

ORIGINAL FILED

MAY 20 2016

LOS ANGELES SUPERIOR COURT

1 Marina J Boyd, Plaintiff in Pro Per
2 10951 National Blvd., #302
3 Los Angeles, California 90064
4 310-663-4811

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES, WEST DISTRICT - SANTA MONICA**
9

10 MARINA J. BOYD, ANITA FAYE BOYD,
11 ALEXIS BOYD-HOLLING,

12 Plaintiff,

13 v.

14 CMI, INC.; SKYWAY REALTY, and DOES 1-
15 10,

16 Defendants.

Case No. SC117126

Assigned to Hon. Lisa H. Cole
Dept. WE-O

**STATEMENT OF UNDISPUTED
MATERIAL FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION**

Hearing Date: May 25, 2016
Time: 8:30 a.m.
Dept.: WE-O
Reservation No. 150911070483

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

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20 Defendant CMI, Inc. ("CMI") submits the following Separate Statement of Undisputed
21 Material Facts in support of its Motion for Summary Judgment or, in the Alternative, Summary
22 Adjudication.

23 **Issue No. 1: All causes of action are without merit because CMI lawfully disposed of the**
24 **personal property left on its premises in accordance with Code of Civil Procedure section 1174**
25 **and, therefore, is immune from liability to Plaintiff.**

26 *Moving Party's Undisputed Material Facts*
27 *and Supporting Evidence:*

Opposing Party's Response and Supporting
Evidence:

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<p>1. On September 28, 2010, CMI purchased the condominium located at 12321 Ocean Park Boulevard, Unit 1, Los Angeles, California 90064, at a trustee's sale.</p> <p>See Declaration of Cindy Swan ("Swan Decl.") ¶ 5; see also Trustee's Deed Upon Sale, attached to Swan Decl. as Exhibit 1; see also Trustee's Deed Upon Sale, attached to RJN ("RJN") as Exhibit 1.</p>	<p>Undisputed.</p>
<p>2. Prior to the trustee's sale, Plaintiff Marina Boyd had been the owner of the condo.</p> <p>See Fourth Amended Complaint ("4AC") ¶ 19.</p>	<p>Undisputed.</p>
<p>3. CMI entered into a REO Listing Agreement with Skyway Realty pursuant to which Skyway Realty would act as listing broker for the condo. Mark Alston is the owner and broker of Skyway Realty.</p> <p>See Swan Decl. ¶ 6; Declaration of Mark Alston ("Alston Decl.") ¶¶ 2, 4; see also REO Listing Agreement, attached to Swan Decl. as Exhibit 2.</p>	<p>Undisputed.</p>
<p>4. On November 24, 2010, CMI filed a complaint against Plaintiff for unlawful detainer.</p> <p>See Verified Complaint for Unlawful Detainer, attached to RJN as Exhibit 2.</p>	<p>Undisputed.</p>

<p>1 5. A trial was held in the unlawful detainer 2 action on June 22, 2011, and judgment was 3 entered in favor of CMI and against 4 Plaintiff. 5 See 4AC ¶ 23; see also Notice of Entry of 6 Judgment and Judgment, attached to RJN as 7 Exhibit 3.</p>	<p>Undisputed.</p>
<p>8 6. On September 2, 2011, CMI filed an 9 application for issuance of a writ of 10 possession. 11 See Application for Issuance of Writ of 12 Execution, Possession or Sale, attached to RJN 13 as Exhibit 4.</p>	<p>Undisputed.</p>
<p>14 7. On September 2, 2011, the court clerk 15 issued a writ of possession. 16 See Writ of Possession of Real Property, 17 attached to RJN as Exhibit 5.</p>	<p>Undisputed.</p>
<p>18 8. On September 15, 2011, a deputy sheriff 19 served Plaintiff with a copy of the writ of 20 possession and a 5-day notice to vacate the 21 premises. 22 See Return of Attachment/Execution, attached 23 to RJN as Exhibit 6.</p>	<p>Undisputed,</p>
<p>24 9. The writ of possession contains a section 25 titled, "Notice to Person Served," which 26 states, in pertinent part: "WRIT OF 27 POSSESSION OF REAL PROPERTY. If</p>	<p>Undisputed.</p>

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<p>the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises."</p> <p>Writ of Possession of Real Property, p. 2, attached to RJN as Exhibit 5.</p>	
<p>10. Plaintiff acknowledges she received a copy of the writ of possession. Plaintiff also acknowledges that she was aware the writ said she had 15 days to claim any personal property left behind on the premises.</p> <p>See Deposition of Marina Joy Boyd ("Pl.'s Dep.") 69:4-13.</p>	<p>Objection. Mischaracterizes Plaintiffs testimony. (See Declaration of Cathy Granger Exhibit 1, Deposition of Marina Boyd, Pages 63, 64) Vague as to when Plaintiff received a copy of the Writ of Possession.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to having received this notice at an unknown time.</p>
<p>11. After Plaintiff failed to vacate the condo, a deputy sheriff executed the writ of</p>	<p>Disputed. No valid writ of possession existed because the pending federal court case superseded the jurisdiction of the Writ of Possession. (Plaintiffs RJN In Support of</p>

<p>1 possession and placed CMI in possession of 2 the condo on September 22, 2011.</p> <p>3 See Swan Decl. ¶ 9; Alston Decl. ¶ 5; see also 4 Receipt for Possession of Real Property, 5 attached to Swan Decl. as Exhibit 4; Receipt for 6 Possession of Real Property, attached to Alston 7 Decl. as Exhibit 1.</p>	<p>Opposition to Defendants Motion for Summary Judgment, Exhibits 7, 8 and 9).</p>
<p>8 12. Once CMI took possession of the premises 9 on September 22, 2011, pursuant to the writ 10 of possession, Plaintiff had until October 7, 11 2011 to take possession of her personal 12 property remaining on the premises.</p> <p>13 See Writ of Possession of Real Property, p. 2, 14 attached to RJN as Exhibit 5.</p>	<p>Disputed. No valid writ of possession existed because the pending federal court case superseded the jurisdiction of the Writ of Possession. (Plaintiffs RJN In Support of Opposition to Defendants Motion for Summary Judgment, Exhibits 7, 8 and 9)</p>
<p>15 13. CMI's records show that it received no 16 written correspondence or telephone calls 17 from Plaintiff between September 22, 2011 18 and October 7, 2011.</p> <p>19 See Swan Decl. ¶ 12; see also CMI's REO 20 Tracking Property Notes, attached to Swan 21 Decl. as Exhibit 3.</p>	<p>Objection. Mischaracterizes evidence</p> <p>Disputed. CMI entered into a listing agreement with Skyway Realty to act as their agent in the preparation of the condo for sale. Part of the responsibility of Skyway Realty was to handle the personal Property left after Plaintiff vacated the premises. Plaintiff made multiple phone calls to Skyway Realty at 310-665-8694 (SEE EXHIBIT 1 and EXHIBIT 2). CMI's REO Tracking Property Notes are not a complete record (see Declaration of Marina J Boyd, Exhibit 4, Deposition of Kevin Smith CMI Person Most Knowledgeable Page 20).</p>
<p>23 14. The personal property was stored at the 24 condo until it was disposed of on October 25 23, 2011.</p> <p>26 See Alston Decl. ¶ 11; see also Swan Decl. ¶ 27 11.</p>	<p>Objection. As to "the personal property" Mischaracterizes the evidence, which was "Plaintiffs Personal Property". Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>

<p>1 15. Mr. Alston did not receive any calls or 2 messages from Plaintiff before the personal 3 property was disposed of on October 23, 4 2011. 5 See Alston Decl. ¶ 12; Alston Dep. 29:19- 6 30:15; 31:9-13.</p>	<p>Objection. Relevant as to “Mr. Alston”, Lacks foundation, mischaracterizes the evidence. Disputed. Skyway Realty was an agent acting on behalf of CMI, Inc. Plaintiff made multiple phone calls to Skyway Realty at 310-665-8964 and Skyway Realty received the calls (Declaration of Marina J Boyd, Exhibit 1 and 2)</p>
<p>7 16. In her fourth amended complaint, Plaintiff 8 alleges that her sister, Anita Faye Boyd, sent 9 an e-mail to Mr. Alston at 10 malston@alstonMortgage.com on October 11 7, 2011. Mr. Alston did not use the e-mail 12 address malston@alstonMortgage.com at 13 this time, and did not receive any e-mail 14 from Anita Faye Boyd. 15 See 4AC ¶ 29; Alston Decl. ¶ 13; see 16 unauthenticated email, attached to 4AC as 17 Exhibit VII.</p>	<p>Objection. Mischaracterizes evidence. This e-mail was part of a verified complaint and that was signed by Anita Boyd and verified discovery response. Disputed. CMI is asserting an affirmative defense and as thus has a shifted burden of proof. CMI has presented no evidence as to whether this e-mail address was active on October 7, 2011 and has relied on nothing by the representation of Mr. Alston although he testified that he does not know when he discontinued using the e-mail address malston@alstonmortgage.com. (See Declaration of Marina Boyd, Deposition of Mark Alston Page 95)</p>
<p>18 17. In the alleged October 7, 2011 e-mail that 19 Mr. Alston never received, Anita Faye Boyd 20 wrote that she would like to pick up her 21 belongings from the condo. Anita Faye 22 Boyd's alleged e-mail did not reference or 23 request Plaintiff's personal property. 24 See 4AC ¶ 29; unauthenticated email, attached 25 to 4AC as Exhibit VII.</p>	<p>Objection. Relevance, conclusion, Lacks foundation as to Mark Alston does not know when he discontinued using the e-mail address malston@alstonmortgage.com. (See Declaration of Marina Boyd, Mark Alston Deposition Page 95) Disputed. CMI is asserting an affirmative defense and as thus has a shifted burden of proof. CMI has presented no evidence as to whether this e-mail address was active on October 7, 2011 and has relied on nothing by the representation of Mark Alston) although he testified that he does not know when he discontinued using the e-mail address malston@alstonmortgage.com. (See Declaration of Marina Boyd, Deposition Page</p>

<p>1 18. Between the time Plaintiff was evicted and 2 the time the personal property was disposed 3 of, Plaintiff never spoke with Mr. Alston. 4 See Pl.'s Dep. 115:17-116:6. 5</p>	<p>Objection to Evidence. Relevance. Whether or not Plaintiff spoke directly to Mr. Alston. Objection. Secondary Evidence, the records are the best evidence of calls made to Skyway Realty and Calls Received by Skyway Realty. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>6 7 19. Mr. Alston received several calls from the 8 owners of neighboring condos and the 9 property management, saying they saw 10 Plaintiff coming and going from the condo 11 on multiple occasions between September 12 22, 2011 and October 23, 2011. 13 See Alston Decl. ¶ 8; Deposition of Mark 14 Alston ("Alston Dep.") 43:7-44:14; 63:22-25; 15 67:1-2.</p>	<p>Objection: Relevance, Hearsay, vague and ambiguous as to "property management" "from the condo" Disputed as to timeframe.</p>
<p>16 20. When Mr. Alston returned to the condo 17 after receiving these calls, he found his 18 "notices were taken down each time, and 19 one time glue was put in the lock so we 20 couldn't get back in." Mr. Alston assumed 21 Plaintiff was getting whatever property she 22 wanted. 23 Alston Dep. 43:7-44:14</p>	<p>Objection to evidence: Relevance, Conclusion, vague as to "we" (couldn't get back in), notices were taken down each time", "glue was put in the locks" and Mr. Alston assumed "Plaintiff was getting whatever property she wanted" Disputed.</p>
<p>24 21. Plaintiff hired a moving company to move 25 her personal property from the condo into 26 her new apartment on October 2, 2011. 27 See Pl.'s Dep. 94:3-24. 28</p>	<p>Objection: Relevance, as to what personal property is referred to as being taken on October 2, 2011, Plaintiff did not take all of her Personal Property. Disputed. Plaintiff had Personal Property remaining at the condo after October 2, 2011 and made repeated request for access to claim (See Declaration of Marina Boyd, Exhibit 1).</p>

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<p>22. At her deposition, Plaintiff was asked whether she ever broke into the condo and whether she had taken property out of the condo. Plaintiff refused to answer, "objecting based on the Fifth Amendment . . . and because it's not relevant." Plaintiff said she would admit to removing personal items on the day the movers were there; but she would neither admit nor deny removing items or entering the condo at other times.</p> <p>Pl.'s Dep. 101:7-104:1; 110:15-16.</p>	<p>Objection. Relevance. Plaintiff testified via deposition on May 5, 2016 regarding her removal of belongings from the property.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Plaintiffs testimony on November 25, 2013.</p> <p>Plaintiff never made entry into the CONDO unless upon good faith belief that it was permissible (See Declaration of Cathy Granger, Deposition of Marina Boyd Page 94, 96).</p>
<p>23. According to Plaintiff's daughter (who lived with Plaintiff at the condo), the movers took everything they wanted from the condo, and left only the things they did not want to take.</p> <p>See Deposition of Alexis Boyd-Holling ("Boyd-Holling Dep.") 21:10-20.</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken.</p> <p>Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit 1). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>24. Plaintiff's daughter testified that the photos taken by Mr. Alston before October 23, 2011 reflect how the condo looked after they moved out of the condo, and that the items in the photos are the items they didn't want.</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken.</p> <p>Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and</p>

<p>1 See Boyd-Holling Dep. 34:13-24; see also later 2 photos, attached to Alston Decl. as Exhibit 5.</p>	<p>the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>3 25. The later photos reflect that much of the 4 original personal property—including 5 televisions, beds, boxes, and other 6 furniture—was removed from the condo 7 before the remaining property was disposed 8 of. 9 Compare Sept. 22, 2011 photos, attached to 10 Alston Decl. as Exhibit 3; with later photos, 11 attached to Alston Decl. as Exhibit 5.</p>	<p>Objection: Lacks Relevance, hearsay, the term “much” is improper subjective conclusion. What Plaintiff took from the condo either on the day she left or after is not relevant to the property that was disposed to. The photo speak for themselves object</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>12 26. The property that was disposed of on 13 October 23, 2011 included pictures, 14 "trophies and things of sentimental value," 15 old toys, clothes, and boxes. 16 Pl.'s Dep. 106:1-6; see also later photos, 17 attached to Alston Decl. as Exhibit 5.</p>	<p>Objection to evidence: Relevance, hearsay, mischaracterizes testimony.</p> <p>Objection to the description. Mr. Alston prepared a list of items in the unit. Objection to the term “old toys”.</p> <p>Disputed</p>
<p>18 27. Mr. Alston acknowledges that he did not 19 know what was in the boxes and "couldn't 20 tell what was what because there was old 21 food and stuff." 22 Alston Dep. 38:12-16; 41:15-18. 23 24</p>	<p>Objection: Relevance, the nature of the items left are not relevant or the presence of “old food and stuff is not relevant”. Improper Conclusion that “old food” prevented him from what was what”</p> <p>Disputed. CMI is asserting an affirmative defense and thus has a shifted burden of proof to show they that their action were reasonable. If Mr. Alston truly wasn't sure what was what, then it would imply that there could be something of value and thus it would be reasonable to contact Plaintiff.</p>
<p>25 28. Plaintiff believes she is possibly a hoarder. 26 See Pl.'s Dep. 108:18-19. 27 28</p>	<p>Undisputed</p>

<p>1 29. Based on Mr. Alston's knowledge and 2 experience as a real estate broker, including 3 his work with peer groups handling similar 4 valuations, Mr. Alston estimated the resale 5 value of the personal property (i.e. what it 6 would bring at a yard sale or similar sale) 7 remaining in the condo to be \$250.00. 8 See Alston Decl. ¶ 10.</p>	<p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Mr. Alston's estimate of the resale value of the property.</p> <p>Disputed otherwise, if Mr. Alston was obstructed from knowing "what was what" (see CMI undisputed fact #134) by old food, his determination of the property value was unreasonable. CMI is asserting an affirmative defense and as such has a shifted burden of proof to demonstrate that their actions were reasonable.</p>
<p>9 30. Given the fact that Plaintiff returned to the 10 condo several times and removed additional 11 property, Mr. Alston believed she had taken 12 everything of value from the condo. Based 13 on Mr. Alston's personal observations, the 14 personal property remaining in the condo 15 appeared to be items of little or no value 16 which had been abandoned by Plaintiff. 17 Alston Decl. ¶ 9.</p>	<p>Objection: Mr. Alston's belief about the value of Plaintiff's personal property is not relevant. Mr. Alston did not know what was remaining, or what Plaintiff did or did not want from the condo.</p> <p>Disputed. The items belonged to plaintiff, were of value to plaintiff and were not abandoned as demonstrated by evidence Plaintiff contacted Skyway Realty multiple times to arrange to claim her Personal Property.</p>
<p>18 Issue No. 2: Plaintiff's first cause of action for conversion has no merit because Plaintiff 19 cannot establish the essential elements of her claim.</p>	
<p>20 <i>Moving Party's Undisputed Material Facts</i> 21 <i>and Supporting Evidence:</i></p>	<p><i>Opposing Party's Response and Supporting</i> <i>Evidence:</i></p>
<p>22 31. On September 28, 2010, CMI purchased the 23 condominium located at 12321 Ocean Park 24 Boulevard, Unit 1, Los Angeles, California 25 90064, at a trustee's sale. 26 See Swan Decl. ¶ 5; see also Trustee's Deed 27 Upon Sale, attached to Swan Decl. as Exhibit 1;</p>	<p>Undisputed.</p>

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see also Trustee's Deed Upon Sale, attached to RJN as Exhibit 1.	
32. Prior to the trustee's sale, Plaintiff had been the owner of the condo. See 4AC ¶ 19.	Undisputed.
33. CMI entered into a REO Listing Agreement with Skyway Realty pursuant to which Skyway Realty would act as listing broker for the condo. Mark Alston is the owner and broker of Skyway Realty. See Swan Decl. ¶ 6; Alston Decl. ¶¶ 2, 4; see also REO Listing Agreement, attached to Swan Decl. as Exhibit 2.	Undisputed
34. On November 24, 2010, CMI filed a complaint against Plaintiff for unlawful detainer. See Verified Complaint for Unlawful Detainer, attached to RJN as Exhibit 2.	Undisputed.
35. A trial was held in the unlawful detainer action on June 22, 2011, and judgment was entered in favor of CMI and against Plaintiff. See 4AC ¶ 23; see also Notice of Entry of Judgment and Judgment, attached to RJN as Exhibit 3.	Undisputed.
36. On September 2, 2011, the court clerk issued a writ of possession.	Undisputed

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<p>See Writ of Possession of Real Property, attached to RJN as Exhibit 5.</p>	
<p>37. On September 15, 2011, a deputy sheriff served Plaintiff with a copy of the writ of possession and a 5-day notice to vacate the premises.</p> <p>See Return of Attachment/Execution, attached to RJN as Exhibit 6.</p>	<p>Undisputed.</p>
<p>38. The writ of possession contains a section titled, "Notice to Person Served," which states, in pertinent part: "WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property.</p> <p>Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later</p>	<p>Undisputed.</p>

<p>1 than 15 days after the time the judgment 2 creditor takes possession of the premises." 3 Writ of Possession of Real Property, p. 2, 4 attached to RJN as Exhibit 5.</p>	
<p>5 39. After Plaintiff failed to vacate the condo, a 6 deputy sheriff executed the writ of 7 possession and placed CMI in possession of 8 the condo on September 22, 2011. 9 See Swan Decl. ¶ 9; Alston Decl. ¶ 5; see also 10 Receipt for Possession of Real Property, 11 attached to Swan Decl. as Exhibit 4; Receipt for 12 Possession of Real Property, attached to Alston 13 Decl. as Exhibit 1.</p>	<p>Disputed. No valid writ of possession existed because the pending federal court case superseded the jurisdiction of the Writ of Possession. (Plaintiffs RJN In Support of Opposition to Defendants Motion for Summary Judgment, Exhibits 7, 8 and 9)</p>
<p>14 40. On September 23, 2011, Mr. Alston posted 15 a notice at the condo, stating that the 16 personal property had been stored on-site 17 and would be disposed of after 18 days from 18 the date of the posting, i.e., after October 19 11, 2011. The notice also stated Skyway 20 Realty's office address and phone number 21 and Mr. Alston's direct cell phone number. 22 See Alston Decl. ¶ 6; Alston Dep. 34:25-35:1; 23 Swan Decl. ¶ 10; see also Sept. 23, 2011 notice, 24 attached to Alston Decl. as Exhibit 3; Sept. 23, 25 2011 notice, attached to Swan Decl. as Exhibit 26 5.</p>	<p>Objection. Conclusion. Notice is the best evidence of its content. Objection to “i.e. after October 11, 2011” is not on the notice. The notice speaks for itself.</p>

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<p>1 41. Plaintiff saw the September 23, 2011 notice 2 after it was posted. 3 See Pl.'s Dep. 77:7-9. 4 5</p>	<p>Objection. Vague as to “after it was posted” Plaintiff has no personal knowledge of when the notice was posted.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>6 42. CMI's records show that it received no 7 written correspondence or telephone calls 8 from Plaintiff between September 22, 2011 9 and October 11, 2011. 10 See Swan Decl. ¶ 12; see also CMI's REO 11 Tracking Property Notes, attached to Swan 12 Decl. as Exhibit 3. 13 14</p>	<p>Objection. Mischaracterizes evidence</p> <p>Disputed. CMI entered into a listing agreement with Skyway Realty to act as their agent in the preparation of the condo for sale. Part of the responsibility of Skyway Realty was to handle the personal Property left after Plaintiff vacated the premises. Plaintiff made multiple phone calls to Skyway Realty at 310-665-8694 (SEE EXHIBIT 1 and EXHIBIT 2). CMI’s REO Tracking Property Notes are not a complete record (see Declaration of Marina J Boyd, Exhibit 4, Deposition of Kevin Smith CMI Person Most Knowledgeable Page 20). CMI is asserting an affirmative defense and thus has a shifted burden of proof.</p>
<p>15 43. The personal property was stored at the 16 condo until it was disposed of on October 17 23, 2011. 18 See Alston Decl. ¶ 11; see also Swan Decl. ¶ 19 11. 20</p>	<p>Objection. As to “the personal property” Mischaracterizes the evidence, which was “Plaintiffs Personal Property”.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>21 44. CMI did not receive any written 22 correspondence or telephone calls from 23 Plaintiff between September 22, 2011 and 24 October 23, 2011. 25 See Swan Decl. ¶ 12; see also CMI's REO 26 Tracking Property Notes, attached to Swan 27 Decl. as Exhibit 3. 28</p>	<p>Objection. Mischaracterizes evidence</p> <p>Disputed. CMI entered into a listing agreement with Skyway Realty to act as their agent in the preparation of the condo for sale. Part of the responsibility of Skyway Realty was to handle the personal Property left after Plaintiff vacated the premises. Plaintiff made multiple phone calls to Skyway Realty at 310-665-8694 (SEE EXHIBIT 1 and EXHIBIT 2). CMI’s REO Tracking Property Notes are not a complete record (see Declaration of Marina J Boyd, Exhibit 4, Deposition of Kevin Smith CMI Person Most Knowledgeable Page 20).). CMI is asserting an</p>

1	affirmative defense and thus has a shifted burden of proof.
2 3 4 5 6 7 8 9	Disputed. Skyway Realty was an agent acting on behalf of CMI, Inc. Plaintiff made multiple phone calls to Skyway Realty at 310-665-8694 (see Declaration of Marina J Boyd Exhibit 1) Objection to Evidence. The declarant has no personal knowledge of Plaintiffs communication to their agent requesting the return of Personal Property. The absence of such notation in the REO Property notes are not relevant since the REO property notes do not contain all communication regarding the SUBJECT PROPERTY.). CMI is asserting an affirmative defense and thus has a shifted burden of proof.
10 11 12 13 14 15 16 17	Disputed. Skyway Realty was an agent acting on behalf of CMI, Inc. Plaintiff made multiple phone calls to Skyway Realty at 310-665-8694 (see Declaration of Marina J Boyd Exhibit 1) Objection. The declarant has no personal knowledge of Plaintiffs communication to their agent requesting the return of Personal Property. The absence of such notation in the REO Property notes are not relevant since the REO property notes do not contain all communication regarding the SUBJECT PROPERTY.). CMI is asserting an affirmative defense and thus has a shifted burden of proof that the property was abandoned.
18 19 20 21 22 23 24 25 26	Objection. Mischaracterizes evidence. This e-mail was part of a verified complaint and that was signed by Anita Boyd and verified discovery response. Disputed. CMI is asserting an affirmative defense and as thus has a shifted burden of proof. CMI has presented no evidence as to whether this e-mail address was active on October 7, 2011 and has relied on nothing by the representation of Mr. Alston although he testified that he does not know when he discontinued using the e-mail address malston@alstonmortgage.com. (See Declaration of Marina Boyd, Deposition of Mark Alston Page 95)

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<p>1 See 4AC ¶ 29; Alston Decl. ¶ 13; see 2 unauthenticated email, attached to 4AC as 3 Exhibit VII.</p>	
<p>4 48. In the alleged October 7, 2011 e-mail that 5 Mr. Alston never received, Anita Faye Boyd 6 wrote that she would like to pick up her 7 belongings from the condo. Anita Faye 8 Boyd's alleged e-mail did not reference or 9 request Plaintiff's personal property. 10 See 4AC ¶ 29; unauthenticated email, attached 11 to 4AC as Exhibit VII.</p>	<p>Objection. Mischaracterizes evidence. This e-mail was part of a verified complaint and that was signed by Anita Boyd and verified discovery response.</p> <p>Disputed. CMI is asserting an affirmative defense and as thus has a shifted burden of proof. CMI has presented no evidence as to whether this e-mail address was active on October 7, 2011 and has relied on nothing by the representation of Mr. Alston although he testified that he does not know when he discontinued using the e-mail address malston@alstonmortgage.com. (See Declaration of Marina Boyd, Deposition Page 95)</p>
<p>12 49. Plaintiff's phone records reflect that Plaintiff 13 placed a call to Skyway Realty's office on 14 Saturday, October 8, 2011. This was the 15 first time Plaintiff attempted to call Mr. 16 Alston after her eviction. Plaintiff says she 17 left a voicemail for Mr. Alston. 18 See phone records, attached to 4AC as Exhibit 19 VIII; Pl.'s Dep. 79:13-24; see also 4AC ¶ 33.</p>	<p>Objection. Relevance, secondary evidence. The phone records speak for themselves. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>20 50. Mr. Alston did not receive or hear this 21 purported October 8, 2011 voicemail. 22 See Alston Decl. ¶ 12.</p>	<p>Disputed. CMI is asserting an affirmative defense and thus has a shifted burden of proof that Plaintiffs message was not received.</p>
<p>23 51. Plaintiff "didn't think it to be urgent" that 24 she reach Mr. Alston after October 8. 25 Alston Dep. 89:23-24.</p>	<p>Objection. Relevance. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>26 52. Plaintiff's phone records reflect that, after 27 the call placed on October 8, Plaintiff next 28</p>	<p>Objection. Secondary Evidence, the records are the best evidence of calls made.</p>

<p>1 placed a call to Skyway Realty's office on 2 October 12, 2011. During this call, Plaintiff 3 either left a voicemail or left a message with 4 the receptionist. 5 See phone records, attached to 4AC as Exhibit 6 VIII; Pl.'s Dep. 79:8-24; 80:23-81:7.</p>	<p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed as to phone records in evidence.</p>
<p>7 53. Plaintiff says she stuck a note in the front 8 door of the condo sometime around October 9 19, 2011. Mr. Alston did not receive this 10 alleged note. Plaintiff admits there is no 11 evidence that Mr. Alston received this 12 alleged note. 13 See 4AC ¶ 34; Alston Decl. ¶ 12; Pl.'s Dep. 14 90:3-18; 108:24-109:2; 113:8-13.</p>	<p>Disputed. CMI is asserting an affirmative defense and as thus has a shifted burden of proof. CMI has presented no evidence that this note was not received.</p>
<p>15 54. Plaintiff says she drove by the condo several 16 times to see if Mr. Alston was there. 17 See Pl.'s Dep. 89:23-90:2; 114:16-115-16.</p>	<p>Undisputed.</p>
<p>18 55. Between the time Plaintiff was evicted and 19 the time the personal property was disposed 20 of, Plaintiff never spoke with Mr. Alston. 21 See Pl.'s Dep. 115:17-116:6.</p>	<p>Objection to Evidence. Relevance. Whether or not Plaintiff spoke directly to Mr. Alston. Objection. Secondary Evidence, the records are the best evidence of calls made to Skyway Realty. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>22 23 56. If Mr. Alston had received a call, he 24 "absolutely" would have made arrangements 25 for Plaintiff to retrieve the property. 26 Alston Dep. 106:21-23.</p>	<p>Objection. Lacks foundation, speculation. Disputed. Skyway Realty DID receive calls. Evidence suggest Mr. Alston was having significant financial problems at the time of the conversion (See Declaration of Marina J Boyd, Exhibit 4, RJN Bankruptcy Filing of Mark Edward Alston). Further evidence suggest that Mr. Alston does not always do the right thing</p>

1	(Plaintiff RJN Exhibit 1-2, and Declaration of Marina Boyd, Exhibit 3)
<p>2 57. It was in Mr. Alston's best interest to have</p> <p>3 Plaintiff remove her personal property</p> <p>4 because "[t]he more the previous owner</p> <p>5 removes, the less it is for us to work with, to</p> <p>6 have to work with."</p> <p>7 Alston Dep. 69:2-4.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p>	<p>Objection. Lacks foundation as to what Mr. Alston considered to be his "best interest. Disputed. Evidence suggest that Mr. Alston was had competing interest which may have been served by either keeping CMI happy (See Declaration of Marina J Boyd, Deposition of Krista McCullough Exhibit 3), and having significant financial problems at the time of the conversion (See Declaration of Marina J Boyd, Exhibit 3, RJN Exhibit 1 and 2 Bankruptcy Filings of Mark Edward Alston). Mr. Alston was relative to be reimbursed by CMI for his approved expenses, including the property trashout. Mr. Alston continued to be a "preferred agent" with CMI even after his disposal of Plaintiffs Personal Property and has been given Additional properties to list. Mr. Alston has filed for bankruptcy in effort to prevent plaintiff from recovering any damages.</p>
<p>13 58. Mr. Alston received several calls from the</p> <p>14 owners of neighboring condos and the</p> <p>15 property management, saying they saw</p> <p>16 Plaintiff coming and going from the condo</p> <p>17 on multiple occasions between September</p> <p>18 22, 2011 and October 23, 2011.</p> <p>19 See Alston Decl. ¶ 8; Alston Dep. 43:7-44:14;</p> <p>20 63:22-25; 67:1-2.</p>	<p>Objection: Relevance, Hearsay, vague and ambiguous as to "property management" "from the condo"</p> <p>Disputed as to timeframe.</p>
<p>21 59. When Mr. Alston returned to the condo</p> <p>22 after receiving these calls, he found his</p> <p>23 "notices were taken down each time, and</p> <p>24 one time glue was put in the lock so we</p> <p>25 couldn't get back in." Mr. Alston assumed</p> <p>26 Plaintiff was getting whatever property she</p> <p>27 wanted.</p> <p>28</p>	<p>Objection. Relevance, lacks foundation, vague as to "we" (couldn't get back in), notices were taken down each time", "glue was put in the locks" and Mr. Alston assumed "Plaintiff was getting whatever property she wanted"</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Mr. Alston's testimony</p>

<p>1 Alston Dep. 43:7-44:14</p>	
<p>2 60. Plaintiff hired a moving company to move 3 her personal property from the condo into 4 her new apartment on October 2, 2011. 5 See Pl.'s Dep. 94:3-24.</p>	<p>Objection: Relevance, as to what personal property is referred to as being taken on October 2, 2011, Plaintiff did not take all of her Personal Property.</p> <p>Disputed. Plaintiff had Personal Property remaining at the condo after October 2, 2011 and made repeated request for access to claim (See Declaration of Marina Boyd, Exhibit 1).</p>
<p>7 61. At her deposition, Plaintiff was asked 8 whether she ever broke into the condo and 9 whether she had taken property out of the 10 condo. Plaintiff refused to answer, 11 "objecting based on the Fifth Amendment . . 12 . and because it's not relevant." Plaintiff said 13 she would admit to removing personal items 14 on the day the movers were there; but she 15 would neither admit nor deny removing 16 items or entering the condo at other times. 17 Pl.'s Dep. 101:7-104:1; 110:15-16.</p>	<p>Objection. Relevance. Plaintiff testified via deposition on May 5, 2016 regarding her removal of belongings from the property.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Plaintiffs testimony on November 25, 2013.</p> <p>Plaintiff never made entry into the CONDO unless upon good faith belief that it was permissible (See Declaration of Cathy Granger, Deposition of Marina Boyd Page 94, 96).</p>
<p>18 62. According to Plaintiff's daughter (who lived 19 with Plaintiff at the condo), the movers took 20 everything they wanted from the condo, and 21 left only the things they did not want to 22 take. 23 See Boyd-Holling Dep. 21:10-20.</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken.</p> <p>Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>27 63. Plaintiff's daughter testified that the photos 28 taken by Mr. Alston before October 23,</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from</p>

<p>1 2011 reflect how the condo looked after 2 they moved out of the condo, and that the 3 items in the photos are the items they didn't 4 want. 5 See Boyd-Holling Dep. 34:13-24; see also later 6 photos, attached to Alston Decl. as Exhibit 5.</p>	<p>the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken. Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>8 64. The later photos reflect that much of the 9 original personal property—including 10 televisions, beds, boxes, and other 11 furniture—was removed from the condo 12 before the remaining property was disposed 13 of. 14 Compare Sept. 22, 2011 photos, attached to 15 Alston Decl. as Exhibit 3; with later photos, 16 attached to Alston Decl. as Exhibit 5.</p>	<p>Objection: Lacks Relevance, hearsay, the term “much” is improper subjective conclusion. What Plaintiff took from the condo either on the day she left or after is not relevant to the property that was disposed to. The photo speak for themselves object Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>17 65. The property that was disposed of on 18 October 23, 2011 included pictures, 19 "trophies and things of sentimental value," 20 old toys, clothes, and boxes. 21 Pl.'s Dep. 106:1-6; see also later photos, 22 attached to Alston Decl. as Exhibit 5.</p>	<p>Objection to evidence: Relevance, hearsay, mischaracterizes testimony. Objection to the description. Mr. Alston prepared a list of items in the unit. Objection to the term “old toys”. Disputed</p>
<p>23 66. Plaintiff believes she is possibly a hoarder. 24 See Pl.'s Dep. 108:18-19.</p>	<p>Undisputed</p>
<p>25 67. Based on Mr. Alston's knowledge and 26 experience as a real estate broker, including 27 his work with peer groups handling similar 28</p>	<p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed as to Mr. Alston’s estimate of the resale value of the property.</p>

<p>1 valuations, Mr. Alston estimated the resale 2 value of the personal property (i.e. what it 3 would bring at a yard sale or similar sale) 4 remaining in the condo to be \$250.00. 5 See Alston Decl. ¶ 10.</p>	<p>Disputed otherwise, if Mr. Alston was obstructed from knowing “what was what” (see CMI undisputed fact #134) by old food, his determination of the property value was unreasonable. CMI is asserting an affirmative defense and as such has a shifted burden of proof to demonstrate that their actions were reasonable.</p>
<p>6 68. Given the fact that Plaintiff returned to the 7 condo several times and removed additional 8 property, Mr. Alston believed she had taken 9 everything of value from the condo. Based 10 on Mr. Alston's personal observations, the 11 personal property remaining in the condo 12 appeared to be items of little or no value 13 which had been abandoned by Plaintiff. 14 Alston Decl. ¶ 9.</p>	<p>Objection: Mr. Alston’s belief about the value of Plaintiff's personal property is not relevant. Mr. Alston did not know what was remaining, or what Plaintiff did or did not want from the condo. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Mr. Alston’s representation of his estimate of the resale value of the property.</p> <p>Disputed as to the value of the items, or even the appearance of their value. CMI is asserting an affirmative defense and as thus has a shifted burden of proof. CMI has presented no evidence that the property was abandoned.</p>
<p>16 69. Mr. Alston did not receive any 17 communication from Plaintiff until October 18 28, 2011, when he found a note from 19 Plaintiff left in the back door of his office. 20 See Alston Decl. ¶ 14; Alston Dep. 29:19- 21 30:15; 32:12-14.</p>	<p>Objection to evidence: Relevance.</p> <p>Disputed. Skyway Realty was an agent acting on behalf of CMI, Inc. Plaintiff made multiple phone calls to Skyway Realty at 310-665- (See Declaration of Marina J Boyd, Exhibit 1 and 2) CMI is asserting an affirmative defense and as thus has a shifted burden of proof. CMI has presented no evidence that they did not receive Plaintiff's documented or alleged communications.</p>
<p>23 70. In the note Mr. Alston found on or about 24 October 28, 2011, Plaintiff wrote that she 25 had left messages "at your Culver City 26 office." Mr. Alston did not have a Culver 27 City office at this time.</p>	<p>Undisputed</p>

<p>1 See Alston Decl. ¶ 15; see also Oct. 28, 2011 2 letter, attached to Alston Decl. as Exhibit 7.</p>	
<p>3 71. In the note Mr. Alston found on or about 4 October 28, 2011, Plaintiff wrote that she 5 had left messages "on your office phone at 6 310-663-8964." That number was not and 7 had never been Mr. Alston's office 8 telephone number. 9 See Alston Decl. ¶ 16; see also Oct. 28, 2011 10 letter, attached to Alston Decl. as Exhibit 7.</p>	<p>Objection. Relevance. This mis-represents the facts which show that Plaintiff called the correct office number of Skyway Realty.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>Issue No. 3: Plaintiff's third, fourth, fifth and seventh causes of action have no merit because Plaintiff has no private right of action under Civ. Code, §§ 1983, 1987, 1988, or 2080.</p>	
<p><i>Moving Party's Undisputed Material Facts and Supporting Evidence:</i></p>	<p><i>Opposing Party's Response and Supporting Evidence:</i></p>
<p>15 72. Whether Civil Code sections 1983, 1987, 16 1988, and 2080 provide Plaintiff a private 17 right of action is a pure question of law that 18 does not turn on facts or evidence.</p>	<p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Disputed.</p>
<p>Issue No. 4: Plaintiff's third cause of action for violation of Civil Code section 1983 has no merit because CMI did not owe a legal duty to Plaintiff pursuant to section 1983.</p>	
<p><i>Moving Party's Undisputed Material Facts and Supporting Evidence:</i></p>	<p><i>Opposing Party's Response and Supporting Evidence:</i></p>
<p>23 73. Plaintiff's fourth amended complaint does 24 not allege a landlord-tenant relationship 25 with CMI. 26 Cf. 4AC ¶¶ 19-23. 27 28</p>	<p>Objection. Relevance. Code of Civil Procedure states that Judgment Creditor and Judgment Debtor are synonymous to landlord and tenant for the purposes of that statute and statutes incorporated by reference.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p>

1	Undisputed that Plaintiff did not allege a landlord-tenant relationship with CMI.
2 3 4 5 6 7 8 9	Undisputed. 74. On September 28, 2010, CMI purchased the condominium located at 12321 Ocean Park Boulevard, Unit 1, Los Angeles, California 90064, at a trustee's sale. See Swan Decl. ¶ 5; see also Trustee's Deed Upon Sale, attached to Swan Decl. as Exhibit 1; see also Trustee's Deed Upon Sale, attached to RJN as Exhibit 1.
10 11 12	Undisputed. 75. Prior to the trustee's sale, Plaintiff Marina Boyd had been the owner of the condo. See 4AC ¶ 19.
13 14 15 16 17	Undisputed. 76. On November 24, 2010, CMI filed a complaint against Plaintiff for unlawful detainer. See Verified Complaint for Unlawful Detainer, attached to RJN as Exhibit 2.
18 19 20 21 22 23 24	Undisputed. 77. A trial was held in the unlawful detainer action on June 22, 2011, and judgment was entered in favor of CMI and against Plaintiff. See 4AC ¶ 23; see also Notice of Entry of Judgment and Judgment, attached to RJN as Exhibit 3.
25 26	Undisputed. 78. On September 2, 2011, the court clerk issued a writ of possession.

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<p>See Writ of Possession of Real Property, attached to RJN as Exhibit 5.</p>	
<p>79. On September 15, 2011, a deputy sheriff served Plaintiff with a copy of the writ of possession and a 5-day notice to vacate the premises.</p> <p>See Return of Attachment/Execution, attached to RJN as Exhibit 6.</p>	<p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>80. The writ of possession contains a section titled, "Notice to Person Served," which states, in pertinent part: "WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property.</p> <p>Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later</p>	<p>Objection.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>

<p>1 than 15 days after the time the judgment 2 creditor takes possession of the premises." 3 Writ of Possession of Real Property, p. 2, 4 attached to RJN as Exhibit 5.</p>	
<p>5 81. Plaintiff acknowledges she received a copy 6 of the writ of possession. Plaintiff also 7 acknowledges that she was aware the writ 8 said she had 15 days to claim any personal 9 property left behind on the premises. 10 See Pl.'s Dep. 69:4-13.</p>	<p>Objection. Mischaracterizes Plaintiffs testimony. (See Declaration of Cathy L Granger, Exhibit 1 Deposition of Marina Boyd, Pages 63, 64) Vague as to when Plaintiff received a copy of the Writ of Possession.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to having received this notice at an unknown time.</p>
<p>12 82. After Plaintiff failed to vacate the condo, a 13 deputy sheriff executed the writ of 14 possession and placed CMI in possession of 15 the condo on September 22, 2011. 16 See Swan Decl. ¶ 9; Alston Decl. ¶ 5; see also 17 Receipt for Possession of Real Property, 18 attached to Swan Decl. as Exhibit 4; Receipt for 19 Possession of Real Property, attached to Alston 20 Decl. as Exhibit 1.</p>	<p>Disputed. No valid writ of possession existed because the pending federal court case superseded the jurisdiction of the Writ of Possession. . (Plaintiffs RJN In Support of Opposition to Defendants Motion for Summary Judgment, Exhibits 7, 8 and 9)</p>
<p>21 83. CMI has never been Plaintiff's landlord and 22 never received any payment from Plaintiff 23 for the time she remained in the condo 24 following the trustee's sale. 25 See Swan Decl. ¶ 15.</p>	<p>Disputed.</p>
<p>Issue No. 5: Plaintiff's third cause of action for violation of Civil Code section 1983 has no merit because Plaintiff received notice that substantially complied with section 1983.</p>	

<p>1 <i>Moving Party's Undisputed Material Facts</i></p> <p>2 <i>and Supporting Evidence:</i></p>	<p><i>Opposing Party's Response and Supporting Evidence:</i></p>
<p>3 84. On September 2, 2011, the court clerk</p> <p>4 issued a writ of possession.</p> <p>5 See Writ of Possession of Real Property,</p> <p>6 attached to RJN as Exhibit 5.</p>	<p>Undisputed.</p>
<p>7 85. On September 15, 2011, a deputy sheriff</p> <p>8 served Plaintiff with a copy of the writ of</p> <p>9 possession and a 5-day notice to vacate the</p> <p>10 premises.</p> <p>11 See Return of Attachment/Execution, attached</p> <p>12 to RJN as Exhibit 6.</p>	<p>Undisputed.</p>
<p>13 86. The writ of possession contains a section</p> <p>14 titled, "Notice to Person Served," which</p> <p>15 states, in pertinent part: "WRIT OF</p> <p>16 POSSESSION OF REAL PROPERTY. If</p> <p>17 the premises are not vacated within five</p> <p>18 days after the date of service on the</p> <p>19 occupant or, if service is by posting, within</p> <p>20 five days after service on you, the levying</p> <p>21 officer will remove the occupants from the</p> <p>22 real property and place the judgment</p> <p>23 creditor in possession of the property.</p> <p>24 Except for a mobile home, personal</p> <p>25 property remaining on the premises will be</p> <p>26 sold or otherwise disposed of in accordance</p> <p>27 with CCP 1174 unless you or the owner of</p>	<p>Objection: Secondary evidence.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>

<p>1 the property pays the judgment creditor the 2 reasonable cost of storage and takes 3 possession of the personal property not later 4 than 15 days after the time the judgment 5 creditor takes possession of the premises." 6 Writ of Possession of Real Property, p. 2, 7 attached to RJN as Exhibit 5.</p>	
<p>8 87. Plaintiff acknowledges she received a copy 9 of the writ of possession. Plaintiff also 10 acknowledges that she was aware the writ 11 said she had 15 days to claim any personal 12 property left behind on the premises. 13 See Pl.'s Dep. 69:4-13.</p>	<p>Objection. Mischaracterizes Plaintiffs testimony. (See Declaration of Cathy L Granger, Exhibit 1 Deposition of Marina Boyd, Pages 63, 64) Vague as to when Plaintiff received a copy of the Writ of Possession.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to having received this notice at an unknown time.</p>
<p>15 88. After Plaintiff failed to vacate the condo, a 16 deputy sheriff executed the writ of 17 possession and placed CMI in possession of 18 the condo on September 22, 2011. 19 See Swan Decl. ¶ 9; Alston Decl. ¶ 5; see also 20 Receipt for Possession of Real Property, 21 attached to Swan Decl. as Exhibit 4; Receipt for 22 Possession of Real Property, attached to Alston 23 Decl. as Exhibit 1.</p>	<p>Objection.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Disputed.</p>
<p>24 89. Plaintiff testified that she was handed a 25 notice at the time of the eviction, which 26 "said that I needed to contact the real estate 27 agency within 18 days I believe it said in 28 order to get the rest of my belongings, and I</p>	<p>Undisputed.</p>

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<p>think it may have said that they would be disposed of or something like that after that, but it did say specifically that I needed to contact someone to make arrangements." Pl.'s Dep. 70:16-71:13.</p>	
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<p>90. On September 23, 2011, Mr. Alston posted a notice at the condo, stating that the personal property had been stored on-site and would be disposed of after 18 days from the date of the posting, i.e., after October 11, 2011. The notice also stated Skyway Realty's office address and phone number and Mr. Alston's direct cell phone number. See Alston Decl. ¶ 6; Alston Dep. 34:25-35:1; Swan Decl. ¶ 10; see also Sept. 23, 2011 notice, attached to Alston Decl. as Exhibit 3; Sept. 23, 2011 notice, attached to Swan Decl. as Exhibit 5.</p>	<p>Objection. Conclusion. Notice is the best evidence of its content. Objection to “i.e. after October 11, 2011” is not on the notice, Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Disputed</p>
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<p>91. Plaintiff saw the September 23, 2011 notice after it was posted. See Pl.'s Dep. 77:7-9.</p>	<p>Objection. Vague as to “after it was posted” Plaintiff has no personal knowledge of when the notice was posted. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
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Issue No. 6: Plaintiff's fourth cause of action for violation of Civil Code section 1987 has no merit because CMI did not owe a legal duty to Plaintiff pursuant to section 1987.

<p><i>Moving Party's Undisputed Material Facts and Supporting Evidence:</i></p>	<p><i>Opposing Party's Response and Supporting Evidence:</i></p>
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<p>1 92. Plaintiff's fourth amended complaint does 2 not allege a landlord-tenant relationship 3 with CMI. 4 Cf. 4AC ¶¶ 19-23. 5 6 7 8</p>	<p>Objection. Relevance. 715.030 (m) makes clear that "For this purpose, references in Section 1174 and in provisions incorporated by reference in Section 1174 to the "landlord" shall be deemed to be references to the judgment creditor and references to the "tenant" shall be deemed to be references to the judgment debtor or other occupant.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed that Plaintiffs does not allege a landlord-tenant relationship</p>
<p>9 10 93. On September 28, 2010, CMI purchased the 11 condominium located at 12321 Ocean Park 12 Boulevard, Unit 1, Los Angeles, California 13 90064, at a trustee's sale. 14 See Swan Decl. ¶ 5; see also Trustee's Deed 15 Upon Sale, attached to Swan Decl. as Exhibit 1; 16 see also Trustee's Deed Upon Sale, attached to 17 RJN as Exhibit 1.</p>	<p>Undisputed.</p>
<p>18 94. Prior to the trustee's sale, Plaintiff Marina 19 Boyd had been the owner of the condo. 20 See 4AC ¶ 19.</p>	<p>Undisputed.</p>
<p>21 95. On November 24, 2010, CMI filed a 22 complaint against Plaintiff for unlawful 23 detainer. 24 See Verified Complaint for Unlawful Detainer, 25 attached to RJN as Exhibit 2.</p>	<p>Undisputed.</p>
<p>26 96. A trial was held in the unlawful detainer 27 action on June 22, 2011, and judgment was 28</p>	<p>Undisputed.</p>

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<p>entered in favor of CMI and against Plaintiff.</p> <p>See 4AC ¶ 23; see also Notice of Entry of Judgment and Judgment, attached to RJN as Exhibit 3.</p>	
<p>97. On September 2, 2011, the court clerk issued a writ of possession.</p> <p>See Writ of Possession of Real Property, attached to RJN as Exhibit 5.</p>	<p>Undisputed.</p>
<p>98. On September 15, 2011, a deputy sheriff served Plaintiff with a copy of the writ of possession and a 5-day notice to vacate the premises.</p> <p>See Return of Attachment/Execution, attached to RJN as Exhibit 6.</p>	<p>Disputed. Conclusion. Plaintiff does not know when Writ of Possession was served.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>99. The writ of possession contains a section titled, "Notice to Person Served," which states, in pertinent part: "WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property.</p> <p>Except for a mobile home, personal</p>	<p>Undisputed.</p>

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<p>property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises."</p> <p>Writ of Possession of Real Property, p. 2, attached to RJN as Exhibit 5.</p>	
<p>100. After Plaintiff failed to vacate the condo, a deputy sheriff executed the writ of possession and placed CMI in possession of the condo on September 22, 2011.</p> <p>See Swan Decl. ¶ 9; Alston Decl. ¶ 5; see also Receipt for Possession of Real Property, attached to Swan Decl. as Exhibit 4; Receipt for Possession of Real Property, attached to Alston Decl. as Exhibit 1.</p>	<p>Disputed. No valid writ of possession existed because the pending federal court case superseded the jurisdiction of the Writ of Possession. (. (Plaintiffs RJN In Support of Opposition to Defendants Motion for Summary Judgment, Exhibits 7, 8 and 9)</p>
<p>101. CMI has never been Plaintiff's landlord and never received any payment from Plaintiff for the time she remained in the condo following the trustee's sale.</p> <p>See Swan Decl. ¶ 15.</p>	<p>Objection. Relevance. There was no lease which required payment of rent by Plaintiff.</p> <p>Disputed. CCP 715.030 (m) makes clear that "For this purpose, references in Section 1174 and in provisions incorporated by reference in Section 1174 to the "landlord" shall be deemed to be references to the judgment creditor and references to the "tenant" shall be deemed to be references to the judgment debtor or other occupant.</p>
<p>Issue No. 7: Plaintiff's fourth cause of action for violation of Civil Code section 1987 has no merit because Plaintiff failed to comply with the statutory requirements for reclaiming personal property left on the premises.</p>	

<i>Moving Party's Undisputed Material Facts and Supporting Evidence:</i>	<i>Opposing Party's Response and Supporting Evidence:</i>
<p>102. On September 2, 2011, CMI filed an application for issuance of a writ of possession.</p> <p>See Application for Issuance of Writ of Execution, Possession or Sale, attached to RJN as Exhibit 4.</p>	<p>Undisputed.</p>
<p>103. In the application for issuance of a writ of possession, CMI's counsel declared under penalty of perjury that the daily rental value of the condo was \$60 as of the date the unlawful detainer complaint was filed.</p> <p>See Application for Issuance of Writ of Execution, Possession or Sale, attached to RJN as Exhibit 4.</p>	<p>Undisputed.</p>
<p>104. On September 2, 2011, the court clerk issued a writ of possession.</p> <p>See Writ of Possession of Real Property, attached to RJN as Exhibit 5.</p>	<p>Undisputed.</p>
<p>105. On September 15, 2011, a deputy sheriff served Plaintiff with a copy of the writ of possession and a 5-day notice to vacate the premises.</p> <p>See Return of Attachment/Execution, attached to RJN as Exhibit 6.</p>	<p>Objection. Conclusion. Plaintiff does not know when Writ of Possession was served.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>

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106. The writ of possession contains a section titled, "Notice to Person Served," which states, in pertinent part: "WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises." Writ of Possession of Real Property, p. 2, attached to RJN as Exhibit 5.

Undisputed.

107. Plaintiff acknowledges she received a copy of the writ of possession. Plaintiff also acknowledges that she was aware the writ said she had 15 days to claim any personal property left behind on the premises.

Objection. Mischaracterizes Plaintiffs testimony. (See Declaration of Cathy L Granger, Exhibit 1 Deposition of Marina Boyd, Pages 63, 64) Vague as to when Plaintiff received a copy of the Writ of Possession.

Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:

<p>1 See Pl.'s Dep. 69:4-13.</p>	<p>Undisputed as to having received this notice at an unknown time.</p>
<p>2 108. After Plaintiff failed to vacate the 3 condo, a deputy sheriff executed the writ of 4 possession and placed CMI in possession of 5 the condo on September 22, 2011. 6 See Swan Decl. ¶ 9; Alston Decl. ¶ 5; see also 7 Receipt for Possession of Real Property, 8 attached to Swan Decl. as Exhibit 4; Receipt for 9 Possession of Real Property, attached to Alston 10 Decl. as Exhibit 1.</p>	<p>Disputed. No valid writ of possession existed because the pending federal court case superseded the jurisdiction of the Writ of Possession. (Plaintiffs RJN In Support of Opposition to Defendants Motion for Summary Judgment, Exhibits 7, 8 and 9)</p>
<p>11 109. Once CMI took possession of the 12 premises on September 22, 2011, pursuant 13 to the writ of possession, Plaintiff had until 14 October 7, 2011 to take possession of her 15 personal property remaining on the 16 premises. 17 See Writ of Possession of Real Property, p. 2, 18 attached to RJN as Exhibit 5.</p>	<p>Disputed. No valid writ of possession existed because the pending federal court case superseded the jurisdiction of the Writ of Possession. . (Plaintiffs RJN In Support of Opposition to Defendants Motion for Summary Judgment, Exhibits 7, 8 and 9)</p>
<p>19 110. On September 23, 2011, Mr. Alston 20 posted a notice at the condo, stating that the 21 personal property had been stored on-site 22 and would be disposed of after 18 days from 23 the date of the posting, i.e., after October 24 11, 2011. The notice also stated Skyway 25 Realty's office address and phone number 26 and Mr. Alston's direct cell phone number.</p>	<p>Objection. Conclusion. Notice is the best evidence of its content. Objection to “i.e. after October 11, 2011” is not on the notice.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Mr. Alston posting “Exhibit 3” at the time he states.</p>

<p>1 See Alston Decl. ¶ 6; Alston Dep. 34:25-35:1; 2 Swan Decl. ¶ 10; see also Sept. 23, 2011 notice, 3 attached to Alston Decl. as Exhibit 3; Sept. 23, 4 2011 notice, attached to Swan Decl. as Exhibit 5 5.</p>	
<p>6 111. Plaintiff saw the September 23, 2011 7 notice after it was posted. 8 See Pl.'s Dep. 77:7-9.</p>	<p>Objection. Vague as to “after it was posted” Plaintiff has no personal knowledge of when the notice was posted. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed</p>
<p>10 112. CMI's records show that it received no 11 written correspondence or telephone calls 12 from Plaintiff between September 22, 2011 13 and October 11, 2011. 14 See Swan Decl. ¶ 12; see also CMI's REO 15 Tracking Property Notes, attached to Swan 16 Decl. as Exhibit 3.</p>	<p>Objection. Mischaracterizes evidence Disputed. CMI entered into a listing agreement with Skyway Realty to act as their agent in the preparation of the condo for sale. Part of the responsibility of Skyway Realty was to handle the personal Property left after Plaintiff vacated the premises. Plaintiff made multiple phone calls to Skyway Realty at 310-665-8694 (SEE EXHIBIT 1 and EXHIBIT 2). CMI's REO Tracking Property Notes are not a complete record (see Declaration of Marina J Boyd, Exhibit 4, Deposition of Kevin Smith CMI Person Most Knowledgeable Page 20). CMI is asserting an affirmative defense and thus has a shifted burden of proof.</p>
<p>19 113. The personal property was stored at the 20 condo until it was disposed of on October 21 23, 2011. 22 See Alston Decl. ¶ 11; see also Swan Decl. ¶ 23 11.</p>	<p>Objection. As to “the personal Property” Mischaracterizes the evidence, which was “Plaintiffs Personal Property”. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>24 114. CMI did not receive any written 25 correspondence or telephone calls from 26 Plaintiff between September 22, 2011 and 27 October 23, 2011. 28</p>	<p>Objection. Mischaracterizes evidence Disputed. CMI entered into a listing agreement with Skyway Realty to act as their agent in the preparation of the condo for sale. Part of the responsibility of Skyway Realty was to handle the personal Property left after Plaintiff vacated the premises. Plaintiff made multiple phone calls</p>

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<p>See Swan Decl. ¶ 12; see also CMI's REO Tracking Property Notes, attached to Swan Decl. as Exhibit 3.</p>	<p>to Skyway Realty at 310-665-8694 (SEE EXHIBIT 1 and EXHIBIT 2). CMI's REO Tracking Property Notes are not a complete record (see Declaration of Marina J Boyd, Exhibit 4, Deposition of Kevin Smith CMI Person Most Knowledgeable Page 20). CMI is asserting an affirmative defense and thus has a shifted burden of proof.</p>
<p>115. Mr. Alston did not receive any calls or messages from Plaintiff before the personal property was disposed of on October 23, 2011.</p> <p>See Alston Decl. ¶ 12; Alston Dep. 29:19-30:15; 31:9-13.</p>	<p>Disputed.</p>
<p>116. In her fourth amended complaint, Plaintiff alleges that her sister, Anita Faye Boyd, sent an e-mail to Mr. Alston at malston@alstonMortgage.com on October 7, 2011. Mr. Alston did not use the e-mail address malston@alstonMortgage.com at this time, and did not receive any e-mail from Anita Faye Boyd.</p> <p>See 4AC ¶ 29; Alston Decl. ¶ 13; see unauthenticated email, attached to 4AC as Exhibit VII.</p>	<p>Objection. Mischaracterizes evidence. This e-mail was part of a verified complaint and that was signed by Anita Boyd and verified discovery response.</p> <p>Disputed. CMI is asserting an affirmative defense and as thus has a shifted burden of proof. CMI has presented no evidence as to whether this e-mail address was active on October 7, 2011 and has relied on nothing by the representation of Mr. Alston although he testified that he does not know when he discontinued using the e-mail address malston@alstonmortgage.com. (See Declaration of Marina Boyd, Deposition of Mark Alston Page 95)</p>
<p>117. In the alleged October 7, 2011 e-mail that Mr. Alston never received, Anita Faye Boyd wrote that she would like to pick up her belongings from the condo. Anita Faye Boyd's alleged e-mail did not reference or request Plaintiff's personal property.</p>	<p>Objection. Mischaracterizes evidence. This e-mail was part of a verified complaint and that was signed by Anita Boyd and verified discovery response.</p> <p>Disputed. CMI is asserting an affirmative defense and as thus has a shifted burden of proof. CMI has presented no evidence as to whether this e-mail address was active on October 7, 2011 and has relied on nothing by the representation of Mr.</p>

<p>1 See 4AC ¶ 29; unauthenticated email, attached 2 to 4AC as Exhibit VII. 3</p>	<p>Alston although he testified that he does not know when he discontinued using the e-mail address malston@alstonmortgage.com. (See Declaration of Marina Boyd, Deposition of Mark Alston Page 95).</p>
<p>4 118. Plaintiff's phone records reflect that 5 Plaintiff placed a call to Skyway Realty's 6 office on Saturday, October 8, 2011. This 7 was the first time Plaintiff attempted to call 8 Mr. Alston after her eviction. Plaintiff says 9 she left a voicemail for Mr. Alston. 10 See phone records, attached to 4AC as Exhibit 11 VIII; Pl.'s Dep. 79:13-24; see also 4AC ¶ 33.</p>	<p>Disputed.</p>
<p>12 119. Mr. Alston did not receive or hear this 13 purported October 8, 2011 voicemail. 14 See Alston Decl. ¶ 12.</p>	<p>Disputed. CMI is asserting an affirmative defense and thus has a shifted burden of proof to show they did not receive Plaintiffs DOCUMENTED calls or that their action were reasonable.</p>
<p>15 120. Plaintiff "didn't think it to be urgent" 16 that she reach Mr. Alston after October 8. 17 Alston Dep. 89:23-24.</p>	<p>Disputed.</p>
<p>18 121. Plaintiff's phone records reflect that, 19 after the call placed on October 8, Plaintiff 20 next placed a call to Skyway Realty's office 21 on October 12, 2011. During this call, 22 Plaintiff either left a voicemail or left a 23 message with the receptionist. 24 See phone records, attached to 4AC as Exhibit 25 VIII; Pl.'s Dep. 79:8-24; 80:23-81:7.</p>	<p>Disputed. CMI is asserting an affirmative defense and thus has a shifted burden of proof to show they did not receive Plaintiffs DOCUMENTED calls or that their action were reasonable.</p>
<p>26 122. Mr. Alston did not receive any 27 communication from Plaintiff until October 28</p>	<p>Disputed. CMI is asserting an affirmative defense and thus has a shifted burden of proof to show they did not receive Plaintiffs DOCUMENTED calls or that their action were reasonable.</p>

<p>1 28, 2011, when he found a note from 2 Plaintiff left in the back door of his office. 3 See Alston Decl. ¶ 14; Alston Dep. 29:19- 4 30:15; 32:12-14.</p>	
<p>5 123. In the note Mr. Alston found on or about 6 October 28, 2011, Plaintiff wrote that she 7 had left messages "at your Culver City 8 office." Mr. Alston did not have a Culver 9 City office at this time. 10 See Alston Decl. ¶ 15; see also Oct. 28, 2011 11 letter, attached to Alston Decl. as Exhibit 7.</p>	<p>Undisputed.</p>
<p>12 124. In the note Mr. Alston found on or about 13 October 28, 2011, Plaintiff wrote that she 14 had left messages "on your office phone at 15 310-663-8964." That number was not and 16 had never been Mr. Alston's office 17 telephone number. 18 See Alston Decl. ¶ 16; see also Oct. 28, 2011 19 letter, attached to Alston Decl. as Exhibit 7.</p>	<p>Objection. Relevance. This mis-represents the facts which show that Plaintiff called the correct office number of Skyway Realty. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>20 Issue No. 8: Plaintiff's fifth cause of action for violation of Civil Code section 1988 has no 21 merit because the personal property was properly disposed of without public auction.</p>	
<p>22 <i>Moving Party's Undisputed Material Facts</i> 23 <i>and Supporting Evidence:</i></p>	<p><i>Opposing Party's Response and Supporting</i> <i>Evidence:</i></p>
<p>24 125. The personal property was stored at the 25 condo until it was disposed of on October 26 23, 2011. 27 28</p>	<p>Objection. As to "the personal property" Mischaracterizes the evidence, which was "Plaintiff's Personal Property". Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>

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<p>See Alston Decl. ¶ 11; see also Swan Decl. ¶ 11.</p>	
<p>126. Mr. Alston received several calls from the owners of neighboring condos and the property management, saying they saw Plaintiff coming and going from the condo on multiple occasions between September 22, 2011 and October 23, 2011.</p> <p>See Alston Decl. ¶ 8; Alston Dep. 43:7-44:14; 63:22-25; 67:1-2.</p>	<p>Objection: Relevance, Hearsay, vague and ambiguous as to “property management” “from the condo”</p> <p>Disputed as to timeframe.</p>
<p>127. When Mr. Alston returned to the condo after receiving these calls, he found his "notices were taken down each time, and one time glue was put in the lock so we couldn't get back in." Mr. Alston assumed Plaintiff was getting whatever property she wanted.</p> <p>Alston Dep. 43:7-44:14</p>	<p>Objection to evidence: Relevance, Conclusion, vague as to “we” (couldn’t get back in), notices were taken down each time”, “glue was put in the locks” and Mr. Alston assumed “Plaintiff was getting whatever property she wanted”</p> <p>Disputed.</p>
<p>128. Plaintiff hired a moving company to move her personal property from the condo into her new apartment on October 2, 2011.</p> <p>See Pl.'s Dep. 94:3-24.</p>	<p>Objection: Relevance, as to what personal property is referred to as being taken on October 2, 2011, Plaintiff did not take all of her Personal Property.</p> <p>Disputed. Plaintiff had Personal Property remaining at the condo after October 2, 2011 and made repeated request for access to claim (See Declaration of Marina Boyd, Exhibit 1).</p>
<p>129. At her deposition, Plaintiff was asked whether she ever broke into the condo and whether she had taken property out of the condo. Plaintiff refused to answer,</p>	<p>Objection. Relevance. Plaintiff testified via deposition on May 5, 2016 regarding her removal of belongings from the property.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p>

<p>1 "objecting based on the Fifth Amendment . . . 2 . and because it's not relevant." Plaintiff said 3 she would admit to removing personal items 4 on the day the movers were there; but she 5 would neither admit nor deny removing 6 items or entering the condo at other times. 7 Pl.'s Dep. 101:7-104:1; 110:15-16.</p>	<p>Undisputed as to Plaintiffs testimony on November 25, 2013.</p> <p>Plaintiff never made entry into the CONDO unless upon good faith belief that it was permissible (See Declaration of Cathy Granger, Deposition of Marina Boyd Page 94, 96).</p>
<p>8 130. According to Plaintiff's daughter (who 9 lived with Plaintiff at the condo), the 10 movers took everything they wanted from 11 the condo, and left only the things they did 12 not want to take. 13 See Boyd-Holling Dep. 21:10-20.</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken.</p> <p>Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>17 131. Plaintiff's daughter testified that the 18 photos taken by Mr. Alston before October 19 23, 2011 reflect how the condo looked after 20 they moved out of the condo, and that the 21 items in the photos are the items they didn't 22 want. 23 See Boyd-Holling Dep. 34:13-24; see also later 24 photos, attached to Alston Decl. as Exhibit 5.</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken.</p> <p>Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>25 132. The later photos reflect that much of the 26 original personal property—including 27 televisions, beds, boxes, and other 28</p>	<p>Objection: Lacks Relevance, hearsay, the term "much" is improper subjective conclusion. What Plaintiff took from the condo either on the day she left or after is not relevant to the property that was disposed to. The photo speak for themselves object</p>

<p>1 furniture—was removed from the condo 2 before the remaining property was disposed 3 of. 4 Compare Sept. 22, 2011 photos, attached to 5 Alston Decl. as Exhibit 3; with later photos, 6 attached to Alston Decl. as Exhibit 5.</p>	<p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>7 133. The property that was disposed of on 8 October 23, 2011 included pictures, 9 "trophies and things of sentimental value," 10 old toys, clothes, and boxes. 11 Pl.'s Dep. 106:1-6; see also later photos, 12 attached to Alston Decl. as Exhibit 5.</p>	<p>Objection to evidence: Relevance, hearsay, mischaracterizes testimony. Objection to the description. Mr. Alston prepared a list of items in the unit. Objection to the term "old toys". Disputed</p>
<p>13 134. Mr. Alston acknowledges that he did not 14 know what was in the boxes and "couldn't 15 tell what was what because there was old 16 food and stuff." 17 Alston Dep. 38:12-16; 41:15-18. 18 19</p>	<p>Objection: Relevance, the nature of the items left are not relevant or the presence of "old food and stuff is not relevant". Improper Conclusion that "old food" prevented him from what was what" Disputed. CMI is asserting an affirmative defense and thus has a shifted burden of proof to show they that their action were reasonable. If Mr. Alston truly wasn't sure what was what, then it would imply that there could be something of value and thus it would be reasonable to contact Plaintiff.</p>
<p>20 135. Plaintiff believes she is possibly a 21 hoarder. 22 See Pl.'s Dep. 108:18-19.</p>	<p>Undisputed.</p>
<p>23 136. Based on Mr. Alston's knowledge and 24 experience as a real estate broker, including 25 his work with peer groups handling similar 26 valuations, Mr. Alston estimated the resale 27 value of the personal property (i.e. what it 28</p>	<p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed as to Mr. Alston's estimate of the resale value of the property. Disputed otherwise, if Mr. Alston was obstructed from knowing "what was what" (see CMI undisputed fact #134) by old food, his</p>

<p>1 would bring at a yard sale or similar sale)</p> <p>2 remaining in the condo to be \$250.00.</p> <p>3 See Alston Decl. ¶ 10.</p>	<p>determination of the property value was unreasonable. CMI is asserting an affirmative defense and as such has a shifted burden of proof to demonstrate that their actions were reasonable.</p>
<p>4 137. Given the fact that Plaintiff returned to</p> <p>5 the condo several times and removed</p> <p>6 additional property, Mr. Alston believed she</p> <p>7 had taken everything of value from the</p> <p>8 condo. Based on Mr. Alston's personal</p> <p>9 observations, the personal property</p> <p>10 remaining in the condo appeared to be items</p> <p>11 of little or no value which had been</p> <p>12 abandoned by Plaintiff.</p> <p>13 Alston Decl. ¶ 9.</p>	<p>Objection: Mr. Alston's belief about the value of Plaintiffs personal property is not relevant. Mr. Alston did not know what was remaining, or what Plaintiff did or did not want from the condo. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed as to Mr. Alston's estimate of the resale value of the property.</p> <p>Disputed.</p>
<p>14 Issue No. 9: Plaintiff's seventh cause of action for violation of Civil Code section 2080 has no</p> <p>15 merit because Plaintiff's personal property was not "lost" and therefore the statute did not</p> <p>16 apply.</p>	
<p>17 <i>Moving Party's Undisputed Material Facts</i></p> <p>18 <i>and Supporting Evidence:</i></p>	<p><i>Opposing Party's Response and Supporting Evidence:</i></p>
<p>19 138. On September 15, 2011, a deputy sheriff</p> <p>20 served Plaintiff with a copy of the writ of</p> <p>21 possession and a 5-day notice to vacate the</p> <p>22 premises.</p> <p>23 See Return of Attachment/Execution, attached</p> <p>24 to RJN as Exhibit 6.</p>	<p>Undisputed.</p>
<p>25 139. The writ of possession contains a</p> <p>26 section titled, "Notice to Person Served,"</p> <p>27 which states, in pertinent part: "WRIT OF</p>	<p>Undisputed.</p>

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<p>POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises."</p> <p>Writ of Possession of Real Property, p. 2, attached to RJN as Exhibit 5.</p>	
<p>140. Plaintiff acknowledges she received a copy of the writ of possession. Plaintiff also acknowledges that she was aware the writ said she had 15 days to claim any personal property left behind on the premises.</p> <p>See Pl.'s Dep. 69:4-13.</p>	<p>Objection. Mischaracterizes Plaintiffs testimony. (See Declaration of Cathy L Granger, Exhibit 1 Deposition of Marina Boyd, Pages 63, 64) Vague as to when Plaintiff received a copy of the Writ of Possession.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to having received this notice at an unknown time.</p>
<p>141. After Plaintiff failed to vacate the condo, a deputy sheriff executed the writ of</p>	<p>Disputed. No valid writ of possession existed because the pending federal court case superseded the jurisdiction of the Writ of</p>

<p>1 possession and placed CMI in possession of 2 the condo on September 22, 2011.</p> <p>3 See Swan Decl. ¶ 9; Alston Decl. ¶ 5; see also 4 Receipt for Possession of Real Property, 5 attached to Swan Decl. as Exhibit 4; Receipt for 6 Possession of Real Property, attached to Alston 7 Dec. as Exhibit 1.</p>	<p>Possession. . (Plaintiffs RJN In Support of Opposition to Defendants Motion for Summary Judgment, Exhibits 7, 8 and 9)</p>
<p>8 142. On September 23, 2011, Mr. Alston 9 posted a notice at the condo, stating that the 10 personal property had been stored on-site 11 and would be disposed of after 18 days from 12 the date of the posting, i.e., after October 13 11, 2011. The notice also stated Skyway 14 Realty's office address and phone number 15 and Mr. Alston's direct cell phone number.</p> <p>16 See Alston Decl. ¶ 6; Alston Dep. 34:25-35:1; 17 Swan Decl. ¶ 10; see also Sept. 23, 2011 notice, 18 attached to Alston Decl. as Exhibit 3; Sept. 23, 19 2011 notice, attached to Swan Decl. as Exhibit 20 5.</p>	<p>Objection. Conclusion. Notice is the best evidence of its content. Objection to “i.e. after October 11, 2011” is not on the notice, Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Disputed</p>
<p>21 143. Plaintiff saw the September 23, 2011 22 notice after it was posted.</p> <p>23 See Pl.'s Dep. 77:7-9.</p>	<p>Objection. Vague as to “after it was posted” Plaintiff has no personal knowledge of when the notice was posted.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>

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<p>1 144. The personal property was stored at the 2 condo until it was disposed of on October 3 23, 2011. 4 See Alston Decl. ¶ 11; see also Swan Decl. ¶ 5 11.</p>	<p>Objection. As to “the personal property” Mischaracterizes the evidence, which was “Plaintiffs Personal Property”. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>6 145. Plaintiff hired a moving company to 7 move her personal property from the condo 8 into her new apartment on October 2, 2011. 9 See Pl.'s Dep. 94:3-24.</p>	<p>Objection: Relevance, as to what personal property is referred to as being taken on October 2, 2011, Plaintiff did not take all of her Personal Property. Disputed. Plaintiff had Personal Property remaining at the condo after October 2, 2011 and made repeated request for access to claim (See Declaration of Marina Boyd, Exhibit 1).</p>
<p>11 146. According to Plaintiff's daughter (who 12 lived with Plaintiff at the condo), the 13 movers took everything they wanted from 14 the condo, and left only the things they did 15 not want to take. 16 See Boyd-Holling Dep. 21:10-20.</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken. Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>20 147. Plaintiff's daughter testified that the 21 photos taken by Mr. Alston before October 22 23, 2011 reflect how the condo looked after 23 they moved out of the condo, and that the 24 items in the photos are the items they didn't 25 want. 26 See Boyd-Holling Dep. 34:13-24; see also later 27 photos, attached to Alston Decl. as Exhibit 5.</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken. Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>

<p>1 148. The later photos reflect that much of the 2 original personal property—including 3 televisions, beds, boxes, and other 4 furniture—was removed from the condo 5 before the remaining property was disposed 6 of. 7 Compare Sept. 22, 2011 photos, attached to 8 Alston Decl. as Exhibit 3; with later photos, 9 attached to Alston Decl. as Exhibit 5.</p>	<p>Objection: Lacks Relevance, hearsay, the term “much” is improper subjective conclusion. What Plaintiff took from the condo either on the day she left or after is not relevant to the property that was disposed to. The photo speak for themselves object Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>10 149. Mr. Alston received several calls from 11 the owners of neighboring condos and the 12 property management, saying they saw 13 Plaintiff coming and going from the condo 14 on multiple occasions between September 15 22, 2011 and October 23, 2011 16 See Alston Decl. ¶ 8; Alston Dep. 43:7-44:14; 17 63:22-25; 67:1-2.</p>	<p>Objection: Relevance, Hearsay, vague and ambiguous as to “property management” “from the condo” Disputed as to timeframe.</p>
<p>18 150. When Mr. Alston returned to the condo 19 after receiving these calls, he found his 20 "notices were taken down each time, and 21 one time glue was put in the lock so we 22 couldn't get back in." Mr. Alston assumed 23 Plaintiff was getting whatever property she 24 wanted. 25 Alston Dep. 43:7-44:14</p>	<p>Objection to evidence: Relevance, Conclusion, vague as to “we” (couldn’t get back in), notices were taken down each time”, “glue was put in the locks” and Mr. Alston assumed “Plaintiff was getting whatever property she wanted” Disputed.</p>
<p>26 151. At her deposition, Plaintiff was asked 27 whether she ever broke into the condo and 28</p>	<p>Objection. Relevance. Plaintiff testified via deposition on May 5, 2016 regarding her removal of belongings from the property.</p>

<p>1 whether she had taken property out of the 2 condo. Plaintiff refused to answer, 3 "objecting based on the Fifth Amendment . . 4 . and because it's not relevant." Plaintiff said 5 she would admit to removing personal items 6 on the day the movers were there; but she 7 would neither admit nor deny removing 8 items or entering the condo at other times. 9 Pl.'s Dep. 101:7-104:1; 110:15-16.</p>	<p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Plaintiffs testimony on November 25, 2013.</p> <p>Plaintiff never made entry into the CONDO unless upon good faith belief that it was permissible (See Declaration of Cathy Granger, Deposition of Marina Boyd Page 94, 96).</p>
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<p>10 152. Given the fact that Plaintiff returned to 11 the condo several times and removed 12 additional property, Mr. Alston believed she 13 had taken everything of value from the 14 condo. Based on Mr. Alston's personal 15 observations, the personal property 16 remaining in the condo appeared to be items 17 of little or no value which had been 18 abandoned by Plaintiff. 19 Alston Decl. ¶ 9.</p>	<p>Objection: Mr. Alston's belief about the value of Plaintiffs personal property is not relevant. Mr. Alston did not know what was remaining, or what Plaintiff did or did not want from the condo. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed as to Mr. Alston's estimate of the resale value of the property.</p> <p>Disputed.</p>
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Issue No. 10: All causes of action are barred by the doctrine of unclean hands.

<i>Moving Party's Undisputed Material Facts and Supporting Evidence:</i>	<i>Opposing Party's Response and Supporting Evidence:</i>
<p>21 22 23 153. On September 15, 2011, a deputy sheriff 24 served Plaintiff with a copy of the writ of 25 possession and a 5-day notice to vacate the 26 premises.</p>	<p>Undisputed.</p>

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<p>See Return of Attachment/Execution, attached to RJN as Exhibit 6.</p>	
<p>154. The writ of possession contains a section titled, "Notice to Person Served," which states, in pertinent part: "WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises." Writ of Possession of Real Property, p. 2, attached to RJN as Exhibit 5.</p>	<p>Undisputed.</p>
<p>155. Plaintiff acknowledges she received a copy of the writ of possession. Plaintiff also acknowledges that she was aware the writ</p>	<p>Objection. Mischaracterizes Plaintiffs testimony. (See Declaration of Cathy L Granger, Exhibit 1 Deposition of Marina Boyd, Pages 63, 64) Vague as to when Plaintiff received a copy of the Writ of Possession.</p>

<p>1 said she had 15 days to claim any personal 2 property left behind on the premises. 3 See Pl.'s Dep. 69:4-13.</p>	<p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed as to having received this notice at an unknown time.</p>
<p>4 156. After Plaintiff failed to vacate the 5 condo, a deputy sheriff executed the writ of 6 possession and placed CMI in possession of 7 the condo on September 22, 2011. 8 See Swan Decl. ¶ 9; Alston Decl. ¶ 5; see also 9 Receipt for Possession of Real Property, 10 attached to Swan Decl. as Exhibit 4; Receipt for 11 Possession of Real Property, attached to Alston 12 Decl. as Exhibit 1.</p>	<p>Disputed. No valid writ of possession existed because the pending federal court case superseded the jurisdiction of the Writ of Possession (Plaintiffs RJN In Support of Opposition to Defendants Motion for Summary Judgment, Exhibits 7, 8 and 9)</p>
<p>13 157. Once CMI was placed in possession of 14 the condo on September 22, 2011, Mr. 15 Alston had a locksmith change the locks. 16 See Alston Decl. ¶ 5.</p>	<p>Undisputed.</p>
<p>17 158. Plaintiff testified that she was handed a 18 notice at the time of the eviction, which 19 "said that I needed to contact the real estate 20 agency within 18 days I believe it said in 21 order to get the rest of my belongings, and I 22 think it may have said that they would be 23 disposed of or something like that after that, 24 but it did say specifically that I needed to 25 contact someone to make arrangements." 26 Pl.'s Dep. 70:16-71:13.</p>	<p>Undisputed</p>

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<p>159. On September 23, 2011 (the day after the eviction), Mr. Alston called the police because he thought someone had broken into the condo and was now hiding there. Mr. Alston believes he saw Plaintiff after she exited the condo through a back window.</p> <p>See Alston Dep. 44:24-45:15; 60:19-22; 65:11-16.</p>	<p>Objection. Relevance, speculation.</p> <p>Undisputed as to Mr. Alston's actions and what he believed at the time.</p>
<p>160. On September 23, 2011, Mr. Alston posted a notice at the condo, stating that the personal property had been stored on-site and would be disposed of after 18 days from the date of the posting, i.e., after October 11, 2011. The notice also stated Skyway Realty's office address and phone number and Mr. Alston's direct cell phone number.</p> <p>See Alston Decl. ¶ 6; Alston Dep. 34:25-35:1; Swan Decl. ¶ 10; see also Sept. 23, 2011 notice, attached to Alston Decl. as Exhibit 3; Sept. 23, 2011 notice, attached to Swan Decl. as Exhibit 5.</p>	<p>Objection. Conclusion. Notice is the best evidence of its content. Objection to "i.e. after October 11, 2011" is not on the notice, Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Mr. Alston's testimony that he posted the notice referred (Alston Decl. as Exhibit 3).</p>
<p>161. Plaintiff saw the September 23, 2011 notice after it was posted.</p> <p>See Pl.'s Dep. 77:7-9.</p>	<p>Objection. Vague as to "after it was posted" Plaintiff has no personal knowledge of when the notice was posted.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>

<p>1 162. The personal property was stored at the 2 condo until it was disposed of on October 3 23, 2011. 4 See Alston Decl. ¶ 11; see also Swan Decl. ¶ 5 11.</p>	<p>Objection. As to “the personal property” Mischaracterizes the evidence, which was “Plaintiffs Personal Property”.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>6 163. Plaintiff's phone records reflect that 7 Plaintiff placed a call to Skyway Realty's 8 office on Saturday, October 8, 2011. This 9 was the first time Plaintiff attempted to call 10 Mr. Alston after her eviction. Plaintiff says 11 she left a voicemail for Mr. Alston. 12 See phone records, attached to 4AC as Exhibit 13 VIII; Pl.'s Dep. 79:13-24; see also 4AC ¶ 33.</p>	<p>Undisputed</p>
<p>14 164. Mr. Alston did not receive or hear this 15 purported October 8, 2011 voicemail. 16 See Alston Decl. ¶ 12.</p>	<p>Disputed. CMI is asserting an affirmative defense and as such has a shifted burden of proof to demonstrate that they did not receive Plaintiffs DOCUMENTD communications and that their actions were reasonable.</p>
<p>17 165. Plaintiff "didn't think it to be urgent" 18 that she reach Mr. Alston after October 8. 19 Alston Dep. 89:23-24.</p>	<p>Objection, Relevance. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>20 166. Mr. Alston did not receive any calls or 21 messages from Plaintiff before the personal 22 property was disposed of on October 23, 23 2011. 24 See Alston Decl. ¶ 12; Alston Dep. 29:19- 25 30:15; 31:9-13.</p>	<p>Disputed. CMI is asserting an affirmative defense and as such has a shifted burden of proof to demonstrate that they did not receive Plaintiffs DOCUMENTD communications and that their actions were reasonable.</p>
<p>26 167. Between the time Plaintiff was evicted 27 and the time the personal property was 28</p>	<p>Objection. Relevance. Whether or not Plaintiff spoke directly to Mr. Alston. Objection. Secondary Evidence, the phone records are the best evidence of calls made to Skyway Realty.</p>

<p>1 disposed of, Plaintiff never spoke with Mr. 2 Alston. 3 See Pl.'s Dep. 115:17-116:6.</p>	<p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>4 168. Mr. Alston received several calls from 5 the owners of neighboring condos and the 6 property management, saying they saw 7 Plaintiff coming and going from the condo 8 on multiple occasions between September 9 22, 2011 and October 23, 2011. 10 See Alston Decl. ¶ 8; Alston Dep. 43:7-44:14; 11 63:22-25; 67:1-2.</p>	<p>Objection: Relevance, Hearsay, vague and ambiguous as to "property management" "from the condo" Disputed as to timeframe. Plaintiff never made entry into the CONDO unless upon good faith belief that it was permissible (See Declaration of Cathy Granger, Deposition of Marina Boyd Page 74)</p>
<p>12 169. When Mr. Alston returned to the condo 13 after receiving these calls, he found his 14 "notices were taken down each time, and 15 one time glue was put in the lock so we 16 couldn't get back in." Mr. Alston assumed 17 Plaintiff was getting whatever property she 18 wanted. 19 Alston Dep. 43:7-44:14</p>	<p>Objection to evidence: Relevance, there is no allegation that Plaintiff is responsible for the removal of notices or glue in the locks. Conclusion, vague as to "we" (couldn't get back in), notices were taken down each time", "glue was put in the locks" and Mr. Alston assumed "Plaintiff was getting whatever property she wanted" Disputed.</p>
<p>20 170. Mr. Alston believes Plaintiff was 21 entering the condo through the windows. 22 See October 31, 2011 email to CMI, attached to 23 Alston Decl. as Exhibit 8.</p>	<p>Objection. Relevance, speculation. Disputed.</p>
<p>24 171. Plaintiff hired a moving company to 25 move her personal property from the condo 26 into her new apartment on October 2, 2011. 27 See Pl.'s Dep. 94:3-24. 28</p>	<p>Objection: Relevance, as to what personal property is referred to as being taken on October 2, 2011, Plaintiff did not take all of her Personal Property. Disputed. Plaintiff had Personal Property remaining at the condo after October 2, 2011 and made repeated request for access to claim (See</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p>	<p>Declaration of Marina Boyd, Exhibit 1). Disputed as to timeframe. Plaintiff never made entry into the CONDO unless upon good faith belief that it was permissible (See Declaration of Cathy Granger, Deposition of Marina Boyd Page 94, 96).</p>
<p>5 172. At her deposition, Plaintiff was asked</p> <p>6 whether she ever broke into the condo and</p> <p>7 whether she had taken property out of the</p> <p>8 condo. Plaintiff refused to answer,</p> <p>9 "objecting based on the Fifth Amendment . . .</p> <p>10 . and because it's not relevant." Plaintiff said</p> <p>11 she would admit to removing personal items</p> <p>12 on the day the movers were there; but she</p> <p>13 would neither admit nor deny removing</p> <p>14 items or entering the condo at other times.</p> <p>15 Pl.'s Dep. 101:7-104:1; 110:15-16.</p>	<p>Objection. Relevance. Plaintiff testified via deposition on May 5, 2016 regarding her removal of belongings from the property.</p> <p>Objection. Relevance. Plaintiff testified via deposition on May 5, 2016 regarding her removal of belongings from the property.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Plaintiffs testimony on November 25, 2013.</p> <p>Plaintiff never made entry into the CONDO unless upon good faith belief that it was permissible (See Declaration of Cathy Granger, Deposition of Marina Boyd Page 94, 96).</p>
<p>16 173. According to Plaintiff's daughter (who</p> <p>17 lived with Plaintiff at the condo), the</p> <p>18 movers took everything they wanted from</p> <p>19 the condo, and left only the things they did</p> <p>20 not want to take.</p> <p>21 See Boyd-Holling Dep. 21:10-20.</p> <p>22</p> <p>23</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken.</p> <p>Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>24 174. Plaintiff's daughter testified that the</p> <p>25 photos taken by Mr. Alston before October</p> <p>26 23, 2011 reflect how the condo looked after</p> <p>27 they moved out of the condo, and that the</p> <p>28</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken.</p> <p>Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration</p>

<p>1 items in the photos are the items they didn't 2 want. 3 See Boyd-Holling Dep. 34:13-24; see also later 4 photos, attached to Alston Decl. as Exhibit 5.</p>	<p>of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>5 175. The later photos reflect that much of the 6 original personal property—including 7 televisions, beds, boxes, and other 8 furniture—was removed from the condo 9 before the remaining property was disposed 10 of. 11 Compare Sept. 22, 2011 photos, attached to 12 Alston Decl. as Exhibit 3; with later photos, 13 attached to Alston Decl. as Exhibit 5.</p>	<p>Objection: Lacks Relevance, hearsay, the term “much” is improper subjective conclusion. What Plaintiff took from the condo either on the day she left or after is not relevant to the property that was disposed to. The photo speak for themselves object</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>14 176. The property that was disposed of on 15 October 23, 2011 included pictures, 16 "trophies and things of sentimental value," 17 old toys, clothes, and boxes. 18 Pl.'s Dep. 106:1-6; see also later photos, 19 attached to Alston Decl. as Exhibit 5.</p>	<p>Objection to evidence: Relevance, hearsay, mischaracterizes testimony.</p> <p>Objection to the description. Mr. Alston prepared a list of items in the unit. Objection to the term “old toys”.</p> <p>Disputed</p>
<p>20 177. Plaintiff believes she is possibly a 21 hoarder. 22 See Pl.'s Dep. 108:18-19.</p>	<p>Undisputed</p>
<p>23 178. Given the fact that Plaintiff returned to 24 the condo several times and removed 25 additional property, Mr. Alston believed she 26 had taken everything of value from the 27 condo. Based on Mr. Alston's personal 28</p>	<p>Objection: Relevant, speculation. Mr. Alston’s belief about the value of Plaintiffs personal property is not relevant. Mr. Alston did not know what was remaining, or what Plaintiff did or did not want from the condo. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed only as to Mr. Alston’s estimate of the resale value of the property.</p>

1	observations, the personal property	Disputed.
2	remaining in the condo appeared to be items	
3	of little or no value which had been	
4	abandoned by Plaintiff.	
5	Alston Decl. ¶ 9.	

Issue No. 11: Plaintiff's claim for punitive damages has no merit because Plaintiff cannot establish oppression, fraud, or malice by clear and convincing evidence.

8	<i>Moving Party's Undisputed Material Facts</i>	<i>Opposing Party's Response and Supporting</i>
9	<i>and Supporting Evidence:</i>	<i>Evidence:</i>

10	179. The personal property was stored at the	Objection. As to “the personal property” Mischaracterizes the evidence, which was “Plaintiffs Personal Property”. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.
11	condo until it was disposed of on October	
12	23, 2011.	
13	See Alston Decl. ¶ 11; see also Swan Decl. ¶ 11	

15	180. CMI did not receive any written	Objection. Mischaracterizes evidence Disputed. CMI entered into a listing agreement with Skyway Realty to act as their agent in the preparation of the condo for sale. Part of the responsibility of Skyway Realty was to handle the personal Property left after Plaintiff vacated the premises. Plaintiff made multiple phone calls to Skyway Realty at 310-665-8694 (SEE EXHIBIT 1 and EXHIBIT 2). CMI’s REO Tracking Property Notes are not a complete record (see Declaration of Marina J Boyd, Exhibit 4, Deposition of Kevin Smith CMI Person Most Knowledgeable Page 20). CMI is asserting an affirmative defense and is subject to a shift in burden of proof that they acted reasonably.
16	correspondence or telephone calls from	
17	Plaintiff between September 22, 2011 and	
18	October 23, 2011.	
19	See Swan Decl. ¶ 12; see also CMI's REO	
20	Tracking Property Notes, attached to Swan	
21	Decl. as Exhibit 3.	

24	181. Mr. Alston did not receive any calls or	Objection. Mischaracterizes evidence Disputed. CMI entered into a listing agreement with Skyway Realty to act as their agent in the preparation of the condo for sale. Plaintiff made multiple phone calls to Skyway Realty at 310-665-8694 (See Declaration of Marina Boyd, Exhibit 1 and 2). CMI’s REO Tracking Property
25	messages from Plaintiff before the personal	
26	property was disposed of on October 23,	
27	2011.	
28		

<p>1 See Alston Decl. ¶ 12; Alston Dep. 29:19- 2 30:15; 31:9-13. 3 4 5 6</p>	<p>Notes are not a complete record (see Declaration of Marina J Boyd, Exhibit 4, Deposition of Kevin Smith CMI Person Most Knowledgeable Page 20). Mark Alston's e-mail to CMI on 10/31/2011 is a false exculpatory statement. He states "the occupant failed to contact my office prior to trashout". Declaration of Marina Boyd, Exhibit 1 and 2 demonstrate that this is not true. Either Mr. Alston representation at the time was knowingly false, or he misrepresented to CMI that he investigated that fact.</p>
<p>7 182. If Mr. Alston had received a call, he 8 "absolutely" would have made arrangements 9 for Plaintiff to retrieve the property. 10 Alston Dep. 106:21-23. 11 12</p>	<p>Objection. Lacks foundation, speculation. Disputed. Skyway Realty DID receive calls. Evidence suggest Mr. Alston was having significant financial problems at the time of the conversion (See Declaration of Marina J Boyd, Exhibit 4, RJN Bankruptcy Filing of Mark Edward Alston). Further evidence suggest that Mr. Alston does not always do the right thing (Plaintiff RJN Exhibit 1-2, and Declaration of Marina Boyd, Exhibit 3).</p>
<p>13 183. It was in Mr. Alston's best interest to 14 have Plaintiff remove her personal property 15 because "[t]he more the previous owner 16 removes, the less it is for us to work with, to 17 have to work with." 18 Alston Dep. 69:2-4. 19 20 21 22 23</p>	<p>Objection. Lacks foundation as to what Mr. Alston considered to be his "best interest." Disputed. Evidence suggest that Mr. Alston was had competing interest which may have been served by either keeping CMI happy (See Declaration of Marina J Boyd, Deposition of Krista McCullough Exhibit 3, and having significant financial problems at the time of the conversion (See Declaration of Marina J Boyd, Exhibit 3, RJN Exhibit 1 and 2 Bankruptcy Filings of Mark Edward Alston). Mr. Alston was relative to be reimbursed by CMI for his approved expenses, including the property trashout. Mr. Alston continued to be a "preferred agent" with CMI even after his disposal of Plaintiffs Personal Property and has been given Additional properties to list. Mr. Alston has filed for bankruptcy in effort to prevent plaintiff from recovering any damages.</p>
<p>24 184. Mr. Alston testified that he is aware of 25 no "other circumstances where someone's 26 property may have been thrown away where 27 they claimed they are trying to get it back." 28</p>	<p>Undisputed.</p>

<p>1 Alston Dep. 107:5-8.</p>	
<p>2 185. Mr. Alston regularly received messages 3 and never had any other problems with 4 Skyway Realty's telephone system. Mr. 5 Alston said "there is no indication, no 6 reasonable or logical reason, to believe that 7 my system was not working." 8 Alston Dep. 34:2-35:14.</p>	<p>Objection. Mischaracterizes Mr. Alston testimony. Mr. Alston did not check to see if his phone/message system was properly working (See Declaration of Mark Alston in Support of Defendants Motion for Summary Judgment, Deposition Page 30, 35). Disputed.</p>
<p>9 186. Between the time Plaintiff was evicted 10 and the time the personal property was 11 disposed of, Plaintiff never spoke with Mr. 12 Alston. 13 See Pl.'s Dep. 115:17-116:6.</p>	<p>Objection to Evidence. Relevance. Whether or not Plaintiff spoke directly to Mr. Alston. Objection. Secondary Evidence, the records are the best evidence of calls made to Skyway Realty. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>14 187. At the time the personal property was 15 disposed of, Mr. Alston believed that the 16 personal property left at the condo had been 17 abandoned. 18 See Alston Decl. ¶ 11; Alston Dep. 62:21; 73:1; 19 82:7-11.</p>	<p>Objection, Relevance. Disputed. Lacks foundation. There is no basis for this believe, and no evidence as to the truth of this statement.</p>
<p>20 188. Mr. Alston received several calls from 21 the owners of neighboring condos and the 22 property management, saying they saw 23 Plaintiff coming and going from the condo 24 on multiple occasions between September 25 22, 2011 and October 23, 2011. 26 See Alston Decl. ¶ 8; Alston Dep. 43:7-44:14; 27 63:22-25; 67:1-2.</p>	<p>Objection: Relevance, Hearsay, vague and ambiguous as to "property management" "from the condo" Disputed as to timeframe. Undisputed as to Mr. Alston'</p>

<p>1 189. When Mr. Alston returned to the condo 2 after receiving these calls, he found his 3 "notices were taken down each time, and 4 one time glue was put in the lock so we 5 couldn't get back in." Mr. Alston assumed 6 Plaintiff was getting whatever property she 7 wanted. 8 Alston Dep. 43:7-44:14</p>	<p>Objection. Relevance, Conclusion, vague as to "we" (couldn't get back in), notices were taken down each time", "glue was put in the locks" and Mr. Alston assumed "Plaintiff was getting whatever property she wanted"</p> <p>Disputed.</p>
<p>9 190. Plaintiff hired a moving company to 10 move her personal property from the condo 11 into her new apartment on October 2, 2011. 12 See Pl.'s Dep. 94:3-24.</p>	<p>Objection: Relevance, as to what personal property is referred to as being taken on October 2, 2011, Plaintiff did not take all of her Personal Property.</p> <p>Disputed. Plaintiff had Personal Property remaining at the condo after October 2, 2011 and made repeated request for access to claim (See Declaration of Marina Boyd, Exhibit 1).</p>
<p>14 191. At her deposition, Plaintiff was asked 15 whether she ever broke into the condo and 16 whether she had taken property out of the 17 condo. Plaintiff refused to answer, 18 "objecting based on the Fifth Amendment . . 19 . and because it's not relevant." Plaintiff said 20 she would admit to removing personal items 21 on the day the movers were there; but she 22 would neither admit nor deny removing 23 items or entering the condo at other times. 24 Pl.'s Dep. 101:7-104:1; 110:15-16.</p>	<p>Objection. Relevance. Plaintiff testified via deposition on May 5, 2016 regarding her removal of belongings from the property.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Plaintiffs testimony on November 25, 2013.</p> <p>Plaintiff never made entry into the CONDO unless upon good faith belief that it was permissible (See Declaration of Cathy Granger, Deposition of Marina Boyd Page 94, 96).</p>
<p>25 192. According to Plaintiff's daughter (who 26 lived with Plaintiff at the condo), the 27 movers took everything they wanted from 28</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken.</p>

<p>1 the condo, and left only the things they did 2 not want to take. 3 See Boyd-Holling Dep. 21:10-20.</p>	<p>Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>6 193. Plaintiff's daughter testified that the 7 photos taken by Mr. Alston before October 8 23, 2011 reflect how the condo looked after 9 they moved out of the condo, and that the 10 items in the photos are the items they didn't 11 want. 12 See Boyd-Holling Dep. 34:13-24; see also later 13 photos, attached to Alston Decl. as Exhibit 5.</p>	<p>Objection: Relevance, lacks foundation, lack of personal knowledge. Deponent has no personal knowledge as to what all Plaintiff wanted from the condo, deponent has no personal knowledge of what was packed in boxes, deponent has no personal knowledge of what was actually taken.</p> <p>Disputed. Plaintiff requested access to retrieve her remaining personal property (See Declaration of Marina J Boyd Exhibit). Plaintiff testified on November 25, 2013 that removal of all property was limited by the size of the moving truck and the time for which movers had been hired See Declaration of Cathy Granger, Deposition of Marina Boyd Page 95).</p>
<p>15 194. The later photos reflect that much of the 16 original personal property—including 17 televisions, beds, boxes, and other 18 furniture—was removed from the condo 19 before the remaining property was disposed 20 of. 21 Compare Sept. 22, 2011 photos, attached to 22 Alston Decl. as Exhibit 3; with later photos, 23 attached to Alston Decl. as Exhibit 5.</p>	<p>Objection: Lacks Relevance, hearsay, the term “much” is improper subjective conclusion. What Plaintiff took from the condo either on the day she left or after is not relevant to the property that was disposed to. The photo speak for themselves object</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>24 195. Plaintiff believes she is possibly a 25 hoarder. 26 See Pl.'s Dep. 108:18-19.</p>	<p>Undisputed.</p>
<p>27 196. Given the fact that Plaintiff returned to 28 the condo several times and removed</p>	<p>Objection: Relevance. Mr. Alston's belief about the value of Plaintiffs personal property is not relevant.</p>

<p>1 additional property, Mr. Alston believed she 2 had taken everything of value from the 3 condo. Based on Mr. Alston's personal 4 observations, the personal property 5 remaining in the condo appeared to be items 6 of little or no value which had been 7 abandoned by Plaintiff. 8 Alston Decl. ¶ 9.</p>	<p>Mr. Alston did not know what was remaining, or what Plaintiff did or did not want from the condo. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed as to Mr. Alston's estimate of the resale value of the property.</p> <p>Disputed.</p>
<p>9 197. Mr. Alston obtained bids for the 10 disposal of the personal property remaining 11 at the condo, and forwarded those bids to 12 CMI for approval. CMI approved a bid of 13 \$3,050 to remove the remaining items of 14 personal property at the condo. 15 See Alston Dep. 12:14-13; 50:24-51-2.</p>	<p>Objection. Misrepresents the evidence. Mark Alston obtained bids for the disposal of "plaintiff's personal property" at the express direction of CMI (see Declaration of Cindy Swan REO Property Tracking Notes Page 5). The document speaks for itself.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>
<p>Issue No. 12: Plaintiff's claim for punitive damages has no merit because Plaintiff cannot establish that an officer, director, or managing agent of CMI was personally guilty of, authorized, or ratified oppression, fraud, or malice, or otherwise present any evidence to support imposing punitive damages on CMI for the acts of real estate broker Mark Alston.</p>	
<p><i>Moving Party's Undisputed Material Facts and Supporting Evidence:</i></p>	<p><i>Opposing Party's Response and Supporting Evidence:</i></p>
<p>22 198. CMI entered into a REO Listing 23 Agreement with Skyway Realty pursuant to 24 which Skyway Realty would act as listing 25 broker for the condo. Mark Alston is the 26 owner and broker of Skyway Realty. 27 28</p>	<p>Objection. Relevance. Broker license is not necessary to obtain bids for and trashout Person. Property and is not proof or relevance to CMI ratification of his actions because he action only at CMI request to perform the trash out.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed.</p>

<p>1 See Swan Decl. ¶ 6; Alston Decl. ¶¶ 2, 4; see 2 also REO Listing Agreement, attached to Swan 3 Decl. as Exhibit 2.</p>	
<p>4 199. Pursuant to the REO Listing Agreement, 5 Skyway Realty was responsible for 6 preparing and listing the condo for sale. 7 See Swan Decl. ¶ 6; Alston Decl. ¶ 4; see also 8 REO Listing Agreement, attached to Swan 9 Decl. as Exhibit 2.</p>	<p>Objection. Vague and ambiguous as to the term “responsible for” and “preparing”.</p> <p>Disputed. Mark Alston testified he was the eyes and ears and only did as instructed (See Declaration of Marina Boyd, Mark Alston Deposition Page 58, 67-68). CMI continued to offer listings to Mr. Alston after he disposed of Plaintiffs Personal Property (See Declaration of Marina Boyd, Mark Alston Deposition Page 23).</p>
<p>10 200. Once the condo became vacant, Skyway 11 Realty was "responsible for reporting to 12 [CMI] any necessary clean-up required and 13 estimating cost." 14 REO Listing Agreement ¶ 13, attached to Swan 15 Decl. as Exhibit 2; see also Swan Decl. ¶ 6. 16</p>	<p>Objection: Relevance as to what he was “responsible for”. Vague and ambiguous time frame “Once the Condo Became Vacant”.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Disputed. Mr. Alston acted only at the express direction of CMI (See Declaration of Cindy Swan, REO Property Tracking Notes Page 5-7) there is no evidence that he acted independently to dispose of Plaintiffs Personal Property “once the property was vacant”</p>
<p>17 201. Mr. Alston has been a licensed real 18 estate broker in California since May 27, 19 2000, and has been a licensed real estate 20 salesperson in California since July 15, 21 1991. 22 See Alston Decl. ¶ 2.</p>	<p>Objection. Relevance. No license is required to do a Property Trash out and such license does not prove any relevant fact.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p> <p>Undisputed.</p>
<p>23 202. In the REO Listing Agreement, Mr. 24 Alston, on behalf of Skyway Realty, 25 represented to CMI "that Broker has all 26 required active licenses and authority to act 27 in the capacity of a real estate broker in the 28</p>	<p>Objection. Relevance. Secondary Evidence, the Listing agreement is the best evidence of its content. No license is required to do a Property Trash out and such license does not prove any relevant fact.</p> <p>Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact:</p>

<p>1 state where this property is located and that 2 such license is not currently suspended and 3 the Broker is not the subject to current 4 disciplinary proceedings by any regulatory 5 agency having jurisdiction over Broker's 6 license or conduct of business." 7 REO Listing Agreement ¶ 5, attached to Swan 8 Decl. as Exhibit 2; see also Swan Decl. ¶ 7.</p>	<p>Undisputed.</p>
<p>9 203. Mr. Alston testified that he is aware of 10 no "other circumstances where someone's 11 property may have been thrown away where 12 they claimed they are trying to get it back." 13 Alston Dep. 107:5-8.</p>	<p>Objection. Relevance, Speculation. Disputed. CMI has given no indication that they have a standard that would ensure that this would not happen (See Declaration of Marina J Boyd, Deposition of Jeanine Cohoon, CMI, Inc. Person Most Knowledgeable Page 65-68 and Declaration of Marina Boyd, Deposition of Mr. Alston Page 94 and 95)</p>
<p>14 204. Mr. Alston informed CMI that he 15 received no communication from Plaintiff 16 requesting the return of Plaintiff's personal 17 property until after the personal property 18 was disposed of on October 23, 2011. 19 Swan Decl. ¶ 12; Alston Decl. ¶ 17.</p>	<p>Objection. Relevance. Mr. Alston's did not inform CMI of this fact until AFTER the property was disposed of. This is not relevant to ratification of a CMI officer, director or managing agent. CMI's actions following the trashout are evidence of their ratification of his actions, both through policy (See Declaration of Marina J Boyd, Deposition of Jeanine Cohoon, CMI, Inc. Person Most Knowledgeable Page 65-68 and Deposition of Krista McCullough, Exhibit 3). Vague as to when Mr. Alston informed CMI of Plaintiffs Request. Subject to and without in any way waiving the foregoing objection, and to the extent Plaintiff understands this alleged fact: Undisputed</p>

25 Dated: May 18, 2016

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27 By: 
Marina J Boyd, Plaintiff in Pro Per