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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 Daniel Adam Borsotti, ) Case No. 2:16-cv-16-07603-FMO (JC)  
11 Claimant )  
12 v. ) WRIT OF ERROR  
 ) QUAE CORAM NOBIS RESIDANT  
 ) in re ORDER TO STRIKE  
 ) ELECTRONICALLY FILED  
13 Quality Loan Services ) DOCUMENT(S)  
Corporation ) [DOC. NO. 71 filed 01-27-2017];  
14 ) ORDER TO SHOW CAUSE  
15 Defendants )  
\_\_\_\_\_ )

16 WRIT OF ERROR QUAE CORAM NOBIS RESIDANT  
17

18 1. COMES NOW THE ABOVE ENTITLED COURT OF RECORD ON ITS OWN  
19 MOTION, TO REVIEW THE FACTS, RECORD AND PROCESS RESULTING IN THE  
20 ORDER ENTITLED "ORDER TO STRIKE ELECTRONICALLY FILED DOCUMENTS  
[DOC. NO. 71 FILED 01-27-2017];

21 I.  
SYLLABUS

22 2. On January 20, 2017, Claimant filed a FIRST AMENDED ACTION  
23 in which he established the above-entitled court <sup>1</sup> as a court of  
record. <sup>2</sup>

24 \_\_\_\_\_  
25 <sup>1</sup> 28 USC 132 CREATION AND COMPOSITION OF district courts. (a) There shall be in each judicial district a  
district court which shall be a court of record known as the United States District Court for the district.

26 <sup>2</sup> A court of record is, "A judicial tribunal having attributes and exercising functions independently of the person of  
the magistrate designated generally to hold it. Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte

1 3. On January 25, 2017 Claimant filed the order entitled ORDER  
2 MAGISTRATE'S DUTY ASSIGNMENT.

3 4. On January 27, 2017 the clerk filed the "ORDER TO STRIKE  
4 ELECTRONICALLY FILED DOCUMENT(S)" [Doc. No. 71] (Attachment 1)  
5 signed by Judge Fernando M. Olguin, the magistrate <sup>3</sup> of the  
6 court.

7 5. A basic requirement of a court of record is that the  
8 tribunal must be independent of the magistrate. <sup>4</sup> It should be  
9 noted that the magistrate is not the court, and vice versa.  
10 That distinction is noted throughout the codes. For example,  
11 see 28 USC 2241 and 28 USC 2243. <sup>5</sup>

12 6. Because the above-entitled court is a court of record in  
13 which the tribunal must be independent of the magistrate, when  
14 the magistrate issued the Order [Doc. No. 71] (Attachment 1) he  
15 usurped the power of the tribunal. <sup>6</sup> The ministerial magistrate  
16 may not exercise any discretion, which is reserved to the  
17 tribunal.

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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.

23 <sup>3</sup> "MAGISTRATE. A person holding official power in a government; as: a The official of highest rank in a  
24 government (chief, or first, magistrate). b An official of a class having summary, often criminal, jurisdiction."  
25 Webster's New Practical Dictionary, 386 (1953), G. & C. Merriam Co., Springfield, Mass.

26 "MAGISTRATE, an official entrusted with administration of the laws", Merriam-Webster On-Line Dictionary  
27 "MAGISTRATE, Person clothed with power as a public civil officer. State ex rel. Miller v. McLeod, 142 Fla.  
28 254, 194 So. 628, 630." Black's Law Dictionary, 4th Ed., 1103

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

33 <sup>5</sup> Examples of the codes distinguishing between a court and a judge:

34 28 USC 2241 "(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district  
35 courts and any circuit judge within their respective jurisdictions..."

36 28 USC 2243 "A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award  
37 the writ or issue an order..."

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

1 II.  
2 IMPEACHMENT AND WRIT

3 7. THE COURT, HAVING REVIEWED THE FACTS, THE RECORD, AND THE  
4 PROCESS BY WHICH THE ORDER [Doc. No. 71] WAS ISSUED, and finding  
5 that the magistrate wrote and filed said order without leave of  
6 court; and finding that the orderly decorum of the court was  
7 replaced by defective impromptu process and usurpation of  
8 legislative and court powers without leave of court,

9 8. And, finding that the clerk of the court improperly accepted  
10 for filing an order from the magistrate without leave of court,

11 9. And, desiring that fair justice be served for all parties,  
12 counterdefendants as well as counterplaintiff,

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

15 11. On examination of General Order 16-05, Local Rules, and  
16 Case Management Order, this court finds nothing in conflict with  
17 this court issuing its own order, in particular the Order  
18 designated as Doc. No. 69.

19 12. Therefore, the Order [Doc. No. 71] [Attachment 1] shall be  
20 and is rescinded, i.e. nunc pro tunc. Therefore Order [Doc. No.  
21 69] is and shall be valid and effective nunc pro tunc as though  
22 never stricken.

23 13. Further, Order [Doc. No. 70] is an unnecessary duplicate of  
24 Order [Doc. No. 69]. Therefore Order [Doc. No. 70] is stricken  
25 from the record without affecting Order [Doc. No. 69].

26 III.  
27 ORDER TO SHOW CAUSE

28 14. Further, the magistrate, Claimant, and defendant are each  
ordered to file and serve on all other interested parties and  
magistrate a brief no later than February 2, 2017 to show cause,  
if any there be, to this court why this order should not take  
effect or should be modified. 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.

29 ///////////////  
30 ///////////////  
31 ///////////////  
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1 IV.  
2 JUDICIAL COGNIZANCE

3 15. This court takes judicial cognizance of and decrees the  
4 following as the law of the case:

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

8 17. Constitution for the United States of America

9 18. Constitution for the United States of America Amendment IV

10 19. Constitution for the United States of America Amendment XIV

11 20. 18 USC 241

12 21. 18 USC 242

13 22. 42 USC 1982

14 23. 42 USC 1983

15 24. 42 USC 1985(3)

16 25. The sovereignty of the state resides in the people  
17 thereof... [California Government Code, Section 100(a)]

18 26. The people of this state do not yield their sovereignty to  
19 the agencies which serve them. [California Government Code,  
20 Sections 11120 and 54950.]

21 27. Laws, whether organic or ordinary, are either written or  
22 unwritten. [California Code of Civil Procedure, Section 1895.]

23 28. A written law is that which is promulgated in writing, and  
24 of which a record is in existence. [California Code of Civil  
25 Procedure, Section 1896]

26 29. The organic law is the Constitution of Government, and is  
27 altogether written. Other written laws are denominated  
28 statutes. The written law of this State is therefore contained  
29 in its Constitution and statutes, and in the Constitution and  
30 statutes of the United States. [California Code of Civil  
31 Procedure, Section 1897]

32 30. Any judicial record may be impeached by evidence of a want  
33 of jurisdiction in the Court or judicial officer, of collusion  
34 between the parties, or of fraud in the party offering the  
35 record, in respect to the proceedings. [California Code of

1 Civil Procedure, Section 1916]

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

7 32. The very meaning of 'sovereignty' is that the decree of the  
8 sovereign makes law. [American Banana Co. v. United Fruit Co.,  
9 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047]

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

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

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

25 36. The state cannot diminish rights of the people. [Hertado  
26 v. California, 100 US 516.]

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

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

33 39. There can be no sanction or penalty imposed upon one  
34 because of this exercise of constitutional rights. [Sherer v.  
35 Cullen, 481 F 946.]

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

1 41. Republican government. One in which the powers of  
2 sovereignty are vested in the people and are exercised by the  
3 people, either directly, or through representatives chosen by  
4 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.]

5 42. The State of California is an inseparable part of the  
6 United States of America, and the United States Constitution is  
7 the supreme law of the land. [California Constitution, Article  
3, Sec. 1.]

8 43. This Constitution, and the Laws of the United States which  
9 shall be made in Pursuance thereof; and all Treaties made, or  
10 which shall be made, under the Authority of the United States,  
11 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.]

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

14 45. COURT. An agency of the sovereign created by it directly  
15 or indirectly under its authority, consisting of one or more  
16 officers, established and maintained for the purpose of hearing  
17 and determining issues of law and fact regarding legal rights  
18 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]

19 46. 28 USC 132 CREATION AND COMPOSITION OF district courts  
20 (a) There shall be in each judicial district a district court  
21 which shall be a court of record known as the United States  
District Court for the district.

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

- 23 A. A judicial tribunal having attributes and  
24 exercising functions independently of the person of  
the magistrate designated generally to hold it  
25 [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227,  
229; Ex parte Gladhill, 8 Metc. Mass., 171, per  
26 Shaw, C.J. See, also, Ledwith v. Rosalsky, 244

1 N.Y. 406, 155 N.E. 688, 689][Black's Law  
2 Dictionary, 4th Ed., 425, 426]

3 B. Proceeding according to the course of common law  
4 [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227,  
5 229; Ex parte Gladhill, 8 Metc. Mass., 171, per  
6 Shaw, C.J. See, also, Ledwith v. Rosalsky, 244  
7 N.Y. 406, 155 N.E. 688, 689][Black's Law  
8 Dictionary, 4th Ed., 425, 426]

9 C. Its acts and judicial proceedings are enrolled, or  
10 recorded, for a perpetual memory and testimony. [3  
11 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas  
12 Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton,  
13 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2  
14 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205,  
15 117 N.E. 229, 231]

16 D. Has power to fine or imprison for contempt. [3  
17 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas  
18 Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton,  
19 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2  
20 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205,  
21 117 N.E. 229, 231.][Black's Law Dictionary, 4th  
22 Ed., 425, 426]

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

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

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

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

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

. . .

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

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

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

10           . . .  
11           8. Any other unlawful interference with the process or  
12 proceedings of a court;

13           . . .  
14           11. Disobedience by an inferior tribunal, magistrate,  
15 or officer, of the lawful judgment, order, or process of a  
16 superior court, or proceeding in an action or special proceeding  
17 contrary to law, after such action or special proceeding is  
18 removed from the jurisdiction of such inferior tribunal,  
19 magistrate, or officer.

20  
21 52. CCP 1211. (a) When a contempt is committed in the  
22 immediate view and presence of the court, or of the judge at  
23 chambers, it may be punished summarily; for which an order must  
24 be made, reciting the facts as occurring in such immediate view  
25 and presence, adjudging that the person proceeded against is  
26 thereby guilty of a contempt, and that he be punished as therein  
27 prescribed.

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

53. IT IS SO ORDERED.

WITNESS: the SEAL of the COURT this 23<sup>rd</sup> day of February, 2017

THE COURT

By \_\_\_\_\_ (SEAL)  
Daniel: Borsotti  
Attornatus Privatus