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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO

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11 LANDMARK EDUCATION CORPORATION,  
12 Plaintiff,  
13 v.  
14 STEVEN PRESSMAN,  
15 Defendant.

CASE NO. 989890

MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
MOTION TO STRIKE COMPLAINT;  
REQUEST FOR COSTS AND  
ATTORNEY'S FEES

Date: January 16, 1998  
Time: 9:30 a.m.  
Dept: Law and Motion, Room 301

Trial Date: Not Applicable

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18 **I. INTRODUCTION**

19 Similar to defendant Steven Pressman's demurrer to this complaint, this anti-SLAPP motion  
20 to strike is both pointless and meritless. The complaint attacked herein was drafted solely as a  
21 vehicle to obtain resolution in the San Francisco Superior Court of a discovery dispute resulting  
22 from a deposition taken locally in a case pending in Illinois state court. In that deposition,  
23 Mr. Pressman refused to answer questions on the asserted basis of the California newsman's shield  
24 (Evidence Code section 1070; California Constitution, Article I, section 2(b)). Plaintiff Landmark  
25 Education Corporation ("Landmark") contends that the questions in dispute were not within the  
26 scope of the newsman's shield. The plain language of the complaint requests an order, "compelling

1 Mr. Pressman to answer questions that *are not subject to the newsman's shield* or any privilege."  
2 (Complaint, ¶ 10. Emphasis added.)

3 Nowhere in the complaint is there a request that Mr. Pressman be compelled to answer  
4 questions that are, indeed, subject to the newsman's shield. Both the demurrer and this motion to  
5 strike, however, are premised on the spurious argument that the complaint somehow seeks to  
6 compel Mr. Pressman to supply information that is constitutionally protected against disclosure by  
7 virtue of the newsman's shield. Instead, the explicit purpose of the complaint was to have the court  
8 hear plaintiff's motion to compel, in order to determine whether these questions were subject to the  
9 newsman's shield and, *if not*, to compel Mr. Pressman to answer. That purpose has substantially  
10 been accomplished with the hearing of plaintiff's motion to compel on December 19, 1997, and  
11 Discovery Commissioner Richard E. Best has taken the matter under submission.

12 This motion to strike, like the demurrer, does not address the complaint. Instead, this  
13 meretricious motion, bedecked with inapposite and irrelevant authority, attacks a complaint that  
14 does not exist. Specifically, the notice of motion states,

15 "The motion to strike will be made on the grounds that the complaint arises from acts  
16 in furtherance of Defendant's free speech rights, and that Plaintiff cannot demonstrate  
17 a likelihood of prevailing on its claim, in that *the relief sought by Plaintiff is barred*  
by the First Amendment to the United States Constitution, by Article I, § 2 of the  
California Constitution and by California law." (Notice, 1:25-2:2. Emphasis added.)

18 There is nothing in the complaint requesting the unlawful relief attributed to the complaint in  
19 the foregoing notice. Instead, the relief requested is, "An Order compelling Mr. Pressman to answer  
20 all questions he has refused to answer that are *outside the proper scope of the asserted newsman's*  
21 *shield* and are not subject to any privilege." (Complaint, 3:10-12. Emphasis added.)

22 Mr. Pressman's basic misreading of the complaint results in his inability to challenge  
23 Landmark's probability of prevailing on its complaint, as required in this anti-SLAPP motion by  
24 section 425.16(b) of the Code of Civil Procedure. Consequently, this motion to strike is additionally  
25 meritless because it is precariously based on the unsupported assumption that plaintiff "cannot  
26 demonstrate a likelihood of prevailing on its claim, *in that the relief sought by Plaintiff is barred...*"

1 However, since the relief expressly sought in the complaint is *not barred* under the grounds asserted  
2 in this motion, there is nothing in the complaint to indicate that plaintiff's motion to compel has no  
3 probability of success. Indeed, after substantial effort by Mr. Pressman to derail, delay and add to  
4 the expense of resolving this discovery matter, plaintiff's motion to compel was heard on  
5 December 19, 1997 and remains under submission as of the writing of this opposition.

6 This motion to strike is pointless, as well as meritless, because the sole purpose of the  
7 complaint was to have a court determine the merits of plaintiff's motion to compel. That objective is  
8 substantially completed. Moreover, the "free speech" to which this motion is addressed consists of  
9 the right of Mr. Pressman's counsel to make objections during a deposition, and the Discovery Code  
10 governs this area. Under the Discovery Code, if opposing counsel believes that objections are not  
11 well founded, counsel has the right to contest the validity of those objections by bringing a motion to  
12 compel. In the event that the Discovery Commissioner determines that either side in a discovery  
13 dispute lacked substantial justification or acted with an improper purpose, sanctions must be  
14 awarded pursuant to sections 2023 and 2025(o) of the Code of Civil Procedure. In the present  
15 discovery dispute, both sides requested sanctions, and the Discovery Commissioner has not ruled.  
16 There is no reason why the court in Law and Motion should now re-consider the same matters that  
17 have been argued before the Discovery Commissioner, but inexplicably pages 7 through 15 of Mr.  
18 Pressman's supporting memorandum are devoted to re-arguing the merits of the discovery motion.  
19 Here, however, the actual questions and evidentiary issues are not before the court and are grossly  
20 mischaracterized in Mr. Pressman's memorandum to fabricate support for this motion.

21 As Landmark argued in opposition to Mr. Pressman's demurrer, this motion to strike is  
22 based entirely on Mr. Pressman's misstatement of the plain language of the complaint and on his  
23 self-serving, unsupported assertions that the deposition questions in dispute are subject to the  
24 newsman's shield. Even in the unlikely event that the Discovery Commissioner rules against  
25 Landmark on some or all of the thirty-four questions in dispute, this motion remains improper  
26 because it seeks to prevent Landmark from exercising its rights under the Discovery Code and it

1 seeks to punish Landmark for bringing this matter before the Discovery Commissioner rather than  
2 passively accepting the "ruling" made by Mr. Pressman's counsel as to the propriety of these  
3 deposition questions. For these reasons, Landmark requests that it be awarded costs and attorney's  
4 fees incurred in opposing this frivolous motion.

## 5 II. FACTS

6 Landmark is a California corporation that conducts seminars for businesses and individuals  
7 on a variety of topics, such as managerial skills and personal effectiveness. Landmark is conducting  
8 discovery in a case filed in the Circuit Court of Cook County, Illinois, *Landmark Education*  
9 *Corporation v. Cult Awareness Network, et al.*, Action No. 94-L-11478 ("the Illinois action"). In  
10 that lawsuit, Landmark will show that the defendants accused it of being a cult and of being involved  
11 in criminal and morally despicable activities, that none of these accusations had any credible basis,  
12 and that these accusations were made with actual malice.<sup>1</sup> Mr. Pressman is a resident of San  
13 Francisco and is not a party to the Illinois action. Mr. Pressman wrote a book in 1993 that was  
14 critical of Landmark, and this book was his only publication concerning Landmark.<sup>2</sup>

15 Mr. Pressman is believed to have knowledge concerning the facts and potential witnesses in  
16 the Illinois action, as well as information that could be used to establish actual malice.  
17 Consequently, as part of plaintiff's discovery efforts, plaintiff obtained a subpoena and commission  
18 from the court in the Illinois action to take the deposition of Mr. Pressman in San Francisco.

19 On the basis of the subpoena and commission, plaintiff obtained a subpoena for  
20 Mr. Pressman's deposition from the San Francisco Superior Court, and the subpoena was then  
21 served on Mr. Pressman, who did not move for a protective order and appeared for his deposition on  
22 the agreed date of June 5, 1997. Landmark, however, was prevented from taking a reasonable and

23 <sup>1</sup> Actual, or constitutional, malice applies to statements made "either knowing that they were false or in  
24 reckless disregard of their possible falsity." *New York Times Co. v. Sullivan* (1964) 376 U.S. 254,  
279-280. (Case lodged in support of motion to compel.)

25 <sup>2</sup> It should be noted that the writing of books is not covered under the explicit terms of the California  
26 newsman's shield, which instead applies to journalists writing news articles for periodicals. All  
objections to deposition questions were made on the basis of the California newsman's shield.

1 complete deposition of Mr. Pressman, because his counsel, Judy Alexander, frequently interposed  
2 objections and instructed her client not to answer, always asserting the California newsman's shield.  
3 None of the questions in dispute inquired into Mr. Pressman's sources for his book, but instead were  
4 general foundational questions to establish his areas of knowledge relevant to the Illinois action. For  
5 example, as set forth in the Separate Statement of Questions and Responses in Dispute, submitted in  
6 support of the motion to compel, many of these questions asked whether he had any contact, at any  
7 time, with various individuals.

8 At the time of the deposition and subsequently in meet and confer correspondence, plaintiff's  
9 counsel maintained that the newsman's shield was inapplicable to the specific questions asked of  
10 Mr. Pressman and that, in regard to a few questions, any applicable shield had been waived by  
11 Mr. Pressman's issuing a declaration, concerning the subject matter of the questions, in other  
12 Landmark litigation in which he was not a party. Although Ms. Alexander eventually changed her  
13 position in regard to certain questions, some thirty-four questions remained in dispute as to whether  
14 the newsman's shield was applicable. Consequently, plaintiff filed the present complaint in the San  
15 Francisco Superior Court for an order compelling answers to deposition questions, along with a  
16 motion to compel, set for hearing in the Discovery Department on November 10, 1997.

17 **III. THE MOTION TO STRIKE IS MERITLESS**

18 **A. Mr. Pressman's Claims of Persecution Are Hypocritical and Ludicrous**

19 The anti-SLAPP motion accuses Landmark of attempting to "harass and punish"  
20 Mr. Pressman because he wrote a book that was critical of various entities, including Landmark.  
21 Not only is this accusation unfounded, the events in this case indicate that, if anything, Mr. Pressman  
22 is attempting to harass and punish Landmark.

23 First, during Mr. Pressman's deposition, his counsel, Judy Alexander, prevented any  
24 meaningful questioning by objecting continuously on the asserted basis that each question asked  
25 Mr. Pressman to reveal his sources for his book and was therefore subject to the California  
26 newsman's shield. Contrary to Ms. Alexander's assertion, none of the questions in dispute asked

1 Mr. Pressman to reveal his sources for his book. Subsequently, the meet and confer process broke  
2 down when Ms. Alexander took the untenable position that Mr. Pressman could refuse to answer  
3 any question about anyone or anything that had any conceivable relationship to any of his journalism  
4 at any time during his twenty-one year career as a journalist, regardless of what information the  
5 question attempted to elicit about such entity. Ms. Alexander has never cited any authority for this  
6 extraordinarily broad interpretation of the newsman's shield.

7       Thereafter, plaintiff's motion to compel was filed, and Ms. Alexander asked for a  
8 continuance, which was granted as a courtesy. (Declaration of Carol P. LaPlant in Support of  
9 Motion for Sanctions, ¶ 3.) Ms. Alexander then filed the present demurrer and motion to strike, and  
10 she made an ex parte application to have the discovery motion taken off calendar until  
11 Mr. Pressman's motions were heard. The salient difference between the parties' motions is that  
12 Landmark's motion deals with the specific content of each deposition question, while  
13 Mr. Pressman's demurrer and motion to strike are based on bald assertions about the content of  
14 those deposition questions, as well as intentional mischaracterization of the relief sought in the  
15 complaint. Tacitly acknowledging this difference, Ms. Alexander's ex parte application was made on  
16 the ground that the Discovery Commissioner possibly would not comprehend the merit of her  
17 position, with the result that Mr. Pressman, "could conceivably be subjected to an order compelling  
18 further answers". (Defendant's Ex Parte Application for Stay of Discovery Proceedings, 2:11-15.)  
19 Ms. Alexander's application was denied by this court on November 6, 1997, and plaintiff brought a  
20 motion to have the discovery matters heard first, which this court granted on November 18, 1997.

21       Although Mr. Pressman asserts in Footnote 3 of his memorandum that he is "an individual  
22 with very limited resources" being subjected to "legal harassment" by a "large corporate entity with  
23 considerable financial resources", he neglects to mention that he has previously voluntarily  
24 interjected himself into litigation involving plaintiff.<sup>3</sup> For example, Mr. Pressman issued a

25 <sup>3</sup> Mr. Pressman's fanciful assertions about Landmark, in this footnote and elsewhere, are both  
26 irrelevant to this motion and incorrect. Landmark is not associated with an organization known as the  
Global Hunger Project, and Landmark's association with Werner Erhard is largely historical.

1 declaration in support of the defendant in the case of *Landmark Education Corporation v. Margaret*  
2 *Singer et al.* (San Francisco Superior Court Case No. 976037). During his deposition in the present  
3 matter, however, Mr. Pressman refused to answer questions about statements contained in that  
4 declaration.<sup>4</sup> These refusals to answer on the asserted basis of the newsman's shield were patently  
5 improper because a newsman who voluntarily enters into the litigation forum opens to discovery the  
6 veracity of any claims he puts before the court. *Dalitz v. Penthouse International, Ltd.* (1985) 168  
7 Cal.App.3d 468, 480-481.

8 As a result of Mr. Pressman's frivolous motions and legal maneuvering, the hearing on  
9 Landmark's discovery motion was delayed and the expense of resolving this discovery dispute in the  
10 only appropriate forum, the San Francisco Superior Court, has escalated tremendously. Mr.  
11 Pressman's assertion that he is somehow being persecuted by Landmark is ludicrous and nothing  
12 more than a flimsy justification for bringing this frivolous anti-SLAPP motion. The transparent bad  
13 faith tactics of Mr. Pressman and his counsel should not be tolerated by this court, and plaintiff  
14 should be compensated for the wasted time and resources caused by Mr. Pressman's motions.

15 **B. An Anti-SLAPP Motion Has No Proper Application to a Discovery Proceeding**

16 Section 425.16(b) of the Code of Civil Procedure provides in pertinent part that,

17 "A cause of action against a person arising from any act of that person in furtherance  
18 of that person's right of petition or free speech under the United States or California  
19 Constitution in connection with a public issue shall be subject to a special motion to  
20 strike, unless the plaintiff has established that there is a probability that the plaintiff  
will prevail on the claim. In making its determination, the court shall consider the  
pleadings, and supporting and opposing affidavits stating the facts upon which the  
liability or defense is based."

21 There is no precedent for an anti-SLAPP motion being used, as it is here, in an attempt to  
22 prevent the hearing of a motion to compel.

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24 Contrary to Mr. Pressman's irresponsible mischaracterizations, Landmark is an independent  
corporation, and Landmark's seminars have long been well received in the business and academic  
communities.

25 <sup>4</sup> In plaintiff's motion to compel, Mr. Pressman's declaration is Exh. G to the Declaration of Carol P.  
26 LaPlant, and this matter is discussed in the Separate Statement of Questions and Responses in  
Dispute, at 11:9-19.

1 "The favored causes of action in SLAPP suits are defamation, various business torts  
2 such as interference with prospective economic advantage, nuisance and intentional  
3 infliction of emotional distress. (Citation.) Plaintiffs in these actions typically ask for  
4 damages that would be ruinous to defendants. (Citation.) SLAPP suits are brought  
5 to obtain an *economic* advantage over the defendant, not to vindicate a legally  
6 cognizable right of the plaintiff." *Wilcox v. Superior Court* (1994) 27 Cal.App.4<sup>th</sup>  
7 809, 816. (Emphasis in original.)

8 Here, the complaint seeks *only* to vindicate a legal right, and neither damages nor any other  
9 economic advantage is sought. To the contrary, nearly all the cost of the present litigation is  
10 attributable to the motions brought by Mr. Pressman. Not surprisingly, there is no statutory basis  
11 whatsoever under section 425.16 to allow Mr. Pressman to bring an anti-SLAPP motion in this  
12 context. As set forth in sections 425.16(a) and (e), such suits must concern defendant's exercise of  
13 free speech on a *public issue* and in a *public forum*. These requirements are mandatory. *Zhao v.*  
14 *Wang* (1996) 48 Cal.App.4<sup>th</sup> 1114, 1125-1127.

15 "Under the plain terms of section 425.16, the motion to strike remedy can be  
16 employed only where the plaintiff has launched litigation stemming from 'any act ...  
17 in furtherance of the [defendant's] right of petition or free speech ... in connection  
18 with a public issue.' (§ 425.16(b).)" *Braun v. Chronicle Publishing Co.* (1997) 52  
19 Cal.App.4<sup>th</sup> 1036, 1043.

20 If Mr. Pressman had any reason to believe that he was being harassed by Landmark, he could  
21 have moved for a protective order to prevent the taking of his deposition. This he did not do.  
22 Instead, he showed up for the deposition but his counsel disrupted the deposition and prevented any  
23 meaningful questioning. The single issue addressed by the ensuing complaint for an order  
24 compelling answers to deposition questions is whether his counsel's objections were justified. Under  
25 the Discovery Code, Landmark is entitled to bring a motion to compel to resolve this issue and the  
26 court is required to sanction any party who acted without substantial justification.

27 The issue of whether objections raised by defendant's counsel during a deposition were  
28 legally justified, is hardly a public issue involving a right of free speech. Rather than pursue this  
29 untenable argument, Mr. Pressman attempts to justify this motion by asserting that the entire  
30 discovery process, including the taking of his deposition, his counsel's objections and Landmark's

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1 motion to compel, all somehow involve Mr. Pressman's exercise of his right to free speech. None of  
2 these self-serving assertions, however, entitle him to bring an anti-SLAPP motion.

3 "[S]ection 425.16 does not apply in every case where the defendant may be able to  
4 raise a First Amendment defense to a cause of action. Rather, it is limited to  
5 exposing and dismissing SLAPP suits – lawsuits '*brought primarily to chill the valid*  
6 *exercise of the constitutional rights* of free speech and petition for the redress of  
7 grievances' 'in connection with a *public issue.*' (§ 425.16(a),(b).)" *Wilcox v.*  
8 *Superior Court, supra*, at 819. (Emphasis added.)

9 Furthermore, in order to prevail on this anti-SLAPP motion, Mr. Pressman must also show  
10 that the complaint is meritless.

11 "Although the statute clearly places the burden on the plaintiff ... to establish a  
12 probability of prevailing on the claim (§ 425.16(b)), this burden does not arise unless  
13 the claim is one falling within the ambit of the statute. ... [¶] It is not only logical to  
14 put this burden on the party seeking the benefit of section 425.16, it is fundamentally  
15 fair that before putting the plaintiff to the burden of establishing probability of success  
16 on the merits the defendant be required to show imposing that burden is justified by  
17 the nature of the plaintiff's complaint." *Wilcox v. Superior Court, supra*, at 819.

18 Mr. Pressman admittedly cannot meet his burden, despite his bluster to the contrary. The  
19 complaint, by its explicit terms, requests only relief that is proper, and Mr. Pressman's assertions  
20 regarding the applicability of the newsman's shield address issues raised in the motion to compel, not  
21 the complaint, because only the motion to compel deals with the content of each question in dispute.  
22 In an anti-SLAPP motion, the court is required to consider the *pleadings* and affidavits of *fact*,  
23 pursuant to section 425.16(b). The court is not permitted to weigh evidence in considering this  
24 motion. *Loony v. Superior Court* (1993) 16 Cal.App.4<sup>th</sup> 521, 537-538. Here, instead of offering  
25 facts or analyzing the complaint, Mr. Pressman offers only unsupported assertions about the merit of  
26 his counsel's objections and the purported ulterior motives of Landmark. Such assertion provides  
no legally cognizable support for this otherwise meritless and improper anti-SLAPP motion.

#### 27 IV. COSTS AND ATTORNEY'S FEES

28 Section 425.16(c) provides that if the court finds an anti-SLAPP motion to be "frivolous or  
29 intended to cause unnecessary delay" the court shall award costs and reasonable attorney's fees to  
30 the prevailing plaintiff. Here, Mr. Pressman's anti-SLAPP motion was brought for the improper