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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Kirk Nowak,

No. CV-12-8023-PCT-FJM

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Plaintiff,

ORDER

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vs.

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Isles Homeowners' Association,

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Defendant.

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The undersigned Magistrate Judge has received from *pro se* Plaintiff an unsolicited and prohibited *ex parte* e-mail in his chamber's e-mailbox. Though the undersigned is neither the assigned trial judge nor has the case been referred to him, this Judge was assigned to conduct a settlement conference in May 2012 which was never held.

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Because Plaintiff's e-mail does not reflect a copy was sent to counsel of record, the

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Court deems the letter to be an innocent but prohibited *ex-parte* communication with the

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Court. *See Best Western Intern., Inc. v. Melbourne Hotel Investors, LLC*, 2008 WL

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2945513, at *1 n. 1 (D. Ariz. July 28, 2008) (“[E]x parte communications are barred even

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if it is not clear that the lawyer intended to influence the judge.”) (citation omitted); *see*

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also San Carlos Apache Tribe v. Bolton ex rel. County of Maricopa, 194 Ariz. 68, 977

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P.2d 790, 794 (Ariz. 1999) (“[W]ith some exceptions, ‘all parties or their lawyers shall be

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included in communications with a judge.”) (citation omitted)). “Canon 3(B)(7) generally

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prohibits a judge from initiating, permitting, or considering communications made

‘outside the presence of the parties concerning a pending or impending proceeding.’” *San*

Carlos Apache Tribe, 194 Ariz. 68, 977 P.2d at 794; *see also Church of Scientology*

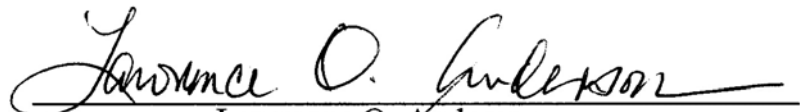
1 *Intern. v. Kolts*, 846 F.Supp. 873, 877 n. 2 (C.D. Cal. 1994). Like the lawyer in *San*
2 *Carlos Apache Tribe*, Plaintiff is cautioned against initiating *ex parte* communications
3 with an adjudication judge. *Id.* at 796.

4 Except for this Order, the e-mail will be filed under seal with no action or response
5 taken by the undersigned Magistrate Judge. Plaintiff is directed to comply with Rule
6 5(a)(1), Fed.R.Civ.P., regarding all future pleadings, letters, e-mails or other writings in
7 this matter and to reflect such mailing or delivery on the filing or document itself. Unless
8 expressly authorized by the judge or rule, all future pleadings, letters, e-mails or other
9 writings in this case must not mailed or delivered to such judge.

10 Accordingly,

11 **IT IS ORDERED** that the Clerk of Court is kindly directed to seal Plaintiff's e-
12 mail and mail or electronically deliver a complete copy of Plaintiff's email and this Order
13 to Plaintiff and counsel of record. This Order, however, is not sealed.

14 Dated this 18th day of January, 2013.

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17 Lawrence O. Anderson
18 United States Magistrate Judge
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