

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

CRAIG HARRISON,

Plaintiff and Respondent,

v.

ROMAN CATHOLIC FAITHFUL, INC. et al.,

Defendants and Appellants.

F080919

(Super. Ct. No. BCV-19-102204)

**OPINION**

APPEAL from an order of the Superior Court of Kern County. Eric Bradshaw,  
Judge.

LiMandri & Jonna, Charles S. LiMandri, Paul M. Jonna and Jeffrey M. Trissell for  
Defendants and Appellants.

The Law Office of Herb Fox, Herb Fox; Law Offices of Craig A. Edmonston,  
Craig Edmonston; and Kyle J. Humphrey for Plaintiff and Respondent.

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Appellants Roman Catholic Faithful, Inc. and Stephen Brady (Brady) filed this appeal after the trial court denied their anti-SLAPP<sup>1</sup> motion under Code of Civil Procedure section 425.16.<sup>2</sup> Raising several arguments, appellants contend the trial court should have struck the core allegations supporting the defamation claims brought against them by Craig Harrison (Harrison), a former Catholic priest. Harrison sued after Brady came to California and held a press conference. At that press conference, Brady described allegations that had been sent to the District Attorney of Merced County in 2004 and produced documents from those allegations that contained lurid accusations of sexual abuse on the part of Harrison. Brady and his organization, Roman Catholic Faithful, Inc., work to uncover evidence of sexual misbehavior by Catholic priests and Brady claimed to be seeking the truth regarding these allegations. For the reasons set forth below, we conclude that the allegedly defamatory statements identified by Harrison are protected by the fair report privilege codified at Civil Code section 47, subdivision (d). Accordingly, we reverse the trial court's order and remand with instructions the trial court grant appellants' motion.

### **FACTUAL AND PROCEDURAL BACKGROUND<sup>3</sup>**

In this case, the parties' extensive briefing and arguments demonstrate they are deeply familiar with both the core facts of the case and the multitude of additional facts surrounding the disputes between Harrison and those that accused him of wrongdoing, as well as the intense media scrutiny that surrounded the events leading to Harrison's

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<sup>1</sup> "Anti-SLAPP" refers to a strategic lawsuit against public participation (SLAPP). (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57.)

<sup>2</sup> Undesignated statutory references are to the Code of Civil Procedure.

<sup>3</sup> Brady has filed three motions requesting this court take judicial notice of various facts relating to additional proceedings in this case unrelated to the issues on appeal, simultaneously proceeding cases filed by Harrison, Harrison's status in the Catholic Church, and the status of criminal investigations into Harrison's conduct. We have reviewed the requested documents in the context of the issues of this case and find them irrelevant to the disposition. Accordingly, Brady's requests for judicial notice are denied.

lawsuits. We thus focus upon the facts relevant to our final determination and note the broad factual discussions and recitations of additional facts unrelated to the issues we resolve can be adequately reviewed in the parties' briefing.

### *The Parties*

Brady is a practicing Catholic living in or around Illinois. He is a disabled veteran with a military police background who worked in construction. Brady is the founder and president of Roman Catholic Faithful, Inc., a nonprofit organization that "seeks to investigate and document allegations of wrongdoing, and then present the evidence to governmental officials, the public, and the Catholic hierarchy in order to motivate remedial action." Brady and Roman Catholic Faithful, Inc., were active in the 1990's but ceased operations between 2009 and their reopening in 2018.

Harrison became Catholic priest in 1987. He was born in Bakersfield and served in multiple parishes within the Roman Catholic Diocese of Fresno (the Diocese) including parishes in Merced, Firebaugh, and Bakersfield. Harrison began serving the St. Francis Parish in 1999. He has four adopted children and claims a fatherly relationship with four more.

### *Events Before Brady's Involvement*

On or around April 12, 2019, a man contacted the Diocese and reported he had been inappropriately touched by Harrison while serving as an altar boy in Firebaugh an unknown number of years earlier. The Diocese publicly reported these allegations on April 25, 2019, and placed Harrison on leave. This led to two other men making reports of past inappropriate behavior by Harrison and, at least by May 11, 2019, resulted in published reports in the local press providing extensive details about the allegations against Harrison. By May 21, 2019, the first publicly identifiable person to make

accusations of inappropriate behavior by Harrison came forward and was featured in additional news stories.<sup>4</sup>

*Brady's Press Conference*<sup>5</sup>

On May 29, 2019, Brady arrived in Bakersfield and held a press conference. Brady opened the press conference by providing some personal details about his life and his work as president of Roman Catholic Faithful, Inc. Brady explained he became publicly known for exposing homosexual priests in the Catholic Church in or around 2000, based on work exposing a group known as “Saint Sebastian’s Angels.” Brady then detailed his view of the hierarchy of the Catholic Church, its role in attempting to silence his prior work, and the corruption Brady believed was rampant in the organization. Throughout his opening, and indeed his entire press conference, were detours in thought to describe lurid or sensational past events Brady had been a part of or learned about.

Brady then transitioned to more local events. Brady explained he was “going back through some old files” related to another priest he had investigated in Merced. He then described his efforts regarding that priest. In doing so, he again touched on corruption in the Catholic Church, but this time mentioned Harrison for the first time. Brady explained: “We—they did force some action on the hierarchy back then, but it was temporary. They’re—they’re playing games, because I’m telling you, just like in the case

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<sup>4</sup> Additional information about this accuser and the lawsuit against him can be found in a companion case to this appeal, case No. F082516.

<sup>5</sup> In a footnote, Brady contends this court should rely on his declaration of what was said at the press conference and not Harrison’s transcript of a recording from the event. Brady argues such a report violates the secondary evidence rule. We do not agree. California’s secondary evidence rule expressly allows secondary proof of a writing’s (or in this case a recording’s) content unless (1) a genuine dispute exists concerning material terms of the writing, or (2) admitting the evidence would be unfair. (Evid. Code, § 1521.) Brady has made no meaningful argument there is a material dispute in the contents of the transcript, and we see no unfairness in considering it. Brady’s citation to an out-of-state opinion on their local best evidence rule, which is different than California’s secondary evidence rule, does not demonstrate it is improper to consider the transcript.

with Father Harrison—now, Father Harrison could be completely innocent in their conspiracy of half-a-dozen individuals to destroy him. But I’ve never seen any conspiracy like that before. [P] On the other hand, he could be guilty, and he knows where the skeletons are buried. And the hierarchy’s gonna protect him, if he is guilty, because he knows where the skeletons are buried.”

Brady then transitioned to issues regarding Harrison. Brady explained that when looking through old documents, he found an e-mail from 2004 that mentioned Harrison. This led Brady to search for Harrison and discover the current accusations. Brady then explained how he had sent that e-mail to Thomas Walsh, a retired special agent with the FBI, but redacted identifying information, and was not sure how Walsh had determined the sender’s name in the letter sent to the prosecutor. After another short diversion, Brady stated he was there to “prove [ ] Harrison’s innocence or guilt,” and, “I don’t trust the hierarchy. And I believe—just a feeling—I believe there was a payoff in this case, a payoff to shut his mouth. And I’ll tell you why, not Harrison. Harrison could be a victim of the hierarchy, as well.”

From this point, Brady began referencing details from the previously mentioned letter. In the midst of these recitations, Brady focused upon the detail in the letter and made statements exemplified by the following: “I’m going to find out, one way or the other, what year Father Harrison had that Ford Explorer, and then I’ll find out when this high school-aged kid had sex with him. And I can link it to the yearbook at the high school. I’ll get the pictures; I’ll get the names.” Following the scope of the letter, Brady made several proclamations about who may have information, or where he would search. Interspersed with these were additional statements such as, “[T]here’s too much information here, there’s no doubt in my mind—there’s no doubt in my mind that there was a payoff by the Bishop,” and, “The Bishop knows damn well who this person is.” At the conclusion of this stage of the press conference, Brady stated, “I’m not going to rest until I found [*sic*] out. I’m still going back through the files, but you can bet—and I’ll bet

money—there was a payoff, because the Bishop Steinbock had to know who this guy was. But they never mentioned it in his statement coming out, talking about the allegations to [] Walsh against [] Harrison.”

Following this, Brady discussed his position on how priests justified their behavior, again recounted his past successes in these type of investigations, confirmed again how he would proceed to prove what had happened, expressed that there was sufficient factual information available to identify who sent the letter, and accused the Bishop of not being sincere by not providing more information. Brady touched briefly on Harrison again near the end, stating, “[A] priest has no business adopting children, period,” and, “This stuff isn’t appropriate, and it doesn’t happen.” Brady then closed by returning to his claim he had one Bishop Ryan removed for inappropriate conduct with children before asking for questions.

During the question and answer period, Brady was confronted on whether he believed the victims, what amount of investigation he had done, and whether he should be involved at all. Brady stated he believed “the victims, what’s come out so far,” because “[t]here’s too much facts here, too much documentation. ‘Documentation,’ I mean too many particulars, to me, to seem to be made up.” Brady also explained that he had done some research into the issues but generally his goal is to bring publicity to these issues to “force the hand of the Bishop,” and that he “fire[s] a shot over the bow, and I see what happens.” Brady asserted he was the best to investigate because he cared as a Catholic, the amount of time that had passed meant there may be no active crime, and “when you have bishops that won’t act on it, it shows their corruption.”

Interspersed with his answers were additional diversions similar to those within his main statements. These included several statements about whether Brady believed the victims, his take on the evidence and statements made in the underlying e-mail, and his past actions involving other priests. Also included in these were statements such as, “[B]ut as far as—I can’t stand here and say, beyond a reasonable doubt, that Harrison is

guilty and did any of this, I can't say it, because I don't have a single affidavit. And until I get signed statements and affidavits, I'm just looking at what's come out in the press. And it's very damaging, very disturbing."

Brady was directly asked about what happened in the past with respect to the Harrison accusations. He responded that in "2004, the only people that were contacted was the FBI agent went to the prosecutor who was listed on that one ... [P] ... [P] [a]nd then I contacted the Bishop's office." Later, he confirmed, that "[a]ll I can tell you is alle—serious allegations were made against Harrison in 2004. They were brought to my attention. I made sure the Bishop and the local prosecutor got 'em. [P] ... [P] So we— basically, we gave information to the right people, and I walked away 'cause I was over a thousand miles away, and we were working on other cases at the time. And I couldn't get—I couldn't get more individuals to come forward. Never went much further. [P] That being said, now it's sort of a different climate." Brady continued shortly thereafter, "So when all this came back up again, a different environment, and I found out that what we brought forward in 2004 was never dealt with. [P] And when I go back and I read the documents based on my knowledge since then in my 25 years working, it sounds credible because of the detail and the information he went into .... [P] That's why I'm suggesting I think there could have been a payoff most definitely."

Brady concluded by noting he was going to try to meet with law enforcement about these issues in the future and would continue to gather evidence.

#### *The Walsh Letter*

At the press conference, Brady provided copies of the allegations he had been discussing in the form of the letter Walsh had sent to the District Attorney of Merced County and the e-mail purportedly attached to that letter from a Trevor Silveira.<sup>6</sup> The

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<sup>6</sup> At the press conference, Brady repeatedly indicated the name "Trevor Silveira" was a pseudonym and implied at several points he did not know who "Trevor" actually was. We refer to the e-mail as the Silveira e-mail for ease of reference.

letter expressly noted it had been sent to the District Attorney and opened and that it was “[c]onfirming our telephone conversation” before claiming to attach the e-mail from Silveira. The letter provides information about Harrison’s appointment in Merced and asserts that the child mentioned in the e-mail is Harrison’s adopted son.

After this opening paragraph, the first half of the letter discussed allegations related to someone named F.D. In those allegations, F.D. spat on Harrison and called him “a ‘Child Molester’ ” when it was suggested F.D. reside in Harrison’s care. As one purported basis for this response, the letter included an allegation that F.D. had heard Harrison would line up boys in his care and examine their testicles to determine if they were using drugs. The letter also included an allegation that one boy who had come to Merced with Harrison had committed suicide, although Walsh expressly stated he believed the name given to him for that person was incorrect. This section also included an allegation that F.D. struck Harrison during their argument and was held overnight by the Merced Police, although no charges were filed.

The second half of the letter included allegations about financial concerns. Walsh alleged that he had been contacted by people who had previously contributed money in response to requests by Harrison. Walsh asserted there had never been an accounting of funds, an itemization as to how they were spent, or an identification of who benefited from them. Walsh also claimed the Bishop at the time was unaware of Harrison’s fundraising efforts.

The letter closed with a statement that Walsh was “corresponding with you on behalf of the contributors who contacted me to bring to your attention the campaign to raise funds, which may or may not be a violation of the law.”

#### *The Silveira E-mail*

The e-mail from Silveira allegedly attached to the Walsh letter and distributed by Brady at the press conference is also in the record. That e-mail contains a detailed set of allegations concerning sexual conduct between Silveira and Harrison. Relevant to the

allegations of defamation, the letter contained an allegation that Silveira “had twos [*sic*] sexual encounters and one semi-sexual encounter” with Harrison, “twice in [Harrison’s son’s] bedroom and the other in the back of [Harrison’s] Ford Explorer.” Silveira wrote that he did not find these interactions wrong “until I found another person on his knees providing [Harrison] with oral pleasure ....” The e-mail also contained allegations against two purported priests, although only one allegation contained specific details.

*Harrison’s Complaint and the Anti-SLAPP Motion*

On August 6, 2019, Harrison filed a complaint for defamation against Brady and Roman Catholic Faithful, Inc. Harrison alleged Brady and Roman Catholic Faithful, Inc. defamed him at the May 29, 2019 press conference. Eight allegedly defamatory statements were included in the complaint. These were statements “alleging [1] that Harrison had sex with two high school students while a pastor in Firebaugh, California, [2] that Harrison would examine boys’ private parts every morning to check whether they were using drugs, [3] that incidents took place in the bedroom of one of Harrison’s adopted sons, [4] that Harrison allegedly had sex with a minor in the back of the priest’s Ford Explorer, [5] that Harrison is a sexual predator, [6] corrupt, [7] has a bad gambling problem and is a high roller and [8] suggested that one troubled youth committed suicide because of alleged abuse by” Harrison.

In October 2019, Brady filed an anti-SLAPP special motion to strike Harrison’s complaint. Brady raised several points, including that both the statutory litigation privilege and the common law neutral reportage privilege applied to his statements, that Harrison was a public figure embroiled in a public controversy who could not show malice, and that Harrison could not prove his allegations regarding what Brady had said at the press conference. Brady submitted a declaration and, along with his counsel, multiple exhibits in support of the motion. Brady also submitted a declaration from Harrison’s sole public accuser. Harrison opposed the motion, submitting his own declaration, declarations from seven other individuals, and numerous exhibits.

The trial court held a hearing on Brady’s motion and eventually denied it. The court first found that Harrison’s complaint arose “from ... oral and written statements made during a press conference on May 29, 2019 at the Holiday Inn,” in “connection with an ‘issue of public interest.’ ” The court then found that Harrison’s complaint was “legally sufficient and supported by a *prima facie* showing of facts to support a favorable judgment on the merits.” The court concluded Harrison was a private figure who had not injected himself into an ongoing public controversy as needed to qualify for limited public figure status. The court further rejected any claim that Brady’s statements were privileged under the “ ‘neutral reportage privilege,’ ” which the court concluded does not exist in California, or the litigation privilege under Civil Code section 47, subdivision (b) because the statements were not made in furtherance of proceedings and because Brady was not a litigant or other participant authorized by law. Finally, the court found that although a showing of malice was not required, Harrison had presented *prima facie* evidence “of the falsity of the allegedly defamatory statements and actual malice.”

This appeal timely followed.

## DISCUSSION

On appeal, Brady raises similar arguments to those he raised before the trial court. Notably, however, Brady also raises additional positions. These include claims that Harrison has failed to prove Brady made certain accused statements at the press conference, that those statements are opinion, that Harrison is a public figure embroiled in a public controversy, that the evidence fails to make a *prima facie* showing of malice, and that various privileges apply, including the statutorily defined litigation and fair report privilege and the common law neutral reportage privilege.<sup>7</sup> (AOB 43-67)! As

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<sup>7</sup> Harrison raises no objection to the expanded scope of Brady’s arguments. We note that the case law contains conflicting opinions regarding whether one may raise new arguments on appeal. (See *Hoffman-Haag v. Transamerica Ins. Co.* (1991) 1 Cal.App.4th 10, 15–16 [“We also note that on appeal a party may change the legal theory he relied upon at trial, so long as the new theory presents a question of law to be applied to undisputed facts in the record.”]; *Ward v.*

noted above, it is our opinion that Harrison has failed to demonstrate Brady made three contested statements and that the statutorily defined fair report privilege applies to the remaining five in this matter. As such, we do not reach the remaining grounds Brady argues in support of his motion to strike.

**Standard of Review and Applicable Law**

The California Legislature enacted section 425.16 in response to “a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.” (§ 425.16, subd. (a).) Section 425.16 states in pertinent part: “A cause of action against a person arising from any act of that person in furtherance of a person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” (§ 425.16, subd. (b)(1).)

Anti-SLAPP motions require a two-step analysis. First, the defendant bringing the motion must make a prima facie showing that the suit arises from an act in furtherance of the defendant’s rights of petition or free speech in connection with a public issue (i.e., the challenged cause of action is one arising from protected activity enumerated in the

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*Taggart* (1959) 51 Cal.2d 736, 742 [change in theory permitted on appeal only when raising question of law on facts appearing in record]; but see *Flatley v. Mauro* (2006) 39 Cal.4th 299, 321, fn. 10 [“As Flatley points out, Mauro’s motion to strike was not based on [section 425.16,] subdivision (e)(2) but on an assertion that his ‘prelitigation communicative efforts to reach a settlement of his client’s claims ... are protected by section 425.16[, subdivisions ](e)(1) and (e)(4).’ Mauro may not change his theory of the case for the first time on appeal.”].) Upon review we consider *Ward* more applicable than *Flatley*. The underlying claims of a lack of evidence and applicable statutory privilege were raised below—although in a more limited scope—and no new evidence is presented on appeal. Further, Harrison has had an opportunity to respond and—in the case of the fair report privilege—has presented arguments against Brady’s positions without raising a forfeiture argument. We thus exercise our discretion to resolve the disputes as raised on appeal.

statute).<sup>8</sup> Once such a showing is made, the second step shifts the burden to the plaintiff to demonstrate a probability of prevailing on the merits of the challenged claims. (§ 425.16; *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 420.) This requires that the plaintiff “present evidence showing he [or she] would establish a prima facie case at trial.” (*Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1496; see *Integrated Healthcare Holdings, Inc. v. Fitzgibbons* (2006) 140 Cal.App.4th 515, 527 [“To establish a probability of prevailing, the plaintiff ‘ ‘must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.’ ’ ”].)

The “ ‘second-step burden is a limited one’—a trial court neither weighs the evidence nor resolves evidentiary conflicts.” (*RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 434.) To overcome any asserted defenses, the defendant must either show that they are inapplicable as a matter of law or make a prima facie showing of facts that, if accepted, would negate such defenses. (*Ibid.*) Privileges such as the litigation and fair report privilege are considered at this second step. (*Id.* at p. 434 [“The litigation privilege is one such defense that may be considered at [step] two.”]; *J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87, 101 [considering fair and true report privilege in second step analysis].)

#### *Scope of a Defamation Claim*

Defamation may consist of either libel or slander. (Civ. Code, § 44.) Libel “is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to

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<sup>8</sup> In this case, there is no dispute raised over the first step and Harrison has confirmed he is not contesting this analysis.

injure him in his occupation.” (Civ. Code, § 45.) Slander “is a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means,” which satisfies one of five additional statutory requirements. (Civ. Code, § 46.)

#### *The Fair Report Privilege*

“A privileged publication or broadcast is one made” “[b]y a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.” (Civ. Code, § 47, subd. (d)(1).)

“The fair report privilege ‘confers an absolute privilege on any fair and true report in, or a communication to, a public journal of a judicial proceeding, or anything said in the course thereof.’ [Citation.] When it applies, the reported statements are ‘absolutely privileged regardless of the defendants’ motive for reporting’ them. [Citations.] Courts have construed the privilege broadly, ‘mindful of the Legislature’s intent ... “to preserve the scarce resources of California’s courts [and] to avoid using the courts for satellite litigation.” ’ ” (*Healthsmart Pacific, Inc. v. Kabateck* (2016) 7 Cal.App.5th 416, 431, third bracketed insertion in original (*Healthsmart*)).

“Defendants bear the burden of proving the privilege’s applicability. [Citation.] Because there is no meaningful factual dispute over the content and distribution of the ... press release, whether the privilege applies is a question of law.” (*Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 278–279, fn. omitted.)

“Although the fair report privilege is typically invoked by news media defendants, it also protects those who communicate information *to the media*. [Citation.] Indeed, the Legislature’s explicit purpose for enacting a 1996 amendment to [Civil Code ]section 47, subdivision (d), was to protect such intermediaries. That amendment expanded the privilege to include fair and true ‘communication[s] to,’ as well as fair and true ‘report[s] in,’ public journals concerning judicial, legislative, or other public proceedings.

[Citation.] ... The additional language thus ‘create[d] the bridge’ between the litigation privilege (which covered statements made in judicial proceedings) and the fair report privilege (which covered media reports of judicial proceedings) ‘to protect a third party who communicates this already privileged material to the press.’ ” (*Healthsmart, supra*, 7 Cal.App.5th at pp. 431–432, first, second & fifth bracketed insertions added.) Thus, “[u]nlike the litigation privilege, the fair and true reporting privilege pertains specifically to communications to the press, and it requires that the report be fair and true, not that it actually further the underlying litigation.” (*Argentieri v. Zuckerberg* (2017) 8 Cal.App.5th 768, 787 (*Argentieri*).

Focusing upon the claims raised in this case, then, the Brady’s statements are protected by the privilege if they are shown to be (1) fair and true (2) communications to a public journal (3) of a (4) public official proceeding or anything said in the course of a public official proceeding.

### **Harrison Has Not Made a Prima Facie Showing of Slander**

Before the trial court and while focusing on the allegedly slanderous statement that Harrison has a bad gambling problem and is a high roller, Brady argued Harrison could not demonstrate this particular slanderous statement was made. On appeal, Brady extends this argument to three allegedly slanderous statements which Brady asserts are not contained in the underlying e-mail. These were noted above as follows: “[5] that Harrison is a sexual predator, [6] corrupt, [7] has a bad gambling problem and is a high roller.” Brady argues there is no evidence in the record that these three statements were actually made at the May 29, 2019 press conference and thus no prima facie showing of a claim for slander based upon them can be made. Harrison does not respond to these claims in his responsive brief.<sup>9</sup>

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<sup>9</sup> To the extent Harrison references any allegations similar to these claims, he points to a declaration from his public accuser that does not reference Brady or the press conference and to statements made outside of the confines of the press conference.

As Brady notes in his briefing, our review of an anti-SLAPP motion is bounded by the allegations made in the pleadings. (*Medical Marijuana, Inc. v. ProjectCBD.com* (2020) 46 Cal.App.5th 869, 884 [looking to controlling complaint to define the activity that forms the basis of the underlying claim].) The burden of making a prima facie showing is low, requiring only that competent evidence exists to support the claim made in the pleadings, but it is not immaterial. (*Paulus v. Bob Lynch ford, Inc.* (2006) 139 Cal.App.4th 659, 672–673 [“The plaintiff may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence.”].)

This court has reviewed the transcript of the May 29, 2019 press conference, the Walsh letter, the Silveira e-mail, and the declarations submitted regarding those events. In none of those records is there any indication Brady made the three identified and allegedly slanderous statements or anything reasonably close that could be understood to be accused under the complaint. Nor are such statements contained in the written materials published by Brady. At the press conference, Brady’s comments coming closest to suggesting that anyone is a sexual predator or corrupt were not directed toward Harrison, but rather toward other priests Brady alleged to have previously uncovered and to the hierarchy of the Catholic Church, whom Brady repeatedly alleged were corrupt and likely involved in payoffs to keep people quiet. While Brady did make several statements confirming that he believed the victims who had reported Harrison, he based his position on factual details in the complaints that he alleged made them believable and not on any claim Harrison was a sexual predator generally. Other than these statements, the only evidence that appears to show such statements from Brady comes from an affidavit submitted by Harrison’s counsel that points to interviews with other news organizations that were not referenced in the complaint and submitted under a heading that Brady has “Continued Slandering Harrison Since the May 29, 2019 Conference.” (Boldface omitted.)

Accordingly, to the extent Harrison’s complaint alleges that Brady defamed him by making three slanderous statements at the May 29, 2019, press conference, Harrison has failed to point to any competent admissible evidence that those statements were actually made. This failure to support three specific factual claims in the complaint means the trial court erred in concluding Harrison made a prima facie showing he has a probability of prevailing on the merits on those three challenged claims. (See *Integrated Healthcare Holdings, Inc. v. Fitzgibbons*, *supra*, 140 Cal.App.4th at p. 527 [“To establish a probability of prevailing, the plaintiff ‘ ‘must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.’ ’ ”].)<sup>10</sup>

**Brady’s Remaining Statements Are Protected by the Fair Report Privilege**

Having determined the three allegedly slanderous statements are not supported by sufficient competent evidence to make a prima facie showing Harrison could prevail at trial, we are left with the remaining five statements: “[1] that Harrison had sex with two high school students while a pastor in Firebaugh, California, [2] that Harrison would examine boys’ private parts every morning to check whether they were using drugs, [3] that incidents took place in the bedroom of one of Harrison’s adopted sons, [4] that Harrison allegedly had sex with a minor in the back of the priest’s Ford Explorer, ... and [8] suggested that one troubled youth committed suicide because of alleged abuse by” Harrison. As these allegations track the language of the Walsh letter and Silveira e-mail, there is no dispute that they were made. Rather, Brady attacks these allegations by claiming they are subject to various privileges, including the fair report privilege.

Harrison challenges Brady’s reliance on the fair report privilege in two ways. First, Harrison states, “Brady did not republish the letter to law enforcement, but instead

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<sup>10</sup> Given that the scope of our review is bound by the complaint, we take no position on whether the accused statements would support a cause of action arising out of the later interviews in which they were made.

he disseminated it to the public, even though the allegations had already been investigated and rejected by the Bakersfield Police Department.”<sup>11</sup> Second, Harrison argues that Brady’s recitation did not constitute a fair and true report of the content of the letter or of the underlying proceedings. Harrison argues the public would understand Brady’s comments as assertions of fact, and not as a report of prior accusations.

We readily reject Harrison’s claim that publication to the press, as opposed to publication to the police, bars application of the fair report privilege. As explained in *Healthsmart*, the fair report privilege was modified specifically to include the publication of materials relating to public proceedings when made to the press. (*Healthsmart, supra*, 7 Cal.App.5th at pp. 431–432; *Argentieri, supra*, 8 Cal.App.5th at p. 787.) We thus turn to whether Brady’s publication satisfies the fair and true requirement of the privilege.<sup>12</sup>

The relevant question for this court is whether Brady’s statements were a fair and true recitation of what was said in the underlying proceedings. Upon review of the record and taking a totality of the circumstances approach, we conclude Brady’s statements satisfy this requirement.

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<sup>11</sup> Harrison provides no citation for the assertion that these allegations were previously rejected by the Bakersfield Police Department. In this court’s review, it has identified no support for this assertion. Regardless, if Brady made a fair and true report of the accusations, this court finds no indication in the case law that the fair report privilege would not apply even if the accusations had been rejected at some point in the past.

<sup>12</sup> Harrison raises no dispute that the press conference is a publication to a public journal or that the underlying letter and e-mail are part of or reflect statements made in the course of a public official proceeding. (See *Green v. Cortez* (1984) 151 Cal.App.3d 1068, 1073 [television broadcast company and newspapers were “no doubt ‘public journals’ within the meaning of the statute”]; *Hawran v. Hixson, supra*, 209 Cal.App.4th at p. 280 [assuming news outlets were public journals]; see also *Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1337 [stating in fair report privilege context that public official proceedings include police investigations]; but see *Burrill v. Nair* (2013) 217 Cal.App.4th 357, 379, 398 [“But Nair has cited us to no case, nor have we found any on our own, holding this privilege applies to a report of the charges made in a citizen’s criminal complaint, made by the citizen who filed that complaint, when there is no evidence any official action has been taken with respect to the complaint.”], disapproved on other grounds by *Baral v. Schnitt* (2016) 1 Cal.5th 376, 387.)

“ ‘Fair and true’ in this context does not refer to the truth or accuracy of the matters asserted in the judicial proceedings, but rather to the accuracy of the challenged statements with respect to what occurred in the judicial proceedings.” (*Healthsmart, supra*, 7 Cal.App.5th at p. 434.) In assessing whether a report is fair and true, “ ‘the publication[s] [are] to be measured by the natural and probable effect [they] would have on the mind of the average reader. [Citations.] The standard of interpretation to be used in testing alleged defamatory language is how those in the community where the matter[s] [were] published would reasonably understand [them].’ ” (*Kilgore v. Younger* (1982) 30 Cal.3d 770, 777.) “The defendant is entitled to a certain degree of ‘ ‘flexibility/literary license’ ’ in this regard, such that the privilege will apply even if there is a slight inaccuracy in details—one that does not lead the reader to be affected differently by the report than he or she would be by the actual truth.” (*Argentieri, supra*, 8 Cal.App.5th at pp. 787–788.) “In evaluating the effect a publication has on the average reader, the challenged language must be viewed in context to determine whether, applying a ‘totality of the circumstances’ test, it is reasonably susceptible to the defamatory meaning alleged by the plaintiff: ‘ “[A] defamatory meaning must be found, if at all, in a reading of the publication as a whole.” [Citation.] “This is a rule of reason. Defamation actions cannot be based on snippets taken out of context.” ’ ” (*J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP, supra*, 247 Cal.App.4th at p. 100.)

Even if fair and true, however, one cannot use the opportunity to subvert legitimate defamation protections by, for example, making “defamatory allegations in a complaint and then report[ing] the same alleged facts, *as facts*, to the media with impunity. This is because the fair report privilege protects reports and communications ‘of ... a judicial ... proceeding, or ... of anything said in the course thereof.’ [Citation.] That is, the statements are privileged if they are fair and true reports *about the proceedings* or of what was *said in the proceedings*. [Citation.] There is thus a critical difference between communicating to the media what is alleged in a complaint and

communicating the alleged facts without reference to the complaint.... The issue is whether the average viewer or listener of the media reports would understand the attorneys' statements as communications about the [underlying] complaint ....”

*(Healthsmart, supra, 7 Cal.App.5th at pp. 435–436.)*

Given these standards, we are not concerned with the merits of Brady's allegations or the truth of the statements contained in the published documents. Rather, our analysis considers whether Brady accurately conveyed the substance of allegations made in the Walsh letter and Silveira e-mail in a manner that would leave the average viewer, reader, or listener with the understanding that Brady was reporting allegations previously made and not making pure assertions of fact.

On the requirement that Brady accurately conveyed the substance of the prior proceedings, we see no material difference between Brady's publications and the statements contained in the Walsh letter or Silveira e-mail as they relate to Harrison's allegations of defamation. There is no argument raised that Brady did not publish the complete underlying documents as they were presented to the District Attorney of Merced County in 2004. And there is no argument made or evidence submitted that these documents were not, in fact, presented to the district attorney previously. Thus, at the outset, there can be no claim that Brady's actions were anything other than a complete and full publication of what those same documents stated in the context of the 2004 proceedings.

Upon review of the press conference itself, Brady's statements regarding the document consistently focused upon what was written therein. The recounting was then peppered with Brady's belief as to whether those statements were provable and what proving them or disproving them would mean to the allegations they contained. In our independent review we have identified no statement by Brady relating to the allegations made against Harrison that would constitute anything other than a fair and true recitation of what was contained in the underlying documents. To the extent Brady's statements

could be viewed as a summary of the underlying documents, the main gist of those documents is fairly and accurately conveyed by Brady. (See *Argentieri, supra*, 8 Cal.App.5th at p. 793 [“And while [counsel] made a statement summarizing the complaint rather than delivering the complaint itself, it would be anomalous to hold privileged the delivery to the press of the complaint—with its extended and more detailed allegations of [the plaintiff’s] purported wrongdoing—but not the delivery to the press of a mere summary that succinctly sets forth its gist.”].)

We next turn to whether the average viewer, reader, or listener would understand Brady’s publications and statements to relate to a public official proceeding, in this case the report of accusations made in 2004, or to assert matters of fact. Again, we find no basis to conclude that the average viewer, reader, or listener would understand Brady’s publications and statements as identified in Harrison’s complaint to be anything other than recitations of prior accusations. While it is true that Brady’s press conference contained a heavy amount of bluster and pontification, a full review of the event leaves this court with the clear understanding that Brady was railing against the Catholic Church, its hierarchy, and that group’s failure to act upon allegations that it had been informed of nearly 15 years earlier.

The recent resurfacing of complaints against Harrison was certainly the catalyst for Brady’s decision to hold a press conference. However, when the complete press conference is considered, Brady’s publication of the prior accusations and underlying documents were essentially the foothold Brady needed for his broader theories about a Church coverup, alleged payoffs, and general corruption. Thus, throughout his press conference, Brady took pains to repeatedly point out the lack of investigation by himself or anyone else up to that point in time and the possibility that Harrison was being falsely accused or wrongly affected by the improper actions of those above him in the Church. Brady repeated accusations from the Walsh letter and Silveira e-mail in the context of a starting point for investigation that could prove or disprove the allegations. While it is

fair to conclude that Brady believed the accusations made against Harrison, Brady's repeated reference to his prior successful investigations and the extended efforts required to complete them provides strong evidence that the average listener would understand Brady to be reciting allegations previously made and insisting that they finally be investigated.

Our conclusion is further supported by direct statements made by Brady that Walsh had previously sent a letter regarding allegations that Walsh had uncovered many years ago and that Brady had ensured those reports had been conveyed to the Catholic hierarchy and the District Attorney of Merced County. Coupled with the simultaneous publication of the letter, including the fact it was addressed to the District Attorney of Merced County, one reviewing the press conference and the statements made therein would undoubtedly understand that the facts discussed by Brady arose out of allegations that had been made in 2004, which had been reported to both the Church and the Merced District Attorney. Brady's extensive diversions into his issues with the Church hierarchy and their desire to protect potentially abusive priests adds further and meaningful context to why Brady would raise the prior allegations and insist he was the one that had to investigate. The average listener to the press conference would understand Brady to be crusading against the Catholic Church and its handling of accusations such as this and not insisting that the allegations contained in the letter are absolute fact.

Given the thematic points regarding the need for investigation and the corruption of the Catholic Church made in Brady's statements and the direct publication of documents not disputed as coming from a prior public official proceeding—specifically a complaint about potential criminal conduct made to the district attorney—we conclude that in the totality of the circumstances a listener, reader, or viewer would understand the allegedly defamatory statements attributed to Brady to be fair and true reports of things said in the course of a public official proceeding. As the average viewer would not understand the alleged defamatory statements to be unassociated with the allegations

made in 2004 nor as direct allegations of fact by Brady, the fair report privilege applies and absolutely bars Harrison’s complaint as drafted. We therefore reverse the trial court’s decision and remand for further proceedings with instructions to grant appellants’ motion.

**DISPOSITION**

The trial court’s “ORDER DENYING ANTI-SLAPP MOTION AND MOTION FOR ANTI-SLAPP ATTORNEYS’ FEES,” filed on December 11, 2019, is reversed. The cause is remanded to the trial court with instructions to enter a new order granting appellants’ special motion to strike under section 425.16 and dismissing the complaint and to conduct further proceedings to determine the amount of attorney fees and costs to be awarded. Appellants are awarded costs on appeal in an amount to be determined by the trial court.

Appellants’ “MOTION FOR JUDICIAL NOTICE,” filed on July 16, 2020, “SECOND MOTION FOR JUDICIAL NOTICE,” filed February 25, 2021, and “THIRD MOTION FOR JUDICIAL NOTICE,” filed May 18, 2021, are DENIED.



HILL, P. J.

WE CONCUR:



LEVY, J.



SMITH, J.