

1. Daniel Borsotti
10153 Riverside Drive
2. Suite 501
Toluca Lake, California
3. 661 312 3268
Claimant
4. Sui Juris

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7.
8.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

9.

10. Daniel Adam Borsotti,)	Case No.: 2:16-cv-07603-FMO-JC
11. Claimant,)	ANSWER
12. vs.)	TO DEFENDANT'S MOTION TO
13. Quality Loan Services)	DISMISS PLAINTIFF'S FIRST
14. Corporation)	AMENDED COMPLAINT;
15. Defendants.)	AFFIDAVIT
)	Date: March 9, 2017
)	Time: 10:00 a.m.
)	Ctrm: 6D, 6 th Floor
)	Judge: Hon. Fernando M. Olguin

17.

1. TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: IN THE ABOVE-
18. ENTITLED COURT OF RECORD HERE FOLLOWS CLAIMANT'S ANSWER TO
19. DEFENDANT'S MOTION TO DISMISS CLAIMANT'S FIRST AMENDED
COMPLAINT:

20.

THE FIRST AMENDED COMPLAINT
SHOULD NOT BE DISMISSED BECAUSE
THERE IS A GENUINE CONTROVERSY
REGARDING JURISDICTION AND INJURIES,
WHICH REQUIRES ADJUDICATION

23.

AUTHORITIES

24.

2. The following authorities apply to the case at hand:

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26.

27.

1. "It is well-established in our circuit that an amended
2. complaint supersedes the original, the latter being
3. treated thereafter as non-existent. In other words,
4. 'the original pleading no longer performs any
5. function[.]'" Ramirez v. Cnty. Of San Bernardino, 806
6. F.3d 1002, 1008 (9th Cir. 2015)

7. [5] "The general rule in appraising the sufficiency of
8. a complaint for failure to state a claim is that a
9. complaint should not be dismissed '***unless it
10. appears beyond doubt that the plaintiff can prove no
11. set of facts in support of his claim which would
12. entitle him to relief.' CONLEY VS. GIBSON (1957), 355
13. U.S. 41, 45, 46, 78 S.Ct. 99, 102, 2LEd 2d 80; SEYMOUR
14. VS. UNION NEWS COMPANY, 7 Cir., 1954, 217 F.2d 168;
15. and see rule 54c, demand for judgment, FEDERAL RULES
16. OF CIVIL PROCEDURE, 28 USCA: "***every final judgment
17. shall grant the relief to which the party in whose
18. favor it is rendered is entitled, even if the party
19. has not demanded such relief in his pleadings." U.S.
20. V. WHITE COUNTY BRIDGE COMMISSION (1960), 2 Fr Serv 2d
21. 107, 275 F2d 529, 535

22. "A complaint may not be dismissed on motion if it
23. states some sort of claim, baseless though it may
24. eventually prove to be, and inartistically as the
25. complaint may be drawn. Therefore, under our rules,
26. the plaintiff's allegations that he is suing in
27. 'criminal libel' should not be literally construed.
28. [3] The complaint is hard to understand but this, with
29. nothing more, should not bring about a dismissal of
30. the complaint, particularly is this true where a
31. defendant is not represented by counsel, and in view
32. of rule 8{f} of the rules of civil procedure, 28
33. U.S.C., which requires that all pleadings shall be
34. construed as to do substantial justice BURT VS. CITY
35. OF NEW YORK, 2Cir., (1946) 156 F.2d 791. Accordingly,
36. the complaint will not be dismissed for insufficiency.
37. [4,5] Since the Federal Courts are courts of limited
38. jurisdiction, a plaintiff must always show in his
39. complaint the grounds upon which that jurisdiction
40. depends." STEIN VS. BROTHERHOOD OF PAINTERS,
41. DECORATORS, AND PAPER HANGERS OF AMERICA, DCCDJ
42. (1950), 11 F.R.D. 153.

43. "A complaint will not be dismissed for failure to
44. state a claim, even though inartistically drawn and
45. lacking in allegations of essential facts, it cannot
46. be said that under no circumstances will the party be
47. able to recover." JOHN EDWARD CROCKARD VS. PUBLISHERS,
48. SATURDAY EVENING POST MAGAZINE OF PHILADELPHIA, PA
49. (1956) Fr Serv 29, 19 F.R.D. 511, DCED Pa 19 (1958)

1. "FRCP 8f: CONSTRUCTION OF pleadings. All pleadings
2. shall be so construed as to do substantial justice."
3. DIOGUARDI VS. DURNING, 2 CIR., (1944) 139 F2d 774

4. "Counterclaims will not be dismissed for failure to
5. state a claim, even though inartistically drawn and
6. lacking in allegations of essential facts, it cannot
7. be said that under no circumstances will the party be
8. able to recover." LYNN VS VALENTINE VS. LEVY, 23 Fr
9. 46, 19 FDR, DSCDNY (1956)

6. DISCUSSION

7.
8. 3. The inferior court ordered [Doc. 58] the original complaint
9. to be dismissed without prejudice on January 3, 2017. The court
10. informed the Claimant "that the court cannot refer to a prior
11. complaint in order to make his First Amended Complaint complete.
12. Local Rule 15-2 requires that an amended pleading be complete in
13. and of itself without reference to any prior pleading. This is
14. because, as a general rule, an amended pleading supersedes the
15. original pleading. See Ramirez v. Cnty. Of San Bernardino, 806
16. F.3d 1002, 1008 (9th Cir. 2015) ("It is well-established in our
17. circuit that an amended complaint supersedes the original, the
18. latter being treated thereafter as non-existent. In other
19. words, "the original pleading no longer performs any
20. function[.]""")" ORDER, Page 4, Lines 6-12

21.
22. 4. Defendant's assertion that the First Amended Complaint is
23. inconsistent with the original complaint, does not comport with
24. Ramirez v. Cnty. Of San Bernardino, supra. Ramirez v. Cnty. Of
25. San Bernardino was cited by the order [Doc. 58]., "[T]he

1. original pleading no longer performs any function". ORDER, Page
2. 4, Line 12

3.
4. 5. In accordance with the order, Claimant raised again a
5. question of Defendant's jurisdiction to cause harm to Claimant.
6. When Defendant causes injury without jurisdiction, then Claimant
7. should be awarded damages.

8.
9. 6. When the question of jurisdiction is raised, the burden of
10. proof is on the defendant's court ¹ to prove his jurisdiction.
11. Otherwise, it proceeds under color of law. ² Defendant may only
12. proceed if it has jurisdiction.

13.
14. 7. However, long before Defendant seriously pursued whatever
15. point it imagines, on August 24, 2016 Claimant served proper
16. notice on Defendant and its principal. Defendant dishonored
17. Claimant by ignoring the notice and responding with nonsensical
18. assertions.

19.
20. 8. Instead of dishonoring the notices, agent Defendant could
21. have and should have made proper reasonable inquiry to its
22.

23. ¹ Here the "court" of Defendant is created whenever he moves [sues] against another party, whether or not it is
24. actually conducted in a formal court setting. In one sense, the present proceeding is a counter claim against
25. Defendant's court. "COURT. The person and suit of the sovereign; the place where the sovereign sojourns with his
26. regal retinue, wherever that may be." [Black's Law Dictionary, 5th Edition, page 318.]

27. ² "However late this objection has been made, or may be made in any cause, in an inferior or appellate court of the
United States, it must be considered and decided, before any court can move one further step in the cause; as any
movement is necessarily the exercise of jurisdiction. 6 Peters, 709; 4 Russell, 415; 3 Peters, 203-7" Cited by
STATE OF RHODE ISLAND v. COM. OF MASSACHUSETTS, 37 U.S. 657, 718 (1838)

1. principal as to the validity of the principal's basis. There is
2. nothing in our system of codes that authorizes enforcement
3. without cause. If a principal instructs an agent to do
4. something illegal,³ California Civil Code § 2924(a)(6)(b) does
5. not entitle the agent to willy nilly proceed without substance.⁴
6. Defendant is not exempt from the law and its consequences,⁵
7. especially when he has been served with notice of the lack of
8. substance.⁶ When demanded, a debt must be proven before
9. enforcement. Two such demands (QWR's) were made of Defendant's
10. principal, and one was made of Defendant. Defendant dishonored
11. each of them by not directly responding.⁷

12.
13. 9. Once an agent has reasonable notice of illegality, to
14. proceed without good faith inquiry is prima facie evidence of
15. malice, intent to do harm.⁸

16. _____
17. ³ An agent acting at the principal's direction can be liable as a tortfeasor (one who commits a wrong, or tort), along
18. with the principal, for committing the tortious act even if the agent was unaware of the wrongfulness of the act.
19. Roger Leroy Miller: Fundamentals of Business Law (2nd Ed.): Excerpted Cases, Page 485

20. ⁴ Agents have a moral, lawful and legal duty to exercise proper diligence to verify their policies do not infringe upon
21. longstanding principles and constitutionally protected rights. Agents may not act against people so as to effectively
22. change their duty into injury. All Agents have a duty to know and follow the laws which bind them, and should be
23. held accountable to the highest standards of professional conduct: "Administration should be both reasonable and
24. vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It
25. should never try to overreach, and should be reasonable within the bounds of law and sound administration." (FTB
26. mission statement) The Codes disallow harmful acts such as, conspiring to extort, misrepresent, deceive or conceal
27. critical information, in order to perpetuate error for the purpose of gain. Section 1986 of the Civil Code also
disallows failure to act in such ways which would prevent injury to anyone.

28. ⁵ As an aside, the agent has his remedy in that he can demand indemnification from his principal.

29. ⁶ "Substance" means that there is an actual basis for proceeding. Was a loan ever made?

30. ⁷ A Qualified Written Request (QWR) was thrice issued in accordance with the Real Estate Settlement Procedures
31. Act § 12 USC 2605(e), Regulation Z, 24 CFR 3500, and The Gramm Leach Bliley Act.

32. ⁸ California Civil Code 2332. As against a principal, both principal and agent are deemed to have notice of whatever
33. either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to
34. others.

1.
2. 10. A so-called creditor or agent cannot arbitrarily foreclose
3. a debt that never existed. 2924(a)(6)(b) does not apply to
4. bogus debts. If Defendant can prove the existence of a genuine
5. debt, then he should have no difficulty winning his point of
6. view.

7.
8. 11. Jurisdiction and injuries are what this case is all about.
9. The court should hear from all parties before adjudicating.⁹

10.
11. 12. To properly adjudicate, Defendant must answer the First
12. Amended Complaint. For that reason, the First Amended Complaint
13. may not be adjudicated before proper examination of all that is
14. presented to the court. The court should view Defendant's non-
15. specific motion as an attempt to bypass the august consideration
16. of the law and the facts. Depriving anyone of the right to have
17. his day in court is very serious. The magistrate has a duty to
18. the Claimant to minister the opportunity to argue the
19. petition.¹⁰

20.
21.
22. "Knowledge of facts which would naturally lead an honest and prudent person to make inquiry constitutes 'notice' of
23. everything which such inquiry pursued in good faith would disclose." Twitchell v. Nelson, 131 Minn. 375, 155
24. N.W. 621, 624; German-American Nat. Bank of Lincoln v. Martin, 277 Ill. 629, 115 N.E. 721, 729." (Black's Law
Dict., 4th Edition, pg. 1210) (1968)

25. ⁹ "He who decides a case with the other side unheard, though he decide justly, is himself unjust."
Seneca Medea 4 BC - AD 65.

26. ¹⁰ "He who decides a case with the other side unheard, though he decide justly, is himself unjust."
27. Seneca Medea 4 BC - AD 65.

1. 13. Defendant asserts that "trespass" is limited to setting
2. foot on real estate. Trespass is simply an "injury committed
3. with force, actual or implied; immediate and not consequential..."
4. Koffler: Common Law Pleading, 152 (1969) ¹¹ The court should
5. find that Defendant's assertion is unfounded and irrelevant to
6. the case.

7. CONCLUSION
8.

9. 14. Claimant raised the issue of jurisdiction. Defendant
10. wishes to skip over that and assume the debt is valid for
11. collection and foreclosure. Jurisdiction may not be assumed.
12. Defendant must prove jurisdiction when questioned. Plaintiff is
13. willing to pay any genuine obligation. The First Amended
14. Complaint raises the question of validity of jurisdiction, and
15. demands damages for the injuries caused by Defendant. A court
16. of record is required to adjudicate the questions.

17.
18. 15. Therefore, the First Amended Complaint must not be
19. dismissed. Defendant should be ordered to answer the First
20. Amended Complaint.
21.
22.

23. ¹¹ a. Trespass – injury committed with force, actual or implied; immediate and not consequential; if property
24. involved, then property was in actual or constructive possession of plaintiff at time of injury. Koffler: Common
Law Pleading, 152 (1969)

25. b. Trespass on the Case – In practice. The form of action by which a person seeks to recover damages caused by
an injury unaccompanied with force or which results indirectly from the act of the defendant. It is more generally
called, simply, case. 2 Bouvier's Law Dictionary 610 (1867)

26. c. Trespass and Trespass on the Case are supplementary to each other; and it may be said that, in general, Trespass
on the Case lies where no other theory or Form of Action is available, though it is sometimes concurrent with other
forms. Koffler: Common Law Pleading, 174 (1969)

1. 16. I am Daniel Borsotti. I am the claimant in this case. I
2. have personal knowledge of the foregoing facts and am competent
3. to testify as to the truth of these facts if called as a
4. witness. I declare under penalty of perjury under the laws of
5. the United States that the foregoing is true and correct, and
6. that this declaration was executed in Santa Clarita, California,
7. on February 21, 2017.

8.
9. by _____
10. Daniel Borsotti
11. Sui Juris
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