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Superior Court of California,
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Clerk of the Superior Court
By Malka Manneh, Deputy Clerk

9 Attorneys for Judgment Creditors and Third-Party Claimants
10 G10 Galuppo Law and Louis A. Galuppo

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN**
12 **DIEGO**

13 **CENTRAL DIVISION**

14 SALAM RAZUKI, an individual,
15 Plaintiff,

16 vs.

17 NINUS MALAN, et al.

18
19 Defendants.

Case No.: 37-2018-00034229-CU-BC-CTL
Consolidated with case no.
37-2018-00039388-CU-BC-CTL

**Judgment Creditors' Opposition to
Plaintiff's Ex Parte Application for
Temporary Restraining Order**

Date: July 6, 2023
Time: 8:30 a.m.
Judge: Hon. Eddie C. Sturgeon
Dept.: C-67

Summary

1
2 A trial court may not grant interim relief, “**regardless of the balance of interim**
3 **harm**, unless there is some possibility that the plaintiff would ultimately prevail on the
4 merits of the claim.” *Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999. There is no
5 probability Plaintiff will prevail on his claims against Galuppo because he does not assert
6 any claims against Galuppo. Salam Razuki has no claims pending against the parties he
7 seeks to enjoin, “The Galuppo” [sic] and “G10 Law Firm” [sic]. No such entities are
8 parties to this litigation.

9 Neither are G10 Galuppo Law and Louis A. Galuppo (“Judgment Creditors”), the
10 actual third-party claimants and judgment creditors who have liens against several
11 parties to this litigation. Judgment Creditors have not been sued by Razuki or his
12 companies. Razuki and his companies have no pending claims for relief against Judgment
13 Creditors. No one has served a summons or complaint against Judgment Creditors.
14 Judgment Creditors are not before this court in any capacity other than lienholders and
15 judgment creditors. Although they tried to intervene, the court denied their motion. Just
16 this past April, the court struck papers filed by Judgment Creditors, noting that “neither
17 is a party to the action and their motion to intervene in this action was previously
18 denied.” Order (Apr. 14, 2023). See also Razuki’s Objections (filed Apr. 10, 2023)
19 (objecting to “non-parties” filings). As this court has made clear, it has no personal
20 jurisdiction over Judgment Creditors, and thus no power to enjoin them from foreclosing
21 on their deeds of trust.

22 The court cannot order Judgment Creditors to refrain from doing what they have
23 every legal right to do: Foreclose on deeds of trust that have been recorded against a
24 property and gone unpaid for *years*. The court should deny the ex parte application, not
25 just because it lacks jurisdiction over Judgment Creditors, but also because Razuki is
26 acting inequitably and therefore cannot get equitable relief:

- 27 1. The court’s website shows Razuki reserved the ex parte on June 26th. But he did
28 not serve moving papers on until 11:45 a.m. on July 5th. That’s untimely. He is

1 intentionally depriving Judgment Creditors of a reasonable chance to oppose
2 the application.

- 3 2. Razuki falsely states that he's never asked for this relief before. ***Yes he has,***
4 ***and the court denied it.*** See Order denying TRO (Aug. 16, 2018), order
5 denying preliminary injunction (Dec. 29, 2018). This is an untimely motion for
6 reconsideration that the court lacks jurisdiction to grant.
- 7 3. The court already found Razuki failed to show a likelihood of success on his
8 claims against Malan. Order (Dec. 29, 2018).
- 9 4. Razuki fails to offer any evidence supporting his claims. His only evidence is a
10 one-sentence order denying a motion to expunge which makes no findings of
11 fact. *Razuki's RJN, Ex. 4*. He ignores the court's actual, express findings of fact
12 which says "The court specifically noted it found a lack of probability of success
13 on the merits of Plaintiffs' claims, and ordered attorney Daniel Watts to make
14 note of that finding in the order, which the court also ordered Watts to
15 prepare." Order (Dec. 29, 2018). His application is not supported by any
16 declaration showing facts to support his claims.

17 The ex parte application should be denied.

18 **Factual Background**

19 The material facts are not just undisputed, but undisputable. Salam Razuki's
20 verified complaint against Malan alleged that the H Street property is not owned by
21 him, but by American Lending & Holdings, LLC. Ninus Malan admitted those
22 allegations, making those facts judicially admitted.

- 23 1. *Plaintiffs admit under penalty of perjury that Ninus Malan is the sole member*
24 *and manager of American Lending.*

25 Defendant Ninus Malan is the manager and a member of American Lending and
26 Holdings, LLC. *Complaint* ¶3. There is a "unity of interest and ownership between
27 Malan" and American Lending and Holdings, LLC. *Complaint* ¶6; *First Amended*
28 *Complaint (FAC)* ¶51. According to Razuki, "adherence to the fiction of the separate

1 corporate existence” of American Lending would “promote injustice.” *Id.* The only
2 certificate of ownership ever issued by American Lending says that Ninus Malan owns
3 100 percent of the complaint. *Decl. Malan* (filed Oct. 12, 2018) ¶5, Exhibit A. The
4 operating agreement says Malan owns 100 percent of the company. *Id.* ¶8, Exhibit B.
5 Malan’s name appears on Schedule K-1 of American Lending’s tax returns; Salam
6 Razuki’s name is nowhere on those returns. *Id.* ¶13, Exhibits C, D, N. Ninus Malan is a
7 personal guarantor of American Lending’s \$950,000 line of credit. *Id.* Exhibit H.

8 *2. American Lending executes deeds of trust in favor of Judgment Creditors.*

9 In 2019, American Lending executed deeds of trust in favor of Judgment Creditor
10 G10 Galuppo Law. They showed American Lending’s indebtedness for \$20,000 and
11 \$50,000, respectively, in addition to “further sums” which might be advanced, plus
12 attorney’s fees. See Exhibits A, B to RJN. American Lending defaulted on payment, so
13 foreclosure was initiated months ago. Exhibits J, K to RJN.

14 *3. Plaintiffs hired a hit man to try to murder Defendants because this and other*
15 *litigation was costing Razuki too much money.*

16 During this litigation, Plaintiffs tried to murder Ninus Malan because this and
17 other litigation was costing Salam Razuki too much money.

18 *4. Judgment Creditors obtained judgment in excess of \$580,000 against American*
19 *Lending and moved to foreclose on deeds of trust with attorney fee provisions.*

20 Judge Wohlfeil entered judgment against Malan on July 20, 2022, later amending
21 the judgment to add American Lending & Holdings, LLC as an additional judgment
22 debtor. See Judgment (July 20, 2022); Order (April 21, 2023). See Exhibits C, D to RJN.
23 As of today, Judgment Creditors have a judgment for more than \$580,000 against
24 American Lending.

25 *5. In 2018, this court denies the relief Razuki seeks.*

26 The court already denied this relief once before. Exhibits F, G to RJN.
27
28

Legal Argument

1. **The court already denied Razuki's request for this relief, finding Razuki is not likely to succeed on the merits; this court lacks jurisdiction to grant an untimely motion for reconsideration.**

Razuki's declaration makes a false statement of fact to deceive this court into reconsidering its earlier ruling denying a preliminary injunction. Attorney Zryd says: "No previous application has been made for the relief requested in this application." Decl. Zryd, ¶5. **This is false.** He compounds the falsity in the memo of Ps and As, arguing:

"There is a strong likelihood that Plaintiffs will prevail on the merits. This Court has previously found that Plaintiffs established the probable validity of their real property claim to the H Street Property pursuant to CCP section 405.32."

That's not true. In fact, the court found Razuki's claims lacked merit *and* denied Razuki's motion for this same relief. In August 2018 this court ruled on an identical ex parte application from Plaintiffs, granting a TRO and stating: "Plaintiff seeks to enjoin a foreclosure sale set for next Friday. This case is related to another case involving the same parties now pending before Judge Sturgeon (No. 2018-34229). ... and the foreclosure is temporarily restrained pending hearing on the preliminary injunction." Order (Aug. 16, 2018). Then, four months later, the court denied the motion for preliminary injunction after considering evidence. The court found: "The court specifically noted **it found a lack of probability of success on the merits** of Plaintiffs' claims, and ordered attorney Daniel Watts to make note of that finding in the order, which the court also ordered Watts to prepare. The court ORDERS: 1. Plaintiffs' ex parte application is denied. 2. **The court finds a lack of probability of success on the merits of Plaintiffs' claims.**" Order (Dec. 28, 2018).

This court already found Razuki failed to show a lack of probability of success. The court already denied his motion for a preliminary injunction. Granting Plaintiffs' latest ex parte application after an order *denying* a motion for the same relief would render inoperative the procedural, substantive, and jurisdictional requirements of Code Civ.

1 Proc. §1008. See *Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 394 (holding that
2 an attempt to circumvent Section 1008 fails when issues presented in earlier motion and
3 current motion are the same). A motion asking for the same relief as an earlier request is
4 a motion for reconsideration, despite the label on it. *Id.* (deeming a second motion for
5 summary judgment a “motion for reconsideration” because it asked for the same relief). If
6 Plaintiff wants to reverse the 2018 order denying his motion for a preliminary injunction,
7 his sole remedy was Section 1008.

8 Because Plaintiff is asking this court to grant relief after the court *denied* such
9 relief, “The threshold issue is whether the trial court ha[s] the power to reconsider” its
10 order denying leave. *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1498-1500. The
11 law is clear: “the exclusive avenue for reconsideration of” a trial court’s orders is “set
12 forth in Code of Civil Procedure section 1008,” which “is jurisdictional.” *Id.* Plaintiffs’
13 request does not meet the statutory prerequisites of Section 1008, so this court lacks
14 jurisdiction to grant the relief requested.

15 “Section 1008 governs reconsideration of court orders whether initiated by a party
16 or the court itself. It is the exclusive means for modifying, amending or revoking an
17 order. That limitation is expressly jurisdictional.” *Id.*

18 Plaintiffs’ application meets none of the jurisdictional prerequisites of Section
19 1008:

20 “(a) When an application for an order has been made to a
21 judge, or to a court, and refused in whole or in part, or
22 granted...any party affected by the order may, within 10 days
23 after service upon the party of written notice of entry of the
24 order and based upon new or different facts, circumstances, or
25 law, make application to the same judge or court that made the
26 order, to reconsider the matter and modify, amend or revoke the
27 prior order. The party making the application shall state by
28 affidavit what application was made before, when and to what
29 judge, what order or decisions were made, and what new or
30 different facts, circumstances, or law are claimed to be shown.”

Code Civ. Proc. §1008(a). See also Code Civ. Proc. §1008(b) (same standard applies to
“party who originally made an application for an order which was refused”).

1 Here, Razuki did not “state by affidavit” that he already filed that 2018 ex parte
2 application and motion, nor did he mention the earlier orders denying this relief. Instead
3 he misleads this court into believing he never asked for this relief before. He does not
4 explain what new facts or law justify reversal of the court’s earlier decision, either.

5 “According to the plain language of the statute, a court acts in excess of
6 jurisdiction when it grants a motion to reconsider that is not based upon ‘new or different
7 facts, circumstances, or law.’” *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1498-
8 1500. When “section 1008 was the exclusive avenue for the relief requested and [the
9 moving party] did not meet the jurisdictional prerequisites for relief under that statute,
10 [appellate courts would] find that the trial court acted in excess of its jurisdiction by
11 granting the motion for reconsideration.” *Id.* at 1502. None of the requirements are met,
12 so the court lacks jurisdiction to reconsider its order denying his motion for a TRO and
13 preliminary injunction.

14 Plaintiff’s untimely, deficient motion to reconsider the 2018 orders is not just
15 meritless, but sanctionable. Section 1008(d) states: “A violation of this section may be
16 punished as a contempt and with sanctions as allowed by Section 128.7.” The court lacks
17 jurisdiction to grant the motion – but it has the power to sanction Plaintiff for filing it.

18 **2. Razuki’s request for an injunction against the world at large is unlawful.**

19 Razuki’s proposed order would enjoin “any and all persons and/or entities and/or”
20 their agents from foreclosing on American Lending’s property. See Proposed Order (filed
21 July 5, 2023). This is plainly unlawful. Just like the court cannot enjoin G10 Galuppo
22 Law – who is not a party, and over whom the court lacks personal jurisdiction – nor can
23 the court enjoin the world at large.

24 “It is well established that injunctions are not effective against the world at large.”
25 *People ex rel. Gwinn v. Kothari* (2000) 83 Cal.App.4th 759, 765; *Planned Parenthood*
26 *Shasta-Diablo, Inc. v. Williams* (1994) 7 Cal. 4th 860, 870 (“A restriction that enjoined all
27 picketers in addition to petitioners would clearly have been overbroad”). “An injunction
28 — a writ or order requiring a person to refrain from a particular act or to do a particular

1 act (Code Civ. Proc., § 525) — is an *in personam* remedy,” not an *in rem* remedy. *People*
2 *ex rel. Gwinn v. Kothari* (2000) 83 Cal.App.4th 759, 765. “An injunction is obviously a
3 personal decree. It operates on the person of the defendant by commanding him to do or
4 desist from certain action.” *Id.* Razuki cannot ask this court to grant equitable relief
5 against people over whom it lacks personal jurisdiction.

6 Here, Judgment Creditors are not parties to this action and the court has no
7 jurisdiction over them. The court cannot enjoin them from enforcing their judgment
8 against American Lending. It certainly cannot enjoin the world at large.

9 **3. It is impossible for Razuki to show a likelihood of success on the merits of**
10 **his claims against Galuppo when he has not made any such claims.**

11 Razuki must show he’s likely to succeed against Galuppo and G10 Galuppo Law, the
12 party whose interests are affected by this application. He cannot show that, not least
13 because he makes no claims against Galuppo. One cannot succeed on a claim that one has
14 not made.

15 Just imagine if this lawsuit went to trial tomorrow. Could Razuki get a judgment
16 against Judgment Creditors G10 Galuppo Law and Louis Galuppo? Well, it is an
17 “elementary common law principle of jurisprudence”—followed in California, as
18 elsewhere—that “a judgment may not be entered either for or against one not a party to
19 action or proceeding.” *Fazzi v. Peters* (1968) 68 Cal.2d 590, 594. A judgment entered in
20 contravention of this principle is void. *Fazzi v. Peters*, supra, at p. 594; see *In re Wren*
21 (1957) 48 Cal.2d 159, 163 (“a judgment may not be entered either for or against a person
22 who is not a party to the proceeding, and any judgment which does so is void to that
23 extent”). Judgment Creditors are not parties to this proceeding, so no, of course not.
24 Razuki cannot get a judgment against them. If he cannot get a judgment against them,
25 he cannot “succeed on the merits.”
26
27
28

1 **4. There is no basis to award injunctive relief against Judgment Creditors in**
2 **the absence of a cause of action against them; a cause of action is a**
3 **prerequisite to *all* forms of injunctive relief.**

4 A cause of action affording a right to relief must exist before injunctive relief may be
5 granted. See *Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168. In determining
6 whether to issue a preliminary injunction, the court must first determine “the likelihood
7 that the plaintiff will prevail on the merits at trial.” However, Razuki is not a “plaintiff”
8 as against Judgment Creditors in any sense of the word. He has not asserted any
9 complaint against Judgment Creditors. Accordingly, there is nothing on which he might
10 “prevail” at trial.

11 A cause of action against Judgment Creditors is a prerequisite to an injunction
12 against them. “Injunctive relief is a remedy and not, in itself, a cause of action, and a
13 cause of action must exist before injunctive relief may be granted.” *Shell Oil Co. v.*
14 *Richter* (1942) 52 Cal.App.2d 164, 168. In *Shell Oil Co.*, the court noted that the moving
15 party “should have made Richter a party to their action against [defendant] Adams if
16 they had then had a cause of action against Richter”, but since they did not, they could
17 not receive injunctive relief against Richter. Here, Judgment Creditors are “Richter” and
18 Malan is “Adams”; if Razuki has a claim against Judgment Creditors, he must join them
19 as parties. He has not done so. Without a cause of action pending against them, he cannot
20 get a TRO. *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23
21 Cal.App.4th 376, 398-399 (“Thus, a cause of action must exist before injunctive relief may
22 be granted. Accordingly, where the complaint fails to state a cause of action an order
23 granting a preliminary injunction must be reversed.”).

24 **5. A temporary restraining order or preliminary injunction cannot issue**
25 **unless the moving party proves a likelihood of success on the merits, and**
26 **Plaintiffs cannot prove Razuki owns American Lending because he**
27 **declared under penalty of perjury that Ninus Malan owns it.**

28 In determining whether to issue injunctive relief, the court must evaluate two
interrelated factors. The first is the likelihood that the plaintiff will prevail on the merits
at trial. The second is the interim harm the plaintiff will suffer if the injunction is denied

1 compared to the harm the defendant may suffer if the injunction is granted. CODE CIV.
2 PROC. §526. A moving plaintiff must meet both elements: A trial court may not grant
3 interim relief, “**regardless of the balance of interim harm**, unless there is some
4 possibility that the plaintiff would ultimately prevail on the merits of the claim.” *Hunt v.*
5 *Superior Court* (1999) 21 Cal.4th 984, 999. There is no probability Plaintiff will prevail
6 on a claim for ownership of a company he already testified is owned by Ninus Malan.

7 “It is well settled that jurisdiction over the parties is necessary for the validity of
8 any judgment *in personam*.” *Rothschild v. Erda* (1968) 258 Cal.App.2d 750, 753 (citing
9 Code Civ. Proc. §1917, *Pennoyer v. Neff*, 95 U.S. 714, and many others). “A restraining
10 order is a decree *in personam*.” *Id.* (citing authorities). To issue a restraining order, a
11 court must first obtain jurisdiction. The “court in which an action is pending
12 has jurisdiction over a party from the time summons is served on him” or he makes a
13 “general appearance.” Code Civ. Proc. §410.50.

14 Here, the court has not obtained jurisdiction over Judgment Creditors. Razuki has
15 not served the summons or complaint on Judgment Creditors by any method allowed by
16 law. Code Civ. Proc. §415.50 (personal delivery), §415.20 (substituted service), §§415.30
17 and 415.40 (notice and acknowledgment), §415.50(a) (publication). He has not even
18 named Judgment Creditors in the complaint. He fails to cite any cause of action that
19 names them as defendants. They are not parties to this action. They are third party
20 judgment creditors and lienholders.

21 *Tokio Marine & Fire Ins. Corp. v. Western Pacific Roofing Corp.* (1999) 75
22 Cal.App.4th 110 is instructive. In *Tokio*, the parties to the litigation (a general
23 contractor and a roofing contractor) and their respective insurers entered into a
24 stipulated judgment that allowed for interim allegations of liability pending trial. *Id.* at
25 p. 113. Although the general contractor's insurer (a nonparty to the litigation) signed the
26 stipulation, the stipulation said nothing about whether the insurer had submitted to
27 jurisdiction, would be added as a party, or had agreed to be named as a judgment debtor.
28 *Id.* at p. 114. After the roofing contractor received a favorable judgment at trial against

1 the general contractor, it filed a motion to add the general contractor's insurer as an
2 additional judgment debtor. The trial court granted the motion. *Id.* at p. 115.

3 The court of appeal reversed. As pertinent here, the court held that the addition of
4 the insurer as a judgment debtor violated due process, because the trial court lacked
5 jurisdiction over the insurer. *Tokio*, supra, 75 Cal.App.4th at p. 119. This was so **even**
6 **though the insurer had signed a stipulated judgment.** As the court explained, the
7 insurer had not automatically become a party to the litigation by becoming a party to the
8 stipulation, and its entry into the stipulation was not tantamount to an intervention in
9 the case or confession of judgment because the statutory requisites for those procedures
10 had not been met. *Id.* at pp. 119-121. Judgment Creditors are not parties to this lawsuit.
11 They specially appear at ex parte hearings only to make sure the court is aware of their
12 judgment liens, but this does not confer jurisdiction over them. Code Civ. Proc. §418.11
13 (“[a]n appearance at a hearing at which ex parte relief is sought, or an appearance at a
14 hearing for which an ex parte application for a provisional remedy is made, is not a
15 general appearance”).

16 **6. Plaintiffs have unclean hands: They originally scheduled their ex parte**
17 **hearing for November 15, 2018, but took it off calendar when they decided**
18 **to try to murder Ninus Malan instead.**

19 Malan explained years ago why Plaintiffs had unclean hands and could not get a
20 preliminary injunction against the sale of H Street. We will explain again.

21 Plaintiffs tried to murder Malan because of this litigation with Malan, and timed his
22 ex parte hearing for just before the murder attempt. When Plaintiff Razuki believed the
23 murder succeeded, he took the ex parte hearing off calendar.

24 Plaintiff's agent said to the hit man, “It's no joke, [Plaintiff] Salam has a lot of money
25 tied up right now, and he's paying attorney fees. You need to get rid of this asshole, he's
26 costing me too much money!”¹ They told the Hit Man that **Plaintiff Razuki wanted –**
27 **needed – Malan dead before November 15, 2018.**²

28 ¹ A fuller explanation of the facts of the murder-for-hire plot has been filed with this court
before. Plaintiffs originally scheduled an ex parte hearing for this same relief for November 15, 2018 –

1 The court can check its calendar in the original SH Westpoint v. American Lending
2 case and see that **Plaintiffs originally scheduled an ex parte hearing on this same**
3 **relief for November 15, 2018** – the deadline Plaintiff Salam Razuki gave his hit man to
4 kidnap and kill Defendant Ninus Malan. When the “hit man” confirmed he would kill
5 Malan by that date, Plaintiff Salam **Razuki took his ex parte hearing off calendar**
6 and did not serve papers. Razuki went to bed that night believing he had killed Malan; no
7 need for an ex parte any more.

8 When Malan survived, Razuki put his ex parte back on calendar. This court later
9 denied it. Now he’s bringing it again, even though he has been *convicted* of the same
10 inequitable act.

12 the deadline Plaintiff Salam Razuki gave his hit man to kidnap and kill Defendant Ninus Malan. When
13 the “hit man” confirmed he would kill Malan by that date, Plaintiff Salam Razuki took his ex parte
14 hearing off calendar.

15 Plaintiff Salam Razuki employs property managers named Elizabeth Juarez and Sylvia Gonzales,
16 who, in the past, have hired gang members to harass Defendant Ninus Malan and his businesses.
17 *Decl. Ninus Malan* (Dec. 4, 2018) ¶¶4-8; *Request for Judicial Notice* (Dec. 4, 2018), exhibits A, B.
18 Because of ongoing litigation with Razuki, their harassment has escalated to violence, according to
19 the sworn statement filed under penalty of perjury by FBI agent Michelle Hart in *United States of*
20 *America v. Salam Razuki*, (S.D. Cal. Nov. 19, 2018), case no. 3:18-MJ-5915. A federal grand jury
21 found sufficient cause to indict Salam Razuki on December 6, 2018. *United States v. Salam Razuki,*
22 *et. al.*, case no. 18-CR-5260-CAB, Doc. #26 (indictment). Judge Frederick A. Mandabach found
23 clear and convincing evidence that Razuki committed “unlawful violence” or “a credible threat of
24 violence, or stalking”.

25 Specifically: On November 5th, Plaintiff Razuki sent minions to meet with who they believed was
26 a hit man (“Hit Man”).¹ His minions asked if the Hit Man could “get rid of [Plaintiff] Salam’s other
27 little problem, [Ninus Malan], **because it looks like they’re going to appeal.**”¹

28 When they said this, a temporary restraining order in this case was preventing Malan and
American Lending from foreclosing on the property. American Lending was indeed considering
whether to appeal.

Plaintiff’s minion Gonzales told the Hit Man she “would love for [Malan] to go to TJ and get
lost. Just leave him over there.”¹ She talked to the Hit Man about the lawsuits with Razuki, and said
they involved more than \$44 million.¹ She said, “It’s no joke, [Plaintiff] Salam has a lot of money
tied up right now, and he’s paying attorney fees. You need to get rid of this asshole, he’s costing me
too much money!”¹

Gonzales told the Hit Man that Plaintiff Razuki needed Malan dead before November 15, 2018.¹

As the court knows, Plaintiff Salam Razuki had scheduled an ex parte hearing for November 15th
in this action. Razuki never ended up serving papers, and suspiciously removed the hearing from the
calendar once Malan went missing.

² Id.

1 A temporary restraining order is an equitable remedy. Using an ex parte application
2 when a murder-for-hire scheme doesn't work is an improper litigation tactic and should
3 not be rewarded. He had this ex parte waiting in the wings for months but chose to file it
4 only when the attempted murder did not work. There is no more inequitable conduct than
5 trying to murder someone. The court should deny equitable relief to Salam Razuki.

6 **7. Judicial admissions establish Ninus Malan is the sole owner of American**
7 **Lending, which means Razuki will lose on the merits of his claims against**
8 **Malan.**

9 It bears repeating: Razuki has no claims against Judgment Creditors, and thus
10 can't show a probability of prevailing.

11 But even against Malan, he will lose. Razuki filed this action alleging that Malan
12 owns American Lending – a fact which Malan *admitted in the answer and removed*
13 *from dispute*. “There is no doubt that where a complaint contains allegations of fact
14 which are admitted by the answer, no issue is raised as to those facts.” *Webster v.*
15 *Freeman* (1938) 27 Cal.App.2d 5, 6. This is beyond dispute.

16 Plaintiff's original verified complaint alleges that Malan owns American Lending.
17 And he doesn't just own it, according to Plaintiff: Malan is its alter ego, with 100 percent
18 absolute control over its finances and operations. Defendant Malan answered the
19 complaint, admitting the ownership allegations. “There is no doubt that where a
20 complaint contains allegations of fact which are admitted by the answer, no issue is
21 raised as to those facts.” *Webster v. Freeman* (1938) 27 Cal.App.2d 5, 6.

22 These allegations aren't just in the original complaint. In the *verified* amended
23 complaint, too, Plaintiff alleges “there existed and now exists a unity of interest and
24 ownership between Malan and each of the Alter Ego Entities [American Lending]; the
25 individuality and separateness of Malan and each of the Alter Ego Entities have ceased.”
26 FAC ¶51(b). Plaintiff cannot speak out of both sides of his mouth – under penalty of
27 perjury, no less. The sham pleading doctrine forbids it. “Under the sham-pleading
28 doctrine, admissions in an original complaint that has been superseded by an amended
pleading remain within the court's cognizance and the alteration of such statements by

1 amendment designed to conceal fundamental vulnerabilities in a plaintiff's case will not
2 be accepted.” *Lockton v. O'Rourke* (2010) 184 Cal.App.4th 1051, 1061.

3 **8. Plaintiffs show no emergency requiring a temporary restraining order.**

4 The foreclosure has been planned for months. This litigation has been pending since
5 2018. Plaintiff claimed a parade of horrors when he tried to get a preliminary injunction
6 in 2018 too, and those were proven false. Nothing has changed since then except Plaintiff
7 tried to murder Ninus Malan. There is no emergency justifying ex parte relief.

8 **9. The balance of equities favors Judgment Creditors, attorneys who have
9 gone more than four years without payment by their clients.**

10 A temporary restraining order is an equitable remedy, and the court must balance the
11 equities here: Judgment Creditors are not parties accused of wrongdoing – they are
12 innocents owed hundreds of thousands of dollars in attorney fees by their clients,
13 including American Lending. They got a judgment a year ago. The judgment is final as of
14 several months ago. They are entitled to collect on it.

15 Salam Razuki, on the other hand, is a convicted felon who tried to commit murder to
16 take control of American Lending. He literally tried to murder Malan as an alternative to
17 getting ex parte relief in 2018. There is no question where the equities fall.

18 **Conclusion**

19 Convicted felon Salam Razuki cannot feign surprise at a foreclosure he already
20 tried and failed to prevent. He cannot contest Malan's ownership of American Lending
21 when his verified complaint says Malan owns it. He cannot show clean hands when his
22 hands are stained in blood. He cannot argue jurisdiction over Galuppo when he spent
23 the last year objecting to everything we file because we are not parties to this action.

24 The court should not issue a temporary restraining order because it lacks
25 jurisdiction over Judgment Creditors, who are not parties. If Judgment Creditors were
26 parties, they would be entitled to do everything a party could do, including filing appeals
27 and peremptory challenges. They have not done so, and it is obvious that they do not
28 have the right to do so since they are not parties.

