

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

NORWOOD 2020 LLC,)	
)	
Plaintiff,)	Cause No.: 21SL-CC01975
)	
v.)	Division: 41
)	
KEEP PUSHING, INC.)	
)	
and)	
)	
SHANA POOLE-JONES)	
)	
Defendants.)	

**DEFENDANTS' KEEP PUSHING, INC. AND SHANA POOLE-JONES
MOTION TO DISMISS AND MOTION FOR JUDGMENT ON THE PLEADINGS**

Pursuant to Mo. R. Civ. P. 55.27(a)(6) and 55.27(b), Defendants Keep Pushing, Inc. and Shana Poole-Jones move for dismissal of Plaintiff Norwood 2020's claims in this action and final judgment in favor of Defendants. Defendants offer the following in support of their motions.

INTRODUCTION

Because threatened loss of housing as a result of eviction during the coronavirus pandemic poses serious health risks, not only to the evicted families but to the general public through the threat of community transmission, the federal Centers for Disease Control and Prevention (CDC) adopted a temporary moratorium on evictions for nonpayment of rent. Citing similar concerns, St. Louis County Circuit Court Presiding Judge Burton also entered an order on March 20, 2020, halting the execution of writs of eviction in this County. *See* Administrative Order No. 20-16. A year later, on March 23, 2021, Presiding Judge Burton ended the County's

judicially-imposed eviction moratorium, allowing residential evictions to begin on April 5, 2021. *See* Administrative Order 21-11. Both moratoria expire on June 30, 2021.

Responding to this likely increase in housing instability and homelessness, St. Louis County compiled a listing, derived from public court records, of the addresses of local families against whom writs of execution of eviction orders had been requested. St. Louis County invited community organizations to participate in a targeted outreach to those families to make sure that they were aware of the CDC moratorium, and to provide information about accessing financial assistance with rent and utilities, free mediation services and legal assistance. Defendant Keep Pushing, Inc., a local community organization devoted to providing aid to the unhoused, and Defendant Shana Poole-Jones, Keep Pushing's founder and director, answered the call, exercising their First Amendment right to communicate with local families to find out whether they were, in fact, facing eviction, and to offer them access to information about how they could possibly avoid eviction and homelessness. In the course of her outreach efforts, Defendant Jones visited three apartments owned and leased by Plaintiff Norwood 2020.

Norwood 2020 would apparently prefer to avoid having its evictions hampered by tenants who are informed of the CDC moratorium and who have access to resources to pay back rent and avoid eviction. Instead, Norwood 2020 has chosen the unfortunate tactic of seeking a court order both enjoining the Defendants from further outreach efforts, and imposing damages for the Defendants' participation in the St. Louis County informational outreach and exercise of their First Amendment rights. To that end, Norwood 2020 filed a nine-count petition, alleging seven common-law causes of action as well as a statutory claim asserting essentially that community organizations are forbidden from telling tenants about eviction protections and rental assistance programs. Plaintiff Norwood 2020's claims are frivolous. They lack merit on their own terms,

and are an attempt to infringe on the Defendants' First Amendment rights. Accordingly, Norwood 2020's petition should be dismissed.

REQUESTED RELIEF WOULD VIOLATE FIRST AMENDMENT

Plaintiff Norwood 2020 has filed suit asking this Court, a government body, to use its state power to impose damages and require the Defendants to comply with a court order preventing speech. The First Amendment regulates such actions by private actors who invoke the power of the courts to prevent speech. *See Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971) (holding First Amendment protected right of community organization to give out leaflets in person, either outside a church or door-to-door, and thus real estate broker could not obtain injunction to prevent leaflet distribution); *Beverly Hills Foodland, Inc. v. United Food & Com. Workers Union, Loc. 655*, 39 F.3d 191, 197 (8th Cir. 1994) (holding "peaceful pamphleteering is a form of communication protected by the First Amendment" and finding that district court's dismissal of tortious interference claim was proper). Importantly, the First Amendment protects the right of non-profit organizations like Defendant Keep Pushing, Inc. to communicate with members of the public about their legal rights and to suggest that they participate in government sponsored rental assistance programs and mediation efforts. *In re Primus*, 436 U.S. 412, 422-426 (1978) (American Civil Liberties Union was entitled to contact women to let them know about potential claims arising from their having been deliberately sterilized during childbirth); *NAACP v. Button*, 371 U.S. 415, 428 (1963) (NAACP was entitled to contact African-American citizens to let them know how they could protect their rights against discrimination); *see also Watchtower Bible and Tract Society of New York v. Stratton*, 536 U.S. 150 (2002) (door-to-door speech or distribution of handbills is protected by First Amendment); *Ryan v. Kirkpatrick*, 669 S.W.2d 215, 218 (Mo. 1984) (First Amendment protects solicitation of

support for legitimate causes, and people whose names were listed publicly could appropriately be contacted for such purposes).

While Plaintiff Norwood 2020 suggests that the CDC moratorium may be unconstitutional, that issue is as yet unsettled, *see Williams v. Ladera Apartments*, 4:21-CV-154-SDJ-KPJ, 2021 WL 949480, at *2 (E.D. Tex. Mar. 12, 2021) (granting stay of eviction); and the CDC declaration is presently effective in this County, *see Administrative Order 21-13* (ordering St. Louis County Sheriff's Office to refrain from executing evictions where residents provide proof of compliance with CDC moratorium declaration). If any of Norwood 2020's tenants invoke their rights under a moratorium, Norwood may then contest the moratorium's lawfulness. However, the First Amendment does not permit Norwood 2020 to leverage injunctive relief or the threat of damages to prevent tenants from learning about the CDC eviction moratorium and their rights as set forth in the CDC order.

PLAINTIFF LACKS STANDING TO ASSERT COUNTS IV THROUGH VIII

Plaintiff Norwood 2020 lacks standing to assert counts IV through VIII of this action. These claims should be dismissed, as standing is a jurisdictional matter antecedent to the right to relief. *State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 227, n. 6 (Mo. 1982) (en banc). To determine standing, a court must ask whether the persons seeking relief have a right to do so, *State ex rel. Twenty-Second Judicial Circuit v. Jones*, 823 S.W.2d 471, 475 (Mo. 1992) (en banc); and if a party lacks standing, the court must dismiss the case because it does not have jurisdiction over the substantive issues presented, Mo. R. Civ. P. Rule 55.27(g)(3); *State ex rel. Ryan v. Carnahan*, 960 S.W.2d 549, 550 (Mo. Ct. App. 1998). Missouri courts thus “consistently require that plaintiffs have some legally protectable interest in the litigation so as to be directly and adversely affected by its outcome.” *Mo. State Med. Ass'n v. State*, 256 S.W.3d

85, 87 (Mo. 2008).

Here, Plaintiff Norwood 2020 alleges that tenants generally or the current resident of Apartment Three suffered emotional distress (Counts IV and V), received deceptive merchandising (Count VI), received misrepresentations (Count VII), or suffered an invasion of privacy (Count VIII). Plaintiff Norwood 2020 itself has not suffered these alleged torts, and lacks standing to seek relief for these unnamed tenants who are not parties to this action. Instead, Norwood 2020 invokes these tort theories to prevent tenants from receiving information that they might use to Norwood 2020's disadvantage. Counts I and II plainly reveal the motivation for this litigation: Norwood wants to be able to evict its tenants despite the risks that the tenants would face, and the increased risk of infection that the public would face, by increasing homelessness during the coronavirus pandemic. In that regard, Plaintiff Norwood 2020's interests and its tenants' interests are in conflict, rather than being aligned. Norwood's self-serving and paternalistic assertion of claims on tenants' behalf should be rejected, and Counts IV through VIII should be dismissed for lack of standing.

FAILURE TO STATE A CLAIM

Rule 55.27(a)(6) allows a defendant to file a motion to dismiss a plaintiff's petition for failure to state a claim upon which relief can be granted. Mo. R. Civ. P. 55.27(a)(6); *Capitol Group, Inc. v. Collier*, 365 S.W.3d 644, 647 (Mo. Ct. App. 2012). A court reviewing such a motion accepts as true the facts the plaintiff has alleged, and then determines whether these alleged facts meet the elements of a recognized cause of action. *City of Lake Saint Louis v. City of O'Fallon*, 324 S.W.3d 756, 759 (Mo. 2010) (en banc); *Dibrill v. Normandy Assocs., Inc.*, 383 S.W.3d 77, 83 (Mo. Ct. App. 2012). Here, Plaintiff Norwood 2020 has failed to allege facts that could support any of its alleged causes of action. As set forth above, the First Amendment limits

Plaintiff's ability to invoke government authority to prevent a community organization from communicating with tenants about their legal rights, and Norwood has not shown that it has standing to bring most of the counts of its Petition. Dismissal of this action for failure to state a claim is thus appropriate.

I. TRESPASS

A person commits the common law tort of trespass by entering without authorization the real property of another. *Grossman v. St. John*, 323 S.W.3d 831, 834 (Mo. Ct. App. 2010). The elements of a common law trespass are (1) the plaintiff's right of possession of land or building, and (2) the defendant's entry onto that land or building without license or consent. *Motchan v. STL Cablevision, Inc.*, 796 S.W.2d 896, 898 (Mo. Ct. App. 1990). A licensee is one who enters the premises with the express or implied permission of the possessor, for his own purpose, from motives of curiosity or private convenience, in no way connected with business or other relations with the owner; an invitee is one who enters premises with the express or implied consent of the possessor either to benefit the possessor or for the mutual benefit of both. *Gillis v. Collins*, 770 S.W.2d 503, 505–06 (Mo. Ct. App. 1989). Plaintiff Norwood 2020's trespass claim fails because its own allegations confirm that it leased its rights of possession to Apartment Three to a tenant, and that Defendants had either a license or an invitation by implied consent to enter into the apartment complex.

a. Right of Possession

When the property owner is out of possession and the premises are in the exclusive possession of the tenant, the owner cannot recover in trespass for a wrong against possession. *Motchan*, 796 S.W.2d at 898. Here, Plaintiff Norwood 2020 alleges that it owns an apartment complex called Norwood-Redfield, and specifically, owns a particular unit—Apartment Three—

within that complex. (Petition ¶¶ 7-8.) Plaintiff also alleges that Defendants entered Plaintiff's property, and spoke to the tenant living in Apartment Three. (Petition ¶¶ 21-22.) Plaintiff Norwood 2020 admits that this individual, who is not a party to this action, is the leaseholder of Apartment Three. (Petition ¶ 9 & Exh. 6.) The individual leasing Apartment Three from Plaintiff Norwood 2020 has the right of possession of those premises, and Plaintiff cannot recover from any trespass therein.

b. License to Enter

A person has an implied license to approach a residence by the sidewalk or path that leads to the front door, and to wait briefly to be received. *Florida v. Jardines*, 133 S. Ct. 1409, 1415-17 (2013) (implied license depends on standards of community, and would permit one to approach a home by the front path, knock on the door, wait briefly, and then—absent an invitation to remain—leave, but does not permit police to bring drug dog onto premises to conduct a sniff test); *Breard v. City of Alexandria, La.*, 341 U.S. 622, 626 (1951) (noting that a knocker on a front door provides an invitation or license to approach and contact the occupant); *Citizens for a Better Environment v. City of Park Ridge*, 567 F.2d 689, 691 (7th Cir.1975) (presence of knocker or bell on a door constitutes license to enter premises); *Moss v. Aaron's, Inc.*, 140 F. Supp. 3d 441, 446–47 (E.D. Pa. 2015) (Pennsylvania law recognizes the implied license to approach a residence and knock on the door in an attempt to speak with the occupant); *United States v. Lundin*, 47 F.Supp.3d 1003, 1013 (N.D. Cal.2014) (the implied license to visit exists during daylight hours); *Smith v. VonCannon*, 197 S.E.2d 524, 529 (N.C. 1973) (holding prevailing customs establish whether one who enters onto land can conclude he or she has the owner's permission to do so, and that a walkway or driveway that leads to the entrance of a residence can be construed as the owner's consent to entry on the property for the purpose of

approaching the residence; concluding taxi driver who entered driveway was not a trespasser); *Singleton v. Jackson*, 935 P.2d 644, 647-48 (Wa. Ct. App. 1997) (noting “strangers approaching a private residence may reasonably interpret the presence of a doorbell or a pathway leading to a front door as tacit consent to approach the residence and attempt to contact its occupants,” and adopting view that door-to-door solicitors are licensees and not trespassers). And, as set forth more fully above, the Supreme Court of the United States has repeatedly held that the First Amendment protects the right of charitable organizations to engage in door-to-door campaigning for the purpose of expressing their views and giving information to occupants.

To the extent Plaintiff Norwood 2020 asserts a trespass claim based on Defendants’ entry into the Norwood-Redfield apartment complex, Plaintiff has not alleged that this entry was unlicensed and in fact admits that Defendants were engaged in a limited informational canvas targeted to three apartments. (Petition ¶¶ 17, 20, 21.) Plaintiff Norwood 2020 simply alleges that Defendant Jones knocked on the door of Apartment Three and provided the occupant with some documents and a business card. (Petition ¶¶ 22-23.) These actions do not constitute an unlicensed entry, and Plaintiff Norwood 2020 has thus failed to allege a colorable claim of trespass.

c. Invitation or Implied Consent

A person who enters an area open to the public at a reasonable time and in a reasonable manner has the implied consent of the owner to enter the premises. *See St. Louis Cty. v. Stone*, 776 S.W.2d 885, 888 (Mo. Ct. App. 1989) (“a person who enters an area open to the public at a reasonable time and in a reasonable manner, has the implied consent of the owner to enter the premises under a limited privilege. So long as there is no substantial evidence of the stay being prolonged, boisterous conduct, breach of the peace, blocking of entranceways, interference with

the public, picketing, or other conduct which would revoke the implied consent of the owner by acts inconsistent with the purposes of the business or facility, there is no trespass until such conduct by the person occurs or the person is requested to leave.”) Further, when an occupant willingly converses with someone who has entered upon the premises, they may not later complain that the person trespassed. *Muir v. Ruder*, 945 S.W.2d 33, 35 (Mo. Ct. App. 1997)(“One who silently watches another enter upon his land, and then willingly engages him in conversation while standing on the premises, may not later complain of trespass.”). Plaintiff Norwood 2020 alleges only that Defendants entered an apartment complex intending to “knock on doors,” (Petition ¶ 27.), and it implicitly admits that the tenant in Apartment Three engaged Defendants in conversation. (Petition ¶ 21) Plaintiff has failed to allege any facts to show that Defendants’ entry onto Plaintiff’s premises was without consent and has thus failed to state a claim for trespass.

II. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

Although Plaintiff styles Count II as a claim for tortious interference with “contractual relations,” Missouri courts treat that phrase as equivalent to a claim for tortious interference “with contract.” *E.g., Community Title Co. v. Roosevelt Fed. Sav. and Loan Ass’n*, 796 S.W.2d 369, 372-373 (Mo. 1990); *Luketich v. Goedecke, Wood & Co.*, 835 S.W.2d 504, 508 (Mo. Ct. App. 1992). To establish a claim for tortious interference with a contract, a plaintiff must show that: (1) a contract existed; (2) the defendant knew of the contract; (3) the defendant caused a breach by his or her intentional interference; (4) there was no justification for defendant’s actions; and (5) the plaintiff suffered damages as a result. *See Bishop & Assocs., LLC v. Ameren Corp.*, 520 S.W.3d 463, 472 (Mo. 2017) (en banc); *Rail Switching Servs., Inc. v. Marquis-Missouri Terminal, LLC*, 533 S.W.3d 245, 259 (Mo. Ct. App. 2017). The “absence of

justification” element of the tort of interference with contractual relations requires the plaintiff to show that the defendant interfered with the contract by “improper means,” that is to say, “means which are independently wrongful, notwithstanding injury caused by the interference.”

Community Title Co., 796 S.W.2d at 373. The fact that defendants exercised their First Amendment right to tell tenants that, in the event they were facing a judicial proceeding for eviction, there were resources and legal defenses of which they might avail themselves, is in no way an “improper means” that constitutes intentional interference with contract.

Further, when there is no showing of an actual breach of contract, plaintiff cannot maintain a claim for tortious interference. *Modern Enterprises v. Allen*, 802 F.2d 312, 313 (8th Cir. 1986). Plaintiff Norwood 2020 alleges that Defendants knew that Plaintiff and the resident of Apartment Three in the Norwood-Redfield complex had a contractual relationship, and that Defendants interacted with Apartment Three’s resident in order to induce a breach of that contract. (Petition ¶¶ 36-37.) Plaintiff has failed to make any allegation that Defendants’ conduct caused a breach of contract, either by the tenant in Apartment Three or by any other tenant who has a contractual relationship with Plaintiff. Nor has Plaintiff Norwood 2020 alleged that it suffered any damages from a breach of contract related to Defendants’ alleged conduct. To the contrary, Plaintiff Norwood 2020 admits that the resident of Apartment Three is current on rent and in compliance with all the terms of the rental contract. (Petition ¶ 9.)

The leases obligate tenants to pay rent, and a failure to pay rent would be a breach of the rental agreement. (Petition Exh. 6.) Plaintiff makes no allegation that Defendants encouraged any breach of this contract, and instead admit that Defendants sought to communicate with tenants who were already behind on rent in order to inform them how they could try to defer enforcement of any eviction order. (Petition ¶ 14.) Hence, even if encouraging a breach that

never happened were actionable, Norwood has made no allegation that Defendants were encouraging any breach of a lease. Plaintiff has thus failed to state a claim for tortious interference with a contractual relationship.

III. CIVIL CONSPIRACY

A civil conspiracy is an agreement or understanding between at least two persons to do an unlawful act, or to use unlawful means to do an act that would otherwise be lawful, but it is not actionable in its own right because it does not exist apart from the statement of an underlying claim. *Roth v. La Societe Anonyme Turbomeca France*, 120 S.W.3d 764, 777 (Mo. App. W. Dist. 2003) (citing *Oak Bluff Partners v. Meyer*, 3 S.W.3d 777, 780–81 (Mo. 1999) (en banc) and *Rice v. Hodapp*, 919 S.W.2d 240, 245 (Mo. 1996) (en banc)). Proving the conspiracy simply allows the co-conspirators to be held jointly liable for the injuries caused by the conspiracy. *Roth*, 120 S.W.3d at 778. Because none of Norwood’s other tort claims can withstand scrutiny, the civil conspiracy claim must be dismissed as well.

Moreover, a claim for civil conspiracy requires a plaintiff to establish that (1) two or more people, (2) had a meeting of the minds, (3) regarding an object to be accomplished, (4) and engaged in one or more unlawful overt acts to accomplish the object, and (5) resulting damages. *Mackey v. Mackey*, 914 S.W.2d 48, 50 (Mo. Ct. App. 1996). A civil conspiracy requires the involvement of two distinct people; a corporation cannot conspire with one of its employees. *8000 Maryland, LLC v. Huntleigh Fin. Servs. Inc.*, 292 S.W.3d 439, 452 (Mo. Ct. App. 2009). Plaintiff Norwood 2020 admits that Defendant Keep Pushing, Inc. is a Missouri nonprofit corporation, and that Defendant Jones is Keep Pushing, Inc.’s founder and CEO. (Petition ¶¶ 2-3.) Plaintiff has failed to assert that the two Defendants are legally distinct people, and thus has failed to state a claim for civil conspiracy.

IV. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

In order to establish a claim for intentional infliction of emotional distress, Plaintiff Norwood 2020 must show that: 1) the Defendants' conduct was "extreme and outrageous," 2) the Defendants acted in an intentional or reckless manner, and 3) those acts caused Plaintiff Norwood 2020 "severe emotional distress resulting in bodily harm." See *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 316 (Mo. 1993) (en banc). In Missouri, a bystander may not assert a claim of intentional infliction of emotional distress, as courts require that the defendant intended to cause extreme emotional distress in the victim. *Diehl v. Fred Weber, Inc.*, 309 S.W.3d 309, 322 (Mo. Ct. App. 2010). Here, Plaintiff Norwood 2020—a corporate entity that lacks emotions or an ability to suffer bodily or emotional harm—has not alleged that it experienced any emotional distress from Defendants' conduct, much less severe emotional distress that resulted in bodily harm. Nor has Plaintiff Norwood 2020 alleged that Defendants acted with the intent to cause emotional distress in that corporate entity.

Further, Plaintiff has failed to allege that the Defendants' conduct was extreme or outrageous enough to permit recovery, as a plaintiff claiming intentional infliction of emotion distress must assert that the defendant's conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Hyatt v. Trans World Airlines*, 943 S.W.2d 292, 298 (Mo. App. E. Dist. 1997). The supposed outrage here was "going door-to-door—in a targeted, mobilized fashion—to inform certain residents that they are being evicted, while lacking authority and any pretense for doing so." (Petition ¶ 48.) As Plaintiff acknowledges and as the Exhibits to the Petition show, the targeted informational effort involved going to addresses

that had judicial eviction orders and offering resources to tenants. Nothing about Defendants' actions was outrageous or extreme. Plaintiff has failed to state a claim for intentional infliction of emotional distress.

V. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Missouri recognizes the view that a person may suffer emotional distress as either the direct victim of another's action, or as a bystander to such action. *Jarrett v. Jones*, 258 S.W.3d 442, 446 (Mo. 2008). "A plaintiff states a cause of action for negligent infliction of emotional distress upon injury to a third person only upon a showing: (1) that the defendant should have realized that his conduct involved an unreasonable risk to the plaintiff, (2) that plaintiff was present at the scene of an injury producing, sudden event, (3) and that plaintiff was in the zone of danger, i.e., placed in a reasonable fear of physical injury to his or her own person." *Asaro v. Cardinal Glennon Mem'l Hosp.*, 799 S.W.2d 595, 599–600 (Mo. 1990) (en banc). Further, a plaintiff seeking to recover as a bystander for the negligent infliction of emotional distress, must show that his or her distress was "serious enough to require medical attention." *Davis v. Shelton*, 710 S.W.2d 8, 11 (Mo. Ct. App. 1986)

Here, Plaintiff Norwood 2020 asserts that one individual with whom Defendants interacted but who is not a party to this action—"Apartment Three's resident"—"was concerned" and "worried, scared, and extremely confused" after receiving information from the Defendants. (Petition ¶¶ 22-23, 46.) However, Plaintiff fails to make any allegations that it suffered distress itself, or that it was present at an event that placed it in fear of physical injury. As a corporate entity, Plaintiff Norwood 2020 is unable to experience physical injury, the fear of physical injury, or distress that requires medical attention. Plaintiff has thus failed to state a claim of negligent infliction of emotional distress.

VI. MISSOURI MERCHANDISING PRACTICES ACT (MMPA)

The MMPA provides a cause of action for unlawful commercial activities. There is no violate of this statute unless there was a sale or attempted sale of goods or merchandise in trade or commerce. *State v. Kowalski*, 587 S.W.3d 709, 715–16 (Mo. App. S. Dist. 2019). Norwood’s failure to allege such a sale is alone sufficient to warrant dismissal of this Count. To establish a claim under the MMPA, a plaintiff must show that: (1) plaintiff purchased or leased merchandise, including real estate; (2) for personal, family, or household purposes; and (3) suffered an ascertainable loss of money or property; (4) as a result of a defendant’s conduct declared unlawful by R.S.Mo. 407.020. *Hess v. Chase Manhattan Bank, USA, N.A.*, 220 S.W.3d 758, 773 (Mo. 2007). Plaintiff Norwood 2020 has failed to allege that its purchase or lease of real estate was for personal, family or household purposes; and instead admits that it is a limited liability company whose primary business is renting units to tenants at the Norwood-Redfield apartment complex. (Petition ¶¶ 1, 7.) Indeed, Norwood has not alleged that it or anyone else purchased or leased anything from Defendants. Nor has Norwood alleged that it has suffered any ascertainable loss of money or property as a result of Defendants’ conduct. Indeed, the MMPA is violated only if there was a relationship between the alleged unlawful action and the sale of merchandise. *Kowalski*, 587 S.W.3d at 716. Having alleged none of this, Plaintiff has failed to state a claim under the MMPA.

VII. NEGLIGENCE MISREPRESENTATION

“The elements of a claim for negligent misrepresentation are: (1) the speaker supplied information in the course of his business; (2) because of a failure by the speaker to exercise reasonable care, the information was false; (3) the information was intentionally provided by the

speaker for the guidance of a limited group of persons in a particular business transaction; (4) the listener justifiably relied on the information; and (5) due to the listener's justified reliance on the information, the listener suffered a pecuniary loss. *Ryann Spencer Grp., Inc. v. Assurance Co. of Am.*, 275 S.W.3d 284, 288 (Mo. Ct. App. 2008). First, Norwood has made no allegation that Defendants were engaged in a business transaction. Rather, Defendants supplied the CDC form free of charge for tenants to use if, in fact, they were eligible to use it.

Further, while Norwood's asserts that privity is not required to establish a negligent misrepresentation claim (Petition ¶ 64), it omits the requirement that a plaintiff "establish that **they** were part of a limited group for whose guidance the information was provided." *Renaissance Leasing, LLC v. Vermeer Mfg. Co.*, 322 S.W.3d 112, 135 (Mo. 2010) (emphasis added). Defendants' outreach effort was not for Plaintiff's benefit. Finally, Plaintiff Norwood 2020 has also made no allegations that it nor any other person suffered any pecuniary loss due to reliance on information provided by Defendants. *See Blevins v. Am. Fam. Mut. Ins. Co.*, 423 S.W.3d 837, 842 (Mo. Ct. App. 2014) (affirming trial court's dismissal of negligent misrepresentation claim when plaintiff failed to make any allegation that they suffered a pecuniary loss after relying on defendant's representations). Plaintiff has thus failed to state a claim for negligent misrepresentation.

VIII. INVASION OF PRIVACY

A common-law action for an invasion of privacy encompasses four distinct torts, including the unreasonable publicity of another's private life. *Y.G. v. Jewish Hosp. of St. Louis*, 795 S.W.2d 488, 497-99 (Mo.App.1990). "The elements of an action for publication of a private matter are (1) publication or 'publicity,' (2) absent any waiver or privilege, (3) of private matters in which the public has no legitimate concern, (4) so as to bring shame or humiliation to

a person of ordinary sensibilities.” *Id.* at 498-99. Norwood’s privacy claim suffers from so many separate flaws, each of which is independently sufficient to warrant its dismissal, that the privacy count can only be deemed frivolous.

First, Norwood is a corporate entity, and a corporation cannot make a claim for privacy. *Bear Foot, Inc. v. Chandler*, 965 S.W.2d 386, 389 (Mo. App. E. Dist. 1998). *See also FCC v. AT & T Inc.*, 562 U.S. 397, 406 (2011) (company cannot claim privacy exemption under FOIA). Thus, Norwood cannot maintain any claim for invasion of its own privacy. And it is the height of chutzpah for Norwood to invoke its tenants’ rights of privacy as a basis for preventing defendants from contacting tenants to inquire about whether they need help regarding Norwood’s eviction proceedings.

Second, Plaintiff Norwood 2020 has failed to allege that Defendants have publicized any private matter, and instead alleges only that Defendants published public information, specifically “a list of rent and possession case numbers and addresses associated with Norwood tenants.” (Petition ¶ 72.) “[T]he prevailing law of invasion of privacy generally recognizes that the interests in privacy fade when the information involved already appears on the public record.” *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 494–95 (1975) (cited by *Doe v. Phillips*, 194 S.W.3d 833, 844 n. 10 (Mo. 2006)). Specifically, “matters become the subject of legitimate public concern when they are included in open court records” because “there can be no invasion of privacy in giving further publicity to a matter which is already public.” *Y.G.*, 795 S.W.2d at 499. Plaintiff Norwood 2020’s claim relies on the fantastical proposition that the identity of parties to court proceedings, the nature of those proceedings, and the orders entered in those proceedings, are private and sensitive information to which Defendants had no access. There is a common law and a First Amendment right of access to court records. *Transit Cas. Co. ex rel.*

Pulitzer Publ. Co. v. Transit Cas. Co. ex rel. Intervening Employees, 43 S.W.3d 293, 301 (Mo. 2001). Accordingly, the contents of court dockets, court orders entered on the merits of cases, as well as the names of the parties, are part of that public record. *Company Doe v. Public Citizen*, 749 F.3d 246, 267 (4th Cir. 2014). Norwood chose to file eviction actions, and Defendants merely relied on this information in the public record.

Third, the First Amendment protects private parties from being sued for revealing information otherwise protected by privacy statutes, so long as they obtained the information lawfully. *Bartnicki v. Vopper*, 532 U.S. 514, 529 (2001). Here, the list of addresses of premises with respect to which eviction orders had been issued was compiled from public court records, and used to ensure tenants who had been subjected to eviction proceedings during the coronavirus pandemic access to information about the CDC moratorium, governmental rental assistance, and free mediation and legal services. Plaintiff Norwood 2020 has wholly failed to state a claim for invasion of privacy.

IX. REQUEST FOR TRO AND INJUNCTIVE RELIEF

There is no independent claim for equitable relief. Instead, in order to obtain a restraining order or injunctive relief, Plaintiff Norwood 2020 must establish that it has a probability of success on the merits, that it would suffer irreparable harm without injunctive relief, that the balance between this harm and the injury that the injunction's issuance would inflict on other interested parties favors an injunction, and that the public interest supports an injunctive order. *State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. 1996). Norwood has offered no allegation nor any support for temporary or permanent injunctive relief. For the reasons stated above, the Plaintiff cannot establish any right to relief under the claims it has asserted. Norwood cannot establish any probably of success on the merits.

Nor can Plaintiff Norwood 2020 show it would suffer any harm or that the public interests supports the relief it seeks. The CDC and St. Louis moratoriums—both issued with the express consideration of the public interest in minimizing the spread of the coronavirus—expire on June 30, 2021, less than six weeks from now. By the time this case proceeds through discovery, even expedited discovery for which plaintiff has sought leave from the Court, and then proceeds to trial and a decision, the very reason for defendants’ informational effort directed at the limited number of units on the list of judicial eviction orders will have expired. Even if there were valid claims for damages, there would be no reason for permanent injunctive relief. Because, as defendants have shown above, Norwood has no claims that can withstand dismissal as a matter of law, Count IX must be dismissed as well.

RELIEF REQUESTED

For the foregoing reasons, Defendants request that this Court dismiss each and all of Plaintiffs’ claims for lack of standing and failure to state a claim upon which relief can be granted; enter a judgment on the pleadings in favor of Defendants; and request that all discovery in this matter be stayed until the issues presented in this motion are finally decided.

Respectfully submitted,

LEGAL SERVICES OF EASTERN MISSOURI

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CERTIFICATE OF SERVICE

I certify on May 20, 2021, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on all attorneys of record.

Robert L. Swearingen
Robert L. Swearingen