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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
7 FOR KING COUNTY

8 THE CITY OF SEATTLE, a municipal
9 corporation,

10 Plaintiff,

11 vs.

12 JOSEPH PHAN, aka CHAU QUANG PHAN,
13 and TRA MY THI LE, husband and wife,
individually and the marital community
composed thereof,

14 Defendants.

No.

**COMPLAINT FOR CIVIL FRAUD,
CONVERSION, BREACH OF
FIDUCIARY DUTY, AND UNJUST
ENRICHMENT**

15 Plaintiff, the City of Seattle ("City") alleges as follows:

16 **I. JURISDICTION, PARTIES AND VENUE**

17 1.1 The City of Seattle is a municipal corporation for the first class, organized and
18 existing under the laws of the State of Washington and doing business in King County,
19 Washington.

20 1.2 Seattle Public Utilities (SPU) is a department of the City of Seattle which provides
21 water and sewer services to the citizens of the City of Seattle.

22 1.3 Defendant Joseph Phan, also known as Chau Quang Phan, is an individual who is
23

1 married to Tra My Thi Le. Upon information and belief, at all relevant times Defendants have
2 resided in King County, Washington, and have been husband and wife and constitute a marital
3 community.

4 1.4 Upon information and belief, actions complained of herein occurred in Seattle,
5 Washington.

6 1.5 This Court has jurisdiction over the parties hereto, and the subject matter of this
7 action.

8 1.6 Venue is proper in King County Superior Court at Seattle.

9 II. FACTUAL ALLEGATIONS

10 2.1 At all relevant times until February 10, 2011 Defendant Joseph Phan was an
11 employee of the City of Seattle.

12 2.2 Mr. Phan was employed as an engineer by the City of Seattle in the department
13 known as Seattle Public Utilities. Mr. Phan's responsibilities included managing water main
14 extension projects for real estate developers and other SPU customers.

15 2.3 During the course of his employment with SPU, and in connection with the water
16 main extension projects that he was working on, Mr. Phan was authorized to inform customers of
17 Seattle Public Utilities' standard charges for services to be performed, to draft contracts between
18 SPU and those customers and to arrange for payment by those customers.

19 2.4 Mr. Phan did not arrange for SPU's accounting department to issue invoices
20 regarding projects that were assigned to him. As a result, SPU's accounting department was not
21 able to trace funds payable to SPU regarding those projects managed by Mr. Phan, and the funds
22 were not included in the reconciliation of SPU's accounts.

23 2.5 In or around 2008 Mr. Phan opened an account with the Bank of America in his own

1 name and “the City of Sea.” This was not an authorized account for the City of Seattle or for
2 Seattle Public Utilities.

3 2.6 Over a period of several years Mr. Phan took checks that were made out to “City of
4 Seattle” or “Seattle Public Utilities” which he had received during the course of his employment
5 and deposited them into the private bank account that he had opened at the Bank of America.

6 2.7 In or around 2008, 2009 and 2010 Mr. Phan deposited into his private bank account
7 with Bank of America over 70 checks worth a total of over \$1 Million which were intended for City
8 of Seattle / SPU. Seventy of the checks are listed in the criminal charges currently pending against
9 Mr. Phan, attached to this complaint as **Attachment A** and incorporated herein by reference.

10 2.8 According to an admission made by Mr. Phan after his arrest, he used the funds from
11 the City of Seattle / SPU checks he had deposited into his Bank of America account for his personal
12 benefit and for the benefit of his marital community, including to pay off credit card debts, to
13 purchase a car and to purchase real estate in Seattle.

14 2.9 In or around April 2009, Mr. Phan purchased undeveloped real estate on the
15 southwest corner on SW Charlestown Street, at 21st Avenue SW, Seattle WA. Upon information
16 and belief, Mr. Phan used the City of Seattle’s funds to purchase this real estate. The real estate is
17 currently in the name of Mr. Phan and his wife. The real estate is described as: Lot(s) 47 and 48,
18 Block 3, Gottstein’s First Addition to West Seattle, according to the plat thereof recorded in
19 Volume 3 of Plats, page(s) 68, records of King County, Washington. The parcel number for the real
20 estate is 2848700645.

21 2.10 In or around April 2009, Mr. Phan purchased undeveloped real estate, namely the 3rd
22 parcel north of South Snoqualmie Street on 47th Avenue South, Seattle, WA. Upon information and
23 belief, Mr. Phan used the City of Seattle’s funds to purchase this real estate. The real estate is

1 currently in the name of Mr. Phan, in his individual capacity. The real estate is described as: Lot 9,
2 Block 61, Maynard's Lake Washington addition to the City of Seattle, according to the Plat thereof
3 recorded in Volume 2 of Plats, Page(s) 33, records of King County, Washington. The parcel
4 number for the real estate is 5249802355.

5 2.11 In or around January 2010, Mr. Phan purchased a single-family house at 6557 29th
6 Avenue South, Seattle 98108. Upon information and belief, Mr. Phan used the City of Seattle's
7 funds to purchase this real estate. The real estate is currently in the name of Mr. Phan and his wife.
8 The real estate is described as: Lot(s) 16, Block 1, Holly Park Subdivision No. 1, according to the
9 plat thereof recorded in Volume 184 of Plats, Page(s) 11 through 17, records of King County,
10 Washington. The parcel number for the real estate is 3395040160.

11 2.12 Upon information and belief, Mr. Phan and his wife have rented out the house at
12 6557 29th Avenue South, Seattle, WA 98108, which has provided them with rental income, for their
13 benefit and for the benefit of their marital community.

14 2.13 In or around December 2010, Mr. Phan purchase undeveloped real estate at 4142
15 23rd Avenue South West, Seattle WA. Upon information and belief, Mr. Phan used the City of
16 Seattle's funds to purchase this real estate. The real estate is currently in the name of Mr. Phan and
17 his wife. The real estate is described as: Lots 5 and 6, Block 2, Southern Pacific supplemental
18 addition to West Seattle, according to the plat thereof recorded in Volume 3 of Plats, Page(s) 37,
19 Records of King County, Washington. The parcel number for the real estate is 7892100085.

20 2.14 In 2011, after Mr. Phan's employment had been terminated, Seattle Public Utilities
21 first suspected that funds connected with Mr. Phan's projects were missing. SPU began to
22 investigate. In January 2012, after SPU's investigators had confirmed that at least one check made
23 out to "City of Seattle" had been deposited into a bank account that was not a City bank account,

1 SPU reported the loss to Seattle Police Department.

2 2.15 Mr. Phan was arrested on March 1, 2012 in connection with suspected theft of funds
3 from SPU. According to the investigating detective, at the time of his arrest Mr. Phan confessed to
4 opening a Bank of American account and telling the bank that the account should list himself and
5 the City of Seattle as owners, as well as to other facts contained herein alleging his use of the stolen
6 funds.

7 2.16 At the time of his arrest Mr. Phan also confessed to taking many checks during the
8 course of his employment with SPU that were intended for the City of Seattle and depositing them
9 into the account that he created at the Bank of America.

10 2.17 At the time of his arrest Mr. Phan also admitted to withdrawing large sums of money
11 from the account that he created at the Bank of America and using them for personal purchases,
12 including to pay credit card debt, to purchase a car, to purchase a house in Seattle that he uses as a
13 rental property and to purchases a piece of property also in Seattle.

14 2.18 Criminal charges were filed against Mr. Phan on March 6, 2012, and are pending at
15 the time of filing this complaint. Mr. Phan was charged with 70 counts of first and second degree
16 theft. A copy of the charging document is attached to this complaint as **Attachment A**.

17 2.19 Mr. Phan has not returned to the City of Seattle any of the City's funds that he
18 deposited into his Bank of America account.

19 2.20 The City of Seattle has been damaged by Mr. Phan's actions.

20 **III. FIRST CAUSE OF ACTION – CIVIL FRAUD**

21 3.1 The City re-alleges all the facts set forth in paragraphs 2.1 to 2.20 above, and hereby
22 incorporates the same by reference.

23 3.2 The City of Seattle entrusted Mr. Phan, during his employment, with arranging for

1 payment by Seattle Public Utilities' customers for services provided to them.

2 3.3 Mr. Phan did not arrange for the Seattle Public Utilities accounting department to
3 issue invoices regarding projects that were assigned to him with the intent to deceive the City of
4 Seattle and to induce the City of Seattle to rely on its entrustment of him.

5 3.4 Mr. Phan opened an unauthorized bank account with Bank of America in the name
6 of the "City of Sea" with the intent to conceal from the City of Seattle his receipt of funds that were
7 intended to pay for services provided by Seattle Public Utilities, and to induce the City of Seattle to
8 continue to entrust Mr. Phan with employment.

9 3.5 The aforementioned conduct of Mr. Phan constituted intentional deceit and
10 concealment of material facts known to Mr. Phan with the intention of depriving the City of Seattle
11 of its property.

12 3.6 The City of Seattle, at the time Mr. Phan committed the acts described in paragraphs
13 3.3 and 3.4 above, was ignorant to Mr. Phan's receipt and deposit of such funds into such bank
14 account and deprivation of the City of Seattle of its rightful possession and use of such funds.

15 3.7 In reliance upon Mr. Phan's creation of the appearance that he was properly
16 arranging for payments to Seattle Public Utilities that were intended to pay for its services, the City
17 of Seattle continued to employ Mr. Phan.

18 3.8 The City of Seattle's reliance upon Mr. Phan's creation of the appearance that he
19 was properly performing his job responsibilities on behalf of the City of Seattle was justified
20 because the City of Seattle was ignorant to Mr. Phan's fraudulent conduct which he deliberately
21 concealed.

22 3.9 As a proximate result of Mr. Phan's concealment, deceit and conversion, the City of
23 Seattle was deprived of property totaling at least \$1,090,762.16, or such other amount as may be

1 proven at trial, and should be awarded judgment against Mr. Phan in that amount.

2 **IV. SECOND CAUSE OF ACTION – CONVERSION**

3 4.1 The City of Seattle re-alleges the facts and allegations set forth in paragraphs 2.1 to
4 3.9 above, and hereby incorporates the same by reference.

5 4.2 In omitting to arrange for Seattle Public Utilities' accounting department to issue
6 invoices regarding projects that were assigned to him, by opening an unauthorized bank account in
7 the name of "City of Sea," and by taking and depositing checks totaling over \$1 Million into this
8 bank account for his own personal use and benefit, Mr. Phan willfully and intentionally interfered
9 with the property of the City of Seattle.

10 4.3 The City of Seattle at no time consented to Mr. Phan's interference with such
11 property, and Mr. Phan, in committing the above described acts, acted without lawful justification.

12 4.4 At all relevant times, the City of Seattle was entitled to and had an exclusive right to
13 possession of the over \$1 Million with which Mr. Phan willfully and intentionally interfered, and
14 was deprived of such possession.

15 4.5 Mr. Phan's willful, intentional and unjustified interference with the property of the
16 City of Seattle constitutes conversion and renders Mr. Phan liable to the City of Seattle, in an
17 amount totaling \$1,090,762.16, or such other amount as may be proven at trial.

18 **V. THIRD CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY**

19 5.1 The City of Seattle re-alleges the facts and allegations set forth in paragraphs 2.1 to
20 4.5 above, and hereby incorporates the same by reference.

21 5.2 At all times relevant herein, Mr. Phan was an employee of the City of Seattle in the
22 Seattle Public Utilities Department, and in that capacity was responsible for managing water main
23 extension projects for SPU customers, including responsibilities regarding finances associated with

1 those projects. As a result of his employment with the City of Seattle and his duties connected
2 therewith, Mr. Phan was in a fiduciary relationship with and owed fiduciary duties to the City of
3 Seattle.

4 5.3 By opening an unauthorized bank account in the name of “City of Sea,” and by
5 depositing checks into that bank account for his own personal use and benefit, Mr. Phan took
6 advantage of that relationship and position of trust to the detriment of the City of Seattle, for the
7 purpose of benefitting himself and his marital community, thereby breaching his fiduciary duties to
8 the City of Seattle.

9 5.4 Mr. Phan’s breach of fiduciary duties to the City of Seattle caused injury and
10 damages to the City of Seattle in amounts to be proven at trial.

11 **VI. FORTH CAUSE OF ACTION - UNJUST ENRICHMENT,**
12 **CONSTRUCTIVE TRUST AND EQUITABLE LIEN**
(Mr. Phan, Tra My Thi Le and their Marital Community)

13 6.1 The City re-alleges all the facts set forth in paragraphs 2.1 to 5.4 above, and hereby
14 incorporates the same by reference.

15 6.2 As a result of the conduct described above, Defendants have been and continue to be
16 unjustly enriched at the expense of the City of Seattle. Specifically, Mr. Phan’s fraudulent and other
17 wrongful conduct enabled Defendants to acquire the real properties identified above, purchase a
18 vehicle and other personal property, and pay off credit cards, using funds of the City of Seattle to do
19 so and thereby unjustly enriching Defendants in an amount to be proven at trial.

20 6.3 By reason of the fraudulent and otherwise wrongful manner in which Defendants, or
21 any of them, obtained their alleged right, title or interest in and to the real properties identified
22 above, the Defendants, and each of them are involuntary trustees holding said property and profits
23 therefrom in constructive trust for the City of Seattle with the duty to convey the same to the City of

1 Seattle forthwith.

2 6.4 The Defendants acquired the properties identified in the above paragraphs 2.9
3 through 2.11 at the expense of the City of Seattle, and the City of Seattle is alternatively entitled to
4 the imposition of equitable liens on such properties.

5 **VII. DECLARATORY AND INJUNCTIVE RELIEF**

6 7.1 The City re-alleges the facts and allegations set forth in paragraphs 2.1 to 6.4 above,
7 and hereby incorporates the same by reference.

8 7.2 The City of Seattle is entitled to declaratory relief establishing that Mr. Phan's
9 conduct constitutes fraud, conversion and breach of fiduciary duty, and that Defendants were and
10 continue to be unjustly enriched thereby.

11 7.3 The City of Seattle is entitled to an injunction freezing any and all of the
12 Defendants' exempt and non-exempt real and personal property assets, including the real property
13 identified in paragraphs 2.9 through 2.11 above.

14 **VIII. PRAYER FOR RELIEF**

15 The City of Seattle now prays for the following relief:

16 8.1 For judgment against Defendants for the total amount of funds that Mr. Phan took
17 from the City of Seattle, in the amount of \$1,090,762.16, or such other amount as may be proven at
18 time of trial;

19 8.2 For pre-judgment interest and post-judgment interest on \$1,090,762.16 and/or in
20 such other and additional amount as may be proven at time of trial;

21 8.3 For a declaration that the Defendants hold the properties identified in paragraphs 2.9
22 through 2.11 above as constructive trustees for the benefit of the City of Seattle, or alternatively for
23 the imposition of equitable liens upon such properties, in favor of the City of Seattle.

1 8.4 For the City's costs incurred in connection with this matter;

2 8.5 For such other additional relief as the Court may deem just and equitable, including
3 the issuance of pre-judgment writs of attachment on the real property of Defendants.

4 DATED this 9th day of March, 2012.

5 PETER S. HOLMES
6 Seattle City Attorney

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ATTACHMENT A

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)
)
) Plaintiff,)
)
) v.) No. 12-1-01393-1 SEA
)
) JOSEPH PHAN,) **INFORMATION**
)
) AKA CHAU QUANG PHAN,)
)
)
)
) Defendant.)

COUNTS 1-40

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse JOSEPH PHAN, AKA CHAU QUANG PHAN, of the crimes of **Theft in the First Degree**, committed as follows:

That the defendant JOSEPH PHAN, AKA CHAU QUANG PHAN, in King County, Washington, on or about the below-listed dates, with intent to deprive another of property, to-wit: lawful U.S. currency, in the below-listed amounts, having a value in excess of \$1,500, did obtain control over such property belonging to City of Seattle, by color and aid of deception, and did exert unauthorized control over such property:

Count	Date	Amount	Check Payor	Check Payee
1	1/30/08	\$11,013.00	Patrick Archer Const.	City of Seattle
2	2/1/08	\$13,502.00	V-Squared, LLC	City of Seattle Water Permits
3	2/8/08	\$11,013.00	Tally Homes, LLC	City of Seattle
4	2/12/08	\$10,440.00	Alex Huynh	City of Seattle
5	2/15/08	\$11,013.00	Carneros Development, LLC	City of Seattle
6	2/25/08	\$11,013.00	Theo Construction, Inc.	City of Seattle
7	4/3/08	\$18,349.00	Bonus Properties LP	City of Seattle
8	4/18/08	\$11,013.00	Northwest Townhomes, LLC	City of Seattle
9	4/25/08	\$25,275.00	Ik Duk Whang dba I.D. Home Builder	City of Seattle

Count	Date	Amount	Check Payor	Check Payee
10	5/6/08	\$17,968.00	A-1 Landscaping and Construction, Inc.	City of Seattle
11	5/20/08	\$28,645.00	Northwest Townhomes, LLC	City of Seattle
12	5/28/08	\$32,976.00	564 Ward, LLC	City of Seattle
13	5/30/08	\$11,011.00	Seattle Signatures Homes, Inc.	City of Seattle
14	6/5/08	\$11,013.00	Inhabit LLC	City of Seattle
15	6/18/08	\$11,013.00	Bitter Lake, LLC	City of Seattle
16	6/25/08	\$11,013.00	JS & J Builders, Inc.	City of Seattle
17	7/7/08	\$11,013.00	Westford Rental Account	City of Seattle
18	7/18/08	\$10,440.00	Carol Depelecyn or James A. Finch	City of Seattle
19	8/14/08	\$10,484.00	JS & J Builders, Inc.	City of Seattle
20	8/20/08	\$6,740.00	Cho's LLC	City of Seattle
21	8/28/08	\$51,444.00	Bonus Properties LP	City of Seattle
22	9/10/08	\$4,239.00	JSH Homes, LLC	City of Seattle
23	9/22/08	\$10,038.00	MZ Construction LLC	City of Seattle
24	12/10/08	\$2,000.00	King County Housing Authority	City of Seattle
25	12/11/08	\$10,484.00	Villa Academy	City of Seattle
26	12/17/08	\$10,110.00	JS & J Builders, Inc.	City of Seattle
27	1/21/09	\$29,262.00	Holden Street Family Housing	City of Seattle
28	1/30/09	\$10,484.00	Pacific Northern Construction	City of Seattle
29	2/6/09	\$24,874.00	Southeast Effective Development (SEED)	City of Seattle
30	2/13/09	\$5,961.00	Bitter Lake, LLC	City of Seattle
31	3/5/09	\$14,799.00	Villa Academy	City of Seattle
32	3/20/09	\$20,959.00	Sea Mar, South Park Family LLC	City of Seattle
33	4/27/09	\$1,562.00	University of Washington	City of Seattle
34	5/1/09	\$18,432.00	ADB Construction Services, Inc.	City of Seattle
35	5/4/09	\$1,562.00	University of Washington	City of Seattle
36	5/4/09	\$1,562.00	University of Washington	City of Seattle
37	6/12/09	\$1,562.00	Solid Ground Washington	City of Seattle
38	6/26/09	\$6,825.00	Samaki Commons Limited Partnership	City of Seattle
39	7/17/09	\$4,265.50	Foushee	City of Seattle
40	8/7/09	\$1,562.00	Melrose Project LLC	City of Seattle

And at all times relevant hereto, defendant JOSEPH PHAN, AKA CHAU QUANG PHAN, was a public officer of Seattle Public Utilities, City of Seattle, and committed said felony offenses in connection with the duties of his office.

Contrary to RCW 9A.56.030(1)(a) and 9A.56.020(1)(a) and (b), and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do allege under the authority of RCW 9.94A.535(3)(d) that said crimes committed by JOSEPH PHAN, AKA CHAU QUANG PHAN, involve the following aggravating factors: that the current offenses were major economic offenses or a series of offenses, so identified by consideration of the following: there were multiple incidents per victim, the offenses occurred over a long period of time, and the defendant used his position of trust to facilitate the commission of the current offenses.

COUNTS 41-67

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH PHAN, AKA CHAU QUANG PHAN, of the crimes of **Theft in the First Degree**, a crime of the same or similar character and based on the same conduct as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant JOSEPH PHAN, AKA CHAU QUANG PHAN, in King County, Washington, on or about the below-listed dates, with intent to deprive another of property, to-wit: lawful U.S. currency, in the below-listed amounts, having a value in excess of \$5,000, did obtain control over such property belonging to City of Seattle, by color and aid of deception, and did exert unauthorized control over such property:

Count	Date	Amount	Check Payor	Check Payee
41	9/11/09	\$11,382.00	Wm. G. Reed, Jr.	City of Seattle
42	9/18/09	\$10,484.00	Emerald Landing LLC	City of Seattle
43	9/25/09	\$8,425.00	Seattle Signature Homes, Inc.	Seattle Public Utilities
44	9/25/09	\$13,010.00	Lake Union III, LLC	City of Seattle
45	9/25/09	\$15,017.00	IRIS Holdings, LLC	City of Seattle
46	10/2/09	\$9,617.00	Nurturing Knowledge Schools, Inc.	Seattle Public Utilities
47	10/2/09	\$49,548.00	Sellen Construction	City of Seattle
48	11/20/09	\$11,382.00	Blue Water Properties 1, LLC	City of Seattle
49	11/20/09	\$12,911.00	NAVOS Mental Health Solutions	City of Seattle
50	11/20/09	\$6,825.00	Harbor West Seattle LLC	City of Seattle
51	12/15/09	\$10,484.00	Monica M. Greenberg or Noah G. Greenberg	City of Seattle
52	12/31/09	\$15,000.00	Eric J. Yuen or David M. Yuen or Tracy M. Tam	City of Seattle
53	12/31/09	\$6,500.00	McFall Inc.	City of Seattle
54	1/29/10	\$7,000.00	Ellina A. Galustyan	City of Seattle
55	1/29/10	\$11,382.00	JDR Development, Inc.	City of Seattle
56	3/19/10	\$11,760.00	Antovich Developers & Contractors, Inc.	City of Seattle
57	4/9/10	\$5,076.00	Ellina A. Galustyan	City of Seattle

Count	Date	Amount	Check Payor	Check Payee
58	5/6/10	\$26,517.00	FC Residential Group, Inc.	City of Seattle
59	6/16/10	\$17,042.00	University of Washington	City of Seattle
60	6/24/10	\$12,101.00	Schilperoort & Brooks, Inc.	Seattle Public Utilities
61	7/30/10	\$22,621.00	NAVOS Mental Health Solutions	Seattle Public Utilities
62	8/6/10	\$6,643.00	M.J. Bill or M.E. Bill	City of Seattle
63	8/27/10	\$217,655.00	King County Housing Authority	City of Seattle
64	10/1/10	\$7,001.50	JDR Development, Inc.	City of Seattle
65	10/1/10	\$12,101.00	Seattle Community College District	Seattle Public Utilities
66	10/22/10	\$15,252.00	Gary Merlino Construction Co., Inc.	Seattle Public Utilities
67	11/19/10	\$12,101.00	PCL Construction Services, Inc.	City of Seattle-Public Utilities

Contrary to RCW 9A.56.030(1)(a) and 9A.56.020(1)(a) and (b), and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County, in the name and by the authority of the State of Washington further do allege under the authority of RCW 9.94A.535(3)(d) that said crimes committed by JOSEPH PHAN, AKA CHAU QUANG PHAN, involve the following aggravating factors: that the current offenses were major economic offenses or a series of offenses, so identified by consideration of the following: there were multiple incidents per victim, the offenses occurred over a long period of time, and the defendant used his position of trust to facilitate the commission of the current offenses.

COUNTS 68-70

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH PHAN, AKA CHAU QUANG PHAN, of the crimes of **Theft in the Second Degree**, a crime of the same or similar character and based on the same conduct as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant JOSEPH PHAN, AKA CHAU QUANG PHAN, in King County, Washington, on or about the below-listed dates, with intent to deprive another of property, to-wit: lawful U.S. currency, in the below-listed amounts, did obtain control over such property belonging to the City of Seattle by color and aid of deception, and did exert unauthorized control over such property belonging to City of Seattle, and that the value of such property did exceed \$750:


Count	Date	Amount	Check Payor	Check Payee
68	9/18/09	\$4,443.00	Norman Ng	City of Seattle

Count	Date	Amount	Check Payor	Check Payee
69	4/26/10	\$1,996.00	Turner Construction Co.	City of Seattle
70	6/24/10	\$1,877.16	Thirty-Sixth Avenue, LLC	City of Seattle

Contrary to RCW 9A.56.040(1)(a) and 9A.56.020(1)(a) and (b), and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County, in the name and by the authority of the State of Washington further do allege under the authority of RCW 9.94A.535(3)(d) that said crimes committed by JOSEPH PHAN, AKA CHAU QUANG PHAN, involve the following aggravating factors: that the current offenses were major economic offenses or a series of offenses, so identified by consideration of the following: there were multiple incidents per victim, the offenses occurred over a long period of time, and the defendant used his position of trust to facilitate the commission of the current offenses.

DANIEL T. SATTERBERG
Prosecuting Attorney

By: 
John C. Carver, WSBA #23560
Senior Deputy Prosecuting Attorney

1
2 CAUSE NO. 12-1-01393-1 SEA

3 PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
4 CONDITIONS OF RELEASE

5 The Defendant Joseph Phan, AKA Chau Quang Phan, is being charged with 67 counts of
6 Theft in the First Degree and three counts of Theft in the Second Degree. He was arrested by the
7 Seattle PD on March 1, 2012. At his initial appearance on March 2, 2012, District Judge Art
8 Chapman set his bail at \$750,000.

9 REQUEST FOR BAIL

10 The allegations in the Information charge Defendant with stealing over \$1,000,000 in
11 funds belonging to Seattle Public Utilities and the City of Seattle. Although about \$220,000 of
12 the fraudulently obtained funds have been recovered, a sizeable amount of funds, in excess of
13 \$500,000, is still unaccounted for. Defendant has stated that he was born in Vietnam, and still
14 has a brother and close friends there. Defendant is a flight risk, therefore, and bail should remain
15 at \$750,000 or be increased, and he should surrender his passport, among other conditions, if he
16 is to be released from custody.

17 Signed this _____ day of March, 2012.

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23
24 

John C. Carver, WSBA #23560

CAUSE NO. 12-1-01393-1 SEH



SEATTLE
POLICE
DEPARTMENT

**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

GENERAL OFFENSE # 12-024387
UNIT FILE NUMBER

That Keith Savas is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 12-024387;

There is probable cause to believe that Joseph PHAN, AKA Chau Quang PHAN, committed the crime(s) of Theft in the First Degree and Theft in the Second Degree within the City of Seattle, County of King, State of Washington.

This belief is predicated on the following facts and circumstances:

Joseph Phan, AKA Chau Quang Phan (hereinafter "Phan") was employed by the Project Engineering and Management Division of Seattle Public Utilities ("SPU") from August 1995 until he was fired from his position in February 2011. SPU fired Phan for using his access to the City of Seattle's Consolidated Customer Service System to fraudulently credit his own SPU customer accounts without actually paying the corresponding amounts to SPU. Phan had access to this system as part of his job responsibilities as an Associate Civil Engineer with SPU.

The primary responsibility of Phan's position with SPU's Project Engineering and Management Division was managing water main extension projects for developers and customers. In carrying out these duties, Phan would meet with the developer or customer, provide a project cost estimate, and enter into an agreement for engineering services (and sometimes construction services). He would also accept funds in the form of checks made out to the City of Seattle or Seattle Public Utilities for the project.

Prior to September 2005, Phan was the water main extension project manager, and he was located in SPU's Customer Service Branch. In that capacity, his duties included arranging for developers or customers to purchase water meters, for which he would also collect checks or other forms of payment. After September 2005, Phan's position moved to the Engineering Department, but the responsibility for arranging for and collecting monies for water meter installations remained with Customer Service.

After Phan was terminated from SPU in February 2011, his supervisor there, Michael Brennan, began to review his workspace and project files in order to catalogue and re-assign the work Phan had been doing. In connection with this review, a developer who wanted to proceed with a project that had previously belonged to a developer who had gone bankrupt called Brennan. This developer asked Brennan if he (the developer) could apply a previously paid deposit towards the project. The developer provided Brennan with a photocopy of the check that had been used as a deposit.

Brennan attempted to verify that this check had in fact been received and deposited to the appropriate account for the City of Seattle. He was unable to locate the check, however, or find out where it had been deposited. He even called Phan to ask him what he might have done with this check. Phan



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made several suggestions to Brennan regarding the fate of this check, none of which panned out. Brennan then contacted Charlene MacMillan-Davis of SPU's Labor Relations section about this situation. Ms. MacMillan-Davis, in turn, contacted Guillemette Regan, the Director of SPU's Risk and Quality Assurance, to investigate further.

Regan began to investigate by interviewing Phan's supervisor and manager to understand the body of work done by Phan. She also assembled a small investigative team that included MacMillan-Davis, Natalie Huang of SPU's Accounts Receivable Department, and Eileen Lawrence, an investigator with the City Attorney's Office. Regan and Lawrence began to go through numerous project files opened by Phan to determine how many checks he had received on behalf of SPU.

Regan and Huang eventually provided dozens of check copies that they had found in Phan's project files to Wells Fargo Bank, to verify whether or not they had been deposited into the City of Seattle's account. All accounts for the City of Seattle and SPU are with Wells Fargo. Wells Fargo subsequently notified Regan and Huang that 35 of the 47 checks that they had presented to Wells Fargo for verification had not been deposited to Wells Fargo. The sum total of the amounts of these checks was \$455,576. All of the copies of these checks, however, were copies of the checks before they had been negotiated. An examination of these copies, then, did not reveal to what account they may have been deposited or where they might have been cashed.

In the meantime, the King County Housing Authority (KCHA) registered a complaint with SPU in December 2011. A representative of the KCHA informed SPU that the KCHA had made a payment as a deposit on a project that Phan was handling on behalf of SPU, but the SPU Accounts Receivable staff was unable to locate the deposit. KCHA then provided to SPU a copy of the cancelled check that KCHA had provided as payment of the deposit.

The KCHA check is in the amount of \$2,000.00, and made payable to the City of Seattle, Department of Finance. It is dated November 26, 2008. The check has an endorsement stamped clearly on the back that reads: "Pay to the Order of Bank of America, Seattle, WA 98118, For Deposit Only, Account #*7000". As has been noted, the City of Seattle and SPU maintain all of their accounts at Wells Fargo Bank: none is located at the Bank of America. This check, then, although made payable to the City of Seattle, Department of Finance, was not actually negotiated through an authorized account of the City of Seattle or SPU. According to Regan and others at SPU, Phan was never authorized to negotiate checks he received in the course of his job for his own personal benefit.

Based on the above information, a subpoena duces tecum to the Bank of America for certain bank records pertaining to Bank of America account #*7000, for the period January 1, 2006 through March 2011 was obtained. I received a copy of the records provided by Bank of America pursuant to that subpoena on February 28, 2012. I have now had a chance to review them.



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The account was opened in the name of Phan and "the City of Sea", though the Bank of America reported it could not locate the original signature card for the account. I found that 71 checks made payable to the City of Seattle or to SPU had been deposited to this account between January 2006 and January 2011, the check amounts ranged from \$675.00 to \$217,655.00 and totaled \$1,090,762.16. Those checks in amounts greater than \$1,500 deposited before September 1, 2009 are charged as Thefts in the First Degree in Counts 1-40 of the Information being filed with this Certification. Those checks in amounts greater than \$5,000 deposited after September 1, 2009 are charged as Thefts in the First Degree in Counts 41-67 of the Information. Finally, those checks in amounts greater than \$750 but not more than \$5,000 that were deposited after September 1, 2009 are charged as Thefts in the Second Degree in Counts 68-70 of the Information.

Such checks made payable to the City of Seattle or to Seattle Public Utilities make up the overwhelming majority of the funds that have passed through this account. The only other checks that I found deposited into this account were a few checks made payable to Phan personally that do not amount to more than a few thousand dollars, and a few checks of several hundred dollars apiece made payable to the "City of Sea".

At my request Bothell PD Detectives arrested Phan at his workplace; I spoke with him at Bothell Police Department Headquarters. Phan confessed to opening the Bank of America account, No. *7000, telling the bank the account should list himself and the City of Seattle as owners. He admitted to taking many checks intended for the City of Seattle between 2008 and 2010 during the course of his employment with SPU, and depositing them into that account he created at Bank of America. He also admitted to withdrawing large sums of money from that account for personal use, to include paying off credit card debt, purchasing a car, purchasing a house in Seattle he uses as a rental property, and purchasing another piece of property also located in Seattle.

In conclusion, based on the evidence I have set out above, there is probable cause to believe that Joseph Phan, AKA Chau Quang Phan, has opened and used Account No. *7000 at the Bank of America almost exclusively as a means of negotiating checks payable to the City of Seattle or to Seattle Public Utilities in the amount of \$1,090,762.16 for his own personal benefit, without any authorization to do so, and therefore has committed numerous instances of Theft in the First Degree and Theft in the second degree between 2008 and 2010. At the time of these theft incidents Phan was employed as a public officer with the Seattle Public Utilities Department, City of Seattle, and the offenses were committed in connection with the duties of his office. The statute of limitations here would thus be ten years.



SEATTLE
POLICE
DEPARTMENT

**CERTIFICATION FOR DETERMINATION
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Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 5TH day of MARCH, 2012, at Seattle, Washington.



AGENCY: Seattle PD	WASPD0000	CASE NUMBER 12-024387	FILE NUMBER	PCN NUMBER	SUPERFORM
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ARREST INFORMATION	
DATE & TIME OF VIOLATION 2/29/2012 10:43 AM	CRIMINAL TRAFFIC CITATION ATTACHED? <input type="checkbox"/> YES <input type="checkbox"/> NO
DATE OF ARREST/TIME 3/1/2012 11:30 AM	ARREST LOCATION Bothell Police Department
ACCOMPLICES	

SUSPECT INFORMATION			
NAME (LAST, FIRST, MIDDLE/JR, SR, 1st, 2nd) PHAN, Chau Quang	Phan, Joseph aka	DOB 8/10/1967	ALIAS, NICKNAMES
ARMED/DANGEROUS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IDENTITY IN DOUBT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
CITIZENSHIP			

PHYSICAL DETAILS							
SEX M	HEIGHT 509	WEIGHT 168	SKIN TONE MED	RACE A	EYE BRO	HAIR BLK	SCARS, MARKS, TATTOOS, DEFORMITIES

IDENTIFICATION DETAILS							
CCN	PRIOR BA # 0	AFIS #	FBI #	STATE ID #	DRIVER'S LICENSE #	STATE WA	SSN
RESIDENCE				EMPLOYMENT / SCHOOL			
LAST KNOWN ADDRESS 3901 14th AV S Seattle, WA 98108-1429				EMPLOYER, SCHOOL (ADDRESS, SHOP/UNION NUMBER) City of Bothell:			
RESIDENCE PHONE				BUSINESS PHONE		OCCUPATION	

EMERGENCY CONTACT				
PERSON TO BE CONTACTED IN CASE OF EMERGENCY		RELATIONSHIP	Address	PHONE

CHARGE INFORMATION			
OFFENSE <input type="checkbox"/> DV <input type="checkbox"/> FUGITIVE I - THEFT INV	RCW / ORD# 2399	COURT / CAUSE # /	CITATION #
OFFENSE <input type="checkbox"/> DV <input type="checkbox"/> FUGITIVE	RCW / ORD#	COURT / CAUSE #	CITATION #

WARRANT / OTHER				
WARRANT DATE	WARRANT NUMBER	OFFENSE	AMOUNT OF BAIL	WARRANT TYPE
ORIGINATING POLICE AGENCY		ISSUING AGENCY	WARRANT RELEASED TO: (SERIAL # / UNIT / DATE / TIME)	

PROPERTY INFORMATION		
LIST VALUABLE ITEMS OR PROPERTY LEFT FOR ARRESTEE AT JAIL wallet cell phone		
LIST VALUABLE ITEMS OR PROPERTY ENTERED INTO EVIDENCE (SIMPLE DESCRIPTION, IDENTIFYING MARKS, SERIAL #) B of A VISA Debit card #3855		
LIST ITEMS ENTERED INTO SAFEKEEPING		
TOTAL CASH OF ARRESTEE \$402.91	WAS CASH TAKEN INTO EVIDENCE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT: \$402.91	SIGNATURE OF JAIL STAFF RECEIVING ITEMS / SERIAL #

OFFICER INFORMATION		
ARRESTING OFFICER / SERIAL # Savas, Keith D 5624	TRANSPORTING OFFICER / SERIAL #	SUPERVISOR SIGNATURE / SERIAL #
SUPERFORM COMPLETED BY (SIGNATURE/SERIAL #) Savas, Keith		CONTACT PERSON FOR ADDITIONAL INFORMATION (NAME/SERIAL#/PHONE) Savas, Keith 5624 2066844319

COURT FILE		
SUPERIOR COURT FILING INFO <input type="checkbox"/> IN CUSTODY <input type="checkbox"/> AT LARGE <input type="checkbox"/> OUT ON BOND	COURT CAUSE (STAMP OR WRITE)	
COURT/DIST. CT.NO.	DIST. CT. BOND \$	SUP. CT. DATE

EXTRADITE				
PERSON APPROVING EXTRADITION	SEAKING-LOCAL ONLY WACIC-STATE WIDE <input type="checkbox"/>	NCIC-WILL EXTRADITE FROM ID & OR ONLY <input type="checkbox"/>	NCIC-WILL EXTRADITE FROM OR, ID, MT, WY, CA, NV, UT, CO, AZ, NM, HI, AK <input type="checkbox"/>	NCIC-WILL EXTRADITE FROM FROM ALL 50 STATES <input type="checkbox"/>
E N T R Y	CCN _____	DOE _____	C L E A R A N C E	DOC _____
	WAC _____	TOE _____		TOC _____
	NCIC _____	OP _____		OP _____

PROBABLE CAUSE INFORMATION	
STATEMENT OF PROBABLE CAUSE: NON-VUCSA	
CONCISELY SET FORTH FACTS SHOWING PROBABLE CAUSE FOR EACH ELEMENT OF THE OFFENSE AND THAT THE SUSPECT COMMITTED THE OFFENSE. IF NOT PROVIDED, THE SUSPECT WILL BE AUTOMATICALLY RELEASED. INDICATE ANY WEAPONS INVOLVED. (DRUG CRIME CERTIFICATE BELOW.)	