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9 Hawkes, Jennifer Hawkes, Michael Scott Hughes, David Bradford, David Bennion and Gary
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

**MEMORANDUM OF POINTS AND
AUTHORITIES 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:

Time:

Dept: 6

Judge: The Honorable Evette D. Pennypacker

**MEMORANDUM OF POINTS AND AUTHORITIES 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 *Memorandum of Points and Authorities in Support of*
4 *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 The Court lacks personal jurisdiction over specially appearing Defendants because
11 Defendants are all residents of the State of Utah or businesses located exclusively within the State
12 of Utah, and Plaintiff’s claims against Defendants allege facts occurring exclusively in the State of
13 Utah. Plaintiff cannot meet his burden of proof in establishing that Defendants have the requisite
14 contact with California sufficient to establish personal jurisdiction. In the alternative, because all
15 the events identified in the Complaint allegedly occurred in Utah, Defendants respectfully request
16 that the Court should find that in the interest of substantial justice, this action should be dismissed
17 on the ground of inconvenient forum.

19 Plaintiff has spent years fighting a spurious battle in Utah courts with a Utah governmental
20 entity and its officers, attorneys, and other individuals within Emigration Canyon, Utah. The Utah
21 entity at issue – the Emigration Canyon Improvement District, or “EID” for short – is a small public
22 entity that has authority to provide water and sewer service to residents within Emigration Canyon,
23 which is located in Salt Lake County, Utah. As Plaintiff alleges in the Complaint, all of the general
24 allegations in this Complaint were also included in a False Claim Act case that Plaintiff previously
25

1 filed against almost the identical defendants in the United States Federal District Court for the
2 District of Utah. Complaint ¶ 61; *see also USA ex rel Mark Christopher Tracy v. Emigration*
3 *Improvement District, et al.*, 2:14-cv-00701. The False Claims Act case was dismissed, and the
4 defendants were awarded over \$90,000.00 in attorney fees against Mr. Tracy based on the Court’s
5 finding that the False Claims Act case vexatious and harassing. *Id.*

7 In addition to filing multiple federal court cases against Defendants in Utah, all of which
8 generally allege the same set of purported facts and complaints against EID and people associated
9 with EID, Plaintiff has filed multiple Utah state court cases against defendants. Based on multiple
10 frivolous and vexatious lawsuits against defendants in Utah state courts, Plaintiff has been found to
11 be a “vexatious litigant,” which precludes him from filing suit in Utah state courts absent
12 permission from the presiding Judge of Utah’s Third District Court in and for Salt Lake County.
13 Declaration of Eric Hawkes In Support of Memorandum of Points and Authorities (“Hawkes
14 Decl.”), ¶ 4 and Ex. A.

16 In an attempt to circumvent his vexatious litigant bar, Plaintiff had now filed a lawsuit in
17 this Court that alleges all the same issues and complaints that Plaintiff has previously alleged in his
18 multiple Utah lawsuits. While there are several problems with this filing, the most immediate is
19 that none of the Defendants reside in or have any significant connection with the State of
20 California, let alone Santa Clara County. Plaintiff did not name the EID (the entity he directs his
21 allegations toward), but numerous individuals affiliated therewith, each of whom Plaintiff
22 acknowledges in his Complaint are residents of Utah.

1 As a result, this Court lacks personal jurisdiction over Defendants. Alternatively, this is the
2 improper forum for a dispute that relates only to Utah residents and their purported actions that took
3 place in Utah. Accordingly, Defendants request that this Court dismiss this action.

4 **II. RELEVANT FACTS RELATING TO JURISDICTION**

5 1. Plaintiff's Complaint names thirteen defendants, each of whom Plaintiff specifically
6 acknowledges is a resident of Utah or is an entity located in Utah. *See* Complaint, ¶¶ 7-19.

7 2. Plaintiff sets forth no allegation that any of the defendants had any tie to or
8 connection with the State of California.

9 3. Plaintiff makes only two arguments why the Court should exercise jurisdiction.
10 First, Plaintiff alleges that false and defamatory statements were made on the Emigration Canyon
11 Improvement District ("EID") website, <https://www.ecid.org>, and that EID's website is published
12 on a platform in California and routed through San Jose, California. Second, Plaintiff alleges
13 defendants published false and defamatory statements for purposes of obtaining continued payment
14 of monies from property owners residing in California. Complaint, para 21.

15 4. However, while the Complaint references EID and its website, <https://www.ecid.org>,
16 the Complaint does not name EID as a party, and there is no allegation that Defendants published
17 anything on the EID website.

18 5. Likewise, the only entity that receives any payment of monies from property owners
19 is EID.

20 6. As described in the very website cited in the Complaint, EID is a small public entity
21 that has authority to provide water service to residents within Emigration Canyon, which is located
22 in Salt Lake County, Utah. *See id.*

1 7. Thus, Plaintiff’s argument is that this Court has jurisdiction because defendants
2 allegedly published false and defamatory statements against Plaintiff so that EID, which is a public
3 entity and not a party, could obtain continued payments of property taxes and water usage fees from
4 property owners in Emigration Canyon, Utah, which property owners also happen to own property
5 or reside in California. *See id.*

6
7 8. Not only is it a ridiculous assertion that defendants published allegedly false and
8 defamatory statements against Plaintiff to somehow assist EID in collecting property taxes and
9 water usage fees, there is no possible basis for the Court to have jurisdiction over the defendants
10 because some property owners in Emigration Canyon who pay taxes and fees to EID also have
11 property in California.

12 9. The Complaint fails to allege that any Defendants have sufficient contacts to enable
13 this Court to obtain personal jurisdiction over said defendants. *See Complaint.*

14
15 10. Plaintiff has filed this lawsuit in California because he has been barred from filing
16 any further actions in the State of Utah. *See Decision and Order Denying Motion to Vacate,*
17 *Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to Be a Vexatious*
18 *Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure* (the “Vexatious Litigant
19 Order”). A copy of the Vexatious Litigant Order is attached as **Exhibit A** to the Declaration of Eric
20 Hawkes.

21 22 **III. ARGUMENT**

23 **A. California Code of Civil Procedure § 418.10(a)(1) – Lack of Personal Jurisdiction**

24 Pursuant to California Code of Civil Procedure § 418.10(a)(1), a defendant may move the
25 court for an order to quash service of summons on the ground of lack of personal jurisdiction.

1 “When a nonresident defendant challenges personal jurisdiction, the plaintiff bears the burden of
2 proof by a preponderance of the evidence to demonstrate that the defendant has sufficient minimum
3 contacts with the forum state to justify jurisdiction.” *DVI, Inc. v. Superior Court* (2002) 104
4 Cal.App.4th 1080, 1090. The plaintiff must present facts demonstrating that the conduct of the
5 defendants related to the pleaded cause of action is sufficient to constitute constitutionally
6 cognizable “minimum contacts.” *Id.* Mere conclusory jurisdictional allegations are insufficient to
7 make this showing. *BBA Aviation PLC v. Superior Court* (2010) 190 Cal.App.4th 421, 429.

9 Under California’s long-arm statute, California state courts may exercise jurisdiction over
10 nonresident defendants only if doing so would be consistent with the “Constitution of this state
11 [and] of the United States.” Code of Civil Procedure § 410.10. The statute “manifests an intent to
12 exercise the broadest possible jurisdiction limited only by constitutional considerations.” *Sibley v.*
13 *Superior Court* (1976) 16 Cal.3d 442, 445. Accordingly, California’s long-arm statute allows state
14 courts and local federal courts to exercise personal jurisdiction on any basis allowable under the
15 Due Process Clause of the 5th Amendment. *Ratcliffe v. Pedersen* (1975) 51 Cal.App.3d 89, 91.

17 The federal Constitution permits a state to exercise jurisdiction over a nonresident defendant
18 if the defendant has sufficient “minimum contacts” with the forum such that “maintenance of the
19 suit does not offend traditional notions of fair play and substantial justice.” *International Shoe Co.*
20 *v. Washington* (1945) 326 U.S. 310, 316. “The substantial connection between the defendant and
21 the forum state necessary for a finding of minimum contacts must come about by an action of the
22 defendant purposefully directed toward the forum State.” *Asahi Metal Industry Co. v. Superior*
23 *Court* (1987) 480 U.S. 102, 112. “Personal jurisdiction is not determined by the nature of the
24 action, but by the legal existence of the party and either its presence in the state or other conduct
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1 permitting the court to exercise jurisdiction over the party.” *Greener v. Workers’ Comp. Appeals*
2 *Bd.* (1993) 6 Cal.4th 1028, 1035. “Personal jurisdiction may be either general or specific.” *Vons*
3 *Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445. A nonresident defendant is
4 subject to a forum’s general jurisdiction when the defendant’s contacts are substantial continuous
5 and systematic. *Id.* Such conduct must be so wide ranging that the defendant is essentially
6 physically present within the forum. *DVI*, 104 Cal.App.4th at 1090.

8 Absent such contacts, a defendant may be subject to specific personal jurisdiction if: (1)
9 “the defendant has purposefully availed himself or herself of forum benefits” with respect to the
10 matter in controversy, (2) the “controversy is related to or arises out of the defendant’s contacts
11 with the forum” and (3) the exercise of jurisdiction would “comport with fair play and substantial
12 justice.” *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269 (internal quotations omitted)
13 *citing Vons*, 14 Cal.4th at 446. The difference between specific and general jurisdiction is that
14 specific jurisdiction requires the litigation to arise out of the defendant’s conduct with the forum.
15 *Bristol-Myers Squibb Co. v. Superior Court of California* (2017) 582 U.S. 255, 262 (“In other
16 words, there must be an affiliation between the forum and the underlying controversy, principally,
17 an activity or occurrence that takes place in the forum State and is therefore subject to the State’s
18 regulation.”) (internal quotations omitted).

20 The purposeful availment inquiry focuses on the defendant’s “intentionality” and is satisfied
21 “when the defendant purposefully and voluntarily directs his activities toward the forum so that he
22 should, expect by virtue of the benefit he receives, to be subject to the court’s jurisdiction based on
23 his contacts with the forum.” *Pavlovich*, 29 Cal.4th at 269 . The purposeful availment requirement
24 is intended to ensure a defendant will not be hauled into a jurisdiction solely as a result of “random,
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1 fortuitous, or attenuated” contacts, or as a result of the “unilateral activity” of another party or third
2 person. *Id.* Purposeful availment asks whether the defendant’s “conduct and connection with the
3 forum State are such that he should reasonably anticipate being hauled into court there.” *World-*
4 *Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297. For the purpose of determining
5 personal jurisdiction, each defendant’s contacts with the forum state must be assessed individually.
6 *Calder v. Jones*, (1984) 465 U.S. 783, 790.

8 Plaintiff’s Complaint admits that all the individual Defendants are Utah residents.
9 Complaint, ¶¶ 9, 10, 11, 12, 13 and 16. Plaintiff also alleges that Cohne Kinghorn and Simplifi
10 Company are both Utah corporations with offices located in Salt Lake City, Utah. In addition, all
11 the general allegations in the Complaint relate to development in Emigration Canyon, Utah.
12 Complaint, ¶¶ 22-60.

14 Instead, Plaintiff makes only two arguments why the Court should exercise jurisdiction.
15 First, Plaintiff alleges that false and defamatory statements were made on the Emigration Canyon
16 Improvement District (“EID”) website, <https://www.ecid.org>, and that EID’s website is published
17 on a platform in California and routed through San Jose, California. However, the Complaint does
18 not name EID as a party, and even if EID was a party, simply publishing information on a website
19 that is hosted on a platform in California does not provide for general jurisdiction. In addition, the
20 Complaint only alleges two purported defamatory statements that were published on the EID
21 website. Complaint, ¶¶ 72, 77. Plaintiff first alleges that Mr. Hawkes published on the EID
22 website that elevated lead levels in drinking water in EID’s water system is likely the result of
23 plumbing within homes tested and not water provided by EID. Complaint, ¶¶ 72. Mr. Tracy does
24 not explain how this statement could have possibly defamed him or placed in him a false light.
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1 Second, Mr. Tracy alleges that Mr. Hawkes posted a notice of water rate increase on EID's website
2 which Notice included purported defamatory statements against Mr. Tracy. Again, posting
3 information a website hosted by a company in California does not provide for general jurisdiction,
4 but even if it did, the allegation is that EID posted a notice of water right increase on EID's website,
5 and EID is not a party. The allegation does not provide a basis to assert that this Court has general
6 jurisdiction over Mr. Hawkes, and certainly does not provide a basis to assert that the Court has
7 general jurisdiction over any of the other Defendants.

8
9 Second, Plaintiff alleges defendants published false and defamatory statements for purposes
10 of obtaining continued payment of monies from property owners residing in California. Complaint,
11 para 21. However, the only entity that receives any payment of monies from property owners is
12 EID, which is not a party.

13
14 Accordingly, the Complaint fails to establish general jurisdiction as a basis for the Court's
15 personal jurisdiction.

16 Additionally, the Complaint fails to allege any facts establishing that Defendants
17 purposefully availed themselves of the benefits of this forum or that this litigation arises from
18 Defendants' contacts with California, if any. Again, all the allegations in the Complaint relate to
19 issues involving Emigration Canyon, Utah and development in Emigration Canyon, and Mr. Tracy
20 has previously alleged these exact same issues in multiple lawsuits in Utah courts.

21
22 Based on the foregoing, Plaintiff's Complaint fails to allege any conduct whatsoever by
23 Defendants in, directed to, or related to the State of California. Accordingly, the Court lacks
24 personal jurisdiction over Defendants. Defendants respectfully requests that the Court quash
25 service of summons and complaint in this action pursuant to California Code of Civil Procedure
26

27 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SPECIALLY APPEARING**
28 **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

1 418.10(a)(1).

2 **B. California Code of Civil Procedure § 418.10(a)(2) – Inconvenient Forum**

3 In the alternative, Defendants respectfully requests that the Court dismiss this action on the
4 grounds of inconvenient forum pursuant to California Code of Civil Procedure 418.10(a)(2).
5 California Code of Civil Procedure 418.10(a)(2) “permits a defendant challenging jurisdiction to
6 object on inconvenient forum grounds if the defendant’s challenge to jurisdiction should be
7 denied.” *Global Financial Distributors, Inc. v. Superior Court* (2019) 35 Cal.App.5th 179, 190
8 (internal quotations omitted). Forum *non conveniens* is an equitable doctrine, under which a court
9 within its discretionary power may decline to exercise jurisdiction over a cause of action when the
10 action may be more appropriately and justly tried elsewhere. *Id.* The Court must balance several
11 factors including the availability of a suitable alternative forum, the private interests of the litigants
12 and the public interest of the forum state. *Cal-State Business Products & Services, Inc., v. Ricoh*
13 (1993) 12 Cal.App.4th 1666, 1675.

14
15
16 In the present action, the interests of justice support the dismissal of this action on the
17 grounds of inconvenient forum. Each of the named Defendants in this action are residents of Utah,
18 not California. The Complaint does not allege that any Defendant conducted business in California
19 or had any contact with California. Plaintiff has also filed at least numerous lawsuits in Utah
20 against the Defendants, all of which are related to the same issue raised by Defendant in this matter.
21 Further, Plaintiff’s claims arise from alleged conduct occurring exclusively in Utah. There are no
22 facts in the Complaint that would indicate that the residents of California would benefit from the
23 litigation of matters arising exclusively in Utah in a California Court. The circumstances of this
24 action demonstrate that Utah is the more appropriate forum to adjudicate this action.
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1 Based on the foregoing, Bowen respectfully requests that if the Court grants Defendant's
2 motion to quash service for lack of personal jurisdiction, or in the alternative, the Court dismiss this
3 action under California Code of Civil Procedure 418.10(a)(2) on the ground of inconvenient forum.
4

5 **CONCLUSION**

6 This Court lacks personal jurisdiction over Defendants because all the individual Defendants are
7 residents of Utah and both entities are Utah corporations without offices or a presence in California.
8 Further, Plaintiff's claims against Defendants arise from alleged conduct occurring exclusively in Utah
9 with no connection to California. Accordingly, the Court should quash service of process and
10 complaint in this action for lack of personal jurisdiction under California Code of Civil Procedure §
11 418.10(a)(1). In the alternative, the Court should dismiss this action pursuant to California Code of
12 Civil Procedure § 418.10(a)(2) based on inconvenient forum.
13

14 DATED: January 2, 2024

KESSENICK GAMMA LLP

15
16 By: 

17 Charlie Y. Chou
18 Attorneys for Attorneys for defendants Cohne Kinghorn,
19 P.C., Simplifi Company, Jeremy Rand Cook, Eric Hawkes,
20 Jennifer Hawkes, Michael Scott Hughes, David Bradford,
21 David Bennion and Gary Bowen
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28 **DEFENDANT COHNE KINGHORN, P.C., SIMPLIFI COMPANY, JEREMY RAND COOK, ERIC HAWKES,**
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