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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PEGGY BOYNTON,

Plaintiff and Counter
Defendant,

v.

UNITED STATES OF AMERICA,

Defendant and
Counter Claimant.

AND RELATED COUNTERCLAIM.

No. 2:11-cv-00623-MCE-EFB

MEMORANDUM AND ORDER

On July 20, 2011, Plaintiff Peggy Boynton (“Plaintiff”) filed the operative First Amended Complaint (“FAC”) against Defendant United States of America (“Defendant” or “government”) seeking redress for the damage caused to her mobile home as a result of Defendant’s purported failure to maintain the property on which the mobile home is situated. ECF No. 14. On November 30, 2011, the government filed an Answer to Plaintiff’s FAC and a Counterclaim in Ejectment, seeking to recover possession of the property on which Plaintiff’s mobile home sits and damages for wrongful retention of that property.¹ Counterclaim, ECF No. 16. Presently before the Court is the government’s

¹ For ease of reference, Ms. Boynton will be referred to as “Plaintiff” and the United States will be referred to as “Defendant” or “the government” throughout this order, including in the discussion of the government’s counterclaim.

1 Motion to Dismiss and/or Motion for Summary Judgment of Plaintiff's Claims, as well as
2 the government's Motion for Summary Judgment of its Counterclaim. Gov't Mot., ECF
3 No. 122. For the reasons set forth below, the government's Motion for Summary
4 Judgment of Plaintiff's Claim is GRANTED, and the government's Motion for Summary
5 Judgment of its Counterclaims is GRANTED. The government's Motion to Dismiss is
6 DENIED as moot.²

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8 **BACKGROUND³**

9
10 Plaintiff is a retired employee of the Board of Prisons ("BOP") and is the owner of
11 a mobile home situated on Defendant's property at the Federal Correctional Institution,
12 Dublin, California ("FCI, Dublin"). Plaintiff lived in her personally owned mobile home in
13 the staff housing area of FCI, Dublin while she was employed with the BOP from 1995
14 until her retirement in 2010. Plaintiff's privilege to occupy the mobile home site
15 terminated upon her retirement from the BOP in 2010.

16 In July 2007, Plaintiff complained to the BOP that the storm drain above her home
17 was not working properly and had caused her yard to flood. The BOP installed a new
18 drainage system in June 2008, and Plaintiff admitted in a September 2010 letter to the

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22 ² On October 4, 2016, the government filed an initial Motion to Dismiss for Lack of Prosecution.
23 ECF No. 107. It appears the present Motion to Dismiss and/or for Summary Judgment supersedes this
24 previous motion, so the motion at ECF No. 107 is DENIED as moot. The Court notes that because
25 Plaintiff has again failed to file an opposition or statement of nonopposition, Plaintiff's claims would this
time be dismissed for failure to prosecute and failure to comply with Court orders. Because the Court
grants the government's motion for summary judgment of Plaintiff's claim, however, the Court need not
directly address Plaintiff's failure to prosecute the action.

26 ³ The following recitation of facts is taken, sometimes verbatim, from the government's unopposed
27 Statement of Undisputed Facts ("SUF") and the evidence cited therein. SUF, ECF No. 122 at 2-7.
28 Because they are unopposed, these facts are considered undisputed for purposes of this motion. Fed. R.
Civ. P. 56(e)(2).

1 former BOP Director that the new system had fixed the flooding issues.⁴ Also in
2 September 2010, Plaintiff filed an administrative tort claim with the BOP seeking
3 damages for the alleged damage to her mobile home, claiming that an open fire hydrant
4 caused erosion and improper drainage around her home, as well as water damage to
5 her home and mold growth.

6 After an investigation, the BOP denied her claim, stating that the only fire hydrant
7 that could possibly have caused the alleged damage belonged to an adjacent U.S. Army
8 Reserve facility, not to the BOP. The BOP's investigation also revealed that sometime in
9 2007, Plaintiff herself constructed an underground irrigation system along the exterior
10 wall of her mobile home, creating a soil barrier around her home. This action had the
11 effect of raising the ground level so that the soil made contact with the wood siding of
12 her home, potentially causing saturation and preventing ventilation. Investigators
13 concluded the damage Plaintiff identified was the result of years of her own failure to
14 maintain the mobile home's exterior. Under BOP Program Statement 4220.02 and
15 Institution Supplement DUB 4220.02(H), an employee like Plaintiff, as a condition of
16 living in staff housing, is solely responsible for the maintenance of his or her mobile
17 home.

18 In 2010, Plaintiff retired from the BOP, thus terminating the privilege of living in
19 staff housing at FCI, Dublin. On September 16, 2010, she was issued a formal notice of
20 termination of occupancy, giving her 90 days to either sell her mobile home or remove it
21 from FCI, Dublin grounds. Having failed to sell or remove her home within this time
22 period, the BOP sent Plaintiff another notice on January 12, 2011, giving her until
23 March 12, 2011, to do so. On April 5, 2011, the BOP granted Plaintiff a 90-day
24 extension to July 5, 2011, to remove or sell her home. The April 5, 2011 extension letter
25 provided that if Plaintiff failed to remove or sell by that date, the BOP would initiate steps

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27 ⁴ The letter also indicates, however, that the BOP did nothing to cure the damage that had already
28 been caused to Plaintiff's home, a point omitted from the government's SUF. Exhibit 6 to Declaration of
John T. LeMaster ("LeMaster Decl.").

1 to have the mobile home transported off FCI, Dublin grounds at Plaintiff's expense. To
2 date, Plaintiff has not sold or removed her mobile home from FCI, Dublin grounds.

3 4 **PROCEDURAL BACKGROUND**

5
6 This case has a long and drawn out procedural history, the most relevant of which
7 the Court summarizes here. Plaintiff filed the operative FAC on July 20, 2011, alleging
8 that BOP's negligence resulted in damage to her mobile home. Specifically, Plaintiff
9 claims that an open fire hydrant washed away dirt from around her home, destroying her
10 yard, and weakening the soil and stability of her mobile home. FAC, ECF No. 14, at
11 ¶¶ 7-8. She additionally claims that her storm drain was clogged, which separately
12 caused flooding of her yard. *Id.* ¶ 16. As a result of erosion, rainwater collected around
13 and under her home. *Id.* ¶ 17. Plaintiff claims mold began to grow inside her home in
14 2008, and continued through 2010, and that the BOP was negligent in failing to maintain
15 the property. *Id.* ¶¶ 17-19.

16 On November 30, 2011, the government filed its Answer along with a
17 Counterclaim in Ejectment to Recover Possession of Real Property and Damages for
18 Wrongful Detention. Gov't Counterclaim, ECF No. 16. The government contends that it
19 is the owner of the property upon which Plaintiff's mobile home sits, and therefore seeks
20 restitution of the premises, damages for Plaintiff's unlawful possession in the amount of
21 \$222.50 bi-weekly from July 5, 2011 until possession is restored, damages for the cost
22 of repair to the property, and damages for the cost of recovering possession, including
23 the cost of transporting the mobile home off of FCI, Dublin grounds.

24 Plaintiff failed to respond to the government's counterclaim, and default was
25 entered on February 7, 2012. ECF No. 19.

26 In July 2014, months after an unsuccessful VDRP session (see ECF No. 46), the
27 government informed the Court that the parties reached a tentative settlement. ECF
28 No. 56. After two continuances of the deadline to file dispositional documents (see ECF

1 Nos. 60, 62), the government then informed the Court that it could not reach Plaintiff's
2 counsel. ECF No. 63. In response to the Court's order to show cause ("OSC") as to
3 why the case should not be dismissed at that point, Plaintiff's counsel filed a response
4 on January 15, 2015, indicating that he had had no direct communication with Plaintiff
5 for more than six months, and requesting that Plaintiff be allowed to retain new counsel.
6 ECF No. 67. Counsel thereafter moved to withdraw as counsel, which request the Court
7 denied because withdrawal would have prejudiced Plaintiff and caused greater delays in
8 an already aging case. ECF Nos. 76, 78, 80.

9 The Court's finding of prejudice was based largely on the fact that the government
10 had filed a motion for default judgment on March 24, 2015 (ECF No. 73), and Plaintiff's
11 counsel sought withdrawal just two days before an opposition to the default was due.
12 ECF No. 80, at 5. Despite Plaintiff's failure to oppose the motion for default judgment,
13 the Court denied the motion, reasoning that Plaintiff herself had not been absent in the
14 litigation, Plaintiff's counsel indicated that he would represent his client's interests going
15 forward, and the Court generally favors resolution of cases on the merits. See Findings
16 and Recommendations, ECF No. 98; Order Adopting F&Rs in full, ECF No. 101.

17 Then on October 4, 2016, the government filed a motion to dismiss for lack of
18 prosecution based primarily on Plaintiff's failure to attend her court-ordered deposition—
19 which had been ordered after many months of attempting to set Plaintiff's deposition
20 without the Court's intervention. The government further cited Plaintiff's failure to
21 respond to the government's First Set of Requests for Admission,⁵ and detailed the
22 many other reasons the case has been delayed by Plaintiff's inaction. ECF No. 107.
23 Plaintiff did not oppose the government's motion, so the Court issued another OSC as to
24 why the case should not be dismissed with prejudice at that time. ECF No. 112.
25 Plaintiff's counsel filed a tardy response to the OSC, indicating that Plaintiff's health
26 issues prevented her from attending her deposition, and also acknowledging that "[t]his

27 ⁵ Because Plaintiff failed to respond to the RFAs, they are deemed admitted. Fed. R. Civ. P.
28 36(a)(3).

1 case has been challenging for the Court, the United States and counsel for Plaintiff.
2 Ms. Boynton is elderly, ill, and has a distrust of both the government and her own
3 counsel.”⁶ That motion was under submission when the government filed the present
4 motion and, because the Court hereby GRANTS the government’s pending motion for
5 summary judgment (ECF No. 122), the Motion to Dismiss for failure to prosecute (ECF
6 No. 107) is hereby DENIED as moot.

7 The deadline for designation of experts and exchange of reports was February 6,
8 2017, per the parties’ Court-approved stipulation. ECF No. 115. To date, Plaintiff has
9 failed to designate any experts.

11 STANDARD

13 The Federal Rules of Civil Procedure provide for summary judgment when “the
14 movant shows that there is no genuine dispute as to any material fact and the movant is
15 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also Celotex Corp. v.
16 Catrett, 477 U.S. 317, 322 (1986). One of the principal purposes of Rule 56 is to
17 dispose of factually unsupported claims or defenses. Celotex, 477 U.S. at 325.

18 Rule 56 also allows a court to grant summary judgment on part of a claim or
19 defense, known as partial summary judgment. See Fed. R. Civ. P. 56(a) (“A party may
20 move for summary judgment, identifying each claim or defense—or the part of each
21 claim or defense—on which summary judgment is sought.”); see also Allstate Ins. Co. v.
22 Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995). The standard that applies to a
23 motion for partial summary judgment is the same as that which applies to a motion for
24 summary judgment. See Fed. R. Civ. P. 56(a); State of Cal. ex rel. Cal. Dep’t of Toxic
25 Substances Control v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998) (applying summary
26 judgment standard to motion for summary adjudication).

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28 ⁶ Indeed, Plaintiff has filed numerous letters with the Court lamenting her troubles with both her current and previous counsel.

1 In a summary judgment motion, the moving party always bears the initial
2 responsibility of informing the court of the basis for the motion and identifying the
3 portions in the record “which it believes demonstrate the absence of a genuine issue of
4 material fact.” Celotex, 477 U.S. at 323. “However, if the nonmoving party bears the
5 burden of proof on an issue at trial, the moving party need not produce affirmative
6 evidence of an absence of fact to satisfy its burden.” In re Brazier Forest Prods. Inc.,
7 921 F.2d 221, 223 (9th Cir. 1990). Rather, the moving party need only point to matters
8 which demonstrate the absence of a genuine issue of material fact. See Celotex,
9 477 U.S. at 323-24 (1986) (“Where the nonmoving party will bear the burden of proof at
10 trial on a dispositive issue, a summary judgment motion may properly be made in
11 reliance solely on the pleadings, depositions, answers to interrogatories, and admissions
12 on file.”) Indeed, summary judgment should be entered against a party who fails to
13 make a showing sufficient to establish the existence of an element essential to that
14 party's case, and on which that party will bear the burden of proof at trial. Id. at 322.

15 If the moving party meets its initial responsibility, the burden then shifts to the
16 opposing party to establish that a genuine issue as to any material fact actually does
17 exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986);
18 First Nat’l Bank v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968).

19 In attempting to establish the existence or non-existence of a genuine factual
20 dispute, a party must support its assertion by “citing to particular parts of materials in the
21 record, including depositions, documents, electronically stored information, affidavits[,] or
22 declarations . . . or other materials; or showing that the materials cited do not establish
23 the absence or presence of a genuine dispute, or that an adverse party cannot produce
24 admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). More specifically, in
25 attempting to establish the existence of a factual dispute, the opposing party may not
26 rely upon the allegations or denials of its pleadings but is required to tender evidence of
27 specific facts in the form of affidavits, and/or admissible discovery material, in support of
28 its contention that the dispute exists. See Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at

1 586 n. 11. The opposing party must also demonstrate that the fact in contention is
2 material, i.e., a fact that might affect the outcome of the suit under the governing law,
3 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52 (1986); Owens v. Local
4 No. 169, Assoc. of W. Pulp and Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987), and
5 that the dispute about a material fact “is ‘genuine,’ that is, if the evidence is such that a
6 reasonable jury could return a verdict for the nonmoving party.” Anderson, 477 U.S. at
7 248. In other words, the judge needs to answer the preliminary question before the
8 evidence is left to the jury of “not whether there is literally no evidence, but whether there
9 is any upon which a jury could properly proceed to find a verdict for the party producing
10 it, upon whom the onus of proof is imposed.” Anderson, 477 U.S. at 251 (quoting
11 Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)) (emphasis in original). As the
12 Supreme Court explained, “[w]hen the moving party has carried its burden under
13 Rule [56(a)], its opponent must do more than simply show that there is some
14 metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586. Therefore,
15 “[w]here the record taken as a whole could not lead a rational trier of fact to find for the
16 nonmoving party, there is no ‘genuine issue for trial.’” Id. 87.

17 In resolving a summary judgment motion, the evidence of the opposing party is to
18 be believed, and all reasonable inferences that may be drawn from the facts placed
19 before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at
20 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s
21 obligation to produce a factual predicate from which the inference may be drawn.
22 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d,
23 810 F.2d 898 (9th Cir. 1987).

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ANALYSIS

A. Motion for Summary Judgment of Plaintiff's Negligence Claim

Defendant's motion for summary judgment is unopposed. Even so, a district court may not grant a motion for summary judgment solely because the opposing party has failed to file an opposition. Cristobal v. Siegel, 26 F.3d 1488, 1494–95, n.4 (9th Cir. 1994) (unopposed motion may be granted only after court determines that there are no material issues of fact). The Court may, however, grant an unopposed motion for summary judgment if the movant's papers themselves are sufficient to support the motion and do not on their face reveal a genuine issue of material fact. See United States v. Real Property at Incline Village, 47 F.3d 1511, 1520 (9th Cir. 1995) (citing Marshall v. Gates, 44 F.3d 722 (9th Cir. 1995); Henry v. Gill Indus., Inc., 983 F.2d 943, 949 (9th Cir. 1993)), rev'd on other grounds, 517 U.S. 820 (1996).

As set forth in the government's motion, Plaintiff has the burden of proving each element of her negligence claim by a preponderance of the evidence. The elements of a negligence claim are (1) duty, (2) breach of that duty, (3) causation, and (4) damages. Among its many arguments in support of dismissal or summary judgment, the government argues that because Plaintiff has failed to designate experts, she cannot establish (1) that there is an interior mold infestation in her mobile home, and (2) that the infestation was caused by the government's negligence. Gov't Mot. at 16-17. Absent a sufficient showing of causation, Plaintiff cannot establish a prima facie case of negligence. Id. at 17.

Indeed, absent any evidence—expert testimony or otherwise—that the government had a duty to maintain the property, that the government breached that duty, and that the government's breach caused the alleged damage to Plaintiff's home, summary judgment of Plaintiff's negligence claim is appropriate. See Celotex, 477 U.S. at 322 (summary judgment should be entered against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case).

1 Though expert testimony is not required in every case, the Court agrees that Plaintiff has
2 presented absolutely no evidence demonstrating the presence of any of the elements of
3 her claim, including causation. Because Plaintiff has failed to make a showing sufficient
4 to establish the existence of any element essential to her negligence claim, and absent
5 any opposition from Plaintiff arguing otherwise, the Court must grant summary judgment
6 in favor of the government. As in Celotex, here “[t]here can be ‘no genuine issue as to
7 any material fact,’ since a complete failure of proof concerning an essential element of
8 the nonmoving party’s case necessarily renders all other facts immaterial.” Id.
9 Consequently, the government’s motion for summary judgment of Plaintiff’s negligence
10 claim is GRANTED.

11 Moreover, not only has the government satisfied its burden as the moving party of
12 pointing to the absence of a genuine issue of material fact, the government has gone
13 one step further and offered evidence that it was Plaintiff’s own actions or inactions that
14 caused the damage to her mobile home. For example, the evidence before the Court
15 indicates that Plaintiff herself “constructed an underground irrigation system directly
16 abutting the base of her mobile home on all sides.” SUF ¶ 19. The construction of that
17 system had the effect of raising the ground around Plaintiff’s home such that her home
18 ended up “submerged in a bowl” of soil, which prevented ventilation under the home
19 while the system likely added water to the surrounding area. Id. “Investigators
20 concluded the damage Boynton identified to her home was due to years of poor
21 maintenance and could not have been caused by a fire hydrant.” Id. ¶ 20. Again,
22 because Plaintiff has failed to oppose any of the government’s undisputed facts, these
23 facts are also considered undisputed for purposes of this motion, and mitigate against
24 any liability on the part of the government for Plaintiff’s alleged damages. Fed. R. Civ. P.
25 56(e)(2).

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1 **B. Motion for Summary Judgment of the Government’s Counterclaim**

2 With respect to the government’s counterclaim in ejectment to recover possession
3 and damages for unlawful possession, the government’s motion is GRANTED.⁷ As
4 discussed above, a district court may not grant a motion for summary judgment solely
5 because the opposing party has failed to file an opposition, but may grant the motion if it
6 determines that there are no disputed issues of material fact. Cristobal, 26 F.3d at
7 1494–95, n.4.

8 The elements of an action for ejection under California law are (1) ownership by
9 plaintiff disclosing a right to possession and (2) a withholding thereof from the plaintiff.
10 Baugh v. Consumers Assoc., Ltd., 241 Cal. App. 2d 672, 675 (1966). Based on the
11 undisputed facts, the Court finds that the government is entitled to a judgment of
12 ejectment as a matter of law. Plaintiff concedes that the government was and now is the
13 owner of the property in question located at FCI, Dublin. FAC ¶ 3. Plaintiff further
14 concedes that she is the owner of a mobile home that is situated on that property. FAC
15 ¶ 4. It is undisputed that Plaintiff lived in her personally owned mobile home in the staff
16 housing area at FCI, Dublin from 1995 until her retirement in 2010. SUF ¶¶ 2-3, 5. It is
17 also undisputed that Plaintiff’s privilege to occupy that space terminated upon her
18 retirement from the BOP at FCI, Dublin in 2010. SUF ¶ 12. As described above, Plaintiff
19 was thereafter provided with notice on multiple occasions that she must either sell or
20 remove her mobile home from the staff housing area. SUF ¶¶ 13-15. To date, Plaintiff
21 has neither sold nor removed her mobile home. SUF ¶ 16. The government has
22 therefore successfully established that it owns the property, that it has a right to possess
23 the property, and that Plaintiff Boynton is withholding that property from the government.

24 ⁷ The government’s motion indicates that its counterclaim includes a claim of trespass. See Gov’t
25 Mot. at 19-20. The counterclaim itself, however, does not mention trespass. See Counterclaim, ECF
26 No. 16. While a claim in ejectment may be closely related to a claim of trespass, it is not clear to the Court
27 that the government cannot obtain the remedies it seeks—specifically, possession and damages—through
28 an action in ejectment alone. See United States v. Langendorf, 322 F.2d 25 (9th Cir. 1963). Because the
government has successfully established that summary judgment of its counterclaim in ejectment is
appropriate, thus entitling it to possession and damages, the Court need not address the extent to which
the government properly pleaded or proved its trespass claim.

1 Plaintiff has failed to oppose those undisputed facts, and has therefore failed to raise a
2 disputed issue of material fact. Summary judgment is therefore GRANTED for the
3 government on its counterclaim in ejectment.⁸

4 As for the government's claimed damages, the Court finds that the evidence
5 supports the requested award. Specifically, the government seeks restitution of the
6 property; damages for lost rental income in the amount of \$222.50 bi-weekly from July 5,
7 2011 to the date on which possession is recovered; and the cost of repair or restoration
8 of the property to its original condition, including the cost of transporting the mobile home
9 off the property. The undisputed facts establish that Plaintiff was given until July 5, 2011
10 to remove or sell her mobile home. SUF ¶ 15. It is also undisputed that although
11 Plaintiff personally owned her mobile home, she was required to pay a bi-weekly fee for
12 use of the lot; upon her retirement in 2010, Plaintiff was paying the reasonable rent of
13 \$222.50 bi-weekly. SUF ¶ 4; LeMaster Decl. ¶¶ 4-5. Lastly, it is undisputed that
14 preparation of the mobile home for transport and transportation off the FCI, Dublin site is
15 estimated to be \$5,500.00. SUF ¶ 35. Based on these established facts, the Court finds
16 the requested award of \$38,875.00 to be reasonable--\$5,500 for the cost of removal of
17 the mobile home, plus \$33,375 in lost rental from July 5, 2011 to April 4, 2017. The
18 Court further awards additional damages in the amount of \$222.50 bi-weekly from
19 April 4, 2017 to the date of electronic filing of this Order. To the extent the government
20 seeks additional damages for the cost of repair or restoration of the property beyond the
21 cost of mobile home removal, however, such a request is not supported by the evidence
22 at this time. The Court therefore retains jurisdiction solely to address future damages
23 requests or any disputes regarding damages.

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26 ⁸ Additionally, the well-pleaded allegations in the government's counterclaim are deemed true in
27 light of Plaintiff's failure to respond to the pleading. Sceper v. Thai Café, No. CIV S-10-3341-KJM-CMK,
28 2011 WL 5321997, at *1 (E.D. Cal. Nov. 3, 2011) (internal citations omitted). Though the Court previously
denied the government's motion for default judgment, that denial was not based on any insufficiency in the
government's pleading.

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CONCLUSION

For the reasons set forth above, the Court GRANTS Defendant's Motion for Summary Judgment of Plaintiff's claim, and GRANTS Defendant's Motion for Summary Judgment of its Counterclaim. ECF No. 122. The Court DENIES as moot Defendant's Motion to Dismiss Plaintiff's claim, ECF No. 122, and further DENIES as moot Defendant's previous Motion to Dismiss for lack of prosecution, ECF No. 107. The Court hereby enters judgment in favor of the government on both Plaintiff's claim and Defendant's counterclaim, orders restitution of the premises in question to the government, and assesses damages against Plaintiff Boynton in the amount of \$38,875, plus additional damages in the amount of \$222.50 bi-weekly from April 4, 2017 to the date of electronic filing of this order.

IT IS SO ORDERED.

Dated: June 29, 2017


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE