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MARINA J BOYD, ANITA FAYE BOYD
ALEXIS BOYD-HOLLING
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES WEST DISTRICT

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

Plaintiffs hereby submit this opposition in response to Defendant Citimortgage, Inc.’s (hereinafter referred to as “CMI”) Motion to Strike portions of Plaintiffs Fourth Amended Complaint.

I. LEGAL STANDARD

Motions to strike are used to challenge defects in the pleadings not subject to demurrer. Any party may move to strike the whole or any part of a pleading within the time allotted to respond to the

1 pleading. (Code Civ. Proc., § 435, subd. (b)(1).) Courts may at any time strike any irrelevant, false, or
2 improper matter inserted in any pleading, and all or any part of any pleading not drawn or filed in
3 conformity with the laws of California, a court rule, or an order of the court. (Id. § 436.) An “irrelevant”
4 matter includes any “demand for judgment requesting relief not supported by the allegations of the
5 complaint or cross-complaint.” (Id. § 431.10, subds. (b)(3), (c); see also Smith v. Superior Court (1992)
6 10 Cal.App.4th 1033, 1036-1042.)

7 Defendants move to strike:

- 8 1) All references to Anita Faye Boyd and Alexis Boyd-Holling in the 4th Amended
9 Complaint
- 10 2) From Paragraph 45, the phrase “willfully and maliciously”
- 11 3) The second cause of action for Intentional Infliction of Emotional Distress
- 12 4) Paragraph 109
- 13 5) From the Prayer for Relief on Page 17:
 - 14 a. Paragraph 113
 - 15 b. Paragraph 115

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17 **A. THE PUTATIVE PLAINTIFFS ANITA FAYE BOYD AND ALEXIS BOYD-**
18 **HOLLING HAVE NEVER BEEN MADE PLAINTIFFS TO THIS ACTION**

19 “CMI” alleges in their Motion to Strike that “Plaintiff has consistently ignored that rules of
20 procedure requiring leave of court to add new plaintiffs to the action”. This assertion is incorrect. The
21 Court Granted Plaintiffs Motion for Order Granting Leave to Amend on November 19, 2014
22 (Defendant “CMI’s” RJN EXHIBIT 5, Page 2, line 17-18 and EXHIBIT 5).

23 At worst, the complaint is missing signatures, and as such, “CMI” motion to strike additional
24 Plaintiffs should be denied. Plaintiffs should be allowed to have additional Plaintiffs sign the
25 complaint, if required.

1 **B. PLAINTIFFS INCLUSION OF THE IIED CAUSE OF ACTION IGNORES**
2 **PREVIOUS COURT ORDERS; THEREFORE, THE COURT SHOULD STRIKE**
3 **THE IIED CAUSE OF ACTIONS**

4 Just as “CMI” was not barred from filing a motion to dismiss Plaintiffs Third Amended
5 Complaint in Federal Court after this Court denied their Motion to Dismiss Plaintiffs Second Amended
6 Complaint (Defendant “CMI’s” request for Judicial Notice, EXHIBIT 6), Plaintiffs was not barred
7 from alleging Intentional Infliction of Emotional Distress in their Fourth Amended Complaint because
8 the Court denied Plaintiffs request for Leave to Amended to include this cause of action in the Third
9 Amended Complaint. In either, or both cases, this action is based on the parties presenting their
10 pleadings before the court according to the rules of procedure for that court, and for a proper purpose.

11 Plaintiffs Fourth Amended Complaint was properly drafted and filed in Federal Court, and
12 “CMI” had the option to simply answer Plaintiffs Third Amended Complaint when the case was
13 remanded to State Court, but by submitting another responsive pleading to Plaintiffs Fourth Amended
14 Complaint, they, by their own choice was asking this court to bring Plaintiffs Fourth Amended
15 Complaint under the jurisdiction of this Court. As such, any challenge to this cause of action must be
16 addressed by Demurrer, and not by Motion to Strike.

17 Regardless, taking guidance from Cochran v. Cochran, Plaintiffs will address the sufficiency
18 of the allegations in this cause of action. *“In reviewing a judgment of dismissal after a demurrer is*
19 *sustained without leave to amend, we must assume the truth of all facts properly pleaded by the*
20 *plaintiff-appellant. Regardless of the label attached to the cause of action, we must examine the*
21 *complaint's factual allegations to determine whether they state a cause of action on any available*
22 *legal theory. Reversible error is committed if the facts alleged show entitlement to relief under any*
23 *possible legal theory.* Cochran v. Cochran, 65 Cal. App. 4th 488 (Cal. App. 2d Dist. 1998)

24 *“The modern rule defining intentional infliction of emotional distress is that there is liability*
25 *for "outrageous" conduct which is especially calculated to cause, and does cause, mental distress.”*
26 (Wallis v. Superior Court” (1984) 160 Cal.App.3d 1109, 1120 [207 Cal.Rptr. 123].) In determining
27 whether to strike portions of a pleading, courts do not read allegations in isolation. (Clason v. Superior
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1 Court (1998) 67 Cal.App.4th 1253, 1255.) Rather, “judges read allegations of a pleading subject to a
2 motion to strike as a whole, all parts in their context, and assume their truth.” (Ibid.)

3 It is important to note that, “*to recover for intentional infliction of emotional distress, a plaintiff*
4 *must establish that: (1) the defendant engaged in “outrageous” conduct; (2) the defendant did so with*
5 *intention to cause or reckless disregard of the probability of causing emotional distress; (3) severe*
6 *emotional suffering resulted; and (4) the defendant’s conduct was the actual and proximate cause of*
7 *the plaintiff’s emotional distress”*. (Fisher v. San Pedro Peninsula Hosp. (1989) 214 Cal.App.3d 590,
8 617.).

9 In this case, Plaintiffs are not simply alleging that “**CMI**” and their Agent, Mark Alston was
10 negligent in retrieving and/or responding to their messages (Plaintiffs Fourth Amended Complaint
11 Page 5, ¶ 29), or their phone calls (Plaintiffs Fourth Amended Complaint Page 6, ¶ 33), or that the
12 Receptionist of Skyway Realty negligently failed to relay the message(s) of Plaintiffs requesting to
13 retrieve their Personal Property (Plaintiffs Fourth Amended Complaint Page 5, ¶ 30), failed to provide
14 any of the notices regarding Plaintiffs Personal Property as prescribed by California Statutes (Plaintiffs
15 Fourth Amended Complaint Page 7, ¶ 39, 44, 45, Page 11, ¶ 82).

16 On the contrary, Plaintiffs are alleging **willfulness** of ALL co-conspirators in the conversion
17 of their “Personal Property”. Plaintiffs are further alleging that “**CMI**” was aware that Plaintiffs were
18 attempting to retrieve their personal property, but that they intentionally destroyed it to prevent
19 Plaintiffs from a challenging the validity of the Trustee sale (Plaintiffs Fourth Amended Complaint,
20 Page 8, ¶ 47), and that it was done with the intent to cause harm to Plaintiffs (Plaintiffs Fourth
21 Amended Complaint, Page 8, ¶ 47).

22 In reading the complaint as a whole along with the Exhibits incorporated by reference,
23 Plaintiffs are alleging that after they suffered the loss of their home, Defendants, subsequently,
24 intentionally, willfully and maliciously, destroyed the physical manifestations of the memories
25 Plaintiffs built during the prior eleven years in which they lived at the CONDOMINIUM with intent
26 to cause harm to Plaintiffs (Plaintiffs Fourth Amended Complaint Page 9, ¶ 54, 60, Page 10, ¶ 61) in
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1 order to avoid Plaintiffs lawful challenge to the trustee sale (Plaintiffs Fourth Amended Complaint
2 Page 10, ¶ 62).

3 Factual allegations are made in Plaintiffs Fourth Amended Complaint, along with Exhibits
4 incorporated by reference demonstrate that Plaintiffs helplessly made repeated attempts to contact
5 Defendants by e-mail, phone calls and notes, while Defendants plotted to destroy Plaintiffs Personal
6 Property, ignoring their statutory duty to notify plaintiffs (California Civil Code 1983, California Code
7 of Civil Procedure 1174) and disregarded their right to move Plaintiffs Personal Property to offsite
8 Storage at Plaintiffs expense. The court has held *“Behavior may be considered outrageous if a
9 defendant (1) abuses a relation or position which gives him power to damage the plaintiff’s interest;
10 (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or
11 unreasonably with the recognition that the acts are likely to result in illness through mental distress.”*
12 (Agarwal v. Johnson (1979) 25 Cal.3d 932, 946, disapproved of on other grounds by White v.
13 Ultramar, Inc. (1999) 21 Cal.4th 563.).

14 This Court is not bound by its previous order denying Plaintiff the opportunity to amend this
15 cause of action. Therefore “CMI’s” motion to strike should be denied.

16 17 **C. PUNITIVE DAMAGES**

18 “CMI” alleges Plaintiffs’ allegations are insufficient as a matter of law to support such prayer
19 (Defendant “CMI’s” Motion to Strike, Page 5, line 20-21). They further allege Plaintiffs first cause
20 of action for Civil Conspiracy to Commit Conversion, which is the only cause of action which could
21 conceivably give rise to punitive damages is “premised on only boilerplate allegations” (Defendant
22 “CMI’s” Motion to Strike Page 6, line 14-15). “CMI” did not demur this cause of action, and as
23 such, is thereby admitting it contains facts sufficient to constitute a cause of action.

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

8 It is possible for "CMI" to have unlawfully interfered with Plaintiffs property rights, as is
9 alleged in the first Cause of Action for Civil Conspiracy to Commit Conversion AND to have done so
10 willfully and maliciously with intent to cause harm to Plaintiffs, and when read as a whole, Plaintiffs
11 have alleges fact to support exactly that.

12 Plaintiff's prayer for Punitive Damages are proper and "CMI" Motion to Strike that portion of
13 the complaint should be denied.

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15 **D. DAMAGES ARE NOT RECOVERABLE UNDER BUSINESS & PROFESSIONS**
16 **CODE §17200**

17 Defendants demur on the ground that damages cannot be recovered, however, BPC §17206(a)
18 provides *"Any person who engages, has engaged, or proposes to engage in unfair competition shall*
19 *be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation.*

20 As such, "CMI" motion to strike this portion of the complaint should be denied, or Plaintiffs
21 should be allowed to amend the complaint to include the statutory language.

22
23 **II. CONCLUSION**

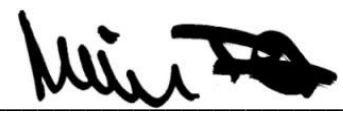
24 The grounds for a motion to strike are that the pleading has irrelevant, false or improper matter,
25 or has not been drawn or filed in conformity with laws. (CCP§436.) The grounds for moving to strike
26 must appear on the face of the pleading or by way of judicial notice. (CCP §437.)

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As previously indicated, this complaint was drawn to be in compliance with the Federal Rules of Civil Procedure, and brought under the jurisdiction of this court by the movant, who now moves to strike portions of the complaint.

Plaintiffs have a statutory right to amend the complaint to cure deficiencies possible.

Date: August 10, 2015

By: 
MARINA J BOYD, PLAINTIFF in PRO PER