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**APPENDIX A — ORDER OF SUPERIOR COURT OF
CALIFORNIA, COUNTY OF ALAMEDA,
DATED DECEMBER 13, 2023**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ALAMEDA**
Rene C. Davidson Courthouse

No. HG21106221

Date: 12/13/2023

Time: 3:00 PM

Dept: 20

Judge: Karin Schwartz

KEVIN CHU,

Plaintiff/Petitioner(s),

vs.

ZHI WU et al,

Defendant/Respondent(s).

ORDER re: Hearing on Motion to Compel Discovery
(not “Further Discovery”) filed by Lei Jiang (Cross-
Complainant) + filed by Zhi Wu (Cross-Complainant);
Lei Jiang (Cross-Complainant) on 12/05/2023

Counsel/Parties on Zoom:

Eric Hartnett, Dan Ballesteros, Zhi Wu & Lei Jiang.

(REPORTED BY RAQUEL SHARP CSR #10619).

Appendix A

The Motion to Compel Discovery (not Further Discovery) - 1 moving party, 1 motion filed by Zhi Wu, Lei Jiang on 10/18/2023 is Denied.

The Motion by Defendants and Cross-Complainants Zhi Wu and Lei Jiang to Compel Responses to Deposition Subpoena for Production of Business Records is DENIED.

Wu and Jiang seek to compel compliance with a subpoena served on AT&T, seeking records of calls and messages between Cross-Defendants Kevin Chu, Xiaoxin Stella Chen, and Aimee Ran Song from January 1, 2021 through the present.

The requested records all fall within the types of records defined by Public Utilities Code section 2891(a)(1). Such records may not be made available to any other persons (including Wu and Jiang) without first obtaining the subscriber's written consent. (Id.; see also Code of Civil Procedure section 1985.3(f).) Wu and Jiang have not produced a written consent or release from Chu, Chen, or Song to release those records. Therefore, AT&T properly refused to produce them.

Wu and Jiang contend that notwithstanding the absence of a written consent or release from Chu, Chen, and Song to release those records, the Court may nevertheless order them released pursuant to Public Utilities Code section 2894(a). That section authorizes release of such records "in good faith compliance with the terms of a state or federal court warrant or order or administrative subpoena issued at the request for a law enforcement official or

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other federal, state, or local governmental agency for law enforcement purposes.” Wu and Jiang do not explain how that section applies to this case.

Wu and Jiang are free to request these documents from Chu, and they apparently have. (See Special Interrogatories Nos. 13 and 15 and Requests for Production of Documents, Nos. 4 and 6 attached to the reply papers.) If Wu and Jiang believe that Chu has not produced all responsive documents, their remedy is a motion to compel further responses, supported by evidence (not mere speculation) that Chu is withholding responsive documents.

No monetary sanctions are awarded.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated : 12/13/2023

/s/ Karin Schwartz
Karin Schwartz, Judge

**APPENDIX B — TENTATIVE RULING OF
SUPERIOR COURT OF CALIFORNIA, COUNTY
OF ALAMEDA, DATED DECEMBER 12, 2023**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

HG21106221: Chu VS Wu
12/13/2023 Hearing on Motion to Compel Discovery
(not “Further Discovery”) filed by Lei Jiang (Cross-
Complainant) + in Department 20

Tentative Ruling - 12/12/2023 Karin Schwartz

The Motion to Compel Discovery (not Further Discovery)
- 1 moving party, 1 motion filed by Zhi Wu, Lei Jiang on
10/18/2023 is Denied.

The Motion by Defendants and Cross-Complainants Zhi
Wu and Lei Jiang to Compel Responses to Deposition
Subpoena for Production of Business Records is DENIED.

Wu and Jiang seek to compel compliance with a subpoena
served on AT&T, seeking records of calls and messages
between Cross-Defendants Kevin Chu, Xiaoxin Stella
Chen, and Aimee Ran Song from January 1, 2021 through
the present.

The requested records all fall within the types of records
defined by Public Utilities Code section 2891(a)(1). Such
records may not be made available to any other persons
(including Wu and Jiang) without first obtaining the
subscriber’s written consent. (Id.; see also Code of Civil
Procedure section 1985.3(f).) Wu and Jiang have not

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produced a written consent or release from Chu, Chen, or Song to release those records. Therefore, AT&T properly refused to produce them.

Wu and Jiang contend that notwithstanding the absence of a written consent or release from Chu, Chen, and Song to release those records, the Court may nevertheless order them released pursuant to Public Utilities Code section 2894(a). That section authorizes release of such records “in good faith compliance with the terms of a state or federal court warrant or order or administrative subpoena issued at the request for a law enforcement official or other federal, state, or local governmental agency for law enforcement purposes.” Wu and Jiang do not explain how that section applies to this case.

The contention by Wu and Jiang that a finding of good cause is not required before a nonparty must comply with a deposition subpoena for production of business records is not supported by the statutes Wu and Jiang cite (Code of Civil Procedure sections 1987.1 and 2025.480.)

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. The subpoena seeks documents covering a period of nearly four years, and the time frame relevant to the claims of Wu and Jiang appears to be limited to May through July 2021, or at latest January 2022.

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Finally, Wu and Jiang are free to request these documents from Chu, and they apparently have. (See Special Interrogatories Nos. 13 and 15 and Requests for Production of Documents, Nos. 4 and 6 attached to the reply papers.) If Wu and Jiang believe that Chu has not produced all responsive documents, their remedy is a motion to compel further responses, supported by evidence (not mere speculation) that Chu is withholding responsive documents.

No monetary sanctions are awarded.

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**APPENDIX C — ORDER OF SUPERIOR COURT OF
CALIFORNIA, COUNTY OF ALAMEDA,
DATED FEBRUARY 15, 2024**

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ALAMEDA**
Rene C. Davidson Courthouse

No. HG21106221

Date: 02/15/2024

Time: 6:31 PM

Dept: 20

Judge: Karin Schwartz

KEVIN CHU,

Plaintiff/Petitioner(s),

vs.

ZHI WU et al,

Defendant/Respondent(s).

**ORDER re: Ruling on Motion for Reconsideration by
Defendants and Cross-Complainants Zhi Wu and
Lei Jiang**

The Court, having taken the matter under submission on
02/15/2024, now rules as follows:

The Motion for Reconsideration filed by Zhi Wu, Lei Jiang
on 12/26/2023 is Denied.

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The Motion for Reconsideration by Defendants and Cross-Complainants Zhi Wu and Lei Jiang is DENIED.

Wu and Jiang seek reconsideration of the Court's order entered December 13, 2023 denying their motion to compel responses to a deposition subpoena served on AT&T.

The controlling statute, Code of Civil Procedure § 1985.3(f), requires a "consent to release" be signed by any consumer whose records sought from a telephone company that is a public utility. It is undisputed that "consent to release" was never obtained in this case, and indeed apparently was not requested until four months after the subpoena was served. (See Declaration of Lei Jiang in Support of Motion to Compel Responses to Deposition Subpoena for Production of Business Records, filed October 18, 2023, paragraph 9.)

Wu and Jiang's 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).

Wu and Jiang argue that they have "newly discovered" statutes and case law that could have supported their legal arguments. However, assuming *arguendo* the relevance of those statutes to the dispute at bar notwithstanding § 1985.3(f), 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

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them. The failure of Wu and Jiang to determine existing law that they contend would have supported their position prior to the hearing on their motion is not a “new” fact or circumstance that supports reconsideration, (see Pazderka v. Caballeros Dimas Alang Inc. (1998) 62 Cal.App.4th 658, 670), nor is any contention that the Court failed to properly apply the law to the facts in its ruling (see Gilberd v. AC Transit (1995) 32 Cal.App.4th 1494, 1500.)

Finally, by its terms, Public Utilities Code section 2894, cited once again in movants’ papers, is a defense to liability rather than rather than independent authorization for the production of records and therefore does not support their case.

Dated : 02/15/2024

/s/ Karin Schwartz
Karin Schwartz, Judge

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**APPENDIX D — ORDER OF SUPREME COURT
OF CALIFORNIA, DATED MAY 1, 2024**

Court of Appeal, First Appellate District,
Division Three - No. A169631

S284025

IN THE SUPREME COURT OF CALIFORNIA

En Banc

LEI JIANG et al.,

Petitioners,

v.

SUPERIOR COURT OF ALAMEDA COUNTY,

Respondent,

KEVIN CHU et al.,

Real Parties in Interest.

The petition for review is denied.

GUERRERO
Chief Justice

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**APPENDIX E — ORDER OF CALIFORNIA COURT
OF APPEAL, FIRST APPELLATE DISTRICT,
DIVISION THREE, DATED FEBRUARY 21, 2024**

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

A169631

(Alameda County
Super. Ct. No. HG21106221)

LEI JIANG et al.,

Petitioners,

v.

THE SUPERIOR COURT OF ALAMEDA COUNTY,

Respondent;

KEVIN CHU et al.,

Real Parties in Interest.

BY THE COURT:*

The petition for writ of mandate is denied.

Dated: 02/21/2024

Fujisaki, Acting P.J.
Presiding Justice

* Fujisaki, Acting P.J., Petrou, J., and Rodríguez, J.

**APPENDIX F — TRANSCRIPT OF PROCEEDINGS
IN THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ALAMEDA,
DATED SEPTEMBER 16, 2021**

SUPERIOR COURT OF THE STATE
OF CALIFORNIA

COUNTY OF ALAMEDA

THE HONORABLE TAMIZA HOCKENHULL,
COMMISSIONER

DEPARTMENT NO. 519

Case Nos. HG21 106052
HG21 106045

LEI JIANG,

Petitioner,

vs.

XIAOXIN CHEN,

Respondent,

and

AIMEE SONG,

Respondent.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HAYWARD HALL OF JUSTICE
24405 Amador Street
Hayward, California
SEPTEMBER 16, 2021

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[2]THURSDAY - SEPTEMBER 16, 2021
MORNING SESSION

PROCEEDINGS

THE CLERK: HG21 106045, Jiang versus Song,
HG21 106052, Jiang versus Chen.

(PARTIES WERE FIRST DULY SWORN BY THE
CLERK OF THE COURT.)

THE CLERK: Can you please state and spell your
name for the record, beginning with you, the petitioner.

MS. JIANG: Yes. My name is Lei Jiang. L-e-i, Lei
-- Jiang, J-i-a-n-g.

THE CLERK: And do you understand and agree to
the stipulation read at the outset?

MS. JIANG: Yes.

THE CLERK: And respondent, please state and spell
your name for the record.

MS. SONG: My name is Aimee Song, S-o-n-g.

THE CLERK: And do you understand and agree to
the stipulation that was read at the outset?

MS. SONG: Yes.

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THE COURT: If you can please, state and spell your name...

MS. CHEN: Xiaoxin Chen. X-i-a-o-x-i-n, last name C-h-e-n.

THE COURT: And do you understand and agree to the stipulation that was read at the outset?

MS. CHEN: Yes.

THE CLERK: Thank you.

[3]THE COURT: Thank you. You all may have a seat.

When you all last appeared I just knew -- I felt I wasn't able to give it the time it deserved. So to some extent we're doing this anew. For purposes of the record we want to have a good, clean record. So just to some degree start from the beginning but I'm doing it more so for the record.

Whenever Ms. Jiang is ready for your husband and he is ready to testify we need to swear him in and notice his appearance for the record.

MS. JIANG: All right.

THE COURT: All right.

MS. JIANG: So I have --

THE COURT: And please use your microphones.

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Although you don't see her, there is a court reporter and she's in a different room creating the record.

MS. JIANG: I have -- I sent an email yesterday and...

(FOR THE RECORD COURT REPORTER
INTERJECTED.)

(OFF THE RECORD.)

THE COURT: Did you send it by email -- probably to the Court, but did you also send it to respondent?

MS. JIANG: Yes. My husband served it.

THE COURT: Did you all receive documents yesterday from petitioner?

MS. SONG: I received it by email.

THE COURT: Okay. Can we let them take a brief [4] look to say this is what they received.

(PAUSE IN PROCEEDINGS.)

THE COURT: Would you agree?

MS. SONG: Yes, we have.

THE COURT: Okay. I just wanted to confirm.

MS. CHEN: Yeah.

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THE COURT: I wanted to make both parties aware of that.

MS. JIANG: Okay. So at the beginning, June 23rd, Aimee Song and Xiaoxin Chen -- they lied to us. They said it was only --

THE COURT: Okay. Hang on. Can you begin again, because you're reading. You should slow down so that the reporter can take it all down. Okay.

MS. JIANG: So June 23rd, Aimee Song and Xiaoxin Chen -- they lied to us to trick us sign her counteroffer and they used the safety of my family as bargaining chip to intimidate us. They said they were acting dual agent for the real-estate transaction and another buyer who has accepted this offer already, so they need to -- for the other house by 10:00 a.m. and then they send the counteroffer -- one-page counteroffer at 9:40 to urge us to sign. So they did not give us much time to think, and unfortunately we -- but they never presented a purchase contract to us before they let us sign the counteroffer.

THE COURT: Hold on. Let me break that down a bit.

You're saying you were presented with a counteroffer at 9:20 a.m.

[5]MS. JIANG: 9:40 a.m., rescinded the counteroffer.

THE COURT: On June 23rd at 9:40 a.m.

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MS. JIANG: And then they say we need to sign by 10:00 a.m.

THE COURT: Was that June 23rd, 2020?

MS. JIANG: 2021.

THE COURT: This year, thank you. So basically, 20 minutes to make a decision about this offer...

MS. JIANG: Yes.

THE COURT: Wait. Wait. Wait. So that's one. And then you said at the time that the counteroffer was presented you were- not provided with the purchase agreement --

MS. JIANG: Yes.

THE COURT: -- which what you're saying should have been presented with the counteroffer. Is that...

MS. JIANG: So I was not sure about her process because I'm not professional, but that's what they give us to sign. So the next day they sent that purchase contract to sign but by that time we found out it's likely fraud, because the buyers -- I asked how the other house accepted that final offer but they never accepted the buyer's offer. So she lied to us to trick us to sign counteroffer.

THE COURT: Hold on. Are you saying this buyer...

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MS. JIANG: Yeah.

THE COURT: -- then offered -- did you say the other house, not your house?

MS. JIANG: Yeah.

[6]THE COURT: You're saying you found out that that offer or the buyer's offer had been accepted in that other transaction.

MS. JIANG: So I asked the listing agent of the other house. They never accepted their buyer's offer therefore what they said their buyer's offer was accepted and that they need to deposit by was a lie. So we refused to sign the purchase agreement.

And in addition, they send us a screen-shot of text message. They sent it to the buyer. They told the buyer there were eight offers to our house but the offer they presented to us was only three. So I asked Xiaoxin Chen and Aimee Song did you present other offers to us, but they said there was an offer that was meaningless so they just rejected ours. It caused transparency.

So we refused to sign the purchase contract and we emailed them to cancel their counteroffer. So everything is when we refused to sign the purchase contract they become very abrasive. They've called us, send text messages. They rented our house. We rented it to Aimee Song at that time.

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So June 28th, Xiaoxin Chen -- she come in our house twice -- one time in the morning, one time in afternoon -- to try to force us to sign the purchase contract. They said that the buyer has a lot of damage because they had his money deposited. Actually, I forgot to mention that on June 24th we already asked them to refund the buyer's earnest monies. We didn't know how the buyer [7]deposit without the purchase contract, but after we now place deposit we requested them to refund his earnest money.

They insist their buyer has a lot of damages. He said -- they said he canceled. Also he canceled his children's school. So they request a lot of money to pay him.

THE COURT: How much is a lot of money?

MS. JIANG: He requested 150,000-dollar damage. So yeah, \$150,000. So we don't think we have the responsibility for this because we did not sign a purchase contract at all, but they just continue text message us every day.

I have attached a document that they call us up to six, seven times each day and send a lot of text messages and tried to -- they always say their buyer has a lot of damage, we have to either pay him or we need to sign the purchase contract. So we do that for a couple of weeks, and on July the 2nd they call again. I tell Aimee Song and Xiaoxin Chen we already have a lawyer to handle their buyer's purchase contract dispute so they do not need to continue to call us and talk to us about this purchase contract dispute anymore. But they did not stop. They still continued to threaten us.

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And on July 7th in a phone call Aimee Song said that what is most important is to protect the family after we rejected their proposals of to either pay their buyer or sign the purchase contract. So I was very shocked. I asked her why we need to protect our family when we decide [8]not to sell the house. She did not deny that and then she still talk about how much damage their buyer had and if we go to the court all the money go to lawyer.

So they still insist we pay their buyer or sign the purchase contract on July 15th and 16th. We tried to get to the keys of our new-purchased house because we also purchased another house with them, but by that time they already rent and got the key of rental unit. So I rejected their -- Xiaoxin Chen say they're getting keys for us.

However, as you can see in the file there's a document in the most recent one on page 24 at the end of the fourth supplemental document that I just submitted. Like, Xiaoxin -- after I rejected her once on July 15 she asked again. She insisted -- I'm sorry. Bottom of page 25 she insisted she should go to our house to get keys for us. Also, I rejected her and then she mentioned that she can bring the keys to me.

So I think she definitely had intention to physically get our keys.

THE COURT: How did you get your own keys? What did you all do?

MS. JIANG: So we contacted the seller's agent and we worked with him directly. Actually, because we free rent --

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we offered free rent back to the sellers, so when our house actually closed -- after that time our house closed escrow, I asked Aimee for help to get keys for us. She refused to do so. She -- like, I contact the seller's agent [9]directly.

So this was very unusual. Like, afterwards they suddenly become very interested in getting keys for us. So we first asked for help and they didn't even offer the help.

THE COURT: Right. And didn't you testify last time that you -- there was this offer or suggestion, and I don't know if it was Ms. Song -- if this was communication with Ms. Song or was it with Ms. Chen about the keys.

MS. JIANG: So like...

THE COURT: Let me clarify my question. With the respondents there was a question about who should get the keys. They offered to get the keys to your new home. Right? And you said no, thank you -- right? -- because you're not happy with the -- the relationship, is what it is at this point, at least from your perspective; you say no, thank you. You feel like they're insisting. And so I believe there was a communication that you were aware of between respondents and -- I don't know if it was the agents of the new home -- about these keys and you had to communicate again and say no, we will get our keys.

MS. JIANG: Yes.

THE COURT: Am I remembering...

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MS. JIANG: Yes.

THE COURT: Okay. Can you tell the Court again about that.

MS. JIANG: Yeah. So I had to communicate to raise this to get the guy's number who was the agent for -- [10] seller's agent for the house to get our keys. So because we previously enjoined on June 14th when the house closed we already get the one key from him by ourselves. So we just continue to work with him to get our keys. That's when Xiaoxin -- she offered multiple times to get keys for us this time and I rejected multiple times. And after I rejected Xiaoxin -- by the way, Aimee Song, she's innocent charged when Xiaoxin asked her for the offer to get the key. So Aimee Song, she know I rejected Xiaoxin multiple times. She still send email to the seller's agent to try to instruct them to put the key in our combo box and to give the pass code to them.

So I have to immediately notice seller's agent to know we should not give keys to them because they have already threatened us and they have been trying to force us to sign the purchase contract so we do not want them to hold our keys. So that's the situation.

THE COURT: Let's fast forward. You've provided in this Court supplement to these documents that you provided to respondents yesterday via email and to the Court this morning. I have two copies here. Mr. Court attendant, you can go ahead and give the physical copy to the respondent.

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You talk about subsequent harassment in this document. Can you tell the Court something about that? -- meaning, you allege cyber-stalking by the respondents. If you can tell the Court about that...

MS. JIANG: Yeah. So after the temporary restraining order was granted suddenly I got a lot of -- [11] like, last time I said phone calls with -- weird phone calls with no one talking on the other side, and also there's, like, very weird, like, terrible -- like, blackmail emails that I need to send money before 36 hours otherwise they will exposure my privacy because they have access to my devices.

So this never had happened to me before in my whole entire life. I never receive this type of email. I mean, the email looks customized to my name. It's my name and it says some information about me, like, I know your age -- things like that. So I don't think it's, like, randomly reason why our email sends out to a lot of people.

And also, in the following days I received the email trying to trick me to click the link.

THE COURT: Tell me about LinkedIn.

MS. JIANG: Yeah. In LinkedIn -- like, if you see the timeline there's so many fake accounts. August 23rd I found that their buyer was viewing my profile. I served the supplement third document. The buyer happened to view my profile, and four hours after that there was a fake account created to try to connect with me. I know it was a fake account because there were no connections in the account, and the profile picture user was -- like, if you go

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and search you find some image of just some other picture just on some other Website. And also, the account linked to my work forum -- because that's where I used to work.

So and then on August 25th I found Aimee's husband. He was also looking at my Linkedin as you can see [12] on page six of the document, the fourth document. Aimee Song's husband, Jeffrey Wang -- he was viewing my Linkedin account, and a couple of hours after that there was another fake Linkedin account called Cody Kreminski with no connections -- like, zero connection, trying to view my account. And on August 26th there's another fake account.

It seems I did not -- oh, yeah. The fake account was the one I talked about, the Cody Kreminski, is key one. So that's the same day as our first hearing. Like, right after that hearing I found that fake account.

THE COURT: Tell me about the threatening email from the broker.

MS. JIANG: Yeah. So on August 31st we -- a email send it to me and then my husband stating that we have issued four statements on social media and Ms. Aimee Song and Ms. Chen will sue me -- something that tries to threaten me. But the fact is I did not publish on any social media. I did talk to my friends about the situation -- like, they forced us to sign a purchase contract and that I filed the restraining order against them, but we send in private messages. So I never published on any social media account.

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THE COURT: I have a question regarding the real estate transaction. And I apologize if I'm going back and forth. Did you all ever sign that purchase contract with their buyers? No.

MS. JIANG: No, never.

THE COURT: What happened regarding the sale of your original house? I know there's a new house.

[13]MS. JIANG: Yeah.

THE COURT: What happened there?

MS. JIANG: The other house is still in dispute. Like, we have another lawsuit about that. Their lawyers filed -- like, we received this from your lawyers.

THE COURT: So you're saying -- I'm sorry to interrupt. Just so I understand, your original house -- that, you haven't been able to sell it because it's in dispute. Is it with these realtors still?

MS. JIANG: In dispute with the buyer.

THE COURT: Oh, with the buyer. Okay.

MS. JIANG: Yeah. That's because their buyer still counts the counteroffer that we did not sign and the purchase contract which we did not sign as well. So our lawyer answered their lawyer's --

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THE COURT: -- complaint.

MS. JIANG: Yeah, complaint -- with the demurrer. The evidence was not sufficient. We did not sign the purchase agreement at all. So when there is no purchase agreement there is no contact, so there's no breach of contract. That is our lawyer's answer. So I have a copy. If you'd like I can submit.

THE COURT: Let's wait. Let me see if I need it. But I did ask the question.

I'm going to stop you here. To be honest with you, your documents do speak for themselves and I think I have a very good idea of the conduct that you are complaining of and why you are seeking protection. Before I [14]do that, though, let me ask your husband if there's anything he wishes to add briefly, knowing that if I have an opportunity I will come back to you all. So before you speak -- do you wish to speak, sir? Yes? I think you do.

MR. WU: Yes.

THE COURT: We need to have you sworn.

(PARTIES WERE FIRST DULY SWORN BY
THE CLERK OF THE COURT.)

THE CLERK: Can you please state and spell your name for the record.

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MR. WU: My name is Zhi Wu. First name, Z-h-i, last name, W-u.

THE CLERK: And did you agree and understand the stipulation read at the outset?

MR. WU: Yes.

THE COURT: Okay. Thank you. Go ahead, sir.

MR. WU: Yes, your Honor. Briefly we have been getting the continued harassment from Ms. Song and Ms. Chen since we refused to sign the purchase contract. Our family's safety was threatened and also there's a real action to threaten our family's safety. And even after we filed a temporary restraining order the harassment continues.

So that's why we think we need the Court's help to protect our family.

THE COURT: Okay. Thank you, sir. I'm going to switch now to the respondents.

Who is going to speak first?

[15]MS. SONG: Regarding...

(FOR THE RECORD COURT REPORTER
INTERJECTED.)

MS. SONG: So regarding petitioner's statement, we have a witness for my side. They said we are threatening

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them in the email. The witness, he is standing outside in the hall and he can come in to, you know -- I did not send any email to them. It's my branch manager. I also have some evidence which the petitioner says she is not a slander, this is not a label on us. But I have all the screen-shots which she put on the social media and also she send it to my current clients trying to interfere with our business and we have been harassed by them. It's not we're threatening them to anything.

THE COURT: Let's talk about the social media, the screen-shots you say you have. Have you provided those to petitioner?

MS. SONG: Not yet. I have the copies here today and I can present to you and present it to the petitioner.

THE COURT: Okay. Let's do that. Let's facilitate that. I want to take a look.

(PAUSE IN PROCEEDINGS.)

MS. JIANG: So what --

THE COURT: Oh, yeah -- not now, you're just looking. To the petitioner -- you can make notes on things you want to address, but it's their turn. When I say notes -- meaning, on your own paper. And if I need to give you paper I can, okay -- I want to address this or I want to [16] address that, when I come back to you. In other words, it's called rebuttal.

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MS. SONG: That's the email from my branch manager on August 31st, because she is sending some false information and trying to label on me to my current sellers. She is trying to look in my Zillow profile.

THE COURT: The mike is on; right? Bring it closer. Turn it in closer.

MS. SONG: You can take a look.

THE COURT: Let the record reflect I'm looking at this document provided by respondent, which includes what appears to be some online discussion. Just a moment.

(PAUSE IN PROCEEDINGS.)

THE COURT: Okay. Go ahead.

MS. SONG: Do you have any questions for me, the document I provide?

THE COURT: Not at this time. Go ahead.

MS. SONG: Yeah. I think she just using for restraining order and try to interfere with our business.

So we report the document. She sent it to my clients, to my branch manager. That's the reason my branch manager send it to her email.

THE COURT: I have a question about the allegations that have been brought, not specifically about these documents.

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MS. SONG: Okay.

THE COURT: My question is -- and I know I asked some of these when we were together before but I'm going to [17]ask again. Let's talk about the keys. And I know you all had a response to that and I want to hear it again since we're kind of doing this hearing anew.

MS. SONG: So regarding -- you said the key.

THE COURT: Right. And the key specifically regarding the petitioner's new home, those keys. In other words, they bought a new house. That situation closed. I think they rented it back to the original --

MS. SONG: They rent back.

THE COURT: Right -- for free, which was quite generous. Was it a house?

MS. JIANG: Yeah.

MS. SONG: They rent -- months rent back to her, so to July 16th.

THE COURT: Just so you know, when I specifically want to --

MS. SONG: We never came there to give them the key. So on the email, which the email I addressed for my branch manager I asked for older listing agent and I asked her the title company. That's our agent's job when we do the keys transfer normally transaction. We're supposed

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to be there with the clients to do the final walk-through. We asked them if they need to do the final walk-through. They say we don't need to participate.

Then I emailed to the listing agent, the title company -- and let him know the owner -- the new owner, which is the petitioner -- they already have the key to access the home. They will get the key by themselves. But [18]when the owner rent back then -- how they handled the last key when they get out the house, that's the purpose I told the listing agent if you are able to put a combination box put a latch on the combination box. Sure, that means the buyer's side, which include us, it include the petitioner -- so they could get last walk-through.

THE COURT: Well, petitioner clearly testified that's not what they wanted. So what ultimately happened? I think she testified that she contacted the seller's agent.

MS. SONG: We know they contacted the seller agent, but it is our job to tell the listing agent how we handle the keys. And also they have the \$3,000 security deposit...

(FOR THE RECORD COURT REPORTER
INTERJECTED.)

MS. SONG: -- for the previous owner on that. So I also kept track to the title company and it directly called the petitioner regarding the \$3,000 holding in the access code given back to the previous owner if everything is in good condition when we make first offer.

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THE COURT: Ms. Song, Ms. Jiang has made it clear that the relationship had deteriorated as far as she and her husband were concerned prior to their ability to now get the keys to their now new home -- let me finish -- from what I'm hearing. I will also tell you I've purchased a few houses myself and I always got my own key. So you know, I am struggling with why the interference when the petitioners are making it clear they're going to take care -- they're doing this. Why? Go ahead.

[19]MS. CHEN: Hi. Xiaoxin Chen. I want to say because the house had one month's rent and you can check all the condition -- so I feel like it's our duty to check everything if in good condition before the house is closed. At that time I don't know petitioner that come in contact with the seller agent. And when I text her she told me she would not show up. At that moment I know they are already not really selling their house and they hire us because we know before. So it's kind of commonsense.

So I feel like even though they're not happy to selling their home, but we still need to do our duty to check everything is good condition for them as the agent.

THE COURT: But the house had closed. The house had closed over a month ago, and these people are renting back. Right?

MS. CHEN: Yeah. Yeah.

THE COURT: So in effect, it's their house. Right? They are the owners of this house -- right? -- for all legal

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purposes. They've been the -- wait. Hold on. They've been the owners of the house for the 30 days this rent back occurred. Am I right?

MS. CHEN: Yes. Before they rent back the ownership between all the houses and we make the same condition before the first time we sell the house. So every time the other buyer they would go through and do their -- try to do the walk-through and we are in that response trying to help the buyer to get it in good condition. I said, no. I know then they really upset, so I try to make [20]this at least really smooth and happy ending. So I text her and she refused first time. And then I talk to Aimee -- just talk to everybody to make sure everything is done even because we didn't do final walk through.

THE COURT: Is it your duty to do it if they say no thank you?

MS. CHEN: So that's why I talk to Aimee and then she told me again. Then I realize maybe they really don't want me to show up. At that time actually I prepare for them because they mention every time we come to my friend or to my buyer there's a good wish to happy forever. So I prepare a gift and wanted to gift it to them. After they insist I didn't show up -- and this listing is everything to us. She just didn't receive our message. So I said maybe they don't want us to show up.

THE COURT: I mean, because if you think about it -- if your think about it for just a moment they are the legal owners of that house and have been for 30 days. I hear what you're saying about you wanted to make sure

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the previous owners didn't destroy the house during the rent-back. I get that and make sure there wasn't -- yeah. It's their legal house and they're completely uninviting to you the party. So...

MS. CHEN: But we didn't show up at the end.

MS. SONG: We did not show up.

THE COURT: Just so you know -- you're asking for the keys and telling them to put it in a lockbox and all this stuff on a piece of property the petitioners have [21] owned. They are the legal owners. They've got the deed and everything for at least 30 days. Just know how that sounds, and they're saying we're not -- we don't want you here -- no, thank you, and you're still insisting on a property they own.

But anyway, go ahead.

MS. SONG: No, we did not show up.

MS. CHEN: We did not show up.

MS. SONG: And also that wasn't the purpose for that. There was no reason getting their keys. It is not our purpose. The purpose is we just wanted to inform all of the parties and the title company and the listing agent --

THE COURT: What is that? Let me -- you know, I understand there's other languages. Can we show it to petitioner first, thank you.

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Let the record reflect Ms. Song referred to an email that she sent --

MS. SONG: Yes. I sent it --

THE COURT: Let me finish my statement -- that she sent to everyone, that the court attendant showed the email that she had printed out to the petitioner. Petitioner reviewed it and now the Court is taking a look.

Go ahead.

MS. SONG: Yeah. In the email the first sentence it's very clear. It says we are not going to get a key. The petitioner and her husband will be going to get the key by themselves because they already have one key on hand.

So there it is. They said I didn't need it of [22]the combo code to share with us -- us means the buyer's side, you know, include the petitioner. It's not we wanted the key. We don't have a reason to want to get a key, period. So we have no intention, no interest to get their home key.

THE COURT: Okay.

MS. SONG: I think that's just their misunderstanding, and I'm sorry.

THE COURT: I think the combo box, that inference -- if possible, comma, you can leave a combo box with the key inside and share us the code...

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MS. SONG: Yeah.

THE COURT: -- if you had left that part out I'd say I think then there wouldn't be a misunderstanding.

MS. SONG: Yes. It's misunderstanding. The ask me, not us -- me and somehow Chen is not us. We are not intending to go into there and transfer the key because they said they would come by themselves.

THE COURT: Let's talk about the offer --

MS. SONG: Okay.

THE COURT: -- and the buyer and specifically -- let me get my question out, Ms. Song -- and specifically, one --

MS. SONG: Let me state it. She is not understanding the email. I have a 3,000-dollar deposit and transfer the title company --

THE COURT: Actually, that's not what I want to discuss. Just a moment. The counteroffer and the 20 -- the [23]20 minutes to make a decision -- the 9:40 a.m. this buyer -- according to petitioner, you told petitioner that they have an accepted offer and they need to submit their earnest money on that other -- as to another property. And again, now we're talking about the original house -- the petitioner's original home, not the new home. She's saying they had 20 minutes to make a decision about this counteroffer and that they were only presented with the counteroffer at that time, not the full purchase contract. Tell me about that.

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MS. SONG: Okay. It is not true. So I have all the evidence she saw the buyers' offer. We use them too for a disclosure I owe, and also I share with her the contact all the access, which is on the MLS listing. I have it printed out. It's got all the interested parties' agents who are submitting offer. So -- and we have offer due date on June 22nd and at 5:00 p.m. And I shared the disclosure I owe to petitioner on June 22nd, 1:35. I have all the records on my system. I print it out.

THE COURT: Tell me again, what are you sharing on June 22nd at 1:35? What exactly are you sharing?

MS. SONG: June 22nd we have this disclosure system which we use to share this seller disclosure inspection reports to all interested parties. And that system can allow the agent who submit their offer and into the system we have a realtime to share with our seller, which I shared the access to her on June 22nd, 1:35. We also have a re-check to confirm she had access for the system. And she [24]reviewed the first offer coming in and then she reviewed the offer on Kevin Chu's offer, which is on June 22nd, 9:47 -- which is seller and the buyer. Xiaoxin is the buyer agent. She submit on June 22nd at 8:27 at night so she reviewed at 9:47. So we have all the records on my system.

THE COURT: Let's talk about 9:47. Is this the buyer at issue --

MS. SONG: The buyer's made offer.

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THE COURT: Right. So let me ask my question. The
9:47 --

MS. SONG: June 22nd.

THE COURT: All right. Okay. So did that buyer have
an accepted offer elsewhere and needed to deposit earnest
money by a certain time?

MS. SONG: I don't know that situation. I'm not the
one who is representing the buyer.

THE COURT: Well, no. Ms. Chen.

MS. CHEN: Hi. With regard to buyer she told me that
she had another offer to buy a house and also want to buy
but really like this one. And I told her just try your best
because the offer has all this issues, accept the offer or not.
So you can see the first offer presented at -- I believe at
8:00 p.m. June 22nd, and then I don't think the petitioner
set this offer.

And also the buyer talked to me. I told them sorry,
this might be too late if you want to get a offer we can
find their counteroffer. So the seller, they did get passed
the counteroffer.

[25]MS. SONG: Yeah. So actually the statement they
said we are threatening them and pushed them to sign
a contract is not true. June 22nd before they accepted
the offer and we have a back and forth conversation and
talk about this buyer's offer. And also she participate

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seller's counteroffer, which is the subject of Ming Cao Tao (PHONETIC) purchase agreement. And also she signed the buyer counteroffer. She totally aware of the conversation. She totally aware of the negotiation. They are participants.

THE COURT: Hold on. Hold on. When I talk you don't. Ms. Song, did you say it's most important to protect your family?

MS. SONG: Yes. That's -- she start the conversation between the house. So the original I tell them that, I remember, on the June 7th or June 17th -- June 7th. Let me see the history. So I think that that conversation is on the -- actually, the seller emerged the phone because she trying to tell them -- the buyer filed a lawsuit because they are subject to mediation and then they reject the mediation.

THE COURT: And then hold on. I have another question.

MS. SONG: Yeah.

THE COURT: I'm not sure which one, but did either of you tell --

MS. SONG: Yeah.

THE COURT: Wait. Hold on. Did either of you tell [26]petitioner that the buyer -- by them not signing the purchase contract that the buyer has significant damages

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totaling approximately 150,000? Did either of you tell the petitioners that?

MS. SONG: No. I don't know. That's -- I don't know. That's based on the lawsuit number HG21 106 --

THE COURT: When was the lawsuit filed?

MS. SONG: I have the buyer lawsuit number.

THE COURT: I want the date.

MS. SONG: I think on...

MS. CHEN: June 21st.

THE COURT: June 21st.

MS. SONG: Do you want to see this?

THE COURT: No, I don't. The buyer -- you're saying the buyer filed a lawsuit on June 21st.

MS. SONG: There are a couple of lawyers' email they are sending to us where. We're just forwarding to petitioner --

THE COURT: So that's not the filing of a lawsuit, those are emails.

MS. SONG: It was filed on June 21st, because --

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THE COURT: Are we saying June 21?

MS. SONG: I'm sorry, July 21st. No.

THE COURT: Okay.

MS. SONG: Because they skipped the mediation they put lis pendens on her house and then they filed a lawsuit, and the lawsuit they are asking for consequential house for 150,000 in damage, which has nothing to do with us. It's [27]between the buyer and the seller. We are not a participant for that.

THE COURT: Okay. In the interest of time I'm going to have to stop it there. I'm going to ask -- and I know you all have stated this before. I'm going back to petitioner.

I don't really want to hear a response to anything other than my question and I will allow you both to answer if you wish. I actually think -- I'll allow you both to answer if you wish. I understand that this transaction did not go well. I understand from your perspective you believe some things were done, said -- what have you, that from your point of view shouldn't have been, should not happen. And I also understand that this was difficult in the sense that you're trying to sell your original home.

You're living in a property owned by your agent. There's dual agency going on. There's a lot. Sounds like a very stressful situation. You all are in your new home now. You are dealing with a lawsuit involving the buyer. I assume lawyers are involved at this point. The buyer has an attorney. You all have an attorney.

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So if you can tell this Court -- in other words, I believe you were a bit entangled with respondent and now to some degree you no longer are. Why do you still feel the need for protection?

MS. JIANG: Yeah, because they still harass us. Like, there are so many fake accounts created on LinkedIn to approach me and there's phishing text messages, phishing [28]emails -- even, like, mal-emails. And also their broker are trending us even after the restraining order. So I think there are still contacts after temporary restraining order.

THE COURT: Okay. Just a moment.

(PAUSE IN PROCEEDINGS.)

THE COURT: California Code of Civil Procedure section 527.6 defines harassment as unlawful violence, a credible threat of violence or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys or harasses a person and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the plaintiff or petitioner, excuse me.

It is the Court's understanding that Ms. Song's statement regarding it's most important to protect your family petitioner took as a credible threat, and the Court understands that, but what I believe most occurred here is course of conduct. Just a moment.

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(PAUSE IN PROCEEDINGS.)

THE COURT: Course of conduct is described by this code section as a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking -- and that can be done online as well -- making harassing telephone calls or emails, et cetera. We have that here.

It is clear this transaction with the original [29]home did not go well. The Court would agree with petitioner that respondents' behavior was aggressive. The Court would agree -- although respondents say they had no desire to get the keys, they know that -- anyone in real estate knows that if you use a combo box or lockbox there's the potential that only the agent has access to that, how to get what's inside of that as opposed to lay persons.

It is also clear that petitioners were owners of the house, the legal deed-holding owners of a property. The agents are still trying to insert themselves. After making comments, like it's most important to protect your family -- after they know this relationship had significantly deteriorated, after they know they're unwelcomed -- they're still insisting. That's just one example of course of conduct, just one.

If you're going to engage in dual agency the level of entanglement -- I'm sorry. I think the line just got more than blurred, more than blurred. If you have someone living on your property, the dual agency -- frankly, it's no wonder we're here. The lines got blurred. And although I

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do think to some degree respondents were well-meaning in trying to maintain some level of professionalism, I do think the lines were blurred, a conflict arose and maybe they didn't handle it the best.

I do think things were communicated to petitioner that shouldn't have been. I think their buyer was saying I have experienced \$150,000 in damages, I'm going to sue -- and that was communicated to the agent, and I [30] believe that was communicated to the petitioners -- the petitioners took it as putting pressure on them to sign a contract they were not signing.

MS. SONG: I was --

THE COURT: I'm not asking for input.

I think a mistake was made. A professional mistake was made by the respondents. Now, I don't work for the board of realtors. That's not my job. I will tell you all I have held a broker's license in the past as an attorney. So I do think a mistake was made, and I think frankly respondents' admitted it at the last hearing -- it should have been done this way, it wasn't -- you know, the purchase agreement and all of that should have been signed at the same time -- or something to that affect.

A mistake may have been made, and as a result of that, that may be why there's this lawsuit happening between petitioners and the buyer. But that's not for me to decide. All I'm saying is there's a lot that happened in this transaction, and frankly it sound like it was multiple

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transactions. There was the sale of the original home and the purchase of a new home and respondents were engaged in all of that.

I do think pressure was put on petitioners and they were clear and remained clear -- no, we're not signing. And I think it was complicated by the dual agency. I do find it concerning that the -- I do believe there's behavior happening online, specifically as to Ms. Jiang, petitioner -- by the respondents, respondents' brokerage -- [31]et cetera. And it could be motivated by the pending lawsuit of the buyer, but that's neither here nor there. I do believe it's happening and it's happening inappropriately.

But more importantly, what was testified to by petitioner -- and again, I do think there was undue pressure put on petitioner to sign this contract that they were not going to sign while living in one of respondents' properties. And for these reasons I do find that there was course of conduct, and I am granting a permanent restraining order protecting petitioner. It will mirror the temporary order.

In that temporary order, you know, I see the children. I'm not seeing the husband. Did you all request protection for the husband?

MS. JIANG: I request for the children and my mom.

THE COURT: It may be that -- yeah. So that is what the protection will be. The length of time for this restraining order will be two years. I might have done a

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shorter period of time, but frankly because of the pending lawsuit I have a concern that conduct and behavior will continue when it shouldn't.

It's the Court's hope that this restraining order will draw a bright line for the respondents in regards to petitioner -- a bright line, one that maybe was not understood before. This matter is concluded.

(PROCEEDINGS CONCLUDED.)

**APPENDIX G — EMAIL TO POLICE REPORTING
AN EMAIL IMPERSONATING CHIEF JUSTICE
OF THE UNITED STATES JOHN ROBERTS**

More harassment email after RO granted

Jiang Lei <n111000jl@hotmail.com>
Sat 09/18/2021 16:57
To: Jason Livingston <jlivi@so.eccounty.us>

📎 8 attachments (20 MB)

Sep 18 disturbing email and fake account view.pdf; Aimee
Ran Song Permanent Restraining Order Granted.pdf;
Response to TRO - Aimee.pdf; Second Supplement JIANG
v SONG.pdf; Supplement and Supporting Doc to Petition
JIANG v SONG Vol 1.pdf; Supplemental ad Supporting
Docs to Petition w POS JIANG v SONG V 2.pdf; THIRD
Supp to Supporting Socs to Petition SONG.pdf; TRO.pdf;

Hi Jason,

How are you doing?
I have you are doing well.

I reported to you on Aug 12 about a blackmail email sent
to me after I filed TRO against Aimee Song and Xiaoxin
Chen for civil harassment. The harassment continues.

On Sep 16, permanent ROs against both of them were
granted after the second hearing (please see the attached
RO). However, I still receive harassment email after RO
was granted as shown below. There is also more fake
account cyberstalking me on LinkedIn as shown in the

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screenshot in the attachment called "Sep 18 disturbing email and fake account view". They were intensively harassed me. There were many fake accounts created to harass me on LinkedIn ever since the TRO was granted. Please refer to the supporting documents attached which were the documents I filed with the court for their previous harassment and threaten.

Could you please have an investigation to figure out who has been harassing me all the time? I really hope they can stop harassing me. It seems they continue after the RO was granted because they thought these disturbing behaviors I could not trace back to them (seems like Xiaoxin Chen's husband is an engineer in cyber security industry for over ten years).

Thank you so much!
Best, Lei

From: John Roberts <root@smtproutes.org>
Sent: Saturday, September 18, 2021 06:59
To: n111000jl@hotmail.com <n111000jl@hotmail.com>
Subject: ARE YOU STILL ALIVE?

We received several emails from one Mrs Holand Rose who narrated to us about the auto car accident you had 2 weeks ago. Mrs Holand made us understand with some proof that you're in hospital for treatment but there is no hope of your recovery. She stated that she is your business associate and your next of kin whom you have chosen and permitted to inherit all your properties. She is in contact with us for the approval of US\$10,500,000.00 (Ten Million

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Five Hundred Thousand United States Dollars Only)
which has just been brought to my desk by the United
State Treasury Secretary.

She requested for the Release Approval Order Certificate
(RAOC)so that the whole amount will be transferred into
her own personal account as she stated below.

Account Name Mrs Holand Rose
Citibank Banamex USA
2029 Century Park East Los Angeles, CA 80068
Routing Number: 122214645
Account Number: 8744130240

We request your confirmation if you are still alive before
we can process this transaction to Mrs Holand's Bank
Account. Because she is already processing the Release
Approval Order Certificate (RAOC).

We decided to contact you for the last time, to avoid
releasing your money to wrong person, because Mrs
Holand is too eager and ready to pay the fees and obtain
the Release Approval Order Certificate (RAOC) and follow
every other legal instruction to have this money into her
account. If you did not have an auto accident and you did
not permit Mrs Holand to claim your money, kindly reply
to this message with your full contact information so we
can process the release of the funds to you.

I'll be waiting to hear from you soon.

Regard,

John Roberts

Chief Justice of the United States

Seal of the Supreme Court

50a

**APPENDIX H — TRANSCRIPT OF MOTION
HEARING IN THE SUPERIOR COURT OF
CALIFORNIA, COUNTY OF ALAMEDA,
DATED DECEMBER 13, 2023**

**[1]IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA IN AND FOR
THE COUNTY OF ALAMEDA**

**THE HONORABLE KARIN SCHWARTZ,
JUDGE, PRESIDING**

NO. HG21106221

KEVIN CHU,

Plaintiff,

vs.

ZHI WU, LEI JIANG, *et al.*,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DECEMBER 13, 2023

**RENE C. DAVIDSON COURTHOUSE
1221 OAK STREET, DEPARTMENT 20
OAKLAND, CALIFORNIA 94612**

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[3]MONDAY, DECEMBER 13, 2023 3:13 P.M.

--o0o--

THE COURT: Calling Chu versus Wu, HG21106221.

Counsel, please state your appearances for the record.
And also counsel who is self-represented parties.

We'll start with the plaintiffs and cross-defendants.

MR. HARTNETT: Yes, your Honor.

Eric Hartnett on behalf of plaintiff and cross-defendant, Kevin Chu.

MR. WU: Yes, your Honor.

This is Zhi Wu, defendants and the cross-complaints (sic) in pro per.

MS. JIANG: Yes, your Honor.

This is Lei Jiang, cross-defendants and cross-complaints in pro per.

THE COURT: I think you're defendants and cross-plaintiffs, correct?

MR. WU: Defendants and cross-complaints.

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MS. JIANG: Thank you.

MR. WU: Thank you for correction, your Honor.

THE COURT: No problem.

Who is next?

[4]MR. BALLESTEROS: Dan Ballesteros, your Honor, for cross-defendants, Stella Xiaoxin Chen, Aimee Song, and Caldwell Banker Realty.

THE COURT: All right. And Mr. Ballesteros, before we went on the record, you wanted to say something. I asked you to hold off until we went on the record.

What is it that you wanted to say?

MR. BALLESTEROS: Thank you, your Honor.

My office did not receive any notice that cross-defendants and/or defendants and cross-complainants were contesting this and were going to do it.

So you know, I attended because -- I'm here because Department 20 sent me a Zoom invitation. But there has been no proper notice of contesting.

THE COURT: All right. Well, so I would just ask Jiang and Wu, could you please address that issue.

Did you provide notice to the other parties of your contest?

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MS. JIANG: I followed information from the court website to contest on the website. If you take a look on the court docket, you will see the information for the contest. And also we contested this before, and there was no issue.

[5]THE COURT: Well, you need to notify the other side.

I think the reason this is an issue because I recently denied an ex parte that you filed because there wasn't proper notice. So it's really important that you comply with any notice requirements in connection with these matters.

However, the parties are here, so I'm going to hear argument. The tentative is to deny the motion on a couple of different grounds, and I understand that the defendants and cross-complainants would like to contest the tentative.

Who is going to argue for you?

MR. WU: Your Honor, thank you for the opportunity. We would like to respond to several points in your tentative ruling.

First, we demonstrate in our reply Section 2A why the documents we are seeking are relevant and necessary and how it can lead to discovery of admissible evidence.

In the third affirmative defense in our answer is truth, unclean hands, which makes them not entitled to any relief.

And also in cross-complaint, the seventh cause of action is fraud against the Chu, Song, and Chen.

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[6]To establish our defense and claim, the communication records between Chu and Lei Jiang through 24 -- 2021 between Chu and Song and Chen are needed in determining whether Chu had engaged in creating the false urgency so Jiang has to sign the one-page counter offer.

Our 11th cause of action in cross-complaint is intentionally inflicting emotional distress.

For the harassment starting Chu in 2021 through January 2022, the communication records between Chu, Song and Chen are needed in determining whether Chu had engaged in harassing us and extorting money from us.

In addition, Song and Chen said they did not know Chu before they found him as a buyer for the Fremont property.

The communication records between Chu, Song, and Chen a few months before selling Fremont property could lead to admissible evidence, that they had communications before buying the Fremont property so that they could have undisclosed the relationship that would contribute to the fraud cause of action.

Also, we have also already tried alternative method to gather the documents which is in the Section 1 statement of fact in the reply.

As your Honor already acknowledged, we [7]requested this documents from Chu. However, Chu did not produce all the communications between him and Song in his initial document production.

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After we have met and conferred with and send letters to Chu multiple times, after all those efforts, Chu produced one more page of text message between him and Song, but he did not agree to produce more.

But even on this additional page of the text messages, the very first text message is Song sharing that Mr. Hartnett's contact with him to take legal action against us, which does not make sense to be the very beginning of the communication between two people who has not known each other before.

THE COURT: I do want to assure you that I have reviewed your briefs. So these are points that you have made in your briefs. I want you to use your time efficiently.

I will tell you this is the third issue in the Court's tentative. I think the more significant issue is the legal basis and authority with respect to a statute which seems to anticipate either on the one hand consent by the consumer or, on the other hand, a law enforcement activity.

So that's really the key issue here, and you may want to focus your argument on that.

[8]When I say law enforcement activity, I mean investigation or prosecution. Something of that nature.

MR. WU: Thank you, your Honor.

The reason we're talking about this is because you mentioned we haven't demonstrated the --

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THE COURT: But you have. I have read your briefs. So if you want to say to me, you know, in a 30,000 foot level, we raise this, we think you're overlooking that.

But going into detail about things that you briefed, and I will represent to you that I read both your opening brief and your closing brief, is not so helpful.

MR. WU: Okay. So I will just try to --

THE COURT: And really on that last point, on that last point, the relevancy issue really relates to the scope of time more than anything I think. It's just this very broad scope of time.

But I don't even get there. And that was really the concern on that last point was the scope of time. I don't even -- and the fact that you generally can't raise these issues in your reply brief.

You need to raise them in your opening brief so that the other side has a chance to respond to them. Otherwise you're kind of sandbagging them.

[9]Setting that aside, the real issue is the authority.

MR. WU: So your Honor, we already tried the alternative method. The authority you were mentioning is 28 -- 2891A, Public Utility Code, Section 2891.

But this code is about the subsequent personal calling pattern, including any listing of the telephone or

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other access numbers called by specific -- called by the subscriber.

However, the documents we are seeking are the communication records between specific persons in this case. It's not a listing of telephone numbers called by the subscriber.

So the documents that we're seeking are not falling under the Public Utility Code 2891; therefore no consent is required.

THE COURT: Anything else before I hear from the other side?

And you will get the last word after I hear from them.

MR. WU: So another thing I would like to mention is that our request is not overly broad because the communication between Chu and Song before the -- before Chu was trying to buy the Fremont property is also important.

[10]That's why it's not overly broad. That's why the first text message between Song and Chu, it is Song sharing the Mr. Hartnett's contact.

And we need this evidence from AT & T to have the evidence to compel Chu for further response so that we are not compelling him based on mere speculation but based on evidence. And the evidence we are trying to get is from the communication record from AT & T.

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THE COURT: All right. Thank you.

Who is going to argue on the other side?

MR. BALLESTEROS: I guess I am, your Honor.

But that's actually a good question. That's one of the questions that became sort of apparent.

This seems like it's really a motion to compel or ostensibly should have been a motion to compel Mr. Chu's further production.

To the extent that they believe there are documents Mr. Chu -- that were properly requested and Mr. Chu somehow improperly did not provide, I mean, that seems what this is -- this fishing expedition is all about.

But as far as Caldwell Banker and its agents, Stella Chen and Aimee Song go, if we're changing the statute now under which we are pursuing these things, well, then I think we need to start over again.

[11]If -- otherwise I think the Court's absolutely right. The statute that started this proceeding requires some sort of law enforcement proceeding. It needs a warrant, not simply a court order in a civil action.

In addition, all the other things that the Court pointed out. It's overbroad. It's seeking four years of communications based on what really should be closer to the four months worth of a transaction.

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And they haven't exhausted. They haven't exhausted all their efforts to try and obtain this stuff through other means.

So I don't really know -- I'm not really certain. If the Court needs me to respond to something further or a specific area, I'm happy to.

THE COURT: All right. Ms. Jiang and Mr. Wu, you get the last word on this.

MR. WU: So yeah, I don't agree with Mr. Ballesteros.

So the Public Utility Code 2891 -- sorry -- the 29 -- 28948, it says the Court can order the telephone company to produce the document without subscriber's consent. It's not only to law enforcement.

And I also want to quote the 1997 Land Development case. California's pretrial discovery [12]procedures are designed to minimize opportunities for fabrication and forgetfulness and to eliminate the need for 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, and it's starting -- and it's about Song and Chu, that they did not know -- Song and Chen said they did not know Chu before Chu was trying to buy the Fremont property.

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And that's a very important piece that they're trying to conceal or hide their relationship with Chu before Chu was trying to buy the Fremont property.

THE COURT: All right. Thank you, both. You'll get the Court's decision which will be posted in the next couple of days.

And with that, we can go off the record.

(Recess taken at 3:27 p.m.)

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**APPENDIX I — TRANSCRIPT OF MOTION
HEARING IN THE SUPERIOR COURT OF
CALIFORNIA, COUNTY OF ALAMEDA,
DATED FEBRUARY 15, 2024**

[1]SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF ALAMEDA

THE HONORABLE KARIN SCHWARTZ,
JUDGE, PRESIDING

Case No. HG 21106221

KEVIN CHU,

Plaintiff,

vs.

ZHI WU, LEI JIANG, *et al.*,

Defendant(S).

REPORTER'S TRANSCRIPT OF PROCEEDINGS

February 15, 2024

(Remote via Zoom videoconferencing)

[3]THURSDAY, FEBRUARY 15, 2024 3:07 P.M.

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PROCEEDINGS

JUDGE SCHWARTZ: All right. So I'm going to call the case on the record. Calling Chu vs. Wu, HG 21106221. Counsel, please state your appearances starting with the plaintiff.

MR. CARDINAL: Yes. Mark Cardinal. I'm specially appearing for Eric Hartnett, who represents plaintiff, Kevin Chu.

MR. BALLESTEROS: Dan Ballesteros for Coldwell Banker and their agents.

MR. WU: Zhi Wu, defendant and cross-complainant. And next to me is Lei Jiang, defendant and cross-complaint.

JUDGE SCHWARTZ: All right. And so you've seen the tentative and I understand, Mr. Wu and Ms. Jiang, that you want to contest the tentative. So who's going to do the talking today?

MR. WU: Your Honor, thank you. I will do the talking.

JUDGE SCHWARTZ: So Mr. Wu, sometimes you're coming in very clearly and sometimes you're coming in and out, and I know that the court reporter also needs to hear you well.

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[4]MR. WU: Okay. I will try to pull myself closer to it, but if I'm not clear, please stop me so that I can --

JUDGE SCHWARTZ: You're good now. Go ahead.

MR. WU: Thank you, Your Honor. First, I would like to thank the court for the tentative ruling, which did not disagree with the cross-complainants' arguments that PUC 2894 does not only apply to law enforcement or criminal cases and that cross-defendants made factual mistakes, such as the duration of the phone records requested and that the request is not overbroad.

Second, the CCP Section 1987.1 was not previously considered as the authority for the court to issue an order permitting compliance with the subpoena. In fact, the court commented in the tentative ruling that PUC 2894 is a defense to liability, not an independent authorization for production, which cross-complainants agree. Therefore, 1987.1 needs to be considered to enable the court to issue an order permitting the compliance with the subpoena, which can then be used in combination with PUC 2984 to create an exception for the consent requirement in PUC 2891. This was discussed in the motion for reconsideration at Part 3, Section (b), starting page 6.

Third, the CCP Section 1985.3(f) is required by PUC 2891. For the sake of time, I will not read the entire code section, but only the last part of it. It says "as [5]required by Section 2891 of the Public Utilities Code." So that means that the PUC 2891 is the basis of CCP 1985.3(f). And cross complainants already demonstrated that the

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records sought did not fall within PUC 2891 in the motion for reconsideration at Part 3, Section (b) starting page 9. And this was one reason in the December 13, 2023 order for the court to deny motion to compel. And at this time, we noticed that the court did not disagree that the records requested did not fall within PUC 2891 in the tentative ruling.

Fourth, I would like to address opposing counsel's arguments regarding whether cross-complainants have shown new or different law or facts under CCP 1008. 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.

In fact, I want to point out that this is not the first time opposing counsel misinterpreted the law. At the motion to compel hearing, opposing counsel said the PUC 2894 requires law enforcement involvement and relating to search warrants. However, the court order alone is sufficient, [6]without the need for law enforcement involvement, as demonstrated in cross-complainants' motion and reply, motion for reconsideration at Part 3, Section (b), starting page 6, and reply, Part 3, Section (b), starting page 5. So there's a repetitive behavior of misinterpretation of the law demonstrating that opposing counsel either does not understand the law or is trying to

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abuse, per se, cross-complainants by purposely misleading the court.

Going back to the new or different law or facts cross-complainants brought to the motion for reconsideration that the court did not previously consider. So this includes the following fact. There's a 3-year retention period --

JUDGE SCHWARTZ: Mr. Wu, I have read your papers, both your moving papers and your reply. So this is not the time to rehash your papers and we do have limited time today. How much longer do you need?

MR. WU: I need to explain that I have new or different law or fact that --

JUDGE SCHWARTZ: How much time do you need, sir? I mean, right now you're rehashing what's in your papers, which I've reviewed. How much time do you need?

MR. WU: Two more minutes.

JUDGE SCHWARTZ: Okay. That's fine. Go ahead.

MR. WU: Okay. Thank you, Your Honor. So there's a

[7]3-year retention period of the AT&T phone records that was discovered after the motion to compel was denied, because at that time, we need to know how long AT&T will retain the records while searching for what need to be done to get the record that we are entitled to.

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We discovered that if the court does not order AT&T to comply with the subpoena, we will suffer irreparable harm and permanent prejudice, meaning that the evidence that is material, relevant and calculated to lead to discovery of admissible evidence will forever disappear once the retention period is expired, and this wasn't considered in the motion to compel.

And another new or different law or fact that we brought to the motion for reconsideration that the court did not previously consider was the following statutes. One is the CCP 1987.1 was not previously considered as authority for the court to issue an order permitting compliance with the subpoena, so which was already discussed in the earlier arguments, and also, the CCP Section 2017.010, which gave cross-complainants the right to discovery as discussed in the Part 3, Section (a) and Section (c) of the motion for reconsideration.

The court should balance between the need for information and the potential harm when deciding whether an order should be granted. So here, without permitting the [8]discovery, cross-complainants will be irreparably harmed and permanently prejudiced, while permitting the discovery will cause no harm to cross-defendants because the records are non-privileged communication between real estate agents and the buyer. There's no privacy concern.

Another new or different law or fact that we brought to the motion for reconsideration that the court did not previously consider was the case laws. One is *Arnold v.*

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Ford, which cited *Mercado v. AT&T*. In this case, court ordered AT&T to produce phone records under CCP 1987.1 and PUC 2894. And, also, *Guzman v. Jensen*, which cited the *Miranda v. 21st Century*. This was also discussed in the Part 3, Section (a) of the motion for reconsideration.

Last, but not least, the trial court has inherent authority derived from the California Constitution to reconsider its earlier ruling and its jurisdiction is not truncated by Section 1008 as in case, *Nesbitt Financial Company*. So therefore, even if cross-complainants did not bring new or different law or fact, the trial court can still reconsider its previous order. In summary --

JUDGE SCHWARTZ: Mr. Wu --

MR. WU: Yes.

JUDGE SCHWARTZ: Go ahead.

MR. WU: Yes, thank you. In summary, this court has authority to reconsider its previous order denying the [9]cross-complainants' motion to compel. And the court also has authority to issue an order permitting compliance to subpoena under CCP 1987.1, and also should order AT&T to comply with the subpoena for the reasons argued above and in all the pleadings filed in this court.

JUDGE SCHWARTZ: Thank you, Mr. Wu.

Mr. Ballesteros or Mr. Cardinal, is either one of you going to be responding to this one?

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MR. BALLESTEROS: I guess I will, Your Honor, if the court requires it. I mean, this is not -- it's a motion for reconsideration. There are no new facts, no new law. I mean, that's sort of the simple answer. I don't really want to get into what I think is, you know, a misrepresentation of what happened before and a misinterpretation of the statutes, but there are no new facts and there are no new law that they provided. So --

JUDGE SCHWARTZ: All right. Thank you to both parties. I'm going to take this under submission. The court's ruling should be available in the next week. We're off the record.

(Whereupon, the record was closed at 3:19 p.m.)

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**APPENDIX J — TENTATIVE RULING OF
SUPERIOR COURT OF CALIFORNIA, COUNTY
OF SAN BERNARDINO, DATED APRIL 11, 2023**

CASE NUMBER: CIVSB2210351

**Tentative ruling on Apr. 11, 2023 in San Bernardino
County, CA - Case no: CIVSB2210351**

HEARING DATE
April 11th, 2023

COUNTY
San Bernardino County, CA

DOCKET FILING DATE
May 23rd, 2022

**Tentative Ruling on Apr. 11, 2023 in San Bernardino
County, CA - Case no: CIVSB2210351**

**CASE NAME: GUZMAN -V- JENSEN ET AL PRINT
CASE NO.: CIVSB2210351**

On April 11, 2023, San Bernardino County Superior Court
issued the following tentative ruling.

The Reference Case No.: CIVSB2210351 San Bernardino
County, California. Hearing Date 04.11.2023.

[View Case Records and Case History](#)

Defendant's ultimate goal is to obtain cell phone
records from Plaintiff's carrier. In this regard Defendant
served a deposition subpoena for records on Plaintiff's

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carrier, T-Mobile. T-Mobile objected because there was no written authorization from Plaintiff but represented that it would produce the records with a Court Order even in the absence of an authorization from Plaintiff.^{1 2}

It would appear that Plaintiff has refused to informally provide an authorization and opposed the instant motion on the grounds that the Court cannot compel her to issue a written authorization because she asserts it is an unauthorized method of discovery to require Plaintiff to produce a written authorization in response to a Request for Production of Documents.

The Court wonders why T-Mobile believes that the deposition subpoena is not an Order because it is. Cal. Code Civ. Proc. § 2020.210 allows for the issuance of a deposition subpoena for records by an attorney of record and Cal. Code Civ. Proc. § 2020.240 provides that a deponent who disobeys a deposition subpoena in any manner * * * may be punished for contempt * * * without the necessity of a prior order of court directing compliance by the witness.” [emphasis added]³

1. See Exhibit J attached to Defendants’ Notice of Lodgment of Exhibits in Support of defendants’ Motion to Compel. (EXHIBITS)

2. Defendant “lodged” exhibits with the Court. The Court “unlodged” them and filed them in order for these documents to be made part of the record. The parties are to refrain from “lodging” exhibits or documents in the future.

3. The Court could issue its own deposition subpoena for records to T-Mobile as an alternative.

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The Court also wonders why Defendant did not request that Plaintiff produce her own cell phone records which are easily obtainable by a cell phone user online. Instead, Defendant brings this motion to compel (1) Plaintiff to provide a written authorization; (2) order T-Mobile to comply with the subpoena or (3) order Plaintiff to provide further response to the Request No. 23.

The Court cannot make an order under (2) above because Defendant has not given any notice to T-Mobile of this motion. Ordering Plaintiff to provide a further response (3) appears ineffective as the real issue is whether or not the Court can compel Plaintiff to provide a written authorization.

Defendants argue *Miranda v. 21st Century Ins. Co.* (2004) 117 Cal.App.4th 913 (“*Miranda*”) provides authority for an order compelling Plaintiff to sign a release. In *Miranda*, the Court affirmed a sanction for failing to comply with a court order to authorize the release of medical records. However, there was no analysis as to whether the order compelling the plaintiff to sign a release was appropriate. Further, a release of medical records is distinguishable from a release of phone records protected by Public Utilities Code, section 1281.⁴

At present there is no clear appellate guidance on this issue. Last year, the issue presented here was addressed

4. Although not contended by either party, one could also argue that neither Cal. Code Civ. Proc. §1985.3 nor Cal. Pub. Util. Code §2891 apply as the subpoena does not appear to request Plaintiff's calling patterns; a listing of telephone numbers; billing or personal credit information.

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in a thoughtful ruling from a Sacramento County Superior Court, *Snow v. Farmers Ins. Exch. & Does I* ex rel. 50, 2022 Cal. Super. LEXIS 44287. In that case, the Defendant Farmers sought the Plaintiffs' cell phone records and text messages for the date of an automobile accident claiming the records may contain communications demonstrating Plaintiffs participated in planning the destruction of the vehicle and in covering up the true cause of the damage. The Defendant had previously issued a subpoena to the cell carrier with a Notice to Consumer, but Plaintiffs refused to sign authorizations. As a result, the Defendant brought a motion for an order compelling Plaintiffs to sign the authorizations, which Plaintiffs opposed. The Defendant conceded that a signed authorization was required under Public Utilities Code, section 2891, subdivision (a) before the cell phone carrier could release the records. The Snow court explained:

There is no other California authority providing guidance on if and how a requesting party may properly obtain discovery of cell phone records if the party whose cell phone records are sought refuses to provide the required authorization, and the decisions of other jurisdictions are inconsistent. Some courts have held that Pub. Util. Code § 2894 creates an exception to the requirement for authorization when disclosure is required by a court order (*McArdle v. AT&T Mobility LLC* (N.D.Cal. Apr. 16, 2010, No. C 09-1117 CW (MEJ)) 2010 U.S. Dist. LEXIS 47099) while others hold the exception applies only to orders issued for law enforcement purposes (*Lee v. Global Tel*Link Corp.* (C.D.Cal. Sep. 6, 2017, No. CV 15-2495-ODW) 2017 U.S. Dist. LEXIS 225542). Similarly, some

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courts have held Pub. Util. Code § 2891 is not intended to apply to mobile phone service (*Kamalu v. Walmart Stores, Inc.* (E.D. Cal. Aug. 15, 2013, No. 1:13-cv-00627-SAB) 2013 U.S.Dist.LEXIS 116590), while others have held the term “residential subscriber” includes mobile telephone service (see *Martin v. Global Tel*Link Corp.* (C.D.Cal. Dec. 6, 2017, No. 2:15-cv-02495-ODW(PLAx)) 2017 U.S.Dist.LEXIS 225617.) In sum, it “is unclear whether a court could order the telephone information without the consent of a party/consumer, or order the party/consumer to consent, or take some punitive [*5] action for the failure of the party/consumer to consent.” (*Robinson v. Kia Motors Am., Inc.* (E.D. Cal. June 13, 2011, No. CIV-S-10-3187-MCE GGH) 2011 U.S.Dist. LEXIS 62845, at *11, n. 3.) However, the cases share a theme in that they envision some method by which the Court may grant relief to a party seeking discovery of cell phone records. Absent clear authority to the contrary and in light of the language in Code of Civ. Proc. § 1985.3 indicating subpoenas for such records are invalid unless accompanied by a release authorization, the Court finds the approach proposed by Defendant and utilized by the trial court in *Miranda* is the most appropriate method for compelling the production of cell phone records via subpoena. (*Id* at p. 5)

In 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 Code of Civil

5. In this case, defendant sought further production of cell phone records from Plaintiff who objected on privacy grounds.

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Procedure 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."

(Cal. Pub. Util. Code § 2894.10(a).) Section 2891 applies to a residential subscriber, not mobile phone records, and does not prevent civil litigants from obtaining relevant information. (Id at p. 6) While not binding on the Court, these two cases are instructive and persuasive. Here, Defendant has made a showing for the relevance of the information sought. Plaintiff denies texting while driving which is directly disputed by a witness, an occupant in Defendant's vehicle.⁶

Plaintiff's opposition is based on a premise that the Court is without authority to make the requested order and cites cases from the last century holding that a trial court has no jurisdiction to order a party to comply with a method of discovery not expressly authorized by statute. Plaintiff attempts to distinguish the Miranda case by arguing there the Plaintiff had a contractual obligation to execute the authorizations. The Court finds that the approach taken in Snow is correct, and that 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, just as the Court can order a party to sign an authorization for medical

6. See EXHIBITS, Exhibit A.

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records. However, the time frame should be limited to an hour, 45 minutes before and 1 hour following the accident and that no content be provided.⁷

Sanctions: As this is a developing issue, sanctions are not appropriate.

Within ten days from this date, Plaintiff Ernestina Guzman is ordered to execute a written authorization for the release of her mobile cell phone records (without content) from T-Mobile for the date of February 8, 2021, from an hour, 45 minutes before and 1 hour following the accident (____ p.m. to _____ p.m.)

Trial Setting Conference:

On the Court's own motion, the Trial Setting Conference is continued to July 8, 2023, at 8:30 a.m. in Department S29.

Moving party is directed to give notice of ruling.

7. The parties are ordered to meet and confer on the exact times to be provided in the Court's Order.

**APPENDIX K — RELEVANT CONSTITUTIONAL
AND STATUTORY PROVISIONS**

Constitution Amend. XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Appendix K***Code Civ. Proc., § 1987.1**

(a) If a subpoena requires the attendance of a witness or the production of books, documents, electronically stored information, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by any person described in subdivision (b), or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person.

(b) The following persons may make a motion pursuant to subdivision (a):

- (1) A party.
- (2) A witness.
- (3) A consumer described in Section 1985.3.
- (4) An employee described in Section 1985.6.
- (5) A person whose personally identifying information, as defined in subdivision (b) of Section 1798.79.8 of the Civil Code, is sought in connection

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with an underlying action involving that person's exercise of free speech rights.

(c) Nothing in this section shall require any person to move to quash, modify, or condition any subpoena duces tecum of personal records of any consumer served under paragraph (1) of subdivision (b) of Section 1985.3 or employment records of any employee served under paragraph (1) of subdivision (b) of Section 1985.6.

*Appendix K***Pub. Util. Code, § 2891(a)**

No telephone or telegraph corporation shall make available to any other person or corporation, without first obtaining the residential subscriber's consent, in writing, any of the following information:

- (1) The subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber, but excluding the identification to the person called of the person calling and the telephone number from which the call was placed, subject to the restrictions in Section 2893, and also excluding billing information concerning the person calling which federal law or regulation requires a telephone corporation to provide to the person called.
- (2) The residential subscriber's credit or other personal financial information, except when the corporation is ordered by the commission to provide this information to any electrical, gas, heat, telephone, telegraph, or water corporation, or centralized credit check system, for the purpose of determining the creditworthiness of new utility subscribers.
- (3) The services which the residential subscriber purchases from the corporation or from independent suppliers of information services who use the corporation's telephone or telegraph

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line to provide service to the residential subscriber.

(4) Demographic information about individual residential subscribers, or aggregate information from which individual identities and characteristics have not been removed.

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Pub. Util. Code, § 2894

(a) Notwithstanding subdivision (e) of Section 2891, the disclosure of any information by an interexchange telephone corporation, a local exchange telephone corporation, or a provider of commercial mobile radio service, as defined in Section 216.8, in good faith compliance with the terms of a state or federal court warrant or order or administrative subpoena issued at the request of a law enforcement official or other federal, state, or local governmental agency for law enforcement purposes, is a complete defense against any civil action brought under this chapter or any other law, including, but not limited to, Chapter 1.5 (commencing with Section 630) of Part 1 of Title 15 of the Penal Code, for the wrongful disclosure of that information.

(b) As used in this section the following terms have the following meanings:

- (1) "Interexchange telephone corporation" means a telephone corporation that is a long-distance carrier.
- (2) "Local exchange telephone corporation" means a telephone corporation that provides local exchange services.

*Appendix K***Fed. R. Civ. P. 26(b)(1)**

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

*Appendix K***Code Civ. Proc., § 2017.010**

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, electronically stored information, tangible thing, or land or other property.

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Code Civ. Proc., § 1985.3

* * *

(f) A subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces tecum and who is a party to the civil action in which this subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

Any other consumer or nonparty whose personal records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party, the witness, and the deposition officer, a written objection that cites the specific grounds on which production of the personal records should be prohibited.

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No witness or deposition officer shall be required to produce personal records after receipt of notice that the motion has been brought by a consumer, or after receipt of a written objection from a nonparty consumer, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

The party requesting a consumer's personal records may bring a motion under Section 1987.1 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the personal records and the consumer or the consumer's attorney.

* * * *

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Civ. Code § 1689(b)(1)

A party to a contract may rescind the contract in the following cases:

If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.

*Appendix K***Code Civ. Proc., § 2894.10**

(a) The Legislature finds and declares that a number of federal and state laws have been enacted to protect residential telephone subscribers' privacy rights with respect to telephone solicitations. Various governmental agencies publish information that generally describes telephone subscribers' rights under these laws. Examples of publications include the Federal Trade Commission's brochure, "Straight Talk About Telemarketing," and the Federal Communications Commission's publication, "Consumer News, What You Can Do About Unsolicited Telephone Marketing Calls and Faxes." The Legislature intends that telephone subscribers be provided with information regarding their privacy rights, under state and federal law, with respect to telephone solicitations.

(b) Every local exchange telephone corporation shall provide its residential customers with information regarding state and federal laws that protect the privacy rights of residential telephone subscribers with respect to telephone solicitations by providing on an annual basis one or more of the following items of information in the billing statement of each residential customer and in conspicuous notices in the consumer information pages of the local telephone directories distributed by that telephone corporation:

- (1) A copy of a publication prepared by the Department of Consumer Affairs, the Public Utilities Commission, the Federal Trade Commission, or any other federal or state

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governmental agency that generally describes telephone subscribers' privacy rights, under state and federal laws, with respect to telephone solicitations.

(2) A list of the titles of the publications identified in paragraph (1) and information on how to obtain those publications.

(c) A provider of local exchange service shall not be subject to any penalties if the provider makes a good faith effort to provide or identify the publications described in subdivision (b).

*Appendix K***Code Civ. Proc., § 1094.5(c)**

Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

*Appendix K***Code Civ. Proc., § 1008(a)**

When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.