

Mark Christopher Tracy
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Pro se Petitioner

**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;
JENNIFER HAWKES, an individual, and
ERIC HAWKES, an individual;

Respondents.

**REPLY MEMORADUM SUPPORTING
MOTION TO VACATE MEMORADUM
DECISION AND JUDGEMENT**

Case No.: 200905074

Judge: Mark Kouris

Pursuant Rule 7(e) of Utah Rules of Civil Procedure (“URCP”), Mark Christopher Tracy (“Mr. Tracy”) dba Emigration Canyon Home Owners Association (“The ECHO-Association”) respectfully submits this *Reply Memorandum Supporting Motion to Vacate Memorandum Decision and Judgement*.

I. Statement of New Matters Raised In the Memorandum Opposing the Motion

The Simplifi Company (“Simplifi”) and its sole shareholders Emigration Canyon Deputy Mayor Jennifer Hawkes (“Deputy Mayor Hawkes”) and certified public records officer Eric Hawkes (“Mr. Hawkes”)(collectively “Simplifi Respondents”) through their legal representative Jeremy R. Cook (“Utah Attorney Cook”) argue that factual representations made to this Court

were “neither ... false or [sic] misleading” and nothing in the email [dated February 24, 2021 from Utah Attorney Cook]¹ “suggest” that Simplifi “is not a private company” and “Mrs. Hawkes had no direct involvement” with processing requests for disclosure of government documents owned by the State of Utah,² and maintained at the private residence of Deputy Mayor Hawkes for Emigration Improvement District (“EID” aka Emigration Canyon Improvement District aka ECID) as owner of water system no. 18143 operated by Simplifi Respondents since 2013.³

Moreover, the present motion “highlights Mr. Tracy’s blatant disregard for this court’s decision and Mr. Tracy’s continued harassment of [Simplifi] Respondents.”⁴

These arguments fail.

Plain words transmitted in the English language are both perceptible and discernable, while the willful refusal to disclose government records under the Government Records Access and Management Act (“GRAMA”) is a criminal offense in the State of Utah.⁵ The present legal action to compel release of public records maintained by the “office of a government entity” compensated with \$118,000.00 of taxpayer funds in the current calendar year is not “harassment” but the only legal remedy available to Mr. Tracy.

The email correspondence from Simplifi Respondents’ legal representative clearly documents an award of attorney fees and costs “*in favor of EID’s records office, Eric Hawkes Simplifi Company and Jennifer Hawkes ... (emphasis added)*” with the additional remark that Simplifi Respondents refuse to release legal invoices of Utah Attorney Cook maintained at their private residence until “fees owed to Eric Hawkes, Jennifer Hawkes and Simplifi Company” as a

¹ *Motion to Vacate Memorandum Decision and Judgement* at Exhibit D.

² Utah Code Ann. § 63A-12-105(2)(a).

³ *Memorandum in Opposition to Motion to Vacate Memorandum Decision and Judgement (Sic)* at page 4.

⁴ *Id.*

⁵ Utah Code Ann. § 63-2-801(3)(a).

“governmental entity...in accordance with Utah Code Ann. [sec.] 63G-2-203(8)(a)” are paid (emphasis added).⁶

While it must be conceded that the email correspondence of Utah Attorney Cook does not “suggest” that the facts presented to this Court were false and misleading, it does *expressly confirm* that the facts argued by Simplifi Respondents through Utah Attorney Cook and subsequently accepted by this Court in granting a motion to dismiss under Rule 12(b)(6) URCP that Simplifi Respondents are exempt from GRAMA provisions as “an office of EID” pursuant to Utah Code Ann. § 63-2-103(11)(b)(i) are simply not true.

As the right to access government documents is a constitutional right in the State of Utah,⁷ the express denial of that right and the reasons cited thereof by a licensed legal professional must be presumed as truthful.

Regarding “Mr. Tracy’s blatant disregard” of court rulings and administrative proceedings, Utah Attorney Cook’s express confirmation of Simplifi Respondents’ status as “EID’s records office” has been forwarded to the Utah State Records Committee⁸ and shall be presented the Utah Court of Appeals at the proper stage of appellate proceedings regarding the cited Memorandum Decision of Judge Faust.⁹

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⁶ See footnote no. 1 *supra*.

⁷ Utah Code Ann. § 63A-2-102(1)(a).

⁸ See email correspondence to Executive Secretary of the Utah State Records Committee dated March 16, 2021, attached as **Ex. A**).

⁹ See Notice of Trial Court Case No. 200905123 dated March 15, 2021, *Mark Christopher Tracy dba Emigration Canyon Home Owners Association v. Simplifi Respondents et al.*, Case No. 20200705-CA, (Utah Ct. App., pending), attached as **Ex. B**.

In short, the shell game of preventing disclosure of government records significant to currently pending state¹⁰ and federal¹¹ proceedings is now over.¹²

II. CONCLUSION

For the foregoing reasons, Mr. Tracy respectfully requests the Court grant the Motion to Vacate the Memorandum Decision and Judgement and allow the petition for de novo judicial review of the denied request for disclosure of government records related to continued groundwater mining in Emigration Canyon by Simplifi Respondents to proceed to the next stage of judicial proceedings without further delay.¹³

DATED this 22nd day of March, 2021.

MARK CHRISTOPHER TRACY dba
EMIGRATION CANYON HOME OWNERS
ASSOCIATION

/s/ Mark Christopher Tracy
Mark Christopher Tracy
Pro se Petitioner

¹⁰ *Emigration Canyon Home Owners Association v. Kent L. Jones and Emigration Improvement District*, Case No. 20200295-CA (Ut. Ct. App., pending).

¹¹ *United States of America ex rel. Mark Christopher Tracy v. Emigration Improvement District et al.*, Case No. 2:14-cv-701-JNP-JCB (D. Utah, pending).

¹² As certified public records officer of EID, Mr. Hawkes similarly refused to comply with a valid request submitted to EID for public documents regarding lead contamination. *See Onysko v. Emigration Improvement District*, No. 200906661 (Utah 3rd Dist., pending).

¹³ Although irrelevant to the present motion, Simplifi Respondents continue to argue that de novo judicial proceedings are moot, due to the fact that an incorrect data file was transmitted to Mr. Tracy. Should this Court grant the present motion, Simplifi Respondents are encouraged to submit an affidavit attesting to the accuracy and completeness of the same under criminal penalty of perjury.

EXHIBIT A

From: The ECHO-Association <m.tracy@echo-association.com>

Subject: Request for Reconsideration of Utah State Records Committee's Updated Denial of Appeal No. 2021-32 (Water Lease Payments & Water Letters for New Construction in Emigration Canyon)

Date: March 16, 2021 at 9:56:28 AM PDT

To: SRC Secretary <srcsecretary@utah.gov>

Cc: Jennifer Hawkes <hawkes@ecmetro.org>, Eric Hawkes <eric@ecid.org>, mike <mike@ecid.org>, brent@ECID.org, dave@ECID.org

Dear Ms. Shaw,

Thank-you for transmitting the Utah State Records Committee's updated decision (*see* correspondence regarding Appeal No. 2021-32 dated March 11, 2021, attached below as **Addendum No. 1**).

However, prior to filing de novo judicial review of the Committee's updated order with the Utah State Third District Court, I am required to inform the Committee that the legal representative of Simplifi Company and its sole shareholders Emigration Canyon Deputy Mayor Jennifer Hawkes ("Deputy Mayor Hawkes") and certified public records manager Eric Hawkes ("Mr. Hawkes")(collectively "Simplifi Respondents) has expressly confirmed that Simplifi Respondents are in fact the records office of Emigration Improvement District ("EID" aka Emigration Canyon Improvement District) as per Utah Code Ann. sec. 63G-2-103(11)(b)(iii) and are thus subject the Utah Government Records and Management Act in its entirety (*see* email correspondence of Jeremy R. Cook of Cohen Kinghorn P.C. dated February 24, 2021 recorded in **Exhibit D** of the *Motion to Vacate Memorandum Decision and Judgement* filed with the Utah State Third District Court attached below as **Addendum No. 2** also available at the website administered by the Emigration Canyon Home Owners Association at https://echo-association.com/?page_id=8183).

Please also note that accounting records of water lease payments and water letters issued by Simplifi Respondents on behalf of EID for new construction in Emigration Canyon are not records of a private entity but rather are owned by the State of Utah pursuant to Utah Code Ann. sec. 63A-12-105 and are currently retained by Simplifi Respondents under Utah Code sec. 63G-2-204 (1)(a) at the private residence of Deputy Mayor Hawkes and Mr. Hawkes.

As such, contrary to the updated decision, Committee thus has proper jurisdiction of the *de facto* denied request for government records under Appeal No. 2021-32.

Please inform the Committee of this additional error and schedule the appeal hearing at your earliest convenience.

Feel free to contact me with any additional questions.

Hochachtungsvoll (Kindest and Most Respectful Regards),

Mark Christopher Tracy
dba Emigration Canyon Home Owners Association
Tel. 929-209-6010

Addendum No. 1

Attachment No. 2

EXHIBIT B

Michele M. Christiansen Forster
Presiding Judge
Jill M. Pohlman
Associate Presiding Judge
Gregory K. Orme
Judge
Kate Appleby
Judge
David N. Mortensen
Judge
Ryan M. Harris
Judge
Diana Hagen
Judge

Utah Court of Appeals

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Nick Stiles
Appellate Court Administrator

Lisa A. Collins
Clerk of Court

IN THE UTAH COURT OF APPEALS

Mark Christopher Tracy,
Appellant,
v.
Simplifi Company, Jennifer Hawkes,
and Eric Hawkes,
Appellees.

NOTICE

Case No. 20200705-CA

Trial Court Case No. 200905123

Pursuant to Chief Justice Durrant's order of March 21, 2020, we have not requested the physical copies of the briefs. Because your case will be before the court shortly, please deliver six copies of your **Appellees' brief** to the Appellate Clerk's Office, Scott Matheson Courthouse, 450 S State Street, 5th floor. You will find a drop box at the front counter. Please deliver your briefs to the court within seven (7) business days.

March 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of March, 2021, a true and correct copy of the foregoing **REPLY MEMORANDUM SUPPORTING MOTION TO VACATE MEMORADUM DECISION AND JUDGEMENT** was sent via electronic mail to the following counsel of record:

Jeremy R. Cook
jcook@ck.law

- and -

Timothy J. Bywater
tbywater@ck.law

- and -

Tim Nielsen
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COHNE KINGHORN, P.C.
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Salt Lake City, Utah 84111

Attorneys for Simplifi Company, Eric Hawkes and Jennifer Hawkes

/s/ Mark Christopher Tracy
Mark Christopher Tracy