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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

KHADIJA A. GHAFUR, Plaintiff and Appellant, v. JONATHAN BERNSTEIN et al., Defendants and Respondents.	A104918 (San Francisco County Super. Ct. No. CGC-03-416294)

Plaintiff and appellant Khadija A. Ghafur sued defendants and respondents the Anti-Defamation League of B'nai B'rith (ADL), ADL's Regional Director, Jonathan Bernstein, and ADL's Regional Board Chair, Gil Serota, for libel for statements in a letter from Bernstein and Serota on behalf of the ADL to former Department of Education Superintendent Delaine Eastin urging an investigation into plaintiff's links to an Islamic terrorist organization, and a suspension of public funding for the charter school system plaintiff managed. This is an appeal from an order granting defendants' motion to strike the complaint under the anti-SLAPP (strategic lawsuit against public participation) law (Code Civ. Proc., § 425.16) and from the resulting judgment against plaintiff.

In the published portion of the opinion, we hold that the alleged libel pertained to plaintiff's role as a public official, and we explain why that conclusion, and the one we draw in the unpublished portion of the opinion—that there is no clear and convincing evidence defendants acted with actual malice in making the challenged statements—are dispositive in defendants' favor. We affirm the order and judgment.

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part II-C.

I. BACKGROUND

Prior to January 16, 2002, plaintiff was the Superintendent of the Gateway Academy public charter schools (Gateway) chartered by the Fresno Unified School District (FUSD). According to December 20, 2001, and January 2, 2002, articles in the *Fresno Bee*, Gateway opened three sites in September 2000 and thereafter became the fastest growing network of charter schools in California, which at its peak operated 14 schools for about 1,000 students from the Bay Area to Southern California.

A December 17, 2001, article in the *San Francisco Chronicle* reported that students at the Gateway school in Sunnyvale were paying tuition, studying Islam in class, and praying with their teachers. Plaintiff denied being aware of the situation at the Sunnyvale school, and severed Gateway's ties with the school the day after she was contacted by the *Chronicle*.

The January 2, 2002, *Fresno Bee* article said that Gateway was being investigated by law enforcement agencies and might soon lose its charter. The investigations were apparently focused on Gateway's spending, school sites, and parent corporation, which was founded by plaintiff. Superintendent of Public Instruction Delaine Eastin was threatening to cut off Gateway's funding if allegations about teaching religion at certain of its sites and charging tuition were not answered. Although Gateway received about $1.1 million in state funds in the preceding academic year, and $672,900 in state funds along with a private loan of $630,000 in the 2002 academic year, it was reporting an indebtedness of $1.3 million. The FUSD had asked Gateway to submit an itemized account of its spending and explain its $1.3 million debt. The article said that if adequate information was not provided by the following Friday, Marilyn Shepard, head of FUSD's charter school department, would ask the FUSD board to terminate Gateway's charter. Plaintiff thought that Gateway was in the spotlight because of "fears and rumors about Muslims" following the September 11, 2001, terrorist attacks, but FUSD officials said that their concerns were legitimate and that Gateway "wasn't being treated unfairly because some members are Muslim."

On January 10, 2002, the ADL under defendants Bernstein's and Serota's signatures sent the letter to Delaine Eastin that is the subject of this lawsuit. The letter called for an immediate suspension of Gateway's funding, and urged an investigation of religious instruction in Gateway schools, and of Gateway's link to an Islamic terrorist organization called Al-Fuqra. The letter referred accurately to news reports stating that plaintiff was an officer of "Muslims of the Americas," that Muslims of the Americas was a corporate front for Al-Fuqra, and that members of Al-Fuqra had committed murders and bombings in the United States. The letter described Muslims of the Americas as "a virulently anti-Semitic, Islamic extremist group."

Gateway's charter was terminated by the FUSD on January 16, 2002, because of fiscal mismanagement, failure to obtain fire marshal approval for facilities, and failure to obtain criminal background clearances for employees. According to the declaration of FUSD official Shepard, the ADL's January 10, 2002, letter to Eastin was not presented to or considered by the FUSD in connection with the charter revocation. She had recommended revocation of the charter, and a vote on the revocation had been scheduled, before the letter was sent.[1] At some point after Gateway's charter was revoked, the ADL posted the letter on its website.

Plaintiff's complaint for libel alleged that the Eastin letter was maliciously false and defamatory in stating that plaintiff was an officer of a virulently anti-Semitic Islamic extremist group, and in linking plaintiff, Gateway, and the Muslims of the Americas to a terrorist organization.

In support of their motion to strike, defendants submitted the above-referenced news articles, and many others detailed below in our discussion of the malice issue, that documented the activities of Al-Fuqra, and the link between Al-Fuqra and Muslims of the Americas. Defendants also submitted Nevada Secretary of State records showing plaintiff as the secretary of a corporation called "Muslims of America, Inc."

[1] Plaintiff does not contend that the letter played any role in the charter's revocation.

Plaintiff submitted a declaration in opposition to the motion stating that she had been a practicing Muslim since 1971, and that she was not anti-Semitic. To her knowledge, Muslims of the Americas, Inc. had never sponsored or supported violence or terror. She had worked with women's groups in conjunction with Muslims of the Americas, Inc. on "refugee outreach, educational programs and social service activities," but had never been an officer or employee of that corporation. She had been secretary of a "wholly different and unrelated Nevada non-profit corporation, Muslims of America, Inc," which never conducted any business or served as a front for any individual or entity. She believed that defendants were aware of the difference between the two corporations, and knew in January 2002 that she was not an officer of Muslims of the Americas, Inc. because they had been tracking that organization since the 1980s.

In its statement of decision on the granting of the motion to strike, the court found that plaintiff's libel claim was subject to the anti-SLAPP law because the transmission of the January 10, 2002, letter to Superintendent Eastin, and the posting of the letter on ADL's website, were "protected First Amendment conduct." The court concluded that plaintiff could not demonstrate a probability of prevailing on her claim because sending the letter to Eastin was privileged under Civil Code section 47 (hereafter section 47), subdivision (b), and posting the letter on the website was privileged under section 47, subdivision (d). Alternatively, the court found that plaintiff had no probability of prevailing because she was a limited purpose public figure, and "may [also] be considered" a public official, with respect to the statements at issue, and there was insufficient evidence that the allegedly false statements in the letter were made with actual malice.

II. DISCUSSION

A. Arguments Raised

In ruling on a motion to strike, the court must first decide whether the defendant has shown that the challenged cause of action arises out of activity protected under the anti-SLAPP law; if that showing is made, the court must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) It is not disputed that plaintiff's libel claim arises out of acts "in furtherance of [defendants'] right of petition or free speech under the United States or California Constitution in connection with a public issue" (Code Civ. Proc. § 425.16, subd. (b)(1)), and thus satisfies the first prong of the anti-SLAPP test. The issue is whether plaintiff has established a probability of prevailing on the claim.

It is conceded that the letter in question was privileged insofar as it was communicated to Superintendent Eastin. The letter sought a suspension of funding for Gateway, and asked for an investigation of ADL's allegations against Gateway and plaintiff. "A communication to an official agency which is designed to prompt action" (*Walker v. Kiousis* (2001) 93 Cal.App.4th 1432, 1439) is deemed part of an official proceeding for purposes of section 47, subdivision (b), which provides that a publication made in any "official proceeding authorized by law" is privileged. (See *Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 362-364 [citing and discussing numerous cases applying this privilege "to complaints to governmental agencies requesting that the agency investigate or remedy wrongdoing"].)

Plaintiff contends that she can nevertheless prevail on her libel claim based on the posting of the letter on ADL's website. She submits that this public broadcast of the letter, unlike the original letter itself, was not privileged. (See *King v. Borges* (1972) 28 Cal.App.3d 27, 34 [absolute privilege covering letter to Division of Real Estate alleging realtor's malfeasance did not extend to copies of letter distributed to persons outside the state agency].) Defendants maintain that the website posting was privileged under section 47, subdivision (d)(1)(C) and (D), which protect fair and true reports in a

"public journal" of anything said in the course of a public official proceeding. Defendants argue that ADL's website, like a newspaper, magazine, or television broadcast (see *Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1558; *Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 246; *Green v. Cortez* (1984) 151 Cal.App.3d 1068, 1073), qualifies as a "public journal" because the ADL has been judicially recognized as an entity that engages in journalistic activity (see *Anti-Defamation League of B'nai B'rith v. Superior Court* (1998) 67 Cal.App.4th 1072, 1092-1093 [noting also, however, that many of ADL's activities "are unrelated to conventional journalism"]).

Alternatively, defendants argue that plaintiff cannot establish a probability of prevailing because she was either a limited purpose public figure, or a public official, in connection with the alleged libel, and there is no clear and convincing evidence that the challenged statements were made with actual malice as required by the *New York Times* (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 279-280) rule. We conclude that plaintiff was a public official, and that she has not established the requisite malice to prevail on her libel cause of action. In view of these conclusions, we need not decide whether plaintiff was a limited purpose public figure, and we need not address defendants' claim of privilege under section 47, subdivision (d).

B. Whether Plaintiff was a Public Official

To recover for defamation relating to their official conduct, public officials must show that the statements were made with knowledge of their falsity or reckless disregard for their truth. (*New York Times Co. v. Sullivan, supra,* 376 U.S. at pp. 279-280.) This rule extends to "anything which might touch on an official's fitness for office." (*Garrison v. Louisiana* (1964) 379 U.S. 64, 77.) The rule reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." (*New York Times Co. v. Sullivan, supra,* 376 U.S. at p. 270.) Public officials are held to a different rule than private individuals because they assume a greater risk of public scrutiny by seeking

public office, and generally have greater access to channels of effective communication to rebut false charges. (*Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 344.)

Whether someone is a "public official" for this purpose is determined according to federal standards. (*Rosenblatt v. Baer* (1966) 383 U.S. 75, 84; *Kahn v. Bower* (1991) 232 Cal.App.3d 1599, 1610.) Under those standards, "the 'public official' designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs." (*Rosenblatt v. Baer, supra,* 383 U.S. at p. 85.) The designation applies where the individual's "position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all governmental employees . . . ." (*Id.* at p. 86.) "The employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy." (*Id.* at p. 86-87, fn. 13.)

Who qualifies as a "public official" has been litigated in many cases throughout the country (see Annot. (1996) 44 A.L.R.5th 193 [collecting decisions]), and the issue has arisen a number of times in California. Under our precedents, a child welfare worker (*Kahn v. Bower, supra,* 232 Cal.App.3d at p. 1613), a police officer (*Gomes v. Fried* (1982) 136 Cal.App.3d 924, 934), and a former city attorney and lawyer for a city redevelopment agency (*Weingarten v. Block* (1980) 102 Cal.App.3d 129, 139) have been found to be public officials. A public school teacher (*Franklin v. Benevolent Etc. Order of Elks* (1979) 97 Cal.App.3d 915, 924-925), and a shareholder and director of the parent company of an association licensed to conduct horse racing at a county fairgrounds (*Mosesian v. McClatchy Newspapers* (1988) 205 Cal.App.3d 597, 611) have been held not to be public officials. There is a split of authority as to whether a deputy public defender should be regarded as a public official. (Compare *James v. San Jose Mercury News, Inc.* (1993) 17 Cal.App.4th 1, 10-11, and *Tague v. Citizens for Law & Order, Inc.* (1977) 75 Cal.App.3d Supp. 16, 24.)

Consistent with the federal nature of the applicable standards, precedents from other jurisdictions have been cited as persuasive authority in the California cases. (E.g., *Kahn v. Bower, supra,* 232 Cal.App.3d at pp. 1612-1613; *Gomes v. Fried, supra,* 136 Cal.App.3d at pp. 933-934; *Weingarten v. Block, supra,* 102 Cal.App.3d at p. 140.) There is disagreement among jurisdictions as to whether public school principals and teachers are to be considered public officials. (See Annot., *supra,* 44 A.L.R.5th at pp. 318-332 and cases cited; see also *Franklin v. Benevolent Etc. Order of Elks, supra,* 97 Cal.App.3d at pp. 924-925.) However, there is apparently universal agreement that public school superintendents and board members merit that designation. (*Garcia v. Bd. of Ed. of Socorro Consol. Sch. Dist.* (10th Cir. 1985) 777 F.2d 1403, 1408 [school board members are public officials]; *Strong v. Oklahoma Pub.* (Okla. Ct. App. 1995) 899 P.2d 1185, 1188 [school board vice president is public official]; *Scott v. News-Herald* (Ohio 1986) 496 N.E.2d 699, 702-703 [superintendent of municipal public school system]; *State v. Defley* (La. 1981) 395 So.2d 759, 761 [school superintendent and "school supervisor"]; *Palm Beach Newspapers, Inc. v. Early* (Fla. Dist. Ct. App. 1976) 334 So.2d 50, 51 [county superintendent of public instruction].)

Whether public school board members and superintendents qualify for public official status has not been considered a close question. "Clearly, the governance of a public school system is of the utmost importance to a community, and school board policies are often carefully scrutinized by residents. Members of the local school board, who are elected to make decisions regarding local education, clearly 'have or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.' *Rosenblatt* [*v. Baer, supra,* 383 U.S. at p. 85]. The strong public interest in ensuring open discussion of their job performance warrants the conclusion that school board members are public officials." (*Garcia v. Bd. of Ed. of Socorro Consol. Sch. Dist., supra,* 777 F.2d at p. 1408; see also *Strong v. Oklahoma Pub., supra,* 899 P.2d at p. 1189 [school board vice president "clearly" meets the test for public official status].) The same reasoning applies equally to an unelected public school superintendent: "Clearly, the head of a city school district has substantial responsibilities in the operation

of the system. Moreover, the [city's] public has a substantial interest in the qualifications and performance of the person appointed as its superintendent. [¶] . . . Controversial actions of a public school superintendent constitute major news in the local paper. A contrary finding [to that of public official status] would stifle public debate about important local issues." (*Scott v. News-Herald, supra,* 496 N.E.2d at pp. 702-703.)

The reasoning of these cases is persuasive here. Plaintiff was the superintendent of what was described at the time as the fastest growing charter school system in the state. At their peak, the Gateway charter schools were educating 1,000 students. They had received over a $1 million in public funds for their operation, and stood to receive millions of dollars more. Insofar as it appears from the record, plaintiff was the primary, if not sole, spokesperson for these schools, and the one in charge of their management. In that capacity she had "substantial responsibility for or control over the conduct of governmental affairs," and her position was one of sufficient importance to "invite public scrutiny and discussion . . . entirely apart from the . . . particular charges in controversy." (*Rosenblatt v. Baer*, *supra*, 383 U.S. at pp. 85-87, fn. 13.) "[E]ducation is perhaps the most important function of state and local governments." (*Brown v. Board of Education* (1954) 347 U.S. 483, 493.) Public schools are "the Nation's most important institution 'in the preparation of individuals for participation as citizens, and in the preservation of the values on which our society rests.' " (*Lorain Journal Co. Et Al. v. Milkovich* (1985) 474 U.S. 953, 958, cert. den. [dis. opn. of Brennan, J.].) Thus, there was manifestly a strong public interest in open discussion of plaintiff's job performance and fitness for the position.

Plaintiff contends that she cannot be considered a public official under *New York Times* because as a superintendent of charter schools, she was not a governmental employee. This argument is based on *Mosesian v. McClatchy Newspapers*, *supra*, 205 Cal.App.3d 597, the case that considered whether a man with an interest in an association licensed to manage horse races was a public official. In concluding that he was not, the court first found that he could not be a public official because he was not a government employee. (*Id.* at p. 609.) Although the court said it did not believe that

public official status could be based merely on the performance of a public or governmental function (*id.* at p. 607), it then went on to note that horse racing is not a government business in California (*id.* at p. 610). Despite the reasoning of this decision, we do not consider government employment a dispositive factor in resolving the issue of public official status here.

Charter schools have been broadly described as "statutorily created schools run by private parties" (Note, Goldstein, *Exploring 'Unchartered' Territory: An Analysis of Charter Schools and the Applicability of the U.S. Constitution* (1998) 7 So.Cal. Interdisc. L.J. 133), and as entities that may in some respects blur the distinction between public and private institutions for constitutional law purposes (*id.* at pp. 150-165 [discussing whether charter schools can be considered government agencies]; see also Wren, *Charter Schools: Public or Private? An Application of the Fourteenth Amendment's State Action Doctrine to These Innovative Schools* (2000) 19 Rev. Litig. 135). However, it is clear that California charter schools are part of this state's public school system. This was one of our holdings in *Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1136, where we rejected state constitutional challenges to California's charter school laws, and the argument that charter schools are private, not public schools (*id.* at p. 1139). We also rejected the contention that charter officials were not officers of the public schools. We held to the contrary that, under the laws of this state, "charter school officials are officers of public schools to the same extent as members of other boards of education of public school districts." (*Id.* at p. 1141.)

We likewise conclude here that plaintiff, as the superintendent of a charter school system, was, like other public school superintendents and board members, a public official under *New York Times*, whether or not she was strictly speaking a governmental employee in that capacity. A contrary conclusion would exalt form over substance, overlook "the intent of the Legislature that charter schools are and should become an integral part of the California educational system" (Ed. Code, § 47605, subd. (b)), and derogate the First Amendment protection of open discussion of the performance and

qualifications of those with "substantial responsibility for or control over the conduct of governmental affairs" (*Rosenblatt v. Baer, supra,* 383 U.S. at p. 85).

This result is consistent with the only case we have found where a First Amendment issue has arisen in the context of a charter school. In *Nampa Charter School, Inc. v. DeLaPaz* (Idaho 2004) 89 P.3d 863, a defamation action by a charter school against a bookkeeper it had fired, the school alleged that the bookkeeper was intentionally making false statements to induce the school district to revoke the school's charter. The school argued that, as a nonprofit corporation, it had the same powers as any individual to sue or be sued. The court concluded, however, based on the state laws governing the charter school, that the school "should be treated similarly to a school district" (*id.* at p. 868), and thus as "a governmental entity, at least within the context of this case" (*ibid.*). Since *New York Times* and *Rosenblatt v. Baer, supra,* 383 U.S. 75, "held that a generalized criticism of government policy cannot be punished," the charter school was barred from suing for defamation. (*Nampa Charter School, Inc. v. DeLaPaz, supra,* at p. 867.) Moreover, the school could not obtain an injunction preventing the teacher from making unfounded false statements about the school's administrators because such relief would be "an impermissible prior restraint on speech that is critical of *public officials*." (*Ibid.*; italics added.)

Accordingly, plaintiff was a public official for purposes of the *New York Times* rule.

C. Whether Defendants Acted With Actual Malice

(1) Legal Standards

Because plaintiff was a public official, she is required to show that defendants acted with actual malice. (*New York Times Co. v. Sullivan*, *supra*, 376 U.S. at pp. 279-280.) "In this context, actual malice means that the defamatory statement was made 'with knowledge that it was false or with reckless disregard of whether it was false or not.' [*Id.* at p. 280.] Reckless disregard, in turn, means that the publisher 'in fact entertained serious doubts as to the truth of his publication.' (*St. Amant v. Thompson* [1968] 390 U.S. 727, 731.) To prove actual malice, therefore, a plaintiff must

'demonstrate with clear and convincing evidence that the defendant realized that his statement was false or that he subjectively entertained serious doubt as to the truth of his statement.' (*Bose Corp. v. Consumers Union of U.S., Inc.* [1984] 466 U.S. 485, 511, fn. 30; see also *McCoy v. Hearst Corp.* (1986) 42 Cal.3d 835, 860.)" (*Khawar v. Globe Internat., Inc.* (1998) 19 Cal.4th 254, 275.)

"The existence of actual malice turns on the defendant's subjective belief as to the truthfulness of the allegedly false statement. (*Reader's Digest Assn. v. Superior Court* [1984] 37 Cal.3d [244,] 257.) . . . Factors such as failure to investigate, anger and hostility, and reliance on sources known to be unreliable or biased 'may in an appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his publication.' (*Id.* at pp. 257-258.)" (*Annette F. v. Sharon S.* (2004) 119 Cal.App.4th 1146, 1167.) However, "[a]ctual malice may not be inferred solely from evidence of personal spite, ill will, or bad motive. (*Harte-Hanks Communications, Inc. v. Connaughton* (1989) 491 U.S. 657, 666-667 & fn. 7.) Similarly, mere failure to investigate the truthfulness of a statement, even when a reasonably prudent person would have done so, is insufficient. (*Id.* at p. 688.)" (*Annette F. v. Sharon S., supra,* 119 Cal.App.4th at p. 1169.)

A publisher "may rely on the investigation and conclusions of reputable sources" (*Reader's Digest Assn. v. Superior Court, supra,* 37 Cal.3d at p. 259), but " 'recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports' " (*id.* at p. 257). "One who repeats what he hears from a reputable news source, with no individualized reason external to the news report to doubt its accuracy, has not acted recklessly." (*Flowers v. Carville* (9th Cir. 2002) 310 F.3d 1118, 1130.) However, defendants cannot "hid[e] behind" news stories if "they knew that the news reports were false, or had information from other sources that raised obvious doubts." (*Ibid.*) "So long as he has no serious doubts concerning its truth," a defendant "can present but one side of the story," and write in a style that "seeks to expose wrongdoing and arouse righteous anger." (*Reader's Digest Assn. v. Superior Court, supra,* 37 Cal.3d at p. 259.)

"In order to establish a probability of prevailing on the claim (§ 425.16, subd. (b)(1), a plaintiff responding to an anti-SLAPP motion must ' "state and substantiate[] a legally sufficient claim." ' (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1123, quoting *Rosenthal v. Great Western Fin. Securities Corp*. (1996) 14 Cal.4th 394, 412.) Put another way, 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.' [Citation.]" (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.)

"Courts must take into consideration the applicable burden of proof in determining whether the plaintiff has established a probability of prevailing. (*Rosenaur v. Scherer* (2001) 88 Cal.App.4th 260, 274.) A public [official] suing for libel must therefore establish a probability that she will be able to produce clear and convincing evidence of actual malice. (*Colt v. Freedom Communications, Inc.* [*supra*,] 109 Cal.App.4th [at p.] 1557; *Conroy v. Spitzer* (1999) 70 Cal.App.4th 1446, 1454; *Beilenson v. Superior Court* (1996) 44 Cal.App.4th 944, 953.) 'The clear and convincing standard requires that the evidence be such as to command the unhesitating assent of every reasonable mind. [Citation.]' (*Beilenson v. Superior Court, supra*, 44 Cal.App.4th at p. 950.)" (*Annette F. v. Sharon S., supra,* 119 Cal.App.4th at pp. 1166-1167.)

(2) Record

One of Gateway's schools was located in Baladullah, described in *Fresno Bee* and *San Francisco Chronicle* articles as an 1800-acre ranch and gated Muslim community near Badger in the foothills of Tulare County. Baladullah came under scrutiny after the incidents of September 11, 2001, because of its possible ties to the alleged terrorist group Al-Fuqra, founded by Pakistani Sheik Mubarik Jilani. That scrutiny intensified when a man who had been staying at Baladullah was accused of murdering a Fresno County deputy sheriff on August 21, 2001.

Baladullah was the subject of a news story on KGO-TV in San Francisco on November 7 and 8, 2001, and articles in the *San Jose Mercury News* on December 24,

2001, and the *Fresno Bee* on January 6, 2002. Baladullah was linked in these reports with two other entities established by Sheik Jilani: the "Qur'anic" or "Quranic" Open University, and a group called "Muslims of the Americas," "Muslims of Americas," or "Muslims of America."

Baladullah was described in the reports as one of a number of isolated rural communities the group had founded in order to live communally and practice their faith. The *Mercury News* article said that agents with the U.S. Bureau of Alcohol, Tobacco and Firearms had looked into Baladullah "as part of their investigation into Al-Fuqra activities at a similar remote settlement in Virginia," where a man had recently been convicted of federal firearms violations. The agent in charge of the ATF in Virginia said that the settlements were "all connected," and that he was "aware that there [was a] faction near Fresno." Ramadan Abdullah, the man accused of killing the deputy sheriff, "had come from a similar Muslim community in Binghamton [New York]," and had sought psychiatric treatment at the Qur'anic Open University in Baladullah. Sheik Jilani was quoted in the television story saying, "You can reach us . . . at Quranic Open University offices in upstate New York or in Connecticut or in Michigan or in South Carolina." The story said that a sign in Baladullah for the university was taken down after the station began its investigation.

Plaintiff was identified in these reports as an officer of Muslims of the Americas or Muslims of America, as president of the nonprofit organization that owned the Baladullah land, and as the "most prominent member" of the community. The television story said that plaintiff was the corporate secretary for Muslims of America. The January 6 *Fresno Bee* article said that plaintiff "was listed recently as an officer on the Web site [sic] of the controversial group Muslims of the Americas. She said the affiliation was part of some paperwork she filled out to join a group delivering medicine to Africa in 2000."

The television report said that Jilani and Al-Fuqra had appeared on terrorist watch lists, but that Muslims of America and Qur'anic Open University had not. The newspaper articles said that the State Department had identified Al-Fuqra, "a black

American Muslim sect" headed by Jilani, as a militant group that sought to purify Islam through violence. The *Fresno Bee* article said that federal authorities held Al-Fuqra responsible for 17 bombings and 12 killings nationwide. The *Mercury News* article said that Al-Fuqra members in Colorado had been convicted of conspiracy in the murder of a Muslim cleric.[2] In the *Bee* article, a forensic document examiner involved in the Colorado case called "Muslims of Americas" and Qur'anic Open University "front organizations" for Al-Fuqra. According to this source, " 'Members of this group always live in rural areas. They're always involved in some sort of government fraud to bring in income, and behind the peaceful façade they're involved in covert activity.' "

Defendant Bernstein expressed "serious concerns" in the television story about Baladullah and the Gateway charter schools. The story reported that Gateway had received $1 million in public funding the previous year, and stood to receive $5.5 million in public funds in the current year. The story said that the ADL had been tracking Al-Fuqra since the 1980s, and that while ADL had "no evidence that your tax dollars are headed from a village in Tulare county . . . to the terrorist's base in Pakistan," it was "concerned about where the charter school money is going." " 'We feel like these funds can land up in the hands of extremists,' " Bernstein said.

Plaintiff defended the community and the schools in the newspaper articles, and denied any association with terrorists. The *Mercury News* article said that Jilani's followers denied the existence of Al-Fuqra and alleged that this organization had been "conjured up" by " 'Zionists' " and "other outsiders." A Fresno physician who was well acquainted with Baladullah's residents told the *Mercury News* that the community was simply a " 'shelter for poor people.' " Suggestions that Baladullah was a sinister place were " 'mind boggling' " to the doctor, who said that the residents were just " 'poor,

[2] The alleged link between Muslims of the Americas and Al-Fuqra, and the crimes allegedly committed by Al-Fuqra members, had been detailed years earlier in a February 28, 1994, article in Newsweek magazine entitled, "Another Holy War, Waged on American Soil; A Muslim Sect With a Dangerous Agenda." The article said that Al-Fuqra's "actual agenda is murky," but that its list of enemies included "Hindus and Hare Krishnas, Israel, the Jewish Defense League and even the Nation of Islam."

black people trying to get on their feet.' " A Tulare County lieutenant sheriff told the *Fresno Bee* that "the biggest problem we have up here is cows on the road," and that he was "more afraid for the people of Baladullah than of them." Plaintiff told the *Bee* that she had founded Baladullah and the charter school as a way for people to nourish " 'the empowerment of the human spirit. [¶] The real sensational story is that some people are living on a ranch together, and they're learning to feel they can accomplish things. . . . And there's a school that is reaching out to parents and children who had fallen through the cracks. Once people gain hope, they can do anything.' " Plaintiff said that the man accused of killing the Fresno deputy sheriff had lived at Baladullah for only a week before the shooting, and that the residents had grieved for the sheriff, who was known and liked in the community.

A "Muslims of America" community in Virginia was also the subject of news reports after the September 11 incidents. A September 30, 2001, article in the Washington Post reported that a man arrested on weapons charges at a "Muslims of America compound" in rural Virginia had been indicted in Colorado in the early 1990's along with "other Al-Fuqra members . . . after a search of a storage locker turned up firearms, explosive and plans for an attack." The Virginia community of the "Muslims of the Americas" was profiled in the *New York Times* on January 3, 2002. The article said that prosecutors identified this community as a "part of" Al-Fuqra. The United States Attorney for the Western District of Virginia said that Al-Fuqra had a history of violence, including suspected involvement in "the recent shooting of a deputy sheriff in California." The article noted that "a man who was staying at a Muslims of the Americas community near Badger, [California]" had been charged with the crime. Suhir Ahmad, a Muslims of the Americas spokesperson who held a Ph.D. in Islamic political science "from Quranic Open University, established by Sheik Gilani in Fresno, [California]" denied that Muslims of the Americas were involved in criminal activity. Members of the group regarded such accusations "as the latest manifestations of a Zionist conspiracy to target Muslims."

The *San Jose Mercury News* and the *Fresno Bee* ran articles on the Muslims of the Americas on January 10, 2002, the day the Eastin letter was sent. The *Mercury News* noted that the organization's "religious communities in rural areas such as the Sierra foothills have drawn law enforcement scrutiny since [September] 11." The articles quoted statements by Muslims of the Americas spokespersons Suhir Ahmad and Muhammad Haqq at the organization's January 9 press conference in Washington D.C. The press conference was held to respond to recent news stories that quoted law enforcement officials as saying that Sheik Jilani was the founder of a violent extremist group, and to disassociate the Muslims of the Americas from the man accused of killing the Fresno deputy sheriff.

Ahmad said, " 'We are not involved in any illegal acts of terrorism or otherwise, and we want to put a stop to the associations. . . . [¶] We are American citizens. We abide by the Constitution. We do support our government, and we are peace lovers. We want peace.' " Haqq said, " 'These situations that have happened in California or wherever else are the acts of the individuals and not the acts of the community . . . . [¶] People come from all walks of life prior to being Muslim. Therefore it's hard to let go of their old ways. . . . Because someone commits a criminal act it does not mean that this is an act of Muslims of the Americas." Haqq said that Ramadan Abdullah, the deputy sheriff's accused killer, left a Muslims of the Americas summer camp in upstate New York because of his mental illness. "When Abdullah left, Haqq said organization leaders were in the dark about his plans. The Muslims of the Americas holds a belief in a Quran-centered concept of psychiatry, [Haqq] said, and Abdullah reportedly has told investigators he was seeking psychiatric treatment at Baladullah. . . . [¶] 'We thought he was going home,' Haqq said, 'and the next thing we saw were the newspaper stories [about the sheriff's death]. We were totally shocked.' "

An ADL researcher quoted in the *Mercury News* article said, " 'All the evidence that we have seen indicates that these two organizations [Muslims of the Americas and Al-Fuqra] are closely related.' " However, the Muslims of the Americas' representatives "said groups and people opposed to the Islamic religion are simply trying to hurt their

group by making the terrorist claims. The Baladullah community had taken down a sign at its entrance indicating the affiliation with the International Qur'anic Open University, because of fear of recriminations triggered by recent publicity the group has received. The sign was recently reposted, Haqq said. . . . [¶] 'We moved to these rural areas to take our families out of the decadence and immorality they found in the inner cities,' Haqq said. 'Our enemies or the enemies of Islam have referred to our campuses and our villages as compounds or terrorist training camps. . . . We're just trying to develop a community that's self-sufficient, where we could educate our children and have a safe secure environment.' "

The Eastin letter read in full as follows:

"We are writing you to express our deep concern and outrage over state funding of the GateWay Academy charter school system. There are indications that this school is linked to an Islamic terrorist group and that the school has violated the First Amendment by teaching religion in this state-funded school.

"The GateWay Charter school superintendent is Khadijah Ghafur. According to published news reports in the *Fresno Bee* of January 6, 2002, Mrs. Ghafur is an officer of the Muslims of the Americas, (MOA), a virulently anti-Semitic, Islamic extremist group. According to Newsweek, MOA has served as a corporate front for another group founded by Sheik Jilani, the terrorist organization Al-Fuqra, whose members have committed firebombings and murders on U.S. soil. The state department describes Al Fuqra as an Islamic sect that seeks to purify Islam through violence. We are deeply concerned about this tie between the charter school superintendent and the MOA. For further information about the Muslims of the Americas, please read about MOA in their own words on ADL's website at http://www.adl.org/extremism/moa/default.asp.

"The suspected linkage of GateWay and MOA is also suggested by the connection of the Muslims of the Americas and the Qu'ranic Open University, which were both founded by Sheik Jilani. The Miramonte Learning Center, a Gateway charter school, is located within the gated Muslim enclave of Baladullah. Until September of 2001, Baladullah also contained a campus openly marked as a Qu'ranic Open University. For

further information about Al Fuqra, you can read ADL's report at: http://www.adl.org/extremismmoa/al-fuqra.pdf.

"Aside from this suspected linkage to terrorist groups, we are extremely concerned by allegations that GateWay schools have engaged in open teaching of religion using state money. In an article in the December 17, 2001, the [*sic*] *San Francisco Chronicle* pointed to direct evidence that religion was being taught at a GateWay school. The reporter found that the Sunnyvale chapter of a GateWay School had Koran's in the principal's office, as well as childrens' [*sic*] books entitled 'My Little Qu'ran.' Allegedly, students reported studying Islam and praying in class with teachers. As a charter school, GateWay schools are prohibited by the First Amendment, the California Constitution, and state law to instruct their students in religion. State funds may not be used for public religious instruction.

"We urge you to investigate these allegations seriously, and to immediately suspend funding to GateWay schools. If our organization can provide further assistance, please do not hesitate to contact us."

In her declaration in opposition to the motion to strike, plaintiff stated that she had received a doctor's degree in Quranic Psychiatry from the Quranic Open University in 1983. She said that in 1981 she "met Sheikh Mubarik Ali Shah Jilani, a native and resident of Pakistan who was visiting the United States to teach a type of benign Muslim faith which eschewed violence and centered on peaceful worship of Allah. Sheik Jilani urged urban Muslims to abandon what he called 'the welfare mentality,' move out of inner-city ghettoes and to set up self-sustaining communities of Muslim families in rural areas. Sheikh Jilani has never taught or sponsored violence or terrorism in my presence, or to anyone else as far as I know." She said that she had never been charged with any crime, and had no knowledge that an organization called Al-Fuqra existed. She believed that defendants published the Eastin letter "as part of their long-standing effort to denigrate Muslims as part of their advocacy for Israel and the fact that most Muslims in America support the Palestinians and the ending of the occupation of that part of Palestine awarded to the Palestinians by U.N. Security Resolution 242."

(3) Analysis

Plaintiff does not contend that the Eastin letter was libelous insofar as it charged that the organization Muslims of the Americas was a corporate front for the terrorist group Al-Fuqra. According to numerous articles from reputable news sources, various law enforcement officials were of the opinion that Muslims of the Americas was linked with Al-Fuqra, and while the existence of Al-Fuqra was disputed, neither the existence of that terrorist organization nor its link with Muslims of the Americas appears to be provably false. (See *Moyer v. Amador Valley J. Union High School Dist.* (1990) 225 Cal.App.3d 720, 724 [statements of opinion may be actionable if they imply a provably false factual assertion].)

Plaintiff's argument for malice is that defendants falsely accused her of being an officer of Muslims of the Americas when they knew that she was in fact an officer of, as her declaration puts it, "a wholly different and unrelated" corporation called "Muslims of America, Inc." Although there is no direct evidence whether defendants were aware of the distinction between these entities when the letter at issue was published, plaintiff submits that such an awareness can be reasonably inferred from the fact that ADL had been monitoring Muslims of *the* Americas for many years. In support of their positions on the motion to strike, both sides submitted information from the Nevada Secretary of State showing that plaintiff was an officer of the corporation "Muslims of America, Inc." Defendants apparently believe this evidence links plaintiff with Muslims of the Americas; plaintiff evidently believes this evidence shows that Muslims of the Americas and Muslims of America were entirely distinct.

Defendants' letter stated in relevant part that "[a]ccording to published news reports in the *Fresno Bee* of January 6, 2002, Mrs. Ghafur is an officer of the Muslims of the Americas . . . ." The newspaper article stated that the Muslims of the Americas had recently listed plaintiff as an officer on its website, and that plaintiff had "said the affiliation was part of some paperwork she filled out to join a group delivering medicine to Africa in 2000." Thus, the challenged assertion in the letter was factually correct—plaintiff was identified in the article as an officer of Muslims of the Americas.

Defendants were entitled to rely on the information in the article unless they had "information from other sources that raised obvious doubts" about the article's veracity. (*Flowers v. Carville*, *supra*, 310 F.3d at p. 1130.)

There is no evidence that the Muslims of the Americas website did not in fact list plaintiff as an officer of that organization as stated in the article. Moreover, while plaintiff has declared that she was never an officer of a corporation called Muslims of the Americas, she has not denied telling the *Fresno Bee* that she was an officer of that organization, or at least acknowledging "the affiliation" shown on the Muslims of the Americas' website as reported in the article.[3] The only "other source" that could potentially have raised "obvious doubts" about the article (*Flowers v. Carville*, *supra*, 310 F.3d at p. 1130) would have been the information showing that she was an officer of the Nevada corporation Muslims of America, Inc.

Plaintiff's argument plausibly assumes that defendants were aware of the Nevada corporation when they published the letter. The November 2001 KGO-TV story on Baladullah said that plaintiff was corporate secretary of Muslims of America, an identification consistent with, and presumably based on, the Nevada Secretary of State's records. Defendant Bernstein was quoted in the report as expressing serious concerns about Baladullah and the Gateway charter schools. Given those strong concerns and the ADL's longstanding interest in Muslims of the Americas, it is not unlikely that defendants were familiar with sources of information for the story. Further, rather than professing subjective good faith with respect to their allegations against plaintiff, defendants have chosen to rely entirely on news articles and Nevada records to show what was publicly known about her alleged ties to a terrorist organization. In these circumstances, it is not unreasonable to infer that defendants were aware, when the letter was written, of the articles and records they now proffer in their defense.

[3] Nor has plaintiff denied telling the Los Angeles Times, in an interview after publication of defendants' letter, that she was "associated with Muslims of the Americas."

But even if defendants knew that plaintiff was an officer of Muslims of America, the question remains whether that knowledge would have raised obvious doubts as to whether she was also an officer of Muslims of the Americas. Asked another way, would there have a been a clear reason on the evidence presented for defendants to have distinguished between the two entities? The answer is "no." The sharp distinction plaintiff wishes to draw between Muslims of the Americas and Muslims of America is insupportable in the face of the news reports in evidence.

The news accounts referred interchangeably to "Muslims of the Americas" and "Muslims of America." While most of the stories called the group "Muslims of the Americas," the September 30, 2001, Washington Post article on the community in rural Virginia, as well as the KGO-TV report on Baladullah, called the group "Muslims of America." The January 6, 2002, *Fresno Bee* article included a third formulation, "Muslims of Americas," as well as "Muslims of the Americas." Although these differences could have simply resulted from loose spelling, nothing in the reports would have suggested to defendants that the different names referred to different organizations.

More importantly, Baladullah would likely have appeared to defendants as precisely the sort of Sheik Jilani-inspired rural enclave as those run elsewhere by Muslims of *the* Americas. According to plaintiff's declaration, Jilani urged urban Muslims to abandon the "welfare mentality," move out of inner-city ghettoes, and establish self-sufficient communities of families in rural areas. Consistent with that vision, Baladullah residents defended their community in the December 24, 2001 *San Jose Mercury News* article "as a group of families who ha[d] come together to live in peace, away from the inner-city ravages of drugs and violence." In the same vein, Muslims of the Americas' national spokesperson Muhammad Haqq was quoted in the January 10, 2002, *Mercury News* as saying, "We moved to these rural areas to take our families out of the decadence and immorality they found in the inner cities." Baladullah was "connected" by a federal agent with the Muslims of the Americas Virginia community in the December 24, 2001, *Mercury News* article, and Baladullah was identified as a Muslims of the Americas community in the January 3, 2002, *New York*

Times article on the Virginia group. Baladullah was also associated with the Muslims of the Americas camp in New York by the news stories on the man accused of killing the Fresno deputy sheriff.

As reported on the date of defendants' letter to Superintendent Eastin, when the Muslims of the Americas held a press conference in Washington, D.C. on January 9, 2002, to distance themselves from the Fresno killing, they did not deny that they were affiliated with Baladullah, they insisted instead that the community bore no collective responsibility for the killing. Further, Baladullah was the site of a Qur'anic Open University, an entity consistently associated with Muslims of *the* Americas. Muhammad Haqq, speaking for the Muslims of the Americas at the January 9 press conference, said that the sign for the university in Baladullah had been taken down because of "publicity the group ha[d] received," but that the sign had recently been reposted. His knowledge and description of these events further reinforced the link between Baladullah and the Muslims of the Americas.

Given plaintiff's status as founder of and spokesperson for Baladullah, and the community's widely-reported ties with "Muslims of the Americas," there would have been no "obvious reasons [for defendants] to doubt" a reputable news report (*Reader's Digest Assn. v. Superior Court, supra*, 37 Cal.3d at p. 257) that she was an officer of that organization, even if they knew that she was also an officer of a Nevada corporation called "Muslims of America." In view of the publicly available information concerning plaintiff, Baladullah, Muslims of the Americas, and Muslims of America—all of the circumstantial evidence bearing on defendants' states of mind—they would likely have viewed the different names of the organizations as a distinction without a difference. Nothing suggested that Muslims of the Americas and Muslims of America were different organizations or, even if they were different entities, that they were not functionally equivalent or that membership in one precluded membership in the other.

Accordingly, there is "no compelling reason to believe that [defendants] acted in bad faith" in repeating the news report that plaintiff was an officer of Muslims of the Americas. (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 847.) There is at best only a

"speculative possibility, fall[ing] short of clear and convincing evidence" that defendants could have known that plaintiff, as she now claims, was not an officer of Muslims of the Americas, or that defendants deliberately conflated Muslims of the Americas and Muslims of America as she charges. (*Ibid.*) On this record, there is no "high probability, sufficient to command unhesitating assent, that [defendants] acted with reckless disregard for the truth or falsity of the statement" at issue. (*Id.* at p. 848.) "[T]he proof presented to show actual malice lacks the convincing clarity which the constitutional standard demands" (*New York Times, supra*, 376 U.S. at pp. 285-286), and was insufficient to withstand the anti-SLAPP motion.

III. DISPOSITION

The order granting the motion to strike, and the judgment for defendants, are affirmed.

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Kay, P.J.

We concur:

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Reardon, J.

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Rivera, J.

Trial Court:	San Francisco County Superior Court
Trial Judge:	Hon. Donald S. Mitchell
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