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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**

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UNITED STATES OF AMERICA ex. rel.  
Mark Christopher Tracy,

Plaintiff,

vs.

EMIGRATION IMPROVEMENT  
DISTRICT, a Utah Special Service District;  
BARNETT INTERMOUNTAIN WATER  
CONSULTING, a Utah corporation;  
CAROLLO ENGINEERS Inc., a California  
professional corporation; AQUA  
ENVIRONMENTAL SERVICES, INC., a  
Utah corporation; AQUA ENGINEERING.  
INC., a Utah corporation; R. STEVE  
CREAMER, an individual; FRED A.  
SMOLKA, an individual; MICHAEL  
HUGHES (AKA MICHAEL SCOTT  
HUGHES), an individual; MARK STEVENS,  
an individual; DAVID BRADFORD, an  
individual; LYNN HALES, an individual;  
ERIC HAWKES, an individual; DON A.  
BARNETT, an individual; JOE SMOLKA, an  
individual; RONALD R. RASH, an  
individual; KENNETH WILDE, an

**DEFENDANT R. STEVE CREAMER'S  
MOTION TO DISMISS RELATOR'S  
THIRD AMENDED COMPLAINT**

Case No.: 2:14-cv-00701

Judge: Jill N. Parrish

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individual; MICHAEL B. GEORGESON , an individual; KEVIN W. BROWN, an individual; ROBERT ROUSSELLE; an individual; LARRY HALL, an individual; THE BOYER COMPANY, L.C., a Utah company; CITY DEVELOPMENT, INC., a Utah Corporation, and DOES 1-145,  
  
Defendants.

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Defendant R. Steve Creamer (“Creamer”), by and through counsel, hereby submits this Motion to Dismiss the Third Amended Complaint (filing no. 204) filed by *qui tam* relator, Mark Christopher Tracy (“Tracy”) and states as follows:

**RELIEF SOUGHT AND GROUNDS FOR THE MOTION**

Creamer moves the Court, pursuant to Fed. R. Civ. P. 12(b)(6) and 9(b), for an Order dismissing the Third Amended Complaint with prejudice against him for the following reasons:

- 1) Tracy’s claims are barred by the applicable statute of limitations found at 31 U.S.C. § 3731(b)(1);
- 2) the Third Amended Complaint fails to allege facts sufficient to state a claim under the False Claims Act, 31 U.S.C. § 3729 *et seq.*; and,
- 3) a claim under the False Claims Act is deemed fraud-based for purposes of pleading, and the First Amended Complaint fails to allege fraud with particularity as required by Fed. R. Civ. P. 9(b).

**INCORPORATION BY REFERENCE OF CO-DEFENDANTS' MOTION TO DISMISS**

Pursuant to D. U. Civ. R. 7(a)(4), Creamer incorporates by reference Co-Defendant Emigration Improvement District's ("EID") Motion to Dismiss (filing no. 207), as if fully set forth herein.

**ARGUMENT**

Steve Creamer is a private landowner in Emigration Canyon. He is not an officer or member of EID. Tracy's Third Amended Complaint does not allege that Creamer made a false claim to the federal government but rather that he conspired with co-defendants. Notwithstanding, the arguments set forth in EID's Motion to Dismiss have equal application to the claims alleged against Creamer in Tracy's Third Amended Complaint. Given the arguments set forth in Co-Defendants' Motions to Dismiss, the allegations in Tracy's Third Amended Complaint against Creamer fail to state a claim upon which relief can be granted. On that basis, the claims against Creamer should be dismissed.

**CONCLUSION**

Tracy's claims against Creamer fail as a matter of law because they are barred by the applicable statute of limitations and they are insufficiently pled under Rules 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure. For the reasons set forth herein, as well as in Co-Defendants' Motions to Dismiss (filing no. 207), the Court should dismiss Tracy's Third Amended Complaint against R. Steve Creamer.

DATED this 30<sup>th</sup> day of April, 2018.

STRONG & HANNI

*/s/ Michael L. Ford*

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Robert L. Janicki  
Michael L. Ford  
Michael A. Stahler  
*Attorneys for R. Steve Creamer*

**MAILING CERTIFICATE**

I hereby certify that on the 30<sup>th</sup> day of April, 2018, a true and correct copy of the foregoing **DEFENDANT R. STEVE CREAMER'S MOTION TO DISMISS RELATOR'S THIRD AMENDED COMPLAINT** was filed using the court's EM/ECF system, which sent notice to counsel of record.

*/s/ Michael L. Ford*

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