

1 Marina Boyd, **PLAINTIFF IN PRO PER**  
2 10951 NATIONAL BLVD., #302  
3 LOS ANGELES, CA 90064  
4 Telephone: (310) 663-4811  
5  
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF LOS ANGELES—SANTA MONICA COURTHOUSE  
9

10 MARINA BOYD

11 Plaintiffs,

12 v.

13 CITIMORTGAGE, INC and DOES 1–20,

14 Defendants.  
15  
16  
17  
18  
19  
20

CASE NO.: SC117126

*Assigned to Hon. Judge Lisa Hart Cole, Dept. O*

**PLAINTIFFS' MEMORANDUM OF POINTS  
AND AUTHORITIES IN OPPOSITION TO  
DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT OR IN THE ALTERNATIVE  
SUMMARY ADJUDICATION**

Hearing Date: May 25, 2016  
Time: 8:30 a.m.  
Dept.: WE-O

Action Filed: May 18, 2012  
Trial Date: June 27, 2016

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

PAGE

<b>I.</b>	<b>INTRODUCTION</b>	<b>2</b>
<b>II.</b>	<b>STATEMENT OF FACTS</b>	<b>2</b>
<b>III.</b>	<b>PROCEDURAL HISTORY</b>	<b>2</b>
<b>IV.</b>	<b>LEGAL STANDARD</b>	<b>2</b>
<b>V.</b>	<b>ARGUMENT</b>	<b>4</b>
<b>A.</b>	<b>CMI Lawfully Disposed of the Remaining Personal Property Pursuant to the Unlawful Detainer Act and, Therefore, Is Immune from Liability</b>	<b>4</b>
<b>B.</b>	<b>Plaintiff's Cause of Action for Conversion Lacks Merit</b>	<b>8</b>
<b>C.</b>	<b>Plaintiff's Statutory Causes of Action Lacks Merit</b>	<b>10</b>
1.	Civil Code Sections 1983, 1987, 1988 and 2080 Do Not Create a Private Right of Action	10
2.	Civil Code Section 1983, 1987 and 2070 Do Not Apply to Plaintiff	11
a.	The Landlord-Tenant procedures in sections 1983 and 1987 are not incorporated in the Unlawful Detainer Act	11
b.	The Personal Property Plaintiff left behind at the condo was not "lost" Property subject to section 2080	12
3.	Plaintiff Cannot Establish a Statutory Violation	13
a.	Plaintiff received notice of her right to reclaim Personal Property	13
b.	Plaintiff failed to comply with statutory requirements for reclaiming the personal property she left behind at the condo	14
c.	CMI lawfully disposed of the Personal Property left at the condo	14
<b>D.</b>	<b>All of Plaintiff's Cases of Action are Barred by the Doctrine of Unclean Hands</b>	<b>14</b>
<b>E.</b>	<b>Plaintiff's Claim for Punitive Damages Lacks Merit</b>	<b>15</b>
<b>VI.</b>	<b>CONCLUSION</b>	<b>19</b>

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I. INTRODUCTION**

4 Plaintiff, Marina J Boyd hereby submits this opposition to Defendant CitiMortgage, (hereinafter  
5 referred to as “CMI”) Motion for Summary Judgment.  
6

7 **II. STATEMENT OF FACTS**

8 Plaintiff Marina Boyd owned a condominium located at 12321 Ocean Park Boulevard, Unit  
9 #1, Los Angeles, California 90064 (the “Property”). Plaintiff lived with her daughter, Alexis Boyd-  
10 Holling, and sister, Anita Faye Boyd. Plaintiff Marina Boyd’s interest in the Property was  
11 foreclosed on due to a default in payments. At the time of the foreclosure action, CMI was the  
12 beneficiary on the note to the Property. CMI was also the servicer of the loan.

13 At a foreclosure sale prior to September 23, 2011, CMI purchased the Property—CMI then  
14 owned both the note and the underlying asset. On or about September 23, 2011, Plaintiffs were  
15 locked out of their home following a judgment in favor of CMI in an unlawful detainer action.

16 Plaintiff contacted CMI agent Skyway Realty on October 7, 2011 (by e-mail), October 8,  
17 2011 by phone, October 12, 2011 by phone, October 19, 2011 by written request and on October  
18 21, 2011 requesting access retrieve Personal Property stored on site at the CONDO.

19 On October 23, 2011, CMI “trashed out” the CONDO and in doing so, disposed of all of  
20 Plaintiffs Personal Property which remained stored onsite at that time.  
21

22 **III. LEGAL STANDARD**

23 The motion for summary judgment shall be granted if all the papers submitted show that  
24 there is no triable issue as to any material fact and that the moving party is entitled to a judgment  
25 as a matter of law. . . .” Cal. Code of Civ. Proc. § 437c(c). There is a triable issue of material fact  
26 “if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in  
27  
28

1 favor of the party opposing the motion in accordance with the applicable standard of proof.”  
2 ***Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850.***

3 The evidence favorable to the plaintiff must be accepted as true and any conflicting evidence  
4 disregarded. In this case, CMI’s claims that Plaintiffs personal Property was abandoned is in direct  
5 conflict with undisputed evidence by way of Plaintiffs phone records (EXHIBIT 1) and Deposition  
6 (see Deposition of Marina J Boyd, Pages 89-88) which demonstrate Plaintiffs repeated contact to  
7 Skyway Realty in requesting return of Personal Property. From this evidence, it may be logically  
8 and reasonably inferred that the Plaintiffs Personal Property was not abandoned and therefore  
9 CMI’s Motion for Summary Judgment must be denied. “If facts sufficient to support a verdict in  
10 the plaintiff’s favor may logically and reasonably be inferred from the evidence, the motion must  
11 be denied even if the evidence is also susceptible to conflicting inferences”. ***Carson v. Facilities***  
12 ***Development Co. (1984) 36 Cal.3d 830, 838-839 [206 Cal.Rptr. 136, 686 P.2d 656]; Ashcraft v.***  
13 ***King (1991) 228 Cal.App.3d 604, 610-611 [278 Cal.Rptr. 900.*** In determining whether plaintiff’s  
14 evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses.  
15 Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence  
16 must be disregarded. As such, CMI’s claims that their records are void of any contact by the  
17 Plaintiffs must be disregarded in considering this motion.

18 In determining whether a trial is necessary, the evidence presented in support of the motion  
19 must be judged not only as to its sufficiency to substantiate a claim of defense, but also as to its  
20 credibility. In this case, there is no basis to draw any OTHER inference from Plaintiffs calls, other  
21 than what Plaintiff has stated, the return of Personal Property. Unless creditability issues inherent  
22 in that proof can be avoided by the burden-of-proof rule or be resolved as a matter of law, a  
23 summary disposition is improper and a trial must be held. It is held that "a summary judgment  
24 may . . . be proper because of the high credibility value accorded to documentary evidence."  
25 ***Harding v. Purtle, 275 Cal. App. 2d 396 (Cal. App. 3d Dist. 1969).*** ***Harding v. Purtle, 275 Cal.***  
26 ***App. 2d 396 (Cal. App. 3d Dist. 1969).*** In this case, the high credibility of Plaintiffs evidence  
27 would dictate, that the reverse is true, and Summary Judgment must be denied.

1           “Failing to draw all reasonable inferences in favor of the plaintiff”. Has been criticized by  
2 higher courts which “noted that, by disregarding critical evidence favorable to the plaintiff and  
3 crediting evidence presented by the employer, the court of appeals “impermissibly substituted its  
4 judgment concerning the weight of the evidence for the jury's.” (*Reeves, supra, 530 U.S. at p. 153.*)  
5 The court held that if the plaintiff establishes a prima facie case and demonstrates pretext through  
6 circumstantial evidence, *Reid v. Google, Inc., 50 Cal. 4th 512 (Cal. 2010)*

7           "It is settled that where the evidence raises an inference that a fact exists, and either party  
8 produces evidence of the nonexistence of the fact that is clear, positive, un-contradicted and of such  
9 a nature that it cannot rationally be disbelieved, the nonexistence of the fact is established as a  
10 matter of law. [Citation.] In these circumstances the inference is dispelled as a matter of law, and,  
11 if the fact inferred is necessary to establish an essential element of the plaintiff's case, a nonsuit or  
12 directed verdict is proper." *Bank of America v. Frost, 205 Cal. App. 2d 614 (Cal. App. 4th Dist.*  
13 *1962)*

#### 14 15           **IV. PROCEDURAL BACKGROUND**

16           Plaintiffs brought this complaint against CMI and Skyway Realty on May 18, 2012.  
17 Defendant, CMI. filed a demurrer which was sustained with Leave to Amend. Plaintiff then filed  
18 a first amended complaint adding Anita Faye Boyd and Alexis Boyd-Holling, who also had primary  
19 residence at 12321 Ocean Park Boulevard, Unit 1, Los Angeles, California 90064, as Plaintiffs.  
20 Defendant CMI also demurred the First Amended Complaint which was sustained with Leave to  
21 Amend.

22           In June 2013, Plaintiffs retained counsel, Alexander Comley, who filed a Second Amended  
23 Complaint on June 4, 2013 alleging six causes of action against Defendant CMI and Skyway Realty  
24 for 1) Negligence (2) Violation of Civil Code §§ 1983-1987 and Code of Civil Procedure § 1174;  
25 (3) Violation of Civil Code § 1965, (4) Negligent Infliction of Emotional Distress (5) Intentional  
26 Infliction of Emotional distress and (6) Unfair Business Practices. These Causes of Action arise  
27 from the Defendant's disposal of the Personal Property of Marina J Boyd, Anita Faye Boyd and  
28

1 Alexis Boyd-Holling which were stored onsite at 12321 Ocean Park Boulevard, Unit 1, Los  
2 Angeles, California 90064 following an Unlawful Detainer judgment and lockout. Defendant CMI  
3 filed a motion to strike Plaintiff's Anita Faye Boyd and Alexis Boyd-Holling because Plaintiff  
4 failed to obtain Leave of Court. Skyway Realty has not made an appearance in this matter.

5 Defendant, CMI again demurred the Second Amended Complaint which was filed on behalf  
6 of Plaintiff; and on June 20, 2014, the court sustained the demurrer to the Sixth Cause of Action  
7 for Intentional Infliction of Emotional Distress without leave to amend, and sustained the remaining  
8 causes of action with 20 days leave to amend.

9 On July 18, 2014, Defendant, CMI filed an Ex-Parte motion to dismiss Plaintiffs Second  
10 Amended Complaint alleging Plaintiff had failed to file a Third Amended Complaint within 10  
11 days (court had ordered the Third Amended Complaint be filed within 20 days). The Court  
12 continued the motion to October 29, 2014, and again to November 19, 2014. On July 17, 2014,  
13 Plaintiff filed a TAC, and on, July 22, 2014, Plaintiff filed a Motion for Leave to Amend with a  
14 Proposed Third Amended Complaint based on facts uncovered during discovery. On November  
15 19, 2014, the court denied Defendant, CMI's motion to dismiss Plaintiffs Second Amended  
16 Complaint and granted Plaintiff's Motion for Leave to Amend. On November 19, 2014, Plaintiff  
17 filed a Third Amended Complaint ("TAC").

18 On December 22, 2014, CMI removed the case to US District Court pursuant to **28 U.S.C.**  
19 **§1441** and on December 29, 2014 and the case was remanded to Superior Court of California on  
20 June 17, 2015.

21 On July 23, 2015, CMI filed a demurrer to the fourth amended complaint which was  
22 sustained in part and overruled in part leaving causes of action for Conspiracy to commit  
23 Conversion, Violations of Civil Code Section 1983, 1987, 1988 and 2080.

24 CMI now submits this Motion for Summary Judgment, or in the alternative, Summary  
25 Adjudication.

1       **V.    ARGUMENT**

2           **A. CMI Lawfully Disposed of the remaining Personal Property Pursuant to the**  
3           **Unlawful Detainer Act and, Therefore, Is Immune from Liability**

4           CMI’s distortion of the language of the statute distorts the law, it’s meanings and the  
5 resulting obligations it places upon them. CMI’s selection re-wording of the statute cannot serve  
6 to disguise the obligations placed upon them by the law. While CMI is correct that the Writ of  
7 Possession gives notice regarding Personal Property, the lack of compliance with §1174 started  
8 from the beginning. CCP §715.010(b)3 states in part, “In addition to the information required by  
9 Section §712.020, the writ of possession of real property shall contain the following: A statement  
10 that any personal property, ....., remaining on the real property after the judgment creditor has  
11 been placed in possession will be sold or otherwise disposed of in accordance with Section 1174  
12 unless the judgment debtor or other owner pays the judgment creditor the reasonable cost of storage  
13 and takes possession of the personal property not later than 15 days after the time the judgment  
14 creditor takes possession of the real property. CMI’s notice was defective because it did not contain  
15 the statutorily required language, but instead reads” “personal property remaining on the premises  
16 will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the  
17 property pays the judgment creditor the reasonable cost of storage and takes possession of the  
18 personal property not later than 15 days after the time the judgment creditor takes possession of the  
19 premises. Of note, CMI cites *Palm Property Investments, LLC v. Yadegar, 194 Cal. App. 4th*  
20 *1419 (Cal. App. 2d Dist. 2011)* as authority for the disposal, but stops short of the passage which  
21 states that this “statutory procedure [Unlawful Detainer Act] must be strictly followed. [Citations.]”  
22 (Kwok v. Bergren (1982) 130 Cal.App.3d 596, 599–600 [181 Cal. Rptr. 795].

23           Significantly, CMI seeks the protection from liability based on their adherence to CCP 1174  
24 in the disposal of Plaintiffs Personal Property, but attempts to reword the statute to imply that they  
25 are not required to give additional notice to Plaintiff. This argument fails as a matter of law. The  
26 Unlawful Detainer Act is a Special Proceeding. As special proceedings are created and authorized  
27 by statute, the jurisdiction over any special proceeding is limited by the terms and conditions of the  
28

1 statute under which it was authorized ( Lay v. Superior Court (1909) 11 Cal. App. 558, 560 [105  
2 P. 775]). In this case, CCP 1174 confer upon Plaintiff less rights than the statutes incorporated that  
3 authorize it. *Kwok v. Bergren, 130 Cal. App. 3d 596 (Cal. App. 1st Dist. 1982)CCP §1174.*

4 For this purpose, references in Section 1174 and in provisions incorporated by reference in  
5 Section 1174 to the “landlord” shall be deemed to be references to the judgment creditor and  
6 references to the “tenant” shall be deemed to be references to the judgment debtor or other  
7 occupant. This resolves the conflict in notice requirements of Civil Code 1983 which clarifies who  
8 must be given notice. “The landlord [Judgment Creditor] shall give notice pursuant to §1983 of  
9 the Civil Code to any person other than the tenant reasonably believed, by the landlord to be the  
10 owner of personal property remaining on the premises. Because tenant means both the judgment  
11 debtor or other occupant, Plaintiff would fall into both categories, and it can reasonably be inferred  
12 that the statute requires that any person who is reasonably believed to be the owner of the personal  
13 property who has not initiated the procedure for surrender of property under §1965. To interpret  
14 otherwise would negate the requirement of the Judgment Creditor to provide notice to any person  
15 who actually lived at or occupied the premises of which they have taken control.

16 In passing upon a motion for summary judgment, the trial court's function is not to find the  
17 true facts in the case, but to determine whether a triable issue of fact exists. *Eagle Oil & Ref. Co.*  
18 *v. Prentice, 19 Cal.2d 553, 555 [122 P.2d 264]; People v. Rath Packing Co., 44 Cal.App.3d 56,*  
19 *61 [118 Cal.Rptr. 438].* If a triable issue of fact exists, it is error to grant a summary judgment.  
20 *Schrimsher v. Bryson, 58 Cal.App.3d 660, 663 [130 Cal.Rptr. 125].*

21 Here, fairness and reasonableness are the twin criteria of legality. Like reasonableness, the  
22 fairness of conduct is an ad hoc characterization susceptible of assessment by the common  
23 experience of lay jurors. In *Mansfield Propane Gas Co., Inc. v. Folger Gas Co. (1974) 231 Ga.*  
24 *868 [204 S.E.2d 625, 628-629], Schrimsher v. Bryson, supra, 58 Cal.App.3d at p. 664.*

25 **B. Plaintiff’s Cause of Action for Conversion Lacks Merit**  
26  
27  
28



1 CMI continues to cloak their self in the Unlawful Detainer Act as if it divest Plaintiff of all  
2 other rights conferred thereto or themselves of all other Obligations thereto. This is not so as a  
3 matter of law.

4 Conversion is the wrongful exercise of dominion over the property of another. The elements  
5 of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2)  
6 the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages.  
7 Conversion is a strict liability tort. *Oakdale Village Group v. Fong (1996) 43 Cal. App. 4th 539,*  
8 *543-544 [50 Cal. Rptr. 2d 810].*

9 CMI claim that the magical date of October 11, 2011 served as a benchmark to divest  
10 Plaintiff of her Personal Property rights is not consistent with any law. (CMI's Memorandum of  
11 Points and Authorities in Support of Motion for Summary Judgment or Summary Adjudication Pg.  
12 7 line 22 suggest that "After October 11, 2011, Plaintiff had no right to claim possession of the  
13 Personal Property remaining at the condo"). CMI's anticipation that Plaintiff believes a single  
14 voice mail transformed the detention of her Personal Property into a conversion, while this may be  
15 a possible interpretation of law, it a misrepresentation of the extensive and repeated efforts Plaintiff  
16 made to secure the return of Personal Property prior to its disposal, but not nearly as extreme as  
17 CMI claim that the property was abandoned (See declaration of Mark Alston Page 62, line 22, Page  
18 72, line 24)

19 First, Plaintiff made request on October 7, 2011 (see Plaintiff's 4<sup>th</sup> Amended Complaint,  
20 Exhibit 1) and called on October 8, 2011, October 12, 2011 and October 21, 2011 (see Declaration  
21 of Marina J Boyd, Exhibit 1) as well as having left a handwritten note at the condo on October 19,  
22 2011. It has been determined that "refusal of one in possession of real property to permit, upon  
23 demand, the owner of chattels which were left there to remove his goods, constitutes conversion.."  
24 *(Gruber v. Pacific States Sav. & Loan Co., supra, p. 148; Edwards v. Jenkins, 214 Cal. 713, 720*  
25 *[7 P.2d 702]; Wolfe v. Willard H. George, Inc., 110 Cal.App. 532, 535 [294 P. 436]; Atwood v.*  
26 *Southern Calif. Ice Co., 63 Cal.App. 343, 345 [218 P. 283]; see 148 A.L.R. 650; 131 A.L.R. 171;*  
27 *65 C.J. 41.* CMI seeks to summarily dispose of this action solely on their declaration that they did  
28

1 not refuse to permit Plaintiff to remove her Personal Property. There is no requirement that  
2 Plaintiffs request be made by CMI's magical October 11, 2011 date (of the evidence suggest they  
3 are unsure of what date plaintiff needed to claim the personal property), but rather, "In a conversion  
4 action the plaintiff need show only that he was entitled to possession at the time of conversion;"  
5 *Enterprise Leasing Corp. v. Shugart Corp. (1991) 231 Cal.App.3d 737, 748 [282 Cal.Rptr. 620].*  
6 *Irving Nelkin & Co. v. South Beverly Hills Wilshire Jewelry & Loan, 129 Cal. App. 4th 692 (Cal.*  
7 *App. 2d Dist. 2005.* If the possessor, after the Personal Property owner makes such a demand,  
8 "appropriates the chattels to his own use in obvious defiance of the owners' rights, he is liable to  
9 the owner for conversion of them (*Perkins v. Maier & Zobelein Brewery, 134 Cal. 372, 375 [66*  
10 *P. 482]; see Prosser on Torts, p. 108; 148 A.L.R. 655; 131 A.L.R. 174.) *Zaslow v. Kroenert, 29*  
11 *Cal. 2d 541 (Cal. 1946).**

12 California Penal Code §485 "One who finds lost property under circumstances which give  
13 him knowledge of or means of inquiry as to the true owner, and who appropriates such property to  
14 his own use, or to the use of another person not entitled thereto, without first making reasonable  
15 and just efforts to find the owner and to restore the property to him, is guilty of theft." *People v.*  
16 *Stay, 19 Cal. App. 3d 166 (Cal. App. 2d Dist. 1971).*

17 CMI's narrow view of the obligations with regard to Plaintiffs Personal Property are at odds  
18 with Plaintiffs rights of ownership which "are absolute". *Poggi v. Scott, 167 Cal. 372 [139 P. 815,*  
19 *51 L.R.A. N.S. 925]*, held "everyone must be sure of his legal right when he invades the possession  
20 of another; that, "neither good nor bad faith, neither care nor negligence, neither knowledge nor  
21 ignorance, are of the gist of the action. ' . . . Nor, indeed, is negligence any necessary part of the  
22 case. . . . the act itself . . . is unlawful and redressible as a tort.'" *See also Reynolds v. Lerman, 138*  
23 *Cal.App.2d 586 [292 P.2d 559], and 2 Witkin, Summary of Cal. Law, Torts, § 139, pp. 1312-*  
24 *1313.) Haines v. Parra, 193 Cal. App. 3d 1553 (Cal. App. 1st Dist. 1987)*

25 The Supreme Court adopted the general rule of strict liability more than 100 years ago and  
26 has never deviated from it. *Harpending v. Meyer, supra, 55 Cal. at pp. 558, 561; Swim v.*  
27  
28

1 **Wilson, supra, 90 Cal. at p. 129.** As such, Summary Adjudication on this issue would be  
2 improper. *Regent Alliance Ltd. v. Rabizadeh, 231 Cal. App. 4th 1177 (Cal. App. 2d Dist. 2014.*

3 “The plaintiff in a strict liability action is not required to disprove every possible alternative  
4 explanation of the injury in order to have the case submitted to the jury. "It is not incumbent upon  
5 a plaintiff to show that an inference in his favor is the only one that may be reasonably drawn from  
6 the evidence; he need only show that the material fact to be proved may logically and reasonably  
7 be inferred from the circumstantial evidence. *Estate of Rowley [1967] 257 Cal.App.2d 324, 334-  
8 335 [65 Cal.Rptr. 139.*

9 CMI cites Zaslow in support of the motion to adjudicate Plaintiffs Conversion cause of  
10 action, however in this case “there is no evidence tending to prove that either he or Mrs. Kroenert  
11 otherwise exerted any dominion over Zaslow's personal property in denial of or inconsistent with  
12 his rights. Further “no demand was made for the return of the personal property”. That is not the  
13 case in this action.

14 On Summary Judgment, the Court must not evaluate the credibility of witnesses, and to  
15 grant Summary Judgment on this issue would mean that the court has decided that Mr. Alston’s  
16 testimony is more credible than phone records in evidence, that Plaintiffs contact with the Mark  
17 Alston’s Receptionist can be disregarded as a legitimate request for return of their Personal Property  
18 and that his actions following his actual contact with Plaintiff following the disposal of Plaintiffs  
19 Personal Property were the actions of a Reasonable Person in similar circumstances.

20 **C. Plaintiff’s Statutory Causes of Action Lack Merit**

21 **1. Civil Code Sections 1983, 1987, 1988 and 2080 Do not Create a Private Right**  
22 **of Action**

23 *California Civil Codes §§1983, 1987, 1988 and 2080* fall under DIVISION 3 of the  
24 California Civil Code which lays statutory OBLIGATIONS of this code. *Section §1427* of the  
25 Civil Code states “An obligation is a legal duty, by which a person is bound to do or not to do a  
26 certain thing”. *Section §1428(2)* states that “An obligation arises from [t]he operation of law. An  
27  
28

1 obligation arising from operation of law may be enforced in the manner provided by law, or by  
2 civil action or proceeding.”

3 "A private right of action may inhere within a statute, otherwise silent on the point, when  
4 such a private right of action is necessary to achieve the statute's policy objectives. The absence  
5 of an express private right of action is not necessarily preclusive of such a right. There are times  
6 when a private right of action may be implied by a statute. *E.g., Siegel v. American Savings &*  
7 *Loan Assn. (1989) 210 Cal.App.3d 953, 966 [258 Cal. Rptr. 746.*

8 The presence of a comprehensive administrative means of enforcement of a statute was one  
9 of the reasons the court determined that there was no private right of action to enforce a statute.  
10 *Moradi-Shalal, supra, 46 Cal.3d at p. 300*, however, no administrative means of redress exist to  
11 mitigate Plaintiffs damages in this instance. “The question whether a regulatory statute creates a  
12 private right of action depends on legislative intent. ... In determining legislative intent, “[w]e first  
13 examine the words themselves because the statutory language is generally the most reliable  
14 indicator of legislative intent.. *Goehring v. Chapman University (2004) 121 Cal.App.4th 353, 375*  
15 *[17 Cal. Rptr. 3d 39]*: The words of the statute should be given their ordinary and usual meaning  
16 and should be construed in their statutory context. ... These canons generally preclude judicial  
17 construction that renders part of the statute “meaningless or inoperative.” (Italics added, citations  
18 omitted.). *Lexin v. Superior Court (2010) 47 Cal.4th 1050, 1090–1091 [103 Cal. Rptr. 3d 767,*  
19 *222 P.3d 214]*).

20 **2. Civil Code Sections 1983, 1987, 1988 and 2080 Do Not Apply to Plaintiff**

21 **a. The landlord-tenant procedures in sections 1983 and 1987 are not**  
22 **incorporated in the Unlawful Detainer Act**

23 CMI is attempting to independently “decide” which statute they are obligated to adhere  
24 based on a musical chairs and impermissible interpretations of the statute, many of which they are  
25 estopped from arguing. The language of Code of Civil Procedure 1174 encompasses the above  
26 referenced statutes. In fact, CCP 1174 contains no independent “notice” procedures, but instead  
27 refers judgment debtors and creditors to any of Civil Codes Section 1965, 1983, 1987, 1988 and  
28

1 2080 to determine their obligations with regard to Personal Property remaining once the real  
2 property has been delivered to the owner, landlord or judgment creditor.

3 Since CCP 1174 has no provisions for notice of or disposal of Personal Property, a  
4 “disposal” in this code necessitates CMI fulfil one their obligations thereof by notice and disposal  
5 by one of the afore mentioned civil codes.

6 **b. The Personal Property Plaintiff left behind at the condo was not “lost”**  
7 **subject to Section 2080**

8 Code of Civil Procedure 1174 provides that one of the options which CMI had available to  
9 fulfil their obligation not to unlawfully interfere with Plaintiffs Property Rights with under the  
10 Provisions of Civil Code 2080. CMI’s attempt to foreclose on their obligation not to trespass on  
11 Plaintiffs property Rights is not supported in law.

12 This is one of many statutes which govern the disposal of Personal Property of another  
13 which a party has come to have in their control and it is a matter for the trier of fact to determine  
14 which if any of these statutes were violated when CMI disposed of Plaintiffs Personal Property.

15 **3. Plaintiff Cannot Establish a Statutory Violation**

16 **a. Plaintiff received notice of her right to reclaim Personal Property**

17 According to his testimony, Mark Alston posted a notice at the condo on September 23,  
18 2011 (See exhibit 4). The notice posted stated that the property would be stored onsite for 18 days.  
19 The notice posted constituted an express contract and pursuant to Civil Code 1625, the execution  
20 of a contract in writing supersedes all negotiations concerning its matter which preceded or  
21 accompanied the execution of the instrument. Parol evidence is admissible to show a collateral  
22 agreement if it does not vary the terms of the written agreement. *Parker v. Meneley, 106*  
23 *Cal.App.2d 391, 402 [235 P.2d 101]; O'Melia v. Adkins, 73 Cal.App.2d 143 [166 P.2d 298].*  
24 *Bright v. Gineste, 133 Cal. App. 2d 725 (Cal. App. 1st Dist. 1955).*

25 **b. Plaintiff failed to comply with the statutory requirements for reclaiming the**  
26 **personal Property she left behind at the condo**

1 CMI's claim that Plaintiff failed to comply with statutory requirements ignore the  
2 overwhelming evidence of Plaintiffs attempts to claim her personal property. CMI has also argued  
3 that Plaintiff was not a "tenant". In such case, Plaintiff, being a person "other than the tenant",  
4 reasonably believed, to be the owner of the Personal Property was entitled to notice pursuant to  
5 Civil Code §1983.

6 **c. CMI lawfully disposed of the Personal Property left at the condo**

7 As stated above, CMI cannot demonstrate that their actions in handling of Plaintiffs  
8 Personal Property were reasonable or that any of the statutes they claim to have followed in the  
9 disposal of Plaintiffs Personal Property. CMI is solely reliant on the The Doctrine of Res Ipsa  
10 Loquitur to support their claim that Plaintiffs Personal Property was abandoned and therefore their  
11 disposal thereof was lawful, however, this fails based not just on Plaintiffs testimony of the efforts  
12 made to claim her Personal Property, but also the phone records of both Plaintiff and Skyway Realty  
13 which is evidence contrary to their claim. "knowledge may be proven by circumstantial evidence".  
14 *Donchin v. Guerrero, 34 Cal. App. 4th 1832 (Cal. App. 2d Dist. 1995.* If there is any substantial  
15 evidence, or reasonable inferences to be drawn therefrom, in support of the verdict, the [summary  
16 judgment] motion should be denied." *Brandenburg v. Pac. Gas & Elec. Co. (1946) 28 Cal.2d 282,*  
17 *284.*

18 Contrary to Plaintiff not being able to establish a statutory violation, CMI cannot  
19 demonstrate that, by any evidence, let alone as a matter of law, they knew when the time for Plaintiff  
20 to claim Personal Property expired, that they took possession to the Personal Property pursuant to  
21 a valid Writ of Possession, that their actions in handling of Plaintiffs Personal Property were  
22 reasonable or that any of the statutes they claim to have followed in the disposal of Plaintiffs  
23 Personal Property was interpreted in the light most favorable to Plaintiff. On that basis, the Motion  
24 for Summary Adjudication on this issue must be denied "The evidence presented in support of the  
25 motion must be judged not only as to its sufficiency to substantiate a claim or defense, but also as  
26 to its credibility." ....The mere fact that the declaration comes from an interested party creates a  
27 credibility issue". *Frye v. Felder, 246 Cal. App. 2d 136 (Cal. App. 2d Dist. 1966).*

1           **D. All Plaintiff's Causes of action are barred by the Doctrine of Unclean Hands**

2           Not all wrongful conduct constitutes unclean hands. Only if the misconduct is directly  
3 related to the cause at issue can a defendant invoke the doctrine. *Kendall-Jackson, supra, 76*  
4 *Cal.App.4th at p. 979; accord, Farahani, supra, 175 Cal.App.4th at p. 1495* [the conduct must be  
5 relative to the matter in which the plaintiff seeks relief].

6           In Brown, defendant argued “that the clean hands doctrine bars recovery by a plaintiff who  
7 is a mere trespasser or intruder.” (Brown, supra, 203 Cal.App.2d at p. 329.) The court, however,  
8 rejected the defendant's argument. The Court “rejected the defendants' unclean hands defense  
9 because there was no evidence that the plaintiffs acted inequitably toward them. (Id. at pp. 789–  
10 790.) The same is not true in the case cited by CMI, nor is it in this case. In this case, Plaintiff  
11 consistently acted in good faith and one could argue that the reliance on good faith allowed CMI to  
12 violate Plaintiffs Property rights.

13           In addition to finding that Sofia committed a “deceitful act” by recording the quitclaim  
14 deed, the trial court also noted that this conduct “ *Kendall-Jackson, supra, 76 Cal.App.4th at p.*  
15 *979.) Aguayo v. Amaro, 213 Cal. App. 4th 1102 (Cal. App. 2d Dist. 2013.*

16           “The trial of the issue relating to clean hands cannot be distorted into a proceeding to try  
17 the general morals of the parties.” *Boericke v. Weise (1945) 68 Cal.App.2d 407, 419 [156 P.2d*  
18 *781]*. “A person is not placed forever entirely outside the protection of the law in a particular  
19 transaction, because, forsooth, sometime in the distant past he was guilty of an improper act.”  
20 *Nealis v. Carlson (1950) 98 Cal.App.2d 65, 69 [219 P.2d 56]*.

21           The rule is qualified by the requirement that the party against whom the doctrine is sought  
22 to be invoked directly “infected” the actual cause of action before the court, and is not merely guilty  
23 of unrelated improper past conduct. *Moriarity v. Carlson, supra, 184 Cal.App.2d at p. 57.*  
24 *Fibreboard Papers Products Corp. v. East Bay Union of Machinists (1964) 227 Cal.App.2d 675,*  
25 *728 [39 Cal.Rptr. 64]*. In this case, CMI’s allegations of Plaintiffs “unclean hands” have no  
26 infectious effect on the Plaintiffs ownership rights to the Property of which was disposed and CMI  
27 has submitted no evidence that Plaintiff did any damage to CMI’s interest. *Pond v. Ins. Co. of N.*  
28

1 *Am.*, 151 Cal. App. 3d 280 (Cal. App. 2d Dist. 1984. This case is analogous to Le Fevre, where  
2 the court rejected the . . . . unclean hands defense because there was no evidence that the plaintiffs  
3 acted inequitably toward them. (Id. at pp. 789–790.) *Le Fevre v. Borwick (1953) 116 Cal.App.2d*  
4 *786 [254 P.2d 626] (Le Fevre).*

5 **E. Plaintiff’s Claim for Punitive Damages Lacks Merit**

6 On a claim for punitive damages, however, the plaintiff’s burden at trial is to establish  
7 oppression, fraud or malice by clear and convincing evidence. (*Civ. Code, § 3294, subd. (a).*)  
8 Allied-Signal contends this more rigorous evidentiary standard also applies on review of a nonsuit  
9 granted, i.e., to demonstrate error, the plaintiff-appellant must show the existence of clear and  
10 convincing evidence to support a finding of malice, fraud or oppression.

11 “The sufficiency of evidence to establish a given fact, where the law requires proof of the  
12 fact to be clear and convincing, is primarily a question for the [trier of fact] to determine, and if  
13 there is substantial evidence to support its conclusion, the determination is not open to review on  
14 appeal.’ ” *Crail v. Blakely (1973) 8 Cal.3d 744, 750 [106 Cal.Rptr. 187, 505 P.2d 1027, quoting*  
15 *Nat. Auto. & Cas. Co. v. Ind. Acc. Com. (1949) 34 Cal.2d 20, 25 [206 P.2d 841]; see also Beeler*  
16 *v. American Trust Co. (1944) 24 Cal.2d 1, 7 [147 P.2d 583]; Rubin v. Los Angeles Fed. Sav. &*  
17 *Loan Assn. (1984) 159 Cal.App.3d 292, 298 [205 Cal.Rptr. 455]. Where reasonable minds could*  
18 *differ as to whether the evidence would support punitive damages, the resolution of the conflicting*  
19 *inferences and the weighing of opposing evidence is for the jury; for the court to grant a nonsuit in*  
20 *that circumstance, or the appellate court to affirm a judgment of nonsuit, would be to usurp the*  
21 *jury’s function. Hoch v. Allied-Signal, Inc., 24 Cal. App. 4th 48 (Cal. App. 1st Dist. 1994)*

22 "An examination of judicial opinions and statutory law reveals that the jury’s power to  
23 award punitive damages proceeds from its ability to speak for the community. As a group, the jury  
24 is in the best possible position to function as the community’s conscience. A jury’s reactions of  
25 shock and outrage presumably mirror those of the community as a whole. Thus when the jury  
26 decides to make a punitive award, it is expressing society’s disapproval; and when it sets the amount



1 of the award, it measures society's outrage and determines the degree of punishment that society  
2 believes will deter the defendant and others like him." *Borowsky, supra, at pp. 152-153.*

3 [This] holding that the clear-and-convincing standard of proof should be taken into account  
4 in ruling on summary judgment motions does not denigrate the role of the jury. It by no means  
5 authorizes trial on affidavits. Credibility determinations, the weighing of the evidence, and the  
6 drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he  
7 is ruling on a motion for summary judgment or for a directed verdict." *Anderson v. Liberty Lobby,*  
8 *Inc. (1986) 477 U.S. 242, 254-255 [106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202]*; see also *Stewart v.*  
9 *Truck Ins. Exchange (1993) 17 Cal. App. 4th 468, 482 [21 Cal. Rptr. 2d 338]* [citing Anderson  
10 with approval].) Accordingly, although the "clear and convincing" evidentiary standard is a  
11 stringent one, it does not impose on a plaintiff the obligation to "prove" a case for punitive damages  
12 at summary judgment. *Cf. Rowe v. Superior Court (1993) 15 Cal. App. 4th 1711, 1734-1735 [19*  
13 *Cal. Rptr. 2d 625].*

14 Because punitive damages are imposed "for the sake of example and by way of punishing  
15 the defendant" (§ 3294, *subd. (a)*), they are typically awarded for intentional torts such as .....  
16 conversion, (See cases collected in 6 Witkin, Summary of Cal. Law, *supra*, Torts, §§ 1349–1365,  
17 pp. 810–833.) In *Cloud v. Casey, supra, 76 Cal.App.4th at page 912.*

18 Thus, punitive damage awards have been reversed where the defendant took action to  
19 protect or minimize the injury to the plaintiff. *American Airlines, Inc. v. Sheppard, Mullin,*  
20 *Richter & Hampton (2002) 96 Cal.App.4th 1017 [117 Cal. Rptr. 2d 685]* *Mayfield v. Johnson*  
21 *(Miss. 1967) 202 So. 2d 630*, however in this case, not only did CMI not take actions to minimize  
22 damages, but obstructed Plaintiffs access to Daniels A & B Construction which they claim was  
23 responsible for removing Plaintiffs Personal Property (*see Deposition of Plaintiff, Marina J Boyd,*  
24 *Page 117-118, 120-121*).

25 Malice may be proved by circumstantial evidence, and is defined as "that attitude or state  
26 of mind which actuates the doing of an act for some improper or wrongful motive or purpose. It  
27 does not necessarily require that the defendant be angry or vindictive or bear any actual hostility or  
28

1 ill will toward the plaintiff." (*BAJI No. 6.94.*) Absent a declaration of malice by Inspector Ryan,  
2 petitioner could prove malice only by presenting circumstantial evidence. *Laible v. Superior*  
3 *Court, 157 Cal. App. 3d 44 (Cal. App. 1st Dist. 1984).*

4 It is only when the negligence amounts to a reckless or wanton disregard for the truth, so as  
5 to reasonably imply a wilful disregard for or avoidance of accuracy, that malice is shown." *Roemer*  
6 *v. Retail Credit Co. (1970) 3 Cal. App. 3d 368, 371–372 [83 Cal. Rptr. 540]*; see also *Bierbower*  
7 *v. FHP, Inc. (1999) 70 Cal.App.4th 1, 9 [82 Cal. Rptr. 2d 393]* *Noel v. River Hills Wilsons, Inc.,*  
8 *113 Cal. App. 4th 1363 (Cal. App. 4th Dist. 200.)*

9 In this case, CMI piled one disregard upon another. First, no person inquired as to Plaintiffs  
10 Personal Property rights prior to or subsequent to disposal, posted an unmonitored/unreliable phone  
11 number for Skyway Realty, paid for disposal as opposed to mitigating cost by returning personal  
12 Property to Plaintiff, delaying their ability to market the property by waiting for the expiration of  
13 Plaintiffs Property Claim rights to expire instead of expediting removal through returning the  
14 Personal Property to Plaintiff, by disregarding the operational deficiencies of Skyway Realty in the  
15 assignment of future listings, by disregarding the ability of Mark Alston to make reasonable  
16 estimates as to the value of the Personal Property.

17 The Courts have held "There is no question that punitive damages may be recovered in an  
18 action for conversion. (*E.g., Ferraro v. Pacific Fin. Corp. (1970) 8 Cal.App.3d 339 [87 Cal.Rptr.*  
19 *226]*". The Courts have further held that "a general allegation that a defendant acted  
20 wilfully and knowingly in defiance of plaintiffs repeated protests and that the  
21 defendant's conduct was oppressive and malicious and for the purpose of  
22 damaging the plaintiff's lawful business has been held sufficient for the  
23 recovery of exemplary damages. (*Sterling Drug, Inc. v. Benatar, 99 Cal.App.2d 393, 399-*  
24 *400 [221 P.2d 965]*. This is analogous to Plaintiffs repeated request for the return of their "Personal  
25 Property" (*Plaintiffs Fourth Amended Complaint Page 5, ¶ 29, Page 5, ¶ 33, 34, 37, 38, Page 7, ¶*  
26 *44, 45, Page 9, ¶ 54, 59, 60, Page 10, ¶ 61, 62 and associated EXHIBITS IV, V and VII which*  
27  
28

1 *should be incorporated into the Fourth Amended Complaint by reference), while “CMI” gave*  
2 *repeated instruction to Mark Alston to dispose of Plaintiffs Personal Property.*

3 Ratification by a corporate defendant of the acts of their agent may be inferred from the fact  
4 that the employer, after being informed of the employee's actions, does not fully investigate and  
5 fails to repudiate the employee's conduct by redressing the harm done and punishing or discharging  
6 the employee.” **Fisher v. San Pedro Peninsula Hospital (1989) 214 Cal.App.3d 590, 621.** In this  
7 case, not only did CMI not intervene to correct the manner in which Skyway Realty treated  
8 Plaintiffs Personal Property (*SEE Deposition of Mark Alston Page 94, line 16-22*) and in October  
9 2012, they advised him he was “still a preferred agent with Citi” (*see Declaration of Marina J*  
10 *Boyd, Deposition of Krista McCullough, Exhibit 3*). **Mintz v. Blue Cross of California (2009) 172**  
11 **Cal.App.4th 1594, 1605.**

## 12

### 13 **VI. CONCLUSION**

14 CMI’s defense to this action is essentially an affirmative one. It is undisputed that Plaintiff  
15 was the owner of the Personal Property when CMI assumed possession thereof, it is undisputed  
16 that they are responsible for the disposal said Personal Property and Plaintiff is damaged by the  
17 loss of use and enjoyment thereof. In this instance, the burden shifts to CMI to prove their claims  
18 that the property was abandoned and their disposal thereof was lawful. They have not submitted a  
19 preponderance of evidence to support this conclusion, certainly not by summary Judgment. It is a  
20 well-established principle in California that because the summary judgment procedure provided for  
21 in Code of Civil Procedure section 437c is drastic, it should be used with caution in order that it  
22 may not become a substitute for existing methods of determining issues of fact. **Eagle Oil & Ref.**  
23 **Co. v. Prentice, 19 Cal.2d 553, 556 [122 P.2d 264]; Snider v. Snider, 200 Cal.App.2d 741, 748**  
24 **[19 Cal.Rptr. 709].** The cardinal rule is that the affidavits of the moving party should be strictly  
25 construed and those of his opponent liberally construed. **Eagle Oil & Ref. Co. v. Prentice, supra,**  
26 **19 Cal.2d 553, 556; Snider v. Snider, supra, 200 Cal.App.2d 741, 748.) Kramer v. Barnes, 212**  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Cal. App. 2d 440 (Cal. App. 1st Dist. 1963.* For the aforementioned reasons, Defendant's motion for summary judgment must be denied.

DATE: May 16, 2016



---

By: Marina J Boyd