

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037
--
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany
--
5 Email: m.tracy@echo-association.com
Telephone: +1 (929) 208-6010
6 +49 (0)172 838 86 37
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
12 MARK CHRISTOPHER TRACY, an
individual,
13 Plaintiff,
14 v.
15 COHNE KINGHORN PC, a Utah Professional
Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
individual; ERIC HAWKES, an individual;
17 JENNIFER HAWKES, an individual;
18 MICHAEL SCOTT HUGHES, an individual;
DAVID BRADFORD, an individual; KEM
19 CROSBY GARDNER, an individual; WALTER
J. PLUMB III, an individual; DAVID
20 BENNION, an individual; R. STEVE
CREAMER, an individual PAUL HANDY
21 BROWN, an individual; GARY A. BOWEN, an
22 individual
23 Defendants.

Case No.: 23CV423435
Honorable Evette D. Pennypacker
[Dept. 6]
**DECLARATION OF MARK
CHRISTOPHER TRACY IN SUPPORT OF
MEMORANDUM AND POINTS OF
AUTHORITY IN OPPOSITION TO
DEFENDANT KEM CROSBY GARDNER’S
MOTION TO QUASH SERVICE OF
PROCESS FOR LACK OF PERSONAL
JURISDICTION**
Hearing Date: February 20, 2024
Time: 09:00 am (PST)
Action Filed: September 21, 2023
Trial Date: TBD

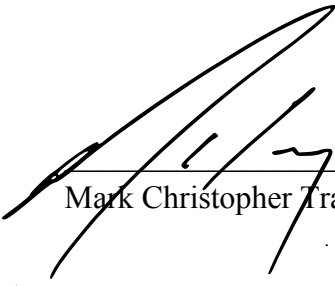
24 I, Mark Christopher Tracy, declare as follows:
25 1. I am party to the action herein. I am over the age of eighteen and competent to testify. I have
26 personal knowledge of the information set forth below, unless noted as information and belief, all
27 of which is true and correct of my own personal knowledge, and if called to testify, I would
28 competently testify thereto.

- 1 2. I have been a resident of the State of California since September 2009.
- 2 3. Attached hereto as **Exhibit A** is a true and correct copy of the “NOTICE OF HEARING ON
3 SPECIALLY APPEARING DEFENDANT KEM C. GARDNER’S MOTION TO QUASH
4 SERVICE OF SUMMONS AND COMPLAINT FOR LACK OF PERSONAL JURISDICTION”
5 received via email correspondence on January 24, 2024 at 5:16:26 PM PST from Aysha D. Lewis
6 at AyshaLewis@dwt.com on behalf of Thomas Burke, attorney-of-record for Defendant Gardner.
- 7 4. On October 28, 2023, I purchased a non-refundable round-trip flight from Los Angeles, California
8 to Frankfurt am Main, Germany under United Airlines itinerary no. 0168024348536, scheduled to
9 depart on February 13 and returning on February 21, 2024. As the hearing on the motion to Quash
10 Service of Summons and Complaint for Lack of Personal Jurisdiction was scheduled by the court
11 clerk of the Superior Court for the County of Santa Clara on behalf of Defendant Gardner by
12 Attorney of Record Thomas Burke sometime on or before January 22, 2024, without my
13 knowledge or prior consultation, I was forced to cancel all arrangements for the aforementioned
14 business trip and therewith incurred costs and expenses in the amount of \$1,680.00 to date.
- 15 5. Attached hereto as **Exhibit B** is a true and correct copy of the email correspondence dated January
16 30, 2024 at 2:36:44 PM PST from Sarah Burns, attorney-of-record for Defendant Gardner
17 regarding a Notice of Motion for Court Sanctions.
- 18 6. Attached hereto as **Exhibit C** is a true and correct copy of the email correspondence dated January
19 30, 2024 at 2:36:44 PM PST to Sarah Burns and Thomas Burke, attorneys-of-record for Defendant
20 Gardner regarding a proposed Consent to Electronic Service of Process. Neither response nor
21 requested verification of email addresses was received.
- 22 7. Attached hereto as **Exhibit D** is a true and correct copy of the NOTICE OF TAKING OF
23 DEPOSITION OF DEFENDANT GARY BOWEN AND REQUEST FOR PRODUCTION OF
24 DOCUMENTS, dated January 17, 2023.
- 25 8. Attached hereto as **Exhibit E** is a true and correct copy of the NOTICE OF TAKING OF
26 DEPOSITION OF DEFENDANT PAUL HANDY BROWN AND REQUEST FOR
27 PRODUCTION OF DOCUMENTS, dated January 19, 2023.

28 //

1 9. I declare under penalty of perjury under the laws of the State of California that the foregoing is true
2 and correct. This Declaration was executed on the 6th day of February 2024, in Carlsbad,
3 California.

4 //
5 //



6 Mark Christopher Tracy
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 THOMAS R. BURKE (CA State Bar No. 141930)
2 SARAH E. BURNS (CA State Bar No. 324466)
3 DAVIS WRIGHT TREMAINE LLP
4 50 California Street, 23rd Floor
5 San Francisco, California 94111-4701
6 Telephone: (415) 276-6500
7 Facsimile: (415) 276-6599
8 Email: thomasburke@dwt.com
9 sarahburns@dwt.com

10 Attorneys for Defendant Kem Crosby Gardner

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SANTA CLARA
13 UNLIMITED JURISDICTION

14 MARK CHRISTOPER TRACY, an individual,
15 Plaintiff,

16 v.

17 COHNE KINGHORN PC, a Utah Professional
18 Corporation; SIMPLIFI COMPANY, a Utah
19 Corporation; JEREMY RAND COOK, an
20 individual; ERIC HAWKES, an individual;
21 JENNIFER HAWKES, an individual; MICHAEL
22 SCOTT HUGHES, an individual; DAVID
23 BRADFORD, an individual; KEM CROSBY
24 GARDNER, an individual; WALTER J. PLUMB
25 III, an individual; DAVID BENNION, an
26 individual; R. STEVE CREAMER, an individual
27 PAUL BROWN, an individual; GARY BOWEN,
28 an individual,
29 Defendants.

Case No. 23CV423435

**NOTICE OF HEARING ON SPECIALLY-
APPEARING DEFENDANT KEM C.
GARDNER'S MOTION TO QUASH
SERVICE OF SUMMONS AND
COMPLAINT FOR LACK OF
PERSONAL JURISDICTION**

[Motion to Quash Service of Summons and
Complaint and Declarations of Kem C.
Gardner and Sarah E. Burns previously filed]

Judge: The Hon. Evette Pennypacker
Department: 06

Date: February 20, 2024
Time: 9:00 a.m.

Complaint Filed: September 21, 2023

DAVIS WRIGHT TREMAINE LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT the hearing on specially-appearing defendant Kem C. Gardner’s previously-filed Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction has been set for February 20, 2024, at 9 a.m., in Department 6 of the Superior Court of California, County of Santa Clara, located at 191 N. First Street, San Jose, CA 95113.

DATED: January 22, 2024


Respectfully submitted,

zDAVIS WRIGHT TREMAINE LLP

By: 
THOMAS R. BURKE
SARAH E. BURNS

Attorneys for Specially-Appearing Defendant
Kem C. Gardner

EXHIBIT B

From: Burns, Sarah SarahBurns@dwt.com 
Subject: RE: Notice of Motion for Court Sanctions - Tracy v. Cohne Kinghorn PC et al. (California Superior Court for the County of Santa Clara, Case No. 23CV423435)
Date: January 30, 2024 at 2:36 PM
To: relator72@icloud.com, Burke, Thomas THOMASBURKE@dwt.com
Cc: Mark Christopher Tracy m.tracy@echo-association.com, mark.tracy72@gmail.com



Good afternoon,

We have reviewed the issues you identify below, and have found no grounds for a successful sanctions motion.

Our motion papers did not list a hearing date because Santa Clara County procedure requires that you not include one, and instead wait for the clerk to provide one. The clerk has since done so, and you were timely served with notice of the February 20, 2024 hearing. See Cal. Civ. Pro. 1005(b) (requiring notice be served 16 court days in advance of the hearing). The clerk did at some point reject our filing for failure to have a notice of motion, but that was the clerk's error, because our papers did contain a notice of motion, and the clerk corrected the error on its own.

We have also investigated the purported "falsities" you identified in the Gardner declaration, and remain confident the declaration is true.

Your threat to file a motion for sanctions is ill advised and should be dropped.

Best,
Sarah

Sarah Burns
Associate, Davis Wright Tremaine LLP

P 415.276.4892 E sarahburns@dwt.com
A 50 California Street, 23rd Floor, San Francisco, CA 94111
DWT.COM

From: relator72@icloud.com <relator72@icloud.com>
Sent: Sunday, January 21, 2024 8:20 AM
To: Burke, Thomas <THOMASBURKE@dwt.com>; Burns, Sarah <SarahBurns@dwt.com>
Cc: Mark Christopher Tracy <m.tracy@echo-association.com>; mark.tracy72@gmail.com
Subject: Notice of Motion for Court Sanctions - Tracy v. Cohne Kinghorn PC et al. (California Superior Court for the County of Santa Clara, Case No. 23CV423435)

[EXTERNAL]

[Download full resolution images](#)
[Available until Feb 20, 2024](#)

Mr. Burke & Ms. Burns,

Prior to filing a motion for court sanctions in the above-captioned matter, I am required to provide your law firm with the following notice per CCP 128.7(c)(1).

Firstly, it appears that your Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction and Inconvenient Forum dated December 29, 2023 (hereafter "Motion"), violated California court rules as follows:

- the Notice of Motion required under California Rules of the Court Rule 3.1110(b) did not record a time and date of the hearing;

- you failed to inform me of the hearing scheduled with the California Superior Court on February 20, 2024 within 16 court days as required under CCP 1005(b); and lastly

- you failed to inform me that the court clerk had rejected your motion on January 2, 2024 for failing to include the motion in the filing envelope (see Civil Filing Rejection Letter, attached as **Exhibit A**).

Second, although irrelevant to the present motion, and contrary to the sworn declaration of Sarah Burns, the Amended Judgement executed by Utah State Judge Mark Kouris and prepared by **Co-Defendant Jerney R. Cook** was issued during appellate proceedings and is thus null and void for lack of jurisdiction. See e.g., Brief of Petitioner for Writ of Extraordinary Relief, *Tracy v. Hon. Kouris*, No. 20210743 (UT, October 11, 2021); see also Motion to Reinstate Time for Filing Appeal, *Tracy v. Simplifi et. al*, No. 200905074 (Utah 3rd Dist., April 15, 2022).

Third, although perhaps unbeknownst to you at the time of filing your Motion, your client executed a sworn declaration, which appear to be demonstrably false as follows:

- Contrary to your Motion and sworn declaration No. 3, **Defendant Kem Crosby Gardner** did pay California property taxes to the San Diego County Tax Collector on October 23, 2023 (see attached screenshot dated January 3, 2024 at 7:47 am, attached as **Exhibit B**;

- Contrary to your Motion and sworn declaration No. 4, **Defendant Kem Crosby Gardner** owns (or did own) a percentage interest in two (2) radio stations located in the State of California (see attached decision of the Federal Communications Commission, attached as **Exhibit C**);

- Contrary to your Motion and sworn declaration No. 6, **Defendant Kem Crosby Gardner** appears to have maintained an office at The Boyer Company as late as May 4, 2004 and continues to co-own properties most likely located in the State of California with the same (see Desert News article "Gardner to leave Boyer Co.," attached as **Exhibit D**; and lastly,

- Contrary to your Motion and sworn declaration No. 3, **Defendant Kem Crosby Gardner**, appears to have extensive and continuous business conduct in the State of California through the companies The Boyer Company, the Gardner Group, and rPlus Energies, (see *id*; see also screenshots of the Gardner Group website, attached as **Exhibit E**).

I trust your law firm will conduct proper due diligence of the issues identified above and either withdraw the Motion in its entirety or clarify the court record prior to close of business on **February 12, 2024**.

However, if you do not intend to withdraw the Motion and/or clarify the court record, please contact me at the number below for a meet and confer regarding a mutually agreeable hearing date per Local Rule 8(A) at your earliest convenience, but prior to close of business on **January 30, 2024** to allow sufficient time to prepare and file a memorandum in opposition.

Please feel free to contact me if you have any questions.

Hochachtungsvoll (Kindest and Most Respectful Regards),

Mark Christopher Tracy

Tel. 929-208-6010

Exhibit A:

[Click to Download](#)

++Clerk Rejection Letter.pdf
48 KB

Exhibit B:



Parcel Number	Year	Assessed Value	Assessed Value	Assessed Value	Assessed Value	Assessed Value	Assessed Value	Assessed Value
01-000-001	2018	100,000	100,000	100,000	100,000	100,000	100,000	100,000
01-000-002	2018	200,000	200,000	200,000	200,000	200,000	200,000	200,000

Exhibit C:

[Click to Download](#)

+Gardner - FCC Ruling.pdf
15.2 MB

Exhibit D:

[Click to Download](#)

+++Gardner to leave Boyer Co. - Deseret News.pdf
1.9 MB

Exhibit E:

[Click to Download](#)

+++Gardner - California Business Interests.pdf
11.8 MB

EXHIBIT C

From: Mark Christopher Tracy mark.tracy72@gmail.com
Subject: Verification of Gardner Declaration & Consent to Electronic Service of Process. (Tracy v. Kinghorn et al. - Santa Clara Superior Court, Case No. 23CV423435)
Date: December 30, 2023 at 9:40 AM
To: SarahBurns@dwt.com, THOMASBURKE@dwt.com
Cc: mark.tracy72@gmail.com



Ms. Burns & Mr. Burke,

Thank-you for the electronic courtesy copy of your motion to Quash Service of Summons filed on behalf of Defendant Kem Crosby Gardner in the above-captioned matter. I will verify the factual representations submitted to the Court by your client at my earliest opportunity.

Please note that I hereby consent to electronic service for future filings pursuant to CCP § 1010.6 (c)(2) when addressed to both "m.tracy@echo-association.com" and "mark.tracy72@gmail.com" and request confirmation of "SarahBurns@dwt.com" and "THOMASBURKE@dwt.com" as your electronic service addresses per subsection (b)(3).

I look forward to working with you for an expedite resolution of this matter at the earliest opportunity.

Enjoy your New Year's celebrations!

Hochachtungsvoll (Kindest and Most Respectful Regards),

Mark Christopher Tracy
Tel. 929-208-6010

Begin forwarded message:

From: "Burns, Sarah" <SarahBurns@dwt.com>
Date: 29. December 2023 at 16:16:02 GMT-8
To: m.tracy@echo-association.com
Cc: "Burke, Thomas" <THOMASBURKE@dwt.com>
Subject: Tracy v. Kinghorn - Santa Clara Case No. 23CV423435

Good evening,

Please see attached.

Thanks,
Sarah

<image001.png>

Sarah Burns
Associate | Davis Wright Tremaine LLP
P 415.276.4892 E sarahburns@dwt.com
A 50 California Street, 23rd Floor, San Francisco, CA 94111

DWT.COM

<image003.png>

<image005.png>

<2023-12-29 Motion to Quash Service of Summons.pdf>
<2023-12-29 Declaration of Sarah Burns ISO Motion to Quash.pdf>
<20231229124353966.pdf>
<Proof of Service_Motion to Quash.pdf>

EXHIBIT D

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037

3 --
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany

5 --
5 Email: m.tracy@echo-association.com
6 Telephone: +1 (929) 208-6010
+49 (0)172 838 86 37

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 individual;
12 Plaintiff,

13 v.

14 COHNE KINGHORN PC, a Utah Professional
15 Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
17 ERIC HAWKES, an individual;
18 JENNIFER HAWKES, an individual; MICHAEL
19 SCOTT HUGHES, an individual; DAVID
20 BRADFORD, an individual; KEM CROSBY
21 GARDNER, an individual; WALTER J.
PLUMB III, an individual; DAVID BENNION, an
individual; R. STEVE CREAMER, an individual
PAUL BROWN, an individual; GARY BOWEN,
an individual,

22 Defendants.

Case No.: 23CV423435

Honorable Evette D. Pennypacker
[Dept. 6]

**NOTICE OF TAKING OF DEPOSITION
OF GARY BOWEN AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

Date of Deposition: February 13, 2024

Time: 09:00 am (MST)

Place: 350 E. 400 S. Rm. 2A

Salt Lake City, Utah 84111

Action Filed: September 21, 2023

Trial Date: TBD

23 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

24 PLEASE TAKE NOTICE that, pursuant to California Code of Civil Procedure §2025.210 –
25 2025.280, Plaintiff will take the deposition of Defendant Gary Bowen on February 13, 2024, at 09:00
26 am MST located at 350 S. 400 S., Rm. 2A, Salt Lake City, Utah 84111, in the above-entitled matter. If
27 the deposition is not completed on the date set out above, the taking of the deposition will continue from
28 day to day, excluding weekends and legal holidays, thereafter until completed.

1 This deposition will be taken upon oral examination before any notary public or other officer duly
2 commissioned by the State of California to administer oaths by stenographic method. Plaintiff reserves
3 the right to record the deposition testimony by videotape for use at trial, pursuant to California Code of
4 Civil Procedure section 2025.220(a)(6). If the services of an interpreter are needed, please notify the
5 undersigned immediately.

6 NOTICE IS FURTHER GIVEN that, pursuant to California Code of Civil Procedure Sections
7 2025.220(a)(4) and 2025.280(a) and (c), DEFENDANT is required to produce the documents, records
8 and other materials described below, which are in his possession, or under the custody or control of any
9 of his agents, representatives, and/or attorneys on or before the date and time set forth for his deposition.
10 The documents to be produced by DEFENDANT are as follows:

11 **DEFINITIONS**

12 A. "PERSON(S)" includes any natural person, firm, association, organization, partnership,
13 business, trust, corporation, governmental or public entity or any other form of legal entity.

14 B. "DOCUMENT" or "DOCUMENTS" shall mean all documents, electronically stored
15 information, and tangible things, including without limitation all writings (as defined in Section 250 of
16 the California Evidence Code) and all other means of recording information, whether written,
17 transcribed, taped, filmed, microfilmed, or in any other way produced, reproduced, or recorded, and
18 including but not limited to: originals, drafts, computer-sorted and computer-retrievable information,
19 copies and duplicates that are marked with any notation or annotation or otherwise differ in any way
20 from the original, correspondence, memoranda, reports, notes, minutes, contracts, agreements, books,
21 records, checks, vouchers, invoices, purchase orders, ledgers, diaries, logs, calendars, computer
22 printouts, computer disks, card files, lists of persons attending meetings or conferences, sketches,
23 diagrams, calculations, evaluations, analyses, directions, work papers, press clippings, sworn or unsworn
24 statements, requisitions, manuals or guidelines, audit work papers, financial analyses, tables of
25 organizations, charts, graphs, indices, advertisements and promotional materials, audited and unaudited
26 financial statements, trade letters, trade publications, newspapers and newsletters, photographs, emails,
27 electronic or mechanical records, facsimiles, telegrams and telecopies, and audiotapes. Each draft,
28 annotated, or otherwise non-identical copy is a separate DOCUMENT within the meaning of this term.

1 DOCUMENTS shall also include any removable sticky notes, flags, or other attachments affixed to any
2 of the foregoing, as well as the files, folder tabs, and labels appended to or containing any documents.
3 DOCUMENTS expressly include all ELECTRONIC RECORDS.

4 C. "COMMUNICATION(S)" means any oral, written or electronic transmission of
5 information, including but not limited to meetings, discussions, conversations, telephone calls,
6 telegrams, memoranda, letters, teletypes, telexes, conferences, messages, notes or seminars.

7 D. "RELATING TO," "RELATED TO" or "RELATE(S) TO" means constituting,
8 containing, concerning, embodying, reflecting, identifying, stating, mentioning, discussing, describing,
9 evidencing, or in any other way being relevant to that given subject matter.

10 E. "PLAINTIFF" shall mean PLAINTIFF Mark Christopher Tracy.

11 F. "DEFENDANT," "YOU" and "YOUR" shall mean Defendant Gary Bowen.

12 G. "SUBJECT INCIDENT" means and refers to the incident as described in Plaintiff's
13 Complaint upon which this suit is founded.

14 H. "DEFENDANTS" shall mean all Defendants to the present action.

15 **REQUEST FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 1:**

17 All DOCUMENTS and COMMUNICATIONS concerning or RELATED TO federal False
18 Claims Act litigation and water-right change applications identified in the SUBJECT INCIDENT sent
19 from or received by DEFENDANT including but not limited to the email addresses
20 "garybowenauthor@gmail.com" and "agarybowen@msn.com."

21 **REQUEST FOR PRODUCTION NO. 2:**

22 A copy of YOUR cell phone records, including times and dates of text messages sent to or
23 received from news media outlets including but not limited to correspondent Emma Penrod of High
24 County News and Salt Lake Tribune journalist Brian Maffly.

25 **REQUEST FOR PRODUCTION NO. 3:**

26 All DOCUMENTS and COMMUNICATIONS sent to or received from Defendants by YOU as
27 RELATED TO news media outlets including but not limited to writer Emma Penrod of High County
28 News and Salt Lake Tribune journalist Brian Maffly.

1 **REQUEST FOR PRODUCTION NO. 4:**

2 All DOCUMENTS and COMMUNICATIONS related to culinary drinking water service and
3 contamination thereof sent to or received from managers, consultants, and/or independent contractors
4 of Emigration Improvement District (aka Emigration Canyon Improvement District)(hereafter "EID")
5 by YOU.

6 **REQUEST FOR PRODUCTION NO. 5:**

7 All DOCUMENTS and COMMUNICATIONS received from or transmitted to Defendants by
8 YOU including EID general manager Fred Smolka of Management Enterprises Inc.

9 **REQUEST FOR PRODUCTION NO. 6:**

10 All DOCUMENTS and COMMUNICATIONS related to payment of monies to or from accounts
11 drawn to or from Defendants including EID by YOU.

12 **REQUEST FOR PRODUCTION NO. 7:**

13 All DOCUMENTS and COMMUNICATIONS related to the demand for payment to or from
14 Defendants including EID.

15 //

16 //

17 DATED: January 17, 2024

18 By: 
Mark Christopher Tracy
19 Pro Se Plaintiff
20
21
22
23
24
25
26
27
28

EXHIBIT E

1 Mark Christopher Tracy
1130 Wall St #561
2 La Jolla, California 92037

3 --
3 Eschersheimer Landstrasse 42
60322 Frankfurt am Main
4 Germany

5 --
5 Email: m.tracy@echo-association.com
6 Telephone: +1 (929) 208-6010
+49 (0)172 838 86 37

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 individual;
12 Plaintiff,

13 v.

14 COHNE KINGHORN PC, a Utah Professional
15 Corporation; SIMPLIFI COMPANY, a Utah
16 Corporation; JEREMY RAND COOK, an
17 individual; ERIC HAWKES, an individual;
18 JENNIFER HAWKES, an individual; MICHAEL
19 SCOTT HUGHES, an individual; DAVID
20 BRADFORD, an individual; KEM CROSBY
21 GARDNER, an individual; WALTER J.
PLUMB III, an individual; DAVID BENNION, an
individual; R. STEVE CREAMER, an individual
PAUL HANDY BROWN, an individual; and
GARY BOWEN an individual,

22 Defendants.

Case No.: 23CV423435

Honorable Evette D. Pennypacker
[Dept. 6]

**NOTICE OF TAKING OF DEPOSITION
OF DEFENDANT PAUL HANDY BROWN
AND REQUEST FOR PRODUCTION OF
DOCUMENTS**

Date of Deposition: February 15, 2024

Time: 09:00 am (MST)

Place: 350 E. 400 S. Rm. 2A

Salt Lake City, Utah 84111

Action Filed: September 21, 2023

Trial Date: TBD

23
24 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

25 PLEASE TAKE NOTICE that, pursuant to California Code of Civil Procedure §2026.010 in
26 connection with §§2025.010 – 2025.280, Plaintiff will take the deposition of Defendant Paul Handy
27 Brown on February 15, 2024, at 09:00 am (MST) located at 350 S. 400 S., Rm. 2A, Salt Lake City, Utah
28 84111, in the above-entitled matter. If the deposition is not completed on the date set out above, the

1 taking of the deposition will continue from day to day, excluding weekends and legal holidays, thereafter
2 until completed.

3 This deposition will be taken upon oral examination before any notary public or other officer duly
4 authorized to administer oaths by the laws of the United States or those of the place where the
5 examination is to be held by stenographic method. Plaintiff reserves the right to record the deposition
6 testimony by videotape for use at trial, pursuant to California Code of Civil Procedure §2025.220(a)(6).
7 If the services of an interpreter are needed, please notify the undersigned immediately.

8 NOTICE IS FURTHER GIVEN that, pursuant to California Code of Civil Procedure
9 §§2025.220(a)(4) and 2025.280(a) and (c), DEFENDANT is required to produce the documents, records
10 and other materials described below, which are in his possession, or under the custody or control of any
11 of his agents, representatives, and/or attorneys on or before the date and time set forth for his deposition.

12 The documents to be produced by DEFENDANT are as follows:

13 **DEFINITIONS**

14 A. "PERSON(S)" includes any natural person, firm, association, organization, partnership,
15 business, trust, corporation, governmental or public entity or any other form of legal entity.

16 B. "DOCUMENT" or "DOCUMENTS" shall mean all documents, electronically stored
17 information, and tangible things, including without limitation all writings (as defined in Section 250 of
18 the California Evidence Code) and all other means of recording information, whether written,
19 transcribed, taped, filmed, microfilmed, or in any other way produced, reproduced, or recorded, and
20 including but not limited to: originals, drafts, computer-sorted and computer-retrievable information,
21 copies and duplicates that are marked with any notation or annotation or otherwise differ in any way
22 from the original, correspondence, memoranda, reports, notes, minutes, contracts, agreements, books,
23 records, checks, vouchers, invoices, purchase orders, ledgers, diaries, logs, calendars, computer
24 printouts, computer disks, card files, lists of persons attending meetings or conferences, sketches,
25 diagrams, calculations, evaluations, analyses, directions, work papers, press clippings, sworn or unsworn
26 statements, requisitions, manuals or guidelines, audit work papers, financial analyses, tables of
27 organizations, charts, graphs, indices, advertisements and promotional materials, audited and unaudited
28 financial statements, trade letters, trade publications, newspapers and newsletters, photographs, emails,

1 electronic or mechanical records, facsimiles, telegrams and teletypes, and audiotapes. Each draft,
2 annotated, or otherwise non-identical copy is a separate DOCUMENT within the meaning of this term.
3 DOCUMENTS shall also include any removable sticky notes, flags, or other attachments affixed to any
4 of the foregoing, as well as the files, folder tabs, and labels appended to or containing any documents.
5 DOCUMENTS expressly include all ELECTRONIC RECORDS.

6 C. "COMMUNICATION(S)" means any oral, written or electronic transmission of
7 information, including but not limited to meetings, discussions, conversations, telephone calls,
8 telegrams, memoranda, letters, teletypes, telexes, conferences, messages, notes or seminars.

9 D. "RELATING TO," "RELATED TO" or "RELATE(S) TO" means constituting,
10 containing, concerning, embodying, reflecting, identifying, stating, mentioning, discussing, describing,
11 evidencing, or in any other way being relevant to that given subject matter.

12 E. "PLAINTIFF" shall mean PLAINTIFF Mark Christopher Tracy.

13 F. "DEFENDANT," "YOU" and "YOUR" shall mean Defendant Paul Handy Brown.

14 G. "SUBJECT INCIDENT" means and refers to the incident as described in Plaintiff's
15 Complaint upon which this suit is founded.

16 H. "DEFENDANTS" shall mean all named Defendants to the present action.

17 **REQUEST FOR PRODUCTION**

18 **REQUEST FOR PRODUCTION NO. 1:**

19 All DOCUMENTS and COMMUNICATIONS concerning or RELATED TO federal False
20 Claims Act litigation and water rights identified in the SUBJECT INCIDENT sent from or received by
21 DEFENDANT including but not limited to the email addresses "paulhandybrown@gmail.com" and
22 "paul.h.brown@verizon.net" and "eopoapresident@gmail.com."

23 **REQUEST FOR PRODUCTION NO. 2:**

24 A copy of YOUR phone records, including times and dates of text messages sent to Defendants
25 including managers, consultants, and/or independent contractors of Emigration Improvement District
26 (aka Emigration Canyon Improvement District)(hereafter "EID"), the Mount Olivet Cemetery
27 Association (hereafter "Mt. Olivet"), the Pioneer Fork Owners Association (hereafter "PFOA"), and the
28 Emigration Oaks Property Owners Association, Inc. (hereafter "EOPOA").

1 **REQUEST FOR PRODUCTION NO. 3:**

2 A copy of YOUR state-issued licenses including documents prepared by religious organizations
3 including but not limited to The Church of Jesus Christ of Latter-day Saints (aka Mormon Church)
4 recording YOUR place of residency, membership, functions, and responsibilities.

5 **REQUEST FOR PRODUCTION NO. 4:**

6 All DOCUMENTS and COMMUNICATIONS related to culinary drinking water service and/or
7 contamination thereof sent to or received from persons including but not limited to managers,
8 consultants, and/or independent contractors of EID.

9 **REQUEST FOR PRODUCTION NO. 5:**

10 All DOCUMENTS and COMMUNICATIONS related to the observance, documentation, repair
11 and/or restoration of fissures, ground erosion and subsidence in Emigration Canyon including but not
12 limited to Defendants and managers, consultants, and/or independent contractors of EID.

13 **REQUEST FOR PRODUCTION NO. 6:**

14 All DOCUMENTS and COMMUNICATIONS received from or transmitted to Defendants by
15 YOU including EID general manager Fred Smolka of Management Enterprises Inc., Mt. Olivet, and
16 PFOA.

17 **REQUEST FOR PRODUCTION NO. 7:**

18 All DOCUMENTS and COMMUNICATIONS related to payment of monies to or from accounts
19 drawn to or from Defendants including EID by YOU.

20 **REQUEST FOR PRODUCTION NO. 8:**

21 All DOCUMENTS and COMMUNICATIONS related to the demand for payment to or from
22 Defendants including EID from YOU.

23 **REQUEST FOR PRODUCTION NO. 9:**

24 All DOCUMENTS and COMMUNICATIONS related to the access and/or development of
25 properties in Emigration Canyon located in Salt Lake County, Utah sent to or received from persons
26 including but not limited to Defendant R. Steve Creamer, and members of the PFOA, and EOPOA.

27 //

28 //

1 **REQUEST FOR PRODUCTION NO. 10:**

2 All DOCUMENTS and COMMUNICATIONS sent to or received from property owners and
3 residents of the EOPOA, and PFOA, including but not limited to meeting minutes, audio recordings and
4 resolutions during your tenure as a board member of the same.

5 //

6 //

7 DATED: January 19, 2024

By: 

Mark Christopher Tracy
Pro Se Plaintiff

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28