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

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MARK CHRISTOPHER TRACY, d/b/a  
Emigration Canyon Home Owners  
Association,

Plaintiff,

vs.

SIMPLIFI COMPANY, a Utah Corporation,  
JENNIFER HAWKES, an individual; ERIC  
HAWKES, an individual, JEREMY R. COOK,  
an individual, DAVID M. BENNION, an  
individual and DOES 1-46,

Defendants.

**DEFENDANTS SIMPLIFI COMPANY,  
JENNIFER HAWKES, ERIC HAWKES,  
AND JEREMY R. COOK'S MOTION TO  
DISMISS**

**Case No.: 2:21-cv-00444**

**Judge: Daphne A. Oberg**

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Defendants Simpli Company ("**Simplifi**"), Jennifer Hawkes ("**Mrs. Hawkes**"), Eric Hawkes ("**Mr. Hawkes**"), and Jeremy R. Cook ("**Mr. Cook**") (collectively "**Defendants**") through counsel, submit this Motion to Dismiss the Complaint filed by Mark Christopher Tracy d/b/a Emigration Canyon Home Owners Association ("**Mr. Tracy**").

**RELIEF SOUGHT AND GROUNDS FOR THE MOTION**

Defendants move the Court, pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6), for an Order dismissing the Complaint with prejudice against the Defendants based on the following: (1) Mr.

Tracy lacks standing because Ms. Penske cannot assign a claim under 42 U.S.C. § 1983 or § 1985; and (2) the action fails to state a claim upon which relief can be granted. In addition, Defendants move the Court: (1) for an award of attorney fees and costs against Mr. Tracy in accordance with 42 U.S.C. § 1988; (2) for a finding that Mr. Tracy is a vexatious litigant and subject to a pre-filing order; and (3) for an Order to Show Cause requiring Mr. Tracy to establish his factual basis for the allegations in the Verified Complaint.

### **BACKGROUND**

The Emigration Improvement District (“**EID**”) is a small local district created by the Salt Lake County Council in 1968 that has authority to provide water and sewer service to residents within Emigration Canyon. EID has a three-member board of trustees who are elected at-large from residents in Emigration Canyon. EID contracts with Mr. Hawkes to perform management and accounting services for EID through Mr. Hawkes’ company, Simplifi. Mr. Cook is a partner at the law firm of Cohne Kinghorn and has been legal counsel for EID since 2012. Neither Jennifer Hawkes nor David Bennion have any direct involvement with EID. In 2013, the EID board of trustees amended EID’s fee schedule, including adopting a new \$15 per month fee (the “**Fee**”) on certain properties in EID’s service area, including a property owned by Ms. Penske.

Mr. Tracy is not a resident in Emigration Canyon and not a customer of EID. Mr. Tracy claims to have both U.S. and German law degrees, but is not licensed to practice law in Utah. In 2014, Mr. Tracy formed the Emigration Canyon Home Owners Association (“**ECHO**”).

According to the ECHO website, ECHO is “a private organization currently registered with the State of Utah as a dba business entity originally formed in January 2014 to pool information and resources providing a collective remedy for what the Third Amended Federal Complaint of the Emigration Canyon Lawsuit and the pending Emigration Canyon Water Litigation alleged to be over three decades of gross mismanagement of scarce water resources by public officials of the

Emigration Improvement District (“EID” aka Emigration Canyon Improvement District aka ECID), Emigration Canyon Mayor Joe Smolka, the Simplifi Company and private land-developers R. Steve Creamer, The Boyer Company L.C., City Development Inc., and the Butler Crockett & Walsh Development Corp.”

In 2014, Mr. Tracy filed Case No.: 2:14-cv-00701 (the “**FCA Action**”) against EID and multiple other parties. The FCA Action generally alleges that a \$1.4 million dollar loan that EID obtained in 2002 from the Utah Division of Drinking Water to make improvements to its public drinking water system was in fact a vast conspiracy to defraud the federal government. On March 9, 2017, the Honorable Judge Parrish awarded EID \$29,936.00 in damages against Mr. Tracy and his counsel based on Mr. Tracy filing a lis pendens against EID’s water rights, which the Court found was a wrongful lien. On February 15, 2019, Judge Parrish issued an *Order Granting in Part and Denying in Part Defendant’s Motion for Attorneys’ Fees and Costs* (the “**FCA Fee Order**”) awarding EID and other defendants, including Mr. Hawkes, \$92,665.00 to be paid by Mr. Tracy. See Exhibit A.<sup>1</sup> In the FCA Fee Order, Judge Parrish found that: “Tracy’s behavior was vexatious and that the suit was brought primarily for purposes of harassment. Accordingly, the court will award attorneys’ fees to Defendants pursuant to 31 U.S.C. section 3730(d)(4).” *Id.*, p. 12.<sup>2</sup>

On August 19, 2019, Judge Chon of the Utah Third District Court issued a *Memorandum Decision and Order* granting a motion to dismiss filed by EID in a separate action brought by Mr. Tracy against EID (Case No. 190901675) (the “**First State Court Action**”). On October 15, 2019, Judge Scott of the Utah Third District Court issued a *Memorandum Decision and Order*

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<sup>1</sup> The Court may take judicial notice of Orders in related cases. See *Turner v. McGee*, 681 F.3d 1215, 1217 n.2 (10th Cir. 2012) (citing *St. Louis Baptist Temple, Inc. v. F.D.I.C.*, 605 F.2d 1169, 1172 (10th Cir. 1979)). In addition, the background information is not necessary for Court to dismiss this action, and is instead provided as a basis for the Court to award fees, find Mr. Tracy is a vexatious litigant, and issue an Order to Show Cause.

<sup>2</sup> The FCA Action was remanded to Judge Parrish by the Tenth Circuit Court of Appeals, and the FCA Fee Order was vacated because EID was not the prevailing party. Judge Parrish has since issued a new Decision and Order dismissing the FCA Action with prejudice, and a new Motion for Attorney’s Fees is pending before Judge Parrish.

granting EID's motion to dismiss a case filed by ECHO against EID (Case No: 190904621) (the "**Second State Court Action**"). In April, 2020, Mr. Tracy filed an Informal Complaint with the Office Professional Conduct against EID's attorney Jeremy R. Cook (the "**Bar Complaint**"). The Office of Professional Conduct refused to prosecute the Bar Complaint.

On or about July 31, 2020, Mr. Tracy filed two separate actions against Mr. Hawkes, Mrs. Hawkes and Simplifi based on EID's purported denial of a GRAMA request (the "**GRAMA Cases**"). See Case No. 200905074 (Judge Kouris Case) and Case No. 200905123 (Judge Faust Case). On September 16, 2020, Judge Faust issued that certain *Memorandum Decision and Order* granting defendants' motion to dismiss (the "**Faust Ruling**"). In the Faust Ruling, Judge Faust found "Petitioner does not cite to any provision or language in GRAMA supporting the position that it can sue an individual or private company based on a governmental entity's alleged failure to respond to a GRAMA request"; and Petitioner "failed to cite any case law to support the position that Respondents are proper or necessary parties to this action." See Exhibit B.

Notwithstanding the Faust Ruling, Mr. Tracy continued to prosecute an almost identical case before Judge Kouris. On February 24, 2021, Judge Kouris entered that certain *Memorandum Decision and Order* granting respondents' motion to dismiss (the "**Kouris Order**"). In the Kouris Order, Judge Kouris found: "[T]he majority of the allegations in the Petition have nothing to do with a purported appeal of the denial of a GRAMA request for telemetry data. In fact Mr. Tracy does not reference the actual GRAMA request until paragraph 49 of the Petition, and the GRAMA form that is the purported basis of the appeal is Exhibit AA of the Petition. The vast majority of the allegations and exhibits relate to other complaints and issues that Mr. Tracy has with EID or Respondents, and are not necessary or proper for this action." See Exhibit C.

After additional frivolous filings by Mr. Tracy, on April 15, 2021, Judge Kouris entered that certain *Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure* (the “**Vexatious Litigant Order**”). In the Vexatious Litigant Order, Judge Kouris found that “despite repeated opportunities from this Court, Mr. Tracy has failed to ever provide a plausible explanation of why he brought this action against Respondents, but intentionally failed to name the governmental entity, EID; or why Mr. Tracy continued to include Respondents in GRAMA requests despite repeatedly being informed that their inclusion was improper.” *Id.* at p. 6. See Exhibit D.

This matter follows the same pattern as Mr. Tracy’s previous frivolous litigation. Mr. Tracy claims that ECHO was assigned a “Civil Rights Claim” (the “**Assigned Claim**”) from a resident in Emigration Canyon named Karen Penske (“**Ms. Penske**”). The basis of Ms. Penske’s Section 1983 claim appears to be that the Defendants violated Ms. Penske’s constitutional rights by only certifying with Salt Lake County the past due fees for “LDS Nonmembers”, but Mr. Tracy fails to allege any actual facts to support Ms. Penske’s claim. Moreover, like his multiple previous cases filed against EID or people associated with EID, the vast majority of the allegations relate to other complaints and issues that Mr. Tracy has with EID, and are not necessary or proper for this action. Finally, like the GRAMA Cases, although Ms. Penske’s real issue appears to be that she was opposed the Fee adopted by EID in 2013, Mr. Tracy has only brought the action against Defendants, and not EID or any member of its board of trustees.<sup>3</sup>

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<sup>3</sup> Any claim that the Fee is invalid is certainly barred by the statute of limitation. In addition, whether or not the Fee was valid would not be a basis for federal court jurisdiction.

## ARGUMENT

### **I. MR. TRACY LACKS STANDING BECAUSE SECTION 1983 AND 1985 CLAIMS CANNOT BE ASSIGNED IN UTAH.**

This case must be dismissed because Section 1983 and 1985 claims cannot be assigned under Utah law, which is applied to actions in Utah Federal District Court. In *Am. Charities for Reasonable Fundraising Regul., Inc. v. O'Bannon*, No. 2:08-CV-875, 2016 WL 4775527, at \*6 (D. Utah Sept. 13, 2016), the Court recognized:

“[Section] 1983 claims are best characterized as personal injury [tort] actions.” Tort claims arising out of personal injury are not assignable under Utah law. Applying this rule of non-assignability to § 1983 claims is not inconsistent with “the central objective of the ... civil rights statutes ... to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief.” While an individual whose federal constitutional or statutory rights have been abridged may not assign her § 1983 claim to someone else, she may still personally recover damages or secure injunctive relief on her own behalf.

(Internal citations omitted). Likewise, in *Nation v. Barr*, No. CV-18-08072-PCT-GMS, 2019 WL 2027861, at \*4 (D. Ariz. May 8, 2019), the Court recognized:

[W]hen deciding whether the wrongful death claim brought by the Nation under § 1983 was assignable, Arizona law governs. In Arizona, “[i]t is well established ... that, absent statutory authorization, an assignment of a cause of action for personal injuries against a third-party tortfeasor is void.” Further, Arizona courts have held that “causes of action for wrongful death are not freely assignable.” The Nation has not pointed to statutory authority allowing for the assignment of Tiffany Robbins' claim to the Nation. Thus, the assignment of the wrongful death claims under § 1983 to the Nation is “void.”

(Internal citations omitted). *See also Wickenkamp v. Steen*, No. 2:15-CV-330-PK, 2015 WL 13237353, at \*10 (D. Or. Oct. 1, 2015), report and recommendation adopted, No. 2:15-CV-330-PK, 2015 WL 13238754 (D. Or. Nov. 13, 2015) (“Section 1983 claims arising in Oregon are not assignable.”).

In this case, Mr. Tracy's entire action is based on the purported assignment by Ms. Penske to ECHO of claims arising pursuant to Sections 1983 and 1985. Accordingly, because such claims cannot be assigned under Utah law, Mr. Tracy lacks standing and the Court should dismiss the action.

**II. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

To avoid dismissal under Rule 12(b)(6), a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Hogan v. Winder*, 762 F.3d 1096, 1104 (10th Cir. 2014) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). The court accepts as true well-pleaded factual allegations and views the allegations in the light most favorable to the plaintiff, drawing all reasonable inferences in the plaintiff's favor. *Wilson v. Montano*, 715 F.3d 847, 852 (10th Cir. 2013). But the court need not accept the plaintiff's conclusory allegations as true. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). "[A] plaintiff must offer specific factual allegations to support each claim." *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011).

The crux of Mr. Tracy's Complaint appears to be that Defendants violated Sections 1983 and 1985 by conspiring to only certify the delinquent accounts of "LDS Nonmembers."<sup>4</sup> However, Mr. Tracy's conclusory allegations fail to provide any factual basis to support his claim. For example, in paragraph 40 of the Complaint, Mr. Tracy alleges: "Upon information and belief, Defendants have commenced no tax-foreclosure proceeding against active LDS

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<sup>4</sup> In accordance with Utah Code Ann. § 17B-1-902, EID may certify to the County Treasurer past due fees, which fees become a lien on the property and are included on the property taxes. Thus, Mr. Tracy's claim appears to be that Defendants recommended to EID's Board of Trustees that EID only certify as delinquent accounts of LDS Nonmembers.

Members consistent with the instructions of Bishop Bennion since November 2014.”<sup>5</sup> The allegation is merely a conclusory statement based upon information and belief.

EID is a governmental entity subject to GRAMA. Yet, Mr. Tracy’s allegations do not include actual facts that establish that there were active LDS Members who had delinquent accounts, but whose accounts weren’t certified delinquent by EID. Mr. Tracy also fails to provide any basis for his conclusory allegation that “Bishop Bennion” instructed Defendants to not certify delinquent accounts of LDS Members, or that the Defendants recommended to the EID board of trustees that EID instruct Salt Lake County not to commence tax foreclosure proceeding against individuals who are active LDS Members. At best, Mr. Tracy’s religious discrimination claim is based on the allegation that Ms. Penske is not LDS, and the vague and completely unsupported allegation that sometime in the fall of 2015, Mr. Bennion admonished fellow LDS members during an LDS religious meeting of their “moral obligation” to pay fees and costs billed by Simplifi Defendants. *See* paragraph 39. However, even if true, the allegation doesn’t remotely support Mr. Tracy’s assertion that Mr. Bennion instructed Defendants to only certify delinquent accounts of LDS Nonmembers, and that Defendants complied with Mr. Bennion’s instructions and recommended to the EID board of trustees that EID not certify as delinquent accounts of active LDS members that had failed to pay fees to EID.

It is also irrational that Mr. Bennion, who is a well-respected lawyer and has no involvement with EID, would advise LDS members that they have a “moral obligation” to pay

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<sup>5</sup> EID, and not Defendants, is responsible for certifying delinquent fees. However, EID does not “commence tax-foreclosure proceeding.” The Salt Lake County Treasurer commences a tax sale if taxes haven’t been paid for a period of 4 years.



EID's fees during a LDS church service, but then actively conspire with Defendants to protect LDS members that didn't pay the fees.

Mr. Tracy also alleges that "in January 2014, Simplifi began certifying 'delinquent accounts' with the Salt Lake County Treasurer of LDS Nonmembers leading to tax foreclosure proceedings . . . ." <sup>6</sup> Again, Mr. Tracy could have easily obtained the names of property owners that were on EID's certified delinquent list to provide an actual factual basis for his claim that EID only certified the delinquent accounts of LDS Nonmembers. Instead, the allegation is just pure speculation without any factual support.

Finally, Mr. Tracy suggests that Mr. Cook, Mr. Hawkes and Mr. Bennion conspired to only certify delinquent the accounts of LDS Nonmember based on the alleged fact that they are LDS. *See* Complaint, ¶¶ 3-6. <sup>7</sup> Not only is there no basis to assume that Mr. Cook, Mr. Hawkes and Mr. Bennion conspired to only certify as delinquent the accounts of LDS Nonmembers simply because they are members of the LDS Church, but Mr. Tracy's allegation is false. Mr. Cook is not, and has never been, a member of the LDS Church. <sup>8</sup>

In summary, Mr. Tracy has no factual basis to support his assertion that EID only certified delinquent accounts of LDS nonmembers; no factual basis or evidence to support his assertion that Mr. Bennion instructed Defendants to not certify delinquent accounts of active LDS Members; and no factual basis or evidence to establish that Defendants recommended to EID's board of trustees that EID not certify delinquent account of active LDS Members.

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<sup>6</sup> The majority of EID's fees are water usage fees charged to residents connected to EID's water system. Therefore, Mr. Tracy appears to be asserting that for the last 7 years, EID hasn't certified delinquent any fees or charges for LDS Members, and only certifies delinquent fees and charges for LDS Nonmembers.

<sup>7</sup> Mr. Tracy fails to include any basis for Ms. Hawkes' inclusion as a defendant. However, his reference to her as Deputy Mayor Hawkes indicates that his motivation for including her is purely political.

<sup>8</sup> The Chair of EID's Board of Trustees, Michael Hughes, is also not LDS.

Furthermore, it is clear that Mr. Tracy included the totally unsupported religious discrimination claims solely to try to create federal court jurisdiction because he has been deemed a vexatious litigant in Utah state court and is not able to file any future state court actions without the approval of Judge Kouris. Accordingly, the Court should dismiss the action because the Complaint fails to allege enough facts to state a claim to relief that is plausible on its face.

### **III. THE COURT SHOULD GRANT ATTORNEY FEES TO DEFENDANTS.**

Section 1988 provides that “[i]n any action or proceeding to enforce a provision of Sections 1981, 1982, 1983, 1985, and 1986 of this title . . . the Court in its discretion may allow the prevailing party . . . a reasonable attorney's fee as part of the costs.” 42 U.S.C. § 1988. A prevailing defendant may receive attorneys' fees and costs when “in the exercise of its discretion [the trial court] has found that the plaintiff's actions were frivolous, unreasonable, or without foundation,” or if the plaintiff “continued to litigate after it clearly became so.” *Christiansburg Garmet Co. v. EEOC*, 434 U.S. 412, 421-22 (1978).

Mr. Tracy has recently been deemed by Judge Kouris to be a vexatious litigant in state court, and Judge Parrish previously awarded attorney fees against Mr. Tracy in the FCA Action based on her finding that the action was frivolous, vexatious and harassing. *See* Exhibits A and C. This action is no different.

First, the action is clearly without foundation because a Section 1983 claim cannot be assigned in Utah.

Second, like Mr. Tracy's previous litigation, the majority of the allegations are not related to a Section 1983 or 1985 claim. For example, paragraph 25 states: “On March 31, 2021, Simplifi through Mr. Hawkes, falsely certified to the Utah State Records Committee that all lead

testing results of the Boyer Water System had been posted on the EID website maintained by Simplifi.” Not only does the allegation have nothing to do with a religious discrimination claim, but Mr. Tracy intentionally defines the water system as the “Boyer Water System” despite knowing that the water system is owned and operated by EID. Likewise, paragraph 22 reiterates Mr. Tracy’s claims in the FCA Action. Paragraphs 31 and 33 allege the amounts paid to Simplifi and Mr. Cook’s law firm. Paragraph 45 alleges ground water mining and resulting fissures that Mr. Tracy believes are caused by EID’s wells. None of these paragraphs related in any way to a religious discrimination claim or a Section 1983 action.

Third, consistent with Mr. Tracy’s prior course of conduct, immediately after filing the Complaint Mr. Tracy sent an email to residents in Emigration Canyon, government officials, and local press in which Mr. Tracy references the litigation and provides a link to the Complaint. *See* Exhibit E. Mr. Tracy’s purpose for the email is clearly to create mistrust of EID and those associated with EID even if the allegations in the Complaint are completely unsupported. In fact, in the FCA Order, Judge Parrish recognized:

During the course of the litigation, Tracy continued to make specious accusations against Defendants that he aired to the public. Tracy wrote letters and emails to the residents of Emigration Canyon. His correspondence included allegations from court documents describing the fraud allegations that he had levied against Defendants. For example, in September of 2015, Tracy wrote a letter specifically discussing the alleged involvement of David Bradford and Michael Hughes in the lawsuit at the time that Bradford and Hughes were both running for reelection on the District’s Board. Other letters that Tracy sent in 2017 and 2018 repeated the allegations that the District intended to use residents’ money and tax dollars to pay the fees and federal debt at issue in the lawsuit. Tracy sent these letters as self-proclaimed president of the Emigration Canyon Homeowner’s Association. His letters, immediately following new filings with the court, are evidence of his bad faith in pursuing this lawsuit. Tracy’s behavior leads the court to conclude that Tracy brought his qui tam suit to air personal grievances against the Defendants in pursuit of an ulterior motive, rather than seek money damages on behalf of the United States. The court finds that Tracy’s behavior was vexatious and

that the suit was brought primarily for purposes of harassment. Accordingly, the court will award attorneys' fees to Defendants pursuant to 31 U.S.C. section 3730(d)(4).

FCA Order, pp. 11-12.

Finally, Mr. Tracy is not a resident in Emigration Canyon, and this is not an action in which Mr. Tracy is attempting to vindicate his own rights. Instead, this action is indicative of the fact that Mr. Tracy's goal is simply to find any possible reason to file litigation against EID and people associated with EID, regardless of whether there is any merit to the claim, and then immediately publicize the litigation to harass and disparage EID and people associated with EID.

In summary, the Complaint is frivolous and without foundation, and the Court should grant Defendants their reasonable attorneys' fees and costs.

**VI. THE COURT SHOULD FIND MR. TRACY TO BE A VEXATIOUS LITIGANT AND IMPOSE A PRE-FILING ORDER.**

This is the sixth lawsuit that Mr. Tracy has filed against EID, or people or entities associated with EID. Although Mr. Tracy has a right to his opinion and political views, his continued attempt to utilize the Court systems to harass and disparage Defendants is both a waste of judicial resources and a completely unjustified expense on EID and people associated with EID. Mr. Hawkes, Mrs. Hawkes and Simplifi already have a judgment for attorneys' fees based on a previous frivolous filing that Mr. Tracy has failed and refused to pay; and Mr. Tracy appears to believe that he can continue to file frivolous actions with impunity because he claims to have no assets to satisfy an award of attorneys' fees.

Accordingly, the Court should find that Mr. Tracy is a vexatious litigant and impose a pre-filing order requiring Mr. Tracy to post a bond prior to filing any future litigation related in any manner to EID.

**V. THE COURT SHOULD ISSUE AN ORDER TO SHOW CAUSE REQUIRING MR. TRACY TO PROVIDE A BASIS FOR HIS VERIFIED ALLEGATIONS.**

Mr. Tracy signed the Declaration Under Penalty of Perjury, which is attached to the Complaint, declaring under oath that the information in the Complaint was true and correct. However, Mr. Tracy provides no actual evidence to support the allegation that EID has not certified past due and owing accounts of active LDS Members; Mr. Tracy provides no basis for how he is informed and believes that Mr. Bennion admonished LDS Members to pay EID's fees during a religious meeting in 2015; Mr. Tracy provides no evidence or factual basis to support his assertion that Mr. Bennion instructed Defendants to not certify delinquent accounts of active LDS Members; and Mr. Tracy falsely alleges that he is "informed and believes" that Mr. Cook is LDS.

Moreover, based on the allegations in the Complaint, and Mr. Tracy's history of litigation and attacks against EID, Mr. Hawkes, Mrs. Hawkes and Mr. Cook, it is clear that Mr. Tracy was simply trying to find another reason for litigation to attack EID and Defendants, and Mr. Tracy included the completely unsupported religious discrimination claims in order to provide a basis for federal court jurisdiction.

Again, Mr. Tracy is entitled to his political opinions, but he should not be allowed to continue to blatantly misrepresent facts to the Court with impunity, particularly when the Mr. Tracy is attacking the credibility and professional conduct of individuals, and then publicizing the Complaint to the press in hopes that people believe the allegations because they are included

in a Complaint.<sup>9</sup> Accordingly, the Court should issue an Order to Show Cause requiring Mr. Tracy to establish why he did not commit perjury.

### **CONCLUSION**

The Court should dismiss the Complaint; grant Defendants their reasonable attorneys' fees and cost; find Mr. Tracy is a vexatious litigant and impose a pre-filing order; and issue an Order to Show Cause requiring Mr. Tracy to show why he did not commit perjury by verifying to the Court that the information in the Complaint was true and correct.

DATED this 27<sup>th</sup> day of August 2021.

COHNE KINGHORN

/s/ Jeremy R. Cook  
Bradley Strassberg  
Jeremy R. Cook  
ATTORNEYS FOR DEFENDANTS

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<sup>9</sup> As set forth above, the ECHO website states in part: “for what the Third Amended Federal Complaint of the Emigration Canyon Lawsuit and the pending Emigration Canyon Water Litigation alleged to be . . .” Mr. Tracy has a law degree and appears to be using the litigation privilege in an attempt to avoid defamation claims by Defendants.

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of August 2021, a true and correct copy of the foregoing document was served by email to the following:

Mark Christopher Tracy  
dba Emigration Canyon Home Owners Association  
1160 E. Buchnell Dr.  
Sandy, Utah 84094  
[m.tracy@echo-association.com](mailto:m.tracy@echo-association.com)

*/s/ Jeremy Cook*