PEC Case No.

19-14

SUBPOENA FOR RECORDS # PEC-190014-95
ATTACHMENT 2: DECLARATION OF CUSTODIAN OF RECORDS

(Pursuant to California Evidence Code, sections 1561-1562)

I, the undersigned, declare:

1. Enclosed with this Declaration (or being made available for inspection and copying by the City of Oakland Public Ethics Commission) are:

<input type="checkbox"/>	All of the records described in Attachment 1 ("List of Records Being Sought") of this subpoena.
<input type="checkbox"/>	Some of the records described in Attachment 1 ("List of Records Being Sought") of this subpoena. The following is a list of the records that are not being produced at this time, and an explanation of why they are not being produced at this time:
<input type="checkbox"/>	None of the records described in Attachment 1 ("List of Records Being Sought") of this subpoena. The following is an explanation of why the records are not being produced at this time:

SUBPOENA FOR RECORDS # PEC-190014-95
ATTACHMENT 2: DECLARATION OF CUSTODIAN OF RECORDS (cont'd)

(Pursuant to California Evidence Code, sections 1561-1562)

2. The records mentioned by me in this Declaration are:

<input type="checkbox"/>	Originals.
<input type="checkbox"/>	Copies of the originals. Based on my personal knowledge of the originals, I can say that these are true, unaltered copies of the originals.
<input type="checkbox"/>	Being made available for inspection and copying at my place of business, residence, or another location that was mutually agreed upon by me and the City of Oakland Public Ethics Commission.
<input type="checkbox"/>	Not being produced at this time.

3. I have possession or control over the records because:

<input type="checkbox"/>	The originals are my property.
<input type="checkbox"/>	It is a part of my job.
<input type="checkbox"/>	Other (<i>please explain</i>):
<input type="checkbox"/>	I do not have possession or control over the records at this time.

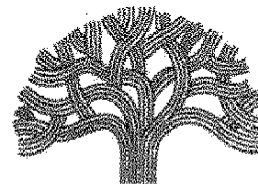
I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

(Date) _____ (Signature of Declarant) _____

(Printed Name) _____

Perjury is punishable as a felony under the California Penal Code, Sections 118 and 126. Knowingly preparing or submitting forged or fraudulently altered or antedated documents in response to this subpoena is punishable as a felony under the California Penal Code, sections 132 and 134. Willfully destroying the records sought by this subpoena is punishable as a misdemeanor under the California Penal Code, section 135.

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION



In the Matter of:

Preliminary Investigation/Audit

PEC Case No.

19-14

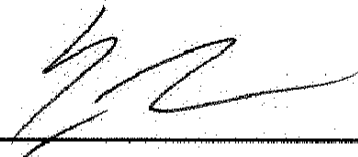
SUBPOENA FOR RECORDS # PEC-190014-95
ATTACHMENT 3: DECLARATION OF SIMON RUSSELL

I, the undersigned, Simon Russell, declare:

1. I am an investigator for the City of Oakland Public Ethics Commission ("PEC").
2. The PEC is authorized by section 603(f)(1)(i)-(iii) of the Oakland City Charter and section 2.24.030 of the Oakland Municipal Code to conduct investigations, audits and public hearings in furtherance of its duties and functions, which are specified in section 603(b) of the Oakland City Charter and section 2.24.020 of the Oakland Municipal Code.
3. The PEC is further authorized by section 603 of the Oakland City Charter and section 2.24.030(B) of the Oakland Municipal Code to issue subpoenas in furtherance of its investigations, audits and public hearings.
4. In accordance with section 603(f)(1)(i)-(iii) of the Oakland City Charter and sections 2.24.020 and 2.24.030 of the Oakland Municipal Code, I am investigating the potential violation of section(s) 3.12.050, 3.12.065 and 3.12.140 of the Oakland Campaign Reform Act.
5. In furtherance of that investigation, I am seeking the records specified in Attachment 1 ("List of Records Being Sought"), which are relevant and material to that investigation, in that they will evidence whether the person named in this subpoena, or their associates, were reimbursed for campaign contributions; the identity of the people involved in that scheme; and whether the violations were committed intentionally or negligently.

SUBPOENA FOR RECORDS # PEC-190014-95
ATTACHMENT 3: DECLARATION OF SIMON RUSSELL (cont'd – page 2 of 2)

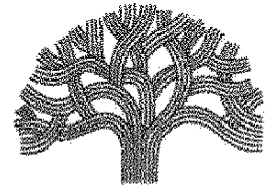
I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

(Date) 8/14/19 (Signature of Declarant) 

(Printed Name) Simon Russell

EXHIBIT B

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION



In the Matter of:

Preliminary Investigation/Audit

PEC Case No.

19-14

SUBPOENA FOR TESTIMONY # PEC-190014-96

(Subpoena ad testificandum)

THE CITY OF OAKLAND PUBLIC ETHICS
COMMISSION IS ISSUING THIS SUBPOENA
TO:

Phuc Hong Tran

1. You are hereby commanded, business and excuses being set aside, to do the following:

Appear in-person for an investigative interview.

2. You must appear at the following date, time, and location:

(date) 10/22/19, at (time) 10AM,

at 1 Frank Ogawa Plaza, Room 104, Oakland, CA 94612

3. Please note:

- **Your appearance is mandatory.** Should you fail to appear at the above date, time, and location, the Public Ethics Commission may seek a court order to compel your appearance at a later date.
- The Public Ethics Commission's prior, affirmative approval is required before this interview can be rescheduled. Contact Investigator Simon Russell immediately if you need to reschedule: (510) 238-2213 or srussell@oaklandca.gov. The Public Ethics Commission will only reschedule this interview for good cause, such as a personal emergency.
- You may request to be interviewed over the phone rather than in-person. The decision to conduct an interview over the phone is solely up to the Public Ethics Commission, and requires the Public Ethics Commission's prior, affirmative approval. To see whether a phone interview will be possible, contact Investigator Simon Russell immediately at (510) 238-2213 or srussell@oaklandca.gov.

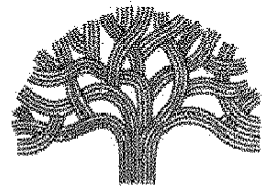
**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT OF COURT
IN THE MANNER PRESCRIBED BY LAW**

4. This subpoena is being issued pursuant to the Public Ethics Commission's subpoena power as provided by the Oakland City Charter, section 603, and the Oakland Municipal Code, section 2.24.030(B); see Attachment 1.

(Date Issued) 8/15/19 (Signature of Authorizing Official) [Signature]

(Printed Name) Whitney Barazoto (Title) Executive Director, Public Ethics Commission

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION



In the Matter of:

Preliminary Investigation/Audit

PEC Case No.

19-14

SUBPOENA FOR TESTIMONY no. PEC-190014-96
ATTACHMENT 1: DECLARATION OF SIMON RUSSELL

I, the undersigned, Simon Russell, declare:

1. I am an investigator for the City of Oakland Public Ethics Commission ("PEC").
2. The PEC is authorized by section 603(f)(1)(i)-(iii) of the Oakland City Charter and section 2.24.030 of the Oakland Municipal Code to conduct investigations, audits and public hearings in furtherance of its duties and functions, which are specified in section 603(b) of the Oakland City Charter and section 2.24.020 of the Oakland Municipal Code.
3. The PEC is further authorized by section 604 of the Oakland City Charter and section 2.24.030(B) of the Oakland Municipal Code to issue subpoenas in furtherance of its investigations, audits and public hearings.
4. In accordance with section 603(f)(1)(i)-(iii) of the Oakland City Charter and sections 2.24.020 and 2.24.030 of the Oakland Municipal Code, I am investigating the potential violation of section(s) 3.12.050, 3.12.065 and 3.12.140 of the Oakland Campaign Reform Act.
5. In furtherance of that investigation, I am seeking the testimony of the witness named in the attached subpoena, in the belief that said testimony will be relevant and material to this investigation, in that the witness may have knowledge of campaign contributions that were reimbursed, or can provide background information on individuals involved in such a scheme.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

(Date) 8/14/19 (Signature of Declarant)

(Printed Name) Simon Russell