

PROPOSED TENTATIVE

On December 17, 2025, plaintiffs Micaela V.C. Morgan, PhD and Andrew Morgan (plaintiffs) filed a complaint against defendants Kelly Herrick (Herrick), Pickford Real Estate Inc. (dba as Berkshire Hathaway Home Services CA Properties) (Pickford) (collectively, defendants), raising seven causes of action, as follows: 1) defamation; 2) negligent interference with prospective economic advantage; 3) intentional interference with prospective economic advantage; 4) harassment; 5) intentional infliction of emotional distress; 6) negligent infliction of emotional distress; and 7) unfair competition in violation of Business and Professions Code section 17200, et seq. Plaintiffs are married. Defendant Herrick is alleged to be an agent of defendant Pickford, working as a licensed realtor. It is alleged that beginning in summer of 2024, “Herrick deployed a concerted effort to destroy the [plaintiffs’] personal and professional relationships and reputations after she learned that the [plaintiffs] did not hire Herrick to assist with the sale of their family home.” (§ 11.) The complaint categorizes the relevant events at issue as follows: 1) Herrick’s interference with the sale of plaintiff’s residential property, located at 310 Sycamore Drive, Buellton; 2) Herrick’s “harassment campaign” against plaintiffs; and 3) Herrick’s “defamatory statements in furtherance of the harassment campaign.”

Each category is discussed below.

A) Factual Allegations

1) Sale of Property

As to the sale of their residence, plaintiffs allege they hired Kristina Novak as their real estate agent, who listed their property for sale in August 2024. Thereafter, “Herrick began injecting herself into the sale processes uninvited.” She spoke with and corresponded with multiple prospective buyers and other real estate agents about plaintiffs’ property, making “numerous false, misleading, and unprivileged statements concerning the Property’s condition, features, and value.” She “spread disparaging statements about [plaintiffs] and the Property, including the Property had serious defects and was overpriced,” all of which were “false and unprivileged.” Herrick “directly told Ms. Novak that ‘she could never and will never bring a buyer to the Morgans’ [Property].” In late 2024, Herrick also communicated directly with Ms. Novak via text messaging, revealing her “malicious motive.” Although plaintiffs entered into a purchase agreement with a buyer in February 2025, and the sale was scheduled to close, “as a direct and proximate result of Herrick’s conduct, Plaintiff’s contractual sale with a potential buyer was cancelled.” “On information and belief, Herrick caused or contributed to the buyer’s sudden withdrawal from the transaction by communicating false and/or misleading information about the Property to these buyers, their agent, and/or the local community” Plaintiffs note that when they hired a Pickford-affiliated agent thereafter, Herrick’s “hostile interference” subsided, and they were able to sell their property on June 25, 2025.

2) Harassment

According to plaintiffs, Herrick continued to “harass in other ways.” “Over the last 18 months [if the lawsuit was filed on December 17, 2025, that would have been June 2024], Herrick has stalked and harassed the [plaintiffs] at community events and activities, including ‘crashing’ plaintiffs’ visits to a local café (Little King Coffee),” creating an “air of discomfort and intimidation.” Specifically, plaintiffs allege that Herrick encouraged her live-in au pair to start a side job as a barista at Little King Coffee (au pairs are not allowed to hold secondary jobs outside their exchange program), suggesting “Herrick may have been attempting to monitor Plaintiffs routine through her au pair’s presence”

Additionally, Herrick “crashed” a local community concert site (the Solvang Music Festival) when plaintiffs were present, setting up near the plaintiffs to “further harass” Plaintiffs observed that Herrick would approach other families from their children’s school, and whisper, causing the families to turn and glance at plaintiff’s with “looks of surprise or disapproval.” Plaintiff was spreading “defamatory gossip.”

Further, Herrick orchestrated a “surprise” encounter at plaintiffs’ young daughter’s gymnastics class. Minutes before the class session began on September 9, 2025, Herrick “called the gymnastics studio and enrolled her daughter on the spot for that single session This sudden enrollment was highly unusual and clearly contrived,” and it was intended to “surprise and unsettle” plaintiffs.

Plaintiffs “have reason to believe that around this same time, there were multiple instances of unknown vehicles and individuals surveilling their former residence . . . and even tailing their car on a few occasions. After moving to their new home (whose address Herrick mysteriously learned), plaintiffs have experienced trespassers at the new property”

Plaintiffs also allege that “Herrick and Pickford” wrongfully obtained the plaintiffs’ new home address without their prior consent. They claim they kept the address “strictly confidential,” although they do not explain how an address can be “strictly confidential.” Nevertheless, on July 2, 2025, Herrick sent a letter addressed to plaintiffs (this apparently was a cease-and-desist letter), and on July 5, 2025, plaintiffs received a real estate marketing mail from Pickford. These letters were mailed to Plaintiffs’ new home address even though Plaintiffs had not yet closed escrow on their new property.

Plaintiffs claim that “Herrick leveraged her position as an administrator of local social media groups to harass and ostracize the Morgans. Herrick served as a group administrator for the two groups for local families. She used this authority to bar and expel Plaintiffs from these community forums without justification.”

3) Defamatory Statements

“Concurrent with her interference in the Property sale” (see Section 1, *ante*), Herrick engaged in an ongoing campaign of slander, libel, and disparagement against the plaintiffs. “On

information and belief, Herrick has spread lies to parents at school.” She falsely stated the plaintiffs are “unhinged,” causing other families to avoid plaintiffs. “One focal point of Herrick’s defamation was Dr. Morgan’s professional title. Dr. Morgan holds a Doctor of Philosophy (PhD.) and rightfully uses the honorific ‘Dr.’ in her professional and personal interactions.” According to plaintiffs, Herrick told third parties in the community on multiple occasions, including parents of the preschool and other real estate agents, that Dr. Morgan is “not a real doctor.” Plaintiffs contend that these statements, by their natural consequence, injure Dr. Morgan’s reputation in the community. On August 1, 2025, Herrick, at a real estate Broker’s Open House, said in front of several people, loudly, “You know the Morgans are suing me for discrimination.” She then immediately said, “I have a cease-and-desist order on them.” “These statements are entirely false and highly defamatory.” On the same date, at the same open house, Herrick also said she “would be terrified” to bring any buyers to the Morgans’ property because the Morgans were unhinged. And in September 2025, Herrick at another open house event made “derogatory comments about the Morgans” No specifics are offered.

Defendants have filed separate demurrers and motions to strike. Opposition and replies have been filed, and all briefing has been examined. The court will explore the demurrers as to each cause of action and then defendants’ motions to strike.

B) Demurrers (2)

As noted, each defendant has filed a separate demurrer. The court will focus only on those arguments from both motions that are dispositive, looking at the causes of action in seriatim.

1) Defamation (First Cause of Action)

Plaintiffs allege that Herrick and Pickford are liable for defamation per se because Herrick, as Pickford’s agent, published unprivileged, false, and defamatory statements about plaintiffs to numerous third parties, and in writing, including claims that “Dr Morgan is not a real doctor”; falsely calling plaintiffs “unhinged”; falsely claiming that defendants had a “cease and desist order” or other court order; and spreading false accusations that Plaintiffs’ “home had serious defects,” and “that Plaintiffs’ were untrustworthy or dishonest in their dealings.”

To prove defamation, a plaintiff must show the “intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage. [Citations.]” (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645, fn. omitted.) A statement is defamatory per se if its defamatory meaning is plain on its face and does not need extrinsic information to be understood. (*ZL Technologies, Inc. v. Does 1-7* (2017) 13 Cal.App.5th 603, 623; *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 290.) Derivative (or respondeat superior) liability attaches to defamatory publications of a corporate agent made within the scope of the agency and in furtherance of the business of the corporation. (*Sanborn v. Chronicle Pub. Co.* (1976) 18 Cal.3d 406, 411; *Alexander v. Community Hospital of Long Beach* (2020) 46 Cal.App.5th 238, 264.)

There are numerous problems with plaintiffs' defamation cause of action. Initially, it is evident that plaintiffs are relying on two general sets of statements by Herrick to support the defamation cause of action – statements made between May 2024 and June 2025 associated with the sale and purchase of their real property; and statements unassociated with the sale, involving comments made by Herrick to persons associated with plaintiffs' child's school, and to those in the real estate market after the sale.

The first problem involves the statute of limitations for defamation, which is one year from the date of publication. (*Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1246.) Plaintiffs contend perfunctorily in paragraph 72 of the operative pleading that they “did not discover, and had no reason to discover, several of Herrick’s defamatory statements until recently. Plaintiffs first began learning of certain statements only after third parties came forward in 2025, or when circumstances (including sudden changes in community relationships) prompted those third parties to disclose what Herrick had previously said about Plaintiffs. Prior to that time, Plaintiffs had no knowledge of the existence, substance or source of these defamatory statements.” But the alleged defamatory statements started shortly after the property was listed in August 2024; plaintiffs admit in the operative pleading that Herrick spoke with Ms. Novak in late 2024, “revealing her malicious motive” (more than a year before the lawsuit was filed on December 17, 2025). Plaintiffs admit they became aware of a change in circumstances from “mid-to-late 2024,” providing a number of examples in paragraphs 51 to 54. Which one of Herrick’s “several” allegedly defamatory statements were only discovered recently as to delay accrual? We are not told. The law is settled that a plaintiff, to rely on the discovery rule, as plaintiffs do, must “specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence.” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808.) More must be pleaded regarding the statements, and when they were discovered, to survive demurrer.

Other problems are also apparent. “Because [a defamatory] statement must contain a provable falsehood, courts distinguish between statements of fact and statements of opinion for purposes of defamation liability. Although statements of fact may be actionable as libel, statements of opinion are constitutionally protected.” (*GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th 141,155.) Courts “ ‘apply a “ ‘totality of the circumstances’ ” test to determine . . . whether a statement declares or implies a provably false factual assertion; that is, courts look at the words of the statement itself and the context in which the statement was made.’ [Citation.] Under this test, “ “[f]irst, the language of the statement is examined. For words to be defamatory, they must be understood in a defamatory sense . . . [¶] Next, the context in which the statement was made must be considered.” ” (*Balla v. Hall* (2021) 59 Cal.App.5th 652, 678.) “ ‘[T]he question is not strictly whether the published statement is fact or opinion. Rather, the dispositive question is whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact.’ ” (*Hoang v. Tran* (2021) 60 Cal.App.5th

513, 532.) “ ‘Whether challenged statements convey the requisite factual imputation is ordinarily a question of law for the court.’ ” (*Balla*, at p. 678; *GetFugu, Inc. v. Patton Boggs LLP* (2013) 220 Cal.App.4th 141, 156.)

Plaintiff cannot rely on vagaries or generalities, which they have done with regard to the September 2025 statements – described exclusively as “derogatory” comments without nuance or substance. That is not enough. (*Comstock v. Abet* (2012) 212 Cal.App.4th 931, 948 [defamation requires specific, nonconclusory allegations].) “As Witkin distills the pleading rule, ‘It is sometimes said to be a requirement, and it certainly is the common practice, to plead the exact words or the picture or other defamatory matter. The chief reason appears to be that the court must determine, as a question of law, whether the defamatory matter is on its face or capable of the defamatory meaning attributed to it by the innuendo. Hence, the complaint should set the matter out verbatim, either in the body or as an attached exhibit.’ ” (*Ibid.*) This rule has consistently been ignored.

Further, even when plaintiff is more specific, the alleged defamatory statements are not per se defamatory, and without more context are not provably false, thus amounting to opinion. Plaintiffs claim that Herrick defamed them by stating that “Dr. Morgan is not a real doctor.” (Emphasis added.) Standing alone, an average person hearing this statement would translate it as an indication that plaintiff is not a medical doctor (an MD). That is what a reasonable person could understand the statement to mean. Nice? Certainly not. Rude and intemperate? Certainly. But as Dr. Morgan is not a medical doctor, it is not provably false, and thus, not defamatory. It is possible, of course, that what the statement meant was that Dr. Morgan is lying when she says that she is any kind of doctor at all. But for that to take on a defamatory meaning, plaintiffs must plead more context, something they have not done.

The same is true of Herrick’s pejorative use of the word “unhinged.” Of course, the court is required to apply a totality of circumstances test to determine whether the requisite factual imputation is provided, and this includes the language of the statement and the context in which it is made. (*Brodeur v. Atlas Entertainment, Inc.* (2016) 248 Cal.App.4th 665, 681.) Plaintiff does not provide context for the court to determine whether there was an objective factual imputation. It very well could be Herrick’s opinion. More must be pleaded to imbue the statement with defamatory meaning.

The plaintiffs’ August 1, 2025, statement, attributed to Herrick, to the effect that plaintiffs were suing Herrick for discrimination and that she obtained a “cease and desist” order involves a slightly different analysis. The problem plaintiff confronts is the fact that the letter referenced in paragraph 43 of the operative pleading – a July 2, 2025, letter from Herrick’s counsel to plaintiffs – indicates that defendant in fact sent a “cease and desist letter” to plaintiffs. It is true that if the statements are not defamatory on their face but are capable of defamatory meaning imputed by innuendo, the defendant must demonstrate the truth of the statements in the sense in which the plaintiff’s innuendo explains them. “However, the defendant need not justify

the literal truth of very word of the allegedly defamatory matter. It is sufficient if the defendant probes the true substance of the charge, irrespective of slight inaccuracy of details, so long as the imputation is substantially true so as to justify the gist or sting of the remark.” (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 647.) The court, looking at the totality of circumstances, is not convinced the statement as portrayed, unadorned and unmoored from its context, is reasonably susceptible to a defamatory interpretation given the verifiable truth that a cease-and-desist *letter* was sent by defendant to plaintiff. More context must be pleaded – other than a naked allegation as made – to show that it is reasonably susceptible to a defamatory interpretation. The “pertinent question” is whether a “reasonable fact finder” could conclude that the statements “as a whole, or any of its parts, directly made or sufficiently implied a false assertion of defamatory *fact* that tended to injure” plaintiff’s reputation. (*Issa v. Applegate* (2019) 31 Cal.App.5th 689, 703.) As pleaded, it cannot. More must be pleaded for this to occur.

The court addresses one last claim, raised by defendant Pickford. Plaintiffs predicate Pickford’s liability on two theories – respondeat superior and ratification. Both theories are viable for this purpose. To be vicariously liable for the publication of another under the doctrine of respondeat superior, the employee or agent must have been ‘acting in the scope of [her] authority and in furtherance of the employer's business.’ [Citation.]” (*Alexander v. Community Hospital of Long Beach* (2020) 46 Cal.App.5th 238, 264 (*Alexander*)). Plaintiffs have adequately alleged that Herrick was acting in the scope of her employment and as Pickford’s agent at all times. This is enough to establish respondeat superior liability and is sufficient to survive demurrer. (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 439.)

Pickford’s challenge to plaintiff’s ratification theory is more fruitful. (*C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1110 [ratification is an alternative to respondeat superior for employer’s liability for employee’s misconduct]; *Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 619.) An employer may be liable for an employee’s act where the employer either authorized the tortious act or subsequently ratified an originally unauthorized tort. The failure to discharge an employee who has committed misconduct may be evidence of ratification. The theory of ratification is generally applied where an employer fails to investigate or respond to charges that an employee committed an intentional tort. (*Ratcliff v. The Roman Catholic Archbishop of Los Angeles* (2022) 79 Cal.App.5th 982, 1002.) There are no facts alleged to show that Pickford was aware of Herrick’s misconduct, and ratified or authorized it. As indicated in CACI 3710, plaintiff must show that Pickford learned of Herrick’s unauthorized conduct after it occurred, and then approved of it. Plaintiffs advance perfunctory allegations only, without nuance. (See, e.g., ¶ 4.) There is no indication that Pickford was actually aware of Herrick’s acts and thereafter approved it. More must be pleaded.

The court will sustain both demurrers with leave to amend.

- 2) Negligent Interference with Prospective Economic Advantage (Second Cause of Action)

Plaintiffs contend they had an existing, identifiable economic relationship with buyers of their real property, in February 2025, by entering into a purchase agreement; defendants knew or should have known of this economic relationship; defendants engaged in false, misleading, or disparaging statements that would interfere with the sales process, and acted negligently by making disparaging comments that sabotaged the sale.

The elements of a claim for intentional interference with prospective economic advantage are: (1) an existing economic relationship between the plaintiff and a third party with a probability of future benefit to the plaintiff, (2) defendant's knowledge of that relationship, (3) defendant's intentional (4) interference with that relationship (5) by independently wrongful means, (6) causing damages. (*Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.* (2021) 71 Cal.App.5th 528, 537.) The elements of a claim for negligent interference are the same, except the intent requirement is lowered; the plaintiff need only prove the defendant knew plaintiff's relationship would be disrupted and failed to act with reasonable care. (*Nelson v. Tucker Ellis, LLP* (2020) 48 Cal.App.5th 827, 844, fn. 5.) To proceed on either of the interference torts, the plaintiff must show that the interfering act **was independently wrongful**. (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1146.) The act must be wrongful by some measure beyond the fact of the interference itself, and must be something other than a breach of contract. (*Drink Tank, supra*, 71 Cal.App.5th at p. 537, 539–540.) Our high court has explained that “an act is independently wrongful if it is unlawful, that is, if it proscribed by some constitutional, statutory regulatory, common law, or determinable legal standard.” (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1159.) “[S]uch an act must be wrongful by some legal measure, rather than merely a product of an improper, but lawful, purpose or motive.” (*Id.* at p. 1159, fn. 11.)

Plaintiffs have not adequately alleged that Herrick’s interference was wrongful by some measure beyond the mere fact of the interference itself, and beyond the product of simply an improper purpose. To the extent plaintiff alleges defamation as the independent wrongful act, that cause of action does not survive (and thus does not survive here). No other unlawful act is alleged. Indeed, a close examination of the operative pleading indicates there is no factual predicate to support wrongful interference outside the naked conclusion that defendants caused the buyers to withdraw from the sale. More must be alleged.

The court sustains the demurrer with leave to amend.

3) Intentional Interference with Prospective Economic Advantage (Third Cause of Action)

The same defect identified with negligent interference with prospective economic advantage is present with the intentional version of the tort. The same analysis applies.

The court sustains the demurrer with leave to amend.

4) Harassment (Fourth Cause of Action)

Plaintiff contends that defendants, through Herrick's actions, "engaged in a deliberate pattern of conduct" by following, surveilling, and harassing plaintiffs. "From mid-2024 and continuing into 2025, Herrick willfully pursued and monitored Plaintiffs in their small community with no lawful purpose, as detailed above. Herrick repeatedly appeared uninvited in close proximity to Plaintiffs at their regular person outings, and she orchestrated these encounters to alarm, intimidate, and torment Plaintiffs." (¶ 93.) "This continuous course of conduct by Herrick was undertaken with the common plan and purpose to seriously alarm, annoy, and harass [the plaintiffs] and to interfere with their privacy and peace of mind. Such conduct had no legitimate purpose and would cause a reasonable person to suffer substantial emotional distress." (¶ 95.) "Herrick's action implied a credible threat – by persistently inserting herself into Plaintiffs' vicinity and demonstrating that she could track their movements (even to the point of obtaining their new address surreptitiously). Herrick conveyed to Plaintiffs that she had the ability to interfere with their lives at any time." (¶ 98.) "Plaintiffs are informed and believed that Herrick's course of conduct included either explicit or implied threats intended to place them in fear. Pickford knew or should have known of Herrick's wrongful conduct and failed to stop it and/or ratified it by allowing Herrick to use company resources . . . to facilitate her harassment" (¶ 99.)

There is no separate common law tort for harassment under California law. (See, e.g., *Myers v. Trendwest Resorts, Inc.* (2007) 148 Cal.App.4th 1403, 1426.) Plaintiffs, however, seem to rely on Civil Code section 1708.7, subdivision (a) (as it is expressly referenced in ¶ 99 of the operative pleading), which creates the tort of stalking. (Witkin, Summary of California Law (11th ed. 2026), Torts, § 770.) Stalking requires the plaintiff to prove: (1) "[t]he defendant engaged in a pattern of conduct the intent of which was to follow, alarm, place under surveillance, or harass the plaintiff"; in order to establish this element, the plaintiff shall be required to support his or her allegations with independent corroborating evidence. (Witkin, *supra*, at § 770(2)(a)); (2) "[t]he plaintiff reasonably feared for his or her safety, or the safety of an immediate family member" or "the plaintiff suffered substantial emotional distress, and the pattern of conduct would cause a reasonable person to suffer substantial emotional distress"; (3) as part of the pattern of conduct, the defendant made a credible threat with the intent to place plaintiff "in reasonable fear for his or her safety, or the safety of an immediate family member"; and (4) the plaintiff must have "clearly and definitively demanded that the defendant cease and abate his or her pattern of conduct and the defendant persisted" unless "exigent circumstances" make the demand "impractical or unsafe." (Civ. Code, § 1708.7, subd. (a).) The statute excludes constitutionally protected activity as well as lawful activity by licensed private investigators or law enforcement personnel to conduct surveillance concerning suspected fraudulent conduct or illegal activity. (Civ. Code, § 1708.7, subd. (b)(1) & (4); see *Tull v. Higgins* (N.D. Cal., Dec. 27,

2021, No. 21-CV-01566-DMR) 2021 WL 6116971, at *13¹; see also *Thunder Studios, Inc. v. Kazal* (9th Cir. 2021) 13 F.4th 736, 743, fn. 1.) A “credible threat” refers to a verbal or written threat, including one communicated by an electronic communications device, or threat implied by a pattern of conduct, or a combination of statements and conduct, made with the intent and apparent ability to carry out the threat so as to cause the target to reasonably fear for his or her safety or the safety of an immediate family member. (Civ. Code, § 1708.7, subd. (b)(2).)

Plaintiffs have failed to plead the requirements of Civil Code section 1708.7. The court acknowledges recent federal district court authority has indicated that “independent corroborating evidence” to show defendant engaged in a pattern of conduct the intent of which is to follow, alarm, or harass is not a pleading standard, but impacts plaintiff’s burden of proof at trial. (*Joiner v. Callaghan* (C.D. Cal., Feb. 26, 2025, No. 8:24-CV-01160-CBM-KS) 2025 WL 1726392, at *4 [“While Cal. Civ. Code § 1708.7 references “independent collaborating evidence,” such language relates to Plaintiff’s burden of proof to prevail on his claim, not a pleading standards].) Even with this, the stalking statute excludes “constitutionally protected activity” from the definition of “pattern of conduct.” (*Thunder, supra*, 13 F.4th at p. 743.) On their face a number of “events” identified by plaintiffs to show a “pattern of conduct” actually involve constitutionally protected activity, and thus do not constitute true threats as pleaded, such as 1) the au-pair’s job as a barista at the café; 2) Herrick’s enrollment of her daughter at the gymnastics class (indeed, Herrick was not even present); 3) obtaining the address of plaintiffs to mail real estate flyers (plaintiffs manifestly fail to explain how an address can be “strictly confidential” (“without permission” can be a predicate act that supports a continuing pattern of conduct); 4) Herrick’s presence at the “Solvang Music in the Park” festival, an event open to the public.² Plaintiffs emphasis repeatedly that the community they live in is small – but this point cuts both ways. Further, plaintiffs’ allegations “based on information and belief” that Herrick

¹ The *Tull v. Higgins* court summarized the requirements as follows: “First, a plaintiff must show that the defendant was engaged in a pattern of conduct with ‘the intent to follow, alarm, or harass the plaintiff.’ Second, a plaintiff must show that, as a result of the defendant’s conduct, the plaintiff ‘reasonably feared for his or her safety, or the safety of an immediate family member.’ Alternatively, a plaintiff may plead that she suffered ‘substantial emotional distress,’ which a reasonable person would also have suffered given the defendant’s pattern of conduct. Third, a plaintiff must show that the defendant made a credible threat intending to place plaintiff in ‘reasonable fear for his or her own safety,’ and that the defendant persisted despite the fact that on at least one occasion, plaintiff made clear that the ‘defendant cease and abate his or her pattern of conduct.’”

² As the Ninth Circuit indicated in *Thunder Studios, Inc., v. Kazel, supra*, 13 F.4th 736, when examining constitutional protected activity as the basis for “pattern of conduct” under Civil Code section 1708.7, cases “in this circuit have long employed an objective test for determining when speech is a ‘true threat.’ [Citation.] Under this test, we asked only ‘whether a reasonable person would foresee that the statement would be interpreted by those to whom the maker communicates the statement as a serious expression of intent to harm or assault.’ [Citation.] We have not yet determined whether the subjective test” contemplated in *Virginia v. Black* (2003) 538 U.S. 343, involving cross-burning (i.e., defendant must subjectively intend to threaten in criminal cases when pure speech is involved in order to pass constitutional muster) “applies in civil cases, or whether the objective test remains the sole test” In this case, the court need not decide which test applies in determining whether the conduct at issue involves a true threat or constitutionally protected activity under either an objective or subjective test, because as in *Thunder* the alleged conduct does not satisfy either one.

was responsible for “unknown vehicles and individuals surveilling their former residence . . . and even tailing their car” is simply too vague and conclusory. A plaintiff may allege on information and belief any matters that are not within his or her personal knowledge, **but only if the plaintiff has information leading him or her to belief that the allegations are true.** (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1158.) It is insufficient to plead on information and belief if the pleading merely asserts the facts without alleging such information that would lead them to believe the allegations are true, the situation here. Finally, the statute requires plaintiffs must have clearly and definitively demanded that the defendants cease and desist the pattern of conduct. The operative pleading fails to meet this requirement.³

For these reasons, the court sustains the demurrer with leave to amend.

5) Intentional Infliction of Emotional Distress (Fifth Cause of Action)

Plaintiffs claim that defendants’ conduct as alleged was extreme and outrageous. A reasonable member of the community “would regard Herrick’s [actions] as atrocious and utterly intolerable in a civil society. Herrick’s actions – including relentlessly harassing Plaintiffs in public and private settings, spreading vicious falsehoods about them in their community, and sabotaging the sale of their home out of personal spite – exceed all bounds of decency.” (§ 102.) “Herrick engaged in the foregoing conduct with the intent to cause Plaintiffs’ severe emotional distress . . . the campaigns against Plaintiffs were deliberate and malicious . . .” (§ 203.) “As a direct and proximate result . . . , Plaintiffs have suffered extreme emotional distress,” such as “intense and enduring emotional anguish,” anxiety, constant fear of their safety, despair, humiliation, and disruption. “Pickford is vicariously liable” under a respondeat superior theory, as well as under a ratification theory.

To plead intentional infliction of emotional distress, plaintiff must allege as follows: (1) defendant engaged in extreme and outrageous conduct (conduct so extreme as to exceed all bounds of decency in a civilized community) with the intent to cause, or with reckless disregard to the probability of causing, emotional distress; and (2) as a result, plaintiff suffered extreme or severe emotional distress. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001.) Additionally, “ ‘[i]t must be conduct directed at the plaintiff, or occur in the presence of the plaintiff of whom the defendant is aware.’ [Citation.] ‘The requirement that the defendant’s conduct be directed primarily at the plaintiff is a factor which distinguishes intentional infliction of emotional distress from the negligent infliction of such injury.’ ” (*Id.* at p. 1002; *Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1273.) ‘ “Conduct, to be ‘ “outrageous” ’ must be so

³ Plaintiffs in paragraph 44 of the operative pleading indicate they provided “multiple written requests” and yet defendants “refused to explain how they obtained Plaintiffs’ new home address.” That allegation does not satisfy the requirement that plaintiffs on at least one occasion must have “clearly and unequivocally” told defendant to cease and abate his or her pattern of conduct and the defendant persisted” unless “exigent circumstances” make the demand “impractical or unsafe.

extreme as to exceed all bounds that are usually tolerated in a civilized society.” ’ [Citation.] In order to avoid a demurrer, the plaintiff must allege with ‘great[] specificity’ the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community. [Citation.]” (*Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 160–161.) “Liability for intentional infliction of emotional distress ‘ “does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” [Citation.]’ [Citations.]” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050.) “It is for the court to determine in the first instance whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit recovery. [Citations.]” (*Jackson v. Mayweather* 2017) 10 Cal.App.5th 1240, 1265.) A claim for intentional infliction of emotional distress may not be based on constitutional protected speech or conduct. (*Reader’s Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 265.)

Plaintiffs have failed to adequately plead this cause of action under these standards. Plaintiffs have failed to plead what is outrageous conduct with the “great specificity” required under existing case law. Further, many of the allegations, as noted above, appear to be constitutionally protected. What is left seems to amount to indignities, threats, annoyances or petty oppressions – all of which are not actionable. This point is reinforced by the general rule that the court is the one charged initially with determining whether defendant’s conduct may reasonably be regarded as so extreme and outrageous to permit recovery, and as pleaded, the conduct does not meet this threshold.

The court separately addresses Pickford’s claim about the basis of liability. While agency as a basis for respondeat superior has been alleged, liability based on ratification has not. More must be pleaded, for the reasons articulated above.

For these reasons, the court sustains the demurrer with leave to amend.

6) Negligent Infliction of Emotional Distress (Sixth Cause of Action)

Negligent causing of emotional distress is not an independent tort but the tort of negligence; the traditional elements of duty, breach, causation, and damages apply. (*Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.* (1989) 48 Cal.3d 583, 588; *Eriksson v. Nunnink* (2015) 233 Cal.App.4th 708, 729.) This theory applies in two general circumstances. The first involves “bystander” situations in which plaintiff seeks to recover damages as a percipient witness to the injury of another. (*McMahon v. Craig* (2009) 176 Cal.App.4th 1502, 1509.) That theory is not implicated here. The second source of duty is found where the plaintiff is a “direct victim,” in that the emotional distress damages result from a duty owed the plaintiff “that is ‘assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of a relationship between the two.” (*Id.* at p. 1510.) “[U]nless the defendant has assumed a duty to plaintiff in which the emotional condition of the plaintiff is an object, recovery is available only

if the emotional distress arises out of the defendant's breach of some other legal duty and the emotional distress is proximately caused by that breach of duty.” (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 985.) Put another way, the duty at issue may be imposed by law, be assumed by the defendant, or exist by virtue of a special relationship. (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.app.4th 182, 205.)

There are no allegations that defendants had a duty to ensure the emotional condition of plaintiff. Further, there are no allegations that defendants had a duty that was imposed by law, assumed by the defendants, or otherwise existed by virtue of a special relationship between the defendants and plaintiffs. In the absence of such allegations, plaintiffs have failed to state a cause of action for negligent infliction of emotional distress.

As above, with regard to Pickford, while the complaint adequately states a potential respondeat superior basis of liability, it has not pleaded sufficient facts to support a theory based on ratification. More must be alleged for that theory to go forward.

The court sustains the demurrer with leave to amend.

7) Unfair Competition under Business and Professions Code section 17200 (Seventh Cause of Action)

“To bring a UCL claim, a plaintiff must show either an (1) ‘unlawful, unfair, or fraudulent business act or practice,’ or (2) ‘unfair, deceptive, untrue or misleading advertising.’ ” (*Lippitt v. Raymond James Financial Services Inc.* (9th Cir. 2003) 340 F.3d 1033, 1043.) Because the UCL is written in the disjunctive, “ ‘it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent.’ ” (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180; *Adhav v. Midway Rent A Car, Inc.* (2019) 37 Cal.App.5th 954, 970.) Plaintiffs initially rely on an “unlawful” basis for the cause of action. (¶115.) “Unlawful” conduct includes any business practice or act forbidden by local, state or federal statutes or by regulations or case law. (*Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661, 676; see also *Rose v. Bank of America, N.A.* (2013) 57 Cal.4th 390, 396.) Plaintiffs identify four unlawful theories as the basis for recovery: 1) defamation (first cause of action); 2) negligence (presumably negligent infliction of emotional distress, the sixth cause of action); 3) stalking (as alleged in the fourth cause of action); and 4) violations of Business and Professional Code section 10176, subdivision (i), which provides that Real Estate Commissioner may temporarily suspend permanently revoke a real estate license if a real estate licensee, “in attempting to perform any of the acts within the scope of this chapter, has been guilty of any other conduct, whether of the same or of a different character than specified in this section, which constitutes fraud or dishonest dealing.” Plaintiffs only discuss the Business and Professions Code provision in the general pleading section of the complaint, in paragraph 60, which consists of the following vague allegations: “California law holds licensed real estate

agents to heightened standards of honesty and fair dealing. Business and Professions Code § 101769 prohibits real estate licensees from engaging in ‘any other conduct . . . which constitutes fraud or dishonest dealing. Herrick’s conduct in spreading falsehoods about [the plaintiffs] and their home constitutes dishonest dealing and is not protected speech.’”

Plaintiffs also rest their UCL claims on “unfair” business acts. “Under the unfairness prong of the UCL, a practice may be deemed unfair even if not specifically proscribed by some other law.” (*In re Carrier IQ, Inc.*, (N.D. Cal. 2015) 78 F. Supp. 3d 1051, 1115.) California courts have developed at least two tests for “unfairness” within the meaning of the UCL: “(1) the tethering test, which requires that the public policy which is a predicate to a consumer unfair competition action under the unfair prong of the UCL must be tethered to specific constitutional, statutory, or regulatory provisions”; and “(2) the balancing test, which examines whether the challenged business practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers and requires the court to weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim.” (*Taleshpour v. Apple Inc.* (N.D. Cal. 2021) 549 F.Supp.3d 1033, 1045, 2022 WL 1577802.) Plaintiffs rely on the acts at issue in all other causes of action to support its claim of unfairness.

Plaintiffs’ allegations do not survive demurrer. As for any claimed unlawfulness or unfairness based on the causes of action alleged in the complaint, as those causes of action do not survive, neither does the UCL cause of action, as its derivative of them. This leaves plaintiffs remaining claim Herrick violated Business and Professions Code section 10176, subdivision (i), based on her “fraud and dishonest dealing” associated with the sale of plaintiffs’ home, even though Herrick was not plaintiffs’ agent. Even if the court assumes this provision applies in the present context, plaintiff has not alleged a sufficient factual basis to show there was an unlawful or unfair violation. While it is true that that the heightened pleading for common law fraud does not apply under the UCL cause of action when it in turn is based on fraud, as appears to be the case here (see, e.g., *Morgan v. AT & T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1256 [the requirement that fraud be pleaded with specificity does not apply to causes of action under UCL], plaintiffs must still plead facts sufficient to show defendants’ acts constituted an unlawful or unfair business practice. (*Id.* at p. 1253.) Plaintiffs have failed to do this, claiming vaguely that Herrick “attempted to chock off the pool of potential purchasers,” by making false, misleading, and unprivileged statements concerning the property’s condition, features and value. Nothing is offered to show what was said or to whom. All that plaintiffs offer are vague extrapolations that “as a result of Herrick’s conduct, Plaintiffs’ contractual sale with a potential buyer was cancelled.” More must be offered (other than speculation and attenuation) to show UCL violation. A UCL cause of action on vague misconduct is subject to demurrer.

Accordingly, the court sustains the demurrer with leave to amend.

C) Motions to Strike (2)

Although technically moot, the court makes the following determinations with regard to defendant Herrick's motion to strike:

- The court denies Herrick's claims that the following are irrelevant and speculative and thus should be stricken: ¶¶ 13, 35, 40, 41, and 46. The court also denies Herrick's request to strike the following as conclusory: ¶¶ 11, 16, 28, 42, 45, 48, 50, 53, 56, 58, 60, 61, 68, 69, 96, 103, 109, and 117. The court generally gives parties great leeway in pleading, and does not overuse the motion to strike as a scalpel.
- Herrick asks the court to strike all references to punitive damages (¶¶ 70, as to the first cause of action; 91 as to the second cause of action; 100 as to the fourth cause of action; 106 as to the fifth cause of action; and in the Prayer for Relief (Item 2)).
 - It is beyond cavil that plaintiffs, pursuant to Civil Code section 3294, subdivision (a), must plead the basis for punitive damages with factual particularity. The vague and general allegations offered here fail to meet this standard. (*Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193 ["In addition to the requirement that the operative complaint set forth the elements as stated in section 3294, it must include specific factual allegations showing that defendant's conduct was oppressive, fraudulent, or malicious to support a claim for punitive damages".]) The court strikes all references to punitive damages as a result. Leave to amend is granted.
- Finally, Herrick asks the court to strike all requests for attorney's fees, as detailed in the Prayer for Relief, Item 5. California law does not allow attorney's fees for tort causes of action as a general rule, and as plaintiffs fail to identify a basis for attorney's fees, a motion to strike is appropriate. Leave to amend is denied.

As to Pickford's motion to strike, although also technically moot, the court makes the following determinations:

- Pickford asks the court to strike all allegations for punitive damages as to it, including ¶¶ 100, 106, and the Prayer for Relief Item 2.
 - Pursuant to Civil Code 3294, subdivision (b), when a corporate defendant is alleged to be liable for punitive damages, plaintiff must not only plead factual specificity, but must allege that the wrongful acts giving rise to punitive damages against the corporation were committed by "an officer, director or managing agent" The allegations fail to do this – they are boilerplate, without factual specificity or nuance. (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 576–577.) While there is no requirement that the specific corporate officer or managing agent be identified in the operative pleading, plaintiff has to allege that the corporate officer or managing agent who caused the wrongful acts exercised substantial discretionary

authority over significant aspects of the corporation's business, and that clearly has not been accomplished. (*White*, at pp. 576-577; see *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1221 [quoting *White*]; *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 428 [same].) Further, when punitive damages are sought against a corporate employer, **facts** must be alleged to show advance knowledge, authorization or ratification. (*Grieves v. Superior Court*, *supra*, 157 Cal.App.3d at p. 168; see also *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29.) The allegations are steeped exclusively in conclusory descriptions that do no more than track the statutory language, which is insufficient to meet the exact pleading requirements for punitive damages for corporations. The court grants the motion to strike all references to punitive damages as a result. Leave to amend is granted.

- Pickford also asks the court to strike the reference to attorney's fees in Item 5 of the Prayer for Relief. For the same reasons as above, the motion to strike is granted, without leave to amend.

Summary:

- The court sustains both demurrers at to all seven causes of action, with leave to amend, for the reasons outlined above.
- Although both motions to strike are technically moot as a result of the demurrers, the court makes the following determinations:
 - The court denies Herrick's motion to strike Herrick's claims that the following are irrelevant and speculative and thus should be stricken: ¶¶ 13, 35, 40, 41, and 46. The court also denies Herrick's request to strike the following as conclusory: ¶¶ 11, 16, 28, 42, 45, 48, 50, 53, 56, 58, 60, 61, 68, 69, 96, 103, 109, and 117.
 - The court nevertheless grants Herrick's request to strike all references to punitive damages, as plaintiffs have failed to plead the requirements with factual specificity. Leave to amend is granted.
 - The court grants Herrick's request to strike all references to attorney's fees from the Prayer for Relief, as there is neither a statutory nor a contractual basis for the request. Leave to amend is denied.
 - The court grants Pickford's motion to strike all references to punitive damages as to it, pursuant to Civil Code section 3294, subdivision (b), as plaintiffs have failed to allege punitive damages with factual specificity, and have failed to identify a direct or managing agent with authority that made any relevant decision, per *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 576-577. Leave to amend is granted.
- Plaintiffs have 30 days from today's hearing to submit an amended pleading.