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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

|   |   |   |
|---|---|---|
| VICTORIA URENIA, an individual; SOLEDAD CORONA, an individual,                  | ) | Case No. CV 13-01934 DDP (AJWx)   |
|   | ) |   |
| Plaintiffs,   | ) | <b>ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS BANK OF AMERICA, N.A., PUBLIC STORAGE, AND MICHAEL ANZ'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT</b> |
| v.  | ) |   |
|   | ) |   |
| PUBLIC STORAGE, a real estate investment trust;                                 | ) | [DKT. NO. 63, 64]   |
| CITY OF LOS ANGELES, a governmental entity; BANK OF AMERICA, N.A.; MICHAEL ANZ, | ) |   |
|   | ) |   |
| Defendants.   | ) |   |
| _____   | ) |   |

Presently before the Court is Defendants Bank of America, N.A., Public Storage, and Michael Anz's motion to dismiss Plaintiffs' First Amended Complaint (the "Motion"). (Docket Nos. 63, 64.) For the reasons stated in this Order, the Motion is GRANTED IN PART and DENIED IN PART.

**I. Background**

A. Procedural Background

This action was originally filed by Victoria Urenia and Soledad Corona against Bank of America, N.A., Public Storage,

1 Michael Anz, and the City of Los Angeles (collectively,  
2 "Defendants") regarding the foreclosure of Ms. Corona's home and  
3 the storage of her personal belongings from that home at a Public  
4 Storage facility. (See Docket No. 1.) The action purported to be a  
5 class action. (Id.) The Court granted in part and denied in part  
6 the motion to dismiss the original complaint, with leave to amend.  
7 (Docket No. 59.) Upon amendment, three new plaintiffs were added to  
8 this action: Cathelene Hughes, Javier Hernandez, and Brenda  
9 Hernandez.<sup>1</sup> (See First Amended Complaint ("FAC"), Docket No. 60.)  
10 The City of Los Angeles answered. (Docket No. 61.) Bank of America,  
11 Public Storage, and Anz (collectively, "Private Defendants") then  
12 filed the Motion. (Docket No. 63, 64.)<sup>2</sup> After the Motion was filed,  
13 Victoria Urenia, Soledad Corona, and Cathelene Hughes were  
14 dismissed from the action without prejudice after the Court held a  
15 hearing on Plaintiffs' counsel's motion to withdraw as attorney for  
16 those three plaintiffs. (See Docket Nos. 100, 105.) Therefore, the  
17 only remaining plaintiffs are Javier Hernandez and Brenda Hernandez  
18 (collectively, "Plaintiffs"). Accordingly, the Court will address  
19 the sufficiency of the FAC with respect to these Plaintiffs only.<sup>3</sup>

20 B. Factual Background

21 \_\_\_\_\_  
22 <sup>1</sup>In the Court's prior order ruling on the motion to dismiss  
23 the original complaint in this action, the Court expressed some  
24 skepticism as to whether the action would be able to proceed as a  
25 class action, though the Court did not rule on the issue of class  
certification at that time. Perhaps in an attempt to demonstrate  
the potential for class claims, these three new plaintiffs were  
added.

26 <sup>2</sup>Private Defendants actually filed two motions: one as to Ms.  
27 Corona's claims (Docket No. 64) and one as to the claims of Ms.  
Urenia, Ms. Hughes, and the Hernandezes (Docket No. 63).

28 <sup>3</sup>The motion to dismiss filed against Ms. Corona (Docket No.  
64) is moot.

1 Plaintiffs Javier Hernandez and his sister Brenda Hernandez  
2 were the owners of real property located at 14620 Leadwell Street,  
3 Van Nuys, California 91405 (the "Property") and secured by a deed  
4 of trust from Countrywide Bank, N.A. (FAC ¶¶ 5-6, 130.) Countrywide  
5 recorded a notice of default against the Hernandezes in 2008. (Id.  
6 ¶ 131.) Bank of America later asserted ownership of the loan as  
7 Countrywide's successor. (Id. ¶ 132.) A trustee's sale was recorded  
8 in 2011. (Id. ¶ 133.) Plaintiffs allege that after the sale,  
9 Plaintiffs were threatened with the deportation of their father if  
10 they refused to vacate the Property. (Id. ¶ 134.) Plaintiffs  
11 refused to vacate, and their father was deported. (Id. ¶ 135.)

12 Javier Hernandez then joined the Occupy Fights Foreclosures  
13 ("OFF") group and began to participate in their meetings and  
14 demonstrations, including events at Ms. Corona's home and at the  
15 Property. (Id. ¶¶ 136-40, 168.) Plaintiffs allege that Los Angeles  
16 Police Department ("LAPD") officers would monitor OFF and its  
17 members by finding out about events and protests through social  
18 media, then showing up at the events, demanding identification of  
19 those present, and sharing the identities of the protestors with  
20 Bank of America. (Id. ¶ 170.) Plaintiffs allege that Bank of  
21 America would then plan immediate lockouts of those individuals  
22 involved in the protests. (Id.) Further, Plaintiffs allege that  
23 LAPD commanded that no one was allowed to photograph or videotape  
24 what was happening at the protests and that LAPD would remove signs  
25 placed on the Property as part of the protests. (Id. ¶ 173, 182.)

26 As the holiday season in 2012 approached, Plaintiffs allege  
27 that Bank of America represented through media outlets that it  
28 would put a halt to foreclosure evictions during the holidays. (Id.

1 ¶ 141.) Nevertheless, Plaintiffs allege that they were locked out  
2 of the Property on December 27, 2012 by Bank of America, LAPD, and  
3 the Los Angeles Sheriff's Department ("LASD") after LAPD and LASD  
4 "stormed" the Property with 50 to 200 armed officers at  
5 approximately 4:00 or 5:00 AM. (Id. ¶¶ 142-43.) All persons at the  
6 Property, including Javier and at least 8 other individuals, were  
7 forcibly removed from the Property. (Id. ¶ 146.) A "clean up crew"  
8 then came and removed all of their personal belongings from the  
9 Property without letting Plaintiffs or others retrieve any  
10 belongings. (Id. ¶ 147.) Plaintiffs allege that there was no valid  
11 search or seizure warrant for the Property. (Id. ¶ 145.) Plaintiffs  
12 allege that later, Javier Hernandez was forced to sign a storage  
13 rental agreement with Public Storage and pay \$250.00 in order to  
14 see his personal property again and that upon gaining access to his  
15 belongings, he discovered that much of the property was damaged or  
16 missing. (Id. ¶ 152.)

17 Plaintiffs bring a variety of claims arising out of these  
18 events. Plaintiffs allege violations of the First Amendment, Fourth  
19 Amendment, RICO, the Sherman Act, and Cal. Bus. & Prof. Code §  
20 17200. Plaintiffs purportedly bring all of their claims on behalf  
21 of a class of similarly situated individuals who have been  
22 subjected to the same alleged acts that Plaintiffs experienced.

## 23 **II. Legal Standard**

24 A complaint will survive a motion to dismiss when it contains  
25 "sufficient factual matter, accepted as true, to state a claim to  
26 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
27 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
28 570 (2007)). When considering a Rule 12(b)(6) motion, a court must

1 "accept as true all allegations of material fact and must construe  
2 those facts in the light most favorable to the plaintiff." Resnick  
3 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint  
4 need not include "detailed factual allegations," it must offer  
5 "more than an unadorned, the-defendant-unlawfully-harmed-me  
6 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or  
7 allegations that are no more than a statement of a legal conclusion  
8 "are not entitled to the assumption of truth." Id. at 679. In other  
9 words, a pleading that merely offers "labels and conclusions," a  
10 "formulaic recitation of the elements," or "naked assertions" will  
11 not be sufficient to state a claim upon which relief can be  
12 granted. Id. at 678 (citations and internal quotation marks  
13 omitted).

14 "When there are well-pleaded factual allegations, a court  
15 should assume their veracity and then determine whether they  
16 plausibly give rise to an entitlement of relief." Id. at 679.  
17 Plaintiffs must allege "plausible grounds to infer" that their  
18 claims rise "above the speculative level." Twombly, 550 U.S. at  
19 555. "Determining whether a complaint states a plausible claim for  
20 relief" is a "context-specific task that requires the reviewing  
21 court to draw on its judicial experience and common sense." Iqbal,  
22 556 U.S. at 679.

### 23 **III. Discussion**

24 As a preliminary matter, it appears that Defendant Michael Anz  
25 is only personally implicated in the factual allegations regarding  
26 Ms. Corona and Ms. Urenia. As those plaintiffs are no longer  
27 involved in this action, there are no remaining allegations that  
28 involve Mr. Anz. As a result, the Court DISMISSES all claims

1 against Defendant Anz. The Court's remaining analysis, therefore,  
2 addresses the sufficiency of the FAC as to Bank of America and  
3 Public Storage only.

4 A. Section 1983 Claims

5 Plaintiffs' § 1983 claims are based on purported violations of  
6 Plaintiffs' First Amendment and Fourth Amendment rights. Private  
7 Defendants argue first that Plaintiffs' Section 1983 claims should  
8 be dismissed as to them because they are not state actors and did  
9 not act under color of law. "To state a claim under § 1983, a  
10 plaintiff must allege two essential elements: (1) that a right  
11 secured by the Constitution or laws of the United States was  
12 violated, and (2) that the alleged violation was committed by a  
13 person acting under the color of State law." Long v. County of Los  
14 Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

15 Generally, private actors do not act under color of state law.  
16 Price v. State of Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991).  
17 Further, "it is generally not a constitutional violation for a  
18 police officer to enforce a private entity's rights." Villegas v.  
19 Gilroy Garlic Festival Ass'n, 541 F.3d 950, 957 (9th Cir. 2008).  
20 Nor does a private party's invocation of remedies provided by state  
21 law constitute state action. See Harper v. Federal Land Bank of  
22 Spokane, 878 F.2d 1172, 1178 (9th Cir. 1989) ("[T]he fact that a  
23 state permits the use of foreclosure procedures and subsequent  
24 sheriff sales as the execution of a judgment is not sufficient to  
25 constitute state action.").

26 However, there are situations where a private individual or  
27 entity can be held liable under § 1983 under a joint action theory.  
28 See Kirtley v. Rainey, 326 F.3d 1088, 1093-95 (9th Cir. 2003); Tsao

1 v. Desert Palace, Inc., 698 F.3d 1128, 1140 (9th Cir. 2012). Joint  
2 action exists where the state has "so far insinuated itself into a  
3 position of interdependence with [the private entity] that it must  
4 be recognized as a joint participant in the challenged activity."  
5 Gorenc v. Salt River Project Agric. Improvement & Power Dist., 869  
6 F.2d 503, 507 (9th Cir. 1989) (quoting Burton v. Wilmington Parking  
7 Auth., 365 U.S. 715, 725 (1961)).

8         The Court previously found that Plaintiffs had sufficiently  
9 pleaded joint action as to Plaintiffs' Fourth Amendment claim. (See  
10 Docket No. 59.) However, that determination was made with reference  
11 to the alleged facts regarding Ms. Urenia and Ms. Corona. Since  
12 those plaintiffs are no longer a part of this action, the Court's  
13 prior determination is irrelevant, and the Court must now determine  
14 whether the allegations regarding the current plaintiffs, Javier  
15 and Brenda Hernandez, support a plausible claim that Private  
16 Defendants acted jointly with LAPD such that they may be held  
17 liable for § 1983 violations.

18                 1. *First Amendment Claim*

19         To state a First Amendment retaliation claim, a plaintiff must  
20 show: "(1) that the plaintiff was engaged in a constitutionally  
21 protected activity; (2) that the defendant[']s actions cause the  
22 plaintiff to suffer an injury that would chill a person of ordinary  
23 firmness from continuing to engage in that activity; and (3) that  
24 the defendant's adverse action was substantially motivated as a  
25 response to the plaintiff's exercise of constitutionally protected  
26 conduct." Forte v. Jones, 2014 WL 2465606, at \*3 (E.D. Cal. 2014);  
27 see also Worrell v. Henry, 219 F.3d 1197, 1212 (10th Cir. 2000).  
28 Private Defendants do not challenge that Plaintiffs' activity at

1 OFF protests was protected activity. However, Private Defendants  
2 argue that no acts by Private Defendants would chill speech and  
3 that those acts were not motivated by a desire to chill speech.

4 The Court finds that Plaintiffs have alleged sufficient facts  
5 to support their allegation that their First Amendment rights were  
6 violated. Plaintiffs allege that LAPD and Bank of America  
7 essentially worked together to effect foreclosures on those  
8 individuals who were active participants in the OFF movement. LAPD,  
9 at the request of Bank of America, was present at various protests  
10 and demanded identification of those present. Then, Bank of America  
11 allegedly used that information to selectively evict those  
12 homeowners who participated in the protests. This alleged scheme,  
13 jointly performed by LAPD and Bank of America, would certainly  
14 chill a person of ordinary firmness from continuing to protest. If  
15 presence at an OFF protest meant that individuals would be required  
16 to show identification to LAPD and that, if they did so, they would  
17 later be singled out for immediate lock-out by Bank of America, it  
18 is reasonable to assume that most people would be chilled from  
19 protesting for fear of losing their homes. The fact that multiple  
20 individuals were locked out within a short period of time after  
21 such protests further supports the conclusion that the lock-outs  
22 were intended to quell further protests against Bank of America and  
23 the foreclosure process. Further, by using LAPD both to collect  
24 identifying information and to assist in the lock-out of  
25 Plaintiffs, Bank of America relied on the authority of state actors  
26 to accomplish the lock-out. Where police officers do more than  
27 merely "stand by" in case of trouble, but instead affirmatively  
28 participate in assisting private actors in effectuating an eviction



1 or repossession of property, the private actors may be said to be  
2 acting under color of law. See Howerton v. Gabica, 708 F.2d 380,  
3 383-84 (9th Cir. 1983)

4 Therefore, the Court finds that Plaintiffs' First Amendment  
5 claim survives the Motion as to Bank of America, and the Motion is  
6 therefore DENIED as to Bank of America. However, Plaintiffs have  
7 not alleged sufficient involvement of Public Storage in their First  
8 Amendment claim, the Court GRANTS the Motion as to any First  
9 Amendment claim against Public Storage.

10 *2. Fourth Amendment Claim*

11 Private Defendants argue that Plaintiffs' Fourth Amendment  
12 claim fails because their entry onto the Property and seizure of  
13 personal property therein was entirely lawful, as they assert that  
14 Plaintiffs no longer had an interest in the Property. Further,  
15 Private Defendants argue that there was no joint action.

16 As to the first argument, the allegations establish a  
17 plausible claim that Plaintiffs' lock-out was not lawful. While  
18 discovery may prove that Private Defendants had performed all of  
19 the necessary acts to properly evict Plaintiffs from the Property,  
20 it is not clear to the Court at this time that Private Defendants  
21 acted lawfully. The code sections cited by Private Defendants in  
22 support of this argument pertain only to the storage of personal  
23 property, and Private Defendants do not address the other aspects  
24 of Plaintiffs' Fourth Amendment claim, including entry into the  
25 occupied Property and removal of individuals present there.  
26 Therefore, Private Defendants' argument in this respect is  
27 unavailing.

28

1           As to the second argument, the Court previously determined  
2 that substantial officer involvement in the lock-out process was  
3 sufficient to support a finding of joint action between LAPD and  
4 Bank of America. Although the underlying facts pertaining to the  
5 current Plaintiffs are slightly different, this conclusion remains  
6 the same. Where police officers do more than merely "stand by" in  
7 case of trouble, but instead affirmatively participate in assisting  
8 private actors in effectuating an eviction or repossession of  
9 property, the private actors may be said to be acting under color  
10 of law. Howerton v. Gabica, 708 F.2d 380, 383-84 (9th Cir. 1983)  
11 ("This case involves more than a single incident of police consent  
12 to 'stand by' in case of trouble. Police were on the scene at each  
13 step of the eviction... The actions of [the officer] created an  
14 appearance that the police sanctioned the eviction." ); see also  
15 Harris v. City of Roseburg, 664 F.2d 1121, 1127 (9th Cir. 1981)  
16 ("[T]here may be a deprivation within the meaning of § 1983 ...  
17 when the officer assists in effectuating a repossession over the  
18 objection of the debtor.").

19           Here, Plaintiffs' alleged facts indicate that the LAPD  
20 officers did more than merely "stand by" when Bank of America  
21 locked Plaintiffs out of the Property, evicted Plaintiffs from the  
22 Property, and took possession of Plaintiffs' personal belongings.  
23 However, the alleged facts do not demonstrate that Public Storage  
24 or Michael Anz performed any acts jointly with LAPD officers, such  
25 that any acts performed by Public Storage were not performed "under  
26 color of law." Therefore, the Court DENIES the Motion as to  
27 Plaintiffs' Fourth Amendment claim against Bank of America and  
28

1 GRANTS the Motion with leave to amend as to Plaintiffs' claim  
2 against Public Storage.

3 B. RICO Claims

4 The elements of a civil RICO claim are "(1) conduct (2) of an  
5 enterprise (3) through a pattern (4) of racketeering activity."  
6 Rezner v. Bayerische Hypo-Und Vereinsbank AG, 630 F.3d 866, 873  
7 (9th Cir. 2010). "To have standing under civil RICO, [a plaintiff]  
8 is required to show that the racketeering activity was both a but-  
9 for cause and a proximate cause of his injury." Id. (citing Holmes  
10 v. Sec. Investor Prot. Corp., 503 U.S. 258, 268 (1992)). Private  
11 Defendants argue that Plaintiffs' RICO claim should be dismissed  
12 because (a) Plaintiffs fail to plead the predicate acts of mail  
13 fraud and wire fraud with sufficient specificity, and (b) there is  
14 an insufficient nexus between mail and/or wire fraud and  
15 Plaintiffs' alleged injuries in this case to satisfy the standing  
16 requirement. Further, Private Defendants argue that Plaintiffs'  
17 RICO conspiracy claim fails because the underlying RICO claim  
18 fails. Finally, Private Defendants argue that there is no  
19 cognizable claim for aiding and abetting a civil RICO claim.

20 The predicate acts upon which Plaintiffs base their RICO claim  
21 appear to be mail and/or wire fraud. The purportedly false  
22 representations at issue here are a bit ambiguous. The alleged  
23 fraud occurred when Bank of America, after taking Plaintiffs'  
24 property to Public Storage, sent Plaintiffs a one page "Release via  
25 Email, Fax and/or US mail ... representing that if the plaintiff  
26 signs the release they will be able to obtain their property from  
27 storage." (FAC ¶ 273.) Plaintiffs allege that this representation  
28 was false, as Plaintiffs were forced to sign a seven-page lease

1 agreement with Public Storage in order to even see their  
2 belongings. (Id. ¶¶ 273-74.) Further, Plaintiffs include  
3 generalized allegations regarding other purportedly false  
4 statements contained in "leases, promotional materials,  
5 applications, agreements, manuals and correspondence." (Id. ¶¶ 287-  
6 88.)

7       As to all predicate acts other than the sending of the  
8 "release" document, Plaintiffs have not alleged mail and/or wire  
9 fraud with sufficient specificity to satisfy the Rule 9(b) pleading  
10 standard. Plaintiffs do not allege what documents were sent to  
11 them, when they were sent, or the specific misrepresentations made  
12 in those documents.

13       As to Plaintiffs' claim based on the "release" document, the  
14 Court need not address whether these allegations are sufficiently  
15 specific to comport with the Rule 9(b) pleading requirements  
16 because the Court finds that the RICO claim may be dismissed on the  
17 basis of Private Defendants' second argument. It is not clear how  
18 the mail and/or wire fraud at issue here was either the actual or  
19 the proximate cause of any harm to Plaintiffs. The harm at issue  
20 here stems from the seizure of Plaintiffs' items from their home  
21 and placement in a Public Storage facility. Harm may possibly have  
22 also resulted from Plaintiffs being forced to sign a purportedly  
23 adhesive and unconscionable lease agreement. (See id. ¶ 307.) Those  
24 acts, while potentially unlawful under other claims Plaintiffs may  
25 have, do not constitute mail fraud or wire fraud. In order to  
26 establish a fraud claim, Plaintiffs would have to show that they  
27 suffered harm as a result of relying on the misrepresentations made  
28 in the "release" documents sent to them. Here, Plaintiffs do not

1 allege that any particular harm occurred as a result of the alleged  
2 misrepresentations; Plaintiffs' property was already at a Public  
3 Storage facility by the time any such misrepresentations were made,  
4 and it is unclear what further harm did or could have occurred by  
5 reason of a representation. As a result, the Court GRANTS the  
6 Motion as to Plaintiffs' RICO claims.

7 Plaintiffs also bring a RICO conspiracy claim. (Id. ¶¶ 310-  
8 17.) As their underlying RICO claim is insufficiently pled, the  
9 conspiracy claim fails as well. See Howard v. America Online, Inc.,  
10 208 F.3d 741, 751 (9th Cir. 2000) ("Plaintiffs cannot claim that a  
11 conspiracy to violate RICO existed if they do not adequately plead  
12 a substantive violation of RICO."). Further, as noted in the  
13 Court's prior order, there is no private right of action for  
14 "aiding and abetting" RICO violations. Therefore, to the extent  
15 that Plaintiffs still attempt to assert such a claim, it must be  
16 dismissed.

17 Therefore, the Court GRANTS the Motion as to all of  
18 Plaintiffs' RICO claims.

19 C. Sherman Act Claims

20 A claim under Section 2 of the Sherman Act requires "(1) the  
21 defendant possessed monopoly power in the relevant market; (2) the  
22 defendant willfully acquired or maintained that power through  
23 exclusionary conduct; and (3) the defendant's conduct caused  
24 antitrust injury." InfoStream Group, Inc. v. PayPal, Inc., 2012 WL  
25 3731517, at \*4 (N.D. Cal. 2012). Plaintiffs' Sherman Act claim  
26 appears to be based on Public Storage's alleged monopolization of  
27 the self-storage industry through an alleged agreement between  
28 Public Storage and Bank of America that all personal property

1 recovered from homes upon which Bank of America has foreclosed will  
2 be taken to a Public Storage facility. Private Defendants argue  
3 that Plaintiffs have not stated a claim under Section 2 of the  
4 Sherman Act because they have not suffered an antitrust injury.<sup>4</sup>

5 An antitrust injury "means harm to the process of competition  
6 and consumer welfare." LiveUniverse, Inc. v. MySpace, Inc., 304 F.  
7 App'x. 554, 557 (9th Cir. 2008). Plaintiffs allege that they  
8 sustained an antitrust injury in the following manner: Public  
9 Storage, because of its size, was able to offer a very low rental  
10 rate for the first month (\$1 or even \$0.01) to Bank of America;  
11 this induced Bank of America to store personal belongings from  
12 foreclosed home exclusively at Public Storage. (FAC ¶ 336.) For  
13 months subsequent to the introductory rate month, Plaintiffs  
14 allege, Public Storage is then able to charge a rental rate higher  
15 than the market rate because owners of the personal property now  
16 have no choice but to pay to store their belongings at the Public  
17 Storage facility. (Id. ¶¶ 341, 344.) It is somewhat unclear whether  
18 Plaintiffs claim that the antitrust violation was an explicit  
19 agreement between Public Storage and Bank of America to collude  
20 regarding storage of foreclosed homeowners' belongings or whether  
21 Plaintiffs instead intend to allege that the antitrust violation is  
22 Public Storage charging a very low introductory rate to induce Bank  
23 of America to use its storage facilities.

24 The Court finds that Plaintiffs have alleged sufficient facts  
25 to support a plausible claim that they suffered an antitrust  
26

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27 <sup>4</sup>Private Defendants offer a couple of additional arguments in  
28 their reply, but the Court does not consider those arguments, as  
they were not raised in the Motion.

1 injury. Because of the alleged collusion, which resulted in Public  
2 Storage being able to offer very low introductory prices and then  
3 locking foreclosed homeowners into higher prices for subsequent  
4 months, harms the welfare of these "forced" consumers of self  
5 storage services, Plaintiffs may be successful in pursuing their  
6 antitrust claims. Therefore, the Court DENIES the Motion as to  
7 Plaintiffs' Sherman Act claims.

8 D. UCL Claims

9 Plaintiffs premise their unfair competition law claim on Bank  
10 of America's alleged practice of "evict[ing] homeowners and  
11 search[ing] and seiz[ing] their personal property, when there is no  
12 valid search warrant and no arrest ... made." (FAC ¶ 354.) Further,  
13 Plaintiffs allege that Bank of America threatens "to arrest and  
14 tak[e] property without due process as a bargaining tool in order  
15 to coerce those to stop associating with the OFF movement to chill  
16 free speech." (Id. ¶ 356.) Finally, Plaintiffs appear to allege  
17 that even in the absence of underlying violations of law, the  
18 scheme at issue here of removing Plaintiffs' personal property and  
19 then making it difficult and costly to retrieve is unfair within  
20 the meaning of § 17200.

21 To the extent that Plaintiffs' underlying claims survive, or  
22 are amended to state a claim, the Court finds that the UCL claim  
23 survives under the "unlawful" prong of Cal. Bus. & Prof. Code §  
24 17200. Further, Plaintiffs have added sufficient facts and  
25 allegations to support a plausible claim that the conduct at issue  
26 here was unfair. Unfair conduct is actionable under the UCL where  
27 the business practice at issue "offends an established public  
28 policy or when the practice is immoral, unethical, oppressive,

1 unscrupulous or substantially injurious to consumers." S. Bay  
2 Chevrolet v. Gen. Motors Acceptance Corp., 72 Cal.App.4th 861, 886-  
3 87 (1999) (citing People v. Casa Blanca Convalescent Homes, Inc.,  
4 159 Cal.App.3d 509, 530 (1984)). Accepting Plaintiffs' allegations  
5 as true, Plaintiffs' belongings were removed from their home and  
6 essentially held captive by Public Storage for what Plaintiffs dub  
7 a "ransom." Even if Bank of America had a right to possession of  
8 the Property and a right to remove personal property from the  
9 Property, the arrangement by which Plaintiffs allege that they were  
10 required to either pay a high rental fee or potentially lose their  
11 belongings forever can be characterized as oppressive and  
12 substantially injurious to the owners of such property. Therefore,  
13 the Court DENIES the Motion as to Plaintiffs' UCL claim.

14 **IV. Conclusion**

15 For the foregoing reasons, the Court GRANTS the Motion IN PART  
16 and DENIES the Motion IN PART. Because of the dismissal of certain  
17 plaintiffs subsequent to the filing of the FAC and the Motion,  
18 allowing clarification of Plaintiffs' claims by way of one more  
19 amendment is warranted, should Plaintiffs wish to amend to attempt  
20 to state claims dismissed in this order. Any amended complaint must  
21 be filed on or before November 21, 2014.

22

23 IT IS SO ORDERED.

24

25

26 Dated: November 6, 2014



27

DEAN D. PREGERSON  
United States District Judge

28