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CLERK U.S. DISTRICT COURT
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BY: _____ *AD*

5 **UNITED STATES DISTRICT COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA**
7 **WESTERN DIVISION**

9 KEITH GILABERT,
10 Plaintiff,

11 vs.

12 ANN LOGUE,
13 Defendant(s)

) Case No.: No. CV13-00578-GHK

) PLAINTIFF'S OPPOSITION TO
) DEFENDANT'S MOTION TO STRIKE
) PURSUANT TO CCP 425.16

) Hearing Date: April 22, 2013

) Time: 9:30am

) Hon. George H. King

) Location: Courtroom 650

) Date action filed: January 25, 2013

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20 PLEASE TAKE NOTICE that Plaintiff KEITH GILABERT ("Plaintiff"), opposes Defendant
21 Logue's ("Defendant"), Motion to Strike. This opposition is based upon the herein Points and
22 Authorities, Exhibits and Declarations hereto as well as the pleadings on file and any oral or
23 written evidence that may be presented at hearings on the Motion.

24
25 **I. SUMMARY**

26 As outlined below, Defendant Logue has demonstrated a willful disregard for the law and
27 has intentionally acted with reckless disregard of the truth. Defendant Logue, ignored the facts
28 because her posting was deemed defamatory by her cohort Aaron Krowne. Defendant Logue

1 then chose to ignore the facts and print a story on Keith Gilabert that had the most damaging
2 interpretation, and with no regard for the true facts and with actual malice.

3 The Plaintiff read an article on November 13, 2011 that was posted on a website hosted
4 by Defendant Aaron Krowne (Krowne) and in which Plaintiff felt was misleading and sent
5 Defendant Krowne a cease and desist letter on November 13, 2011 (see exhibit B). Defendant
6 Krowne removed the posting which Plaintiff later found out that the author was Defendant
7 Logue.

8 On November 14, 2011 Defendant Krowne sent Plaintiff a letter stating:

9 "I will be removing the article, but I'm going to post a reply, and it will be far worse for
10 you than the original article (and even less "putatively" actionable than the original post,
11 which was already completely non-actionable against me)."

12 Defendant Krowne then published Plaintiff's home address and signature which were on the
13 cease and desist letter on the his website hf-implode.com.

14 On November 18, 2011 Defendant Logue then published an article about Plaintiff with
15 statements which she had serious doubt that they were true. Logue was given a copy of the
16 "Cease and Desist Letter" delivered to Krowne. After her false and malicious blog post was
17 taken down from Krowne's site she posted it on her site. In her posting Defendant Logue stated
18 that she researched government reports and they are all "factual".

19 Plaintiff offers as evidence Defendant Logue's own post in which she cites various
20 government documents that all offer conflicting reports. Defendant Logue even offers uses as a
21 reference US Attorney's press release that contradicts her own post. Plaintiff asserts there is
22 sufficient government reports that exist on his case that give a clear and accurate picture of what
23 really transpired and Defendant Logue chose to ignore court documents because it would change
24 her story.

25 Plaintiff Gilabert never cost investors \$14 million as Defendant Logue stated. Investors
26 were paid back over \$8,000,000.00 by UBS Securites which Defendant Logue did not report.

1 Plaintiff Gilabert, did not post losses from the beginning. Accounting firm Eichler
2 Bergsman has given the government audited financials showing in 2002 Plaintiff Gilabert
3 generated a 15% net return for his investors which Defendant Logue did not report.

4 Plaintiff Gilabert, did not charge management fees on phony profits as stated by
5 Defendant Logue which Defendant Logue did not report.

6 Plaintiff Gilabert, had over \$1,000,000.00 invested alongside his investors. Plaintiff
7 Gilabert never withdrew a penny from the fund, this fact can be confirmed by the US Attorneys
8 Office which Defendant Logue did not Report.

9 Plaintiff Gilabert, never received commission kickbacks from any brokers as stated by
10 Defendant Logue.

11 Plaintiff Gilabert, never paid investors from money coming in from new investors as
12 stated by Defendant Logue.

13 Plaintiff Gilabert loss his investors funds in the stock market along with substantial part
14 of his net worth which Defendant Logue did not report.

15 Plaintiff Gilabert did plead guilty to securities violation and was sentenced to 60 months
16 in federal camp. During the incarceration Plaintiff Gilabert was given community custody and
17 assigned to work at Vandenburg Air Force Base as a driver for special projects. Plaintiff
18 Gilabert worked closely with military personnel under Lieutenant Colonel Pietsch. Plaintiff
19 never had any disciplinary actions and was one of four inmates given security level of
20 community custody and was also given full unsupervised access to an automobile which Plaintiff
21 was asked to drive to town daily.

22 Defendant Logue has not offered this Court any evidence to exonerate her from any of
23 the false statements she posted on her blog. She wrote a story about Plaintiff knowing full well
24 that there was serious doubt as to her facts.

25 Accordingly, the Court should deny Defenant's Motion to Strike because each of the
26 Defendant's arguments is flawed and incorrect as a matter of law. Furthermore, Defendant
27 Logue has intentionally filed a false declaration to this court.

28 **Applicable Law**

1 The anti-SLAPP statute provides a procedure for striking meritless, chilling causes of action at
2 the earliest possible stages of litigation. In the first step of a two-step analysis the trial court
3 determines if the defendant has made a threshold showing that the challenged cause of action is
4 one arising from protected activity that is in the furtherance of the defendant's right of petition or
5 free speech under the federal or state Constitutions. The defendant must establish that the
6 plaintiff's cause of action is actually based on conduct in the exercise of those rights.

7 If the claims implicate constitutional rights the court then determines whether the plaintiff
8 has demonstrated a reasonable probability of prevailing which requires a preponderance of the
9 evidence. The court applies a "summary-judgment-like" test accepting as true the evidence
10 favorable to the plaintiff and evaluating the defendant's evidence only to determine whether the
11 defendant has defeated the plaintiff's evidence as a matter of law. A court may not weigh
12 credibility or compare the weight of the evidence. (See CCP 425.16)

13 Specifically, Defendant Logue contends that her "lies on her blog are an issue of public
14 interest." *Lying is not privileged or protected activity.*

15 In addition, courts have articulated the following principles to distinguish private matter
16 from public matter.

- 17 (1) Public interest does not equate with mere curiosity; (2) a matter of public interest
18 should be a matter of concern to a substantial number of people, not to a relatively
19 small, specific audience; (3) there should be some degree of closeness between the
20 statements at issue and the asserted public interest; (4) the focus of the speaker's
21 conduct should be the public interest rather than an effort to 'gather ammunition' for
22 a private controversy; and (5) those charged with defamation cannot, by their own
23 conduct, create their own defense by making the claimant a public figure. (Weinberg,
24 110 Cal. App. 4th at 1132-33.)

25 Argument

26 Defendant Logue's story on her blog is not protected by Section 425.16. On her post
27 dated November 18, 2013 she has several conflicting reports within the same story.
28

Defendant Logue knowingly made false statements

I. On Paragraph 3 she states, "...raised 14.1 million from 38 investors beginning September of 2001."

Defendant Logue knows this is false because she then states On Paragraph 9, "He admitted that from September 2000 through January 2005...collected more than \$7 million from more than 40 investor-clients."

II. On Paragraph 3 she states, "...The fund posted losses from the beginning, but reported gains to investors.

Defendant Logue was made aware by the cease and desist letter sent to Krowne that her information was false.

III. On Paragraph 3 she states, "Gilabert charged his management fees based on phony the profits, and he also received commission kickbacks from one of the brokers with whom he did business."

Defendant Logue knows this is false because she states On Paragraph 5 "It is all backed by primary sources....and Gilabert's own guilty plea as reported by the US Department of Justice." US Department of Justice has on record that Plaintiff Gilabert had over \$1 million of personal assets invested alongside his investors.

Where ambiguity exists with the facts underlying a story, the publisher may not intentionally abuse this uncertainty by choosing the most damaging interpretation. Defendant Logue chose to print a misleading story which inflated the role of the Plaintiff.(See Rebozo v. Washington Post Co. (637 F.2d 375 5th Cir. 1981)) The court should deny Defendant Logue's Motion to Strike because she acted with malice.

Logue Published with Actual Malice

Defendant Logue has submitted a false declaration to this court. On a post dated May 3, 2012 Defendant Logue wrote an article, "Researching Court Cases". In this article Defendant Logue states the following:

1 1. I often do stories on different frauds or lawsuits in the
2 investment industry.

3 2. But the full Monty will be hidden in the courthouse website,
4 behind a pay wall. (See Exhibit A)

5 Also, Defendant Logue also states, "on her post dated November 18, 2012, "Annie Logue knows
6 how to do research using such primary sources as government documents."(See Exhibit B)

7 Plaintiff has submitted clear and convincing evidence of Actual Malice. In the complaint
8 Plaintiffs states Defendant Logue lied about the following:

- 9 1. Raised \$14.1 million from investors
- 10 2. Received commission kickbacks from a broker.
- 11 3. Charged management fees on phony profits
- 12 4. Mass marketed the fund
- 13 5. Claimed the fund had performance dating back to 1997

14 The court applies a "summary-judgment-like" test accepting as true the evidence
15 favorable to the plaintiff and evaluating the defendant's evidence only to determine
16 whether the defendant has defeated the plaintiff's evidence as a matter of law. A
17 court may not weigh credibility or compare the weight of the evidence. (See CCP
18 425.16). Defendant Logue offers not evidence that she did not knowingly print a
19 false story.

20 Defendant Logue has shown total disregard for the truth. She claims to be a researcher in
21 the investment arena and therefore should have been highly aware as she was reading
22 government reports of the probable falsity or at least had serious doubts about its truth. This is
23 conclusive evidence that Defendant Logue wrote this story out of Actual Malice.

24 Therefore, the court should dismiss defendant Logue's motion to strike.

25 **Defendant Logue Lied By Omission**

26 It is quite clear that on November 14, 2011 Defendant Logue was made aware that her
27 story had a number of deficiencies as evidenced by the email Aaron Krowne sent her stating, that
28 he was going to take down her story. Defendant Logue took 4 days to review her information

1 that was publicly available and after reviewing all the court documents decided out of pure
2 arrogance and reckless disregard for the truth to publish her lies on AnnLogue.com. Her
3 publishing of certain allegations and ignoring factual finding of the Federal Court cases available
4 can only be described as malicious and lying by omissions. Her only purpose was to paint the
5 Plaintiff in the worst possible light in order to get back at the Plaintiff for having her story taken
6 down. The court record clearly states, the loss at approximately \$7.8 million and that the
7 investors were paid back nearly \$6.7 million. This point is very important because Defendant
8 Logue states in her story that her article is very similar to Los Angeles Times. This is another lie
9 of Defendant Logue, Los Angeles Times at least stated that the investors were being paid back
10 by UBS Securities, Defendant Logue's story suggests that Plaintiff stole \$14 million single
11 handedly. Defendant Logue makes no attempt to give a clear and accurate report. Furthermore,
12 even an 8 year-old child can tell you the difference between 7 and 14?? Defendant Logue in her
13 research sought the most damaging allegations to print and ignored the factual findings by the
14 court which is available for public viewing and she has in her possession the court docket which
15 contradicts her entire story.

16 This further proves that Defendant Logue acted with Actual Malice.

17 II. Conclusion

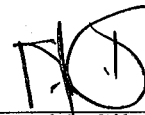
18 The court should deny Defendant Logue's motion to strike as to all causes. Defendant
19 Logue claims ignorance to the facts in her Motion to Strike but then states in her declaration that
20 she relied on government documents and that she has more than 20 years experience in the
21 research field. This is clear and convincing evidence that she did publish with Actual Malice. A
22 jury would find it reasonable that Defendant Logue who has 20 years experience researching had
23 intentionally ignored court documents in the course of her research of Plaintiff that would change
24 her story. She was upset that Aaron Krowne stated, "I'm inclined to take it down since I didn't
25 write it and I can't vouch for the content." Krowne removed her story from the site.(see Exhibit
26 C)

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Plaintiff Gilabert respectfully request that the Court deny Defendant's anti-SLAPP motion in its entirety.

Dated this 18th day of March, 2013

Respectfully submitted,



Keith Gilabert, Pro Per


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CERTIFICATE OF SERVICE

I, Keith Gilabert, certify that on March 18, 2013, I served the above and forgoing *Plaintiff's MOTION TO STRIKE*, by causing true and accurate copies of such paper to be deposited with the United States Postal Service to the persons shown below, on this the 18th day of March, 2013.

JEROME H. MOONEY,
12121 WILSHIRE BLVD. #525
LOS ANGELES, CA 90025

RAYMOND VASARI
C/O ANN LOGUE
55 PUBLIC SQUARE, #2200
CLEVELAND, OHIO 44113



Keith Gilabert

Researching Court Cases

By Ann Logue on May 3, 2012

I often do stories on different frauds or lawsuits in the investment industry. You can rarely find information about court cases on Google. If a newspaper or blog picked up the story, then you'll see some naughty bits, but the full Monty will be hidden in the courthouse website, behind a paywall. It is public information, however, so you don't have to be a lawyer to use it.

What you do is go straight to the courthouse's website. For example, suppose a disgruntled ex-convict threatens to sue you in Los Angeles Superior Court because he doesn't like that you reported on his case. Well, you can go to the court's website, register, and search for the party's name. The fee is \$4.75 per search in LA, charged to your credit card.

For federal court, the system to use is PACER. The fee is just \$0.10 per page (although some cases have hundreds or thousands of pages). Each court has its own data repository, so first you have to find out where the case is located. Still, there is a lot of good stuff here.

In some jurisdictions, especially smaller counties, you may have to go down to the courthouse yourself. You will also need to go to the courthouse to read transcripts. In most courts, one transcript is kept on file, and anyone wanting additional copies has to buy them directly from the court reporter.

The most important point is this: just because you can't find it on Google doesn't mean it doesn't exist. You can find tons of great public information available behind paywalls, once you know where to look. A neighbor who is a lawyer explained PACER to me, and I'm glad he did.

Likewise, just because you can find something on Google doesn't mean that it's real. Years ago, I had an editor assign me a story about people in a particular profession who became CEOs. I couldn't find anyone, and he was surprised. After all, when he Googled "occupation" and "CEO", he got thousands of hits!

However, I Googled "CEO" and "puppies", and got even more hits. Google is wonderful, but it isn't perfect.

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EXH. A

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Keith Gilabert Pled Guilty. That's A Fact.

By Ann Logue on November 18, 2011

I do guest-blogging occasionally to promote my books. When *Hedge Funds for Dummies* came out, I wrote a post for the Hedge Fund Implode-o-Meter about some of the hedge fund scandals of the day.

Here's what I wrote on that site in 2007:

Keith Gilabert, who operated the Capital Management Group Holding Company that managed a hedge fund, the GLT Venture Fund, raised \$14.1 million from 38 investors beginning in September of 2001. The fund posted losses almost from the beginning, but it reported gains to investors. Gilabert charged his management fees based on the phony profits, and he also received commission kickbacks from one of the brokers with whom he did business. When investors made withdrawals, they received funds from new people coming in, not from the fund's assets. There is also evidence that he mass-marketed the fund, in violation of the rules requiring unregistered funds to deal only with accredited investors. He is alleged to have been assisted by someone at a large brokerage firm. Gilabert pleaded guilty in April of 2006.

Ironically, as part of his marketing activities, Gilabert issued a press release in September of 2004 noting that hedge funds were not always risky. In it, he suggested that investors look for certain safeguards for their assets, such as funds being held at outside financial institutions and monthly statements listing every holding in the portfolio.

There were two warning signs that might have been uncovered in due diligence. The first is that the fund was not formed until 2000, but it claimed performance dating back to 1997. The second is that in 2003, the California Department of Corporations revoked Gilabert's investment adviser registration.

Last week, Gilabert sent a letter to Aaron Krowne, who operates the Hedge Fund Implode-o-Meter, claiming that this post was defamatory. Krowne took the post down and replaced it with more information, including the letter from Gilabert. I agreed to move the original post here, because I stand behind what I wrote. It is all backed by primary sources, specifically a complaint by the US Securities and Exchange Commission, the cease and desist order from the California Department of Corporations, and Gilabert's own guilty plea as reported by the US Department of Justice. In fact, one of the issues that Gilabert says is defamatory is my reference to his press release in 2004, but it is still available online.

I'm not the only person who has reported this. The Los Angeles Times reported a similar story in 2006.

I'm not interested in picking a fight with Keith Gilabert, but I did not post anything false and malicious. Aaron Krowne gave me a platform to promote my book, and I appreciate it. It was all in the interest of making readers aware of the importance of doing good due diligence before investing in a hedge funds.

To reiterate: Keith Gilabert pled guilty to operating a fraudulent hedge fund and lying to investors in an effort to convince them to invest with his fund. He admitted that from September 2000 through January 2005, his firm purported to offer investments in GLT and collected more than \$7 million from more than 40 investor-clients. Even though he claimed average annual returns of 27 percent, since at least 2002, Gilabert concealed the fact that he had lost most of the investors' funds and that he had misappropriated investors' funds throughout most of GLT's operation.

Like the song says, don't do the crime if you cannot do the time.

Also: Annie Logue knows how to do research using such primary sources as government documents.

annlogue.com/2011/11/18/keith-gilabert-pled-guilty-thats-a-fact/

Archives

- January 2013
- December 2012
- November 2012
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- September 2012
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- February 2012



Ann Logue is a freelance writer and consulting analyst who is fascinated by business and technology. She is the author of "Socially Responsible Investing for Dummies" (Wiley 2009), "Day Trading for Dummies" (Wiley, 2007), and "Hedge Funds for Dummies" (Wiley, 2006), and has written for Alpha, Barron's, Newsweek Japan, and Business Week Chicago, among other publications. She is a lecturer in finance at the University of Illinois at Chicago. Her current career follows 12 years of experience as an investment analyst. She holds a B.A. from Northwestern University, an M.B.A. from the University of Chicago, and the Chartered Financial Analyst designation.

EXH. B

