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7 Pro Se Plaintiff

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]  
**REPLY TO KINGHORN DEFENDANTS’  
OPPOSITION TO MOTION TO  
RECONSIDER ORDER GRANTING  
DEFENDANTS’ MOTIONS TO QUASH  
SERVICE OF COMPLAINT AND  
SUMMONS 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 Plaintiff Mark Christopher Tracy (“Mr. Tracy” and “Plaintiff”) respectfully submits this Reply  
26 to the memorandum filed by Defendants Cohne Kinghorn P.C., Simplifi Company, Utah Attorneys  
27 Jeremy Rand Cook and David Bennion, Emigration Improvement District (aka Emigration Canyon  
28 Improvement District, hereafter “ECID”) public records officers Eric and Jennifer Hawkes, and ECID

1 trustees Michael Scott Hughes and David Bradford (“Kinghorn Defendants” and “Kinghorn Opp.”) in  
2 opposition to the Motion for Reconsideration of this Court’s Order Granting Motions to Quash Service  
3 of Summon and Complaint for Lack of Personal Jurisdiction (“Order”).

4 Kinghorn Defendants argue that no new facts have been presented to the Court per California  
5 Code Civ. P. § 1008(a) and, as such, the motion should be denied. Kinghorn Opp. at p. 5.

6 This argument fails.

7 Firstly, motions are ordinarily made and determined in this forum by affidavits alone. *Fuller v.*  
8 *Lindenbaum* (1938) 29 Cal.App.2d 227, 230; *Skouland v. Skouland* (1962) 201 Cal. App. 2d 677, 678.  
9 Second, it is uncontested that even during summary judgment proceedings, the Court has inherent power  
10 to grant judgment on legal grounds not explicitly tendered by the moving party. *Juge v. County of*  
11 *Sacramento* (1993) 12 Cal.App.4th 59, 70 (citing *Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367,  
12 1377; *Weiss v. Chevron, U.S.A., Inc.* (1988) 204 Cal.App.3d 1094, 1098-1099; *Johnson v. Banducci*  
13 (1963) 212 Cal. App.2d 254, 260). However, due process of law requires that the party opposing the  
14 motion must be provided an opportunity to respond to the ground of law identified by the court and must  
15 be given a chance to show there is a triable issue of fact material to said ground of law. *Juge v. County*  
16 *of Sacramento*, 12 Cal.App.4 at 70. Given that an issue is not subject to appellate review if not properly  
17 raised in the trial court (*Johnson v. Banducci* (1963) 212 Cal.App.2d 254, 259), a “new circumstance”  
18 allows motion to reconsider pursuant to Code Civ. P. § 1008(a).

19 In the present case, although no factual jurisdictional allegation of the Complaint was contested  
20 by the Defendants, the Court ruled that Mr. Tracy had failed to meet his burden to produce sufficient  
21 evidence sustaining personal jurisdiction over the Defendants.

22 This legal argument was never advanced by the Defendants and appears to be contrary to long-  
23 standing authority.

24 It is recognized that a verified petition should be treated as a counter affidavit on a motion to  
25 quash service of process and, where the defendant’s affidavit did not deny or otherwise meet the essential  
26 allegations in the complaint as related to the issue at hand, it is insufficient to warrant the granting of a  
27 motion if the complaint addressed jurisdiction, even if unverified. *Atkins, Kroll & Co. v. Broadway Lbr.*  
28 *Co.* (1963) 222 Cal.App.2d 646, 653-654 (citing *Albertson v. Raboff* (1960) 185 Cal.App.2d 372, 388;

1 *Hoffman v. City of Palm Springs*, (1957) 169 Cal.App.2d 645, 648)).

2 In the present case, Mr. Tracy's verified Complaint charged that the actions of the Defendants  
3 were deliberately directed at California residents and established an agency and conspiratorial  
4 relationship among Defendants showing Defendants (i) intentionally routed ECIDs website through San  
5 Jose, (ii) deliberately posted false statements knowing it would be read by California residents, (iii) these  
6 postings were read by property owners residing in California, and (iv) as the result, California property  
7 owners paid monies to the moving Defendants.

8 As Kinghorn Defendants presented no counter affidavit denying or otherwise meeting the  
9 essential factual allegations in the complaint as related to this Court's personal jurisdiction, the Order  
10 granting motions to quash service of the complaint and summons was improper.

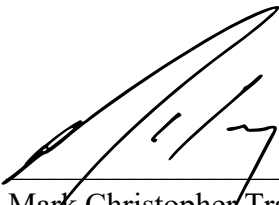
11 **CONCLUSION**

12 Based on the foregoing reasons, Mr. Tracy respectfully requests that the Court reconsider its  
13 Order based upon post-ruling jurisdictional circumstances and deny Kinghorn Defendants' Motion to  
14 Quash Service of the Complaint and Summons for lack of personal jurisdiction in its entirety.

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17 DATED: March 18, 2024

18 By:   
19 \_\_\_\_\_  
20 Mark Christopher Tracy  
21 *Pro Se Plaintiff*