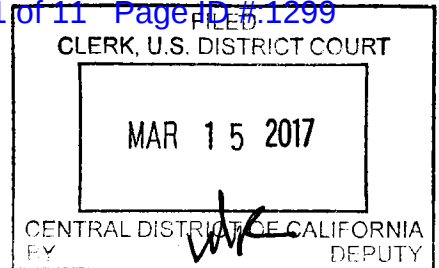


UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA



NOTICE OF DOCUMENT DISCREPANCIES

To:  U.S. District Judge /  U.S. Magistrate Judge FERNANDO M. OLGUIN  
From: Vanessa Figueroa, Deputy Clerk Date Received: 3/13/17  
Case No.: CV 16-7603 FMO (JCx) Case Title: Borsotti v. Bray, et al.  
Document Entitled: Ruling on Defendant's Motion to Dismiss

Upon the submission of the attached document(s), it was noted that the following discrepancies exist:

- Local Rule 5-4.1 Documents must be filed electronically
- Local Rule 6-1 Written notice of motion lacking or timeliness of notice incorrect
- Local Rule 7-19.1 Notice to other parties of ex parte application lacking
- Local Rule 7.1-1 No Certification of Interested Parties and/or no copies
- Local Rule 11-3.1 Document not legible
- Local Rule 11-3.8 Lacking name, address, phone, facsimile numbers, and e-mail address
- Local Rule 11-4.1 No copy provided for judge
- Local Rule 11-6 Memorandum/brief exceeds 25 pages
- Local Rule 11-8 Memorandum/brief exceeding 10 pages shall contain table of contents
- Local Rule 15-1 Proposed amended pleading not under separate cover
- Local Rule 16-7 Pretrial conference order not signed by all counsel
- Local Rule 19-1 Complaint/Petition includes more than 10 Does or fictitiously named parties
- Local Rule 56-1 Statement of uncontroverted facts and/or proposed judgment lacking
- Local Rule 56-2 Statement of genuine disputes of material fact lacking
- Local Rule 83-2.5 No letters to the judge
- Fed. R. Civ. P. 5 No proof of service attached to document(s)
- Other: A party may not rule on a motion before the court. Defendant's Motion to Dismiss is fully briefed and pending at this time.

Please refer to the Court's website at [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov) for Local Rules, General Orders, and applicable forms.

ORDER OF THE JUDGE/MAGISTRATE JUDGE

IT IS HEREBY ORDERED:

- The document is to be filed and processed. The filing date is ORDERED to be the date the document was stamped "received but not filed" with the Clerk. Counsel\* is advised that any further failure to comply with the Local Rules may lead to penalties pursuant to Local Rule 83-7.

\_\_\_\_\_  
Date U.S. District Judge / U.S. Magistrate Judge

- The document is NOT to be filed, but instead REJECTED, and is ORDERED returned to counsel.\* Counsel\* shall immediately notify, in writing, all parties previously served with the attached documents that said documents have not been filed with the Court.

3-15-17  
Date F. M. Olguin  
U.S. District Judge / U.S. Magistrate Judge

\* The term "counsel" as used herein also includes any pro se party. See Local Rule 1-3.

COPY 1 - ORIGINAL OFFICE COPY 2 - JUDGE COPY 3 - SIGNED & RETURNED TO FILER COPY 4 - FILER RECEIPT

1 Daniel Adam Borsotti  
10153 Riverside Drive  
2 Suite 501  
Toluca Lake, California  
3 661 312 3268  
Attornatus Privatus  
4

5  
6  
7  
8 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
9

10 Daniel Adam Borsotti, ) Case No. 2:16-cv-16-07603-FMO (JCx)  
11 Claimant )  
12 v. ) RULING  
 ) ON DEFENDANT'S MOTION TO DISMISS  
13 Quality Loan Services ) [Dkt. 74]  
14 Corporation )  
15 Defendants )  
\_\_\_\_\_ )

16 RULING ON DEFENDANT'S MOTION TO DISMISS [Dkt. 74]  
17

18 1. COMES NOW THE ABOVE ENTITLED COURT OF RECORD <sup>1</sup> ON *DEFENDANT'S*  
19 *MOTION TO DISMISS*, to review the facts, record and process  
presented to the court. <sup>2</sup>

20 I. SYLLABUS.....2  
21 II. RULING.....2  
22 III. ORDER TO SHOW CAUSE.....3  
23 IV. JUDICIAL COGNIZANCE (LAW OF THE CASE).....3

24 <sup>1</sup> 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"  
Black's Law Dictionary, 4th Ed., 425, 426.

26 <sup>2</sup> COURT. The person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue,  
27 wherever that may be. [Black's Law Dictionary, 5th Edition, page 318.]

I  
SYLLABUS

2. On January 20, 2017 Claimant filed the *First Amended Action* [Dkt. 67]. The First Amended Action supersedes the original complaint which is now treated as non-existent and no longer performs any function.<sup>3</sup>

3. On February 8, 2017 Defendant filed the *Motion To Dismiss* [Dkt. 74].

4. On February 23, 2017 Claimant filed the *Answer* [Dkt. 78] to Defendant's motion.

5. On February 28, 2017 Defendant filed the *Reply* [Dkt. 80] to Claimant's Answer.

6. The Court ORDER [Dkt. 58] and LAW OF THE CASE require Defendant to either file an answer to the First Amended Complaint, or file a motion to dismiss, provided that

"Defendants' motion(s) must include copies of all meet and confer letters as well as a declaration that sets forth in detail the entire meet and confer process (i.e., when and where it took place, how long it lasted and the position of each party or attorney with respect to each disputed issue that will be the subject of the motion). Failure to include such a declaration will result in the motion(s) being denied." [footnote omitted] [emphasis added]

7. Defendant failed to file in this court the required declaration in accordance with the ORDER [Dkt. 58, Page 4, Lines 22 through 25].

8. Further, Defendant failed to file any declaration in support of its motion. [Local Rules, Chapter 1, L.R. 7-5(b)].

II  
RULING

9. Because the Defendant failed to obey the ORDER of the court, [Dkt. 58] the LAW OF THE CASE, and Local Rule 7-5(b), it is ordered that the motion for dismissal is denied.

10. Further, it is ordered that Defendant, Quality Loan Services Corporation shall file and serve an answer to the *FIRST AMENDED COMPLAINT* no later than March 29, 2017.

<sup>3</sup> See *Ramirez v. Cnty. Of San Bernardino*, 806 F.3d 1002, 1008 (9<sup>th</sup> Cir. 2015) ("It is well-established in our circuit that an amended complaint supersedes the original, the latter being treated thereafter as non-existent. In other words, 'the original pleading no longer performs any function[.]'" (citations and internal quotation marks omitted).

1  
2 III  
3 ORDER TO SHOW CAUSE

4 11. Further, the magistrate, Claimant, and defendant are each  
5 invited to file and serve on all other interested parties and  
6 magistrate a brief no later than March 20, 2017 to show cause,  
7 if any there be, to this court why this order should not take  
8 effect or should be modified. Unless requested, there will be  
9 no oral argument. The court, mindful of the rights of the  
10 parties and the importance of fair play, will liberally construe  
11 the written arguments presented.

9 IV  
10 JUDICIAL COGNIZANCE  
11 (LAW OF THE CASE)

12 12. THIS COURT OF RECORD TAKES JUDICIAL COGNIZANCE OF AND  
13 DECREES THE FOLLOWING AS THE LAW OF THE CASE:

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

17 14. Constitution for the United States of America

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

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

20 17. 18 USC 241

21 18. 18 USC 242

22 19. 42 USC 1982

23 20. 42 USC 1983

24 21. 42 USC 1985(3)

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

27 23. The people of this state do not yield their sovereignty to  
28 the agencies which serve them. [California Government Code,  
Sections 11120 and 54950.]

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

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

3 26. The organic law is the Constitution of Government, and is  
4 altogether written. Other written laws are denominated  
5 statutes. The written law of this State is therefore contained  
6 in its Constitution and statutes, and in the Constitution and  
7 statutes of the United States. [California Code of Civil  
8 Procedure, Section 1897]

9 27. Any judicial record may be impeached by evidence of a want  
10 of jurisdiction in the Court or judicial officer, of collusion  
11 between the parties, or of fraud in the party offering the  
12 record, in respect to the proceedings. [California Code of  
Civil Procedure, Section 1916]

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

18 29. The very meaning of 'sovereignty' is that the decree of the  
19 sovereign makes law. [American Banana Co. v. United Fruit Co.,  
20 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047]

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

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

32. ....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.]

33. The state cannot diminish rights of the people. "It  
necessarily happened, therefore, that, as these broad and  
general maxims of liberty and justice held in our system a  
different place and performed a different function from their  
position and office in English constitutional history and law,  
they would receive and justify a corresponding and more  
comprehensive interpretation. Applied in England only as guards

1 against executive usurpation and tyranny, here they have become  
2 bulwarks also against arbitrary legislation; but, in that  
3 application, as it would be incongruous to measure and restrict  
4 them by the ancient customary English law, they must be held to  
5 guarantee not particular forms of procedure, but the very  
6 substance of individual rights to life, liberty, and property."  
7 Hertado v. California, 110 US 516, 532.

8 34. "A State cannot deprive a person of his property without  
9 due process of law..." *Walker v. Sauvinet*, 92 U. S. 90,

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

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

16 37. There can be no sanction or penalty imposed upon one  
17 because of this exercise of constitutional rights. [*Sherer v.*  
18 *Cullen*, 481 F 946.]

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

24 39. Republican government. One in which the powers of  
25 sovereignty are vested in the people and are exercised by the  
26 people, either directly, or through representatives chosen by  
27 the people, to whom those powers are specially delegated. [In  
28 *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.]

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

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

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

3 43. COURT. An agency of the sovereign created by it directly  
4 or indirectly under its authority, consisting of one or more  
5 officers, established and maintained for the purpose of hearing  
6 and determining issues of law and fact regarding legal rights  
7 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]

8 44. 28 USC 132 CREATION AND COMPOSITION OF district courts  
9 (a) There shall be in each judicial district a district court  
10 which shall be a court of record known as the United States  
District Court for the district.

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

12 A. A judicial tribunal having attributes and  
13 exercising functions independently of the person of  
14 the magistrate designated generally to hold it  
15 [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227,  
229; Ex parte Gladhill, 8 Metc. Mass., 171, per  
16 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]

17 B. Proceeding according to the course of common law  
18 [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227,  
229; Ex parte Gladhill, 8 Metc. Mass., 171, per  
19 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]

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

24 D. Has power to fine or imprison for contempt. [3  
25 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas  
Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton,  
26 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,

1 117 N.E. 229, 231.][Black's Law Dictionary, 4th  
2 Ed., 425, 426]

3 E. Generally possesses a seal. [3 Bl. Comm. 24; 3  
4 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24  
5 U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger  
6 v. Davis, 96 Ohio St. 205, 117 N.E. 229,  
7 231.][Black's Law Dictionary, 4th Ed., 425, 426]

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

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

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

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

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

26 4. Abuse of the process or proceedings of the court,  
27 or falsely pretending to act under authority of an order or  
28 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.

50. CCP 1211. (a) When a contempt is committed in the  
immediate view and presence of the court, or of the judge at  
chambers, it may be punished summarily; for which an order must  
be made, reciting the facts as occurring in such immediate view



1 and presence, adjudging that the person proceeded against is  
2 thereby guilty of a contempt, and that he be punished as therein  
prescribed.

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

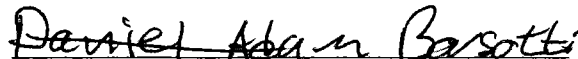
8 51. Ramirez v. Cnty. Of San Bernardino, 806 F.3d 1002, 1008 (9<sup>th</sup>  
9 Cir. 2015) "It is well-established in our circuit that an  
10 amended complaint supersedes the original, the latter being  
11 treated thereafter as non-existent. In other words, 'the  
12 original pleading no longer performs any function[.]'"  
13 (citations and internal quotation marks omitted).

14 52. Paragraph 8 of the ORDER [Dkt. 58] is incorporated as  
15 follows:

16 "(8) In the event defendants wish to file another  
17 motion to dismiss, then plaintiff and counsel for the  
18 parties shall, on February 7, 2017, at 10:00 a.m. meet  
19 and confer to discuss defendants' motion(s) to  
20 dismiss. Defendants' motion(s) must include copies of  
21 all meet and confer letters as well as a declaration  
22 that sets forth, in detail, the entire meet and confer  
23 process (i.e., when and where it took place, how long  
24 it lasted and the position of each party or attorney  
25 with respect to each disputed issue that will be the  
26 subject of the motion). Failure to include such a  
27 declaration will result in the motion(s) being  
28 denied." [footnote omitted] [emphasis added]

29 WITNESS: the SEAL of the COURT this 7<sup>th</sup> day of March, 2017

30 THE COURT (SEAL)

31   
32 Daniel: Borsotti  
33 Attornatus Privatus

**PROOF OF SERVICE BY CERTIFIED MAIL**

I am not a party to this action, and on the Los Angeles County California State. I am over the age of 18 and not a party to the within action. My address is C/o 10153 Riverside Drive Suite 501 Toluca Lake California 91602.

On MARCH 07, 2017, I served the within document(s) as: "RULING ON DEFENDANT'S MOTION TO DISMISS [Dkt. 74]"  
 " on each interested party in this action as stated below:

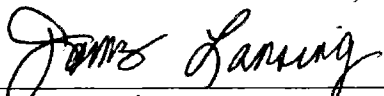
Bounlet Louvan Agent Service Process 411 Ivy Street San Diego, California 92101	Jay Bray <del>6108 LD Lockett Road Colleyville, Texas 76034-6543</del>
Office of Clerk United States District Court Central District California U.S. Courthouse room G 8 Los Angeles California 90012	Jamie Dimon <del>1185 Park Avenue Apt. 16 L New York, New York 10128</del> Annia Quintana <del>2457 Eastridge Loop, Chula Vista, California 91915</del>
Robert Stiles, <del>5210 Edmondson Avenue Dallas, Texas 75209-5902</del>	McCarthy & Holthus, LLP Melissa Robins Coutts, Mathew B. Learned, 1770 Fourth Avenue San Diego California 92101

By mail: by placing a true copy of the foregoing documents in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this practice for collection and processing of correspondence for mailing.

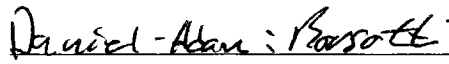
Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid on Los Angeles, California, in the ordinary course of business. I am aware that the party is served, service is presumed valid when postal cancellation date or postage is canceled as of the date and if more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am doing this business on normal daily practice.

Executed on March 07, 2017 at Los Angeles California.

  
 \_\_\_\_\_  
 JAMES LANSING

Witness 1.

  
 \_\_\_\_\_

Witness 2.

Daniel Borsotti  
10153 Riverside Drive, Suite 501  
Toluca Lake, California 91602

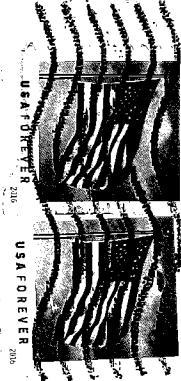
SANTA CLARITA, CA 913

06 MAR 2017 PM 3 L

FMD

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United States District Court  
Central District California  
U.S. Courthouse Room G8  
Los Angeles, California 90012

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