

24-139

ORIGINAL

IN THE
Supreme Court of the United States

FILED
JUL 30 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

LEI JIANG; ZHI WU,

Petitioners,

v.

KEVIN CHU, AIMEE RAN SONG, XIAOXIN CHEN,
AND COLDWELL BANKER REALTY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ALAMEDA

PETITION FOR A WRIT OF CERTIORARI

LEI JIANG
Pro Se Petitioner
ZHI WU
Pro Se Petitioner
5612 Evolene St.
Danville, CA 94506
(937) 554-9295
leij@smu.edu

July 30, 2024

116979



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

6.12 million homes were sold nationally in 2021.⁷ Petitioners' property could have been one of them, if they were not defrauded by Respondents. Facing the buyer's lawsuit alleging breach of contract, specific performance, and damages, Petitioners raised an affirmative defense to rescind a counteroffer on the grounds of fraud. The complete communications between the real estate agents and the buyer during the incident are believed to provide direct evidence to determine whether Respondents conspired in the fraud and harassment. Respondents agreed to comply with the discovery requests to produce all the communications but failed to produce complete records. Petitioners' subpoena to third-party phone providers for phone records also faced non-compliance. Despite Petitioners having established in court proceedings good cause to compel and that the records requested met all the required elements in relevant statutes, the trial court denied Petitioners' Motion to Compel production of business records which contradicts the decisions in multiple similar cases in California Superior Courts. The denial of the motion effectively disregarded Petitioners' due process rights to a fair trial and prevented Petitioners from obtaining sufficient evidence to establish their claims and defenses which would lead to Petitioners losing their property. The lack of legal stability could lead to State depriving person's life, liberty, or property, without due process of law which is a violation of the Fourteenth Amendment to the U.S. Constitution.

The question presented is:

Whether the Due Process Clause of the Fourteenth Amendment was violated when the California Superior

Court for the County of Alameda denied Petitioners' Motion to Compel third-party phone provider AT&T's responses to deposition subpoena for production of business records which effectively denied Petitioners' access to the critical evidence – the nonprivileged, relevant, and proportional communications between the buyer Respondent and the real estate agent Respondents, to prove Petitioners' real estate fraud case and prevent their property from being deprived without due process of law.

PARTIES TO THE PROCEEDING

The petitioners are Lei Jiang and Zhi Wu. Petitioners were defendants and cross-complainants in the state trial court and appellants in the court of appeals.

The Respondents are Kevin Chu, Aimee Ran Song, Xiaoxin Chen, and Coldwell Banker Realty. Respondent Chu was the plaintiff and cross-defendant in the state trial court and appellee in the court of appeals. Respondents Song, Chen and Coldwell Banker Realty were the cross-defendants in the state trial court and appellees in the court of appeals.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the California Superior Court for the County of Alameda, the California Court of Appeal, and the California Supreme Court:

- *Chu v. Wu et al.*, No. HG21106221 (Cal. Super. Ct.), order denying Petitioners' Motion to Compel AT&T's responses to deposition subpoena for production of business records, issued December 13, 2023;
- *Chu v. Wu et al.*, No. HG21106221 (Cal. Super. Ct.), order denying Petitioners' Motion for Reconsideration of Cal. Super. Ct.'s order entered December 13, 2023 denying Petitioners' motion to compel AT&T's responses to deposition subpoena for production of business records, issued February 15, 2024;
- *Wu et al. v. Super. Ct.*, No. A169631 (Cal. Ct. App.), Petition for Writ of Mandate denied February 21, 2024;
- *Jiang et al. v. Super. Ct.*, No. S284025 (Cal.), Petition for Review denied May 1, 2024.

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	iii
STATEMENT OF RELATED PROCEEDINGS	iv
TABLE OF CONTENTS.....	v
TABLE OF APPENDICES	vii
TABLE OF CITED AUTHORITIES	ix
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
I. Background	2
II. Discovery Issues	7
III. Proceedings Below	12
REASONS FOR GRANTING THE PETITION....	20

Table of Contents

	<i>Page</i>
I. The Trial Court Violated the Due Process Clause by Flouting the Statutes Governing the Scope of Discovery, the Procedures for Subpoenaing Business Records and Exceptions for Disclosure Without Subscriber Consent in Civil Cases	20
II. The Court Should Grant Certiorari to Ensure Consistency in the Law and Provide a Uniform Interpretation of the Statutes Governing the Procedures for Subpoenaing Business Records and Exceptions for Disclosure Without Subscriber Consent in Civil Cases	29
III. The Issue Presented in This Petition is of Exceptional Public Interest and Could Set a Precedent	32
CONCLUSION	36

TABLE OF APPENDICES

	<i>Page</i>
Appendix A — Order of Superior Court of California, County of Alameda, Dated December 13, 2023	1a
Appendix B — Tentative Ruling of Superior Court of California, County of Alameda, Dated December 12, 2023	4a
Appendix C — Order of Superior Court of California, County of Alameda, Dated February 15, 2024	7a
Appendix D — Order of Supreme Court of California, Dated May 1, 2024.....	10a
Appendix E — Order of California Court of Appeal, First Appellate District, Division Three, Dated February 21, 2024.....	11a
Appendix F — Transcript of Proceedings in the Superior Court of California, County of Alameda, Dated September 16, 2021	12a
Appendix G — Email to Police Reporting an Email Impersonating Chief Justice of the United States John Roberts	47a
Appendix H — Transcript of Motion Hearing in the Superior Court of California, County of Alameda, Dated December 13, 2023	50a

Table of Appendices

	<i>Page</i>
Appendix I — Transcript of Motion Hearing in the Superior Court of California, County of Alameda, Dated February 15, 2024	61a
Appendix J — Tentative Ruling of Superior Court of California, County of San Bernardino, Dated April 11, 2023	69a
Appendix K — Relevant Constitutional and Statutory Provisions	76a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<i>Arnett v. Dal Cielo,</i> 14 C4th 20, 56 CR2d 706 (1996)	23
<i>Arnold et al. v. Ford Motor Company et al.,</i> Case No. 20STCV45317, Los Angeles County Superior Court, June 14, 2022	16, 30
<i>Babbitt v. Sweet Home Chapter,</i> 515 U.S. 687 (1995).....	17
<i>Barnhart v. Thomas,</i> 540 U.S. 20 (2003).....	17
<i>Bates v. Jean,</i> 745 F.2d 1146 (7th Cir. 1984).....	18
<i>Brotherhood of R.R. Trainmen v.</i> <i>Baltimore & O.R. Co.,</i> 331 U.S. 519 (1947)	17
<i>Carey v. Piphus,</i> 435 U.S. 247 (1978).....	28
<i>Emerson Elec. Co. v Superior Court,</i> 16 C4th 1101, 68 CR 2d 883 (1997)	25
<i>Fahy v. Sauter et al.,</i> No. CGC-19-579316, San Francisco County Super. Ct., Apr. 8, 2021	32

	<i>Cited Authorities</i>	<i>Page</i>
<i>Getz v. Superior Court,</i> 72 Cal.App.5th 637 (2021)	19	
<i>Glenfed Development Corp. v. Superior Court,</i> 53 Cal.App.4th 1113 (1997)	13, 25	
<i>Gonzales v. Sup. Ct.,</i> 33 Cal.App.4th 1539 (1995)	16	
<i>Greyhound Corp. v. Superior Court,</i> 56 C2d 355, 15 CR 90 (1961)	23, 25, 26	
<i>Guzman v. Jensen et al.,</i> No. CIVSB2210351, San Bernardino County Super. Ct., Apr. 11, 2023	16, 29, 31	
<i>Kaur v. City of Lodi,</i> No. 2:14-CV-0828 (E.D. Cal., Jan. 28, 2016)	31	
<i>Lee v. Global Tel*Link Corp.,</i> 2017 WL 11272587 (C.D. Cal. Dec. 6, 2017).....	17	
<i>Mathews v. Eldridge,</i> 424 U.S. 319 (1976)	28	
<i>McArdle v. AT&T Mobility LLC,</i> No. C 09-1117 CW (N.D. Cal., Apr. 16, 2010).....	31	
<i>Miranda v. 21st Century Ins. Co.,</i> 117 Cal.App.4th 913 (2004)	31	

Cited Authorities

	<i>Page</i>
<i>Monarch Healthcare v. Cassidenti,</i> 78 Cal.App.4th 1282 (2000).....	12
<i>Moore v. Reda Balarbi & Assocs.,</i> 2017 Cal. Super. LEXIS 21534.....	31
<i>Sitzer et al v. National Association of Realtors, et al.,</i> Case No. 4:2019cv00332, U.S. District Court for the Western District of Missouri.....	33
<i>Wawanessa General Ins. Co. v. Dargbe, et al.,</i> No. 18VECV00178, Los Angeles County Super. Ct., Mar. 11, 2020.....	31
<i>Zimmerman v. Loose,</i> 162 Colo. 80, 425 P.2d 803 (1967)	23

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V	22
U.S. Const. amend. XIV.....	20, 21, 22, 27, 28
U.S. Const. amend. XIV, § 1.....	2, 21

STATUTES, RULES AND REGULATIONS

Civ. Code § 1689(b)(1)	2, 5, 23
Code Civ. Proc., § 1008(a).....	2, 18

Cited Authorities

	<i>Page</i>
Code Civ. Proc., § 1094.5(c)	15
Code Civ. Proc., § 1985.3(f)	2, 11
Code Civ. Proc., § 1985.3(g)	2, 11, 12
Code Civ. Proc., § 1987.1.....	2, 16, 19, 30
Code Civ. Proc., § 1987.1(a).....	25
Code Civ. Proc., § 2017.010	2, 16, 25
Fed. R. Civ. P. 26(b)(1).....	2, 25
Pub. Util. Code, § 2891	11, 13, 31
Pub. Util. Code, § 2891(a)(1).....	2, 14, 15, 16, 17
Pub. Util. Code, § 2894	2, 16, 17, 19, 30, 31, 32
Pub. Util. Code, § 2894(a).....	13, 14
Pub. Util. Code, § 2894.10.....	17

OTHER AUTHORITIES

https://law.justia.com/constitution/us/amendment-14/05-procedural-due-process-civil.html	28
https://nowbam.com/industry-lawsuit-watch-tracking-real-estates-biggest-legal-battles/	33

Cited Authorities

	<i>Page</i>
https://www.cato.org/cato-handbook-policymakers/cato-handbook-policy-makers-8th-edition-2017/property-rights-constitution# suggested-readings	28
https://www.foxbusiness.com/lifestyle/real-estate-fraud-risk-on-rise-victims-sounding-alarm	34
https://www.karbasianlaw.com/common-types-of-real-estate-agent-or-broker-fraud/	34
https://www.law.cornell.edu/constitution-conan/amendment-14/additional-requirements-of-procedural-due-process	21
https://www.law.cornell.edu/wex/fifth_amendment	22
https://www.law.cornell.edu/wex/procedural_due_process	22
https://www.nar.realtor/research-and-statistics/research-reports/highlights-from-the-profile-of-home-buyers-and-sellers	33
https://www.statista.com/statistics/226144/us-existing-home-sales/	32

PETITION FOR WRIT OF CERTIORARI

Petitioners Lei Jiang and Zhi Wu respectfully request that this court issue a writ of certiorari to reverse and remand the decisions below.

OPINIONS BELOW

The Supreme Court of California summarily denied Petitioner's Petition for Review on May 1, 2024 with order reproduced at App.10a. The First Appellate District of the Court of Appeal of California summarily denied Petitioner's Petition for Writ of Mandate on February 21, 2024 with order reproduced at App.11a. The California Superior Court for the County of Alameda denied Petitioners' Motion to Compel AT&T's responses to deposition subpoena for production of business records on December 13, 2023. The general order is unpublished and reproduced at App.1a-3a. The tentative ruling issued on December 12, 2023 is unpublished and reproduced at App.4a-6a. The California Superior Court for the County of Alameda denied Petitioners' Motion for Reconsideration of its order denying Petitioners' Motion to Compel AT&T's responses to deposition subpoena for production of business records on February 15, 2024. The general order is unpublished and reproduced at App.7a-9a.

STATEMENT OF JURISDICTION

The Supreme Court of California entered judgment on May 1, 2024. App.10a. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions (U.S. Const. amend. XIV, § 1 (Due Process Clause); Code Civ. Proc., § 1987.1; Pub. Util. Code, § 2891(a)(1); Pub. Util. Code, § 2894; Fed. R. Civ. P. 26(b)(1); Code Civ. Proc., § 2017.010; Code Civ. Proc., § 1985.3, subsections (f) and (g); Civ. Code § 1689(b)(1); Code Civ. Proc., § 1094.5(c); Code Civ. Proc., § 1008(a)) are reproduced in Appendix K to this petition at App.76a-90a.

STATEMENT OF THE CASE

I. Background

Petitioners, Aimee Ran Song (“Song”), Xiaoxin Chen (“Chen”) (collectively “Agents”), and Coldwell Banker Realty (“CB”) entered into agreements to buy and sell houses. Agents failed to perform. Agents worked with their buyer, Plaintiff Kevin Chu (“Chu”), to create a false urgency and tricked Petitioners into signing a one-page counteroffer without seeing the Purchase Agreement. Petitioners would not have signed the counteroffer without the false urgency and misrepresentation.

Agents also told Petitioners there was no ratified contract if Petitioners did not sign the Purchase Agreement about the house they tried to sell (“Fremont Property”). However, they referred their buyer, Chu to his current counsel and encouraged him to file a malicious lawsuit against Petitioners.

Petitioners could no longer trust Agents after finding out their misrepresentations and sent a timely

email to cancel the listing agreement before they signed the purchase agreement. Petitioners also immediately started to pay Agents the listing costs according to the listing agreement and an email about listing costs. However, Agents asked for more money that was not on the listing agreement, claiming Petitioners must pay for their buyer's damages of \$150,000 because Chu had his children withdraw from school and had canceled his rental apartment immediately after he signed the counteroffer. Agents also claimed Petitioners must pay them because they previously had another seller must pay their buyer tens of thousands of dollars when the seller decided not to sell the house. Agents tried to pressure Petitioners to pay by stating their buyer would file a lawsuit against Petitioners if they do not pay the unjustified damages claimed.

After Petitioners did not agree to pay after consulting attorneys, Agents started to harass and threaten the safety of Petitioners' family. Agents acted as the collection agency, kept calling and sending text messages many times a day, or appeared in the house Petitioners rented from Song twice in a day to urge Petitioners to pay their buyer's huge damages. On July 7, 2021, Agents called Petitioners and said: "The most important is to protect your family." App.20a, 39a. This shocked Jiang, so she asked, "Are you threatening me? What do you mean? Why do I need to protect my family because we did not sell the house?" Agents did not deny or explain. The phone calls and texts from Agents continued until the end of July 2021, almost a month after Petitioners refused to sign the Purchase Agreement. Petitioners asked Agents multiple times to stop harassing them since they had an attorney handling the lawsuit, but Agents continue working with Chu to bypass Petitioners' attorney to contact them.

After threatening the safety of Jiang's family, Agents even attempted to get hold of the keys to the new house Petitioners bought without Petitioners' authorization. App.20a-22a. This caused Jiang and her family great fear for their safety, including an elder over 65 and three children under 10. Jiang had to file restraining orders ("RO") (No. HG21106045 (Cal. Super. Ct.) and No. HG21106052 (Cal. Super. Ct.)) to stop Agents from contacting her, which were granted on September 16, 2021, after two hearings. Agents had appealed but got dismissed. On September 18, 2021, two days after the RO were granted, Petitioner Jiang received an email titled "ARE YOU STILL ALIVE?" from someone pretending to be Chief Justice of the United States, John Roberts that Jiang found shocking and immediately reported to police and requested an investigation. App.47a-49a.

Ever since the hearing notice of RO were served to Agents by police on or around August 5, 2021, Jiang received severe harassments that never happened to her before such as cyberstalking by a large number of fake accounts on social media ever since Chu and Song's husband Jeffery Wang visited Jiang's LinkedIn profile in August 2021, including certain account named itself "Real Estate Agent"; blackmail email on August 11, 2021 claiming had control of Jiang's devices and requested money to be sent within 36 hours or otherwise would expose Jiang's privacy which caused Jiang extremely worried because Chen's husband was a cybersecurity expert; non-stop facetime calls days and nights for a week right after the RO were granted until Jiang was forced to change her business phone number; weird daily phone calls that the callers remained silent and hang up. Jiang had suffered severe emotional distress from Agents'

harassment and threatening and had to see therapist for two years.

With the counsel referred to by Song, in July 2021, Chu filed a complaint against Petitioners, alleging breach of contract, specific performance, and actual damage of \$150,000, even though no fully executed contract existed.

Petitioners brought a cross-complaint against Chu, Agents, and CB for fraud, breach of contract, and intentional infliction of emotional distress (“IIED”). Petitioners also had a cause of action to rescind the counteroffer on the grounds of fraud in their cross-complaint under Civ. Code § 1689(b)(1). App.86a.

Thereafter, Agents and CB cross-complained against Petitioners 15 days after they filed an answer to Petitioners' cross-complaint, alleging Petitioners owe CB commission of \$63,200 for the house that was not sold through CB.

CB also claimed in their cross-complaint that Petitioners owe them the cost of preparing the Property for marketing of \$9,100, even though by that time Petitioner had already paid Agents over \$8,000 of the listing cost. The rest of the amount not paid was due to Agents did not provide valid receipt for the items as they agreed.

Moreover, Respondents tried to gain unfair leverage and increase Petitioners' financial burden by abuse of litigation. In January 2022, Song was advised by CB to file a baseless copyright infringement lawsuit against Petitioners with fabricated evidence to support the claim. The case number is 3:22-cv-00002-JD Song

v. Jiang et al in California Northern District (San Francisco). In that lawsuit, Song fabricated a backdated Copyright Assignment Agreement between Song and the photographer Ruixiang Yu, so that she could have a standing to file the lawsuit which claimed Petitioners had used her photos of Petitioner's Fremont Property to market their house for rent in July 2021. Song also lied to the court under penalty of perjury about signing the copyright assignment agreement in June 2021 in her written discovery response to interrogatories. The business record produced by DocuSign in response to the subpoena had proved the copyright assignment was signed in December 2021. Song lied about the critical time and committed perjury because if Song did not lie, she would have no standing to bring the lawsuit since she did not even own the copyright during the time period she claimed there was copyright infringement.

According to Song's sworn declaration in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment, her broker firm's attorneys advised her to file the copyright infringement lawsuit. During January 26, 2023 hearing on Jiang's Motion for Summary Judgement, the Federal court asked Song's attorney why Song filed that lawsuit. Song's attorney Mr. Liu could not provide any proper reason nor any evidence of copyright infringement. Instead, he complained "as the Court knows, . . . , the state court sometimes can be chaotic." After that argument, Mr. Liu requested the court to stay the case.

Petitioners are ordinary law-abiding citizens who had never been involved in any lawsuit before this set of lawsuits initiated by the Respondents. Jiang is a Data Scientist with deep knowledge in Biomedical Engineering who applied state-of-art AI technologies

to help diagnose cancer and treat cancer patients and build machine learning models to protect the financial security of consumers. Wu is a senior hardware engineer in the semiconductor industry. Petitioners worked hard in their jobs to contribute to society. On the other hand, Chu has criminal records such as being prosecuted felony for attempted cheating at river boat gambling, owes Federal Tax Lien of \$43,469.60, has multiple defaults, foreclosures, and bankruptcy based on public records, and seems experienced with legal proceedings from his experience. Although Chu claim to be an individual, he worked closely with CB during the lawsuit which could be demonstrated by Chu did not compel CB when CB did not provide verified responses to Chu's written discovery requests, while Chu filed multiple motions to compel Petitioners after Petitioners responded with hundreds of pages of verified responses.

The case in Superior Court of California is in the discovery stage. Opposing parties had already filed a joint motion to continue the trial date from May 31, 2024 to November 22, 2024 which was granted on March 6, 2024. A second motion to continue or in the alternative, vacate the trial date was filed by Plaintiff Chu on June 25, 2024 and was granted such that a new trial date will be decided in Case Management Conference on November 12, 2024 according to the trial court's order.

II. Discovery Issues

Key to Petitioners' case are the communications between Chu and Agents, which are crucial for determining Respondents' involvement in creating false urgency and harassment since phone calls and text messages

appeared to be the primary method Chu and the Agents communicated.

On or about February 9, 2022, Petitioners served Chu written discovery requests. Special Interrogatory No. 13 and 15, as well as Request for Production No. 4 and 6 were asking Chu to identify and produce all communications documents relating to the property that Chu had ever made with Song and Chen. The requested records could establish Petitioners' claims of fraud, IIED, and breach of fiduciary duty, as well as their defenses such as unclean hands, no contract, no breach and performance excused.

Chu responded, "will comply with this request, to the extent it is understood, by producing copies of all non-privileged responsive documents." However, the text messages Chu produced looked truncated and no phone call records were produced. The earliest date of the text messages was on June 25, 2021, which is days after June 22 and June 23 when the counteroffers were signed. After meeting and conferring, an additional page of text messages between Chu and Song showing Song had referred Chu's attorney Mr. Hartnett to Chu was produced on January 20, 2023, but further records were refused.

Petitioners' written discovery requests to CB, Song and Chen also requested communication between Respondents. Similarly, CB, Song and Chen responded "will comply" but they did not produce complete text messages and phone call history. Moreover, Respondents did not file any protective order regarding the requested communications.

Text messages from Song to Petitioners on or around June 22 and June 23, 2021 showing Song told Petitioners

Chu had another house already accepted his offer with the other house's address clearly stated. Text messages from Chen to Petitioners on June 23, 2021 showing Chen urged Petitioners to sign their buyer Chu's counteroffer before 10 A.M. on June 23, 2021, stating otherwise Chu would buy the other house which already accepted his offer. To further urge the Petitioners, Agents also called Petitioners to say Chu was such a good buyer that they could never find any buyer as good as him if they missed Chu. Chu's one-page counteroffer was then sent at 9:40 A.M. on June 23, 2021 which allowed Petitioners less than 20 minutes to sign a counteroffer without even seeing the main purchase agreement. After signing the counteroffer, Petitioners found out the other house did not accept Chu's offer. Petitioners found the false urgency to trick them into signing the counteroffer suspicious and refused to sign the purchase agreement when Agents sent it on June 24, 2021.

In addition to proving fraud, the records are relevant to proving the conspiracy of the harassment and threat against Petitioners and their family. For example, based on Chu's discovery response, Chu had text messages with Song at around 8:38 p.m. on August 23, 2021, when Chu said he would call Song at about 9 p.m. A couple of hours after these communications, around 11 p.m. on August 23, Chu visited Jiang's LinkedIn profile page. Shortly after Chu's visit, a series of online harassment towards Jiang began. However, Chu refused to produce any text messages nor phone calls beyond August 23, 2021.

Although it could be inferred that Chu must have had communications with Agents during the incident, there was lack of solid evidence to prove which communications Chu did not produce. Thus, it was hard for Petitioners to file a Motion to Compel Respondents for further response

based on mere speculation. Moreover, without records requested from AT&T, even Petitioners managed to compel Respondents to produce more records, it was impossible for Petitioners to verify the completeness of the records. Petitioners had to subpoena third-party phone provider AT&T to obtain the complete records, but AT&T did not comply. Deposition Subpoena for Production of Business Records issued by Petitioners' previous attorney to the Custodian of Records for AT&T along with Notice to Consumer or Employee and Objection directed to Chu, Song and Chen was served to all parties on April 17, 2023, and that the Deposition Subpoena was personally served on AT&T by the deposition officer on April 27, 2023. The deposition subpoena to AT&T requested the following records:

1. Any and all Short Message Service (SMS) messages, Multimedia Messaging Service (MMS) messages, message detail records, call detail records, voice messages, and meta data between (408) 857-0968 (Kevin Chu) and (510) 203-6970 (Xiaoxin Stella Chen) from January 1, 2021 through the present.
2. Any and all Short Message Service (SMS) messages, Multimedia Messaging Service (MMS) messages, message detail records, call detail records, voice messages, and meta data between (408) 857-0968 (Kevin Chu) and (408) 693-5188 (Aimee Ran Song) from January 1, 2021 through the present.
3. Any and all Short Message Service (SMS) messages, Multimedia Messaging Service (MMS) messages, message detail records, call

detail records, voice messages, and meta data between (408) 857-0968 (Kevin Chu) and (510) 990-9999 (Aimee Ran Song) from January 1, 2021 through the present.

The production date in the subpoena was May 15, 2023. On May 30, 2023, AT&T emailed the deposition officer to refuse to comply and the reason they could not produce was due to a Motion to Quash (“MTQ”) filed by CB. Petitioners tried to convince AT&T in multiple phone calls and emails that the MTQ did not exist since Petitioners were never served with the MTQ and it was not filed with court.

On or around July 27, 2023, CB’s counsel finally confirmed in emails to Petitioners that they had not actually filed any MTQ with the trial court. As no MTQ was filed at least five days before the date set for productions under Code Civ. Proc., § 1985.3(g), Respondents have waived any right to challenge the Subpoena.

On August 11, 2023, AT&T objected in email on the ground that the subpoena failed to comply with statutes, stating: “AT&T objects to this Legal Demand because it fails to comply with (a) California PUC section 2891, which requires a residential subscribers consent in writing before records can be produced, and or (b) in civil matters, CCP section 1985.3(f), which states a subpoena duces tecum for personal records is invalid unless accompanied by a consent to release signed by the subscriber. Absent compliance with these statutes, AT&T cannot produce information responsive to the Legal Demand. If you wish, you may resubmit the Legal Demand along with the statutorily required consent. Please ensure the consent is

notarized and refer to the AT&T File Number listed above. Motion to Quash application was also received.” AT&T’s objections were untimely, as the date for production was set for May 15, 2023, and the objections were not made until August 11, 2023. A non-party served with a records-only subpoena may object to the production of documents without filing a motion to quash. (*Monarch Healthcare v. Cassidenti*, (2000) 78 Cal.App.4th 1282, 1290.) Under Code Civ. Proc., § 1985.3(g), any objection must be made prior to the date of production and cite specific grounds on which the production should be prohibited.

On August 14, 2023, Jiang sent letters to Respondents, requesting Chu, Chen and Song sign consents to the disclosure of the information sought from AT&T. In the letters Jiang explained that Respondents should have no objection to signing the consent forms as they had verified that they had already produced the requested information in discovery response, or that Petitioners would be entitled to the records if Petitioners requested them directly from Respondents. At the time of this petition, no response from Respondents was received.

III. Proceedings Below

Since Petitioners have exhausted all alternatives to obtain the records sought, including requests to Respondents, who had not cooperated, and AT&T did not comply to deposition subpoena, they had to file Motion to Compel Responses to Deposition Subpoena for Production of Business Records from AT&T. In the moving papers, reply and December 13, 2023 hearing on this Motion to Compel, Petitioners had established the following: (1)the opposing parties failed to file a timely motion to

quash; (2) AT&T's objection was untimely; (3) the records requested were relevant, proportional and important to Petitioners' claims and defenses with detailed examples; (4) the communications between the real estate agents and their buyer were nonprivileged since the records requested did not fall under any category of privileged information; and (5) if the court order the phone provider to release the subpoenaed records, the phone provider may release the records without subscriber's consent under Pub. Util. Code, § 2894(a). Petitioners cited "All doubts about discoverability are resolved in favor of disclosure." (*Glenfed Development Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1119 (*Glenfed*).)

During the December 13, 2023 hearing, Petitioners argued "California's pretrial discovery procedures are designed to minimize opportunities for fabrication and forgetfulness and to eliminate the guesswork about the other side's evidence with all thoughts about the discovery ability resulting in favor of disclosure. And we respectfully request the Court to grant our motion because it is not overly broad." App.59a.

Petitioners also argued that the requested records were not falling under the Pub. Util. Code § 2891 and no consent was required. App.56a-57a.

When the court mentioned "a statute which seems to anticipate either on the one hand consent by the consumer or, on the other hand, a law enforcement activity" during the hearing, App.55a, Petitioners argued that Pub. Util. Code, § 2894(a) not only apply to law enforcement. App.59a.

After December 13, 2023 hearing, the trial court published a General Order, App.1a-3a, removing some of the findings in the December 12, 2023 Tentative Ruling, App.4a-6a, including “Even if the Court had the power to order AT&T to produce the requested records in the absence of a written consent or release from Chu, Chen, and Song, the Court would not do so because the subpoena is overly broad and Wu and Jiang have not demonstrated how the requested documents would lead to the discovery of admissible evidence.” App. 5a. This demonstrated that Petitioners had established the records requested were relevant and proportional in the December 13 hearing.

Despite Petitioners had established the records requested met all the standard of Code Civ. Proc., § 2017.010 as well as Petitioners had made significant informal effort to obtain the records and had exhausted alternative methods, the trial court exercised its discretion and denied Petitioners’ Motion to Compel. The December 13, 2023 General Order denying Petitioners’ Motion to Compel stated the reasons for denying the motion as (1) Pub. Util. Code, § 2891(a)(1) applies to the requested records, therefore Cross-Defendants’ consents are required; (2) Wu and Jiang did not explain how Pub. Util. Code, § 2894(a) applies to this case; and (3) Wu and Jiang should file motion to compel further responses from Chu supported by evidence that Chu is withholding responsive documents. App.2a-3a.

The first finding in the trial court’s order denying Petitioners’ motion to compel is Pub. Util. Code, § 2891(a)(1) applies to the requested records, therefore Petitioners’ consents are required. However, this finding is not supported by the weight of the evidence and abuse of

discretion is established under Code Civ. Proc., § 1094.5(c). During the December 13, 2023 hearing, Petitioners argued their interpretation on Pub. Util. Code, § 2891(a)(1) that the records requested in the subpoena do not fall within the types of records defined by Pub. Util. Code, § 2891(a)(1) since the subpoena does not appear to request Plaintiff's "calling pattern" or "listing of . . . access numbers called" as in the statute's language. The subpoena at issue had a precise scope and was properly tailored to records only between the cross-defendants in this case. Furthermore, the call and text message logs between two specific individuals were not calling patterns. Moreover, the statute's language suggests its primary focus is on broader trends and patterns, not individual call details. This interpretation aligns with the legislative history, which emphasizes protecting against marketing and profiling based on aggregated call data.

Petitioners also contended even if the records did fall within Pub. Util. Code, § 2891(a)(1), consent from the subscriber (Chu) is not required when the court orders compliance.

On December 24, 2023, Petitioners filed a timely Motion for Reconsideration for the denied Motion to Compel. In this motion, Petitioners introduced new legal arguments, new statutes and case law that were critical and material to the outcome of the motion and were not considered by the trial court previously, and performed a thorough analysis and discussion on whether the records requested should be compelled to be produced.

First, Petitioners argued the records requested were relevant and nonprivileged and not protected by any

protective order, therefore Petitioners were entitled to these records during discovery under Code Civ. Proc., § 2017.010. Furthermore, for purposes of discovery, information is considered relevant if it “might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement.” (*Gonzales v. Sup. Ct.* (1995) 33 Cal.App.4th 1539, 1546.)

Second, Petitioners also established how Code Civ. Proc., § 1987.1 and Pub. Util. Code, § 2894 applied to this case just like in other similar cases where the Motion to Compel third-party phone provider to produce business records were granted in California Superior Courts, citing *Arnold et al. v. Ford Motor Company et al.*, Case No. 20STCV45317, Los Angeles County Superior Court, June 14, 2022 (*Arnold*), and *Guzman v. Jensen et al.*, No. CIVSB2210351, San Bernardino County Super. Ct., Apr. 11, 2023 (*Guzman*).

Third, Petitioners explained in detail that Pub. Util. Code, § 2891(a)(1) did not apply to this case because (1) its legislative history showed its purpose to protect against marketing and profiling based on aggregated call data and (2) Petitioners’ subpoena only requested the phone records between the specific persons who were parties in this lawsuit.

Petitioners further argued that, since Chu had responded “will comply” to the request on “all communications” between him and the Agents and then he produced text messages along with sworn verification that his response was under penalty of perjury. If Chu did not commit perjury and had produced the complete phone records, there should be no privacy concern

because Chu had already disclosed the same information to Petitioners and in effect had waived his privacy rights on these records.

During the Informal Discovery Conference on January 2, 2024, the trial court stated again that motion for reconsideration was unlikely to be granted because subpoenas for phone records were only issued for criminal cases, but never issued for civil cases because it was not authorized. In the Writ filed to the Court of Appeal of the State of California on February 1, 2024, Petitioners cited opinions to establish Pub. Util. Code § 2894(a) does not apply exclusively to criminal cases. For example, United States District Judge had a comprehensive research and discussion on the statutory interpretation of Pub. Util. Code section 2894 in *Lee v. Global Tel*Link Corp.* 2017 WL 11272587 (C.D. Cal. Dec. 6, 2017) (*Lee*). *Lee* concluded Pub. Util. Code section 2894 did not only apply to law enforcement or search warrant, but also to civil cases based on “the rule of last antecedent, as stated by the Supreme Court in *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003)”, the title of Pub. Util. Code section 2894 as a “secondary indicium of the meaning of the statute” (*Brotherhood of R.R. Trainmen v. Baltimore & O.R. Co.*, 331 U.S. 519, 529 (1947)), legislative history (*Babbitt v. Sweet Home Chapter*, 515 U.S. 687, 704–06 (1995)), and Pub. Util. Code section 2894.10 setting forth “Legislature’s findings concerning consumers’ privacy rights as it pertains to telephone solicitations”. As a result, in the February 15, 2023 hearing on Motion for Reconsideration, the trial court no longer mentioned “subpoenas for phone records were only issued for criminal cases”.

In the February 15, 2023 hearing, Petitioners argued “In the case law opposing counsel cited in their opposition, page 7, starting line 18, *Gilberd v. AC Transit*. Opposing counsel quoted, ‘motion to reconsider is for circumstances where a party offers a court some fact or authority that was not previously considered by it.’ However, opposing counsel interpreted the new law with respect to the last amended date, which is not consistent with the case law interpretation.” App.64a. Again, the trial court abused its discretion and did not consider the new authority provided by petitioners and ruled in its February 15, 2024 order that Petitioners’ “motion for reconsideration fails because it does not identify any new or different facts, circumstances, or law that would support reconsideration, as required by Code of Civil Procedure section 1008(a).” App.8a.

Although a motion for reconsideration under California Code of Civil Procedure section 1008(a) does not explicitly require the moving party to demonstrate why the new case law was not available at the original motion, in their Motion for Reconsideration, Petitioners explained briefly that they were pro se litigants with no previous legal training which caused they did not discover the new authority earlier. Petitioners also cited the case about pro se litigants’ pleadings are not held to the same standards of perfection as lawyers (“[p]ro se litigants are commonly required to comply with standards less stringent than those applied to expertly trained members of the legal profession”. *Bates v. Jean*, 745 F.2d 1146, 1150 (7th Cir. 1984)) and respectfully pled the trial court to consider the merit of their Motion for Reconsideration. However, the trial court’s finding in the February 15, 2024 order was “Wu and Jiang do not demonstrate that any of these “newly discovered” statutes or cases are in fact

new, or that they were not available to Wu and Jiang at the time of the December 13, 2023 hearing on the motion to compel if Wu and Jiang had done the legal research to locate them.” App.8a-9a.

Moreover, in the Motion for Reconsideration, despite Petitioners had argued Cal. Civ. Proc. Code § 1987.1 could enable courts to issue an order permitting compliance with a subpoena and had established with case law in California Superior Courts that Code Civ. Proc., § 1987.1 and Pub. Util. Code, § 2894 were used in combination to grant motion to compel third-party to comply subpoena of business records, the trial court ignored Petitioners’ arguments and ordered “Finally, by its terms, Public Utilities Code section 2894, cited once again in movants’ papers, is a defense to liability rather than independent authorization for the production of records and therefore does not support their case.” App.9a.

The interlocutory order on Motion to Compel was not immediately appealable. In order to challenge the trial court’s December 13, 2023 order, Petitioners needed to file Petition for Writ of Mandate. Because the hearing date of the Motion for Reconsideration was set to be after 60 days of the December 13, 2023 order, to preserve their right, Petitioners filed their verified Writ to Court of Appeal of the State of California, First Appellate District, on February 1, 2024. In this petition, the Petitioners included the arguments presented in Motion to Compel and Motion for Reconsiderations and claimed the trial court’s discovery order constitutes abuse of discretion and invokes writ jurisdiction under *Getz v. Superior Court* (2021) 72 Cal.App.5th 637. After Petitioners filed to the Court of Appeal the trial court’s order denying

Motion for Reconsideration on February 16, 2024, the Court of Appeal summarily denied the petitioners' Writ on February 21, 2024. App.11a.

Petitioners filed a timely Petition for Review to Supreme Court of California on March 4, 2024, argued the issue should be reviewed to ensure legal stability, to prevent the same issue of fraudulent misrepresentation in real estate transactions considering the large number of home selling occur annually in California through real estate agents, and the issue was of substantial public interest also because there were other victims who experience similar harassment and threats from CB agents as Petitioners did. The Supreme Court of California summarily denied Petitioners' Petition for Review on May 1, 2024. App.10a.

REASONS FOR GRANTING THE PETITION

I. The Trial Court Violated the Due Process Clause by Flouting the Statutes Governing the Scope of Discovery, the Procedures for Subpoenaing Business Records and Exceptions for Disclosure Without Subscriber Consent in Civil Cases.

The trial court's decision must be reviewed to protect the right to a fair trial and due process guaranteed by The Fourteenth Amendment to the U.S. Constitution for Petitioners and people in similar situation who were deprived of their right to due process in discovery. Petitioners are at risk of losing their property or being compelled to pay substantial damages because they were wrongfully denied access to critical evidence, which is nonprivileged, relevant and proportional communications between the Respondents. Discovery rights are an integral

part of ensuring a fair trial. The access to the records requested in the subpoena is critical to ensure complete and fair discovery in this matter, therefore denying Motion to Compel Responses to Deposition Subpoena for Production of Business Records hinders Petitioners' ability to obtain the relevant and discoverable evidence to establish their defenses and claims and significantly prejudiced Petitioners.

The Fourteenth Amendment to the U.S. Constitution guarantees due process of law, which encompasses the right to a fair trial, including the ability to obtain evidence necessary to prove one's case.

“ . . . nor shall any State deprive any person of life, liberty, or property, without due process of law;” App.76a.

Amdt14.S1.5.4.6 Additional Requirements of Procedural Due Process provides:

“Beyond the requirements of notice and a hearing before an impartial decision maker, due process may also require other procedural protections such as an opportunity for confrontation and cross-examination of witnesses, discovery, a decision based on the record, or the opportunity to be represented by counsel.”¹

“The guarantee of due process for all persons requires the government to respect all rights, guarantees, and protections afforded by the U.S. Constitution and all applicable statutes before the government can deprive any

1. <https://www.law.cornell.edu/constitution-conan/amendment-14/additional-requirements-of-procedural-due-process>

person of life, liberty, or property. Due process essentially guarantees that a party will receive a fundamentally fair, orderly, and just judicial proceeding. While the Fifth Amendment only applies to the federal government, the identical text in the Fourteenth Amendment explicitly applies this due process requirement to the states as well.”²

In addition, “[t]he Fifth and the Fourteenth Amendments of the U.S. Constitution guarantee due process to all citizens. The Amendments, also known as the Due Process Clauses, protect citizens when the government deprives them of life, liberty, or property, and limits the government’s arbitrary exercise of its powers. The U.S. Constitution requires two types of due process: procedural due process and substantive due process. As indicated by the name, *procedural* due process is concerned with the *procedures* the government must follow in criminal and civil matters . . . Procedural due process refers to the constitutional requirement that when the government acts in such a manner that denies a citizen of life, liberty, or property interest, the person must be given notice, the opportunity to be heard, and a decision by a neutral decision-maker. The government must also demonstrate that there is an articulated standard of conduct for their actions with sufficient justification. The requirements, called “fundamental fairness,” protect citizens from unjust or undue deprivation of interest. . . . In most cases, we examine the fundamental fairness of the government’s actions to determine whether the government has met the requirements for due process.”³

2. https://www.law.cornell.edu/wex/fifth_amendment

3. https://www.law.cornell.edu/wex/procedural_due_process

Based on the U.S. Constitution Annotations above, due process encompasses the right to a fair trial, which includes the ability to obtain evidence that is necessary to prove one's case. Discovery is a crucial part of due process in civil lawsuits, allowing formal exchange of evidentiary information and materials between parties to a pending action. *Arnett v Dal Cielo* (1996) 14 C4th 20, 56 CR2d 706. In *Greyhound Corp. v. Superior Court* (1961) 56 C2d 355, 15 CR 90 (*Greyhound*), it interpreted the Discovery Act of 1957 as a party is entitled to disclosure in discovery as "a matter of right unless statutory or public policy considerations clearly prohibit it."

The second cause of action in Petitioners' cross complaint is "Rescission based on Fraudulent Misrepresentation [Against Cross-Defendant Kevin Chu and ROES 1-5]". To establish Petitioners' cause of action to rescind the counteroffer on the grounds of fraud in their cross-complaint under Civ. Code § 1689(b)(1), Petitioners need to prove all the elements of the fraud. To successfully allege a claim for common law fraud, Petitioners must plead each element with specificity and particularity and each element of fraud must be supported by sufficient evidence. Fraud may never be established by doubtful, vague, speculative, or inconclusive evidence. However, "fraud may be inferred from circumstantial evidence" and that direct proof of reliance is unnecessary to prevail on a common law fraud claim. (See *Zimmerman v. Loose*, 162 Colo. 80, 87-88, 425 P.2d 803, 807 (1967).) The requested phone records between Chu and Agents around the time of the incident could provide circumstantial evidence that are crucial to establish the elements of fraud such as Agents and Chu's knowledge of the representation's falsity and Respondents' intent to induce Petitioners to act in accordance with the representation.

Communication records are pivotal in establishing the facts and circumstances surrounding the allegations of fraud. The records will show the frequency and nature of interactions between Agents and Chu, potentially proving that Agents worked with Chu to create the false sense of urgency to deceive the Petitioners. For example, the communications between Chu and Agents are believed to reveal: the creation of false urgency to pressure Petitioners into signing the counteroffer—Chu was aware of the other house did not accept his offer but purposely misrepresented with the intention to trick Petitioners into signing the counteroffer in a hurry without seeing the purchase agreement; the coordination between Chu and Agents about the harassment tactics against Petitioners to extort money and any undisclosed relationships that could support fraud claims.

The text message from Song to Petitioners with the address of the other house accepted Chu's offer indicated Chu had involved in creating the false urgency to trick Petitioners into signing the counteroffer, because Agents should not know the address of the other house Chu had placed offer on, unless Chu provided it to them, given Agents claimed they just met Chu on June 22, 2021 and they were never the buyer's agent for Chu in Agents' verified discovery response. Respondents had not produced any records showing how Chu communicated the address of the other house to Agents. However, proving the fraud requires undoubtful and conclusive evidence which could only be obtained from the complete communications between Chu and Agents. From the complete records, Petitioners are likely be able to prove Chu's intentional misrepresentations and concealment of material facts, so that the counteroffer should be rescinded based on fraud to protect Petitioners' property from being deprived.

Fed. R. Civ. P. 26(b)(1) and California Code Civ. Proc., § 2017.010 provide statutes for the discovery of non-privileged matters relevant to any party's claim or defense and proportional to the needs of the case. App.82a-83a. The Petitioners had already proved the requested records met all the elements required in Code Civ. Proc., § 2017.010 in the previous court proceedings as discussed in the section Statement of the Case of this petition. The records Petitioners requested also met all elements of Fed. R. Civ. P. 26(b)(1) which could be considered as a federal equivalent of California Code Civ. Proc., § 2017.010. The trial court had the authority under Code Civ. Proc., § 1987.1(a) to grant Petitioners' Motion to Compel AT&T to produce business records and allow the nonprivileged and relevant phone records between the buyer and real estate agents that were appropriately tailored to the specific needs of the investigation to be discovered.

However, in California, the right to discovery is subject to the management of the trial court exercising its sound discretion. (See *Greyhound*, at 382.) The trial court should base its decisions on the language of the Civil Discovery Act and the legislative purpose of avoiding surprise and preventing fabrication of evidence at trial when exercising its discretion. (See *Glenfed*, at 1119.)

To accomplish the legislative purpose behind the discovery statutes, the pretrial discovery procedures "*must be construed liberally in favor of disclosure.*" *Emerson Elec. Co. v Superior Court* (1997) 16 C4th 1101, 1107, 68 CR 2d 883, quoting *Greyhound*. [Emphasis Added]

In the seminal case of *Greyhound*, the Supreme Court of California announced the principles such as the legislative purpose of liberal discovery must not be subverted under the guise of exercise of discretion; this purpose is to be given effect rather than thwarted, so discovery is encouraged; and disputed facts should be liberally construed in favor of discovery, rather than in the most limited and restricted manner possible. (See *Greyhound*, at 377, 383.)

In Petitioners' case, failing to follow the above principles set by the Supreme Court of California, the trial court exercised its discretion to deny Petitioners' Motion to Compel in the December 13, 2023 General Order. By abusing its discretion, the trial court denied Petitioners' access to relevant, nonprivileged and critical evidence and impeded their ability to adequately prepare and present their case, thus violating Petitioners' right to a fair legal process.

Furthermore, as discussed with more details in the subsection below, the rules and statutes involved were not fairly applied to everyone because in many other cases in similar situations, the Motions to Compel third-party phone provider to produce business records were typically granted in California Superior Courts.

The trial court abused its discretion again and denied Petitioners' Motion for Reconsideration without considering the new authority provided by petitioners in its February 15, 2024 order. Petitioners tried their best to petition for appeal in the California courts, but their petitions did not get a chance to be reviewed. Petitioners' Writ and Petition were summarily denied by the Court

of Appeal of California and the Supreme Court of California. The denial of discovery effectively disregarded Petitioners' right to discovery on critical issues in their case and thus disabled Petitioners to obtain sufficient evidence to establish their claims and defenses which would eventually lead to Petitioners losing their property and/or being compelled to pay substantial damages. Consequently, Petitioners are deprived of their right to due process guaranteed by the Fourteenth Amendment to the U.S. Constitution.

It was not the only time that the trial court had deprived Petitioners' right to due process. On February 7, 2024, Petitioners' opposition to Chu's ex parte application to continue trial date was rejected by the trial court because proof of service was attached to the end of opposition. At the same time, Respondents' proof of service was often attached to the end of their papers and was accepted by the trial court without any problem. Nevertheless, Petitioners filed another opposition with the proof of service separated on February 7, 2024 which was accepted and with court stamped time February 7, 2024 at 7:30 PM. However, on February 8, 2024 at 9:05 AM, the trial court granted Chu's ex parte application because it was "unopposed", ignoring Petitioners' opposition filed on February 7, 2024.

Petitioners have been the legal owners of the Fremont Property since 2015. Petitioners' property interest is within the Fourteenth Amendment's protection of liberty and property. "Thomas Jefferson when he drafted the Declaration of Independence, stated the issue simply: 'Lives, Liberties, and Estates, which I call by the general Name, Property.' And James Madison, the principal

author of the Constitution, echoed those thoughts when he wrote, ‘as a man is said to have a right to his property, he may be equally said to have a property in his rights.’”⁴

“The language of the Fourteenth Amendment requires the provision of due process when an interest in one’s “life, liberty or property” is threatened.”⁵

“First, ‘[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.’ (*Carey v. Piphus*, 435 U.S. 247, 259 (1978). ‘[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases.’ *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976).) Thus, the required elements of due process are those that ‘minimize substantively unfair or mistaken deprivations’ by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. . . . The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel.”⁶ [Citation Omitted]

4. <https://www.cato.org/cato-handbook-policy-makers/cato-handbook-policy-makers-8th-edition-2017/property-rights-constitution#suggested-readings>

5. <https://law.justia.com/constitution/us/amendment-14/05-procedural-due-process-civil.html>

6. <https://law.justia.com/constitution/us/amendment-14/05-procedural-due-process-civil.html>

Therefore, due to deprivation of their right to discovery by the order denying Motion to Compel, Petitioners could not obtain sufficient evidence to prove the fraud and they may fail to prove their cause of action on the counteroffer should be rescinded based on fraud, which would eventually lead to petitioners lose their Fremont Property and/or must pay the \$150,000 damages Chu claimed in his complaint. Thus, Petitioners' property would be deprived due to trial court's violation of Due Process Clause by flouting the statutes governing the scope of discovery, the procedures for subpoenaing business records and exceptions for disclosure without subscriber consent in civil cases. In this case, without review of the trial court's orders on December 13, 2023 and February 15, 2024, Petitioners' protected interest is at risk of being deprived without due process of law and the similar situation could happen to many litigants across the county. The Court's review has profound and far-reaching implications for the general public.

II. The Court Should Grant Certiorari to Ensure Consistency in the Law and Provide a Uniform Interpretation of the Statutes Governing the Procedures for Subpoenaing Business Records and Exceptions for Disclosure Without Subscriber Consent in Civil Cases.

There is a significant conflict between California Superior Courts' decisions on this issue that California Court of Appeal and the Supreme Court of California did not address. The absence of clear guidance on this issue has led to inconsistent rulings in lower courts as discussed in the ruling of *Guzman*. App.71a-74a. This Court's review is necessary to resolve this conflict and provide clear

guidance for future cases. The Court's interpretation of the codes in question affects litigants' rights, necessitating a uniform approach to enforce subpoenas for nonprivileged and relevant information necessary for fair redress and defense.

In Petitioners' case, the trial court abused its discretion and **DENIED** Petitioners' Motion to Compel which caused undue disadvantage towards Petitioners as discussed in the previous subsection. However, other California Superior Courts typically tend to **GRANT** Motion to Compel Responses to Deposition Subpoena for Production of Business Records where third-party phone providers were involved. In similar cases in comparable situations, such as in *Arnold*, the court **GRANTED** the motion to compel and ordered the third-party phone provider to comply with the subpoena based on Code Civ. Proc., § 1987.1 and Pub. Util. Code, § 2894. *Arnold* is very similar to Petitioners' case in many respects: Both cases involve subpoenas for similar types of information related to phone records; In both cases, incomplete production of cell phone records by the plaintiff necessitated subpoenas to phone service providers; The reasons for refusal to comply by the phone providers—lack of subscriber consent—were the same in both cases; Both parties made significant informal efforts to resolve the discovery disputes.

The trial court's order on December 13, 2023 denying Petitioners' Motion to Compel Responses to Deposition Subpoena for Production of Business Records was not consistent with the decisions on multiple cases in California Superior Courts that motion to compel responses to subpoena from third-party phone provider were granted.

For example, in *Guzman*, the court confirmed the deposition subpoena was an order. App.70a. And court's opinion was "this Court has the authority under *Miranda v. 21st Century Ins. Co.*, supra, 117 Cal.App.4th 913 to order Plaintiff to sign an authorization for her cell phone records". App.74a. Furthermore, "[i]n another recent case from the Sacramento Superior Court, *Moore v. Reda Balarbi & Assocs.*, 2017 Cal. Super. LEXIS 21534,5 the Court found Plaintiff's *citations to the Public Utilities Code section 2891 and Cal. Civ. Proc. Code section 1985.3 not persuasive to prevent the production of cell phone records without a written authorization*, stating that, [t]he Utilities Code was enacted to protect residential telephone subscriber's privacy rights with respect to telephone solicitations." [Emphasis Added]. App.73a-74a. Therefore, the motion to compel was **GRANTED**.

In *Wawanese General Ins. Co. v. Dargbe et al.*, No. 18VECV00178, Los Angeles County Super. Ct., Mar. 11, 2020, the superior court held that "while PUC section 2891(a)(1) requires a residential subscriber to give a corporation written consent before the corporation can disclose the subscriber's telephone records, an exception exists under Public Utilities Code, section 2894 where a court order compels the record's production. (*McArdle v. AT&T Mobility LLC* (N.D. Cal., Apr. 16, 2010, No. C 09-1117 CW); *Kaur v. City of Lodi* (E.D. Cal., Jan. 28, 2016, No. 2:14-CV-0828.) Thus, Plaintiffs should not be precluded from receiving the cell phone records . . . Plaintiff's motion for an order compelling Metro PCS to produce Defendant Dargbe's cellular phone record is **GRANTED**."

In *Fahy v. Sauter et al.*, No. CGC-19-579316, San Francisco County Super. Ct., Apr. 8, 2021, the court also **GRANTED** the motion to compel. The superior court held that “this order constitutes and order under Cal. Public Utilities Code §2894 authorizing a telephone corporation to disclose subscriber information pursuant to a court order. Plaintiff, Stephen Fahy’s cell phone records responsive to Defendants’ Subpoena to Dish Wireless, LLC shall be produced upon notice to Dish Wireless, LLC of the entry of this order.”

The denial of Petitioners’ motion to compel AT&T to produce business records contradicts with the previous decisions in California state courts. The disparate rulings among the superior courts on these statutory provisions underscore the necessity for a unifying ruling. The inconsistency poses a significant challenge for litigants and adversely affects the administration of justice. The Court’s review is necessary to ensure legal stability and equal treatment for similarly situated parties.

III. The Issue Presented in This Petition is of Exceptional Public Interest and Could Set a Precedent

The case involves a question of public interest concerning real estate practices. This case has significant public interest because it affects real estate transactions, a common occurrence for many Americans. According to the National Association of Realtors, there were approximately 4.09 million existing home sales in the US in 2023.⁷ As majority (89%) of homeowners in United

7. <https://www.statista.com/statistics/226144/us-existing-home-sales/>

States sell houses through agents⁸, the outcome of this case could impact a large population of homeowners who sell through agents and could set a precedent for similar cases, where homeowners selling through agents may be exposed to fraudulent practices without adequate legal recourse.

The matters related to home selling through real estate agents are matters of widespread interest because the nature of the matters is closely related to many ordinary people. For this reason, the impact of lawsuits involving real estate transactions is usually national. For example, there have been over 20 Real Estate Commission Lawsuits filed in recent years in California, Nevada, Utah, Arizona, Texas, Missouri, Illinois, Georgia, South Carolina, Pennsylvania, New York, and Massachusetts alleging a conspiracy among the National Association of Realtors (NAR) and affiliated associations and brokerages including Coldwell Banker Realty's parent company Anywhere Real Estate Inc., for artificially inflating agent commissions that violates federal antitrust laws.⁹ Some of these lawsuits was already ruled in favor of plaintiffs. In *Sitzer et al v. National Association of Realtors et al*, Case No. 4:2019cv00332, US District Court for the Western District of Missouri, the federal jury found NAR guilty and issued a verdict in favor of the plaintiffs, awarding them \$1.75 billion in damages on October 31, 2023.

8. <https://www.nar.realtor/research-and-statistics/research-reports/highlights-from-the-profile-of-home-buyers-and-sellers>

9. <https://nowbam.com/industry-lawsuit-watch-tracking-real-estates-biggest-legal-battles/>

Furthermore, the issue of real estate fraud is a growing concern¹⁰, with many cases involving misrepresentation by agents¹¹. Clear guidance on obtaining evidence is crucial to deter such misconduct. The outcome of this case will directly affect the ability of home sellers to obtain critical evidence in real estate fraud cases, potentially deterring unethical behavior by real estate agents and ensuring fairness in real estate transactions. On the other hand, if this case became a precedent for denial of access to the phone records between the Agents and the buyers and essentially made the records not discoverable, the unethical agents were likely to take advantage of this fact and commit more fraud by conspiring with buyers to misrepresent and defraud sellers, depriving sellers' properties. Thus, lack of review on this issue could lead to a potential surge of fraud in real estate transactions and the probability of giving rise to the same issue is high.

In this case, the communications between Chu and the Agents are also relevant to proving the conspiracy of the harassment and threat against Petitioners' and their family to extort money. Petitioners are not the only victims being harassed and threatened by CB's agents. In Exhibit 23 of Opposition to Plaintiff and Cross-defendants' Joint Motion for Order to Continue Trial Date filed in the trial court on February 20, 2024, Petitioners exhibited a verified declaration from another victim Roe (pseudonym), testifying that another CB's agent, Liping "Serena" Zhang, in July 2023 had threatened to harm Roe's family and tried

10. <https://www.foxbusiness.com/lifestyle/real-estate-fraud-risk-on-rise-victims-sounding-alarm>

11. <https://www.karbasianlaw.com/common-types-of-real-estate-agent-or-broker-fraud/>

to scare Roe with vexatious litigation since the agents were backed by their strong legal team, to force Roe to remove their online post about the agent's misconducts. In Exhibit 25 of the opposition mentioned above, Petitioners also exhibited another victim with pseudonym John's public post in July 2023 begging the above-mentioned CB's agent Zhang to stop harassing them by stating "I feel the fear, please let go of my family." The real names of victims are redacted or omitted in the exhibits to protect the victims, but Petitioners had requested the trial court to permit filing of the unredacted declarations under seal during March 6, 2024 hearing. The trial court did not approve their request. The denial of Petitioners' access to Chu and the Agents' requested phone records disabled Petitioners to establish their claims and will help Respondents evade justice and enable them to continue to be a threat to the safety of the general public.

Due to the above concerns, people from various regions across California tried to listen to remote hearing of Petitioners' Motion for Reconsideration on February 15, 2024. But they were not allowed by the court to join the Zoom hearing. In addition, the public livestream for the trial court's department was also turned off during that hearing. Multiple verified declarations from people who were not able to join the Zoom hearing nor listen through public live stream had been exhibited in the Appendix C of the Petition for Review filed in the Supreme Court of California filed by Petitioners on March 4, 2024. On the other hand, the trial court not only allowed Agents' attorney Mr. Liu in the copyright infringement case into the Zoom hearing but also allowed him to argue during the July 12, 2023 hearing of this case despite Jiang's objection. "Since he is here effectively as a member of the public." The trial court stated.

The Court's review is necessary because the issues presented in this petition are of exceptional public interest and could set a precedent.

CONCLUSION

For the foregoing reasons, certiorari should be granted.

Respectfully submitted,

LEI JIANG
Pro Se Petitioner
ZHI WU
Pro Se Petitioner
5612 Evolene St.
Danville, CA 94506
(937) 554-9295
leij@smu.edu

July 30, 2024