

EXHIBIT A

Bloom Rubenstein Karinja & Dillon, P.C.
70 South Orange Avenue, Suite 215
Livingston, New Jersey 07039
(973) 535-3388
PD-7957

Cohen Lans LLP
885 Third Avenue, 32nd Floor
New York, New York 10022
(212) 980-4500
DL-5063
GL-5382

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

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

-----X
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," :
:
Defendants. :
-----X

**PLAINTIFFS' RESPONSE TO DEFENDANTS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

Plaintiffs (collectively, "Landmark"), by and through their undersigned counsel, respond to Defendants' First Request For Production of Documents and Things to Plaintiffs dated October 15, 2004 (the "Request"), as follows:

PRELIMINARY STATEMENT

By providing a response to a specific document request: (a) Landmark does not concede that the subject matter of the request or the response provided is relevant to the subject matter involved in the pending action or that either relates to a claim or defense of any party; (b) Landmark does not waive, and hereby reserves, its rights to object to the admissibility into evidence, for any purpose, including for motions or the trial of this action or in any other proceeding, of any document provided or referred to in this Response, on any grounds, including without limitation competency, relevancy, materiality and privilege; (c) Landmark does not waive any objection that it might have to any other discovery request involving or relating to the subject matter of any document request; and (d) Landmark reserves the right to supplement any or all of the responses given herein at any time.

GENERAL RESPONSES AND OBJECTIONS

Landmark objects to the Request for the reasons set forth below (the "General Objections"). The General Objections are incorporated into each of Landmark's specific responses to document requests Nos. 1-64 without the need specifically to refer to or restate the General Objections. Each and every one of Landmark's responses shall be deemed: (a) to have been given subject to each of the General Objections; and (b) not to constitute a waiver of any of the General Objections.

1. Landmark objects to each instruction, definition and document request to the

extent that it: (a) (as in the case, specifically, of Instructions Nos. 2 and 6-7) purports to impose any obligation on Landmark that is greater than or different from that imposed by the Federal Rules of Civil Procedure or this Court's local rules; (b) seeks documents subject to the attorney-client privilege, the work-product doctrine, or any other applicable privilege or protection; (c) does not relate to a claim or defense of any party and is therefore irrelevant to the subject matter involved in the pending action; or (d) is unduly burdensome or oppressive, such that, for example, the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; or the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action and the importance of the proposed discovery in resolving the issues.

2. Inadvertent disclosure of a privileged document is not intended to be, and shall not operate as, a waiver of the applicable privilege, protection or immunity in whole or in part. A privilege log will be supplied.

3. Landmark objects to Instruction "1" because the time period relevant to this litigation does not extend back beyond January 1, 1996, when defendants began operating their Internet web sites, and therefore this instruction purports to require Landmark to produce information in response to document requests that is neither relevant to the subject matter of this lawsuit nor likely to lead to the discovery of admissible evidence and renders the Request as a whole overbroad and unduly burdensome. Unless otherwise indicated in response to a particular request, Landmark will provide responsive, non-privileged documents going back to January 1, 1996.

4. Landmark objects to Definition "1" because it renders the Request as a whole

overbroad and unduly burdensome. Landmark will interpret the term “person” to mean any natural person or any business, legal or governmental entity or association.

5. Landmark objects to Definitions “4” and “5” to the extent that they include persons “purporting to act” on Landmark’s behalf. Landmark will interpret the terms “Landmark,” “plaintiffs,” “you” and “your” to mean any one or more of Landmark Education, LLC, Landmark Education International, Inc. and Landmark Education Business Development, Inc., their officers, directors and employees.

6. Landmark objects to Definition “11” because Landmark is incapable of answering the Request using the stated definition.

SPECIFIC RESPONSES AND OBJECTIONS

Document Request No. 1

Any and all versions of each of Plaintiffs’ training manuals, training videos, training audio tapes, manuals, handbooks, guides, reference sheets, or any other documents Plaintiffs use or have ever used to train, educate, inform, instruct or prepare employees, potential employees and/or volunteers, amongst other things:

- (a) to organize, manage, lead, assist, or in any way participate in conducting a Landmark Forum or any other of Plaintiffs’ programs;
- (b) to locate, choose, prepare, organize, set up, arrange, rearrange, control or set the conditions for, any room, auditorium, lecture hall, or any other venue where the Landmark Forum or any other of Plaintiffs’ programs has been or is going to be held, including, but not limited to, a written or illustrated descriptions [sic] of how, amongst other things, the temperature, windows, chairs, lights, entrances and exits, podiums, and booths are initially set, used, and rearranged in the room, auditorium, lecture hall, or other venue;
- (c) to endorse, sell, advertise, or promote the Landmark Forum or any other of Plaintiffs’ programs;
- (d) to recruit new and existing customers to register for the Landmark Forum, any advanced Landmark course, or any other of Plaintiffs’ programs;

- (e) to convince existing customers to refrain from discontinuing their participation in the Landmark Forum or any other of Plaintiffs' programs;
- (f) to convince existing customers to become Landmark volunteers.

Response to Document Request No. 1

Landmark objects to Request No. 1 on the ground that Landmark does not "recruit" customers or attempt to "convince" customers to refrain from discontinuing their registration or to become volunteers, as assumed in sub-sections (d), (e) and (f) of this request, respectively. Without waiving its objection, upon the execution of an appropriate confidentiality stipulation or the entry of a protective order Landmark will produce manuals, video tapes, audio tapes, handbooks, guides, reference sheets or other documents, whether such materials are properly described as "training" materials, as "educational" materials or otherwise.

Document Request No. 2

Any and all versions of each of Plaintiffs' training manuals, training videos, training audio tapes, manuals, handbooks, guides, reference sheets, or any other documents Plaintiffs use or have ever used to train, educate, inform, instruct or prepare employees, potential employees, or volunteers, including but not limited to the "Forum Supervisors Manual," the "Forum Production Supervisors Manual," the "Forum Registration Manual," and any successors and predecessors of these manuals or any other manual.

Response to Document Request No. 2

Landmark refers defendants to Landmark's response to Request No. 1.

Document Request No. 3

Any and all versions of each of Plaintiffs' educational materials, videos, tapes, manuals, books, handbooks, workbooks, guides, homework assignment sheets or any other materials Plaintiffs use or have ever used to inform or instruct participants or enrollees in their programs.

Response to Document Request No. 3

Landmark refers defendants to Landmark's response to Request No. 1 and to the Landmark Forum "course syllabus" posted on Landmark's Internet web site, www.landmarkeducation.com.

Document Request No. 4

Any and all documents that refer or relate to any statements made by or communications from Plaintiffs or any individuals or entities in any way affiliated with Plaintiffs -- whether such statements or communications were made or disseminated internally or to third-parties -- regarding the potential or actual commencement, for any reason, of a lawsuit against Rick A. Ross or The Ross Institute.

Response to Document Request No. 4

Landmark will produce non-privileged documents responsive to Request No. 4.

Document Request No. 5

Any and all documents that refer or relate to any statements made by or communications from Plaintiffs or any individuals or entities in any way affiliated with Plaintiffs -- whether such statements or communications were made or disseminated internally or to third-parties -- regarding any person or entity who has allegedly made defamatory or disparaging statements regarding Plaintiffs and/or their programs.

Response to Document Request No. 5

Landmark objects to this request as so vague and convoluted as to make it impossible for Landmark to respond. Landmark also objects to this request on the ground that it seeks documents that are not relevant to any claim or defense of any party to this action.

Document Request No. 6

For each and every occasion on which Plaintiffs have initiated litigation against an individual or entity as a result of an alleged disparaging or defamatory comment, statement, or article regarding Plaintiffs and their programs, (i) copies of all versions of the complaint or petition, and the answer, (ii) copies of all briefs, certifications, affidavits and other documents, including all exhibits, filed by any party in connection with any dispositive motion, and/or any appeal, (iii) copies of transcripts of all depositions taken in the litigation of Landmark's witnesses, including its officers, directors, employees and experts, (iv) copies of transcripts of

any trial held, and (v) copies of any and all written opinions of the trial court, any appellate court, and transcripts of any oral decision rendered following any hearing or trial.

Response to Document Request No. 6

Landmark objects to the request on the ground that it seeks documents that are not relevant to any claim or defense asserted by any party to this action.

Document Request No. 7

For each and every occasion on which litigation has been initiated against Plaintiffs by any individual or entity as a direct or indirect result of a person's registration or participation in the Landmark Forum or any other of Plaintiffs' programs, (i) copies of all versions of the complaint or petition, and the answer, (ii) copies of all briefs, certifications, affidavits and other documents, including all exhibits, filed by any party in connection with any dispositive motion, and/or any appeal, (iii) copies of transcripts of all depositions taken in the litigation of Landmark witnesses, including its officers, directors, employees and experts, (iv) copies of transcripts of any trial held, and (v) copies of any and all written opinions of the trial court, any appellate court, and transcripts of any oral decision rendered following any hearing or trial.

Response to Document Request No. 7

Landmark objects to the request on the ground that it seeks documents that are not relevant to any claim or defense asserted by any party to this action.

Document Request No. 8

Any and all documents that refer or relate to any customer service or complaints department or its equivalent maintained by Plaintiffs, including, but not limited to, any description of such department and all training materials, employee handbooks, guides, e-mails and memoranda, whether or not currently in use, that describe, instruct, or otherwise set forth the manner in which Plaintiffs' customer service agents or their equivalents are to handle customer complaints or problems of any nature.

Response to Document Request No. 8

Upon the execution of an appropriate confidentiality stipulation or the entry of a protective order Landmark will produce non-privileged documents responsive to Request No. 8. Further, Landmark refers defendants to Landmark's response to Request No. 1.

Document Request No. 9

Any and all documents received by Plaintiffs that refer or relate to complaints, whether oral or written and in any form whatsoever, regarding the Landmark Forum, any other of Plaintiffs' programs, or any of Plaintiffs' business practices or conduct.

Response to Document Request No. 9

Landmark will produce non-privileged documents responsive to Request No. 9, subject to the entry of a protective order or the execution of a confidentiality stipulation as to materials generated in connection with Landmark's self-critical analysis processes.

Document Request No. 10

Any and all documents received by Plaintiffs that refer or relate to complaints, whether oral or written and in any form whatsoever, that Plaintiffs or their programs (i) are a "cult," (ii) are "cult-like" or maintain some or all of the characteristics of a cult; (iii) employ or utilize any form of "brainwashing," "hypnosis," or "mind control," (iv) are "destructive," "dangerous," or "potentially dangerous," (v) use inappropriately aggressive recruiting techniques, (vi) harass participants, (vii) use bullying and humiliation techniques, (viii) intimidate participants about attempting to leave the program, using the bathroom, eating or taking medication, (ix) cause psychological problems, or (x) engage in any other behavior or employ any other business practice or conduct the allegation of which Plaintiffs deem to be false and disparaging.

Response to Document Request No. 10

Landmark will produce non-privileged documents responsive to Request No. 10, subject to the entry of a protective order or the execution of a confidentiality stipulation as to materials generated in connection with Landmark's self-critical analysis processes.

Document Request No. 11

Any and all organizational charts, or similarly descriptive documents regarding Plaintiffs' corporate and personnel organization and structures.

Response to Document Request No. 11

Landmark has no responsive documents.

Document Request No. 34

Any and all documents tending to support the allegations contained in ¶ 19 of the Complaint that “many” of the statements set forth in sub-parts (a) through (j) of ¶ 18 of the Complaint “simply could not be made by any person who had attended The Landmark Forum.”

Response to Document Request No. 34

Landmark objects to Request No. 34 on the ground that defendants’ web site materials speak for themselves and that the request seeks documentary support for conclusions reasonably drawn from a review of web site materials. Without waiving its objections, Landmark will produce non-privileged documents responsive to Request No. 34. Landmark also refers defendants to Landmark’s response to Interrogatory No. 4 of Defendants’ First Interrogatories.

Document Request No. 35

Any and all documents, other than Defendants’ website materials themselves, tending to support the allegations contained in ¶ 28 of the Complaint that “defendants also exercise unconstrained discretion in editing authentic discussion threads originating with chat room guests and/or filtering them so as to permit only disparaging comments to be or remain posted.”

Response to Document Request No. 35

Landmark does not presently possess any responsive documents.

Document Request No. 36

Any and all documents that refer or relate to any former participant in the Landmark Forum or any other of Plaintiffs’ programs claiming that as a result of attending the Landmark Forum or any other of Plaintiffs’ programs, such former participant (i) sought and/or received psychiatric, psychological or sociological care, (ii) developed a psychiatric or psychological disorder or disability, and/or (iii) experienced one or more psychiatric or psychotic episodes.

Response to Document Request No. 36

Landmark objects to Request No. 36 on the ground that it seeks documents that are not relevant to any claim or defense of any party to this action. Moreover, this request was served on Landmark by defendants after Mr. Ross was hired as an expert witness for the plaintiff against Landmark in Been v. Weed et al., Index No. CJ-2003-02541 (Ok. Dist. Ct. Tulsa Co. 2003).

This request is a thinly-veiled attempt to obtain discovery irrelevant to this action for the sole and improper purpose of aiding the plaintiff in the Been action.

Document Request No. 37

Any and all documents, other than Defendants' website materials themselves, tending to support the allegations contained in ¶ 34 of the Complaint that "defendants are only interested in disparaging Landmark's programs and will not permit praise of the programs from any source to be posted on their sites."

Response to Document Request No. 37

Landmark will produce non-privileged documents responsive to Request No. 37.

Document Request No. 38

Any and all documents that refer or relate to the allegation contained in ¶ 34 of the Complaint that "any reasonable person would conclude from the structure and content of defendants' web sites that Landmark is a cult or engages in cult-like practices."

Response to Document Request No. 38

Landmark objects to Request No. 38 on the ground that defendants' web site materials speak for themselves and that the request seeks documentary support for conclusions reasonably drawn from a review of web site materials. Without waiving its objections, Landmark will produce non-privileged documents responsive to Request No. 38.

Document Request No. 39

Any and all documents that refer or relate to persons who have, at the request of or on behalf of Plaintiffs after Plaintiffs filed or threatened litigation against such person, written statements praising or supporting Landmark and/or Landmark's programs, including statements addressing whether Landmark is a "cult," whether such statement was written in connection with settlement of any such actual or threatened litigation or otherwise.

Response to Document Request No. 39

Without acceding in any respect to defendants' description of the documents requested or the circumstances in which statements were given, Landmark will produce statements written by: (1) the Board of Directors of the Cult Awareness Network, Inc. ("CAN"); and (2) Margaret T.

Response to Document Request No. 45

Landmark objects to Request No. 45 on the ground that the term “administrative action” as used in this request is vague and ambiguous. Landmark also objects to the breadth of the request, insofar as it is not limited to investigations concerning the nature of Landmark’s programs, as opposed to matters not relevant to this action such as investigations concerning routine wage and hour employment matters or Landmark’s compliance with statutory non-discrimination obligations. Without waiving its objections and limiting its response to the request to a proper scope (i.e., investigations concerning the nature of Landmark’s programs), Landmark has no responsive documents.

Document Request No. 46

Any and all documents that refer or relate to or constitute scripts to be used by Plaintiffs’ employees or volunteers during communications on any subject with potential, current and/or former participants in the Landmark Forum or other programs run by Plaintiffs.

Response to Document Request No. 46

Landmark refers defendants to Landmark’s response to Request No. 1.

Document Request No. 47

Any and all documents that refer or relate to or constitute all current and former versions of application forms, releases and/or waivers required to register in the Landmark Forum or any other program run by the Plaintiffs.

Response to Document Request No. 47

Landmark objects to Request No. 47 on the ground that it seeks documents that are not relevant to any claim or defense of any party to this action.

Document Request No. 48

Any and all documents that refer or relate to or constitute advice or warnings, whether written or oral, given by Plaintiffs at any time regarding types of prospective customers who are advised or warned not to participate in the Landmark forum [sic] or any other program run by the Plaintiffs.

Response to Document Request No. 48

Landmark objects to Request No. 48 on the ground that it seeks documents that are not relevant to any claim or defense of any party to this action.

Document Request No. 49

Any and all documents that refer or relate to or constitute communications between the Plaintiffs and the Defendants, including but not limited to correspondence and e-mails between the parties as well as internal memoranda and internal e-mails that refer or relate to communications between the parties, created between January 1, 1996 and the present.

Response to Document Request No. 49

Landmark will produce non-privileged documents responsive to Request No. 49.

Document Request No. 50

Any and all documents that refer or relate to Plaintiffs' concerns about or displeasure with Defendants and/or Defendants' conduct.

Response to Document Request No. 50

Landmark objects to Request No. 50 on the ground that the terms "concerns" and "displeasure" as used in this request are vague and ambiguous. Without waiver of its objection, Landmark will produce non-privileged documents responsive to Request No. 50.

Document Request No. 51

Any and all documents identified by either party in their respective pleadings.

Response to Document Request No. 51

Landmark will produce the documents identified by Landmark in the Complaint.

Document Request No. 52

Any and all documents reviewed by you or your agents in preparing your pleadings, whether or not such documents are referred to in the pleadings or attached thereto.

Document Request No. 60

Any and all documents that refer or relate to the purpose, goals, aims or intended results of participation in the seminars offered and maintained by EST, including, but not limited to, mission statements, internal and external memoranda, advertising materials, and internal and external communications.

Response to Document Request No. 60

Landmark objects to Request No. 60 on the grounds that Landmark is not EST nor is Landmark a successor to EST. Therefore, the request seeks documents that are not relevant to any claim or defense of any party to this action. In any event, Landmark has no responsive documents.

Document Request No. 61

Documents sufficient to show the total compensation, including benefits, bonuses and stock options, paid to each member of Landmark management for each of the past five years.

Response to Document Request No. 61

Landmark objects to Request No. 61 on the ground that it seeks documents that are not relevant to any claim or defense of any party to this action.

Document Request No. 62

Any and all documents referring or relating to any screening program or process implemented by Landmark that seeks to avoid registering participants deemed in any manner to be psychologically unfit, including any handbooks, manuals, instruction sheets, questionnaires, communications with psychiatrists, psychologists, medical doctors or other experts concerning such screening program or process, documents sufficient to show when such program or process was implemented, and all documents referring or relating to why it was implemented.

Response to Document Request No. 62

Landmark objects to Request No. 62 on the ground that it seeks documents that are not relevant to any claim or defense of any party to this action.

EXHIBIT B

Bloom Rubenstein Karinja & Dillon, P.C.
70 South Orange Avenue, Suite 215
Livingston, New Jersey 07039
(973) 535-3388
PD-7957

Cohen Lans LLP
885 Third Avenue, 32nd Floor
New York, New York 10022
(212) 980-4500
DL-5063
GL-5382

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

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

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

PLAINTIFFS' RESPONSE TO DEFENDANTS' FIRST SET OF INTERROGATORIES

Interrogatories”). Landmark is unable to set forth its final position with respect to information not currently in its possession, information it has not yet had an opportunity to learn through discovery or otherwise, or information that may be the subject of expert testimony.

5. Landmark objects to the Interrogatories to the extent that, taking into consideration the numerous subparts of many of the interrogatories, the total number of interrogatories far exceeds the 25-interrogatory limit set by the Court in its September 13, 2004 Letter Order.

6. Landmark objects to Instruction “1” because the time period relevant to this litigation does not extend back beyond January 1, 1996, when defendants began operating their Internet web sites, and therefore this instruction purports to require Landmark to produce information in response to interrogatories that is neither relevant to the subject matter of this lawsuit nor likely to lead to the discovery of admissible evidence and renders the Interrogatories as a whole overbroad and unduly burdensome. Unless otherwise indicated in response to a particular interrogatory, Landmark will provide responsive, non-privileged information going back to January 1, 1996.

7. Landmark objects to Definition “1” because it renders the Interrogatories as a whole overbroad and unduly burdensome. Moreover, this definition has the effect of multiplying each interrogatory into numerous subparts rendering the Interrogatories as a whole in further violation of the 25-interrogatory limit set by the Court in its September 13, 2004 Letter Order.

8. Landmark objects to Definition “4” because it renders the Interrogatories as a whole overbroad and unduly burdensome. Landmark will interpret the term “person” to mean any natural person or any business, legal or governmental entity or association.

9. Landmark objects to Definitions “8” and “9” to the extent that they include

Response to Interrogatory No. 6

Landmark objects to this and every succeeding interrogatory because defendants have exceeded the number of permissible interrogatories. Without waiving the objection, see ¶¶ 36 through 39 of the Complaint and the documents produced by Landmark in response to Requests Nos. 16-17 and 28-30 of Defendants' First Document Request. Further information is in defendants' sole possession and control.

Interrogatory No. 7

Identify and set forth the circumstances surrounding each and every occasion on which a potential or actual Landmark customer canceled or otherwise declined to pursue a potential or actual registration to attend a Landmark Forum or any other Landmark program as a direct result of statements made or articles authored by Defendants. Include in your answer the total dollar amount of damages actually caused by Defendants' purported conduct and, if different due to the inclusion of items other than special damages, the total dollar amount of all damages alleged by Plaintiff [sic] as a result. Identify all persons with knowledge regarding these allegations and summarize the information each possesses. Identify any and all documents and other evidence that supports or refutes these allegations and attach copies of any and all such documents.

Response to Interrogatory No. 7

Landmark objects to this and every succeeding interrogatory because defendants have exceeded the number of permissible interrogatories. Landmark also objects to this interrogatory on the ground that the parties have agreed to bifurcate the issues of liability and damages. Without waiving the objections, see ¶ 41 of the Complaint and the documents produced by Landmark in response to Request No. 25 of Defendants' First Document Request. Further information is in defendants' sole possession and control. The persons with knowledge concerning the allegations of ¶ 41 of the Complaint are identified in Landmark's Rule 26(a)(1) Disclosures.

Interrogatory No. 8

Identify and set forth the circumstances surrounding each and every occasion on which Landmark has initiated litigation against an individual or entity as a result of an alleged

disparaging or defamatory comment, statement or article regarding the Landmark Forum or any other Landmark program. With respect to each such litigation, set forth the specific comments or statements alleged to be disparaging or defamatory, the time at which the lawsuit was filed, the jurisdiction and court in which and docket number under which the lawsuit was adjudicated, the duration of the lawsuit, and whether the lawsuit was settled, dismissed, or tried to verdict, including a description of any settlement or verdict.

Response to Interrogatory No. 8

Landmark objects to this and every succeeding interrogatory because defendants have exceeded the number of permissible interrogatories. Landmark also objects to this interrogatory on the ground that it seeks information that is not relevant to any claim or defense of any party to this action.

Interrogatory No. 9

Identify and set forth the circumstances surrounding each and every occasion on which litigation has been instigated against Landmark as the alleged direct or indirect result of an individual's registration for or participation in the Landmark Forum or any other Landmark program. With respect to each such litigation, set forth the specific claims alleged against Landmark, the time at which the lawsuit was filed, the jurisdiction and court in which and docket number under which the lawsuit was or is currently being adjudicated, the duration of the lawsuit, and whether the lawsuit was settled, dismissed or tried to verdict, including a description of any settlement or verdict.

Response to Interrogatory No. 9

Landmark objects to this and every succeeding interrogatory because defendants have exceeded the number of permissible interrogatories. Landmark also objects to this interrogatory on the ground that it seeks information that is not relevant to any claim or defense of any party to this action.

Interrogatory No. 10

Set forth all facts that support or refute the allegation contained in ¶ 40 of the Complaint that defendants have caused "plaintiffs to suffer substantial damages," including, but not limited to, a precise description, including dollar amounts, of the financial losses incurred as a result of any allegedly disparaging or defamatory statements made by defendants. Identify all persons with knowledge regarding these allegations, including but not limited to, the damages sustained with respect to each of the persons withdrawing from Landmark programs described in ¶¶ 41(a)-

Interrogatory No. 12

Identify each and every occasion on which a former participant in the Landmark Forum or any other Landmark program has, within three months following attendance at the Landmark Forum or any other Landmark program (i) sought and/or received psychiatric, psychological, or sociological care, whether at a hospital or otherwise, (ii) developed a psychiatric or psychological disorder or disability, and/or (iii) experienced one or more psychiatric or psychotic episodes. Include in your response the identity of all such persons who to your knowledge have claimed to have suffered as specified above, regardless of whether Landmark disputes those claims or liability therefor. Attach copies of all documents relating to such occasions to your answers to these interrogatories.

Response to Interrogatory No. 12

Landmark objects to this and every succeeding interrogatory because defendants have exceeded the number of permissible interrogatories. Landmark also objects to this interrogatory on the ground that it seeks information that is not relevant to any claim or defense of any party to this action. Moreover, this interrogatory was served on Landmark by defendants after Mr. Ross was hired as an expert witness for the plaintiff against Landmark in Been v. Weed et al., Index No. CJ-2003-02541 (Ok. Dist. Ct. Tulsa Co. 2003). This interrogatory is a thinly-veiled attempt to obtain discovery irrelevant to this action for the sole and improper purpose of aiding the plaintiff in the Been action.

Interrogatory No. 13

Identify the dates on which (i) you concluded that defendants had made defamatory or disparaging comments about Landmark or the Landmark Forum, (ii) you concluded that defendants had authored or directed the preparation of the "visitor comments," "personal stories," and/or discussion threads" maintained on defendants' websites, and (iii) you decided to file this lawsuit, setting forth all facts that contributed to or precipitated each conclusion or decision.

Response to Interrogatory No. 13

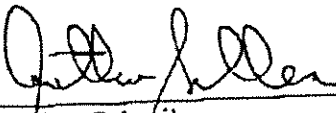
Landmark objects to this and every succeeding interrogatory because defendants have exceeded the number of permissible interrogatories. Without waiving the objection, the

VERIFICATION

STATE OF CALIFORNIA)
 ss:
COUNTY OF SAN FRANCISCO)

ARTHUR SCHREIBER, being duly sworn, deposes and says:

I am the General Counsel of Landmark Education LLC, Landmark, Education International, Inc. and Landmark Education Business Development, Inc., plaintiffs herein (collectively, "Landmark"). I have read the foregoing Response to Defendants' First Set of Interrogatories and the contents thereof are true, based on information and belief, and the documents referred to in such answers.

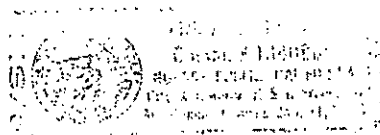


Arthur Schreiber

Sworn to before me this 7th
day of January, 2005.



Notary Public



RECEIVED TIME JAN. 7. 2:16PM

EXHIBIT C

CONFIDENTIAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
LANDMARK EDUCATION CORPORATION,
Plaintiff,

Index No. 114814/93

-against-

THE CONDE NAST PUBLICATIONS, INC.,
d/b/a SELF MAGAZINE, ADVANCE MAGAZINE
PUBLISHERS, INC. d/b/a SELF MAGAZINE,
and DIRK MATHISON,

Defendants.
-----X

MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

FILE
JUL 7 1994
COUNTY CLERK
NEW YORK

Of counsel:

Robert M. Callagy
Jan R. Uhrbach

SATTERLEE STEPHENS BURKE & BURKE
230 PARK AVENUE
NEW YORK, N. Y. 10169-0079

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

FACTS 2

 The Parties 2

 The Article 3

 Plaintiff's Complaint 5

DISCUSSION 7

POINT I

AS A MATTER OF LAW, THE STATEMENTS
COMPLAINED OF ARE SUBSTANTIALLY TRUE 7

 A. THERE CAN BE NO GENUINE DISPUTE THAT THE FORUM HAS
 BEEN THE SUBJECT OF NUMEROUS COMPLAINTS ABOUT ITS
 "CULT-LIKE" PRACTICES 10

 1. Leading Cult Awareness Organizations Have Received Complaints
 About The Forum 10

 2. Plaintiff Has Received Complaints that The Forum Has Engaged
 in Many of the Practices Detailed in the Sidebar and the Article . . . 10

 3. Complaints About The Forum and its Cult-Like Practices Have
 Been Widely Reported in the National and International Press 15

 4. The Forum Has Been the Subject of Legal Complaints Alleging
 Cult-Like Practices and Psychological Damage 18

 B. THERE CAN BE NO GENUINE DISPUTE THAT THE FORUM HAS
 ENGAGED IN MANY OF THE TACTICS LISTED IN THE
 SIDEBAR 20

 1. Manipulative and Coercive Pressure in Recruitment 21

 2. Thought Reform, Mind Control, and Trance Induction 26

 3. Psychological and Emotional Damage 34

C. OTHER OF PLAINTIFF'S PRACTICES SET FORTH IN DOCUMENTS
PRODUCED BY PLAINTIFF ARE ALSO CHARACTERISTIC OF
CULTS 35

POINT II
THE STATEMENTS COMPLAINED OF QUALIFY
AS CONSTITUTIONALLY PROTECTED OPINION 37

POINT III
THE STATEMENTS COMPLAINED OF
ARE NOT "OF AND CONCERNING" PLAINTIFF 43

CONCLUSION 47

TABLE OF AUTHORITIES

FEDERAL CASES

Church of Scientology of California v. Cazares, 638 F.2d
1272 (5th Cir. 1981) 40

Church of Scientology of California v. Siegelman, 475 F.
Supp. 950 (S.D.N.Y. 1979) 39, 40

Law Firm of Daniel P. Foster v. Turner Broadcasting, 844
F.2d 955 (2d Cir.), cert. denied, 488 U.S. 944 (1988) 8

Liberty Lobby, Inc. v. Dow Jones & Co. Inc., 838 F.2d
1287 (D.C. Cir. 1988), cert. denied, 488 U.S. 825,
109 S. Ct. 75 (1988) 8

Milkovich v. Lorain Journal Co., 497 U.S. 1, 110 S. Ct.
2695 (1990) 37, 38

Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767,
106 S. Ct. 1558 (1986) 7, 8

Robertson v. McCloskey, 666 F. Supp. 241 (D.D.C. 1987) 8

STATE CASES

Allen v. Gordon, 86 A.D.2d 514, 446 N.Y.S.2d 48 (1st
Dep't), aff'd without op., 56 N.Y.2d 780, 452
N.Y.S.2d 25 (1982) 43

Bee Pub. v. Cheektowaga, 107 A.D.2d 382, 485 N.Y.S.2d
885 (4th Dep't 1985) 44

Brady v. Ottaway Newspapers, 84 A.D.2d 226, 445 N.Y.S.2d
786 (2d Dep't 1981) 44

Cera v. Mulligan, 79 Misc. 2d 400, 358 N.Y.S.2d 642
(Sup. Ct. Monroe Co. 1974) 41, 42

<u>Cohn v. Brecher</u> , 20 Misc. 2d 329, 192 N.Y.S.2d 877 (Sup. Ct. N.Y. Co. 1959)	46
<u>Commonwealth Motor Parts Ltd. v. Bank of Nova Scotia</u> , 44 A.D.2d 375, 355 N.Y.S.2d 138 (1st Dep't 1974), <u>aff'd</u> , 37 N.Y.2d 824, 377 N.Y.S.2d 482 (1975)	7
<u>Droner v. Schapp</u> , 34 A.D.2d 823, 311 N.Y.S.2d 934 (2d Dep't 1970)	7
<u>Fairley v. Peekskill Star Corp.</u> , 83 A.D.2d 294 (2d Dep't 1981)	8
<u>Grab v. Poughkeepsie Newspapers, Inc.</u> , 91 Misc. 2d 1003, 399 N.Y.S.2d 97 (Sup. Ct. Dutchess Co. 1977)	8
<u>Großs v. Cantor</u> , 270 N.Y. 93, 200 N.E. 592 (1936)	44
<u>Gross v. The New York Times Co.</u> , ___ N.Y.2d ___, ___ N.Y.S.2d ___, 1993 WL 419149 (1993)	38
<u>Holy Spirit Ass'n of the Unification for World Christianity v. Sequoia Elsevier Publishing Co.</u> , 75 A.D.2d 523, 426 N.Y.S.2d 759 (1st Dep't 1980)	40
<u>Holy Spirit Assoc. v. Harper & Row Publishers, Inc.</u> , 101 Misc. 2d 30, 420 N.Y.S.2d 56 (1979)	39
<u>Immuno A.G. v. Moor-Jankowski</u> , 77 N.Y.2d 235, 566 N.Y.S.2d 906 (1991)	37, 38, 39
<u>Julian v. American Business Consultants</u> , 2 N.Y.2d 1, 155 N.Y.S.2d 1 (1956)	44
<u>Licitra v. Faraldo</u> , 130 A.D.2d 555, 515 N.Y.S.2d 289 (2d Dep't 1987)	7, 8
<u>New Testament Missionary Fellowship v. E.P. Dutton & Co.</u> , 112 A.D.2d 55, 491 N.Y.S.2d 626 (1982)	40
<u>Pollnow v. Poughkeepsie Newspapers, Inc.</u> , 67 N.Y.2d 778, 501 N.Y.S.2d 17 (1986)	8

Rinaldi v. Holt, Rinehart & Winston, 42 N.Y.2d 369, 397
 N.Y.S.2d 943 cert. denied, 434 U.S. 969 (1977) 8, 39

Steinhilber v. Alphonse, 69 N.Y.2d 283 (1986) 38, 39, 41

MISCELLANEOUS

Prosser & Keeton, Law on Torts, § 116 (5th Ed. 1984) 20

Restatement (Second) of Torts § 581A 20

Sack, Libel, Slander and Related Problems, §IV.4.4.
 (Practicing Law Institute 1980) 39

Smolla, Law of Defamation § 5.08[2] 20, 39

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X	
LANDMARK EDUCATION CORPORATION,	:
	:
Plaintiff,	:
	:
-against-	:
	:
THE CONDE NAST PUBLICATIONS, INC.,	:
d/b/a SELF MAGAZINE, ADVANCE MAGAZINE	:
PUBLISHERS, INC. d/b/a SELF MAGAZINE,	:
and DIRK MATHISON,	:
	:
Defendants.	:
	:
-----X	

MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

PRELIMINARY STATEMENT

Defendants The Conde Nast Publications, Inc., d/b/a Self Magazine, Advance Magazine Publishers, Inc. d/b/a Self Magazine, and Dirk Mathison (hereinafter "defendants") submit this memorandum of law in support of their motion for summary judgment pursuant to CPLR 3212 dismissing the complaint in its entirety.¹

This is an action for alleged defamation arising from an article on "cults," written by defendant Mathison, and published in the February 1993 issue of Self magazine (the "Article"). Defendants are entitled to summary judgment because, as a matter of law, each of the statements complained of is (1) substantially true, (2) non-actionable opinion, and/or (3) not "of and concerning" plaintiff.

¹ The Conde Nast Publications is a division of Advance Magazine Publishers, Inc.

The documents setting forth the facts relevant to this motion are contained in the Affidavit of Robert M. Callagy, sworn to November 8, 1993 ("Callagy Aff."), and the exhibits annexed thereto. A copy of the Amended Verified Complaint is annexed to the Callagy Aff. as Exhibit A. Copies of defendants' Verified Answers are annexed to the Callagy Aff. as Exhibit B.

FACTS

The Parties

Plaintiff Landmark Education Corporation ("Landmark") is a for-profit corporation.² Among its other activities, Landmark offers a four-part "program" that promises transformation and empowerment to individuals dissatisfied with their lives. The first course in this program is called "The Forum" ("Forum"). Complaint, ¶ 6 (Callagy Aff., Exh. A). The Forum was founded by Werner Erhard, and is a direct descendent of Erhard's "est" programs. See Complaint, ¶ 9 (Callagy Aff., Exh. A).³

² Plaintiff's 1991 tax return reveals a gross profit in the amount of \$24,570,344. Callagy Aff., Exh. D.

³ Although plaintiff denies that Mr. Erhard has ever had an ownership interest or involvement in Landmark (Complaint, ¶ 9), it is clear that this is not the complete truth.

First, records obtained from plaintiff and the California Secretary of State reveal a strong connection between Erhard and Landmark. For example, Landmark (previously known as Transnational Education Corp., and prior to that, Breakthrough Technologies, Inc.) had a wholly-owned subsidiary known as Werner Erhard and Associates International, Inc. In 1991, with Landmark's permission, Werner Erhard and Associates International, Inc. changed its name to Landmark Education International, Inc. Erhard's brother, Harry Rosenberg, and longtime counsel, Art Schreiber, serve as directors of Landmark and Landmark Education International, Inc. Callagy Aff., Exh. E.

Second, a Dun & Bradstreet report regarding Landmark's wholly-owned subsidiary states the following:

(continued...)

Defendant Advance Magazine Publishers, Inc. ("Advance"), through its division, defendant Conde Nast Publications, Inc. ("Conde Nast"), has been a leader in the publishing field for decades. It owns and publishes some of this country's most prominent publications, including Vanity Fair, Vogue, Architectural Digest, and Self.

Defendant Dirk Mathison ("Mathison") is a freelance writer with extensive experience in investigative journalism. He is a former bureau chief in Boston and San Francisco for People magazine, and a past contributor to Time and other national publications.

The Article

The Article at issue is entitled "White-collar cults: they want your mind." It was written by defendant Mathison, and appeared in the February, 1993 issue of Self magazine, published by defendant Advance. A copy of the Article is annexed to the Callagy Aff. as Exh. C.

³(...continued)

The training and other programs offered to the public were created by Werner Erhard beginning in 1971. These programs were delivered in the United States by Erhard Seminars Training, Inc. . . . and EST, an educational corporation Effective June 1, 1981, Werner Erhard purchased the operating assets of EST

In 1991 the parent company [Landmark], which was purchased by the employees from Werner Erhard, also purchased this firm.

Callagy Aff., Exh. F (emphasis added).

Third, the stock register produced by plaintiff reveals that J. Rosenberg (Erhard's real name is Jack Rosenberg) owns 1,236 shares of stock in Landmark. The register also lists H. Rosenberg (presumably Erhard's brother, Harry), as owning 1,854 shares. Callagy Aff., Exh. G.

Finally, it has been widely reported that The Forum evolved from est, and was originally offered by Werner Erhard and Associates. See, e.g., "Erhard Shelves est in Favor of The Forum," Associated Press, December 14, 1984; "Werner Erhard and Associates Issues Statement," Business Wire, June 3, 1987 (Callagy Aff., Exh. H).

The Article is a well-documented investigative report of the growing "human potential" movement in the United States. It describes the movement in general terms, and reports on the ever-increasing criticism of self-help groups such as "Scientology," John Hanley's "Lifespring," and "PSI World." The Article also refers to several leading cult watchdog organizations; these organizations analogize the tactics of the "human potential" movement to traditional "cult" and "mind control" techniques.

The five and one-half page Article makes exactly two explicit references to The Forum; plaintiff itself is not named at all. First, the main text of the Article contains the following passage:

In 1991, after Erhard was publicly charged with sexual and mental abuse by his daughter on 60 Minutes, he filed suit against CBS. He has moved to Costa Rica, but the Forum (a toned-down reincarnation of est) continues to draw thousands of followers.

Article, p. 122 (Callagy Aff., Exh. C). Plaintiff does not claim that anything in the above passage is defamatory.

Second, there is a "sidebar" to the Article, entitled "America's most-wanted cults" ("Sidebar"). The Sidebar opens with the following paragraph:

What makes a cult? The leading cult-awareness organizations cite the groups below -- which range from sleek and sophisticated "transformational workshops" to fundamentalist sects -- as having been the subject of complaints for activities that include: trance-induction; manipulative recruitment; thought reform or mind control; harassment of critics and their families and former followers; psychological and emotional damage; and fraud and deceit in fund-raising. The list was compiled from information provided by the American Family Foundation, the Commission on Cults and Missionaries and the Cult Awareness Network.

Article, p. 155 (Callagy Aff., Exh. C) (emphasis added). A list of nine organizations that have been the subject of such complaints then follows. The Forum is included in this list:

* The Forum (also est and The Hunger Project): Founded by Werner Erhard. *Personal growth, success and sometimes the salvation of the world.* Celebrity member: John Denver.

Article, p. 155 (Callagy Aff., Exh. C). Plaintiff does not allege that this description of The Forum is defamatory.

Plaintiff's Complaint

Plaintiff commenced this action by service of a complaint on Conde Nast on or about July 22, 1993. Subsequently, plaintiff amended the complaint to include defendant Advance, and served defendant Mathison. The complaint contains one claim of alleged^a defamation against all defendants. Callagy Aff., Exh. A. On or about July 14, 1993 and August 5, 1993, defendants filed their respective answers, denying the material allegations of the complaint and asserting as affirmative defenses, inter alia, that the statements complained of are substantially true, non-actionable opinion, and not "of and concerning" plaintiff. Callagy Aff., Exh. B. To date, plaintiff and defendants have exchanged documents, and defendants have responded to plaintiff's first set of interrogatories.

As set forth above, plaintiff does not assert that either of the two explicit references to The Forum is defamatory. Instead, the crux of plaintiff's complaint is that the inclusion of The Forum in the Article and Sidebar is defamatory, because The Forum is allegedly not a "cult." In connection with this claim, plaintiff points to seven generalized quotations from the Article (none of which are specific to The Forum), and twelve alleged "implications" of the Article. Complaint, ¶¶ 18-19 (Callagy Aff., Exh. A).

Plaintiff's defamation claim fails for several reasons. First, the statements complained of are substantially true. As set forth below, there can be no genuine dispute that The Forum has been the subject of numerous complaints (published, unpublished, and legal) about its cult-like practices, and has been identified as a cult by several cult-awareness groups, the Israeli government, and numerous articles published prior to the Article. Moreover, the documents produced by plaintiff reveal that The Forum in fact employs many of the practices identified in the Article as characteristic of cults.

Second, if there were any question as to whether plaintiff can properly be labelled a "cult," which there is not, such question could only arise because the term "cult" is non-actionable opinion, incapable of being proven true or false. Similarly, many of the generalized statements complained of -- even assuming arguendo that they could be characterized as "of and concerning" plaintiff -- are also non-actionable opinion.

Finally, the statements complained of are not "of and concerning" the plaintiff, but general statements which clearly apply to some, but not all, of the groups mentioned.⁴ As

⁴ For example, the plaintiff alleges as a defamatory statement that "Plaintiff engages in 'a pyramid marketing scheme.'" Complaint, ¶¶ 18(c), 19 (d) (Callagy Aff., Exh. A). This allegation is based solely on a paragraph that appears on the first page of the Article:

Anthropologists have found evidence of groups like these throughout history and in every society. They are referred to as "cults of the afflicted," in which members, once "cured" of whatever ails them, go forth seeking new converts. It's a pyramid marketing scheme that dates back to the pyramids themselves.

Article, pp. 121-22 (Callagy Aff., Exh. C). This paragraph expressly refers to groups "throughout history" and "in every society" -- not to any specific group, and certainly not to The Forum. Moreover, the statement "[i]t's a pyramid marketing scheme that dates back to the pyramids themselves" is non-actionable opinion, incapable of being proven true or false.

a matter of law, no reasonable reader could conclude that every single statement in the Article -- and every single tactic in the Sidebar -- applies to every single group referred to throughout the Article and Sidebar. The unambiguous thrust of the Sidebar (and the Article) is that each group mentioned engages in one or more of the practices described. As set forth fully below, plaintiff's own training documents establish that The Forum engages in at least one (and in fact many) of the practices referred to in the Article and the Sidebar.⁵

DISCUSSION

POINT I

AS A MATTER OF LAW, THE STATEMENTS COMPLAINED OF ARE SUBSTANTIALLY TRUE

It is beyond dispute that substantial truth is "an absolute defense" to a defamation claim. Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 775, 106 S. Ct. 1558 (1986); Licitra v. Faraldo, 130 A.D.2d 555, 515 N.Y.S.2d 289, 290 (2d Dep't 1987); Commonwealth Motor Parts Ltd. v. Bank of Nova Scotia, 44 A.D.2d 375, 355 N.Y.S.2d 138 (1st Dep't 1974), aff'd, 37 N.Y.2d 824, 377 N.Y.S.2d 482 (1975); Droner v. Schapp, 34 A.D.2d 823, 311 N.Y.S.2d 934, 935 (2d Dep't 1970).

Because a libel plaintiff bears the burden of proving that the statements complained of are false, courts have consistently granted summary judgment based on substantial truth, or plaintiff's failure to offer sufficient evidence of substantial falsity. See Philadelphia

⁵ Defendants also believe that plaintiff will be unable to establish fault under any degree of care. However, because plaintiff has not yet had the opportunity to depose defendants on the issue of standard of care, this motion is addressed solely to those issues which are dependent on facts within the plaintiff's own knowledge (substantial truth) or qualify as matters of law (such as opinion and "of and concerning").

Newspapers, Inc. v. Hepps, 475 U.S. at 775; Pollnow v. Poughkeepsie Newspapers, Inc., 67 N.Y.2d 778, 501 N.Y.S.2d 17 (1986); Rinaldi v. Holt, Rinehart & Winston, 42 N.Y.2d 369, 397 N.Y.S.2d 943, cert. denied, 434 U.S. 969 (1977); Licitra v. Faraldo, supra; Fairley v. Peekskill Star Corp., 83 A.D.2d 294 (2d Dep't 1981); Grab v. Poughkeepsie Newspapers, Inc., 91 Misc. 2d 1003, 399 N.Y.S.2d 97 (Sup. Ct. Dutchess Co. 1977); Law Firm of Daniel P. Foster v. Turner Broadcasting, 844 F.2d 955, 960 (2d Cir.), cert. denied, 488 U.S. 944 (1988). Thus, if plaintiff cannot come forward with competent evidence establishing substantial and material falsity, its complaint must fail. See Rinaldi v. Holt Rinehart & Winston, 42 N.Y.2d at 382, 397 N.Y.S.2d at 951.⁶ Furthermore, "where the question of truth or falsity is a close one, a court should err on the side of nonactionability." Liberty Lobby, Inc. v. Dow Jones & Co. Inc., 838 F.2d 1287, 1292 (D.C. Cir. 1988), cert. denied, 488 U.S. 825, 109 S. Ct. 75 (1988). See also Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. at 778.

As set forth above, the crux of plaintiff's complaint is the inclusion of The Forum in the Sidebar of groups that have been the subject of complaints for cult-like activities:

What makes a cult? The leading cult awareness organizations cite the groups below -- which range from sleek and sophisticated "transformational workshops" to fundamentalist sects -- as having been the subject of complaints for activities that include: trance-induction; manipulative recruitment; thought reform or mind control; harassment of critics and their families and former followers; psychological and emotional damage; and fraud and deceit in fund-raising.

⁶ Moreover, because plaintiff is, at the very least, a limited purpose public figure, it has the burden of establishing falsity by clear and convincing proof, not a mere preponderance of the evidence. See, e.g., Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. at 773; Robertson v. McCloskey, 666 F. Supp. 241, 248 (D.D.C. 1987).

Article (Callagy Aff., Exh. C).⁷

There can be no genuine dispute that the inclusion of The Forum in the Sidebar is substantially true. First, the Sidebar accurately refers to The Forum as "having been the subject of complaints." The Sidebar does not state or imply that the complaints are well-founded (although the documents produced by plaintiff establish that they are). There can be no genuine dispute that The Forum has been the subject of numerous complaints about practices that are typical of cult behavior, and specifically about several of the practices listed in the Sidebar. These complaints have been made to anti-cult groups, to plaintiff, in the national and international press, and in the courts.

Second, even if the Sidebar could be read to imply (which it does not) that The Forum does in fact engage in one or more of the practices listed, such a statement is true. The documents produced by plaintiff establish that The Forum has engaged in many, if not all, of the tactics listed in the Sidebar.

Third, even if the Sidebar or Article could be read to imply that The Forum is a "cult," such a statement is substantially true, in light of the tactics employed by The Forum, the numerous complaints about those tactics, and the number of individuals, organizations, and media entities that have concluded that The Forum is a cult.

⁷ The specific allegations regarding this paragraph appear at ¶¶ 18(g) and 19(e) through (j) of the Complaint. Callagy Aff., Exh. A. However, most of the other allegedly defamatory statements are substantially equivalent to the statements in the paragraph quoted above. See Complaint, ¶¶ 18(a), (b), (d), (e), (f), and 19(a), (b), (c), (k), and (l) (Callagy Aff., Exh. A). The only remaining allegations (¶¶ 18(c) and 19(d)) are addressed at Points II and III, *infra*.

A. THERE CAN BE NO GENUINE DISPUTE THAT THE FORUM HAS BEEN THE SUBJECT OF NUMEROUS COMPLAINTS ABOUT ITS "CULT-LIKE" PRACTICES

1. Leading Cult Awareness Organizations Have Received Complaints About The Forum

Apparently, plaintiff does not dispute -- nor could it -- that anti-cult organizations such as the Cult Awareness Network ("CAN") and American Family Foundation ("AFF") have received complaints about, and/or maintain files on, plaintiff. See, e.g., CAN At a Glance (Callagy Aff., Exh. L) ("A partial list of groups about which CAN has received complaints includes the following: . . . The Forum/est/The Hunger Project"); "The Return of Werner Erhard: Guru II," Los Angeles Magazine, May 1988 (Callagy Aff., Exh. I) ("We [CAN] classify est, the Forum and the Hunger Project as destructive cults . . ."); "Selling Practical Enlightenment: Est Leaders Recharge the Batteries of a New Clientele," New York Times, March 13, 1988 (Callagy Aff., Exh. K) ("The Cult Awareness Network . . . believes that the Forum and Lifespring brainwash participants . . ."); American Family Foundation Information Packet, est/The Forum (Callagy Aff., Exh. M).

2. Plaintiff Has Received Complaints that The Forum Has Engaged in Many of the Practices Detailed in the Sidebar and the Article

Not only have anti-cult organizations received complaints about The Forum, but plaintiff itself has received such complaints. Forum participants have written to plaintiff complaining about the practices of The Forum. These letters include grievances about exhausting sessions, psychological abuse, emotional confrontation and hyper-aggressive recruiting -- the very tactics mentioned in the Article and Sidebar as typifying "cults."

For example, one University of Maryland teacher, Yvonne S. Gentzler, wrote to plaintiff to complain about the treatment she received at The Forum. First, she noted that plaintiff had misrepresented the ending time of the Forum day:

I felt as if I was misled by the persons telling me about the workshop because I was told that it would end sometime between 11:00 p.m. and midnight. It did not end until 1:00 a.m.

She then recounted that her request to reschedule had been refused despite the fact that her car had been stolen from The Forum's parking lot, and that she was unable to get home for a night's sleep. Her letter describes the very same techniques mentioned in the Sidebar and Article:

- o Needless to say I got 45 minutes of sleep before I had to get back up and get back to the meeting. . . . I told Jack when I arrived that I had little to no sleep, nothing to eat, and felt that I could not concentrate on what was happening in the workshop . . . His only response was that I could rest on their cot and that I needed to trust that the care givers would take care of me. In essence, he said that I was having difficulty giving up control and needed to learn that being so independent was not necessary

By the end of the day I was physically ill and unable to concentrate on anything that Randy was talking about in his presentation. Once again, I asked Jack if I could either get my money reimbursed and leave, or attend a later session to complete the Forum work. I was told that if I would go home and sleep I would feel better in the morning when I was to be back at 9:00 a.m. . . .

On Sunday I arrived as I was told I had to -- partly because I did not want to lose the money I had already spent

Having endured this experience, Ms. Gentzler was then subjected to numerous phone calls from plaintiff's representatives attempting to recruit her for advanced programs:

I have already received telephone calls from persons calling to see if I will be attending the weekly sessions and the Advanced Seminar. I promptly told them that I had no intentions of attending any other Forum meetings and that they could cross my

name off their calling list. However, because I continue to get calls from The Landmark Education Center, I have decided to write to you and request that you see to it that I am not contacted further.

Letter from Yvonne S. Gentzler, dated January 29, 1993 (Callagy Aff., Exh. N) (emphasis added).

Another participant, Gary Schnell, wrote to express his satisfaction with certain aspects of The Forum. However, even this "fan" described several of the "cult-like" tactics employed by The Forum:

. . . I do not agree with the "bootcamp" tactics which were used, particularly in the first day or two of The Forum. Many of the participants felt that the profanity, shouting, confrontation, and aggression vented by the Forum leader were excessive. . . .

Having paid to be there and having come committed to our lives; we question whether it is really necessary to "break us down and put us back together again?" . . . Much of the initial conversation in the Forum intimated that we were basically "slugs who were leading wretched lives incapable of full vitality."

* * *

Another area of concern is the way that trauma work is dealt with in the Forum. For example, many participants voluntarily shared childhood or other traumas. Given a microphone and enough badgering from the Forum leader they emotionally recounted very specific details of the trauma.

* * *

The Forum states clearly that it is not therapy. However, much of the "coaching" during these times of sharing was invasive enough to appear as psychological counseling.

Mr. Schnell also described the "manipulative recruitment" tactics employed by The Forum:

Having taken some marketing classes and some religion classes, I can assure you that we were exposed to a hybrid of evangelical fervor and powerful sales pressures. . . . I had initially wanted to bring many friends to the Tuesday night session. However, as the sales fervor increased on Sunday night I decided against it.

Letter from Gary G. Schnell, dated February 25, 1992 (Callagy Aff., Exh. N) (emphasis added).

Another letter, from a woman with a master's degree from Harvard, sheds light on whether full-time attendance in the grueling Forum schedule is truly voluntary. The writer, Gail Price, was unable to attend the evening session of The Forum. Her letter explains that she was not told that attendance at the session was required, but only "strongly recommended," and that Landmark representatives "tried to persuade [her] of the importance of the evening session." However, it turned out that attendance was a requirement for continuing in the program, and Ms. Price was "turned away from the course on Saturday morning." Ms. Price then described the attempts at "mind control" by Forum personnel:

I am specifically speaking about the disempowerment that can occur when a person in authority, i.e. course leader, coach or program coordinator, imposes their will and invalidates the opinions of someone of lesser authority. This can be done under the pretext of helping the person of lesser authority to "get off it" - - and is based on the assumption that the person in authority somehow knows better.

Letter from Gail Price, dated February 18, 1992 (Callagy Aff., Exh. N).

Still another Forum participant characterized The Forum as "a 'sick show', a money and people racket, and smattered with many destructive cult techniques." Ms. Weldemere, who sent a copy of her letter to the Cult Awareness Network, described the

harassment, deceptive recruitment, emotional attacks, and "programming" she experienced at

The Forum:

I received another call from your organization. . . . I cancelled my commitment to this program . . . It seems nobody understands English, so would you please accept my written word!

* * *

I try very hard to avoid subjecting myself to anything relating to Spiritualism, meditation or "New Age" programming, hypnosis, or any anti-Christian functions. I specifically asked two different people if your program was tainted with the above and was assured it was not. I was certainly deceived on this point, or plainly lied to.

It took me two weeks to recuperate emotionally from the brash treatment and unprofessional judgment I experienced at the mouth of the speaker. . . . I was also acasted [sic] as a child by one of your volunteers for being two minutes late for one meeting.

. . . The term "New Age" neuro-linguistic-programming (NLP) describes [the Forum leader's] techniques very well.

Letter from Loraine Weldemere, dated June 3, 1993 (Callagy Aff., Exh. N) (emphasis in original). See also Letter from Gene Slomski, dated July 2, 1993 (Callagy Aff., Exh. N) (describing the "public humiliation" and "McCarthyism" experienced at The Forum).

Accordingly, based solely on the few documents produced by plaintiff, there can be no genuine dispute that The Forum "ha[s] been the subject of complaints for activities that include: . . . manipulative recruitment; thought reform or mind control; harassment of critics . . . ; [and] psychological and emotional damage."⁸

⁸ Whether or not each of these letters is accurate is irrelevant (although, based on the widespread reports of such tactics by The Forum, defendants have no reason to doubt them). The Article simply states that plaintiff has been the subject of complaints of this nature; the complaints produced by plaintiff establishes the truth of the Article.

3. Complaints About The Forum and its Cult-Like Practices Have Been Widely Reported in the National and International Press

In addition to the complaints that have been made to anti-cult groups and to plaintiff itself, prior to the publication of the Article numerous articles had been published in the United States and abroad linking plaintiff to "cult" activities and criticizing its practices.

For example, The Forum was analogized to "minor cults" in the New York Times on January 7, 1990:

[T]he man who has made the most out of the Heidegger business . . . is Werner Erhard, the man behind the now defunct est self-improvement cult. . . .

Mr. Erhard's est encounter sessions . . . attracted plenty of criticism for their authoritarian form of indoctrination. But they also produced hundreds of obsessively eager acolytes: enough for him to set up a watered-down and more marketable organization, known as the Forum, which replaced est in 1984. . . .

One main idea behind the Forum is a thesis . . . that people derive their identities from stories they tell about themselves. The Forum's aim is to expose these stories by inducing existentialist anxiety, and then to enable people to construct more "empowering" stories, which "transform" them. Sounds easy. It certainly empowers Forum adepts to adopt a great deal of jargon and go off in search of more people to transform.

* * *

Those who take the Forum phenomenon seriously might see it as an attempt to overthrow the democracy of reason: you cannot debate the Forum, you just start talking its language or you don't. It is replete with the ironies of most minor cults: to open up the possibilities in your own life, you have to be intellectually bombarded by somebody else; to free yourself from the categories of everyday language, you have to be imprisoned in a new jargon that few other people speak.

"Heidegger for Fun and Profit" (Callagy Aff., Exh. I) (emphasis added).

In addition, The Columbus Dispatch ran two articles in February, 1992, referring to The Forum as a cult. The first, headlined "Agency Spends \$4,800 on 'Cultlike' Seminars," begins as follows:

Franklin County Children Services has spent \$4,800 in tax money for 20 managers to attend "cultlike" seminars created by "est" founder Werner Erhard

The seminars, collectively entitled The Forum, were developed in 1984 by Erhard

Columbus police and other believe The Forum has some characteristics of a cult.

The Columbus Dispatch article also describes two cult experts who concluded that The Forum is a cult:

[The] description of The Forum does not surprise Edwin Morse, a psychologist and nationally recognized cult expert from Madison, Wis.

Morse said The Forum is "a sophisticated cult" that uses mind control, brainwashing, psychological manipulation and emotional control.

* * *

Columbus police detective Jim Lanfear, considered an expert on cults, said The Forum . . . "is no different than any other cult."

Callagy Aff., Exh. I. The following day, the paper ran a second article, entitled "Few Agencies Interested in est-Like Program," which refers to "a program called The Forum that some people say is similar to a cult." Callagy Aff., Exh. I. See also, MacNamara, "The Return of Werner Erhard: Guru II," Los Angeles Magazine, May 1988 (Callagy Aff., Exh. I).

The Forum has been branded a cult in international circles as well. According to one report, the Israeli government's Interministerial Committee for the Investigation of Cults and New Religions included The Forum in its 500-page report on spiritual groups employing unethical and damaging practices. "Israeli Report Calls est/Forum a Cult," Cult Awareness Network News (Callagy Aff., Exh. I).

Similarly, an article entitled "Money and Motivation" reports on The Forum's "cult-like" activities in Canada, while an article on Landmark Education International and The Forum, entitled "'Cult' Woos Top Scots," appeared in Scotland's Sunday Mail. Callagy Aff., Exh. I.

In addition, there have been numerous published articles reporting that The Forum engages in the very practices listed in the Sidebar and the Article. Indeed, there is a wealth of public information that has been critical of The Forum.

For example, in July 1992, The Times of London ran a four-part series on The Forum, and sent an undercover reporter to the program. The editorial that followed the series is illustrative:

[Our reporter] saw people undergoing humiliation and other kinds of emotional trauma that have no place in respectable management practice or sound psychological counseling. The training sessions were a potent brew of arcane philosophy, smooth salesmanship, amateur psychiatry, psychological brow-beating and New Age mysticism. Such techniques prey upon suggestibility and are designed to induce dependency, confusion and self-doubt.

There is a growing body of evidence that manipulative pressure like this . . . can lead to long-term stress, nervous breakdown or clinical depression. . . .

Once people have been convinced by a plausible line of patter that their personality suffers from some unspecified psychological flaw,

they can then be persuaded that a complete cure will require a further course. They also come under pressure to bring friends and relatives with them next time (for additional fat fees).

Callagy Aff., Exh. J.

Other significant articles have also detailed the practices of The Forum. See, e.g., "est Revisited," New Woman, January 1987 (Callagy Aff., Exh. K); "The Forum: EST in the Heir," SCP Journal, originally published in The Cult Observer, October 1985) (Callagy Aff., Exh. K); American Family Foundation Information Packet on est/The Forum (Callagy Aff. Exh. M).

Thus, there can be no genuine dispute that The Forum "ha[s] been the subject of complaints" in the national and international press for many of the practices mentioned in the Sidebar and the Article.

4. The Forum Has Been the Subject of Legal Complaints Alleging Cult-Like Practices and Psychological Damage

The Forum has also been the subject of legal claims alleging coercive and deceptive recruitment, psychological and emotional damage, and that it is a "cult."

For example, in 1991, Stephanie Ney brought an action against Werner Erhard, Werner Erhard and Associates, and Landmark seeking damages for "negligence, fraud, breach of warranty and intentional, willful and wanton acts" arising from her participation in The Forum. Complaint in Ney v. Erhard et al., 91-1245-A (E.D.Va. 1991) (Callagy Aff., Exh. O). Her complaint included charges of deceptive and coercive recruitment, mind manipulation, group pressure, physical deprivation, and intentional infliction of emotional distress:

In the recruitment, selling or marketing of The Forum training program . . . the defendants . . . acted in a coercive manner, [and]

made affirmative representations either explicitly or by implication Plaintiff Ney relied upon these false representations.

During the training referred to herein, plaintiff Ney was subjected to . . . group pressures which resulted from manipulation of the participants . . . ; psychological techniques which caused plaintiff Ney to lose her essential psychological defenses; . . . physical deprivation through exhausting marathon sessions; the intentional infliction of emotional distress; and abandonment once her psychological balance had been disturbed.

As a direct and proximate result of her participation in The Forum, plaintiff Stephanie Ney suffered psychological decompensation, a psychotic break with reality, acute and permanent psychological injuries, severe depression, mood swings, and other mental pain and suffering. Less than three days after her Forum training, plaintiff was hospitalized for fourteen days in the Psychiatric Institute of Montgomery County, Maryland.

Complaint in Ney v. Erhard et al., ¶¶ 16, 18, 22 (Callagy Aff., Exh. O).⁹

In addition, a March 1988 report by the American Civil Liberties Union of Georgia states that the ACLU filed Equal Employment Opportunity Commission ("EEOC") charges against the DeKalb Farmer's Market on behalf of six former employees in connection with The Forum. The ACLU charged that the six "were fired or forced to resign because they refused to participate in The Forum, a program they describe as a 'religious cult.'" Callagy Aff., Exh. O. The ACLU report states:

[One former employee] charged that the seminar leaders tried to brainwash participants. "If you criticized what was going on they laughed at you and made jokes about you," he said. "They made you sit there without going to the bathroom and if you asked to go

⁹ Upon information and belief, the district court ordered Erhard to pay more than \$500,000 in compensatory and punitive damages, and directed a verdict in favor of Landmark solely on the ground that plaintiff had not established successor liability. Upon information and belief, the determination relating to Landmark is on appeal to the Fourth Circuit.

to the bathroom more than three times in 10 hours they screamed at you that you were a baby."

Callagy Aff., Exh. O.

Thus, it is undisputed that plaintiff has been the subject of legal complaints that The Forum engages in manipulative recruitment, thought reform or mind control, harassment of critics, and psychological and emotional damage -- the very techniques mentioned in the Article.

In sum, the documents produced by plaintiff, materials distributed by anti-cult organizations, and published news reports establish that the Article is substantially true. Accordingly, defendants are entitled to summary judgment dismissing the complaint in its entirety.

B: THERE CAN BE NO GENUINE DISPUTE THAT THE FORUM HAS ENGAGED IN MANY OF THE TACTICS LISTED IN THE SIDEBAR

Even assuming that the Article implies that plaintiff has actually engaged in one or more of the practices listed (which it does not), there can be no genuine dispute that The Forum has in fact engaged in many of the tactics listed in the Sidebar.¹⁰

¹⁰ In order to establish that the Article is substantially true, defendants need not establish that plaintiff has been the subject of complaints about, or engaged in, all of the practices mentioned in the piece. Instead, the Article is substantially true if plaintiff has been the subject of complaints about at least one of the practices listed, or if plaintiff has engaged in at least one of the practices listed. See, e.g., Smolla, Law of Defamation § 5.08[2]; Restatement (Second) of Torts § 581A comment c (1976); Prosser & Keeton, Law on Torts, § 116 (5th Ed. 1984). In any event, it is clear that plaintiff has engaged in most of the practices.

1. Manipulative and Coercive Pressure in Recruitment¹¹

The Forum Supervisors Manual (produced by plaintiff) makes clear that plaintiff's highest priority is increasing enrollment in The Forum and other Landmark programs:

"[T]he whole job is enrollment. When you come in to greet the team for the first time, you need to hit the ground running . . . There's only enrollment. You're either gonna get enrolled, or you're going to do the enrolling." Forum Supervisors Manual, A 093 (Callagy Aff., Exh. P).¹²

"Part of the Enrollment Mgr distinction is being completely informed re all the programs that are available for the Ps. You need to get off whatever you've got going on about selling." Forum Supervisors Manual, A 094 (Callagy Aff., Exh. P).

"Another RESULT to produce is around the seminar enrollment. . . . The MEASURE is the number of People that continue on in the Curriculum for Living and in this case it is the seminar. The STATISTIC will be the percent enrolled in seminars." Forum Supervisors Manual, A 116-17 (Callagy Aff., Exh. P).

In fact, enrollment and completion of the program is always deemed to be best for the participant, even if that means substituting plaintiff's judgment for the judgment of the participant:

Landmark Education Corporation policy is that we do not transfer people to a later Forum. When communicating with people who are requesting to transfer to a later Forum, supporting

¹¹ Complaint, ¶ 18(a) ("Plaintiff uses 'coercive pressure and deception to get people to join in'"); ¶ 18(d) ("Plaintiff 'Rel[ies] upon deception and aggressive marketing to keep warm bodies running through the training pipe line"); ¶ 19(a) ("Landmark uses coercive pressure and deception to get people to enroll in The Forum"); ¶ 19(b) ("Landmark uses mind-manipulation techniques to get people to enroll in The Forum"); ¶ 19(f) ("Landmark engages in manipulative recruitment") (Callagy Aff., Exh. A).

¹² Exhibits P through T to the Callagy Aff. are Forum training and registration materials produced by plaintiff. For ease of reference, the pages in these documents will be referred to by the Bates numbers affixed by plaintiff (A ____).

them to complete the Forum for which they registered is what serves the person. We do support a participant requesting to transfer to an earlier Forum, as this is a statement of their commitment to participate in the Forum.

Forum Registration Manual, A 513 (Callagy Aff., Exh. Q).¹³

Thus, if there is any indication that a potential participant might not complete The Forum or the enrollment process, a "support call" is made. The goal of the call is to ensure that The Forum registration and program is completed, regardless of the individual's own "thoughts [or] opinions":

1. Support Call

a. Intended Results of Support Calls

- * Participant's communication is recreated and the participant clear that whatever has come up (circumstances, thoughts, opinions) is part of their participation in the Forum and usually is right along the lines of the breakthrough they were committed to.
- * Participants know that something happened which had them question their commitment.
- * Participants complete the Forum for which they are registered.

Forum Registration Manual, A 499 (Callagy Aff., Exh. Q). When the participant has "recommitted to completing the Forum," the "Communicator" is to advise the participant that the "problem" may arise again, and ensure that "they promise to complete the Forum." Forum Registration Manual, A 501 (Callagy Aff., Exh. Q).

¹³ The printed text of this paragraph actually reads: "The Werner Erhard and Associates policy" However, "Werner Erhard and Associates" is crossed out, and "Landmark Education Corporation" written in. Indeed, despite plaintiff's attempts to distance its programs from Werner Erhard, the Forum Registration Manual produced by plaintiff bears the legend, "Werner Erhard and Associates," at the bottom of each page. In addition, the Manual states that the content of The Forum cannot be reproduced without the written permission of Werner Erhard, and instructs Forum personnel to communicate "in a way that represents Werner and this work." Forum Registration Manual, A 456, 483 (Callagy Aff., Exh. Q).

Forum officials are constantly on the telephone recruiting potential participants and participants. Indeed, the Forum Registration Manual contains more than 100 pages of detailed instructions on the constant telephone calls to be placed to potential participants and participants. Forum Registration Manual, A 470-563 (Callagy Aff., Exh. Q).

"There is a design and purpose for each series of calls," which are placed by the "Communications Team." Forum Registration Manual, A 473 (Callagy Aff., Exh. Q). The "Communications Team" is directed to call participants "during three-hour sessions twice each week from the day the Forum opens . . ." and "up to four times each week from one week before the balance due date until Day 1." Forum Registration Manual, A 474 (Callagy Aff., Exh. Q). After the "initial Registration call," participants will be called if "[t]hey did not keep their word about a promise to do something," or "[t]here is a question about their commitment to be in the Forum." Forum Registration Manual, A 487 (Callagy Aff., Exh. Q). Forum officials may call or visit participants at home (or at their hotels) during the program: "You need to interact with people like they're in the F[orum] wherever they are -- even if they're at home in bed." Forum Supervisors Manual, A 093 (Callagy Aff., Exh. P). Thus, any participant whose nametag is not returned at the end of the first session will be called at 7:30 the following morning. Forum Supervisors Manual, A 155 (Callagy Aff., Exh. P). Statements by the participant that he or she will not return are disregarded:

When you reach someone who has left the F.[orum], . . . nothing they say means anything. People say things like, I'll talk to you but I'm not coming back. That doesn't mean anything. Nobody talks to you who isn't open to the possibility of coming back. Their being on the phone is a request for coaching: they're saying Please say something that will have me come back!

Forum Supervisors Manual, A 093 (Callagy Aff., Exh. P). Participants are also called where they are staying if they do not return their name tag at the dinner break. Forum Supervisors Manual, A 179 (Callagy Aff., Exh. P).

Moreover, anyone attempting to leave The Forum is confronted aggressively, in an effort to have them complete the program:

"[I]s there anything you want to say? You're leaving the Forum? Bye! I'm going back in with the 300 people that are here to transform the quality of their lives. You say you're tired and uncomfortable? You gotta be kidding me!" Forum Supervisors Manual, A 093 (Callagy Aff., Exh. P).

- "[When participants attempt to leave The Forum,] If there is an opening for a conversation for enrolling them in what they came to The Forum for, step into it." Forum Supervisors Manual, A 096 (Callagy Aff., Exh. P).

Guests and visitors of The Forum are always viewed as potential participants, and Forum Supervisors are instructed to do whatever they can to enroll guests as Forum participants:

If a guest enters the course room or a guest room at anytime while the event is in progress -- that person is now officially a "guest" and is CONSIDERED "potential to enroll."

Forum Supervisors Manual, A 110 (Callagy Aff., Exh. P).

The Forum Supervisors Manual also reveals the heavy emphasis on recruiting participants in The Forum for more advanced (and more expensive) seminars. For example, Forum Supervisors are required to maintain lists of Forum participants "who have not yet registered in a seminar." Forum Supervisors Manual, A 178 (Callagy Aff., Exh. P). Forum Supervisors are to keep Forum Leaders apprised of the "progress of seminar enrollment," and, "if there has been a breakdown in seminar registration," to discuss whether to do "another formal, from in front of the room, registration opportunity." Forum Supervisors Manual, A 181

(Callagy Aff., Exh. P). Any participant living within a seventy-five mile radius of available advanced programs is considered "potential to enroll for seminars." Forum Supervisors Manual, A 109 (Callagy Aff., Exh. P).¹⁴

Pressure to enroll in additional programs is constant. For example, The Forum uses a display board entitled "Schedule of the Forum," which indicates that The Forum Evening Session consists of "ADVANCED COURSE ENROLLMENT." Another such board, entitled THE LANDMARK CURRICULUM FOR LIVING, is a graphic display of the courses offered by Landmark, and demonstrates that the LANDMARK FORUM leads to the FORUM IN ACTION, which leads to the LANDMARK ADVANCED COURSE, which leads to the LANDMARK SELF-EXPRESSION & LEADERSHIP PROGRAM. The Forum Supervisors Manual states that both boards are to be displayed throughout the entire Forum. Forum Supervisors Manual, A 207-210 (Callagy Aff., Exh. P).

In fact, the theme for the last session (in addition to "sharing," "choice" and "promise") is "Seminar Registration and Opportunity for Advanced Course Enrollment." Distinctions of The Forum, A 284 (Callagy Aff., Exh. S). Enrollment in additional courses is

¹⁴ Indeed, Forum officials appear to be consumed with encouraging further enrollment, and ensuring that recruitment proceeds precisely according to plan. Production Supervisors are told to "make the seminar enrollment work -- have all the right supplies." Forum Production Supervisors Manual, A 067, 072 (Callagy Aff. Exh. T). Similarly, The Forum Supervisors Manual is replete with precise directions for the handling and presentation of plaintiff's promotional literature, and procedures for increasing enrollment, including making sure there is an adequate supply of registration cards, Forum brochures, Advance Course brochures, schedules of Center events, Universal Programs schedules, and Universal Seminar schedules, setting up course registration tables during breaks, preparing the seminar and Advanced Course "enrollment, set-up, flow & targets," and distributing handouts. Forum Supervisors Manual, A 131, A 149-50, A 191 (Callagy Aff., Exh. P). There is even a "Participation Manager" and "Advanced Course Enrollment Manager" who can be located "in case of an emergency." Forum Supervisors Manual, A 149-50 (Callagy Aff., Exh. P).

viewed as proof that the participant "got it," and as necessary to maintain the benefits of The Forum:

People who go on to seminars are people who got value out of the Forum and can see that that value would maintain itself or generate itself or would stabilize the breakthrough the Forum was.

Forum Supervisors Manual, A 116 (Callagy Aff., Exh. P).

Finally, the Forum Registration Manual reveals that plaintiff knowingly permits participants to go into debt to attend The Forum. Forum registration officials will accept participants in The Forum even if the participant does not have the money to pay for it, provided that the participant "has a viable plan to get the money." Forum Registration Manual, A 453 (Callagy Aff., Exh. Q). Moreover, the "Communications Team" rehearses what to say in the event that payment is not received because of "problems, e.g., no money, changed my mind" Forum Registration Manual, A 494 (Callagy Aff., Exh. Q).

2. Thought Reform, Mind Control, and Trance Induction¹⁵

There can be no doubt that the purpose of The Forum is "thought reform." Indeed, Landmark's own promotional material promises a change in thought patterns: "In the Landmark Forum, you break through the confines of even the best conventional modes of

¹⁵ Complaint, ¶ 18(b) ("Plaintiff 'uses mind-manipulation techniques without the consent or knowledge of the participants'"); ¶ 18(e) ("Members have cut their ties to the outside world, abdicated their decision-making abilities and surrendered their psyches as well as, in many cases, any assets they may have"); ¶ 19(c) ("Landmark uses mind-manipulation techniques on participants in The Forum"); ¶ 19(e) ("Landmark induces trances in participants in The Forum"); ¶ 19(g) ("Landmark engages in thought reform or mind control"); ¶ 19(k) ("Landmark brainwashes participants in The Forum") (Callagy Aff., Exh. A).

"Trance induction" and "thought reform or mind control" are listed separately in the Sidebar. However, because they are obviously related concepts, and because many of the same practices that are associated with "thought reform or mind control" are also associated with "trance induction," they are addressed together.

thinking." Forum Application Materials, A 005 (Callagy Aff., Exh. R). Unfortunately, these "breakthroughs" sometimes occur through "breakdowns." Forum Registration Manual, A 473 (Callagy Aff., Exh. Q) ("Any concerns the participants have are a part of the process of them being in the Forum. Their breakdowns are access to the breakthroughs they committed themselves to by registering . . . "). Indeed, these "breakthroughs" happen when a participant's "source of identity" or "sense of belonging" is "broken." Distinctions of The Forum, A 283 (Callagy Aff., Exh. S).

The Forum training manuals confirm that plaintiff practices many techniques which are traditionally associated with "thought reform," "mind control," or "brainwashing," such as sleep and nutritional deprivation, authoritarian control, humiliation, strict control over the environment, and isolation.¹⁶

¹⁶ For example, The Merck Manual of Diagnosis and Therapy, (15th Ed. 1987), p. 1470, includes the following techniques as part of "thought reform":

(1) controlling an individuals's social and psychologic environment, especially the person's time; (2) placing an individual in a position of powerlessness within a high-control, authoritarian system; . . . (5) eroding the confidence of a person's perceptions; (6) manipulating a system of rewards, punishments, and experiences . . . Punishments usually are social ones . . . ie, shunning, social isolation, and humiliation

Callagy Aff., Exh. U. Similarly, the Cult Awareness Network literature includes the following as techniques of "mind control":

Group Pressure, Isolation/Separation, Confession/Fear and Guilt, Rejection of Old Values, Sleep Deprivation, Inadequate Nutrition, Confusion, Absolutism

Callagy Aff., Exh. U. Many of these techniques are explained in the Article.

First, even before the actual Forum program begins, Forum "Communicators" begin to encourage participants to distrust their own thoughts and feelings in a scripted "Registration Follow-Up Call":

remember when you enrolled in the Forum, the person who registered you said that it was a process that began when you registered and you could expect things to come up. You know how when you take on a major commitment in life, things alter. Things start looking different, you may start acting differently, it may look like people or circumstances around you are changing -- sometimes it makes people uncomfortable and we just wanted you to know that this might occur.

Forum Registration Manual, A 537 (Callagy Aff., Exh. Q).

Second, participants are systematically subjected to marathon sessions with little allowance for food or rest. While the Complaint describes The Forum as a self-improvement program that takes place "on three days and one evening" (Callagy Aff., Exh. A, ¶ 7), in fact each of these three "days" lasts from 9:00 in the morning to 1:00 a.m. the next day. Forum Application Materials, A 003 (Callagy Aff., Exh. R). These long program days do not permit participants to obtain more than five or six hours of sleep a night; if participants live some distance from the program facility (as many do), they may get even less. Additional "homework" given to participants further decreases the amount of time available for sleep. Forum Supervisors Manual, A 154 (Callagy Aff., Exh. P). Nevertheless, participants are instructed to remain awake throughout the entire sixteen-hour day, and given instruction on how to do so. Forum Supervisors Manual, A 168 (Callagy Aff., Exh. P).

During these marathon meetings, participants are granted just one meal break each day, usually around 5:00 p.m. Forum Application Materials, A 003 (Callagy Aff., Exh. R). They are not permitted to eat during the program sessions, and are strongly urged not to eat at

the breaks. Forum Supervisors Manual, A 169, 204 (Callagy Aff., Exh. P). Indeed, participants are not permitted to "eat in the building in which The Forum is being conducted." Forum Supervisors Manual, A 157 (Callagy Aff., Exh. P). Thus, The Forum's rules require participants to go more than eight hours at a time without eating.

The obvious result of such unusually lengthy sessions -- with the scheduling of a sole meal break eight hours into the day -- is a state of physical exhaustion and nutritional deprivation, commonly associated with lower intellectual and emotional resistance, greater suggestibility and "mind control." See fn. 16, *supra*.

Third, Forum leaders exercise authoritarian control over the daily meetings, demanding absolute obedience to required norms and standards of behavior. The Forum Supervisors Manual reveals that the leaders are instructed to conduct their sessions with rigid discipline and intolerance for dissent. Among the directions issued to Forum Supervisors are:

"An FS [Forum Supervisor] needs to be an S.O.B. for impeccability. You need to give up a concern for being liked . . . Be a destroyer . . . Blitz the center for 60 minutes some time. Then maintain it." Forum Supervisors Manual, A 092-93 (Callagy Aff., Exh. P).

"Don't ever let people move or stand up or talk before you have declared the start of the break. Don't ever let stuff like that go by. Ever, ever, ever. Intervene when people head out to the bathroom without checking in with you." Forum Supervisors Manual, A 096 (Callagy Aff., Exh. P).

"Put people on a People to Watch List." Forum Supervisors Manual, A 087 (Callagy Aff., Exh. P).

"Re: control: people actually get comfortable when they know what the boundaries are, when you are clear about what they can and cannot do. People get upset when the boundaries are

undefined." Forum Supervisors Manual, A 095 (Callagy Aff., Exh. P).¹⁷

The leaders assert their authority by demanding strict compliance with detailed rules and regulations set by The Forum. These range from the major "promises" that all participants are expected to honor to the many specific restrictions on behavior during the daily meetings, including not taking notes or using a tape recorder, and not smoking or eating in the building. Participants are asked to commit themselves to following the rules without question. See, generally, Forum Supervisors Manual, A 156A-170 (Callagy Aff., Exh. P).

Participants are also asked to promise to be present for the entirety of all sessions. Forum Supervisors Manual, A 166 (Callagy Aff., Exh. P). While people are ostensibly free to leave the room at any time, the standard speech read to Forum participants strongly advises against leaving for even the briefest period, and demands that participants report to a Forum official before leaving:

if you miss any part of any Forum session, you forfeit the right to expect any result from your participation. Is there anyone here who knows they will need to leave the room more frequently than the announced breaks? (Send them to FSA at the back of the room.)

If at any time during The Forum you need or want to leave the room, please go to the back of the room and let the Forum Supervisor know that you are leaving, where you are going, and when you will return.

¹⁷ The Manual even reveals training sessions in authoritative, controlling behavior. Forum personnel engage in mock Forum sessions in which leaders read the Promises and Requests "as a wimp," and then "powerfully." Forum Supervisor Manual, A 095 (Callagy Aff., Exh. P). Similarly, leaders experiment with directing participants "First with intentionality, then with little intentionality. One way produces certainty and trust, the other produces uncertainty and a lack of safety." Forum Supervisor Manual, A 095 (Callagy Aff., Exh. P).

Forum Supervisors Manual, A 167 (Callagy Aff., Exh. P). Participants who require more frequent eating or bathroom breaks "are required to notify the Forum Supervisor" in advance. Forum Supervisors Manual, A 162 (Callagy Aff., Exh. P).

Anyone not conforming to these "promises" may be swiftly confronted and rebuked:

"If you see participants not keeping their required promises, i.e. chatting to each other, taking notes using a tape recorder or camera, etc., let the Forum Supervisor know right away." Forum Supervisors Manual, A 136 (Callagy Aff., Exh. P).

"Basic principles with lates You made a promise. What do you need to do to make sure you keep your promise? If someone says they didn't make the promise, you need to know their promises like the back of your hand Background is: you may be out of the room when one of the critical break opens happens." Forum Supervisors Manual, A 096 (Callagy Aff., Exh. P).

The leaders even enforce some "promises" that participants are not aware of:

There is nothing in the P&Rs [Promises and Requests] about chair movement. But if someone on the edge has moved their chair away from the group, you could say Excuse me, we ask that you keep your chair in the group, so that the seating for everyone is equal. Could you please move your chair back into the group?

Forum Supervisors Manual, A 095 (Callagy Aff., Exh. P).

Forum leaders treat latecomers, in particular, as threatening deviants. The latecomers' names and arrival times are recorded by Forum officials. Forum Supervisors Manual, A 136 (Callagy Aff., Exh. P). Before they may enter The Forum room they have to be cleared by a Forum supervisor. Forum Supervisors Manual, A 136 (Callagy Aff., Exh. P). To be cleared for entrance, they must renew their commitment to The Forum, and a supervisor must vouch for their continued respect for Forum rules. Forum Supervisors Manual, A 147

(Callagy Aff., Exh. P). Supervisors are instructed to impress upon the latecomers the gravity of their misbehavior, as illustrated by one supervisor's experience with confronting a latecomer:

Demonstrated that FS cannot be messed with. Got participant clear about what had them be late, clear that participation in the Forum requires extraordinariness, had participant commit to being that way, got participant complete about what they'd missed, answered any questions, had P commit to completing, let P know that he is sending a note in to FL re P entering.

Forum Supervisor Manual, A 089 (Callagy Aff., Exh. P). As a Landmark manual explains, "[w]hile it may not seem to make sense that being out of the room for just a few minutes could make a difference, our experience shows that it does." Forum Supervisors Manual, A 207 (Callagy Aff., Exh. P).

The Forum Supervisors Manual further indicates that the underlying purpose is "to assert authority and maintain rules. The actual content of the rules is irrelevant:

Set up rules for observers (e.g. in and out at breaks, no talking). The content of the rules isn't important; what matters is that the observer gets the sacredness of the space from the conversation.

Forum Supervisors Manual, A 091 (Callagy Aff., Exh. P).

Fourth, The Forum maintains tight control over every aspect of The Forum environment, eliminating any stimuli other than those approved and planned by The Forum. Indeed, the Forum Supervisor's Manual describes The Forum as a "passion play," and cautions Forum personnel not to "let anything break the mood of the theater." Forum Supervisors Manual, A 091 (Callagy Aff., Exh. P). Production supervisors are told to "[a]rrange [the] back of rooms to minimize visual distractions." Forum Production Supervisor's Manual, A 028 (Callagy Aff., Exh. T). Personnel are instructed to "walk gently (i.e. amble) so that [the] movement doesn't distract the participants," engage in no "unnecessary talking," and ensure that

nothing in their pockets "might jingle." Forum Supervisors Manual, A 137 (Callagy Aff., Exh. P). The temperature, as well as the noise level of the air conditioning and heating, is carefully monitored. Forum Supervisors Manual, A 139 (Callagy Aff., Exh. P).

Forum personnel also take steps to isolate participants within The Forum's structured environment and keep outsiders from interfering in any way. Participants are deliberately separated from anyone they might know from outside The Forum, and are instructed to relocate to another chair if they are sitting next to someone they know. Forum Supervisors Manual, A 169 (Callagy Aff., Exh. P). Supervisors are told that "[o]nly participants, Forum leaders, staff, invited observers and assistants are to come into the room during the Forum All other observers should be asked to wait outside and should be announced to the F[orum] S[upervisor] with a note saying who they are and why they are observing." Forum Supervisors Manual, A 137 (Callagy Aff., Exh. P). Production Supervisors are also specifically instructed to "[b]e aware of strangers or unwanted persons coming or going." Forum Production Supervisors Manual, A 061 (Callagy Aff., Exh. T). Supervisors are warned not to "have any voyeurs in the back of the room." Forum Supervisors Manual, A 091 (Callagy Aff., Exh. P). During the brief period when visitors are allowed inside the room, a "room manager" is appointed to watch over participants' family and friends. Forum Supervisors Manual, A 189 (Callagy Aff., Exh. P).

Within this strictly regulated environment, The Forum also employs classic suggestive techniques, such as closed-eye exercises. Forum Supervisors Manual, A 086 ("[n]ever move while people's eyes are closed in an exercise"); A 137 ("If the FL asks the participants to close their eyes to imagine something, do not move in or out of the room")

(Callagy Aff., Exh. P). As set forth in the Article, "[c]losed-eye exercises, a form of guided imagery, can be one of the most powerful trance-induction tools used in workshops."

Thus, there can be no genuine dispute that plaintiff engages in many of the traditional "thought reform," "mind control," or "trance induction" techniques (e.g., undermining participants' belief in their own thoughts and feelings, deprivation of sleep and food, authoritarian control, strict environmental control, isolation and separation, and closed eye exercises).

3. Psychological and Emotional Damage¹⁸

Apparently, even Landmark feels compelled to warn participants about the possible psychological, emotional, and physical dangers of participating in The Forum. Thus, The Forum application form contains the following warnings:

As with any serious undertaking in life, you should take the time to determine whether or not you are physically, mentally and emotionally prepared to engage in these kinds of questions. . . . We will assume your presence at the Program to indicate that you have considered the nature of the Program and have chosen to attend it on your own responsibility and risk

. . . people will from time to time cry or experience headaches, tiredness, nausea, confusion, disappointment, feelings of anxiety, uncertainty, and hopelessness. Some participants may find the Program physically, mentally, and emotionally stressful.

Forum Application Materials, A 008-9 (Callagy Aff., Exh. R).

Accordingly, there can be no genuine dispute that, in fact, The Forum does engage in one or more of the practices listed in the Article.

¹⁸ Complaint, ¶ 19(i) ("Participation in The Forum causes psychological and emotional damage") (Callagy Aff., Exh. A).

C. OTHER OF PLAINTIFF'S PRACTICES SET FORTH IN DOCUMENTS PRODUCED BY PLAINTIFF ARE ALSO CHARACTERISTIC OF CULTS

As set forth at Point I(B), supra, there can be no genuine dispute that plaintiff exhibits many characteristics typical of cults: aggressive, manipulative recruitment techniques to bolster enrollment and to dissuade dissatisfied participants from leaving; marathon sessions with little allowance for food and rest; absolute obedience to rules and requirements established by The Forum; and isolation of participants within The Forum.

In addition, documents produced by plaintiff reveal that plaintiff engages in several other practices -- beyond those mentioned in the Sidebar -- that typify cult behavior. One of those practices is the development and employment of code-like jargon -- a new "language" unique to believers within the organization. The following examples of "doublespeak" -- reminiscent of Orwell's 1984 -- are quoted from plaintiff's Forum Supervisors Manual:

"Ordinarily, we are reasonable and worried about looking good. We are psychologistic entities. People are always being that there's something wrong, and we're being that we have to be careful because there's something wrong with them being that way. Where do we need to stand to deal with this? With integrity -- that is, being complete, whole, lacking no parts. Our work is a conversation." Forum Supervisors Manual, A 087 (Callagy Aff., Exh. P).

"Let FL know that you want to let go of some things, want them to recreate you. Then say it. Get off it. That's a gift. Unreasonable = grounded in a commitment, versus shaped by circumstances." Forum Supervisors Manual, A 088 (Callagy Aff., Exh. P).

"In honoring my word as myself I am called to keep going and invent myself as unstoppable." Forum Supervisors Manual, A 113 (Callagy Aff., Exh. P).

"You need to invent the listening into which you are speaking."
Forum Supervisors Manual, A 095 (Callagy Aff., Exh. P).

The use of such jargon further isolates participants from non-Forum friends and family, who do not understand the code.

Another practice commonly associated with cults is exploitation of participants' feelings of insecurity and alienation. The instructions offered to Forum supervisors demonstrate such a practice, in the form of repeated confrontation and condescension that is clearly designed to place participants in positions of powerlessness. For example, supervisors are told:

"Recreate people. What [participants] say is empty and meaningless." Forum Supervisors Manual, A 088 (Callagy Aff., Exh. P).

"[N]othing [participants] say means anything." Forum Supervisors Manual, A 094 (Callagy Aff., Exh. P).

Suggested response to dissatisfied participant: "[I]s there anything you want to say? You're leaving The Forum? I'm going back in with the 300 people that are here to transform the quality of their lives. You say you're tired and uncomfortable? You gotta be kidding me!" Forum Supervisors Manual, A 093 (Callagy Aff., Exh. P).

Finally, The Forum's organizational hierarchy and division of responsibilities suggests another practice common to cult groups -- charismatic leadership. The Forum supervisor's manual makes clear that Forum leaders, the individuals ultimately responsible for execution of each session, are to be treated by underlings with extreme deference and care. Forum Supervisors Manual, A 129-34 (Callagy Aff., Exh. P). The job of the "Forum Leader Support Person" is to "take care of The Forum leader, and fulfill his/her requests. This includes buying or preparing meals and serving the meals as if you were serving someone in your own home." In addition, the Support Person has The Forum leader's car cleaned, inside and out,

and the tank filled with gasoline. Forum Supervisors Manual, A 127 (Callagy Aff., Exh. P). The Support Person also keeps track of The Forum Leader's preferences for meals, drinks, snacks, and mints, dinner guests, travel arrangements, and wake-up and pick-up times. Forum Supervisors Manual, A 134 (Callagy Aff., Exh. P).

Thus, in light of (1) the numerous complaints about The Forum's cult-like practices received by cult-awareness groups, plaintiff, and the courts, (2) the numerous press reports detailing The Forum's cult-like practices, and (3) the materials produced by plaintiff confirming that The Forum does engage in many of these practices, there can be no genuine dispute that any reference to The Forum as a "cult" is substantially true.

Accordingly, because there can be no genuine dispute of fact that the statements complained of are substantially true, defendants are entitled to summary judgment dismissing the complaint in its entirety.

POINT II

THE STATEMENTS COMPLAINED OF QUALIFY AS CONSTITUTIONALLY PROTECTED OPINION

It is well settled that an expression of opinion on a matter of public concern, which is not susceptible of being proved true or false, is protected under both the United States and New York State Constitutions and does not give rise to an action for defamation. Both the United States Supreme Court and the New York Court of Appeals have recently reaffirmed this long standing principle. Milkovich v. Lorain Journal Co., 497 U.S. 1, 110 S. Ct. 2695 (1990); Immuno A.G. v. Moor-Jankowski, 77 N.Y.2d 235, 566 N.Y.S.2d 906 (1991).

In Milkovich, the Supreme Court reaffirmed that the First Amendment to the United States Constitution protects expressions of pure opinion:

Hepps ensures that a statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection.

Next, the Bresler-Letter Carriers-Falwell line of cases provide protection for statements that cannot "reasonably [be] interpreted as stating actual facts" about an individual. This provides assurance that public debate will not suffer for lack of "imaginative expression" or the "rhetorical hyperbole" which has traditionally added much to the discourse of our Nation.

497 U.S. at 19-20, 110 S. Ct. at 2706-07 (citations and footnote omitted).

The New York State Constitution provides even broader protection. Noting New York's "exceptional history and rich tradition" of protecting press freedoms, the Court in Immuno AG reaffirmed its earlier holdings that the New York State Constitution provides complete protection for opinion:

We therefore proceed to resolve this case independently as a matter of State law, concluding that . . . the standard articulated and applied in Steinhilber furnishes the operative standard in this State for separating actionable fact from protected opinion.

Immuno AG, 77 N.Y.2d at 252. See also Gross v. The New York Times Co., ___ N.Y.2d ___, ___ N.Y.S.2d ___, 1993 WL 419149 (1993). The Steinhilber case provided:

It is a settled rule that expressions of opinion, "false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions."

* * *

The essential task is to decide whether the words complained of, considered in the context of the entire communication and of the circumstances in which they were spoken or written, may be reasonably understood as implying the assertion of undisclosed facts justifying the opinion.

Steinhilber v. Alphonse, 69 N.Y.2d 283, 286, 290 (1986).

Whether a particular statement is a statement of opinion or fact is a question of law for the court. Id. at 290; Rinaldi v. Holt, Rinehart & Wilson Inc., 42 N.Y.2d 369, 397 N.Y.S.2d 943, cert. denied, 434 U.S. 969 (1977) (pre-Milkovich). Indeed, the Court of Appeals recently "reaffirm[ed its] regard for the particular value of summary judgment, where appropriate, in libel cases." Immuno AG, 77 N.Y.2d at 256. Specifically, courts have not hesitated to dismiss defamation actions based on statements of "loose, figurative hyperbolic language" relating to particular religious and spiritual groups.¹⁹

The case of Church of Scientology of California v. Siegelman, 475 F.Supp. 950 (S.D.N.Y. 1979) is directly on point. In that case, a "religious" organization brought suit against the publisher and authors of a book which investigated techniques used by "cults" and mass-marketed self-help groups. The plaintiff was among the many groups studied and commented upon. The Court dismissed the action against the publisher and authors, stating:

These statements are replete with opinions and conclusions about the methods and practices used by the Church of Scientology and the effect such methods and practices have, recounts of what the authors had been told during the course of their investigation, and some unflattering, though not defamatory, factual statements. None of these statements go beyond what one would expect to find in a frank discussion of a controversial religious movement, which is a public figure, and thus none of these statements may be the basis for an action in defamation.

¹⁹ Indeed, commentary about "religious" practices is also protected by the freedom of religion provisions of the First Amendment. See, e.g., Holy Spirit Assoc. v. Harper & Row Publishers, Inc., 101 Misc. 2d 30, 420 N.Y.S.2d 56 (1979) ("where the issue involves the validity of a religious denomination's beliefs, the First Amendment would bar such a claim, as it would embroil the state in an inquiry into the truth or falsity of beliefs or teachings . . ."); Church of Scientology of California v. Siegelman, 475 F. Supp. 950 (S.D.N.Y. 1979) (courts must remain neutral in matters of religious doctrine and practice and resist the making of any type of ecclesiastical determination). See also Sack, Libel, Slander and Related Problems, § IV.4.4. (Practicing Law Institute 1980); Smolla, Law of Defamation, § 6.12[6] (1980).

475 F. Supp. at 955.

Similarly, in Holy Spirit Ass'n of the Unification for World Christianity v. Sequoia Elsevier Publishing Co., 75 A.D.2d 523, 426 N.Y.S.2d 759 (1st Dep't 1980), the Unification Church brought a defamation claim based on statements that plaintiff was a "cult" characterized by "elements of Nazi-style anti-semitism." The First Department affirmed the grant of summary judgment to defendants, holding that the statements complained of were protected opinion.

Again, in Church of Scientology of California v. Cazares, 638 F.2d 1272 (5th Cir. 1981), the Scientologists sued an official for his outspoken opposition to the group, including describing the group as a "gung-ho" "paramilitary religious organization." The Fifth Circuit affirmed the lower court's dismissal of the claim, holding that the official's statements were protected opinion:

When read in their proper context, the statements made constitute merely conclusions or opinions which express ideas which defendant had concerning a public figure.

638 F.2d at 1288.

Finally, in New Testament Missionary Fellowship v. E.P. Dutton & Co., 112 A.D.2d 55, 491 N.Y.S.2d 626 (1982), it was held protected opinion to label a group of coreligionists "spiritual fascists."

In this case, the inclusion of The Forum in the Article on "cults" constitutes protected opinion, because it is incapable of being proven true or false. Plaintiff cannot point

to a uniform definition of "cult" that is widely accepted.²⁰ The meaning of the term "cult," and the characteristics that an organization must exhibit to be considered a "cult," vary enormously.²¹ See Steinhilber v. Alphonse, 69 N.Y.2d at 292 (court must examine "whether the specific language in issue has a precise meaning which is readily understood," as well as "whether the statements are capable of being proven true or false") (quoted in Gross v. The New York Times Co., *supra*).

Moreover, belief systems -- be they religious, philosophic, or psychologic -- are very personal. What one person sees as intense religious belief, another sees as a cult; what one person believes to be a valuable self-help group, another calls a cult.

Indeed, at least one New York court has explicitly held that the term "cult" is nonactionable opinion. In Cera v. Mulligan, 79 Misc. 2d 400, 358 N.Y.S.2d 642 (Sup. Ct. Monroe Co. 1974), plaintiff brought a defamation claim based on a letter to the editor entitled "Dangerous Cult Given TV Time," which criticized chiropractors. The letter stated, *inter alia*,

²⁰ Even dictionaries and other reference works suggest a variety of different meanings to the term. See, e.g., American Heritage Dictionary of the English Language (1976) ("a system or community of religious worship"); Webster's Third New International Dictionary (1976) ("a usually small or narrow circle of persons united by devotion or allegiance to some artistic or intellectual program, tendency or figure"); The Merck Manual of Diagnosis and Therapy (1987) ("Groups with religious, political, psychologic, and other ideologies at their core, which almost universally offer as their central theme a special, new psychologic awareness . . ."). Callagy Aff., Exh. U.

²¹ See, e.g., Hassan, Combatting Cult Mind Control, at 99-104 (the most important criteria distinguishing cult groups are deceptive recruitment, control of thought and behavior, and restricted freedom to leave); Cult Awareness Network, "Marks of a Destructive Cult" (charismatic leadership, exclusivity, alienation, fatigue, lack of privacy, exploitation and totalitarian worldview); Conway & Singleton, "Cracking the Riddle of Cults: Frontiers of Freedom in an Information Age," (1987), at 2 (the model of cult behavior is "covert induction accomplished not by coercion, but . . . through everyday uses of human communication"). Callagy Aff., Exh. V.

that a local television station had given air time to "cultists who called themselves chiropractors," and described chiropractic as "a dangerous cult . . . [and] an unscientific form of treatment . . . designed to eliminate causes that do not exist while denying the existence of the real causes . . . mortally dangerous." The court granted defendants' motion for summary judgment, holding that the term "cult" was mere opinion:

The letter did no more than espouse an opinion that chiropractors are a "dangerous cult." It seems to me that the comment of Thomas Jefferson in his first inaugural address sums up the answer: "If there be any among us who wish to dissolve this union or change its republican form of government, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is free to combat it."

79 Misc. 2d at 406.

Accordingly, as a matter of law, the inclusion of The Forum in the Sidebar on "cults" is protected opinion.

Similarly, statements regarding "thought reform," "mind control," "mind manipulation," "manipulative recruitment" and "brainwashing" are nonactionable opinion, as is the statement that participants in these groups "surrendered their psyches." There can be no doubt that one goal that participants in The Forum hope to achieve is changing their thought patterns and views of themselves and the world. However, whether that constitutes "transformation" (as plaintiff would say), or "thought reform" or "brainwashing," is a matter of opinion.²² Similarly, whether The Forum's enrollment strategies are "manipulative," or

²² Just as there are many conflicting definitions of "cult," there are many different definitions of "brainwashing," and what constitutes "brainwashing," and none is very clear. For example, the Penguin Dictionary of Psychology definition of "brainwashing" begins as follows: "Metaphorically speaking, a systematic attempt to alter a person's ideas, attitudes and beliefs." Callagy Aff., Exh. U.

merely "aggressive," is a matter of opinion. Moreover, one wonders how plaintiff intends to establish that no participant in The Forum "surrendered" his or her "psyche."

Finally, plaintiff complains that the Article states or implies that plaintiff "engages in 'a pyramid marketing scheme.'" Complaint, ¶¶ 18(c), 19(d) (Callagy Aff., Exh. A). This allegation is based solely on a paragraph that appears on the first page of the Article:

Anthropologists have found evidence of groups like these throughout history and in every society. They are referred to as "cults of the afflicted," in which members, once "cured" of whatever ails them, go forth seeking new converts. It's a pyramid marketing scheme that dates back to the pyramids themselves.

Article, pp. 121-22 (Callagy Aff., Exh. C). Aside from the fact that this paragraph is not "of and concerning" plaintiff, taken in context the statement complained of is clearly "imaginative expression," "rhetorical hyperbole," or "loose, figurative or hyperbolic language" protected by Milkovich. Indeed, no reasonable reader could conclude that The Forum (which has been in existence for less than ten years) is "a pyramid marketing scheme that dates back to the pyramids themselves."

Accordingly, because the statements alleged to be defamatory qualify as protected opinion, defendants are entitled to summary judgment dismissing plaintiff's claim for defamation.

POINT III

THE STATEMENTS COMPLAINED OF ARE NOT "OF AND CONCERNING" PLAINTIFF

It is beyond dispute that in order for plaintiff to prevail in a defamation action, it must establish that the statements complained of are "of and concerning" plaintiff. Allen v. Gordon, 86 A.D.2d 514, 515, 446 N.Y.S.2d 48, 49 (1st Dep't), aff'd without op., 56 N.Y.2d

Second, the statements "uses coercive pressure and deception to get people to join in," and "uses mind-manipulation techniques without the consent or knowledge of the participants," are not "of and concerning" plaintiff. Complaint, ¶¶ 18(a) and (b), 19(a), (b), and (c) (Callagy Aff., Exh. A). Those statements come from a generalized definition of "cult" that one particular organization uses for their own purposes. The actual text of the Article is as follows:

What makes a cult? "For our purposes," says Marcia Rudin, director of the International Cult Education Program, "we define it as a group that, one, uses coercive pressure and deception to get people to join in and, two, uses mind-manipulation techniques without the consent or knowledge of the participants."

Article, p. 121 (Callagy Aff., Exh. C). Clearly, this paragraph is not applicable to any specific organization, and certainly not to The Forum, which is not even mentioned on the same page.

The same is true of the following statements in the Article:

Which would be fine if the mass therapy groups didn't rely upon deception and aggressive marketing to keep warm bodies running through the training pipeline.

* * *

By this time, members have cut their ties to the outside world, abdicated their decision-making abilities and surrendered their psyches as well as, in many cases, any assets they might have.

Article, p. 121-22 (Callagy Aff., Exh. C).²⁴ Neither of these statements is "of and concerning" any particular group.

²⁴ Complaint, ¶¶ 18(d) and (e) (Callagy Aff., Exh. A).

The case of Cohn v. Brecher, 20 Misc. 2d 329, 192 N.Y.S.2d 877 (Sup. Ct. N.Y. Co. 1959), is instructive. In that case, the defendant had stated to three identified employees that money was missing and that one of them was a crook. One of the employees sued for defamation, claiming that the defendant had been looking straight at him and the words were "of and concerning" him. Despite the fact that plaintiff was clearly identified as one of a small group, the Court dismissed the claim:

where the words are used to a small or restrictive group expressly but impersonally or indefinitely refer to one or more of the several members thereof, one of the members, in order to maintain an action, must establish the application of the language to himself.

* * *

Here the words refer to one not specified of a group of persons. Whereas it is essential that the "defamatory words must refer to some ascertained or some ascertainable person, and that person must be the plaintiff. * * * So, if the words reflect impartially on either A. or B., or on some one of a certain number or class, and there is nothing to show which one was meant, no one can sue."

. . . The court does not agree that it should be left to a jury to determine whether the alleged remark was directed toward [plaintiff] and him alone. . . . The words used, "one of you" belie this conclusion

Id. at 330-31, 192 N.Y.S.2d at 878 (citations omitted).

Finally, no specific practice listed in the Sidebar is "of and concerning" the plaintiff. The clear implication of the Sidebar is that each group was the subject of complaints about at least one of the tactics listed. No reasonable reader would conclude that every group was the subject of complaints about every tactic listed. Accordingly, evidence that The Forum was the subject of complaints about any one of the practices listed is sufficient to establish the

substantial truth of the Sidebar as to plaintiff (see Point I, supra), and the remaining statements are not "of and concerning" plaintiff.

Accordingly, because many of the statements complained of are not "of and concerning" plaintiff, defendants are entitled to summary judgment dismissing plaintiff's claims with respect to those statements.

CONCLUSION

As set forth above, the statements complained of are substantially true, non-actionable opinion, and/or not "of and concerning" plaintiff. Accordingly, defendants respectfully request an order dismissing the complaint in its entirety, and granting defendants such other and further relief as the Court deems appropriate.

Dated: New York, New York
November 8, 1993

Respectfully submitted,

SATTERLEE STEPHENS BURKE & BURKE
Attorneys for Defendants
230 Park Avenue
New York, New York 10169
(212) 818-9200

Counsel:

Robert M. Callagy
Richard R. Uhrbach

& BUR

EXHIBIT D

FILED

CAUSE NO. 97-00933-I

98 NOV -2 PM 3:20

TRACY NEFF,
Plaintiff

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

vs.

DISTRICT CLERK
DALLAS COUNTY, TEXAS
DEPUTY

LANDMARK EDUCATION
CORPORATION AND DAVID GRILL,
AN INDIVIDUAL,
Defendants

162nd JUDICIAL DISTRICT

**PLAINTIFF'S RESPONSE TO LANDMARK'S
MOTION FOR SUMMARY JUDGMENT**

NOW COMES Plaintiff Tracy Neff, and files this Response to Defendant Landmark Education Corporation's Motion for Summary Judgment. Tracy Neff relies in support of her Response on the evidence indexed as Exhibit "A" to this Motion, which index is incorporated herein by reference, together with all pleadings and discovery on file, and would show unto the court as follows:

I.

**TRACY NEFF WAS BRUTALLY RAPED AND
SODOMIZED BY DEFENDANT DAVID GRILL**

This law suit¹ arises out of the brutal sexual assault of Plaintiff Tracy Neff by Defendant David Alan Grill ("Grill") which occurred in the early morning hours of February 3, 1995. Tracy Neff encountered Grill on the evening of the assault at a facility owned and operated by Defendant Landmark Education Corporation ("Landmark"), where Grill asked Neff to go to his apartment at 1117 South Akard so that he could "share" with her some traumatic events in his life. Deposition of Tracy Lynn Neff, Exh. "A-10" hereto, hereafter "Neff Depo" at p. 238-39. After arriving at the Akard Street apartment, Grill began drinking heavily and according to his testimony, he consumed at least a half bottle of Scotch Whiskey. Deposition of David Allen

¹ Defendant Landmark has moved for Summary Judgment on only one issue—proximate cause—as to Plaintiff's negligence and negligent hiring and retention claims against Landmark. Defendant has also moved for Summary Judgment on Intentional Infliction of Emotional Distress. However, Landmark's Motion does not address Plaintiff's claims under the following additional theories pled by Plaintiff: Assault and Battery, Breach of Fiduciary Duty, Sexual Exploitation by a Mental Health Services Provider under Civil Practice and Remedies Code Chapter 81, Sexual Assault under Penal Code § 21.001, Fraud, Negligent Misrepresentation and Violations of the Texas Deceptive Trade Practices Act. Therefore, these causes of Action are not addressed specifically herein.

Grill, Exh. "A-7" hereto, hereafter "Grill Depo" at p. 228-229. Neff has testified that Grill first forced her to perform oral sex [Neff Depo at p. 245] and then led her to his bedroom. Neff Depo at p. 271. Once in Grill's bedroom, Grill brutally raped Neff with a dildo, and thereafter anally sodomized her. Neff Depo at p. 293-304.

Grill was so intoxicated that he has no memory of the assault. Grill Depo at p. 228-229. He does not deny that the assault took place. Grill Depo at p. 291-292. Further, Grill has judicially confessed to sexual assault, and specifically to "knowingly causing the penetration of the sexual organ of [Neff] ... without any consent..." See Judicial Confession, "Exh. A-8" hereto.; Grill Depo at p. 245.

The following day, Tracy Neff reported the assault to the Dallas Police Department, and underwent a rape examination at Parkland Memorial Hospital which confirmed that a sexual assault had taken place. See Police Report, Exh. "A-5", Parkland Report Exh. "A-6". Subsequently, Tracy Neff underwent surgery to repair the damage done by Grill to her vagina. See Godat Records Exh. "A-7". Further, Tracy Neff has sustained severe and permanent documented psychological injuries, for which she is seeking recovery in this law suit.

II.

LANDMARK EDUCATION CORPORATION NEGLIGENTLY HIRED AND RETAINED DAVID GRILL, WHICH WAS THE REASON TRACY NEFF MET GRILL IN THE FIRST PLACE

At the date and time of the incident, Grill was employed by Defendant Landmark Education Corporation as the Center Manager of Landmark's Dallas facility. Deposition of Arthur Schrieber, Exh. "A-11" hereto, hereafter Schrieber Depo at p. 91. Long before Tracy Neff ever met David Grill, Landmark knew or should have known that Grill was a danger to himself and to others who were students in their programs.

A. Landmark Education Corporation Provided Interactive Group Therapy to Tracy Neff and Purported to Teach a "Breakthrough" in the Way Plaintiff Thought about the World

Landmark is in the business of providing large group therapy self-help seminars to persons such as Tracy Neff. Landmark presents a seminar called the "Landmark Forum" which is their "basic" or introductory seminar. Schrieber Depo at p. 91. The Forum is based on "technology" developed by Werner Erhart, who presented the programs under the name EST until December, 1984. Schrieber Depo at p. 89. Persons are asked to fill out a "forum information sheet" prior to attending the Forum, and list what "issues" they would like to address in their Forum experience. Participants are also asked whether they have had any mental health problems, or inpatient alcohol and/or drug treatment, and are asked to sign an "informed consent" before enrolling in the program. Schrieber Depo at p. 106. In the words of Landmark's own literature, the Forum is a truly earth-shattering experience for a participant:

This is the age of breakthroughs—of extraordinary leaps in science, in technology, in understanding that have vastly elevated our quality of life. The Landmark Forum is such a breakthrough, but a breakthrough in what is possible for people—a breakthrough in living. *The Landmark Forum is a means of gaining insight into fundamental premises that shape and govern our lives—the very structures that determine our thinking, our actions, our values, the kind of people that we can be. In the Landmark Forum, you get at the heart of who you are—examining the basis of your identity, your personality, your formulas for living, relating and achieving success.* The Landmark Forum is an invitation to move beyond the limits you have set for yourself, the constraints you have imposed on your own life, breaking through to new levels of performance and ability. Based on original theories and models of thinking, The Landmark Forum challenges old assumptions and creates new tools to access those issues that are most basic, most urgent to each of us. *It is designed to bring about a fundamental shift in what is possible in our lives.*

See “The Landmark Forum, An Exceptional Opportunity,” Exh. “A-2”

Some persons find this type of self-examination very difficult and rigorous. Schrieber Depo at 121-123. Further, mental health professionals who have examined the program have advised that it is not recommended for anyone taking anti-depressants, anyone enrolled in therapy, or anyone who has had drug or alcohol counseling. Schrieber Depo at p. 111-114.

B. Landmark Negligently Allowed Grill to Interact with, and Manipulate, Vulnerable Women Including Plaintiff Tracy Neff

Despite \$48 million in annual revenue in 1997, Landmark has a paid staff of only approximately 275 persons worldwide. Schreiber Depo at 149. Landmark presents their seminars through the widespread use of an “assistants program”—meaning that graduates of the Forum are encouraged to volunteer their time to present the work to others. The viability of a Landmark Center is directly related to the size and strength of its volunteer base.

Grill was hired on March 1, 1991 as the “center manager” of Landmark’s Dallas facility. Grill Depo at p. 148. When Grill was hired, Grill was told that he would be responsible for running the day to day operations of the Dallas center [Grill Depo at p. 125], and was told that the only qualification for a Dallas center manager for Landmark was to be “willing to do what it takes... to get the job done.” Grill Depo at p. 134. During the time he was manager of the Dallas facility, he turned the center around, from being the worst of all of Landmark’s facilities, to being the number one center in terms of profitability and revenue. Grill Depo at p. 144-146. In order to do this, he “brought in music” so that the volunteers would have fun, and made it a point to socialize with participants in the Landmark programs. Grill Depo at p. 145-46.

Grill was expected to make participants feel welcome at the center, and made it a point to meet all participants personally. [Grill Depo at p. 134-137] It was while engaged in this “meet

and greet" function that Grill first met Tracy Neff, on the Sunday of her attendance at the Forum. Neff Depo at p. 164.

In her original application to be a Forum participant, Tracy Neff clearly set forth that she was in a vulnerable mental condition. Neff Depo at p. 26. She stated she was uncomfortable with herself, having recently separated from her husband. Id. at p 27. Neff listed her goal as to "become comfortable with myself and allow people to get close to me, to be comfortable with my father and be able to discuss his homosexuality with him and . . . to find the courage to complete medical school..." Neff Application, Exh. "A-15". Tracy Neff also disclosed in her application that she was "gang raped eleven years ago and used drugs and alcohol [sic] to escape the reality of what happened to me; I completed a program and learned to deal with it. . ." Id. In the course of his duties as center manager, Grill read Tracy Neff's application containing all of this personal information about her vulnerable mental state at the time she enrolled to take the Landmark Forum. Grill Depo at p. 261.

Through her participation in the Landmark programs, Tracy Neff increasingly came into contact with Grill. After initially meeting Grill at the Landmark facility on December 18, 1995 -- the last night of her Forum [Neff Depo at p. 164] -- Tracy Neff knew that Grill was the head of the Dallas center. Neff Aff., Exh. "A-16" Further, she had an understanding that because Grill was in management for Landmark, he had mastered the Landmark programs and philosophies of dealing with life. Neff Aff., Exh. "A-16". Neff Depo at 202-203. Although Tracy Neff did not have any personal interaction with Grill between December 18, 1994 and January 1, 1995, she did see him at the Landmark facility, and other persons communicated to her that Grill was the "most self-expressed" person involved with Landmark in the Dallas area, and that he was the best example of the Landmark philosophies about how to live life without guilt. Neff Aff., Exh. "A-16"; Neff Depo at 202-203.

On January 1, 1995, Neff attended a party at the home of a high-level Landmark volunteer, at which only Landmark staff, graduates and participants were in attendance. Neff Depo at p. 390. In a private room upstairs, Neff and Grill had sexual intercourse, which Neff has testified made her feel extremely uncomfortable. Neff Depo at pp. 159-60; 390-92. The following day, Grill telephoned Neff, and she told him that she was not comfortable with what had happened.² Grill urged her to "complete" with what happened at the New Year's Day event by "sharing" with him at a face-to-face meeting. Thereafter, Grill explained to Neff that the Landmark philosophy encouraged guilt-free living, and that Neff should not be ashamed to express herself sexually with Grill. Neff Depo at 202-203. Tracy Neff believed what Grill was saying because he was held out to her as a living example of the teachings and philosophies of Landmark.

Thus, Grill was able to use the cloak of the philosophies of Landmark, as well as the actual and apparent authority as the center manager, to manipulate and coerce Tracy Neff into the

² Significantly, Tracy Neff had never given Grill her telephone number. Clearly, Grill had used his position as center manager in order to access personal information about where to contact Neff to arrange the face-to-face encounter of January 2, 1995. Neff Depo at p. 176-178.

situation where he was able to rape her. Affidavit of Rick Ross Exh. "A-4" hereto; Over the approximate month prior to the sexual assault, Tracy Neff continued to see Grill and interact with him at the Dallas Landmark facility, and continued to be told that Grill was the best example of the Landmark philosophies.

C. Landmark Education Corporation was Negligent in Hiring Grill in a Position Where He Could Manipulate Vulnerable Women Such as Plaintiff Tracy Neff

As tragic as the assault on Tracy Neff has been, the greater tragedy is that Landmark could have easily prevented the incident through proper personnel procedures and actions. Certainly, Grill's well-documented misdeeds³ prior to February 3, 1998 made it clearly foreseeable to Landmark that Grill was capable of rape or other behavior while intoxicated which would seriously injure another person. See Affidavit of Joel Brockner, Ph.D., Exh. "A-3" hereto.

1.) Grill had an Extensive Past Criminal Record Evidencing Reckless Behavior, and Involvement with Alcohol and Drugs

Grill had an extensive criminal arrest history prior to being hired by Landmark in a position of authority. In 1976, Grill was arrested by Palm Beach County, Florida, Sheriff's office for felony possession of marijuana, possession of narcotic equipment, and possession of synthetic narcotics. Grill Depo at p. 27. On April 30, 1979, Grill was arrested by the Pompano Beach Police Department and charged with misdemeanor possession of marijuana, the felony of carrying a concealed weapon and three separate traffic offenses. Grill Depo at p. 57-58. On November 22, 1987, Grill was arrested by the DelRay Beach, Florida, Police Department for disorderly conduct and resisting arrest. Grill Depo at p. 62-63. This incident occurred when Grill told law enforcement officials that their mothers and daughters "gave good head," all of which Grill thought was "fun." Grill Depo at p. 64.

2.) Prior to Being Hired By Landmark, Grill had No Qualifications For Dealing With Women in a Vulnerable Position

Prior to the time Landmark picked Grill to lead its Dallas operation, Grill had never held any job which would qualify him to deal in a position of authority and responsibility with vulnerable persons such as Tracy Neff in the context of the types of programs presented by Landmark. Grill's application shows that he worked from 1973 until 1983 for Kelly's Custom

³ Where a master is charged with hiring or retaining in his employ an incompetent servant, the servant's character is then in issue and may be proven by evidence of reputation or of specific conduct for the purpose of showing that the master knew or by exercising ordinary care should have known of the servant's incompetence. *Estate of Arrington v. Fields*, 578 S.W.2d 173, 179 (Tex. Civ. App. – Tyler 1979, writ ref'd n.r.e.); *Porter v. Nemir*, 900 S.W.2d 376, 380 (Tex. App. – Austin 1995, no writ); *See also* Tex. R. Civ. Ev. 405(b). Evidence of sexual encounters with other women, and of other bad acts are admissible to show the reckless and manipulative behavior of an employee charged with sexual misdeeds. *See, e.g., Porter* at 382.

Trim, where he helped build exotic custom cars. See Grill Application, Exh. "A-1"; Grill Depo at p.97-98. Grill testified that he left that job, although if Landmark had called his references, his boss would probably say he was fired. Grill Depo at p. 102. After a four month gap, Grill went to work in November, 1983 for J. Vitolo Construction and listed his job as "ran construction project." Grill's application showed he stopped working for Vitolo Construction in 1989, but he listed no other employment from that time until the time of his application with Landmark. See Application Exh. "A-1."

When asked to list special skills which would qualify Grill as a center manager, Grill listed that he was a "carpenter." Grill Application at Exh. "A-1."; Grill Depo at 97-98.

Grill had applied at Landmark three years before he was finally hired in January 1991. The first time he applied he had been turned down because he "owed too much money." Grill Depo at p. 84. However, after a sexual relationship with Landmark center manager Cindy DiCosimo, she recommended to Landmark that he be hired. Grill Depo at p. 92-93.

Prior to working at Landmark, Grill considered himself addicted to cocaine. Grill Depo at p. 33. Further, Grill says that he had taken his life in his own hands by abusing alcohol and drugs on "countless" occasions prior to his employment with Landmark. Nevertheless, Landmark apparently did no background check and did not check any of Grill's references. Deposition of Patricia Dillon, Exh. "A-12" hereto, hereafter Dillon Depo. Instead, Landmark put Grill in charge of their Dallas facility, where he would be in a position of responsibility, leadership and authority over women such as Tracy Neff who were in vulnerable states of mind.

B. Landmark was Negligent in Retaining Grill, after his Record of Reckless, Drunken and Abusive Behavior

Grill's abuse of alcohol, drugs and women did not end with his employment at Landmark, but such reckless activity continued in a well-documented pattern up until the time Tracy Neff was assaulted.⁴

1.) Grill Evidenced a Pattern of Behavior that was Reckless, Alcoholic and Abusive Toward Women In 1991, 1992 and 1993 That Was Known to Landmark

⁴ It can reasonably be inferred that Landmark kept Grill on staff because he was a "producer." By memo dated January 1993, Grill's supervisor Ingrid authorized a salary increase for Grill, noting that he did "122% of Forum Target, 105% Adv. Target, 141% of Seminar Target, 40% of TCC Target, 108% of SEL Target. DFW revenue was \$338,000, with at 19% operating surplus [and had] 100 persons in 'Assistants Program.'" [Personnel file Exh. "A-1" hereto] In fact, over the course of his employment with Landmark, Grill was given a total of four salary increases based on performance. [id.] Grill testified that he took the center from worst in the nation to number one, in terms of profitability and revenue. Grill Depo at 144-146.

Sometime before August 1992, when Grill had only been on staff for Landmark for approximately a year, Grill had a confrontation with chief executive officer Harry Rosenberg at a gathering of Landmark insiders at Dave's Bar in San Francisco. Grill Depo at 45-46. In this confrontation, Grill was so intoxicated from drinking martinis that he told Rosenberg (or his sister, Joan, the director of the Centers Division of Landmark Education and also directly above Grill in the chain-of-command) to "fuck himself." Grill Depo at p. 46, 232.

By memorandum dated September 16, 1992, Landmark manager Tirzah Cohen placed Grill on probation on probation because Grill had

- (1) falsified enrollments;
- (2) embezzled money from Landmark;
- (3) had sexual relationships with 13 Landmark participants;
- (4) frequently driven while drunk; and,
- (5) engaged in inappropriate behavior with graduates while intoxicated.

See Personnel File, Exh. "A-1" hereto. Grill had conversations with Cohen and his supervisor Ingrid Cain in August, 1992 wherein he admitted each of the items listed in the Cohen memorandum. Grill Depo at p. 154. With regard to his sexual relationships with participants, Grill was told that such behavior was absolutely inappropriate, and Grill had to meet with each of his thirteen known sexual partners in the presence of a Landmark management employee in order to "complete" with them about his inappropriate behavior.⁵ Grill Depo at p.172-73.

Although a memorandum in Grill's file indicates he successfully completed the term of his 1992 probation, Grill testified that he was "on probation" "most of the time" he was employed by Landmark for getting "in trouble." Grill Depo at 150.

Sometime in 1993, Grill kicked in the door to a hotel room at the Reunion Hyatt Regency in Dallas, Texas in order to get into a hotel room where one of his sexual partners was located. The following day, Grill's supervisor at Landmark telephoned him about the incident, and told him that his behavior needed to be appropriate for a center manager at all times and in all places. Grill Depo at 262-263.

2.) Grill's Pattern of Behavior that was Reckless, Alcohollic and Abusive Toward Women Escalated In 1994

⁵ Knowledge of prior sexual relationships with program participants was enough to give Landmark knowledge of the possibility of the sexual assault of Tracy Neff. *Porter v. Nemir*, 900 S.W.2d 376 (Tex. App. – Austin, 1995, no writ) (knowledge that unlicensed drug treatment counselor had inappropriate sexual relationship with a prior patient made sexual assault of subsequent program participant foreseeable to his employer, despite that the sexual assault of the plaintiff in that case (1) began as a consensual relationship, (2) occurred off-premises and after-hours).

a.) Mindie Dodson Complaints

In February, 1994, a woman named Mindie Dodson came to work under Grill's supervision in Dallas. Deposition of Mindie Dodson, Exh. "A-14", hereto, hereafter Dodson Depo. On her first day of work, Grill took her to a bar and ordered a bottle of Cuervo. While drinking the tequila, he told Mindie that he thought she was beautiful, he wanted to marry her, and that he had previously torn up a photograph submitted with her application when he found she was a lesbian. Dodson Depo at p. 33-36. Shortly thereafter, Dodson complained to Landmark human resources director Fred Lange during which she told him she was having a hard time dealing with Grill's sexual harassment. Dodson Depo at p. 157.

On numerous occasions, Mindie Dodson observed what she considered to be violent behavior on the part of David Grill, including (1) having him slam his fist down in front of her face [Dodson Depo at p. 57]; (2) seeing him repeatedly pound on a copy machine because it wouldn't work [Dodson Depo at p. 61-62]; (3) having him get in her face and yell five times "I hate your guts and I don't trust you." [Dodson Depo at p. 60-62] Mindie also observed Grill drive drunk "most nights." [Dodson Depo at p. 67-68] David Grill himself does not deny that these things took place. Grill Depo at p. 214-217.

Mindie Dodson also observed Grill engaging in sexually inappropriate behavior, directed toward herself and toward other women. Grill would specifically go through applications to certain Landmark programs, and Grill told Mindie Dodson he was "looking for a wife" in the program applications. Dodson Depo at p. 80. During a Landmark function in Atlanta, Georgia, Grill stated that a female participant would be a "good fuck," which was overheard by the participant's boyfriend.⁶ Dodson Depo, p. 85-86. Grill acknowledged that this occurred. Grill Depo at p. 259. Further, while Mindie Dodson was on staff, Grill showed her two people having sex on computer screen. Dodson Depo at p. 47-50. In May of 1994, Grill showed Mindie Dodson a copy of Playboy magazine (his subscription was sent to the Landmark facility) and said "I wonder what you'd look like in here." Dodson Depo at p. 52, Grill Depo at p. 264. After May, 1994, Dodson and Grill traveled to Oklahoma City, Oklahoma, on Landmark business, and Grill booked a single hotel room for them to stay in.⁷ Dodson Depo at p. 78. After these incidents, Grill told Ms. Dodson that he knew he was going to be charged with sexual harassment. Dodson Depo at p. 56.

Grill had a cocaine abuse problem prior to his association with Landmark [Grill Depo at p. 32-33] and had a relapse one weekend at while at Landmark headquarters in San Francisco. Grill Depo at p. 35. Further, Grill told Mindie Dodson that he had told "his boss" at Landmark. Dodson Depo at p. 63-64. Grill confirmed that he probably told his supervisor at Landmark, Pat Dillon. Grill Depo at p. 34.

⁶ Grill's supervisor, Patricia Dillon, acknowledged that she was aware of the incident in Atlanta. Dillon Depo at p. 278.

⁷ Grill apparently still sees nothing inappropriate in this action. Grill Depo at p. 206-207.

Also in May of 1994, Mindie Dodson observed Grill screaming at Landmark management employee Jerry Baden, only two inches from his face, in a disagreement over the proper way to set up a seminar room. Dodson Depo at p. 107.

In June, 1994, Ms. Dodson's tolerance for Grill's abusive behavior was at end. In that month Dodson initiated a conference call with Baden, a Landmark Forum leader who was Dodson's primary contact with management, in which Mindie told Baden that Grill was drunk a lot, was hung over a lot, threw up in the shower every morning, was going out a lot at night, had tried to make Mindie's life miserable after he found out she was a lesbian, and had showed her the sex on the computer and nude women in Playboy. Dodson Depo at p. 58-59.

When Grill's behavior did not improve, Dodson was forced to quit her work with Landmark in late June or early July of 1994. Before she left Dallas, however, she had an in-person interview with Grill's supervisor, Patricia Dillon, and a telephone conversation with Fred Lange, Landmark's head of human resources, about Grill's behavior. See Dillon Depo at p. 252; Dodson Depo at p. 90-94. Dodson told Dillon that Grill frequently came to work hung over, that his behavior was inconsistent, about the Playboy incident (discussed supra), about Grill's violent behavior in the center, and about the Oklahoma hotel room incident (discussed supra). Dodson Depo at p. 90-92. Dodson told Lange about Grill's drunkenness, and mood swings, as well as violent behavior. Grill was, again, put on probation (where he'd spent most of his career at Landmark) but no other substantive action was taken. Dillon Depo at p. 253-262.

b.) Robin Adelson Complaints

Soon after Mindie Dodson left, Robin Adelson, a high-level Landmark volunteer and former Dallas staff member sent a letter directed to Landmark chief executive officer Harry Rosenberg dated July 14, 1994. See Exh. "A-1"; Deposition of Robin Adelson, Exh. "A-13" hereto, hereafter Adelson Depo, at p. 44. The letter states that Grill was coming to work with an "obvious hangover, including the 'shakes,' [and that he was] irascible to key assistants and staff, screaming loud enough for guests to hear." The letter also alluded to the Playboy incident (discussed supra) and accused Grill of making lewd and/or disrespectful comments to participants, graduates, assistants and staff. Importantly, the letter suggests that interviews be done of people working near Grill. [See personnel file, Exh. "A-1."] However, although Grill's Landmark supervisors say that they went over the allegations contained in the letter with Grill, nothing substantive was done in the way of investigation or by way of remedy. Dillon Depo at p. 272-273.

By letter dated August 5, 1994, Robin Adelson sent a second letter to corporate management at Landmark, this time directing her letter to Patricia Dillon and sending copies to Harry Rosenberg and Joan Rosenberg. Adelson Depo at p. 27. This second letter, co-authored with Landmark volunteer Vickie Bishop, stepped up the tone and tenor of the complaints that Grill's behavior was completely out of control. The letter put Landmark management on notice that Grill was frequently drunk "beyond verbal and motor control", had mentioned to a Landmark staff member that he frequently vomited in the shower, was having wild mood swings, was making erratic decisions, had memory lapses, displayed sexist and bigoted outbursts, was

womanizing and had a violent temper. The letter alleges that Grill had no respect for women. The letter goes on to advise Landmark management that Grill was "ongoingly dat[ing]" Landmark students, searching for them via their applications, and "ha[d] problems with powerful women, avoid[ed] intimacy, [was] sexist, volatile, lie[d], bullie[d] and manipulate[d people]." [See Personnel file, Exh. "A-1"]

In response, Grill's supervisor Patricia Dillon merely reiterated her same old warning, but otherwise took no response. See Dillon Depo at p. 248, 265-67, Dillon memo of 2/28/95. Within two (2) months of Landmark's receipt of this letter, Grill reviewed Tracy Neff's application and began his sexual pursuit of her. Grill Depo at p.261.

The failure of Landmark to address the erratic, violent behavior of David Grill was clear negligence on the part of Landmark. Given Grill's record, Landmark's failure to deal substantively with the problems, and Landmark's choice to retain Grill in a job where he was in a position of leadership and authority over vulnerable women such as Tracy Neff, was clearly negligent management by Landmark. Affidavit of Joel Brockner, Ph.D., hereafter Brockner Aff., Exh. "A-3" hereto.

III.

THE SEXUAL ASSAULT OF TRACY NEFF WAS FORSEEABLE BY LANDMARK EDUCATION CORPORATION

Landmark has moved for summary judgment on Plaintiff Tracy Neff's negligence claims against Landmark by alleging that Landmark could not have foreseen that their negligence in hiring and retaining Grill might result in Grill's assaultive behavior. Apparently, Landmark's position is that, because they were not aware of any prior rapes by Grill, they had no reason to suspect a rape might occur in this case.

The Texas Supreme Court has held that prior sexual assaults are not a prerequisite for determining whether a particular sexual assault is foreseeable. *Nixon v. Mister Property Management*, 690 S.W.2d 546, 550 (Tex. 1985) (reversing a summary judgment in favor of a defendant who claimed a rape on his premises was not foreseeable). "It is not required that the particular [incident] complained of should have been foreseen. All that is required is 'that the injury be of such a general character as might reasonably have been anticipated,' and that the injured party should be so situated with relation to the wrongful act that injury to him or to one similarly situated might reasonably have been foreseen." *Nixon* at 550, citing *Carey v. Pure Distributing Corp.*, 133 Tex. 31, 124 S.W.2d 847, 849 (1939). Thus, there is no requirement that Landmark should have been able to foresee rape, only that the general character of injury be reasonably foreseen. *Id.*

Certainly, given Grill's well-documented history of alcoholic, sexist, abusive, violent erratic and irresponsible behavior, together with his particular history of dating program participants, Landmark officials could have reasonably foreseen that Grill was likely to engage in behavior that would put participants in a great degree of risk, including but not limited to irresponsible behavior while intoxicated, sexual harassment, violence and sexual assault. See

Affidavit of Joel Brockner, Ph.D., Exh. "A-3." Further, by placing Grill in a position where persons in a vulnerable state of mind would be particularly susceptible to a high degree of undue influence and suggestion from Grill, Landmark could have reasonably foreseen that Grill would manipulate vulnerable women such as Tracy Neff into a position where he could sexually assault them, particularly if he was intoxicated. Affidavit of Rick Ross, Exh. "A-4."

As a matter of Texas law, "Individuals... who have been sexually abused as children are especially vulnerable to sexual exploitation by a counselor." *Porter v. Nemir*, 900 S.W.2d 376, 386 (Tex. App. - Austin 1995, no writ). Tracy Neff had been sexually abused, and Landmark and David Grill knew about the prior assault because Tracy put that information in her initial Forum information sheet, which was reviewed by Grill and Tracy's Forum leader. See Neff Application, Grill Depo at 261. Tracy had come to Landmark with the express purpose of dealing with this complex emotional problem. Neff Application. In a situation-- such as in the context of the programs presented to Neff by Landmark-- where persons are in turmoil due to self examination, Landmark had a "heightened obligation to hire and retain" competent employees because their programs treat a psychologically fragile clientele. Porter at 386. Where a person in authority in such a situation has even dated one prior program participant, that individual's employer has reason to know that the person is incompetent and must investigate the situation in order to ascertain whether program policies are being violated and program participants are at risk. *Id.*

Landmark was aware that Grill had had a sexual relationship with at least thirteen participants prior to September 16, 1992. See Grill Depo at p. 161. Further, Robin Adelson's letters put Landmark on notice that Grill was "ongoingly dating participants" in Landmark's programs. Clearly, Landmark had notice that their Dallas leader would engage in inappropriate dating and sexual relationships with program participants. *Porter* at 386.

It is interesting that Landmark should claim it could not foresee that a volatile and dangerous situation was developing, when clearly it was obvious to everyone else involved. Grill himself stated on numerous occasions that he knew he was going to get in trouble for sexual inappropriateness. Dodson Depo at p. 50-52. Further, Robin Adelson's letter dated August 5, 1994 contains the following statements:

... as an ongoing participant in this work for years, it would be dishonest for me not to say that I'm also wondering how such blatantly unprofessional behavior could be totally unknown to you, especially given the incidents that gave rise to David's having been on probation. If it is know to management, is it being ignored or overlooked? ... There is no corporation in the world that would allow management to interact with employees the way David does and not be n court eventually ... Given David's ongoingly sexually inappropriate interactions with and about women, it is a miracle that no suit has been brought for sexual harassment ...

Personnel File, Exh. "A-1." Given the clear notice that Adelson, Dodson and others gave to Landmark, the only reason the company did not foresee the events giving rise to this law suit is

because they were ignoring the clear signals that something was severely wrong with Grill and that someone was going to get hurt.

IV.
LANDMARK'S NEGLIGENT HIRING AND RETENTION
OF GRILL WAS THE CAUSE IN FACT OF THE
SEXUAL ASSAULT ON TRACY NEFF

Landmark has understandably attempted to distance itself from the assault of Tracy Neff by its employee, David Grill, by arguing Landmark's negligence in hiring and retaining Grill cannot be the cause in fact of the assault because the assault did not take place on Landmark property, during business hours, and was not expressly done to further Landmark's business. Landmark's arguments confuse two legal principles: (1) Plaintiff argues that Landmark is responsible for the negligence and intentional acts of its employee Grill under the doctrine of respondeat superior because Grill was acting within the course and scope of his actual and apparent authority as an employee of Landmark at the time of the sexual assault, and (2) Plaintiff asserts that Landmark's own independent acts of negligence in hiring and retaining Grill was also a proximate cause of Tracy Neff's injuries. Landmark relies heavily on *Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472 (Tex. 1995) for the proposition that Landmark's negligent hiring and retention were too remote from the rape to have constituted legal cause in fact. Landmark also cites two cases which have held that an employer cannot be held responsible for the assault of an employee under respondeat superior because an employee ordinarily does not commit an assault within the course and scope of his employment. *Mackey v. U.P. Enterprises, Inc.*, 935 S.W.2d 446 (Tex. App. -- Tyler 1996, no writ); *Dieter v. Baker Service Tools*, 739 S.W.2d 405 (Tex. App. -- Corpus Christi 1987, writ denied).

A. Grill's Actions in Manipulating Neff Were Within His Actual and Apparent Authority as Dallas Center Manager

If David Grill's actions were within the course and scope of his actual and apparent authority as an employee of Landmark, then Landmark's causation arguments must fail because it is undisputed that the actions of David Grill in assaulting Tracy Neff were the cause of here damages. Under the doctrine of respondeat superior, the principle is vicariously liable for the actions of the agent. *Dieter*, 739 S.W.2d at 408. There is ample summary judgment proof to indicate that David Grill was acting within the course and scope of his employment whenever he socialized with graduates and participants of the Landmark programs:

After Grill kicked in a hotel room door to gain access to the room of a woman with whom he was having a sexual relationship, he was told by Landmark management that he was required to be an example of the Landmark philosophies at all times and in all places. Grill Depo at 262-263.

David Grill considered it his job to make things “fun” to participate in Landmark in Dallas, and made it a point to socialize with Landmark participants. Grill Depo at 144-146.

Landmark apparently considered it within their authority to discipline Grill for having sexual relations with program participants, and put Grill on probation for this behavior in September of 1992. Personnel file. Grill Depo at p. 154, 172-173.

By memorandum dated February 28, 1995, Grill’s supervisor Patricia Dillon memorialized a conversation with Grill in July of 1994, wherein Grill “was clear that the behavior outlined in the letter was inappropriate for a Center manager [and] agreed that his actions as a manager from that point on would be consistent with that of a Center Manager of LEC *at all times both in and out of the center.*” Exh. “A-1”

In the same February 28, 1995 memorandum, Dillon states that she “[w]arned [Grill] that if there was another complaint of his behavior *either inside or outside the center* that he would be terminated.” [emphasis added] Exh. “A-1”

In a memorandum dated October 5, 1994 Patricia Dillon outlined conversations she had had with Grill regarding the allegations contained in the Robin Adelson letters (discussed *supra*) “With regard to both letters, Joan [Rosenberg] and she had a conference call with David and went over each point of the letters. We specifically requested that he not try to find out who sent them. David is now causing Center Manager *at all times, in all places, inside and outside the center.* I requested that David stop yelling and stop drinking... He no longer has alcohol around the graduates...” Exh. “A-1”

Because Grill was acting within the course and scope of his actual and apparent authority as a Landmark employee at all times and in all places, including while engaging in sexual relationships with program participants, Landmark is vicariously liable for Grill’s negligent and intentional acts. Certainly, it cannot be argued that Grill’s acts were not a proximate cause of Tracy Neff’s injuries.

B. The Negligence of Landmark in Hiring and Retaining Grill was a Cause in Fact of Neff’s Injuries

An entirely separate issue raised by Landmark’s Motion is whether the independent acts of negligence on the part of Landmark in hiring and retaining Grill were the cause in fact of Tracy Neff’s assault.⁸ Negligent retention involves “the master’s own negligence in ... retaining in his employ an incompetent servant whom the master knows or by the exercise of reasonable

⁸ Defendant’s reliance on *Mackey v. U.P. Enterprises, Inc.*, 935 S.W.2d 446 (Tex. App. – Tyler 1996, no writ) is misplaced because the Plaintiff in that case was not proceeding under a theory of negligent retention and hiring. The act complained of by Plaintiff in this case is not merely a vicarious liability claim, but also that Defendant Landmark engaged in its own independent acts of negligence by hiring and retaining Grill when it knew or should have known of his propensity to harm Tracy Neff and others similarly situated.

care should have known was incompetent or unfit.” *Porter v. Nemir*, 900 S.W.2d at 385. Cause in fact in a negligent hiring and retention case merely requires that the negligent act or omission of the employer was a “substantial factor” in bringing about the injury and without which no harm would have occurred. *Nixon v. Mister Property Management*, 690 S.W.2d 546, 549 (Tex. 1985).

Even in cases where the intentional acts of an employee have been held not to have been committed within the course and scope of the employee’s job, nevertheless a Plaintiff can still prevail on a negligent hiring and retention theory. *Dieter v. Baker Service Tools*, 739 S.W.2d 405 (Tex. App. – Corpus Christi 1987, writ denied) (reversing summary judgment for an employer on a negligent hiring claim although an assault was held not to have occurred within the course and scope of the employee). In *Dieter* (*supra*, and cited by Landmark) the Corpus Christi court of appeals held that liability for negligent hiring and supervision is not dependent upon a finding that the employee was within the course and scope of his employment when the tortious act occurred. *Id.* at 407.

Further, there is no requirement that the intentional act occur on the premises of the employer, or within the working or business hours of the employee.⁹ Retention of an incompetent employee can be the cause in fact of a sexual assault which occurs off the premises and after the business hours of the defendant employer, where the employee gained the confidence and trust of the sexual abuse victim “through the cloak of responsibility” as an employee of the defendant employer. *Porter v. Nemir*, 900 S.W.2d at 386.

There is ample evidence that Grill manipulated Tracy Neff and sexually assaulted her through the use of his position within Landmark. Tracy Neff met Grill at the Landmark Center,

⁹ Defendant Landmark’s reliance on *Doe v. Boys Clubs of Greater Dallas*, 907 S.W.2d 472 (Tex. 1995) for the proposition that there is no cause in fact in the present case is misplaced. In *Doe*, a Boys Club volunteer had been assigned to the club as part of his community service obligations secondary to a DWI conviction. After the volunteer met two young boys at the club, he became friends with the boys’ grandparents, and visited their home on at least ten occasions. On several overnight camping trips over a three year time period, the volunteer sexually assaulted the boys. The Supreme Court rightly held that the failure of the Club to investigate the volunteer’s criminal record could not constitute the cause in fact of the assaults because (1) full disclosure of the criminal record would not have prevented the volunteer from being at the club, and (2) the grandparents were specifically told that the club did not endorse relationships between boys and volunteers outside the supervision of the club. In the case at bar, thorough investigation of Grill’s behavior would have disclosed that he had a propensity to engage in reckless, violent and abusive behavior, to date participants of Landmark’s programs and engage in sexually inappropriate behavior. Certainly, if Grill’s problem behaviors had been addressed properly by Defendant Landmark, Grill should never have been allowed to manipulate Tracy Neff under the cloak of Landmark authority. Further, Tracy Neff met Grill at the Landmark Center, where he was the manager, and was never around Grill outside the ever-enveloping context of Landmark and its programs. The night of the rape, Grill first approached Neff at the Landmark facility.

and knew he was the center manager, a position of trust and authority within Landmark. Neff Affidavit, Exh. "16." Neff was told that Grill was the highest example of the Landmark philosophies. Neff Affidavit, Exh. "16." Although Tracy Neff felt uncomfortable having sexual relations with Grill, he told her that it was acceptable behavior under the Landmark philosophies. Neff Affidavit. On the night of the sexual assault, Neff encountered Grill at the Landmark facility. Neff Affidavit, Exh. "16." Grill manipulated Tracy Neff back to his apartment by telling her he needed to share with her, which is a Landmark "buzz word." Neff Affidavit. Further, the Landmark program fostered dependence by Tracy Neff on the suggestions of leaders like Grill, such that Neff was easily manipulated into the situation of rape. Rick Ross Affidavit, Exh. "A-4"

Despite Landmark's attempts to distance themselves from Grill's atrocious acts, it was undisputedly the fact that Landmark allowed Grill to be in a position of leadership around vulnerable women such as Tracy Neff that was the cause in fact of the sexual assault of Tracy Neff. See, Affidavit of Joel Brockner, Exh. "A-3." This Court should deny summary judgment on this issue and allow the claim to proceed to trial on the merits.

V.

**LANDMARK INTENTIONALLY INFLICTED
EMOTIONAL DISTRESS ON TRACY NEFF**

With regard to the intentional infliction of emotional distress claims, Landmark merely claims that because Landmark did not "authorize or direct" the assault on Tracy Neff, that Landmark's behavior cannot, as a matter of law, be extreme and outrageous. Tracy Neff would assert that, given Grill's record of violence, alcoholism and reckless behavior, Landmark's behavior in repeatedly ignoring such behavior and thereby intentionally putting program participants at risk was, indeed, behavior that should be regarded as "atrocious, and utterly intolerable in a civilized community." *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993).

WHEREFORE, PREMISES CONSIDERED, Tracy Neff respectfully prays that Landmark's Motion for Summary Judgment be denied.

Respectfully submitted,

KIMBERLY A. STOVALL & ASSOCIATES, P.C.

BY: 

KIMBERLY A. STOVALL, ESQUIRE

State Bar No. 19337000

JAY C. ENGLISH, ESQUIRE

State Bar No. 06625290

North Central Plaza Three, Suite 550

12801 North Central Expressway

Dallas, Texas 75243

(972) 774-1276, phone

(972) 774-0733, fax

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been forwarded by certified mail, return receipt requested to the following counsel of record on this 30 day of Oct, 1998:

Robert Roby, Esquire
GWINN & ROBY
4100 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

VIA CM/RRR NO. Z 557 998 693

George R. Milner, III
2515 McKinney Avenue
Suite 1500, L.B. 21
Dallas, Texas 75201

VIA CM/RRR NO. Z 557 998 692


JAY C. ENGLISH, ESQUIRE

EXHIBIT E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRACY NEFF

VS.

LANDMARK EDUCATION
CORPORATION AND DAVID
GRILL, AN INDIVIDUAL

* IN THE DISTRICT COURT
*
* DALLAS COUNTY, TEXAS
*
*
* 162ND JUDICIAL DISTRICT

VIDEOTAPED
ORAL DEPOSITION OF
ARTHUR H. SCHREIBER

ANSWERS AND DEPOSITION of ARTHUR H. SCHREIBER,
a witness produced on behalf of the Plaintiff,
taken in the above styled and numbered cause on the
23rd day of October, 1998, before Kay D. Gallivan,
a Certified Shorthand Reporter in and for the State
of Texas, taken in the offices of Gwinn & Roby,
4100 Renaissance Tower, 1201 Elm Street, City of
Dallas, County of Dallas, State of Texas, pursuant
to the Texas Rules of Civil Procedure.

COPY

1 speak with the center manager to get information?

2 A. Sure. There's nothing -- I mean, I'm
3 only saying the registrar because that's the person
4 in whose job responsibility this would fall. But
5 if he's on vacation for two weeks, they wouldn't
6 just leave a message so --

7 Q. All right. You mentioned that -- that
8 there is a new Forum Information Form and one of
9 the changes to it is that there is an arbitration
10 agreement.

11 A. Uh-huh.

12 Q. Does -- who does the arbitrations under
13 that agreement?

14 A. The office of the American Arbitration
15 Association in the city in which The Forum is being
16 delivered.

17 Q. Have any arbitrations been performed
18 pursuant to the arbitration agreement since the
19 form was revised?

20 A. No.

21 Q. You mentioned that there was Dr. Edward
22 Lowell --

23 A. Uh-huh.

24 Q. -- who has served as a mental health
25 advisor --

1 A. Uh-huh.

2 Q. -- to Landmark Education Corporation.

3 A. Unpaid advisor, that's correct.

4 Q. All right. Are there any other paid or
5 unpaid mental health professionals that have served
6 as advisors to Landmark Education Corporation?

7 A. There have never been any paid advisors,
8 and there have been unpaid advisors; and over the
9 years, the names I don't recall. Doctor Lowell I
10 definitely know about.

11 Q. Why is it that Landmark Education
12 Corporation has determined based on advice from
13 mental health professionals that persons who answer
14 "yes" to the questions on that form should not
15 participate in The Forum?

16 A. I can tell you exactly why. As we tell
17 people in this -- right in their application
18 form -- and I'm reading from the form. "The
19 Landmark Forum is intended for people who are
20 well. In the program you will address such
21 questions as, 'What does it mean to be human' and
22 'What is the possibility of being for human
23 beings.' Although most people find these matters
24 engaging, challenging, and rewarding, some may find
25 thinking about such matters difficult and

1 unsettling. As with any serious undertaking in
2 life, you should take the time to determine whether
3 or not you are physically, mentally and emotionally
4 prepared to engage in these kinds of questions.

5 The program is not therapeutic in design,
6 intent or methodology and is not a substitute for
7 psychotherapy or for a drug or alcohol treatment
8 program. Because some people may, contrary to our
9 specific instructions, take the program as a way of
10 dealing with issues that are properly addressed by
11 trained mental health professionals, we advise you
12 that The Forum leaders are not trained mental
13 health professionals; that no trained mental health
14 professionals will be in attendance at The Forum;
15 and that The Forum will not address issues that are
16 best dealt with in therapy."

17 I couldn't say it any better to answer
18 your question.

19 MS. STOVALL: I'll object as
20 nonresponsive.

21 Q. (By Ms. Stovall) And maybe I didn't ask
22 the question. Let me try it again. What is it
23 about The Forum, the activities that occur in The
24 Forum --

25 A. Uh-huh.

EXHIBIT F

D + A



Congratulations on having registered in The Landmark Forum. We have designed The Landmark Forum as an opportunity for people to advance their goals and commitments, to enhance their personal effectiveness, and to achieve consistently extraordinary results.

JIN 57

Please fill out this form completely and return it in the enclosed envelope within one week of receipt.

The accuracy and completeness of your answers are important as a condition to your participation in this program. We will hold the information on this form in strictest confidence.

Please print clearly in ink and answer every question, and please sign your name in each of the appropriate places.

1. Forum (City) Dallas
 Month Dec Date 16, 17, 18, 20 Year 1994

2. Name (Last) Neff (First) Tracy
 (Middle) Lynn (Name I like to be called) Tracy

3. Home Address (Street / P.O. Box) 8924 Rosecliff
 City Dallas State TX Zip 75217

4. Home Phone (214) 391-1809 Work Phone (214) 789-2354

5. Age 25 Birthdate (Month/Day/Year) 11/21/68
If you are under 18 years of age, you must currently live at least 50% of the time with a parent or guardian who has been placed in The Landmark Forum.

6. Sex Male Female

7. Marital Status Single Married Widowed Separated Divorced

8. a. Please indicate your occupation or profession: Secretary
 b. What is your job title or position? Benefits Assistant
 c. If you are not currently employed, please indicate your vocation, training, or profession: _____

9. Have you completed The Landmark Forum? Yes No If yes, where and when?
 City _____ Month _____ Year _____

Have you completed any of our previous programs? Yes No

If yes, please indicate the first program you participated in: Program: _____
 City _____ Month _____ Year _____

LandmarkEducation

20. In order to benefit fully from your participation in The Landmark Forum, we ask that you take a moment to state specifically what you intend to accomplish. Answering this question does not suggest or guarantee that you will achieve these specific results by the end of the program. However, by being specific, you will facilitate your participation. Please answer in the space below.

To become comfortable with myself and
allow people to get close to me.
To be comfortable with my father and be able
to discuss his homosexuality with him and
my fear of AIDS since his partner died 3 years
ago
to find the courage to complete med school

21. Name of the person who introduced you to The Landmark Forum: Gwendolyn Curlee

22. Please list the names of the family members, relatives, friends, and business associates who are participating in The Landmark Forum with you.

Name of Person	Relationship to You
_____	_____
_____	_____
_____	_____

23. Is there anything else you would like to communicate now?

I was gang raped eleven years ago and used
drugs and alcohol to escape the reality of
what happened to me. I completed a
program and learned to deal with it.
I learned that I can't change my
past - only learn from it.

CONFIDENTIALITY AGREEMENT

I understand that The Landmark Forum is a private and personal experience for each participant. As such, I agree to respect the confidentiality of all participants and their remarks and actions, and I agree to keep all such information private and confidential. I am also aware that The Landmark Forum is protected by copyright, and cannot be reproduced, copied or otherwise duplicated without the express written permission of Landmark Education Corporation. I agree not to violate this copyright.

DECLARATION AND PROMISE (AGREEMENT)

I declare that I have read and understand all of the information on this Information Form; that all of my responses are accurate and true to the best of my knowledge; and that I have read and understand the Confidentiality Agreement and agree to abide by it.

Signature Haley L. Neff Date 10/12/94

If you are under 18 years of age, your parent or legal guardian must read and sign below:

As parent or legal guardian of the above-named minor,

- 1. I have completed The Landmark Forum and the above-named minor lives with me at least 50% of the time.
- 2. I hereby give my permission for my child to take The Landmark Forum.
- 3. I agree to the above Declaration on his /her behalf.

Signature Haley L. Neff Date _____

NOTICE

PLEASE READ THE FOLLOWING SECTION CAREFULLY AND COMPLETELY. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE REGISTRAR IN YOUR LOCAL CENTER. WE WILL ASSUME FROM YOUR PARTICIPATION IN THE LANDMARK FORUM THAT YOU HAVE UNDERSTOOD THE FOLLOWING SECTION AND HAVE FOLLOWED OUR RECOMMENDATIONS.

The Landmark Forum (the "Program") is intended for people who are well. In the Program, you will address such questions as "What does it mean to be human?" and "What is the possibility of being for human beings?" Although most people find these matters engaging, challenging and rewarding, some may find thinking about such matters difficult and unsettling. As with any serious undertaking in life, you should take the time to determine whether or not you are physically, mentally and emotionally prepared to engage in these kinds of questions.

To achieve the maximum value from the Program, you should be prepared to engage in a rigorous examination, in serious work. We will assume your presence at the Program to indicate that you have considered the nature of the Program and have chosen to attend it on your own responsibility and risk, with no questions in your mind about your willingness and ability to do so. You are responsible for your own well-being.

To be certain that you have no misunderstanding about the nature of the Program, we advise you of the following:

- 1. The Program is not therapeutic in design, intent or methodology and is not a substitute for psychotherapy or for a drug or alcohol treatment program. Because some people may, contrary to our specific instructions, take the Program as a tool of dealing with issues that are properly addressed by trained mental health professionals, we advise you that the Program Leaders are not trained mental health professionals; that no trained mental health professionals will be in attendance at the Program; and that the Program will not address issues which are best dealt with in therapy.

2. Please answer the following questions truthfully:

(a) Have you ever been hospitalized for psychiatric care or a mental disorder, or has such hospitalization been recommended to you by a psychiatrist or other mental health professional?

Yes No

(b) Are you currently in therapy?

Yes No

(c) If you are currently in therapy, are you winning* in therapy?

Yes No

(d) Have you ever had an incomplete course in therapy?

Yes No

(e) If you are currently in therapy and you are winning*, you must advise your therapist that you are going to be in the Program. It is our intention here simply to serve your best interest by not adding input that your therapist does not know about.

Have you advised your therapist that you are going to be in the Program?
Has your therapist verbally stayed your being in the Program?

Yes No

Yes No

Yes No

- 3. Have you ever been in a residential treatment program for drug or alcohol use?

Yes No

*Our definition of "winning in therapy": You are winning in therapy if what you and the therapist are doing (or did) is handling (or has handled) the situation(s) for which you are (or were) in therapy. In other words, you and your therapist are (or were) satisfied with the therapy.

If you answered "yes" to questions 2 (a) or (d), or 3, or "no" to question 2 (e), we recommend that you NOT participate in the Program at this time. Please contact the Registrar in your Center immediately regarding this recommendation.

4. Even if you answered "no" to questions 2 (a), (b), and (d), or question 3, you should reconsider your participation in the Program in terms of the long hours each day and the intensity of the work. Breaks occur approximately once every 2-1/2 hours, and there is one scheduled meal break each day. (People who have a medical condition which requires more frequent eating or bathroom breaks or other special arrangements are required to notify the Program Supervisor at the beginning of the Program so that appropriate arrangements can be made.)
5. In the Program, you will address fundamental issues regarding being human. In the course of such an inquiry, some people will, from time to time, experience emotions such as fear, anger, sadness, regret, and despair. Also in the Program, or in life, people will from time to time cry or experience headaches, tiredness, nausea, confusion, disappointment, feelings of anxiety, uncertainty, and helplessness. Some participants may find the Program physically, mentally, and emotionally stressful. If you are unwilling to encounter such experiences or if you consider that experiencing such emotions may be upsetting to you, we recommend that you NOT participate in the Program.
6. Since people find different events stressful, you should assess your own participation in the Program. In this regard, we have been advised that persons who have suffered serious physical or emotional problems, or who have a history of physical or emotional problems in their immediate family may be more susceptible to stress than others. If you have any questions about your ability to deal with stress, we recommend you NOT participate in the Program.
7. The Program is not intended as a substitute for medical treatment. Please be advised that numerous kinds of physical and medical disorders and ailments may reduce your tolerance even to "normal" levels of stress. Examples of such disorders include, but are not limited to, heart and blood vessel disease, nerve and muscular disorders, glandular and metabolic disorders, some respiratory illnesses and high blood pressure. Your participation in the Program is not recommended if you fall into one of these categories and such participation may jeopardize your well-being. If you are presently under the care of a physician for any such disorder, or if you are not or have not been feeling well or have been meaning to see a physician for some complaint or symptoms, we recommend that you consult your physician and obtain verbal approval for participating in the Program.
8. We want to inform you that the intake of certain kinds of drugs may reduce your tolerance to even "normal" levels of stress. Therefore, if you are currently using (a) major tranquilizers, (b) minor tranquilizers, (c) anti-depressants, (d) barbiturates or sedative hypnotics, (e) amphetamines or related drugs or (f) lithium, we recommend that you NOT participate in the Program at this time. If you are receiving any kind of drug therapy which is under a doctor's prescription and is not mentioned in the previous sentence, even if it seems harmless to you (e.g., antibiotics), we recommend that you check with your physician to be certain that neither the drug itself nor the condition for which you are being treated will predispose you to risk. Should your physician approve your participation in the Program, you will be able, of course, to take your medicine during the Program.

INFORMED CONSENT

THIS INFORMED CONSENT IS INTENDED TO HAVE LEGAL SIGNIFICANCE. IF YOU HAVE ANY QUESTIONS ABOUT ITS MEANING, PLEASE CONSULT AN ATTORNEY.

I have read and understand the above Notice, and have truthfully answered the questions in Items 2 and 3.

I have been informed that in order for me to receive the results of the Program, my participation must be an expression of my own free choice.

I represent that I am participating in the Program voluntarily and not as a result of coercion, pressure, a condition of employment, or to satisfy anyone other than myself.

I am aware and understand that the Program involves a potential risk of physical and/or emotional stress. I agree that Landmark Education Corporation is responsible only for the orderly presentation of the Program and that I am responsible for my own participation in the Program and my own well-being.

I represent that I have not enrolled in the Program to handle a physical problem or drug or alcohol problem, or to participate in therapy, and I recognize that no portion of the Program is delivered or supervised by a trained health professional. I know of no episodes in my past history which suggest to me that I have a physical or emotional disorder or a recurring and unremitting physical or emotional problem. Further, I know of no recurring symptoms, physical or mental, which suggest to me that I may not be able to handle the types of activities described to me as part of the Program.

I promise to inform the Program Supervisor if, at any time during the Program, I experience any physical sensation or mental discomfort which I consider to be out of the ordinary.

I willingly and knowingly assume for myself, and my heirs, family members, executors, administrators, and assigns, all risk of physical injury and emotional upset which may occur during or after the Program, and I hereby agree to hold Landmark Education Corporation, its officers, directors, shareholders, employees, and agents, harmless from any and all liability arising out of my participation in the Program.

Signature

Mary E. Huff

Date 10/12/94

If you are under 18 years of age, your parent or legal guardian must read and sign below:

As parent or legal guardian of the above-named minor, I agree to the above (Informed Consent) on his/her behalf.

Signature

Date

EXHIBIT G

CAUSE NO. 97-00933-T

TRACY NEFF,
Plaintiff

vs.

LANDMARK EDUCATION
CORPORATION AND DAVID GRILL,
AN INDIVIDUAL,
Defendants

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

162ND JUDICIAL DISTRICT

AFFIDAVIT OF RICK ROSS

COMES NOW Rick Ross, who deposes and states as follows:

"My name is Rick Ross. I am of sound mind, am over the age of eighteen. The statements in this affidavit are made upon my personal knowledge and are true and correct.

"Since 1986, I have been employed as a private consultant, lecturer and intervention specialist regarding destructive cults, radical, controversial and potentially unsafe groups. In this context, I work with families, mental health professionals, attorneys, clergy, members of law enforcement and the media specifically with regard to individuals who have come under some type of undue influence. My work since 1982 has been focused on researching groups with evidence of a group dynamic and/or philosophy that often creates a type of learned dependency. That is, participants are unduly influenced to follow the directions and solutions of the group and become dependent upon them.

"I have identified and/or interviewed numerous individuals who have participated in programs presented by the Landmark Education Corporation, including persons who have done the Forum, persons who have been volunteers and/or associated with the company. Further, I have reviewed the personnel file of David Grill, and deposition testimony of Tracy Neff taken in this case.

"There is a phenomenon described by mental health professionals as the "transference phenomenon." Essentially, this transference phenomenon is the process in which patients develop trust and transfer feelings and perceptions they have had in past relationships, such as with parents, to their therapist. An imbalance of power develops due to the inherent dependent nature of this relationship. That is, the patient looks to the therapist for help, guidance and critical analysis and becomes extraordinarily vulnerable to their suggestions and/or influence.

"Although Landmark Education denies that it is therapy, it is nevertheless a type of intensive group encounter. Within the context of such an intensive encounter and through continued courses, Landmark leaders and facilitators essentially occupy a role similar to that of a therapist and/or group encounter facilitator. A type of transference is encouraged within their encounter process that engenders trust by design. Landmark therefore has an inherent responsibility to carefully choose and supervise its designated leaders and be sensitive to any complaints.

"An imbalance of power developed in the relationship between Tracy Neff and David Grill, such that David Grill was able to manipulate and exercise undue influence over Tracy Neff. Further, this type of trust and dependence was due to the fact that David Grill occupied a position of leadership and authority within Landmark Education Corporation and because Tracy Neff was specifically influenced - - again by design - - through the programs presented by Landmark in which she was enrolled.


"The manipulation of Tracy Neff by David Grill, which was facilitated and continually strengthened by his position within Landmark Education Corporation, was a proximate cause of the sexual assault of Tracy Neff on February 3, 1997. Further, because Landmark Education Corporation is imminently familiar with its own programs, it should have reasonably foreseen that this transference phenomenon could develop around its leaders, such as David Grill.

"Further Affiant Sayeth Not."


Rick Ross, Affiant

SWORN TO AND SUBSCRIBED before me by Rick Ross

on the 30th day of October, 1998.


NOTARY PUBLIC in and for the
State of Maryland

MICHAEL J. TEARE
MY COMMISSION EXPIRES
04/15/2001

EXHIBIT H

Peter L. Skolnik (PLS-4876)
LOWENSTEIN SANDLER PC
Attorneys At Law
65 Livingston Avenue
Roseland, New Jersey 07068
973.597.2500
Attorneys for Defendants
The Ross Institute and Rick Ross

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

LANDMARK EDUCATION LLC, et al.,

Plaintiff,

-v-

THE ROSS INSTITUTE, RICK ROSS, et al.,

Defendants.

Civil Action No. 04-3022 (JLC)

**ORDER COMPELLING
PRODUCTION OF DISCOVERY**

THIS MATTER having been opened to the Court by Lowenstein Sandler PC, attorneys for the Defendants, the Ross Institute and Rick Ross, on an application for an Order compelling the production of certain discovery requests, and upon notice to counsel for the Plaintiffs, and for good cause shown;

IT IS on this _____ day of _____, 2005;

ORDERED that no later than _____, 2005, Plaintiffs shall respond to the following of Defendants discovery demands made in Defendants' First Request for Production of Documents and Things to Plaintiffs ("Document Requests") and Defendants' First Set of Interrogatories to Plaintiffs ("Interrogatories"):

A: Document Request 6; Interrogatory 8, except that the response should include documents and information relating to all lawsuits brought by Plaintiffs against any public critic of the Landmark Forum, regardless of whether the lawsuit brought alleged defamation or disparagement; and all documents reflecting the terms of settlement or other disposition of each matter; and

B. Document Request 7; Interrogatory 9; except that the response should include documents and information related to both lawsuits and arbitrations; and documents and information relating to lawsuits and arbitrations brought against Plaintiffs that arose out of the misconduct of a Landmark Forum employee towards a participant or volunteer in the Landmark Forum; and all documents reflecting the terms of settlement or other disposition of each matter; and

C. Document Request 10; and

D. Document Request 36; Interrogatory 12; and

E. Document Requests 47, 48 & 62; which should include documents relating to the changes in Landmark's application materials; and

F. Document Requests 1, 2, and 3; and

IT IS FURTHER ORDERED that Plaintiffs shall produce:

All communications from any Landmark officer, director, employee or volunteer questioning, challenging or disagreeing with any Landmark policy, practice, method, technique or procedure that relates to Landmark's (i) use of inappropriately aggressive recruiting techniques, (ii) harassment of participants, (iii) use of bullying and humiliation techniques, (iv) intimidation of participants about attempting to leave the program, using the bathroom, eating or taking medication, (v) causing psychological problems, or (vi) engaging in any other behavior or employing any other business practice or conduct the allegation of which Plaintiffs allege to be false and disparaging in its Complaint in this matter.

The Hon. Mark Falk, U.S.M.J