

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037
--
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany
--
5 Email: m.tracy@echo-association.com
Telephone: +1 (929) 208-6010
6 +49 (0)172 838 86 37
7 Pro Se Plaintiff

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 2/5/2024 12:06 AM
Reviewed By: L. Nguyen
Case #23CV423435
Envelope: 14311478**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10 **UNLIMITED JURISDICTION**

11 MARK CHRISTOPHER TRACY, an
12 individual,
13 Plaintiff,
14 v.
15 COHNE KINGHORN PC, a Utah Professional
16 Corporation; SIMPLIFI COMPANY, a Utah
17 Corporation; JEREMY RAND COOK, an
18 individual; ERIC HAWKES, an individual;
19 JENNIFER HAWKES, an individual;
20 MICHAEL SCOTT HUGHES, an individual;
21 DAVID BRADFORD, an individual; KEM
22 CROSBY GARDNER, an individual;
23 WALTER J. PLUMB III, an individual;
24 DAVID BENNION, an individual; R. STEVE
25 CREAMER, an individual PAUL HANDY
26 BROWN, an individual; GARY A. BOWEN,
27 an individual
28 Defendants.

Case No.: 23CV423435

Honorable Evette D. Pennypacker
[Dept. 6]

**MEMORANDUM AND POINTS OF
AUTHORITY IN SUPPORT OF
OPPOSITION TO KINGHORN
DEFENDANTS’ MOTION TO QUASH
SERVICE OF PROCESS FOR LACK OF
PERSONAL JURISDICTION OR
INCONVENIENT FORUM**

Hearing Date: February 20, 2024
Time: 09:00 am (PST)

Action Filed: September 21, 2023
Trial Date: TBD

INTRODUCTION

Plaintiff Mark Christopher Tracy (“Mr. Tracy” and “Plaintiff”) respectfully submits this memorandum and points of authority in support of his opposition to the motion to quash service of summons for lack of personal jurisdiction or inconvenient forum submitted by Defendants Cohne Kinghorn P.C., Simplifi Company, Utah Attorneys Jeremy Rand Cook and David Bennion, Eric

1 Hawkes, Jennifer Hawkes, Michael Scott Hughes and David Bradford (“Kinghorn Defendants”) and
2 filed pursuant to Code of Civ. P. § 418.10(a) subsections (1) and (2).

3 Kinghorn Defendants argue that the Complaint alleges facts occurring “exclusively” in Utah,
4 and because none of the Defendants have any personal or business conduct in the State of California,
5 this Court lacks personal jurisdiction to adjudicate the present action. Memorandum of Points and
6 Authorities in Support of Specially Appearing Defendants Cohne Kinghorn P.C., Simplifi Company,
7 Jeremy Rand Cook, Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, and David
8 Bennion’s Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction and
9 Motion to Dismiss for Inconvenient Forum (“Kinghorn Memo” and the “Motion”), p. 5, ¶ 9.

10 In the alternative, because no California resident would purportedly benefit from an action to
11 recover economic damage and loss caused by defamatory statements and ongoing fraudulent activities
12 published on the world-wide web, this Court should exercise its discretionary authority and decline
13 jurisdiction under the grounds of inconvenient forum. Kinghorn Memo., p. 10.

14 These arguments fail.

15 First, Kinghorn Defendants waived jurisdictional objections by failing to conduct a mandatory
16 meet and confer and by serving Plaintiff a blank Notice of Motion. Next, even a perfunctory review of
17 the Complaint reveals purposeful tortious conduct occurring both within and directed towards residents
18 of the forum state establishing exercise of personal jurisdiction. Lastly, California has a manifest interest
19 in protecting residents against libelous statements and deception perpetrated by out-of-state actors,¹ and
20 this Court is the most appropriate litigation forum.

21 In the alternative, because Kinghorn Defendants submitted sworn declarations, which appear to
22 be demonstrably false, the Court should stay the Motion for 180 days to allow discovery of any relevant,
23 contested jurisdictional facts.

24 //

25 //

26 ¹ See e.g., Alexandra E. Petri, *Utah governor tells Californians to ‘stay in California instead of coming*
27 *as refugees,*’ Los Angeles Times, February 13, 2023, available at the website administered by the Los
28 Angeles Times Communications, LLC <https://www.latimes.com/california/story/2023-02-13/utah-governor-tells-californians-to-stay-in-california>.

1 **ARGUMENT**

2 **I. Legal Framework for the Exercise of Jurisdiction for Out-of-State Defendants**

3 When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has
4 the initial burden of demonstrating facts justifying the exercise of jurisdiction. *State of Oregon v.*
5 *Superior Court*, 24 Cal. App.4th 1550, 1557 (1994).

6 Once facts showing minimum contacts with the forum state are established, it then becomes the
7 burden of the defendant to demonstrate that the exercise of jurisdiction would be unreasonable. *Burger*
8 *King Corp. v. Rudzewicz*, 471 U.S. 462, 476-477 (1985). However, when a defendant who has
9 purposefully directed his activities at forum residents seeks to defeat jurisdiction, “he must present a
10 compelling case that the presence of some other considerations would render jurisdiction unreasonable.”
11 *Id.* at 477.

12 **II. The Motion to Defeat Jurisdiction is Null and Void**

13 Code of Civ. P. § 418.10(a) stipulates that a defendant may, on or before the last day of the time
14 to plead, serve and file motion to quash the service of summons or dismiss the action on grounds of
15 inconvenient forum. However, subsection (b) requires that “[t]he notice *shall* designate, as the time for
16 making the motion, a date not more than 30 days after filing of the notice” (emphasis added).

17 Local Rule 8A of the Civil Division of the Superior Court for County of Santa Clara orders that
18 prior to scheduling a hearing with the court clerk via telephone no. (408) 882-2430,² “the moving party
19 *must* (1) meet and confer with the non-moving party or parties to identify mutually agreeable dates then
20 (2) follow the procedure set forth on the civil law and motion section of the court’s website at
21 <https://www.scscourt.org/>” (emphasis added).

22 In the instant action, hours before expiration of the response deadline and without clarification,
23 Cohne Kinghorn Defendants served Plaintiff a Notice of Motion with the date, time, and place of the
24 hearing left blank and then, without prior consultation, served an “Amended Notice” six days later
25 forcing Plaintiff to cancel a planned business trip to Germany and causing him to incur substantial costs
26 and expense. Declaration of Mark Christopher Tracy (“Tracy Decl.”), ¶ 3, Exhibit A and ¶ 4.

27 ² Plaintiff is informed and believes that changes to local rules were published by this Court sometime
28 in June 2023 for a public-comment period and then went into effect on January 1, 2024.

1 By disregarding state and local court rules of notice and consultation causing economic loss,
2 Kinghorn Defendants waived objection to this Court’s exercise of personal jurisdiction.

3 **III. The Motion to Defeat Jurisdiction is Devoid of Basis in Fact and Law**

4 Assuming arguendo that Kinghorn Defendants had properly raised jurisdictional objections and
5 not caused Plaintiff pecuniary harm, the present action is entirely consistent with California’s long-arm
6 statute and the due process clause of the Constitution of the United States.

7 A state court’s exercise of personal jurisdiction over a nonresident defendant (who has not been
8 served with process within the state) per Code Civ. P. § 410.10 requires compliance with the due process
9 clause of the federal Constitution, which in turn mandates that the defendant has such minimum contacts
10 so the assertion of jurisdiction does not violate “traditional notions of fair play and substantial justice.”
11 *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see also Burnham v. Superior Court*,
12 495 U.S. 604, 618-619 (1990).

13 Personal jurisdiction may be either general or specific. The former provides that a nonresident
14 defendant may be subject to litigation if his (or her) contacts in the forum state are “substantial [...]”
15 continuous and systematic” (*Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445, 446 (1952)), while the
16 later demands that the defendant has purposefully availed himself (or herself) of forum benefits (*Burger*
17 *King Corp. v. Rudzewicz*, 471 U.S. 462, 471 (1985)) and the controversy is related to or “arises out of
18 a defendant’s contacts with the forum” (*Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408,
19 414 (1984)).

20 **A. Factual Jurisdictional Allegations of the Complaint**

21 In support of the Motion to defeat this Court’s jurisdiction, Kinghorn Defendants Jeremy Rand
22 Cook, David Bennion, Eric Hawkes, Jennifer Hawkes, Michael Scott Hughes and David Bradford
23 declared under penalty of perjury that they have no residence, own no property, conduct no business,
24 and corporate defendants Cohne Kinghorn P.C. and Simplify Company maintain no office in the State
25 of California.³

26 As Kinghorn Defendants limited their factual assertions of jurisdiction to property ownership,

27 ³ These assertions are inconsequential to the Motion and, upon cursory review, appear to be
28 demonstrably false. *See e.g.*, Tracy Decl. ¶ 5, Exhibit B.

1 business conduct, and the location of residence or corporate offices,⁴ the following allegations of the
2 Complaint are uncontested:

3 1. Plaintiff Mark Christopher Tracy (“Tracy” and “Plaintiff”) is a California resident and
4 federal whistleblower in what has been alleged to be the longest and most lucrative water grabs in the
5 history of Utah. Compl. ¶ 1.

6 2. This scheme is perpetuated for the private profit of Kinghorn Defendants including
7 politically influential land developers and codefendants Kem Crosby Gardner,⁵ Walter J. Plumb III,⁶
8 and R. Steve Creamer,⁷ (“Codefendants Gardner, Plumb, and Creamer”) at the expense of California
9 citizens and residents.⁸ Compl. ¶ 2.

10 3. Specifically, since December 1, 1984, defendant Cohne Kinghorn P.C., acting on behalf
11 of a Utah Special Service Water District,⁹ and controlled by Kinghorn Defendants induced long-time
12 residents of Emigration Canyon, Utah to abandon senior water rights,¹⁰ and yield to duplicitous water
13 claims stripped from the only active federal military cemetery created by an Act of Congress, signed

14 ⁴ Kinghorn Defendants’ argument that “Mr. Tracy has alleged these exact same issues in multiple
15 lawsuits in Utah Courts” (Kinghorn Memo, p. 9) is both irrelevant to a motion to defeat jurisdiction
and demonstrably false.

16 ⁵ See e.g., Lee Davidson, *Utah’s biggest individual political donor is a software CEO, helping right-*
17 *wing GOP causes to the tune of \$777K. Eight others gave more than \$200K each*, Salt Lake Tribune,
18 August 13, 2018, available at the website administered by the Newspaper Agency Corporation
<https://www.sltrib.com/news/politics/2018/08/13/utahs-biggest-individual/>.

19 ⁶ See e.g., Taylor W. Anderson, *Meet the man spending \$100,000 to defeat Utah’s medical marijuana*
20 *initiative*, Salt Lake Tribune, May 25, 2018, available at the website administered by the Newspaper
21 Agency Corporation [https://www.sltrib.com/news/politics/2018/05/25/meet-the-man-spending-](https://www.sltrib.com/news/politics/2018/05/25/meet-the-man-spending-100000-to-defeat-utahs-medical-marijuana-initiative/)
22 [100000-to-defeat-utahs-medical-marijuana-initiative/](https://www.sltrib.com/news/politics/2018/05/25/meet-the-man-spending-100000-to-defeat-utahs-medical-marijuana-initiative/); Codefendant Walter J. Plumb III appears to
23 have avoided service of process and has not yet entered appearance. See e.g., Second Proof of Service
24 of Summons, filing no. 9444693.

25 ⁷ Davidson, *supra* note 5; Request for Entry of Default against Codefendant R. Steve Creamer is
26 currently pending. See filing no. 9352600.

27 ⁸ See e.g., Brian Maffly, *‘We Don’t Need Your Water’: Emigration Canyon Water Fight Breaks Out In*
28 *Court*, Salt Lake Tribune, June 18, 2015, at A1, available at the website administered by the
Newspaper Agency Corporation <https://archive.sltrib.com/article.php?id=2618507&itype=CMSID>.

⁹ Misuse of special service water districts for private profit has received national attention. See e.g.,
Special Districts: Last Week Tonight with John Oliver, Home Box Office, March 7, 2016, available at
the website administered by Google LLC <https://www.youtube.com/watch?v=3saU5racsGE>.

¹⁰ See e.g., Emigration Canyon Improvement District Water Rates, subheading “Water Rights,”
available at the website administered by Kinghorn Defendant Simplifi Company through Kinghorn
Defendants Eric and Jennifer Hawkes <https://www.ecid.org/water-rates>, last visited February 4, 2024
at 1:53 PM.

1 into law by United States President Ulysses S. Grant in 1874, subject to the reversionary interest to be
2 “forever used for the burial of the dead,” but however misappropriated by Codefendants Gardner, Plumb
3 and Creamer for the construction and massive expansion of a luxurious private urban development,¹¹
4 marketed and sold to unsuspecting California residents immediately following the 2002 Olympic Winter
5 Games as the “Bel Air of Salt Lake City.”¹² Compl. ¶¶ 2, 57.

6 4. In furtherance of this ongoing fraud, and to ensure continued payment of monies from
7 property owners residing in Venice, Rancho Cucamonga, Corona Del Mar, Coto de Caza, Mountain
8 View, San Rafael, Bayside, Loomis, and San Diego, California, Kinghorn Defendants miscited and
9 withheld expert hydrology reports expressly warning against aquifer depletion via operation of large-
10 diameter commercial wells constructed by Codefendants Gardner, Plumb and Creamer while
11 simultaneously concealing governmental records evidencing extensive lead contamination,¹³ and
12 inadequate emergency-fire protection¹⁴ in a small-mountain community identified as especially prone
13 to wild-fire fatalities.¹⁵ Compl. ¶ 3.

14 5. When however, the suppression of expert studies and public records proved unsuccessful,
15 Kinghorn Defendants resorted to a collaborative smear campaign publishing false and defamatory

16 ¹¹ See e.g., Emma Penrod, *Paranoia and a ‘Preposterously’ Oversized Water Tank*, High Country
17 News, June 28, 2019, available at the website administered by High Country News
<https://www.hcn.org/issues/51.12/water-paranoia-and-a-preposterously-oversized-water-tank-in-utah>.

18 ¹² See e.g., Dennis Romboy, *Emigration Canyon: Its historical significance, offbeat aura lend the area*
19 *plenty of flavor*, Desert News, July 25, 2006, available at the website administered by the Desert News
20 Publishing Company [https://www.deseret.com/2006/7/25/19964952/emigration-canyon-its-historical-](https://www.deseret.com/2006/7/25/19964952/emigration-canyon-its-historical-significance-offbeat-aura-lend-the-area-plenty-of-flavor)
21 [significance-offbeat-aura-lend-the-area-plenty-of-flavor](https://www.deseret.com/2006/7/25/19964952/emigration-canyon-its-historical-significance-offbeat-aura-lend-the-area-plenty-of-flavor); see also correspondence to United States
22 Congressional Representatives, dated September 19, 2020, available at the website administered by
23 The ECHO-Association https://echo-association.com/?page_id=6908, last edited on December 7,
24 2022.

25 ¹³ See e.g., email correspondence dated July 6, 2020, from Kinghorn Defendant Eric Hawkes to
26 Kinghorn Defendants Utah Attorney Jeremy Rand Cook, Michael Scott Hughes, and David Bradford,
27 available at the website administered by The ECHO-Association [https://echo-](https://echo-association.com/?page_id=4955)
28 [association.com/?page_id=4955](https://echo-association.com/?page_id=4955).

¹⁴ See e.g., Emigration Improvement District (aka Emigration Canyon Improvement District) Trustee
Meeting Minutes, dated October 13, 2013, available at the website administered by The ECHO-
Association https://echo-association.com/?page_id=7603, last edited on March 24, 2022 at 11:07 AM.

¹⁵ Thomas J Cova, Justin P Johnson, *Microsimulation of Neighborhood Evacuations in the Urban*
Wildland Interface, Environment and Planning A 2002, volume 34, 2211-29 available at the website
administered by The ECHO-Association https://echo-association.com/?page_id=7603, last edited on
March 24, 2022 at 11:07 AM.

1 statements against Mr. Tracy on the world-wide web via a server located in San Jose, California under
2 the slogan “STAY INFORMED – GET THE FACTS!” (emphasis in original) whereby each codefendant
3 acted as the agent, servant, employee, partner, co-conspirator, and/or joint venture of each remaining
4 codefendant.¹⁶ Compl. ¶¶ 4, 20.

5 6. In August 2018, Emigration Canyon Steam suffered total depletion for the first time in
6 recorded history as predicted in expert hydrology reports withheld and misrepresented to California
7 residents.¹⁷ Compl. ¶ 52.

8 7. The environmental and economic damage caused by willful groundwater depletion and
9 drinking-water contamination by Kinghorn Defendants and Codefendants Gardner, Plumb and Creamer
10 is a matter of public record.¹⁸ *Id.*

11 **B. Minimum Contact with the Forum State**

12 The Complaint records that acting as agents of Codefendants Gardner, Plumb and Creamer,

13 ¹⁶ Although irrelevant to the Motion, and contrary to Kinghorn Defendants’ contention, Emigration
14 Improvement District is not a necessary party to the present litigation per Code of Civ. P. § 389(a).

15 ¹⁷ Mismanagement of scarce water resources in Utah has gained national attention. *See e.g., Water:*
16 *Last Week Tonight with John Oliver (HBO)*, Home Box Office, March 7, 2016, available at the
17 website administered by Google LLC [https://youtu.be/jtxew5XUVbQ?si=nlt-](https://youtu.be/jtxew5XUVbQ?si=nlt-MGNKupuyTIPv&t=970)
18 [MGNKupuyTIPv&t=970](https://youtu.be/jtxew5XUVbQ?si=nlt-MGNKupuyTIPv&t=970); *see also* Brian Maffly, *Why is Emigration Creek — a historic Utah*
19 *waterway — dry? Blame runs from climate change to drought to development to water-sucking wells*,
20 Salt Lake Tribune, September 8, 2018, available at the website administered by the Newspaper
21 Agency Corporation <https://www.sltrib.com/news/environment/2018/09/08/why-is-emigration-creek/>;
22 *see also* Amy Joi O’Donoghue, *Emigration Canyon and Groundwater Pumping in Utah: What’s at*
23 *Risk?* Desert News, January 2, 2019, available at the website administered by the Desert News
24 Publishing Company at [https://www.deseret.com/2019/1/2/20662500/emigration-canyon-and-](https://www.deseret.com/2019/1/2/20662500/emigration-canyon-and-groundwater-pumping-in-utah-what-s-at-risk)
25 [groundwater-pumping-in-utah-what-s-at-risk](https://www.deseret.com/2019/1/2/20662500/emigration-canyon-and-groundwater-pumping-in-utah-what-s-at-risk); *see also* Amy Joi O’Donoghue, *District’s water*
26 *diversion will continue in Emigration Canyon*, January 18, 2019, available at the website administered
27 by Bonneville International Corporation [https://www.ksl.com/article/46471323/districts-water-](https://www.ksl.com/article/46471323/districts-water-diversion-will-continue-in-emigration-canyon)
28 [diversion-will-continue-in-emigration-canyon](https://www.ksl.com/article/46471323/districts-water-diversion-will-continue-in-emigration-canyon); *see also* compilation of media reports by CNN, High
Country News, The Washington Post, and Business Insider available at the website administered by
The ECHO-Association at https://echo-association.com/?page_id=405, last edited on September 13,
2023 at 12:32 AM.

29 ¹⁸ *See e.g., Ground Collapse and Fissures in Emigration Oaks PUD*, December 13, 2020, available at
30 the website administered by Google LLC
31 [https://www.youtube.com/watch?time_continue=4&v=r3YsR6dPktM&embeds_referring_uri=https%](https://www.youtube.com/watch?time_continue=4&v=r3YsR6dPktM&embeds_referring_uri=https%3A%2F%2Fecho-association.com%2F&source_ve_path=MzY4NDIsMjg2NjY&feature=emb_logo)
32 [3A%2F%2Fecho-association.com%2F&source_ve_path=MzY4NDIsMjg2NjY&feature=emb_logo](https://www.youtube.com/watch?time_continue=4&v=r3YsR6dPktM&embeds_referring_uri=https%3A%2F%2Fecho-association.com%2F&source_ve_path=MzY4NDIsMjg2NjY&feature=emb_logo);
33 *see also* Utah Division of Water Rights public hearing for permanent change applications no. a44045
34 (57-7796), December 18, 2018, available at the website administered by Google LLC
35 <https://www.youtube.com/watch?v=2bEPqIzQ9gc>.

1 Kinghorn Defendants published false and defamatory statements on the world-wide web via a server
2 located in the City of San José, California to induce payment of monies from California residents.

3 As Kinghorn Defendants failed to contest these jurisdiction facts,¹⁹ Plaintiff has met his burden
4 of production.

5 **C. Kinghorn Defendants Failed to Identify a Compelling Reason to Defeat Jurisdiction**

6 Once it has been decided that a defendant purposefully established minimum contacts within the
7 forum State, these contacts may be considered in light of other factors to determine whether the assertion
8 of personal jurisdiction would comport with “fair play and substantial justice.” *International Shoe Co.*
9 *v. Washington*, 326 U.S. at 320.

10 In this regard, the court may evaluate “the burden on the defendant,” “the forum State’s interest
11 in adjudicating the dispute,” “the plaintiff’s interest in obtaining convenient and effective relief,” “the
12 interstate judicial system’s interest in obtaining the most efficient resolution of controversies,” and the
13 “shared interest of the several States in furthering fundamental substantive social policies.” *World-Wide*
14 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980).

15 In the present case, Kinghorn Defendants have cited neither hinderance nor burden in
16 adjudicating the present action before this Court and given the purposeful tortious conduct both within
17 and directed towards residents of California,²⁰ a “compelling reason” required to defeat this Court’s
18 jurisdiction remains to date undiscernible.²¹

19 //

20 ¹⁹ Any additional factual argument advanced in the Kinghorn Memo but not supported by a declaration
21 under penalty of perjury under the laws of California is inadmissible hearsay. *Kulshrestha v. First*
22 *Union Commercial Corp.*, 33 Cal.4th 601, 610 (2004).

23 ²⁰ While not relevant to the Motion, the United States Supreme Court held that a publisher who
24 distributes magazines to the public in a distant state may be held accountable in that forum for damage
25 to a victim of defamation. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984).

26 ²¹ The vexatious litigant order, repeatedly cited by the Kinghorn Defendants, Codefendants Kem
27 Crosby Gardner, Gary A. Bowen, and Paul Handy Brown, drafted by Codefendant Utah Attorney
28 Jeremy Rand Cook, and executed by Utah Third District Court Judge Mark Kouris during appellate
proceedings before the Utah Supreme Court provides no evidence how the exercise of personal
jurisdiction by this Court poses a burden to defendants. *See e.g.*, Brief of Petitioner for Writ of
Extraordinary Relief, *Tracy v. Hon. Kouris*, No. 20210743 (UT, October 11, 2021); *see also* Motion to
Reinstate Time for Filing Appeal, *Tracy v. Simplifi et. al*, No. 200905074 (Utah 3rd Dist., April 15,
2022); *see also* Tracy Decl. ¶ 5, Exhibit B.

