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

10 MARK CHRISTOPHER TRACY, an  
11 individual,

12 Plaintiff,

13 v.

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

26 Defendants.

Case No. 23CV423435

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
SPECIALLY APPEARING DEFENDANT  
PAUL BROWN'S MOTION TO QUASH  
SERVICE OF SUMMONS AND  
COMPLAINT FOR LACK OF PERSONAL  
JURISDICTION AND MOTION TO  
DISMISS FOR INCONVENIENT FORUM**

**Date:**  
**Time:**  
**Dept:**  
**Judge:** The Honorable

1 **I. INTRODUCTION**

2 The Court lacks personal jurisdiction over Specially Appearing Defendant Paul Brown  
3 (“Brown”) because Brown is a resident of the State of Utah, is not a resident of the State of  
4 California, and Plaintiff’s claims against Brown allege facts occurring exclusively in the State of  
5 Utah. Plaintiff cannot meet his burden of proof in establishing that Brown has the requisite contact  
6 with California sufficient to establish personal jurisdiction. In the alternative, because all of the  
7 events identified in the Complaint allegedly occurred in Utah, Brown respectfully requests that the  
8 Court should find that in the interest of substantial justice, this action should be dismissed on the  
9 ground of inconvenient forum.

10 Plaintiff has spent the past several years engaging in futile and vexatious litigations against a  
11 Utah governmental entity and its members, officers, and attorneys before both state and federal  
12 courts in Utah. The Utah entity at issue – the Emigration Canyon Improvement District (“EID”) –  
13 is a small public entity that has the authority to provide water and sewer services to residents within  
14 Emigration Canyon, which is located in Salt Lake County, Utah. Both federal and state courts in  
15 Utah have sanctioned Plaintiff for vexatious litigation practices in cases factually related to this  
16 action. Additionally, as a result of Plaintiff’s meritless claims in Utah concerning EID and its  
17 officers, a state court in Utah has declared Plaintiff to be a “vexatious litigant,” precluding him from  
18 filing suit in Utah state courts absent permission from the presiding Judge of Utah’s Third District  
19 Court in and for Salt Lake County.

20 Now Plaintiff seeks to litigate his claims in a new forum. However, Brown does not reside  
21 in California and has no significant connections with California. Accordingly, the Court lacks  
22 personal jurisdiction over Brown. Alternatively, this is the improper forum for a dispute relating  
23 only to Utah residents and conduct allegedly occurring in Utah. Accordingly, Brown respectfully  
24 requests that the Court quash service of summons on the ground of lack of personal jurisdiction  
25 pursuant to California Code of Civil Procedure § 418.10(a)(1). In the alternative, Brown  
26 respectfully requests that the Court dismiss this action on the ground of inconvenient forum  
27 pursuant to California Code of Civil Procedure § 418.10(a)(2).

1 **II. BACKGROUND**

2 Plaintiff’s Complaint acknowledges that Brown is a resident of Utah. (Compl. ¶ 18) The  
3 Complaint alleges that Brown is the former Co-Chair of the Emigration Canyon Community  
4 Council located in Utah. (*Id.* ¶¶ 8, 18) Plaintiff’s sole allegation against Brown is that Brown sent  
5 an email to the residents of Emigration Oaks PUD. (*Id.* ¶¶ 23, 76) According to the complaint,  
6 Emigration Oaks PUD is located in Salt Lake County, Utah. (*Id.* at ¶ 23) Brown is a resident of  
7 Utah and does not have any residential or business connections with California. (Declaration of  
8 Paul Brown.)

9 A majority of Plaintiff’s claims arise from the alleged conduct of the Emigration Oaks  
10 Defendants – identified in the Complaint as Kem Crosby Gardner, Walter J. Plumb III, and David  
11 M. Bennion – and EID. (*Id.* at ¶¶ 24-78) EID is not a named defendant in this action. The  
12 Complaint is completely devoid of any facts alleging that Brown was associated with any other  
13 named Defendant. Further, the Complaint lacks facts indicating that any Defendant, let alone  
14 Brown, did anything related to or directed at the State of California.

15 Plaintiff has previously been unsuccessful in litigating claims related to the facts alleged in  
16 this Complaint. In fact, in 2022, the United States Court of Appeals for the Tenth Circuit affirmed  
17 the United States District Court for the District of Utah’s issuance of sanctions against Plaintiff in a  
18 litigation against EID. (*United States Ex Rel. Tracy v. Emigration Improvement District* (10th Cir.,  
19 November 1, 2022) 2022 WL 16570934.) The District Court’s decision to impose sanctions was  
20 based on a finding that the litigation was “clearly vexatious and brought primarily for purposes of  
21 harassment.” (*Id.*) A copy of the Tenth Circuit’s Order is attached as **Exhibit A** to the Declaration  
22 of Miguel Mendez-Pintado. Further, as a sanction for vexatious litigation in related lawsuits,  
23 Plaintiff has been barred from filing any further actions in the State of Utah without permission  
24 from the presiding Judge of Utah’s Third District Court in and for Salt Lake County. *See Decision*  
25 *and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark*  
26 *Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil*  
27 *Procedure* (“Vexatious Litigant Order”). A copy of the Vexatious Litigant Order is attached as

1 **Exhibit B** to the Declaration of Miguel Mendez-Pintado.

2 **III. LEGAL ARGUMENTS**

3 A. California Code of Civil Procedure § 418.10(a)(1) – Lack of Personal Jurisdiction

4 Pursuant to California Code of Civil Procedure § 418.10(a)(1), a defendant may move the  
5 court for an order to quash service of summons on the ground of lack of personal jurisdiction.  
6 “When a nonresident defendant challenges personal jurisdiction, the plaintiff bears the burden of  
7 proof by a preponderance of the evidence to demonstrate that the defendant has sufficient minimum  
8 contacts with the forum state to justify jurisdiction.” (*DVI, Inc. v. Superior Court* (2002), 104  
9 Cal.App.4th 1080, 1090). The plaintiff must present facts demonstrating that the conduct of the  
10 defendants related to the pleaded cause of action is sufficient to constitute constitutionally  
11 cognizable “minimum contacts.” (*Id.*) Mere conclusory jurisdictional allegations are insufficient to  
12 make this showing. (*BBA Aviation PLC v. Superior Court* (2010) 190 Cal.App.4th 421, 429)

13 Under California’s long-arm statute, California state courts may exercise jurisdiction over  
14 nonresident defendants only if doing so would be consistent with the “Constitution of this state  
15 [and] of the United States.” (Code of Civil Procedure § 410.10) The statute “manifests an intent to  
16 exercise the broadest possible jurisdiction limited only by constitutional considerations.” (*Sibley v.*  
17 *Superior Court* (1976) 16 Cal.3d 442, 445) Accordingly, California’s long-arm statute allows state  
18 courts and local federal courts to exercise personal jurisdiction on any basis allowable under the  
19 Due Process Clause of the 5th Amendment. *Ratcliffe v. Pedersen* (1975) 51 Cal.App.3d 89,91)

20 The federal Constitution permits a state to exercise jurisdiction over a nonresident defendant  
21 if the defendant has sufficient “minimum contacts” with the forum such that “maintenance of the  
22 suit does not offend traditional notions of fair play and substantial justice.” (*International Shoe Co.*  
23 *v. Washington*, (1945) 326 U.S. 310, 316) “The substantial connection between the defendant and  
24 the forum State necessary for a finding of minimum contacts must come about by an action of the  
25 defendant purposefully directed toward the forum State.” (*Asahi Metal Industry Co. v. Superior*  
26 *Court* (1987) 480 U.S. 102, 112) “Personal jurisdiction is not determined by the nature of the  
27 action, but by the legal existence of the party and either its presence in the state or other conduct

1 permitting the court to exercise jurisdiction over the party.” (*Greener v. Workers’ Comp. Appeals*  
2 *Bd.* (1993) 6 Cal.4th 1028, 1035)

3 “Personal jurisdiction may be either general or specific.” (*Vons Companies, Inc. v. Seabest*  
4 *Foods, Inc.*, (1996) 14 Cal.4th 434, 445) A nonresident defendant is subject to a forum’s general  
5 jurisdiction when the defendant’s contacts are substantial continuous and systematic. (*Id.*) Such  
6 conduct must be so wide ranging that the defendant is essentially physically present within the  
7 forum. (*DVI*, 104 Cal.App.4th at 1090)

8 Absent such contacts, a defendant may be subject to specific personal jurisdiction if: (1)  
9 “the defendant has purposefully availed himself or herself of forum benefits” with respect to the  
10 matter in controversy, (2) the “controversy is related to or arises out of the defendant’s contacts  
11 with the forum” and (3) the exercise of jurisdiction would “comport with fair play and substantial  
12 justice.” (*Pavlovich v. Superior Court* (2002), 29 Cal.4th 262, 269 (internal quotations omitted)  
13 citing *Vons*, 14 Cal.4th at 446) The difference between specific and general jurisdiction is that  
14 specific jurisdiction requires the litigation to arise out of the defendant's conduct with the forum.  
15 (*Bristol-Myers Squibb Co. v. Superior Court of California*, (2017) 582 U.S. 255, 262) (“In other  
16 words, there must be an affiliation between the forum and the underlying controversy, principally,  
17 an activity or occurrence that takes place in the forum State and is therefore subject to the State’s  
18 regulation.”) (internal quotations omitted).

19 The purposeful availment inquiry focuses on the defendant’s “intentionality” and is satisfied  
20 “when the defendant purposefully and voluntarily directs his activities toward the forum so that he  
21 should, expect by virtue of the benefit he receives, to be subject to the court’s jurisdiction based on  
22 his contacts with the forum.” (*Pavlovich*, 29 Cal.4th at 269). The purposeful availment requirement  
23 is intended to ensure a defendant will not be haled into a jurisdiction solely as a result of “random,  
24 fortuitous, or attenuated” contacts, or as a result of the “unilateral activity” of another party or third  
25 person. (*Id.*) Purposeful availment asks whether the defendant’s “conduct and connection with the  
26 forum State are such that he should reasonably anticipate being haled into court there.” (*World-*  
27 *Wide Volkswagen Corp. v. Woodson*, (1980) 444 U.S. 286, 297) For the purpose of determining

1 personal jurisdiction, each defendant's contacts with the forum state must be assessed individually.  
2 (*Calder v. Jones*, (1984) 465 U.S. 783, 790)

3 Plaintiff's Complaint acknowledges that Brown is a resident of Utah. (Complaint, ¶ 18) The  
4 Complaint states that Emigration Oaks PUD is a residential PUD located in Utah. (Complaint, ¶ 23)  
5 Plaintiff's sole allegation against Brown is that Brown allegedly sent an email to the residents of  
6 Emigration Oaks PUD – a residential PUD in Utah (Complaint, ¶¶ 23, 76).

7 As an individual residing in Utah, Brown has not made any substantial, continuous and  
8 systematic contact with the State of California. The Complaint does not identify any conduct  
9 directed at the State of California or any residents of California. Accordingly, the Complaint fails to  
10 establish general jurisdiction as a basis for the Court's personal jurisdiction.

11 Additionally, the Complaint fails to allege any facts establishing that Brown purposefully  
12 availed himself of the benefits of this forum or that this this litigation arises from Brown's contact  
13 with California. Plaintiff's sole claim against Brown – a resident of Utah – was that he allegedly  
14 sent an email to residents of Emigration Oaks PUD – also in Utah. Accordingly, Brown's alleged  
15 conduct occurred in Utah and was directed at residents of Utah. The Complaint identifies no basis  
16 for specific personal jurisdiction in California. Additionally, even if the alleged email was sent to a  
17 resident of California, it is well established that this would be insufficient to confer personal  
18 jurisdiction. (*Axiom Foods, Inc. v. Acerchem International, Inc.*, (9th Cir. 2017) 874 F.3d 1064,  
19 1070 (holding that newsletters and emails not specifically targeted at California were insufficient to  
20 establish minimum contact with California), *Gray & Co., v. Firstenberg Machinery Co., Inc.*, (9th  
21 Cir. 1990) 913 F.2d 758, 760-61 (holding that phone calls and mailing invoices to a resident was  
22 insufficient contact with a forum to establish personal jurisdiction), *Burdick v. Superior Court*,  
23 (2015) 233 Cal.App.4th 8, 16 (adopting the Seventh Circuit's reasoning that sending email blasts  
24 failed to show a relation between the defendant and the forum))

25 Based on the foregoing, Plaintiff's Complaint fails to allege any conduct whatsoever by  
26 Brown in, directed to, or related to the State of California. Accordingly, the Court lacks personal  
27 jurisdiction over Brown. Brown respectfully requests that the Court quash service of summons and  
28

1 complaint in this action pursuant to California Code of Civil Procedure 418.10(a)(1).

2 B. California Code of Civil Procedure § 418.10(a)(2) – Inconvenient Forum

3 In the alternative, Brown respectfully requests that the Court dismiss this action on the  
4 grounds of inconvenient forum pursuant to California Code of Civil Procedure 418.10(2).

5 California Code of Civil Procedure 418.10(2) “permits a defendant challenging jurisdiction  
6 to object on inconvenient forum grounds if the defendant’s challenge to jurisdiction should be  
7 denied.” (*Global Financial Distributors, Inc. v. Superior Court*, (2019) 35 Cal.App.5th 179, 190)  
8 (internal quotations omitted) Forum non conveniens is an equitable doctrine, under which a court  
9 within its discretionary power may decline to exercise jurisdiction over a cause of action when the  
10 action may be more appropriately and justly tried elsewhere. (*Id.*) The Court must balance several  
11 factors including the availability of a suitable alternative forum, the private interests of the litigants  
12 and the public interest of the forum state. (*Cal-State Business Products & Services, Inc., v. Ricoh*,  
13 (1993) 12 Cal.App.4th 1666, 1675)

14 In the present action, the interests of justice support the dismissal of this action on the  
15 grounds of inconvenient forum. Each of the named Defendants in this action are residents of Utah,  
16 not California. The Complaint does not allege that any Defendant conducted business in California  
17 or had any contact with California. Further, Plaintiff’s claims arise from alleged conduct occurring  
18 exclusively in Utah. There are no facts in the Complaint that would indicate that the residents of  
19 California would benefit from the litigation of matters arising exclusively in Utah in a California  
20 Court. The circumstances of this action demonstrate that Utah is the more appropriate forum to  
21 adjudicate this action.

22 Based on the foregoing, Brown respectfully requests that if the Court denies Brown’s  
23 motion to quash service for lack of personal jurisdiction, the Court, in the alternative, dismiss this  
24 action under California Code of Civil Procedure 418.10(a)(2) on the ground of inconvenient forum.

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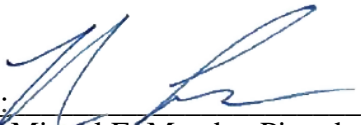
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**IV. CONCLUSION**

This Court lacks personal jurisdiction over Defendant Brown because Defendant Brown is a resident of Utah and has no connection to the State of California. Further, Plaintiff’s claims against Defendant Brown arise from alleged conduct occurring exclusively in Utah with no connection to California. Accordingly, the Court should quash service of process and complaint in this action for lack of personal jurisdiction under California Code of Civil Procedure § 418.10(a)(1). In the alternative, the Court should dismiss this action pursuant to California Code of Civil Procedure § 418.10(a)(2) based on inconvenient forum.

DATED: November 20, 2023.

MURPHY, PEARSON, BRADLEY & FEENEY

By:   
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