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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

LANDMARK EDUCATION CORPORATION,

Plaintiff,

v.

STEVEN PRESSMAN,

Defendant.

CASE NO. 989890

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SANCTIONS
[CCP § 128.7]

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

Trial Date: Not Applicable

I. INTRODUCTION

Steven Pressman and his attorney, Judy Alexander, have gone to extraordinary lengths to prevent or delay the hearing of plaintiff's motion to compel, and Mr. Pressman's unnecessary motions have increased exponentially the expense to plaintiff of access to the court to resolve a discovery dispute. Now, Mr. Pressman has the astounding audacity to suggest that he is the victim in litigation largely of his own making and that plaintiff's discovery motion is no longer necessary because he has delayed the discovery process for so long that some of the defendants in the underlying Illinois action have settled.

In his Opposition to this motion for sanctions, as well as in his memoranda supporting his demurrer and motion to strike, Mr. Pressman persistently miscasts the underlying discovery issue and stridently insists that plaintiff is seeking improper discovery. There is nothing in the complaint or in the motion to compel, however, that seeks unlawful discovery. Instead, the complaint asks only for the court's resolution of the discovery dispute, and the motion to compel analyzes each of the thirty-four deposition questions involved, presenting cogent reasons why answers to each question should be ordered.

Mr. Pressman's demurrer and motion to strike represent legal maneuvering intended to prevent or delay the resolution of a discovery dispute, to harass plaintiff and to increase plaintiff's costs, and, as such, are eminently sanctionable under section 128.7 of the Code of Civil Procedure.

II. PLAINTIFF IS BEING HARASSED AND PENALIZED FOR BRINGING A MOTION TO COMPEL

On June 5, 1997, plaintiff Landmark Education Corporation ("Landmark") took the deposition of Steven Pressman. The deposition was taken under commission and subpoena issued by the Circuit Court of Cook County, Illinois, in the case of *Landmark Education Corporation v. Cult Awareness Network, et al.*, Action No. 94-L-11478 ("the Illinois action") and under subpoena from the San Francisco Superior Court. Although Mr. Pressman now makes the disingenuous argument that he is being persecuted by Landmark, Mr. Pressman appeared for his deposition without moving for a protective order.

Landmark was prevented from taking a meaningful deposition, because his counsel, Judy Alexander, continuously objected and instructed Mr. Pressman not to answer on the asserted basis of the California newsman's shield, which, Ms. Alexander insisted, was applicable because Mr. Pressman wrote a book in 1993 that mentioned Landmark. Contrary to Ms. Alexander's assertions, the questions in dispute do not inquire into Mr. Pressman's sources as a journalist, nor do they ask what investigation he performed. Instead, these are preliminary, foundational questions that seek to establish whether the witness has any relevant knowledge about specific individuals and events

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pertaining to the Illinois action. In addition, a few of these questions concern statements made by Mr. Pressman in a declaration that he voluntarily submitted in other litigation, *Landmark Education Corporation v. Margaret Singer, et al.* (San Francisco Superior Court Case No. 076037).[1]

When Landmark's attempts to meet and confer proved fruitless, other than to elicit an agreement that Mr. Pressman would answer a minority of the questions in dispute, Landmark filed a motion to compel. To provide a jurisdictional basis for this motion, Landmark filed the instant complaint seeking "the intervention of the San Francisco Superior Court in compelling Mr. Pressman to answer deposition questions that are not subject to the newsman's shield or any privilege." (Complaint, ¶ 10.) The relief requested by the complaint is, "An Order compelling Mr. Pressman to answer all questions he has refused to answer that are outside the proper scope of the asserted newsman's shield and not subject to any privilege." (Complaint, 3:10-12.) In short, the complaint asks that the court hear and decide Landmark's motion to compel.

Rather than dealing with the motion to compel on its merits, Mr. Pressman has filed a meritless and unwarranted demurrer and motion to strike, intended only to prevent, delay and add to the expense of the motion to compel.

Throughout the ensuing litigation surrounding Landmark's motion to compel, both in the Law and Motion and Discovery Departments, Mr. Pressman's papers have consistently avoided discussing the actual questions in dispute and, instead, have stridently insisted that these questions involve subjects that are indisputably protected by the newsman's shield. The issue of whether the newsman's shield is, or is not, applicable to these questions, however, is central to Landmark's motion to compel, and Landmark contends that there is nothing in the content of the questions that asks Mr. Pressman to reveal his sources or research for his book. Landmark's motion was heard, finally, after the intervention of this court, by Discovery Commissioner Richard E. Best on

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[1] Even if the newsman's shield were otherwise applicable to the questions concerning Mr. Pressman's declaration, and plaintiff contends that it is not, the law is well established that where a journalist voluntarily enters the litigation forum, statements that he puts before the court are open to discovery. *Dalitz v. Penthouse International* (1985) 168 Cal.App.3d 468, 480-481.

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December 19, 1997, and was taken under submission, where it remains as of the writing of this Reply.

While the resolution of Landmark's motion to compel is entirely a discovery matter and no useful purpose is served by re-arguing the merits of that motion in the present forum – although Mr. Pressman's memoranda supporting his demurrer and motion to strike and opposing this motion for sanctions do just that – a copy of Landmark's Separate Statement of Questions and Responses in Dispute [California Rule of Court 335(a)], filed in support of Landmark's motion to compel, is attached as Exhibit A for the sole purpose of demonstrating that Mr. Pressman has no reasonable basis for insisting that these questions necessarily fall within the scope of the newsman's shield.

In his Opposition to this motion, Mr. Pressman indicates that Landmark has reached settlement with three of the parties in the Illinois action, finalized in December, 1997. As Mr. Pressman's memorandum and attachments indicate, however, the litigation is on-going against other defendants, including Cynthia Kisser and Cult Awareness Network of New York and New Jersey. In addition, at least one of the settling defendants, Cult Awareness Network, Inc., is in Chapter 7 bankruptcy proceedings, resulting in a stay in regard to that defendant, pending liquidation. In essence, Mr. Pressman argues that because he successfully delayed the resolution of this discovery dispute until after settlement negotiations with some of the defendants were underway, Landmark should not have moved to compel his answers, even though no defendant had settled. To the contrary, however, Landmark has been prejudiced both in the on-going litigation and settlement negotiations by Mr. Pressman's delay tactics and by his efforts to prevent Landmark from obtaining necessary discovery. The law does not allow a wrongdoer to take advantage of his own misconduct to reap benefit. *Vacco Industries, Inc. v. Van Den Berg* (1992) 5 Cal.App.4th 34, 53. Here, the impermissible and illogical benefit would be for Mr. Pressman to escape sanctions because some defendants in the Illinois action settled during the lengthy delay caused by his frivolous motions.

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III. MR. PRESSMAN'S MOTIONS ARE IMPROPER AND FRIVOLOUS

Rather than deal with Landmark's motion on its merits, Mr. Pressman has attempted to exploit the fact that a complaint was filed by Landmark as a procedural ancillary to the motion to compel. If his deposition had been taken in a California case, Mr. Pressman's time wasting and expensive maneuvers in Law and Motion would not have been available. In his Opposition memorandum, Mr. Pressman asserts that Landmark's counsel and the court "agreed" that he is entitled to proceed with his demurrer and motion to strike; to the contrary, as pointed out in Landmark's letter of November 26, 1997, although Mr. Pressman technically has the right to obtain a hearing of his motions, he and his counsel must nonetheless be held accountable for pursuing meritless motions that serve no conceivable purpose, other than delay, harassment, increased cost and waste of time. (Exh. C to Motion for Sanctions.)

Although the Opposition memorandum attempts with much bluster to re-argue the merits of Mr. Pressman's motions, the facts remain unchallenged that the demurrer is inherently improper because there is nothing on the face of the complaint to support the demurrer, and the motion to strike is inapplicable to a discovery proceeding.

Mr. Pressman makes three arguments to justify his demurrer, none of which are tenable. First, he argues that a demurrer can be made where the affirmative defense of privilege appears on the face of the complaint. The only relief requested in the complaint, however, is an order, "compelling Mr. Pressman to answer questions that *are not subject to the newsman's shield* or any privilege." (Complaint, ¶ 10. Emphasis added.) There is manifestly nothing in the complaint that supports the asserted affirmative defense. Moreover, the authority relied upon by Mr. Pressman is inapposite because, as explained in the Opposition to the demurrer, the complaint in *Green v. Uccelli* (1989) 207 Cal.App.3d 1112, sought damages against the divorce attorney of plaintiff's ex-wife for abuse of process and intentional infliction of emotional distress based, as stated in his complaint, on Uccelli's representation of plaintiff's wife in the divorce action. The demurrer was granted because the complaint indicated, on its face, that Uccelli's acts were performed in the course of a judicial

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deposition, can be proper grounds for an anti-SLAPP motion. Despite Mr. Pressman's far-fetched attempt to mischaracterize a motion to compel as proper matter for an anti-SLAPP motion, all applicable caselaw holds otherwise.

> "[S]ection 425.16 does not apply in every case where the defendant may be able to raise a First Amendment defense to a cause of action. Rather, it is limited to exposing and dismissing SLAPP suits – lawsuits '*brought primarily to chill the valid exercise of the constitutional rights* of free speech and petition for the redress of grievances' 'in connection with a *public issue*.' (§ 425.16(a),(b).)" *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 819. (Emphasis added.)

Furthermore, "SLAPP suits are brought to obtain an *economic* advantage over the defendant, not to vindicate a legally cognizable right of the plaintiff." *Wilcox, supra,* at 816. (Emphasis in original.) Here, the entire purpose of Landmark's complaint was to vindicate the legal right to discovery, and the motion to compel only became economically burdensome when Mr. Pressman filed his motions to prevent or delay the resolution of the discovery dispute.

Mr. Pressman's self-pitying argument, offered in support of his anti-SLAPP motion, that the protracted litigation following Landmark's motion to compel was "a course of oppressive litigation conduct" intended primarily "for delay and distraction" and "to punish him by imposing litigation costs" (Opposition 8:15-22) is exceedingly disingenuous, if not ludicrous. Here, the oppressive litigation conduct has consisted entirely of Mr. Pressman's motions and related attempts to block the resolution of the discovery dispute, while the only victim of the resulting delay and greatly increased litigation costs is Landmark.

IV. LANDMARK WAS ENTITLED TO PURSUE NECESSARY DISCOVERY

Landmark is a corporation that presents seminars to businesses and individuals. Contrary to Mr. Pressman's unfounded and lurid assertions that Landmark is indistinguishable from Werner Erhard, est, the Global Hunger Project and other organizations in which Mr. Erhard has ever been involved, Landmark is an independent corporation that is attempting to obtain evidence, through discovery, to show that the defendants in the Illinois action intentionally made false and injurious statements about Landmark, including accusations of being a cult and of criminal or otherwise

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morally despicable conduct. Mr. Pressman is believed to have knowledge about the facts relating to statements about Landmark made by the defendants in the Illinois action and to be acquainted with various people who are involved in a concerted effort to disseminate false and damaging information about Landmark. When Mr. Pressman's deposition was subpoenaed, no objection was made before either the Cook County, Illinois court or the San Francisco court.

In his Opposition to this motion, Mr. Pressman argues that because he wrote a book that criticized Landmark, he is forever exempt from any discovery by Landmark. Although his Opposition cites an abundance of inapposite and irrelevant authority, Mr. Pressman cites no authority for this novel exemption. Nor can he cite authority for his assertion that Landmark somehow forfeited the right to pursue discovery or to resolve a discovery dispute by the means of a motion to compel.

In an attempt to justify his frivolous motions, Mr. Pressman argues, "Landmark's claim that this is merely a discovery matter cannot obscure the fact that this action arises from the research, writing, and publication of a book, and not merely the refusal to answer improper deposition questions." (Opposition Memo., 4:22-24.) This argument is untenable for several reasons. First, the Discovery Commissioner has had the motion to compel under submission for nearly one month, belying the claim that the disputed questions are obviously improper. Second, as demonstrated in the motion to compel, Mr. Pressman testified that he spent two years, 1991-1993, writing his book and he produced no other publication about Landmark; most of the disputed questions, however, are unlimited as to time, asking, for example, if he *ever* had any contact with various people or *ever* performed an activity. (Exh. A, Separate Statement.) Third, the specious argument that the motion to compel was intended to penalize Mr. Pressman for criticizing Landmark in his book, is refuted by Mr. Pressman's own conduct in this matter, intentionally causing delay and greatly increasing costs.

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V. CONCLUSION

The tenor of Mr. Pressman's Opposition to this motion for sanctions, as well as his memoranda in support of his own motions, suggests that the applicability of the claimed newsman's shield to the disputed questions is obvious and explicit. A review of the actual questions in dispute demonstrates otherwise, however, as does the lengthy review by the Discovery Commissioner. There is no authority whatsoever for Mr. Pressman's peculiar assertion that Landmark has no right to have this discovery dispute resolved by the court, rather than acquiescing to the assertions of Mr. Pressman's counsel regarding the propriety of these questions. The fundamental merit of Landmark's motion is evidenced by the tremendous efforts of Mr. Pressman to prevent the hearing of that motion and to miscast the nature of the disputed questions in his Law and Motion memoranda, as well as his present attempt to attribute sinister motives to Landmark.

Sanctions are merited, because the resolution of a discovery dispute has escalated to include three appearances in Law and Motion, as well as preparation of Oppositions to a demurrer and motion to strike. Mr. Pressman and his counsel have misused the time and resources of Law and Motion in their campaign to prevent the Discovery Department from performing its appointed function and making a determination in this matter. Such misconduct is merits the imposition of sanctions pursuant to section 128.7 of the Code of Civil Procedure.

Dated: January 14, 1998

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