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Mark Christopher Tracy  
m.tracy@echo-association.com  
1160 E. Buchnell Dr.  
Sandy, Utah 84094  
Tel: 929-208-6010  
*Qui tam Relator and Pro Se Appellant*

No. 22-4032

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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MARK CHRISTOPHER TRACY,  
d/b/a Emigration Canyon Home  
Owners Association

Appellant,

vs.

SIMPLIFI COMPANY, et. al.

Appellees.

**ORAL ARGUMENT  
REQUESTED**

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Appeal from the District of Utah, Central Division  
Hon. Robert J. Shelby, Chief District Judge  
D.C. No. 2:21-cv-00444-RJS

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**REPLY BRIEF OF APPELLANT**

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## **GLOSSARY**

**FCA:** False Claims Act

**SDWA:** Safe Drinking Water Act of 1974

## **ADDENDA**

1. Instructions and Briefing Schedule, 10th Circuit Court of Appeals, dated April 22, 2022.
2. H.R. Con. Res. 60th Cong. 23863 (1909)(enacted).
3. Email Correspondence between Appellant and the Legal Counsel of Appellees (Chronological Order).
4. Draft Unopposed Motion for Extension of Time to File Opening Brief (version 2.0).

*Pro se* appellant and federal whistleblower<sup>1</sup> Mark Christopher Tracy (“USA ex rel. Tracy”) respectfully submits the following Reply to the joint Response Brief filed by Appellee Utah Attorney Jeremy Rand Cook (“Utah Attorney Cook”)<sup>2</sup> on behalf of himself, and as the legal representative of the Simplifi Company, and its sole shareholders Jennifer and Eric Hawkes<sup>3</sup> (“Cook Appellees” and “Cook Response Brief” respectively) and the separate Response Brief filed by Church of Jesus Christ of Latter-Day Saints (“LDS” aka Mormon) Religious Leader and Appellee David M. Bennion (“Utah Attorney Bennion” and “Bennion Response Brief” respectively).

## INTRODUCTION

For the past eight (8) years, at extraordinary private expense, with the devoted support of multiple long-time residents, a member of Utah’s Hogle Zoo Board of Directors, a former trustee,<sup>4</sup> and the widowed spouse of a former trustee of

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<sup>1</sup> *United States of America ex rel. Mark Christopher Tracy v. Emigration Improvement District et al.*, No. 21- 4059 & 21- 4143 (10th Cir., Response Order, November 29, 2021).

<sup>2</sup> Utah Attorney Cook has likewise presented himself as a material witness in the pending FCA litigation and entered appearance for Eric Hawkes as a private “EID independent contractor” at taxpayer expense. *Id.*, ECF No. 76

<sup>3</sup> Contrary to the representations of Utah Attorney Cook to this Court that “[Jennifer] Hawkes has no direct involved with EID” [*Cook Response Brief* at page 2, ft. no. 2], both Jennifer and Eric Hawkes serve as the designated public records office of EID as confirmed by Utah Attorney Cook himself in previous litigation. *see* Motion to Vacate Memorandum Decision and Judgment, *Tracy v. Simplifi et al.*, No. 200905074 (Utah 3rd Dist., March 15, 2021).

<sup>4</sup> *Id.*, ECF No. 233-1.



Emigration Improvement District (“EID”), USA ex rel. Tracy has collected and reviewed thousands of pages of public and private documents spanning a period of over 113 years, secured hundreds of hours of voice recordings, and conducted extensive ground- and drinking water testing at key locations in Emigration Canyon (the “Canyon”) in what has alleged to be the longest, most lucrative, and perhaps most economically destructive water grabs in the history of the State of Utah.

Despite having secured expert hydrology reports of groundwater depletion [R188-97] both willfully withheld and misrepresented to the public by Cook Appellees,<sup>5</sup> internal communications evidencing active concealment of lead contamination of public drinking-water system UT18143 in violation of the federal Safe Drinking Water Act of 1974,<sup>6</sup> and documentation of massive fissures, ground

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<sup>5</sup> *Tracy v. Simplifi et al.* No. 20210227-CA (Utah Ct. App., Order of Summary Affirmance, January 24, 2022).

<sup>6</sup> *Tracy v. Simplifi et al.* No. 20210754-CA (Utah, Ct. App., Remittitur, January 7, 2022); *see also* illustrative map entitled “Lead Contamination Table – EID Water Sources and Customers” at [https://echo-association.com/?page\\_id=4950](https://echo-association.com/?page_id=4950) last edited on November 3, 2019, 6:04 PM, and email correspondence entitled “Email Correspondence from EID General Manager Eric Hawkes of Simplifi Company to EID Trustees and EID Legal Counsel Jeremy R. Cook (July 6, 2020)” at [https://echo-association.com/?page\\_id=6740](https://echo-association.com/?page_id=6740) last edited on March 7, 2020, 7:06 AM. (*Complaint* at page 7, no. 24).

subsidence,<sup>7</sup> and contamination of the Canyon's Twin Creek aquifer,<sup>8</sup> with the active assistance of legal professionals licensed in the State of Utah and the presiding judge of the Utah State Third District Court,<sup>9</sup> the fraudulent retirement of senior perfected water shares vis-à-vis a water right stripped by Mormon Land Developers from the only active federal military created by an Act of Congress and signed into law by United States President Ulysses S. Grant in 1874 "to be permanently used as a cemetery for the burial of the dead"<sup>10</sup> continues to date unabated.<sup>11</sup>

The instant appeal asks if the assignment of a federal civil right to safe culinary drinking water -- and therewith the use and enjoyment of a private home -- is null and void under Utah common law and if such a state law prohibition is consistent

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<sup>7</sup> See audio and video recording entitled, "Aerial and Ground Recording of the Emigration Oaks PUD (YouTube)" available at the website administered by The ECHO- Association at [https://echo-association.com/?page\\_id=3310](https://echo-association.com/?page_id=3310) last edited on October 10, 2021, at 04:31 PM [R178].

<sup>8</sup> See laboratory test results of Karen Penske (aka Karen Anderson) dated December 13, 2013, and September 7, 2022, [R199-200].

<sup>9</sup> Brief of Petitioner for Writ of Extraordinary Relief, *Tracy v. Hon. Kouris*, No. 20210743 (UT, October 11, 2021); see also Motion to Reinstate Time for Filing Appeal *Tracy v. Simplifi et. al*, No. 200905074 (Utah 3rd Dist., April 15, 2022).

<sup>10</sup> H.R. Con. Res. 60th Cong. 23863 (1909)(enacted).

<sup>11</sup> Water litigation to terminate operation of public water system UTAH18143 operated by Appellees for the benefit of Utah Attorney Bennion, and former Utah State Supreme Court Justice Christina Durham inter alia at the determinate of nine (9) senior water right protestants is currently pending before the Utah Court of Appeals. *Emigration Canyon Home Owners Association v. Kent L. Jones and Emigration Improvement District*, No. 20020295 (Utah Ct. App., Reply Brief, May 2, 2022).

with requirements of 42 U.S.C. § 1988(a) as articulated by the Supreme Court in *Wilson v. Garcia*, 471 U.S. 261 (1985).

Contrary to the cursory legal analysis of the district court, which incorrectly held that *Wilson* was “superseded” by 28 U.S.C. § 1658 [R225] and was thus inapplicable to the instant action,<sup>12</sup> and Appellees’ one-sentence legal argument presented to this Court,<sup>13</sup> the instant case demonstrates that “the protection of all persons in the United States in their civil rights” as mandated by 42 U.S.C. §1988(a) for the application of state common law is not *advanced* but is rather *thwarted* when individuals acting under the color of state law and/or via class-based, invidiously discriminatory animus successfully conceal federal civil rights violations from unsuspecting injured citizen(s) of the United States of America.

As in the case of Lincoln’s Law enacted in 1863 to prevent massive fraud against the United States of America during the American Civil War,<sup>14</sup> assignment is an effective and suitable remedy allowing private investigation and prosecution of federal civil rights violations thereby ensuring that the cloaked misuse of state

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<sup>12</sup> Not only does 28 U.S.C. §1658 apply only to federal statutes enacted after December 1, 1990, it applies solely to time limitations and not assignment of federal claims, which must be determined under the requirements of 42 U.S.C. § 1988(a) as articulated under *Wilson*.

<sup>13</sup> *Cook Response Brief* at page 20; *Bennion Response Brief* at page 22.

<sup>14</sup> 31 U.S.C. §§ 3729 et seq.



authority and/or veiled conspiracies of class-based, invidiously discriminatory animus do not occur within the jurisdiction of this Court unpunished.

### **SUMMARY OF ISSUES PRESENTED BY APPELLEES**

Appellees argue that USA ex rel. Tracy has forfeited and/or waived appellate review, or in the alternative, this Court should affirm dismissal as the assignment of federal civil rights is prohibited under Utah common law pursuant to this Court's previous rulings regarding the application of state common law when determining the statute of limitations of federal statutes.<sup>15, 16</sup>

In the yet further alternative, Appellees content that this Court should affirm on the grounds that Utah Attorney Bennion's actions in furtherance of an invidiously discriminatory animus toward Non-LDS Members occurred five years prior to commencement of the present action and is thus time barred<sup>17</sup> and/or was permissible

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<sup>15</sup> The Appellees offer no analysis how this Court's previous rulings regarding the statute of limitations must also preclude assignment of federal claims pursuant to 42 U.S.C. §1988(a).

<sup>16</sup> Appellees offer this Court no explanation how assignment of federal civil law claims will lead to "maintenance and champerty" for citizens of the United States of America who are unaware of injury due to active concealment of individuals acting under the color of state law or veiled conspiracies involving invidiously discriminatory animus. *See Cook Response Brief* at page 19; *Bennion Response Brief* at page 22.

<sup>17</sup> *Bennion Response Brief* at page 37.



as it was a purely “private conspiracy”<sup>18</sup> not directed towards Negroes,<sup>19</sup> and was solely motivated by the personal economic interest of Utah Attorney Bennion.<sup>20</sup>

These arguments fail.

### SUMMARY OF ARGUMENT

Based upon the detailed factual allegations of the Complaint [R005-16], the Objections to the Report and Recommendation of the Magistrate Judge [R177-215] and the issues and arguments identified in the Pro se Aplt. Brief approved and accepted for filing by this Court,<sup>21, 22</sup> USA ex rel. Tracy has neither waived nor forfeited appellate review.

Moreover, 42 U.S.C. § 1988(a) does not permit state common law to determine if the assignment of federal civil rights is null and void, while litigation against Utah Attorney Bennion is not time barred, is not limited to class-based animus towards Negroes as Utah Attorney Bennion actively collude with Cook Appellees to commence tax foreclose sale of private homes belonging to only Non-

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<sup>18</sup> *Id.* at page 35.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> This Court issued Utah Attorney Cook two (2) Notices of Deficiency, while Pro se Appellant USA ex rel. Tracy has received no such notice.

<sup>22</sup> It must be noted that although Utah Attorneys Cook and Eric Olson stipulated to an extension of time for USA ex rel. Tracy to file the Opening Brief, both refused to respond to the draft stipulated motion forcing utilization of the Pro se Aplt. Br. See Email Correspondence between Appellant and Legal Counsel of Appellees, attached as Addendum No. 3 and Draft Unopposed Motion for Extension of Time to File Opening Brief (version 2.0), attached as Addendum No. 4.

LDS Members in order to ensure continued operation of an unfeasible and destructive water systems operated under the color of state authority via a known duplicitous water right mandated by the Congress of the United States of America for exclusive use at an active federal military cemetery.

This Court should reverse dismissal and remand for further proceedings with the district court consistent with its opinion.

## **ARGUMENT**

### **I. Standard of Review.**

As this case was dismissed by the district court under Fed. R. Civ. P. 12(b)(6), all reasonable inferences are to be drawn in the light most favorable to the non-moving party, without making credibility determinations or weighing the evidence. *Mayfield v. Bethards*, 826 F. 3d 1252, 1255 (10th Circuit 2016). To withstand dismissal, the Complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)(quoting *Bel Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007)).

### **II. Pro Se Pleading Requirements for Federal Civil Rights Violations.**

As a *pro se* litigant, the district court must construe the Complaint liberally. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Pursuant to the “newly refined pleading standard” plaintiffs must “nudge their claims across the line from conceivable to plausible” and the allegations must not be “so general that they

encompass a wide swath of conduct.” *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012).

### **III. Detailed Factual Allegations of the Complaint.**

#### **A. The Construction of Private Luxury Estates in Emigration Canyon with a Water Right Deeded by the Congress of the United States of America for Exclusive Use at an Active Federal Military Cemetery.**

In the summer of 1985, private land developers and prominent members of the Mormon Church, Kem Gardner and Walter J. Plumb III, former law partner of United States Senator Orrin Hatch and President pro tempore of the Senate, (“LDS Land-Developers Gardner and Plumb”) stripped water rights from the only active federal military cemetery created by an Act of Congress,<sup>23, 24, 25</sup> signed into law by United States President Ulysses S. Grant, and originally deeded to the Mount Olivet Cemetery Association in 1874 to be “forever used for the burial of the dead” (“Mt. Olivet Water Right”) [Addendum No. 2], to construct the luxurious Emigration Oaks Private Urban Development (“Emigration Oaks PUD” and “Emigration Oaks

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<sup>23</sup> See Mount Olivet Cemetery under “History” available at website administered by the Mount Olivet Cemetery Association <http://www.mountolivetcemeteryslc.com/MO-History.html> last accessed on January 14, 2022 [R179].

<sup>24</sup> See “Boyer and Sorenson Land Development Deeds” available at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=6908](https://echo-association.com/?page_id=6908) last edited on June 27, 2020, 09:45 AM [R179].

<sup>25</sup> USA ex rel. Tracy has retained services a to ensure that the Mt. Olivet Water Rights currently held by EID and Salt Lake City are properly returned to hallowed cemetery grounds See Open Letter to United States Congressional Leaders at *id.* [R179].



Drinking-Water System”) on the north slopes of the Canyon. (*Complaint* at pages 4-5, nos. 16-18.)

As the United States of America retained a revisionary interest if cemetery property (and water rights appurtenant thereto) were used in violation of the conveyance deed [Addendum No. 2], the Emigration Oaks Drinking-Water System was legally defunct as it extracted groundwater for water use outside of hallowed cemetery grounds. (*Complaint* at page 5, ft. no. 1).

The Emigration Oaks Drinking-Water System was also technically deficient consisting of a grossly undersized 300,000 gallon water tank and two (2) large-diameter commercial wells<sup>26</sup> expressly prohibited by expert hydrology reports as ill-suited to the Canyon’s unique aquifer system and predicted to dewater both the historic Canyon stream providing water service to Utah’s Hogle Zoo<sup>27</sup> and existing

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<sup>26</sup> During pendency of second appeal and the second remand by the United States Court of Appeals for the 10th Circuit, the USA ex rel. Tracy secured laboratory records evidencing that all Emigration Oaks PUD water sources had tested positive for lead contamination since April 18, 1994. See “Certificate of Analysis” available at the website administered by the Emigration Canyon Home Owners Association at [https://echo-association.com/?page\\_id=5916](https://echo-association.com/?page_id=5916) last edited on November 24, 2019, 7:52 AM and [https://echo-association.com/?page\\_id=5918](https://echo-association.com/?page_id=5918) last edited on November 24, 2019, 7:53 AM [R180]. To date, EID through Cook Appellees continue to prevent access to public records of lead contamination. *Onysko v. Patrica Smith-Mansfield et. al*, Case No. 20090661 (Utah Third Dist., Scheduling Order, December 14, 2021).

<sup>27</sup> See audio recording and illustrative diagrams entitled “Interference with Groundwater Movement by the Emigration Oaks Development” at the website administered by the Emigration Canyon Home Owners Association at [https://echo-association.com/?page\\_id=2204](https://echo-association.com/?page_id=2204) last edited on August 22, 2018, 10:15 AM [R180].



single-family domestic wells operated under senior perfected water rights “*with almost certainty*” [R188-97](emphasis added). (*Complaint* at page 4, no. 17.)

Facing a catastrophic business investment, LDS Land-Developers Gardner and Plumb turned to EID,<sup>28</sup> a Utah special service water district, controlled by a black-listed securities broker,<sup>29</sup> and a failed Utah banker,<sup>30</sup> to assume legal title and liability of the defunct Emigration Oaks Drinking-Water System at taxpayer expense. (*Complaint* at page 5, nos. 18-20.)

Upon EID’s acquisition of the Boyer Water System in August 1998, LDS Religious Leader Fred A. Smolka (“Bishop Smolka”), stepped down as EID Trustee Chairman after first awarding his own private Utah corporation Management Enterprises LLC a no-bid contract to operate the Emigration Oaks Drinking-Water System with Bishop Smolka christening himself as EID operations manager, EID

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<sup>28</sup> See excerpt of EID Trustee public meetings minutes entitled “Undisclosed Conflict of Interest Between EID Trustee Chairman Michael Scott Hughes, R. Steve Creamer, Walter J. Plumb III (City Development Inc.), and Kem Gardner (The Boyer Company LC) available at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=1661](https://echo-association.com/?page_id=1661).

<sup>29</sup> See FINRA Broker Report for current EID Trustee Chairman Michael Scott Hughes and *In re Hughes*, United State Bankruptcy, No. 05-80062, Adversary Proceedings No. 06-02165. (Bankr. D. Utah, July 6, 2008) available at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=1661](https://echo-association.com/?page_id=1661).

<sup>30</sup> Brett DelPorto, *71 Homeowners Breathing Easier After Jury Rules Against Home S&L*, *Deseret News* (August 15-16, 1984) regarding former EID Trustee Chairman and EID General Manager Fred A. Smolka available at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=8981](https://echo-association.com/?page_id=8981) last edited on January 12, 2022, 7:32 PM.

financial manager, EID election specialist, and EID public records officer. (*Id.* no. 19.)

Sometime in 2013, EID transferred operation of the Emigration Oaks Drinking-Water System from Bishop Smolka's private Utah corporation to Simplifi through LDS Members Jennifer and Eric Hawkes. (*Id.* no. 20.)

To facilitate further massive development of Phases 4A, 6 and 6A of the Emigration Oaks PUD at extraordinary private profit of Utah Attorney Bennion *inter alia* and at the expense of existing Canyon homes serviced by single-family domestic wells, EID trustees and managers fraudulently acquired and then diverted federally-backed funds earmarked for “financially disadvantaged communities” for the construction of the Wildflower Reservoir, the Brigham Fork and the Upper Freeze Creek Wells on property belonging to LDS Land-Developers R. Steve Creamer and John Walsch [R132-4] under a duplicitous water right acquired from the Emigration Dam and Ditch Company (“Dam & Ditch Water Right”). (*Id.* at page 6, no. 22).

The massive expansion and continued operation of the Emigration Oaks Drinking-Water System was both economically unfeasible and destructive to the Canyon’s fragile aquifers [R109-10]. (*Id.* at page 8, nos. 30-2.)

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**B. Fraudulent Consolidation of Senior Perfected Water Rights Under the Color of State Authority and Conspiracy to Engage in Invidious Class-Based Animus.**

In order to prevent legal action to terminate water service to the Emigration Oaks PUD operated under the duplicitous Mt. Olivet and Emigration Dam & Ditch Water Rights, with the assistance of Utah Attorneys Cook and Bennion, Cook Appellees falsely promulgated in public that “EID holds one of the most senior water right in the Canyon” and homeowners “can exchange their water right for the District's senior water right” [R214] despite the fact that all underground water sources of the Emigration Oaks Drinking-Water System have the most junior water right priority date of September 12, 2018 under permanent change application “a44045” to the Emigration Dam & Ditch Water Right or are unapproved points-of-diversion under the Mt. Olivet Cemetery Water Right, and are contaminated with lead. (*Id.* at page 7, no. 27.)

In August 2018, the Canyon stream suffered total depletion for the first time in recorded history less than 2 miles from Utah’s Hogle Zoo as predicted in hydrology reports purposely withheld from and misrepresented to the public (*Id.* at page 8, no. 29.)

On July 6, 2020 in an email to Utah Attorney Cook, Simplifi through Eric Hawkes acknowledged that the Emigration Oaks Drinking-Water System had exceeded SDWA reporting requirements for lead contamination of drinking water



believed to be caused by groundwater mining of the Twin Creek Aquifer via operation of larger-diameter commercial wells but then refused to answer questions from USA ex rel. Tracy regarding lead testing during the August 6, 2020, public EID trustee meeting and failed to warn Canyon residents of drinking water contamination. (*Id.* at page 7, no. 24)

On June 2, 2021, for the first time since recording on March 29, 2018, Canyon Resident Karen Penske (“Ms. Penske”) documented that her single-family domestic well operated under a senior perfected water right had exceeded federal drinking water standards for Total Dissolved Solids (“TDS”) [R199-200] as predicted in hydrological study withheld by CookAppellees warning against continued groundwater depletion of the Canyon’s Twin Creek Aquifer including a study of the United States Geological Survey dated October 2005 warning against continued residential development in the Canyon. (*Complaint* at page 10, no. 43.)

On June 1, 2013, with the assistance of Utah Attorney Cook, EID announced that \$83,000 “more money [sic] each year” was needed to maintain yet outstanding federally-backed loan obligations [R109-10].<sup>31</sup>

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<sup>31</sup> In the Report and Recommendation Magistrate Judge Romero noted that it is “curious” that EID is not a named plaintiff [R167]. As the present litigation alleges misuse of a special service water district for private profit, USA ex rel. Tracy has no interest in burdening Ms. Penske and other unsuspecting Canyon homeowners with additional legal expenses if EID is not a necessary party.



Appellees then conspired to commence tax-foreclosure proceedings against 46 Non-LDS Members including Ms. Penske in order to prevent default of yet outstanding federally-backed loan obligations and to punish no-payers of the Emigration Oaks Drinking-Water System but then failed to certify any delinquent amount to Salt Lake City following commencement of the present action [R202-12].<sup>32</sup> (*Compliant* at page 9, no. 35-7; page 10, no. 39.)

As such, Ms. Penske was forced to render payment to Salt Lake County on March 13, 2019, after Cook Appellees with the assistance of Utah Attorney Bennion certified Ms. Penske’s home for tax-foreclosure sale following Ms. Penske’s refusal to pay “water base fees” used to finance the construction of the same lead-contaminated large-diameter commercial wells, which had impaired Ms. Penske’s drinking water for the benefit of Utah Attorney Bennion inter alia. (*Complaint* at page 9, no. 38.)

Ms. Penske could not have known the scope and impact of the cause of injury until after she had recorded that her private well was unsuitable for culinary drinking. On September 9, 2020, for good and valuable consideration, Mr. Penske assigned

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<sup>32</sup> Following commencement of the present action, for the first time in seven (7) years, Cook Appellees did not certify collection of delinquent fees against Non-LDS Members under the Salt Lake County “certified delinquent program” (*see e.g., Complaint* at page 9, no. 37) but continue to demand payment for a “water base fee” although Mrs. Penske’s private residence is serviced by a private well with an impaired senior water right [R202-12]. (*Complaint* at page 10, no. 43.)

present and future federal civil rights claims to USA ex Rel. Tracy's d/b/a entity. (*Complaint* at page 11, no. 46.)

**IV. Appellant Has Neither Waived nor Forfeited Appellate Review.**

Contrary to the Appellees' arguments, the Pro se Aplt. Brief filed by USA ex rel. Tracy is neither subject to Federal Rules of Appellate Procedure nor 10th Circuit Rules as per the instructions of this court dated April 22, 2022. [Addendum No. 1.]

Appellees' reliance on this Court's rulings in *Eagar v. Drake*, 829 F. App'x 878 (10th Cir. 2020) and *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836 (10th Cir. 2005) also merits little discussion. In *Eagar*, the district court dismissed the action based upon claim and issue preclusion, but the plaintiff failed to identify the issues in his briefs. *Eager*, 829 F.App'x at Subsection III, A. Likewise, in *Garrett*, the bulk of the Appellant's brief was dedicated to personal attacks against the judge and then in the reply brief the plaintiff repeated each item verbatim listed in his opening brief, which "contained no argument of substance." *Garrett*, 425 F.3d at 840.

In the instant action, USA ex rel. Tracy properly identified the issues of the present appeal including the district court's error in failing to apply the legal standards of 42 U.S.C. § 1988(a) articulated in *Wilson*, and abuse of discretion

regarding a proposed amendment to the Complaint to include USA ex rel Tracy's own federal civil right claims.<sup>33</sup>

USA ex rel. Tracy has neither forfeited nor waiver of appellate review.

**V. Assignment of Federal Civil Rights Claims is Not Determined by State Common Law Under 42 U.S.C. § 1988(a)**

Appellees further contend that legal authority for prohibiting of assignment of federal civil rights may be found in *Pony v. County of Los Angeles*, 433 F.3d 1138, 1142–45 (9th Cir. 2006).

In that case, however, the court addressed only if an attorney may contractually force assignment of a client's right to recover attorney fees pursuant to 42 U.S.C § 1988(b) upon successful prosecution of a federal civil rights case. Correctly applying the requirements of 42 U.S.C. §1988(b), the court first held that California tort law is consistent with the purpose of the federal civil rights statutes as the right to recover attorney fees vests with the client and not the attorney, and that by preventing civil right plaintiffs from contractually transferring statutory rights to recover attorney fees, the federal policies of protecting civil rights and encouraging settlement is ensured. *Pony* 433 F.3d at 1143 (citing *Evans v. Jeff D.*, 475 U.S. 712, 732)(“[W]e believe that a general proscription against negotiated

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<sup>33</sup> It cannot be required that the Pro se Apt. Brief accepted for filing by the court provides a more detailed legal analysis than recorded by either the district court or in the Appellees' Response Briefs prepared by four licensed legal professionals.



waiver of attorney's fees in exchange for a settlement on the merits would itself impede vindication of civil rights, at least in some cases, by reducing the attractiveness of settlement.”)

Appellees’ argument is thus irrelevant to facts of the instant appeal.

For Utah common law to prohibit assignment of federal civil rights claims in the present case, two (2) requirements of 42 U.S.C. § 1988(a) must first be met:

1. [the federal laws] are not adapted to the [goal of protecting all persons in the United States in their civil rights], or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law; **and**
2. Any assessment of the applicability of a state law to federal civil rights litigation . . . must be made in light of the purpose and nature of the federal right (emphasis added). *Wilson v. Garcia*, 471 U.S. 261, 267 (1985) (citation omitted) (internal quotation marks omitted).

While assignment of a wrongful death or personal injury cause of action may have bearing on determining the statute of limitations, the present case addresses assignment of a constitutional right to the use and enjoyment of private property in the form of a senior perfected water right and is fundamentally different that determination of a time limit of a federal statute.

Specifically, under the first prong of *Wilson*, the Complaint alleges that Utah Attorney Cook, a licensed legal professional specializing in water rights, willfully misrepresented both the validity and priority date of duplicitous water shares with the positive knowledge that hydrological studies completed by EID’s own hydrologists

had indicated that operation of large-diameter commercial wells in the Canyon would impair the senior perfected water right belonging to Ms. Penske “with almost certainty.”<sup>34</sup>

As a retired newborn intensive care therapist with no specialized knowledge of water rights and of modest means, having been denied access to hydrological studies completed with public funds, Ms. Penske was unable comprehend the scope and long-term impact of the operation of large-diameter commercial wells in the Canyon’s Twin Creek Aquifer and thus impairment of her own constitutionally protected property right to clean, safe drinking water.<sup>35</sup>

Moreover, after USA ex rel. Tracy documented massive ground subsidence and fissures in the Freeze Creek drainage area with the assistance of multiple Canyon homeowners, and independent drinking water experts,<sup>36</sup> and secured substantial evidence of lead contamination of all four (4) large-diameter commercial wells

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<sup>34</sup> *Complaint* at page 4, nos. 15, 17; page 7, no. 27; page 8, no. 28; page 10, no. 41.

<sup>35</sup> *Id.* at page 10, no. 43.

<sup>36</sup> *Id.* at page 11, no. 45; *see also* audio-video recording entitled “Aerial and Ground Recording of Emigration Oaks PUD near Lots Nr. 199, 171, 178, 180, 182 and 184 (YouTube)” available at the website maintained by The ECHO-Association at [https://echo-association.com/?page\\_id=3310](https://echo-association.com/?page_id=3310).

operated by Cook Appellees,<sup>37</sup> Ms. Penske assigned Section 1983 and Section 1985 claims to Mr. Tracy's dba entity.<sup>38, 39</sup>

As such, state common law does not offer suitable remedies and punish concealed offenses against the law, and therefore may therefore not preclude assignment of claims under § 1983 and § 1985 as mandated under 42 U.S.C. §1988(a).

**VI. Legal Action Against Utah Attorney Bennion is Not Time Barred, Nor Disallowed Because it is Directed Only at Non-LDS Members and/or Based Solely Upon Private Profit.**

It is recognized that state law dictates when a legal action commenced under Section 1983 and Section 1985 is timely. *Wilson*, 471 U.S. at 275. Utah Attorney Bennion notes that Section 1983 and Section 1985 claims fall within a 4-year tolling provision in Utah, but then offers cursory a conclusion without citation that an unlawful agreement and/or conduct before July 22, 2017, must be necessarily time barred.<sup>40</sup>

This argument fails.

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<sup>37</sup> *Complaint* at page 7, no. 24.

<sup>38</sup> *Id.* at page 11, no. 46.

<sup>39</sup> Since commencement of the present action, Appellees have declined to assess additional tax assessments against Ms. Penske and 46 other Emigration Canyon Home Owners [R204-12]. As such, assignment of Ms. Penske's claims have already ensured that federal civil rights are observed.

<sup>40</sup> *Bennion Response Brief* at pages 37-9.



While state law determines the duration of the statute of limitations, federal law dictates when a federal cause of action accrues. *Alexander v. Oklahoma*, 382 F.3d 1206, 1215 (10th Cir. 2004). The federal discovery rule provides that federal claims accrue and “[t]he statute of limitations begins to run when the plaintiff knows or has reason to know of the *existence and cause of the injury* which is the basis of his action” (emphasis added). *Indus. Constructors Corp. v. United States Bureau of Reclamation*, 15 F.3d 963, 969 (10th Cir.1994). In particular, “[a] civil rights action accrues when facts that would support a cause of action are or should be apparent.” *Fratus v. Deland*, 49 F.3d 673, 675 (10th Cir.1995) (internal quotations omitted).

The Complaint documents that Appellees misrepresented and successfully concealed hydrology reports warning of continued groundwater mining of the Canyon’s Twin Creek Aquifer providing culinary drinking water service to Ms. Penske’s private home until December 21, 2018, when USA ex Rel. Tracy successfully secured an original copy of the July 2000 Barnett-Yonkee study from a previously unknown source.<sup>41</sup>

After careful monitoring water quality of her private well over a two (2) year period, on June 2, 2021, Ms. Penske recorded that the concentration of Total Dissolved Solids (“TDS”) had exceeded primary drinking water levels and thus the

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<sup>41</sup> *Compliant* at pages 10-11, nos. 43 and 44.

operation of large diameter commercial wells by Appellees had impaired her senior property right to safe drinking water as predicted in hydrology reports both withheld and misrepresented to the public.<sup>42</sup>

Furthermore, Ms. Penske was forced to render payment to Salt Lake County on March 13, 2019, after Appellees certified Ms. Penske's home for tax-foreclosure sale following Ms. Penske's refusal to pay "water base fees" used to finance the construction of the same lead-contaminated large-diameter commercial wells, which had impaired Ms. Penske's private well.<sup>43</sup>

As Ms. Penske could not have known the scope, impact, and cause of her injury until after she had recorded that her private well was unsuitable for culinary drinking, under the federal discovery rule the statute of limitations period commenced on June 2, 2021.

The instant Action against Utah Attorney Bennion is timely.

Utah Attorney Bennion's accompanying economic interest to target and punish Non-LDS Members through tax-foreclosure for Ms. Penske's having refused to finance a water system installed for the benefit of LDS Land-Developers and Utah Attorney Bennion is likewise inconsistent with the prevailing authority regarding class-based animus.

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<sup>42</sup> *Id.* at page 10, no. 43.

<sup>43</sup> *Id.* at page 9, no. 38.

Specifically, this Court held that for “non-racially motivate *private conspiracy*, it is necessary to plead that:

1. that the conspiracy is motivated by a class-based invidiously discriminatory animus; and
2. that the conspiracy is aimed at interfering with rights that by definition are protected against private, as well as official, encroachment (emphasis added)(*Tilton v. Richardson*, 6 F.3d 683, 686 (10th Cir. 1993).

In the present case, the decision to commence tax foreclosure proceedings targeting only Non-LDS Members is not a “private conspiracy” but rather an action involving state authority of a Utah special service water district controlled by Cook Appellees.<sup>44</sup>

Furthermore, as the complaint alleges a class-based invidiously discriminatory animus [R123-4] and documents a conspiracy [R101-107] to impair a constitutional protected right to clean, safe drinking water and therewith use and enjoyment of private residence by dewatering the Canyon through the operation of large-diameter commercial wells under the color of state law, the Complaint has alleged a plausible cause of action against Utah Attorney Bennion.

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<sup>44</sup> Problems associated with the exercise of state authority via special service districts has recently received national attention. *See e.g.*, Special Districts: Last Week Tonight with John Oliver (Home Box Office), <https://www.youtube.com/watch?v=3saU5racsGE> (March 7, 2016).



**VII. The District Court Abused its Discretion When It Denied Motion to Amend the Complaint.**

Contrary to the cursory recital by the district court, USA ex rel. Tracy expressly objected to the Report and Recommendation of the Magistrate Judge motioning the district court for leave to amend the complaint in order to include an additional cause of action for impairment of USA ex rel. Tracy's own federal civil rights [R186].

As this issue was properly identified in both in the Objection to the Report and Recommendation of the Magistrate Judge [R186], the Pro se Aplt Br. (issue no. 3(b)) and the foregoing Reply Brief of Appellant, USA ex Rel. Tracy has neither waiver nor forfeited appellate review.

**CONCLUSION**

For the foregoing reasons, this Court should reverse the district court's dismissal and remand for further proceedings.

DATED this 21st day of July 2022.



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Mark Christopher Tracy  
*Qui tam Relator and Pro se Appellant*

**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)**

Certificate of Compliance with Type-Volume Limitation,  
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(ii) because:

this brief contains 5,414 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), or

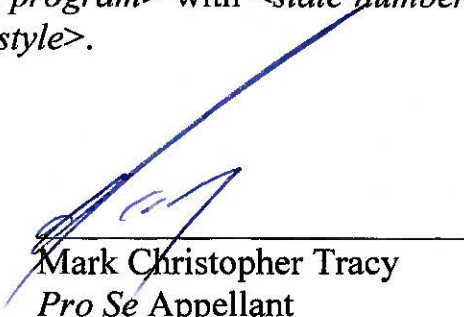
this brief uses a monospaced typeface and contains *<state the number of>* lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because:

this brief has been prepared in a proportionally spaced typeface using Microsoft Word (Version 16.59) in Times New Roman 14-point font, or

this brief has been prepared in a monospaced typeface using *<state name and version of word processing program>* with *<state number of characters per inch and name of type style>*.

Date: July 21, 2022

  
Mark Christopher Tracy  
Pro Se Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **REPLY BRIEF OF APPELLANT** was sent to the following individuals, by way of the Court's CM/ECF Filing System and by email correspondence:

Jeremy Rand Cook  
[jcook@ck.law](mailto:jcook@ck.law)

- and -

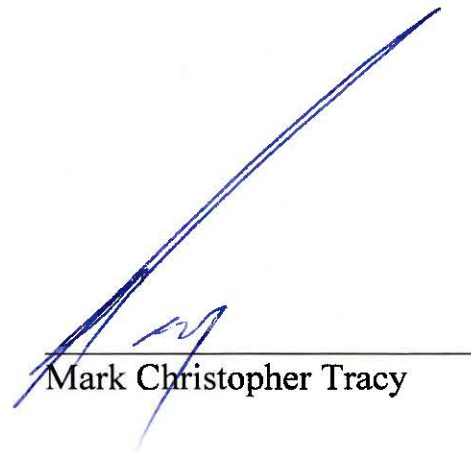
Bradley Strassberg  
[bstrassberg@ck.law](mailto:bstrassberg@ck.law)  
COHNE KINGHORN, P.C.  
111 E. Broadway, Suite 1100  
Salt Lake City, Utah 84111  
*Attorneys for Jeremy Rand Cook, Simplifi Company, Jennifer Hawkes and Eric Hawkes*

Erik A. Olson  
[eolson@mohtrial.com](mailto:eolson@mohtrial.com)

- and -

Christopher D. Ballard  
[cballard@mohtrial.com](mailto:cballard@mohtrial.com)  
MARSHALL, OLSON & HULL  
Newhouse Building  
Ten Exchange Place, Suite 350  
Salt Lake City, Utah 841118  
*Attorneys for David M. Bennion*

Date: July 21, 2022



Mark Christopher Tracy



**Addendum No. 1**

**Instructions and Briefing Schedule**  
United States Court of Appeals for the 10th Circuit,  
Case No. 22-4032, *Tracy v. Simplifi Company, et al.*

Appellate Case: 22-4032 Document: 010110674400 Date Filed: 04/22/2022 Page: 1

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Byron White United States Courthouse  
1823 Stout Street  
Denver, Colorado 80257  
(303) 844-3157  
Clerk@ca10.uscourts.gov

Christopher M. Wolpert  
Clerk of Court

Jane K. Castro  
Chief Deputy Clerk

April 22, 2022

Mr. Mark Christopher Tracy  
1160 East Buchnell Drive  
Sandy, UT 84094

**RE: 22-4032, Tracy v. Simplifi Company, et al**  
Dist/Ag docket: 2:21-CV-00444-RJS

Dear Appellant:

Please note the following requirements for prosecuting this matter.

The record on appeal in this case will consist of copies of all relevant documents filed in the district court except those excluded by 10th Cir. R. 10.4(E). As such, you do not need to submit any record materials to the court.

You must file an opening brief by June 1, 2022. You may use the Pro Se Brief form or you may file a separate brief. If you do not use the form, your brief must comply with the Federal Rules of Appellate Procedure and Tenth Circuit Rules with respect to briefs. Failure to file a brief could result in dismissal of this appeal without further notice. *See* 10th Cir. R. 42.1. Copies of the brief must be served on all opposing counsel and all unrepresented parties. The clerk may refuse to file any brief which does not comply with the rules and the court's instructions. Motions for extensions of time are not favored and, absent extraordinary circumstances, will not be granted.

The appellee may file an answer brief within 30 days after filing and service of your opening brief. Copies of the brief must be served on all opposing counsel and all unrepresented parties.

If the appellee files an answer brief, you may file a reply brief. Your reply brief must be filed within 21 days after filing and service of appellee's answer brief. If your appeal has more than one appellee, they may each file a separate answer brief. Regardless of how many answer briefs are filed, you may only file one reply brief. Copies of your reply brief must be served on all opposing counsel and all unrepresented parties.

Please contact this office if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', with a long horizontal flourish extending to the right.

Christopher M. Wolpert  
Clerk of Court

cc: Jeremy Rand Cook  
Erik A Olson

CMW/klp



**Addendum No. 2**

Approved Resolution, Sixtieth Congress, Sess. II, Chp., 37 (1909)  
United States Court of Appeals for the 10th Circuit,  
Case No. 22-4032, *Tracy v. Simplifi Company, et al.*

Beginning at a stone marking the southwest boundary of the United States military reservation, thence north twenty-two degrees twelve minutes west two thousand seven hundred and nineteen and eighty-six one-hundredths feet; thence north twenty degrees west three hundred and fifty-one and eighty-four hundredths feet; thence north seventy degrees east fifteen and five-tenths feet to a line twenty-two feet from the center of the Capital Water Company's ditch; thence in an easterly direction following a line twenty-two feet from the center line of said ditch and parallel to the same to the intersection with said line of the southeasterly boundary of the reservation; thence south seventy degrees west to the point of beginning, subject to any rights of the Capital Water Company for the use of said grounds as a right of way or an easement to convey water.

Description.

Approved, January 21, 1909.

**CHAP. 37.**—An Act For the exchange of certain lands situated in the Fort Douglas Military Reservation, State of Utah, for lands adjacent thereto, between the Mount Olivet Cemetery Association, of Salt Lake City, Utah, and the Government of the United States.

January 23, 1909.  
[H. R. 23863.]

[Public, No. 194.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of War, for and on behalf of the United States, is hereby authorized and directed to grant and convey by deed to the Mount Olivet Cemetery Association, of Salt Lake City, Utah, the following-described tract of land: Commencing at the southwest corner of the Fort Douglas Military Reservation and running thence east along and upon the south line of said Fort Douglas Military Reservation eighty rods; thence north parallel with the west boundary line of the said military reservation to the southeast corner of the Mount Olivet Cemetery grant; thence west along the south boundary line of the said Mount Olivet Cemetery grant eighty rods to the intersection of said line with the west line of said military reservation; thence south along and upon said west line of said military reservation to the place of beginning, containing an area of fifty acres, more or less. Said land to be by the said Mount Olivet Cemetery Association permanently used as a cemetery for the burial of the dead: Provided, That when it shall cease to be used for such purpose it shall revert to the United States.

Fort Douglas Military Reservation, Utah.  
Exchange of lands in, with the Mount Olivet Cemetery Association, authorized.  
Description.

Proviso.  
Reversion.

Land to be conveyed to Government.

**SEC. 2.** That the deed provided for in the foregoing section of this Act shall not be delivered to the said Mount Olivet Cemetery Association until said association shall have conveyed, or caused to be conveyed, to the United States in fee simple, free and clear of all incumbrances, subject to the approval of the Attorney-General of the United States, the following-described land, to wit: The fractional southwest quarter of section two, township one south, range one east, Salt Lake meridian, containing one hundred and fifty and ninety-two one-hundredths acres, situate in Salt Lake County, State of Utah.

Description.

Approved, January 23, 1909.

**Addendum No. 3**

Email Correspondence between Appellant and the Legal Counsel of Appellees  
(Chronological Order)

United States Court of Appeals for the 10th Circuit,  
Case No. 22-4032, *Tracy v. Simplifi Company, et al.*



From: The ECHO-Association <m.tracy@echo-association.com>

Sent: Tuesday, May 31, 2022 8:50 AM

To: eolson@mohtrial.com; Bradley Strassberg <bstrassberg@ck.law>; Jeremy Cook <jcook@ck.law>

Subject: Tracy v. Simplifi et al. Case No. 22-4032 (10th Circuit)

Dear Opposing Counsel,

Due to prior work commitments, I could use a 21-day extension of time to file the opening brief in the above captioned matter.

If you are in agreement, I can send a stipulation for your review and approval.

Kind Regards,

Mark Christopher Tracy  
Tel. 929-208-6010

---

From: Jeremy Cook <jcook@ck.law>

Date: Tuesday, May 31, 2022 at 3:04 PM

To: The ECHO-Association <m.tracy@echo-association.com>, "Erik A. Olson" <eolson@mohtrial.com>

Subject: RE: Tracy v. Simplifi et al. Case No. 22-4032 (10th Circuit)

Mr. Tracy,

It is a little ironic that you requested a 21 day extension, and then within an hour you objected my request to postpone the state records committee hearing scheduled for Thursday. Nevertheless, I will stipulate to the extension.

Thanks,

Jeremy

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On May 31, 2022, at 3:28 PM, Erik Olson <eolson@mohtrial.com> wrote:

We are willing to stipulate. Please send over the stipulation.

Erik

Erik A. Olson  
Attorney at Law

---

From: The ECHO-Association <m.tracy@echo-association.com>

Date: May 31, 2022 at 6:48:48 PM MDT

To: Erik Olson <eolson@mohtrial.com>, bstrassberg@ck.law, Jeremy Cook  
<jcook@ck.law>

Subject: Motion for Extension of Time - Tracy v. Simplifi et al. Case No. 22-4032 (10th Circuit)

Dear Opposing Counsel,

Here is the proposed motion for your review and approval.

Hochachtungsvoll (Kindest and Most Respectful Regards),

Mark Christopher Tracy  
d/b/a Emigration Canyon Home Owners Association  
Tel. 929-208-6010

<Tracy - Extension Motion (version 1.0).docx>

---

From: The ECHO-Association <m.tracy@echo-association.com>

Date: June 1, 2022 at 11:09:04 PM MDT

To: bstrassberg@ck.law, eolson@mohtrial.com, Jeremy Cook <jcook@ck.law>

Subject: Failure to Approve Stipulated Motion for Extension of Time & Opening Brief - Tracy v. Simplifi et al. Case No. 22-4032 (10th Circuit)

Gentlemen,

As you failed to respond to the proposed "Unopposed Motion for Extension of Time" as stipulated (see email correspondence below), the attached "Pro Se Appellant Brief" was transmitted today to the 10th Circuit Court of Appeals in the above-captioned case.

We note that on May 17, 2022, Utah Attorney Jeremy R. Cook entered appearance for himself as Defendant-Appellee in the matter as well as the legal representative for Simplifi Company, Jennifer Hawkes and Eric Hawkes.

Regards,

Mark Christopher Tracy

d/b/a Emigration Canyon Home Owners Association

<Pro Se App. Brief (final ele executed).pdf>

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**Addendum No. 4**

Draft Unopposed Motion for Extension of Time to File Opening Brief (version 2.0)  
United States Court of Appeals for the 10th Circuit,  
Case No. 22-4032, *Tracy v. Simplifi Company, et al.*,

**CASE NO. 22-4032**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

MARK CHRISTOPHER TRACY d/b/a Emigration Canyon Home Owners  
Association,

Plaintiff – Appellant,

v.

Simplifi Company, Jeremy R. Cook, Jennifer Hawkes, Eric Hawkes, and David M.  
Bennion,

Defendants – Appellees.

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On Appeal from the United States District Court for the District of Utah  
The Honorable Judge Robert J. Shelby  
District Court No. 2:21-cv-00444-RJS

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**APPELLANT’S UNOPPOSED MOTION FOR  
EXTENSION OF TIME TO FILE OPENING BRIEF**

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Pursuant to Federal Rules of Appellate Procedure 27 and 32(a), pro se Appellant Mark Christopher Tracy d/b/a/ Emigration Canyon Home Owners Association (“Appellant” or “Mr. Tracy”), respectfully requests that this Court grant an extension of twenty-one (21) days, from June 2 to June 23, 2022, for Mr. Tracy to submit the Opening Brief. Appellees Simplifi Company, Jeremy R. Cook (“Utah Attorney Cook”), Jennifer Hawkes, Eric Hawkes and David M. Bennion

(collectively “Appellees”) through legal counsel of record Utah Attorney Cook and Eric Olsen (“Appellees Counsel”) do not oppose the relief requested.

### **I. RELIEF REQUESTED**

Mr. Tracy filed Notice of Appeal on April 21, 2022 and entered timely notice of appearance on May 23, 2022. Utah Attorney Eric Olsen (“Mr. Olsen”) entered timely appearance on May 5, 2022, for Defendant-Appellee David M. Bennion. Following two (2) notices of deficiency issued by this Court, Appellee Utah Attorney Cook entered appearance as the legal representative for both himself and Appellees Simplifi Company, Jennifer Hawkes and Eric Hawkes on May 27, 2022, along with Bradley M. Strassberg of the Salt Lake City law firm Cohne Kinghorn P.C.

The current deadline for filing Appellants’ Opening Brief identified by this Court is June 1, 2022.<sup>1</sup> Mr. Tracy seeks an extension of twenty-one (21) days, from June 2 to June 23, 2022, to file the Opening Brief. This is Mr. Tracy’s first request for an extension in this appeal.

### **II. REASON FOR EXTENSION**

Good cause exists for granting Mr. Tracy’s requested extension of twenty-one (21) days. As a pro se appellant, the delayed entry of appearance by Utah Attorney

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<sup>1</sup> See Tenth Circuit Rule 31.1(A)(1) whereby Appellant’s Brief is due within 40 days after the district court clerk notifies the parties and the circuit clerk that the record is complete for the purpose of appeal.



Cook on behalf of himself, the Simplifi Company, Jennifer Hawkes and Eric Hawke and failure of the Utah district court clerk to notify the parties and docket the “record is complete for the purpose of appeal” in the CM/ECF system per Tenth Circuit Rule 31.1(A)(1) caused Mr. Tracy unnecessary confusion as to the actual filing deadline for the Opening Brief as identified by this Court in its initial correspondence issued one day after Mr. Tracy filed Notice of Appeal.

Because of this uncertainty, if Mr. Tracy is not given an extension, it will not be possible for Appellant to file an adequate brief on time, even if Mr. Tracy exercises due diligence and gives the brief priority. This extension is not sought for purposes of delay and will not prejudice any Party in the case.

**III. APPELLEE’S CONSENT TO THE EXTENSION**

On May 31, 2022, following Mr. Tracy’s discovery of the previous deadline identified by this Court, the undersigned contacted Appellees Counsel to determine whether they would consent to the requested twenty-one (21) day extension of time to Mr. Tracy’s Opening Brief. On the same day, Appellee Utah Attorney Cook and Mr. Olsen stated that they do not oppose the relief requested in this Motion on behalf of both Utah Attorney Cook and their clients.

**IV. CONCLUSION**

For the foregoing reasons, Mr. Tracy respectfully requests that this Court grant an extension of twenty-one (21) days to file the Opening Brief. Good cause exists to

grant this extension, and it will not cause any material impediment to the expedient adjudication of this case.

Dated this 1st day of June 2022.

---

Mark Christopher Tracy  
d/b/a Emigration Canyon Home  
Owners Association  
1160 E. Buchnell Dr.  
Sandy, Utah 84094  
Telephone: 929-208-6010  
[m.tracy@echo-association.com](mailto:m.tracy@echo-association.com)

*Pro se Appellant*