

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



NO JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICTORIA URENIA, an individual; SOLEDAD CORONA, an individual,)	Case No. CV 13-01934 DDP (AJWx)
)	
Plaintiffs,)	ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
v.)	
)	[Dkt. Nos. 192, 196, 204]
PUBLIC STORAGE, a real estate investment trust;)	
CITY OF LOS ANGELES, a governmental entity; BANK OF AMERICA, N.A.; MICHAEL ANZ,)	
)	
Defendants.)	
_____)	

Presently before the Court are motions for summary judgment filed by Plaintiffs (Dkt. No. 196), Defendant City of Los Angeles (Dkt. No. 204), and Defendant Bank of America ("BANA") (Dkt. No. 192). Having heard oral arguments and considered the parties' submissions, the Court adopts the following order addressing all three motions.

I. BACKGROUND

Plaintiff Javier Hernandez owned and, with Plaintiff Brenda Hernandez, resided at a certain property on Leadwell St. in Van

1 Nuys, CA. (Third Amended Complaint ("TAC"), ¶ 2.) Plaintiffs had
2 purchased the property via a mortgage loan, secured by a deed of
3 trust, that was originally held by Countrywide and later taken over
4 by BANA. (Id. at ¶¶ 35-37; Decl. Javier Hernandez, Ex. B.)
5 Countrywide recorded a notice of default in 2008. (Id. at ¶ 36.)
6 BANA foreclosed on the loan; in 2011 the property was sold at
7 auction to The Bank of New York Mellon ("Mellon"), and a trustee's
8 deed upon sale was recorded. (BANA's RJN, Ex. A.)

9 Plaintiffs refused to vacate the property. (TAC, ¶ 40.)
10 Mellon filed an unlawful detainer action against Plaintiffs, and in
11 June 2012 the Superior Court issued a judgment of possession in
12 Mellon's favor. (BANA's RJN, Exs. B-C.) The court also issued a
13 writ of possession authorizing eviction and directing the sheriff
14 to enforce compliance, on the condition that no lockout should take
15 place prior to July 15, 2012. (Id., Ex. D.) After the auction
16 sale and the judgment, BANA and Plaintiff Javier Hernandez
17 continued to negotiate a possible loan modification; however, in
18 October 2012 the bank ultimately rejected the application for
19 modification, citing an inability to confirm the incomes of certain
20 of Plaintiff's family members. (Decl. Javier Hernandez, Exs. C-E.)
21 In the letter rejecting the application, BANA informed Plaintiff
22 that "your account is no longer being reviewed for any workout
23 assistance" and "we are required . . . to proceed with the eviction
24 process." (Decl. Javier Hernandez, Ex. E.) One news source
25 reported that a BANA spokesperson had stated in an email that "it
26 is the bank's policy to avoid foreclosure sales or displacement of
27 homeowners or tenants around the Christmas holiday," although the
28 bank declined to discuss specific dates. (Supp. Decl. Javier

1 Hernandez, Ex. 1.) The Los Angeles Sheriff's Department ("LASD")
2 ultimately carried out the eviction on December 27, 2012. (Decl.
3 Javier Hernandez, ¶ 11.)

4 Plaintiffs now sue for alleged First and Fourth Amendment
5 violations, as well as violations of anti-trust law and
6 California's Unfair Competition Law (UCL). (Compl., generally.)

7 **II. LEGAL STANDARD**

8 Summary judgment is appropriate where the materials in the
9 record show "that there is no genuine dispute as to any material
10 fact and the movant is entitled to judgment as a matter of law."
11 Fed. R. Civ. P. 56(a), (c). A party seeking summary judgment bears
12 the initial burden of informing the court of the basis for its
13 motion and of identifying those portions of the pleadings and
14 discovery responses that demonstrate the absence of a genuine issue
15 of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323
16 (1986). All reasonable inferences from the evidence must be drawn
17 in favor of the nonmoving party. Anderson v. Liberty Lobby, Inc.,
18 477 U.S. 242, 242 (1986).

19 Once the moving party meets its burden, the burden shifts to
20 the nonmoving party opposing the motion, who must "set forth
21 specific facts showing that there is a genuine issue for trial."
22 Anderson, 477 U.S. at 256. Summary judgment is warranted if a party
23 "fails to make a showing sufficient to establish the existence of
24 an element essential to that party's case, and on which that party
25 will bear the burden of proof at trial." Celotex, 477 U.S. at 322.
26 A genuine issue exists if "the evidence is such that a reasonable
27 jury could return a verdict for the nonmoving party," and material
28 facts are those "that might affect the outcome of the suit under

1 the governing law." Anderson, 477 U.S. at 248. There is no
2 genuine issue of fact "[w]here the record taken as a whole could
3 not lead a rational trier of fact to find for the nonmoving party."
4 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
5 587 (1986).

6 **III. DISCUSSION**

7 **A. First and Fourth Amendment Violations**

8 **1. BANA as a State Actor**

9 Plaintiff sues BANA under 42 U.S.C. § 1983, which provides for
10 relief against persons who violate a plaintiff's federal
11 constitutional rights under color of state law. Ordinarily, as a
12 private business organization, a bank does not act "under color of
13 state law." However, where there is "significant state
14 involvement" in a private party's action, it may be considered
15 "under color of state law" for § 1983 purposes. Howerton v.
16 Gabica, 708 F.2d 380, 382 (9th Cir. 1983) (internal quotation marks
17 omitted). Thus, for example, state action may be found where a
18 state "devolves upon a [private] political organization the
19 uncontested choice of public officials," Terry v. Adams, 345 U.S.
20 461, 484 (1953), or where the private party has a "symbiotic"
21 lessor-lessee relationship with a state agency, Moose Lodge No. 107
22 v. Irvis, 407 U.S. 163, 175 (1972), or where there is a conspiracy
23 between the private actor and a law enforcement officer to practice
24 private discrimination with the threat of arrest behind it.
25 Adickes v. S. H. Kress & Co., 398 U.S. 144, 152 (1970).

26 In Howerton, this last principle was in play: a landlord
27 conspired with a police officer to evict the plaintiffs, allegedly
28 without the required due process of law. There, the court noted

1 that "[p]olice were on the scene at each step of the eviction,"
2 "the police officer . . . privately approached the Howertons and
3 recommended that they leave the trailerhouse," and "he inquired
4 whether the tenants had found a new rental." 708 F.2d at 384.
5 Thus, his actions "created an appearance that the police sanctioned
6 the eviction," although the eviction was in fact a private action.

7 Here, the eviction was not a private matter. It was carried
8 out by LASD, pursuant to a court order issued in favor of Mellon.
9 But the eviction was requested, apparently, by a lawyer affiliated
10 with both Mellon and BANA. (Decl. Tuan Uong, Ex. K.) BANA also
11 took part directly in the eviction by having its contractors
12 retrieve Plaintiffs' belongings and move them to a storage unit.
13 Because the removal of Plaintiffs' possessions happened under the
14 apparent authority of LASD and/or LAPD, it can qualify as state
15 action on BANA's part.

16 Plaintiffs' other primary allegation of a constitutional
17 violation, that BANA conspired with the LAPD to harass and silence
18 Plaintiffs because they protested BANA directly and/or because they
19 were involved in the "Occupy" movement against inequality, could
20 also certainly qualify as state action, for the same reason. And
21 allegation that a private entity uses law enforcement as a stalking
22 horse to pursue private ends is an allegation that the private
23 entity takes "state action" for § 1983 purposes.

24 The Court therefore turns to the substantive evidence
25 supporting these allegations.

26 ///
27 ///
28 ///

1 **2. First Amendment Claim**

2 Plaintiffs allege that BANA and LAPD conspired to chill the
3 free speech, association, and petition rights of protesters,
4 including themselves, by:

5 (1) having the LAPD and Bank of America monitor social media,
6 cell phones, and fusion center data, and then arrive at each
7 home or protest location and take photos of the members at the
8 OFF events which plaintiffs are informed and believe and
9 allege thereon were then passed onto Bank of America and/or
10 their agents; (2) LAPD would also demand identification of all
11 individuals present at the lock outs or protests0 [sic]; (3)
12 LAPD would pass this information onto Bank of America; (4)
13 Bank of America would then take that information and plan
14 immediate lockouts in order to snuff out the protests.

15 [Occupy] members who showed up to support other members . . .
16 were suddenly finding themselves a victim of identity theft, a
17 court process, or eviction.

18 (TAC, ¶¶ 78, 84-85.)

19 In Plaintiffs' own motion and reply, however, the Court has
20 difficulty discerning any coherent First Amendment argument, let
21 alone undisputed evidence showing that BANA and LAPD conspired to
22 take the actions described above. Plaintiffs assert that "Bank of
23 America had the Los Angeles Police Department harass the Plaintiffs
24 in retaliation for protesting illegal foreclosures." (Pls.' Mot.
25 Summ. J. at 1.) However, the motion is almost entirely free of
26 citations to a factual record that would support this contention.
27 The same is true of Plaintiffs' oppositions to BANA and LAPD's
28 motions. It is not the Court's task "to scour the record in search

1 of a genuine issue of triable fact." Keenan v. Allan, 91 F.3d
2 1275, 1279 (9th Cir. 1996).

3 Nonetheless, in the interest of justice, the Court examines
4 the record evidence in the light most favorable to Plaintiffs to
5 determine whether their claims could survive Defendants' motions
6 for summary judgment. That examination shows that there is simply
7 no evidence showing that BANA coordinated a campaign of harassment
8 and retaliation against Plaintiffs. Plaintiffs provide evidence to
9 show, at best, that Javier Hernandez is a member of Occupy and has
10 protested "in front of Bank of America on at least one occasion"
11 (Decl. Javier Hernandez, ¶¶ 5-6, 36); that he and Brenda Hernandez
12 staged protests against the foreclosure at his home (id. at ¶¶ 30-
13 35); that LAPD Officer Gavin¹ approached the house on October 4,
14 2012 and made some belligerent statements, including telling the
15 other protesters that Plaintiffs were "behind 48 months" on their
16 payments and saying "I wish I could live like that" (id. at ¶¶ 38-
17 49; id., Ex. I); and that the following interactions with law
18 enforcement occurred during the six-month protest period: LAPD and
19 Child Protective Services visited the house, allegedly at
20 midnight,² police investigated a sanitation complaint regarding
21 couches in the roadway, "supporters" of the protest were stopped by
22 police three times, and items including a "wall," some couches, and

23

24

25 ¹He is referred to as "Officer Gavin" in Javier Hernandez's
26 declaration and "Lieutenant Gavin" in the moving papers.

27 ²Plaintiffs provide video evidence of the visit, but the video
28 does not actually show the presence of any identifiable LAPD
officers. (Decl. Javier Hernandez, Ex. J, "9-17-12 DCFS LAPD try to
take child.")

1 a "portrait," and police drove by the house numerous times. (Id.
2 at ¶ 50.)

3 It is entirely possible that some of these actions were
4 harassing or intimidating - Officer Gavin, in particular, is
5 alleged to have taunted protesters and belittled their right to
6 free speech. (Id. at ¶¶ 38-49; id., Ex. I.) What is lacking,
7 however, is any evidence tying this behavior to BANA. Plaintiffs
8 argue that a letter from BANA's attorney to LASD shows that there
9 was "coordination," because in that letter the attorney suggests
10 that her firm will keep the timing of the eviction "highly
11 confidential," so as to avoid "unwanted attention." (Decl. Lenore
12 Albert, Ex. A at 30.) But the fact that the bank's attorney
13 thought LASD might want to avoid unwanted attention during the
14 (presumably from protesters) simply does not lead to an inference
15 that BANA engaged in a months-long campaign of harassment
16 coordinated with LAPD, a different agency, long before the letter
17 was written.

18 Nor does the fact that Javier Hernandez protested "in front of
19 Bank of America" one time lead to the conclusion that BANA took
20 notice of the protest, identified Mr. Hernandez, connected him to
21 the property, and/or had the kind of control or influence over (or
22 even relationship with) LAPD as an entity that would enable the
23 coordinated campaign of harassment and intimidation that Plaintiffs
24 allege.

25 Plaintiffs also point to the fact that Officer Gavin allegedly
26 knew that Plaintiffs had not made mortgage payments for 48 months
27 as evidence that BANA *must* have supplied him with that information
28 and therefore *must* have been the puppetmaster behind his actions

1 and the actions of other LAPD officers. (Pls.' Opp'n to LAPD's
2 Mot. at 6.) But Defendants point out that Plaintiffs themselves
3 had publicized the fact that they had stopped paying their
4 mortgage, and Gavin stated on video that he had previously done
5 undercover work and surveilled the group. (Suppl. Decl. Tuan Uong,
6 Exs. S, T; Decl. Javier Hernandez, Ex. I.) Defendants also point
7 out that call logs show no communications between BANA and LAPD as
8 to the property.³ (Decl. Tuan Uong, Ex. R.) There is therefore no
9 reason beyond the speculative to conclude that Officer Gavin got
10 his information from BANA.

11 As to BANA, Plaintiffs' evidence creates no more than a
12 "metaphysical doubt" as to the possibility of a conspiracy.
13 Matsushita, 475 U.S. 574, 586 (1986). A rational trier of fact
14 could not conclude, on this evidence, that BANA acted in concert
15 with LAPD to violate Plaintiffs' First Amendment rights.

16 As to LAPD, nothing in Plaintiffs' evidence suggests a policy
17 or custom of retaliation, harassment, or intimidation against anti-
18 foreclosure protesters, as would be required to hold the City
19 liable for the acts of individual LAPD officers.⁴ Monell v. Dep't
20 of Soc. Servs. of City of New York, 436 U.S. 658, 690-91 (1978)
21 (municipality may be held liable for official policy or unofficial
22 custom, but not for individual torts of government agents).⁵ Thus,

23
24 ³Plaintiffs point out that the call logs do not provide
25 complete information about the callers and are in a few cases
26 redacted. However, Plaintiffs have provided no positive evidence
27 that BANA and LAPD were in contact.

28 ⁴The individual officers are not named as defendants.

⁵Plaintiffs address Monell only by saying that it "is not
relevant. Monell deals with immunity. The LAPD was not immune
(continued...)

1 a rational trier of fact could not conclude that the City acted to
2 violate Plaintiffs' First Amendment rights.

3 **3. Fourth Amendment Claim**

4 Plaintiffs also allege that Defendants acted to deny them
5 their Fourth Amendment right to be free of unreasonable search and
6 seizure during the eviction. Although the exact gravamen of the
7 claim is not entirely clear, the TAC appears to allege four kinds
8 of Fourth Amendment violation: entry without a warrant or exigent
9 circumstances; seizure of the home; seizure of possessions; and
10 excessive force. (TAC, ¶¶ 97-122.)

11 LASD, assisted by LAPD officers, evicted Plaintiffs from the
12 house pursuant to a statutory scheme specifically designed to deal
13 with situations where a former owner refuses to vacate a house
14 after foreclosure. See Cal. Civ. Proc. Code § 1166a (if court in
15 unlawful detainer action finds for plaintiff, "order shall be
16 entered for the immediate possession of the premises"); § 712.010
17 ("After entry of a judgment for possession or sale of property, a
18 writ of possession or sale shall be issued by the clerk of the
19 court . . . "); § 712.020 (writ of possession requires levying
20 officer to enforce the judgment). Plaintiffs do not challenge this
21 scheme on its face.

22 A Fourth Amendment claim as to entry into the home or seizure
23 of the home will necessarily fail if Plaintiffs do not have a
24

25 ⁵(...continued)
26 here." (Pls.' Opp'n to LAPD's Mot. at 9.) This argument is hard
27 to parse. Monell sets out the standard for determining when a
28 municipality can be sued under § 1983 - that is, the policy-or-
custom standard. LAPD is an agency of the City of Los Angeles, and
the City, a municipality, is the defendant here. Monell is
therefore not only relevant but dispositive.

1 possessory right to the home. Persons in a private residential
2 property without a legal right of possession, such as squatters, do
3 not have an objectively reasonable expectation of privacy.
4 Zimmerman v. Bishop Estate, 25 F.3d 784, 787 (9th Cir. 1994).
5 Therefore, they cannot object to entry and search on Fourth
6 Amendment grounds. Similarly, a person without a possessory
7 interest in a property necessarily cannot object to its seizure.
8 "A seizure of property ... occurs when there is some meaningful
9 interference with an individual's possessory interests in that
10 property." Soldal v. Cook County, 506 U.S. 56, 61 (1992) (internal
11 quotation marks omitted).

12 Plaintiffs appear to argue that they did have a right of
13 possession, and that the entry and seizure were unlawful, because
14 the writ of possession authorizing the eviction was invalid
15 (because it lacked the debtor's address), and LASD officials knew
16 that it was invalid. (Pls.' Opp'n to LAPD's Mot. at 9; Decl.
17 Lenore Albert, Ex. A at 21-23 (emails showing that some LASD
18 personnel were concerned about the writ and felt it should have
19 been rejected).) But, first, the Court cannot consider the emails,
20 which lack foundation showing that they even refer to the Leadwell
21 St. property at all,⁶ are hearsay,⁷ and are not the best evidence
22
23

24 ⁶The property is not actually named in the email exchange,
25 although the following exchange occurs: "Which case is this? Fort
26 Lucero?" "Yes, the ELA eviction you wanted to do Thursday." (Pls.'
27 Opp'n to LAPD's Mot. at 9; Decl. Lenore Albert, Ex. A at 22.) The
28 house in this case, however, was nicknamed "Fort Hernandez," not
"Fort Lucero." (Decl. Javier Hernandez, ¶ 32.)

⁷Fed. R. Evid. 801 (hearsay is an out-of-court statement
offered in evidence to prove the truth of the matter asserted in
the statement).

1 of the contents of the writ.⁸ Plaintiffs point to no copy of the
2 writ showing that the writ did not have their address on it. The
3 copy of the writ submitted as an exhibit by Defendants, on the
4 other hand, plainly does have Plaintiffs' address on it. (BANA's
5 RJN, Ex. D) Nor do Plaintiffs allege that BANA's exhibit is
6 fraudulent or inauthentic.⁹

7 Second, what stripped Plaintiffs of their possessory interest
8 in the house was not the writ, which merely authorized the
9 eviction, but the foreclosure sale.¹⁰ There is no evidence
10 suggesting the foreclosure was improper, and the state court issued
11 an order in the unlawful detainer action explicitly giving Mellon,
12 not Plaintiffs, the right of possession. There is no allegation or
13 evidence that the court order was improper or invalid. Plaintiffs
14 therefore did not have a possessory interest in the house as of
15 December 27, 2012 and cannot assert a Fourth Amendment right as to
16 either privacy or the seizure of the home.

17 Plaintiffs still maintained a possessory right to their
18 *personal* property, of course. As BANA itself acknowledges, its

19
20 ⁸Fed. R. Evid. 1002 (original writing is required to prove its
21 content). Nor is the exception in Fed. R. Evid. 1007, allowing
22 proof of a document's contents by the "written statement of the
23 party against whom the evidence is offered," applicable: the only
statements that assert a defect in the writ are statements by
LASD's officers and employees, and LASD is not a party to this
case.

24 ⁹"A duplicate is admissible to the same extent as the original
25 unless a genuine question is raised about the original's
26 authenticity or the circumstances make it unfair to admit the
duplicate." Fed. R. Evid. 1003.

27 ¹⁰"[I]n California, once a foreclosure sale concludes and the
28 purchaser records the deed in accordance with applicable law, the
original trustor or borrower no longer has an interest or right in
the subject real property." In re Edwards, 454 B.R. 100, 106
(B.A.P. 9th Cir. 2011).

1 "contractors . . . moved the personal possessions remaining on the
2 Leadwell Property to a U.S. Storage Centers facility." (BANA's
3 Mot. at 14.) They did so pursuant to Cal. Civ. Proc. Code §
4 1174(e)-(1), which allows a landlord or judgment creditor¹¹ to
5 remove and store property left behind by former residents.
6 Plaintiffs do not challenge the constitutionality of § 1174, which
7 provides that the landlord or judgment creditor must return the
8 property on demand.

9 Of course, Plaintiffs presumably left their possessions behind
10 because they were forced to leave quickly by the sheriff's
11 deputies. Nonetheless, BANA, acting on behalf of Mellon, had the
12 right to remove property left behind in the house, to which
13 Plaintiffs did *not* have a possessory right - including the right to
14 store their possessions there.¹² Because the removal itself was
15 lawful, because Plaintiffs could have removed their possessions in
16 any of the months prior to the eviction, and because the
17 possessions were left behind on Mellon's property, BANA did not

19
20 ¹¹Section 1174 refers only to a "landlord," but Cal. Civ.
21 Proc. Code § 715.030 clarifies that § 1174 applies to a judgment
22 creditor taking possession pursuant to a writ of possession as
23 well.

24 ¹²In their opposition to the City's motion, but not in their
25 motion for summary judgment, Plaintiffs cite in passing to In re
26 Perl, where the Ninth Circuit held that a purchaser violated an
27 automatic stay in a bankruptcy proceeding by locking a resident out
28 property, which was at that time property of the bankruptcy estate.
513 B.R. 566, 576 (B.A.P. 9th Cir. 2014). Plaintiffs note that
Javier Hernandez's second bankruptcy petition was still pending at
the time of the eviction. (Opp'n to City's Mot. at 10.) However,
Mellon had moved for and received an order for relief from the stay
in the bankruptcy, which distinguishes this case from Perl. See In
re Hernandez, No. 1:12-bk-19878-VK, Dkt. No. 24 (Bankr. C.D.Cal.
Nov. 30, 2012) (order granting relief from stay).

1 conspire with the LASD or the LAPD to effect an unreasonable
2 seizure of Plaintiffs' property.¹³

3 Finally, Plaintiffs appear to allege an excessive force claim
4 under the Fourth Amendment:

5 Using 100 officers in the dark at 4:30AM with tanks,
6 bulldozers, and guns surely was excessive force when there
7 were no prior violent altercations or reason to believe there
8 would be one. It was excessive force that would intimidate
9 anyone - and there were children inside this home. It was a
10 protest - not an armed shoot-out at the Okay Corral.

11 (Pls.' Reply at 4; see also Opp'n to LAPD's Mot. at 7.)

12 Plaintiffs point to no case, however, in which the presence of
13 a large number of officers or particular equipment has been the
14 sole basis for a Fourth Amendment excessive force claim, and the
15 Court can find no such case. Javier Hernandez admitted in his
16 deposition that the extent of Plaintiffs' interaction with the
17 sheriff's deputies on the morning of the eviction was that "they
18 came in and they asked us to leave," and Plaintiffs did leave,
19 peacefully.¹⁴ (Suppl. Decl. Tuan Uong, Ex. T at 37.) No evidence
20 of violence, or even a *threat* of violence beyond the presence of
21
22

23 ¹³Nothing in this order prevents Plaintiffs from suing BANA or
24 the storage company for the loss or destruction of the property
25 under any appropriate state law, of course. (TAC, ¶ 107 (on
26 entering the storage unit, Plaintiff Javier Hernandez "discovered
27 most of the property was lost, stolen, damaged or destroyed").)

28 ¹⁴Given that the house was the site of an ongoing protest and
had been walled off by protesters (Decl. Javier Hernandez, ¶ 51),
it was not unreasonable of LASD to anticipate that a large number
of law enforcement officers and special equipment might be needed
to effect the eviction.

1 armed officers, is presented in the record. There is no excessive
2 force claim.

3 No rational trier of fact could conclude that there was a
4 Fourth Amendment violation on this record.

5 **B. Antitrust Claim**

6 Plaintiffs' antitrust claim was dependent on arguments about
7 the market share of former defendant Public Storage. As Public
8 Storage was not the storage company involved in this case and is no
9 longer a party (see Dkt. Nos. 184, 189), there would seem to be no
10 basis for the claim. Plaintiffs do not defend the antitrust claim
11 in their opposition to BANA's motion, and the Court deems the claim
12 abandoned.

13 **C. UCL Claim**

14 Section 17200 of the UCL, under which Plaintiffs sue, forbids
15 "any unlawful, unfair or fraudulent business act or practice."
16 Cal. Bus. & Prof. Code § 17200. Plaintiffs allege that the
17 eviction itself was unlawful under state law, but, as discussed
18 above, it was not.

19 Plaintiffs also allege that Public Storage's business
20 practices are unfair, but, as noted above, Public Storage is no
21 longer a party here.

22 Nor have Plaintiffs presented evidence the BANA was behind a
23 scheme to harass and intimidate protesters. Evidence that some
24 harassment took place, with nothing tying it to the bank, cannot
25 support a UCL claim.

26 Finally, Plaintiffs argue that the eviction was unlawful or
27 unfair because BANA had allegedly announced a moratorium during the
28 holidays. However, no specific dates were attached to the

1 announcement, (Supp. Decl. Javier Hernandez, Ex. 1), and there is
2 no evidence that Plaintiffs knew of the moratorium, assuming it
3 existed and still applied on December 27, 2012. (See Pls.' Stmt.
4 Genuine Disputes Fact at 4 (acknowledging that Javier Hernandez was
5 not aware of a moratorium).) Thus, they could not have relied on
6 it to their detriment.

7 No rational trier of fact could find a violation of the UCL on
8 this record.

9 **IV. CONCLUSION**

10 The Court GRANTS summary judgment to Defendants and DENIES
11 summary judgment to Plaintiffs.

12

13

14 IT IS SO ORDERED.

15

16

17 Dated: August 14, 2015

18


DEAN D. PREGERSON
United States District Judge

19

20

21

22

23

24

25

26

27

28