

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

MARK CHRISTOPHER TRACY,
Plaintiff and Appellant,

v.

COHNE KINGHORN PC, SIMPLIFI
COMPANY, JEREMY RAND COOK,
ERIC HAWKES, JENNIFER HAWKES,
MICHAEL SCOTT HUGHES, DAVID
BRADFORD, KEM CROSBY
GARDNER, DAVID BENNION, PAUL
HANDY BROWN and GARY A.
BOWEN,
Defendants and Respondents.

Court of Appeals No. H052028

APPELLANT'S APPENDIX
VOLUME I of II
(Pages 1 to 135 of 237)

Superior Court of California, County of Santa Clara
Case. No. 23CV423435
Honorable Judge Evette D. Pennypacker

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Plaintiff-Appellant
In propria persona

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6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

23CV423435

11 MARK CHRISTOPHER TRACY, an individual;
12 Plaintiff,

Case No.:

VERIFIED COMPLAINT FOR DAMAGES

13 v.

- 1) Defamation---Liable
- 2) Defamation---Liable Per Se
- 3) False Light
- 4) Intentional Infliction of Emotional Distress

14 COHNE KINGHORN PC, a Utah Professional
15 Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
17 individual; ERIC HAWKES, an individual;
18 JENNIFER HAWKES, an individual; MICHAEL
19 SCOTT HUGHES, an individual; DAVID
20 BRADFORD, an individual; KEM CROSBY
21 GARDNER, an individual; WALTER J.
PLUMB III, an individual; DAVID BENNION, an
individual; R. STEVE CREAMER, an individual
PAUL BROWN, an individual; GARY BOWEN,
an individual,

22 Defendants.

DEMAND FOR JURY TRIAL

23 Pro se Plaintiff MARK CHRISTOPHER TRACY, an individual and resident of the State of
24 California, alleges on information and belief, which is based on personal knowledge the following.

NATURE OF THE ACTION

25
26 1. Plaintiff is a federal whistleblower in what has alleged to be the longest and most lucrative
27 water grabs in the history of the State of Utah. The environmental and economic damage caused by
28 willful groundwater depletion and drinking-water contamination is now a matter of public record.

1 2. Specifically, for the past 40 years, and continuing to the present day unabated, a renowned
2 Salt Lake City law firm acting on behalf of a Utah special service water district -- and for the economic
3 benefit of politically influential private land-developers named herein -- perpetuated a fraudulent scheme
4 to retire senior water rights vis-a-vis duplicitous water claims removed from the only active federal
5 military cemetery created by an Act of Congress, signed into law by United States President Ulysses S.
6 Grant in 1874, subject to the reversionary interest to be “forever used for the burial of the dead,” but
7 however misappropriated for the construction and massive expansion of a luxurious private urban
8 development marketed and sold to unsuspecting California residents as the “Bel Air of Salt Lake City.”

9 3. In furtherance of this ongoing fraud, and to secure continued payment of monies from
10 property owners residing in Venice, Rancho Cucamonga, Corona Del Mar, Coto de Caza, Mountain
11 View, San Rafael, Bayside, Loomis, and San Diego, California, Defendants miscited and withheld
12 hydrology reports expressly warning against aquifer depletion via operation of large-diameter
13 commercial wells of a public drinking-water system, while simultaneously concealing governmental
14 records evidencing extensive lead contamination and inadequate emergency-fire protection in a small
15 mountain community especially prone to wild-fire fatalities.

16 4. However, when suppression of expert studies and public records proved futile, Defendants
17 resorted to a concerted smear campaign publishing false and defamatory statements on the world-wide
18 web via a server located in San Jose, California under the slogan “STAY INFORMED – GET THE
19 FACTS!” (emphasis in original).

20 5. Mr. Tracy brings this defamation action to clear his name. By this civil lawsuit, Plaintiff
21 seeks to restore his reputation and establish Defendants’ legal liability for the fraudulent retirement of
22 senior water rights, improper concealment of drinking-water contamination, and grossly inadequate
23 emergency-fire protection. Mr. Tracy seeks an award of compensatory damages for the reputational
24 harm that he suffered as a result of the Defendants false and defamatory statements. Further, given the
25 willfulness and maliciousness that the Defendants have and continue to demonstrate, Mr. Tracy also
26 seeks an award of punitive damages.

27 //
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PARTIES

1
2 6. Plaintiff MARK CHRISTOPHER TRACY (“*Mr. Tracy*” and “*Plaintiff*”) is and all times
3 relevant hereto a resident of the State of California, County of San Diego and is sole proprietor of the
4 Emigration Canyon Home Owners Association (“*ECHO-Association*”) currently registered with the
5 Utah Department of Commerce under entity no. 12903885. Mr. Tracy was the target of Defendants’
6 false and defamatory statements sent via United States postal service and published on the website
7 “<https://www.ecid.org>” between June 2013 and September 22, 2022.

8 7. Plaintiff is informed and believes that Defendant COHNE KINGHORN PC (“*Defendant*
9 *Kinghorn*”) is a Utah professional corporation organized and existing under the laws of Utah with its
10 headquarters located at 111 E. Broadway, Suite 1100, Salt Lake City, Utah 84111, is the successor in
11 interest to Gerald Kinghorn - Attorney at Law, Kapaloski, Kinghorn & Alder, and Parson Kinghorn
12 Harris PC, is admitted to the United States Federal Court of Appeals for the Ninth Circuit through
13 shareholder Paul T. Moxley and has acted as sole legal representative of the Utah special service water
14 district Emigration Improvement District (aka Emigration Canyon Improvement District, hereafter
15 “*ECID*”) since sometime prior to December 15, 1995 and provided legal services to the Defendants
16 identified below at taxpayer expense.

17 8. Plaintiff is informed and believes that Defendant SIMPLIFI COMPANY (“*Defendant*
18 *Simplifi*”), is a corporation organized and existing under the laws of Utah with its headquarters located
19 at 271 N. Margarethe Lane, Salt Lake City, Utah 84107, has no employees, owns no property, and is the
20 operator of public drinking-water system UTAH18143 (“*Emigration Oaks Water System*”) since
21 February 13, 2021, and received legal services of Defendant Kinghorn at taxpayer expense.

22 9. Plaintiff is informed and believes that all times relevant hereto Defendant JEREMY
23 RAND COOK, is an individual and resident of Utah, is a shareholder of Defendant Kinghorn, is admitted
24 to practice law in Utah under license no. 10325, and purports to specialize in “Water Law” on the website
25 <https://cohnekinghorn.com> (“*Utah Attorney Cook*”).

26 10. Plaintiff is informed and believes that all times relevant hereto Defendant ERIC
27 HAWKES is an individual and resident of Utah, principal of Defendant Simplifi, current ECID General
28 Manager, designated Public Records Officer, Financial Manager and administrator of the website

1 “www.ecid.org” and received legal services of Defendant Kinghorn at taxpayer expense (“**ECID**
2 **Manager Hawkes**”).

3 11. Plaintiff is informed and believes that all times relevant hereto Defendant JENNIFER
4 HAWKES is an individual and resident of Utah, principal of Simplifi, designated ECID Public Records
5 Officer and Deputy Mayor of the Emigration Canyon Metro Township and received legal services of
6 Defendant Kinghorn at taxpayer expense (“**Deputy Mayor Hawkes**”).

7 12. Plaintiff is informed and believes that all times relevant hereto Defendant MICHAEL
8 SCOTT HUGHES is an individual and resident of Utah, ECID Trustee Chairman, chief administrative
9 officer, and since May 27, 1992, is bared from associating with any member of the National Association
10 of Security Dealers in any capacity, and received legal services of Defendant Kinghorn at taxpayer
11 expense (“**ECID Chairman Hughes**”).

12 13. Plaintiff is informed and believes that Defendant DAVID BRADFORD is an individual
13 and resident of Utah, ECID Trustee, received culinary water service from the Emigration Oaks Water
14 System, and received legal services of Defendant Kinghorn at taxpayer expense (“**ECID Trustee**
15 **Bradford**”).

16 14. Plaintiff is informed and believes that all times relevant hereto Defendant KEM CROSBY
17 GARDNER is an individual and resident of Utah, constructed a grossly undersized water reservoir
18 (“**Boyer Tank**”), two (2) underground culinary water sources contaminated with lead (“**Boyer Wells No.**
19 **1 and 2**”) of the Emigration Oaks Water System and employed ECID Chairman Hughes as an unlicensed
20 contractor to construct the Emigration Oaks Waste Water System and then transferred title of the same
21 to ECID (hereafter “**Land-Developer Gardner**”).

22 15. Plaintiff is informed and believes that all times relevant hereto Defendant WALTER J.
23 PLUMB III is an individual and resident of Utah, former law partner of the President pro tempore of the
24 United States Senate and Chairman of the Senate Judiciary Committee Orin Hatch, former member of
25 the Emigration Advisory Committee, constructed the Boyer Wells and Emigration Oaks Reservoir of
26 the Emigration Oaks Water System and employed ECID Chairman Hughes as an unlicensed contractor
27 to construct the Emigration Oaks Waste Water System (“**Land-Developer Plumb**”).

28 //

1 16. Plaintiff is informed and believes that all times relevant hereto Defendant DAVID M.
2 BENNION is an individual and resident of the State of Utah, was previously admitted to practice law in
3 Utah under license no. 5664 but suspended for failure to pay fees, was former co-owner of the
4 Emigration Oaks Water System and employed ECID Chairman Hughes as an unlicensed contractor to
5 construct the Emigration Oaks Waste Water System (“*Utah Attorney Bennion*”).

6 17. Plaintiff is informed and believes that all times relevant hereto Defendant R. STEVE
7 CREAMER is an individual and resident of Utah, former ECID Advisory Committee Chairman, assisted
8 construction of two (2) large-diameter commercial wells (“*Brigham Fork*” and “*Upper Freeze Creek*
9 *Wells*”) and a “preposterously oversized” water reservoir (“*Wildflower Reservoir*”) of the Emigration
10 Oaks Water System on his private 203-acre palatial estate with federal funds administered by Utah State
11 Division of Drinking Water (“*DDW*”) under the Safe Drinking Water Act of 1974 (“*SDWA*”) with the
12 legal assistance of Defendant Kinghorn at taxpayer expense (“*ECID Chairman Creamer*”).

13 18. Plaintiff is informed and believes that all times relevant hereto PAUL BROWN is an
14 individual and resident of Utah, former Co-Chairman of the Emigration Canyon Community Council
15 and received culinary water service from the Emigration Oak Water System (“*ECCC Chairman*
16 *Brown*”).

17 19. Plaintiff is informed and believes that all times relevant hereto Defendant GARY
18 BOWEN is an individual and resident of Utah, former member of the Emigration Canyon Community
19 Council, and is contracted to receive future culinary water service from the Emigration Oaks Water
20 System (“*Defendant Bowen*”).

21 20. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned,
22 each Defendant was acting as the agent, servant, employee, partner, co-conspirator, and/or joint venture
23 of each remaining Defendant. Each Defendant was acting in concert with each remaining Defendant in
24 all matters alleged, and each Defendant has inherited any and all violations or liability of their
25 predecessors-in-interest. Additionally, each Defendant has passed any and all liability of predecessors-
26 in-interest. Additionally, each Defendant has passed any all liability to their successors-in-interest, and
27 at all times were acting within the course and scope of such agency, employment, partnership, and/or
28 concert of action.

1 **JURISDICTION AND VENUE**

2 21. This Court has specific personal jurisdiction over Defendants pursuant to California’s
3 long-arm statute, Cal. Civ. Proc. Code § 410.010, as well as under the Due Process Clause of the United
4 States Constitution, because, among other things, the cause of action in this Complaint arises from
5 Defendants transacting business and/or causing tortious injury by an act or omission in the State of
6 California. Moreover, exercising jurisdiction would not offend traditional notions of fair play and
7 substantial justice because Defendants could have – indeed should have – reasonably foreseen being
8 hauled in California court to account for false and defamatory statements on a website that is created
9 and published on a digital platform in California and routed through San Jose, California. Furthermore,
10 Defendants published false and defamatory statement for the purpose of obtaining continued payment
11 of monies from property owners residing in California.

12 **GENERAL ALLEGATIONS**

13 **Legal and Historical Background of the Fraudulent Retirement of Senior Water Rights.**

14 22. Apart from the historical significance of Emigration Canyon (“*Canyon*”) as the fatal
15 detour of the Donner Party, the Emigration Canyon Stream also habitat to the Bonneville Cutthroat
16 Trout, a federally protected “pure species” (“*Canyon Stream*”).

17 23. Immediately following the 2002 Olympic Games, the Canyon’s pristine mountain vistas
18 located 20 minutes from both the Salt Lake City International Airport and Sundance Film Festival
19 became the location of a disastrous, multi-million-dollar luxury residential building investment
20 (“*Emigration Oaks PUD*”).

21 24. To illustrate, after connection to the Salt Lake City Public Utility water system at a cost
22 of \$42,000,000.00 dollars failed, Land-Developers Gardner, Plumb and Utah Attorney Bennion
23 (“*Emigration Oaks Defendants*”) who had acquired over 1,200 acres of otherwise worthless sheep-
24 grazing property in the mountains immediately east of city in the early 1980’s were left with only one
25 option to successfully market the Emigration Oaks PUD to affluent California residents -- exploit the
26 Canyon’s existing water resources.

27 25. The unique ground-water hydrology of the area however posed (as continues to pose)
28 insurmountable financial risk.

1 26. Specifically, Emigration Oaks Defendants needed approval from the State Engineer to
2 divert groundwater for the planned luxury residential development, and more importantly, the technical
3 and legal capacity to extract and deliver sufficient safe drinking water to 223 parcels eventually sold as
4 “buildable” to high-end out-of-state buyers.

5 a. As for the first problem, in 1968, with only circa 300 part-time, modest summer cabins
6 constructed with senior perfected water rights located near artesian springs feeding the
7 Canyon Stream, the State Engineer had closed the entire area to new water-use applications
8 due to the “full appropriation” of the Canyon’s underground and surface water sources.

9 b. Also, use of surface water of the Canyon Stream had already been fully adjudicated in 1923
10 by the Utah Third District Court under Civil Decree No. 25890 and confirmed by the Utah
11 Supreme Court primarily for the benefit of the Mt. Olivet Cemetery Association (“*Mt.*
12 *Olivet*”), the only active military cemetery created by an Act of Congress, signed into law by
13 United States President Ulysses S. Grant in 1874, and subject to the reversionary interest “to
14 forever used for the burial of the dead” as documented in the November 1970 Feasibility
15 Report completed with a grant by the United States Department of Urban Housing and
16 Development (“*United States Housing Study*”).

17 c. As for the second problem, as a “First-in-Right” jurisdiction, every water-use application or
18 change to an existing point-of-use and/or point-of-diversion approved by the State Engineer
19 is legally inferior to all existing water rights previously established (*i.e.*, “perfected”) by an
20 earlier priority date.

21 d. Worse, in 1966, not only had the State Engineer closed the Canyon to new water-right
22 applications due to the “full appropriation” of the Canyon’s water sources, but the State
23 Engineer’s own hydrologist had expressly concluded that if large-diameter commercial wells
24 were drilled into the Canyon’s aquifers, such a method of water extraction would dry up senior
25 underground and surface water rights “*with almost certainty*” (“*Utah State Engineer Study*”).

26 e. Worse yet, on December 15, 1995, Defendant Kinghorn entered testimony before the State
27 Engineer, that the operation of large-diameter commercial wells in the Canyon’s Twin Creek
28 Aquifer would interrupt artesian pressure supporting the Canyon Stream for “*twenty-five, fifty*”

1 *or seventy-five years*” (“**Defendant Kinghorn Testimony**”).

- 2 f. Still worse yet, in June 2000, the Chairman of the Weber State University Department of
3 Geology confirmed that if extraction of groundwater exceeded the natural recharge rate of the
4 Canyon’s Twin Creek Aquifer, receding groundwater levels would permanently close the
5 microscopic pores of the supporting limestone bedrock thereby destroying the Canyon’s
6 fragile groundwater absorption and storage system (“**Weber State Study**”).
- 7 g. And still worse yet, the continued practice of dewatering the Canyon’s Twin Creek Aquifer
8 as documented in the “good water year of 1998” would lead to increased levels of sodium,
9 turbidity, and dissolved solids, thereby contaminating drinking-water for all Canyon residents
10 as documented in California, Nevada, California, Texas, Arizona, Nebraska, Cedar City,
11 Utah, and the Sierra de Crevillente Aquifer in Alicante, Spain (“**Groundwater Mining**”).

12 27. In sum, *even if* Emigration Oaks Defendants secured legal title to water rights from Mt.
13 Olivet, and *even if* they were able to secure consent of the Congress of the United States of America to
14 removed adjudicated water claims from an active federal military cemetery, and *even if* State Engineer
15 approved a change application contrary to its own expert studies, every new luxury estate marketed and
16 sold to California residents as “buildable” may be rendered uninhabitable if (and when) the owner of a
17 senior water right suffers quality and/or quantity impairment and commences water litigation to prevent
18 contamination of drinking water by Groundwater Mining.

19 28. The solution? Emigration Oaks Defendants would simply construct the exact same
20 underground water sources refuted by expert hydrology studies and predicted to impair senior water
21 rights “with almost certainty,” and then transfer legal liability of the defunct water system to a Utah
22 special service district controlled by a failed Utah banker and the black-listed securities broker and then
23 engage a renowned Salt Lake City law firm to misrepresent that water rights are “superior” to all
24 previously perfected surface and underground water sources.

25 **Construction of the Legally and Technically Defunct Emigration Oaks Water System.**

26 29. Immediately following acquisition of the Mt. Olivet Cemetery water right 57-8865,
27 between May 15, 1984, and June 15, 1986, Emigration Oaks Defendants constructed Boyer Well No. 1
28 (aka Freeze Creek Well), and the 355,000 gallon Boyer Tank on the north side of the Canyon.

1 30. Despite the fact Emigration Oaks Defendants had secured title *without* consent of the
2 Congress of the United States of America and thus controlled a duplicitous water share sufficient for
3 only **125** residential units (including irrigation), by currently unknown means, the State Engineer not
4 only disregarded its own expert studies but also approved interior and exterior water service to **188**
5 domestic units under permanent change application “a12710b.”

6 31. As predicted by the Utah State Engineer Study, the Emigration Oaks Water System
7 immediately proved to be technically defunct.

8 32. Contrary to statements published on August 17, 1984, that Emigration Oaks Defendants
9 had “dug a well capable of supplying all its future water needs,” sometime in January 1993, Boyer Well
10 No. 1 “pumped dry” and the Boyer Tank exhausted possibly causing damage to the productive capacity
11 of the water system as recorded in Canyon Wide System Master Plan/Financial Feasibility Draft Report
12 from January 1994 (“**1994 Canyon Wide Report**”).

13 33. Moreover, sometime in the early 1990’s, the United States Forest Service designated the
14 entire Emigration Oaks PUD as a “Wildfire Danger Zone” leading to exorbitant monthly fire insurance
15 premiums (\$1,000.00) as published in *Environment and Planning*, A 2002, volume 34, pages 2211- 29.

16 34. Having constructed a single access road to the entire Emigration Oaks PUD, sometime in
17 1992, a multi-million-dollar home was completely destroyed by fire due to the difficulty of the Fire
18 Department in reaching the blaze.

19 35. To remedy the situation, and to continue the successful marketing of vacant parcels, on
20 February 20, 1994, Emigration Oaks Defendants constructed a second large-diameter commercial well,
21 Boyer Well No. 2, located 1/2 mile west of Boyer Well No. 1, also contrary to the Utah State Engineer
22 Study.

23 36. Although Emigration Oaks Defendants owned and operated Boyer Well No. 2, for
24 unknown reasons, the State Engineer approved construction and operation under permanent change
25 application #a17521 (underground point-of-diversion No. 9) under water right #57-7796 controlled by
26 ECID Trustees although the point-of-diversion for Boyer Well No. 2 was not listed on the original
27 permanent change application and no lease contract was recorded with the State Engineer.

28 //

1 37. By 1998, 105 multi-million-dollar homes had been constructed, and Emigration Oaks
2 Defendants were obligated to supply water to another **118** vacant properties it had sold as “buildable”
3 to unsuspecting out-of-state buyers.

4 38. Emigration Oaks Defendants had however failed to construct water distribution lines in
5 Phases 4, 6, and 6A of the coveted “Emigration Estates” development.

6 39. With the positive knowledge that it held a defunct title for water rights sufficient for only
7 **125** residential units under water right #57-8865 (including exterior irrigation) and not the **223**
8 residential parcels it sold as “buildable” as well as the positive knowledge that its water-system
9 infrastructure was entirely deficient for even its current needs, Emigration Oaks Defendants knew that
10 the entire business adventure was at risk, because each new household drawing water at a higher
11 elevation was legally inferior to every private well drawing water from artesian springs near the Canyon
12 Stream.

13 **Transfer of Liability and Expansion of the Emigration Oaks Water System at Taxpayer Expense.**

14 40. Sometime in 1998, through Defendant Kinghorn, Emigration Oaks Defendants transferred
15 legal title and liability of the incomplete, dilapidated, and deficient water system as a “gift” to ECID
16 whereby ECID Trustees assumed obligation to provide water service to an additional 130 vacant lots at
17 taxpayer expense.

18 41. On November 19, 2002, Defendant Kinghorn advised Land-Developer Plumb of private
19 land-development in the Canyon and then billed its legal services to ECID Trustees as documented in
20 statement no. 121372, account no. 8031-00M.

21 42. On March 23, 2003, Defendant Kinghorn prepared a deed for the transfer of Boyer Well
22 No. 2 to ECID although the underground drinking water source was contaminated with lead since its
23 initial construction by the Emigration Oaks Defendants on February 25, 1994.

24 43. Defendant Kinghorn allowed transfer of legal liability to its client, despite the fact that
25 Emigration Oaks Defendants had been operating Boyer Well No. 2 without a valid operating permit as
26 documented in a correspondence dated September 20, 1995, as well as recorded in the 1996 and 2015
27 Sanitation Surveys completed by the Utah Division of Drinking Water confirming that Boyer Well No.
28 2 was ineligible for the issuance of an operating permit.

1 44. To date, ECID through Simplifi continues operation of Boyer Wells Nos. 1 and 2 as
2 culinary water sources of the Emigration Oaks Water System.

3 45. Immediately following transfer of title and legal liability, on January 3, 2001, ECID
4 Trustees secured federally-backed funds administered by the Utah Division of Drinking Water (“**DDW**”)
5 earmarked for “Economically Disadvantaged Communities” for the construction of two (2) additional
6 large-diameter commercial wells and a 1-million gallon water reservoir to be eventually constructed on
7 property belonging to ECID Chairman Creamer for the purported benefit of “57 existing” Canyon
8 homes.

9 46. As per federal revenue-bonding requirement no. 7(b), Defendant Kinghorn certified that
10 ECID Trustees “have established the ownership of water rights to any and all water used in the system”

11 47. On September 27, 2001, Defendant Kinghorn advised ECID Chairman Creamer regarding
12 private land-development in the Canyon and then billed its legal services to ECID Trustees as
13 documented in statement no. 119444, account no. 8031-00M.

14 48. On October 18, 2002, DDW planning engineer Dr. Steve Onysk (“**Dr. Onysko**”) refused
15 to certify use of federal funds for the construction of a “preposterously oversized” 1-million gallon
16 reservoir and “grossly undersized water lines” on property belonging to ECID Chairman Creamer.

17 49. Eleven (11) days later on October 29, in an undisclosed meeting Defendant Kinghorn
18 conferred with ECID Chairman Creamer to discuss “recommendations for smaller reservoir” eventually
19 leading to project approval and final distribution of federal funds on September 29, 2004.

20 50. Following project completion, the DDW documented the Wildflower Reservoir at 1.3
21 million gallons while internal ECID documents referenced capacity at 2.0 million gallons.

22 51. Plaintiff is informed and believes that current water source capacity of the Emigration
23 Oaks Water system as calculated by DDW is 200% while water storage capacity is 600%.

24 52. On September 8, 2018, the Salt Lake Tribune documented total depletion of the Canyon
25 Steam for the first time in recorded history as predicted in the Defendant Kinghorn Testimony.

26 53. On June 16, 2020, the ECHO-Association recorded massive ground subsidence and a 700-
27 foot fissure in the Canyon’s Twin Creek Aquifer consistent with Groundwater Mining as documented
28 in the Weber State Study and in an article published by Business Insider on September 11, 2023.

1 54. Plaintiff is informed and believes that since initial construction of the Emigration Oaks
2 Water System, over 40 private wells operated with senior water share have suffered quality and/or
3 quantity impairment consistent with the Utah State Engineer Study.

4 55. Plaintiff is informed and believes that the collapse of the Canyon’s water table and thereby
5 the artesian pressure supporting the Canyon Stream, the destruction of the fragile Twin Creek Aquifer
6 and deterioration of drinking-water quality through Groundwater Mining may be permanent and
7 irreversible.

8 56. In the Project Notification Form dated January 17, 2013, ECID reported to Utah State
9 officials that ECID “is obligated” to provide future water service to an additional 475 domestic units.

10 **Fraudulent Misrepresentation of Duplicitous Water Rights.**

11 57. Sometime on or about December 1, 1982, Defendant Kinghorn circulated a letter with the
12 subject title “IMPORTANT NOTICE REGARDING YOUR WATER RIGHTS!” (emphasis in original)
13 stating that ECID had obtained approval of the State Engineer to construct a large-diameter commercial
14 well “to assist residents in the Canyon and mutual water companies [...]” and because the district “has
15 one of the most senior or oldest water rights” it is “prepared to accept a dedication of water rights from
16 existing residents [...] in exchange for a dedication [...] as a point-of-diversion under the District’s senior
17 water right.

18 58. To induce Canyon residents to abandon priority water shares, Defendant Kinghorn
19 insisted that “[m]ore water rights may have been approved in Emigration Canyon than there is water in
20 the Canyon to satisfy all rights” and therefore “[d]uring times of shortage individuals ... with the most
21 recent water rights will be forced to curtail their use of water while those with more senior rights will be
22 allowed to use their full share.” *Id.*

23 59. To date, Simplifi Defendant maintains on the website page “[https://www.ecid.org/price-](https://www.ecid.org/price-list)
24 [list](https://www.ecid.org/price-list)” that “EID [aka ECID] holds one of the most senior water right in the Canyon” and homeowners
25 “can exchange their water right for the District’s senior water right” despite the fact that all underground
26 water sources of the Boyer Water System have the most junior water right priority date of September
27 12, 2018 under permanent change application “a44045” (57-7796).

28 //

1 60. The statements of Defendants Kinghorn and Simplifi are demonstrably false as
2 documented in the United States Urban Study.

3 **Federal False Claims Act Litigation.**

4 61. The above-listed allegations were filed in United States Federal District Court for the
5 District of Utah on September 26, 2014, under the Federal False Claims Act (“*FCA Litigation*”).

6 62. Although dismissal of the action by the district court under the statute of limitations was
7 twice reversed by the Tenth Circuit following a superseding decision of the United States Supreme Court
8 in *Cochise Consultancy Inc. et al. v. U.S. ex. rel Hunt* (decided on May 13, 2019), the appellate court
9 affirmed the third dismissal thereby disregarding long-standing precedent of the Federal Court of Claims
10 and the United States Court of Appeals for the Second and Third Circuits as recorded in the Request for
11 Extension of Time to File a Petition for a Writ of Certiorari to the United States Court of Appeals for
12 the Tenth Circuit, *U.S. ex Rel. Tracy v. Emigration Improvement District et al.*, Case no. 22A636.

13 63. Based upon the false and defamatory statements alleged herein, Mr. Tracy was unable to
14 secure financing necessary to resolve the divergence of opinion between the United States appellate
15 courts.

16 64. To date, no state or federal court has issued an opinion regarding the merits of the FCA
17 Litigation.

18 **False and Defamatory Statements Against Plaintiff.**

19 65. In a correspondence dated June 1, 2013, ECID Trustees announced a “fire-hydrant rental
20 fee” in order to service outstanding federally backed debt obligations for construction of the Brigham
21 Fork, Upper Freeze Creek Wells and Wildflower Reservoir on property owned and controlled by ECID
22 Chairman Creamer as alleged in the FCA Litigation.

23 66. In a correspondence dated June 2014, in response to an informational complaint filed by
24 Mr. Tracy with the Utah State Auditor, ECID Manager Hawkes released a statement that “[...] residents
25 have not been clear about facts surrounding the Emigration Improvement District” and contrary to the
26 aforementioned allegations insisted that “[t]he District has taken measures to hold down development
27 in the Canyon by thoughtfully allocating water connections.”

28 //

1 67. On June 18, 2015, following removal of the federal district court seal, the Salt Lake
2 Tribune published a front-page story of the FCA Litigation.

3 68. Shortly thereafter, DDW altered the source capacity of the Wildflower Reservoir from 1.3
4 million gallons to 1.0 million gallons as approved by DDW contrary to Dr. Onysko's objections.

5 69. Defendant Kinghorn through Utah Attorney Cook however reported to Salt Lake Tribune
6 environmental reporter Brian Maffly, "[t]he majority of the accusations [filed by Mr. Tracy] are
7 completely false and inaccurate, and the statements that are correct are used to support absurd
8 conspiracy-theory conclusions."

9 70. In the same article, ECID Manager Hawkes stated that the Utah special service holds the
10 canyon's most senior water right, "dating back to 1872," despite the fact that the Brigham Fork and
11 Upper Freeze Creek Wells were operated by Simplifi Defendant at that time under temporary change
12 applications, which do not require, publication, expire annually, and do not vest in relation to perfected
13 senior water rights.

14 71. In a letter to Canyon residents dated October 6, 2015, ECID Chairman Hughes and ECID
15 Trustee Bradford accused Mr. Tracy of fabricating allegations of the FCA Litigation, insisting that ECID
16 Chairman Hughes "was fully exonerated and went on to become an expert witness for the National
17 Association of Dealers as well as the SEC in Washington DC [sic] contrary to FINRA BrokerCheck no.
18 1180722.

19 72. Following an article of the Salt Lake Tribune dated November 8, 2019, published in
20 response to a press release issued by the ECHO-Association addressing lead contamination of the
21 Emigration Oaks Water System, ECID Manager Hawkes published statement on the ECID website
22 reporting that elevated lead levels in drinking water, "is likely the result of plumbing within the homes
23 tested and not water provided by the Emigration Improvement District" despite that fact that ECID
24 Manger Hawkes was personally informed of lead contamination of Boyer Well No. 1 in an email
25 correspondence dated January 10, 2017, and secretly informed ECID Trustees and Defendant Kinghorn
26 in a correspondence dated July 6, 2020 that lead testing had exceeded levels requiring mandatory
27 reporting under the SDWA.

28 //

1 73. In response to Mr. Tracy’s allegations regarding ECID proposal to provide future water
2 to a proposed Gun Range and Wedding Resort in an area prone to wildfire fatalities, ECID released a
3 statement dated November 18, 2018, stating “[ECID] needs to set the record straight relative the
4 relationship between its recent water right change application [and the development plans submitted to
5 Salt Lake County]. There is none! Zero! Nada! The District has had zero communication with Mr. Walsh
6 [the developer]” contrary to the discussions recorded in ECID trustee meeting minutes dated March 18,
7 2010 and October 11, 2012.

8 74. In the email correspondence sent from “agarybowen@msn.com” and dated November 14,
9 2018, Defendant Bowen asserted to several members of the press that Mr. Tracy “is of the devil, who
10 is the father of contention” and the doctrine of the “Lord Jesus Christ recorded in the Book of Mormon”
11 required that “such things should be done away with.”

12 75. In a sperate email correspondence and phone call to the Deputy Utah State Engineer and
13 acting Utah State Engineer Boyd Clayton that same day, Defendant Bowen accused Mr. Tracy of
14 committing a “fraud,” and as a “retired Security Analyst working to protect Utah residents from
15 securities fraud” Defendant Bowen stated that the matter “should be referred to Office of the Utah
16 Attorney General for a criminal investigation.”

17 76. In the email correspondence sent from “paul.h.brown@verizon.net” to Emigration Oaks
18 PUD residents dated December 15, 2018, ECCC Chairman Brown reported that the FCA Litigation and
19 protest of change applicaitons pending with the Utah State Engineer required for the operation of the
20 Upper Freeze Creek and Brigham Fork Wells “has the potential of shutting down our only water supply.
21 There is no ‘upside.’ If you are among those supporting or encouraging these actions, please stop.”

22 77. During appellate review of FCA Litigation before the United States Court of Appeals for
23 the Tenth Circuit, a correspondence dated September 22, 2022, and subsequently posted on
24 <https://ecid.org>, ECID Manager Hawkes posted a notice of a water rate increase for Canyon Residents
25 not connected to the Emigration Oaks Water System stating, “[...] the District has been required to
26 defend against a series of meritless lawsuits filed by a former resident of Emigration Canyon named
27 Mark Tracy. All of the of the various action have been decided in favor of the District.”

28 //

1 78. On January 19, 2023, in a public hearing conducted on the internet platform Zoom, in
2 order to prevent disclosure of legal invoices of Defendant Kinghorn believed to document misuse of
3 public funds by ECID Manager Hawkes and Defendant Kinghorn, Utah Attorney Cook stated that Mr.
4 Tracy was “hiding assets” and thus had committed perjury before the Utah State Third District Court.

5 **FIRST CAUSE OF ACTION**
6 **Defamation --- Libel**
7 (By Plaintiff Against All Defendants)

8 79. Plaintiff incorporates all allegation of this Complaint and re-alleges them as if set forth
9 fully herein.

10 80. Defendants published the aforementioned numerous false and defamatory claims to
11 members of the media, Canyon residents, current and prospective property owners.

12 81. These statements identified—and was “of or concerning”—Mr. Tracy and/or Mr. Tracy’s
13 business entity.

14 82. These statements contained numerous falsehoods about Mr. Tracy, whether on its face
15 and/or by virtue of a clear implication affirmatively intended by Defendants.

16 83. Defendants ensured that these false and defamatory statement about Mr. Tracy would
17 receive a wide circulation.

18 84. Defendants made these false and defamatory statement knowing that it was false or with
19 reckless disregard for its truth or falsity.

20 85. Defendants made these false statement with ill will and spite, and with wanton, reckless,
21 or willful disregard for its injurious effects on Mr. Tracy and Mr. Tracy’s rights.

22 86. Defendants false and defamatory statement caused Plaintiff to suffer reputational,
23 emotional, and professional harm.

24 87. As a proximate result of Defendants’ actions, Plaintiff has suffered and continues to
25 suffer damages in an amount according to proof.

26 **SECOND CAUSE OF ACTION**
27 **Defamation---Liable Per Se**
28 (By Plaintiff Against All Defendants)

88. Plaintiff incorporates all allegation of this Complaint and re-alleges them as if set forth
fully herein.

Document received by the CA 6th District Court of Appeal.

1 89. Defendants published the aforementioned numerous false and defamatory claims to
2 members of the media, Canyon residents, and current and future property owners.

3 90. These statements identified—and was “of or concerning”—Mr. Tracy and/or Mr. Tracy’s
4 business entity.

5 91. These statements contained numerous falsehoods about Mr. Tracy, whether on its face
6 and/or by virtue of a clear implication affirmatively intended by Defendants.

7 92. Defendants ensured that these false and defamatory statement about Mr. Tracy would
8 receive a wide circulation.

9 93. Defendants made these false and defamatory statement knowing that it was false or with
10 reckless disregard for its truth or falsity.

11 94. Defendants made these false and defamatory statement in a campaign to damage
12 Plaintiff’s reputation and interfere with his ability to utilize his skills and in the intent of portraying
13 Plaintiff as a criminal or bad actor.

14 95. Defendants false and defamatory statement caused Plaintiff to suffer reputational,
15 emotional, and professional harm.

16 96. As a proximate result of Defendants’ actions, Plaintiff has suffered and continues to suffer
17 damages in an amount according to proof.

18 **THIRD CAUSE OF ACTION**
19 **False Light**
20 **(By Plaintiff Against All Defendants)**

21 97. Plaintiff incorporates all allegation of this Complaint and re-alleges them as if set forth
22 fully herein.

23 98. Defendants published the aforementioned numerous false and defamatory claims to
24 members of the media, Canyon residents, current and future property owners.

25 99. These statements identified—and was “of or concerning”—Mr. Tracy and/or Mr. Tracy’s
26 business entity.

27 100. These statements contained numerous falsehoods about Mr. Tracy, whether on its face
28 and/or by virtue of a clear implication affirmatively intended by Defendants.

//

1 101. Defendants ensured that these false and defamatory statement about Mr. Tracy would
2 receive a wide circulation.

3 102. These accusations would be highly offensive to any self-respecting individual in
4 American society, if not a reasonable person in Plaintiff’s position. No one in California, especially a
5 person running an association of homeowners, would want to be known as associating with a person
6 who knowingly submits false statements to a court, or commits a crime during court proceedings.
7 Defendants published unfounded accusations to publicly humiliate Plaintiff and ruine his reputation.

8 103. As a proximate result of Defendants’ actions, Plaintiff has suffered and continues to suffer
9 damages in an amount according to proof.

10 **FOURTH CAUSE OF ACTION**
11 **Intentional Infliction of Emotional Distress**
12 (By Plaintiff Against All Defendants)

13 104. Plaintiff incorporates all allegation of this Complaint and re-alleges them as if set forth
14 fully herein.

15 105. Defendants published the aforementioned numerous false and defamatory claims to
16 members of the media, Canyon residents, current and future property owners.

17 106. These statements identified—and was “of or concerning”—Mr. Tracy and/or Mr. Tracy’s
18 business entity.

19 107. These statements contained numerous falsehoods about Mr. Tracy, whether on its face
20 and/or by virtue of a clear implication affirmatively intended by Defendants.

21 108. Defendants ensured that these false and defamatory statement about Mr. Tracy would
22 receive a wide circulation.

23 109. After publication, Plaintiff has suffered and continues to suffer severe emotional distress
24 due to the uncertainty about his future.

25 110. One of the more intangible result, Canyon residents are afraid to associate with Plaintiff
26 due to fears of public backlash. As a result, Plaintiff has been isolated, lost significant revenue.

27 111. But for Defendants’ actions, Plaintiff has suffered and continues to suffer emotional
28 distress and/or social isolation.

//

1 **PRAYER FOR RELIEF**


2 Wherefore, Plaintiff prays for judgment against Defendants as follows:

- 3 a) Special damages in an amount according to proof at the time of trial;
- 4 b) For interest accrued to date;
- 5 c) For general damages and pain and suffering, where applicable;
- 6 d) For compensatory damages for losses resulting from humiliation, mental anguish,
- 7 harm to reputation, and emotional distress according to proof;
- 8 e) That Defendant, its agents, successors, employees, and those acting in concert,
- 9 be enjoined permanently from engaging in each of the unlawful practices, policies, usages, and
- 10 customs set forth herein;
- 11 f) For an award of attorneys' fees, expert witness fees, and other litigation expenses
- 12 as allowed by law;
- 13 g) For an award of attorneys' fees, expert witness fees, and other litigation expenses;
- 14 h) For punitive damages for Defendant's malicious and despicable conduct;
- 15 i) For costs of suit herein; and
- 16 j) Grant such further relief as the Court deems necessary and proper.

17 //

18 //

19 DATED: September 21, 2023

20 By: 
 Mark Christopher Tracy
 Pro Se Plaintiff

Document received by the CA 6th District Court of Appeal.

DEMAND FOR JURY TRIAL

Plaintiff hereby demand a trial by jury for each and every claim for which he has a right to jury trial.

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DATED: September 21, 2023.

By: 

Mark Christopher Tracy
Pro Se Plaintiff

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VERIFICATION

I, Mark Christopher Tracy, declare:

I am the Plaintiff in the above-entitled action, and as such I am authorized to make this verification for that reason.


I have read the attached Complaint and know the contents thereof, and based on the information or belief, I believe them to be true.

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

Executed this 21st day of September 2023, in Huntington Beach, California.

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Mark Christopher Tracy
Pro Se Plaintiff

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Document received by the CA 6th District Court of Appeal.

1 Nicholas C. Larson (SBN 275870)
2 NLarson@MPBF.com
3 Miguel E. Mendez-Pintado (SBN 323372)
4 mmendezpintado@mpbf.com
5 MURPHY, PEARSON, BRADLEY & FEENEY
6 520 Pike Street, Suite 1205
7 Seattle, WA 98101
8 Telephone: (206)-219-2008
9
10 Attorneys for Defendant
11 PAUL BROWN

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 11/20/2023 6:39 PM
Reviewed By: B. Roman-Antunez
Case #23CV423435
Envelope: 13652285**

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8
9 COUNTY OF SANTA CLARA

10 MARK CHRISTOPHER TRACY, an
11 individual,
12
13 Plaintiff,

14 v.

15 COHNE KINGHORN, PC, a Utah professional
16 corporation; SIMPLIFI CO., a Utah
17 corporation; JEREMY COOK, a Utah resident;
18 ERIC HAWKS, a Utah resident; JENNIFER
19 HAWKES, a Utah resident; MICHAEL
20 HUGHES, a Utah resident; DAVID
21 BRADFORD, a Utah resident; KEM
22 GARDNER, a Utah resident; WALTER
23 PLUMB, a Utah resident; DAVID BENNION,
24 a Utah resident; R. STEVE CREAMER, a Utah
25 resident; PAUL BROWN, a Utah resident; and
26 GARY BOWEN, a Utah resident,
27
28 Defendants.

Case No. 23CV423435

**DECLARATION OF PAUL BROWN IN
SUPPORT OF MEMORANDUM OF
POINTS AND AUTHORITIES**

Date:
Time:
Dept:
Judge: The Honorable

**DECLARATION OF PAUL BROWN IN SUPPORT OF MEMORANDUM OF POINTS AND
AUTHORITIES**

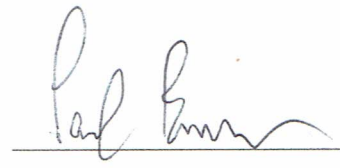
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I, Paul Brown, declare as follows:

1. I am a party to the action herein. I am over the age of eighteen and competent to testify.
I have personal knowledge of the information set forth below, unless noted as based on information and belief, all of which is true and correct of my own personal knowledge, and if called upon to testify, I could and would competently testify thereto.
2. I am a resident of Utah.
3. I do not have a residence in California, nor do I conduct any business in California.
4. I declare that under the penalty of perjury under the laws of Utah that the foregoing is true and correct and that this Declaration was executed on this 20th day of November 2023, in Salt Lake County, Utah.

DATED: November 20, 2023



Paul Brown

**DECLARATION OF PAUL BROWN IN SUPPORT OF MEMORANDUM OF POINTS AND
AUTHORITIES**

Document received by the CA 6th District Court of Appeal.

1 Nicholas C. Larson (SBN 275870)
2 NLarson@MPBF.com
3 Miguel E. Mendez-Pintado (SBN 323372)
4 mmendezpintado@mpbf.com
5 MURPHY, PEARSON, BRADLEY & FEENEY
6 520 Pike Street, Suite 1205
7 Seattle, WA 98101
8 Telephone: (206)-219-2008

9 Attorneys for Defendant
10 PAUL BROWN

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County of Santa Clara,
on 11/21/2023 1:14 PM
Reviewed By: A. Montes
Case #23CV423435
Envelope: 13660488

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MARK CHRISTOPHER TRACY, an
individual,

Plaintiff,

v.

COHNE KINGHORN, PC, a Utah professional
corporation; SIMPLIFI CO., a Utah
corporation; JEREMY COOK, a Utah resident;
ERIC HAWKS, a Utah resident; JENNIFER
HAWKES, a Utah resident; MICHAEL
HUGHES, a Utah resident; DAVID
BRADFORD, a Utah resident; KEM
GARDNER, a Utah resident; WALTER
PLUMB, a Utah resident; DAVID BENNION,
a Utah resident; R. STEVE CREAMER, a Utah
resident; PAUL BROWN, a Utah resident; and
GARY BOWEN, a Utah resident,

Defendants.

Case No. 23CV423435

**AMENDED DECLARATION OF
PAUL BROWN IN SUPPORT OF
MEMORANDUM OF POINTS
AND AUTHORITIES**

Date:

Time:

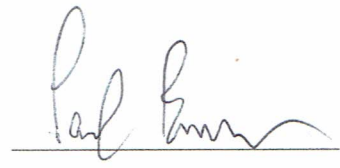
Dept:

Judge: The Honorable

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I, Paul Brown, declare as follows:

1. I am a party to the action herein. I am over the age of eighteen and competent to testify.
I have personal knowledge of the information set forth below, unless noted as based on information and belief, all of which is true and correct of my own personal knowledge, and if called upon to testify, I could and would competently testify thereto.
2. I am a resident of Utah.
3. I do not have a residence in California, nor do I conduct any business in California.
4. I declare that under the penalty of perjury under the laws of Utah that the foregoing is true and correct and that this Declaration was executed on this 21st day of November 2023, in Salt Lake County, Utah.



Paul Brown

Document received by the CA 6th District Court of Appeal.

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037
--
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany
--
5 Email: m.tracy@echo-association.com
Telephone: +1 (929) 208-6010
6 +49 (0)172 838 86 37
7 Pro Se Plaintiff

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 11/22/2023 1:25 PM
Reviewed By: R. Aragon
Case #23CV423435
Envelope: 13673778**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 MARK CHRISTOPHER TRACY, an individual;
12 Plaintiff,

Case No.: 23CV423435

Honorable Evette D. Pennypacker
[Dept. 6]

13 v.

**MEMORANDUM AND POINTS OF
AUTHORITY IN SUPPORT OF
OPPOSITION TO MOTION TO QUASH
SERVICE OF PROCESS FOR LACK OF
PERSONAL JURISDICTION AND
INCONVENIENT FORUM;**

14 COHNE KINGHORN PC, a Utah Professional
15 Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
17 ERIC HAWKES, an individual;
18 JENNIFER HAWKES, an individual; MICHAEL
SCOTT HUGHES, an individual; DAVID
BRADFORD, an individual; KEM CROSBY
GARDNER, an individual; WALTER J.
19 PLUMB III, an individual; DAVID BENNION, an
20 individual; R. STEVE CREAMER, an individual
21 PAUL BROWN, an individual; GARY BOWEN,
an individual,

Date of Hearing: Unspecified
Time: Unspecified

Action Filed: September 21, 2023
Trial Date: TBD

22 Defendants.

23 **I. INTRODUCTION**

24 Plaintiff Mark Christopher Tracy respectfully submits this opposition to Defendant Paul Brown's
25 motion to quash service of the complaint and summons for lack of personal jurisdiction and inconvenient
26 forum pursuant to California Rules of Civil Procedure §1408(a) subsections (1) and (2) ("Defendant
27 Brown" and the "Motion").

28 //

1 Defendant Brown argues that the Complaint alleges facts occurring “exclusively” outside the
2 forum state and because the Defendant does not have any residential or business connection in the State
3 of California, under requirements of traditional notions of fair play and substantial justice, this Court
4 lacks specific personal jurisdiction.

5 Defendant Brown further contends that because all defendants are Utah residents, and no citizens
6 of California would benefit from the instant action, this Court should exercise its discretionary power and
7 decline jurisdiction under the grounds of inconvenient forum pursuant to California Code of Civil
8 Procedure § 418.10(2).

9 These arguments fail.

10 Specially, the Motion is without evidentiary basis as the factual representations submitted to the
11 Court are inadmissible heresy as Defendant Brown and legal counsel Attorney Miguel E. Mendez-
12 Pintado failed to execute declarations within the forum state or under penalty of perjury pursuant to the
13 laws of the State of California.

14 Next, because the Notice of Motion failed to record a hearing date within 30 days pursuant to
15 California Code of Civil Procedure § 418.10(2), Plaintiff’s right to a timely hearing has been violated
16 and the Motion must be denied.¹

17 **II. BACKGROUND**

18 Plaintiff Mark Christopher Tracy is a California resident and federal whistleblower in what has
19 been alleged to be the longest and most lucrative water grabs in the history of the State of Utah
20 perpetuated for the economic benefit of private land-developers including Defendant Brown at the cost
21 of California citizens and residents. Compl. ¶ 1.

22 Specially, for the past 40 years, and continuing to the present day unabated, a renowned Salt
23 Lake City law firm acting on behalf of a Utah special service water district and Defendant Brown
24 perpetuated a fraudulent scheme to retire senior perfected water rights vis-a-vis duplicitous water claims
25

26 ¹ Contrary to Defendant Brown’s representations, a cursory review of the Complaint reveals
27 allegations of tortious conduct occurring both within and directed towards the forum state including
28 intended injury resulting in California. Moreover, because the Complaint alleges an ongoing fraud
against citizens of California for the economic benefit of the Defendants, there is an overwhelming
public interest in proper adjudication of the Complaint and the Motion should be denied in its entirety.

Document received by the CA 6th District Court of Appeal.

1 stripped from the only active federal military cemetery created by an Act of Congress, signed into law
2 by United States President Ulysses S. Grant in 1874, subject to the reversionary interest to be “forever
3 used for the burial of the dead,” but however misappropriated for the construction and massive
4 expansion of a luxurious private urban development marketed and sold to unsuspecting California
5 residents as the “Bel Air of Salt Lake City.” Compl. ¶ 2.

6 In furtherance of this ongoing fraud, and to secure continued payment of monies from property
7 owners residing in Venice, Rancho Cucamonga, Corona Del Mar, Coto de Caza, Mountain View, San
8 Rafael, Bayside, Loomis, and San Diego, California, Defendants miscited and withheld expert
9 hydrology reports expressly warning against aquifer depletion via operation of large-diameter
10 commercial wells of a public drinking-water system, while simultaneously concealing governmental
11 records evidencing extensive lead contamination and inadequate emergency-fire protection in a small
12 mountain community especially prone to wild-fire fatalities. Compl. ¶ 3.

13 However, when suppression of expert studies and public records proved futile, Defendants
14 resorted to a collaborative smear campaign publishing false and defamatory statements on the world-
15 wide web via a server located in San Jose, California under the slogan “STAY INFORMED – GET THE
16 FACTS!” (emphasis in original). Compl. ¶¶ 4, 20.

17 **III. ARGUMENT**

18 **A. Defendant Brown’s Motion Fails to Comply with the Requirements Section 1408(b).**

19 Pursuant to California Code of Civil Procedure §1408(a), a defendant may, on or before the last
20 day of the time to plead, may serve and file motion to quash the service of summons or dismiss the
21 action on grounds of inconvenient forum. However, under subsection (b) “[t]he notice *shall* designate,
22 as the time for making the motion, a date not more than 30 days after filing of the notice” (emphasis
23 added).

24 In the instant action, Defendant Brown served the Plaintiff Mark Christopher Tracy a notice to
25 quash service and summons for lack of personal jurisdiction, or in the alternative, an inconvenient forum
26 with the date, time and place of the hearing left blank. (Declaration of Mark Christopher Tracy (“Tracy
27 Decl.”), ¶ 3, Exhibit A).

28 //

1 The Motion is clearly filed in bad faith as a delaying tactic in that it is not calendared and must
2 be denied in its entirety.

3 **B. Defendant Brown’s Motion Is Without Factual Basis and Must Be Denied.**

4 In order to enhance the reliability of declarations used as hearsay evidence by disclosing the
5 criminal sanction for dishonesty, California Code of Civil Procedure § 2015.5 requires that the document
6 must either reveal a “place of execution” within California or recite that it is made “under the laws of
7 the State of California.” Factual representations that fail to meet these requirements must be excluded
8 as heresy and cannot be used as evidence. *Kulshrestha v. First Union Commercial Corp.*, (2004) 33
9 Cal. 4th 601, 610.

10 The Declaration of Defendant Brown (“Brown Decl.”), signed on November 20, 2023, and the
11 subsequent Amended Declaration (“Brown Amended Decl.”) executed the following day record the
12 location of Salt Lake City, Utah under penalty of perjury pursuant to the laws of Utah and is thus
13 inadmissible. (Def. Motion, Brown Decl. ¶ 4; Def. Motion, Amend Brown Decl. ¶ 4.)

14 Likewise, the Declaration of Miguel Mendez-Pintado (“Mendez-Pintado Decl.”), signed on
15 November 21, 2023, in Seattle, Washington and executed under penalty of perjury under the laws of
16 Washington and is likewise inadmissible and cannot be used as evidence. (Def. Motion, Mendez-Pintado
17 Decl. ¶ 4.)

18 As the Motion lacks any factual basis for its arguments, it must be denied.

19 **C. Service of Process Complies with Statutory Standards and Is Proper.**

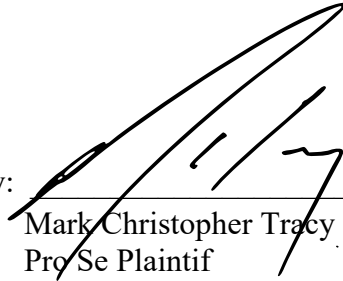
20 Defendant Brown was properly served on October 19, 2023 at 8:11 PM MDT by a Registered
21 Process Server as documented by the proof of service filed with the Court on November 6, 2023. Tracy
22 Decl. ¶ 4, Exhibit B. Said proof of service complies with all statutory standards and thus creates a
23 rebuttable presumption that service was proper.

24 **IV. CONCLUSION**

25 Based on the foregoing reasons, Plaintiff Mark Christopher Tracy respectfully requests that the
26 Court deny Defendant Brown’s motion to quash service of process for lack of personal jurisdiction as
27 Defendant Brown has failed to comply with Section 1408(b), and has offered this Court no admissible
28 evidence why this action should be heard in a forum outside of the State of California.

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DATED: November 22, 2023

By: 
Mark Christopher Tracy
Pro Se Plaintiff

Document received by the CA 6th District Court of Appeal.

1 Charlie Y. Chou (SBN 248369)
2 KESSENICK GAMMA LLP
3 1 Post Street, Suite 2500
4 San Francisco, CA 94014
5 Telephone: (415) 568-2016
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7 cchou@kessenick.com

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by Superior Court of CA,
County of Santa Clara,
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Reviewed By: A. Montes
Case #23CV423435
Envelope: 13701860

Attorneys for Defendant Gary Bowen

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MARK CHRISTOPHER TRACY, an
individual,

Plaintiff,

v.

COHNE KINGHORN, PC, a Utah professional
corporation; SIMPLIFI CO., a Utah
corporation; JEREMY COOK, a Utah resident;
ERIC HAWKS, a Utah resident; JENNIFER
HAWKES, a Utah resident; MICHAEL
HUGHES, a Utah resident; DAVID
BRADFORD, a Utah resident; KEM
GARDNER, a Utah resident; WALTER
PLUMB, a Utah resident; DAVID BENNION,
a Utah resident; R. STEVE CREAMER, a Utah
resident; PAUL BROWN, a Utah resident; and
GARY BOWN, a Utah resident,

Defendants.

Case No. 23CV423435

**DECLARATION OF GARY BOWEN IN
SUPPORT OF MEMORANDUM OF
POINTS AND AUTHORITIES**

Date:

Time:

Dept: 6

Judge: The Honorable Evette D. Pennypacker

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I, Gary Bowen, declare as follows:

1. I am a party the action herein. I am over the age of eighteen and competent to testify. I believe the following to be true and correct to the best of my knowledge. I have personal knowledge of all facts stated herein except for those matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called upon to testify to these matters I could and would do so truthfully.

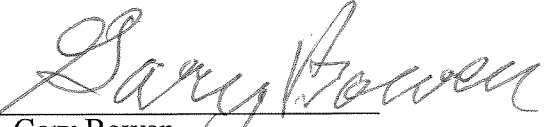
2. I am a resident of Utah.

3. I do not have a residence in California and I do not conduct business in California.

4. I am aware that the Plaintiff, Mark Christopher Tracy, has filed multiple lawsuits or legal actions against individuals in Utah. Plaintiff has filed so many of these actions, with no success, that the State Court in Utah has declared Plaintiff a “vexatious litigant” and precluding the Plaintiff from filing further actions without court approval in the State of Utah. *See Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure* (the “Vexatious Litigant Order”). A copy of the Vexatious Litigant Order is attached hereto as **Exhibit A**.

5. I declare that under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed on the 21st day of November, 2023.

DATED: November 21, 2023.

By: 
Gary Bowen

Document received by the CA 6th District Court of Appeal.

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037

3 --
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany

5 --
5 Email: m.tracy@echo-association.com
6 Telephone: +1 (929) 208-6010
6 +49 (0)172 838 86 37

7 Pro Se Plaintiff

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 12/4/2023 12:22 AM
Reviewed By: R. Burciaga
Case #23CV423435
Envelope: 13753859**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 MARK CHRISTOPHER TRACY, an
12 individual,

13 Plaintiff,

14 v.

15 COHNE KINGHORN PC, a Utah Professional
16 Corporation; SIMPLIFI COMPANY, a Utah
17 Corporation; JEREMY RAND COOK, an
18 individual; ERIC HAWKES, an individual;
19 JENNIFER HAWKES, an individual;
20 MICHAEL SCOTT HUGHES, an individual;
21 DAVID BRADFORD, an individual; KEM
22 CROSBY GARDNER, an individual; WALTER
23 J. PLUMB III, an individual; DAVID
24 BENNION, an individual; R. STEVE
25 CREAMER, an individual PAUL BROWN, an
26 individual; GARY BOWEN, an individual

27 Defendants.

Case No.: 23CV423435

Honorable Evette D. Pennypacker
[Dept. 6]

**MEMORANDUM AND POINTS OF
AUTHORITY IN SUPPORT OF
OPPOSITION TO DEFENDANT
BOWEN’S MOTION TO QUASH
SERVICE OF PROCESS FOR LACK OF
PERSONAL JURISDICTION AND
DISMISS FOR INCONVENIENT FORUM**

Date of Hearing: Unspecified
Time: Unspecified

Action Filed: September 21, 2023
Trial Date: TBD

28 **I. INTRODUCTION**

Plaintiff Mark Christopher Tracy respectfully submits this opposition to Defendant Gary Bowen’s *Motion to Quash Service of the Complaint and Summons for Lack of Personal Jurisdiction and Dismiss for Inconvenient Forum* pursuant to California Rules of Civil Procedure § 418.10(a) subsections (1) and (2) (“Defendant Bowen” and the “Motion”).

Document received by the CA 6th District Court of Appeal.

1 Defendant Bowen argues that the Complaint alleges facts occurring “exclusively” outside the
2 forum state, and because the Defendant does not have any residential or business connection in the State
3 of California,¹ this Court lacks specific personal jurisdiction. Memorandum of Points and Authorities in
4 Support of Defendant Bowen’s Motion to Quash Service of Summons and Complaint for Lack of
5 Personal Jurisdiction and Motion to Dismiss for Inconvenient Forum (“Bowen Memo.”), p. 7.

6 Defendant Brown further contends that because all defendants are Utah residents, and no citizens
7 of California would benefit from the instant action, this Court should exercise its discretionary power and
8 decline jurisdiction under the grounds of inconvenient forum pursuant to California Code of Civil
9 Procedure § 418.10(a)(2). Bowen Memo., p. 8.

10 These arguments fail.

11 Specially, the Motion is without evidentiary basis as the factual representations submitted to the
12 Court are inadmissible heresy as Defendant Bowen failed to execute declarations within the forum state
13 or under penalty of perjury pursuant to the laws of the State of California.²

14 Next, because the Notice of Motion failed to record a hearing date within 30 days pursuant to
15 California Code of Civil Procedure § 418.10(b), Plaintiff’s right to a timely hearing has been violated
16 and the Motion must be denied in its entirety.

17 **II. BACKGROUND**

18 Plaintiff Mark Christopher Tracy is a California resident and federal whistleblower in what has
19 been alleged to be the longest and most lucrative water grabs in the history of the State of Utah
20 perpetuated for the economic benefit of private land-developers including Defendant Bowen at the cost
21 of California citizens and residents. Compl. ¶ 1.

22 Specially, for the past 40 years, and continuing to the present day unabated, a renowned Salt
23 Lake City law firm acting on behalf of a Utah special service water district and Defendant Bowen

24 ¹ Contrary to Defendant Bowen’s representations to the Court, a cursory review of the Complaint
25 reveals allegations of tortious conduct occurring both within and directed towards the forum state
26 including intended injury resulting in California. Moreover, because the Complaint alleges an ongoing
27 fraud against citizens of California for the economic benefit of the Defendants, there is an
28 overwhelming public interest in proper adjudication of the Complaint and the Motion should be denied
in its entirety.

² Plaintiff respectfully declines to address factual allegations not properly submitted to the Court.

Document received by the CA 6th District Court of Appeal.

1 perpetuated a fraudulent scheme to retire senior perfected water rights vis-a-vis duplicitous water claims
2 stripped from the only active federal military cemetery created by an Act of Congress, signed into law
3 by United States President Ulysses S. Grant in 1874, subject to the reversionary interest to be “forever
4 used for the burial of the dead,” but however misappropriated for the construction and massive
5 expansion of a luxurious private urban development marketed and sold to unsuspecting California
6 residents as the “Bel Air of Salt Lake City.” Compl. ¶ 2.

7 In furtherance of this ongoing fraud, and to secure continued payment of monies from property
8 owners residing in Venice, Rancho Cucamonga, Corona Del Mar, Coto de Caza, Mountain View, San
9 Rafael, Bayside, Loomis, and San Diego, California, Defendants miscited and withheld expert
10 hydrology reports expressly warning against aquifer depletion via operation of large-diameter
11 commercial wells of a public drinking-water system, while simultaneously concealing governmental
12 records evidencing extensive lead contamination and inadequate emergency-fire protection in a small
13 mountain community especially prone to wild-fire fatalities. Compl. ¶ 3.

14 However, when suppression of expert studies and public records proved futile, Defendants
15 resorted to a collaborative smear campaign publishing false and defamatory statements on the world-
16 wide web via a server located in San Jose, California under the slogan “STAY INFORMED – GET THE
17 FACTS!” (emphasis in original). Compl. ¶¶ 4, 20.

18 III. ARGUMENT

19 A. Defendant Bowen’s Motion Fails to Comply with the California Code of Civil Procedure.

20 Pursuant to California Code of Civil Procedure § 418.10(a), a defendant may, on or before the
21 last day of the time to plead, may serve and file motion to quash the service of summons or dismiss the
22 action on grounds of inconvenient forum. However, under subsection (b) “[t]he notice *shall* designate,
23 as the time for making the motion, a date not more than 30 days after filing of the notice” (emphasis
24 added).

25 In the instant action, Defendant Bowen served the Plaintiff Mark Christopher Tracy a notice to
26 quash service and summons for lack of personal jurisdiction, or in the alternative, dismiss for an
27 inconvenient forum with the date, time and place of the hearing left blank. (Declaration of Mark
28 Christopher Tracy (“Tracy Decl.”), ¶ 3, Exhibit A).

1 The Motion is clearly filed in bad faith as a delaying tactic in that it is not calendared and must
2 be denied in its entirety.

3 **B. Defendant Bowen’s Motion Is Without Factual Basis and Must Be Denied.**

4 In order to enhance the reliability of declarations used as hearsay evidence by disclosing the
5 criminal sanction for dishonesty, California Code of Civil Procedure § 2015.5 requires that the document
6 must either reveal a “place of execution” within California or recite that it is made “under the laws of
7 the State of California.” Factual representations that fail to meet these requirements must be excluded
8 as heresy and cannot be used as evidence. *Kulshrestha v. First Union Commercial Corp.*, (2004) 33
9 Cal. 4th 601, 610.

10 The Declaration of Defendant Bowen signed on November 21, 2023, recorded no location where
11 the document was executed³ and was not signed under penalty of perjury pursuant to the laws of
12 California and is thus inadmissible. Declaration of Gary Bowen in Support of Memorandum and Points
13 of Authorities (“Brown Decl.”), ¶ 5.

14 As the Motion lacks any factual basis for its arguments, it must be denied.

15 **C. Service of Process Complies with Statutory Standards and Is Proper.**

16 Defendant Bowen was properly served by substitute service on October 17, 2023 at 7:46 PM
17 MDT by Process Servers Hayden Hunter and Jesus Alvarez as documented by the proof of service filed
18 with the Court on November 6, 2023. Tracy Decl. ¶ 4, Exhibit B.

19 Said proof of service complies with all statutory standards and thus creates a rebuttable
20 presumption that service was proper.

21 **IV. CONCLUSION**

22 Based on the foregoing reasons, Plaintiff Mark Christopher Tracy respectfully requests that the
23 Court deny Defendant Bowen’s motion to quash service of process for lack of personal jurisdiction as
24 Defendant Brown has failed to comply with Section 418.10 (b) and has offered this Court no admissible
25 evidence why this action should be heard in a forum outside of the State of California.

26
27 ³ As Defendant Bowen maintains that he “does not have any residential or business connections with
28 California” it must be assumed that the document was not executed in the forum state. *See* Bowen Decl.
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DATED: December 4, 2023

By: 
Mark Christopher Tracy
Pro Se Plaintiff

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Facsimile: (415) 362-9401
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Attorneys for Defendant Gary Bowen

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County of Santa Clara,
on 12/6/2023 2:52 PM
Reviewed By: A. Montes
Case #23CV423435
Envelope: 13789739

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MARK CHRISTOPHER TRACY, an
individual,

Plaintiff,

v.

COHNE KINGHORN, PC, a Utah professional
corporation; SIMPLIFI CO., a Utah
corporation; JEREMY COOK, a Utah resident;
ERIC HAWKS, a Utah resident; JENNIFER
HAWKES, a Utah resident; MICHAEL
HUGHES, a Utah resident; DAVID
BRADFORD, a Utah resident; KEM
GARDNER, a Utah resident; WALTER
PLUMB, a Utah resident; DAVID BENNION,
a Utah resident; R. STEVE CREAMER, a Utah
resident; PAUL BROWN, a Utah resident; and
GARY BOWN, a Utah resident,

Defendants.

Case No. 23CV423435

**AMENDED DECLARATION OF GARY
BOWEN IN SUPPORT OF
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date:
Time:
Dept: 6
Judge: The Honorable Evette D. Pennypacker

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I, Gary Bowen, declare as follows:

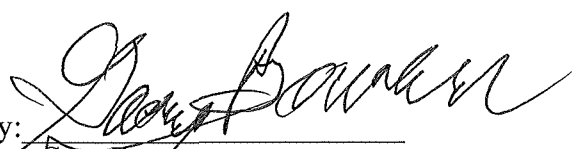
1. I am a party the action herein. I am over the age of eighteen and competent to testify. I believe the following to be true and correct to the best of my knowledge. I have personal knowledge of all facts stated herein except for those matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called upon to testify to these matters I could and would do so truthfully.

2. I am a resident of Utah.

3. I do not have a residence in California and I do not conduct business in California.

4. I am aware that the Plaintiff, Mark Christopher Tracy, has filed multiple lawsuits or legal actions against individuals in Utah. Plaintiff has filed so many of these actions, with no success, that the State Court in Utah has declared Plaintiff a “vexatious litigant” and precluding the Plaintiff from filing further actions without court approval in the State of Utah. *See Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure* (the “Vexatious Litigant Order”). A copy of the Vexatious Litigant Order is attached hereto as **Exhibit A**.

5. I declare that under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 5th day of December, 2023 in Salt Lake City, Utah.

By: 

Gary Bowen

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County of Santa Clara,
on 12/29/2023 5:50 PM
Reviewed By: B. Roman-Antunez
Case #23CV423435
Envelope: 13986023**

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3 DAVIS WRIGHT TREMAINE LLP
4 50 California Street, 23rd Floor
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7 Facsimile: (415) 276-6599
8 Email: thomasburke@dwt.com
9 sarahburns@dwt.com

6 Attorneys for Defendant Kem Crosby Gardner

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SANTA CLARA

11 UNLIMITED JURISDICTION

12 MARK CHRISTOPER TRACY, an individual,

13 Plaintiff,

14 v.

15 COHNE KINGHORN PC, a Utah Professional
16 Corporation; SIMPLIFI COMPANY, a Utah
17 Corporation; JEREMY RAND COOK, an
18 individual; ERIC HAWKES, an individual;
19 JENNIFER HAWKES, an individual; MICHAEL
20 SCOTT HUGHES, an individual; DAVID
21 BRADFORD, an individual; KEM CROSBY
22 GARDNER, an individual; WALTER J. PLUMB
23 III, an individual; DAVID BENNION, an
24 individual; R. STEVE CREAMER, an individual
25 PAUL BROWN, an individual; GARY BOWEN,
26 an individual,

22 Defendants.

Case No. 23CV423435

**DECLARATION OF KEM C. GARDNER
IN SUPPORT OF MOTION TO QUASH
SERVICE OF SUMMONS AND
COMPLAINT FOR LACK OF
PERSONAL JURISDICTION**

Judge: The Hon. Evette Pennypacker
Department: 06

Date:
Time:

Complaint Filed: September 21, 2023

DAVIS WRIGHT TREMAINE LLP

Document received by the CA 6th District Court of Appeal.

DECLARATION OF KEM C. GARDNER

1
2 1. I am named as a defendant in the above-entitled action, *Mark Christopher Tracy*
3 *v. Cohne Kinghorn PC, et al.*, Santa Clara County Case No. 23CV423435 (the "Lawsuit"). I
4 make this declaration in support of Specially Appearing Defendant Kem C. Gardner's Motion to
5 Quash Service of Summons and Complaint for Lack of Personal Jurisdiction. I have personal
6 knowledge of the facts set forth herein, except as to those stated on information and belief and,
7 as to those, I am informed and believe them to be true. If called as a witness, I could and would
8 competently testify to the matters stated herein.

9 2. I am a resident of Utah, and have been since 1988. I am registered to vote in
10 Utah, and intend to remain in the state.

11 3. I have never been a resident of California. I do not conduct business on behalf of
12 myself in California. I do not maintain bank accounts in California. I do not pay taxes in
13 California. I do not have any employees in California, and have not appointed anyone to accept
14 service on my behalf in California. I do not consent to jurisdiction in California.

15 4. I have a percentage interest in a timeshare located in Carlsbad, California, which I
16 acquired more than 15 years ago. I visit California a handful of times each year for vacation,
17 with each stay typically lasting between few days and a week. Other than the timeshare interest,
18 I do not own real estate, or any interest in any real estate, in California.

19 5. Before 2004, I was an employee and partial owner of The Boyer Company, L.C.,
20 a Utah limited liability company. The Boyer Company, L.C. is located 101 South 200 East,
21 Suite 200, Salt Lake City, Utah. In 2004, I left that company and started my own, KC Gardner
22 Company, L.C., which is a separate Utah limited liability company. I have not been an officer or
23 manager of The Boyer Company, L.C. since 2004.

24 6. KC Gardner Company, L.C. is operated independently of The Boyer Company,
25 L.C. and the two entities maintain separate offices. The office for KC Gardner Company, L.C. is
26 located at 201 South Main Street, Suite 2000, Salt Lake City, Utah.

27 7. The Boyer Company, L.C. is not authorized to accept service of process on my
28 behalf, and its office is not my usual place of business.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 29, 2023, in Salt Lake City, Utah.

Kem C. Gardner
Kem C. Gardner

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Charlie Y. Chou (SBN 248369)
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cchou@kessenick.com

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County of Santa Clara,
on 1/2/2024 6:12 PM
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Case #23CV423435
Envelope: 14000132**

Attorneys for Defendant Michael Scott Hughes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MARK CHRISTOPHER TRACY, an
individual,

Plaintiff,

v.

COHNE KINGHORN, PC, a Utah professional
corporation; SIMPLIFI COMPANY, a Utah
corporation; JEREMY RAND COOK, a Utah
resident; ERIC HAWKES, a Utah resident;
JENNIFER HAWKES, a Utah resident;
MICHAEL SCOTT HUGHES, a Utah resident;
DAVID BRADFORD, a Utah resident; KEM
CROSBY GARDNER, a Utah resident;
WALTER J. PLUMB, a Utah resident; DAVID
BENNION, a Utah resident; R. STEVE
CREAMER, a Utah resident; PAUL BROWN,
a Utah resident; and GARY BOWEN, a Utah
resident,

Defendants.

Case No. 23CV423435

**DECLARATION OF MICHAEL HUGHES
IN SUPPORT OF MEMORANDUM OF
POINTS AND AUTHORITIES**

Date:

Time:

Dept: 6

Judge: The Honorable Evette D. Pennypacker

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I, Michael Hughes, declare as follows:

1. I am a party the action herein. I am over the age of eighteen and competent to testify. I believe the following to be true and correct to the best of my knowledge. I have personal knowledge of all facts stated herein except for those matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called upon to testify to these matters I could and would do so truthfully.

2. I am a resident of Utah.

3. I do not have a residence in California and I do not have an office in California.

4. I declare that under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on the ____ day of January, 2024.

DATED: January 2, 2024.

By: 
Michael Hughes

Document received by the CA 6th District Court of Appeal.

1 Charlie Y. Chou (SBN 248369)
2 KESSENICK GAMMA LLP
3 1 Post Street, Suite 2500
4 San Francisco, CA 94014
5 Telephone: (415) 568-2016
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7 cchou@kessenick.com

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 1/2/2024 6:12 PM
Reviewed By: B. Roman-Antunez
Case #23CV423435
Envelope: 14000132**

8 Attorneys for defendants Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand Cook, Eric
9 Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, David Bennion and Gary
10 Bowen

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SANTA CLARA

13 MARK CHRISTOPHER TRACY, an
14 individual,

15 Plaintiff,

16 v.

17 COHNE KINGHORN, PC, a Utah professional
18 corporation; SIMPLIFI COMPANY, a Utah
19 corporation; JEREMY RAND COOK, a Utah
20 resident; ERIC HAWKES, a Utah resident;
21 JENNIFER HAWKES, a Utah resident;
22 MICHAEL SCOTT HUGHES, a Utah resident;
23 DAVID BRADFORD, a Utah resident; KEM
24 CROSBY GARDNER, a Utah resident;
25 WALTER J. PLUMB, a Utah resident; DAVID
26 BENNION, a Utah resident; R. STEVE
27 CREAMER, a Utah resident; PAUL BROWN,
28 a Utah resident; and GARY BOWEN, a Utah
resident,

Defendants.

Case No. 23CV423435

**DECLARATION OF JEREMY R. COOK
IN SUPPORT OF MEMORANDUM OF
POINTS AND AUTHORITIES**

Date:

Time:

Dept: 6

Judge: The Honorable Evette D. Pennypacker

Document received by the CA 6th District Court of Appeal.

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I, Jeremy R. Cook, declares as follows:

1. I am a party the action herein. I am over the age of eighteen and competent to testify. I believe the following to be true and correct to the best of my knowledge. I have personal knowledge of all facts stated herein except for those matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called upon to testify to these matters I could and would do so truthfully.

2. I am a resident of Utah.

3. I do not have a residence or own any property in California.

4. I am a shareholder of the law firm Cohne Kinghorn.

5. Cohne Kinghorn’s only office is located in Salt Lake City, Utah.

6. Cohne Kinghorn has represented Emigration Improvement District and numerous other defendants in the instant matter in multiple lawsuits brought by plaintiff Mark Christopher Tracy in Utah.

7. As a result of the multiple frivolous lawsuits filed by Mr. Tracy in Utah, Mr. Tracy has been deemed a vexatious litigant by the Honorable Mark Kouris, who is the presiding judge of the Third District Court in and for Salt Lake County, Utah. As a result, Mr. Tracy is not allowed to file any new complaints in Utah without the permission of Judge Kouris.

8. All of the parties in this current Complaint have been named in previous actions filed by Mr. Tracy in Utah, and the basic facts alleged by Mr. Tracy in the instant action are the same facts and issues that Mr. Tracy has alleged in multiple previous actions in Utah.

9. In June, 2023, Mr. Tracy was ordered to appear in person in Utah at an Order to Show Cause Hearing based on Mr. Tracy’s failure to provide substantive responses to questions during a Debtor’s examination.

1 Charlie Y. Chou (SBN 248369)
2 KESSENICK GAMMA LLP
3 1 Post Street, Suite 2500
4 San Francisco, CA 94014
5 Telephone: (415) 568-2016
6 Facsimile: (415) 362-9401
7 cchou@kessenick.com

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County of Santa Clara,
on 1/2/2024 6:12 PM
Reviewed By: B. Roman-Antunez
Case #23CV423435
Envelope: 14000132**

8 Attorneys for defendants Cohn Kinghorn, P.C., Simplifi Company, Jeremy Rand Cook, Eric
9 Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, David Bennion and Gary
10 Bowen

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA

13 MARK CHRISTOPHER TRACY, an
14 individual,

15 Plaintiff,

16 v.

17 COHNE KINGHORN, PC, a Utah professional
18 corporation; SIMPLIFI COMPANY, a Utah
19 corporation; JEREMY RAND COOK, a Utah
20 resident; ERIC HAWKES, a Utah resident;
21 JENNIFER HAWKES, a Utah resident;
22 MICHAEL SCOTT HUGHES, a Utah resident;
23 DAVID BRADFORD, a Utah resident; KEM
24 CROSBY GARDNER, a Utah resident;
25 WALTER J. PLUMB, a Utah resident; DAVID
26 BENNION, a Utah resident; R. STEVE
27 CREAMER, a Utah resident; PAUL BROWN,
28 a Utah resident; and GARY BOWEN, a Utah
resident,

Defendants.

Case No. 23CV423435

**DECLARATION OF JENNIFER HAWKES
IN SUPPORT OF MEMORANDUM OF
POINTS AND AUTHORITIES**

Date:

Time:

Dept: 6

Judge: The Honorable Evette D. Pennypacker

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I, Jennifer Hawkes, declare as follows:

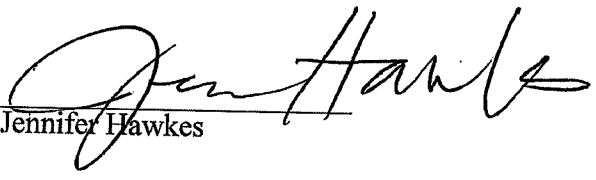
1. I am a party the action herein. I am over the age of eighteen and competent to testify. I believe the following to be true and correct to the best of my knowledge. I have personal knowledge of all facts stated herein except for those matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called upon to testify to these matters I could and would do so truthfully.

2. I am a resident of Utah.

3. I do not have a residence in California and I do not conduct business in California.

4. I declare that under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on the 1 day of January, 2024.

DATED: January 1, 2024.

By: 
Jennifer Hawkes

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1 Charlie Y. Chou (SBN 248369)
2 KESSENICK GAMMA LLP
3 1 Post Street, Suite 2500
4 San Francisco, CA 94014
5 Telephone: (415) 568-2016
6 Facsimile: (415) 362-9401
7 cchou@kessenick.com

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Case #23CV423435
Envelope: 14000132**

8 Attorneys for defendants Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand Cook, Eric
9 Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, David Bennion and Gary
10 Bowen

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA

13 MARK CHRISTOPHER TRACY, an
14 individual,

15 Plaintiff,

16 v.

17 COHNE KINGHORN, PC, a Utah professional
18 corporation; SIMPLIFI COMPANY, a Utah
19 corporation; JEREMY RAND COOK, a Utah
20 resident; ERIC HAWKES, a Utah resident;
21 JENNIFER HAWKES, a Utah resident;
22 MICHAEL SCOTT HUGHES, a Utah resident;
23 DAVID BRADFORD, a Utah resident; KEM
24 CROSBY GARDNER, a Utah resident;
25 WALTER J. PLUMB, a Utah resident; DAVID
26 BENNION, a Utah resident; R. STEVE
27 CREAMER, a Utah resident; PAUL BROWN,
28 a Utah resident; and GARY BOWEN, a Utah
resident,

Defendants.

Case No. 23CV423435

**DECLARATION OF ERIC HAWKES IN
SUPPORT OF MEMORANDUM OF
POINTS AND AUTHORITIES**

Date:

Time:

Dept: 6

Judge: The Honorable Evette D. Pennypacker

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I, Eric Hawkes, declare as follows:

1. I am a party the action herein. I am over the age of eighteen and competent to testify. I believe the following to be true and correct to the best of my knowledge. I have personal knowledge of all facts stated herein except for those matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called upon to testify to these matters I could and would do so truthfully.

2. I am a resident of Utah.

3. I do not have a residence in California and I do not conduct business in California.

4. I am aware that the Plaintiff, Mark Christopher Tracy, has filed multiple lawsuits or legal actions against individuals in Utah, including myself. Plaintiff has filed so many of these actions, with no success, that the State Court in Utah has declared Plaintiff a “vexatious litigant” and precluding the Plaintiff from filing further actions without court approval in the State of Utah. *See Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure* (the “Vexatious Litigant Order”). A copy of the Vexatious Litigant Order is attached hereto as **Exhibit A**.

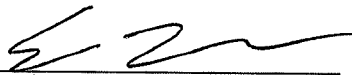
5. I am also the manager of Simplifi Company, a Utah corporation. Simplifi Company does not have an office in California.

6. I declare that under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on the 1 day of January, 2024.

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DATED: January 1, 2024.

By: 
Eric Hawkes

1 Charlie Y. Chou (SBN 248369)
2 KESSENICK GAMMA LLP
3 1 Post Street, Suite 2500
4 San Francisco, CA 94014
5 Telephone: (415) 568-2016
6 Facsimile: (415) 362-9401
7 cchou@kessenick.com

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Reviewed By: B. Roman-Antunez
Case #23CV423435
Envelope: 14000132**

8 Attorneys for defendants Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand Cook, Eric
9 Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, David Bennion and Gary
10 Bowen

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA

13 MARK CHRISTOPHER TRACY, an
14 individual,

15 Plaintiff,

16 v.

17 COHNE KINGHORN, PC, a Utah professional
18 corporation; SIMPLIFI COMPANY, a Utah
19 corporation; JEREMY RAND COOK, a Utah
20 resident; ERIC HAWKES, a Utah resident;
21 JENNIFER HAWKES, a Utah resident;
22 MICHAEL SCOTT HUGHES, a Utah resident;
23 DAVID BRADFORD, a Utah resident; KEM
24 CROSBY GARDNER, a Utah resident;
25 WALTER J. PLUMB, a Utah resident; DAVID
26 BENNION, a Utah resident; R. STEVE
27 CREAMER, a Utah resident; PAUL BROWN,
28 a Utah resident; and GARY BOWEN, a Utah
resident,

Defendants.

Case No. 23CV423435

**DECLARATION OF DAVID BRADFORD
IN SUPPORT OF MEMORANDUM OF
POINTS AND AUTHORITIES**

Date:
Time:
Dept: 6
Judge: The Honorable Evette D. Pennypacker

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I, David Bradford, declare as follows:

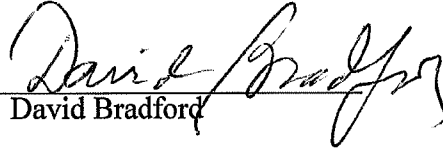
1. I am a party the action herein. I am over the age of eighteen and competent to testify. I believe the following to be true and correct to the best of my knowledge. I have personal knowledge of all facts stated herein except for those matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called upon to testify to these matters I could and would do so truthfully.

2. I am a resident of Utah.

3. I do not have a residence in California and I do not conduct business in California.

4. I declare that under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on the 1 day of January, 2024.

DATED: January 1, 2024.

By: 
David Bradford

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Charlie Y. Chou (SBN 248369)
KESSENICK GAMMA LLP
1 Post Street, Suite 2500
San Francisco, CA 94014
Telephone: (415) 568-2016
Facsimile: (415) 362-9401
cchou@kessenick.com

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Attorneys for defendants Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand Cook, Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, David Bennion and Gary Bowen

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MARK CHRISTOPHER TRACY, an individual,

Plaintiff,

v.

COHNE KINGHORN, PC, a Utah professional corporation; SIMPLIFI COMPANY, a Utah corporation; JEREMY RAND COOK, a Utah resident; ERIC HAWKES, a Utah resident; JENNIFER HAWKES, a Utah resident; MICHAEL SCOTT HUGHES, a Utah resident; DAVID BRADFORD, a Utah resident; KEM CROSBY GARDNER, a Utah resident; WALTER J. PLUMB, a Utah resident; DAVID BENNION, a Utah resident; R. STEVE CREAMER, a Utah resident; PAUL BROWN, a Utah resident; and GARY BOWEN, a Utah resident,

Defendants.

Case No. 23CV423435

DECLARATION OF DAVID BENNION IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES

Date:

Time:

Dept: 6

Judge: The Honorable Evette D. Pennypacker

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I, David Bennion, declare as follows:


1. I am a party the action herein. I am over the age of eighteen and competent to testify. I believe the following to be true and correct to the best of my knowledge. I have personal knowledge of all facts stated herein except for those matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called upon to testify to these matters I could and would do so truthfully.

2. I am a resident of Utah.

3. I do not have a residence in California and I do not conduct any business in California.

4. I declare that under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on the 2nd day of January, 2024.

DATED: January 2nd, 2024.

By: 
David Bennion

Document received by the CA 6th District Court of Appeal.

1 Nicholas C. Larson (SBN 275870)
2 NLarson@MPBF.com
3 Miguel E. Mendez-Pintado (SBN 323372)
4 mmendezpintado@mpbf.com
5 MURPHY, PEARSON, BRADLEY & FEENEY
6 520 Pike Street, Suite 1205
7 Seattle, WA 98101
8 Telephone: (206)-219-2008

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9 Attorneys for Defendant
10 PAUL BROWN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MARK CHRISTOPHER TRACY, an individual,

Plaintiff,

v.

COHNE KINGHORN, PC, a Utah professional corporation; SIMPLIFI CO., a Utah corporation; JEREMY COOK, a Utah resident; ERIC HAWKS, a Utah resident; JENNIFER HAWKES, a Utah resident; MICHAEL HUGHES, a Utah resident; DAVID BRADFORD, a Utah resident; KEM GARDNER, a Utah resident; WALTER PLUMB, a Utah resident; DAVID BENNION, a Utah resident; R. STEVE CREAMER, a Utah resident; PAUL BROWN, a Utah resident; and GARY BOWEN, a Utah resident,

Defendants.

Case No. 23CV423435

AMENDED DECLARATION OF PAUL BROWN IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES

Date: January 11, 2024
Time: 9:00 a.m.
Dept: 6
Judge: The Honorable Yvette D. Pennypacker

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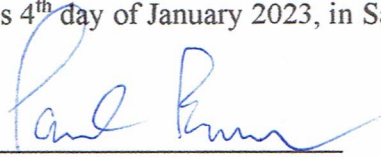
I, Paul Brown, declare as follows:

1. I am a party to the action herein. I am over the age of eighteen and competent to testify. I have personal knowledge of the information set forth below, unless noted as based on information and belief, all of which is true and correct of my own personal knowledge, and if called upon to testify, I could and would competently testify thereto.

2. I am a resident of Utah.

3. I do not have a residence in California, nor do I conduct any business in California.

4. I declare that under the penalty of perjury under the laws of California that the foregoing is true and correct and that this Declaration was executed on this 4th day of January 2023, in Salt Lake County, Utah.



Paul Brown



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MINUTE ORDER

Mark Tracy vs Cohne Kinghorn PC et al
23CV423435
Date of Hearing: 01/11/2024

Hearing Start Time: 9:00 AM
Hearing Type: Motion: Quash
Comments: Line 14

Heard By: Pennypacker, Evette
Courtroom Reporter: - No Court Reporter

Location: Department 6
Courtroom Clerk: David Criswell
Court Interpreter:
Court Investigator:

Parties Present:

Future Hearings:

Exhibits:

- service of summons and complaint for lack of personal jurisdiction and motion to dismiss for inconvenient forum by Def Paul Brown (Miguel E. Mendez-Pintado)

There are no appearances.

This hearing is CONTINUED to 2/20/24 at 9:00am in Department 6.

Ruling:

Defendants motions to quash service of summons for lack of personal jurisdiction are CONTINUED to February 20, 2024 to join with a third motion to quash set on that same date. No further notice of these two motions is necessary; all three motions to quash will be heard on February 20, 2024 at 9 a.m. in Department 6.

Motion Hearings can be reserved in advanced by phone. Call 408-882-2430 between 8:30am and 12:30pm Monday through Friday.

Department 6 is equipped for appearances by Microsoft Teams. Go to www.sccourt.org and look for Remote Hearings Links , then select one of the Department 6 options. You may also appear in person at the Downtown Superior Courthouse located at 191 N First Street in San Jose.

1 Charlie Y. Chou (SBN 248369)
2 KESSENICK GAMMA LLP
3 1 Post Street, Suite 2500
4 San Francisco, CA 94014
5 Telephone: (415) 568-2016
6 Facsimile: (415) 362-9401
7 cchou@kessenick.com

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County of Santa Clara,
on 2/1/2024 11:20 AM
Reviewed By: V. Wong
Case #23CV423435
Envelope: 14287309**

8 Attorneys for Defendant Gary Bowen

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 MARK CHRISTOPHER TRACY, an
13 individual,

14 Plaintiff,

15 v.

16 COHNE KINGHORN, PC, a Utah professional
17 corporation; SIMPLIFI COMPANY, a Utah
18 corporation; JEREMY RAND COOK, a Utah
19 resident; ERIC HAWKES, a Utah resident;
20 JENNIFER HAWKES, a Utah resident;
21 MICHAEL SCOTT HUGHES, a Utah resident;
22 DAVID BRADFORD, a Utah resident; KEM
23 CROSBY GARDNER, a Utah resident;
24 WALTER J. PLUMB, a Utah resident; DAVID
25 BENNION, a Utah resident; R. STEVE
26 CREAMER, a Utah resident; PAUL BROWN,
27 a Utah resident; and GARY BOWEN, a Utah
28 resident,

Defendants.

Case No. 23CV423435

**SECOND AMENDED DECLARATION OF
GARY BOWEN IN SUPPORT OF
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date:
Time:
Dept: 6
Judge: The Honorable Evette D. Pennypacker

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I, Gary Bowen, declare as follows:

1. I am a party the action herein. I am over the age of eighteen and competent to testify. I believe the following to be true and correct to the best of my knowledge. I have personal knowledge of all facts stated herein except for those matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called upon to testify to these matters I could and would do so truthfully.

2. I am a resident of Utah.

3. I do not have a residence in California.

4. I retired in December 2010 from the State of Utah, Department of Commerce, Division of Securities.

5. Approximately four years ago, I self-published two religious books that are sold through Amazon.com. The books have sold approximately 500 copies in total. In 2023, I made less than \$200 in income from book sales through Amazon.

6. Although it is possible that some of the books were shipped through Amazon to people in California, I do not consider selling the books through Amazon as conducting business in California.

7. I do not conduct any other business in California.

8. I am aware that the Plaintiff, Mark Christopher Tracy, has filed multiple lawsuits or legal actions against individuals in Utah. Plaintiff has filed so many of these actions, with no success, that the State Court in Utah has declared Plaintiff a “vexatious litigant” and precluding the Plaintiff from filing further actions without court approval in the State of Utah. *See Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil*

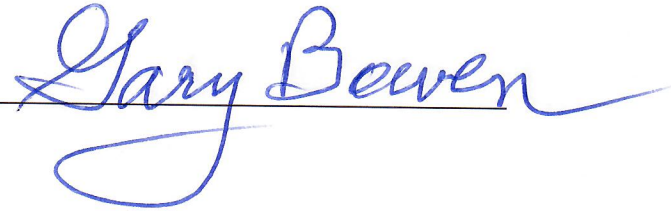
Document received by the CA 6th District Court of Appeal.

1 *Procedure* (the “Vexatious Litigant Order”). A copy of the Vexatious Litigant Order is attached
2 hereto as **Exhibit A**.

3 9. This Declaration shall supersede and replace all prior declarations that I have filed in
4 this action.

5 10. I declare that under the penalty of perjury of the State of California that the
6 foregoing is true and correct and that this Declaration was executed on the 29th day of January,
7 2024.
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9
10 DATED: January 29, 2024.

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12 By: 
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1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037
--
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany
--
5 Email: m.tracy@echo-association.com
Telephone: +1 (929) 208-6010
6 +49 (0)172 838 86 37
7 Pro Se Plaintiff

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on 2/5/2024 12:06 AM
Reviewed By: L. Nguyen
Case #23CV423435
Envelope: 14311478**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 MARK CHRISTOPHER TRACY, an
12 individual,
13 Plaintiff,
14 v.
15 COHNE KINGHORN PC, a Utah Professional
16 Corporation; SIMPLIFI COMPANY, a Utah
17 Corporation; JEREMY RAND COOK, an
18 individual; ERIC HAWKES, an individual;
19 JENNIFER HAWKES, an individual;
20 MICHAEL SCOTT HUGHES, an individual;
21 DAVID BRADFORD, an individual; KEM
22 CROSBY GARDNER, an individual;
23 WALTER J. PLUMB III, an individual;
24 DAVID BENNION, an individual; R. STEVE
25 CREAMER, an individual PAUL HANDY
26 BROWN, an individual; GARY A. BOWEN,
27 an individual
28 Defendants.

Case No.: 23CV423435

Honorable Evette D. Pennypacker
[Dept. 6]

**MEMORANDUM AND POINTS OF
AUTHORITY IN SUPPORT OF
OPPOSITION TO KINGHORN
DEFENDANTS’ MOTION TO QUASH
SERVICE OF PROCESS FOR LACK OF
PERSONAL JURISDICTION OR
INCONVENIENT FORUM**

Hearing Date: February 20, 2024
Time: 09:00 am (PST)

Action Filed: September 21, 2023
Trial Date: TBD

INTRODUCTION

Plaintiff Mark Christopher Tracy (“Mr. Tracy” and “Plaintiff”) respectfully submits this memorandum and points of authority in support of his opposition to the motion to quash service of summons for lack of personal jurisdiction or inconvenient forum submitted by Defendants Cohne Kinghorn P.C., Simplifi Company, Utah Attorneys Jeremy Rand Cook and David Bennion, Eric

Document received by the CA 6th District Court of Appeal.

1 Hawkes, Jennifer Hawkes, Michael Scott Hughes and David Bradford (“Kinghorn Defendants”) and
2 filed pursuant to Code of Civ. P. § 418.10(a) subsections (1) and (2).

3 Kinghorn Defendants argue that the Complaint alleges facts occurring “exclusively” in Utah,
4 and because none of the Defendants have any personal or business conduct in the State of California,
5 this Court lacks personal jurisdiction to adjudicate the present action. Memorandum of Points and
6 Authorities in Support of Specially Appearing Defendants Cohne Kinghorn P.C., Simplifi Company,
7 Jeremy Rand Cook, Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, and David
8 Bennion’s Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction and
9 Motion to Dismiss for Inconvenient Forum (“Kinghorn Memo” and the “Motion”), p. 5, ¶ 9.

10 In the alternative, because no California resident would purportedly benefit from an action to
11 recover economic damage and loss caused by defamatory statements and ongoing fraudulent activities
12 published on the world-wide web, this Court should exercise its discretionary authority and decline
13 jurisdiction under the grounds of inconvenient forum. Kinghorn Memo., p. 10.

14 These arguments fail.

15 First, Kinghorn Defendants waived jurisdictional objections by failing to conduct a mandatory
16 meet and confer and by serving Plaintiff a blank Notice of Motion. Next, even a perfunctory review of
17 the Complaint reveals purposeful tortious conduct occurring both within and directed towards residents
18 of the forum state establishing exercise of personal jurisdiction. Lastly, California has a manifest interest
19 in protecting residents against libelous statements and deception perpetrated by out-of-state actors,¹ and
20 this Court is the most appropriate litigation forum.

21 In the alternative, because Kinghorn Defendants submitted sworn declarations, which appear to
22 be demonstrably false, the Court should stay the Motion for 180 days to allow discovery of any relevant,
23 contested jurisdictional facts.

24 //

25 //

26 ¹ See e.g., Alexandra E. Petri, *Utah governor tells Californians to ‘stay in California instead of coming*
27 *as refugees,*’ Los Angeles Times, February 13, 2023, available at the website administered by the Los
28 Angeles Times Communications, LLC <https://www.latimes.com/california/story/2023-02-13/utah-governor-tells-californians-to-stay-in-california>.

1 **ARGUMENT**

2 **I. Legal Framework for the Exercise of Jurisdiction for Out-of-State Defendants**

3 When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has
4 the initial burden of demonstrating facts justifying the exercise of jurisdiction. *State of Oregon v.*
5 *Superior Court*, 24 Cal. App.4th 1550, 1557 (1994).

6 Once facts showing minimum contacts with the forum state are established, it then becomes the
7 burden of the defendant to demonstrate that the exercise of jurisdiction would be unreasonable. *Burger*
8 *King Corp. v. Rudzewicz*, 471 U.S. 462, 476-477 (1985). However, when a defendant who has
9 purposefully directed his activities at forum residents seeks to defeat jurisdiction, “he must present a
10 compelling case that the presence of some other considerations would render jurisdiction unreasonable.”
11 *Id.* at 477.

12 **II. The Motion to Defeat Jurisdiction is Null and Void**

13 Code of Civ. P. § 418.10(a) stipulates that a defendant may, on or before the last day of the time
14 to plead, serve and file motion to quash the service of summons or dismiss the action on grounds of
15 inconvenient forum. However, subsection (b) requires that “[t]he notice *shall* designate, as the time for
16 making the motion, a date not more than 30 days after filing of the notice” (emphasis added).

17 Local Rule 8A of the Civil Division of the Superior Court for County of Santa Clara orders that
18 prior to scheduling a hearing with the court clerk via telephone no. (408) 882-2430,² “the moving party
19 *must* (1) meet and confer with the non-moving party or parties to identify mutually agreeable dates then
20 (2) follow the procedure set forth on the civil law and motion section of the court’s website at
21 <https://www.sccourt.org/>” (emphasis added).

22 In the instant action, hours before expiration of the response deadline and without clarification,
23 Cohne Kinghorn Defendants served Plaintiff a Notice of Motion with the date, time, and place of the
24 hearing left blank and then, without prior consultation, served an “Amended Notice” six days later
25 forcing Plaintiff to cancel a planned business trip to Germany and causing him to incur substantial costs
26 and expense. Declaration of Mark Christopher Tracy (“Tracy Decl.”), ¶ 3, Exhibit A and ¶ 4.

27 ² Plaintiff is informed and believes that changes to local rules were published by this Court sometime
28 in June 2023 for a public-comment period and then went into effect on January 1, 2024.

1 By disregarding state and local court rules of notice and consultation causing economic loss,
2 Kinghorn Defendants waived objection to this Court’s exercise of personal jurisdiction.

3 **III. The Motion to Defeat Jurisdiction is Devoid of Basis in Fact and Law**

4 Assuming arguendo that Kinghorn Defendants had properly raised jurisdictional objections and
5 not caused Plaintiff pecuniary harm, the present action is entirely consistent with California’s long-arm
6 statute and the due process clause of the Constitution of the United States.

7 A state court’s exercise of personal jurisdiction over a nonresident defendant (who has not been
8 served with process within the state) per Code Civ. P. § 410.10 requires compliance with the due process
9 clause of the federal Constitution, which in turn mandates that the defendant has such minimum contacts
10 so the assertion of jurisdiction does not violate “traditional notions of fair play and substantial justice.”
11 *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see also Burnham v. Superior Court*,
12 495 U.S. 604, 618-619 (1990).

13 Personal jurisdiction may be either general or specific. The former provides that a nonresident
14 defendant may be subject to litigation if his (or her) contacts in the forum state are “substantial [...]
15 continuous and systematic” (*Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445, 446 (1952)), while the
16 latter demands that the defendant has purposefully availed himself (or herself) of forum benefits (*Burger*
17 *King Corp. v. Rudzewicz*, 471 U.S. 462, 471 (1985)) and the controversy is related to or “arises out of
18 a defendant’s contacts with the forum” (*Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408,
19 414 (1984)).

20 **A. Factual Jurisdictional Allegations of the Complaint**

21 In support of the Motion to defeat this Court’s jurisdiction, Kinghorn Defendants Jeremy Rand
22 Cook, David Bennion, Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes and David Bradford
23 declared under penalty of perjury that they have no residence, own no property, conduct no business,
24 and corporate defendants Cohne Kinghorn P.C. and Simplify Company maintain no office in the State
25 of California.³

26 As Kinghorn Defendants limited their factual assertions of jurisdiction to property ownership,

27 ³ These assertions are inconsequential to the Motion and, upon cursory review, appear to be
28 demonstrably false. *See e.g.*, Tracy Decl. ¶ 5, Exhibit B.

1 business conduct, and the location of residence or corporate offices,⁴ the following allegations of the
2 Complaint are uncontested:

3 1. Plaintiff Mark Christopher Tracy (“Tracy” and “Plaintiff”) is a California resident and
4 federal whistleblower in what has been alleged to be the longest and most lucrative water grabs in the
5 history of Utah. Compl. ¶ 1.

6 2. This scheme is perpetuated for the private profit of Kinghorn Defendants including
7 politically influential land developers and codefendants Kem Crosby Gardner,⁵ Walter J. Plumb III,⁶
8 and R. Steve Creamer,⁷ (“Codefendants Gardner, Plumb, and Creamer”) at the expense of California
9 citizens and residents.⁸ Compl. ¶ 2.

10 3. Specifically, since December 1, 1984, defendant Cohne Kinghorn P.C., acting on behalf
11 of a Utah Special Service Water District,⁹ and controlled by Kinghorn Defendants induced long-time
12 residents of Emigration Canyon, Utah to abandon senior water rights,¹⁰ and yield to duplicitous water
13 claims stripped from the only active federal military cemetery created by an Act of Congress, signed

14 ⁴ Kinghorn Defendants’ argument that “Mr. Tracy has alleged these exact same issues in multiple
15 lawsuits in Utah Courts” (Kinghorn Memo, p. 9) is both irrelevant to a motion to defeat jurisdiction
and demonstrably false.

16 ⁵ See e.g., Lee Davidson, *Utah’s biggest individual political donor is a software CEO, helping right-*
17 *wing GOP causes to the tune of \$777K. Eight others gave more than \$200K each*, Salt Lake Tribune,
18 August 13, 2018, available at the website administered by the Newspaper Agency Corporation
<https://www.sltrib.com/news/politics/2018/08/13/utahs-biggest-individual/>.

19 ⁶ See e.g., Taylor W. Anderson, *Meet the man spending \$100,000 to defeat Utah’s medical marijuana*
20 *initiative*, Salt Lake Tribune, May 25, 2018, available at the website administered by the Newspaper
21 Agency Corporation [https://www.sltrib.com/news/politics/2018/05/25/meet-the-man-spending-](https://www.sltrib.com/news/politics/2018/05/25/meet-the-man-spending-100000-to-defeat-utahs-medical-marijuana-initiative/)
22 [100000-to-defeat-utahs-medical-marijuana-initiative/](https://www.sltrib.com/news/politics/2018/05/25/meet-the-man-spending-100000-to-defeat-utahs-medical-marijuana-initiative/); Codefendant Walter J. Plumb III appears to
23 have avoided service of process and has not yet entered appearance. See e.g., Second Proof of Service
24 of Summons, filing no. 9444693.

25 ⁷ Davidson, *supra* note 5; Request for Entry of Default against Codefendant R. Steve Creamer is
26 currently pending. See filing no. 9352600.

27 ⁸ See e.g., Brian Maffly, *‘We Don’t Need Your Water’: Emigration Canyon Water Fight Breaks Out In*
28 *Court*, Salt Lake Tribune, June 18, 2015, at A1, available at the website administered by the
Newspaper Agency Corporation <https://archive.sltrib.com/article.php?id=2618507&itype=CMSID>.

⁹ Misuse of special service water districts for private profit has received national attention. See e.g.,
Special Districts: Last Week Tonight with John Oliver, Home Box Office, March 7, 2016, available at
the website administered by Google LLC <https://www.youtube.com/watch?v=3saU5racsGE>.

¹⁰ See e.g., Emigration Canyon Improvement District Water Rates, subheading “Water Rights,”
available at the website administered by Kinghorn Defendant Simplifi Company through Kinghorn
Defendants Eric and Jennifer Hawkes <https://www.ecid.org/water-rates>, last visited February 4, 2024
at 1:53 PM.

1 into law by United States President Ulysses S. Grant in 1874, subject to the reversionary interest to be
2 “forever used for the burial of the dead,” but however misappropriated by Codefendants Gardner, Plumb
3 and Creamer for the construction and massive expansion of a luxurious private urban development,¹¹
4 marketed and sold to unsuspecting California residents immediately following the 2002 Olympic Winter
5 Games as the “Bel Air of Salt Lake City.”¹² Compl. ¶¶ 2, 57.

6 4. In furtherance of this ongoing fraud, and to ensure continued payment of monies from
7 property owners residing in Venice, Rancho Cucamonga, Corona Del Mar, Coto de Caza, Mountain
8 View, San Rafael, Bayside, Loomis, and San Diego, California, Kinghorn Defendants miscited and
9 withheld expert hydrology reports expressly warning against aquifer depletion via operation of large-
10 diameter commercial wells constructed by Codefendants Gardner, Plumb and Creamer while
11 simultaneously concealing governmental records evidencing extensive lead contamination,¹³ and
12 inadequate emergency-fire protection¹⁴ in a small-mountain community identified as especially prone
13 to wild-fire fatalities.¹⁵ Compl. ¶ 3.

14 5. When however, the suppression of expert studies and public records proved unsuccessful,
15 Kinghorn Defendants resorted to a collaborative smear campaign publishing false and defamatory

16 ¹¹ See e.g., Emma Penrod, *Paranoia and a ‘Preposterously’ Oversized Water Tank*, High Country
17 News, June 28, 2019, available at the website administered by High Country News
<https://www.hcn.org/issues/51.12/water-paranoia-and-a-preposterously-oversized-water-tank-in-utah>.

18 ¹² See e.g., Dennis Romboy, *Emigration Canyon: Its historical significance, offbeat aura lend the area*
19 *plenty of flavor*, Desert News, July 25, 2006, available at the website administered by the Desert News
20 Publishing Company [https://www.deseret.com/2006/7/25/19964952/emigration-canyon-its-historical-](https://www.deseret.com/2006/7/25/19964952/emigration-canyon-its-historical-significance-offbeat-aura-lend-the-area-plenty-of-flavor)
21 [significance-offbeat-aura-lend-the-area-plenty-of-flavor](https://www.deseret.com/2006/7/25/19964952/emigration-canyon-its-historical-significance-offbeat-aura-lend-the-area-plenty-of-flavor); see also correspondence to United States
22 Congressional Representatives, dated September 19, 2020, available at the website administered by
23 The ECHO-Association https://echo-association.com/?page_id=6908, last edited on December 7,
24 2022.

25 ¹³ See e.g., email correspondence dated July 6, 2020, from Kinghorn Defendant Eric Hawkes to
26 Kinghorn Defendants Utah Attorney Jeremy Rand Cook, Michael Scott Hughes, and David Bradford,
27 available at the website administered by The ECHO-Association [https://echo-](https://echo-association.com/?page_id=4955)
28 [association.com/?page_id=4955](https://echo-association.com/?page_id=4955).

¹⁴ See e.g., Emigration Improvement District (aka Emigration Canyon Improvement District) Trustee
Meeting Minutes, dated October 13, 2013, available at the website administered by The ECHO-
Association https://echo-association.com/?page_id=7603, last edited on March 24, 2022 at 11:07 AM.

¹⁵ Thomas J Cova, Justin P Johnson, *Microsimulation of Neighborhood Evacuations in the Urban
Wildland Interface*, Environment and Planning A 2002, volume 34, 2211-29 available at the website
administered by The ECHO-Association https://echo-association.com/?page_id=7603, last edited on
March 24, 2022 at 11:07 AM.

1 statements against Mr. Tracy on the world-wide web via a server located in San Jose, California under
2 the slogan “STAY INFORMED – GET THE FACTS!” (emphasis in original) whereby each codefendant
3 acted as the agent, servant, employee, partner, co-conspirator, and/or joint venture of each remaining
4 codefendant.¹⁶ Compl. ¶¶ 4, 20.

5 6. In August 2018, Emigration Canyon Steam suffered total depletion for the first time in
6 recorded history as predicted in expert hydrology reports withheld and misrepresented to California
7 residents.¹⁷ Compl. ¶ 52.

8 7. The environmental and economic damage caused by willful groundwater depletion and
9 drinking-water contamination by Kinghorn Defendants and Codefendants Gardner, Plumb and Creamer
10 is a matter of public record.¹⁸ *Id.*

11 **B. Minimum Contact with the Forum State**

12 The Complaint records that acting as agents of Codefendants Gardner, Plumb and Creamer,

13 ¹⁶ Although irrelevant to the Motion, and contrary to Kinghorn Defendants’ contention, Emigration
14 Improvement District is not a necessary party to the present litigation per Code of Civ. P. § 389(a).

15 ¹⁷ Mismanagement of scarce water resources in Utah has gained national attention. *See e.g., Water:
16 Last Week Tonight with John Oliver (HBO)*, Home Box Office, March 7, 2016, available at the
17 website administered by Google LLC [https://youtu.be/jtxew5XUVbQ?si=nlt-
18 MGNKupuyTIPv&t=970](https://youtu.be/jtxew5XUVbQ?si=nlt-MGNKupuyTIPv&t=970); *see also* Brian Maffly, *Why is Emigration Creek — a historic Utah
19 waterway — dry? Blame runs from climate change to drought to development to water-sucking wells*,
20 Salt Lake Tribune, September 8, 2018, available at the website administered by the Newspaper
21 Agency Corporation <https://www.sltrib.com/news/environment/2018/09/08/why-is-emigration-creek/>;
22 *see also* Amy Joi O’Donoghue, *Emigration Canyon and Groundwater Pumping in Utah: What’s at
23 Risk?* Desert News, January 2, 2019, available at the website administered by the Desert News
24 Publishing Company at [https://www.deseret.com/2019/1/2/20662500/emigration-canyon-and-
25 groundwater-pumping-in-utah-what-s-at-risk](https://www.deseret.com/2019/1/2/20662500/emigration-canyon-and-groundwater-pumping-in-utah-what-s-at-risk); *see also* Amy Joi O’Donoghue, *District’s water
26 diversion will continue in Emigration Canyon*, January 18, 2019, available at the website administered
27 by Bonneville International Corporation [https://www.ksl.com/article/46471323/districts-water-
28 diversion-will-continue-in-emigration-canyon](https://www.ksl.com/article/46471323/districts-water-diversion-will-continue-in-emigration-canyon); *see also* compilation of media reports by CNN, High
Country News, The Washington Post, and Business Insider available at the website administered by
The ECHO-Association at https://echo-association.com/?page_id=405, last edited on September 13,
2023 at 12:32 AM.

29 ¹⁸ *See e.g., Ground Collapse and Fissures in Emigration Oaks PUD*, December 13, 2020, available at
30 the website administered by Google LLC
31 [https://www.youtube.com/watch?time_continue=4&v=r3YsR6dPktM&embeds_referring_uri=https%
32 3A%2F%2Fecho-association.com%2F&source_ve_path=MzY4NDIsMjg2NjY&feature=emb_logo](https://www.youtube.com/watch?time_continue=4&v=r3YsR6dPktM&embeds_referring_uri=https%3A%2F%2Fecho-association.com%2F&source_ve_path=MzY4NDIsMjg2NjY&feature=emb_logo);
33 *see also* Utah Division of Water Rights public hearing for permanent change applications no. a44045
34 (57-7796), December 18, 2018, available at the website administered by Google LLC
35 <https://www.youtube.com/watch?v=2bEPqIzQ9gc>.

1 Kinghorn Defendants published false and defamatory statements on the world-wide web via a server
2 located in the City of San José, California to induce payment of monies from California residents.

3 As Kinghorn Defendants failed to contest these jurisdiction facts,¹⁹ Plaintiff has met his burden
4 of production.

5 **C. Kinghorn Defendants Failed to Identify a Compelling Reason to Defeat Jurisdiction**

6 Once it has been decided that a defendant purposefully established minimum contacts within the
7 forum State, these contacts may be considered in light of other factors to determine whether the assertion
8 of personal jurisdiction would comport with “fair play and substantial justice.” *International Shoe Co.*
9 *v. Washington*, 326 U.S. at 320.

10 In this regard, the court may evaluate “the burden on the defendant,” “the forum State’s interest
11 in adjudicating the dispute,” “the plaintiff’s interest in obtaining convenient and effective relief,” “the
12 interstate judicial system’s interest in obtaining the most efficient resolution of controversies,” and the
13 “shared interest of the several States in furthering fundamental substantive social policies.” *World-Wide*
14 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980).

15 In the present case, Kinghorn Defendants have cited neither hinderance nor burden in
16 adjudicating the present action before this Court and given the purposeful tortious conduct both within
17 and directed towards residents of California,²⁰ a “compelling reason” required to defeat this Court’s
18 jurisdiction remains to date undiscernible.²¹

19 //

20 ¹⁹ Any additional factual argument advanced in the Kinghorn Memo but not supported by a declaration
21 under penalty of perjury under the laws of California is inadmissible hearsay. *Kulshrestha v. First*
22 *Union Commercial Corp.*, 33 Cal.4th 601, 610 (2004).

23 ²⁰ While not relevant to the Motion, the United States Supreme Court held that a publisher who
24 distributes magazines to the public in a distant state may be held accountable in that forum for damage
25 to a victim of defamation. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984).

26 ²¹ The vexatious litigant order, repeatedly cited by the Kinghorn Defendants, Codefendants Kem
27 Crosby Gardner, Gary A. Bowen, and Paul Handy Brown, drafted by Codefendant Utah Attorney
28 Jeremy Rand Cook, and executed by Utah Third District Court Judge Mark Kouris during appellate
proceedings before the Utah Supreme Court provides no evidence how the exercise of personal
jurisdiction by this Court poses a burden to defendants. *See e.g.*, 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); *see also* Tracy Decl. ¶ 5, Exhibit B.

1 **IV. The Court Should Stay the Motion if Any Compelling Reason Should Arise**

2 Should Kinghorn Defendants make a compelling case that the exercise of jurisdiction by this
3 Court is unreasonable, it is long established that a trial court has discretion to continue the hearing on a
4 motion to quash service of summons for lack of personal jurisdiction to allow plaintiff sufficient time to
5 conduct discovery on jurisdictional issues. *HealthMarkets, Inc. v. Superior Court*, 171 Cal.App.4th
6 1160, 1173 (2009).

7 In order to prevail on a motion for a continuance for jurisdictional discovery, “the plaintiff should
8 demonstrate that discovery is likely to lead to the production of evidence of facts establishing
9 jurisdiction.” *In re Automobile Antitrust Cases I & II*, 135 Cal.App.4th 100, 127 (2005).

10 In the present case, following similar attempts to defeat of this Court’s jurisdiction by
11 Codefendants Paul Handy Brown and Gary A. Bowen, Mr. Tracy served Notice of Disposition and
12 Request for Production of Documents on January 17, and January 19 reasonably calculated to evidence
13 minimum contact with the forum state should the Court rule that jurisdictional objections were not
14 waived. *See* Tracy Decl. ¶ 6, Exhibit C and ¶ 7, Exhibit D.

15 Similar discovery notices for Kinghorn Defendants will be served at the earliest opportunity.

16 **CONCLUSION**

17 Based on the foregoing reasons, Mr. Tracy respectfully requests that the Court deny Kinghorn
18 Defendants’ motion to quash service of process for lack of personal jurisdiction or inconvenient forum
19 in its entirety, or in the alternative, stay the Motion for 180 days to allow for discovery of any material,
20 contested jurisdictional fact properly submitted to the Court.

21 //

22 //

23 DATED: February 5, 2024

By: 

Mark Christopher Tracy
Pro Se Plaintiff

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037
--
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany
--
5 Email: m.tracy@echo-association.com
Telephone: +1 (929) 208-6010
6 +49 (0)172 838 86 37
7 Pro Se Plaintiff

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 2/5/2024 12:06 AM
Reviewed By: L. Nguyen
Case #23CV423435
Envelope: 14311478**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11
12 MARK CHRISTOPHER TRACY, an
individual,
13 Plaintiff,
14 v.
15 COHNE KINGHORN PC, a Utah Professional
Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
individual; ERIC HAWKES, an individual;
17 JENNIFER HAWKES, an individual;
18 MICHAEL SCOTT HUGHES, an individual;
DAVID BRADFORD, an individual; KEM
19 CROSBY GARDNER, an individual; WALTER
J. PLUMB III, an individual; DAVID
20 BENNION, an individual; R. STEVE
CREAMER, an individual PAUL BROWN, an
21 individual; GARY BOWEN, an individual
22 Defendants.

Case No.: 23CV423435
Honorable Evette D. Pennypacker
[Dept. 6]

**DECLARATION OF MARK
CHRISTOPHER TRACY IN SUPPORT OF
MEMORANDUM AND POINTS OF
AUTHORITY IN OPPOSITION TO
KINGHORN DEFENDANTS' MOTION TO
QUASH SERVICE OF PROCESS FOR
LACK OF PERSONAL JURISDICTION OR
INCONVENIENT FORUM**

Hearing Date: February 20, 2024
Time: 09:00 am (PST)
Action Filed: September 21, 2023
Trial Date: TBD

24 I, Mark Christopher Tracy, declare as follows:

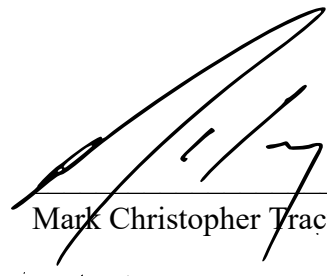
- 25 1. I am party to the action herein. I am over the age of eighteen and competent to testify. I have
26 personal knowledge of the information set forth below, unless noted as information and belief, all
27 of which is true and correct of my own personal knowledge, and if called to testify, I would
28 competently testify thereto.

2. I have been a resident of the State of California since September 2009.
3. Attached hereto as **Exhibit A** is a true and correct copy of the “NOTICE OF MOTION AND MOTION IN SUPPORT OF SPECIALLY APPEARING DEFENDANTS COHNE KINGHORN, P.C., SIMPLIFI COMPANY, JEREMY RAND COOK, ERIC HAWKES, JENNIFER HAWKES, MICHAEL SCOTT HUGHES, DAVID BRADFORD, AND DAVID BENNION’S MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND MOTION TO DISMISS FOR INCONVENIENT FORUM” received via email correspondence dated Tuesday, January 2, 2024 3:56 PM from Sarah Nguyen at snguyen@kessenick.com on behalf of Attorney Charlie Chou, attorney of record for Kinghorn Defendants.
4. On October 28, 2023, I purchased a non-refundable round-trip flight from Los Angeles, California to Frankfurt am Main, Germany under United Airlines itinerary no. 0168024348536, scheduled to depart on February 13 and returning on February 21, 2024. As the hearing on the motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction was scheduled by the court clerk of the Superior Court for the County of Santa Clara on behalf of Kinghorn Defendants sometime on or before January 6, 2024, without my knowledge or prior consultation, I was forced to cancel all arrangements for the aforementioned business trip and therewith incurred costs and expenses in the amount of \$1,680.00 to date.
5. Attached hereto as **Exhibit B** is a true and correct copy of the email correspondence from Attorney Charlie Chou, dated January 26, 2024, at 8:43 AM PST.
6. Attached hereto as **Exhibit C** is a true and correct copy of the NOTICE OF TAKING OF DEPOSITION OF DEFENDANT GARY BOWEN AND REQUEST FOR PRODUCTION OF DOCUMENTS, dated January 17, 2023.
7. Attached hereto as **Exhibit D** is a true and correct copy of the NOTICE OF TAKING OF DEPOSITION OF DEFENDANT PAUL HANDY BROWN AND REQUEST FOR PRODUCTION OF DOCUMENTS, dated January 19, 2023.

//
//

1 8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true
2 and correct. This Declaration was executed on the 5th day of February 2024, in Oceanside,
3 California.

4 //
5 //



6 Mark Christopher Tracy

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Document received by the CA 6th District Court of Appeal.

EXHIBIT A

1 Charlie Y. Chou (SBN 248369)
2 **KESSENICK GAMMA LLP**
3 1 Post Street, Suite 2500
4 San Francisco, CA 94014
5 Telephone: (415) 568-2016
6 Facsimile: (415) 362-9401
7 cchou@kessenick.com

8 Attorneys for Defendants Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand Cook, Eric
9 Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, David Bennion and Gary
10 Bowen

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA

13 MARK CHRISTOPHER TRACY, an
14 individual,

15 Plaintiff,

16 v.

17 COHNE KINGHORN, PC, a Utah professional
18 corporation; SIMPLIFI CO., a Utah
19 corporation; JEREMY COOK, a Utah resident;
20 ERIC HAWKS, a Utah resident; JENNIFER
21 HAWKES, a Utah resident; MICHAEL
22 HUGHES, a Utah resident; DAVID
23 BRADFORD, a Utah resident; KEM
24 GARDNER, a Utah resident; WALTER
25 PLUMB, a Utah resident; DAVID BENNION,
26 a Utah resident; R. STEVE CREAMER, a Utah
27 resident; PAUL BROWN, a Utah resident; and
28 GARY BOWEN, a Utah resident,

Defendants.

Case No. 23CV423435

**NOTICE OF MOTION AND MOTION IN
SUPPORT OF SPECIALLY APPEARING
DEFENDANTS COHNE KINGHORN,
P.C., SIMPLIFI COMPANY, JEREMY
RAND COOK, ERIC HAWKES,
JENNIFER HAWKES, MICHAEL SCOTT
HUGHES, DAVID BRADFORD, AND
DAVID BENNION'S MOTION TO QUASH
SERVICE OF SUMMONS AND
COMPLAINT FOR LACK OF PERSONAL
JURISDICTION AND MOTION TO
DISMISS FOR INCONVENIENT FORUM**

Date:

Time:

Dept: 6

Judge: The Honorable Evette D. Pennypacker

NOTICE OF MOTION AND MOTION OF SPECIALLY APPEARING DEFENDANTS COHNE KINGHORN,
P.C., SIMPLIFI COMPANY, JEREMY RAND COOK, ERIC HAWKES, JENNIFER HAWKES, MICHAEL
SCOTT HUGHES, DAVID BRADFORD, AND DAVID BENNION'S MOTION TO QUASH SERVICE OF
SUMMONS AND COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND MOTION TO DISMISS
FOR INCONVENIENT FORUM

Case No. 23CV423435

1 Specially appearing defendants Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand
2 Cook, Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, and David Bennion
3 (collectively “Defendants”) submits this *Notice of Motion and Motion in Support of*
4 *Specially Appearing Defendants Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand Cook,*
5 *Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, and David Bennion’s*
6 *Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction and Motion*
7 *to Dismiss for Inconvenient Forum* (the “Motion”).
8

9 **TO ALL PARTIES AND ATTORNEYS OF RECORD:**

10 PLEASE TAKE NOTICE THAT, on _____, at 191 North First Street,
11 San Jose, CA 95113 in Department 6 of the above-entitled Court, Defendants will and hereby does
12 move this Court for an order dismissing the Complaint filed by Plaintiff Mark Tracy (“Plaintiff”).
13

14 This Motion is made pursuant to Section 418.10 of the California Code of Civil Procedure
15 on the grounds that this Court lacks personal jurisdiction over Defendants and, alternatively, is an
16 inconvenient forum for this resolution of Plaintiff’s claims against Defendants. Defendants are
17 residents of Utah and have not established sufficient minimum contacts with California for this
18 Court to exercise personal jurisdiction over them. Moreover, Plaintiff’s allegations against
19 Defendants involve conduct exclusively occurring in Utah and all of the evidence (documents,
20 witnesses, *etc.*) relating to those allegations are located in Utah.
21

22 The motion will be based on this notice of motion, the accompanying memorandum of
23 points and authorities in support of the motion, the Declaration of David Bennion, Declaration of
24 David Bradford, Declaration of Eric Hawkes, Declaration of Jennifer Hawkes, Declaration of
25 Jeremy Cook, Declaration of Michael Hughes, the files and records in this action and such other
26 and further evidence as this Court may receive at or before the hearing.
27

28 **NOTICE OF MOTION AND MOTION OF SPECIALLY APPEARING DEFENDANTS COHNE KINGHORN,
P.C., SIMPLIFI COMPANY, JEREMY RAND COOK, ERIC HAWKES, JENNIFER HAWKES, MICHAEL
SCOTT HUGHES, DAVID BRADFORD, AND DAVID BENNION’S MOTION TO QUASH SERVICE OF
SUMMONS AND COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND MOTION TO DISMISS
FOR INCONVENIENT FORUM
Case No. 23CV423435**

Document received by the CA 6th District Court of Appeal.

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Dated: January 2, 2024

KESSENICK GAMMA LLP



CHARLIE Y. CHOU

Attorneys for Defendants Cohne Kinghorn, P.C.,
Simplifi Company, Jeremy Rand Cook, Eric Hawkes,
Jennifer Hawkes, Michael Scott Hughes, David
Bradford, David Bennion and Gary Bowen

NOTICE OF MOTION AND MOTION OF SPECIALLY APPEARING DEFENDANTS COHNE KINGHORN,
P.C., SIMPLIFI COMPANY, JEREMY RAND COOK, ERIC HAWKES, JENNIFER HAWKES, MICHAEL
SCOTT HUGHES, DAVID BRADFORD, AND DAVID BENNION'S MOTION TO QUASH SERVICE OF
SUMMONS AND COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND MOTION TO DISMISS
FOR INCONVENIENT FORUM

Case No. 23CV423435

Document received by the CA 6th District Court of Appeal.

EXHIBIT B

From: Charlie Chou <cchou@kessenick.com>
Subject: Re: Notice of Motion for Court Sanctions - Tracy v. Cohne Kinghorn PC et al. (California Superior Court for the County of Santa Clara, Case No. 23CV423435)
Date: January 26, 2024 at 8:43:00 AM PST
To: Mark Christopher Tracy <mark.tracy72@gmail.com>
Cc: Anna Mao <amao@kessenick.com>, Sarah Nguyen <snguyen@kessenick.com>, Mark Christopher Tracy <m.tracy@echo-association.com>, Charlie Chou <cchou@kessenick.com>

Hey Mark,

I've had a chance to review the information cited in the email below and here is my substantive response.

With respect to Civil Local Rule 8(B)(2), that new rule only went into effect on January 1, 2024. Because our filing occurred on the first day in which the new rule went into effect (i.e., January 2, 2024), we were unaware of the new rule's existence at the time of those filings. I apologize for any inconvenience that may have caused you. That said, it appears that the Court accepted the filings and provided a February 20, 2024 hearing date.

You concede that several of the issues set forth below are irrelevant to my clients' motions to quash (your ownership of property in Utah, where you can file legal actions in Utah, etc.). More importantly, however, those grievances involve your disagreement with my clients' presentation / interpretation of evidence. That is not a sufficient basis for a 128.7 motion. For those issue, I have not provided a substantive response because, as you state, they are irrelevant. That said, if there are any issues there that you want to discuss further, please let me know in writing and we can discuss further via email.

I've reviewed the docket for the 37 Ventures, LLC and Larada Sciences, Inc. bankruptcy proceedings in the Central District of CA and do not see anything that associates that case with Jeremy Cook. If you have any evidence (beyond your assertions), please provide them to me and I will review.

Micheal Scott Hughes does not own the property located at 968 Village Square S, Palm Springs, CA 92262. If you have evidence to the contrary, please provide that to me to review with my client.

David M. Bennion is not licensed in CA. The person listed on Cal. Bar's website is "David J. Bennion" - different person. Additionally, being a shareholder at Parsons - a law firm with no offices in CA - does not contradict David's declaration. Finally, with the Ned Medico Rehab case you cited, that matter ended in 1996 - nearly 30 years ago - and is not relevant for purposes of Mr. Bennion's motion to quash.

With respect to Eric and Jennifer Hawkes, I'm not sure I follow your logic or the citation below. Being shareholders of Simplifi does not mean they have systematic business contacts with CA.

If you have contrary evidence, please provide that to me to review. Finally, the link you provided doesn't show anything of relevance. Happy to review any evidence that you possess showing that the Hawkes contradicted their declarations.

David Bradford is associated with Pegus but does conduct business in CA - which is what he declared in his declaration. If you have evidence establishing that Mr. Bradford actually conducts business in CA, then please provide that to me to review with my client.

Based on the foregoing, I do not believe you have a basis to file any motion against my clients. If you do so, my clients will oppose that motion and seek their costs and fees in so doing.

Charlie

Charlie Chou
KESSENICK GAMMA LLP
1 Post Street, Suite 2500
San Francisco, CA 94104
P: 415.568.2016
F: 415.362.9401
E: cchou@kessenick.com

On Jan 14, 2024, at 9:39 AM, Mark Christopher Tracy <mark.tracy72@gmail.com> wrote:

Mr. Chou,

Prior to filing a motion for court sanctions in the above-captioned matter, I am required to provide your law firm with the following notice pursuant to CCP 128.7(c)(1).

Firstly, it appears that your Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction and Inconvenient Forum dated January 2, 2024, violated Santa Clara County Local Rule 8(B)(2) as follows:

- the Notice of Motion required under California Rules of the Court Rule 3.1110(b) did not record a time and date of the hearing;
- you failed to conduct a meet and confer regarding a mutual agreeable hearing date resulting in conflicted business trip to Frankfurt, Germany scheduled for February 13, 2024;
- although irrelevant to your motion, your factual allegation that I do not own property located in Emigration Canyon, Utah is both unsubstantiated and demonstrably false;
- contrary to your representations to the court, the Complaint does not allege "[tortious] conduct occurring exclusively in Utah."

Secondly, although perhaps unbeknownst to you at the time of filing, your clients on behalf of themselves and Defendants Cohne Kinghorn PC and Simplifi, filed sworn declarations, which appear to be demonstrably false as follows:

- Although irrelevant to the present motion, contrary to the sworn declaration of Defendant Jeremy Cook the Amended Judgement of Utah State Judge Mark Kouris was issued during appellate proceedings and is thus null and void for lack of jurisdiction (see e.g., 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).
- Although irrelevant to the present motion, contrary to the sworn declaration of Defendant Jeremy Cook, I may file legal action in United States Federal District Court for the District of Utah or in any Utah State Court with the exception of district no. 3 without permission of Judge Mark Kouris. See e.g., Memorandum Decision and Order, Tracy v. Simplifi et al., Case No. 2:21-cv-00444-RJS-CMR (Utah D., March 25, 2022).
- Although irrelevant to the present motion, contrary to the sworn declaration of Defendant Jeremy Cook, the "all of the parties in the current action" were not named in previous litigation;
- Although irrelevant to the present motion, contrary to the sworn declaration of Defendant Jeremy Cook, "the basic facts" of the present litigation are not "same facts and issues that Mr. Tracy alleged in multiple previous actions in Utah."
- Although irrelevant to the present motion, contrary to the sworn declaration of Defendant Jeremy Cook, the present litigation is not "an apparent attempt" to "retaliate against defendants" but rather to recover economic damage and loss caused by false and defamatory statements published by your clients (or by third-parties acting as agents of your clients) on an internet server located in San Jose, California.
- Contrary to your motion in connection with the sworn declaration of Defendant Jeremy Cook, Defendant Cohne Kinghorn PC has substantial, continuous, and systematic business contact within the State of California as alleged in Complaint (see also, 37 Ventures, LLC and Larada Sciences, Inc., Bankr. C.D. Cal., no. 9:21-bk-10261-DS);
- Contrary to his sworn declaration, Defendant Michael Scott Hughes appears to have a California residence located at "968 Village Square S, Palm Springs, CA, 92262."
- Contrary to his sworn declaration, Defendant Michael Scott Hughes has substantial, continuous, and systematic business conduct within the State of California as founder and sole proprietor of the company "PureAG" (see e.g., <https://pureagproducts.com/collections/pureag-microbiology>);

- Contrary to his sworn declaration, Defendant David M. Bennion, has substantial, continuous, and systematic business contact within the state of California as both a licensed attorney and as a shareholder of the law firm Parsons Behle & Latimer PLC, (see e.g., <https://parsonsbehle.com/people>; see also *New Medico Rehab, et al v. Principal Financial*, (C.D Cal., no. 2:96-cv-01282-JMI-SH));

- Contrary to her sworn declaration, Defendant Jennifer Hawkes has substantial, continuous, and systematic business conduct within the State of California as shareholder of Defendant Simplifi Company as alleged in the Complaint (see also <https://transparent.utah.gov/vendet.php>);

- Contrary to his sworn declaration, Defendant Eric Hawkes has substantial, continuous, and systematic business conduct within the State of California as shareholder of Defendant Simplifi Company as alleged in the Complaint (see id.); and lastly,

- Contrary to his sworn declaration, Defendant David Bradford has substantial, continuous, and systematic business conduct within the State of California as founder and shareholder of Pegus Research Inc. (see e.g., <https://pegus.com/our-team>).

I trust you will conduct proper due diligence of the issues identified above and clarify the court record prior to close of business on February 5, 2024.

However, if you do not intend to withdraw the motion and/or clarify the court record accordingly, please contact me at the number below for a meet and confer regarding a mutually agreeable hearing date at your earliest convenience but prior to close of business on January 29, 2024 to allow sufficient time to prepare and file a memorandum in opposition.

Please feel free to contact me if you have any questions.

Hochachtungsvoll (Kindest and Most Respectful Regards),

Mark Christopher Tracy
Tel. 929-208-6010

EXHIBIT C

Document received by the CA 6th District Court of Appeal.

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037

3 --
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany

5 --
5 Email: m.tracy@echo-association.com
6 Telephone: +1 (929) 208-6010
+49 (0)172 838 86 37

7 Pro Se Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SANTA CLARA**

10 **UNLIMITED JURISDICTION**

11 MARK CHRISTOPHER TRACY, an individual;
12 Plaintiff,

13 v.

14 COHNE KINGHORN PC, a Utah Professional
15 Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
17 ERIC HAWKES, an individual;
18 JENNIFER HAWKES, an individual; MICHAEL
19 SCOTT HUGHES, an individual; DAVID
20 BRADFORD, an individual; KEM CROSBY
21 GARDNER, an individual; WALTER J.
PLUMB III, an individual; DAVID BENNION, an
individual; R. STEVE CREAMER, an individual
PAUL BROWN, an individual; GARY BOWEN,
an individual,

22 Defendants.

Case No.: 23CV423435

Honorable Evette D. Pennypacker
[Dept. 6]

**NOTICE OF TAKING OF DEPOSITION
OF GARY BOWEN AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

Date of Deposition: February 13, 2024
Time: 09:00 am (MST)
Place: 350 E. 400 S. Rm. 2A
Salt Lake City, Utah 84111

Action Filed: September 21, 2023
Trial Date: TBD

23 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

24 PLEASE TAKE NOTICE that, pursuant to California Code of Civil Procedure §2025.210
25 2025.280, Plaintiff will take the deposition of Defendant Gary Bowen on February 13, 2024, at 09:00
26 am MST located at 350 S. 400 S., Rm. 2A, Salt Lake City, Utah 84111, in the above-entitled matter. If
27 the deposition is not completed on the date set out above, the taking of the deposition will continue from
28 day to day, excluding weekends and legal holidays, thereafter until completed.

1 This deposition will be taken upon oral examination before any notary public or other officer duly
2 commissioned by the State of California to administer oaths by stenographic method. Plaintiff reserves
3 the right to record the deposition testimony by videotape for use at trial, pursuant to California Code of
4 Civil Procedure section 2025.220(a)(6). If the services of an interpreter are needed, please notify the
5 undersigned immediately.

6 NOTICE IS FURTHER GIVEN that, pursuant to California Code of Civil Procedure Sections
7 2025.220(a)(4) and 2025.280(a) and (c), DEFENDANT is required to produce the documents, records
8 and other materials described below, which are in his possession, or under the custody or control of any
9 of his agents, representatives, and/or attorneys on or before the date and time set forth for his deposition.
10 The documents to be produced by DEFENDANT are as follows:

11 **DEFINITIONS**

12 A. "PERSON(S)" includes any natural person, firm, association, organization, partnership,
13 business, trust, corporation, governmental or public entity or any other form of legal entity.

14 B. "DOCUMENT" or "DOCUMENTS" shall mean all documents, electronically stored
15 information, and tangible things, including without limitation all writings (as defined in Section 250 of
16 the California Evidence Code) and all other means of recording information, whether written,
17 transcribed, taped, filmed, microfilmed, or in any other way produced, reproduced, or recorded, and
18 including but not limited to: originals, drafts, computer-sorted and computer-retrievable information,
19 copies and duplicates that are marked with any notation or annotation or otherwise differ in any way
20 from the original, correspondence, memoranda, reports, notes, minutes, contracts, agreements, books,
21 records, checks, vouchers, invoices, purchase orders, ledgers, diaries, logs, calendars, computer
22 printouts, computer disks, card files, lists of persons attending meetings or conferences, sketches,
23 diagrams, calculations, evaluations, analyses, directions, work papers, press clippings, sworn or unsworn
24 statements, requisitions, manuals or guidelines, audit work papers, financial analyses, tables of
25 organizations, charts, graphs, indices, advertisements and promotional materials, audited and unaudited
26 financial statements, trade letters, trade publications, newspapers and newsletters, photographs, emails,
27 electronic or mechanical records, facsimiles, telegrams and telecopies, and audiotapes. Each draft,
28 annotated, or otherwise non-identical copy is a separate DOCUMENT within the meaning of this term.

1 DOCUMENTS shall also include any removable sticky notes, flags, or other attachments affixed to any
2 of the foregoing, as well as the files, folder tabs, and labels appended to or containing any documents.
3 DOCUMENTS expressly include all ELECTRONIC RECORDS.

4 C. "COMMUNICATION(S)" means any oral, written or electronic transmission of
5 information, including but not limited to meetings, discussions, conversations, telephone calls,
6 telegrams, memoranda, letters, teletypes, telexes, conferences, messages, notes or seminars.

7 D. "RELATING TO," "RELATED TO" or "RELATE(S) TO" means constituting,
8 containing, concerning, embodying, reflecting, identifying, stating, mentioning, discussing, describing,
9 evidencing, or in any other way being relevant to that given subject matter.

10 E. "PLAINTIFF" shall mean PLAINTIFF Mark Christopher Tracy.

11 F. "DEFENDANT," "YOU" and "YOUR" shall mean Defendant Gary Bowen.

12 G. "SUBJECT INCIDENT" means and refers to the incident as described in Plaintiff's
13 Complaint upon which this suit is founded.

14 H. "DEFENDANTS" shall mean all Defendants to the present action.

15 **REQUEST FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 1:**

17 All DOCUMENTS and COMMUNICATIONS concerning or RELATED TO federal False
18 Claims Act litigation and water-right change applications identified in the SUBJECT INCIDENT sent
19 from or received by DEFENDANT including but not limited to the email addresses
20 "garybowenauthor@gmail.com" and "agarybowen@msn.com."

21 **REQUEST FOR PRODUCTION NO. 2:**

22 A copy of YOUR cell phone records, including times and dates of text messages sent to or
23 received from news media outlets including but not limited to correspondent Emma Penrod of High
24 County News and Salt Lake Tribune journalist Brian Maffly.

25 **REQUEST FOR PRODUCTION NO. 3:**

26 All DOCUMENTS and COMMUNICATIONS sent to or received from Defendants by YOU as
27 RELATED TO news media outlets including but not limited to writer Emma Penrod of High County
28 News and Salt Lake Tribune journalist Brian Maffly.

1 **REQUEST FOR PRODUCTION NO. 4:**

2 All DOCUMENTS and COMMUNICATIONS related to culinary drinking water service and
3 contamination thereof sent to or received from managers, consultants, and/or independent contractors
4 of Emigration Improvement District (aka Emigration Canyon Improvement District)(hereafter "EID")
5 by YOU.

6 **REQUEST FOR PRODUCTION NO. 5:**

7 All DOCUMENTS and COMMUNICATIONS received from or transmitted to Defendants by
8 YOU including EID general manager Fred Smolka of Management Enterprises Inc.

9 **REQUEST FOR PRODUCTION NO. 6:**

10 All DOCUMENTS and COMMUNICATIONS related to payment of monies to or from accounts
11 drawn to or from Defendants including EID by YOU.

12 **REQUEST FOR PRODUCTION NO. 7:**

13 All DOCUMENTS and COMMUNICATIONS related to the demand for payment to or from
14 Defendants including EID.

15 //

16 //

17 DATED: January 17, 2024

18 By: 
19 _____
20 Mark Christopher Tracy
21 Pro Se Plaintiff

Document received by the CA 6th District Court of Appeal.

EXHIBIT D

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037
--
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany
--
5 Email: m.tracy@echo-association.com
Telephone: +1 (929) 208-6010
6 +49 (0)172 838 86 37
7 Pro Se Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 MARK CHRISTOPHER TRACY, an individual;
12 Plaintiff,

13 v.

14 COHNE KINGHORN PC, a Utah Professional
15 Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
17 individual; ERIC HAWKES, an individual;
18 JENNIFER HAWKES, an individual; MICHAEL
19 SCOTT HUGHES, an individual; DAVID
20 BRADFORD, an individual; KEM CROSBY
21 GARDNER, an individual; WALTER J.
22 PLUMB III, an individual; DAVID BENNION, an
23 individual; R. STEVE CREAMER, an individual
24 PAUL HANDY BROWN, an individual; and
25 GARY BOWEN an individual,

26 Defendants.

Case No.: 23CV423435

Honorable Evette D. Pennypacker
[Dept. 6]

**NOTICE OF TAKING OF DEPOSITION
OF DEFENDANT PAUL HANDY BROWN
AND REQUEST FOR PRODUCTION OF
DOCUMENTS**

Date of Deposition: February 15, 2024
Time: 09:00 am (MST)
Place: 350 E. 400 S. Rm. 2A
Salt Lake City, Utah 84111

Action Filed: September 21, 2023
Trial Date: TBD

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to California Code of Civil Procedure §2026.010 in connection with §§2025.010 – 2025.280, Plaintiff will take the deposition of Defendant Paul Handy Brown on February 15, 2024, at 09:00 am (MST) located at 350 S. 400 S., Rm. 2A, Salt Lake City, Utah 84111, in the above-entitled matter. If the deposition is not completed on the date set out above, the

1 taking of the deposition will continue from day to day, excluding weekends and legal holidays, thereafter
2 until completed.

3 This deposition will be taken upon oral examination before any notary public or other officer duly
4 authorized to administer oaths by the laws of the United States or those of the place where the
5 examination is to be held by stenographic method. Plaintiff reserves the right to record the deposition
6 testimony by videotape for use at trial, pursuant to California Code of Civil Procedure §2025.220(a)(6).
7 If the services of an interpreter are needed, please notify the undersigned immediately.

8 NOTICE IS FURTHER GIVEN that, pursuant to California Code of Civil Procedure
9 §§2025.220(a)(4) and 2025.280(a) and (c), DEFENDANT is required to produce the documents, records
10 and other materials described below, which are in his possession, or under the custody or control of any
11 of his agents, representatives, and/or attorneys on or before the date and time set forth for his deposition.

12 The documents to be produced by DEFENDANT are as follows:

13 **DEFINITIONS**

14 A. "PERSON(S)" includes any natural person, firm, association, organization, partnership,
15 business, trust, corporation, governmental or public entity or any other form of legal entity.

16 B. "DOCUMENT" or "DOCUMENTS" shall mean all documents, electronically stored
17 information, and tangible things, including without limitation all writings (as defined in Section 250 of
18 the California Evidence Code) and all other means of recording information, whether written,
19 transcribed, taped, filmed, microfilmed, or in any other way produced, reproduced, or recorded, and
20 including but not limited to: originals, drafts, computer-sorted and computer-retrievable information,
21 copies and duplicates that are marked with any notation or annotation or otherwise differ in any way
22 from the original, correspondence, memoranda, reports, notes, minutes, contracts, agreements, books,
23 records, checks, vouchers, invoices, purchase orders, ledgers, diaries, logs, calendars, computer
24 printouts, computer disks, card files, lists of persons attending meetings or conferences, sketches,
25 diagrams, calculations, evaluations, analyses, directions, work papers, press clippings, sworn or unsworn
26 statements, requisitions, manuals or guidelines, audit work papers, financial analyses, tables of
27 organizations, charts, graphs, indices, advertisements and promotional materials, audited and unaudited
28 financial statements, trade letters, trade publications, newspapers and newsletters, photographs, emails.

1 electronic or mechanical records, facsimiles, telegrams and teletypes, and audiotapes. Each draft,
2 annotated, or otherwise non-identical copy is a separate DOCUMENT within the meaning of this term.
3 DOCUMENTS shall also include any removable sticky notes, flags, or other attachments affixed to any
4 of the foregoing, as well as the files, folder tabs, and labels appended to or containing any documents.
5 DOCUMENTS expressly include all ELECTRONIC RECORDS.

6 C. "COMMUNICATION(S)" means any oral, written or electronic transmission of
7 information, including but not limited to meetings, discussions, conversations, telephone calls,
8 telegrams, memoranda, letters, teletypes, telexes, conferences, messages, notes or seminars.

9 D. "RELATING TO," "RELATED TO" or "RELATE(S) TO" means constituting,
10 containing, concerning, embodying, reflecting, identifying, stating, mentioning, discussing, describing,
11 evidencing, or in any other way being relevant to that given subject matter.

12 E. "PLAINTIFF" shall mean PLAINTIFF Mark Christopher Tracy.

13 F. "DEFENDANT," "YOU" and "YOUR" shall mean Defendant Paul Handy Brown.

14 G. "SUBJECT INCIDENT" means and refers to the incident as described in Plaintiff's
15 Complaint upon which this suit is founded.

16 H. "DEFENDANTS" shall mean all named Defendants to the present action.

17 **REQUEST FOR PRODUCTION**

18 **REQUEST FOR PRODUCTION NO. 1:**

19 All DOCUMENTS and COMMUNICATIONS concerning or RELATED TO federal False
20 Claims Act litigation and water rights identified in the SUBJECT INCIDENT sent from or received by
21 DEFENDANT including but not limited to the email addresses "paulhandybrown@gmail.com" and
22 "paul.h.brown@verizon.net" and "eopoapresident@gmail.com."

23 **REQUEST FOR PRODUCTION NO. 2:**

24 A copy of YOUR phone records, including times and dates of text messages sent to Defendants
25 including managers, consultants, and/or independent contractors of Emigration Improvement District
26 (aka Emigration Canyon Improvement District)(hereafter "EID"), the Mount Olivet Cemetery
27 Association (hereafter "Mt. Olivet"), the Pioneer Fork Owners Association (hereafter "PFOA"), and the
28 Emigration Oaks Property Owners Association, Inc. (hereafter "EOPOA").

1 **REQUEST FOR PRODUCTION NO. 3:**

2 A copy of YOUR state-issued licenses including documents prepared by religious organizations
3 including but not limited to The Church of Jesus Christ of Latter-day Saints (aka Mormon Church)
4 recording YOUR place of residency, membership, functions, and responsibilities.

5 **REQUEST FOR PRODUCTION NO. 4:**

6 All DOCUMENTS and COMMUNICATIONS related to culinary drinking water service and/or
7 contamination thereof sent to or received from persons including but not limited to managers,
8 consultants, and/or independent contractors of EID.

9 **REQUEST FOR PRODUCTION NO. 5:**

10 All DOCUMENTS and COMMUNICATIONS related to the observance, documentation, repair
11 and/or restoration of fissures, ground erosion and subsidence in Emigration Canyon including but not
12 limited to Defendants and managers, consultants, and/or independent contractors of EID.

13 **REQUEST FOR PRODUCTION NO. 6:**

14 All DOCUMENTS and COMMUNICATIONS received from or transmitted to Defendants by
15 YOU including EID general manager Fred Smolka of Management Enterprises Inc., Mt. Olivet, and
16 PFOA.

17 **REQUEST FOR PRODUCTION NO. 7:**

18 All DOCUMENTS and COMMUNICATIONS related to payment of monies to or from accounts
19 drawn to or from Defendants including EID by YOU.

20 **REQUEST FOR PRODUCTION NO. 8:**

21 All DOCUMENTS and COMMUNICATIONS related to the demand for payment to or from
22 Defendants including EID from YOU.

23 **REQUEST FOR PRODUCTION NO. 9:**

24 All DOCUMENTS and COMMUNICATIONS related to the access and/or development of
25 properties in Emigration Canyon located in Salt Lake County, Utah sent to or received from persons
26 including but not limited to Defendant R. Steve Creamer, and members of the PFOA, and EOPOA.

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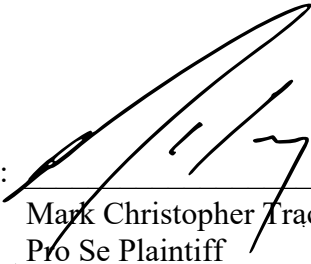
1 **REQUEST FOR PRODUCTION NO. 10:**

2 All DOCUMENTS and COMMUNICATIONS sent to or received from property owners and
3 residents of the EOPOA, and PFOA, including but not limited to meeting minutes, audio recordings and
4 resolutions during your tenure as a board member of the same.

5 //

6 //

7 DATED: January 19, 2024

By: 
Mark Christopher Tracy
Pro Se Plaintiff

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Document received by the CA 6th District Court of Appeal.

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037
--
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany
--
5 Email: m.tracy@echo-association.com
Telephone: +1 (929) 208-6010
6 +49 (0)172 838 86 37
7 Pro Se Plaintiff

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 2/6/2024 6:07 AM
Reviewed By: A. Floresca
Case #23CV423435
Envelope: 14324715**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 MARK CHRISTOPHER TRACY, an
12 individual,
13 Plaintiff,
14 v.
15 COHNE KINGHORN P.C., a Utah Professional
16 Corporation; SIMPLIFI COMPANY, a Utah
17 Corporation; JEREMY RAND COOK, an
18 individual; ERIC HAWKES, an individual;
19 JENNIFER HAWKES, an individual;
20 MICHAEL SCOTT HUGHES, an individual;
21 DAVID BRADFORD, an individual;
22 KEM CROSBY GARDNER, an individual;
23 WALTER J. PLUMB III, an individual;
24 DAVID BENNION, an individual; R. STEVE
25 CREAMER, an individual PAUL HANDY
26 BROWN, an individual; GARY A. BOWEN,
27 an individual
28 Defendants.

Case No.: 23CV423435
Honorable Evette D. Pennypacker
[Dept. 6]
**MEMORANDUM AND POINTS OF
AUTHORITY IN SUPPORT OF
OPPOSITION TO DEFENDANT
KEM CROSBY GARDNER’S MOTION
TO QUASH SERVICE OF PROCESS
FOR LACK OF PERSONAL
JURISDICTION**
Hearing Date: February 20, 2024
Time: 09:00 am (PST)
Action Filed: September 21, 2023
Trial Date: TBD

24 **INTRODUCTION**

25 Plaintiff Mark Christopher Tracy (“Mr. Tracy” and “Plaintiff”) respectfully submits this
26 memorandum and points of authority in support of his opposition to the motion to quash service of
27 summons for lack of personal jurisdiction filed pursuant to Code of Civ. P. § 418.10(a)(1) by Defendant
28 Kem Crosby Gardner (“Defendant Gardner” and “Defendant”).

Document received by the CA 6th District Court of Appeal.

1 Defendant Gardner argues that this Court lacks jurisdiction because there is no proof of actual
2 delivery of the Complaint and Summons. Motion of Specially Appearing Defendant Kem C. Gardner to
3 Quash Service of Summons and Complaint for Lack of Personal Jurisdiction (“Gardner Memo.” and
4 “Motion), pp. 9-10.¹ Also, The Boyer Company LC was “not authorized” to accept service of process,
5 as the Defendant was “last associated” with his former company 20 years ago. *Id.*, Next, the Complaint
6 does not allege any conduct in the State of California attributable to the Defendant (*id.*, p. 12) and
7 because Defendant Gardner has no personal or business connections in the forum state “other than [a]
8 timeshare interest,” he does not “consent” to the jurisdiction of this Court. *Id.*, pp. 11-14. Lastly, it would
9 offend traditional notions of fair play because Defendant Gardner has taken “no action that he could
10 reasonably believe would subject him to suit in California.” *Id.*, pp. 14-15.

11 These arguments fail.

12 First, Defendant Gardner waived jurisdictional objections by failing to provide Mr. Tracy proper
13 notice prior to the filing deadline per California Rules of the Court and then neglected to conduct a
14 mandatory meet and confer required by local court rules when the notice of the motion was served some
15 26 days later. Next, even a perfunctory review of the Complaint reveals purposeful tortious conduct
16 occurring both within and directed towards residents of the forum state by, on behalf of, and in the
17 economic interest of Defendant Gardner thereby establishing this Court’s exercise of personal
18 jurisdiction.

19 In the alternative, because Defendant Gardner submitted sworn declarations, which appear to be
20 demonstrably false, the Court should stay the Motion for 180 days to allow discovery of any relevant,
21 contested jurisdictional facts.

22 ARGUMENT

23 The present litigation addresses construction of a legally and technically defunct drinking water
24 system of the luxurious private urban development “Emigration Oaks” marketed and sold by Defendant

25 ¹ On January 2, 2023, the Clerk of the Court rejected the filing with the remark “NO MOTION
26 ATTACHED TO THE ENVELOPE,” but appears to have scheduled a hearing for “Motion: Order”
27 but not “Motion: Quash” on January 22, 2024. To date, it is unclear if the court has subsequently
28 accepted the filing contrary to Rule 3.1110 of the California Rules of the Court. Out of an abundance
of caution, this opposition will however address the Motion as if accepted by the court.

1 Gardner to unsuspecting California residents as “the Bel Air of Salt Lake City” immediately following
2 the 2002 Olympic Winter Games, and Defendant’s collaborative effort to defame Mr. Tracy when
3 concealment of his fraudulent activities proved futile. *Id.*, ¶¶ 4, 29-56.

4 Service of process and this Court’s exercise of personal jurisdiction over Defendant Gardner are
5 above reproach.

6 **I. Service of Process**

7 Contrary to Defendant Gardner’s sworn declaration, a local newspaper reported that despite his
8 departure as President of The Boyer Company LC sometime in May 2004, Defendant maintained an
9 office at the company and continued co-ownership of properties with the same.² *See* Declaration of
10 Mark Christopher Tracy (“Tracy Decl.”), ¶ 5, Exhibit B.

11 In this light, it is entirely comprehensible why Rachel Carrier of The Boyer Company accepted
12 service of process as the self-identified agent of Defendant Gardner. *See* Amended Proof of Service of
13 Summons, filing no. 14045716.

14 Even if service was improper at the office of Defendant Gardner’s former company, after an
15 unidentified “house sitter” refused to accept service at his place of residence, Mr. Tracy served a Second
16 Complaint and Summons at Defendant Gardner’s place of business identified in the Motion thereby
17 curing any purported deficiencies.³ *See* Second Proof of Service of Summons, filing no. 14045716.

18 **II. Legal Framework for the Exercise of Jurisdiction for Out-of-State Defendants**

19 When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has
20 the initial burden of demonstrating facts justifying the exercise of jurisdiction. *State of Oregon v.*
21 *Superior Court*, 24 Cal. App.4th 1550, 1557 (1994).

22 //

23 ² Dave Anderton, *Gardner to leave Boyer Co.*, May 24, 2004, Desert News, available at the website
24 administered by the Desert News Publishing Company
25 [https://www.deseret.com/2004/5/25/19830721/gardner-to-leave-boyer-](https://www.deseret.com/2004/5/25/19830721/gardner-to-leave-boyer-co#:~:text=After%20more%20than%2030%20years,company%20to%20the%20Boyer%20family)
[co#:~:text=After%20more%20than%2030%20years,company%20to%20the%20Boyer%20family](https://www.deseret.com/2004/5/25/19830721/gardner-to-leave-boyer-co#:~:text=After%20more%20than%2030%20years,company%20to%20the%20Boyer%20family).

26 ³ Following service of process for Codefendants Paul Handy Brown and Gary A. Bowen, it appears
27 Defendant Gardner instructed both his unidentified “house guest” and the office manager of the
28 Gardner Group to refuse service of process in an apparent (but futile) attempt to defeat this Court’s
jurisdiction. *See e.g.*, Second Proof of Service of Summons, filing no. 14045716.

1 Once facts showing minimum contacts with the forum state are established, it then becomes the
2 burden of the defendant to demonstrate that the exercise of jurisdiction would be unreasonable. *Burger*
3 *King Corp. v. Rudzewicz*, 471 U.S. 462, 476-477 (1985). However, when a defendant who has
4 purposefully directed his activities at forum residents seeks to defeat jurisdiction, “he must present a
5 compelling case that the presence of some other considerations would render jurisdiction unreasonable.”
6 *Id.* at 477.

7 III. The Motion to Defeat Jurisdiction is Null and Void

8 Code of Civ. P. § 418.10(a) stipulates that a defendant may, on or before the last day of the time
9 to plead, serve and file motion to quash the service of summons, while § 1008(a)(4) requires that written
10 notice *shall* be given for the motion (emphasis added) and subsection (b) of the later provides “[t]he
11 notice *shall* designate, as the time for making the motion, a date not more than 30 days after filing of the
12 notice” (emphasis added).

13 Local Rule 8A of the Civil Division of the Superior Court for County of Santa Clara orders that
14 prior to scheduling a hearing with the court clerk via telephone no. (408) 882-2430,⁴ “the moving party
15 *must* (1) meet and confer with the non-moving party or parties to identify mutually agreeable dates then
16 (2) follow the procedure set forth on the civil law and motion section of the court’s website at
17 <https://www.sccourt.org/>” (emphasis added).⁵

18 In the instant action, shortly before expiration of the response deadline, Defendant Gardner served
19 Mr. Tracy the Motion to Quash without a hearing date and then without prior consultation, 26 days later,
20 served the Notice of Motion per email correspondence,⁶ forcing Plaintiff to cancel a planned business
21 trip to Germany and causing him to incur substantial costs and expense. Tracy Decl., ¶ 4.

22 ⁴ Plaintiff is informed and believes that changes to local rules were published by this Court sometime
23 in June 2023 for a public-comment period and then went into effect on January 1, 2024.

24 ⁵ In the email correspondence dated January 30, 2024, attorney-of-record Sarah Burns miscited the
25 local rules of this Court to Mr. Tracy and postulated that a Motion for Court Sanctions “is ill advised
26 and should be dropped” upon learning that Defendant Gardner owns (or did own) a percentage interest
27 in two (2) California radio stations contrary to the sworn declaration of her client. *See* Tracy Decl., ¶ 5,
28 Exhibit B.

⁶ As Defendant Gardner’s legal counsel Thomas Burke and Sarah Burns failed to verify their email
addresses following Mr. Tracy’s request, the parties did not agree to electronic service of process and
the Notice of Hearing is untimely per Code of Civ. P. § 1005(b) and invalid per § 1010.6(c)(2). *See*
Tracy Decl., ¶ 6, Exhibit C.

1 By ignoring state and local court rules of notice and consultation causing economic damage and
2 loss, Defendant Gardner waived objection to this Court’s exercise of personal jurisdiction.

3 **IV. The Motion to Defeat Jurisdiction is Devoid of Basis in Fact and Law**

4 Assuming arguendo that Defendant Gardner had properly raised jurisdictional objections and not
5 caused Mr. Tracy pecuniary harm, the present action is also entirely consistent with California’s long-
6 arm statute and the due process clause of the Constitution of the United States.

7 A state court’s exercise of personal jurisdiction over a nonresident defendant (who has not been
8 served with process within the state) per Code Civ. P. § 410.10 requires compliance with the due process
9 clause of the federal Constitution, which in turn mandates that the defendant has such minimum contacts
10 so the assertion of jurisdiction does not violate “traditional notions of fair play and substantial justice.”
11 *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see also Burnham v. Superior Court*,
12 495 U.S. 604, 618-619 (1990).

13 Personal jurisdiction may be either general or specific. The former provides that a nonresident
14 defendant may be subject to litigation if his (or her) contacts in the forum state are “substantial [...]
15 continuous and systematic” (*Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445, 446 (1952)), while the
16 latter demands that the defendant has purposefully availed himself (or herself) of forum benefits (*Burger*
17 *King Corp. v. Rudzewicz*, 471 U.S. 462, 471 (1985)) and the controversy is related to or “arises out of
18 a defendant’s contacts with the forum” (*Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408
19 414 (1984)).

20 **A. Factual Jurisdictional Allegations of the Complaint**

21 In support of the Motion to defeat this Court’s jurisdiction, Defendant Gardner declared under
22 penalty of perjury that “other than the timeshare interest” he does not own real estate, or any interest in
23 real estate, conducts no business “on behalf of myself,” does not vote, and does not pay taxes in
24 California.⁷ Gardner Decl. ¶¶ 3, 4, 7.

25 As Defendant Gardner limited his factual assertion regarding lack of jurisdiction to property
26 ownership, vague business conduct, voter registration, and paying taxes, the following allegations of the

27 ⁷ These assertions are inconsequential to the Motion and, upon cursory review, appear to be
28 demonstrably false. *See e.g.*, Tracy Decl. ¶ 5, Exhibit B.

1 Complaint are uncontested:

2 1. Plaintiff Mark Christopher Tracy (“Tracy” and “Plaintiff”) is a California resident and
3 federal whistleblower in what has been alleged to be the longest and most lucrative water grabs in the
4 history of Utah. Compl. ¶ 1.

5 2. This scheme was, and is, being perpetuated for the private profit of Defendant Gardner,⁸
6 including land developer Walter J. Plumb III,⁹ and R. Steve Creamer,¹⁰ at the expense of California
7 citizens and residents.¹¹ *Id.*, ¶ 2.

8 3. Specifically, since December 1, 1984, Codefendant Cohne Kinghorn P.C., acting on
9 behalf of a Defendant Gardner,¹² began fraudulently inducing long-time residents of Emigration Canyon
10 to abandon senior water rights,¹³ and yield to duplicitous water claims stripped from the only active
11 federal military cemetery created by an Act of Congress, signed into law by United States President
12 Ulysses S. Grant in 1874, subject to the reversionary interest to be “forever used for the burial of the
13 dead,” but however misappropriated by Defendant Gardner for the construction and massive expansion

14 ⁸ See e.g., Lee Davidson, *Utah’s biggest individual political donor is a software CEO, helping right-*
15 *wing GOP causes to the tune of \$777K. Eight others gave more than \$200K each*, Salt Lake Tribune,
16 August 13, 2018, available at the website administered by the Newspaper Agency Corporation
<https://www.sltrib.com/news/politics/2018/08/13/utahs-biggest-individual/>.

17 ⁹ See e.g., Taylor W. Anderson, *Meet the man spending \$100,000 to defeat Utah’s medical marijuana*
18 *initiative*, Salt Lake Tribune, May 25, 2018, available at the website administered by the Newspaper
19 Agency Corporation [https://www.sltrib.com/news/politics/2018/05/25/meet-the-man-spending-](https://www.sltrib.com/news/politics/2018/05/25/meet-the-man-spending-100000-to-defeat-utahs-medical-marijuana-initiative/)
20 [100000-to-defeat-utahs-medical-marijuana-initiative/](https://www.sltrib.com/news/politics/2018/05/25/meet-the-man-spending-100000-to-defeat-utahs-medical-marijuana-initiative/); Codefendant Walter J. Plumb III appears to
21 have avoided service of process and has not yet entered appearance. See e.g., Second Proof of Service
22 of Summons, filing no. 9444693.

23 ¹⁰ Davidson, *supra* note 5; Request for Entry of Default against Codefendant R. Steve Creamer is
24 currently pending. See filing no. 9352600.

25 ¹¹ See e.g., Brian Maffly, *‘We Don’t Need Your Water’: Emigration Canyon Water Fight Breaks Out*
26 *In Court*, Salt Lake Tribune, June 18, 2015, at A1, available at the website administered by the
27 Newspaper Agency Corporation <https://archive.sltrib.com/article.php?id=2618507&itype=CMSID>.

28 ¹² Misuse of special service water districts for private profit has received national attention. See e.g.,
Special Districts: Last Week Tonight with John Oliver, Home Box Office, March 7, 2016, available at
the website administered by Google LLC <https://www.youtube.com/watch?v=3saU5racsGE>.

¹³ See e.g., *Emigration Canyon Improvement District Water Rates*, subheading “Water Rights,”
available at the website administered by Codefendants Simplifi Company through Codefendants Eric
and Jennifer Hawkes <https://www.ecid.org/water-rates>, last visited February 4, 2024 at 1:53 PM.

1 of Emigration Oaks,¹⁴ marketed and sold to unsuspecting California residents immediately following
2 the 2002 Olympic Winter Games as the “Bel Air of Salt Lake City.”¹⁵ *Id.*, ¶¶ 2, 57.

3 4. In furtherance of this ongoing fraud, and to ensure continued payment of monies from
4 property owners residing in Venice, Rancho Cucamonga, Corona Del Mar, Coto de Caza, Mountain
5 View, San Rafael, Bayside, Loomis, and San Diego, California, Codefendant Cohne Kinghorn P.C.,
6 Codefendant Cohne Kinghorn P.C., on behalf of Defendant Gardner, miscited and withheld expert
7 hydrology reports expressly warning against aquifer depletion via operation of large-diameter
8 commercial wells constructed by the Defendant while simultaneously concealing governmental records
9 evidencing extensive lead contamination,¹⁶ and inadequate emergency-fire protection,¹⁷ in a small-
10 mountain community identified as especially prone to wild-fire fatalities.¹⁸ *Id.*, ¶ 3.

11 5. When however, the suppression of expert studies and public records proved unsuccessful,
12 Codefendant Cohne Kinghorn P.C., on behalf of Defendant Gardner, resorted to a collaborative smear
13 campaign publishing false and defamatory statements against Mr. Tracy on the world-wide web via a
14 server located in San Jose, California under the slogan “STAY INFORMED – GET THE FACTS!”
15 (emphasis in original) *Id.*, ¶¶ 4, 20.

16 ¹⁴ See e.g., Emma Penrod, *Paranoia and a ‘Preposterously’ Oversized Water Tank*, High Country
17 News, June 28, 2019, available at the website administered by High Country News
<https://www.hcn.org/issues/51.12/water-paranoia-and-a-preposterously-oversized-water-tank-in-utah>.

18 ¹⁵ See e.g., Dennis Romboy, *Emigration Canyon: Its historical significance, offbeat aura lend the area*
19 *plenty of flavor*, Desert News, July 25, 2006, available at the website administered by the Desert News
20 Publishing Company [https://www.deseret.com/2006/7/25/19964952/emigration-canyon-its-historical-](https://www.deseret.com/2006/7/25/19964952/emigration-canyon-its-historical-significance-offbeat-aura-lend-the-area-plenty-of-flavor)
21 [significance-offbeat-aura-lend-the-area-plenty-of-flavor](https://www.deseret.com/2006/7/25/19964952/emigration-canyon-its-historical-significance-offbeat-aura-lend-the-area-plenty-of-flavor); see also correspondence to United States
22 Congressional Representatives, dated September 19, 2020, available at the website administered by
23 The ECHO-Association https://echo-association.com/?page_id=6908, last edited on December 7,
24 2022.

25 ¹⁶ See e.g., email correspondence dated July 6, 2020, from Codefendant Eric Hawkes to Codefendants
26 Utah Attorney Jeremy Rand Cook, Michael Scott Hughes, and David Bradford, available at the website
27 administered by The ECHO-Association https://echo-association.com/?page_id=4955.

28 ¹⁷ See e.g., Emigration Improvement District (aka Emigration Canyon Improvement District) Trustee
Meeting Minutes, dated October 13, 2013, available at the website administered by The ECHO-
Association https://echo-association.com/?page_id=7603, last edited on March 24, 2022 at 11:07 AM.

¹⁸ Thomas J Cova, Justin P Johnson, *Microsimulation of Neighborhood Evacuations in the Urban
Wildland Interface*, Environment and Planning A 2002, volume 34, 2211-29 available at the website
administered by The ECHO-Association https://echo-association.com/?page_id=7603, last edited on
March 24, 2022 at 11:07 AM.

1 6. In August 2018, Emigration Canyon Steam suffered total depletion for the first time in
2 recorded history as predicted in expert hydrology reports withheld and misrepresented to California
3 residents by Defendant Gardner.¹⁹ *Id.*, ¶ 52.

4 7. The environmental and economic damage caused by willful groundwater depletion and
5 drinking-water contamination by Defendant Gardner is a matter of public record.²⁰ *Id.*, ¶1.

6 **B. Minimum Contact with the Forum State**

7 With his acknowledgement of the purchase of a timeshare in Carlsbad, California more than
8 fifteen years ago, (Gardner Decl. ¶ 4) Defendant Gardner conceded that he has purposely availed
9 himself to the rights and benefits of the forum state and has therewith minimum contact with the State
10 of California.²¹ Even without the benefit of this opposition memorandum, Plaintiff has met his burden
11 of production.

12 ¹⁹ Mismanagement of scarce water resources in Utah has gained national attention. *See e.g., Water:*
13 *Last Week Tonight with John Oliver (HBO)*, Home Box Office, March 7, 2016, available at the
14 website administered by Google LLC [https://youtu.be/jtxew5XUVbQ?si=nlt-](https://youtu.be/jtxew5XUVbQ?si=nlt-MGNKupuyTIPv&t=970)
15 [MGNKupuyTIPv&t=970](https://youtu.be/jtxew5XUVbQ?si=nlt-MGNKupuyTIPv&t=970); *see also* Brian Maffly, *Why is Emigration Creek — a historic Utah*
16 *waterway — dry? Blame runs from climate change to drought to development to water-sucking wells*,
17 Salt Lake Tribune, September 8, 2018, available at the website administered by the Newspaper
18 Agency Corporation <https://www.sltrib.com/news/environment/2018/09/08/why-is-emigration-creek/>;
19 *see also* Amy Joi O’Donoghue, *Emigration Canyon and Groundwater Pumping in Utah: What’s at*
20 *Risk?* Desert News, January 2, 2019, available at the website administered by the Desert News
21 Publishing Company at [https://www.deseret.com/2019/1/2/20662500/emigration-canyon-and-](https://www.deseret.com/2019/1/2/20662500/emigration-canyon-and-groundwater-pumping-in-utah-what-s-at-risk)
22 [groundwater-pumping-in-utah-what-s-at-risk](https://www.deseret.com/2019/1/2/20662500/emigration-canyon-and-groundwater-pumping-in-utah-what-s-at-risk); *see also* Amy Joi O’Donoghue, *District’s water*
23 *diversion will continue in Emigration Canyon*, January 18, 2019, available at the website administered
24 by Bonneville International Corporation [https://www.ksl.com/article/46471323/districts-water-](https://www.ksl.com/article/46471323/districts-water-diversion-will-continue-in-emigration-canyon)
25 [diversion-will-continue-in-emigration-canyon](https://www.ksl.com/article/46471323/districts-water-diversion-will-continue-in-emigration-canyon); *see also* compilation of media reports by CNN, High
26 Country News, The Washington Post, and Business Insider available at the website administered by
27 The ECHO-Association at https://echo-association.com/?page_id=405, last edited on September 13,
28 2023 at 12:32 AM.

20 ²⁰ *See e.g., Ground Collapse and Fissures in Emigration Oaks PUD*, December 13, 2020, available at
the website administered by Google LLC
https://www.youtube.com/watch?time_continue=4&v=r3YsR6dPktM&embeds_referring_euri=https%3A%2F%2Fecho-association.com%2F&source_ve_path=MzY4NDIsMjg2NjY&feature=emb_logo;
see also Utah Division of Water Rights public hearing for permanent change applications no. a44045
(57-7796), December 18, 2018, available at the website administered by Google LLC
<https://www.youtube.com/watch?v=2bEPqIzQ9gc>.

21 ²¹ Any additional factual argument advanced in the Memo, including speculative “motives” of the
Plaintiff, not supported by a declaration under penalty of perjury under the laws of California is
inadmissible hearsay. *Kulshrestha v. First Union Commercial Corp.*, 33 Cal.4th 601, 610 (2004).

1 **C. Defendant Gardner Failed to Identify a Compelling Reason to Defeat Jurisdiction**

2 Once it has been decided that a defendant purposefully established minimum contacts within the
3 forum State, these contacts may be considered in light of other factors to determine whether the assertion
4 of personal jurisdiction would comport with “fair play and substantial justice.” *International Shoe Co.*
5 *v. Washington*, 326 U.S. at 320.

6 In this regard, the court may evaluate “the burden on the defendant,” “the forum State’s interest
7 in adjudicating the dispute,” “the plaintiff’s interest in obtaining convenient and effective relief,” “the
8 interstate judicial system’s interest in obtaining the most efficient resolution of controversies,” and the
9 “shared interest of the several States in furthering fundamental substantive social policies.” *World-Wide*
10 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980).

11 In the present case, Defendant Gardner have cited no hinderance or burden in adjudicating the
12 present action before this Court and given the purposeful tortious conduct by the Defendant both within
13 and directed towards residents of California, a “compelling reason” required to defeat this Court’s
14 jurisdiction remains to date undiscernible.²²

15 **V. The Court Should Stay the Motion if Any Compelling Reason Should Arise**

16 Should Defendant Gardner make a compelling case that the exercise of jurisdiction by this Court
17 is unreasonable, it is long established that a trial court has discretion to continue the hearing on a motion
18 to quash service of summons for lack of personal jurisdiction to allow plaintiff sufficient time to conduct
19 discovery on jurisdictional issues. *HealthMarkets, Inc. v. Superior Court*, 171 Cal.App.4th 1160, 1173
20 (2009).

21 In order to prevail on a motion for a continuance for jurisdictional discovery, “the plaintiff should
22 demonstrate that discovery is likely to lead to the production of evidence of facts establishing

23 ²² The vexatious litigant order, repeatedly cited by Defendant Gardner’s attorney-of-record Sarah
24 Burns, Codefendants Cohne Kinghorn P.C., Utah Attorney Jeremy Cook, Gary A. Bowen,
25 Codefendant Paul Handy Brown’s attorney-of-record Miguel Mendez-Pintado, drafted by
26 Codefendant Utah Attorney Jeremy Rand Cook, and executed by Utah Third District Court Judge
27 Mark Kouris during appellate proceedings before the Utah Supreme Court, provides no evidence how
28 the exercise of personal jurisdiction by this Court poses a burden to Defendant Gardner. *See e.g.*, 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); *see also* Tracy Decl. ¶ 5, Exhibit B.

1 jurisdiction.” *In re Automobile Antitrust Cases I & II*, 135 Cal.App.4th 100, 127 (2005).

2 In the present case, following similar attempts to defeat of this Court’s jurisdiction by
3 Codefendants Paul Handy Brown and Gary A. Bowen, Mr. Tracy served Notice of Disposition and
4 Request for Production of Documents on January 17, and January 19 reasonably calculated to evidence
5 minimum contact with the forum state should the Court rule that jurisdictional objections were not
6 waived. *See* Tracy Decl. ¶ 7, Exhibit D and ¶ 8, Exhibit E.

7 Similar discovery notice for Defendant Gardner will be served at the earliest opportunity.

8 **CONCLUSION**

9 Based on the foregoing reasons, Mr. Tracy respectfully requests that the Court deny Defendant
10 Gardner’s motion to quash service of process for lack of personal jurisdiction in its entirety, or in the
11 alternative, stay the Motion for 180 days to allow for discovery of any material, contested jurisdictional
12 fact properly submitted to the Court.

13 //

14 //

15 DATED: February 6, 2024

By: 

Mark Christopher Tracy
Pro Se Plaintiff

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037
--
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
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--
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7 Pro Se Plaintiff

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 2/6/2024 6:07 AM
Reviewed By: A. Floresca
Case #23CV423435
Envelope: 14324715**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11
12 MARK CHRISTOPHER TRACY, an
individual,
13 Plaintiff,
14 v.
15 COHNE KINGHORN PC, a Utah Professional
Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
individual; ERIC HAWKES, an individual;
17 JENNIFER HAWKES, an individual;
18 MICHAEL SCOTT HUGHES, an individual;
DAVID BRADFORD, an individual; KEM
19 CROSBY GARDNER, an individual; WALTER
J. PLUMB III, an individual; DAVID
20 BENNION, an individual; R. STEVE
CREAMER, an individual PAUL HANDY
21 BROWN, an individual; GARY A. BOWEN, an
22 individual
23 Defendants.

Case No.: 23CV423435
Honorable Evette D. Pennypacker
[Dept. 6]
**DECLARATION OF MARK
CHRISTOPHER TRACY IN SUPPORT OF
MEMORANDUM AND POINTS OF
AUTHORITY IN OPPOSITION TO
DEFENDANT KEM CROSBY GARDNER’S
MOTION TO QUASH SERVICE OF
PROCESS FOR LACK OF PERSONAL
JURISDICTION**
Hearing Date: February 20, 2024
Time: 09:00 am (PST)
Action Filed: September 21, 2023
Trial Date: TBD

24 I, Mark Christopher Tracy, declare as follows:

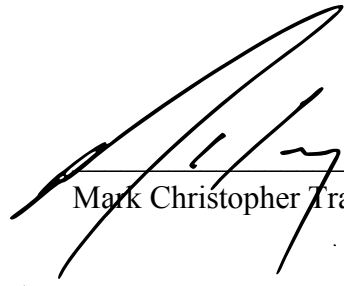
- 25 1. I am party to the action herein. I am over the age of eighteen and competent to testify. I have
26 personal knowledge of the information set forth below, unless noted as information and belief, all
27 of which is true and correct of my own personal knowledge, and if called to testify, I would
28 competently testify thereto.

- 1 2. I have been a resident of the State of California since September 2009.
- 2 3. Attached hereto as **Exhibit A** is a true and correct copy of the “NOTICE OF HEARING ON
3 SPECIALLY APPEARING DEFENDANT KEM C. GARDNER’S MOTION TO QUASH
4 SERVICE OF SUMMONS AND COMPLAINT FOR LACK OF PERSONAL JURISDICTION”
5 received via email correspondence on January 24, 2024 at 5:16:26 PM PST from Aysha D. Lewis
6 at AyshaLewis@dwt.com on behalf of Thomas Burke, attorney-of-record for Defendant Gardner.
- 7 4. On October 28, 2023, I purchased a non-refundable round-trip flight from Los Angeles, California
8 to Frankfurt am Main, Germany under United Airlines itinerary no. 0168024348536, scheduled to
9 depart on February 13 and returning on February 21, 2024. As the hearing on the motion to Quash
10 Service of Summons and Complaint for Lack of Personal Jurisdiction was scheduled by the court
11 clerk of the Superior Court for the County of Santa Clara on behalf of Defendant Gardner by
12 Attorney of Record Thomas Burke sometime on or before January 22, 2024, without my
13 knowledge or prior consultation, I was forced to cancel all arrangements for the aforementioned
14 business trip and therewith incurred costs and expenses in the amount of \$1,680.00 to date.
- 15 5. Attached hereto as **Exhibit B** is a true and correct copy of the email correspondence dated January
16 30, 2024 at 2:36:44 PM PST from Sarah Burns, attorney-of-record for Defendant Gardner
17 regarding a Notice of Motion for Court Sanctions.
- 18 6. Attached hereto as **Exhibit C** is a true and correct copy of the email correspondence dated January
19 30, 2024 at 2:36:44 PM PST to Sarah Burns and Thomas Burke, attorneys-of-record for Defendant
20 Gardner regarding a proposed Consent to Electronic Service of Process. Neither response nor
21 requested verification of email addresses was received.
- 22 7. Attached hereto as **Exhibit D** is a true and correct copy of the NOTICE OF TAKING OF
23 DEPOSITION OF DEFENDANT GARY BOWEN AND REQUEST FOR PRODUCTION OF
24 DOCUMENTS, dated January 17, 2023.
- 25 8. Attached hereto as **Exhibit E** is a true and correct copy of the NOTICE OF TAKING OF
26 DEPOSITION OF DEFENDANT PAUL HANDY BROWN AND REQUEST FOR
27 PRODUCTION OF DOCUMENTS, dated January 19, 2023.

28 //

1 9. I declare under penalty of perjury under the laws of the State of California that the foregoing is true
2 and correct. This Declaration was executed on the 6th day of February 2024, in Carlsbad,
3 California.

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7 _____
8 Mark Christopher Tracy

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Document received by the CA 6th District Court of Appeal.

EXHIBIT A

1 THOMAS R. BURKE (CA State Bar No. 141930)
2 SARAH E. BURNS (CA State Bar No. 324466)
3 DAVIS WRIGHT TREMAINE LLP
4 50 California Street, 23rd Floor
5 San Francisco, California 94111-4701
6 Telephone: (415) 276-6500
7 Facsimile: (415) 276-6599
8 Email: thomasburke@dwt.com
9 sarahburns@dwt.com

10 Attorneys for Defendant Kem Crosby Gardner

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

MARK CHRISTOPER TRACY, an individual,
Plaintiff,

v.

COHNE KINGHORN PC, a Utah Professional Corporation; SIMPLIFI COMPANY, a Utah Corporation; JEREMY RAND COOK, an individual; ERIC HAWKES, an individual; JENNIFER HAWKES, an individual; MICHAEL SCOTT HUGHES, an individual; DAVID BRADFORD, an individual; KEM CROSBY GARDNER, an individual; WALTER J. PLUMB III, an individual; DAVID BENNION, an individual; R. STEVE CREAMER, an individual; PAUL BROWN, an individual; GARY BOWEN, an individual,
Defendants.

Case No. 23CV423435

NOTICE OF HEARING ON SPECIALLY-APPEARING DEFENDANT KEM C. GARDNER'S MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT FOR LACK OF PERSONAL JURISDICTION

[Motion to Quash Service of Summons and Complaint and Declarations of Kem C. Gardner and Sarah E. Burns previously filed]

Judge: The Hon. Evette Pennypacker
Department: 06

Date: February 20, 2024
Time: 9:00 a.m.

Complaint Filed: September 21, 2023

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT the hearing on specially-appearing defendant Kem C. Gardner’s previously-filed Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction has been set for February 20, 2024, at 9 a.m., in Department 6 of the Superior Court of California, County of Santa Clara, located at 191 N. First Street, San Jose, CA 95113.

DATED: January 22, 2024


Respectfully submitted,

zDAVIS WRIGHT TREMAINE LLP

By: 
THOMAS R. BURKE
SARAH E. BURNS

Attorneys for Specially-Appearing Defendant
Kem C. Gardner

EXHIBIT B

From: Burns, Sarah SarahBurns@dwt.com 
Subject: RE: Notice of Motion for Court Sanctions - Tracy v. Cohne Kinghorn PC et al. (California Superior Court for the County of Santa Clara, Case No. 23CV423435)
Date: January 30, 2024 at 2:36 PM
To: relator72@icloud.com, Burke, Thomas THOMASBURKE@dwt.com
Cc: Mark Christopher Tracy m.tracy@echo-association.com, mark.tracy72@gmail.com



Good afternoon,

We have reviewed the issues you identify below, and have found no grounds for a successful sanctions motion.

Our motion papers did not list a hearing date because Santa Clara County procedure requires that you not include one, and instead wait for the clerk to provide one. The clerk has since done so, and you were timely served with notice of the February 20, 2024 hearing. See Cal. Civ. Pro. 1005(b) (requiring notice be served 16 court days in advance of the hearing). The clerk did at some point reject our filing for failure to have a notice of motion, but that was the clerk's error, because our papers did contain a notice of motion, and the clerk corrected the error on its own.

We have also investigated the purported "falsities" you identified in the Gardner declaration, and remain confident the declaration is true.

Your threat to file a motion for sanctions is ill advised and should be dropped.

Best,
Sarah

Sarah Burns
Associate, Davis Wright Tremaine LLP

P 415.276.4892 E sarahburns@dwt.com
A 50 California Street, 23rd Floor, San Francisco, CA 94111
DWT.COM

From: relator72@icloud.com <relator72@icloud.com>
Sent: Sunday, January 21, 2024 8:20 AM
To: Burke, Thomas <THOMASBURKE@dwt.com>; Burns, Sarah <SarahBurns@dwt.com>
Cc: Mark Christopher Tracy <m.tracy@echo-association.com>; mark.tracy72@gmail.com
Subject: Notice of Motion for Court Sanctions - Tracy v. Cohne Kinghorn PC et al. (California Superior Court for the County of Santa Clara, Case No. 23CV423435)

[EXTERNAL]

[Download full resolution images](#)
[Available until Feb 20, 2024](#)

Mr. Burke & Ms. Burns,

Prior to filing a motion for court sanctions in the above-captioned matter, I am required to provide your law firm with the following notice per CCP 128.7(c)(1).

Firstly, it appears that your Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction and Inconvenient Forum dated December 29, 2023 (hereafter "Motion"), violated California court rules as follows:

Document received by the CA 6th District Court of Appeal.

- the Notice of Motion required under California Rules of the Court Rule 3.1110(b) did not record a time and date of the hearing;
- you failed to inform me of the hearing scheduled with the California Superior Court on February 20, 2024 within 16 court days as required under CCP 1005(b); and lastly
- you failed to inform me that the court clerk had rejected your motion on January 2, 2024 for failing to include the motion in the filing envelope (see Civil Filing Rejection Letter, attached as **Exhibit A**).

Second, although irrelevant to the present motion, and contrary to the sworn declaration of Sarah Burns, the Amended Judgement executed by Utah State Judge Mark Kouris and prepared by **Co-Defendant Jerney R. Cook** was issued during appellate proceedings and is thus null and void for lack of jurisdiction. See e.g., 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).

Third, although perhaps unbeknownst to you at the time of filing your Motion, your client executed a sworn declaration, which appear to be demonstrably false as follows:

- Contrary to your Motion and sworn declaration No. 3, **Defendant Kem Crosby Gardner** did pay California property taxes to the San Diego County Tax Collector on October 23, 2023 (see attached screenshot dated January 3, 2024 at 7:47 am, attached as **Exhibit B**;
- Contrary to your Motion and sworn declaration No. 4, **Defendant Kem Crosby Gardner** owns (or did own) a percentage interest in two (2) radio stations located in the State of California (see attached decision of the Federal Communications Commission, attached as **Exhibit C**);
- Contrary to your Motion and sworn declaration No. 6, **Defendant Kem Crosby Gardner** appears to have maintained an office at The Boyer Company as late as May 4, 2004 and continues to co-own properties most likely located in the State of California with the same (see Desert News article "Gardner to leave Boyer Co.," attached as **Exhibit D**; and lastly,
- Contrary to your Motion and sworn declaration No. 3, **Defendant Kem Crosby Gardner**, appears to have extensive and continuous business conduct in the State of California through the companies The Boyer Company, the Gardner Group, and rPlus Energies, (see *id*; see also screenshots of the Gardner Group website, attached as **Exhibit E**).

I trust your law firm will conduct proper due diligence of the issues identified above and either withdraw the Motion in its entirety or clarify the court record prior to close of business on **February 12, 2024**.

However, if you do not intend to withdraw the Motion and/or clarify the court record, please contact me at the number below for a meet and confer regarding a mutually agreeable hearing date per Local Rule 8(A) at your earliest convenience, but prior to close of business on **January 30, 2024** to allow sufficient time to prepare and file a memorandum in opposition.

Please feel free to contact me if you have any questions.

Hochachtungsvoll (Kindest and Most Respectful Regards),

Mark Christopher Tracy

Tel. 929-208-6010

Exhibit A:

[Click to Download](#)
++Clerk Rejection Letter.pdf
48 KB

Exhibit B:



Exhibit C:

[Click to Download](#)
+Gardner - FCC Ruling.pdf
15.2 MB

Exhibit D:

[Click to Download](#)
+++Gardner to leave Boyer Co. - Deseret News.pdf
1.9 MB

Exhibit E:

[Click to Download](#)
++++Gardner - California Business Interests.pdf
11.8 MB

EXHIBIT C

From: Mark Christopher Tracy mark.tracy72@gmail.com
Subject: Verification of Gardner Declaration & Consent to Electronic Service of Process. (Tracy v. Kinghorn et al. - Santa Clara Superior Court, Case No. 23CV423435)
Date: December 30, 2023 at 9:40 AM
To: SarahBurns@dwt.com, THOMASBURKE@dwt.com
Cc: mark.tracy72@gmail.com



Ms. Burns & Mr. Burke,

Thank-you for the electronic courtesy copy of your motion to Quash Service of Summons filed on behalf of Defendant Kem Crosby Gardner in the above-captioned matter. I will verify the factual representations submitted to the Court by your client at my earliest opportunity.

Please note that I hereby consent to electronic service for future filings pursuant to CCP § 1010.6 (c)(2) when addressed to both "m.tracy@echo-association.com" and "mark.tracy72@gmail.com" and request confirmation of "SarahBurns@dwt.com" and "THOMASBURKE@dwt.com" as your electronic service addresses per subsection (b)(3).

I look forward to working with you for an expedite resolution of this matter at the earliest opportunity.

Enjoy your New Year's celebrations!

Hochachtungsvoll (Kindest and Most Respectful Regards),

Mark Christopher Tracy
Tel. 929-208-6010

Begin forwarded message:

From: "Burns, Sarah" <SarahBurns@dwt.com>
Date: 29. December 2023 at 16:16:02 GMT-8
To: m.tracy@echo-association.com
Cc: "Burke, Thomas" <THOMASBURKE@dwt.com>
Subject: Tracy v. Kinghorn - Santa Clara Case No. 23CV423435

Good evening,

Please see attached.

Thanks,
Sarah

<image001.png>

Sarah Burns
Associate | Davis Wright Tremaine LLP
P 415.276.4892 E sarahburns@dwt.com
A 50 California Street, 23rd Floor, San Francisco, CA 94111

DWT.COM

<image003.png>

<image005.png>

<2023-12-29 Motion to Quash Service of Summons.pdf>
<2023-12-29 Declaration of Sarah Burns ISO Motion to Quash.pdf>
<20231229124353966.pdf>
<Proof of Service_Motion to Quash.pdf>

Document received by the CA 6th District Court of Appeal.

EXHIBIT D

Document received by the CA 6th District Court of Appeal.

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037

3 --
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany

5 --
5 Email: m.tracy@echo-association.com
6 Telephone: +1 (929) 208-6010
+49 (0)172 838 86 37

7 Pro Se Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 MARK CHRISTOPHER TRACY, an individual;
12 Plaintiff,

13 v.

14 COHNE KINGHORN PC, a Utah Professional
15 Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
17 ERIC HAWKES, an individual;
18 JENNIFER HAWKES, an individual; MICHAEL
19 SCOTT HUGHES, an individual; DAVID
20 BRADFORD, an individual; KEM CROSBY
21 GARDNER, an individual; WALTER J.
22 PLUMB III, an individual; DAVID BENNION, an
individual; R. STEVE CREAMER, an individual
PAUL BROWN, an individual; GARY BOWEN,
an individual,

Defendants.

Case No.: 23CV423435

Honorable Evette D. Pennypacker
[Dept. 6]

**NOTICE OF TAKING OF DEPOSITION
OF GARY BOWEN AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

Date of Deposition: February 13, 2024
Time: 09:00 am (MST)
Place: 350 E. 400 S. Rm. 2A
Salt Lake City, Utah 84111

Action Filed: September 21, 2023
Trial Date: TBD

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to California Code of Civil Procedure §2025.210
2025.280, Plaintiff will take the deposition of Defendant Gary Bowen on February 13, 2024, at 09:00
am MST located at 350 S. 400 S., Rm. 2A, Salt Lake City, Utah 84111, in the above-entitled matter. If
the deposition is not completed on the date set out above, the taking of the deposition will continue from
day to day, excluding weekends and legal holidays, thereafter until completed.

1 This deposition will be taken upon oral examination before any notary public or other officer duly
2 commissioned by the State of California to administer oaths by stenographic method. Plaintiff reserves
3 the right to record the deposition testimony by videotape for use at trial, pursuant to California Code of
4 Civil Procedure section 2025.220(a)(6). If the services of an interpreter are needed, please notify the
5 undersigned immediately.

6 NOTICE IS FURTHER GIVEN that, pursuant to California Code of Civil Procedure Sections
7 2025.220(a)(4) and 2025.280(a) and (c), DEFENDANT is required to produce the documents, records
8 and other materials described below, which are in his possession, or under the custody or control of any
9 of his agents, representatives, and/or attorneys on or before the date and time set forth for his deposition.
10 The documents to be produced by DEFENDANT are as follows:

11 **DEFINITIONS**

12 A. "PERSON(S)" includes any natural person, firm, association, organization, partnership,
13 business, trust, corporation, governmental or public entity or any other form of legal entity.

14 B. "DOCUMENT" or "DOCUMENTS" shall mean all documents, electronically stored
15 information, and tangible things, including without limitation all writings (as defined in Section 250 of
16 the California Evidence Code) and all other means of recording information, whether written,
17 transcribed, taped, filmed, microfilmed, or in any other way produced, reproduced, or recorded, and
18 including but not limited to: originals, drafts, computer-sorted and computer-retrievable information,
19 copies and duplicates that are marked with any notation or annotation or otherwise differ in any way
20 from the original, correspondence, memoranda, reports, notes, minutes, contracts, agreements, books,
21 records, checks, vouchers, invoices, purchase orders, ledgers, diaries, logs, calendars, computer
22 printouts, computer disks, card files, lists of persons attending meetings or conferences, sketches,
23 diagrams, calculations, evaluations, analyses, directions, work papers, press clippings, sworn or unsworn
24 statements, requisitions, manuals or guidelines, audit work papers, financial analyses, tables of
25 organizations, charts, graphs, indices, advertisements and promotional materials, audited and unaudited
26 financial statements, trade letters, trade publications, newspapers and newsletters, photographs, emails,
27 electronic or mechanical records, facsimiles, telegrams and telecopies, and audiotapes. Each draft,
28 annotated, or otherwise non-identical copy is a separate DOCUMENT within the meaning of this term.

1 DOCUMENTS shall also include any removable sticky notes, flags, or other attachments affixed to any
2 of the foregoing, as well as the files, folder tabs, and labels appended to or containing any documents.
3 DOCUMENTS expressly include all ELECTRONIC RECORDS.

4 C. "COMMUNICATION(S)" means any oral, written or electronic transmission of
5 information, including but not limited to meetings, discussions, conversations, telephone calls,
6 telegrams, memoranda, letters, teletypes, telexes, conferences, messages, notes or seminars.

7 D. "RELATING TO," "RELATED TO" or "RELATE(S) TO" means constituting,
8 containing, concerning, embodying, reflecting, identifying, stating, mentioning, discussing, describing,
9 evidencing, or in any other way being relevant to that given subject matter.

10 E. "PLAINTIFF" shall mean PLAINTIFF Mark Christopher Tracy.

11 F. "DEFENDANT," "YOU" and "YOUR" shall mean Defendant Gary Bowen.

12 G. "SUBJECT INCIDENT" means and refers to the incident as described in Plaintiff's
13 Complaint upon which this suit is founded.

14 H. "DEFENDANTS" shall mean all Defendants to the present action.

15 **REQUEST FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 1:**

17 All DOCUMENTS and COMMUNICATIONS concerning or RELATED TO federal False
18 Claims Act litigation and water-right change applications identified in the SUBJECT INCIDENT sent
19 from or received by DEFENDANT including but not limited to the email addresses
20 "garybowenauthor@gmail.com" and "agarybowen@msn.com."

21 **REQUEST FOR PRODUCTION NO. 2:**

22 A copy of YOUR cell phone records, including times and dates of text messages sent to or
23 received from news media outlets including but not limited to correspondent Emma Penrod of High
24 County News and Salt Lake Tribune journalist Brian Maffly.

25 **REQUEST FOR PRODUCTION NO. 3:**

26 All DOCUMENTS and COMMUNICATIONS sent to or received from Defendants by YOU as
27 RELATED TO news media outlets including but not limited to writer Emma Penrod of High County
28 News and Salt Lake Tribune journalist Brian Maffly.

1 **REQUEST FOR PRODUCTION NO. 4:**

2 All DOCUMENTS and COMMUNICATIONS related to culinary drinking water service and
3 contamination thereof sent to or received from managers, consultants, and/or independent contractors
4 of Emigration Improvement District (aka Emigration Canyon Improvement District)(hereafter "EID")
5 by YOU.

6 **REQUEST FOR PRODUCTION NO. 5:**

7 All DOCUMENTS and COMMUNICATIONS received from or transmitted to Defendants by
8 YOU including EID general manager Fred Smolka of Management Enterprises Inc.

9 **REQUEST FOR PRODUCTION NO. 6:**

10 All DOCUMENTS and COMMUNICATIONS related to payment of monies to or from accounts
11 drawn to or from Defendants including EID by YOU.

12 **REQUEST FOR PRODUCTION NO. 7:**

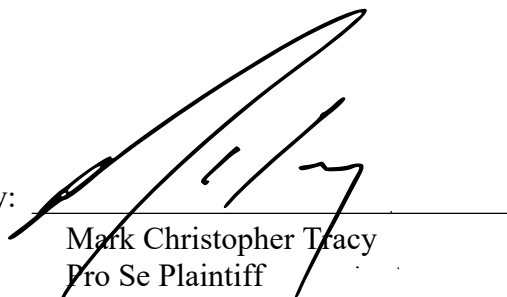
13 All DOCUMENTS and COMMUNICATIONS related to the demand for payment to or from
14 Defendants including EID.

15 //

16 //

17 DATED: January 17, 2024

By:



Mark Christopher Tracy
Pro Se Plaintiff

Mark Christopher Tracy
Pro Se Plaintiff

Document received by the CA 6th District Court of Appeal.

EXHIBIT E

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037
--
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany
--
5 Email: m.tracy@echo-association.com
Telephone: +1 (929) 208-6010
6 +49 (0)172 838 86 37
7 Pro Se Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 MARK CHRISTOPHER TRACY, an individual;
12 Plaintiff,

13 v.

14 COHNE KINGHORN PC, a Utah Professional
15 Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
17 individual; ERIC HAWKES, an individual;
18 JENNIFER HAWKES, an individual; MICHAEL
19 SCOTT HUGHES, an individual; DAVID
20 BRADFORD, an individual; KEM CROSBY
21 GARDNER, an individual; WALTER J.
22 PLUMB III, an individual; DAVID BENNION, an
23 individual; R. STEVE CREAMER, an individual
24 PAUL HANDY BROWN, an individual; and
25 GARY BOWEN an individual,

26 Defendants.

Case No.: 23CV423435

Honorable Evette D. Pennypacker
[Dept. 6]

**NOTICE OF TAKING OF DEPOSITION
OF DEFENDANT PAUL HANDY BROWN
AND REQUEST FOR PRODUCTION OF
DOCUMENTS**

Date of Deposition: February 15, 2024
Time: 09:00 am (MST)
Place: 350 E. 400 S. Rm. 2A
Salt Lake City, Utah 84111

Action Filed: September 21, 2023
Trial Date: TBD

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, pursuant to California Code of Civil Procedure §2026.010 in connection with §§2025.010 – 2025.280, Plaintiff will take the deposition of Defendant Paul Handy Brown on February 15, 2024, at 09:00 am (MST) located at 350 S. 400 S., Rm. 2A, Salt Lake City, Utah 84111, in the above-entitled matter. If the deposition is not completed on the date set out above, the

1 taking of the deposition will continue from day to day, excluding weekends and legal holidays, thereafter
2 until completed.

3 This deposition will be taken upon oral examination before any notary public or other officer duly
4 authorized to administer oaths by the laws of the United States or those of the place where the
5 examination is to be held by stenographic method. Plaintiff reserves the right to record the deposition
6 testimony by videotape for use at trial, pursuant to California Code of Civil Procedure §2025.220(a)(6).
7 If the services of an interpreter are needed, please notify the undersigned immediately.

8 NOTICE IS FURTHER GIVEN that, pursuant to California Code of Civil Procedure
9 §§2025.220(a)(4) and 2025.280(a) and (c), DEFENDANT is required to produce the documents, records
10 and other materials described below, which are in his possession, or under the custody or control of any
11 of his agents, representatives, and/or attorneys on or before the date and time set forth for his deposition.

12 The documents to be produced by DEFENDANT are as follows:

13 **DEFINITIONS**

14 A. "PERSON(S)" includes any natural person, firm, association, organization, partnership,
15 business, trust, corporation, governmental or public entity or any other form of legal entity.

16 B. "DOCUMENT" or "DOCUMENTS" shall mean all documents, electronically stored
17 information, and tangible things, including without limitation all writings (as defined in Section 250 of
18 the California Evidence Code) and all other means of recording information, whether written,
19 transcribed, taped, filmed, microfilmed, or in any other way produced, reproduced, or recorded, and
20 including but not limited to: originals, drafts, computer-sorted and computer-retrievable information,
21 copies and duplicates that are marked with any notation or annotation or otherwise differ in any way
22 from the original, correspondence, memoranda, reports, notes, minutes, contracts, agreements, books,
23 records, checks, vouchers, invoices, purchase orders, ledgers, diaries, logs, calendars, computer
24 printouts, computer disks, card files, lists of persons attending meetings or conferences, sketches,
25 diagrams, calculations, evaluations, analyses, directions, work papers, press clippings, sworn or unsworn
26 statements, requisitions, manuals or guidelines, audit work papers, financial analyses, tables of
27 organizations, charts, graphs, indices, advertisements and promotional materials, audited and unaudited
28 financial statements, trade letters, trade publications, newspapers and newsletters, photographs, emails.

1 electronic or mechanical records, facsimiles, telegrams and teletypes, and audiotapes. Each draft,
2 annotated, or otherwise non-identical copy is a separate DOCUMENT within the meaning of this term.
3 DOCUMENTS shall also include any removable sticky notes, flags, or other attachments affixed to any
4 of the foregoing, as well as the files, folder tabs, and labels appended to or containing any documents.
5 DOCUMENTS expressly include all ELECTRONIC RECORDS.

6 C. "COMMUNICATION(S)" means any oral, written or electronic transmission of
7 information, including but not limited to meetings, discussions, conversations, telephone calls,
8 telegrams, memoranda, letters, teletypes, telexes, conferences, messages, notes or seminars.

9 D. "RELATING TO," "RELATED TO" or "RELATE(S) TO" means constituting,
10 containing, concerning, embodying, reflecting, identifying, stating, mentioning, discussing, describing,
11 evidencing, or in any other way being relevant to that given subject matter.

12 E. "PLAINTIFF" shall mean PLAINTIFF Mark Christopher Tracy.

13 F. "DEFENDANT," "YOU" and "YOUR" shall mean Defendant Paul Handy Brown.

14 G. "SUBJECT INCIDENT" means and refers to the incident as described in Plaintiff's
15 Complaint upon which this suit is founded.

16 H. "DEFENDANTS" shall mean all named Defendants to the present action.

17 **REQUEST FOR PRODUCTION**

18 **REQUEST FOR PRODUCTION NO. 1:**

19 All DOCUMENTS and COMMUNICATIONS concerning or RELATED TO federal False
20 Claims Act litigation and water rights identified in the SUBJECT INCIDENT sent from or received by
21 DEFENDANT including but not limited to the email addresses "paulhandybrown@gmail.com" and
22 "paul.h.brown@verizon.net" and "eopoapresident@gmail.com."

23 **REQUEST FOR PRODUCTION NO. 2:**

24 A copy of YOUR phone records, including times and dates of text messages sent to Defendants
25 including managers, consultants, and/or independent contractors of Emigration Improvement District
26 (aka Emigration Canyon Improvement District)(hereafter "EID"), the Mount Olivet Cemetery
27 Association (hereafter "Mt. Olivet"), the Pioneer Fork Owners Association (hereafter "PFOA"), and the
28 Emigration Oaks Property Owners Association, Inc. (hereafter "EOPOA").

1 **REQUEST FOR PRODUCTION NO. 3:**

2 A copy of YOUR state-issued licenses including documents prepared by religious organizations
3 including but not limited to The Church of Jesus Christ of Latter-day Saints (aka Mormon Church)
4 recording YOUR place of residency, membership, functions, and responsibilities.

5 **REQUEST FOR PRODUCTION NO. 4:**

6 All DOCUMENTS and COMMUNICATIONS related to culinary drinking water service and/or
7 contamination thereof sent to or received from persons including but not limited to managers,
8 consultants, and/or independent contractors of EID.

9 **REQUEST FOR PRODUCTION NO. 5:**

10 All DOCUMENTS and COMMUNICATIONS related to the observance, documentation, repair
11 and/or restoration of fissures, ground erosion and subsidence in Emigration Canyon including but not
12 limited to Defendants and managers, consultants, and/or independent contractors of EID.

13 **REQUEST FOR PRODUCTION NO. 6:**

14 All DOCUMENTS and COMMUNICATIONS received from or transmitted to Defendants by
15 YOU including EID general manager Fred Smolka of Management Enterprises Inc., Mt. Olivet, and
16 PFOA.

17 **REQUEST FOR PRODUCTION NO. 7:**

18 All DOCUMENTS and COMMUNICATIONS related to payment of monies to or from accounts
19 drawn to or from Defendants including EID by YOU.

20 **REQUEST FOR PRODUCTION NO. 8:**

21 All DOCUMENTS and COMMUNICATIONS related to the demand for payment to or from
22 Defendants including EID from YOU.

23 **REQUEST FOR PRODUCTION NO. 9:**

24 All DOCUMENTS and COMMUNICATIONS related to the access and/or development of
25 properties in Emigration Canyon located in Salt Lake County, Utah sent to or received from persons
26 including but not limited to Defendant R. Steve Creamer, and members of the PFOA, and EOPOA.

27 //

28 //

1 **REQUEST FOR PRODUCTION NO. 10:**

2 All DOCUMENTS and COMMUNICATIONS sent to or received from property owners and
3 residents of the EOPOA, and PFOA, including but not limited to meeting minutes, audio recordings and
4 resolutions during your tenure as a board member of the same.

5 //

6 //

7 DATED: January 19, 2024

By: 

Mark Christopher Tracy
Pro Se Plaintiff

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Document received by the CA 6th District Court of Appeal.