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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 MOTION
TO RECONSIDER ORDER GRANTING
DEFENDANTS’ MOTIONS TO QUASH
SERVICE OF PROCESS FOR LACK OF
PERSONAL JURISDICTION**
Hearing Date: March 26, 2024
Time: 09:00 am (PST)
Action Filed: September 21, 2023
Trial Date: TBD

24 **INTRODUCTION**

25 Pursuant to Code of Civ. P. § 1008(a), Plaintiff Mark Christopher Tracy (“Mr. Tracy” and
26 “Plaintiff”) respectfully submits this memorandum and points of authority in support of his motion for
27 the Court to reconsider its Order granting the motions to quash service of the complaint and summons
28 for lack of personal jurisdiction submitted by Defendants Cohne Kinghorn P.C., Simplifi Company,

1 land-developer Kem Crosby Gardner, Utah Attorneys Jeremy Rand Cook and David Bennion,
2 Emigration Improvement District (aka Emigration Canyon Improvement District, hereafter “ECID”)
3 public records officers Eric and Jennifer Hawkes, and ECID trustees Michael Scott Hughes and David
4 Bradford (collectively “Defendants” and “Motions to Quash”).

5 In its Order granting the Motions to Quash, the Court ruled “[t]here is no evidence these alleged
6 actions were deliberately directed at California residents or establishing agency or a conspiratorial
7 relationship among Defendants:¹ There is no evidence showing Defendants (1) intentionally routed
8 ECID’s website through San Jose, (2) deliberately posted false statements [via the world-wide web]
9 knowing it would be read by California residents, (3) the postings were read by property owners residing
10 in California, and (4) as the result, California property owners paid monies to the moving Defendants”
11 and “[with the exception of Defendant Gary A. Bowen] none of the remaining moving Defendants has
12 conducted any business in California.”²

13 Plaintiff respectfully requests that the Court reconsider its Order due to the fact that the court
14 clerk had rejected Defendant Kem Crosby Gardner’s Motion to Quash,³ Defendants Paul Handy Brown
15 and Gary A. Bowen may not correct impermissible hearsay evidence after Plaintiff’s Opposition was
16 filed, and the Court denied Plaintiff an opportunity to present evidence of jurisdictional facts never
17 contested by any Defendant to date.

18 //

19 ¹ Although never contested, public records confirm that Defendants were aware that the construction of
20 large-diameter commercial wells would lead to impairment of senior perfected water rights of Davis,
21 California resident Pat Sheya “with almost certainty” (Declaration of Mark Christopher Tracy (“Tracy
22 Decl.”) ¶ 2, Exhibit A, and ¶ 3, Exhibit B).

23 ² Contrary to the sworn declarations submitted to the Court and forming the basis of the Court’s Order,
24 Defendant Kem Crosby Gardner owns (or did own) a percentage interest in two California radio
25 stations and conducts extensive business in California through The Boyer Company L.C., the Gardner
26 Group, and rPlus Energies since sometime prior to 2004 (Tracy Decl. ¶ 4, Exhibit C and ¶ 5, Exhibit
27 D) while Defendants Cohne Kinghorn P.C., and David M. Bennion entered pro hac vice appearances
28 in California courts (Tracy Decl. ¶ 6) and Defendants Michael Scott Hughes and David Bradford
currently market and sell products and services to California residents through the companies PureAG
and Pegus Research, Inc. (Tracy Decl. ¶ 7, Exhibit E and ¶ 8, Exhibit F).

³ On February 15, 2024, the court clerk similarly rejected the Motion to Quash Service of the
Complaint and Summons submitted by Defendant Walter J. Plumb III for having failed to reserve a
hearing date per local rule 8A. Plaintiff will respond to the sworn affidavit submitted to the Court by
legal counsel Thomas R. Burke and Sarah E. Burns in the due course of time.

1 **ARGUMENT**

2 **I. Legal Framework for Evaluating Objections to Personal Jurisdiction.**

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

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).

9 However, as in the present case, when a defendant who has purposefully directed his activities at
10 forum residents seeks to defeat jurisdiction,⁴ “he must present a compelling case that the presence of
11 some other considerations would render jurisdiction unreasonable.” *Id.* at 477.

12 Plaintiff cannot rely on vague and conclusory assertions of ultimate facts. *Strasner v. Touchstone*
13 *Wireless Repair & Logistics* (2016) 5 Cal.App.5th 215, 222. Plaintiff must provide affidavits and other
14 authenticated documents to demonstrate competent evidence of specific evidentiary facts that would
15 permit a court to form an independent conclusion on the issue of jurisdiction. *In re Automobile Antitrust*
16 *Cases I & II* (2005) 135 Cal.App.4th 100, 113. Evidence of the jurisdictional facts, or their absence,
17 may be in the forms of declarations. “Where there is a conflict in the declarations, resolution of conflict
18 by the trial court will not be disturbed on appeal if the determination is supported by substantial evidence.

19 However, where the evidence of jurisdictional facts is not conflicting, the question of whether a
20 defendant is subject to personal jurisdiction is one of law. *Elkman v. National States Ins. Co.* (2009) 173
21 Cal.App.4th 1305, 1312-1313; *see also Greenwell v. Auto-Owners Ins. Company* (2015) 233
22 Cal.App.4th 783, 789, citing *Elkman.*)

23 **II. Defendant Gardner’s Motion to Quash was Rejected by the Court Clerk.**

24 In the present case, on January 2, 2024, the court clerk informed legal counsel of record Thomas
25 R. Burke and Sarah E. Burns (“Defendant Gardner Legal Counsel”) that the Motion to Quash Service

26 ⁴ In the present case, Defendants did not contest that defamatory statement were of and related to a
27 resident of the State of California and the Plaintiff suffered reputation harm and economic damage in
28 the forum state as a result of their intentional and tortious activities. *See Jewish Defense Organization,*
Inc. v. Sup. Ct. of Los Angeles County (Rambam) (1999) 72 Cal.App.4th 1045, 1054.

1 of Process for Lack of Jurisdiction was improperly submitted.⁵

2 For currently unknown reasons, the Defendant Gardner’s legal counsel failed to inform Plaintiff
3 of the rejected filing and declined correct the court record prior to execution of the Court’s Order.

4 **III. The Court Improperly Allowed Defendants Bowen and Brown to Amend Pleadings.**

5 In its ruling, in apparent reliance on the argument advanced by Attorney Charlie Chow, the Court
6 concluded that two (2) separate amendments to the sworn declarations of Defendants Paul Handy Brown
7 and Gary A. Bowen were permissible because “[...] the content of each declaration was not changed
8 and no new evidence was presented.”

9 This contention is however inconsistent both with the court record and standing rules of civil
10 procedure.

11 Code of Civ. P. § 472(a) provides that “a party may amend its pleading *once* without leave of the
12 court [...] after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard
13 if the amended pleading is filed and served *no later than the date for filing an opposition* to the demurrer
14 or motion to strike. A party may amend the pleading after the date for filing an opposition to the demurrer
15 or motion to strike, *upon stipulation by the parties*” (emphasis added).

16 On November 1 and November 21, 2023,⁶ Defendants Bowen and Brown executed sworn
17 declarations in Salt Lake City, Utah without reference to punishment under perjury laws of the State of
18 California. Rather than responding to impermissible hearsay evidence, Plaintiff filed his Oppositions on
19 November 22, and December 4 respectively, leading Defendants Bowen and Brown to amend their
20 declarations on December 5, and January 4 without consultation or consent.⁷

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22 ⁵ It is uncontested that Defendant Gardner Legal Counsel failed to meet and confer with Mr. Tracy
23 and declined to reserve a hearing date prior to filing the Amended Notice of Motion as required under
24 Code. Civ. P. § 418.10 and Local Rule 8A.

25 ⁶ The previous day, Defendant Brown had submitted a defective Declaration, which contained several
26 clerical errors. Following Plaintiff’s notification, these deficiencies were corrected without
27 opposition.

28 ⁷ Defendant Gary A. Bowen submitted a Second Amended Declaration 21 days after the first
scheduled hearing postponed by the Court (and 59 days after Plaintiff filed Opposition to the motion)
conceding that he had in fact conducted business in the State of California contrary to his First
Amended Declarations executed under penalty of perjury under the laws of the State of California.

1 As Defendants are not allowed to amended pleadings after Opposition is filed, the First and
2 Second Amended Declarations of Defendants Bowen and Brown contesting personal jurisdiction were
3 improperly considered by the Court.

4 **IV. The Court did not Allow Plaintiff to Present Evidence of Uncontested Facts.**

5 In the present case, Plaintiff has collected thousands of pages of documentary evidence spanning
6 over a century, secured hundreds of hours of voice recordings, consulted with expert hydrologists and
7 conducted independent water-quality testing in what has alleged to be the longest and most lucrative
8 water grabs in the history of the State of Utah.⁸

9 As such, Defendants are arguably reluctant to make any statement under penalty of perjury.⁹

10 In the present case, the sworn declarations properly submitted to the Court by Defendants Kem
11 Crosby Gardner, Jeremy Rand Cook, David Bennion, Michael Scott Hughes, David Bradford, Eric and
12 Jennifer Hawkes did not contest Plaintiff's verified allegations that defamatory statement were
13 knowingly posted on a website hosted in San José, California at the behest of Defendant Eric Hawkes
14 by Network Solutions, Inc. under the IP address 185.230.63.186,¹⁰ were of an related to Plaintiff as a
15 resident of California,¹¹ knowing it would be read by California residents,¹² the postings were read by
16 property owners residing in California,¹³ and as the result, California property owners paid monies to
17 the moving Defendants,¹⁴ thereby establishing agency or a conspiratorial relationship among Defendants
18 to defame and defraud residents of the State of California.¹⁵

19 ⁸ See e.g., Brian Maffly, *'We Don't Need Your Water': Emigration Canyon Water Fight Breaks Out In*
20 *Court*, Salt Lake Tribune, June 18, 2015, at A1, available at the website administered by the
21 Newspaper Agency Corporation <https://archive.sltrib.com/article.php?id=2618507&itype=CMSID>,
last visited on February 29, 2024.

22 ⁹ In the present case, it was entirely proper for Mr. Tracy to first inform Defendants' legal counsel of
23 possible perjury of their clients to allow for either correction of the court record or withdrawal of
24 patently unsubstantiated motions. Unfortunately, these demonstrably false declarations have now
25 resulted in an Order of the Court. A Motion for Court Sanctions and referral to the Santa Clara County
26 District Attorney Jeff Rosen appear to be warranted at this time.

27 ¹⁰ Tracy Decl. ¶ 9, Exhibit G.

28 ¹¹ *Id.*, ¶ 10, Exhibit H.

¹² *Id.*, ¶ 3, Exhibit B.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Tracy Decl. ¶ 11 and ¶ 12, Exhibit G; see also Brian Maffly, *Lead shows up in Emigration Canyon*
drinking water, Salt Lake Tribune, November 8, 2019, available at the website administered by the

1 As the Court did not provide Plaintiff an opportunity to produce evidence of uncontested
2 jurisdictional facts, it should reconsider its Order.

3 **CONCLUSION**

4 Based on the foregoing reasons, Mr. Tracy respectfully requests that the Court reconsider its
5 Order and deny the Motions to Quash in their entirety or in the alternative, stay the Motion for 180 days
6 to allow for discovery of any additional, contested jurisdictional fact properly submitted to the Court as
7 a sworn declaration under penalty of perjury of the laws of the State of California.

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10 DATED: February 29, 2024

By: 

Mark Christopher Tracy
Pro Se Plaintiff

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Newspaper Agency Corporation <https://www.sltrib.com/news/environment/2019/11/08/lead-shows-up-emigration/>, last visited on February 29, 2024.