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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BEAUX CARSON et al.,

Plaintiffs and Appellants;

BEAUX CARSON,

Cross-Defendant and Respondent,

v.

DAMA CHASLE,

Defendant, Cross-Complainant and
Appellant.

B218835

(Los Angeles County
Super. Ct. No. BC349962)

APPEALS from a judgment of the Superior Court of Los Angeles County, Ann I.
Jones, Judge. Reversed in part with directions; affirmed in part.

Myer Law Firm and Scott D. Myer for Plaintiffs and Appellants.

Nunziato Buckley Weber, Tom A. Nunziato and Illece Buckley Weber for
Defendant and Appellant.

I. INTRODUCTION

Defendant, Dama Chasle, appeals from a judgment, following a court trial, in favor of plaintiffs: Beaux Carson; Mr. Carson's business associate, Jack Price; and Mr. Carson's ex-wife, Kay Nelson. Plaintiffs cross-appeal from the judgment. The trial court found in favor of: Mr. Carson and Mr. Price for intentional interference with prospective economic advantage; Ms. Nelson for intentional infliction of emotional distress; and defendant on a statutory privacy invasion claim. We resolve the appeal thusly: we reverse the judgment on the complaint in favor of Mr. Carson and Mr. Price; we reverse the judgment on the complaint in favor of Ms. Nelson as to damages with directions to the trial court to reconsider the compensatory damage award; and we affirm the judgment on the cross-complaint in favor of defendant.

II. BACKGROUND

The central figures in this litigation are two individuals involved in the entertainment industry—Mr. Carson and defendant. Mr. Carson had 15 years experience as a “film packager”—a person who puts a film or television project together, often for sale to a studio. Among other projects, Mr. Carson had been developing a movie, *Blue Mountain*, since 1993. Defendant acted as Mr. Carson's attorney from early 2000 until May 2002. They also worked on entertainment projects together. Defendant was later employed as a vice president in the tax department of News America Incorporated, an entity within the Fox network of companies. (We use the term “Fox” loosely, as do the parties. Our references to “Fox” are not to any particular Fox entity.) Defendant claimed that for more than a year she had an intimate romantic relationship with Mr. Carson. Mr. Carson testified the two had been only business associates, roommates and good friends. The trial court found defendant's attraction to Mr. Carson was unreciprocated; moreover, when he failed to return her affections, she mounted a campaign to harm him personally

and professionally. The trial court also found defendant caused harm to Mr. Price and Ms. Nelson.

Mr. Price was a Council Bluffs, Iowa police officer who also operated an executive security service. Mr. Price provided personal security services to Mr. Carson and Ms. Nelson. At the time, Mr. Carson and Ms. Nelson were married. Mr. Price also developed a proposed television show, *Deadbeat Dads*. Mr. Carson successfully promoted *Deadbeat Dads* to Dick Clark Productions. (The company name is written in lower case letters, “dick clark productions.” For the sake of consistency in identifying entities, however, we use initial capital letters.) Mr. Price entered into an option agreement with Dick Clark Productions. Under the option agreement, Mr. Carson’s company, Carson Signature Films, was to be the co-executive producer of *Deadbeat Dads*.

Ms. Nelson lived in Council Bluffs, Iowa, and owned a dance studio there. During her marriage to Mr. Carson, they commuted between Los Angeles and Council Bluffs. Mr. Carson and Ms. Nelson are now divorced.

Richard Farr, a nonparty, was a central figure in the case. He was an internet radio host in Texas known publicly as “Richar’ Farr.” Mr. Farr’s radio station, KRightsRadio, was devoted to helping parents with family court issues. When news of the proposed *Deadbeat Dads* project reached Mr. Farr, in February 2005, KRightsRadio issued a press release and took other steps to protest the show. Defendant contacted Mr. Farr. Over the course of a five-month period beginning on February 8, 2005, defendant manipulated Mr. Farr to assist in her crusade against Mr. Carson. Defendant repeatedly told Mr. Farr that Fox was very interested in his mission. She manipulated Mr. Farr by promising him a Fox television special on the issue of child support, custody and family court. Mr. Farr acted in the belief that defendant did not know Mr. Carson, Mr. Price or Ms. Nelson. Mr. Farr believed defendant’s information came from Fox News sources. Defendant repeatedly said about Mr. Carson and Mr. Price, “These guys must be really bad guys to be [developing the *Deadbeat Dads* show].” Defendant wanted Mr. Farr to discredit Mr. Carson and Mr. Price in order to derail the show. To that end, defendant fed false

information to Mr. Farr including but not limited to the following: Mr. Price’s daughters were prostitutes; Mr. Price was a “dirty cop” who sold drugs; Mr. Price was “dirty with the casinos”; the Council Bluffs Police Department was corrupt; Mr. Carson and Mr. Price were dangerous men, liars and thieves; and they were capable of harming Mr. Farr for interfering with *Deadbeat Dads*.

Each plaintiff—Mr. Carson, Ms. Nelson and Mr. Price—asserted multiple causes of action against defendant. The trial court found in plaintiffs’ favor as follows: defendant intentionally interfered with Mr. Carson’s contractual relations with respect to his film project, *Blue Mountain*, however, he failed to prove compensable damages; defendant interfered with Mr. Carson’s and Mr. Price’s prospective economic relations in connection with *Deadbeat Dads*; Mr. Carson and Mr. Price were entitled to recover their lost income from *Deadbeat Dads* in the amount of \$490,000 and \$700,000 respectively; defendant intentionally inflicted severe emotional distress on Ms. Nelson; and Ms. Nelson was entitled to recover \$1,182,800 in damages. The trial court found in defendant’s favor on her claim that Mr. Carson had violated the California Invasion of Privacy Act (Pen. Code, § 630 et seq.) by recording a telephone conversation, and awarded her \$5,000 in statutory damages.

III. DISCUSSION

A. Standard of Review

The parties dispute the sufficiency of the evidence on several points. Our review is for substantial evidence. We view the evidence in the light most favorable to the judgment. (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 693-694; *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 787; *Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, abrogated on other grounds as stated in *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 100.) The trial court’s findings of fact are conclusive on appeal where there is substantial evidence supporting the findings. (*Bickel*

v. City of Piedmont, supra, 16 Cal.4th at p. 1053; *Robinson v. Robinson* (1911) 159 Cal. 203, 204.) As our Supreme Court explained in *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926: “In resolving the issue of the sufficiency of the evidence, we are bound by the established rules of appellate review that all factual matters will be viewed most favorably to the prevailing party [citations] and in support of the judgment [citation]. All issues of credibility are likewise within the province of the trier of fact. [Citation.] ‘In brief, the appellate court ordinarily *looks only at the evidence supporting the successful party, and disregards the contrary showing.*’ [Citation.] All conflicts, therefore, must be resolved in favor of the respondent. [Citation.]” More recently, in *Bickel v. City of Piedmont, supra*, 16 Cal.4th at page 1053, our Supreme Court reiterated: “‘Where findings of fact are challenged on a civil appeal, we are bound by the “elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,” to support the findings below. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.) We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.’ (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660, ellipses in *Baldwin.*)” And, as our Supreme Court has held, “Substantial evidence is not any evidence—it must be reasonable in nature, credible, and of solid value. (*Kroopf v. Guffey* (1986) 183 Cal.App.3d 1351, 1356; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873.)” (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 51; accord, *Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, ___ [2010 WL 5168828].)

B. Defendant's Appeal

1. Interference with prospective economic advantage as to *Deadbeat Dads*

The trial court found defendant tortuously interfered with Mr. Carson's and Mr. Price's prospective economic advantage in connection with the television project, *Deadbeat Dads*, which they had successfully promoted to Dick Clark Productions. Defendant contends there was no substantial evidence it was reasonably probable plaintiffs would have benefitted economically but for her interference. We agree.

The elements of the tort of intentional interference with prospective economic advantage are usually stated as follows: ““(1) an economic relationship between the plaintiff and some third party, *with the probability of future economic benefit to the plaintiff*; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.” [Citations.]’ (*Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 521-522.)” (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153, quoting *Buckaloo v. Johnson* (1975) 14 Cal.3d 815, 827, italics added, disapproved on a related point in *Della Penna v. Toyota Motor Sales, USA, Inc.* (1995) 11 Cal.4th 376, 393, fn. 5.) With respect to the first element, our Supreme Court has held, “[I]t must be reasonably probable that the prospective economic advantage would have been realized but for defendant's interference. [Citations.]” (*Youst v. Longo* (1987) 43 Cal.3d 64, 71; see *Worldwide Commerce, Inc. v. Fruehauf Corp.* (1978) 84 Cal.App. 3d 803, 811.) This is a “threshold causation” requirement. (*Youst v. Longo, supra*, 43 Cal.3d at p. 71; accord, *Kasparian v. County of Los Angeles* (1995) 38 Cal.App.4th 242, 271.) The Court of Appeal has explained: “[T]he interference tort applies to interference with *existing* noncontractual relations *which hold the promise of future economic advantage*. In other words, it protects the expectation that the relationship eventually will yield the desired benefit, not necessarily the more speculative

expectation that a potentially beneficial relationship will eventually arise.” (*Westside Center Associates v. Safeway Stores 23, Inc.*, *supra*, 42 Cal.App.4th at p. 524, fn. omitted, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 331, and *Youst v. Longo*, *supra*, 43 Cal.3d at pp. 71-75; first italics orig., second italics added.)

The pertinent facts are as follows. On November 19, 2004, Mr. Price (as president of Crown Group, Inc.) entered into an option agreement with Dick Clark Productions. No extrinsic evidence was presented at trial as to the meaning of the option agreement. According to its plain terms (*TRB Investments, Inc. v. Fireman’s Fund Ins. Co.* (2006) 40 Cal.4th 19, 27; *People v. Shelton* (2006) 37 Cal.4th 759, 767), the agreement gave Dick Clark Productions an exclusive right for six months or, at its option, one year, to acquire all rights in and to *Deadbeat Dads* by entering into a development agreement with a broadcast network, syndicator, cable operator, or other third party financier (“distributor”). Dick Clark Productions agreed to take steps to secure a development contract.¹ Both Mr. Price, through Crown Group, Inc., and Mr. Carson, via Carson Signature Films, Inc, would benefit economically if Dick Clark Productions successfully secured a development agreement. But in order for Mr. Price and Mr. Carson to benefit economically the following had to occur: Dick Clark Productions had to enter into a development agreement with a distributor; within one year of that date, a production order had to be secured; during the next year, the project had to commence production;

¹ The agreement stated: “1. Option: In consideration of [Dick Clark Production’s] efforts to secure a development and/or production deal for a television series/specials in connection with the Property for original exploitation on television . . . [Dick Clark Productions] shall have an exclusive and irrevocable option, for a period of six (6) months . . . , to acquire all rights in and to the Property on an exclusive basis [Dick Clark Productions] shall have the right to extend this option for one (1) consecutive additional period of six (6) months [¶] (a) The option shall be automatically exercised upon [Dick Clark Production’s] entering into an agreement to develop and /or produce a presentation, pilot, special(s) and/or series . . . with a broadcast network, syndicator, cable operator or other third party financier . . . during the Option Period” (ex. 295, p. 1)

and an original program produced by Dick Clark Productions had to be ordered and accepted by the distributor.²

Mr. Price testified that Dick Clark Productions and Mr. Carson promoted *Deadbeat Dads* to several studios, including Fox, and, “[U]ltimately, we had an agreement with Fox Studios.” As of early February 2005, Dick Clark Productions was ready to move forward with the project. There was also evidence that on or about March 14, 2005, four months after the parties executed the option agreement, representatives from Dick Clark Productions attended a meeting at Fox to promote the show. Mr. Price was not present. Mr. Carson did not attend because of a Fox security clearance alert—posted at defendant’s request—which prevented or impeded his access to the studio. There was no evidence who was present at the meeting, what was discussed, or whether any particular agreement was reached.

The Dick Clark Productions option agreement expired in May 2004. There was no evidence Mr. Price or Mr. Carson took subsequent steps to promote *Deadbeat Dads* or that any other studio or distributor expressed any interest in the project. Mr. Carson testified that while he was “tied up in litigation,” in or about April 2008, Fox purchased a show called *Bad Dads* that was “pretty much” identical to *Deadbeat Dads*.

Defendant argues in part that: plaintiffs’ damages were speculative; the Dick Clark Productions option agreement lacked commitment or certainty; and the option

² The option agreement further provided: “If a production order is not obtained within one (1) year of the exercise of the option hereunder, or if a television special or series does not commence production within one (1) year of [Dick Clark Productions’] production order, then all rights in and to the Property . . . shall automatically revert to Crown [Group, Inc.]. . . . [¶] 2. Rights/Consultation Fee: . . . [Dick Clark Productions] shall pay Crown [Group, Inc.] for each original program, a rights/consultation fee equal to three percent (3%) of the final approved budget amount received by [Dick Clark Productions], with a floor of five thousand dollars (\$5,000) per half-hour program and seven-thousand five-hundred dollars (\$7,500) per one-hour program ordered by a Distributor and produced and delivered by [Dick Clark Productions] and accepted by the Distributor Additionally, it is understood that Carson Signature Films, Inc. will be co-executive producer on each original program and shall receive a fee of one percent (1%) of the budget for any program produced hereunder.”

agreement did not obligate Dick Clark Productions to secure a development agreement or to guarantee a certain number of shows. We view that argument as bearing on the threshold causation requirement that the economic relationship in question include a reasonable probability of future economic benefit to the plaintiffs. (See *Westside Center Associates v. Safeway Stores 23, Inc.*, *supra*, 42 Cal.App.4th at p. 520 [“the need to prove interference with a particular relationship and the need to prove damages with reasonable certainty are interrelated”].) We asked the parties to further brief the question whether there was substantial evidence of a reasonably probable prospective economic advantage. In response, plaintiffs assert: “The factual determination that the ‘Deadbeat Dads’ project had the proper ‘probability’ to proceed on the interference with economic relations claim was . . . based upon sufficient facts. . . . Plaintiffs had a relationship with a major player, Dick Clark Productions, and the project was already moving forward. Plaintiff Price was taking voice lessons [in pursuit of the host position]. Further, the same project was a couple years later used by another entity.”

Westside Center Associates v. Safeway Stores 23, Inc., *supra*, 42 Cal.App.4th at pages 520-528 is instructive. The plaintiff owned part of a shopping center. Various defendants, which were identified by the Court of Appeal for ease of reference merely as Safeway, leased a building in the shopping center from separate owners. Safeway, which was the “anchor” tenant, closed its store in 1987, 15 months before a 20-year lease expired. The building remained vacant for a year or more. Business at other shops in the center suffered. And although it did not intend to reopen, and no replacement tenant had been found, Safeway executed an option to renew its lease for five additional years. (*Id.* at p. 510.) The plaintiff sold its interest in the shopping center at a loss. It then sued Safeway for tortious interference with prospective economic advantage. The plaintiff alleged Safeway had conspired to: close its supermarket; leave the building vacant causing the value of the shopping center to decline; purchase the property at an artificially low price; and then bring in a new anchor tenant. (*Ibid.*) The Court of Appeal for the Fifth Appellate District held: “The law precludes recovery for overly speculative expectancies by initially requiring proof the business relationship contained “the

probability of future economic benefit to the plaintiff.” (*Youst v. Longo, supra*, 43 Cal.3d at p. 71; see also *Pacific Gas & Electric Co. v. Bear Stearns & Co.* [(1990)] 50 Cal.3d [1118,] 1136-1137.) ‘Although varying language has been used to express this threshold requirement, the cases generally agree it must be reasonably probable that the prospective economic advantage would have been realized but for defendant’s interference.’ (*Youst v. Longo, supra*, 43 Cal.3d at p. 71.) . . . ¶ . . . [Plaintiff] claims Safeway interfered in its relationship with the class of all potential buyers for its property and thereby reduced the property’s market value. . . . Safeway interfered not with a particular sale but with [plaintiff’s] ‘opportunity’ to sell the property for its true value. ¶ . . . ¶ The problem with this ‘lost opportunity’ approach is that it allows recovery no matter how speculative the plaintiff’s expectancy. It assumes what normally must be proved, i.e., that it is reasonably probable the plaintiff would have received the expected benefit had it not been for the defendant’s interference. . . . ¶ . . . ¶ . . . [T]he interference applies to interference with *existing* noncontractual relations which hold the promise of future economic advantage. In other words, it protects the expectation that the relationship eventually will yield the desired benefit, not necessarily the more speculative expectation that a potentially beneficial relationship will arise. . . . ¶ . . . ¶ . . . [Plaintiff] postulates an expansive view of the tort which protects [plaintiff’s] economic relationship with the entire market of all possible but as yet unidentified buyers for its property. Were it not for Safeway’s interference in the market, this view supposes a hypothetical buyer would have emerged at the appropriate time who was willing and able to pay the 1986 appraised . . . value of the property. . . . ¶ . . . [Plaintiff’s theory] fails to provide any factual basis upon which to determine whether the plaintiff was likely to have actually received the expected benefit. Without an existing relationship with an identifiable buyer, [plaintiff’s] expectation of a future sale was ‘at most a hope for an economic relationship and a desire for future benefit.’ (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 331.) ¶ . . . ¶ Thus, we conclude [plaintiff’s] ‘interference with the market’ theory of liability, by itself, is insufficient as a matter of law to show [plaintiff] had an economic relationship with a prospective buyer which was reasonably likely to

produce a future beneficial sale of its property.” (*Westside Center Associates v. Safeway Stores 23, Inc.*, *supra*, 42 Cal.App.4th at pp. 522-528.)

Mr. Carson and Mr. Price did not meet the threshold causation requirement; they failed to establish it was reasonably probable they would have received an economic benefit from the *Deadbeat Dads* project but for defendant’s interference. The option agreement with Dick Clark Productions merely gave it the opportunity to enter into a development contract for *Deadbeat Dads* with an unknown potential distributor. Mr. Carson and Mr. Price hoped that a potentially beneficial relationship, a development contract, would eventually arise out of the option agreement. But there was no substantial evidence of an existing relationship such that it was reasonably probable *Deadbeat Dads* would be produced. There was no substantial evidence Dick Clark Productions had entered into or was negotiating a development agreement with Fox or any other distributor. That Dick Clark Productions had discussions with Fox employees, without more, does not support a reasonable inference *Deadbeat Dads* was reasonably likely to be: produced; delivered to a distributor; and accepted by the distributor. Any economic benefit to Mr. Carson and Mr. Price was dependent on: Dick Clark Productions securing a development contract with a developer within the time frame of the option agreement; obtaining a production order within one year of the development agreement; commencing production within one year of the production order; producing and delivering an original program; and securing the distributor’s acceptance of the program. Given the absence of a development contract, whether the necessary events would have occurred in a timely manner was speculative. We conclude that, given the several contingencies under the option agreement and the absence of a development contract with any distributor, there was no substantial evidence it was reasonably probable Mr. Carson and Mr. Price would have realized an economic benefit absent any interference by defendant.

2. Intentional emotional distress infliction as to Ms. Nelson

a. liability

The trial court found defendant intentionally caused Ms. Nelson to suffer severe emotional distress. Defendant contends there was no substantial evidence in support of that finding. In support of that assertion, defendant improperly reargues the evidence and the weight to be accorded to it. (*Roby v. McKesson Corp.*, *supra*, 47 Cal.4th at pp. 693-694; *Bickel v. City of Piedmont*, *supra*, 16 Cal.4th at p. 1053; *Service Employees Internat. Union v. County of Los Angeles* (1990) 225 Cal.App.3d 761, 769-770.) We conclude substantial evidence supported the trial court's liability determination. But we conclude the damages award is not supported by substantial evidence. Therefore, we reverse the judgment in favor of Ms. Nelson as to damages only and remand with directions to the trial court to reconsider the compensatory damage award in light of the misconduct we conclude is attributable to defendants.

i. substantial evidence

Our Supreme Court has held: "The elements of the tort of intentional infliction of severe emotional distress are: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. . . ." (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903; accord, *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051.)

There was substantial evidence defendant intentionally inflicted serious emotional distress as follows. On March 8, 2002, defendant telephoned Ms. Nelson from Mr. Carson's cellular telephone. Defendant asked Ms. Nelson, "How is the divorce proceeding?" Ms. Nelson described the conversation: "She wanted to know if I was his

wife and asked me questions in regards to our marriage and stated that I was delusional and I should probably move on with my life, that they're together"; "[s]he wanted to make sure that I knew she was in Beaux's life and that they were boyfriend and girlfriend"; and "she wanted me to know they had a relationship." The following day, March 9, 2002, someone dropped a letter and photographs through a slot in the door of Ms. Nelson's dance studio. The photographs, which were of defendant and Mr. Carson, were visible through the glass frontage to anyone walking by on the busy main street. Ms. Nelson, who had been "blissfully happy" in her marriage to Mr. Carson, was "absolutely" surprised. In the letter, defendant asserted: Mr. Carson was her boyfriend and they had been living together for more than a year; Mr. Carson said he was separated from Ms. Nelson, Mr. Carson had proposed marriage to her; and she never would have gotten involved with a married man if she "had truly understood the circumstances." The letter included descriptions of purported events in the shared life of defendant and Mr. Carson. The events described were uncomfortably similar to events in Ms. Nelson's life with Mr. Carson.

Several months later, defendant began to call Ms. Nelson's home. Ms. Nelson saw defendant's telephone number on the telephone caller identification. Ms. Nelson received dozens of calls. The calls came in around 2 a.m. for about a year. On one occasion in 2003, Ms. Nelson answered the telephone. Defendant said she had been with Mr. Carson that evening. Defendant said: "Hi Kay . . . I'm phoning you this evening to tell you that Beaux and I were together tonight." Defendant told Ms. Nelson, "I just want to let you know that Beaux and I were together and we made love in front of the fireplace and it was romantic and now he's in the shower." Ms. Nelson testified, "She was telling me about making love to my husband, things she had done to him sexually" Ms. Nelson knew that Defendant was lying. Mr. Carson was at home with Ms. Nelson at the time of defendant's telephone call.

On another occasion, defendant telephoned Ms. Nelson. Ms. Nelson was told that if she did not move on, it would be detrimental to her. On three occasions when Ms. Nelson answered the phone, defendant said, "Hi, it's me," or "We need to talk." Ms.

Nelson hung up on each occasion. Ms. Nelson blocked calls from defendant's numbers. Ms. Nelson began to receive telephone calls from other places—Massachusetts, Texas, Colorado, Arizona and Ohio. The calls always came in the middle of the night. Finally, Ms. Nelson starting unplugging her home telephone.

In the spring of 2002, Ms. Nelson observed a man studying her car, which was parked outside the dance studio. It looked like he wrote down her vehicle identification number. When police officers later encountered the man, they found Ms. Nelson's physical description and the address of her dance studio in his car. That same man was later observed entering and then leaving defendant's Los Angeles residence.

Defendant urged Mr. Farr to telephone Ms. Nelson. In an email dated March 1, 2005, defendant said: "Make sure you tell Kay that you know the computer was purchased on HER credit card. That ought to sort out which side she is on. I don't think a dance teacher wants to be associated with 'kiddie porn.' Also John-Beaux is on her prescription plan." On March 2, 2005, Mr. Farr e-mailed defendant saying: "It looks like Kay is going to work with us . . . Just got off the phone with her we are going to talk again before 4pm Cst today" Defendant responded, "Let me know when you speak to Mrs. Carson." Mr. Farr further testified defendant told him she had an "investigator" in Council Bluffs. The otherwise unidentified investigator knew Ms. Nelson, and her family. Defendant told Mr. Farr that Mr. Price and Mr. Carson had forged Ms. Nelson's credit cards and checks. Mr. Farr testified, "[Defendant] wanted me to call [Ms. Nelson and her family] and tell them if they knew just what Beaux [Carson] was doing." Mr. Farr telephoned Ms. Nelson and told her she was in danger. Ms. Nelson testified that on March 9, 2005 she arrived at work. Ms. Nelson's mother, Virginia Nelson,³ was "very shaken" and upset. Virginia said a man named Richard Farr had telephoned and needed Ms. Nelson to call him. Ms. Nelson returned the call. Mr. Farr said: a high-level executive at Fox had proof she was a victim and was in danger; he had it on good authority that Mr. Carson and Mr. Price were dangerous men, liars and thieves; they had

³ To avoid confusion, and without intending any disrespect, we refer to Kay Nelson's mother, Virginia Nelson, as Virginia.

used her credit card; Mr. Price was a bad man, a “dirty cop” and “He’s there to hurt you”; her life was in danger; and these men would ruin her. Ms. Nelson testified that Mr. Farr explained the danger she was in: “He stated in a phone call that I could be followed, grabbed or even shot at, that there was a brick building across the street from my business . . . and ‘you could be . . . picked off at any time from the building across the street,’ which alarmed me, because I did not know how this man from Texas knew there was a brick building across the street and from the roof of that I could be shot at or shot or assassinated, as he put it, from these bad people—[Mr. Carson and Mr. Price].” Mr. Farr had told Virginia the same things—including that Ms. Nelson could be assassinated. Later that day, Virginia suffered a heart attack. Ms. Nelson testified: “They said it was due to stress.” Mr. Farr admitted he had spoken to Virginia. When asked whether he ever told Virginia Ms. Nelson was in danger, Mr. Farr testified, “I think possibly that I did say that there could be . . . a threatening situation or it looks like there is a threatening or something going on.” Mr. Farr thought he said, “We have found out information that could be threatening to Kay.”

We disagree with defendant’s assertion there was no substantial evidence connecting her with \$130,000 in lost business at Ms. Nelson’s dance studio. Ms. Nelson testified students stopped attending her dance studio after rumors about her began to circulate in Council Bluffs. The rumors were to the effect that she worked as a stripper in Los Angeles and that she was addicted to cocaine. Parents of her students told Ms. Nelson they would not return to the dance studio because they did not want to subject their children to such behavior. Ms. Nelson attributed the rumors to defendant. The trial court found: “The timing of these rumors, their coincidence with Chasle’s harassing phone calls, Chasle’s clear and continuing motive to destroy Carson and his marriage to Nelson, and the absence of any other reasonable explanation as to why such scurrilous rumors would be circulated about Ms. Nelson, support a reasonable inference that the genesis of these falsehoods was defendant” The trial court, having heard all of the evidence, could reasonably infer that defendant was the source of the rumors. The foregoing evidence supported the trial court’s liability finding. Defendant engaged in

persistent and continual efforts over a period of several years to inflict pain on Ms. Nelson. This was sufficient evidence of outrageous conduct intended to cause Ms. Nelson to suffer severe emotional distress.

ii. insufficient evidence

There was evidence concerning additional events as to which we conclude there was no substantial evidence of defendant's responsibility. These matters were relied upon by the trial court in fixing the amount of damages. First, a man telephoned Ms. Nelson at the dance studio and said that if she did not do what the Council Bluffs police officer and his conspirator wanted her to do, her family's home would be burned down. There was no evidence who the man was or what connection he had, if any, to defendant.

Second, starting in 2003 and continuing for approximately a year, someone repeatedly followed Ms. Nelson home from work and attempted to run her off the road. Ms. Nelson made multiple reports to the police concerning the stalking. Ms. Nelson hired Mr. Price to protect her. Ms. Nelson suspected Joe Vendetti was involved in the assaults because one of several vehicles driven by the pursuer looked like his brother's jeep. Mr. Vendetti was a former Council Bluffs police officer and former associate of Mr. Carson's. Mr. Vendetti's employment with the police department had been terminated. Mr. Carson's relationship with Mr. Vendetti had soured in 2002. Defendant had met Mr. Vendetti through Mr. Carson and there was evidence they had remained in touch. Mr. Carson sought to have criminal charges filed against Mr. Vendetti, defendant, and another man, Justin Eveloff, for extortion in relation to the Blue Mountain project. Mr. Price testified he investigated the extortion charge: "There was an extortion which involved Joe Vendetti and 'Blue Mountain,' a movie that Mr. Carson was working on at the time. And at that time is when I became privy that [defendant] was also involved." This was insufficient evidence defendant was linked to the persons who were following Ms. Nelson and attempting to run her off the road.

Third, in January 2003, Ms. Nelson went to the hospital for a computerized axial tomography scan of her knee. But instead she was given chemotherapy for stomach cancer. Her medical orders had been changed. Ms. Nelson suspected defendant was responsible. Defendant's sister was a nurse. Defendant's brother was a physician. Defendant had once been married to a physician. Further, on the day of the incident, defendant sent an email to Mr. Farr that said something like, "Guess what I did" and "She'll be out of the picture." Later, Ms. Nelson developed a tumor in her left breast that had to be surgically removed. This was insufficient evidence defendant had interfered with Ms. Nelson's medical orders.

Fourth, Mr. Vendetti telephoned Ms. Nelson on her cellular phone in February 2004. He said, "Do you know who you are f'ing with" and "what the F are you doing? You know what could happen to you?" There was no evidence defendant was responsible for Mr. Vendetti's conduct.

Fifth, three times someone broke into Ms. Nelson's Council Bluffs home. The first time Mr. Carson's wedding ring was stolen. The second time, Ms. Nelson's baby book was taken. Later, defendant said something about Ms. Nelson being someone's "throwaway." Ms. Nelson took the comment as a reference to her having been adopted. This information was included in Ms. Nelson's baby book but was not otherwise known publicly. During the third break-in, Ms. Nelson's home was "tossed," but nothing was missing. Two friends' homes were also broken into. Both knew Mr. Vendetti. Ms. Nelson suspected Ms. Vendetti was involved because he had always commented on two Warner Brothers jackets that were stolen from one of the homes. Mr. Carson testified with respect to the break-ins: "I believe and know [defendant] was in [Ms. Nelson's] home. That's how she described [a] ring, because when there was those home invasions, no jewelry was taken. Nothing was missing." There is no evidence defendant was responsible for the burglaries.

Sixth, Ms. Nelson encountered problems with her credit cards and bank accounts. In September 2008, someone walked into a branch in Beverly Hills and changed the password and business phone numbers on her checking account. She was unable to

access her funds. Money was taken from her bank accounts. All of her credit cards were used fraudulently. Ms. Nelson was forced to file for bankruptcy protection. Seventh, in November 2006, Ms. Nelson discovered her mortgagor, Countrywide, had sent refinancing papers to an address on Mulholland Drive in California. Other than the fact that defendant lived on Mulholland Drive in Los Angeles, there was no evidence connecting her with these events. Eighth, Ms. Nelson was repeatedly stopped and searched at the airport. There was no evidence that would support an inference defendant was responsible. At least some if not all of the foregoing eight matters were considered by the trial court in fixing the amount of damages. We respectfully disagree with the trial court to the extent it concluded these matters are attributable to defendant.

b. damages

Defendant asserts the amount of compensatory damages is subject to reconsideration for lack of substantial evidence, as discussed above, as to a number of the events on which the award was predicated. We agree that the trial court must reconsider the compensatory damage issue in light of our decision. (See *Torres v. Automobile Club of So. California* (1997) 15 Cal.4th 771, 776 [appellate court has power to order retrial on limited issue]; *Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 897-898 [limited retrial on damages]; *Clifford v. Ruocco* (1952) 39 Cal.2d 327, 329 [where evidence of liability is “overwhelming,” retrial may be limited to damages]; *Taylor v. Pole* (1940) 16 Cal.2d 668, 675 [retrial limited to damages where jury determination of liability had overwhelming support in the evidence]; *Ramona Manor Convalescent Hospital v. Care Enterprises* (1986) 177 Cal.App.3d 1120, 1140-1141 [judgment reversed as to damages only].)

C. Plaintiffs' Appeal

1. Intentional severe emotional distress infliction

Mr. Carson and Mr. Price argue that, contrary to the trial court's conclusion, there was substantial evidence they suffered severe emotional distress as a result of defendant's actions. Therefore, Mr. Carson and Mr. Price reason the trial court should have found in their favor on their intentional severe emotional distress infliction claims. The entirety of their argument on this point is as follows: "Each plaintiff testified that they suffered severe emotional distress, and that Chasle's conduct was the cause of that. [¶] While the trial court awarded emotional distress damages to Nelson, the court did not award any to Carson nor Price. However, Carson and Price suffered emotional distress as well. [RT:112; RT:531-532; RT:1274]" We find nothing in the evidence compelled the conclusion Mr. Carson and Mr. Price suffered severe emotional distress.

Our Supreme Court has held: "With respect to the requirement that the plaintiff show severe emotional distress, this court has set a high bar. 'Severe emotional distress means "emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.'" (*Potter v. Firestone Tire & Rubber Co.* [(1994)] 6 Cal.4th [965,] 1004.)" (*Hughes v. Pair, supra*, 46 Cal.4th at p. 1051; *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1376.)

The record citations above are to the following evidence. Mr. Carson testified he suffered damages as a result of defendant's interference with his rights as to Blue Mountain: "Fifteen years of a motion picture is a lot of work. I lost hundreds and thousands of dollars of my own personal money running around the country trying to defend myself, you know, having to – yeah, a lot of emotional damage, a lot of stress, the divorce of my wife, wanted to have kids, but I'm kind of getting a little too old for that. So I lost that window, kind of." Mr. Carson further testified: "It's been a lot of emotional damages and stress. The problem is, you know, if a project falls out all of a sudden, I'm wondering if it's [defendant]." Mr. Carson said that as a result of

defendant's actions he: had received medical care for stress; was paranoid about how defendant's campaign would affect his business deals; lost sleep; suffered headaches, backaches and neck aches; and the damage to his reputation had caused him to lose business contacts. With respect to defendant's interference with his television project, *Deadbeat Dads*, Mr. Price testified as follows: "Q Did you go to a doctor as a result of this? [¶] A A doctor? [¶] Q Did you see any psychiatrists or psychologists or any medical doctors? [¶] A No. [¶] Q Did you have any emotional injuries as a result? [¶] A That came from having to protect my family from the – that was the only emotional distress that I really suffered. [¶] I'm used to people coming after me because of the nature of my work, but when my children and my family was put at risk because of the people like Farr and his extremists and other people in the area, obviously, I had someone outside of my house. I know that my – I had to warn my daughters that there was some extra issues that they had to be very careful of and to protect themselves from. [¶] Q Did you have any physical symptoms from that? [¶] A I lost a lot of sleep traveling back and forth from Beaux, from Beaux and from here, and ultimately ended in my divorce. So I have since remarried and have a good life, good life with my new wife. She is an angel. So very happy in that sense. But it ultimately ended my 22-year marriage."

As noted above, the trial court concluded Mr. Carson and Mr. Price failed to establish that they suffered severe emotional distress. Substantial evidence supported that determination. The trial court could reasonably conclude neither Mr. Carson nor Mr. Price had suffered substantial or enduring emotional distress of a type no reasonable person in civilized society should be expected to endure.

2. Blue Mountain

Mr. Carson alleged defendant had interfered with the movie he was developing, *Blue Mountain*. *Blue Mountain* was the story of some small town Arkansas children and their connection to a gun claimed to have been used in the Robert Kennedy assassination.

Mr. Carson testified the “one-line movie pitch” was, “What happens when small boys in . . . Blue Mountain, Arkansas, find a handgun that links to the Bobby Kennedy assassination and what happens when the whole world shows up on their doorstep.” The trial court found: defendant clearly intended to and did interfere with Mr. Carson’s development of the movie; defendant knew Mr. Carson had obtained an option agreement for the life story rights of an individual, Billy Franklin; defendant intended to and did disrupt that contract by deterring Mr. Franklin from dealing with Mr. Carson; defendant’s conduct prevented the performance of the option agreement; and Mr. Carson lost his ability to convey clear rights to the Blue Mountain project. The trial court further found: “[Defendant] clearly intended to and did interfere with [Mr.] Carson’s ability to obtain Billy Franklin’s life rights. Moreover, this interference continues to pose obstacles to anyone considering going forward with the movie project. The court found credible [Mr.] Carson’s testimony that any company considering the project would be deterred by the absence of life rights for key actors in this story—regardless of whether the character has been changed in the script. A lawsuit would invariably be filed challenging the right of the film maker to use the story of these boys without having first obtain[ed] their life rights. [¶] . . . There is, however, no competent evidence in the record to establish the resulting damage to Carson as a result of this ongoing impediment. Despite the optimistic testimony of Laurie Chapman, there is no competent evidence that Blue Mountain, with or without Billy Franklin in the story, will ever be made into a commercially viable movie.” The trial court repeated its conclusion in similar language, stating “[Mr. Carson] has not proved that, but for the loss of Billy Franklin’s life rights, the Blue Mountain film would have been made.”

Mr. Carson argues the trial court erred. Substantial evidence supported the trial court’s findings. Mr. Carson testified that the average movie “on a fast track” would take from 3 to 5 years to make, but most movies took 10 to 15 years. Mr. Carson first became involved in the Blue Mountain project in 1993, 16 years prior to trial. Five years later, in 1998, Darby Conner wrote a treatment—a screenplay in narrative form—for Blue Mountain. This was followed by a full script. Ms. Conner helped Mr. Carson package

the movie project for development. In 1993, Mr. Carson had secured agreements with three individuals giving him the right to their life stories—Billy Franklin and David and Donald Sloan. Mr. Carson testified that a movie studio would require “a clean chain of title” to the stories; that is, a life rights agreement. A studio would be at risk of being sued absent life rights agreements. In 2003, the three individuals refused to renew their life rights option agreements. At that time, Mr. Carson believed he had the ability to get the movie made. Mr. Carson sent each of the men a \$5,000 check with their renewal contracts. But, much to his surprise, they sent them back. Subsequently, Ms. Conner rewrote the script omitting Mr. Franklin as a character. In December 2004, 11 years after the project was conceived, Mr. Carson entered into an option agreement with Laurie L. Chapman and Tom Kent, partners in Chapman Ventures, LLC. Mr. Chapman and Mr. Kent agreed to seek financing for the film. Ms. Chapman and Mr. Kent believed Blue Mountain was a good project and a story that needed to be told. In June 2005, however, they allowed the option agreement to expire. They were unable to secure financing. In 2007, Mr. Carson sold the rights to Blue Mountain to Ernest Jacquet. As of October 14, 2008, when Mr. Kent was deposed, he still considered Blue Mountain a viable project. Mr. Kent and Ms. Chapman were then working with Mr. Jacquet to develop the film. They were getting ready to invest in a script rewrite, which they expected to occur within 90 days. Once the script was rewritten—by Ms. Connor—they intended to start looking for investors. At the time of trial, however, in April 2009, Mr. Carson testified Blue Mountain was “basically a dead project”; Mr. Jacquet had left it “just sitting” for about two years. The trial court could reasonably conclude the project had been at the script-writing and finance-seeking stages for more than 10 years, was not being actively developed, and, especially given the lack of clear title to the central individuals’ life rights, was not likely to ever be produced as a film.

3. The eavesdropping statute

In her cross-complaint, defendant alleged Mr. Carson violated the California Invasion of Privacy Act (Pen. Code § 632) by recording a telephone conversation she had with Mr. Farr. She sought damages under Penal Code section 637.2, which authorizes a civil action for a violation of Penal Code section 632. The trial court found in defendant's favor and awarded her \$5,000 in statutory damages. (Pen. Code, § 637.2, subd. (a)(1).) Mr. Carson argues, without citing pertinent legal authority: there was no substantial evidence he violated Penal Code section 632; Mr. Farr made the recording; defendant had no expectation of privacy in talking to an internet radio host at his radio station; Mr. Farr was authorized under Penal Code section 633.5 to record the conversation "in light of the threats to individuals made by" defendant including the plaintiffs; the recording was made in Texas, not in California; and he had been advised that recording was allowed under the circumstances. We conclude there was substantial evidence Mr. Carson violated Penal Code Section 632.

Penal Code section 632 provides in relevant part: "(a) Every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished [¶] . . . [¶] (c) The term 'confidential communication' includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded." Penal Code section 637.2 states: "(a) Any person who has been injured by a violation of this chapter may bring an action against the person who committed the violation for the greater of the following amounts:

[¶] (1) Five thousand dollars (\$5,000). [¶] (2) Three times the amount of actual damages”

Penal Code section 633.5 sets forth a limited circumstance in which one party may secretly record a communication in an attempt to gather evidence of a crime. A conversation may be recorded for the purpose of securing evidence “reasonably believed to relate” to the commission of the crimes of extortion, kidnapping, bribery, felonious violence against a person, or a violation of the annoying telephone call statute. (Pen. Code, § 633.5; *Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 95, 118, fn. 9; *Lubetzky v. State Bar* (1991) 54 Cal.3d 308, 321.) As our Supreme Court explained in *Lubetzky v. State Bar, supra*, 54 Cal.3d at page 321: “. . . Penal Code section 633.5 exempts from the sweep of the statute an undisclosed recording by one of the parties [to] a conversation ‘reasonably believed to relate to the commission by another party [to the conversation] of [certain enumerated crimes]’ [¶] . . . [Penal Code section 633.5] exempts from [Penal Code section 632] an unconsented recording made with the requisite reasonable belief although the recording fails to capture the anticipated evidence (*People v. Parra* (1985) 165 Cal.App.3d 874, 880-881) or the initial purpose of the recording is self-protection rather than to gather evidence for use in a criminal prosecution (*People v. Ayers* (1975) 51 Cal.App.3d 370, 377).”

Mr. Carson, Mr. Farr, and Rick Pfaff, a private investigator, testified to the circumstances surrounding the recorded telephone conversation. On March 15, 2005, Mr. Farr met with Mr. Carson and Mr. Pfaff at a restaurant in Texas. Mr. Carson and Mr. Pfaff had traveled to Texas to talk to Mr. Farr. In the course of their conversation, Mr. Farr realized that he had been duped by defendant. Mr. Farr testified, “It was clear to me that [defendant] was on a mission to damage [Mr. Carson] . . . and she had used me” The three men proceeded to Mr. Farr’s radio station. Mr. Farr and Mr. Carson testified they all three decided Mr. Farr would telephone defendant and record the conversation. Mr. Pfaff, on the other hand, testified that the recording was his idea. Mr. Pfaff and Mr. Carson signed a document that stated: “To Whom it may concern, [¶] The recording of the telephone conversation conducted March 15, 2005 between Richard Farr of

Krightsradio and Dama Chasle V.P. of Fox Tax for the Fox Media Group, Inc. was under the direction and supervision of Richard Pfaff of Pfaff Protective Group, Inc. and Beau Carson of Carson Signature Films, Inc. [¶] The conversation was recorded for the expressed reason of facilitating an investigation of defendant, which includes extortion and stalking.” Mr. Carson intended by his signature to authorize the recording. Mr. Farr placed a call to defendant and recorded their conversation. Mr. Carson was able to hear both sides of the conversation.

Mr. Carson testified he signed the authorization document to make a record that the recording could or would be turned over to the police. Earlier, Mr. Carson had made a report to the Los Angeles County Sheriff’s Department alleging stalking, annoying telephone calls and grand theft. Detective Ronald Sabatine investigated the matter. Detective Sabatine met with Mr. Carson and with a deputy district attorney, Suzy Freeman. Ms. Freeman advised Mr. Carson to keep a camera and a tape recorder with him at all times in case defendant or someone else threatened him. Following the meeting, Detective Sabatine reminded Mr. Carson to carry a tape recorder. This was standard procedure in a case of this type. But Detective Sabatine did not authorize Mr. Carson to initiate a telephone conversation with defendant so that it could be recorded.

Mr. Carson is not exculpated because Mr. Farr performed the mechanical act of recording the conversation. Mr. Carson assented to and authorized the recording both verbally and in writing. Mr. Carson clearly intended that the conversation be recorded. Therefore he “intentionally” recorded the conversation. (Pen. Code, § 632, subd. (a).) Mr. Carson also listened to the conversation as it was being recorded, hence he “eavesdrop[ed] upon” the conversation. (Pen. Code, § 632, subd. (a).) Nor is it significant that Mr. Farr was in Texas when he recorded the conversation with defendant who was in California. The prohibition against recording conversations extends to the situation where a person in another state records a conversation with a California resident who is within this state. (*Kearney v. Salomon Smith Barney, Inc.*, *supra*, 39 Cal.4th at pp. 119-120.)

Further, a conversation is confidential within the meaning of Penal Code section 632 if a party to the conversation has an objectively reasonable expectation it is not being overheard or recorded. (*Kearney v. Salomon Smith Barney, Inc.*, *supra*, 39 Cal.4th at p. 117, fn. 7; *Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 768, 774-776.) This is an objective standard; the parties' subjective assumptions are irrelevant. (*Wilkins v. National Broadcasting Co.* (1999) 71 Cal.App.4th 1066, 1080; *Coulter v. Bank of America* (1994) 28 Cal.App.4th 923, 929.) We see no reason why a person in California answering a telephone call from an acquaintance who is an internet radio host in Texas and who happens to be calling from his work location would have any reason to expect that their conversation might be recorded or that others might be listening to it. The circumstances in which the recording was made were such that the trial court could reasonably conclude defendant had an objectively reasonable expectation of privacy. (See *Frio v. Superior Court* (1988) 203 Cal.App.3d 1480, 1490; *People v. Pedersen* (1978) 86 Cal.App.3d 987, 994.)

Mr. Carson contends that under Penal Code section 633.5 he was allowed to record the conversation with the reasonable belief that it might relate to threats of violence. As noted above, Penal Code section 633.5 authorizes a party to record a communication "for the purpose of obtaining evidence reasonably believed to relate" to specified criminal conduct. Mr. Carson has not explained how, under the circumstances, he could reasonably expect that defendant, in conversation with Mr. Farr, would threaten violence against any one of plaintiffs or otherwise provide evidence relating to such an act.

4. Injunctive relief

Plaintiffs argue the trial court should have entered an injunction against defendant because there was evidence of continuing wrongdoing—specifically, in 2008, she attended a meeting with third parties in Mr. Carson's office building and on his floor. And in 2009, defendant became involved in a movie project, *The Tempest*, that Mr. Carson was already substantially involved in. We review an order *denying* a permanent

injunction for an abuse of discretion. (*Classis of Central California v. Miraloma Community Church* (2009) 177 Cal.App.4th 750, 759; *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 390.) Plaintiffs argue the trial court *could* have entered a permanent injunction. A party seeking an injunction must prove a likelihood that the defendant will engage in some form of misconduct. (*Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084 [“An injunction cannot issue in a vacuum based on the proponents’ fears about something that may happen in the future. It must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity”]; *East Bay Mun. Utility Dist. v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1113, 1126 [“An injunction properly issues only where the right to be protected is clear, injury is impending and so immediately likely as only to be avoided by issuance of the injunction”].) The trial court did not abuse its discretion in impliedly ruling that there was insufficient evidence defendant would repeat her prior misconduct in the future.

IV. DISPOSITION

The judgment on the complaint in favor of Mr. Carson and Mr. Price is reversed. The judgment on the complaint in favor of Ms. Nelson is reversed as to damages with directions to the trial court to reconsider the compensatory damage award. The judgment on the cross-complaint in favor of defendant is affirmed. In the interests of justice, the parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P.J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.