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**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

UNITED STATES OF AMERICA Ex.
Rel. MARK CHRISTOPHER TRACY,

Plaintiff - Appellant,

v.

EMIGRATION IMPROVEMENT
DISTRICT, et al.

Defendants – Appellees.

Case Nos. 21-4159 & 21-4143

(D.C. No. 2:14-CV-00701-JNP)

(D. Utah)

**OPPOSITION TO MOTION TO SUBSTITUTE PARTY AND DISMISS
APPEAL**

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure, through counsel, and on behalf of the United States of America, Relator Mark Christopher Tracy (“**Relator Tracy**”) hereby submits this Opposition to Motion to Substitute

Party and Dismiss Appeal filed by Defendant/Appellee Eric Hawkes (“**Defendant Hawkes**”), Emigration Canyon Deputy Mayor Jennifer Hawkes and Simplifi Company (collectively “**Moving Parties**”).

Relator Tracy requests that this Court deny Moving Parties’ Motion in its entirety.¹ The grounds for this request are set forth herein.

STATEMENT OF FACTS

The factual grounds for this Opposition are as follows:

1. For the past seven (7) years, Relator Tracy has collected and reviewed thousands of pages of public and private documents spanning over a period of 112 years, secured hundreds of hours of voice recordings in what has alleged to be the longest, most lucrative, and perhaps most economically destructive water grabs in the history of the State of Utah.²

2. In September 2018, during the pendency of second appeal before this Court, the Emigration Canyon (the “Canyon”) stream suffered total depletion for the

¹ Relator Tracy is informed and believes that the Government lacks sufficient information at this time to consent to the Dismiss of Appeal and should therefore withdraw the same.

² Declaration of Mark Christopher Tracy, ECF No. 288-1; *see also* Brian Maffly, ‘We Don’t Need Your Water’: Emigration Canyon Water Fight Breaks Out in Court, Salt Lake Tribune (June 18, 2015), <https://archive.sltrib.com/article.php?id=2618507&itype=CMSID>.

first time on record,³ as alleged by Relator Tracy,⁴ and expressly predicted in oral testimony presented to the Utah State Engineer 26 years ago by Defendant/Appellee Emigration Improvement District (“Defendant EID”) on December 15, 1995.⁵

3. In Utah Third District Court case nos. 200905123 and 200905074 Relator Tracy requested government records of lead contamination and telemetry data (*i.e.*, water-level reports) believed to evidence groundwater mining and aquifer contamination in the sole possession of Defendant Hawkes and the Moving Parties at the Public Records Office of Defendant EID.

4. Upon the Moving Parties’ refusal to disclose laboratory test results and following receipt of a duplicitous data file from Defendant Hawkes, Relator Tracy filed Petition for Judicial Review of Denied Request for Disclosure of Public Records, Injunction for Violations of the Utah Government Records Access and Management Act (“GRAMA”), Award of Attorney Fees and Cost against the Moving Parties.

³ Brian Maffly, *Why is Emigration Creek — A Historic Utah Waterway — Dry? Blame Runs from Climate Change to Drought to Development to Water-Sucking Wells*, Salt Lake Tribune (September 8, 2018),

<https://www.sltrib.com/news/environment/2018/09/08/why-is-emigration-creek/>.

⁴ See David E. Hansen memo to Scot Boyd 04-30-2015 [ECF No. 107 at Exhibit I].

⁵ Emigration Canyon Home Owners Association, *Utah State Engineer Hearing – Barnett Testimony* (June 24, 2020, 12:31 PM).

s (October 19, 2021, 04:00 PM) https://echo-association.com/?page_id=6908.

5. Contrary to the majority view of state and federal authorities including express provisions the federal Safe Drinking Water Act of 1974 requiring lead contamination documents to be maintained on the premises of the Moving Parties for inspection and review, Utah State Third District Court judges Robert P. Faust (“Utah judge Faust”) and Mark S. Kouris (“Utah judge Kouris”) ruled that a Public Records Office organized as a private Utah corporation and the controlling shareholders in sole possession of government records are exempt from GRAMA provisions.

6. Relator Tracy filed direct appeal to the Utah Supreme Court. A copy of Utah Supreme Court filing confirmation dated April 7, 2021, is attached as Exhibit A.

7. Utah judge Faust’s ruling is currently before the Utah Court of Appeals,⁶ while appellate review of the judgment of Utah Judge Kouris has been stayed pending final adjudication of the former.⁷

8. During appellate proceedings, Utah judge Kouris however issued an Amended Judgment requiring Relator Tracy to obtain leave of Judge Kouris himself prior to filing any future litigation in a Utah State Court as a “vexatious litigant” for

⁶ *Mark Christopher Tracy v. Simplifi Company et al.*, No. 20210754 (Utah, Writ of Certiorari filed October 14, 2021).

⁷ *Mark Christopher Tracy v. Simplifi Company et al.*, No. 20210227 (Utah Ct. App., Corrected Order, May 15, 2021).

having requested public documents from the Moving Parties directly related to the present Action and germane to this appeal. A copy of the Decision and Order dated April 15, 2021, is attached as Exhibit B and the Amended Judgment dated April 30, 2021, is attached as Exhibit C.

9. Utah Judge Kouris issued no prefiling order in pending litigation and granted Relator Tracy neither judicial notice nor hearing of the same.

10. Under Utah law, Utah judge Kouris lacked jurisdiction to amend judgment during appellate review. *See White v. State*, 795 P.2d 648, 650 (Utah 1990) (per curiam), (“[the] court ha[d] long followed the general rule that the trial court is divested of jurisdiction over a case while it is under advisement on appeal.”).

11. Neither the Utah State Third District Court nor counsel for the Moving Parties transmitted Relator Tracy a copy of the executed Amended Judgment and did not inform Relator Tracy of its existence until the status hearing on June 10, 2021.

12. Relator Tracy filed notice of appeal of the Amended Judgment the same day.

13. Despite have failed to issue a prefiling order in pending litigation and devoid of jurisdiction to amend judgment during appellate review, Utah judge Kouris withheld Relator Tracy’s objection to the Amended Judgment, notice of appeal of the Amended Judgment, including Relator Tracy’s objection to the Order

to Attend Debtor Hearing and the Writ of Execution returning the same to Relator Tracy via United States postal service on September 3, 2021.

14. Although Judge Kouris failed to transmit Relator Tracy a copy of the executed Amended Judgment and had withheld Relator Tracy's notice of appeal for 85 days, on July 9, 2021, Judge Kouris ordered immediate seizure and sale of federal appellate litigation pending before this Court including Judge Kouris' own original judgment pending at that time before the Utah Supreme Court.

15. The Certificate of Sale issued to Defendant Hawkes and the Moving Parties attests to a judgment date of February 24, 2021, although the Application for Writ of Execution and the corresponding writ executed by Judge Kouris documents the date of the Amended Judgment as April 30, 2021, in the amount of \$9,215.00 and not the amount of the original judgment of \$5,758.50 entered on February 24, 2021.

16. The Writ of Execution states that the judgment debtor is "Mark Christopher Tracy" and not the United States of America. *See* Exhibit A to Moving Parties' Motion, p. 2.

17. The Writ of Execution and Certificate of Sale were not served on the United States of America as the Real Parties of Interest.

18. The Writ of Execution and Certificate of Sale list the cause of action “Appeal in the Tenth Circuit Court of Appeals” as owned by “Plaintiff [Relator Tracy]” and not the United States of America. *Id.*

19. Utah judge Kouris’ jurisdiction to modify judgment during appellate review, order the seizure of state and federal appellate litigation without judicial notice and hearing, and sale of the same to Defendant Hawkes and the Moving Parties is currently pending before the Utah Supreme Court.⁸

20. Utah judge Kouris refused to respond to Relator Tracy’s Petition for Writ of Extraordinary Relief to the Utah Supreme Court arguing that the Moving Parties are “in the best position to make the appropriate arguments” regarding the judicial conduct of the presiding judge of the Utah Third District Court. A copy of the Notice to Court and Real-Parties-in-Interest is attached as Exhibit D.

ARGUMENT

The Federal Rules of Appellate Procedure state that “[i]f a party needs to be substituted for any [reason other than death or incompetency], the court “may” substitute a “personal representative” after notice of appeal is filed. Fed. R. App. P. 43(a) and (b). The language of this rule indicates that a motion to substitute parties is permissive, not mandatory, and this Court is not required to grant substitution.

⁸ *Mark Christopher Tracy v. Simplifi Company et al.*, No. 20210743 (Utah, Writ of Certiorari filed December 6, 2021).

Moreover, the jurisdiction of Utah judge Kouris to order seizure and forced sale of litigation pending before this Court, and a cause of action belonging to the United States of America is subject to collateral attack as a judgment rendered by a court devoid of jurisdiction is null and void. *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604, 608, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990); *see also Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir.1986). “Traditionally [this] proposition was embodied in the phrase *coram non iudice*, ‘before a person not a judge’ — meaning, in effect, that the proceeding in question was not a *judicial* proceeding because lawful judicial authority was not present, and could therefore not yield a *judgment*.” *Burnham*, 495 U.S. at 608, 110 S.Ct. 2105 (emphasis in original).

Here, there is no cause to substitute the parties as there are contested issues surrounding judge Kouris’ jurisdiction in issuing the Writ of Execution, whether Defendant Hawkes and the Moving Parties may purchase a claim of the United States of America and be substituted as the “personal representative” of Relator Tracy in federal False Claims Act litigation contrary to substantial public policy considerations under both Utah and federal law.

A. Legal Action Commenced Under False Claims Act is Not Personal Property of the Federal Whistleblower.

First, Moving Parties have not acquired a cause of action of the United States of America as the Real Party in Interest. The Writ of Execution and Certificate of Sale provided by Moving Parties states that the judgment debtor is “Mark

Christopher Tracy.” *See* Exhibit A to Moving Parties’ Motion, p. 3. The Certificate of Sale also lists the Cause of Action as belonging to the United States of America, and not Relator Tracy. *Id.* In this claim, the judgment debtor is Relator Tracy personally, and not the United States of America.⁹ Therefore, it cannot be said that Defendant Hawkes and the Moving Parties have purchased the underlying cause of action identified in the Writ of Execution or Certificate of Sale.

B. Substitution of Parties Lacking Identity of Interest is Not Allowed Under Utah Law.

Even if it can be shown that the Relator Tracy’s appeal right was sold to the Moving Parties, Defendant Hawkes and the Moving Parties cannot be substituted as Mr. Tracy’s personal representatives under Utah law. The Utah Court of Appeals vacated its own order substituting parties on the basis that the parties had no identity of interest, the lack of monetary value of the underlying claim, and because equity demanded the court vacate its previous decision. *Pugh v. Dozzo-Hughes*, 2005 UT App 203, ¶¶ 14-16.

Here, Moving Parties likewise have no identity of interest with Mr. Tracy. Defendant Hawkes is himself party in the present appeal and his interests are materially adverse to both Relator Tracy and the United States.

⁹ Utah R. Civ. P. 64(A)(a)(9) bestows jurisdiction to the district court over the judgement debtor’s personal and real property and not a cause of action commenced on behalf of the United States of America.

It is clear that substitution is improper in an action acquired at a forced execution sale when the purchaser has no identity of interest with the original party and substitution of the purchaser serves to adversely affect that party. Therefore, as noted in *Pugh*, equity demands that Moving Parties' Motion be denied. *See Pugh*, 2005 UT App at ¶ 16 ("Equity demands that we vacate our prior substitution of parties order.").

C. Substitution of Parties is Not Allowed Under the Federal False Claims Act and the Federal Rules of Appellate Procedure.

Lastly, there is a substantial federal public policy interest in denying Moving Parties' request for substitution and its motion to dismiss. In situations unlike the present case, where an adverse party purchases a claimant's cause of action and right to appeal, this Court had previously deferred to Utah law. However, the Utah Supreme Court recently ruled that public policy considerations must first determine whether such substitution of parties should be permitted thereby overruling its previous ruling of *Applied Med. Techs., Inc. v. Eames*, 2002 UT 18, ¶ 17, 44 P.3d 699, 702-03 cited by the Moving Parties. *See Alarm Prot. Tech., LLC v. Crandall*, 2021 UT 26, ¶¶ 52-55 (concurring).

Specify, in 2013, the Utah Supreme Court noted that it "would not uphold such a sale without first undertaking a careful review of the constitutional and other implications of allowing judgment creditors to execute on judgment debtors' appellate rights." *ASC Utah, Inc. v. Wolf Mt. Resorts, L.C.*, 2013 UT 24, ¶ 9, fn. 2.

At the federal level (though applying Utah law), this Court upheld a ruling that a plaintiff pursuing his own claim (not belonging to the United States of America) no longer had standing to pursue a causes action purchased by the defendant. *See RMA Ventures California v. SunAmerica Life Insurance Co.*, 576 F.3d 1070 (10th Cir. 2009).

The Court however confined its previous ruling by acknowledging that the Plaintiff (and not the United States of America) had waived its right to challenge Defendant's purchase of the cause of action by failing to appeal the district court's denial of Plaintiff's motion to stay or quash the execution sale and acknowledged that "the circumstances of this case present a degree of discomfort." *Id.* at 1075.

In a separate concurring opinion, Judge Lucero described the reasoning for the discomfort:

It is with considerable understatement that the majority acknowledges the "degree of discomfort" presented by this case. . . . By executing on a subsidiary judgment, SunAmerica has extinguished RMA's right to appeal the very merits determination that served as the predicate for the subsidiary judgment in the first place. If we were to reach the merits and reverse the district court's decision, however, there is little doubt that RMA would be entitled to relief from the subsidiary attorneys' fee judgment. . . . RMA will not have the opportunity to pursue its merits appeal As a matter of public policy, I doubt the wisdom of a rule that readily places the right to appeal on an auction block. More troublesome still is a rule permitting a defendant to purchase its opponent's appellate rights, thereby extinguishing a plaintiff's claim. "[A defendant] obviously has no intention to litigate a claim against itself." Today's decision thus incentivizes Utah defendants to attempt an end run around merits determinations by purchasing a plaintiff's right to appeal. *This incentive is at its zenith when it is most offensive—*

in those cases in which a defendant believes it would likely lose the merits appeal (emphasis added).

Id. at 1076-77 (Lucero, J., concurring) (fourth alteration in original). In her concurrence for the Utah Court of Appeals, Justice Petersen noted:

Even so, the facts here and in other cases make it difficult to deny the collateral damage done to justice. Here, the very entity that Appellants accuse of injuring them is able to take over their civil cases and terminate them. . . .

Clearly, permitting judgment creditors to execute upon claims in which they are defendants can result in severe collateral damage to the legal process and the presumption that claims should be fairly adjudicated on the merits. Our rules currently permit this. But we should consider whether our rules should permit such a practice. Judgment creditors like APT have the legal right to a sum of money. We have civil rules to assist them in collecting that money. But the right to collect a sum certain does not include the right to immunity from suit or dismissal of an otherwise valid legal claim against the creditor. We should consider whether our civil rules could be modified to address this situation in a way that still assists creditors in collecting on judgments, but better protects the legal process from unnecessary harm.

Crandall, 2021 UT at ¶¶ 52, 55.

In the present case, Relator Tracy has diligently contested the jurisdiction of Utah judge Kouris to order seizure and sale to Defendant Hawkes and the Moving Parties while the previous the rulings of the Utah Court of Appeals and this Court are confined to causes of action belonging to the Plaintiff and not the United States of America as the Real Party of Interest in False Claims Act litigation. Such a ruling would have catastrophic effects on future federal whistleblowers.

As noted above, this Court is under no obligation or requirement to substitute the parties under the Federal Rules of Appellate Procedure. Moving Parties cite no authority outside the Writ of Execution executed against Relator Tracy, and not the United States of America as the Real Part in Interest. As the Defendant Hawkes is a current party in this appeal, and there is no doubt that the Moving Parties are acting solely to deprive Mr. Tracy and ultimately the United States of the right to continue pursuit of all claims against all Defendants/Appellees following remittal to the district court for further proceedings.

III. CONCLUSION

For the foregoing reasons, Relator Tracy requests that this Court deny the Motion to Substitute Party and Dismiss Appeal.

DATED: 7th day of December 2021.

PRICE PARKINSON & KERR, PLLC

/s/ Alan W. Dunaway _____
Jason M. Kerr
Alan W. Dunaway
Attorneys for Relator Mark Christopher Tracy

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December 2021, a true and correct copy of the foregoing **OPPOSITION TO MOTION TO SUBSTITUTE PARTY AND DISMISS APPEAL** was entered in the CM/ECF system, which sent notice to all counsel of record in this matter:

/s/ Angela Johnson _____

EXHIBIT A



Nick Stiles
State Court Administrator

Nicole J. Gray
Clerk of Court

Supreme Court of Utah

450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Appellate Clerks' Office
Telephone 801-578-3900
Email:supremecourt@utcourts.gov

Matthew B. Durrant	Chief Justice
Thomas R. Lee	Associate Chief Justice
Deno G. Himonas	Justice
John A. Pearce	Justice
Paige Petersen	Justice

April 7, 2021

Mark Christopher Tracy
m.tracy@echo-association.com

RE: Tracy v Simplifi Company

Appellate Case No. 20210227

Dear Mark Christopher Tracy:

Please be advised that the notice of appeal in this case has been filed with the Utah Supreme Court. The case number is 20210227 and should be indicated on any future filings or correspondence.

Included with this notice is an order transferring the case to the Utah Court of Appeals within twenty days. The order remains in effect, unless, within 7 business days of the date of the order letters are received advising the Supreme Court why they should retain the case.

The trial court has advised this court that the notice of appeal was filed without the payment of the \$240.00 filing fee and the posting of the \$300.00 cost bond. Please be advised that the filing fee and the cost bond must be paid to the trial court, and a copy of the trial court receipt evidencing the payment, must be submitted to this court **within seven (7) days of the date of this letter. If evidence of payment of the filing fee and cost bond is not received by this court within such time period, the appeal will be submitted for dismissal.**

This court will permit documents to be filed by email by attaching a searchable PDF file of no more than 25 MB. Unless the court orders otherwise, the filing of documents and briefs is timely if the email is received before midnight on the last day for filing. A document is deemed filed when the email is received. Sending an email is an electronic signature, and it carries all of the representations and consequences under Rule 40 of the Utah Rules of Appellate Procedure. If a document other than a brief is delivered by email or any other method of filing, a paper copy does not need to be delivered. *See*

Utah Supreme Court Standing Order No. 11. All risks associated with filing by email are borne by the sender. The email address for the Supreme Court is supremecourt@utcourts.gov and for the Court of Appeals is courtofappeals@utcourts.gov. The Court emails all documents to the email listed on the State Bar's website for attorneys, or to the email provided by self-represented parties.

It appears that you will not have the assistance of an attorney in preparing papers for filing in this court. Enclosed is a pro se guide concerning appeal procedures. We hope it will be helpful to you in presenting your case. Please be aware that failure to file designated papers within the time limits established under the Utah Rules of Appellate Procedure may result in dismissal of your appeal.

Rule 11(e)(1) of the Utah Rules of Appellate Procedure requires that, within ten (10) days of the filing of the notice of appeal, appellant must submit a transcript request for such parts of the proceedings as the appellant deems necessary.

Transcripts may be ordered on line by going to the court's web site at www.utcourts.gov. Under "Do," select **Request a Transcript**. The State Transcript Coordinator, Crystal Cragun, may be reached at either (385) 312-0888 or crystalc@utcourts.gov.

Pursuant to Rule 21 of the Utah Rules of Appellate Procedure, copies of all papers filed with this court in connection with the appeal must be served on all other parties to the appeal. All papers filed must be accompanied by a certificate of service in the form of a statement of the date and manner of service, the names of the persons served, and the addresses at which they were served. All documents filed in this court must be served (mailed, emailed or hand-delivered) on the opposing party to allow the party an opportunity to respond. In turn, all papers filed by the opposing party must be served on you so that you may respond.

Be advised that it is your responsibility to notify this court immediately in writing if you have a change of address during the appeal process.

The Docketing Statement is due within twenty-one (21) days of the filing of the notice of appeal in the trial court. The docketing statement is due **April 16, 2021**.

Please note, failure to perfect an appeal at any time during the appeal process may result in dismissal of the appeal.

Sincerely,

/s/ Sihem Tefiani
Sihem Tefiani

Judicial Assistant

cc:

JEREMY R. COOK

JCOOK@CK.LAW

THIRD DISTRICT, SALT LAKE

CHERYLA@UTCOURTS.GOV; JULIER@UTCOURTS.GOV

THIRD DISTRICT, SALT LAKE, 200905074

EXHIBIT B

The Order of the Court is stated below:

Dated: April 15, 2021
02:53:03 PM

/s/ MARK KOURIS
District Court Judge



Prepared and Submitted by:

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Attorneys for Eric Hawkes, Jennifer Hawkes and Simplifi Company

**IN THE THIRD DISTRICT COURT
IN AND FOR THE STATE OF UTAH**

MARK CHRISTOPHER TRACY, DBA
EMIGRATION CANYON HOME OWNERS
ASSOCIATION,

Petitioner,

vs.

SIMPLIFI COMPANY, a Utah Corporation,
ERIC HAWKES, an individual, and
JENNIFER HAWKES, an individual

Respondents.

**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**

Case No. 200905074

Judge: Kouris

This case is a petition for *de novo* judicial review of a denial of a request for documents pursuant to the Utah Government Records Access and Management Act ("GRAMA"). This matter is before the Court on Petitioner's *Motion to Vacate Memorandum Decision and*

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Judgement (sic) (the "**Motion**"). Oral arguments were held on April 7, 2021. The Court having considered the Motion, related memoranda, and the arguments of the parties at the hearing, hereby enters the following decision and order:

BACKGROUND

Emigration Improvement District ("**EID**") is a Utah local district that is subject to GRAMA. On June 10, 2020, petitioner Mark Christopher Tracy ("**Mr. Tracy**") submitted a GRAMA request to EID requesting telemetry data for EID's water wells and water tanks (the "**GRAMA Request**"). The GRAMA Request correctly designated the governmental entity as EID, and EID responded to the GRAMA request. After appealing the purported denial of the GRAMA Request to the chair of EID's board of trustees, Mr. Tracy brought this action. However, instead of bringing the action against EID, Mr. Tracy named only Eric Hawkes, Jennifer Hawkes and Simplifi Company ("**Respondents**").

On February 10, 2021, the Court held a hearing on Respondent's *Motion to Dismiss*. During the hearing, the Court issued is verbal ruling finding in part that GRAMA provides that a records request must be made to a governmental entity, and that EID was the governmental entity. See Utah Code Ann. § 63G-2-204(1)(a) ("A person making a request for a record shall submit to the governmental entity that retains the record a written request . . ."). This Court's decision was the same as a decision issued by Judge Faust on September 16, 2020. See Case No. 200905123. In addition, on February 11, 2021, the day after the hearing in this matter, the State Records Committee of the State of Utah (the "**Records Committee**") heard the appeal of three separate GRAMA requests submitted by Mr. Tracy for records of EID. The Records Committee

found that submitting a GRAMA request to Simplifi Company or Respondents, as opposed to EID, was not proper and denied Mr. Tracy's appeals.

On February 11, 2021 (the day after this Court's decision), Mr. Tracy submitted a new GRAMA request to EID in which he again cc'd Jennifer Hawkes and again stated that the governmental entity was "Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company." (the "**New GRAMA Request**"). In response to the New GRAMA Request, EID's attorney sent Mr. Tracy an email informing Mr. Tracy that based on his continued inclusion of Simplifi Company and Mrs. Hawkes in the New GRAMA Request, the fees awarded by this Court would need to be paid prior to a response to the New GRAMA Request (the "**Response Email**").

MOTION TO VACATE

Mr. Tracy brought this Motion based on the argument that the Response Email established "factual representations made to this court regarding the status of Simplifi as a 'private corporation' and Mrs. Hawkes having 'no direct involvement with EID' were designed to improperly influence the decision of the Court and were therefore fraudulent under Rule 60(b)(3) URCP." See *Motion*, p. 3. The Court finds that the Motion does not establish any fraud, misrepresentations, or other misconduct of Respondents, or justify relief under Rule 60(b)(3). Specifically, the Response Email only indicated that if Mr. Tracy wanted to continue to take the position that it was proper to submit a GRAMA request to EID c/o Simplifi Company or include Mrs. Hawkes in the GRAMA request, which position is contrary to the decision of this Court,

that Mr. Tracy would be required to pay the fees awarded to Respondents in this case. Nothing in the Response Email suggests that Respondents changed their representations to this Court or their legal arguments in this matter. Accordingly, the Court denies the Motion.

ATTORNEYS FEES

Mr. Tracy was informed at least six times by this Court, Judge Faust, the State Records Committee or EID's attorney that GRAMA requests should be made only to the public entity, Emigration Improvement District. At the hearing, Mr. Tracy was not able to provide any plausible explanation for disregarding the decision of this Court and continuing to include Simplifi Company or Mrs. Hawkes in the New GRAMA Request, which leads this Court to conclude that Mr. Tracy's reason for continuing to include Simplifi Company and Mrs. Hawkes was to continue to harass Respondents. Simply put, Mr. Tracy could have easily avoided any issues by following the decision and order of this Court, but inexplicably chose to disregard the Court's decision and continue to harass Respondents by including them in GRAMA requests that Mr. Tracy knew should be served only on EID.

The Court has previously found that an award of attorney fees is proper pursuant to Utah Code Ann. § 78B-5-825(1), and the Court finds that Respondents should be awarded their reasonable attorneys' fees responding to the Motion.

VEXATIOUS LITIGANT

Rule 83(a)(1) of the Utah Rules of Civil Procedure states that the court may find a person to be a "vexatious litigant" if the person does any of the following:

(a)(1)(B) After a claim for relief or an issue of fact or law in the claim has been finally determined, the person two or more additional times re-litigates or attempts to re-litigate

the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined.

(a)(1)(C) In any action, the person three or more times does any one or any combination of the following:

(a)(1)(C)(i) files unmeritorious pleadings or other papers,

(a)(1)(C)(ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

(a)(1)(C)(iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or

(a)(1)(C)(iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

The Court finds that Mr. Tracy has violated Rule 83(a)(1)(B) and 83(a)(1)(C). With respect to Rule 83(a)(1)(B), Mr. Tracy served and prosecuted this action after Judge Faust previously issued a decision on the same issue of law. See Case No. 200905123. After this Court issued its decision, Mr. Tracy ignored both decisions, again served GRAMA request to EID that were served c/o Simplifi Company and included Mrs. Hawkes, and then Mr. Tracy attempted to utilize EID's response to again argue to this Court that filing an action against on Respondents, and not EID, was proper. With respect to 83(a)(1)(C), the Court has previously found that the Petition in this action including redundant and immaterial allegations that appear to relate to other claims and issues that Mr. Tracy has against EID, and that the Petition was frivolous and filed for the purpose of harassment. The Court also finds that the Motion was unmeritorious.

The Court also finds that the Petition and the Motion were filed for the purpose of harassing Respondents in violation of Rule 11(b)(1) of the Utah Rules of Civil Procedure. As

set forth above, despite repeated opportunities from this Court, Mr. Tracy has failed to ever provide a plausible explanation of why he brought this action against Respondents, but intentionally failed to name the governmental entity, EID; or why Mr. Tracy continued to include Respondents in GRAMA requests despite repeatedly being informed that their inclusion was improper. In accordance with Rule 11(c)(2), the Court finds that an appropriate sanction to deter repetition of such conduct is to find that Mr. Tracy is a vexatious litigant.

Based on the foregoing, the Court finds petitioner Mark Christopher Tracy to be a vexatious litigant in accordance with U.R.C.P. 83(b)(4), and the Court orders that Mr. Tracy must obtain leave from the Presiding Judge of the Court prior to Mr. Tracy filing any future actions in Utah State Courts.

Approved as to Form:

/s/ Mark Christopher Tracy
Mark Christopher Tracy

————— **COURT'S SIGNATURE AND DATE APPEAR AT TOP OF** —————
FIRST PAGE OF THIS DOCUMENT

EXHIBIT C

The Order of the Court is stated below:

Dated: April 30, 2021
08:52:33 AM

/s/ MARK KOURIS
District Court Judge



Prepared and Submitted by:

Jeremy R. Cook (10325)
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Attorneys for Eric Hawkes, Jennifer Hawkes and Simplifi Company

**IN THE THIRD DISTRICT COURT
IN AND FOR THE STATE OF UTAH**

MARK CHRISTOPHER TRACY, DBA
EMIGRATION CANYON HOME OWNERS
ASSOCIATION,

Petitioner,
vs.

SIMPLIFI COMPANY, a Utah Corporation,
ERIC HAWKES, an individual, and
JENNIFER HAWKES, an individual

Respondents.

AMENDED JUDGMENT

Case No. 200905074

Judge: Kouris

The Court hereby finds as follows:

1. Pursuant to the Court's *Memorandum Decision and Order*, Respondents' Motion to Dismiss is **GRANTED**.
2. Pursuant to the Court's *Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to be a Vexatious Litigant and*

{00553316.RTF /}

Subject to Rule 83 of the Utah Rules (the “**Motion to Vacate Order**”), Mr. Tracy’s Motion to Vacate is **DENIED**.

3. Pursuant to the Motion to Vacate Order, the Court finds petitioner Mark Christopher Tracy to be a vexatious litigant in accordance with U.R.C.P. 83(b)(4), and the Court orders that Mr. Tracy must obtain leave from the Presiding Judge of the Court prior to Mr. Tracy filing any future actions in Utah State Courts.

4. The Court awards judgment in favor of respondents Simplifi Company, Eric Hawkes and Jennifer Hawkes and against petitioner Mark Christopher Tracy for attorney fees in the amount of Nine Thousand Twenty-Nine Dollars (**\$9,029.00**).

5. The Court further orders that this judgment may be augmented for interest, attorney fees and costs incurred in obtaining and collecting the judgment as permitted by the Utah Rules of Civil Procedure.

Approved as to form:

Mark Christopher Tracy

– Court’s Signature and Date Appear at Top of First Page of this Document –

EXHIBIT D

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IN THE UTAH SUPREME COURT

MARK CHRISTOPHER TRACY, dba
Emigration Canyon Home Owners
Association

Plaintiff and Petitioner,

vs.

SIMPLIFI COMPANY; JENNIFER
HAWKES; and ERIC HAWKES,

Defendants and Respondents.

**NOTICE TO COURT AND
REAL-PARTIES-IN-INTEREST**

Case No. 20210743

Trial Court No. 200905074

Judge Mark S. Kouris, by and through counsel Brent M. Johnson of the Administrative Office of the Courts, provides notice to the court and the real-parties-in-interest that Judge Kouris will not be filing a response to Mark Christopher Tracy's Petition for Extraordinary Relief. Counsel has had an opportunity to review the Petition and based on the facts and the issues being raised, the real-parties-in-interest are in the best position to make the appropriate arguments.

Dated this 22nd day of October, 2021.

/s/Brent M. Johnson
Brent M. Johnson
Administrative Office of the Courts

MAILING CERTIFICATE

This is to certify that a true and correct copy of the foregoing document was delivered via e-filing and electronic mail as follows on this 22nd day of October, 2021.

Mark Christopher Tracy
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/s/ Minhvan Brimhall
Minhvan Brimhall
Legal Secretary to Brent M. Johnson