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10 Bowen

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SANTA CLARA

13 MARK CHRISTOPHER TRACY, an
14 individual,

15 Plaintiff,

16 v.

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

Defendants.

Case No. 23CV423435

**REPLY MEMORANDUM IN SUPPORT
OF SPECIALLY APPEARING
DEFENDANTS COHNE KINGHORN,
P.C., SIMPLIFI COMPANY, JEREMY
RAND COOK, ERIC HAWKES,
JENNIFER HAWKES, MICHAEL SCOTT
HUGHES, DAVID BRADFORD, AND
DAVID BENNION'S MOTION TO QUASH
SERVICE OF SUMMONS AND
COMPLAINT FOR LACK OF PERSONAL
JURISDICTION AND MOTION TO
DISMISS FOR INCONVENIENT FORUM**

Date: February 20, 2024

Time: 9:00 a.m.

Dept: 6

Judge: The Honorable Evette D. Pennypacker

**REPLY MEMORANDUM IN SUPPORT OF SPECIALLY APPEARING DEFENDANT COHNE
KINGHORN, P.C., SIMPLIFI COMPANY, JEREMY RAND COOK, ERIC HAWKES, JENNIFER HAWKES,
MICHAEL SCOTT HUGHES, DAVID BRADFORD AND DAVID BENNION'S MOTION TO QUASH
SERVICE OF SUMMONS AND COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND MOTION
TO DISMISS FOR INCONVENIENT FORUM**

Case No. 23CV423435

1 Specially appearing defendants Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand
2 Cook, Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, and David Bennion
3 (collectively “Defendants”) submits this *Reply Memorandum of Points and Authorities in Support*
4 *of Specially Appearing Defendants Cohne Kinghorn, P.C., Simplifi Company, Jeremy Rand Cook,*
5 *Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, and David Bennion’s*
6 *Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction and Motion*
7 *to Dismiss for Inconvenient Forum.*

9 **I. INTRODUCTION**

10 Mark Christopher Tracy (“Plaintiff” or “Mr. Tracy”) has spent the last ten years filing
11 frivolous and vexatious litigation against defendants in Utah state and federal courts based on the
12 same allegations in this action related to development and water rights in Emigration Canyon, Utah.
13 In fact, Mr. Tracy acknowledges that the first twelve pages of allegations in the Complaint are just a
14 repeat of the allegations asserted in a prior Federal False Claims Act case filed by Plaintiff. *See*
15 *Complaint, § 61* (“The above-listed allegations were filed in United States Federal District Court of
16 Utah on September 26, 2014, under the False Claims Act (the “FCA Litigation”).”¹ As a result of
17 Mr. Tracy’s completely meritless litigation in Utah, Mr. Tracy has been deemed a vexatious litigant
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21 ¹ On October 29, 2021, Judge Parrish issued that certain *Order Granting in Part and Denying in*
22 *Part Defendants’ Motion for Attorneys’ Fees and Cost and Granting Defendants’ Motion to Amend*
23 *(the “FCA Attorney Fee Order”)* in the FCA Litigation. *See Supplemental Declaration of Jeremy*
24 *R. Cook, ¶ 9, Exhibit E.* In the FCA Attorney Fee Order, Judge Parrish found: “Thus, having found
25 that Tracy’s actions were both clearly vexatious and brought for the purpose of harassment, the
26 court need not reach the question of whether Tracy’s claim was clearly frivolous.” *Id.*, p. 8. Based
27 on the finding, Judge Parrish awarded defendants \$92,665 in attorneys’ fees and costs for expenses
28 against Mr. Tracy, none of which have been paid. *Id.*

1 by Utah state courts. Because Mr. Tracy is unable to file any actions in Utah state courts without
2 leave of the presiding judge, Mr. Tracy has brought this action in California again attempting to
3 establish his meritless claims related to development and water rights in Emigration Canyon. *See*
4 *Complaint*, ¶5 (“By this lawsuit, Plaintiff seeks to . . . establish Defendants’ liability for the
5 fraudulent retirement of senior water rights, improper concealment of drinking water contamination
6 and grossly inadequate emergency-fire protection.”).

8 In his *Memorandum and Points of Authority in Support of Opposition to Kinghorn*
9 *Defendant Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction*
10 *and Motion to Dismiss for Inconvenient Forum* (the “Opposition”), Plaintiff makes four arguments
11 why this case should not be dismissed. First, Plaintiff argues that the Defendants waived objections
12 to the Court’s jurisdiction because Defendants failed to meet and confer with respect to hearing date
13 for this Motion. Second, Plaintiff lists a bunch of irrelevant facts that Plaintiff claims are
14 uncontested and therefore the Court must deny the motion. Third, Plaintiff asserts that the Court
15 has jurisdiction because Defendants published false or defamatory statements on the Emigration
16 Improvement District webpage, and that webpage is hosted on a server located in California.
17 Fourth, Plaintiff makes that conclusory assertion that “Kinghorn Defendants have cited neither
18 hinderance or burden in adjudicating the present action before this Court” None of these
19 arguments have any merit.
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22 Furthermore, Plaintiff fails to even respond to Defendants’ argument that the Court should
23 dismiss this action on the grounds of inconvenient forum pursuant to California Code of Civil
24 Procedure 418.10(a)(2). All of the allegations in the Complaint relate to issues in Emigration
25 Canyon, Utah; none of the defendants have any contact with California; and by his own admission,
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1 Mr. Tracy has filed cases against defendants in Utah based on the same facts and issues. Clearly,
2 the interests of justice support the dismissal of this action on the grounds of inconvenient forum.

3 **II. ARGUMENT**

4 **A. Failure to Confer on the Hearing Date Does Not Waive Defendant's Objection to**
5 **the Court's Exercise of Jurisdiction.**

6 Plaintiff filed this action in California even though none of the Defendants live in
7 California; all of the allegations relate to development, water rights or other issues in Emigration
8 Canyon; and Mr. Tracy has previously filed multiple actions in Utah against the same defendants
9 based on the same facts and circumstances. Plaintiff is certainly aware that there is no possible
10 basis for jurisdiction in this matter, and his purpose for filing this action in California is purely to
11 continue to harass Defendants by requiring them to expend time, money and resources defending
12 yet another frivolous case in California.

13
14 With respect to the hearing on this motion, counsel for Defendants followed the normal
15 process of filing this Motion and waiting for the Court to assign a hearing date. Mr. Tracy was
16 provided notice of the hearing date over forty-five days prior to the hearing. If Mr. Tracy was not
17 able to appear on the date assigned by the Court, Mr. Tracy could have filed a motion for
18 continuance. Thus, Mr. Tracy's assertion that the Court must deny the motion and assert
19 jurisdiction over Defendants because Mr. Tracy purportedly had to cancel a planned business trip to
20 Germany to appear at a hearing in a case that he filed is without merit.

21
22 **B. The Purported Undisputed Facts Do Not Establish Jurisdiction.**

23 Plaintiff next lists seven alleged facts from the Complaint that Plaintiff asserts are
24 undisputed. However, Plaintiff does include any argument as to why the seven alleged undisputed
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1 facts provide a basis for the Court to have jurisdiction, and even if true, none of the alleged facts
2 would establish jurisdiction. For example, one of the alleged facts states: “In August 2018,
3 Emigration Canyon Steam (sic) suffered total depletion for the first time in recorded history as
4 predicted in expert hydrology reports withheld and misrepresented to California residents.” Thus
5 Mr. Tracy’s argument is apparently that this Court has jurisdiction over Defendants for Plaintiff’s
6 claim of defamation and false light because some unidentified expert report prior to 2018
7 purportedly predicted depletion of Emigration Creek and the report was allegedly withheld and
8 misrepresented by an unidentified party to unidentified California residents. There is absolutely no
9 link between the expert report and Mr. Tracy’s defamation claim, and Mr. Tracy does not even
10 allege that any of the Defendants drafted the report or had any involvement in the report.
11 Moreover, even the alleged report had been “withheld”, and some of the people that may have
12 received a copy of the report lived in California, there is no possible basis that the allegation would
13 establish jurisdiction over the Defendants in this action.
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16 Simply put, none of the seven alleged undisputed facts would even remotely provide a basis
17 for the Court to exercise jurisdiction in this matter, and Mr. Tracy fails to include any argument as
18 to why the alleged facts provide jurisdiction.

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20 **C. The Assertion the Emigration Improvement District’s Webpage Is Hosted on a
Server in California Does Not Convey Jurisdiction Over Defendants.**

21 Plaintiff next makes the one paragraph argument that the Court has jurisdiction because the
22 webpage operated by Emigration Improvement District (“EID”) is hosted on a server in California
23 and alleged false and defamatory statements were published on EID’s website. However, Plaintiff
24 provides no response to Defendants’ argument that the Complaint only includes two allegations of
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1 purported statements published on EID’s website. The first allegation is that Mr. Hawkes, who is
2 EID’s manager, published on EID’s website that elevated lead levels in drinking water in EID’s
3 water system is likely the result of plumbing within homes tested and not water provided by EID.
4 Complaint, ¶ 72. Mr. Tracy does not explain how this statement could have possibly defamed him
5 or placed in him a false light. Second, Mr. Tracy alleges that Mr. Hawkes posted EID’s notice of
6 water rate increase on EID’s website which notice included purported defamatory statements
7 against Mr. Tracy. Even if hosting a webpage on a California server somehow established
8 jurisdiction in California, the allegation does not provide a basis to assert that this Court has general
9 jurisdiction over Mr. Hawkes, and certainly does not provide a basis to assert that the Court has
10 general jurisdiction over any of the other Defendants.
11

12 In summary, the allegation the EID hosts its webpage on a server in California does not
13 provide jurisdiction over Defendants, particularly since the assertion is only that EID posted
14 information on its webpage, and EID is not a party.
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16 **D. Plaintiff’s Conclusory Statement That Defendants Have Not Established Any**
17 **Burden Does Not Provide a Basis to Deny the Motion.**

18 Plaintiff next argues that once it has been established that a defendant purposefully
19 established minimum contacts within the forum state, the contacts may be considered in light of
20 other factors to determine whether personal jurisdiction would comport with “fair play and
21 substantial justice”, including an evaluation of the “burden on defendants.” *Opposition*, p. 8.
22 Plaintiff then asserts that Defendants have “cited neither hinderance nor burden in adjudicating the
23 present action before this Court.” However, not only has Plaintiff not established that Defendants
24 have minimum contacts with California, but the burden on Defendants of having to defend this
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1 action in California clearly favors the Court denying jurisdiction. All of the Defendants live in
2 Utah, and all the allegations relate to development, water rights, or other issues in Emigration
3 Canyon, Utah. Clearly, the burden on Defendants of having to defend this action in California
4 outweighs any interest of California court's in adjudicating this dispute or the interest of the
5 Plaintiff, who has already filed multiple cases in Utah state and federal courts based on the same
6 facts and circumstances.
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8 In summary, Plaintiff's assertion that the Court should deny the motion because Defendants
9 have not established that there is a burden on them to defend this case in California is without merit.

10 **E. The Court Should Grant the Motion Based On Defendants' Inconvenient Forum**
11 **Argument.**

12 California Code of Civil Procedure 418.10(a)(2) "permits a defendant challenging
13 jurisdiction to object on inconvenient forum grounds if the defendant's challenge to jurisdiction
14 should be denied." *Global Financial Distributors, Inc. v. Superior Court* (2019) 35 Cal.App.5th
15 179, 190 (internal quotations omitted). Section B of Defendant's Motion was based solely on an
16 argument of inconvenient forum. However, Plaintiff failed to even address Defendants'
17 inconvenient forum argument or provide any basis for the Court to not use its discretionary power
18 to decline jurisdiction.
19

20 Based on the alleged facts in the Complaint, Utah courts are a more appropriate venue for
21 this action. For example, Plaintiff begins the Complaint by stating: "Plaintiff is a federal
22 whistleblower in what has alleged to be the longest and most lucrative water grabs in the history of
23 the State of Utah." Complaint, ¶ 1. Likewise, all of the allegations in the Complaint relate to
24 development, water rights or other issues in Utah. Plaintiff has also filed multiple actions in Utah
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1 that Plaintiff acknowledges include almost identical facts to this action. See Complaint, ¶ 61.

2 In summary, the Court should deny jurisdiction because Utah is the more convenient forum.

3 **F. The Court Should Not Stay the Motion or Grant Leave to Amend.**

4 Mr. Tracy's final argument is that the Court should stay the Motion to allow Mr. Tracy to
5 conduct discovery to "evidence minimum contacts with the forum state . . ." Opposition, p. 9.
6 However, as set forth above, Mr. Tracy failed to even argue that the Court should not dismiss the
7 action on the grounds of inconvenient forum, and no amount of discovery related to Defendants
8 minimum contacts with the forum state would alter the facts related to Defendants' inconvenient
9 forum argument.
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11 It is undisputed that all the allegations in the Complaint relate solely to development, water
12 rights, and other issues in Emigration Canyon, Utah. Moreover, by Plaintiff's own admission,
13 almost all of the allegations are identical to allegations alleged in previous litigation filed by Mr.
14 Tracy in Utah.
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16 Accordingly, because the action is more appropriately and justly tried in Utah, and
17 discovery will not change the facts related to Defendants' inconvenient forum argument, the Court
18 should deny Plaintiff's request to stay a decision, conduct discovery, or amend the Complaint.
19

20 **CONCLUSION**

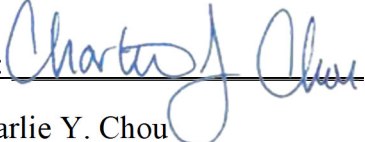
21 This Court lacks personal jurisdiction over Defendants because all the individual Defendants are
22 residents of Utah and both entities are Utah corporations without offices or a presence in California.
23 Further, Plaintiff's claims against Defendants arise from alleged conduct occurring exclusively in Utah
24 with no connection to California. Accordingly, the Court should quash service of process and
25 complaint in this action for lack of personal jurisdiction under California Code of Civil Procedure §
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1 418.10(a)(1). In addition, as an alternative ground, the Court should dismiss this action pursuant to
2 California Code of Civil Procedure § 418.10(a)(2) based on inconvenient forum.

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DATED: February 9, 2024.

KESSENICK GAMMA LLP

By: 

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Attorneys for defendants Cohne Kinghorn, P.C., Simplifi
Company, Jeremy Rand Cook, Eric Hawkes, Jennifer
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