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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION
11

12 KHADIJA A. GHAFUR,

13 Plaintiff,

14 v.

15 ANTI-DEFAMATION LEAGUE OF B'NAI
BRITH; JONATHAN BERNSTEIN; GIL
16 SEROTA,

17 Defendants.

CASE NO. CGC-03-416294

REPLY MEMORANDUM IN SUPPORT
OF DEFENDANTS' SPECIAL MOTION
TO STRIKE PLAINTIFF'S COMPLAINT

Date: June 9, 2003
Time: 9:30 a.m.
Dept: 302
Honorable Ronald Quidachay

Complaint filed: January 9, 2003
Trial Date: To be set

V00659

AA 335

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INTRODUCTION

1
2 Plaintiff Ghafur's opposition to ADL's anti-SLAPP motion to strike struggles to escape the
3 prohibition of Code of Civil procedure §425.16 on lawsuits that are based upon, and which have the
4 effect of chilling, activity protected by the First Amendment. However, those efforts fail, and
5 ADL's motion should be granted. All of the communications that Ghafur challenges are protected
6 by the First Amendment. Ghafur's own opposition concedes that that ADL's motion is properly
7 brought under Section 425.16, and that ADL's transmission of its January 10, 2002 letter to
8 California's Superintendent of Public Instruction is absolutely privileged under Civil Code §47(b).
9 Furthermore, Ghafur's opposition presents *no* evidence of actual malice on the part of ADL, a
10 burden imposed on her by Section 425.16. Ghafur's opposition thus relies on a meritless assertion,
11 contrary to the evidence, that Ghafur is not a "public official" or "public figure," an assertion made
12 to avoid the consequences of her failure to satisfy her burden of proving, by clear and convincing
13 evidence, that ADL acted with actual malice.

14 The true facts are that, prior to the ADL's January 10, 2002 letter, Ghafur voluntarily
15 engaged in activities that qualify her at a *minimum* as a limited purpose public figure; in the fall of
16 2001, she and groups with which she is affiliated came under intense media scrutiny for a variety of
17 reasons; at that time, according to Ghafur's own verified complaint in another action, Gateway
18 Academy "was classified *nationally* as having ties to terrorism" (Ex.5 [Fresno Complaint, ¶40];
19 and prior to ADL's January 10, 2002 letter, there was concern about Ghafur's possible ties to a
20 terrorist organization because, as reported by the Fresno Bee, "Muslims of the Americas" itself
21 identified Ghafur as an officer on its web site, a fact that Ghafur effectively confirmed at the time,
22 attributing it to being the result of "paperwork" filed in connection with refugee relief. (Ex.24)

23 Ghafur has not demonstrated and cannot possibly demonstrate in the face of these facts that
24 she has a probability of prevailing. Accordingly, ADL respectfully submits that its special motion
25 to strike and request for attorneys fees and costs should be granted.

BRIEF FACTUAL AND PROCEDURAL BACKGROUND

26
27 The factual and procedural background of this action is set forth at pages 3-7 of the
28 memorandum of points and authorities filed in support of ADL's motion. For purposes of this reply

1 memorandum, however, a few matters deserve note.

2 **A. Ghafur's Opposition Concedes That ADL's Letter To Superintendent Eastin Was**
3 **Absolutely Privileged Pursuant to Civil Code, section 47**

4 Ghafur concedes that ADL's letter Superintendent Eastin was absolutely privileged:

5 "Plaintiff concedes that the official proceeding or litigation privilege of Civil
6 Code section 47, subdivision (b) also extends to communications 'preliminary
7 to' a school district hearing, and that if the privilege does apply, it is absolute
8 even if a defendant has acted with malice." (Opp. p.13:3-6.)

7 **B. Ghafur's Opposition Concedes That ADL's Letter To Superintendent Eastin Did Not**
8 **Cause Revocation Of Gateway's Charter**

9 Ghafur concedes that, when the School District revoked Gateway's charter for failure to
10 document use of public funds and instruction in religion, the School District had not received and
11 did not consider the letter sent to Superintendent Eastin. (Ex.1 ¶¶ 8-9; Ghafur Decl. ¶22.)

12 **C. The Fresno Bee Reported That "Muslims Of The Americas" Named Ghafur As An Officer**

13 Prior to January 6, 2002, "Muslims of the Americas" identified Ghafur on their web site as
14 an officer, a fact which the Fresno Bee reported, and which Ghafur explained away as having to do
15 with "paperwork" she filed in connection with refugee relief. (Ex.24; see Ghafur Decl, ¶16.)

16 **D. Counsel's Lexis Search Terms Are Completely Irrelevant To The ADL's Lack Of Malice**

17 One final matter that bears noting is the irrelevance of the manner in which counsel for ADL
18 performed Lexis searches to identify articles relevant to Ghafur's status as a public official / public
19 figure. (See Ghafur Decl., ¶17.) In preparing this motion in April 2003, counsel for ADL performed
20 numerous Lexis searches of publications for articles about both Muslims of America and "Muslims
21 of the Americas," (Anastassiou Decl., ¶2.) These searches were done without input from ADL or
22 its prior counsel and has *nothing* probative to say about what ADL knew, more than a year earlier,
23 when it prepared and transmitted its letter to Superintendent Eastin. (*Id.*, ¶2.)

24 **ARGUMENT**

25 **I. GHAFUR'S LAWSUIT COMES WITHIN SECTION 425.16**

26 While acknowledging that her complaint is subject to Section 425.16 (Opp. p.2:11-12),
27 Ghafur half-heartedly argues that her complaint is not a SLAPP suit. (Opp. pp. 2-4.) This argument
28 misapprehends the law. Section 425.16 exists to ensure that lawsuits do not "chill the valid

1 exercise of the constitutional rights of freedom of speech and petition for the redress of grievances,”
2 by subjecting such lawsuits to early and rigorous scrutiny. (Code of Civil Procedure §425.16(b).)
3 Sending the January 10, 2002 letter to a government official and publishing that letter and press
4 release on ADL’s web journal are classic First Amendment activity. On its face, Ghafur’s
5 complaint is a “SLAPP suit” within the coverage of Section 425.16.

6 Ghafur nonetheless asserts that her complaint is not a SLAPP suit because she is seeking
7 compensation rather than trying to chill ADL’s exercise of First Amendment rights. (Opp. pp. 2-3.)
8 The argument is meaningless: any defamation plaintiff can argue that compensation is her goal, and
9 courts would be hard-pressed indeed to find a defamation plaintiff who would admit that their suit
10 was intended to chill First Amendment activity.^{1/} That is why a plaintiff’s intent is not relevant to
11 Section 425.16, which recognizes that the fact of a lawsuit (not the plaintiff’s intent) is what chills
12 First Amendment rights. (City of Cotati v. Cashman (2002) 29 Cal.4th 69, 73-74.)

13 **II. GHAFUR HAS NOT SATISFIED HER BURDEN**
14 **OF OFFERING EVIDENCE ESTABLISHING A PROBABILITY OF PREVAILING**

15 **A. The Letter And Publication On ADL’s Web Site Were Privileged**

16 As set forth in ADL’s opening brief (Memorandum at pp. 7-9), once it has been established
17 that Section 425.16 applies (as it does here), the burden shifts to Ghafur to demonstrate that she has
18 a probability of prevailing. (Tuchscher Dev. Ents., Inc. v. San Diego Unified Port Dist. (2003) 106
19 Cal.App.4th 1219, 1239-1241.) The first failure in Ghafur’s opposition is the failure to deal with
20 the fact that the communications at issue are privileged. None of her arguments overcome this.

21 **1. Ghafur Concedes That The Letter To Eastin Was Absolutely Privileged**

22 Ghafur’s opposition concedes that ADL’s January 10, 2002 letter to Superintendent Eastin is
23 absolutely privileged under Civil Code §47(b). (Opp. 13:3-6.) Thus, Ghafur cannot prevail on that
24 ground. (Wise v. Thrifty Payless, Inc. (2002) 83 Cal.App.4th 1296, 1302.) Having conceded that
25 ADL’s communication with Delaine Eastin is privileged, Ghafur instead mis-focuses on ADL’s
26 publication of the letter and a press release on its web journal, citing a hodgepodge of cases in an

27 ^{1/} Ghafur’s argument is also contradicted by her own opposition, which says that she wants to
28 affect how ADL exercises First Amendment rights. (Opp. p.2:23-24 [she wants to “cause ADL
in the future to exercise its First Amendment rights responsibly and fairly.”

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1 effort to argue that Civil Code §47(d) does not apply. (Opp. 13:5-14:14.) However, Ghafur's
2 opposition improperly conflates two distinct privileges: the Section 47(b) privilege that applies to
3 the letter to Superintendent Eastin is absolute.

4 **2. Publication On ADL's Web Journal Was Privileged Under Civil Code §47(d)**

5 ADL's publication of the press release and the January 10, 2002 letter on its web journal is
6 protected by Section 47(d) because it was a "fair and true report in, or a communication to, a public
7 journal, of ... [a] public official proceeding ..." (Civil Code §47(d).) Ghafur's argument ignores
8 the fact that ADL is a journalistic organization that routinely engages in publishing activity
9 protected by the First Amendment. (See ADL v. Sup. Court, supra, 67 Cal.App.4th at 1092-1093.)
10 Here, ADL published on its web journal a press release concerning its petitioning of the
11 government. This First Amendment communication falls squarely within Section 47(d).^{2/}

12 **B. Ghafur's Failure To Present A Scintilla Of Evidence Showing Actual Malice Requires**
13 **Dismissal Of Her Complaint**

14 In the hopes of avoiding her burden of showing by clear and convincing evidence that
15 ADL's communications were sent with actual malice (New York Times v. Sullivan (1964) 375 U.S.
16 254, 280; Damon v. Ocean Hills Journalism Club (2000) 85 Cal.App.,4th 468, 479), Ghafur spends
17 most of her opposition ineffectively trying to argue that she is not a public official or public figure.^{3/}

18 **1. Ghafur Is A Public Figure Who Must Show Malice To Prevail On Her**
19 **Defamation Claims**

20 Ghafur is undeniably a limited purpose public figure because she achieved special
21 prominence with regard to specific public issues. (Readers Digest Ass'n v. Sup. Court (1984) 37
22 Cal.3d 244, 254.) Ghafur's own opposition cites authority that a person who injects herself, or is
23 drawn into, a particular public controversy is a public figure for purposes of First Amendment
24 privilege under New York Times v. Sullivan. (Gertz v. Robert Welch (1974) 418 U.S. 323, 345,
25 351-352.) In such a situation, the public figure cannot maintain suit for defamation without proving

26 ^{2/} The only decision that Ghafur cites in support of her argument is completely inapposite. In
27 King v. Borges ((1972) 28 Cal.App.3d 27), an attorney, not a journalist, privately disseminated
28 to others a letter he had sent to a government official. (King, supra, 28 Cal.App.3d at 30.)
Journalistic publication was not at issue *at all*.

^{3/} Ghafur's opposition argues that Ghafur is not an "all purpose public figure," (Opp. p.7 *et seq.*),
something which ADL has never argued, and is not at issue in this action.

1 actual malice, even if a statement complained-of is ultimately shown to be false. (Id.)

2 Here, there is a wealth of evidence concerning Ghafur's status as a limited purpose public
 3 figure concerning issues relating to the Muslim community, Gateway Academy and Baladullah and
 4 their suspected links to "Muslims of the Americas," Al Fuqra and Sheik Jilani:

- 5 • In 1983, Ghafur obtained a PhD from the Quranic University, which is affiliated with Sheik
 6 Jilani (Ghafur Decl. ¶2), leased a 120-acre site in the 1990s to form the Muslim community
 7 Baladullah (Ghafur Decl. ¶7) and established in September 2000 the Gateway Academy Charter
 8 School, serving as its superintendent. (Ghafur Decl., ¶8.)
- 9 • Ghafur has chaired sessions at public events regarding religious experiences of Muslims,
 10 including one in 2000 in which Congressman Tom Campbell participated. (Ghafur Decl. ¶19.)
- 11 • Ghafur participated in a September 2000 convention of the American Muslim Alliance, and
 12 chaired a session: "Learning from History: Ethnic and Religious Experience. (Opp. 9:23-10:1.)
- 13 • Ghafur is the Corporate Secretary for, and was a founding member of, the Nevada Corporation
 14 Muslims of America, Inc. (Ghafur Decl. ¶17.)
- 15 • Ghafur attended the Republican Governors' Association event, "An Evening with President
 16 Bush" organized in October 2001 for the purpose of demonstrating the Administration's goal of
 17 ending prejudicial conduct towards Muslims. (Ghafur Decl., ¶10; see Ex.13.)
- 18 • "Muslims of the Americas" identified Ghafur on its web site as a corporate officer, an affiliation
 19 she attributed to "paperwork" she had done in connection with refugee relief. (Exhibit 24.)

20 In addition, the activities of Gateway and Baladullah, (Ghafur headed both), attracted
 21 intense media coverage of those organizations and of Ghafur personally. (See Exhibits 10, 13-22,
 22 23-26.) Moreover, both before and after the controversy arose concerning Gateway Academy's
 23 misuse of public funds, Ghafur voluntarily spoke out publicly and in the media, not merely on
 24 behalf of Gateway, but on behalf of Baladullah, the Muslim enclave she helped found.^{4/}

25
 26 ^{4/} See, e.g., Ex.13 [Ghafur holds public event for Baladullah neighbors intended to calm fears
 27 concerning the Muslim community, after returning from Washington, DC and representing
 28 Muslims at a national public event]; Ex.18 [Ghafur quoted speaking on behalf of Gateway in
 December 20, 2001 article about School District investigation]; Ex.19 [Ghafur quoted speaking
 on behalf of Baladullah in December 24, 2001 article about FBI investigation of links to
 terrorism]; Ex.21 [Ghafur quoted speaking on behalf of Gateway in January 2, 2002 article

1 Given Ghafur's background and links to Sheik Jilani, the scandals at Gateway and
2 Baladullah, and Ghafur's self-representation as a spokesperson for Baladullah (see Exhibits 13, 19)
3 and Gateway Schools (see Exhibits 18, 21) - particularly in the context of post-9/11 concerns over
4 radical Muslim elements and misuse of public funds by organizations with possible ties to terrorism
5 - Ghafur clearly was a limited public figure under settled law. (Reader's Digest, supra, 37 Cal.3d
6 244, 254; Damon v. Ocean Hills Journalism Club (2000) 85 Cal.App.4th 468, 479.)

7 All of Ghafur's attempts to avoid the effect of her voluntary and public participation in the
8 controversies surrounding Baladullah and Gateway Schools are devoid of merit:

- 9 • Ghafur's argument that the Court must look to events *before* transmission of the January 10,
10 2002 letter (Opp. p.8) ignores the numerous articles cited in the moving papers in which Ghafur
11 is quoted on behalf of Baladullah and/or Gateway Schools *before* January 10, 2002. (See, e.g.
12 Exhibits 18, 19, 21, and 24.)
- 13 • Ghafur's suggestion that there was no controversy about Baladullah and/or Gateway Schools
14 prior to the January 10, 2002 letter (Opp. p.8:11-14) is a material misrepresentation of the facts.
15 (See Exhibits 18, 19, 21, 24.) Similarly, Ghafur's assertion that she did not "involve[] herself in
16 the Gateway Charter question" until January 16, 2002 (Opp. p.9:14-18) is contradicted by the
17 fact that she had already spoken to the press on the subject two weeks earlier, implying in her
18 statement to the press that the investigation into misuse of public funds was really the result of
19 the attacks on the World Trade Center and Pentagon. (Ex.21.) Furthermore, Ghafur was not
20 some disinterested third person - as Superintendent of the school being investigated for misuse
21 of public funds, she essentially *was* the "Gateway Charter question."⁵¹
- 22 • Ghafur's assertion that she did not voluntarily project herself into the public eye is contrary to
23 press reports that she went to Washington, D.C. for a public event which *she* then publicized at
24 *another* public event when she returned to Baladullah (reported on October 21, 2001). (Ex. 13.)
- 25 • Ghafur's assertion that she is not a public figure because she had no greater access to the media

26 about School District investigation]; Ex.24 [Ghafur quoted speaking on behalf of Baladullah in
27 January 6, 2002 article about the community and allegations of terrorist connections].)

28 ⁵¹ In any event, the Gateway investigation and her spokesperson role began long before January
16, 2002.

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1 than “any other local religious or education leader” (Opp. 10:14-15) completely misses the point
2 because, unlike “any other local religious or educational leader,” Ghafur repeatedly used her
3 access to the press to speak on behalf of Baladullah and Gateway Schools, both before and
4 after the School District investigation.^{6/}

- 5 • Ghafur’s assertion that she is not a public figure because she did not have a chance to counter
6 the alleged defamation is without merit because Ghafur has presented *no* evidence that she even
7 sought access to counter the alleged defamation, much less that she was *denied* the chance.^{7/}
- 8 • Ghafur’s assertion that she cannot be a public figure because she was only responding to press
9 inquiries (Opp. p.12:5-11), even if it were supported by any evidence whatsoever (which it is
10 not), is contrary to the evidence showing that she voluntarily spoke on behalf of both Baladullah
11 and Gateway Academy, both before and after the investigation. (Exhibits 13, 18, 19, 21, 24.)^{8/}
- 12 • Ghafur’s argument that the alleged defamation was disseminated beyond the scope of her own
13 participation in the public controversies (Opp. 12:5-26) makes no sense because the statements
14 she made to the media appeared in major newspapers and their Internet sites, *exactly* as the letter
15 and press release did on ADL’s web journal. In other words, ADL’s statements had *exactly* the
16 same public exposure as did the public statements by Ghafur that give her public figure status.

17 The evidence submitted in support of ADL’s motion establishes that, both before and after
18 January 10, 2002 (when ADL sent its letter to Superintendent Eastin), and both before and after the
19 Gateway Schools’ charter was revoked, Ghafur voluntarily and publicly spoke on behalf of
20 Baladullah and Gateway Schools about perceptions of the Muslim community and the investigation
21 of misuse of public funds. Ghafur cannot use her status as Gateway Superintendent and Baladullah
22 co-founder to speak on their behalf and, at the same time, deny that she is a “public figure” because

23 _____
24 ^{6/} Ghafur’s citation to Khawar v. Globe International ((1998) 19 Cal.4th 254, 266-267) is
25 inexplicable. That decision has nothing to do with the situation in which the head of a school
26 or community undertakes the role of spokesperson, as did Ghafur for Gateway and Baladullah.
27 ^{7/} Further, the authority that Ghafur cites does not apply to a journalistic publication such as
28 ADL’s web journal. (See ADL v. Sup. Court, supra, 67 Cal.App.4th 1072, 1092.)
^{8/} Ghafur’s opposition attempts to negate this evidence by saying that “[a]lmost all” of the articles
post-date the Gateway School controversy. (See Opp. 12:8-10.) Ghafur does not explain how
that disqualifies her frequent statements to the press, on behalf of both Gateway Schools and
Baladullah, from evidencing her public figure status.

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1 she did not “voluntarily” do so. Ghafur is a limited purpose public figure.

2 2. **Ghafur Is A Public Official Who Must Show Malice To Prevail On Her**
3 **Defamation Claims**

4 In addition to her status as a “public figure,” Ghafur’s position as Superintendent of the
5 Gateway Schools qualifies her as a “public official.” Ghafur cites California authority that actual
6 employment by the government is a “condition precedent” to public official status, but Ghafur was
7 the Superintendent of Gateway Schools and was thus overseeing a public school. (Ex.7; Education
8 Code §§ 235, 47605.) Ghafur submits *no* evidence establishing that, although she was a
9 Superintendent of a public school, she was anything but an “employee” of a governmental body.

10 Even if there were any such evidence, however, her argument that she is not a public official
11 would still be without merit. The substance of a person’s employment, not the name at the bottom
12 of a paycheck, should determine whether a person has the status and responsibility of a public
13 official. Ghafur oversaw public charter schools, scores of teachers, and “almost 1,000 students at
14 the end of the [2000-2001] school year.” (Ex.5 [Fresno Complaint, ¶29].) She was responsible for
15 millions of dollars in public funds allocated to the schools. (See Ghafur Decl., ¶14; Exhibits 19 and
16 20.) Her disclaimer of public official status should be rejected by this Court.

17 3. **Ghafur Cannot Rely On Unsupported Statements In Her Opposition**
18 **Memorandum To Avoid Section 425.16**

19 Because she is a public figure (and a public official), Ghafur cannot prevail on her
20 defamation claim because she has submitted *no* evidence that ADL acted with actual malice. A
21 “public figure” cannot maintain a suit for defamation without demonstrating, by clear and
22 convincing evidence, that the statements of which she complains were made with actual malice.
23 (Rosenauer v. Scherer (2001) 88 Cal.App.4th 260, 274, citing Beilinson v. Superior Court (1996)
24 44 Cal.App.4th 944, 950.) The same rule holds true for a “public official.” (McCoy v. Hearst Corp.
25 1986) 42 Cal.3d 835, 841.) This heightened burden must be borne in mind when considering
26 Ghafur’s failure to offer evidence that establishes a probability of prevailing, in opposition to
27 ADL’s special motion to strike. (Conroy v. Spitzer (1990) 70 Cal.App.4th 1446, 1451; accord,
28 Mattel, Inc. v. Luce, Forward, Hamilton & Scripps (2002) 99 Cal.App.4th 1179, 1188-1180.)

ADL’s letter relates press reports concerning possible connections between Muslims of

1 America, Al Fuqra and Gateway Schools. (See Opposition Ex.B.) There are only two ways in
 2 which Ghafur can show actual malice in the context of republication of press reports: Ghafur must
 3 either show that ADL knew the press reports were false, or recklessly made statements it had reason
 4 to believe were false.^{9/} New York Times Co. v. Sullivan, *supra*, 376 U.S. 243, 279-280.) Proving
 5 “recklessness” requires showing that the defendant “entertained serious doubts as to the truth of
 6 [the] publication.” (Jackson v. Paramount Pictures Corp. (1998) 68 Cal.App.4th 10, 33.)

7 Reduced to essentials, Ghafur’s argument is that ADL was “reckless” in failing to realize
 8 that Ghafur was an officer of “Muslims of America,” not “Muslims of the Americas.” (See Opp. pp.
 9 18-19; Ghafur Decl., ¶¶ 16-18.) However, Ghafur’s argument on what ADL *should* have known
 10 ignores not only the facts listed above (*supra*, pp. 5-7), but also the press reports *before* ADL’s
 11 January 10, 2002 letter linking Ghafur to *both* Muslims of America and “Muslims of the Americas,”
 12 and linking *both* Muslims of America and “Muslims of the Americas” to possible terrorist ties:

- 13 • In September 30 and October 7, 2001 articles, the Washington Post stated that a Muslim enclave
 14 with suspected terrorist ties in Virginia was organized by Muslims of America. (Exhibits 11,12.)
- 15 • On November 8, 2001, a television station to whom Ghafur gave statements identified Muslims
 16 of America (of which Ghafur admits she is an officer) as having been established by an
 17 individual associated with radical Islamic fundamentalism, Sheikh Jilani. (see Ex.15.)
- 18 • By December 2001, the FBI was investigating links between Baladullah and Al-Fuqra, with
 19 Ghafur acting as Baladullah’s spokesperson. (Exhibits 19, 20.)
- 20 • Prior to September 11, 2001, the Baladullah property bore a sign for the International Quranic
 21 Open University, the newest office of Sheik Jilani’s institution. (Exhibits 14, 19, 24.) A
 22 criminal investigator who studied Sheik Jilani, “Muslims of the Americas” and the Quranic
 23 Open University told the press, “If you have them you have [Al]Fuqra.” (Ex.24.)
- 24 • On December 24, 2001, the San Jose Mercury News reported that Sheikh Jilani had founded
 25 “Muslims of the Americas” with an educational branch the Qur’anic Open University (with

26 ^{9/} ADL wishes to be absolutely clear that it does *not* believe that *anything* in the January 10, 2002
 27 letter or press release was untrue. However, that is not the ground upon which this motion has
 28 been brought: Ghafur’s complaint must be dismissed because, even if there *were* something
 untrue in the letter or press release, Ghafur has not shown, and cannot show, that ADL acted
 with actual malice.

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1 facilities at Baladullah), where Ghafur says she received her PhD. (see Ex.19; Ghafur Decl. ¶2.)

2 • On January 6, 2002, the Fresno Bee reported that the “Muslims of the Americas” web site listed
3 Ghafur as an officer, to which Ghafur reportedly said the Muslims of the Americas “affiliation
4 was part of some paperwork she filled out ...” in connection with refugee relief. (Ex.24.)

5 Thus, before the ADL wrote its letter to Superintendent Eastin and posted the letter on its
6 web journal, press reports had linked Ghafur to both Muslims of America and “Muslims of the
7 Americas,” and had associated both organizations with possible terrorist links. For Ghafur to argue
8 *now* that ADL (along with all the other media and government agencies who investigated her,
9 Baladulla, and Gateway) should have known that she was only associated with *one* of the
10 organizations, is illogical in the extreme. The argument certainly does not, and cannot, substitute
11 for *evidence* that ADL should have known otherwise. (Tuchscher Dev., *supra*, 106 Cal.App.4th
12 1219, 1239-1241.) Ghafur has not offered, and cannot offer, any evidence that ADL acted with
13 actual malice, and without such proof her complaint must be stricken as a matter of law.

14 **CONCLUSION**

15 For the reasons set forth above, Defendants respectfully request that this Court strike the
16 Complaint of Plaintiff Khadija Ghafur without leave to amend, and that it rule that Defendants are
17 entitled to their attorneys fee and costs, pursuant to Code of Civil procedure §425.16.

18
19 Respectfully submitted,

20 Dated: June 2, 2003

ROPERS, MAJESKI, KOHN & BENTLEY

21
22
23 By 

SUSAN H. HANDELMAN
TERRY ANASTASSIOU
Attorneys for Defendants ANTI-DEFAMATION
LEAGUE OF B'NAI BRITH; JONATHAN
BERNSTEIN; GIL SEROTA

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1 CASE NAME: GHAFUR V. BERNSTEIN, et al

ACTION NO.: CGC-03-416294

2 PROOF OF SERVICE

3 I am a citizen of the United States. My business address is 333 Market Street, Ste. 3150, San
4 Francisco, California 94105. I am employed in the county of San Francisco where this service
5 occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with
6 my employer's normal business practice for collection and processing of correspondence for
7 mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the
8 U.S. Postal Service the same day as the day of collection in the ordinary course of business.

9 On the date set forth below, following ordinary business practice, I served a true copy of the
10 foregoing document(s) described as:

- 11 • Declaration of Terry Anastassiou in Support of Reply Memorandum on
12 Defendants' Special Motion to Strike Plaintiff's Complaint; and,
- 13 • Proof of Service

14 (BY FAX) by transmitting via facsimile the document(s) listed above to the fax
15 number(s) set forth below, or as stated on the attached service list, on this date
16 before 5:00 p.m.

17 (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be
18 placed in the United States mail at San Francisco, California.

19 (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand
20 this date to the offices of the addressee(s).

21 (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an
22 overnight delivery carrier with delivery fees provided for, addressed to the
23 person(s) on whom it is to be served.

24 Paul N. McCloskey, Jr., Esq.
25 Adriana C. Moore, Esq.
26 McCloskey, Hubbard, Ebot & Moore
27 399 Bradford Street, Suite 102
28 Redwood City, CA 94063
Telephone: (650) 366-9593
Facsimile: (650) 366-5043

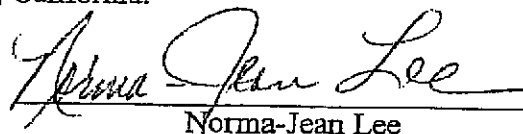
Brian Beckwith, Esq.
723 Hamilton Avenue
Palo Alto, CA 94301
Telephone: (650) 851-4780
Facsimile: (650) 328-9797

Counsel for Plaintiff Ghafur

Counsel for Plaintiff Ghafur

29 (State) I declare under penalty of perjury under the laws of the State of California
30 that the above is true and correct.

31 Executed on June 2, 2003, at San Francisco, California.

32 
33 Norma-Jean Lee

V00674

1 SUSAN H. HANDELMAN, State Bar No. 142529
TERRY ANASTASSIOU, State Bar No. 157996
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4 Facsimile: (650) 780-1701

5 Attorneys for Defendants ANTI-DEFAMATION LEAGUE OF
B'NAI BRITH; JONATHAN BERNSTEIN; GIL SEROTA
6

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION
11

12 KHADIJA A. GHAFUR,

13 Plaintiff,

14 v.

15 ANTI-DEFAMATION LEAGUE OF B'NAI
BRITH; JONATHAN BERNSTEIN; GIL
16 SEROTA,

17 Defendants.
18

CASE NO. CGC-03-416294

DECLARATION OF TERRY
ANASTASSIOU IN SUPPORT OF REPLY
MEMORANDUM ON DEFENDANTS'
SPECIAL MOTION TO STRIKE
PLAINTIFF'S COMPLAINT

Date: June 9, 2003
Time: 9:30 a.m.
Dept: 302
Honorable Ronald Quidachay

Complaint filed: January 9, 2003
Trial Date: To be set

19
20
21 I, TERRY ANASTASSIOU, declare as follows:

22 1. I am an attorney licensed to practice law before the court of the State of California and a
23 member of the law firm of Ropers, Majeski, Kohn & Bentley, counsel of record for Defendants
24 Anti-Defamation League of B'Nai Brith, Jonathan Bernstein, and Gil Serota ("ADL"), on whose
25 behalf I make this declaration. If called as a witness, I could competently testify to the matters set
26 forth herein of my own personal knowledge except those matters declared on information and belief
27 and, as to those matters, I believe them to be true.

28 2. As part of preparing ADL's special motion to strike Plaintiff Khadija Ghafur's

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1 complaint, I did substantial on-line research using Lexis archives of newspapers and magazines.
2 Because I understood from Ghafur's complaint that she was claiming that she had been mis-
3 identified as an officer of "Muslims of the Americas" rather than "Muslims of America," an
4 organization for which Ghafur admitted to serving as a officer, I used both organizations' names in
5 the research that I performed. I personally retrieved and printed every Internet-based document
6 appended to my declaration filed in support of ADL's moving papers. My research did not, and
7 was not intended to, duplicate the scope of whatever research ADL might have previously
8 performed.

9 3. I was responsible for compiling the exhibits in support of ADL's motion. In the course
10 of doing so, I inadvertently attached a copy of the Fresno Unified School District's agenda for
11 January 15, 2002 as "Exhibit B" to the Declaration of Dr. Marilyn Shepherd. The document which
12 Dr. Shepherd's original declaration authenticates is the Fresno Unified School District's agenda for
13 January 16, 2002, a true and correct copy of which is attached to this declaration, marked "Exhibit
14 39."

15 4. On May 3, 2003, Brian Beckwith, counsel for Ghafur, pointed out the discrepancy in
16 exhibits discussed in Paragraph 3. On May 12, 2003, after speaking to Mr. Beckwith, I provided a
17 copy of the correct exhibit, the January 16, 2002 agenda, to Ghafur's counsel *via facsimile*
18 transmission.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing
20 is true and correct. Executed this day in San Francisco, California.

21

22 Dated: June 2, 2003

23

24

25

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27

28



Terry Anastassiou

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AA 352