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MARINA J BOYD, ANITA FAYE BOYD
ALEXIS BOYD-HOLLING
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ORIGINAL FILED
Superior Court of California
County of Los Angeles
AUG 10 2015
Sherri R. Carter, Executive Officer/Clerk
By Darnetta Smith, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES WEST DISTRICT**

MARINA J BOYD, ANITA FAYE BOYD,) CASE NO. SC117126
ALEXIS BOYD-HOLLING)
) **PLAINTIFFS OPPOSITION TO DEFENDANT**
Plaintiff,) **CITIMORTGAGE, INC. DEMURRER TO**
) **PLAINTIFFS FOURTH AMENDED**
vs.) **COMPLAINT**
)
CITIMORTGAGE, INC. & SKYWAY)
REALTY, MARK ALTON) Hearing Date: August 19, 2015
) Hearing Time: 8:30am
) Presiding Judge: Hon. Lisa Hart Cole
)
Defendants) COMPLAINT FILED: May 18, 2012
)

Plaintiffs hereby submits this opposition to Defendant, Citimortgage, Inc. (hereinafter referred to as “CMI”) demurrer to Plaintiffs Fourth Amended Complaint.

I. PROCEDURAL NOTES

On November 19, 2014, the Court granted Plaintiffs motion to file a Third Amended Complaint. Plaintiffs filed a Third Amended Complaint on November 19, 2014 alleging nine causes of action, one of which was R.I.C.O. Violations under 18 U.S.C. 1961. ON December 22, 2014,

1 While it could be considered proper for “CMI” to demurrer claims upon which the Federal
2 Court did not rule, once they declined to exercise supplemental jurisdiction over the remaining claims,
3 by now demurring claims which they did not challenge in their Motion to Dismiss would somehow
4 suggest that they no longer understand the nature of the claims against them that they did in fact
5 understand at the time they filed their responsive pleading in Federal Court. Such an allowance would
6 have the effect of allowing the Defendant to demurrer each cause of action in a single complaint, in
7 separate, successive demurrers and would prolong litigation indefinitely.

8 There is limited case law regarding the effect of pleadings filed in Federal Court on proceedings
9 once it is remanded to State court, however, “A century ago the United States Supreme Court observed
10 in *Ayres v. Wiswall* (1884) 112 U.S. 187 [28 L.Ed.693, 5 S.Ct. 90], that “It will be for the State court,
11 when the case gets back there, to determine what shall be done with pleadings filed . . . during the
12 pendency of the suit in [federal court].” *Laguna Vill. v. Laborers' Int'l Union of N. Am.*, 35 Cal. 3d
13 174 (Cal. 1983). This court, having now accepted Plaintiffs Fourth Amended Complaint as the
14 complaint at issue, should properly also consider “CMI’s” Motion to Dismiss as the responsive
15 pleading as well, and along with arguments submitted in “CMI’s” demurrer consider the merits of
16 their Motion to Dismiss/Demurrer on the Eight Cause of Action for violation of The UNRUH Act
17 only, with the Federal Court having already dismissed the Ninth Cause of Action for R.I.C.O.
18 violations.

19 As noted in Edward Hansen, “Adoption of the federal pleadings filed in this case would avoid
20 the needless waste of time, effort and expense which would result from requiring [parties] to duplicate
21 in this court their actions in the federal court.” “Second, giving effect to a federal motion or
22 pleading is not unfair to the [parties]; he suffer[s] no real prejudice, because generally he is “fully
23 apprised of the proceedings in . . . the District Court and of that court's remand to [the state] court.”
24 Finally, by giving effect to federal motions or pleadings, courts avoid forfeiture of claims and resolve
25 doubts in favor of litigation on the merits. (internal citations omitted).

26 The Laguna court concluded “our policy favoring resolution of disputes on their merits
27 suggests flexibility rather than mechanical adherence to motion and pleading labels, even at the
28 expense of sacrificing a degree of procedural rigidity. We hold therefore that the motion to dismiss

1 *filed in federal court is sufficiently similar to a demurrer to constitute a responsive pleading.*” Laguna
2 Vill. v. Laborers' Int'l Union of N. Am., 35 Cal. 3d 174 (Cal. 1983).

3 Generally, California Courts have favored a resolution of cases on merit. As such, Plaintiffs
4 believe that the courts should overrule “CMI” demurrer to the Fourth, Fifth, Sixth, Seventh and Tenth
5 Causes of action as improper, but submits the following arguments in support of this opposition.

6
7 **A. 4th Cause of Action for Violation of California Civil Code § 1987 fails to allege sufficient**
8 **facts**

9 “CMI” demurrers this cause of action based on their allegation that Plaintiff failed to allege
10 that she paid the reasonable cost of storage (Demurrer of “CMI”, Page 4, line 28 and Page 5, line 1).
11 This argument fails because California Civil Code § 1987(c) states: “the landlord shall release the
12 personal property described in the notice to the former tenant and shall not require the former tenant
13 to pay the cost of storage if the property remained in the dwelling and the former tenant”.

14 Plaintiffs repeatedly allege in their Fourth Amended Complaint that the property was stored on
15 site at the “CONDOMINIUM” and further alleges that “CMI” “took possession of the Plaintiffs
16 “PERSONAL PROPERTY” which remained on the premises after Defendant’s took possession of
17 the “CONDOMINIUM” (Page 4, ¶27); And that Plaintiffs “sent an e-mail to MARK ALSTON, an
18 agent of “CITI” requesting to schedule a time to pick up PLAINTIFFS’ “PERSONAL
19 PROPERTY”, which was stored on site at the CONDOMINIUM” (Page 5, ¶ 29); And “Plaintiff
20 requested the receptionist schedule a time for PLAINTIFFS to pick up their “PERSONAL
21 PROPERTY” which was stored on site at the CONDOMINIUM” (Page 5, ¶ 30);

22 “CMI’s” demurrer is based on an incomplete reading of the complaint which is contrary to
23 Taylor v. City of Los Angeles Dept. of Water and Power (2006) 144 CA 4th 1216, 1228 which holds:
24 “When considering demurrers, courts read the allegations liberally and in context.

25
26 **B. Fifth Cause of Action for Violation of California Civil Code § 1988 fails to allege sufficient**
27 **facts**

1 “CMI” demurrers this cause of action based on their allegation that Plaintiff failed to allege
2 “whether “CMI” reasonably believed that total resale value of the property left behind was less than
3 the statutory amount” (Demurrer of “CMI”, Page 5, Line 12-18). This argument fails because
4 Plaintiffs requested the return of the property.
5

6 **C. 6th Cause of Action for Violation of California Code of Procedure § 1174 fails to allege**
7 **sufficient facts**

8 “CMI” demurrers this cause of action based on their allegation that Plaintiff “fails to any
9 violation of California Code of Civil Procedure § 1174 and that Plaintiffs only “claim the Defendant
10 never served Plaintiff with the requisite notice required under CCP §1174 and California Civil Code
11 §1983”. “CMI” continues by stating that California Code of Civil Procedure does not contain any
12 notice requirement and only contains a passing reference to the date by which such property must be
13 retrieved as set forth in the writ of possession (Demurrer of CMI Page 5, Line 25-27).

14 Again, this argument fails. California Code of Civil Procedure §1174 provides SPECIFICALLY that
15 notice is required pursuant to California Civil Code §1983, and “CMI’s” failure to follow the notice
16 requirements of CCC §1983 is a violation of California Code of Civil Procedure §1174(f) which states:
17 “The landlord shall give notice pursuant to §1983 of the Civil Code to any person (other than the
18 tenant) reasonably believed, by the landlord to be the owner of personal property remaining on the
19 premises unless the procedure for surrender of property under §1965 of the Civil Code has been
20 initiated or completed”. Clearly stated here, this section requires a notice pursuant of California Civil
21 Code Section 1983, and as such, “CMI” failure to provide that notice is a violation of that code unless
22 the Procedures under § 1965 have been initiated. The court has previously ruled that California Civil
23 Code §1965 was not properly initiated because the Plaintiffs e-mail to Mark Alston did not contain a
24 listing of the “Personal Property” in question, therefore, “CMI” had not statutory relief from the
25 requirement of CCP §1174(f), which they failed to perform, and which Plaintiffs allege in their Fourth
26 Amended Complaint (Page 13, ¶82).

1 **D. 7th Cause of Action Violation of California Civil Code § 2080 fails to allege predicated**
2 **Circumstances Necessary to Invoke the Statute**

3 In this instance, it is the demurrer of “CMI” which is uncertain. “CMI” quotes Miller & Starr,
4 California Real Estate 3d, Ch. 17, Landlord and Tennant, SS 19:233. (Demurrer of “CMI” Page 6,
5 line 10-13). Then, “CMI” goes on to state “Plaintiff alleges she made timely request for the return of
6 the personal property at issue” (Demurrer of “CMI”, Page 6, line 14). In the next paragraph, “CMI”
7 states “As such, Plaintiff has failed to satisfy her pleading burden to maintain a cognizable claim under
8 the statute, and the Court should therefore dismiss this cause of action”.

9 It is difficult to ascertain exactly what “CMI” means in their demurrer to this cause of action,
10 but Plaintiffs will chose to address the demurrer on the heading.

11 In their Fourth Amended Complaint, Page 4, ¶ 27, Plaintiffs allege “CMI” voluntarily took
12 possession of Plaintiffs Personal Property. It is this predicated circumstance which invoked this
13 statute, which states in part: “Any person who finds a thing lost is not bound to take charge of it,
14 unless the person is otherwise required to do so by contract or law, but when the person does take
15 charge of it he or she is thenceforward a depositary for the owner, with the rights and obligations of a
16 depositary for hire”. The legislature clearly demonstrated their intent that this obligation applies to
17 Landlords and Tenants by reference of this statute in California Code of Civil Procedure § 1174
18 which requires that (e) Personal property remaining on the premises which the landlord reasonably
19 believes to have been lost shall be disposed of pursuant to Article 1 (commencing with Section 2080)
20 of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code.

21
22 **E. 8th Cause of Action for Violation of The UNRUH Act Fails to State Facts Sufficient to**
23 **Constitute a Cause of Action**

24 “CMI” demurrers this cause of action based on their claim that Plaintiffs “essentially rest on
25 allegations that Alston was incompetent. Without actually alleging it, the 4AC implies CMI hired
26 Alston despite his incompetence because MI perceived that, as an African American, he would get
27 along better with Plaintiffs than would a broker of any other ethnicity” (Demurrer of “CMI”, Page 7,
28 line 15-17) “CMI” further claims the Plaintiffs “fall short of their Pleading obligation because they

1 failed to allege “willful, affirmative misconduct” on the part of those who violate the Act.” (Demurrer
2 of “CMI”, Page 7, line 28, and Page 8, line 1).

3 “CMI’s” arguments are not consistent with the pleading requirements or the Statute.
4 California Civil Code 52 states in part: “Whoever denies, aids or incites a denial, or makes any
5 discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense.

6 In evaluating a demurrer, it is important to remember “*The Unruh Civil Rights Act “serves as*
7 *a preventive measure, without which it is recognized that businesses might fall into discriminatory*
8 *practices. With regard to the Unruh Civil Rights Act particularly, we recently explained that it “must*
9 *be construed liberally in order to carry out its purpose” to “create and preserve a nondiscriminatory*
10 *environment in California business establishments by ‘banishing’ or ‘eradicating’ arbitrary, invidious*
11 *discrimination by such establishments.” (Angelucci v. Century Supper Club (2007) 41 Cal.4th 160,*
12 *167 [59 Cal. Rptr. 3d 142, 158 P.3d 718].)*

13 Plaintiffs allege in their Fourth Amended Complaint, Page 4, ¶ 26 that “CMI” hire of Mark
14 Alston was motivated by their perception that Plaintiff was Black. This fact alone alleges that “CMI”
15 made a distinction based on race, which is prohibited by the UNRUH Act. Further, Page 14, ¶ 93 of
16 Plaintiffs Complaint, alleges that they were denied equal advantages, privileges and services is
17 reflective of the actions alleged in ¶ 28-37 of the Complaint, wherein Plaintiffs allege Mark Alston of
18 Skyway Realty did not respond to e-mail messages, notes or phone calls from Plaintiffs and that Mark
19 Alston of Skyway Realty provided none of the Statutory notices required regarding the Plaintiffs
20 Personal Property. On Page 15, ¶ 96 of the Complaint, Plaintiffs allege “CMI”, knew or should have
21 known about Mark Alston’s history of financial mis-management including his adverse disciplinary
22 records with the California Department of Real Estate and Mark Alston’s Bankruptcy filing during the
23 period of his management of the CONDOMINIUM.”

24 The essential elements of violations of the UNRUH Act are that “CMI” made a distinction
25 that resulted in the denial of full and equal advantages, privileges and services to Plaintiffs, that the
26 distinction made by “CMI” was based on their perception of Plaintiffs race, and race of Plaintiffs was
27 a motivating reason for their selection of Mark Alston, and that “CMI” actions in departing from their
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1 hiring standard to hire based on race was a substantial factor in causing Plaintiffs harm. *“In liberally*
2 *construing the complaint, these allegation are implicitly contained within the pleadings. Furthermore,*
3 *whether reliance upon a misrepresentation was reasonable under the circumstances is not properly*
4 *resolved via demurrer, except in the rare case of undisputed facts precluding a reasonable difference*
5 *of opinion.”* Charnay (supra) 145 Cal.App.4th at p. 186.

6 **F. 10th Cause of Action for Violation of California Business & Professional Code § 17200**

7 **fails**

8 “CMI” demurrers Plaintiffs 10th Cause of Action based on their claim that “Plaintiffs cannot
9 state a cause of action for unfair business practices because she fails to suggest a sufficient predicate
10 unlawful, unfair or fraudulent business practice.” (Demurrer of “CMI”, Page 9, line 8-10). Plaintiffs
11 have specified above where in the Fourth Amended Complaint, Plaintiff has alleged facts to support
12 the demurred causes of action, however, even if the Court were to sustain “CMI’s” demurrer to
13 Plaintiffs Fourth, Fifth, Sixth, Eighth and Tenth Causes of Action, Plaintiffs would still be allowed to
14 bring this cause of action based on the First, and Third Causes of Action.

15
16 **IV. CONCLUSION**

17 This Demurrer is another attempt by “CMI” to avoid a trial of this case on the merits and is an
18 improper attempt to have another “bite” at the apple to challenge a causes of action in the complaint
19 that they failed to challenge in Federal Court.

20 The Court should overrule “CMI’s” Demurrer in its entirety, and order that “CMI” shall
21 answer Plaintiffs Fourth Amended Complaint be answered within 10 days, or if the court finds “CMI’
22 demurrer to be proper, Plaintiffs should be allowed leave to amend the complaint so it can be redrafted
23 in accordance with California pleading standards.

24 Upon sustaining a demurrer, “the court may grant leave to amend the pleading upon any terms
25 as may be just and shall fix the time within which the amendment or amended pleading shall be filed.”
26 (Code Civ. Proc., § 472a, subd. (c).) “It is an abuse of discretion to deny a party leave to amend a
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1 complaint if there is a reasonable possibility the pleading can be cured by amendment.” (Brenner v.
2 City of El Cajon (2003) 113 Cal.App.4th 434, 444.)

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DATED: August 10, 2015

By:  _____

MARINA J BOYD PLAINTIFF