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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OSJ PEP TENNESSE LLC,)	Case No. CV 14-03741 DDP (MANx)
)	
Plaintiff,)	ORDER GRANTING IN PART
)	DEFENDANTS' MOTIONS TO DISMISS
v.)	
)	[Dkt. Nos. 6 & 9]
KAMALA D. HARRIS, CALIFORNIA)	
DEPARTMENT OF PUBLIC HEALTH;)	
RONALD CHAPMAN; CALIFORNIA)	
HIGHWAY PATROL; JOSEPH A.)	
FARROW; OFFICE OF THE)	
ATTORNEY GENERAL, CALIFORNIA)	
DEPARTMENT OF JUSTICE,)	
)	
Defendants.)	
)	

Presently before the Court are two motions to dismiss and/or strike portions of Plaintiff's First Amended Complaint ("FAC") in this case, from two groups of Defendants. Defendants California Department of Public Health ("CDPH") and Dr. Ron Chapman's motion to dismiss focuses primarily on the contract and property issues at play in this case, while Defendants California Highway Patrol ("CHP"), Office of the Attorney General ("OAG"), Joseph A. Farrow, and Kamala D. Harris's motion focuses on issues of unlawful seizure. Because the factual and legal questions involved in these

1 two sets of claims are mixed, the Court considers the two motions
2 together.

3 **I. BACKGROUND**

4 In 2010, CDPH purchased 13.7 million respirator masks, worth
5 \$9.8 million, from a company named Global Protection USA, Inc.
6 ("GPI"). (Ex. 1, FAC.) Plaintiff alleges that after the purchase,
7 CDPH requested that GPI store the masks for approximately two
8 months. (FAC, ¶¶ 16-17.) However, after the two month period was
9 over, CDPH did not retrieve the masks. Instead, they remained
10 warehoused at GPI's facility for approximately two years. (Id. at
11 ¶ 18.) Plaintiff alleges that GPI because to bill CDPH for
12 storage, and that CDPH in some way "acknowledged that it owed the
13 storage fees." (Id. at ¶ 19.) However, Plaintiff alleges, CDPH
14 never actually paid these storage fees, which eventually totaled
15 some \$761,100.00. (Id. at ¶¶ 20-21.)

16 GPI, for apparently unrelated reasons, filed for Chapter 11
17 bankruptcy in March 2012. (Id. at ¶ 21.) As part of the
18 bankruptcy proceeding, GPI obtained permission of the bankruptcy
19 court to sell its "rights and claims against the California
20 Department of Public Health . . . arising from the storage of
21 CDPH's 3M masks/respirators" to a company called Global Safety.
22 The sale took place on or around September 24, 2012. (Ex. 3, FAC.)
23 At around the same time, GPI was pursuing administrative relief
24 against CDPH through the California Victim Compensation and
25 Government Claims Board ("VCCB"); that relief was summarily denied
26 on December 7, 2012. (Id. at ¶ 21.)

27 While the claim was pending with VCCB, Global Safety began
28 negotiating to sell the masks themselves, to Leslee Sports,

1 apparently in the belief that GPI had held a "warehouseman's lien"
2 on the masks to secure payment of the storage fees. (Id. at ¶¶ 20,
3 23.) Global Safety transferred its interest in the claim to Rhino
4 Pets Series 1, LLC, which in turn sold the masks to Leslee Sports.
5 "During negotiations for that sale, Rhino . . . represented that
6 CDPH could no longer assert any ownership claim to the Masks and
7 that Leslee could take ownership free and clear together with a
8 claim for unpaid storage fees." (Id. at ¶ 25.) On December 14,
9 2012, Leslie sold "all of its rights and title to the masks" to
10 Plaintiff. (Id. at ¶ 27.)

11 At some point in this process, the masks had been transferred
12 to the care of a "third party warehouse in Los Angeles" belonging
13 to American Export Lines ("American Export"). (Id. at ¶ 29; Ex. 6,
14 FAC.) On February 13, 2013, CDPH sent a letter to the warehouse
15 agent claiming that the masks had been "converted" by Plaintiff's
16 predecessors in interest and demanding their prompt return. (Ex.
17 6, FAC.) Plaintiff alleges that around February 20-24, American
18 Export, its attorney, an attorney from OAG, a CHP officer, and
19 other unidentified parties held a telephone conference, during
20 which the CHP and OAG representatives told American Export that the
21 masks were "stolen goods" and that the state would "shut down"
22 American Export's operations if it was forced to obtain a court
23 order to get the masks. (Ex. 7, FAC.) American Export thereafter
24 turned the masks over to some state agent. (Id.)

25 Plaintiff therefore presents claims against CDPH for breach of
26 express, implied, or quasi-contract for failure to pay the fees;
27 against CDPH and CHP for conversion and trespass to chattels;
28 against CDPH, CHP, and OAG for violation of a statute prohibiting

1 the use of violence or intimidation; against Ron Chapman, Kamala
2 Harris, and Joseph Farrow individually for deprivation of
3 Fourteenth Amendment due process rights, as well as unlawful
4 seizure under the Fourth and Fourteenth Amendments, per 42 U.S.C. §
5 1983; against CDPH, CHP, and OAG for violations of the California
6 Constitution; and for a declaratory judgment regarding “the rights
7 and responsibilities of the parties arising from their ownership
8 interests, if any, in the Masks.” (FAC ¶¶ 39-123.)

9 Plaintiff requests compensatory and punitive damages, costs,
10 attorneys’ fees, prejudgment interest, declaratory judgment, and
11 either an order directing the return of the masks to Plaintiff or
12 an order directing Defendants to provide Plaintiff an appealable
13 hearing on CDPH’s interest in the masks.

14 **II. LEGAL STANDARD**

15 A complaint may be dismissed under Rule 12(b)(6) only if it
16 “either (1) lacks a cognizable legal theory or (2) fails to allege
17 sufficient facts to support a cognizable legal theory.” Somers v.
18 Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013). “All allegations
19 of material fact in the complaint are taken as true and construed
20 in the light most favorable to the plaintiff.” Williams v. Gerber
21 Products Co., 552 F.3d 934, 937 (9th Cir. 2008). “When there are
22 well-pleaded factual allegations, a court should assume their
23 veracity and then determine whether they plausibly give rise to an
24 entitlement to relief.” Ashcroft v. Iqbal, 556 U.S. 662, 679
25 (2009).

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1 **III. DISCUSSION**

2 **A. Storage Contract and Warehouseman's Lien**

3 At the heart of this case is the question of what rights, if
4 any, Plaintiff acquired from its predecessors in interest.
5 Plaintiff asserts that GPI had, at the time of its bankruptcy, a
6 storage contract with CDPH: either an express/implied-in-fact
7 contract, a modification of the original purchase order, or, at the
8 very least, an equitable quasi-contract based on GPI's reasonable
9 reliance on CDPH's representations that it would pay storage fees.
10 (FAC ¶¶ 39-72.) Relatedly, Plaintiff asserts that GPI acquired, as
11 the warehouseman of CDPH's goods, a warehouseman's lien on the masks
12 to secure payment of the storage fees. Alternatively, Plaintiff
13 argues, CDPH affirmatively abandoned the masks, which would also
14 allow GPI and its successors to claim ownership. Thus, under this
15 theory, CDPH owes Plaintiff either the storage fees or the masks.

16 Were CDPH a private party, Plaintiff's contentions would
17 suffice to survive a motion to dismiss. At the very least,
18 resolving Plaintiff's claims would require a factual inquiry as to
19 whether GPI made an offer of continuing storage and whether CDPH
20 accepted the offer, either verbally or by continuing to store its
21 masks with GPI.¹ And if such a contractual agreement existed, GPI
22 likely could have obtained a warehouseman's lien and the
23 concomitant right to sell the masks. Cal. Commercial Code §§ 7206,
24 7209-10.

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27 ¹"Performance of the conditions of a proposal, or the
28 acceptance of the consideration offered with a proposal, is an
acceptance of the proposal." Cal. Civ. Code § 1584.

1 However, because CDPH is a public entity, the matter is
2 different. As a general rule, public entities in California may
3 not contract in any manner other than that prescribed by
4 statute-usually by approval of the Department of General Services.

5 *All* contracts entered into by any state agency for . . .
6 services . . . or maintenance of property, real or personal .
7 . . are void unless and until approved by the department.

8 *Every contract* shall be transmitted with all papers,
9 estimates, and recommendations concerning it to the department
10 and, if approved by the department, shall be effective from
11 the date of the approval.

12 Cal. Pub. Cont. Code § 10295 (emphases added). Plaintiff does not
13 allege, even in its Opposition, that the purported contract was
14 transmitted to or approved by the Department.

15 Of course, it is not necessarily the responsibility of a party
16 suing a state agency to allege the details of internal
17 communications of the state government. But in this case, where
18 the entire contract would have arisen passively—"CDPH accepted
19 GPI's offer of further storage . . . by maintaining the Masks at
20 GPI's warehouse without objection" (FAC ¶ 43)—Plaintiff cannot rely
21 on a presumption that the contract had gone through the proper
22 channels. Because, absent a statutory exception,² Department

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24 ²Plaintiff notes that there are a few statutory exceptions to
25 the general provision quoted above, see Cal.Gov.Code § 14616
26 (Director of General Services may exempt contracts under \$50,000
27 from approval); Cal.Gov.Code § 11256 (Director may exempt service
28 arrangement between state agencies). Plaintiff argues that "only
discovery will reveal . . . whether and to what extent any of the
myriad exceptions apply." (Opp'n at 24:6-9.) But § 10295, by
including in its sweep "all" contracts, establishes a general
presumption. Thus, to survive a motion to dismiss, Plaintiff must
(continued...)

1 approval is a statutory requirement for contract formation, and all
2 other contracts are void as a matter of law, there could not have
3 been a contract between GPI and CDPH.

4 Plaintiff nonetheless argues that some form of quasi-contract
5 must apply to this situation. "Under Defendants' logic," Plaintiff
6 avers, "by agreeing to store the masks for two months, GPI became
7 forever obligated to hold the Masks for CDPH and had no means to
8 collect payment or cause the state to recognize its obligation.
9 That cannot be the law." (Opp'n at 25:25-27.)

10 That is not the law. Although in general quasi-contract
11 cannot be found where the method of government contracting is
12 established by statute, Reams v. Cooley, 171 Cal. 150, 156-57
13 (1915), in extreme circumstances, equitable remedies like
14 promissory estoppel may be available. "The government may be bound
15 by an equitable estoppel in the same manner as a private party when
16 . . . the injustice which would result from a failure to uphold an
17 estoppel is of sufficient dimension to justify any effect upon
18 public interest or policy which would result from the raising of an
19 estoppel." City of Long Beach v. Mansell, 3 Cal. 3d 462, 496-97
20 (1970).

21 Here, however, there is little in the way of injustice that
22 will be wrought should the Court not apply estoppel. GPI was not
23 "forever obligated to hold the Masks for CDPH." It could, for
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25 ²(...continued)
26 allege at least some facts tending to show that some statutory
27 exception applies. Mere hope that some such exception applies and
28 that "discovery will reveal" the exception is not enough. Bell
Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007) (plaintiff must
allege "enough fact to raise a reasonable expectation that
discovery will reveal evidence of" the purported cause of action).

1 example, have picked up the phone and demanded that CDPH come
2 collect its goods—a simple action that, surprisingly, is nowhere
3 alleged by Plaintiff. If a direct request failed, GPI could have
4 sought injunctive relief based on trespass. Cal. Gov't Code § 814
5 (excluding claims for injunctive relief from general provisions of
6 government immunity). Instead, GPI decided to respond to CDPH's
7 neglect by invoicing in the hope of collecting storage fees. That
8 is understandable—had it worked, GPI might have been much the
9 richer. But that is not how government contracts are formed, and
10 GPI's gamble that it could collect storage fees without a valid
11 contract does not compel the Court to set aside the important
12 public policy considerations embodied in the statutory limitations
13 placed on state agency contracting.³

14 Public policy considerations similarly counsel against finding
15 that GPI had a warehouseman's lien, or that CDPH had abandoned the
16 masks. It is well-established under California law that mechanic's
17 and materialmen's liens cannot be asserted against public property,
18 North Bay Const., Inc. v. City of Petaluma, 143 Cal.App.4th 552,
19 556 (2006), and CDPH argues that the same is true of warehouseman's
20 liens. Plaintiff counters that the line of cases cited in North
21 Bay apply only to liens on real property, not the sort of fungible
22 personal property at issue here. But those cases consistently
23 refer to "principles of sovereign immunity," id., and Plaintiff
24 does not make a convincing argument as to why the warehouseman's

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27 ³"The statutory requirement of independent written approval of
28 the Director of General Services protects the public from
improvident or secret action" State of California v.
Haslett Co., 45 Cal. App. 3d 252, 257 (1975).

1 lien statutes should be read to abrogate the general presumption of
2 immunity.⁴

3 Plaintiff does argue that real estate is specially protected
4 from liens because it is "irreplaceable," while the masks in
5 question are "fungible." (Opp'n at 30:22,26.) But while they may
6 be fungible in a technical sense, it is not necessarily the case
7 that CDPH would be able to lay hands on 13.7 million such masks at
8 a moment's notice in case of a public emergency. Indeed, that fact
9 is presumably what motivated the agency to purchase these masks in
10 advance of any such emergency. Although it certainly appears, on
11 Plaintiff's facts, that the agency was negligent in taking
12 possession of its property, that negligence did not entitle GPI to
13 claim ownership of state property. See, e.g., United States v.
14 Cardinale Warehousing Corp., 65 F. Supp. 760, 762 (D.N.J. 1946)
15 (finding no warehouseman's lien against the federal government
16 because "[i]t would be intolerable to imagine that the United
17 States would not have the right at all times and under all
18 circumstances to the possession of such materials purchased to
19 promote the defense of the United States.") (internal quotation
20 marks and ellipses omitted).

21 In short, absent specific statutory authorization, policy
22 considerations and general principles of sovereign immunity counsel

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24 ⁴Plaintiff also cites no authority for its proposition.
25 Plaintiff does cite to a sentence in In re S. Bay Expressway, L.P.,
26 but in context that sentence is clearly intended to distinguish
27 between private and public property interests, not between
28 mechanic's liens and other liens: "[North Bay] stands for the
unremarkable proposition that mechanic's liens cannot be asserted
against a public's entity's interest in *public property*. Here, the
mechanic's liens are asserted against Debtors' *private property*
interests, not the concurrent property interest of Caltrans." 434
B.R. 589, 601 (Bankr. S.D. Cal. 2010) (emphases added).

1 against finding that private parties can impose liens on personal
2 property owned by the state government.

3 For similar reasons, a court cannot presume that long-unused
4 government property has been abandoned, absent an "official action"
5 affirmatively showing intent to abandon. City of Stockton v. Miles
6 & Sons, Inc., 165 F. Supp. 554, 560 (N.D. Cal. 1958). The public
7 interest in the government's retaining ownership of the people's
8 property, even despite neglect by officials, is far too great to
9 allow private parties to lay claim to supposedly "abandoned" items.
10 This is why, for example, there is no right to adverse possession
11 of public property. Cal. Civ. Code § 1007. "The public is not to
12 lose its rights through the negligence of its agents" Bd.
13 of Ed. of City & Cnty. of San Francisco v. Martin, 92 Cal. 209, 218
14 (1891).

15 Plaintiff argues that CDPH's failure to intervene or otherwise
16 assert its rights in the masks during GPI's bankruptcy proceedings
17 is an official action showing intent to abandon. But that argument
18 must be rejected, as it relies on a failure to take action when it
19 might have been prudent-i.e., negligence, which does not suffice to
20 show intent to abandon. Plaintiff relies on City of Stockton, but
21 in that case the city affirmatively showed its intent to abandon a
22 water channel by filling it with soil, as well as taking certain
23 other legislative steps to officially abandon the property. 165 F.
24 Supp. at 560. Declining to intervene in a bankruptcy proceeding in
25 New Jersey is not such an affirmative official action-especially

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1 where it was unclear what, if any, rights were actually being
2 transferred.⁵

3 The Court accordingly grants the motions to dismiss the first
4 through fourth and seventh causes of action. Because the Court
5 finds that neither GPI nor any of its successors in interest had
6 any property right in the masks, this effectively also resolves the
7 thirteenth cause of action, for declaratory judgment as to the
8 parties' rights in the masks. The fifth cause of action
9 (conversion) and sixth cause of action (trespass to chattels) rely
10 on a property right in the masks which, as a matter of law, does
11 not exist, and therefore the Court grants the motions to dismiss as
12 to these claims as well.

13 **B. Bane Act and Federal and State Constitutional Claims**

14 **1. Bane Act**

15 Plaintiff asserts a claim under the Bane Act, Cal. Civ. Code §
16 52.1, which provides for damages and injunctive relief for an
17 individual "whose exercise or enjoyment of rights secured by the
18 Consitution or laws of the United States, or of rights secured by
19 the Constitution or laws of this state, has been interfered with."
20 The intimidation must be accomplished "by threats, intimidation, or
21 coercion." Id. If the action is brought on the basis of speech
22 alone, rather than intimidating or coercive *acts*, the plaintiff
23 must show that "the speech itself threatens violence against a
24 specific person or group of persons; and the person or group of
25 persons against whom the threat is directed reasonably fears that,

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27 ⁵The Bankruptcy Court itself did not specify what the source
28 of the property right in the masks might be: ". . . whether those
claims arise under any warehouseman's lien, abandonment claims,
statute, common law, or otherwise" (Ex. 3, FAC.)

1 because of the speech, violence will be committed against them or
2 their property.” Id. at §52.1(j).

3 Defendants primarily argue that Plaintiff cannot assert the
4 Act’s protection because any alleged threats were against the third
5 party warehouse, not against Plaintiff, and because the state
6 believed at the time of the alleged actions that Leslee Sports, not
7 Plaintiff, was holding the masks. (CHP Defs.’ Mot. Dismiss at 8-9;
8 CHP Defs.’ Reply at 11-13.) However, because the Court finds an
9 independent reason to dismiss the claim on the face of the Bane Act
10 statute, it need not reach that issue here.

11 Plaintiff alleges that, during a phone conversation, the
12 Defendants threatened to shut down its third-party warehouse’s
13 business. This is not enough to satisfy § 52.1(j)’s threat-of-
14 violence requirement. Even taking into account that the violence
15 may be against “property,” the plain meaning of the word “violence”
16 clearly involves some physical, destructive act, which would not
17 include administratively shutting down a business. A mere
18 statement that an official may take official action is not a threat
19 of violence. Martin v. Cnty. of San Diego, 650 F. Supp. 2d 1094,
20 1109 (S.D. Cal. 2009) (“Det. Maus told Plaintiff that if he did not
21 consent to voluntarily submit a DNA sample he would attempt to get
22 a warrant and ‘come look[ing] for you.’□ Det. Maus did not threaten
23 violence against Plaintiff. . . .”) Plaintiff’s allegation
24 therefore cannot sustain a Bane Act claim. The motions to dismiss
25 are granted as to this claim.

26 **2. Claims Under the California Constitution**

27 Plaintiff also brings two claims under different provisions of
28 the California Constitution. First, Plaintiff alleges a violation

1 of Cal. Const. art. 1, § 7, which reads, in pertinent part, "A
2 person may not be deprived of life, liberty, or property without
3 due process of law" Parties are agreed that Plaintiff may
4 not seek money damages for such a violation, and Plaintiff now
5 seeks only injunctive relief. (Opp'n at 35:17-20.) However, the
6 injunctive relief Plaintiff seeks is return of the masks,
7 presumably in order to sell them or seek storage fees from CDPH.
8 (FAC ¶ 115.) As the Court has now determined that, as a matter of
9 law, the masks belong to the state and no storage fees are due, any
10 claim for injunctive relief is moot. This claim is therefore
11 dismissed.

12 Second, Plaintiff alleges a violation of Cal. Const. art. 1, §
13 13, which reads, in pertinent part, "The right of the people to be
14 secure in their persons, houses, papers, and effects against
15 unreasonable seizures and searches may not be violated"
16 Absent a claim under a statute like the Bane Act, Plaintiff
17 essentially alleges a freestanding constitutional tort.

18 The California Supreme Court has laid out a test for
19 determining whether such a tort exists. The court must first
20 consider whether there is evidence of an affirmative intent to
21 create such a tort; if so, the court gives effect to that intent.
22 Katzberg v. Regents of Univ. of California, 29 Cal. 4th 300, 317
23 (2002). "But with regard to most constitutional provisions, the
24 words of the provision do not on their own manifest any such
25 intent." Id. Thus, the court must often look to historical
26 context to determine whether such intent existed. Id. Only if no
27 such intent can be found does the court proceed to a more free-
28 ranging "constitutional tort analysis" modeled on the United States

1 Supreme Court case Bivens v. Six Unknown Named Agents of Fed.
2 Bureau of Narcotics. Id.

3 Federal courts in California have reached contradictory
4 conclusions about whether such a tort based on § 13 actually
5 exists. Those that have found a constitutional tort have generally
6 done so based on an inference of intent on the part of the drafters
7 of the California Constitution, relying on language in Katzberg
8 suggesting that the tort remedy for unlawful searches and seizures
9 is an ancient one incorporated into American law from the English
10 common law. Compare Wigfall v. City & Cnty. of San Francisco, No.
11 C 06-4968 VRW, 2007 WL 174434, at *1, *4-6 (N.D. Cal. Jan. 22,
12 2007) (undertaking the Katzberg analysis and concluding that no
13 tort remedy exists), with Millender v. Cnty. of Los Angeles, No. CV
14 05-2298 DDP RZX, 2007 WL 7589200 at *1, *39 (C.D. Cal. Mar. 15,
15 2007) rev'd in part, 472 F. App'x 627 (9th Cir. 2012) (finding that
16 Katzberg implied a historical foundation for tort remedy for
17 unlawful searches and seizures), and Smith v. County of Riverside,
18 No. EDCV 05-00512 VAP, at *1, *16-18 (C.D.Cal. May 16, 2006)
19 (same). The Court finds the Millender/Smith reasoning more
20 persuasive.

21 Defendants argue that Katzberg's discussion of a New York case
22 describing the historical tort remedy for unlawful search and
23 seizure⁶ was meant only by way of example and is limited to the
24 specifics of New York law: "[T]he New York court found historical
25 support in New York case law and legislative history for New York's
26 adoption of a damages remedy . . . [But] the court in Wigfall

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28 ⁶Brown v. State, 89 N.Y.2d 172 (1996).

1 found that an analysis of California legislative history did not
2 show support.” (CHP Defs.’ Mot. Dismiss at 15:9-17.)

3 But the Katzberg court in fact appears to have been pointing
4 to a general understanding that where a state constitution is
5 adopted that preserves the common law, it is appropriate for courts
6 to infer the existence of “constitutional torts” based on
7 historical tort remedies for the wrongs contemplated by specific
8 constitutional provisions:

9 In considering evidence of an implied right to seek damages,
10 we also believe it appropriate to examine, as have sister
11 state jurisdictions that have permitted damage suits to remedy
12 search and seizure violations, common law history from which
13 we might infer, within the provision at issue, an intent to
14 provide an action for damages to remedy a violation of that
15 provision

16 [T]he New York Court of Appeals observed that ‘the courts have
17 looked to the common-law antecedents of the constitutional
18 provision to discover whether a damage remedy may be implied.
19 New York's first Constitution in 1777 recognized and adopted
20 the existing common law of England and each succeeding
21 Constitution has continued that practice’

22 Katzberg, 29 Cal. 4th at 322.

23 The California Constitution, like the New York Constitution,
24 appears to have been drafted against a background expectation that
25 common law remedies would continue to be available. Indeed,
26 shortly after the adoption of the Constitution, California affirmed
27 by statute that “[t]he Common Law of England, so far as it is not
28 repugnant to or inconsistent with the Constitution of the United

1 States, or the Constitution or laws of the State of California,
2 shall be the rule of decision in all the Courts of this State.”
3 Cal. Stats. 1850, ch. 95.⁷ And as the Katzberg court noted, the
4 English common law, by longstanding practice, provided a damages
5 remedy for unlawful searches and seizures. Id. Thus it seems
6 quite likely that the framers of the California Constitution
7 expected and intended that violations of § 13 would have had a
8 common law tort remedy.

9 In the absence of an actual California Supreme Court decision,
10 this Court “must predict how the California Supreme Court would
11 decide the issue” and rule accordingly. Astaire v. Best Film &
12 Video Corp., 116 F.3d 1297, 1300 (9th Cir. 1997). There is no
13 California Supreme Court case ruling conclusively on this issue.
14 Therefore, the Court, following the analytic pattern set forth by
15 Katzberg, finds that Plaintiff can claim damages for a violation of
16 § 13.

17 Defendants’ motions to dismiss are therefore denied as to this
18 claim.

19 **3. Claims Under 42 U.S.C. § 1983 for Violations of the Federal**
20 **Constitution**

21 Finally, Plaintiff alleges that Defendants violated the Fourth
22 and Fourteenth Amendments of the United States Constitution by
23 seizing the masks, and it brings a claim for damages under 42
24 U.S.C. § 1983. The seizure itself was unlawful, Plaintiff argues,
25 and it was also deprivation of property without due process of law.
26 Defendants argue that these claims “fail to state plausible claims

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28 ⁷The statute is today codified, with small changes, at Cal.
Civ. Code § 22.2.

1 on which relief may be granted because, as a matter of law,
2 Plaintiff had no lawful right to possession or ownership of the
3 property that it claims was unlawfully seized by the Defendants.”
4 (CHP Defs.’ Mot. Dismiss at 2:14-20.)

5 But Plaintiff’s claim on the masks had not yet been
6 adjudicated at the time of seizure. It had a non-frivolous, if
7 ultimately unavailing, legal argument for a lien and the right to
8 hold or sell the masks to recoup storage costs.⁸ No court had yet
9 determined that Plaintiff “had no lawful right to possession” of
10 the masks.

11 Where property rights are disputed or imperfect, at the very
12 least a party is entitled to appropriate due process before the
13 property is seized. As the Supreme Court has explained in the
14 context of the use of replevin by private parties:

15 The right to a prior hearing, of course, attaches only to the
16 deprivation of an interest encompassed within the Fourteenth
17 Amendment's protection

18 The appellants who signed conditional sales contracts lacked
19 full legal title to the replevied goods. The Fourteenth
20 Amendment's protection of ‘property,’ however, *has never been*
21 *interpreted to safeguard only the rights of undisputed*
22 *ownership*. Rather, it has been read broadly to extend
23 protection to ‘any significant property interest’

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26 ⁸In particular, it appears that no previous court has taken up
27 the question of whether a private party can obtain a warehouseman's
28 lien and right of sale against the state's fungible personal
property under Cal. Commercial Code § 7206(a). As Plaintiff points
out, the lien and right to sell are available under § 7206(a) even
in the absence of any contractual obligation.

1 The appellants were deprived of such an interest in the
2 replevied goods—the interest in continued possession and use
3 of the goods

4 Their ultimate right to continued possession was, of course,
5 in dispute. If it were shown at a hearing that the appellants
6 had defaulted on their contractual obligations, it might well
7 be that the sellers of the goods would be entitled to
8 repossession. But . . . *[t]he right to be heard does not*
9 *depend upon an advance showing that one will surely prevail at*
10 *the hearing.*

11 Fuentes v. Shevin, 407 U.S. 67, 84 (1972) (emphases added).

12 Nor does the right to be heard depend on whether the adverse
13 claimant is the state. Although case law is sparse on this
14 particular point, courts have been reluctant to deny private
15 parties due process in property disputes solely because the other
16 party is the government. See Langbord v. U.S. Dep't of Treasury,
17 645 F. Supp. 2d 381, 396 (E.D. Pa. 2009) (holding that due process
18 requirements applied when government seized coins that were the
19 subject of an ownership dispute with a private party); United
20 States v. One Parcel of Real Prop. with Bldgs., Appurtenances &
21 Known as 170 Westfield Drive, Located in the Town of E. Greenwich,
22 Rhode Island, 34 F. Supp. 2d 107, 115 (D.R.I. 1999) (declining,
23 where the government had seized disputed property, to find that the
24 adverse private claimant had merely held the property in
25 constructive trust).

26 Similarly, the Fourth Amendment protects against unlawful
27 searches and seizures even when title to the property is unclear,
28 and even when the adverse claimant is the government.

1 The premise that property interests control the right of the
2 Government to search and seize has been discredited. Searches
3 and seizures may be "unreasonable" within the Fourth Amendment
4 *even though the Government asserts a superior property*
5 *interest* at common law. We have recognized that the principal
6 object of the Fourth Amendment is the protection of privacy
7 rather than property, and have increasingly discarded
8 fictional and procedural barriers rested on property concepts.
9 Warden, Md. Penitentiary v. Hayden, 387 U.S. 294, 304 (1967)
10 (emphasis added). See also Leshner v. Reed, 12 F.3d 148, 150 (8th
11 Cir. 1994) ("The district court concluded no constitutional
12 violation had occurred because the [police department] owned the
13 dog at the time the animal was taken from the Leshners' home.
14 Regardless of the disputed ownership of this dog, the court erred
15 in dismissing the Leshners' Fourth Amendment claim.").

16 In short, both the guarantee of due process of law under the
17 Fourteenth Amendment and the protection from unreasonable seizure
18 under the Fourth Amendment apply to seizures of property held by a
19 private party to which the government asserts a claim.

20 As the Defendants offer no other grounds for dismissal of
21 these claims, the motions to dismiss are denied as to the § 1983
22 claims.

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1 **IV. CONCLUSION**

2 The motions are granted and Plaintiff's First Amended
3 Complaint is dismissed as to its First through Eighth, Eleventh,
4 and Thirteenth Causes of Action. However, the motions are denied
5 as to the Ninth, Tenth, and Twelfth Causes of Action.

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7 IT IS SO ORDERED.

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10 Dated: October 7, 2014

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DEAN D. PREGERSON
United States District Judge

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