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County of Santa Clara,  
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Case #23CV423435  
Envelope: 13753859**

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; WALTER  
23 J. PLUMB III, an individual; DAVID  
24 BENNION, an individual; R. STEVE  
25 CREAMER, an individual PAUL BROWN, an  
26 individual; GARY BOWEN, an individual

27 Defendants.

Case No.: 23CV423435

Honorable Evette D. Pennypacker  
[Dept. 6]

**MEMORANDUM AND POINTS OF  
AUTHORITY IN SUPPORT OF  
OPPOSITION TO DEFENDANT  
BOWEN’S MOTION TO QUASH  
SERVICE OF PROCESS FOR LACK OF  
PERSONAL JURISDICTION AND  
DISMISS FOR INCONVENIENT FORUM**

Date of Hearing: Unspecified  
Time: Unspecified

Action Filed: September 21, 2023  
Trial Date: TBD

28 **I. INTRODUCTION**

Plaintiff Mark Christopher Tracy respectfully submits this opposition to Defendant Gary Bowen’s *Motion to Quash Service of the Complaint and Summons for Lack of Personal Jurisdiction and Dismiss for Inconvenient Forum* pursuant to California Rules of Civil Procedure § 418.10(a) subsections (1) and (2) (“Defendant Bowen” and the “Motion”).

1 Defendant Bowen argues that the Complaint alleges facts occurring “exclusively” outside the  
2 forum state, and because the Defendant does not have any residential or business connection in the State  
3 of California,<sup>1</sup> this Court lacks specific personal jurisdiction. Memorandum of Points and Authorities in  
4 Support of Defendant Bowen’s Motion to Quash Service of Summons and Complaint for Lack of  
5 Personal Jurisdiction and Motion to Dismiss for Inconvenient Forum (“Bowen Memo.”), p. 7.

6 Defendant Brown further contends that because all defendants are Utah residents, and no citizens  
7 of California would benefit from the instant action, this Court should exercise its discretionary power and  
8 decline jurisdiction under the grounds of inconvenient forum pursuant to California Code of Civil  
9 Procedure § 418.10(a)(2). Bowen Memo., p. 8.

10 These arguments fail.

11 Specially, the Motion is without evidentiary basis as the factual representations submitted to the  
12 Court are inadmissible heresy as Defendant Bowen failed to execute declarations within the forum state  
13 or under penalty of perjury pursuant to the laws of the State of California.<sup>2</sup>

14 Next, because the Notice of Motion failed to record a hearing date within 30 days pursuant to  
15 California Code of Civil Procedure § 418.10(b), Plaintiff’s right to a timely hearing has been violated  
16 and the Motion must be denied in its entirety.

17 **II. BACKGROUND**

18 Plaintiff Mark Christopher Tracy is a California resident and federal whistleblower in what has  
19 been alleged to be the longest and most lucrative water grabs in the history of the State of Utah  
20 perpetuated for the economic benefit of private land-developers including Defendant Bowen at the cost  
21 of California citizens and residents. Compl. ¶ 1.

22 Specially, for the past 40 years, and continuing to the present day unabated, a renowned Salt  
23 Lake City law firm acting on behalf of a Utah special service water district and Defendant Bowen

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24 <sup>1</sup> Contrary to Defendant Bowen’s representations to the Court, a cursory review of the Complaint  
25 reveals allegations of tortious conduct occurring both within and directed towards the forum state  
26 including intended injury resulting in California. Moreover, because the Complaint alleges an ongoing  
27 fraud against citizens of California for the economic benefit of the Defendants, there is an  
28 overwhelming public interest in proper adjudication of the Complaint and the Motion should be denied  
in its entirety.

<sup>2</sup> Plaintiff respectfully declines to address factual allegations not properly submitted to the Court.

1 perpetuated a fraudulent scheme to retire senior perfected water rights vis-a-vis duplicitous water claims  
2 stripped from the only active federal military cemetery created by an Act of Congress, signed into law  
3 by United States President Ulysses S. Grant in 1874, subject to the reversionary interest to be “forever  
4 used for the burial of the dead,” but however misappropriated for the construction and massive  
5 expansion of a luxurious private urban development marketed and sold to unsuspecting California  
6 residents as the “Bel Air of Salt Lake City.” Compl. ¶ 2.

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

14 However, when suppression of expert studies and public records proved futile, Defendants  
15 resorted to a collaborative smear campaign publishing false and defamatory statements on the world-  
16 wide web via a server located in San Jose, California under the slogan “STAY INFORMED – GET THE  
17 FACTS!” (emphasis in original). Compl. ¶¶ 4, 20.

### 18 **III. ARGUMENT**

#### 19 **A. Defendant Bowen’s Motion Fails to Comply with the California Code of Civil Procedure.**

20 Pursuant to California Code of Civil Procedure § 418.10(a), a defendant may, on or before the  
21 last day of the time to plead, may serve and file motion to quash the service of summons or dismiss the  
22 action on grounds of inconvenient forum. However, under subsection (b) “[t]he notice *shall* designate,  
23 as the time for making the motion, a date not more than 30 days after filing of the notice” (emphasis  
24 added).

25 In the instant action, Defendant Bowen served the Plaintiff Mark Christopher Tracy a notice to  
26 quash service and summons for lack of personal jurisdiction, or in the alternative, dismiss for an  
27 inconvenient forum with the date, time and place of the hearing left blank. (Declaration of Mark  
28 Christopher Tracy (“Tracy Decl.”), ¶ 3, Exhibit A).

1 The Motion is clearly filed in bad faith as a delaying tactic in that it is not calendared and must  
2 be denied in its entirety.

3 **B. Defendant Bowen’s Motion Is Without Factual Basis and Must Be Denied.**

4 In order to enhance the reliability of declarations used as hearsay evidence by disclosing the  
5 criminal sanction for dishonesty, California Code of Civil Procedure § 2015.5 requires that the document  
6 must either reveal a “place of execution” within California or recite that it is made “under the laws of  
7 the State of California.” Factual representations that fail to meet these requirements must be excluded  
8 as heresy and cannot be used as evidence. *Kulshrestha v. First Union Commercial Corp.*, (2004) 33  
9 Cal. 4th 601, 610.

10 The Declaration of Defendant Bowen signed on November 21, 2023, recorded no location where  
11 the document was executed<sup>3</sup> and was not signed under penalty of perjury pursuant to the laws of  
12 California and is thus inadmissible. Declaration of Gary Bowen in Support of Memorandum and Points  
13 of Authorities (“Brown Decl.”), ¶ 5.

14 As the Motion lacks any factual basis for its arguments, it must be denied.

15 **C. Service of Process Complies with Statutory Standards and Is Proper.**

16 Defendant Bowen was properly served by substitute service on October 17, 2023 at 7:46 PM  
17 MDT by Process Servers Hayden Hunter and Jesus Alvarez as documented by the proof of service filed  
18 with the Court on November 6, 2023. Tracy Decl. ¶ 4, Exhibit B.

19 Said proof of service complies with all statutory standards and thus creates a rebuttable  
20 presumption that service was proper.

21 **IV. CONCLUSION**

22 Based on the foregoing reasons, Plaintiff Mark Christopher Tracy respectfully requests that the  
23 Court deny Defendant Bowen’s motion to quash service of process for lack of personal jurisdiction as  
24 Defendant Brown has failed to comply with Section 418.10 (b) and has offered this Court no admissible  
25 evidence why this action should be heard in a forum outside of the State of California.


26  
27 <sup>3</sup> As Defendant Bowen maintains that he “does not have any residential or business connections with  
28 California” it must be assumed that the document was not executed in the forum state. *See* Bowen Decl.  
¶ 3.

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4 DATED: December 4, 2023

By:   
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Mark Christopher Tracy  
*Pro Se Plaintiff*

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