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8 Attorneys for defendant
9 PAUL BROWN

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

12 MARK CHRISTOPHER 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, a Utah
18 resident; ERIC HAWKES, a Utah resident;
19 JENNIFER HAWKES, a Utah resident;
20 MICHAEL SCOTT HUGHES, a Utah resident;
21 DAVID BRADFORD, a Utah resident; KEM
22 CROSBY GARDNER, a Utah resident;
23 WALTER J. PLUMB, a Utah resident; DAVID
24 BENNION, a Utah resident; R. STEVE
25 CREAMER, a Utah resident; PAUL BROWN, a
26 Utah resident; and GARY BOWEN, a Utah
27 resident,

28 Defendants.

Case No. 23CV423435

**REPLY MEMORANDUM 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: January 11, 2024

Time: 9:00 a.m.

Dept: 6

Judge: The Honorable Evette D. Pennypacker

1 Specially appearing defendant Paul Brown (“Brown”) submits this *Reply Memorandum of*
2 *Points and Authorities in Support of Specially Appearing Defendant Paul Brown’s Motion to Quash*
3 *Service of Summons and Complaint for Lack of Personal Jurisdiction and Motion to Dismiss for*
4 *Inconvenient Forum* (the “Motion”).

5 I. INTRODUCTION

6 In his *Memorandum and Points of Authority in Support of Opposition to Defendant Brown’s*
7 *Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction and Motion*
8 *to Dismiss for Inconvenient Forum* (the “Opposition”), plaintiff Mark Christopher Tracy (“Plaintiff”)
9 does not provide any evidence or make any arguments as to why this Court has jurisdiction over
10 Brown. Instead, Plaintiff argues that the Motion should be denied based on two technical grounds.
11 First, Plaintiff argues that that the Motion is without evidentiary support because Brown and his
12 counsel, Miguel E. Mendez-Pintado, failed to execute their declarations under penalty of perjury
13 pursuant to the laws of the State of California. Second, Plaintiff argues that the Motion should be
14 denied because the hearing was not held within 30 days pursuant to California Code of Civil
15 Procedure § 418.10(b). Neither of these arguments have any merit, and the Motion should be granted.

16 II. ARGUMENT

17 A. Any Defects in the Brown and Mendez-Pintado Declarations Do Not Justify Denial of 18 the Motion.

19 Plaintiff first argues that that the Motion is without evidentiary support because Brown and
20 his counsel, Miguel E. Mendez-Pintado, failed to execute their declarations under penalty of perjury
21 pursuant to the laws of the State of California. This argument does not go to the material facts of the
22 case. The Declarations’ intent to attest to the truthfulness of the statements under penalty of perjury
23 is evident and should be considered valid for the purpose of the Motion. Despite this, to eliminate
24 any procedural concerns, Brown and Miguel E. Mendez-Pintado have filed herewith Amended
25 Declarations. These Amended Declarations are identical to their original declarations, but which are
26 under penalty of perjury pursuant to the laws of the State of California. As such, any procedural
27 defects have been cured, and do not serve as a basis to deny the motion.

28 //

1 Moreover, even if the original Brown and Mendez-Pintado Declarations were defective,
2 when a defendant moves to quash service of process based on lack of personal jurisdiction, “[t]he
3 plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction.”
4 *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 273 (Pavlovich); *Vons Companies, Inc. v. Seabest*
5 *Foods, Inc.* (1996) 14 Cal.4th 434, 449 (Vons). Only when a plaintiff carries that burden does it then
6 shift to the defendant to demonstrate that the court's exercise of personal jurisdiction over it would
7 be unfair or unreasonable. (*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); *Vons*, supra,
8 at pp. 447-448.).

9 Plaintiff has failed to articulate any facts that would justify the exercise of jurisdiction.
10 Plaintiff acknowledges in his Complaint that Brown is a resident of Utah, and Plaintiff’s sole
11 allegation against Brown is that Brown sent an email to residents of Emigration Oaks PUD, located
12 in Salt Lake County, Utah. (Complaint, ¶¶ 23, 76) Plaintiff does not even attempt to argue in his
13 Opposition how these facts support jurisdiction, and Plaintiff does not make any substantive
14 arguments in his Opposition in response to the Motion.

15 Finally, Brown moved to quash for both lack of jurisdiction under California Code of Civil
16 Procedure § 418.10(a)(1) and inconvenient forum under California Code of Civil Procedure §
17 418.10(a)(2). As Plaintiff alleges in the Complaint, all of the general allegations in this Complaint
18 were also included in a False Claim Act case that Plaintiff previously filed against almost the identical
19 defendants in the United States Federal District Court for the District of Utah. (Complaint ¶ 61; *see*
20 *also USA ex rel Mark Christopher Tracy v. Emigration Improvement District, et al.*, 2:14-cv-00701.)
21 All of the general allegations relate solely to Emigration Canyon in Utah and issues related to
22 development in Emigration Canyon, and the allegations have been repeated by Plaintiff in multiple
23 lawsuits in Utah that have been found to be frivolous, vexatious and harassing. (Exhibit A to the
24 Declaration of Miguel Mendez-Pintado) Plaintiff failed to make any argument in response to Brown’s
25 motion to quash for inconvenient forum, which is not contingent upon the Brown or Mendez-Pintado
26 Declarations and serves as an alternative ground for the Court to grant the Motion.

27 Accordingly, Plaintiff’s contention that the Court should deny the Motion based on alleged
28 defects in the Brown and Miguel Mendez-Pintado Declarations is without merit.

1 **B. California Court’s Do Not Require a Hearing Within 30 Days.**

2 Plaintiff’s only other argument is that the Motion should be denied because the hearing was
3 not held within 30 days pursuant to California Code of Civil Procedure § 418.10(b). However, despite
4 the statute's use of the word “shall”, courts have not construed Code of Civil Procedure section
5 418.10, subdivision (b), to impose a mandatory requirement that a hearing be noticed or held within
6 30 days. Moreover, Plaintiff was on notice of the hearing as other defendants had communicated the
7 date, and, notably, Plaintiff filed his Opposition to the Motion, indicating awareness of the hearing.
8 **An Amended Notice was also sent promptly to Plaintiff once the hearing date was established.**

9 In *Olinick v. BMG Entertainment* (2006) 138 Cal.App.4th 1286 (*Olinick*), for instance, the
10 defendant filed the notice of its motion to stay or dismiss based on inconvenient forum, pursuant to
11 Code of Civil Procedure section 418.10, subdivision (a), on May 4, 2004. (*Olinick*, supra, at p. 1295.)
12 It then designated a hearing date of July 1, and the parties later stipulated to move the date to July 21,
13 which the trial court approved. (*Ibid.*) The Court of Appeal rejected the plaintiff’s arguments that a
14 mandatory 30-day timeline governs the motion and that “by failing to designate a hearing date within
15 the 30-day period, [defendant] waived its right to bring the motion under [Code of Civil Procedure]
16 section 418.10.” (*Id.* at p. 1296.)

17 The Court of Appeal noted that subdivision (a) of the statute provides that “[a] defendant, on
18 or before the last day of his or her time to plead or within any further time that the court may for good
19 cause allow, may serve and file a notice of motion . . . ” (*Olinick*, supra, 138 Cal.App.4th at p. 1296,
20 quoting Code Civ. Proc., § 418.10, subd. (a).) It explained that “the statute reflects the trial court is
21 authorized to extend the time for filing such a motion” (*Olinick*, supra, at p. 1296), and cited with
22 approval treatise language stating that “[s]cheduling a hearing date beyond 30 days should not
23 invalidate a motion to quash. Nothing in [Code of Civil Procedure section] 418.10 suggests the court
24 must overlook the lack of personal jurisdiction or proper service because of a defendant's failure to
25 schedule a hearing date within 30 days.” (*Ibid.*, quoting *Weil & Brown, Cal. Practice Guide: Civ.*
26 *Proc. Before Trial* (The Rutter Group 2005) ¶ 3:381.) The court therefore rejected the argument that
27 a “tardy hearing date on a motion to stay or dismiss under section 418.10 deprives the trial court of
28 jurisdiction to consider the merits of the motion.” (*Olinick*, supra, at p. 1296.)

1 Similarly, in *Preciado v. Freightliner Custom Chassis Corp.* (2023) 87 Cal.App.5th 964, the
2 Court of Appeal rejected the same argument in the context of a motion to quash that was noticed for
3 hearing 99 days after filing because that was the first available court date. (*Id.* at p. 972.) Citing
4 *Olinick*, the court held that “a tardy hearing date on a motion . . . under [Code of Civil Procedure]
5 section 418.10” does not “deprive [] the trial court of jurisdiction to consider the merits of the
6 motion.” (*Id.* at p. 969, fn. 4, quoting *Olinick, supra*, 138 Cal.App.4th at p. 1296; *Edmon & Karnow*,
7 *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2022) ¶ 3:381 [scheduling a
8 hearing date beyond 30 days does not invalidate the motion].).

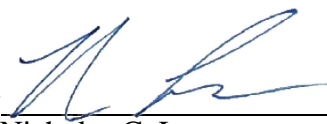
9 In this case, the Court noticed the hearing at the first available date. Clearly, a defendant
10 cannot be subject to jurisdiction of the Court simply because the earliest available hearing date was
11 more than 30 days out. This is especially true given Plaintiff’s awareness of the hearing and his filing
12 of an Opposition.

13 III. CONCLUSION

14 This Court lacks personal jurisdiction over Brown, and any of the other defendants, because all
15 the individual Defendants are residents of Utah and both entities are Utah corporations without offices or
16 a presence in California. Further, Plaintiff’s claims against Defendants arise from alleged conduct
17 occurring exclusively in Utah with no connection to California. Accordingly, the Court should quash
18 service of process and complaint in this action against all the defendants for lack of personal jurisdiction
19 under California Code of Civil Procedure § 418.10(a)(1). In the alternative, the Court should dismiss this
20 action against all the defendants pursuant to California Code of Civil Procedure § 418.10(a)(2) based on
21 inconvenient forum.

22
23 DATED: January 4, 2024.

MURPHY PEARSON BRADLEY & FEENEY

24
25 By 
26 Nicholas C. Larson
27 Miguel E. Mendez-Pintado
28 Attorneys for Defendant Paul Brown

1 **CERTIFICATE OF SERVICE**

2 I, Joan E. Soares, declare:

3 I am a citizen of the United States, am over the age of eighteen years, and am not a party to or
4 interested in the within entitled cause. My business address is 580 California Street, Suite 1100, San
5 Francisco, California 94104.

6 On January 4, 2024, I served the following document(s) on the parties in the within action:

7 **REPLY MEMORANDUM IN SUPPORT OF SPECIALLY APPEARING DEFENDANT**
8 **PAUL BROWN’S MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT**
9 **FOR LACK OF PERSONAL JURISDICTION AND MOTION TO DISMISS FOR**
10 **INCONVENIENT FORUM**

11 **XX** **VIA E-MAIL:** I attached the above-described document(s) to an e-mail message, and to
transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My
email address is ARoss@mpbf.com/

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20 Legal Assistant: Sarah Nguyen
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22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
23 a true and correct statement and that this Certificate was executed on January 4, 2024.
24

25 By 
26 Joan E. Soares