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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

STEPHANIE SMITH,

Plaintiff and Respondent,

v.

PALISADES NEWS et al.,

Defendants and
Appellants.

B292107

(Los Angeles County
Super. Ct. No. SC128999)

APPEAL from an order of the Los Angeles County Superior Court, Gerald Rosenberg, Judge. Reversed.

Jassy Vick Carolan, Jean-Paul Jassy and Elizabeth H. Baldrige for Defendants and Appellants.

Katie Townsend; Davis Wright Tremaine, Kelli Sager, Rochelle Wilcox, and Nicolette Vairo for Reporters Committee for Freedom of the Press and 21 Media Organizations as Amici Curiae for Defendants and Appellants.

Law Offices of Ben Eilenberg and Ben Eilenberg for
Plaintiff and Respondent.

I. INTRODUCTION

Plaintiff Stephanie Smith is a mother of five young children, and lives in the Pacific Palisades neighborhood of Los Angeles. She also owns warehouses in the Inland Empire used for large scale marijuana farming, and before her cannabis real estate ventures was found guilty of performing liposuction without a license. After her warehouses and personal residence were raided by law enforcement, the mash-up of motherhood, prior criminal history, and large-scale cannabis production proved to be journalistic catnip. Numerous press articles appeared—locally, nationally, and overseas—talking about the police raids and describing Smith as a suburban mom and alleged drug “queenpin” who made millions in connection with a huge marijuana growing operation.

In response to the police activity and resulting press coverage, Smith issued several public statements. She also gave a press interview. She described herself as a well-known and recognized leader in large-scale cannabis real estate development. She denied any wrongdoing by her or her tenants. She argued that authorities were out of touch with modern thought about cannabis and needed to change their approach to stop thwarting the public’s embrace of legalization. She also embraced the term “queenpin” as complimenting her cannabis industry leadership.

After the initial flurry of press coverage and Smith’s public statements, defendant Palisades News (a small community

newspaper in Smith’s residential neighborhood) published an article about Smith that largely referenced prior coverage from other, much larger, news organizations. Smith responded by suing Palisades News for defamation. Palisades News filed a special motion to strike under the anti-SLAPP statute.¹ There being no dispute the Palisades News article involved protected activity, the trial court focused on whether Smith had shown the required probability of prevailing on her defamation claim. The court, believing Smith was not required to show Palisades News acted with actual malice, found she had demonstrated a prima facie case and declined to strike the claim. For the reasons explained below, we reverse.

II. BACKGROUND

A. The Parties

Defendant Palisades News is published both in print and electronically. Defendant Sue Pascoe is the newspaper’s editor, and writes articles for the publication including the one about Smith at issue in this matter. Defendant Matt Sanderson also works for the newspaper, and was tangentially involved in publishing the article about Smith.

Plaintiff Smith holds herself out as a commercial real estate developer and landlord. While she does not operate a cannabis distribution business herself, she leases buildings to

¹ “SLAPP stands for ‘Strategic Lawsuit Against Public Participation.’” (*Lam v. Ngo* (2001) 91 Cal.App.4th 832, 835, fn. 1.) For clarity, we refer to a “SLAPP” or “anti-SLAPP” motion as a “special motion to strike”—the language used in the statute (Code Civ. Proc., § 425.16, subd. (b)(1)).

commercial cannabis operators. Smith has publicly commented that renting to cannabis businesses is more lucrative than renting to other tenants, with demand so high that in one instance she received triple the rent she initially asked. She previously worked as an office manager for a Beverly Hills plastic surgeon. Following patient complaints of botched operations, she was found guilty of a misdemeanor for assisting in liposuction procedures without a medical license. In 2013, she was sentenced to 3 years of probation.

B. The Law Enforcement Raid of Smith's Properties and Subsequent News Coverage

On December 13, 2017, police raided three warehouse buildings belonging to Smith, as well as Smith's home in Pacific Palisades. That same day, local television channel KTLA reported that police were stating the warehouses contained very large and sophisticated marijuana growing operations with tens of thousands of plants. KTLA also reported police said Smith paid for the buildings in cash, and that she had not obtained the required permits for a marijuana business. KTLA reported police were saying a search warrant was served at Smith's home, that she was detained pending further investigation, and that police expected to arrest her.

Also on December 13, 2017, the local CBS News affiliate ran an article on its website under the headline "Mom, 43, Made Millions Per Month on Pot-Growing Operations, Police Say." The article said "San Bernardino police busted a major marijuana grow operation" and that "officials say the drug kingpin behind the grow was actually a drug queen—and a mother from a ritzy Pacific Palisades neighborhood." The article reported the

operation had more than 24,000 plants, and that while this type of “huge operation is normally associated with a druglord, . . . this stash belonged to 43-year-old mom Stephanie Smith of Pacific Palisades, police said. Smith was making millions of dollars per month running the operation, sources said.”

The Associated Press reported on the raids on December 13 and 14, 2017. The December 13th article stated that tens of thousands of marijuana plants were seized from several locations in San Bernardino, including a building near police headquarters. The article further reported that Smith owned the buildings where the raids occurred, and that she was arrested on suspicion of illegally cultivating marijuana. The December 14th article said police “raided a weed ‘fortress’ on Wednesday, seizing 35,000 marijuana plants and shutting down an operation they believe was bringing in millions of dollars a month.” The article said that Smith owned the searched properties, but “she was not arrested or charged with a crime.”

On December 18, 2017, the Daily Mail (a United Kingdom newspaper) reported on the raids under the headline “EXCLUSIVE: California drug ‘Queenpin’ is spotted shopping for designer bikinis days after police seized 18,000lbs of marijuana from her multi-million dollar weed fortress which she says is a ‘proper business.’” Smith gave an interview to DailyMailTV, saying she was going to get a license in San Bernardino once they were available. Smith asserted she ran a proper business, and therefore was not concerned about possible criminal charges or jail time. The Daily Mail also referenced Smith’s conduct and conviction in the liposuction matter. The San Bernardino Sun, The Washington Times, Miami Herald, Kansas City Star, Seattle

Times, Daily Caller, and FoxNews.com also ran articles about the police raids, which repeated many of the statements above.

On December 20, 2017, Smith released an official statement. The statement, from which some later articles quoted, said Smith was “disappointed to explain that these military style raids are the way City leaders handle zoning issues,” and “[s]torming into my home and pointing assault weapons at me . . . because a building I own doesn’t have the proper zoning permits is not acceptable Attempting to smear me as an illicit drug lord is laughable for countless reasons, the least among them is that medical marijuana is legal and the voters in California have asked for over a decade that our representatives create laws that work for safe access—not work against it. . . . The raids on our local cannabis businesses, who want to be regulated and taxed and have asked repeatedly for local government to simply follow the laws approved by the citizens, is clearly out of step with the will of the voters and a sensationalized military response to a respected, peaceful female entrepreneur is an abuse of power. [¶] The age of prohibition has ended and I welcome a more sensible approach to cannabis regulation. Professionals in the cannabis industry, including landlords, growers, producers and processors, can only hope that the powers that be do not continue to react in such an expensive, heavily armed, and contradictory manner that directly thwarts the will of the majority of our citizens.” Smith also posted photos of the raid online, accompanied by a statement that “[r]aiding a woman and toddlers with SWAT in full gear and guns is absurd.” Various press outlets printed portions of this additional statement.

Smith made a further public statement on December 22, 2017 via Facebook where she embraced the description of her as a “queenpin”—“The government attempted to smear me as a #QueenPin. They thought associating me with cannabis would embarrass me. They were wrong. Being a leader in cannabis is no different than being a leader in any other legitimate industry. I accept the complement [sic]. I am a Queenpin indeed. . . .” Smith went on to give her own description of a “queenpin” as a “non-stop doer,” “advocate to many, and community leader,” and a “[s]trong, accomplished, determined fighter” She closed by asking if there are “[a]ny other Queen Pin’s out there?” with the hashtags #QueenPin, #MyRights, #Notavictim, #Survivor, and #SHARE.

C. The Palisades News Article

On January 2, 2018, the Palisades News published an article about Smith entitled “Palisadian Stephanie Smith Gains Marijuana Notoriety.” The article began by saying Smith “was busted on December 13 for operating an allegedly illegal marijuana-growing operation in San Bernardino.” The article went on to reference prior coverage, including from KTLA and CBS News. It noted that “[a]ccording to KTLA, police issued a search warrant for Smith at her home . . . and she was detained there. [¶] The case received national media attention, with headline writers calling the attractive 43-year-old a ‘queenpin.’ CBS News reporters said police reported that ‘the huge operation is normally associated with a drug lord’ and ‘Smith was making millions of dollars per month running the operation.’” The article also relayed that “KTLA reported that Smith had paid cash for two warehouses and a home for the operation.” It further discussed that “[t]his was not Stephanie Smith’s first

brush with the law” and provided details about the prior liposuction matter.

The day after the Palisades News article, Smith made another public statement. The statement did not reference the Palisades News article. Smith described herself as “a well known and recognized leader in large-scale cannabis real estate development. . . .” She claimed “[t]he tenants in my buildings were compliant with the laws of the State of California and had applied for licenses from the City of San Bernardino multiple times only to have their applications rejected for technicalities. . . . In attempting to terrorize my family and smear me as an illicit drug lord, the Mayor [of San Bernardino] embarrassed himself and showed that he [is] out of touch with modern thought about [the] cannabis industry” Like her prior statements, the January 3, 2018 statement was reported in the press.

D. The Defamation Lawsuit

Smith did not serve Palisades News with a retraction demand within 20 days of the article’s publication, but asserts she did so later at some unspecified point in time.² On March 14, 2018, Smith sued the Palisades News, Sue Pasco, and Matt Sanderson (collectively hereafter Palisades News) for libel/defamation, false light, and intentional infliction of emotional distress. Smith did not sue any other news

² To recover general or punitive damages for any alleged libel, a plaintiff must request correction within 20 days of the statement(s) claimed to be libelous, and the publisher must refuse the request for correction. (Civ. Code, § 48a; *Anschutz Entertainment Group, Inc. v. Snepp* (2009) 171 Cal.App.4th 598, 640–641.)

organization or reporter, including those organizations and reporters whose statements the Palisades News repeated in its coverage.

Smith claimed the Palisades News article contained three defamatory statements: (1) that she “was busted on December 13 for operating an allegedly illegal marijuana-growing operation in San Bernardino”; (2) that she was making “millions of dollars per month running the operation” and the operation was of a size normally associated with a “drug lord”; and (3) that Smith “paid cash for two warehouses and a home for the operation.” Smith claims these statements were false because she did not operate a cannabis business but was merely a landlord. Smith also asserts she did not make millions of dollars a month and did not pay for the operational sites in cash. She further alleged that to the extent the Palisades News was republishing information from other news organizations (which it largely was, including two of the three quoted statements she claimed were defamatory), the newspaper and its journalists knew or had reason to know of the falsity of the statements. Smith claimed the defamatory statements in the Palisades News caused disruptions to her business, and reputational harm with other Pacific Palisades residents.

E. The Ordinance Challenges

Soon after Smith filed the defamation action, two companies controlled by Smith filed suit in San Bernardino County challenging the cannabis ordinances of the cities of San Bernardino and Colton. Smith and her attorney both spoke to the press, and were quoted in articles about the lawsuits and the muddled legal landscape facing marijuana-related entrepreneurs

in California following the passage of Proposition 64. The suits challenging the ordinances remained pending during the trial court's consideration of the defamation claim against Palisades News. Smith also helped spearhead a petition to add an initiative to the City of San Bernardino's November 2018 ballot concerning the City's cannabis ordinances and encouraged city residents to vote in the upcoming election.

F. Defendants' Anti-SLAPP Motion

Palisades News responded to Smith's defamation lawsuit by filing a special motion to strike pursuant to the anti-SLAPP statute. After taking the matter under submission, the trial court issued a written ruling granting the motion as to the false light and intentional infliction of emotional distress claims, and denying it as to the defamation cause of action.³

The court found the complaint alleged protected conduct. It further found Smith "is a limited purpose public figure in connection with municipal ordinances governing marijuana facilities" because she sued the cities of San Bernardino and Colton over their ordinances, spoke to the press to advocate her position, and thereby interjected herself into that controversy. The court found Smith was not a limited purpose public figure for purposes of the defamation claim, however, because the Palisades News "article that Plaintiff is a marijuana operator did not

³ Smith filed a notice of appeal, but that appeal was dismissed on September 19, 2018 pursuant to California Rule of Court 8.100(c) for failure to pay the required filing fee. As Smith did not pursue appellate review of the claims struck by the trial court, we do not further address her false light and intentional infliction of emotional distress causes of action.

pertain to the ordinances that were challenged by Plaintiff in her lawsuits.”

The court found Smith had made a prima facie showing that the statements were defamatory, and was not required to prove actual malice to survive the special motion to strike. Finding the burden shifted to defendants, the court found Palisades News failed to establish any affirmative defense at the special motion to strike stage.

Palisades News filed a timely notice of appeal. We have jurisdiction pursuant to Code of Civil Procedure section 904.1, subdivision (a)(13).⁴

III. DISCUSSION

A. The Anti-SLAPP Statute and the Standard of Review

Our colleagues in Division Eight of this District recently summarized the application of the anti-SLAPP statute to a defamation cause of action in *Dickinson v. Cosby* (2019) 37 Cal.App.5th 1138 (*Dickinson*). We begin our analysis by quoting their cogent summary.

“The Legislature enacted the anti-SLAPP statute to address the societal ills caused by meritless lawsuits filed to chill the exercise of First Amendment rights. (§ 425.16, subd. (a).) The statute accomplishes this end by providing a special procedure for striking meritless, chilling claims at an early stage of litigation. (See § 425.16, subd. (b)(1); *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055–1056.)

⁴ All unspecified statutory references are to the Code of Civil Procedure.

“The anti-SLAPP statute establishes a two-step procedure to determine whether a claim should be stricken. In the first step, the court decides whether the movant has made a threshold showing that a challenged claim arises from statutorily-defined protected activity. (*Rusheen v. Cohen, supra*, 37 Cal.4th at p. 1056.) Here, the parties agree, as do we, that [Smith]’s defamation claim[] arise[s] from protected activities.^[5] We focus, therefore, on the second prong of the analysis: whether [Smith] has shown of probability of prevailing on her claims. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.)

“To show a probability of prevailing, the opposing party must demonstrate the claim is legally sufficient and supported by a sufficient prima facie showing of evidence to sustain a favorable judgment if the evidence it has submitted is credited. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.) ‘In deciding the question of potential merit, the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant (§ 425.16, subd. (b)(2)); though the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant’s evidence supporting the motion defeats the plaintiff’s

⁵ Section 425.16, subd. (e), specifies categories of protected activity. The Palisades News article included statements made in connection with an issue under consideration or review by an executive body (the San Bernardino Police Department) in an official proceeding authorized by law (a judicially authorized search warrant) (§ 425.16, subd. (e)(2)), statements made in a public forum in connection with an issue of public interest (§ 425.16, subd. (e)(3)) and conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest (§ 425.16, subd. (e)(4)).

attempt to establish evidentiary support for the claim. [Citation.]’ [Citations.]’ (*Taus v. Loftus* (2007) 40 Cal.4th 683, 713–714.) We accept as true the evidence favorable to the plaintiff. Further, a plaintiff must establish only that the challenged claims have minimal merit to defeat an anti-SLAPP motion. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.)

“We review the denial of an anti-SLAPP motion de novo. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067.)” (*Dickinson, supra*, 37 Cal.App.5th at pp. 1154—1155, fn. omitted.)

B. Smith’s Has Not Demonstrated a Probability of Prevailing on Her Defamation Claim

1. Required Elements for Defamation

“A statement is not defamatory unless it can reasonably be viewed as declaring or implying a provably false factual assertion [citation], and it is apparent from the ‘context and tenor’ of the statement ‘that the [speaker] seriously is maintaining an assertion of actual fact.’ [Citation.] . . . ‘California law permits the defense of substantial truth,’ and thus a defendant is not liable ‘ “ ‘if the substance of the charge be proved true ’ ” ’ ‘Put another way, the statement is not considered false unless it “would have a different effect on the mind of the reader from that which the . . . truth would have produced.” ’ [Citation.]” (*Carver v. Bonds* (2005) 135 Cal.App.4th 328, 344.)

A “private person need prove only negligence (rather than malice) to recover for defamation.” (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 742.) However, “[w]hen a defamation action is brought by a public figure, the plaintiff, in order to

recover damages, must show that the defendant acted with actual malice in publishing the defamatory communication.” (*Denney v. Lawrence* (1994) 22 Cal.App.4th 927, 933 (*Denney*).) Whether a plaintiff is a public figure is determined by the court. (*Stolz v. KSFM 102 FM* (1994) 30 Cal.App.4th 195, 203.)

2. Public Figure Test

In *Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323 (*Gertz*), the United States Supreme Court recognized two different categories of public figures. The first is the “all purpose” public figure who has “achiev[ed] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts.” (*Id.* at p. 351.) “For the most part those who attain [all-purpose public figure] status have assumed roles of especial prominence in the affairs of society” (*Id.* at p. 345.) Such status is not lightly assumed—for a plaintiff to be deemed an all-purpose public figure, there must be “clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society” (*Id.* at p. 352.) Neither party argues, nor does the record demonstrate, that Smith has the requisite level of fame, notoriety, or pervasive involvement in the affairs of society to be an all-purpose public figure.

The second category is the “limited purpose” or “vortex” public figure who “voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.” (*Gertz, supra*, 418 U.S. at p. 351.) “Unlike the ‘all purpose’ public figure, the ‘limited purpose’ public figure loses certain protection for his reputation only to the extent that the allegedly defamatory communication relates to

his role in a public controversy.” (*Reader’s Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 253–254 (*Reader’s Digest*).)

3. *Smith Is a Limited Public Figure*

The trial court found Smith was a limited purpose public figure in connection with municipal ordinances governing marijuana facilities. It based that decision on Smith suing two municipalities over such ordinances and speaking to the press to advocate her position. We agree that Smith was a limited purpose public figure, but for different reasons. The trial court relied on Smith’s voluntary acts after the Palisades News article. It instead should have focused Smith’s acts before publication, and whether they made Smith a limited purpose public figure at the time the Palisades News article was published. We find Smith’s voluntary prepublication acts made Smith a limited purpose public figure, and for a public controversy broader than the one identified by the trial court.

To characterize a plaintiff as a limited purpose public figure, three elements must be present. First, “there must be a public controversy . . .” (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 24.) Second, “the plaintiff must have undertaken some voluntary act through which he or she sought to influence resolution of the public issue.” (*Ibid.*) Third, “the alleged defamation must be germane to the plaintiff’s participation in the [public] controversy.” (*Ibid.*) We discuss each of these elements in turn.

a. Existence of a Public Controversy

A public controversy exists when the controversy at issue was debated publicly and had foreseeable and substantial ramifications for nonparticipants in the debate. (*Gilbert v. Sykes*,

supra, 147 Cal.App.4th at p. 24.) Smith does not seriously dispute a public controversy exists here. For some time, there has been a significant and ongoing public debate regarding the legalization of cannabis, how legalization will impact local communities, and how best to regulate the manufacture and sale of cannabis to mitigate any adverse impacts on local communities and their residents. (E.g., *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171 [ordinance regulating location and operation of marijuana dispensaries “capable of causing indirect physical changes” to city environment and thus subject to environmental review]; *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 762 [marijuana regulation is “an area that remains controversial”].)

b. Voluntary Acts to Influence Resolution of Public Controversy

To become a limited purpose public figure, a plaintiff must undertake some voluntary act through which he or she seeks to influence resolution of the public controversy. “It is not necessary to show that a plaintiff actually achieves prominence in the public debate” (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845.) Instead, “it is sufficient that the plaintiff attempts to thrust him or herself into the public eye.” (*Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1577 (*Ampex*).) Smith sought to do exactly that through her public statements following the raid and prior to the Palisades News publication. Smith’s public statements were not confined (as the trial court held) to challenging municipal ordinances, but were a much broader commentary on how laws regulating cannabis are applied and enforced, accompanied by advocacy for a different approach.

Smith contends her public statements were not voluntary because Palisades News forced her to respond to its defamatory and false reporting. It is true that “a defamation defendant cannot create a defense by creating a controversy from the content of defamatory statements” and “a plaintiff does not become a public figure simply by responding to defamatory statements” (*Mosesian v. McClatchy Newspapers* (1991) 233 Cal.App.3d 1685, 1702.) But Smith’s argument ignores the actual chronology of events. There was a public controversy regarding cannabis regulation before any alleged defamatory statements. Smith did not simply respond to the Palisades News article. Instead, she released multiple public statements seeking to influence public perception of the police raids and San Bernardino’s approach to cannabis businesses *before* Palisades News published its article.

Moreover, Smith’s comments preceding the Palisades News article did not just respond to prior press coverage but instead sought to address statements from city officials and influence public perception of the city’s enforcement efforts. These public statements gave Smith prominence in the public controversy concerning cannabis regulation. Smith acknowledged this fact, describing herself as a “well-known and recognized leader in large-scale cannabis real estate development” in a statement the day after the Palisades News article. Smith did not become a “well-known and recognized” figure overnight—her public recognition preexisted the Palisades News article and was not solely the result of the prior press coverage but also her public advocacy.

The lone authority on which Smith relies to claim she is not a limited purpose public figure is *Time, Inc. v. Firestone* (1975)

424 U.S. 448 (*Firestone*). In that case, a weekly news magazine published an article about a marital dissolution proceeding between the plaintiff wife and her husband, who were both wealthy and prominent socialites. The United States Supreme Court held the dissolution proceeding was not the type of public controversy to which *Gertz* referred in describing limited purpose public figures, but instead involved a private family matter. (*Id.* at p. 454.) Additionally, the wife did not voluntarily inject herself into a public forum—she had no alternative to using court proceedings if she wanted to get divorced. (*Ibid.*) While she held a few press conferences “in an attempt to satisfy inquiring reporters,” that did not convert her into a public figure. (*Id.* at p. 454, fn. 3.) The Court based this holding on (1) the fact the press interviews should have had no effect upon the merits of the legal dispute or its outcome, (2) no such effect was intended by the wife, and (3) the press conferences were not designed to inject the wife into “the forefront of some unrelated controversy in order to influence its resolution.” (*Ibid.*)

The facts here are quite different. Smith was the subject of public police investigation involving search warrants. As discussed above, the subject matter of that investigation—the regulation of cannabis businesses, and where and how they operate—are matters of public interest and controversy. Unlike the plaintiff in *Firestone*, who did not seek to influence the outcome of the court proceeding, Smith’s comments to the press attempted to impact the police investigation and city officials otherwise involved in that investigation. Her comments also injected Smith into the forefront of related controversies concerning cannabis in an attempt to influence their resolution in a way favorable to her and her business. Smith became a limited

purpose public figure when she “actively and openly sought to influence public officials and in that manner affect the public decision process for determining the uses to which land in [San Bernardino] County may be put.” (*Hofmann Co. v. E.I. Du Pont de Nemours & Co.* (1988) 202 Cal.App.3d 390, 404, abrogated in part on other grounds as recognized in *Kahn v. Bower* (1991) 232 Cal.App.3d 1599, 1606–1608.)

Smith’s public comments prior to the Palisades News article are much closer to the facts of *Denney, supra*, 22 Cal.App.4th 927 than *Firestone*. In *Denney*, the plaintiff’s identical twin brother committed a murder. The killing generated intense local media publicity because both brothers were sheriff’s deputies. The plaintiff gave the press a photograph to use in connection with a newspaper article and was interviewed twice by a reporter. After these actions, a local newspaper printed a letter to the editor the plaintiff alleged was defamatory. The *Denney* court found plaintiff was a limited purpose public figure because he “voluntarily involved himself in the public debate and attempted to influence public opinion” by promoting a version of facts favorable to his brother. (*Denney, supra*, 22 Cal.App.4th at pp. 934–936.)

Following the raid and in the days before the Palisades News article, Smith similarly voluntarily involved herself in the public debate and attempted to influence public opinion by promoting a version of the facts favorable to her. She complained “that these military style raids are the way City leaders handle zoning issues,” and that it was “not acceptable.” She asserted the police actions were “clearly out of step with the will of the voters,” and there needed to be “a more sensible approach to cannabis regulation” that did not “directly thwart[] the will of the majority

of our citizens.” She claimed “[t]he tenants in my buildings were compliant with the laws of the State of California and had applied for licenses from the City of San Bernardino multiple times only to have their applications rejected for technicalities.” She expressed pride in “[b]eing a leader in cannabis” and “a Queenpin indeed.”

There are two rationales for the public figure doctrine. One, as discussed above, is that the individual has voluntarily exposed themselves to public scrutiny through their statements and actions, including the increased risk of injury from defamatory falsehood, and must accept the consequences. (*Reader’s Digest*, *supra*, 37 Cal.3d at p. 253; *Stolz*, *supra*, 30 Cal.App.4th at p. 203.) The second is that “[s]uch persons ordinarily enjoy considerably greater access than private individuals to the media and other channels of communication. This access in turn enables them to counter criticism and to expose the fallacies of defamatory statements.” (*Reader’s Digest*, *supra*, 37 Cal.3d at p. 253.)

The record before us bears out the second rationale as well as the first. The press reported on Smith’s public statements before and contemporaneous with the Palisades News article. Following the Palisades News article, Smith continued to be able to publicize her views, including about the lawsuits challenging the San Bernardino and Colton ordinances. She additionally was featured in a favorable March 31, 2018 article in the Los Angeles Times (a publication with far greater reach in Los Angeles than the Palisades News) along with one of her prominent tenants, B-Real of multi-platinum hip-hop recording artists Cypress Hill, where she was able to respond to publicity surrounding the San Bernardino raids.

c. *The Allegedly Defamatory Statements Were Germane to Smith's Participation in the Controversy*

Lastly, for the limited public figure doctrine to apply, the alleged defamatory statements must be germane to the plaintiff's participation in the public controversy. The public controversy at issue (and into which Smith voluntarily injected herself) was much broader than simply municipal ordinances governing marijuana facilities. It encompassed who should operate such businesses, where those operations should take place, what type of permitting and regulatory process should exist for such operations, and how violations of regulations should be policed. The three allegedly defamatory statements were germane to this debate over the permitting process, law enforcement efforts surrounding that permitting process, and whether Smith was the type of individual worthy of licensure.

4. *Smith Did Not Make a Prima Facie Showing of Malice*

To survive a special motion to strike a defamation claim, a limited purpose public figure like Smith must establish the requisite probability that she can prove the allegedly defamatory statements were made with knowledge of their falsity, or with reckless disregard of their truth or falsity. (*Ampex, supra*, 128 Cal.App.4th at p. 1578.) Smith submitted no evidence, and does not contend, that Palisades News knew anything in the article was false. She instead argues Palisades News acted in reckless disregard of the truth or falsity of the allegedly defamatory statements.

For reckless disregard to exist, there must be sufficient evidence to permit the conclusion that Palisades News entertained serious doubts as to the truth of the statements it published. The ultimate issue is the good faith of the publisher. (*Reader's Digest, supra*, 37 Cal.3d at p. 257.) The subjective belief of Palisades News concerning the truthfulness of the publication—that is, the attitude of Palisades News toward the truth or falsity of the material published and not its attitude toward Smith—is what matters. (*Ibid.*) As examples of actions not taken in good faith, the United States Supreme Court has given examples such as “where a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call.” (*St. Amant v. Thompson* (1968) 390 U.S. 727, 732.) Nor will a defense of good faith “be likely to prevail when the publisher’s allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports.” (*Ibid.*)

Smith does not argue the Palisades News article was fabricated, the product of imagination, based on unverified anonymous tip, or that the content of the story was inherently improbable. The record shows that in making the three statements alleged to be defamatory, Palisades News relied on prior reporting from reputable organizations. Indeed, two of the identified statements were expressly attributed to those prior sources—KTLA and CBS—in the Palisades News article.

Instead, Smith argues reckless disregard can be inferred because Palisades News did no independent investigation. For example, it never attempted to contact Smith or the San

Bernardino Police Department to determine if the allegations levied by the police were correct. Smith also points to inconsistencies in the prior press coverage (such as whether Smith was arrested, differences in how many others were arrested, and discrepancies in the number of plants allegedly in the warehouses) that she argues should have prompted a reasonable person to do independent investigation.

However, “reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing.” (*St. Amant v. Thompson*, *supra*, 390 U.S. at p. 731.) “The failure to conduct a thorough and objective investigation, standing alone, does not prove actual malice A publisher does not have to investigate personally, but may rely on the investigation and conclusions of reputable sources. ‘Where the publication comes from a known reliable source and there is nothing in the circumstances to suggest inaccuracy, there is no duty to investigate.’” (*Reader’s Digest*, *supra*, 37 Cal.3d at pp. 258—259.) Moreover, the complained-of inconsistencies related to minor, collateral details about the raids.

Because Smith has not made the required showing of malice, we need not address whether she carried her burden to establish that the statements were false, that the Palisades News article caused the damages she alleges as opposed to the prior publicity, or other elements of her *prima facie* case. To survive a special motion to strike, Smith had to make a sufficient *prima facie* showing of facts sufficient to sustain a favorable judgment. (*Navellier v. Sletten*, *supra*, 29 Cal.4th at pp. 88–89.) Her failure

to produce evidence of malice, one of the necessary elements of that prima facie showing, is fatal in and of itself.⁶

IV. DISPOSITION

The trial court's order denying the special motion to strike is reversed. The matter is remanded with directions to grant the motion in full and enter judgment in Defendants' favor. Defendants are awarded their costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

ROTHSCHILD, P. J.

BENDIX, J.

⁶ Given Smith's failure to produce evidence of malice, we also decline to address amici curiae's invitation to recognize a neutral reportage or wire service defense under California law.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.