

1 J. Leah Castella (SBN 205990)
E-mail: lcastella@bwslaw.com
2 BURKE, WILLIAMS & SORENSEN, LLP
1999 Harrison Street, Suite 1650
3 Oakland, CA 94612-3520
Tel: 510.273.8780 Fax: 510.839.9104

4 Attorney for Petitioner City of Oakland Public
5 Ethics Commission, a city government agency

FILING FEE EXEMPT PURSUANT TO
GOVERNMENT CODE § 6103

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
06/27/2024 at 03:32:03 PM
By: Anita Dhir,
Deputy Clerk

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

10 CITY OF OAKLAND PUBLIC ETHICS
11 COMMISSION,

12 Petitioner,

13 v.

14 OAKLAND UNITED TO RECALL SHENG
15 THAO (OUST), FOUNDATIONAL
OAKLAND UNITED, and
16 FOUNDATIONAL OAKLAND UNITES
(collectively "OAKLAND UNITED"),

17 Respondents.

Case No. 24CV081048

**NOTICE OF MOTION AND MOTION TO
COMPEL OAKLAND UNITED TO
RECALL SHENG THAO,
FOUNDATIONAL OAKLAND UNITED,
and FOUNDATIONAL OAKLAND
UNITES' COMPLIANCE WITH THE
CITY OF OAKLAND PUBLIC ETHICS
COMMISSION'S INVESTIGATIVE
SUBPOENAS**

(OMC § 2.24.030)

Date: July 19, 2024

Time: 2:00 p.m.

Dept: 520

Reservation No.: A-81048-001

21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 PLEASE TAKE NOTICE THAT on **July 19, 2024 at 2:00 p.m.**, or as soon thereafter as
23 the matter may be heard in Department 520 of the above-entitled Court located at 24405 Amador
24 Street, Hayward, CA, 94544, Petitioner CITY OF OAKLAND PUBLIC ETHICS COMMISSION
25 ("Petitioner" or "PEC") will move this Court for an Order pursuant to California Government
26 Code sections 11186-88 to compel Respondents OAKLAND UNITED TO RECALL SHENG
27 THAO (OUST), FOUNDATIONAL OAKLAND UNITED, and FOUNDATIONAL OAKLAND
28

1 UNITES to produce documents in compliance with PEC Investigative Subpoena Nos. PEC-
2 240008-07, PEC-240008-04, and PEC-240008-03 (the “Subpoenas”).

3 This motion is made pursuant to Government Code sections 11187 on the grounds that
4 good cause exists for compelling the production of the records sought by the Subpoenas. Each
5 Subpoena is supported by a compelling interest of the PEC in investigating and identifying any
6 illegal campaign activities, including the potential illegal failure by Respondents to properly report
7 earmarked contributions and failure to make contributions under a legal name. The PEC’s
8 investigation is based on a factual pattern that demonstrates a likelihood that illegal activity has
9 occurred. The information sought by the Subpoenas is directly relevant and material to the PEC’s
10 investigation.

11 This motion is based on this notice of motion, the attached memorandum of points and
12 authorities, the Petition to Enforce Investigative Subpoenas concurrently filed, and on such oral
13 argument and other information that the Court finds relevant at the time of the hearing.

14 **Dept. 520 requires advance notice of intent to contest** a tentative ruling (TR) in all law
15 and motion matters. Your TR can be read on the internet at

16 www.alameda.courts.ca.gov/domainweb, calendar information for Dept. 520, or can be heard by
17 calling (866) 223-2244. The TR will automatically become the final order of the court unless by
18 no later than 4:00p.m. on the court day before the hearing a party **(1)** notifies the court and all
19 opposing parties by e-mail at Dept520@alameda.courts.ca.gov and states specifically the issue
20 they are contesting in the tentative ruling, OR **(2)** notifies all opposing counsel or unrepresented
21 parties by phone or in person that the party intends to appear to contest the TR and advises the
22 court of such. Contests that have not been properly noticed will not be heard. **You must include**
23 **all parties in your email to the court contesting the matter.**


24 ///
25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The court does not provide court reporters for hearings in civil departments. A party who wants a record of the proceedings must engage a private court reporter. (See amended Local Rule 3.95).

Dated: June 27, 2024

BURKE, WILLIAMS & SORENSEN, LLP

By: 

J. Leah Castella
Attorneys for Petitioner City of Oakland
Public Ethics Commission, a city
government agency

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

I. INTRODUCTION.....1

II. STATEMENT OF FACTS.....1

 A. Investigation of Respondents Due to Suspicious Campaign Activity.....1

 B. The Subpoenas3

 C. Respondents’ Objections and Failure to Negotiate4

III. ARGUMENT5

 A. This Court has the Authority to Compel Compliance with these Properly Issued Subpoenas5

 1. The PEC Has Authority to Issue Investigative Subpoenas5

 2. This Court May Compel Compliance with the Subpoenas7

 B. Respondents’ Objections Do Not Justify Noncompliance7

 1. The Subpoenas Offered a Flexible Deadline for Compliance.....7

 2. Respondents’ Claim That They Lack Access to the Records is Hollow8

 3. The Subpoenas Do Not Seek to Invade the Attorney-Client Privilege9

 4. The Subpoenas are Tailored to Seek Records Relevant and Material to the PEC’s Investigation.....9

 5. Disclosure of the Information Sought by the Subpoenas is Justified by the PEC’s Compelling Interest in Investigating Illegal Activity.....10

 6. The PEC Attempted to Negotiate with Respondents in Good Faith12

IV. CONCLUSION12

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

State Cases

Britt v. Superior Court
(1978) 20 Cal.3d 844..... 10, 11

Brovelli v. Sup.Ct.
56 C2d 524 (1961)..... 6

City of Santa Cruz v. Patel,
155 Cal. App. 4th 234 (2007)..... 5, 6

Franchise Tax Bd. v. Barnhart,
105 Cal.App. 3d 274 (1980)..... 5

Socialist Workers etc. Committee v. Brown
(1975) 53 Cal.App.3d 879..... 11

State Water Resources Control Bd. v. Baldwin & Sons, Inc.
(2020) 45 Cal.App.5th 40..... 11

Whitney v. Montegut
(2014) 222 Cal.App.4th 906..... 11

State Statutes

California Code of Evidence section 250..... 5

California Government Code section 11187, subdivision (a)..... 7

California Political Reform Act 6

Code of Civil Procedure 2020.410(c) 7

Gov. Code § 11181..... 5, 11

Gov. Code § 11181(e)..... 5

Gov. Code § 11183..... 11

Gov. Code § 11186-88 7

Gov. Code § 84211..... 6

Gov. Code § 84215..... 6

Gov. Code § 85704..... 6

1 Oakland’s Campaign Reform Act 7, 12

2 Political Reform Act..... 5

3 **Other Authorities**

4 City of Oakland Charter § 603(b) 5

5 City of Oakland Charter § 603(f)(1)(i) - (f)(1)(iv) 5

6 Oakland Campaign Reform Act 5

7 Oakland Municipal Code Chapters 2.24 and 3.12 5

8 Oakland Municipal Code section 3.12.065 6

9 Oakland Municipal Code section 3.12.065 and 3.12.240 1, 6, 7

10 Oakland Municipal Code section 3.12.240 6

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioner CITY OF OAKLAND PUBLIC ETHICS COMMISSION (“Petitioner” or
4 “PEC”) seek an order compelling Respondents OAKLAND UNITED TO RECALL SHENG
5 THAO (OUST), FOUNDATIONAL OAKLAND UNITED, and FOUNDATIONAL OAKLAND
6 UNITES (collectively, “Respondents”) to produce documents in compliance with PEC
7 Investigative Subpoena Nos. PEC-240008-07, PEC-240008-04, and PEC-240008-03
8 (“Subpoenas”).

9 Petitioner is the government agency charged with ensuring compliance with the City of
10 Oakland’s government campaign reform act and ethics ordinances. In furtherance of that function
11 and as a part of an ongoing investigation into Respondents for potential violations of Oakland
12 Municipal Code (“OMC”) section 3.12.065 and 3.12.240, relating to failure to properly report
13 earmarked contributions and failure to make contributions under a legal name Petitioner served the
14 Subpoenas.

15 Respondents have wholly failed to comply with the Subpoenas and have shown no genuine
16 indication that they intend to work with Petitioner to comply in a timely manner. Petitioner’s
17 investigation is time-sensitive. According to the Oakland City Clerk, OUST’s signature-gathering
18 efforts for the recall of Mayor Sheng Thao, for which it is suspected to have advanced through
19 illicit means, were successful and the recall will appear on the November ballot, which means
20 campaigning will likely start immediately. Petitioner seeks an order from this Court to compel
21 compliance so that the PEC may continue its investigation and take any actions necessary to
22 enforce the important campaign finance laws that it is charged with overseeing.

23 **II. STATEMENT OF FACTS**

24 **A. Investigation of Respondents Due to Suspicious Campaign Activity**

25 Respondent OUST was officially formed in early 2024 to support the recall of Oakland
26 Mayor Sheng Thao. (Declaration of Simon Russell (“Russell Decl.”) at ¶ 2 and Exh. A thereto.)
27 On January 31, 2024, OUST filed a Statement of Organization (Form 410) with the PEC, as
28 required by the California Fair Political Practices Commission when recipient committees receive

1 \$2,000 or more in contributions. OUST’s treasurers are listed as Stacy Owens and Peter Sullivan.
2 (Russell Decl. at ¶ 2 and Exh. A thereto.)

3 Soon thereafter, on February 20, 2024, Oakland Unites PAC formed by filing a Statement
4 of Organization with the PEC, which listed its treasurers as Stacy Owens and Peter Sullivans and
5 principal officer as Tanya Boyce. (Russell Decl. at ¶ 3 and Exh. B thereto.) Not long after, on
6 March 4, 2024, Oakland United Non-Profit filed its Statement of Information with the California
7 Secretary of State, listing Tanya Boyce as Chief Executive Officer. (Russell Decl. at ¶ 4 and Exh.
8 C thereto.) Oakland United Non-Profit registered with the Secretary of State on December 5,
9 2023. (Russell Decl. at ¶ 4 and Exh. D thereto.)

10 OUST announced its intention to begin signature-gathering to support its recall effort in
11 early February 2024. (Russell Decl. at ¶ 5 and Exh. E thereto.) OUST’s draft petition was
12 approved by the City Clerk on February 13, 2024, officially authorizing signature-gathering.
13 (Russell Decl. at ¶ 6 and Exh. F thereto.) The signature-gathering must be completed in 160
14 days—which is July 22, 2024. (*Id.*)

15 On February 16, 2024, Oakland United Non-Profit made an in-kind contribution of over
16 \$200,000 to OUST for the payment of bills to The Halftone print shop and On the Ground, a
17 signature-gathering service. (Russell Decl. at ¶ 7, 2 and Exh. A thereto.) On March 4, 2024,
18 Oakland United Non-Profit filed a Statement of Information with the Secretary of State, listing
19 Tanya Boyce as CEO. (Russell Decl. at ¶ 8 and Exh. G thereto.)

20 Oakland United and OUST have several overlapping personnel, including treasurers Stacy
21 Owens and Peter Sullivan, consultant/founder Seneca Scott, and consultant/assistant Andrew
22 Hock. (*See* Russell Decl. at Exhs. A, B, and C.) OUST also reported that the bulk of its funding
23 was received via in-kind contributions from Oakland United. (*See* Russell Decl. at Exh. A.)
24 However, these were not reported as intermediary contributions, so the original donors to Oakland
25 United remain unknown. (*See id.*)

26 In April 2024, OUST sent an email to its listserv stating that would-be contributors could
27 make “private” donations to the recall effort via Oakland United (it was not specified whether this
28 referred to Oakland Unites PAC or Oakland United Non-Profit). (Russell Decl. at ¶ 9 and Exh. G.)

1 The public records currently available to the PEC relating to OUST and Oakland United show a
2 pattern which suggests that OUST solicited contributions to itself via Oakland United and that
3 Oakland United raised money with the purpose of contributing it to OUST. (Russell Decl. at ¶ 10.)
4 Further, OUST did not report any earmarked contributions on its Form 460. (*Id.*) Regarding the
5 contributions from Oakland United in particular, OUST did not report them as earmarked or
6 otherwise state who the original contributors to Oakland United were. (*Id.*)

7 Based on the foregoing facts, the PEC initiated an investigation of Respondents to
8 investigate potential illegal activity. (Russell Decl. at ¶ 11.)

9 **B. The Subpoenas**

10 On May 21, 2024, the PEC served the Subpoenas on each Respondent.¹ (Russell Decl. at ¶
11 11 and Exhibit (“Exh.”) H thereto; *see also* Exh. I.) Each Subpoena sought written records
12 concerning or referencing funds actually or potentially raised or offered to each Respondent that
13 reference the other Respondent(s) and meet additional search criteria meant to seek only those
14 records relating to the Commission’s investigation. (Russell Decl. at Exh. H, Attach. 1a.) The
15 Subpoenas additionally sought written records concerning or referencing the making of a
16 monetary or non-monetary contribution to each Respondent from the other Respondent(s) or any
17 actual or potential contract with or payment to the entities “The Halftone Shop” or “On the
18 Ground.” (*Id.*) The Subpoenas further sought all written records referencing or concerning the
19 drafting or sending of an email message seeking contributions and providing that there are
20 “options for donors to remain private....” or records received by or sent from the email address
21 which sent the subject email referencing or concerning donations. (*Id.*) The first page of the
22 Subpoenas provided that Respondents could contact PEC Enforcement Chief to request a
23 reasonable extension and discuss any other issues Respondents may have with regard to the
24 Subpoenas. (*Id.*)

25 ///

26

27 ¹ Specifically, the PEC issued Subpoenas for documents Subpoena No. PEC-240008-07 to OUST,
28 Subpoena No. PEC-240008-04 to Oakland United Non-Profit, and Subpoena No. PEC-240008-03
to Oakland Unites PAC.

1 **C. Respondents’ Objections and Failure to Negotiate**

2 On May 28, 2024, OUST and Oakland United, through their counsel, submitted objections
3 to the Subpoenas to the PEC. (Russell Decl. at ¶ 12 and Exh. J thereto.) The objections alleged
4 that the Subpoenas’ timeline for compliance was unreasonable, that the Subpoenas’ requests are
5 overly broad, that some of the records sought are subject to attorney-client privilege, that
6 communications sought exist on personal devices, that records sought are protected by third
7 parties’ right to privacy, stating that the Commission should have engaged Respondents informally
8 prior to issuing the Subpoenas, and requesting that the Commission withdraw the Subpoenas and
9 recuse itself from further investigation into Oakland United or OUST. (*Id.*)

10 The PEC assessed Respondents’ objections and determined that they were not valid and/or
11 sufficient to justify Respondents’ non-compliance with the Subpoenas. Accordingly, on June 6,
12 2024, the PEC sent a response letter to address the objections asserted by Respondents. (Russell
13 Decl. at ¶ 13 and Exh. K thereto.) The PEC explained that the deadline for compliance was not
14 onerous, but in the spirit of cooperation, invited negotiation as to the deadline. (*Id.* at p. 1-2.) The
15 Commission also explained that the Subpoenas were carefully tailored to request only written
16 communications reasonably evidencing earmarking. (*Id.* at p. 3.) The PEC further explained that
17 the Subpoenas do not seek privileged documents. (*Id.*) The PEC offered to subpoena individual
18 officers directly if that was the preference of Respondents. (*Id.* at p. 2.) The PEC explained its
19 authority to issue subpoenas under the laws and regulations of the City of Oakland and State of
20 California. (*Id.*) The PEC further explained that it is independent and does not take direction from
21 any City office, and thus recusal is not necessary nor appropriate. (*Id.* at p. 2-3.) The letter
22 concluded by requesting a response by June 13, 2024, which would either propose a rolling
23 production and/or request new subpoenas to address Respondents’ concerns. (*Id.* at p. 4.)

24 On June 13, 2024, OUST and Oakland United sent a response letter to the Commission,
25 continuing to take issue with the Subpoenas and stating an intent not to comply. (Russell Decl. at ¶
26 14 and Exh. L thereto.) As of the date of filing this petition, the Commission has yet to receive any
27 responsive documents from either OUST or Oakland United.

1 On or around June 18, 2024, the Oakland City Clerk confirmed to reporters that the recall
2 campaign has submitted enough signatures to qualify the recall for the ballot. If this is correct,
3 then the recall campaign itself can be expected to begin immediately. This may include the use of
4 advertisements by OUST which must include disclaimers listing its largest donors and possible
5 sponsors. These disclaimers are required by laws enforced by the PEC and Fair Political Practices
6 Commission, including the Oakland Campaign Reform Act and the state Political Reform Act.
7 The accuracy of any such disclaimers cannot be determined unless the PEC can verify whether
8 OUST received earmarked contributions, of what size, and from whom. (Russell Decl. at ¶ 15.)

9 **III. ARGUMENT**

10 **A. This Court has the Authority to Compel Compliance with these Properly**
11 **Issued Subpoenas**

12 **1. The PEC Has Authority to Issue Investigative Subpoenas**

13 The City of Oakland Public Ethics Commission is the government agency charged with the
14 function and duty to enforce compliance with the City of Oakland’s government campaign reform
15 act and ethics ordinances, among other things. (See City of Oakland Charter § 603(b); OMC
16 Chapters 2.24 and 3.12.) In furtherance of that function and duty, the PEC is authorized to conduct
17 investigations and issue subpoenas to compel the production of papers, records, and documents on
18 any matter pending before them. (City of Oakland Charter § 603(f)(1)(i) - (f)(1)(iv).)

19 Agencies are given authority to issue subpoenas for the production of papers, books,
20 accounts, documents, and any writings as defined in California Code of Evidence section 250,
21 including photocopies, emails, faxes and sound recordings, tangible things, and testimony
22 pertinent or material to any inquiry, investigation, hearing, proceeding, or action ducted in any part
23 of the state. (Gov. Code § 11181(e); see *Franchise Tax Bd. v. Barnhart*, 105 Cal.App. 3d 274,
24 278-80 (1980) (FTB has subpoena power under § 11181 to investigate violations of the Political
25 Reform Act although not empowered by any specific statute to issue subpoenas).) Specifically,
26 administrative agencies may lawfully subpoena records when the subpoena is issued pursuant to
27 an investigation that has a lawfully authorized purpose within the power of the agency. (*City of*
28 *Santa Cruz v. Patel*, 155 Cal. App. 4th 234, 250 (2007).) Further, “the requirement of probable

1 cause ... is satisfied as long as the subpoenaed documents are relevant to the inquiry.” (*Id.*) The
2 subpoena must also specify documents to be produced which are adequate for purposes of the
3 relevant inquiry, but not excessive in light of the inquiry. (*Id.*) Additionally, administrative
4 agencies like the PEC can investigate not only completed acts which violate their laws, but also
5 “merely on suspicion that the law is being violated, or even just because it wants assurance that it
6 is not.” (*Brovelli v. Sup.Ct.* 56 C2d 524, 529 (1961).)

7 Here, the PEC is investigating, based on the factual record of suspicious activities, whether
8 any earmarked campaign contributions were improperly reported by a recipient campaign
9 committee, whether any campaign contributions were made or reported to that committee in a
10 name other than the legal name used by the original contributor(s), and whether a recipient
11 committee or its agent(s) caused, aided, or abetted any such violations(s). (*See* Russel Decl. at
12 Exh. H, Attach. 3.) If true, these activities would constitute violations of OMC sections 3.12.065
13 and 3.12.240.²

14 The Subpoenas seek records directly relating to that investigation. Specifically, the
15 Subpoenas request:

- 16 • Written records relating to funds actually or potentially raised by or offered
17 to each Respondent that also reference the recall campaign, expenditures for
18 signature-gathering or petitioning, reference earmarking, or contain specific
19 key words such as “oust” and “recall”;
- 20 • Written records concerning or referencing the making of a monetary or non-
21 monetary contribution to other Respondents or relating to any payment to or
22 contract with the Halftone Shop or On the Ground; and
- 23 • Written records related to the drafting or sending of the email in Attachment
24 1b of the Subpoenas, or any emails sent by or received from the same email
25 address referencing or concerning donations.

26 (Russell Decl. at Exh. H, Attach 1a.) Since the Subpoenas seek records relevant to the PEC’s
27 lawfully authorized purpose, there is no legitimate basis for Respondents’ non-compliance.
28

² OMC section 3.12.065 states that, “No contributions shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes.” OMC section 3.12.240 adopts the provisions of the California Political Reform Act, including Govt. Code §§ 84211, 84215 and 85704 which govern reporting and proper use of earmarked contributions.

1 **2. This Court May Compel Compliance with the Subpoenas**

2 If a person does not voluntarily comply with a subpoena, the PEC’s course of action is to
3 file a petition with the superior court for an order compelling compliance. (Gov. Code § 11186-
4 88.) California Government Code section 11187, subdivision (a), provides that if any witness
5 refuses to produce records required by a subpoena, the head of the department of the investigating
6 agency may petition the superior court in the county in which the investigation is pending for an
7 order compelling the person to produce the documents required by the subpoena. Pursuant to that
8 section, this Court is the proper court because the subpoena in question designates documents to
9 be produced in the County of Alameda. Consistent with its duty to enforce compliance with the
10 City of Oakland’s Campaign Reform Act, the PEC is investigating whether Respondents violated
11 OMC sections 3.12.065 and 3.12.240 and has acted within its authority to issue the Subpoenas to
12 further than investigation. Respondents have refused to comply. Therefore, this Court may
13 properly compel compliance with the Subpoenas.

14 **B. Respondents’ Objections Do Not Justify Noncompliance**

15 Respondents justify non-compliance on the basis of six objections: unreasonable deadline,
16 inaccessibility of records, attorney-client privilege, overbreadth, privacy concerns, and the PEC’s
17 supposed failure to negotiate. This is a series of inapplicable objections are inapplicable.

18 **1. The Subpoenas Offered a Flexible Deadline for Compliance**

19 Respondents claim the Subpoenas imposed an unreasonable timeline for compliance.
20 (Russell Decl. at Exh. J, p. 2.) That this objection is nothing more than a stall tactic is exemplified
21 by two facts: First, Respondents raised it without making any effort to negotiate an extension, as
22 explicitly authorized by the Subpoenas. (Russell Decl. at Exh. H.) Second, Respondents did not
23 rescind the objection when the PEC offered to re-issue the Subpoenas with a deadline 15 days
24 from the service date to correspond with Code of Civil Procedure 2020.410(c), which was cited in
25 Respondents’ objections.³ (Russell Decl. at Exh. L.)

26 _____
27 ³ While the PEC offered to reissue the Subpoenas with a deadline 15 days after service in an effort
28 to negotiate in good faith, it was not required to do so. Code of Civil Procedure 2020.410(c)
applies to subpoenas issued to non-parties in civil litigation, not investigative subpoenas issued as

1 Moreover, Respondents have made no effort to explain why they are unable to comply in a
2 timely fashion. Respondents have direct access to the records sought, can easily conduct keyword
3 searches for electronic records, and are only being asked to search records going back, at most,
4 five months. The eight days they originally had to respond were sufficient to do that work. And
5 the extensions offered by the PEC would have provided more than enough time for Respondents
6 to complete simple searches for records from such a slim period of time.

7 The Subpoenas imposed a reasonable deadline given the time-sensitive nature of the
8 investigation and the limited scope of the records sought. Even so, when pressed about the
9 deadline, PEC offered a reasonable extension. Given these facts, this objection is not a justifiable
10 basis for Respondents' refusal to comply with the Subpoenas.

11 **2. Respondents' Claim That They Lack Access to the Records is Hollow**

12 Respondents assert that communications between OUST and Oakland United officers,
13 directors, treasurers, employees, etc. are housed on the personal devices of those individuals and
14 thus not accessible by Respondents. (Russell Decl. at Exh. J, p. 2; *see also* Exh. L, p. 2.) To the
15 extent that this is true, the PEC asked Respondents to provide the names of those individuals
16 whose communications Respondents do not have access to, so that the PEC could issue subpoenas
17 directly to those individuals. This, again, was an effort by the PEC to negotiate, as the Subpoenas
18 seek the records described in the individuals' capacity as officers and thus those records must be
19 produced to the extent they are in Respondents' control. Respondents ignored this offer.

20 Given that the individuals referenced by Respondents are officers of the organizations,
21 Respondents should have the legal right to access at least some of the communications. And,
22 notably, Respondents have not claimed they have *no* access to any responsive records. Nor would
23 such a claim be credible. For example, the Subpoenas request certain emails sent from or received
24 by an organizational email (andrew@foundationaloaklandunites.org). (Russell Decl. at Exh. H,
25 Attach. 1a and 1b.) Respondent Oakland Unites PAC clearly has access to emails sent from its
26 own organizational domain.

27 _____
28 a part of an administrative investigation.

1 If Respondents were attempting to comply with the Subpoenas in good faith, they would
2 have produced some documents and they would have responded to PEC’s attempt to meet and
3 confer by providing the names of the individuals whose documents they claim they cannot access
4 so those individuals could be subpoenaed directly. They did neither. Given these facts, this
5 objection is not a justifiable basis for Respondents’ refusal to comply with the Subpoenas.

6 **3. The Subpoenas Do Not Seek to Invade the Attorney-Client Privilege**

7 Respondents also object to the Subpoenas on the grounds that some of the records sought
8 are protected by the attorney-client privilege. (Russell Decl. at Exh. J, p. 2.) In its June 6, 2024
9 letter, the PEC explained to Respondents that the Subpoenas do not seek privileged documents,
10 and that Respondents must still produce any responsive, non-privileged documents and include a
11 privilege log for any records withheld on privilege grounds. (Russell Decl. at Exh. K, p. 3.)
12 Moreover, the Subpoenas themselves expressly explain that:

13 For purposes of this subpoena, the use of the term “complete” in relation to a
14 written record means that the version of the record produced under this subpoena
15 shall not be redacted or abridged or in any way, *other than information legally*
16 *privileged* under the California Evidence Code. Any redaction or withheld record
17 must be accounted for on an accompanying privilege log with sufficient detail to
identify the particular record being redacted or withheld, the sender(s) and
recipient(s) of that record, and the basis for invoking a privilege as to that redaction
or withheld record.

18 (Russell Decl. at Exh. H, Attach. 1a.) (*emphasis added*). Thus, it was clear from the face of the
19 Subpoenas that Respondents need not produce privileged records. In any event, invocation of the
20 attorney-client privilege as to *some* records is not a basis for Respondents to completely avoid
21 producing *any* responsive documents. Respondents must produce responsive, non-privileged
22 records, as required by the lawfully issued Subpoenas.

23 **4. The Subpoenas are Tailored to Seek Records Relevant and Material to**
24 **the PEC’s Investigation**

25 Respondents also object on the basis that the Subpoenas are overbroad. Not so. Each
26 Subpoena was narrowly drafted to cover only written communications reasonably evidencing
27 earmarking. Indeed, the use of search terms such as “private,” “secret” or “anonymous” mirrors
28 the term used by Respondents when soliciting “private” donations. (Russell Decl. at Exh. H,

1 Attach. 1b.) The first request is precise, in that it seeks records relating to a specific recall
2 campaign, earmarking or payments specifically with respect to Respondents, and payments for
3 signature-gathering and petition services (given that such payments were flagged in the
4 investigation). (Russell Decl. at Exh. H, Attach. 1a.) The second request is also specific in seeking
5 records showing payments to specific entities, The Halftone Shop and On The Ground, which are
6 suspected to have received payments as a part of Respondents’ financing scheme. (*See id.*) The
7 third request seeks records pertaining to one specific email sent by Oakland Unites PAC and
8 emails related to that email, given that the email purported to solicit “private” contributions. (*See*
9 *id.* at Attach. 1a, 1b.)

10 Still, in its June 6th letter, the PEC invited Respondents to negotiate regarding the search
11 criteria and provide rolling productions in the meantime. (Russell Decl. at Exh. K, p. 3.)
12 Respondents declined the invitation, and instead of offering genuine suggestions regarding ways
13 to narrow the Subpoenas to satisfy their concerns, responded with a generic statement that they
14 would comply with Subpoenas that sought relevant information and were not overbroad. This
15 tactic is a clear indicator that Respondents are not interested in working with the PEC, and are
16 instead using boilerplate, inapplicable objections to delay responding so that they can continue to
17 keep the public in the dark about the donor information that they are legally required to disclose.
18 Given these facts, this objection is not a justifiable basis for Respondents’ refusal to comply with
19 the Subpoenas. Respondents must produce responsive, non-privileged records, as required by the
20 lawfully issued Subpoenas.

21 **5. Disclosure of the Information Sought by the Subpoenas is Justified by**
22 **the PEC’s Compelling Interest in Investigating Illegal Activity**

23 Respondents also claim the Subpoenas invade their members’ right to associational
24 privacy. (Russell Decl. at Exh. J, p. 3; *see also* Exh. L, p. 2). However, the right to associational
25 privacy “is not absolute” and “under some circumstances disclosure may permissibly be
26 compelled. (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 855.) When associational privacy is
27 triggered, the agency seeking disclosure must demonstrate a compelling purpose supporting the
28

1 disclosure, and the request for information must be precisely drawn so that only the necessary
2 information must be disclosed. (*Id.* at 855-65.)

3 Here, the PEC seeks information directly relevant and material to its investigation of
4 illegal conduct. The PEC has a compelling interest in obtaining the records sought in order to
5 further its investigation and identify any unlawful activity. The allegations of unlawful activity at
6 issue, if true, directly impact election integrity and the democratic process. As such, uncovering
7 potential violations of campaign finance laws in order to prevent corruption of the electoral
8 process is a significant compelling interest which justifies disclosure here. (*See Socialist Workers*
9 *etc. Committee v. Brown* (1975) 53 Cal.App.3d 879, 889.) Further, the Subpoenas themselves are
10 tailored to seek only those documents directly relevant to its investigation; nothing more and
11 nothing less. (Russell Decl. at Exh. H.) To the extent that Respondents disagree as to the scope of
12 the Subpoenas, the PEC offered to negotiate in order to assure that privacy interests are protected
13 and that only material documents are sought.

14 Moreover, to the extent that there is any privacy concern, Respondents and their members
15 are protected by Government Code section 11183, which prohibits disclosure of records seized
16 pursuant to an investigational subpoena. (*See Whitney v. Montegut* (2014) 222 Cal.App.4th 906,
17 920.) Under this statute, an officer who divulges information or evidence in violation of
18 this section is guilty of a misdemeanor and disqualified from acting in any official capacity in the
19 department. (Gov. Code § 11183.) Further, Government Code section 11181 which authorizes
20 investigative subpoenas even provides that records obtained via investigative subpoenas may be
21 shared with a relevant prosecuting attorney only if that person or agency “agrees to maintain the
22 confidentiality of the information received...” Thus, “the subpoena process itself guarantees
23 limited use and precludes unauthorized disclosure...” (*State Water Resources Control Bd. v.*
24 *Baldwin & Sons, Inc.* (2020) 45 Cal.App.5th 40, 64.)

25 Given these facts, this objection is not a justifiable basis for Respondents’ refusal to
26 comply with the Subpoenas. Respondents must produce responsive, non-privileged records, as
27 required by the lawfully issued Subpoenas.

28

1 **6. The PEC Attempted to Negotiate with Respondents in Good Faith**

2 Respondents further objected on the grounds that the PEC failed to negotiate or otherwise
3 work with Respondents to obtain the information necessary for the investigation. This assertion is
4 legally unsound and contradicted by the facts. There is no legal requirement that the PEC negotiate
5 with anyone before subpoenaing their records as a part of an ethics investigation. But even if there
6 was such a requirement, PEC *did* attempt to resolve this matter with OUST before subpoenaing
7 their records. The PEC contacted OUST principal officer Brenda Harbin-Forte about the
8 allegations on April 8, 2024. (*See* Russell Decl. at Exh. K, p. 2.) However, she failed to adequately
9 respond to the allegations. (*See id.*) The PEC again contacted Ms. Harbin-Forte on May 21, 2024,
10 just prior to serving the subpoenas, and again she failed to address the allegations. (*See id.*)

11 The PEC continued to meet and confer after the Subpoenas were issued. The Subpoenas
12 themselves offered contact information for the PEC if Respondents desired an extension or had
13 any other issues with the Subpoenas. The PEC’s June 6th letter further reiterated its openness to
14 negotiation as to timeline, breadth, and accessing the records of Respondents’ officers. As the
15 record makes clear, it is Respondents—not the PEC—who have failed to negotiate in good faith,
16 and have instead unnecessarily delayed complying with the Subpoenas, necessitating the instant
17 Petition and Motion.

18 **IV. CONCLUSION**

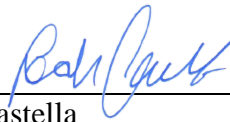
19 If the PEC’s investigation substantiates violations of Oakland’s Campaign Reform Act,
20 Respondents are actively using unlawful practices to further their recall campaign. The PEC issued
21 the Subpoenas to expedite its investigation and identify any unlawful behavior in time to take
22 corrective actions, if necessary.

23 Recent reports indicate that the recall campaign has gathered the requisite signatures, and
24 thus it is anticipated that the recall will appear on the November ballot. Respondents’ boiler plate
25 and unpersuasive objections to the Subpoenas combined with their failure to engage in any
26 meaningful meet and confer are a blatant attempt to resist compliance with Oakland’s campaign
27 finance laws, precluding voters from knowing who is contributing to the recall campaign. This
28 Court should not countenance this blatant attempt to avoid compliance and should instead order

1 Respondents Oakland United To Recall Sheng Thao, Foundational Oakland United, and
2 Foundational Oakland Unites to produce documents responsive to the Subpoenas immediately.

3
4 Dated: June 27, 2024

BURKE, WILLIAMS & SORENSEN, LLP

5
6 By: 
7 J. Leah Castella
8 Attorneys for Petitioner City of Oakland
9 Public Ethics Commission, a city
10 government agency

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

**City of Oakland Public Ethics Commission v. Oakland United to Recall Sheng Thao
(OUST), et al.
Case No. 24CV081048**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 444 South Flower Street, Suite 2400, Los Angeles, CA 90071-2953.

On June 27, 2024, I served true copies of the following document(s) described as **NOTICE OF MOTION AND MOTION TO COMPEL OAKLAND UNITED TO RECALL SHENG THAO, FOUNDATIONAL OAKLAND UNITED, AND FOUNDATIONAL OAKLAND UNITES' COMPLIANCE WITH THE CITY OF OAKLAND PUBLIC ETHICS COMMISSION'S INVESTIGATIVE SUBPOENAS** on the interested parties in this action as follows:

TODD PICKLES
Email: picklest@gtlaw.com
GREENBURG TRAUERIG, LLP
400 Capitol Mall #2400
Sacramento, CA 95814


Attorney for Respondents,
OAKLAND UNITED TO RECALL SHENG THAO (OUST), FOUNDATIONAL OAKLAND UNITED, and FOUNDATIONAL OAKLAND UNITES

Tel: (916) 868-0628
Fax: (916) 448-1709

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address lvillarroel@bwslaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on June 27, 2024, at Los Angeles, California.



Lisa Villarroel

Villarroel, Lisa

From: Mulhall, Alexandra L.
Sent: Thursday, June 27, 2024 2:21 PM
To: Villarroel, Lisa
Subject: FW: Hearing date reservation request - 24CV081048 Motion to Compel

Alexandra L. Mulhall | Associate

Pronouns: she, her, hers

444 South Flower Street, Suite 2400 | Los Angeles, CA 90071

d - 213.236.2738 | t - 213.236.0600 | f - 213.236.2700

amulhall@bwsllaw.com | bwsllaw.com



The information contained in this e-mail message is intended only for the CONFIDENTIAL use of the designated addressee named above. The information transmitted is subject to the attorney-client privilege and/or represents confidential attorney work product. Recipients should not file copies of this email with publicly accessible records. If you are not the designated addressee named above or the authorized agent responsible for delivering it to the designated addressee, you received this document through inadvertent error and any further review, dissemination, distribution or copying of this communication by you or anyone else is strictly prohibited. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONING THE SENDER NAMED ABOVE AT 800.333.4297. Thank you.

From: Dept. 520, Superior Court <dept520@alameda.courts.ca.gov>
Sent: Thursday, June 27, 2024 12:03 PM
To: Scott, Anne M. <AScott@bwsllaw.com>
Cc: Mulhall, Alexandra L. <AMulhall@bwsllaw.com>; Castella, J. Leah <LCastella@bwsllaw.com>
Subject: Re: Hearing date reservation request - 24CV081048 Motion to Compel

[EXTERNAL]

Dear Counsel,

You are in luck I just had a matter drop 8 motions for 7-19. Your matter is set for this date if you can properly make all notice requirements.

With regard to your request for a law and motion reservation, please read this entire email as it contains necessary information for your hearing:

1. Your motion is reserved for hearing on 07-19-24 in Department 520. Reservation number is A-81048-001 hearings are 2:00p.m. IF it turns out you no longer need this reservation, please promptly notify the court so the motion can be dropped from calendar.

2. Documents must be filed well in advance of the hearing date or they may not be electronically scanned and available to the court by the hearing. In addition, hard copies must be delivered to Department 520 the same day as filed. Proof of service for the motion(s) and/or opposition must also be filed with the court before the hearing.

3. The reservation number, hearing date and your **email address must appear** on all face pages of all documents filed with the court.

Moving parties MUST give written notice of these requirements to all responding parties. Hearings for which hard copies were not timely received may be dropped or continued at the court's discretion.

4. **If a party timely contests the Court's tentative ruling on a motion, the court will THEN send out invitations to appear via ZOOM. Please note that the date to appear for oral argument may be different than your motion date, possible new date and times will be given along with the Zoom information. Please make sure all parties are aware that no ZOOM information will be given out prior to the matter being contested. You must include all parties in your email to the court contesting the matter!!!**

Please include the following information in your notice of motion:

Dept. 520 requires advance notice of intent to contest a tentative ruling (TR) in all law and motion matters. Your TR can be read on the internet at www.alameda.courts.ca.gov/domainweb , calendar information for Dept. 520, or can be heard by calling (866) 223-2244. The TR will automatically become the final order of the court unless by no later than 4:00p.m. on the court day before the hearing a party (1) notifies the court and all opposing parties by e-mail at Dept520@alameda.courts.ca.gov and states specifically the issue they are contesting in the tentative ruling, OR (2) notifies all opposing counsel or unrepresented parties by phone or in person that the party intends to appear to contest the TR and advises the court of such. Contests that have not been properly noticed will not be heard. You must include all parties in your email to the court contesting the matter.

The court does not provide court reporters for hearings in civil departments. A party who wants a record of the proceedings must engage a private court reporter. (See amended Local Rule 3.95)

WITH REGARD TO MOTIONS to COMPEL DISCOVERY:

The court requires "meaningful" meet and discovery prior to filing, which means in-depth, in-person discussion which has been documented in writing. Brief emails demanding compliance without detailed explanation do not qualify as "meet and confer."

Parties must comply with the new provisions of CCP 2016.090 (a)(1)(A-C) which require each party who has appeared to provide certain "initial disclosures" to the other parties within 60 days of a demand, unless modified by stipulation. "Initial disclosures" include but are not limited to names and contact info on all parties with discoverable information; a copy of all relevant documents in that party's possession, including contracts and insurance policies.

Mandatory sanctions of \$1000 are available against any party who fails to meaningfully meet and confer, fails to make "initial disclosures" in good faith, or who produces discovery within 7 days of a hearing on a MTC discovery.

Danielle Labrecque (Madam Clerk)
Courtroom Clerk D520

From: Scott, Anne M. <AScott@bwslaw.com>
Sent: Thursday, June 27, 2024 11:55 AM
To: Dept. 520, Superior Court <dept520@alameda.courts.ca.gov>
Cc: Mulhall, Alexandra L. <AMulhall@bwslaw.com>; Castella, J. Leah <LCastella@bwslaw.com>
Subject: RE: Hearing date reservation request - 24CV081048 Motion to Compel

Dear Clerk of the Court,

Thank you for your response. This motion is rather urgent, having to do with subpoenas related to the election and the campaign to recall the Mayor of Oakland, Sheng Thao. Is there any possibility that the court will allow us to have the motion heard on July 19? If not, we will need to go in ex parte.

Thank you in advance for your assistance with this matter.

Respectfully,

Anne Scott

Anne Scott, Legal Secretary

1999 Harrison Street, Suite 1650 | Oakland, CA 94612-3520

d - 510.903.8846 | t - 510.273.8780 | f - 510.839.9104

ascott@bwsllaw.com | bwsllaw.com



The information contained in this e-mail message is intended only for the CONFIDENTIAL use of the designated addressee named above. The information transmitted is subject to the attorney-client privilege and/or represents confidential attorney work product. Recipients should not file copies of this email with publicly accessible records. If you are not the designated addressee named above or the authorized agent responsible for delivering it to the designated addressee, you received this document through inadvertent error and any further review, dissemination, distribution or copying of this communication by you or anyone else is strictly prohibited. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONING THE SENDER NAMED ABOVE AT 800.333.4297. Thank you.

From: Dept. 520, Superior Court <dept520@alameda.courts.ca.gov>
Sent: Thursday, June 27, 2024 9:07 AM
To: Scott, Anne M. <AScott@bwsllaw.com>
Cc: Mulhall, Alexandra L. <AMulhall@bwsllaw.com>
Subject: Re: Hearing date reservation request - 24CV081048 Motion to Compel

[EXTERNAL]

Counsel,

What date works better for you August 9th or August 16th?

Danielle Labrecque
Courtroom Clerk D520

From: Scott, Anne M. <AScott@bwsllaw.com>
Sent: Wednesday, June 26, 2024 2:51 PM
To: Dept. 520, Superior Court <dept520@alameda.courts.ca.gov>
Cc: Mulhall, Alexandra L. <AMulhall@bwsllaw.com>
Subject: Hearing date reservation request - 24CV081048 Motion to Compel

Dear Clerk of the Court,

I am writing to request a hearing date for case no.: 24CV081048 for a Motion to Compel.

The full name of the motion is: Motion to Compel Oakland United to Recall Sheng Thao, Foundational Oakland United and Foundational Oakland Unites' Compliance with the City of Oakland Public Ethics Commission's Investigative Subpoenas.

If possible, a hearing date on the morning of July 24th, 25th, or anytime July 16th, 2024 is ideal. Please let us know what hearing date is available.

Thank you in advance for your assistance with this matter.

Anne Scott, Legal Secretary

1999 Harrison Street, Suite 1650 | Oakland, CA 94612-3520

d - 510.903.8846 | t - 510.273.8780 | f - 510.839.9104

ascott@bwsllaw.com | bwsllaw.com



The information contained in this e-mail message is intended only for the CONFIDENTIAL use of the designated addressee named above. The information transmitted is subject to the attorney-client privilege and/or represents confidential attorney work product. Recipients should not file copies of this email with publicly accessible records. If you are not the designated addressee named above or the authorized agent responsible for delivering it to the designated addressee, you received this document through inadvertent error and any further review, dissemination, distribution or copying of this communication by you or anyone else is strictly prohibited. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONING THE SENDER NAMED ABOVE AT 800.333.4297. Thank you.