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Attorneys for Plaintiffs
Landmark Education LLC, Landmark Education
International, Inc. and Landmark Education
Business Development, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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LANDMARK EDUCATION LLC, :
LANDMARK EDUCATION INTERNATIONAL, :
INC. and LANDMARK EDUCATION :
BUSINESS DEVELOPMENT, INC., :
 :
Plaintiffs, :
 :
vs. : Civil Action No. 04-3022 (JCL)
 :
THE RICK A. ROSS INSTITUTE OF NEW : Honorable John C. Lifland
JERSEY a/k/a/ THE ROSS INSTITUTE a/k/a/ : Honorable Mark Falk
THE ROSS INSTITUTE FOR THE STUDY OF :
DESTRUCTIVE CULTS, CONTROVERSIAL :
GROUPS AND MOVEMENTS and RICK ROSS :
a/k/a/ "RICKY ROSS," : **Declaration of**
 : **Gary I. Lerner**
 :
Defendants. :
-----X

Gary I. Lerner hereby declares under the penalties of perjury pursuant to 28 U.S.C. §

1746:

1. I am associated with Cohen Lans LLP, attorneys for plaintiffs (together “Landmark”) and submit this declaration in support of plaintiffs’ motion to dismiss this action pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. The purpose of this declaration is to describe the procedural history of the action to date.

2. The complaint was filed on June 25, 2004 and served on July 13, 2004. The Rule 16(f) conference was held on November 22, 2004. On December 10, 2004, the parties exchanged Rule 26(a)(1) statements. Plaintiffs’ statement was 15 pages long and listed, among others, 66 potential witnesses, including 16 who would speak to damages. Plaintiffs served document requests and interrogatories on defendants and defendants served two sets each of document requests and interrogatories on plaintiffs.

3. The parties, prior to the Rule 16(f) conference, had begun to discuss the manner in which electronic materials would be produced -- in electronic or paper form and, if the latter, in which format. The question of format was never resolved. As a result, when each party made its initial production, only paper documents were produced. Plaintiffs produced 1,392 pages and responded to both sets of defendants’ interrogatories. Defendants produced 325 pages in all in an initial and a supplemental production.


4. Each party raised certain objections to discovery. During January 2005, those objections were discussed. Some were resolved, others were not. A conference with Magistrate Judge Falk was held on February 9, 2005. As a result of the conference, the parties undertook to present the remaining discovery controversies by motion. Plaintiffs intended to challenge defendants’ refusal to produce, in whole or in part, among other things, relevant evidence concerning: (1) the sources of defendants’ information concerning Landmark; (2) specified documents authored by Mr. Ross requested to validate the findings of the forensic linguist

consulted by Landmark; (3) communications between defendants and Landmark's customers; (4) interventions conducted by Mr. Ross, including concerning Landmark registrants; and (5) income information relevant both to liability and damages issues.

5. The discovery motions were not, however, made, as plaintiffs sought permission to dismiss the case shortly thereafter.

6. As of the time when plaintiffs sought to dismiss, neither defendants nor plaintiffs had produced any electronic materials, neither defendants nor plaintiffs had produced any materials pursuant to the negotiated understandings discussed in ¶ 4 above, and the parties had not yet prepared motions which would resolve the remaining issues.

Made this 2nd day of May, 2005 in New York, New York.



Gary I. Lerner