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FILED BY FAX
 ALAMEDA COUNTY
 September 08, 2020
 CLERK OF
 THE SUPERIOR COURT
 By Joanne Downie, Deputy
 CASE NUMBER:
RG20051805

6 Attorneys for Petitioner
 7 CITY OF OAKLAND PUBLIC ETHICS COMMISSION,
 a city government agency

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ALAMEDA

10 CITY OF OAKLAND PUBLIC ETHICS	)	EXEMPT FROM FILING FEES
11 COMMISSION,	)	(GOV. CODE § 6103)
)	
12 Petitioner,	)	Case No.: RG20051805
)	
13 vs.	)	REQUEST TO PRESENT ORAL
	)	TESTIMONY AT HEARING ON
14 PHUC HONG TRAN,	)	PETITIONS TO ENFORCE
	)	INVESTIGATIVE SUBPOENAS
15 Respondent.)	
	)	Date: 9/15/20
	)	Time: 9:00 a.m.
	)	Dept.: 511
)	
)	

18
 19 TO THE COURT, RESPONDENT, AND HIS ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE THAT Petitioner CITY OF OAKLAND PUBLIC ETHICS
 21 COMMISSION (“PEC”) requests, pursuant to California Rules of Court, Rule 3.1306,
 22 subdivision (b), permission to introduce oral testimony in support of its Petitions to Enforce
 23 Investigative Subpoenas in this matter (“Tran Petitions”), set for hearing on September 15, 2020
 24 at 9:00 a.m. in this Department.

25 The nature of the testimony to be offered by Simon Russell, Investigator for the PEC, is
 26 set forth in the Declaration of Simon Russell in Support of Petitions to Enforce Investigative
 27 Subpoenas for Documents and an In Person Interview, attached hereto as Exhibit 1 (“Russell
 28 Declaration”).

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The purpose of the offered testimony is to provide additional evidence in support of the Tran Petitions, particularly regarding the context of the subject subpoenas and the relevance of the documents and testimony sought by the subpoenas, as that has been challenged by Respondent PHUC HONG TRAN.

The PEC estimates the hearing will last approximately forty-five minutes including oral testimony.

If the Court prefers, the PEC will file the Russell Declaration as a supplement to the Tran Petitions, in lieu of offering the oral testimony, outlined in Exhibit 1.

Dated: September 8, 2020 HAAPALA THOMPSON & ABERN, LLP

By: Jody Struck
Jody Struck
Attorney for Petitioner
CITY OF OAKLAND PUBLIC ETHICS
COMMISSION, a city government agency

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EXHIBIT 1

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 2 MARIA BEE, Chief Assistant City Attorney (State Bar No. 167716)
 3 DAVID A. PEREDA, Special Counsel (State Bar No. 237982)
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6 Attorney for Petitioner City of Oakland
 Public Ethics Commission, a city government agency

7
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF ALAMEDA

10
 11 CITY OF OAKLAND PUBLIC ETHICS
 12 COMMISSION,

13 Petitioner,

14 v.

15 PHUC HONG TRAN,

16 Respondent.

EXEMPT FROM FILING FEES
 (GOVT. CODE § 6103)

Case No. RG20051805

**DECLARATION OF SIMON RUSSELL IN
 SUPPORT OF PETITIONS TO ENFORCE
 INVESTIGATIVE SUBPOENAS FOR
 DOCUMENTS AND AN IN PERSON
 INTERVIEW**

(OMC § 2.24.030)

Date: September 15, 2020

Time: 9:00 am

Dept.: 511

17
 18
 19 I, Simon Russell, declare as follows:

20
 21
 22 1. I am an investigator for the City of Oakland Public Ethics Commission (“PEC” or
 23 “Petitioner”). I have personal knowledge of the following facts, and if called upon to do so, could and would
 24 competently testify thereto.

25 2. I have been an investigator with the PEC for four and a half years. Prior to that, I was a Special
 26 Investigator with the Fair Political Practices Commission (“FPPC”) for three and a half years. One of my
 27 duties as an investigator at both agencies was/is investigating campaign finance-related violations, including
 28 the identification and investigation of straw campaign donations (also referred to as “campaign money

1 laundering”). Campaign money laundering is a scheme in which a would-be campaign donor who wishes to
2 obscure their identity from public disclosure and/or circumvent contribution restrictions will arrange to pre-
3 pay or reimburse campaign contributions made in the name of a third party (referred to as a straw donor or
4 “conduit”).

5 3. I have investigated several cases involving laundered campaign funds. I have also led teams
6 of investigators in campaign money laundering cases, and I have helped train new investigators on
7 investigating and identifying campaign money laundering. The PEC and FPPC have successfully
8 prosecuted several of these cases.

9 4. In this matter, we have identified straw donors through the admissions of participants in the
10 scheme, through the analysis of written communications obtained from known or suspected participants and
11 various campaign committees, through the analysis of bank records of known or suspected participants, and
12 through the analysis of campaign finance disclosure forms filed by campaign committees known or suspected
13 to have received straw contributions.

14 5. Multiple participants in the scheme have admitted to the PEC that one of the people soliciting
15 cash for campaign checks was Andy Duong, that they personally received cash from Duong in exchange for
16 their check(s), that they personally gave their check(s) to Duong, and that this activity was not an isolated
17 incident but occurred over a period of time and for purposes of contributing to multiple campaigns. Participants
18 in the scheme admitted that Duong returned to solicit and reimburse them on multiple occasions. Participants
19 in the scheme admitted that they were friends, relatives or business associates of Duong. Some participants
20 admitted to being reimbursed by someone known or suspected to be acting as an agent of Andy Duong, using
21 funds known or suspected to have been provided by Duong.

22 6. In my experience, the above-described activity is consistent with how campaign money
23 laundering schemes typically operate, in which the person soliciting straw donations often utilizes the same
24 conduits multiple times, and often utilizes their relatives, friends or business associates as conduits due to their
25 pre-existing level of trust and convenience. Sometimes a conduit will not only make a laundered contribution
26 in their own name, but will also be enlisted by the true source of the funds to act as a middleman and use the
27 source’s money in order to solicit and reimburse further contributions from other relatives, friends or business
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1 associates. One result of this is that patterns can be detected in campaign finance data, in that straw donors
2 tend to contribute to the same campaign committees as one another on similar dates, and often share similar
3 family names, addresses, or professional associations.

4 7. With the identity of straw donors in this matter confirmed through witness admissions and the
5 analysis of bank records and communications records, I have analyzed campaign finance data to identify other
6 potential straw donors who exhibited a pattern of contributing to the same committees on the same or similar
7 dates as the confirmed straw donors. I also used publicly-available information on the Internet to determine
8 whether suspected conduits had personal or professional connections to Andy Duong.

9 8. Phuc Hong Tran contributed to several of the same committees on or around the same dates as
10 multiple confirmed straw donors in this matter. In my experience analyzing campaign finance data and
11 investigating campaign money laundering, it is highly unusual for the same people to repeatedly contribute to
12 the same committees on the same dates without some degree of coordination and/or communication between
13 them.

14 9. Tran admitted in an interview with investigators that he is friendly with Andy and David
15 Duong. He also admitted that in one instance, he personally gave one of the campaign checks we suspect to
16 be laundered to Andy Duong. That check was received by the committee at the same time as it received other
17 checks from Duong that have been confirmed as laundered through witness admissions and the analysis of
18 bank records and communications records.

19 10. Analysis of Tran's bank records contains evidence that, in my experience analyzing similar
20 records in this and other campaign money laundering cases, is consistent with evidence of laundering. For
21 example, on August 21, 2018, Tran wrote a check for \$5,000.00 to a committee that we have confirmed
22 through witness admissions and document analysis received laundered checks from other contributors using
23 cash provided by Andy Duong. The same day, Tran deposited \$5,000.00 cash into the account from which
24 this check was written. Based on my analysis of Tran's bank records, he did not have a pattern of depositing
25 that amount of cash on a routine basis. Before depositing the cash, Tran had less than \$2,000.00 in the account
26 from which his check was written – not enough to cover the amount of the check. Tran admitted to
27 investigators that he gave this check to Andy Duong. We know from admissions by other participants that
28

1 Duong was giving cash to other people in exchange for checks to this committee on or around August 21,
2 2018.

3 11. Many of the checks in this matter from contributors other than Tran that we suspect to be
4 laundered are at least partially in Phuc Hong Tran's handwriting. Tran confirmed in an interview with
5 investigators that some of these checks are at least partially in his handwriting, including the payee lines on
6 checks bearing the name of Anna Wong. Analysis of the bank records belonging to that contributor indicates
7 that their typical pattern was to write non-campaign checks in their own handwriting. In my experience
8 investigating this and similar cases, it is not unusual for conduits to give checks that are totally blank or that
9 have a blank payee line, with the rest of the check being filled out by the person who reimbursed the check.
10 This leads me to believe that Tran may be in possession of written communications concerning these checks
11 and/or have knowledge of whether these checks were written in exchange for cash provided by the true source
12 of funds in this case.

13 12. Tran served as the President of the Oakland Vietnamese Chamber of Commerce during the
14 period of time we are investigating. Some of the suspected conduits in this case (other than Tran) are also
15 affiliated with the chamber and have confirmed that they know Tran. Tran confirmed in an interview with
16 investigators that some of their checks are in his handwriting. This leads me to believe that Tran may be in
17 possession of written communications concerning those people's contributions and/or have knowledge of
18 whether those contributions were given in exchange for cash provided by the true source of funds in this case.

19 13. Tran has denied to investigators in this matter that he took part in a campaign money laundering
20 scheme. However, he also denied to investigators that he had any written communications in his possession
21 relating to campaign contributions. Evidence gathered in this case shows that to be untrue. For example, we
22 have in our possession written communications between Tran and the Duongs concerning some of the
23 contributions we suspect to be laundered in this matter. We also have communications in our possession
24 indicating that some of the committees we are investigating had identified Tran as a potential source of funds
25 or fundraising event organizer, leading me to believe that written communications may exist between Tran
26 and those committees. As such, I find Tran's earlier denials of involvement or possession of records to be
27 unreliable. I require the evidence sought in these subpoenas to further our investigation of this matter.
28

1 14. On September 11, 2019, I personally interviewed Tran at his office located at 412 8th Street,
2 Suite D, Oakland, CA 94607. At the conclusion of the interview, I personally served Tran with PEC subpoenas
3 190014-95 and 190014-96. I also explained the subpoenas to him at that time, telling him he was legally
4 required to search his emails and texts and get back to me with his response and his “Declaration of Custodian
5 of Records,” signed under penalty of perjury. Tran indicated that he understood, showed me his email inbox
6 and said he had a lot of emails to search.

7 15. The original deadline on subpoena 190014-95 was October 1, 2019. On September 30, 2019,
8 Tran emailed me and requested a 45-day extension due to “stress.” I gave him an extension to October 8, 2019,
9 and told him I would only grant a longer extension if he had a more substantive reason, e.g. medical
10 emergency. The October 8, 2019, deadline passed with no further communication from Tran.

11 16. On October 16, 2019, I emailed Tran again and said that he had missed his deadline, and that
12 if I did not receive his response by October 23, 2019, then I would seek a court order. Tran replied less than
13 two hours later saying “thanks for the reminder” and claiming that he had no texts or emails relating to
14 campaign contributions. He did not attach a Declaration of Custodian of Records. I replied on October 18,
15 2019, saying his response was not complete until I got his signed Declaration of Custodian of Records. I also
16 stated that I found it hard to believe he had no emails re: campaign contributions, given his political activity,
17 and suggested he search one more time. To date I have not heard anything further from him regarding that
18 subpoena.

19 17. Other witnesses in this case have turned over emails to our agency in which Phuc Hong Tran
20 is a recipient and/or participant and in which the subject of campaign contributions is discussed.

21 18. Subpoena 190014-96 originally required Tran to come for an investigative interview at
22 Oakland City Hall at 10AM on October 22, 2019. On October 16, 2019, I emailed Tran and informed that I
23 was postponing that interview. I did not provide a new date at that time.

24 19. On October 18, 2019, I emailed Tran and rescheduled his interview to November 20, 2019, at
25 2PM.

26 20. On October 22, 2019, Tran did not appear for his originally-scheduled interview date (as I had
27 instructed him not to do in my emails of October 16 and October 18, 2019).

28

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ALAMEDA COUNTY
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CASE NUMBER:
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15 CITY OF OAKLAND PUBLIC ETHICS COMMISSION,
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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 IN AND FOR THE COUNTY OF ALAMEDA

19 CITY OF OAKLAND PUBLIC ETHICS) EXEMPT FROM FILING FEES
20 COMMISSION,) (GOV. CODE § 6103)
21)
22) Petitioner,) Case No.: RG20051805
23)
24) vs.) PEC No.: 19-14
25)
26) PHUC HONG TRAN,) OMC No.: § 2.24.020
27)
28) Respondent.) Hearing Date: 9/15/20
) Dept: 511
) Time: 9:00 a.m.
)
) **PROOF OF SERVICE**
)

29 Verda J. Glover certifies and declares as follows:

30 I am employed in the County of Alameda, State of California. I am over the age of 18
31 years, and not a party to this action. My business address is 1939 Harrison Street, Suite 800,
32 Oakland, California, 94612-3527.

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1 On September 8, 2020, I served the foregoing document described as **City of Oakland**
 2 **Public Ethics Commission’s Reply in Support of Their Petition to Enforce Investigative**
 3 **Subpoenas; Request To Present Oral Testimony at Hearing on Petitions to Enforce**
 4 **Investigative Subpoenas with Exhibit 1 Declaration of Simon Russell** in the manner set forth
 5 below.

- 6 **By Facsimile:** By personally transmitting, a true copy of the document(s) via an
 7 electronic facsimile machine maintained at 510-273-8534, between the hours of
 8 8:00 a.m. and 5:00 p.m., to the numbers listed below. The transmission was reported as
 9 complete and without error. I caused said facsimile machine to print a transmission
 10 report, a copy of which is attached to the original of this proof of service.
 11 **By Electronic Mail:** By personally transmitting a true copy of the document(s) via an
 12 electronic mail account maintained at the law firm of Haapala, Thompson & Abern,
 13 LLP, between the hours of 8:00 a.m. and 5:00 p.m., to the e-mail address listed below.
 14 The transmission was reported as complete and without error.

11 Thomas D. Stout
 12 THE STOUT FIRM
 13 317 Washington Street, Suite 170
 14 Oakland, CA 94607
 15 Tele: (415) 862-8482
 16 Fax: (415) 862-8487
 17 Email: tstout@stoutfirm.com

Attorneys for Respondent, PHUC HONG
 TRAN

16 I declare under penalty of perjury under the laws of the State of California that the above
 17 is true and correct. Executed on September 8, 2020, at Oakland, California.



Verda J. Glover

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1 **I. SUMMARY OF ARGUMENT**

2 The CITY OF OAKLAND PUBLIC ETHICS COMMISSION (“PEC”) has been
 3 investigating a potential money laundering scheme within the City of Oakland. On August 15,
 4 2019, pursuant to its legal authority, the PEC issued Subpoena No. 190014-95 (“Records
 5 Subpoena”), which named Respondent PHUOC HONG TRAN (“Tran”) as a witness to the PEC’s
 6 investigation and required him to produce certain documents in his possession or under his control
 7 for inspection by the PEC. The PEC also issued Subpoena No. 190014-96 commanding Tran to
 8 appear for an investigative interview on October 22, 2019 (“Testimony Subpoena,” both the
 9 Records Subpoena and Testimony Subpoena are also referred to as “Subpoenas” or “Tran
 10 Subpoenas”). The Subpoenas were personally served on September 11, 2019, and Tran was
 11 directed to comply with the Records Subpoena on or before October 1, 2019.

12 Tran requested several extensions of time to comply with the Subpoenas, and these requests
 13 were granted. However, as Tran had not complied with the valid Subpoenas, nor raised a legal
 14 objection to them in almost one year, the PEC petitioned this Court to order compliance with the
 15 Subpoenas (“Tran Petitions” or “Petitions”).¹

16 Tran now opposes the Petitions, claiming that his Fourth and Fifth Amendment rights will
 17 be violated if he is ordered to comply with the Subpoenas. However, he has not shown that the
 18 Subpoenas are invalid or that their compliance would violate his constitutional rights. The PEC
 19 respectfully submits that the Tran Petitions should be granted in their entirety.

20 **II. THE TRAN SUBPOENAS ARE VALID AND ENFORCEABLE**

21 A government agency “has a broad right to investigate, including the use of subpoenas,
 22 when it suspects an entity operating within its jurisdiction is violating the law.” *City and County of*
 23 *San Francisco v. Uber Technologies, Inc.* (2019) 36 Cal.App.5th 66, 73–74 (“*Uber*”), citing
 24 *California Restaurant Assn. v. Henning* (1985) 173 Cal.App.3d 1069, 1075 [“the use of subpoenas
 25 and subpoenas *duces tecum* as an investigatory tool is an accepted and established part of the
 26

27
 28 ¹ A Petition to enforce the Records Subpoena was filed on January 24, 2020. The second Petition to enforce the
 Testimony Subpoena was filed on July 28, 2020.

1 administrative process”].) As recently noted by the First District Court of Appeal in *Uber*:

2 [T]he power to make an administrative inquiry is not derived from a judicial
3 function but is instead analogous to the power of a grand jury, which does not
4 depend on a case or controversy to gather evidence but can investigate “merely on
5 suspicion that the law is being violated, or even just because it wants assurance that
6 it is not.” The Supreme Court explained that “[t]he only power that is involved [in
7 an administrative inquiry] is the power to get information from those who best can
8 give it and who are most interested in not doing so. Because judicial power is
9 reluctant if not unable to summon evidence until it is shown to be relevant to issues
10 in litigation, it does not follow that an administrative agency charged with seeing
11 that the laws are enforced may not have and exercise powers of original inquiry.”

8 (*Uber*, 36 Cal.App.5th at 74, quoting *United States v. Morton Salt Co.* (1950) 338 U.S. 632, 642–
9 643.) The *Uber* Court further observed, “[j]udicial deference to administrative discretion and
10 expertise is considerable. The general policy of noninterference is evidenced by the manner in
11 which courts evaluate claims that an administrative subpoena infringes upon interests protected by
12 the Fourth Amendment. Such direct attacks are seldom successful.” (*Uber*, 36 Cal.App.5th at 74,
13 quoting *California Restaurant Assn. v. Henning* (1985) 173 Cal.App.3d. 1069, 1075; see
14 also *Craib v. Bulmash* (1989) 49 Cal.3d 475, 478 [“Forty years of United States Supreme Court
15 decisions establish that the subpoenaed records need only be relevant to an authorized regulatory
16 purpose and described with reasonable specificity”].)

17 As stated in the Tran Petitions which are before this Court, the PEC has the authority to
18 issue subpoenas to investigate possible violations of the City of Oakland’s government campaign
19 reform act and ethics ordinances, among other things. Moreover, “[b]ecause [Tran] did not file
20 an answer or other responsive pleading to the petition[s] to enforce the [Subpoenas] (hereafter,
21 petition[s]), but only a memorandum of points and authorities in opposition to the petition[s],
22 “the facts alleged in the petition[s] are uncontroverted and are deemed true....” (*Stiger v.*
23 *Flippin* (2011) 201 Cal.App.4th 646, 649-50, quoting *Sehlmeyer v. Department of General*
24 *Services* (1993) 17 Cal.App.4th 1072, 1075, fn. 1.)

25 Investigative subpoenas issued by a government agency, such as the PEC, “are valid in
26 scope as long as: (1) they inquire into matters the agency is authorized to investigate; (2) the
27 request for information is ‘not too indefinite’; and (3) the information requested is ‘reasonably
28 relevant’ to the investigation.” (*Stiger*, 201 Cal.App.4th at 656–57, quoting *Brovelli v. Superior*

1 *Court* (1961) 56 Cal.2d 524, 529; accord, *Board of Medical Quality Assurance v. Hazel*
 2 *Hawkins Memorial Hospital* (1982) 135 Cal.App.3d 561, 565.) In this case, the Subpoenas
 3 inquire into matters the PEC is authorized to investigate, the request for information is specific,
 4 and the requested information is “reasonably relevant” to the PEC’s investigation into campaign
 5 money laundering. It is the PEC’s position that the Tran Subpoenas meet all three requirements
 6 of a valid subpoena and are therefore enforceable by this Court.

7 **III. THE SUBPOENAS DO NOT VIOLATE TRAN’S FOURTH AMENDMENT**
 8 **RIGHTS**

9 As noted above, the Fourth Amendment does not require a showing of probable cause to
 10 obtain documents via an administrative subpoena, “the subpoenaed records need only be relevant
 11 to an authorized regulatory purpose and described with reasonable specificity.” (*Craib*, 49 Cal.3d
 12 at 478.) The Tran Records Subpoena complies with these requirements.

13 **A. The Records Subpoena requires the production of relevant documents.**

14 “In the context of discovery, evidence is ‘relevant’ if it might reasonably assist a party in
 15 evaluating its case, preparing for trial, or facilitating a settlement. Admissibility is *not* the test, and
 16 it is sufficient if the information sought might reasonably lead to other, admissible evidence.”
 17 (*Glenfed Development Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117.) “Any doubts
 18 regarding relevance are generally resolved in favor of allowing the discovery. (*Colonial Life &*
 19 *Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790, 183 Cal.Rptr. 810, 647 P.2d 86.)
 20 Because of the breadth of the standard of discovery relevance, “[m]uch of the information that
 21 surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying
 22 cause of action.” (*Seattle Times, supra*, 467 U.S. at p. 33, 104 S.Ct. 2199.)” (*Mercury Interactive*
 23 *Corp. v. Klein* (2007) 158 Cal.App.4th 60, 98.) As summed up by the California Supreme Court,
 24 “the relevance of the subject matter standard must be reasonably applied; in accordance with the
 25 liberal policies underlying the discovery procedures, doubts as to relevance should generally be
 26 resolved in favor of permitting discovery.” (*Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2
 27 Cal.3d 161, 173, footnote omitted.)

28 The broad scope of permissible discovery “is equally applicable to discovery of information

1 from a nonparty as it is to parties in the pending suit.” (*Johnson v. Superior Court* (2000) 80
 2 Cal.App.4th 1050, 1062, disapproved on other grounds by *Williams v. Superior Court* (2017) 3
 3 Cal.5th 531, 557.) For example, a party may serve a deposition subpoena for the production of
 4 business records on a nonparty, and that subpoena “need not be accompanied by an affidavit or
 5 declaration showing good cause for the production of the business records designated in it.” (Code
 6 Civ. Proc., § 2020.410, subd. (c); see also, *Fielder v. Berkeley Properties Co.* (1972) 23
 7 Cal.App.3d 30, 40 [“a ‘good cause’ showing affidavit is not required as a basis for the subpoenas
 8 for statutorily-permitted investigations.”].)

9 Tran cites one case, a District Court opinion from the Northern District of Texas in 1981,
 10 for the proposition that this Court should not allow the PEC to “bootstrap itself when justifying an
 11 investigation,” and that “the burden lies with the [agency].” (Opp., at 3:22-25, quoting *Sunshine*
 12 *Gas Co. v. Dep’t of Energy* (N.D. Tex. 1981) 524 F.Supp. 834, 841.) The *Sunshine Gas Co.* case
 13 cited by Tran is procedurally distinct, not binding precedent, and not particularly helpful in
 14 resolving the issues before this Court.

15 *Sunshine Gas Co.* involved an investigation by the Department of Energy regarding
 16 violations of pricing restrictions on petroleum products; the agency issued subpoenas. *Sunshine*
 17 *Gas Company* brought a suit to invalidate the subpoena it received and the Department of Energy
 18 answered, stating that it suspected the gas company of pricing violations, and that the subpoena
 19 was necessary to “smoke out” the violations. (*Sunshine Gas Co.*, 524 F.Supp. at 837.) The issue
 20 before the court was whether the Department of Energy was “required, as a matter of law, to give
 21 Plaintiff *Sunshine Gas* more than a general statement of purpose regarding the reason for its
 22 investigation.” (*Ibid.*) In going through its analysis, the court noted its “narrow and limited” role,
 23 “confined to determining (1) whether the subpoena was issued for a lawfully authorized purpose
 24 and (2) whether it seeks information relevant to the agency’s inquiry. ***If these questions are***
 25 ***resolved in the affirmative, the subpoena is valid and must be enforced.***” (*Ibid.*, emphasis added.)
 26 In the particular context of that case, the court held that when a person subject to a subpoena
 27 challenges it in court, the burden of establishing the lawful purpose and relevancy is with the
 28 administrative agency. (*Id.*, at 839.)

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Significantly, the court conceded:

This Court is not unaware of different principles enunciated and followed in other jurisdictions. Specifically, various Courts have ruled the investigative process could be completely disrupted if such hearings were transformed into trial-like proceedings This type of proceeding would make a shambles of the investigation and stifle the agency in its gathering of facts [citations]; that such would cause undue delay [citations] and would frustrate an important governmental interest in an expeditious investigation if a party could use the subpoena hearing to raise a full panoply of objections [citations]. Furthermore, *broadness alone is not sufficient rationale to refuse enforcement* [citation] and the standard of reasonable relevance only requires a measuring of the relevance of the request with the general purposes of the investigation, i.e., *it is sufficient if the relevance can be determined from the face of the subpoena* [citations].

(*Sunshine Gas Co.*, 524 F.Supp. at 840–41, emphasis added.) Thus, even this single case cited by Tran reinforces the principle that a lawfully authorized subpoena seeking relevant information is valid and must be enforced.

Unlike the agency in *Sunshine Gas Co.*, the PEC has clearly stated the nature and purpose of its investigation, so that the relevance of the requested documents can be determined from the face of the Records Subpoena. Tran contends the requested documents are not relevant to the PEC’s investigation because the facts alleged in the Petitions are capable of an innocent interpretation. (Respondent’s Opposition to Petitions (“Opp.”) at 4:4-5:23.) However, an administrative agency such as the PEC “can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.” (*Morton Salt*, 338 U.S. at 642-43; see also, *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 8.)

Tran also claims that the PEC cannot identify specific instances of campaign money laundering attributable to him, but the PEC is not required at this point in its investigation to lay out the specific evidence against Tran, which is inextricably linked with evidence involving other individuals. In fact, the PEC is generally required to keep confidential the information it has acquired thus far in its investigation. (Govt. Code, § 11183.) The PEC notes it will request an opportunity to present oral evidence at the hearing pursuant to California Rules of Court (2020), Rule 3.1306, subdivision (b), so the Court can consider additional evidence relating to the relevance of the requested documents.

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1 **B. The Tran Subpoenas are within the scope of the PEC's authority.**

2 The PEC's authority for the Tran Subpoenas is set forth in the Petitions. Tran argues the
 3 PEC does not have authority to request records regarding political campaigns and conduct
 4 related to its investigation that is outside of the City of Oakland. (Opp., at 6:10-7:3.) As held
 5 by the California Supreme Court in *People ex rel. DuFauchard v. U.S. Fin'l Mgmt., Inc.* (2009)
 6 169 Cal.4th 1502, an administrative agency's ability to investigate is not presumed to be limited
 7 to the geographical location where it exercises authority. (*Id.*, at 1514–19.) The subpoenas in
 8 this case and the related cases before this Court are investigative tools, used to obtain evidence
 9 of campaign money laundering; the PEC is not required to establish admissibility in order to
 10 obtain documents through discovery. As noted by Tran as well as the PEC, the standard is
 11 merely relevance. Certainly, evidence of campaign money laundering in other jurisdictions
 12 outside of Oakland is relevant and appropriate to the PEC's investigation.

13 Tran further argues that the Record Subpoena exceeds the PEC's authority because it
 14 requests documents relating to possible conspiracies to launder campaign contributions. He
 15 claims that only actual violations, and not a conspiracy to commit them, can be investigated by
 16 the PEC. (Opp., at 7:4-11.) However, evidence of a conspiracy to launder campaign
 17 contributions is relevant to an investigation into campaign money laundering.

18 The California Supreme Court has repeatedly recognized the broad power of government
 19 agencies to grant and enforce subpoenas. (See, *Craib*, 49 Cal.3d at 481–85; *People ex rel.*
 20 *DuFauchard v. U.S. Fin'l Mgmt., Inc.*, 169 Cal.4th at 1514–19; *Millan v. Restaurant Enterprises*
 21 *Group, Inc.* (1993) 14 Cal.4th 477, 491–93.) Here, the PEC has established that it has the
 22 authority to subpoena the requested documents as part of its investigation into illegal campaign
 23 contributions. Tran does not challenge the overall authority of the PEC to issue these
 24 subpoenas; rather, he seeks to chip away at the edges of the agency's authority to potentially
 25 remove one or more categories of documents from the Records Subpoena. The arguments are
 26 unavailing and the Tran Petitions should be granted in their entirety.

27 **C. The Records Subpoena is not indefinite.**

28 The PEC has requested communications relating to campaign contributions of "family,

1 friends, or associates” of Tran. The crux of Tran’s argument here is that the reference to
2 “associates” is impermissibly vague. He notes that the PEC “could mean any person ranging
3 from someone with whom Mr. Tran has regular recurring contact to literally anyone he has ever
4 met.” (Opp., at 7:24-26.) As a practical matter, the phrase could not mean “anyone he has ever
5 met,” unless Tran communicates with those individuals regarding campaign contributions.

6 Merriam-Webster’s dictionary defines the noun “associate” as “one associated with
7 another,” such as “partner, colleague, [e.g.] business associates.” A secondary definition is
8 “companion, comrade.” Any of these common definitions are sufficient to convey what is
9 required by the word “associate” when combined with family and friends and the condition that
10 Tran has communicated with the individual(s) regarding campaign contributions. PEC submits
11 that the word is not impermissibly vague or indefinite.

12 **D. The Record Subpoena does not impose a substantial, unjustified burden.**

13 As a final salvo, Tran also argues that he cannot comply with the Records Subpoena
14 because it creates “a tremendous and unreasonable burden.” (Opp., at 8:5-26.) The only
15 support for this dramatic claim is the fact that the requested communications date back to
16 January 1, 2016, which Tran alleges creates an “impossibly time-consuming task” of searching
17 through his records. In fact, email can be searched by keywords without opening any of the
18 correspondence. If Tran types his correspondence on a computer, he could similarly search his
19 documents for keywords, such as “campaign,” “donation,” “contribution,” “election,” or the
20 names of candidates he has supported. These searches do not appear to be overly burdensome.

21 Moreover, while Tran is a small business owner and does not have employees, there is
22 no evidence that responding to the Records Subpoena will “threaten the normal operation of
23 [his] business. (Opp., at 8:25-26.) Tran has already had almost a year to comply with the
24 Subpoenas. He has been free to communicate with the PEC and its investigator and he did, in
25 fact, request additional time to respond, and indicated his willingness to comply with the
26 Subpoenas. If Tran had objected to the Subpoenas, he could have brought a motion to quash.
27 (*Shively v. Stewart* (1966) 65 Cal.2d 475, 481 [administrative subpoena subject to a motion to
28 quash]; Govt. Code, § 11450.20(a); Code Civ. Proc., § 1987.1.)

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1 Finally, Tran argues that the Records Subpoena constitutes an impermissible “fishing
 2 expedition,” citing *United States v. Theodore* (4th Cir. 1979) 479 F.2d 749, 754 (*Theodore*).
 3 (Opp. at 8:5-8, 20-22.) However, the *Theodore* Court acknowledges that other courts may have
 4 a different view, and cites *U.S. v. Giordano* (1969) 419 F.2d 564. (*Theodore*, 479 F.2d at 754.)
 5 In *Giordano* the Court observed, “Taxpayer in his brief characterized the Government’s efforts
 6 as a ‘fishing expedition.’ If so, the Secretary or his delegate has been specifically licensed to
 7 fish by [26 U.S.C.A.] § 7602. (*Id.*, at 568; see also *Morton Salt*, 338 U.S. at 641-642 [prohibition
 8 on “fishing expeditions” is a judicial limitation that is not inherent to the administrative process].)
 9 The *Theodore* Court also observed that, “The Fourth Amendment prohibition against
 10 unreasonable searches and seizures does not require that administrative summonses meet a
 11 ‘probable cause’ standard in order to be enforceable.” (*Theodore*, 479 F.2d 749, 754, citing
 12 *United States v. Powell* (1964) 379 U.S. 48.)

13 Tran has not shown that compliance with the Subpoenas would be burdensome and
 14 oppressive, nor has he shown that it would violate his Fourth Amendment rights.

15 IV. THE SUBPOENAS DO NOT VIOLATE TRAN’S FIFTH AMENDMENT RIGHTS

16 The Fifth Amendment to the United States Constitution provides that no person “shall be
 17 compelled *in any criminal case* to be a witness against himself.” (Emphasis added.) As the
 18 PEC is conducting an administrative, rather than criminal, investigation, Tran’s compliance with
 19 the Subpoena will not violate his Fifth Amendment rights.

20 A. Tran has not met his burden of showing that he faces a real threat of 21 criminal prosecution.

22 Tran acknowledges that “the privilege [against self-incrimination] ‘protects against real
 23 dangers, not remote and speculative possibilities....’” (Opp., at 9:6-8, citation omitted.) As the
 24 Court of Appeal stated in *Warford v. Medeiros* (1984) 160 Cal.App.3d 1035, “[A] witness must
 25 satisfy the court that the claim of privilege is justified and not a mere subterfuge. [Citations.] ...
 26 [T]he person claiming the privilege has the burden of showing that the proffered evidence might
 27 tend to incriminate him.” (*Id.*, at 1043.) The Court cautioned:

28 [T]his protection must be confined to instances where the witness has reasonable

1 cause to apprehend danger from a direct answer. [Citation.] The witness is not
 2 exonerated from answering merely because he declares that in so doing he would
 3 incriminate himself--his say-so does not of itself establish the hazard of
 4 incrimination. It is for the court to say whether his silence is justified, [Citation],
 5 and to require him to answer if ‘it clearly appears to the court that he is
 6 mistaken.’ [Citation.]

7 (*Warford*, 160 Cal.App.3d at 1043, quoting *Hoffman v. United States* (1951) 341 U.S. 479, 486-
 8 487.) In other words, the burden is on Tran to show that there is a real danger of criminal
 9 prosecution related to the documents he will produce or the statements he will make pursuant to
 10 the Subpoenas, and that they would tend to incriminate him.

11 Here, there is no evidence that the PEC intends to forward information to a law
 12 enforcement agency, as suggested by Tran. (Opp., at 9:19-23.) Tran insists that, “[g]iven the
 13 strong language of the Petitions and the [PEC’s] *mandate* to uncover and refer criminal
 14 violations, Mr. Tran faces a very real danger of criminal prosecution that is in no way remote or
 15 speculative.” (Opp., at 9:21-23, emphasis added.) The PEC does not have such a mandate; the
 16 Oakland Municipal Code merely states, “In the event criminal violations of this Act come to the
 17 attention of the Public Ethics Commission, it *may* forward the information to the appropriate
 18 law enforcement agency.” (OMC § 3.12.270, emphasis added.) The PEC is conducting its own
 19 ethics investigation into campaign money laundering, and the investigation is administrative, not
 20 criminal.

21 **B. Tran has not made a particularized claim of privilege under the Fifth**
 22 **Amendment.**

23 Any objections based on the Fifth Amendment must be specifically stated; “[t]here is no
 24 blanket Fifth Amendment right to refuse to answer questions in noncriminal
 25 proceedings” (*Warford*, 160 Cal.App.3d at 1044, citations omitted.) The rule in California with
 26 respect to both criminal and civil matters is that “[t]he privilege must be specifically claimed on
 27 a particular question and the matter submitted to the court for its determination as to the validity
 28 of the claim.” (*Id.*, at 1045, citations omitted.) The court “must undertake a particularized
 inquiry with respect to each specific claim of privilege to determine whether the claimant has
 sustained his burden of establishing that the testimony or other evidence sought might tend to

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1 incriminate him. (*Warford*, 160 Cal.App.3d at 1045, footnote omitted.)

2 In this case, Tran has not made a claim of privilege under the Fifth Amendment as to
3 each specific document or category of documents he believes he cannot produce without
4 incriminating himself. Instead, he has categorically refused to provide *any* documents. Tran’s
5 attempt to assert a blanket Fifth Amendment right as to all of the documents set forth in the
6 Records Subpoena should not be condoned by the Court.

7 Similarly, Tran contends he cannot submit to an interview by the PEC, as that would
8 violate his right against self-incrimination. Such a claim is premature. (*Fuller v. Superior*
9 *Court* (2001) 87 Cal.App.4th 299, 308 [blanket privilege against self-incrimination could not be
10 invoked with respect to an entire deposition].) In order to properly claim the privilege, Tran
11 must submit to the interview and, if he reasonably believes a particular question or questions
12 require him to incriminate himself, he could assert the privilege at that time. The Court would
13 then have a clear record upon which to base its determination as to the claimed privilege. (See,
14 *Fuller*, 87 Cal.App.4th at 309-310.) In sum, Tran’s claim of Fifth Amendment privilege as to
15 the Subpoenas must fail on substantive and procedural grounds.

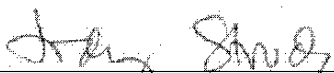
16 **V. CONCLUSION**

17 Tran has not made a colorable claim that compliance with the Subpoenas will violate his
18 Fourth or Fifth Amendment rights. The Records Subpoena does not constitute an unreasonable
19 search or seizure under the Fourth Amendment, and neither Subpoena violates his Fifth
20 Amendment right against self-incrimination as this is an administrative, not a criminal,
21 investigation. Moreover, Tran has sought to invoke a blanket Fifth Amendment privilege,
22 without identifying particular documents that would tend to incriminate him or even waiting
23 until the PEC commenced its interview. The PEC respectfully requests that the Court grant its
24 Petitions and enforce the Tran Subpoenas.

25 Dated: September 8, 2020

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26
27 By:



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