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9 Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, David Bennion and Gary
10 Bowen

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

11 MARK CHRISTOPHER TRACY, an
12 individual,

13
14 Plaintiff,

15 v.

16 COHNE KINGHORN, PC, a Utah professional
17 corporation; SIMPLIFI CO., a Utah
18 corporation; JEREMY COOK, a Utah resident;
19 ERIC HAWKES, a Utah resident; JENNIFER
20 HAWKES, a Utah resident; MICHAEL
21 HUGHES, a Utah resident; DAVID
22 BRADFORD, a Utah resident; KEM
23 GARDNER, a Utah resident; WALTER
24 PLUMB, a Utah resident; DAVID BENNION,
25 a Utah resident; R. STEVE CREAMER, a Utah
26 resident; PAUL BROWN, a Utah resident; and
27 GARY BOWEN, a Utah resident,

28 Defendants.

Case No. 23CV423435

**SPECIALY APPEARING DEFENDANTS
COHNE KINGHORN, P.C., SIMPLIFI
COMPANY, JEREMY RAND COOK,
ERIC HAWKES, JENNIFER HAWKES,
MICHAEL SCOTT HUGHES, DAVID
BRADFORD, DAVID BENNION AND
GARY BOWEN'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION**

Date: March 26, 2024

Time: 9:00 a.m.

Dept: 6

Judge: The Honorable Evette D. Pennypacker

1 Specially appearing defendants Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand
2 Cook, Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, David Bennion and
3 Gary Bowen (collectively “Defendants”) submits this memorandum in opposition to plaintiff’s
4 *Motion to Reconsider Order Granting Defendants’ Motion to Quash Service of Process for Lack of*
5 *Personal Jurisdiction* (the “Motion to Reconsider”).
6

7 **I. INTRODUCTION**

8 Plaintiff Mark Christopher Tracy (“Plaintiff” or “Mr. Tracy”) has filed multiple actions
9 against defendants in Utah courts based on what Mr. Tracy alleges to be the “longest and most
10 lucrative water grabs in the history of the State of Utah.” *Motion to Reconsider*, p. 5. However, not
11 only have Utah state and federal courts found that Mr. Tracy’s vast conspiracy theories don’t have
12 any merit, but both Utah state and federal courts have found the actions to vexatious and harassing;
13 awarded attorney fees against Mr. Tracy; and Mr. Tracy has been deemed a vexatious litigant in
14 Utah state court. Like Mr. Tracy’s multiple actions in Utah, this matter lacked merit, and Mr.
15 Tracy’s Motion to Reconsider is yet another baseless attempt to harass Defendants and require
16 Defendants to expend funds defending against Mr. Tracy’s frivolous claims.
17

18 Mr. Tracy makes three arguments in his Motion to Reconsider. First, Mr. Tracy argues that
19 defendant Kem Gardner’s Motion to Quash was rejected by the Court. Second, Mr. Tracy argues
20 that the Court improperly allowed the defendants Bowen and Brown to amend pleadings after Mr.
21 Tracy filed his opposition. Third, Mr. Tracy argues that the Court did not allow him to present
22 evidence of uncontested facts. However, the Motion to Reconsider is not based on any “new or
23 different facts, circumstances or law”; and Mr. Tracy has not offered any satisfactory explanation
24 for his failure to present the allegedly new information and arguments at the Court’s initial hearing
25 on the Motions to Quash. Accordingly, the Court should deny the Motion to Reconsider.
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1 **II. ARGUMENT**

2 California Code of Civil Procedure section 1008 governs a motion for reconsideration, and
3 provides in pertinent part that such motion must be based on “new or different facts, circumstances,
4 or law” than those before the court at the time of the original ruling. The legislative intent was to
5 restrict motions for reconsideration to circumstances where a party offers the court some fact or
6 circumstances not previously considered, and some valid reason for not offering it earlier. *Gilberd*
7 *v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500. The burden under § 1008 is comparable to that of
8 a party seeking a new trial on the ground of newly discovered evidence: the information must be
9 such that the moving party could not, with reasonable diligence, have discovered or produced it at
10 the trial. *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212. A party seeking
11 reconsideration of a prior order based on “new or different fact, circumstances or law” must provide
12 a satisfactory explanation for failing to present the information at the first hearing. *Garcia v.*
13 *Hejmadi* (1997) 58 Cal.App.4th 674, 690.

14 **A. Kem Gardner’s Motion to Quash Was Accepted by the Court.**

15
16 Mr. Tracy first argues that the Court should reconsider its ruling because the Court never
17 accepted Kem Gardner’s Motion to Quash. However, Mr. Tracy has previously argued this point,
18 and Mr. Tracy does not provide any new or different facts, circumstances, or law that would justify
19 reconsideration by the Court.
20

21
22 Specifically, in his *Memorandum of Points and Authority in Support of Opposition to*
23 *Defendant Kem Crosby Gardner’s Motion to Quash Service of Process for Lack of Personal*
24 *Jurisdiction*, Mr. Tracy argued:

25 “On January 2, 2023, the Clerk of the Court rejected the filing with the remark “NO MOTION
26 ATTACHED TO THE ENVELOPE,” but appears to have scheduled a hearing for “Motion:
27 Order” but not “Motion: Quash” on January 22, 2024. To date, it is unclear if the court has
28 subsequently accepted the filing contrary to Rule 3.1110 of the California Rules of the Court.

1 Out of an abundance of caution, this opposition will however address the Motion as if accepted
2 by the court.”

3 Footnote 1.

4 The Court clearly rejected this argument since the Court considered Mr. Gardner’s Motion
5 to Quash. Thus, simply restating an argument that was raised before the Court and could have been
6 raised during oral arguments without any new facts, circumstance or law is not sufficient grounds
7 for a Motion to Reconsider.

8 **B. The Court Correctly Considered the Amended Bowen and Brown Declarations.**

9 Mr. Tracy next argues that the Court improperly allowed defendants Bowen and Brown to
10 amend pleadings after Mr. Tracy filed his opposition. In its Order, the Court considered Mr.
11 Tracy’s arguments with respect to the Bowen and Brown declarations and found “the Court will
12 consider the resubmitted declarations since the content of each declaration was not changed and no
13 new evidence was presented.” *Order*, p. 7.

14 In the Motion to Reconsider, Mr. Tracy argues that the Court erred because California Code
15 of Civil Procedure § 472(a) only allows a party to amend a pleading *once* without leave of Court.
16 However, section 472(a) discusses the procedure for amending pleadings. “[P]leadings are the
17 formal allegations by the parties of their respective claims and defenses, for the judgment of the
18 Court.” Code of Civil Procedure § 420. Pleadings include “complaints, demurrers, answers, and
19 cross-complaints.” Code of Civil Procedure § 422.10. Declarations in support of motions are not
20 considered pleadings subject to Section 472. In addition, even if section 472(a) was applicable,
21 section 472(a) is not new law, and Mr. Tracy fails to provide a valid reason for not raising the
22 argument in his opposition or during the hearing.

23 Finally, as the Court stated in its Order, the Court is vested with the discretion to consider
24 additional evidentiary matter on reply when it poses no prejudice to the opposing party. *Hahn v.*
25

1 *Diaz-Barba*, 194 Cal.App.4th 1177, 1193 (2011). The purpose of the amended Bowen declaration
2 was to simply clarify that Mr. Bowen sold approximately 500 copies of his self-published book on
3 Amazon and that it was possible that Amazon shipped some of the books to California residents.
4 Mr. Tracy argued that the book sales provided the Court with jurisdiction. Thus, although the Court
5 found that the book sales did not demonstrate general jurisdiction, there is no possibility that the
6 Court’s acceptance of the Amended Bowen Declaration prejudiced Mr. Tracy.
7

8 **C. Mr. Tracy’s Argument That the Court Did Not Allow Him to Present Evidence**
9 **of Uncontested Facts is Without Merit.**

10 Mr. Tracy’s final argument is that the Court did not allow him to present evidence of
11 uncontested facts. Mr. Tracy argues that the declarations submitted by defendants “did not contest
12 Plaintiff’s verified allegations” and the Court did not “provide Plaintiff an opportunity to produce
13 evidence of uncontested jurisdictional facts.” However, the Court clearly read the Complaint.
14 Therefore, if Mr. Tracy’s position is that there were facts in his Complaint that were uncontested, it is
15 unclear how Mr. Tracy was not allowed to present those facts to the Court.
16

17 In addition, to the extent Mr. Tracy’s argument is that his declaration in support of the Motion
18 to Reconsider contains additional facts that should be considered by the Court, none of the facts are *new*
19 facts that could not have discovered prior to filing the Complaint and included in Mr. Tracy’s previous
20 oppositions. Mr. Tracy also fails to provide any instance in which the Court denied him the ability to
21 present the evidence in his declaration. *See Morris v. AGFA Corp.*, 144 Cal.App.4th 1452, 1460
22 (2006) (motions for reconsideration are properly denied where they are based on evidence that
23 *could have been* presented in connection with the original motion). Thus, Mr. Tracy’s arguments
24 that the Court did not allow him to present evidence, or the Court should now consider facts that could
25 have previously been presented, are without merit.
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1 Finally, a number of the “new facts” have nothing to do with jurisdiction and are simply a
2 continuation of Mr. Tracy’s attempt to assert his grievances with the Emigration Improvement District.
3 For example, paragraph 2 of the Tracy Declaration references an excerpt from a 1995 Thesis that has
4 nothing to do with a California court having jurisdiction in this matter. Paragraph 3 alleges that in 2018
5 a tax foreclosure sale was initiated against a property in Utah while the resident was purportedly in an
6 assisted living facility in California. Mr. Tracy’s inclusion of these “facts” is just further evidence that
7 this action has nothing to do with a legitimate claim and is instead just another attempt by Mr. Tracy to
8 harass Defendants because he opposes development in Emigration Canyon, Utah.

10 III. CONCLUSION

11 For ten years, Mr. Tracy has been obsessed with attacking the Emigration Improvement
12 District and anyone associated with development in Emigration Canyon. Mr. Tracy claims to have
13 no assets and no ability to pay any judgments against him. Therefore, although Defendants have
14 been awarded over \$95,000 in attorneys’ fees against Mr. Tracy, Mr. Tracy appears to believe that
15 he can simply continue to file frivolous *pro se* actions and smotions against Defendants without any
16 repercussion. Mr. Tracy’s Motion to Reconsider is no exception. Mr. Tracy presents no new or
17 different fact, circumstances or law, and the one statute relied on by Mr. Tracy is not applicable to
18 his argument. Accordingly, the Court should deny the Motion to Reconsider.

20 DATED: March 13, 2024.

KESSENICK GAMMA LLP

22 By: 
23 _____

24 Charlie Y. Chou
25 Attorneys for defendants Cohne Kinghorn, P.C., Simplifi
26 Company, Jeremy Rand Cook, Eric Hawkes, Jennifer
27 Hawkes, Michael Scott Hughes, David Bradford, David
28 Bennion and Gary Bowen

1 **PROOF OF SERVICE**

2 *Tracy v. Cohne Kinghorn, et al., Santa Clara County Superior Court Case No. 23CV423435*

3 I, Sarah Nguyen, state:

4 My business address is 1 Post Street, Suite 2500, San Francisco, CA 94104. I am employed
5 in the City and County of San Francisco where this service occurs or mailing occurred. The
6 envelope or package was placed in the mail at San Francisco, California. I am over the age of
eighteen years and not a party to this action. On March 13, 2024, I served the following documents
described as:

7 SPECIALLY APPEARING DEFENDANTS COHNE KINGHORN, P.C., SIMPLIFI COMPANY,
8 JEREMY RAND COOK, ERIC HAWKES, JENNIFER HAWKES, MICHAEL SCOTT HUGHES,
9 DAVID BRADFORD, DAVID BENNION AND GARY BOWEN’S OPPOSITION TO
PLAINTIFF’S MOTION FOR RECONSIDERATION

10 on the following person(s) in this action addressed as follows:

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25 *Kem Crosby Gardner and*
26 *Defendant Walter J. Plumb III*

27 X **BY FIRST CLASS MAIL:** I am readily familiar with my firm’s practice for
28 collection and processing of correspondence for mailing with the United States Postal
Service, to-wit, that correspondence will be deposited with the United States Postal
Service this same day in the ordinary course of business. I sealed said envelope and
placed it for collection and mailing on March 13, 2024, following ordinary business
practices.

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X BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission on March 13, 2024, I caused the documents to be sent to the person(s) at the electronic notification address(es) listed above. Within a reasonable time, the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this date at San Francisco, California.

Dated: March 13, 2024



Sarah Nguyen