MARINA J BOYD, PLAINTIFF IN PRO PER
10951 NATIONAL BOULEVARD, APT 302
LOS ANGELES, CALIFORNIA 90064
(310) 663-4811

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles
JUN 21 2016
Sherri R. Carter, Executive Officer/Clerk
By Donita Fowler, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES WEST DISTRICT

MARINA J BOYD	CASE NO. SC117126
Plaintiff,	**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF MARINA J BOYD MOTION FOR A NEW TRIAL**
vs.	Hearing Date: July 8, 2016
CITIMORTGAGE, INC.	Hearing Time: 8:30am
	Presiding Judge: Hon. Lisa Hart Cole
Defendants	COMPLAINT FILED: May 18, 2012
	Reservation Number: 160525131230

I. INTRODUCTION

The basis of this action is Plaintiff, Marina J Boyd, allegation that CitiMortgage (hereinafter referred to as CMI) is guilty of Conversion in the disposal of Plaintiffs Personal Property following foreclosure and lockout from the CONDO she previously owned at 12321 Ocean Park Blvd., Unit 1, Los Angeles, CA 90064. Plaintiff further alleges a conspiracy existed between Skyway Realty Broker Mark Alston and "CMI" to dispose of Plaintiffs Personal Property which included papers which would

assist Plaintiff in the prosecution of the Quiet Title action which had been initiated at the time of the conversion of Plaintiffs Property. In addition, Plaintiff alleges violations of California Civil Code §§1983, 1987, 1988 and 2080.

The evidence Plaintiff submitted in support of her claim is an On October 7, 2011, sent by Anita Faye Boyd to MARK ALSTON, an agent of "CMI" requesting to schedule a time to pick up PLAINTIFFS' "PERSONAL PROPERTY". Phone records of Plaintiff Marina J Boyd showing Plaintiff called Skyway Realty on October 8, 2011, October 12, 2011 and October 21, 2011 requesting the return of her Personal Property prior to CMI's disposal on October 23, 2011 and multiple calls after the October 23, 2011 trashout in efforts to retrieve what property may have still been in possession of the vendor who performed the trashout.

II. PROCEDURAL BACKGROUND

On May 12, 2012, Plaintiff Marina J Boyd filed a Complaint for Damages against "CMI", Inc. and Skyway Realty as an Unlimited Civil matter in Los Angeles Superior Court West District, for the disposal and destruction of Plaintiffs Personal Property. The Complaint was assigned Case #SC117126, and was assigned to Department M, the Hon. Linda K. Lefkowitz presiding.

Prior to the first hearing in the matter, the case was reassigned to Hon. Bobbi Tilmon, who sustained, with leave to amend, CMI's demurrer to the complaint on October 19, 2012. The Corresponding Motion to Strike was denied as Moot.

On, or about November 15, 2012, Plaintiff filed a first amended complaint adding additional Plaintiffs, Anita Faye Boyd (hereinafter referred to as Anita) and Alexis Boyd-Holling (minor daughter of Plaintiff Marina J Boyd, hereinafter referred to as Alexis). "CMI" demurred all causes of action and move to strike portions of Plaintiffs 1st Amended Complaint and Plaintiffs Anita and Alexis. On or about April 12, 2013, Hon. Bobbi Tilmon sustained "CMI"' demurrer to Plaintiffs First Amended Complaint with Leave to Amend and granted the Motion to Strike Plaintiffs Anita and Alexis.

On or about May 6, 2013, the case was transferred to the Stanley Mosk Courthouse in Department 92, Hon. Amy K. Hogue presiding.

On or about June 4, 2013, through newly retained counsel R. Alexander Comley, Plaintiff filed a Second Amended Complaint alleging six causes of action for Negligence, Violation of California Civil Codes §§1965, 1983, 1984 and 1987, California Code of Civil Procedure §1174, Negligent Infliction of Emotional Distress, Intentional Infliction of Emotional Distress and Business and Professions Code §17200.

The hearing on "CMI" demurrer and motion to strike Plaintiffs portions of 2nd Amended Complaint was scheduled for hearing on December 4, 2013, however, on December 4, 2013, on the Court, on its own motion, transferred the case back to West District Courthouse in Santa Monica to Independent Calendar Court and assigned to Department O, Hon. Lisa Hart Cole presiding. The hearing on CMI demurrer and Motion to Strike was reset for June 20, 2014.

On or about October 3, 2013, CMI filed their first Motion for Summary Judgment which was set for hearing on December 19, 2013, then vacated and reset for hearing on June 20, 2014 following transfer to back to the West District Court.

On or about November 11, 2013, CMI served identical Form Interrogatories (55 items each), Special Interrogatories (94 items each), Request for Admissions (32 items each), Request for Production of Documents (39 Document Request each) and Notice of Depositions and Demand for Production of Documents at the time of Deposition on Plaintiffs Marina J. Boyd, Anita and Alexis (39 Document Request each).

On March 9, 2014, Plaintiffs served **"CMI"** with Form Interrogatories, Request for Admissions and Request for Production of Documents. After several extensions, CMI served boilerplate objections to 100% of Plaintiffs discovery request and after three additional months of extensions and concessions by Plaintiff "CMI" served Plaintiffs incomplete (missing and redacted documents) and non-compliant (not produced in the same for as kept in the normal course of business) discovery responses on September 18, 2014, which were verified by Travis Nurse.

Beginning just days following the receipt of **"CMI's"** discovery responses, Plaintiff made repeated attempts by phone and e-mail to meet and confer with Samantha Lamm, then counsel for **"CMI",** in an effort to resolve the discovery issues, however Ms. Lamm ignored Plaintiffs inquiries until December 2014 when she presumably left the firm of Wolfe and Wyman, LLP.

On December 22, 2014, Plaintiff received notice of "CMI's" removal of this case to Federal Court and Cathy L Granger (partner at Wolfe & Wyman) assumed representation of **"CMI".** On December 27, 2014 "CMI" filed a Motion to Dismiss Plaintiffs Third Amended Complaint which was granted (for none opposition) with Leave to Amend on January 26, 2015.

In January 2015, Plaintiffs initiated efforts to meet and confer with Ms. Granger to resolve the discovery disputes which were left outstanding by Ms. Lamm, however on in mid February 2015, Ms. Granger denied withholding production of any discovery.

On April 18, 2014, Plaintiff brought an ex-parte Motion for Order Granting Leave to amend (the motion was brought ex-parte at the request of CMI), with a proposed Third Amended Complaint, but the Court denied the motion without stated reason and at that time vacated the hearing on CMI's October 2013 Motion for Summary Judgment stating the "case was not yet at issue".

On or about June 20, 2014, Hon. Lisa Hart Cole sustained with 20 days leave to amend (except intentional infliction of emotional distress which was sustained without leave to amend), "CMI's" demurrer to Plaintiffs 2nd Amended Complaint. Plaintiff asked the Court to adopt the Proposed Thirda Amended Complaint which was filed on April 18, 2014, but the Court declined and granted 20 days leave to amend.

On July 17, 2014, re-filed (as a Noticed Motion) the Motion for Order Granting Leave to Amend and with a Proposed Third Amended Complaint seeking leave to add Plaintiffs Anita and Alexis, Defendant Mark Edward Alston and Causes of Action for Conversion, Racketeering, Violation of the Unruh Act, and Intentional Infliction of Emotional Distress (citing new facts which had been discovered since the 2nd Amended Complaint wherein the court denied Leave to Amend that cause of action). The Motion was set for hearing on October 29, 2014.

On July18, 2014, "CMI" brought an ex-parte Motion to Dismiss Plaintiffs Second Amended Complaint with Prejudice based on a failure to file an amended complaint within 10 days; HOWEVER the Court had ordered that the amended complaint be filed within 20 days. On July 22, 2014, Plaintiff filed a Third Amended Complaint.

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

Lisa Hart Cole's courtroom was dark on July 18, 2014, and Hon. Alan Goodman of Department P continued the hearing on CMI's Motion to Dismiss to July 29, 2014.

On July 29, 2014, Judge Lisa Hart Cole refused to deny "CMI" erroneous Motion to Dismiss, even though at the time of hearing, a Third Amended Complaint had been timely filed by Plaintiff, and instead, continued the hearing on "CMI's"' erroneous Motion to Dismiss Plaintiffs 2nd Amended Complaint to coincide with the hearing date for Plaintiffs Motion for Order Granting Leave to Amend, on October 29, 2014.

On or about October 28, 2014, Department O issued a tentative ruling GRANTING "CMI's" improper motion to Dismiss Plaintiffs complaint with Prejudice and DENYING Plaintiffs Motion for Order Granting Leave to Amend based on a Procedural defect WHICH was not raised in "CMI" Opposition to Plaintiffs Motion (Plaintiffs Motion is Denied based on a failure to comply with C.R.C. 3.1324).

On October 29, 2014, at the hearing, with court reporter present Plaintiff presented to the court a document with the missing procedural elements along with a supplemental opposition to "CMI" Motion to Dismiss Plaintiffs Second Amended Complaint.

Again, the Court refused to deny "CMI" Motion to Dismiss Plaintiffs 2nd Amended Complaint with Prejudice, but instead continued the hearing on Plaintiffs Motion for Order Granting Leave to Amend to November 19, 2014 and granted "CMI" opportunity to reply to Plaintiffs Declaration pursuant to C.R.C 3.1324 even though they did not raise this issue in their opposition to Plaintiffs Motion for Order Granting Leave to Amend.

On November 19, 2014, with court reporter present, Hon. Lisa Hart Cole finally GRANTED Plaintiffs Motion for Order Granting Leave to Amend with the exception of the Cause of Action for Intentional Infliction of Emotional Distress, which she directed Plaintiff to remove that cause of action and file a 3rd Amended Complaint within five days. At the end of the hearing, Plaintiff Marina J Boyd request the Court allow Plaintiff to make arguments for the records on the cause of action which was sustained without leave to amend, which the Court denied. This is contrary to Cannon 3B (7) of the Code of Judicial Ethics which states "A judge shall accord to every person who has a legal interest in

a proceeding, or that person's lawyer, full right to be heard according to law. Making a record for appeal is a fundamental cornerstone of appellate practice.

On or about November 22, 2014, following removal of the Cause of Action for Intentional Infliction of Emotional Distress as order Plaintiff filed a Verified Third Amended Complaint.

On December 22, 2014, Plaintiff received notice of "CMI's" removal of this case to Federal Court and concurrently was informed that Cathy L Granger would be assuming the representation of **"CMI"** in this case, and that the case was assigned to Hon. Fernando Olguin for general purposes and Hon. John McDermott was assigned as Magistrate Judge in the proceedings.

On December 27, 2014 "CMI" filed a Motion to Dismiss Plaintiffs Third Amended Complaint which was granted with Leave to Amend on January 26, 2015.

In January 2015, Plaintiffs initiated efforts to meet and confer with Ms. Granger to resolve the discovery disputes which were left outstanding by Ms. Lamm, however on in mid February 2015, Ms. Granger informed Plaintiffs that she had conferred extensively with **"CMI"** and that no additional documents responsive to Plaintiffs request existed.

On February 2, 2015, Plaintiff filed a Fourth Amended Complaint in U.S. District Court alleging ten causes of action for Conspiracy to Commit Conversion in Violation of Civil Code §1708, 1712 and 1714, Violation of Civil Code §1983, Violation of Civil Code §1986, Violation of Civil Code §1987, Violation of Civil Code §1988, Violation of California Code of Civil Procedure §1174, Violation of Business and Professions Code §17200, Violation of Civil Code §51, and Intentional Infliction of Emotional Distress and R.I.C.O. Violations.

On February 23, 2015, Plaintiff served a second set of Request for Production of Documents to "CMI" for electronically stored information with metadata and expanding the scope of the documents sought pursuant to the new Causes of Action since the first discovery request in 2014.

On February 26, "CMI" filed a Motion to Dismiss portions of Plaintiffs Fourth Amended Complaint as well as Motion to Strike in US District Court.

On March 6, 2015, Plaintiff filed a motion to Compel Further Responses, however despite almost a year of conferring to resolve the disputes and having well met the burden to meet and confer

under California Code of Civil Procedures, the US District Court denied Plaintiffs motion because a stipulation regarding Plaintiffs Meet and Confer efforts was in included.

During the pending of Plaintiffs Motion to Compel in Federal Court, **"CMI"** suggested they would like to further confer in efforts to resolve outstanding discovery disputes and on April 30, 2015 and May 15, 2015 CMI served further responses to Plaintiffs Request for Production of Documents Set One despite the previous representation that all responses had been provided.

On March 30, 2015, "CMI" served boiler plate objections to Plaintiffs second set of Request for Production of Documents as Electronically Stored Information (ESI).

Plaintiff advised **"CMI"** in June 2015 that in order to avoid a renewed motion to compel, Plaintiff wished to take the Deposition of Travis Nurse, the employee for **"CMI",** who certified their discovery responses and who also submitted testimony under oath, by way of declaration in opposition to Plaintiffs Motion to Compel Further Responses in US District Court to determine whether their search efforts were sufficient, to ascertain the credibility that additional searches would either be overly burdensome, and/or unlikely to lead to discoverable documents, and to determine if production of documents was complete pursuant to California Discovery Act.

On at least four separate occasions, Plaintiff sought to meet and confer with counsel for **"CMI"** regarding the setting of deposition for Travis Nurse, however after those efforts were ignored.

On June 17, 2015, the US District Court granted "CMI's" Motion to Dismiss the R.I.C.O. Cause of action and remanded the remaining causes of action to the State Court. On June 30, 2015, Department O of the Los Angeles Superior Court issued a notice ex-parte to counsel for "CMI" setting case management hearing for August 4, 2015 and ordering "CMI" to give notice of the Orders to Plaintiff.

On or about July 8, 2015, Plaintiff served a Statement of Damages to counsel for "CMI" and on July 14, 2015, Plaintiff obtained an Entry of Default against "CMI", Inc. for failure to file a responsive pleading to Plaintiffs Third Amended Complaint.

On July 22, 2015, "CMI" filed a Demurrer to and Motion to Strike Plaintiffs Fourth Amended Complaint which was set for hearing on August 19, 2015. Namely "CMI" sought to strike additional

Plaintiffs Anita Faye Boyd and Alexis Boyd-Holling stating that "Judge Lisa Hart Cole had never ruled on that portion of Plaintiffs Motion for Order Granting Leave to Amend".

On or August 4, 2015, Case Management hearing was held in Department O of the Los Angeles Superior Court in which the Court ordered Plaintiff file the Fourth Amended Complaint under separate cover, and vacated Plaintiffs Entry of Default. Upon request by counsel for "CMI" to the Court, Plaintiff agreed to a voluntary Settlement Conference on September 11, 2015 to determine if any or all of the matters at issue in the case could be resolved.

On August 4, 2015 pursuant to a brief meet and confer regarding discovery matters following the hearing, Cathy Granger sent an e-mail to Plaintiff granting a two week extension for Plaintiff to bring a Motion to Compel further responses to request for Production of Documents but did not offer a date for the Deposition of Travis Nurse.

On or about August 5, 2015, Plaintiff noticed the Deposition of Travis Nurse to take place on August 31, 2015 at the offices of Wolfe and Wyman, LLC in Irvine, California.

On August 6, 2015, Plaintiff filed a Motion to Compel Further Responses to Request for Production of Documents Set One and second set of Request for Production of Documents which was set for hearing on February 17, 2016.

On August 26, 2015 Plaintiffs received notice from **"CMI"** of their objection to the Deposition of Travis Nurse and Plaintiff made four separate attempts to contact counsel for **"CMI"** in effort to resolve their objections, however Plaintiffs messages were ignored by until Wednesday, September 2, 2015 AFTER they received ex-parte notice of Plaintiffs Motion to Compel the Deposition of Travis Nurse.

On August 19, 2015, the Court heard "CMI" Demurrer and Motion to Strike and sustained, without leave to amend, "CMI" Demurrer to Plaintiffs Causes of Action for violation of California Civil Code §§51, 52 (The Unruh Act), Violations of Code of Civil Procedure §1174, Violations of Business and Professions Code §17200 and granted "CMI's" Motion to Strike Plaintiffs Anita Alexis in contradiction to her November 19, 2014 order granting leave to amend to add Plaintiffs. CMI plead no arguments as to why Plaintiffs should be stricken nor did they allege that the Plaintiffs were

improperly added, but when asked to explain, simply recited the unsupported reason CMI stated in their motion "that she never ruled on that portion of the Motion for Leave to amend".

On September 2, 2015, Plaintiff gave notice to "CMI" of their Ex-Parte Application for Order Shortening Time to hear a Motion to Compel the Deposition of Travis Nurse and to hear the Motion to Compel Further Responses to Request for Production of Documents.

Only AFTER having received notice of the Ex-Parte hearing did "CMI", on September 3, 2015, counsel for "CMI" agreed to a meet and confer phone conference, but during the conference, they refused to agree on a date and/or terms for the deposition even though Plaintiff advised that the deposition could be taken by video conference or by Plaintiff traveling to Missouri to take the deposition.

On September 4, 2015, Plaintiff filed a Motion to Compel the Deposition of Travis Nurse which was set for hearing on February 23, 2016, and brought an Ex-Parte Application for Order Shortening Time for hearing the Motion to Compel Further Responses to Request for Production of Documents, a Motion to Compel the Deposition of Travis Nurse to October 6, 2015 (instead of February 17 2016, and February 23, 2016 respectively).

On September 4, 2015, the Court continued Plaintiffs Motion for Order Shortening time to September 11, 2015 which was the date previously set for a settlement conference and upon request of Ms. Granger, took the Settlement Conference off Calendar.

On September 11, 2015, the Court denied Plaintiffs UNOPPOSED Motion to Compel further Responses to the Request for Production of Documents, as untimely and the UNOPPOSED Motion to Compel the Deposition of Travis Nurse because he lived more than 75 miles from the noticed location. The Court denied sanctions which had been demanded for misuse of the discovery process and failure to meet and confer regarding the Deposition of Travis Nurse citing first the denial of the motion, then upon Plaintiffs arguing CCP §2016, changed her reason to "substantial justification", however as the Motions were unopposed, CMI did not plead nor did the Court specify what justification it relied upon.

On or about October 2, 2015, Plaintiff filed a Petition for Writ of Mandate with the Court of Appeals which was summarily denied on or about November 12, 2015 for inadequate record.

On or about December 13, 2015, Plaintiff filed a Petition for Review in the Supreme Court of the State of California, but the Petition was summarily denied without comment.

On January 26, 2016, "CMI" filed a Motion for Summary Judgment or in the alternative, Summary Adjudication.

On or about February 3, 2016 Plaintiff served a Notice of taking of Deposition of Person Most Knowledgeable for "CMI" to take place on March 8, 2016, however, on or about February 28, 2016, "CMI" served boilerplate objections to the entire notice.

On or about March 2, 2016, Plaintiff meet and conferred with counsel for "CMI" by phone regarding the outstand discovery and requested dates of Depositions for five CitiMortgage employees. Counsel for "CMI" refused to agree to any dates except to "get back to Plaintiff with an update" by Thursday, March 10, 2016.

On Friday, March 11, 2016, in the first communication regarding outstanding discovery matters since the March 2, 2016 meet and confer, counsel for "CMI" sent an e-mail stating they would get back to me on Friday, March 18, 2016.

On or about March 26, 2016 CMI finally identified their Persons Most Knowledgeable, as Kevin Smith and Jeanine Cohoon and the first available date for the first Deposition "CMI" provided was April 11, 2016. CMI's also advised that Travis Nurse was no longer associated with "CMI" and as such after almost a year of effort, Plaintiff was never able to depose the person who verified their discovery responses.

On April 18, 2016, Plaintiff took the Deposition of "CMI" person most Knowledgeable, Kevin Smith. "CMI" objected to, and did not provide any documents responsive to the Notice of Taking of Deposition of Kevin Smith and request for Production of Documents at the time of Deposition.

On April 19, 2016, Plaintiff took the Deposition of "CMI" employee Demetrios Bageris, however "CMI" objected to and did not provide any documents responsive to the Notice of Taking of Deposition of Kevin Smith and request for Production of Documents at the time of Deposition.

On April 22, 2016, Plaintiff took the Deposition of "CMI" person most Knowledgeable, Jeanine Cohoon. "CMI" objected to and did not provide any documents responsive to the Notice of Taking of Deposition of Jeanine Cohoon and request for Production of Documents at the time of Deposition.

On April 26, 2016, Plaintiff took the Deposition of "CMI" employee Krista McCullough, however "CMI" objected to and did not provide any documents responsive to the Notice of Taking of Deposition of Krista McCullough and request for Production of Documents at the time of Deposition.

On May 20, 2016, I filed and served Memorandum of Points and Authorities, Separate Statement of Undisputed Facts, Objection to Evidence in Opposition of, Request for Judicial Notice in Opposition and Declaration in Opposition to "CMI's" Motion for Summary Judgment, (the Memorandum of Points and Authorities in Opposition was also served by e-mail on May 17, 2016, and Separate Statement of Undisputed Facts was served by e-mail on May 18, 2016).

On or about May 23, 2016, "CMI" filed a Reply and Objections to Plaintiffs late response.

On May 25, 2016, the Court granted "CMI's" Motion for Summary Judgment over objection by Plaintiff that Judge Lisa Hart Cole recuse herself from the Case. Plaintiff's objection and request for recusal pursuant to 170.1 was not entered into the minute order.

On May 26, 2016, Plaintiff filed a Statement of Disqualification against Judge Lisa Hart Cole for bias, and included by referenced a May 24, 2016, Complaint for Equity which set forth facts constituting bias.

On June 1, 2016, Judge Lisa Hart Cole filed a Verified Answer generally denying any Bias, and in refusing to incorporate the facts set forth in the Complaint for Equity Ordered the Statement of Disqualification stricken. The Second district Court of Appeals summarily denied a subsequent Writ of Mandate on June 17, 2016, but only ruled that the trial court did not error in striking the Statement of Disqualification.

III. ARGUMENT

A motion for a new trial asks the Court to re-examine one or more issues of fact or law after trial. (Code of Civil Procedure 656; Carney v Simmonds (1957) 49 Cal.d3 84, 90). Code of Civil Procedure 657 expressly authorizes a verdict to be vacated and any other decision to be modified or

vacated and that section authorizes the Court to grant a new trial under various circumstances. Unfortunately the single most sinister and disturbing statement in the Court ruling is that "The Court read and considered Plaintiffs Opposition", because clearly this is not the case.

The Court's ruling is exactly the type of Summary Judgment ruling that the Seventh Circuit Court of Appeals harshly criticized its recent commentary on modern Summary Judgment Practice in Malin v. Hospira, Inc., No. 13-2433 (7th Cir. Aug. 7, 2014). It "denounced defense counsel's approach to summary judgment practice, which included "cherry-picking isolated phrases from [the plaintiff's] deposition and [claiming] that these 'admissions' doomed [the plaintiff's] case,". An approach [which] resulted in defense counsel misrepresenting the record and the plaintiff's legal theories and criticized it as "both costly and wasteful" and "would necessarily be reversed by an appellate court". In this particular jurisdiction, such practice is particularly sinister in light of Jameson and Desta.

The Seventh Circuit concluded that this litigation tactic misrepresents the record and does not comport with counsel's duty of candor to the court. The Seventh Circuit cautioned practitioners who may be tempted to take this approach to summary judgment practice, noting that it will destroy their credibility with the court.

The Court's ruling on this Summary Judgment Motion consist solely of cherry picking "CMI" disputed and contradictory evidence, reliance on inadmissible evidence, and weighing the credibility of evidence. None of which is permissible in GRANTING a Motion for Summary Judgment. CMI did not even come close to carrying the "initial burden of demonstrating that [th]ey were entitled to summary judgment or summary adjudication. ***(See, e.g., Thatcher v. Lucky Stores, Inc. (2000) 79 Cal.App.4th 1081, 1086)***. [trial court may not grant [even an unopposed] motion for summary judgment "without first determining that the moving party has met its initial burden of proof"].

IV. LEGAL STANDARD

1. Summary Judgment

a. The Order Granting Summary Judgment is Void

If "a disqualified judge made a dispositive ruling, that alone is an irregularity justifying a new trial." In this case, Plaintiffs contents that disqualifying factors exist and that the Court has been prevented from hearing the merits of the Judges disqualification, however, based upon Judge Hart Coles agreement to recuse herself in Case #SC111724, simply based on the knowledge that attorney an Plaintiff had filed a complaint with the Commission on Judicial Performance, then her refusal to recuse herself with knowledge of similar allegations demonstrates a bias against Pro Se Plaintiff Marina J. Boyd. A reasonable person would conclude that the judge in this case was disqualified prior to the order granting "CMI's" Summary Judgment based on a bias against Pro Se litigants in addition to the pattern of irregularities set forth in this pleading. Further, this pleading sets forth multiple instances wherein the Judge performed "judicial act that exceeds the judge's lawful power with a conscious disregard for the limits of the [her] authority." ***(Broadman, supra, 18 Cal.4th at p. 1092).***

It is "the fact of disqualification that controls, not subsequent judicial action on that disqualification. (Id. at p. 689.). The Christie Court, ***(citing Urias, supra, 234 Cal. App. 3d 415)***, states that "an order rendered by a disqualified judge is null and void, it will be set aside without determining if the order was meritorious and the Courts have rejected claims that if a trial was error free, no prejudice was shown" (although Plaintiffs notes, this trial was not error free). The statute does not say that the judge is disqualified to decide erroneously but that he shall not decide at all***" (McCauley v. Superior Court (1961) 190 Cal. App. 2d 562, 565 [12 Cal. Rptr. 119). (Christie v. City of El Centro, 135 Cal. App. 4th 767 (Cal. App. 4th Dist. 2006).***

Plaintiff anticipates that "CMI" will argue that the Judge was not disqualified at the time of her ruling on this dispositive motion, however the Christie Court cites and concurs with Courts from other jurisdictions which also hold that "The judge erred in not granting a motion to disqualify, and at that time lost jurisdiction to act**". (See, e.g., People v. Dist. Ct. in and for Third Jud. Dist. (1977) 192 Colo. 503 [560 P.2d 828, 833] [*(Christie v. City of El Centro, 135 Cal. App. 4th 767 (Cal. App. 4th Dist. 2006).*** And that "any actions following his recusal *or after he should have recused himself* are naturally void"***(Vacura v. Haar's Equipment, Inc. (Minn. 1985) 364 N.W.2d 387, [(Christie v. City of El Centro, 135 Cal. App. 4th 767 (Cal. App. 4th Dist. 2006).*** "If a judge is disqualified under the constitution, he is absolutely without jurisdiction in the case, and any judgment rendered by him is

void and subject to collateral attack"].) ***Christie v. City of El Centro, 135 Cal. App. 4th 767 (Cal. App. 4th Dist. 2006).***

Further, if "the actions of the judge materially affected the substantial rights of a party and prevented the party from having a fair trial……the matter is reversible per se. ***(9 Witkin, Cal. Procedure, supra, Appeal, § 449, p. 497; Fewel v. Fewel (1943) 23 Cal.2d 431, 433 [144 P.2d 592])*** and the verdict may be vacated and any other decision may be modified or vacated, in whole or in part, and a new or further trial granted. This is a sufficient showing of prejudice to affirm a grant of new trial. ***(Brown v. George Pepperdine Foundation (1943) 23 Cal.2d 256, 262 [143 P.2d 929***) [grant of new trial affirmed because error might "possibly have been prejudicial"].) ***Christie v. City of El Centro, 135 Cal. App. 4th 767 (Cal. App. 4th Dist. 2006)*** "Because the summary judgment was rendered by a disqualified judge, the judgment was voidable". ***(North Beverly Park Homeowners Assn. v. Bisno, 147 Cal. App. 4th 762 (Cal. App. 2d Dist. 2007).***

b. The Courts Bias Violated Plaintiffs Right to Due Process

The Court suddenly seemed concerned with the due process rights of CMI, stating in its ruling "Plaintiff's failure to timely and properly serve her opposition papers deprived Defendant of due process. Defendant cannot respond to such a defective opposition". The court was not equally concerned with the Due process rights of Plaintiff when denying an unopposed discovery motions and when vacating, without motion from CMI plaintiffs Entry of Default.

The Court abused in discretion in refusing Plaintiffs request to be allowed the opportunity to present evidence in support of her disqualification prior to her granting CMI's Motion for Summary Judgment. This action further demonstrated her bias against Plaintiff. By her refusal to allow plaintiff to present such evidence, she was derelict in her duty to. There would have been no prejudice to CMI if the Court allowed even as little as one day to allow Plaintiff to offer evidence of disqualification, if the Court then found that it was not disqualified from ruling on the matter, then the Motion could have been granted at that time. Further, the Court did not enter Plaintiffs request for recusal in its Minute Order on the Hearing.

c. Irregularities in the Proceedings Justifies a New Trial

A motion for new trial on the ground of irregularity in the proceedings is granted in full if ”the taint of an appearance of unfairness is palpable” and “the resulting appearance of impropriety, did materially and prejudicially affect the plaintiff's right to a fair and impartial hearing and trial. ***(Christie v. City of El Centro, 135 Cal. App. 4th 767 (Cal. App. 4th Dist. 2006).***

The Summary Judgment itself had irregularities which cannot be explained and which suggest a predisposed choice to grant the summary Judgment, but a lack of any real attention to the arguments and evidence presented by Plaintiff in opposition to the Summary Judgment.

The Court in its Judgment indicates that the tentative was not posted the day prior, but was given to the parties the morning of the hearing, however, some of the content in the tentative ruling suggest that it had been prepared days earlier. In previous hearings, Plaintiff has been able to review the tentative rulings which were posted the day before, and thus be prepared to address errors which are not consistent with the evidence or arguments in the pleadings. While the purpose of the tentative ruling is not to invite the parties to present new arguments or evidence, it can be useful for allowing a party to prepare to point to specific items which are incorrect or which may have been missed in the previously presented papers. Plaintiff has done this successfully in the past, and that success has resulted in Department ceasing to post tentative orders online in advance. In this case specifically, the tentative order states that Plaintiff did not file a proof of service, however, Plaintiff did file a proof on service on May 24, 2016 directly with the clerk of the department. If the tentative was prepared prior to that filing, there is no reason why the tentative could not have been posted online. This alone may seem like a minor irregularity, however, is one in a pattern of such irregularities which cannot be explained, and which suggest a predisposed choice to grant the Summary Judgment in favor of CMI, and a disregard for arguments and evidence presented by Plaintiff in opposition to the Summary Judgment. When taken as a whole these irregularities are sufficient to warrant a new trial.

In addition, the Judge did not enter Plaintiffs request that he recuse herself in the minute order, then upon Plaintiffs filing of a Statement of Disqualification passed on the sufficiency of law by Striking the Statement for failure to state a lawful basis for disqualification. CCP 170.3(c) (5) states “A judge who refuses to recuse himself or herself shall not pass upon his or her own disqualification

or upon the sufficiency in law, fact, or otherwise, of the Statement of Disqualification filed by a party". In that case, the question of disqualification shall be heard and determined by another judge". Judge Cole did not allow for such hearing by another judge.

d. The Court Applied an Incorrect Legal Standard in Granting Summary Judgment

"If facts sufficient to support a verdict in the plaintiff's favor may logically and reasonably be inferred from the evidence, the motion must be denied even if the evidence is also susceptible to conflicting inferences". ***Carson v. Facilities Development Co. (1984) 36 Cal.3d 830, 838-839 [206 Cal.Rptr. 136, 686 P.2d 656]; Ashcraft v. King (1991) 228 Cal.App.3d 604, 610-611 [278 Cal.Rptr. 900.)*** In the Courts ruling, it would appear that in many instances, evidence of the Plaintiff was totally disregarded, and that evidence of the Defendant was "cherry picked" from extraordinarily inconsistent evidence to select those portions which fit her pre-determined ruling.

In passing upon a motion for summary judgment, the trial court's function is not to find the true facts in the case, but to determine whether a triable issue of fact exists. If a triable issue of fact exists, it is error to grant a summary judgment. (***Schrimsher v. Bryson, 58 Cal.App.3d 660, 663 [130 Cal.Rptr. 125]).***

e. Evidence Was Insufficient to Justify Granting CMI's Motion for Summary Judgment

i. Statutory Violations Regarding Disposal (CCP §1983, 1987, 1988, 2080)

This case begins and ends with Mark Alston's denial of receipt of ANY of Plaintiffs communications, including those which are documented by Plaintiffs phone records and the phone records of Skyway Realty (Declaration of Marina J Boyd in Opposition to CMI's MSJ, Exhibit 1 and 2). The Court's ruling repeatedly points to the testimony of Mark Alston in support of GRANTING Summary Judgment on behalf of CMI'S, however this is a fatal flaw pursuant to California Code of Civil Procedure 473(e) which sates "summary judgment may be denied in the discretion of the court if the only proof of a material fact offered in support of the summary judgment is an affidavit or

declaration made by an individual who was the sole witness to that fact". This is another example of the Courts "one way discretion" in this matter.

If Plaintiff did have 18 days from the date that sign was posted, then Plaintiffs documented call to Skyway Realty was timely made on October 8, 2011. Further, Plaintiff has submitted evidence in support of the right to challenge the validity of the CMI Writ of Execution upon which they relied to take possession of the CONDO. (See SSUUMF Page13, item 39, and Plaintiff RJN in Opposition to CMI MSJ, EHXIBIT 7, Sholem Perl vs. Eden Place, LLC), which would bring into question the legitimacy of the alleged 15 day window upon which the Court improperly relied.

Throughout the Courts ruling it impermissibly "weighed" and/or cherry picked disputed facts to support its ruling, and ignored or failed to mention any evidence or arguments which did not support its predetermined conclusion. Specifically, the Court's ruling states "Defendant took possession of the property on 9/22/11 and Plaintiff had until 10/7/11 to retrieve the property. Id. at Nos. 12-13." However, "CMI" gave three different dates by which Plaintiff was required to "retrieve" her property, and during that time, agent for "CMI" repeated prevented Plaintiff from retrieving her property. CMI's "creditability issues inherent in that proof [cannot] be avoided, or be resolved as a matter of law, therefore, a summary disposition is improper and a trial must be held. ***(Harding v. Purtle, 275 Cal. App. 2d 396 (Cal. App. 3d Dist. 1969).*** In fact CMI has put forth a least three different dates by which Plaintiff "purportedly" was required to claim her Personal Property (Declaration of Mark Alston, in Support of CMI MSJ, Deposition EXHIBIT 3).

The Court's ruling also states "Defendant's records indicates they never received any written messages or calls from Plaintiff between 9/22/11 and 10/7/11. See Defendant's SSUMF No. 13. Mark Alton, agent of the real estate company in charge of the eviction and disposition of the property, testifies he received no communication from Plaintiff from 9/22/11 through 10/23/11, when the property was disposed of. See Defendant's SSUMF No. 15 and 18". However the phone records of Plaintiff and Skyway Realty dispute this fact and show multiple calls to Skyway Realty (See Declaration of Marina J. Boyd in opposition of MSJ, Exhibit 1 and 2), in at least one instance speaking

directly to the live receptionist of Skyway Realty. Neither “CMI” nor Skyway Realty dispute Plaintiffs stated purpose of the calls which was to request the return of her Personal Property prior to its disposal.

A “Summary Judgment may . . . be proper because of the high credibility value accorded to documentary evidence". (***Bank of America v. Frost, 205 Cal. App. 2d 614 (Cal. App. 4th Dist. 1962).*** In this case, the high credibility phone records evidence, which is undisputed, would dictate, that the reverse is true, and Summary Judgment must be denied.

The Court’s ruling states “Plaintiff alleges that Defendant violated CC §1983, which governs notice to former tenants and owners of personal property left behind on the premises after termination of the tenancy. However, Plaintiff was not a tenant and Defendant was not her landlord. Plaintiff was a foreclosed upon owner and Defendant the BFP at the foreclosure sale. CC §1174 also does not refer to or incorporate CC §1983.” The Court already agrees that CMI is not shielded from liability under CCP §1174, and the only function of CCP §1174 in this context is to specific that CMI was required to follow either Civil Code 1965, which they admit they did not, or Civil Code §1980-1989, which they admit they did not, or Civil Code §2080, which they admit they did not. Essentially, CMI has come up with excuses, none of which are supported by statute or authority, to explain why they did not have to follow ANY of the procedures required by CCP §1174. Then, when these arguments all fail, they resort to the outrageous argument that Plaintiff was not a tenant and CMI was not Plaintiffs Landlord. This argument fails as a matter of law because CCP §1174 states “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. Yet, inexplicably, the Court again “restates “CMI” claim and ignores that Plaintiff cited this statue in her Memorandum of Points and Authorities in Opposition to CMI’s MSJ (See Plaintiffs MP&A in Opposition to CMI’s MSJ, Page 7, Line 4-15).

The statutory violations are still at issue because Plaintiff did make contact with Skyway Realty before the property was discarded and the nature of Plaintiff’s phone calls to Skyway Realty are undisputed by CMI as to their existence or purpose, which Plaintiff testified was to request the return of her Personal Property and thus the self-serving statements of CMI and Mark Alston that they never received such communication is a credibility matter to be examined by a jury.

The right to regain possession of one's property is a substantial right which may not be dependent upon the whim and caprice of a court. ***(Cf. Mendoza v. Small Claims Court, 49 Cal.2d 668 [321 P.2d 9]; Mihans v. Municipal Court, 7 Cal.App.3d 479 [87 Cal.Rptr. 17].)*** (***Franklin v. Municipal Court, 26 Cal. App. 3d 884 (Cal. App. 1st Dist. 1972).*** Neither can it be subject to some "unspecified" and/or conflicting date of CMI to justify their unlawful interference with Plaintiffs Personal Property Rights.

The Court's ruling states "Plaintiff alleges that she repeatedly demanded that the property be returned to her by emails and phone calls from 10/7/11 through the time the property was disposed on 10/23/11. However, Defendant's evidence refutes Plaintiff's allegations that she demanded return of her property." There is a difference between evidence being disputed and evidence being refuted, but in this case, the statement is patently untrue. Not only has CMI has NEVER refuted, they have not ever even disputed Plaintiffs calls and demands for the return of her Personal Property. The next statement of the Court's ruling makes even less sense and reads "Plaintiff's daughter testified that the movers took all the items they wanted and left behind those things they did not want. See Defendant's SSUMF No. 23. She also confirmed at deposition, by reference to photos, that those items left behind at the premises and disposed of on 10/23/11 were items she and her mother did not want. Id. at ¶24".

This finding neglects to considered, the Defendants daughter was only 12 years old at the time of the lockout, that the deposition in which the Court refers to was taken approximately two and a half years after the lockout, that the Defendant's daughter had no personal knowledge as to what Plaintiff did or did not want, that the Defendant's daughter testified that she did not help pack boxes, and that defendant's daughter did not know what was in the boxes that remained. Under that law, whether or not Plaintiff wanted her Personal Property is wholly immaterial. It was Plaintiffs Property and she was entitled to have it.

Not only is the speculative, hearsay testimony of Plaintiffs teenage daughter inadmissible, in granting A Summary Judgment, the Court improperly decided to apply the weight of her testimony against phone records, and Plaintiffs' testimony that she requested it's return.

The Court also states that "The evidence submitted in support of this MSJ negates Plaintiff's assertion that the property was not abandoned and that she requested return of that property. As such, the evidence negates any allegation that Defendant violated CC §2080", however, CMI submitted no such evidence, and again this finding ignores testimony from Mark Alston's Deposition Page 68-69. When asked "When asked how many calls he identified on Plaintiffs phone records to his office number prior to the disposal of Plaintiffs Personal Property he stated "I see three", which is consistent with Plaintiffs testimony that she called to request the return of her Personal Property.

The Court's ruling states "Plaintiff attached a purported email from her sister to Defendant's agent, Mark Alston, dated 10/7/11 indicating that she would like to pick up her belongings." The court reference to the e-mail as "purported" is improper because neither CMI nor Skyway Realty has submitted ANY evidence that the e-mail is not valid. Further, Mark Alston, owner/broker for Skyway Realty testified in his October 7, 2015 Deposition, that this was an e-mail address of that he once used Mark Alston, and that HE DID NOT KNOW when he stopped using that e-mail address (See Alston Decl. Page 95), further, there no evidence was submitted to demonstrate when the e-mail address was de-activated by the internet service provider. As such, the credibility of his self-serving denial is a credibility matter to be determined by a jury.

The Court's ruling states "Plaintiff alleges that Defendant failed to sell her Personal Property at public sale by competitive bidding in violation of CC §1988(a). Under the statute, if Defendant believed the resale value to be less than $700, it was entitled to dispose of it in any manner. Alston testifies that he believed the property to be abandoned and the property to be of little to no value. See Alston Decl., ¶¶6-11. Alston testifies that he witnessed from 9/22/11 through 10/23/11 that the most valuable property was being removed from the premises. Id. Plaintiff also testified at deposition that the property disposed of on 10/23/11 consisted of pictures, trophies, things of sentimental value, old toys, clothes and boxes. See Defendant's SSUMF No. 26." First, CMI, nor Mark Alston have no knowledge of what they actually discarded (See SSUMF No. 27, wherein Mark Alston testifies he could not tell what remained) and (Deposition of Mark Alston 38:12-16; 41:15-18 stating he did not open boxes or look through items remaining).

CMI's own expert witness Eugene L. Evans states that the actual cash value of the lost Items of Marina J Boyd is $6,405.00 (See attached EXHIBIT A). The disputed value of the property itself is a matter for the jury to determine if CMI should have disposed of Plaintiffs Personal Property at public auction pursuant to California Civil Code §1988. This conflict cannot be resolved by the Court on Summary Judgment.

ii. Cause of Action for Conspiracy to Commit Conversion

To reconcile its finding of no conversion with its finding that defendant locked plaintiffs out would require a finding that defendant offered plaintiffs a limited access to the locked apartment for the purpose of removing their personal property. There is simply no evidence to support such a finding, nor does "CMI" claim that the allowed such access. (***Price v. Hovsepian, 114 Cal. App. 2d 385 (Cal. App. 1952).*** The Court's ruling correctly states that Conversion is the wrongful exercise of dominion over the property of another, but stops short of defining the essential elements, which Plaintiff successfully demonstrated by their evidence. First, CMI does not dispute Plaintiffs ownership rights to the property in question and shamefully, this is the only authority cited by the Court in its entire ruling.

CMI's belief that Plaintiffs Personal Property was abandoned is immaterial and are at odds with Plaintiffs rights of ownership which "are absolute". ***(Poggi v. Scott, 167 Cal. 372 [139 P. 815, 51 L.R.A. N.S. 925])***, held "everyone must be sure of his legal right when he invades the possession of another; that, "neither good nor bad faith, neither care nor negligence, neither knowledge nor ignorance, are of the gist of the action.'. . . Nor, indeed, is negligence any necessary part of the case. . . . the act itself . . . is unlawful and re-dressible as a tort.'" See also ***(Reynolds v. Lerman, 138 Cal.App.2d 586 [292 P.2d 559], and 2 Witkin, Summary of Cal. Law, Torts, § 139, pp. 1312-1313.) Haines v. Parra, 193 Cal. App. 3d 1553 (Cal. App. 1st Dist. 1987).*** The Courts finding would suggest that Plaintiff had the burden of chasing down CMI or their Agent to secure the return of Personal Property, however this again is at odds with established law.

Even if one were to believe that "CMI" was indeed ignorant of Plaintiffs demands for the return of her property, that belief did not divest Plaintiff of her absolute Property rights, and therefore, CMI's disposal thereof was a wrongful act, either with or without their knowledge and are responsible for the damages resulting. Conversion is a strict liability tort**. *(Oakdale Village Group v. Fong (1996) 43 Cal. App. 4th 539, 543-544 [50 Cal. Rptr. 2d 810])*.** CMI has presented no arguments in their affirmative defense to defeat Plaintiffs property rights.

CMI doesn't DISPUTE that Plaintiff called Skyway Realty to request the return of Personal Property on October 8, 2011, October 12, 2011 and October 21, 2011 (See Declaration of Marina J Boyd, Page 2, Line 23-27, Page 3, Line 1-11) and Plaintiff phone records as well as the phone records for CMI agent Skyway Realty show both the outgoing calls and corresponding incoming calls to Skyway Realty in support Plaintiffs testimony (See Declaration of Marina J Boyd in Opposition to CMI's MSJ, Exhibits 1 and 2).

The Court's ruling seems to suggest that CMI had the right to dispose of Plaintiffs Personal Property at any time after either 15 or 18 days, of which "CMI" is unsure or that Plaintiffs Property rights expired despite her repeated request for the return there of. On the contrary, CMI was bound to be sure of their legal right to dispose of Plaintiffs Personal Property. They could have established such, but any of the methods prescribed by CCP §1174, or by simply placing a call to Plaintiff. "Refusal of one in possession of real property to permit, upon demand, the owner of chattels which were left there to remove his goods, constitutes conversion." ***(Gruber v. Pacific States Sav. & Loan Co., supra, p. 148; Edwards v. Jenkins, 214 Cal. 713, 720 [7 P.2d 702]; Wolfe v. Willard H. George, Inc., 110 Cal.App. 532, 535 [294 P. 436]; Atwood v. Southern Calif. Ice Co., 63 Cal.App. 343, 345 [218 P. 283]; see 148 A.L.R. 650; 131 A.L.R. 171; 65 C.J. 41.***

The Supreme Court adopted the general rule of strict liability [regarding trespass upon a persons' chattels] more than 100 years ago and has never deviated from it. ***(Harpending v. Meyer, supra, 55 Cal. at pp. 558, 561;), (Swim v. Wilson, supra, 90 Cal. at p. 129)***. Therefore if, after the Personal Property owner makes such a demand, a party "appropriates the chattels to his own use in obvious defiance of the owners' rights, he is liable to the owner for conversion of them" ***(Perkins v.***

Maier & Zobelein Brewery, 134 Cal. 372, 375 [66 P. 482]; see (Prosser on Torts, p. 108; 148 A.L.R. 655; 131 A.L.R. 174.) Zaslow v. Kroenert, 29 Cal. 2d 541 (Cal. 1946). (Regent Alliance Ltd. v. Rabizadeh, 231 Cal. App. 4th 1177 (Cal. App. 2d Dist. 2014.) In a strict liability action [Plaintiff] is not required to disprove every possible alternative explanation of the injury in order to have the case submitted to the jury. "It is not incumbent upon a plaintiff to show that an inference in his favor is the only one that may be reasonably drawn from the evidence; "only …..that the material fact to be proved may logically and reasonably be inferred from the circumstantial evidence. (***Estate of Rowley [1967] 257 Cal.App.2d 324, 334-335 [65 Cal.Rptr. 139.),*** "In a conversion action the plaintiff need show only that he was entitled to possession at the time of conversion;" ***(Enterprise Leasing Corp. v. Shugart Corp. (1991) 231 Cal.App.3d 737, 748 [282 Cal.Rptr. 620].) (Irving Nelkin & Co. v. South Beverly Hills Wilshire Jewelry & Loan, 129 Cal. App. 4th 692 (Cal. App. 2d Dist. 2005).***

In Gruber, the Court "expressly found if the Plaintiff was locked out by the court "[t]hey locked in their personal property" Therefore, "the denial of access to their property in this fashion constituted a conversion. ***(Gruber v. Pacific States Savings & Loan Co., 13 Cal.2d 144 [88 P.2d 137]; Pearl v. Figoni, 49 Cal.App.2d 662 [122 P.2d 385].) (Price v. Hovsepian, 114 Cal. App. 2d 385 (Cal. App. 1952).***

"It is an established principle of statutory construction that when two alternative interpretations are presented, one of which would be unconstitutional and the other constitutional, the court will choose that construction which will uphold the validity of the statute and will be constitutional.' [Citations***.]" (Baldwin v. City of San Diego, 195 Cal.App.2d 236, 240 [15 Cal.Rptr. 576]; Patterson v. Municipal Court, 232 Cal.App.2d 289, 294 [42 Cal.Rptr. 769]; Civ. Code, § 3541.)*** All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property". The Court's ruling is at odds with Plaintiffs constitutional right to acquire, possess and protect her Property.

2. Plaintiff Should be Afforded a Fair Hearing on Discovery Issues

The Court has never offered a legal theory to support the denial of Plaintiffs unopposed Discovery Motions or the denial of sanctions on September 11, 2015. When a party repeatedly and willfully fails to provide certain evidence to the opposing party as required by the discovery rules, preclusion of that evidence may be appropriate, even if such a sanction proves determinative ***(Juarez v. Boy Scouts of America, Inc., supra, 81 Cal.App.4th at p. 390.)***

Throughout these proceedings, CMI has engaged in every cited misuse and abuse of discovery in violation of CCP §2023 and violation of Federal Code of Civil Procedure §26 discovery orders. CMI has provided incomplete responses, illegible responses, boilerplate objections, propounded discovery excess discovery, resisted authorized methods of discovery, interfered with Plaintiffs deposition of Mark Alston, and presented unqualified Persons "Most Knowledgeable" and Plaintiff has filed a Notice of Motion of Discovery Sanctions currently with this Motion of which the outcome may impact not only a number of the pleadings filed by CMI, but also the evidence and issues which they may offer in defense.

At the time the Court granted CMI motion for Summary Judgment, the time for hearing discovery motions had not yet expired, and Plaintiff is entitled to a hearing on these matters and a New Trial pursuant to the outcome thereof.

3. The Court Made Multiple Orders which Were A Prejudicial Abuse of Discretion

'The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action ***(City of Sacramento v. Drew, supra, 207 Cal.App.3d at p. 1297.)*** The Court have further held that parties should "be free from arbitrary adjudicative procedures ***(People v. Ramirez, supra, 25 Cal. 3d at pp. 263, 268).*** The Ramirez court instructed the state courts to "evaluate the extent to which procedural protections can be tailored to promote more accurate and reliable administrative decisions in light of the governmental and private interests at stake". ***(Ryan v. California Interscholastic Federation-San Diego Section, 94 Cal. App. 4th 1048 (Cal. App. 4th Dist. 2001).*** This cannot be accomplished if a Court repeatedly and makes orders, while refusing to offer any statutory support or legal authority in support thereof. This

1 invites abuse of discretion, and the Court accepted that invite in this matter, primarily to the benefit of
2 CMI.

3 **a. Vacating Plaintiffs Entry of Default was a Prejudicial Abuse of Discretion**

4 On July 14, 2015, Plaintiff filed a Request for and obtained a Clerks Entry of Default as to
5 CitiMortgage, Inc. for failure to file a responsive pleading to Plaintiffs Third Amended Complaint
6 following remand of all causes of Action except R.I.C.O. to State Court on June 17, 2015.

7 On August 4, 2015, Judge Hart Cole vacated Plaintiffs Entry of Default and ordered Plaintiff
8 to file a copy of the Fourth Amended Complaint which was filed in Federal Court within five days.
9 Plaintiff contends that the Court had no authority to vacate Plaintiffs proper entry of Default sua sponte
10 and such action was impermissible "advocating on behalf of "CMI" and against Plaintiff. Further the
11 Court did not have the authority to make orders sua sponte regarding the operative Complaint which
12 Plaintiff was required to rest.

13 The Court's order essentially gave CMI a second bit at the dismissal of the Causes of Action
14 which were substantially identical to Plaintiffs Third Amended Complaint. The Laguna court
15 concluded "we hold ……. that the motion to dismiss filed in federal court is sufficiently similar to a
16 demurrer to constitute a responsive pleading***."(Laguna Vill. v. Laborers' Int'l Union of N. Am., 35***
17 ***Cal. 3d 174 (Cal. 1983)***. As such, CMI had the opportunity to file two responsive pleadings to
18 Plaintiffs Fourth Amended Complaint.

19 **b. Granting "CMI's" Motion to Strike Plaintiffs was a Prejudicial Abuse of**
20 **Discretion**

21 On July 17, 2014, Plaintiff filed a Motion for Order granting Leave to file a Third amended
22 Complaint. Plaintiff sought to add a Cause of Action for Conspiracy to Commit Conversion, specified
23 statutory violations related to the disposal of Plaintiffs Personal Property, to add Plaintiffs Anita Faye
24 Boyd and Alexis Boyd-Holling, and to add Defendant Mark Alston. The Court granted that Motion
25 on November 19, 2014 and adopted Plaintiff Proposed Third Amended Complaint with EXPRESS
26 exception to the Cause of Action for Intentional Infliction of Emotional Distress, which the Court
27 directed removed before filing the Third Amended Complaint, because the Court had previously
28

sustained without leave to amend that Cause of Action in CMI's demurer to Plaintiffs Second Amended Complaint.

On August 19, 2015, the Court held a hearing on CitiMortgage Demurrer and Motion to Strike portions of Plaintiffs 4th Amended Complaint which was filed for the first time in Federal Court. Judge Lisa Hart Cole sustained CitiMortgage Demurrer to Plaintiffs Cause of Action for violation of California Civil Code §§51, 52 The Unruh Act, Violations of Code of Civil Procedure §1174, Violations of Business and Professions Code §17200 and inexplicably GRANTED CMI'S Motion to Strike Plaintiffs Anita Faye Boyd and Alexis Boyd-Holling stating that she "had never ruled on that portion of the Motion". The Minute Order and Notice of Ruling from November 19, 2014 are in contradiction to this finding. Plaintiff contends the Court acted in complete absence of jurisdiction in GRANTING CMI's Motion to Strike additional Plaintiffs, after granting leave to add them.

The Court also erred in Granting CMI's Motion to Strike Plaintiffs Intentional Infliction of Emotional Distress Cause of Action based on the Courts previous order denying leave to amend it. New factual allegations are made in Plaintiffs Fourth Amended Complaint, along with Exhibits incorporated by reference which require that the Court should evaluate that pleading on its merit as stated, not be bound by a previous order.

c. Refusal to Rule on Plaintiffs Evidentiary Objections was a Prejudicial Abuse of Discretion

The Court is permitted to hear objections up to and including the hearing on a Motion for Summary Judgment and the Court had the discretion to grant CMI additional time to respond to those evidentiary objections (437(b)(5) states Evidentiary objections not made at the hearing shall be deemed waived". . Plaintiff submitted 47 evidentiary objections, and ALL of the Courts "cherry picked" evidence used to support granting CMI's Motion for Summary Judgment was either disputed with evidence of a greater weight or the subject of an evidentiary objection by Plaintiff. This is another instance, in a pattern thereof, of the Court selecting evidence, arguments, statutes and authorities which fit a predetermined outcome, and the Court has repeatedly done so by simply repeating (in at least one case verbatim) some arbitrary argument of CMI which is unsupported by any statute or authority.

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

Further the late nature of Plaintiffs responses are directly a result of CMI delay in making employees available for deposition and their litany of abusive discovery and litigation practices, which the Court refused to sanction.

An un-bias exercise of discretion should equally benefit both parties, however this was another in the pattern of the Court advocating on behalf of CMI by granted relief not prayed for or moved for and nit-picking each and every procedural defect of Plaintiff.

PRAYER FOR RELIEF

That the Court shall vacate the Order GRANTING the Summary Judgment in favor of CMI, shall grant Plaintiff a full hearing on discovery issues specified in the attached Notice of Motion for Discovery Sanctions (EXHIBIT 5) and shall properly set this matter for Jury trial as soon as is possible.

Dated: June 20, 2016

By:________________________________

Marina J Boyd, Pro Se Plaintiff