
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>_____,</p> <p>Defendant.</p>	<p>PLAINTIFF'S RESPONSE TO DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS</p> <p>Case No. _____</p> <p>District Judge _____</p>
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Plaintiff Brandon Michael Jeanpierre, pro se, submits this Response to Defendants' Reply in Support of Motion to Dismiss.

I. INTRODUCTION

Defendants' Reply demonstrates fundamental misunderstandings of state action doctrine, religious liberty protections, and procedural requirements. Most critically, Defendants present contradictory positions—simultaneously exercising statutory lien powers while claiming immunity from constitutional constraints as mere private actors. This "heads I win, tails you lose" approach epitomizes what judicial estoppel prohibits. *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001).

II. DEFENDANTS FUNDAMENTALLY MISINTERPRET CONTROLLING CASE LAW

A. *Lugar v. Edmondson Oil Co.* Directly Applies to Statutory Lien Enforcement

Defendants' characterization of *Lugar* as inapplicable because it "involves a Virginia Code allowing for prejudgment attachment" misses its central holding: when private entities utilize "statutory procedures" with "significant aid of state officials," they become state actors subject to constitutional constraints. 457 U.S. 922, 937 (1982). *Lugar*'s three-part test is satisfied when: (1) "the deprivation must

be caused by the exercise of some right or privilege created by the State"; (2) the party "must be a person who may fairly be said to be a state actor"; and (3) the conduct is "otherwise chargeable to the State." *Id.*

Defendants ignore that the Tenth Circuit has directly applied *Lugar* to situations analogous to statutory lien enforcement in *Coleman v. Turpen*, 697 F.2d 1341, 1345 (10th Cir. 1982), holding that a private towing company became a state actor by "jointly participating" with state officials in property seizure pursuant to state law.

B. *Edmonson v. Leesville Concrete Co.* Supports State Actor Status

Contrary to Defendants' mischaracterization, *Edmonson* establishes criteria that directly support Plaintiff's position. The Court identified factors for determining state action: "the extent to which the actor relies on governmental assistance and benefits...whether the actor is performing a traditional governmental function...and whether the injury caused is aggravated in a unique way by the incidents of governmental authority." 500 U.S. 614, 621-622 (1991). Public Storage's utilization of Utah Code § 38-8-1 satisfies all three criteria.

C. *D.H. Overmyer Co. v. Frick Co.* Requires Voluntary, Knowing Waiver

Defendants' most egregious misrepresentation involves *D.H. Overmyer*, claiming it supports contractual waiver of constitutional rights. They selectively quote that "due process rights...are subject to waiver" while omitting the Court's critical limitation that such waivers must be "voluntary, knowing, and intelligently made." 405 U.S. 174, 185-186 (1972). No such waiver of religious liberty rights exists in the storage contract, and the religious duress circumstances of contract formation would invalidate any purported waiver.

III. DEFENDANTS IGNORE CRITICAL RELIGIOUS LIBERTY PROTECTIONS

Defendants' Reply conspicuously fails to address either Utah's Religious Freedom Restoration Act (SB150) or the federal RFRA. SB150 explicitly prohibits burdening religious exercise without a compelling governmental interest implemented through least restrictive means. Utah Code § 63G-31-201. This Court recently affirmed protection for unconventional religious practices in *Singularism v. Provo City* (D. Utah, Feb. 20, 2025), stating "the laws must protect unfamiliar religions equally with familiar ones."

The federal RFRA similarly applies to private entities acting under color of state law, as established in *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020), which recognized that RFRA permits suits against officials for damages when implementing statutory authority.

IV. JUDICIAL ESTOPPEL BARS INCONSISTENT CONTRACTUAL POSITIONS

As detailed in Plaintiff's Ex Parte Motion for Preemptive Judicial Estoppel, Defendants' attempts to invoke contractual provisions after abandoning them through conduct warrant estoppel. The storage contract's Section 6.2 explicitly requires "any and all disputes" be resolved through arbitration. By bypassing this provision and proceeding directly to statutory lien enforcement, Defendants waived their right to rely on favorable contractual provisions. *Peterson v. Shearson/Am. Express, Inc.*, 849 F.2d 464, 467-68 (10th Cir. 1988).

Defendants' assertion of contract value limitations (\$5,000 cap) after receiving explicit notice of the property's religious significance similarly warrants estoppel. *Hadley v. Baxendale*, 156 Eng. Rep. 145 (1854); *P&E Equip. Co. v. Mostek Corp.*, 773 F.2d 229, 232 (10th Cir. 1985).

V. DEFENDANTS' PROCEDURAL OBJECTIONS LACK MERIT

A. Diversity Jurisdiction Is Properly Established

Defendants object to diversity jurisdiction as "newly asserted" but cite no authority prohibiting a plaintiff from asserting multiple jurisdictional bases. Complete diversity exists between Plaintiff (Utah) and Defendants (Maryland/California), and the amount in controversy (\$64,973,140.19) vastly exceeds the \$75,000 threshold.

B. The Complaint States Valid Claims

Defendants' claim that the Complaint lacks "sufficient factual assertions" contradicts its 30+ pages of detailed allegations, including formal recognition of The Black Flag's religious status, explicit notice to Defendants, documented religious deadline, and rejected settlement attempts. Each element of every claim is supported by specific facts.

C. Corporate Representation Is Protected Religious Expression

The February 1, 2025 Board Resolution formally "assigns, transfers, and conveys all rights, claims, and causes of action" to Plaintiff individually while maintaining "all proceeds from litigation shall be transferred to Brandon Jeanpierre (individual) as temporary holding for THE CORPORATION." This resolution, combined with the religious-corporate unity doctrine established in The Covenant Codex, resolves any technical questions about standing.

Defendants mischaracterize *Our Lady of Guadalupe School v. Morrissey-Berru* and *Hosanna-Tabor* as merely about "employment discrimination" rather than their central holding that the First Amendment protects "the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion." *Hosanna-Tabor*, 565 U.S. 171, 186 (2012). This principle

directly applies to The Black Flag's religious determination of its relationship to its founder.

VI. CONCLUSION


Defendants cannot simultaneously exercise state-delegated statutory powers while claiming immunity from constitutional constraints as mere private actors. Such inconsistency is precisely what judicial estoppel prohibits. This Court should deny Defendants' Motion to Dismiss in its entirety.

RESPECTFULLY SUBMITTED,

Brandon Michael Jeanpierre

Pro Se Plaintiff

Executed on _____.

Signature:  _____

Printed Name: _____