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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH**

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UNITED STATES OF AMERICA ex. rel.  
Mark Christopher Tracy,

Plaintiff,

vs.

EMIGRATION IMPROVEMENT DISTRICT, a Utah Special Service District; BARNETT INTERMOUNTAIN WATER CONSULTING, a Utah corporation; CAROLLO ENGINEERS Inc., a California professional corporation; AQUA ENVIRONMENTAL SERVICES, INC., a Utah corporation; AQUA ENGINEERING. INC., a Utah corporation; R. STEVE CREAMER, an individual; FRED A. SMOLKA, an individual; MICHAEL HUGHES (AKA MICHAEL SCOTT HUGHES), an individual; MARK STEVENS, an individual; DAVID BRADFORD, an individual; LYNN HALES, an individual; ERIC HAWKES, an individual; DON A. BARNETT, an individual; JOE SMOLKA, an individual; RONALD R. RASH, an individual; KENNETH WILDE, an individual; MICHAEL B. GEORGESON, an individual; KEVIN W. BROWN, an

**DEFENDANT R. STEVE CREAMER'S  
JOINDER IN EID'S AND CAROLLO'S  
REPLY MEMORANDA SUPPORTING  
THEIR RENEWED MOTIONS TO  
DISMISS PLAINTIFF'S THIRD  
AMENDED COMPLAINT**

Case No.: 2:14-cv-00701

Judge: Jill N. Parrish

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individual; ROBERT ROUSSELLE; an individual; LARRY HALL, an individual; THE BOYER COMPANY, L.C., a Utah company; CITY DEVELOPMENT, INC., a Utah Corporation, and DOES 1-145,

Defendants.

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Defendant R. Steve Creamer (“Creamer”), by and through counsel, hereby respectfully submits this Joinder in Carollo’s reply memorandum supporting its renewed motion to dismiss Plaintiff’s Third Amended Complaint [ECF 289] and EID’s reply memorandum supporting its renewed motion to dismiss Plaintiff’s Third Amended Complaint [ECF 291] and states as follows:

**INCORPORATION BY REFERENCE OF CO-DEFENDANTS’ MOTION TO DISMISS**

Pursuant to D. U. Civ. R. 7(a)(4), Creamer incorporates by reference Co-Defendant Carollo Engineers, Inc.’s (“Carollo”) Reply Memorandum Supporting Its Renewed Motion to Dismiss Plaintiff’s Third Amended Complaint [ECF 289] and Emigration Improvement District’s (“EID”) Reply Memorandum Supporting Its Renewed Motion to Dismiss Plaintiff’s Third Amended Complaint [ECF 291].

**ARGUMENT**

The arguments set forth in both Carollo’s Reply Memorandum Supporting Its Renewed Motion to Dismiss and EID’s Reply Memorandum Supporting Its Renewed Motion to Dismiss have equal application to the claims alleged against Creamer in Tracy’s Third Amended Complaint. In particular, both Carollo’s and EID’s arguments that Tracy’s claims are barred by the ten-year statute of repose contained in 31 U.S.C. § 3731(b)(2), that Tracy does not satisfy the

scienter requirement, and that the Third-Amended Complaint fails to state with particularity the circumstances constituting fraud, have equal application to the allegations against Creamer. Given the arguments set forth in Co-Defendants' Memoranda Supporting Their Renewed Motions to Dismiss, the allegations in Tracy's Third Amended Complaint against Creamer fail to state a claim upon which relief can be granted. On that basis, the claims against Creamer should be dismissed.

**CONCLUSION**

For the reasons set forth herein, as well as in Carollo's Reply Memorandum Supporting Its Renewed Motion to Dismiss [ECF 289] and EID's Reply Memorandum Supporting Its Renewed Motion to Dismiss [ECF 291], the Court should dismiss Tracy's Third Amended Complaint against R. Steve Creamer.

DATED this 14<sup>th</sup> day of October 2020.

STRONG & HANNI

*/s/ Michael L. Ford*  
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Robert L. Janicki  
Michael L. Ford  
*Attorneys for R. Steve Creamer*

**MAILING CERTIFICATE**

I hereby certify that on the 14<sup>th</sup> day of October 2020, a true and correct copy of the foregoing **DEFENDANT R. STEVE CREAMER'S JOINDER IN EID'S AND CAROLLO'S REPLY MEMORANDA SUPPORTING THEIR RENEWED MOTIONS TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT** was filed using the court's CM/ECF system, which sent notice to counsel of record.

*/s/ Michael L. Ford* \_\_\_\_\_