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4 Pro Se Plaintiff

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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.

25 **NATURE OF THE ACTION**

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.

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1 **PARTIES**

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 tempora 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**”).

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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.

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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).

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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.”

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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.”

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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.

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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.

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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.

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19 DATED: September 21, 2023

20 By: 
Mark Christopher Tracy
21 Pro Se Plaintiff

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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