



LAW OFFICE OF  
STEVEN D. ZANSBERG, LLC

May 24, 2022

*via email*

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Re: *Hicks and Hines v. Rubinstein, et al.*, No. 2022-cv-31306 (Denver County Dist. Ct.)

Dear Mssrs. Andrews and Atkins:

This law firm represents Macmillan Publishing Group, LLC,<sup>1</sup> its division Farrar, Straus, Giroux, and Julian Rubinstein (collectively “defendants”). I write to ask that your clients voluntarily dismiss the above-referenced lawsuit, which has not yet been served on any defendant, on or before May 31, 2022, or your clients will become financially responsible for all fees and costs my clients incur in having that lawsuit dismissed by operation of Colorado’s anti-SLAPP Act. § 13-20-1101(4)(a), C.R.S. (2022).

The Complaint alleges that Mr. Sheria “Drettie” Hicks and Mr. Pernell (“P.Lok” or “P-Lok-O”) Hines were defamed by the statements made about them in the book, “The Holly: Five Bullets, One Gun, and the Struggle to Save an American Neighborhood” (hereinafter “the Book”). For the reasons I explain below, your clients’ lawsuit has zero chance of success.

The Complaint alleges that the following four categories of statements about Plaintiffs were both false and defamatory:

1. That they “committed crimes and w[ere] involved in crime in the Holly neighborhood and Denver,” and that Mr. Hicks “smoked ‘dope’ specifically crack cocaine”;

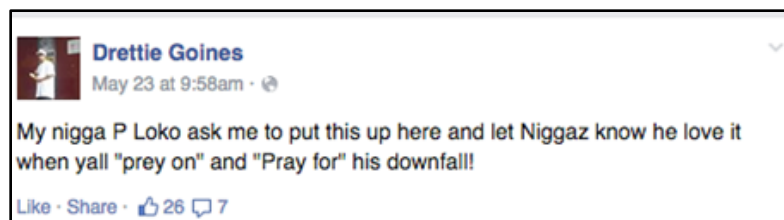
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<sup>1</sup> The Complaint erroneously names “Macmillan Publishing, Inc.” as a defendant.

2. That they were “Original Gangster,” “OG” Blood members; furthermore, your letter claims, “Rubinstein wrote that Pernell Hines still controlled the Northeast Park Hill’s Holly neighborhood as late as 2020 or 2021”;
3. That they were “‘snitch[es]’ for the Denver Police Department, [and] worked as confidential informants for the Denver Police Department”; and
4. That they were “released, had charges dropped, or otherwise exonerated from various crimes as a result of [their] work for the Denver Police Department”; specifically, your letter claims, the Book states that Hines “faced 10 criminal charges after repeated arrests in 2019 and 2020, claiming that for some of these, he received reduced punishment and for some [he] was never prosecuted as a result of working as an informant for the Denver Police Department.”

The first set of statements above accurately report the contents of official law enforcement records – i.e., that both Mr. Hicks and Mr. Hines have been convicted of multiple crimes in the City and County of Denver. See **Exhibit A** hereto. Mr. Hicks was convicted in August 2017 and sentenced to four years in prison for possession of a controlled substance with intent to distribute it, as reflected in **Exhibit A** (and mentioned on page 346 of the Book). Accordingly, those statements are absolutely immune from liability for defamation. See *Smiley’s Too, Inc. v. Denver Post Corp.*, 935 P.2d 39, 42-43 (Colo. App. 1996) (“reporting the truth is not a tort”); *Fry v. Lee*, 408 P.3d 843, 849 (Colo. App. 2013) (holding that a statement “is not actionable if it is substantially true.”).

The second set of statements, declaring that both Mr. Hicks and Mr. Hines were affiliated with, and held themselves out as affiliated with, the “OG” Bloods is also unquestionably true. Mr. Hines has repeatedly acknowledged having been a Blood gang member, including in this video [[https://www.youtube.com/watch?v=FJaFX3\\_DLG0](https://www.youtube.com/watch?v=FJaFX3_DLG0)] in which he described his multi-decade involvement with that gang and the various crimes he committed (including drug dealing, car theft, and homicide) while being so involved. Mr. Hicks, too, was a well-known and self-proclaimed member of the OG Bloods – he was featured with other Blood members (including L. Shady and Pernell Hines flashing gang signs) in a 2014 YouTube video entitled “Wit Da Shit.” He also posted (under the name “Drettie Goines”) the following comment regarding “P Loko” [a/k/a Mr. Hines, as the CBI report shows]:



which can accurately be described as his being “a so-called P.R. man” for Mr. Hines.

With respect to the second portion of paragraph 2 above, stating that Mr. Hines “still controlled the Northeast Park Hill’s Holly neighborhood as late as 2020 or 2021” the Book does not state that as a fact. Instead, it states, on page 359, that reliable sources (including Terrance Roberts) had told Mr. Rubinstein that Mr. Hines has so claimed:

Meanwhile in the Holly, Pernell Hines continued working out of Terrance’s old office, where a vigil for his and Ice’s brothers was held. While Pernell had apparently convinced someone in Denver’s public safety office that he was no longer a Blood, **that was not something I found credible. Photos of him continued to appear on social media at Blood gang gatherings, depicting him wearing red and flashing gang signs. All of my best sources in the neighborhood, including Terrance, told me that Pernell and his brother Leland, recently deceased, had made it clear that they still controlled the “car,” meaning they were in charge in the Holly.** Yet, somehow, Pernell continued to do anti-gang work, and to receive support from the activist Brother Jeff. Pernell’s record fighting gang violence, though unchallenged, spoke for itself. On his watch gang violence in the Holly had exploded, with his own brother among the victims.

Mr. Rubinstein stands behind that reporting, and, if Mr. Hines so desires, we can provide additional documentary evidence of his appearing alongside other Bloods in the past two years and flashing gang signs. Here are but two examples (from 2021):



We do acknowledge that the first edition of the Book, in the Epilogue (page 359), included two sentences which stated, mistakenly, that in 2019 and 2020 Mr. Hines had been charged with various crimes (two drug counts, assault, and parole violations). Those sentences were based upon public court records that discussed “Pernell Lamont Hines.” Upon being alerted, for the first time (after publication), that those records concerned Mr. Hines’ son who has the identical name, Mr. Rubinstein and Macmillan immediately removed those sentences from subsequent print runs on their own initiative – as shown in the reproduced section of the Epilogue above from the paperback edition of the Book. While that error is regrettable, and my clients do apologize for it, it nevertheless is not

actionable as defamation under Colorado law. In Colorado, all libel plaintiffs (even purely “private figures,” unlike Mr. Hines) who sue on a publication addressing a matter of legitimate public concern, such as the Book, must prove, by “clear and convincing evidence,” that the defendant published the false and defamatory statement either knowingly or with a “high degree of awareness of its probable falsity.” C.J.I.-Civ. 22:1; 22:2, 22:3 (2022); *Di Leo v. Koltnow*, 613 P.2d 318, 321 n. 4 (Colo. 1980).

Here, Mr. Hines cannot possibly meet that burden. The fact that both he and his son bear the identical first, middle, and last names – with no indication of one being “Sr.” and the other “Jr.” – combined with the fact that my clients swiftly corrected the error upon being alerted to it, through their own initiative, make it impossible to prove, by the requisite “clear and convincing evidence,” that the erroneous information was published with knowledge of it was false or while my clients had a “high degree of awareness of its probable falsity.” See, e.g. *McMullen v. Denver Post Corp.*, No. 2000-cv-3759 (Denver Cty. Dist. Ct., May 24, 2001) (granting summary judgment to defendants for lack of actual malice where newspaper sports columnist admitted he’d confused the plaintiff with another former professional franchise owner who had left behind “considerable unpaid debts”); see also *Nelson Auto Ctr., Inc. v. Multimedia Holdings Corp.*, 951 F.3d 952, 958 (8th Cir. 2020) (finding no plausible allegation of actual malice where television station mistakenly reported that an auto dealership, as opposed to one of its employees, was the subject of a criminal investigation, which the station corrected immediately upon being notified of the error: “Failure to recognize a mistake or ambiguity and its potential consequences is not evidence of a reckless disregard for the truth.”); *Peterson v. N.Y. Times Co.*, 106 F. Supp. 2d 1227, 1228 (D. Utah 2000) (affirming dismissal of libel claim for lack of actual malice premised on defendants having mistakenly published plaintiff’s photograph instead of that of another individual who had the same name, and corrected it immediately upon discovering the error); *Jones v. New Haven Register, Inc.*, 763 A.2d 1097, 1105 (Conn. Super. Ct. 2000) (same); *Johnson v. Chi. Tribune Co.*, 2014 Ill. App. 133087, at 8 (Ill. App. Ct. 2014) (affirming grant of summary judgment to defendant that mistakenly confused the plaintiff, a former NBA basketball player, with another former NBA player of the same name). Just as was the case in *Johnson*, at the time the Book was first published, “there was no subjective understanding or awareness that the [author or] editors had identified the wrong [Pernell Hines].” *Id.*

Several of statements identified in your letter as false and defamatory do not appear anywhere in the Book. For example the third set of statements above – which you assert accuse both Mr. Hicks’ and Mr. Hines’ of having been “snitches” (i.e. confidential informants for the Denver Police Department) – do not appear anywhere in the Book. Nor does any passage of the Book create any such reasonable inference. The same is true of the fourth set of statements that your letter: nowhere in the Book is there any statement expressly declaring, or reasonably implying, that Mr. Hicks and Mr. Hines were treated preferentially by the criminal justice system as a reward for their having served as confidential informants for the Denver Police Department. Lastly, the Book does not contain any allegation that Mr. Hicks smoked crack cocaine.

Mark Andrews and Chad Atkins

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Accordingly, no defamation claim can be premised on your assertion that my clients *published* those statements. *See, e.g.,* C.J.I.-Civ. 22:1, 22:7 (2022) (plaintiff must establish that the defendant “published” the statement alleged to be false and defamatory); *see also Miles v. Ramsey*, 31 F. Supp. 2d 869, 878 (D. Colo. 1998) (dismissing claim for plaintiff’s failure to establish that defendant actually published the challenged statements).

In short, under firmly established legal precedents, none of the statements identified in your Complaint can give rise to a valid libel claim. Accordingly, Rules 1.4(b), 2.1, and 3.1 of the Colo. R. Prof. Conduct require you to advise your clients not to move forward in pursuing a frivolous, groundless, and meritless set of claims.

In addition, under Colorado’s anti-SLAPP Act, enacted in 2019, any plaintiff whose lawsuit premised on the defendant’s exercise of his/her/its freedom of speech on a matter of legitimate public concern (which is undoubtedly true here) shall be ordered to pay the defendant’s reasonable attorney’s fees and costs upon the granting of a Special Motion to Dismiss under that Act. *See* § 13-20-1101(4)(a), C.R.S. (2022). Enclosed herewith are some of the judicial orders I have obtained on behalf of other clients from courts applying that statute to similarly meritless libel claims.

Mr. Hines and Mr. Hicks will become financially liable to pay my clients the reasonable costs and fees upon my filing of a Special Motion to Dismiss their Complaint. *See Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.*, 122 Cal. App. 4th 1049 (Cal. Ct. App. 2004) (plaintiff who voluntarily dismisses his claims in response to an anti-SLAPP motion is responsible for defendant’s attorney’s fees); *Law Offices of Bruce Altschuld v. Wilson*, 632 Fed. App’x 321, 323 (9th Cir. 2015) (same). Such fee awards in anti-SLAPP cases have been entered for tens of thousands of dollars, and, in some cases have reached six figures.

Accordingly, unless your clients file a Notice of Voluntary Dismissal of the above referenced lawsuit on or before May 31, 2022, they will become financially responsible for all the fees and costs my clients incur in defending this meritless lawsuit. We trust and hope that you will counsel your clients to protect their financial assets by voluntarily dismissing their lawsuit by the date set forth above.

Sincerely,



Steven D. Zansberg