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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 Daniel Adam Borsotti,) Case No. 2:16-cv-07603-FMO-JCx
11 Claimant)
12 v.) WRIT OF ERROR
Quality Loan Services) QUAE CORAM NOBIS RESIDANT
13 Corporation,) in re ORDER STRIKING FILED DOCUMENTS
14 Defendants) FROM THE RECORD [DKT. NO. 91;
15) WRIT OF ERROR in re SERVICE LIST
ORDER TO SHOW CAUSE;
) **(CLERK ACTION REQUIRED)**
) (See paragraphs 6 through 9, 17)

16 WRIT OF ERROR QUAE CORAM NOBIS RESIDANT
17 in re ORDER STRIKING FILED DOCUMENTS FROM THE RECORD
[DKT. NO. 91]

18 1. COMES NOW THE ABOVE ENTITLED COURT OF RECORD SUA SPONTE, TO
19 REVIEW THE FACTS, RECORD, AND PROCESS RESULTING IN THE ORDER
20 ENTITLED *ORDER STRIKING FILED DOCUMENTS FROM THE RECORD*
[DKT NO. 91]:

21 I.
22 SYLLABUS in re
ORDER STRIKING FILED DOCUMENTS FROM THE RECORD [DKT. NO. 91]

23 2. On January 20, 2017, Claimant, as one of the people ¹ of the

24 ¹ "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic
25 Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to
26 ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."
Constitution for the United States of America, Preamble

1 United States, a republic,² filed a *FIRST AMENDED ACTION*
2 [DKT NO. 67] in which he established the above-entitled court³
3 as a court of record.⁴

3 3. A basic requirement of a court of record is that the
4 tribunal must be independent of the magistrate.⁵ The magistrate
5 is not the court, and vice versa. That distinction is noted
6 throughout the codes. For examples, see 28 USC 2241 and 28 USC
7 2243.⁶

6 4. On March 29, 2017 the clerk filed the unlawful *ORDER*
7 *STRIKING FILED DOCUMENTS FROM THE RECORD* [DKT. NO. 91]
8 (Attachment 5) received from Fernando Manzano Olguin
9 (hereinafter "magistrate"), a judge in the court. The unlawful
10 order attempted to strike DKT. NO. 89 and DKT. NO. 90. This is
11 the fifth (5th) time the magistrate unlawfully attempted to usurp
12 the authority of the tribunal of the court of record.

10 5. Because the above-entitled court is a court of record in
11 which the tribunal must be independent of the magistrate, when
12 the magistrate issued *ORDER* [DKT. NO. 91] (Attachment 5) he

13 ² "The United States shall guarantee to every State in this Union a Republican Form of Government..." Constitution
14 for the United States of America, Article IV, § 4

14 "Government: Republican Government. One in which the powers of sovereignty are vested in the people and are
15 exercised by the people, either directly, or through representatives chosen by the people, to whom those powers are
16 specially delegated. In re Duncan, 139 U.S. 449, 11 S.Ct. 573, 35 L.Ed. 219; Minor v. Happersett, 88 U.S. (21
17 Wall.) 162, 22 L.Ed. 627." Black's Law Dictionary, Fifth Edition, p. 626

16 ³ COURT. "The person and suite of the sovereign; the place where the sovereign sojourns with his regal retinue,
17 wherever that may be." Black's Law Dictionary, 4th Ed., 425, 426

18 ⁴ 28 USC 132 "CREATION AND COMPOSITION OF district courts. (a) There shall be in each judicial district a
19 district court which shall be a court of record known as the United States District Court for the district."

19 A court of record is, "A judicial tribunal having attributes and exercising functions **independently** of the person of
20 the magistrate designated generally to hold it. Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte
21 Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689"
22 Black's Law Dictionary, 4th Ed., 425, 426. [emphasis added]

21 ⁵ "A judicial tribunal having attributes and exercising functions independently of the person of the magistrate
22 designated generally to hold it [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc.
23 Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689]" Black's Law
24 Dictionary, 4th Ed., 425, 426

24 ⁶ Examples of the codes distinguishing between a court and a judge:

25 28 USC 2241 "(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district
26 courts and any circuit judge within their respective jurisdictions..." [emphasis added]

26 28 USC 2243 "A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith
27 award the writ or issue an order..." [emphasis added]

1 again attempted to usurp the power of the tribunal.⁷ The
2 ministerial magistrate may not exercise any judicial discretion,
which is reserved to the tribunal.

3 II
4 SYLLABUS in re
5 WRIT OF ERROR in re SERVICE LIST;
6 ORDER TO CLERK

6 6. On January 3, 2017, before the FIRST AMENDED ACTION
7 established this court of record, an inferior court ordered that
8 all motions for dismissal were granted, and that "the court
9 cannot refer to a prior pleading in order to make his First
10 Amended Complaint complete. Local Rule 15-2 requires that an
amended pleading be complete in and of itself without reference
to any prior pleading. This is because, as a general rule, and
amended pleading supersedes the original pleading." [emphasis
added]

11 7. Because all motions to dismiss were granted, and because now
12 there is only one defendant [Quality Loan Service Corporation],
all other defendants were dismissed and not subject to the
jurisdiction of this court.

13 8. Only Quality Loan Service Corporation needs to be served
14 with copies of papers filed with this court.

15 9. THEREFORE, IT IS ORDERED that the clerk shall revise the
16 SERVICE LIST so that only active parties (Quality Loan Service
Corporation and its attorney, and Daniel Adam Borsotti) are on
the list and served.

17 III
18 IMPEACHMENT AND WRIT OF ERROR
19 in re DKT. NO. 91

20 10. THE COURT, HAVING REVIEWED THE FACTS, THE RECORD, AND ORDER
[DKT. NO. 91] THAT WAS ISSUED, AND FINDING that the magistrate
filed said orders without leave of court; and finding that the
orderly decorum of the court was replaced by defective impromptu
processes and usurpation of legislative and court powers without
leave of court,

23 11. And, finding that the clerk of the court improperly

24 ⁷ A court of record is, "A judicial tribunal having attributes and exercising functions independently of the person of
25 the magistrate designated generally to hold it [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte
Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689]"
26 Black's Law Dictionary, 4th Ed., 425, 426.

1 accepted for filing the *ORDER* [DKT. NO. 91] from the magistrate
2 without leave of court,

3 12. And, desiring that fair justice be served for all parties,
4 defendants as well as claimant,

5 13. And, on examination of General Orders, Local Rules, and
6 Case Management Order, this court finds nothing in conflict with
7 this court issuing its own order, in particular the *ORDERS*
8 designated as DKT. NO. 89 and DKT. NO. 90, filed March 27, 2017.

9 14. NOW THEREFORE, THE COURT issues this WRIT OF ERROR QUAE
10 CORAM NOBIS RESIDANT, to wit:

11 15. *ORDER* [DKT. NO. 91] [Attachment 5] shall be and is
12 rescinded, nunc pro tunc. The *ORDERS* designated as DKT. NO. 89
13 and DKT. NO. 90, filed March 27, 2017, are reinstated nunc pro
14 tunc.

15 16. Further, it is ordered that Defendant, Quality Loan
16 Services Corporation shall file and serve an answer to the *FIRST*
17 *AMENDED ACTION* no later than May 1, 2017. This deadline
18 supersedes the date specified in Paragraph 24 of the *WRIT OF*
19 *ERROR* [DKT. NO. 89].

20 IV.

21 ORDER TO SHOW CAUSE

22 17. Further, the magistrate, claimant, defendant, and clerk are
23 each ordered to file and serve on all other interested parties
24 and magistrate a brief no later than April 25, 2017 to show
25 cause, if any there be, to this court why any of these *WRITS*
26 should not take effect or should be modified. Failure to show
27 cause shall constitute concordance of all interested persons
28 with these *WRITS*. Unless requested, there will be no oral
argument. The court, mindful of the rights of the parties and
the importance of fair play, will liberally construe the written
arguments presented.

V.

JUDICIAL COGNIZANCE

18. This court takes judicial cognizance of and decrees the
following as the law of the case:

19. JUDICIAL COGNIZANCE. Judicial notice, or knowledge upon
which a judge is bound to act without having it proved in
evidence. [Black's Law Dictionary, 5th Edition, page 760.]

20. Constitution for the United States of America

- 1 21. Constitution for the United States of America Amendment IV
2 22. Constitution for the United States of America Amendment XIV
3 23. 18 USC 241
4 24. 18 USC 242
5 25. 42 USC 1982
6 26. 42 USC 1983
7 27. 42 USC 1985(3)
8 28. The Congress as the instrumentality of sovereignty is
9 endowed with certain powers to be exerted on behalf of the
10 people in the manner and with the effect the Constitution
11 ordains. The Congress cannot invoke the sovereign power of the
12 people to override their will as thus declared. *Lynch v. United*
13 *States*, supra, pages 580, 582, of 292 U.S. 54 S.Ct. 840. Cited
14 by *Perry v. United States*, 294 U.S. 330, 353 (1935).
15
16 29. In the United States, sovereignty resides in the people who
17 act through the organs established by the Constitution. *Chisholm*
18 *v. Georgia*, 2 Dall. 419, 471; *Penhallow v. Doane's*
19 *Administrators*, 3 Dall. 54, 93; *McCulloch v. Maryland*, 4 Wheat.
20 316, 404, 405; *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S.Ct.
21 1064. Cited by *PERRY v. UNITED STATES*, 294 U.S. 330, 353 (1935)
22
23 30. The sovereignty of the state resides in the people
24 thereof... [California Government Code, Section 100(a)]
25
26 31. The people of this state do not yield their sovereignty to
27 the agencies which serve them. [California Government Code,
28 Sections 11120 and 54950.]
29
30 32. Laws, whether organic or ordinary, are either written or
31 unwritten. [California Code of Civil Procedure, Section 1895.]
32
33 33. A written law is that which is promulgated in writing, and
34 of which a record is in existence. [California Code of Civil
35 Procedure, Section 1896]
36
37 34. The organic law is the Constitution of Government, and is
38 altogether written. Other written laws are denominated
39 statutes. The written law of this State is therefore contained
40 in its Constitution and statutes, and in the Constitution and
41 statutes of the United States. [California Code of Civil
42 Procedure, Section 1897]
43
44 35. Any judicial record may be impeached by evidence of a want

1 of jurisdiction in the Court or judicial officer, of collusion
2 between the parties, or of fraud in the party offering the
3 record, in respect to the proceedings. [California Code of
4 Civil Procedure, Section 1916]

5 36. ...at the Revolution, the sovereignty devolved on the
6 people; and they are truly the sovereigns of the country, but
7 they are sovereigns without subjects...with none to govern but
8 themselves..... [CHISHOLM v. GEORGIA (US) 2 Dall 419, 454, 1 L
9 Ed 440, 455 @DALL (1793) pp471-472.]

10 37. The very meaning of 'sovereignty' is that the decree of the
11 sovereign makes law. [American Banana Co. v. United Fruit Co.,
12 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047]

13 38. The people of this State, as the successors of its former
14 sovereign, are entitled to all the rights which formerly
15 belonged to the King by his prerogative. [Lansing v. Smith, 4
16 Wend. 9 (N.Y.) (1829), 21 Am.Dec. 89 10C Const. Law Sec. 298; 18
17 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48
18 C Wharves Sec. 3, 7.]

19 39. A consequence of this prerogative is the legal ubiquity of
20 the king. His majesty in the eye of the law is always present in
21 all his courts, though he cannot personally distribute justice.
22 (Fortesc.c.8. 2Inst.186) His judges are the mirror by which the
23 king's image is reflected. 1 Blackstone's Commentaries, 270,
24 Chapter 7, Section 379.

25 40. 28 USC 2241 (a) Writs of habeas corpus may be granted by
26 the Supreme Court, any justice thereof, the district courts and
27 any circuit judge within their respective jurisdictions...

28 28 USC 2243 A court, justice or judge entertaining an
application for a writ of habeas corpus shall forthwith award
the writ or issue an order...

41.This declaration of rights may not be construed to
impair or deny others retained by the people. [California
Constitution, Article 1, Declaration Of Rights Sec. 24.]

42. The state cannot diminish rights of the people. [Hertado
v. California, 110 US 516.]

43. The assertion of federal rights, when plainly and
reasonably made, is not to be defeated under the name of local
practice. [Davis v. Wechsler, 263 US 22, 24.]

44. Where rights secured by the Constitution are involved,
there can be no rule making or legislation which would abrogate
them. [Miranda v. Arizona, 384 US 436, 491.]

1 45. There can be no sanction or penalty imposed upon one
2 because of this exercise of constitutional rights. [Sherer v.
Cullen, 481 F 946.]

3 46. Whereas, the people of California have presented a
4 constitution....and which, on due examination, is found to be
5 republican in its form of government.... [Act [of Congress] for
the Admission of California Into the Union, Volume 9, Statutes
at Large, Page 452.]

6 47. Republican government. One in which the powers of
7 sovereignty are vested in the people and are exercised by the
8 people, either directly, or through representatives chosen by
9 the people, to whom those powers are specially delegated. [In
re Duncan, 139 U.S. 449, 11 S.Ct. 573, 35 L.Ed. 219; Minor v.
Happersett, 88 U.S. (21 Wall.) 162, 22 L.Ed. 627. Black's Law
Dictionary, Fifth Edition, p. 626.]

10 48. The State of California is an inseparable part of the
11 United States of America, and the United States Constitution is
12 the supreme law of the land. [California Constitution, Article
3, Sec. 1.]

13 49. This Constitution, and the Laws of the United States which
14 shall be made in Pursuance thereof; and all Treaties made, or
15 which shall be made, under the Authority of the United States,
16 shall be the supreme Law of the Land; and the Judges in every
State shall be bound thereby; any Thing in the Constitution or
Laws of any State to the Contrary notwithstanding.
[Constitution for the United States of America, Article VI,
Clause 2.]

17 50. COURT. The person and suit of the sovereign; the place
18 where the sovereign sojourns with his regal retinue, wherever
that may be. [Black's Law Dictionary, 5th Edition, page 318.]

19 51. COURT. An agency of the sovereign created by it directly
20 or indirectly under its authority, consisting of one or more
21 officers, established and maintained for the purpose of hearing
22 and determining issues of law and fact regarding legal rights
23 and alleged violations thereof, and of applying the sanctions of
the law, authorized to exercise its powers in the course of law
at times and places previously determined by lawful authority.
[Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black's
Law Dictionary, 4th Edition, page 425]

24 52. 28 USC 132 CREATION AND COMPOSITION OF district courts
25 (a) There shall be in each judicial district a district court
26 which shall be a court of record known as the United States
District Court for the district.

1 53. COURT OF RECORD. To be a court of record a court must have
2 four characteristics, and may have a fifth. They are:

3 A. A judicial tribunal having attributes and
4 exercising functions independently of the person of
5 the magistrate designated generally to hold it
6 [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227,
229; Ex parte Gladhill, 8 Metc. Mass., 171, per
Shaw, C.J. See, also, Ledwith v. Rosalsky, 244
N.Y. 406, 155 N.E. 688, 689][Black's Law
Dictionary, 4th Ed., 425, 426]

7 B. Proceeding according to the course of common law
8 [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227,
229; Ex parte Gladhill, 8 Metc. Mass., 171, per
9 Shaw, C.J. See, also, Ledwith v. Rosalsky, 244
N.Y. 406, 155 N.E. 688, 689][Black's Law
10 Dictionary, 4th Ed., 425, 426]

11 C. Its acts and judicial proceedings are enrolled, or
12 recorded, for a perpetual memory and testimony. [3
13 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas
14 Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton,
52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2
L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205,
117 N.E. 229, 231]

15 D. Has power to fine or imprison for contempt. [3
16 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas
17 Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton,
52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2
18 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205,
117 N.E. 229, 231.][Black's Law Dictionary, 4th
Ed., 425, 426]

19 E. Generally possesses a seal. [3 Bl. Comm. 24; 3
20 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24
21 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v.
U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger
v. Davis, 96 Ohio St. 205, 117 N.E. 229,
231.][Black's Law Dictionary, 4th Ed., 425, 426]

22 54. The following persons are magistrates: ...The judges of
23 the superior courts.... [California Penal Code, Sec. 808.]

24 MAGISTRATE. A person holding official power in a
25 government; as: a The official of highest rank in a government
(chief, or first, magistrate). b An official of a class having
26 summary, often criminal, jurisdiction. Webster's New Practical
Dictionary, 386 (1953), G. & C. Merriam Co., Springfield, Mass.

27 MAGISTRATE, an official entrusted with administration of
the laws. Merriam-Webster On-Line Dictionary

28 MAGISTRATE, Person clothed with power as a public civil

1 officer. State ex rel. Miller v. McLeod, 142 Fla. 254, 194 So.
2 628, 630. Black's Law Dictionary, 4th Ed., 1103

3 55. ...our justices, sheriffs, mayors, and other ministers,
4 which under us have the laws of our land to guide, shall allow
5 the said charters pleaded before them in judgement in all their
6 points, that is to wit, the Great Charter as the common law....
7 [Confirmatio Cartarum, November 5, 1297 Sources of Our Liberties
8 Edited by Richard L. Perry, American Bar Foundation.]

9 56. Henceforth the writ which is called Praeceptum shall not be
10 served on any one for any holding so as to cause a free man to
11 lose his court. Magna Carta, Article 34.

12 57. 18 USC § 401 - Power of court

13 A court of the United States shall have power to punish by
14 fine or imprisonment, or both, at its discretion, such contempt
15 of its authority, and none other, as-

16 (1) Misbehavior of any person in its presence or so near
17 thereto as to obstruct the administration of justice;

18 (2) Misbehavior of any of its officers in their official
19 transactions;

20 (3) Disobedience or resistance to its lawful writ, process,
21 order, rule, decree, or command.

22 58. CCP 1209. (a) The following acts or omissions in respect
23 to a court of justice, or proceedings therein, are contempts of
24 the authority of the court:

25 3. Misbehavior in office, or other willful neglect or
26 violation of duty by an attorney, counsel, clerk, sheriff,
27 coroner, or other person [e.g. a judge or magistrate], appointed
28 or elected to perform a judicial or ministerial service;

4. Abuse of the process or proceedings of the court,
or falsely pretending to act under authority of an order or
process of the court;

5. Disobedience of any lawful judgment, order, or
process of the court;

8. Any other unlawful interference with the process or
proceedings of a court;

11. Disobedience by an inferior tribunal, magistrate,
or officer, of the lawful judgment, order, or process of a
superior court, or proceeding in an action or special proceeding
contrary to law, after such action or special proceeding is
removed from the jurisdiction of such inferior tribunal,
magistrate, or officer.

1 59. CCP 1211. (a) When a contempt is committed in the
2 immediate view and presence of the court, or of the judge at
3 chambers, it may be punished summarily; for which an order must
4 be made, reciting the facts as occurring in such immediate view
and presence, adjudging that the person proceeded against is
thereby guilty of a contempt, and that he be punished as therein
prescribed.

5 When the contempt is not committed in the immediate view
6 and presence of the court, or of the judge at chambers, an
7 affidavit shall be presented to the court or judge of the facts
8 constituting the contempt, or a statement of the facts by the
9 referees or arbitrators, or other judicial officers. ...

10 60. IT IS SO ORDERED.

11 WITNESS: the SEAL of the COURT this 11th day of April, 2017

12 THE COURT

13 By _____ (SEAL)
14 Daniel Borsotti
15 Attornatus Privatus