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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SHAWN CARTER, Plaintiff and Appellant, v. THE BUZBEE LAW FIRM et al., Defendants and Respondents.	B347898 (Los Angeles County Super. Ct. No. 24SMCV05637)

APPEAL from an order of the Superior Court of Los Angeles County, Mark H. Epstein, Judge. Affirmed.

Sidley Austin, David R. Carpenter, Collin P. Wedel, Madeleine Joseph; Horvitz & Levy, Felix Shafir, Mark A. Kressel, Jeremy B. Rosen and Marshall Grasty for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton, Camille M. Vasquez, J. Randall Boyer, Samuel A. Moniz, Melissa Medhat Mikail and Valerie E. Alter for Defendants and Respondents.

Plaintiff Shawn Carter, more commonly known as Jay-Z, is a world-famous rapper and businessman. He brought this action against attorney Anthony G. Buzbee and his law firm the Buzbee Law Firm (collectively, Buzbee) alleging Buzbee civilly extorted Carter, defamed him, and intentionally inflicted emotional distress upon him.

Carter appeals the trial court's order granting Buzbee's special motion to strike all his causes of action under the anti-SLAPP statute. (Code Civ. Proc.,[1] § 425.16.) Finding no error, we affirm.

FACTUAL BACKGROUND

Because this appeal arises from an order granting an anti-SLAPP motion, we base this background upon " 'the pleadings, and supporting and opposing affidavits upon which the liability or defense is based.' " (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

In September 2024, rapper Sean Combs, more commonly known as Diddy, was indicted in a highly publicized prosecution involving charges of racketeering, sex trafficking, and transportation for purposes of prostitution. The indictment alleged Combs, for decades, had coerced individuals into performing sex acts at "freak off" parties.

Buzbee practices law in Houston, Texas. AVA Law Group (AVA) is a firm that practices law in multiple states. After Combs's indictment, Buzbee and AVA began representing alleged victims of Combs's crimes.

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[1] Undesignated statutory references are to the Code of Civil Procedure.

In September and October 2024, Buzbee issued press releases, held press conferences, and went on talk shows to discuss his and AVA's work on the Combs matter. In various social media posts and press interviews, Buzbee represented that: (1) other celebrities committed the crimes with Combs; (2) his firm would sue and identify these perpetrators; (3) if his clients were comfortable, his firm would identify these individuals to the authorities; and (4) he had sent demand letters to these individuals.

According to Buzbee, during his firm's investigation, clients and potential clients identified Carter as an accomplice to Combs and a perpetrator himself. One of these clients was Jane Doe, who initially retained AVA to pursue claims against Combs and Carter. Buzbee began representing Jane Doe after receiving a referral from AVA. Another client who retained Buzbee to sue Combs and Carter was John Doe.

On October 20, 2024, Jane Doe, through Buzbee, filed a lawsuit in the United States District Court for the Southern District of New York (New York Action) accusing Combs and a "Celebrity A" of rape.

On November 5, 2024, Buzbee sent "Mediation Demand" letters (Demand Letters) to Carter on behalf of Jane and John Doe. The Demand Letters claimed Carter sexually assaulted Jane Doe when she was 13 and John Doe when he was 16 while they were at Combs's parties. The "demand" section of the Demand Letters stated: (1) Buzbee had recommended Jane and John Doe to immediately sue but they were not interested in causing a "public spectacle"; (2) Jane and John Doe "want something of substance done"; (3) they demand that Carter participate in mediation; (4) they will sue if Carter refused; and (5) once they have sued, other victims will likely come forward.

PROCEDURAL HISTORY

I. Carter's Complaint

Carter refused the requests to mediate and anonymously commenced this lawsuit on November 18, 2024, alleging civil extortion and intentional infliction of emotional distress (IIED).

On December 8, 2024, Jane Doe amended the complaint in the New York Action to explicitly name Carter as "Celebrity A."

On December 20, 2024, Carter amended the complaint in this action to sue under his own name and add a defamation cause of action. In the first amended complaint (FAC), Carter alleged Buzbee extorted him with the Demand Letters. Carter further alleged Buzbee falsely accused him of rape in social media posts and media interviews. The FAC identified the following statements as underpinning his defamation cause of action:

Statement A: "On or around October 2, [2024,] Buzbee stated on the Stephen A. Smith Show: 'I want to make sure I capture a wide net and capture everybody involved, and that's what I'm . . . trying to do. And part of the . . . purpose of the press conference was to encourage people that witnessed some of these events to come forward, and that's happening now. I want to make sure that anyone that facilitated this, egged it on, participated, benefited from, profited from, they're involved too because that's really . . . what needs to happen here. It happens . . . in other cases like that. You want to make sure that you include everyone, especially those that enabled and were complicit.' He even admitted: 'You know, obviously, a lot of this is hard to corroborate.' "

Statement B: "On or around October 3, [2024,] on the Chris Hansen Show, Buzbee accused 'facilitators' of misconduct, claiming they 'should be prosecuted and put underneath [*sic*] the jail.' He further said: 'I expect the [Combs] indictment and the charges in the indictment will grow. I expect other people will be implicated, so I think that, like I say, I think we're only seeing the tip of the iceberg here.' " (First brackets added.)

Statement C: "On or around October 7, [2024,] on the Shaun Attwood Podcast, Buzbee threatened that 'there are going to be some people named in these cases that are going to raise some eyebrows . . . if you were a bank and you were somehow facilitating this by allowing, you know, hundreds and hundreds of thousands of dollars of cash to be withdrawn to be used for various things, or you were some sort of pharmacy that ordered large volumes of particular drugs were being purchased or maybe you were a hotel or a club or this type of activity was taking place, you're going to be named.' "

Statement D: "On or around October 8, [2024,] in an interview with Piers Morgan, Buzbee stated: 'It may not be big names at first, but . . . we have a long list of names.' "

Statement E: "On November 18, 2024, Buzbee referred to his client in the New York [A]ction as a 'sexual assault survivor[],' which is reasonably understood to refer to . . . Carter as the perpetrator of the alleged assault." (First brackets added.)

Statement F: "On December 10, [2024,] TMZ reported that 'Buzbee said he's not ruling out filing rape charges against [Carter] with New York authorities,' and further stated, 'What happens next is up to my client. It's her case and what she decides to do you will find out in due course.' The article also noted, '[Carter's] rape accuser might take the music mogul's advice and file a criminal complaint against him after slapping him with a civil suit alleging sexual assault, according to . . . Buzbee.' "

II. Buzbee's Anti-SLAPP Motion

On January 17, 2025, Buzbee filed an anti-SLAPP motion seeking to strike the FAC in its entirety. Buzbee supported his motion with his own declaration, and later with a declaration from an AVA attorney, attesting: (1) Buzbee and AVA screened and interviewed clients who accused Carter of sexual assault; (2) their due diligence led Buzbee to genuinely believe Carter sexually assaulted individuals at Combs's parties, including Jane and John Doe; and (3) Buzbee sent the Demand Letters on behalf of his clients in good faith anticipation of litigation.

On February 10, 2025, Carter opposed the motion. Carter supported his opposition by submitting, among other things, a declaration refuting Jane and John Doe's accusations, transcripts of Buzbee's press interviews, and an expert declaration opining the Demand Letters "crossed ethical lines" and Buzbee failed to adequately investigate the claims.

On February 14, 2025, Jane Doe dismissed the New York Action with prejudice in exchange for Carter's promise that neither he nor his agents would harass or further interact with her.

On February 25, 2025, the trial court held its first hearing on the motion. At the hearing, Carter's attorney informed the court Carter had just obtained new evidence relevant to the motion. The court took the matter under submission.

On March 5, 2025, Carter filed an ex parte application asking the trial court to consider new statements made by Jane

Doe, or, in the alternative, to lift the discovery stay so he could depose Jane Doe and Buzbee.

Briefing on the application revealed that on February 21, 2025, investigators "indirectly" acting on Carter's behalf visited Jane Doe at her home in Alabama and surreptitiously recorded[2] an interview with her. After Jane Doe expressed surprise and concern that someone had discovered her identity and address, the investigators claimed they were "independent hires" there to help her. They also promised Jane Doe she would remain anonymous and be left alone if she cooperated. The investigators then extensively questioned Jane Doe regarding her communications with Buzbee. During the questioning, the bulk of which consisted of one-word responses to the investigators' questions, Jane Doe admitted the following: (1) she met with Buzbee for the first time to discuss her case around the same time he had her flown to Houston to do an interview with NBC[3]; (2) during that meeting with Buzbee, she told him Combs raped her at one of his parties; (3) Carter was present at the party but did not rape her; (4) Buzbee suggested to her that Carter also raped her and pushed her to make that claim; (5) lawyers at Buzbee's firm told her that if she pursued Carter she would receive a payout; and (6) she dismissed the New York Action

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[2] In Alabama, only one party's consent is necessary to record a conversation. (See Ala. Code, § 13A-11-30.)

[3] Carter contended that if this was true, it would mean Jane Doe first discussed the case with Buzbee around December 11, 2024, as that was the date NBC conducted the interview. Buzbee contended that she had earlier conversations with other members of the legal team in October 2024.

because Buzbee and lawyers at his firm told her Carter had threatened to kill her.

Carter's application also argued that to the extent Jane Doe's statements were hearsay, the trial court should consider them pursuant to *Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931 (*Sweetwater*).

Buzbee opposed Carter's application on March 11, 2025. He submitted declarations from Jane Doe, wherein she stated: (1) she felt intimidated when she was confronted by the investigators at her home; (2) her allegations were true and she only dismissed the New York Action because of fear of retaliation; (3) her lawyers extensively interviewed her about her claims; and (4) she authorized Buzbee to send the demand letter to Carter and to initiate the New York Action. Buzbee also submitted declarations from lawyers at his firm, AVA, and a third firm that worked on Jane Doe's case, attesting: (1) Jane Doe was referred to Buzbee's firm by AVA in October 2024, following which she hired Buzbee and AVA to pursue claims against Combs and Carter; (2) in November 2024, she authorized Buzbee's firm to send the demand letter; and (3) her lawyers dismissed the New York Action on her behalf because that was in the parties' best interests rather than because they did not believe in the claims.

On June 30, 2025, the trial court granted the anti-SLAPP motion. The court first ruled the statements Jane Doe made to the investigators were inadmissible hearsay, it could not consider the statements pursuant to *Sweetwater*, and limited discovery would be inappropriate. The court then ruled the anti-SLAPP statute and litigation privilege protected the Demand Letters. The court next ruled the defamation cause of action lacked minimal merit because Carter failed to show either that

Statements A through D concerned Carter or that Buzbee made Statements E and F with actual malice. Finally, the court struck the IIED cause of action for the same reasons it struck the other claims.

Carter timely appealed.

DISCUSSION

I. Overview of Anti-SLAPP Principles and Standard of Review

The anti-SLAPP statute "provides a procedure for weeding out, at an early stage, meritless claims arising from protected activity." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384, italics omitted (*Baral*).)

The court's ruling on an anti-SLAPP motion entails a two-step procedure. First, the "moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them." (*Baral*, *supra*, 1 Cal.5th at p. 396.) If the defendant makes such a showing, at the second step the "burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated." (*Ibid.*) Without resolving evidentiary conflicts, the court determines "whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment." (*Ibid.*)

We review an order granting an anti-SLAPP motion de novo and in so doing, conduct the same two-step analysis. (*Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 788.) We review the court's evidentiary rulings in connection with an anti-SLAPP motion for an abuse of discretion. (*Morrow v. Los Angeles Unified School Dist.* (2007) 149 Cal.App.4th 1424, 1444.)

II. The Trial Court Properly Granted the Anti-SLAPP Motion

A. The Trial Court Properly Struck the First Cause of Action for Extortion

Carter first argues the trial court erroneously struck the cause of action for extortion because the anti-SLAPP statute and litigation privilege do not protect the Demand Letters. We disagree.

1. The Demand Letters Are Protected Prelitigation Communications

"Prelitigation communications may qualify for [protection under the anti-SLAPP statute] so long as they ' "concern[] the subject of the dispute" and [are] made "in anticipation of litigation 'contemplated in good faith and under serious consideration . . . .' " ' " (*Flickinger v. Finwall* (2022) 85 Cal.App.5th 822, 832–833.)

Here, Buzbee satisfied his moving burden of showing the Demand Letters are protected. The Demand Letters concerned the subject of the parties' dispute, Carter's alleged sexual assault of Jane and John Doe. The Demand Letters offered a common prelitigation alternative dispute resolution process, mediation, and threatened a lawsuit. Buzbee's and Jane Doe's declarations indicated litigation was genuinely contemplated in good faith. And Jane Doe sued Carter after he declined to mediate.

Carter argues Buzbee did not meet his first-step burden because the record, construed in his favor, shows the Demand Letters were not made in good faith anticipation of litigation. But at the first step, the only issue is whether Buzbee made a *prima facie case* that the activity underlying Carter's claims is statutorily protected, not whether his actions were ultimately lawful. (*Curtin Maritime Corp. v. Pacific Dredge & Construction, LLC* (2022) 76 Cal.App.5th 651, 664.) Buzbee met this burden.

2. The Demand Letters Were Not Extortionate as a Matter of Law

Before moving to the second step of the anti-SLAPP analysis, Carter argues the Demand Letters are not protected because they constituted extortion. This argument relies on our Supreme Court's decision in *Flatley v. Mauro* (2006) 39 Cal.4th 299, 320 (*Flatley*).

The narrow exception described in *Flatley* does not apply here. The plaintiff in *Flatley* sued an attorney for engaging in extortionate communications, and the attorney moved to strike the complaint under the anti-SLAPP statute. The California Supreme Court held the motion was properly denied. The anti-SLAPP statute is not available to strike a complaint when the moving defendant concedes, or the evidence conclusively establishes, that the allegedly protected speech was illegal as a matter of law. (*Flatley, supra,* 39 Cal.4th at p. 320.)

Here, Buzbee did not concede he engaged in extortionate conduct, and Carter submitted no evidence to prove illegality conclusively. The Demand Letters and Buzbee's conduct bear little resemblance to those the Supreme Court in *Flatley* held to be illegal as a matter of law. (See *Flatley, supra,* 39 Cal.App.4th at pp. 330–332.) Even drawing all inferences in favor of Carter's interpretation, the Demand Letters fall into the category of prelitigation threats which *Flatley* has held not to constitute extortion. (*Id.* at p. 332, fn. 16 ["our opinion should not be read to imply that rude, aggressive, or even belligerent prelitigation negotiations, whether verbal or written, that may include threats to file a lawsuit, report criminal behavior to authorities or publicize allegations of wrongdoing, necessarily constitute extortion"].)

3. The Litigation Privilege Applies to the Demand Letters

The litigation privilege precludes liability for a publication made in or in the initiation of a judicial proceeding. (Civ. Code, § 47, subd. (b).) "[T]he privilege is 'an "absolute" privilege, and it bars *all tort causes of action except a claim of malicious prosecution*.' " (*Flatley*, *supra*, 39 Cal.4th at p. 322, italics added.) " 'Any doubt about whether the privilege applies is resolved in favor of applying it.' " (*Fazel v. Pete Fowler Construction Services, Inc.* (2026) 121 Cal.App.5th 315, 320.)

" 'A prelitigation communication is privileged only if it "relates to litigation that is contemplated in good faith and under serious consideration" . . . . The requirement of good faith contemplation and serious consideration provides some assurance that the communication has some " ' "connection or logical relation" ' " to a contemplated action and is made " ' "to achieve the objects" ' " of the litigation.' " (*Malin v. Singer* (2013) 217 Cal.App.4th 1283, 1300–1301, citation omitted.) "[C]ommunications made in connection with litigation do not necessarily fall outside the privilege simply because they are, or are alleged to be, fraudulent, perjurious, unethical, or even illegal," assuming of course they are " 'logically related' to the litigation." (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 920.) An " 'attorney demand letter threatening to file a lawsuit if a claim is not settled' " is a " 'classic example' " of a communication to " 'which the privilege would attach.' " (*Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 682.)

The litigation privilege applies to the Demand Letters. As discussed in part II.A.1., *ante*, the evidence shows the Demand Letters related to litigation contemplated in good faith, Buzbee sent the Demand Letters to resolve his clients' claims against Carter, and the communications bore a logical relation to the litigation threatened against Carter.

Carter fails to show there is a triable issue. First, Carter makes much of the fact that John Doe did not submit a declaration stating he genuinely contemplated suing Carter. But Buzbee and Jane Doe submitted declarations stating litigation was contemplated in good faith, thus providing evidence the Demand Letters were not merely empty threats. Buzbee specifically testified two of his clients "were prepared to assert civil claims against Carter" and authorized him to send the Demand Letters in "serious, good faith anticipation of litigation." Although Buzbee did not specify one of the clients was John Doe, Buzbee attached the demand letter sent on John Doe's behalf to this same paragraph of testimony. Buzbee did not need to submit a declaration from John Doe himself to show John Doe seriously contemplated litigation. (See *Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1259, 1269 [declaration from attorney stating he prepared letter accusing his client's former employee of misappropriation of trade secrets at his client's request created inference the client contemplated litigation seriously and in good faith].) At oral argument, Carter's counsel conceded an attorney may submit a declaration testifying as to their client's intent.

Second, Carter contends a jury could infer John and Jane Doe did not seriously consider suing him because John Doe never sued and Jane Doe ultimately dismissed the New York Action. But this does not necessarily show John and Jane Doe did not genuinely *contemplate* suing. (See *Aronson v. Kinsella* (1997) 58 Cal.App.4th 254, 271–272 (*Aronson*) [that the defendant "did not thereafter file a complaint . . . does not raise a triable issue of fact as to whether [the defendant] made the statements in good faith and serious contemplation of litigation"].)

Third, Carter claims the Demand Letters' request for mediation and statement that Jane and John Doe had "no real interest" in "filing a public lawsuit" confirm they did not contemplate litigation. The actual contents of the demands reveal otherwise. Buzbee stated in the Demand Letters he had recommended Jane and John Doe to "immediately file suit" and they "will do so"; the only reason they had not sued yet was because they did not want to cause a public spectacle. Nothing about these statements show Jane and John Doe were not seriously considering suing Carter. The dispute had "ripened into a *proposed proceeding*" sufficient to trigger the litigation privilege. (*Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 39.)

Finally, Carter argues it can be inferred that Jane Doe's demand letter was a negotiating tactic because when Buzbee sent the "pre-suit demand," Jane Doe had already filed the New York Action accusing a "Celebrity A" of sexual assault. Although Carter claims this was done to "goad" him "into making a pay-off to avoid 'a public spectacle' " and to leave open the option of extorting others, he fails to point to any evidence to support this interpretation of Jane Doe's actions.

B. The Trial Court Appropriately Struck the Second Cause of Action for Defamation

With respect to the cause of action for defamation, Carter does not dispute it arises from protected activity. He only contends he made a prima facie case of defamation. We disagree.

Any plaintiff suing for defamation is constitutionally required to show "the statement on which the claim is based . . . specifically refer[s] to, or [is] 'of and concerning,' the plaintiff in some way." (*Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1042.) That is, the plaintiff must be "identified . . . expressly or by clear implication." (*Id.* at p. 1044.) "Whether defamatory statements can reasonably be interpreted as referring to [the] plaintiff[] is a question of law for the court." (*Tamkin v. CBS Broadcasting, Inc.* (2011) 193 Cal.App.4th 133, 146.)

When the plaintiff is a public figure, which Carter does not dispute he is, he must also " 'show, by clear and convincing evidence, that the defamatory statement was made with actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false.' " (*Sanchez v. Bezos* (2022) 80 Cal.App.5th 750, 763, fn. 4 (*Sanchez*).) The reckless disregard standard "does not mean gross or even extreme negligence, but requires actual doubt concerning the truth of the publication." (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 259, fn. 11 (*Reader's Digest*).)

Here, the trial court correctly found Carter failed to show Statements A through D concerned Carter. In these statements, Buzbee told the press he wanted to cast a wide net and "capture" other perpetrators, he expected "other people will be implicated," some of the people named will "raise some eyebrows," and the names may not be big at first but he has a "long list of names."

These general statements cannot be reasonably read to refer to Carter.

Resisting this conclusion, Carter argues Buzbee linked him to Statements A through D by "liking" an X post on November 19, 2024. But the post and the circumstances surrounding it reveal otherwise. After Carter anonymously sued Buzbee on November 18, Buzbee posted on X that a perpetrator had sued him. Thereafter, a user made a post correctly guessing the plaintiff was Carter. Buzbee "liked" the user's post, which could be read as confirming Carter was the plaintiff and the perpetrator mentioned in Buzbee's November 18 post. The user's post, however, did not connect Carter to the statements Buzbee previously made to the press. Thus, the user's post and Buzbee's "liking" of it did not link Carter to Statements A through D.

As for Statements E and F, which implicated Carter as the person who sexually assaulted Jane Doe, the trial court correctly concluded Carter failed to show Buzbee made those statements with actual malice. The record contains no evidence Buzbee accused Carter of raping Jane Doe while knowing those statements to be false or with reckless disregard as to whether they were true. To the contrary, Buzbee submitted declarations showing his firm's and AVA's investigations led him to subjectively believe in the truth of the accusations.

Carter's arguments do not support a contrary conclusion. First, he contends the clients and potential clients Buzbee relied on to substantiate the accusations against Carter were "obviously" unreliable sources. Specifically, he argues a jury could infer "any accuser" was unreliable because Buzbee's sexual abuse hotline asking for Combs's victims to come forward had received more than 15,000 calls. But those accusations were not all directed at Carter, and in any event, the record shows Buzbee attempted to weed out frivolous claims and only believed Carter's accusers after "extensive" interviews. Carter also argues that because Jane and John Doe alleged Carter sexually assaulted them in 2000 and 2015 respectively, the passage of time inherently rendered them unreliable. Not so. Just because a sexual assault happened years ago does not mean that the accuser is unreliable.

Second, Carter argues Buzbee and his law firm failed to adequately investigate the claims against Carter. But "a defendant's failure to investigate an issue will not, alone, support a finding of actual malice." (*Collins v. Waters* (2023) 92 Cal.App.5th 70, 73.) This is so even if the failure to investigate amounts to gross or extreme negligence. (*Reader's Digest*, *supra*, 37 Cal.3d at p. 259, fn. 11.) Instead, Carter must show Buzbee had "actual doubt[s]" about the truth. (*Ibid.*) Carter argues there is evidence of that here because Buzbee relied on unreliable sources without further investigation. As just detailed, there is no evidence Buzbee's sources were inherently unreliable.

At oral argument, Carter's counsel additionally argued there is at least a triable issue as to whether Buzbee accused Carter of raping John Doe with actual malice because the record is devoid of any evidence Buzbee investigated John Doe's claims. This is a moot point because none of the statements underpinning the defamation cause of action concerns the accusation that Carter raped *John Doe*.

C. The Trial Court Appropriately Struck the Third Cause of Action for IIED

Carter recognizes his cause of action for IIED rises and falls with his causes of action for extortion and defamation.

Because we have concluded the trial court properly struck the latter causes of action, we also conclude the court appropriately struck the cause of action for IIED.

III. The Trial Court Did Not Err in Excluding Carter's New Evidence

Carter next argues that even if the trial court correctly granted the anti-SLAPP motion based on the evidence it considered, the court should have considered Jane Doe's interview with the investigators as it would have allowed Carter to meet his second-step burden.

As a preliminary matter, we note there are many issues with the interview separate from those addressed by the trial court. First, although Carter and his counsel never admitted to sending the investigators and never disclosed who did, the investigators said they were acting "indirectly" on Carter's behalf. If any of Carter's counsel were involved, this would have been a violation of rule 4.2 of the Rules of Professional Conduct, which prohibits direct or *indirect* contact with a represented party. Second, the investigators' questions regarding Jane Doe's communications with Buzbee deliberately invaded the attorney-client privilege. (Evid. Code, § 954.) Carter claims Jane Doe waived the privilege, but the circumstances surrounding the interview, where two investigators surprised her at her home and told her they would leave her alone and let her remain anonymous if she cooperated, call into question whether the alleged waiver was "voluntary." (*Roberts v. Superior Court* (1973) 9 Cal.3d 330, 343.) Third, for the same reasons, the circumstances surrounding the interview raise serious doubts regarding the reliability of Jane Doe's alleged admissions. (See *People v. Chhoun* (2021) 11 Cal.5th 1, 47 [statements only constitute declarations against interest if they are reliable].) Finally, the interview was conducted on February 21, 2025, four days before the hearing on the anti-SLAPP motion, but Carter waited until March 5, 2025, to disclose the interview had occurred and March 14, 2025, to produce a copy of the interview transcript, which also revealed investigators had recorded the interview.

Even assuming these issues do not prohibit consideration of Jane Doe's interview, the trial court properly concluded Jane Doe's statements were inadmissible hearsay and not curable under *Sweetwater*.

A. The Trial Court Acted Within Its Discretion in Concluding Jane Doe's Statements Were Inadmissible Hearsay

An out-of-court statement "offered to prove the truth of the matter stated" is hearsay and inadmissible unless authorized by a recognized exception. (Evid. Code, § 1200, subds. (a), (b).) Evidence Code section 1230 makes an exception for declarations against interest.

The "against interest" issue is a foundational matter for the trial court to determine. (Evid. Code, § 405.) "In determining whether a statement is truly against interest within the meaning of Evidence Code section 1230, and hence is sufficiently trustworthy to be admissible, the court may take into account not just the words but the circumstances under which they were uttered, the possible motivation of the declarant, and the declarant's relationship to the defendant." (*People v. Frierson* (1991) 53 Cal.3d 730, 745.) We may reverse the trial court's finding on this issue only if there is an abuse of discretion. (*Ibid.*)

Here, the trial court did not err in concluding Carter offered Jane Doe's statements for their truth. The statements would only support Carter's contention that Buzbee did not send the Demand Letters in good faith anticipation of litigation and acted with actual malice if it was true that (1) Jane Doe told Buzbee that Carter did not rape her; (2) Buzbee nevertheless pushed her to accuse Carter and promised her a payout; and (3) Buzbee pushed her to dismiss the New York Action.

The trial court also reasonably rejected Carter's argument that Jane Doe's statements were against her interest. The court listened to the audio of the interview and placed itself in Jane Doe's shoes.[4] As noted by the court, the investigators told Jane Doe they believed she was a victim and was being taken advantage of by Buzbee. The court reasonably found the tone of these statements gave Jane Doe the impression that if she supported the investigators' narrative—that Buzbee pushed her to falsely accuse Carter—she need not worry about legal action from Carter. Further, the court noted that although the tone of the interview appeared to be polite and friendly, the investigators surprised her at her front door and told her they were acting "indirectly" on Carter's behalf. Coupled with the fact that one of the investigators also told Jane Doe "if you cooperate and kind of tell us what's going on, everything remains a Jane Doe," the court reasonably concluded Jane Doe felt she needed to cooperate and help Carter if she wanted to remain anonymous and not be sued. The record supports the court's determination that Jane Doe's

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[4] Carter lodged the audio recording of this interview as exhibits with the trial court. The parties have lodged the recording with this court, and we have also listened to the audio to assess the trial court's ruling.

statements actually advanced her interests and thus its ruling did not " 'exceed the bounds of reason, all of the circumstances before it being considered.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

B. Carter Misapplies *Sweetwater*

Carter argues even if Jane Doe's statements were hearsay, the trial court should have considered them because it is reasonably possible they will be admitted at trial. Because Carter's argument is based on a misreading of *Sweetwater*, we disagree.

In *Sweetwater*, the California Supreme Court held that "in determining [whether a plaintiff can satisfy the second-step of the anti-SLAPP analysis], the court may consider statements that are the equivalent of affidavits and declarations *because they were made under oath or penalty of perjury in California*," like plea forms and grand jury testimony transcripts, even though they technically constituted hearsay because of the manner in which they were presented. (*Sweetwater, supra,* 6 Cal.5th at p. 945, italics added.) However, that holding did not end the inquiry because the defendants argued the plaintiff was required to satisfy other preconditions to admissibility at the anti-SLAPP hearing. Rejecting this argument, the court held "evidence may be considered at the anti-SLAPP motion stage if it is reasonably possible the evidence *set out in supporting affidavits, declarations or their equivalent will be admissible at trial*." (*Id.* at p. 947, italics added.)

Here, unlike the guilty plea forms and grand jury testimony proffered in *Sweetwater*, Jane Doe's statements were not made under oath or penalty of perjury. Thus, they were not "the equivalent of affidavits and declarations." (*Sweetwater*, *supra*, 6 Cal.5th at p. 945.) For this same reason, they were not "curable" hearsay identified in *Sweetwater*. (*Id.* at pp. 947, 949; see also *Sanchez*, *supra*, 80 Cal.App.5th at p. 759 [holding same].)

Even assuming Carter is correct *Sweetwater* is not limited to statements made under oath, Carter's argument as to how the statements can come in at trial is unpersuasive. According to Carter, Jane Doe would most certainly testify at trial, and, while on the stand, she would either confirm the statements or deny them and be impeached. Our Division One colleagues rejected a similar preemptive use of the prior inconsistent hearsay exception, and we reject it here, too. (*Sanchez*, *supra*, 80 Cal.App.5th at p. 776 [allowing a plaintiff to preemptively assert the inconsistent statement exception would "eviscerate the hearsay rule for purposes of anti-SLAPP proceedings"].)

IV. The Trial Court Reasonably Denied Carter's Request for Limited Discovery

Finally, Carter argues even if the trial court properly excluded Jane Doe's statements, it should have lifted the discovery stay to let him depose Jane Doe and Buzbee. We conclude the trial court did not abuse its discretion.

When a defendant files an anti-SLAPP motion, all discovery proceedings are automatically stayed pending a decision on the motion. (§ 425.16, subd. (g).) The statute "permits the trial court to lift this [stay] upon a showing of good cause" (*The Garment Workers Center v. Superior Court* (2004) 117 Cal.App.4th 1156, 1161), but the court must ensure that discovery does not delay the resolution of a motion unnecessarily. "[T]o allow [the plaintiff unduly] extensive discovery would subvert the intent of the anti-SLAPP legislation." (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 247.) We review a court's decision to deny relief from the discovery stay for abuse of discretion. (*Balla v. Hall* (2021) 59 Cal.App.5th 652, 692.)

Carter argues the trial court abused its discretion in denying grant his request for discovery because he can only obtain evidence of actual malice by deposing Jane Doe and Buzbee regarding their states of mind. We agree that discovery may be appropriate in cases involving actual malice. (See *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 868, superseded by statute on other grounds as stated in *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 478.) But several reasons support the court's decision to deny Carter discovery here.

First, Carter's request to lift the discovery stay—which came eight days after the initial anti-SLAPP hearing and almost two months after Buzbee filed his motion—was not a "timely and properly noticed motion for discovery" as required by section 425.16, subdivision (g). (*Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1052.) Carter argues the court had inherent power to excuse his untimely request. But "the anti-SLAPP statute prescribed the court's power to allow or proceed with discovery proceedings, and the court lacked inherent power to act directly contrary to the statutory mandate." (*Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1129.)

Second, the trial court reasonably concluded depositions would be inappropriate because Jane Doe and Buzbee already presented sworn testimony on the subject of Carter's proposed inquiry. Discovery may not be obtained under the anti-SLAPP statute "merely to 'test' the opponent's declarations." (*1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 593.)

Third, even if Carter had been given an opportunity to depose Jane Doe and Buzbee, the attorney-client privilege would foreclose him from asking them about their communications. (Evid. Code, § 954.)

Fourth, depositions of Jane Doe and Buzbee to obtain direct evidence of their states of mind were not absolutely necessary because a plaintiff can prove actual malice with circumstantial evidence. (See *Reader's Digest*, *supra*, 37 Cal.3d at p. 257.)

Finally, the record supports the trial court conclusions that the depositions would not be narrowly tailored and that they would infringe on Jane Doe's privacy rights. The pleadings below were contentious and rife with irrelevant accusations, and the court reasonably concluded the depositions would be no different. Further, in light of the fact that Jane Doe had agreed to dismiss the New York Action based on the promise that neither Carter nor his agents would harass or further interact with her, the court did not abuse its discretion in considering her privacy rights as a third party and victim of a serious crime by Combs, whether or not she was also a victim of Carter's.

DISPOSITION

The order is affirmed. Buzbee is entitled to costs on appeal.

RICHARDSON, J.

WE CONCUR:

CHAVEZ, Acting P. J.

GOORVITCH, J.