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ENDORSED
FILED
San Francisco County Superior Court

NOV 6 - 1997

ALAN CARLSON, Clerk
BY: S. DOUGLAS
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE CITY AND COUNTY OF SAN FRANCISCO

12 LANDMARK EDUCATION CORPORATION,

13 Plaintiff,

14 v.

15 STEVEN PRESSMAN,

16 Defendant.

CASE NO. 989890

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR CONTINUANCE OF HEARING OF
DEMURRER AND MOTION TO STRIKE,
UNTIL AFTER HEARING OF MOTION TO
COMPEL, AND FOR RELIEF FROM STAY

Date: November 18, 1997
Time: 9:30 a.m.
Dept: 10, Room 414

Trial Date: Not Applicable

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19 I. FACTS

20 Plaintiff Landmark Education Corporation ("Landmark") is a California corporation
21 that conducts seminars for businesses and individuals on a variety of topics, such as managerial skills
22 and personal effectiveness. Landmark is conducting discovery in a case filed in the Circuit Court of
23 Cook County, Illinois, *Landmark Education Corporation v. Cult Awareness Network, et al.*, Action
24 No. 94-L-11478 ("the Illinois action"). Defendant Steven Pressman is a resident of San Francisco
25 and not a party to the Illinois action. As part of plaintiff's discovery efforts, plaintiff obtained a
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1 subpoena and commission from the court in the Illinois action to take the deposition of Mr.
2 Pressman in San Francisco.

3 On the basis of the subpoena and commission, plaintiff obtained a subpoena for Mr.
4 Pressman's deposition from the San Francisco Superior Court, and the subpoena was then served on
5 Mr. Pressman, who appeared for his deposition on the agreed date of June 5, 1997. Plaintiff,
6 however, was prevented from taking a reasonable and complete deposition of Mr. Pressman,
7 because his counsel, Judy Alexander, frequently interposed objections and instructed her client not to
8 answer, always asserting the California newsman's shield (California Constitution, Article I, section
9 2(b) and California Evidence Code section 1070).

10 At the time of the deposition and subsequently in meet and confer correspondence,
11 plaintiff's counsel maintained that the newsman's shield was inapplicable to the specific questions
12 asked of Mr. Pressman. Although Ms. Alexander eventually changed her position in regard to
13 certain questions, some 34 questions remained in dispute as to whether the newsman's shield was
14 applicable. Consequently, plaintiff filed the present complaint in the San Francisco Superior Court
15 for order compelling answers to deposition questions and a motion to compel in the Discovery
16 Department. The motion to compel was first set for hearing on November 10, 1997 and, at the
17 request of Ms. Alexander, re-scheduled for hearing on November 20, 1997.

18 Instead of responding to plaintiff's motion to compel, on November 3, 1997,
19 defendant filed a demurrer to the complaint and motion to strike pursuant to section 425.16 of the
20 Code of Civil Procedure, with both of defendant's motions set for hearing on November 18, 1997,
21 prior to the motion to compel.

22 Defendant's motions are substantively and procedurally improper, in that they
23 mischaracterize the issues involved in the motion to compel and are directed entirely to the merits of
24 those mischaracterized issues. Defendant's motions are founded on the strongly disputed premise
25 that the newsman's shield is applicable to the questions in dispute and that, consequently, plaintiff's
26 motion to compel has no possibility of success. The fundamental question, however, remains the

1 discovery issue of whether the newsman's shield is indeed applicable to these questions.

2 Accordingly, the discovery motion must be decided before the demurrer and motion
3 to strike can be considered. Otherwise, the Law and Motion Department must decide a discovery
4 matter involving some 34 deposition questions before the Discovery Commissioner can consider the
5 same questions. Duplicative, unnecessary and time-wasting briefings and hearings can only be
6 avoided by giving scheduling priority to the motion to compel. Ancillary to giving the necessary
7 priority to the motion to compel, leave from the stay of discovery proceedings resulting from the
8 motion to strike must be granted, pursuant to section 425.16(g) of the Code of Civil Procedure. As
9 a practical matter, resolution of the discovery motion will very likely obviate the need to hear the
10 demurrer and motion to strike.

11 II. LEGAL AUTHORITY

12 The relief requested by plaintiff consists of re-scheduling the hearings of matters that
13 deal with the same subject and require prior resolution of the discovery matter. The requested
14 scheduling priority is intended to obviate the need for unnecessary and duplicative hearings in the
15 Law and Motion and Discovery Departments. This court has "inherent equity, supervisory and
16 administrative powers as well as inherent power to control litigation" before it. *Cottle v. Superior*
17 *Court* (1992) 3 Cal.App.4th 1367, 1377. In addition, pursuant to sections 128(8) and 187 of the
18 Code of Civil Procedure, this court has statutory power to control the proceedings before it, in the
19 interest of justice and the spirit of the Code of Civil Procedure.

20 Plaintiff's motion to compel answers by Mr. Pressman to deposition questions is a
21 discovery matter and, as such, pursuant to San Francisco Law and Motion Rule 11(d), was required
22 to be heard in the Discovery Department, where the motion to compel was properly noticed and set
23 for hearing.

24 Mr. Pressman's asserted ground for demurrer, stated in his Notice, is improper
25 because the demurrer is not made on any ground contained in section 430.10 of the Code of Civil
26 Procedure. Moreover, the asserted ground for demurrer, stated in the Notice, that "the relief sought

1 therein is barred by the First Amendment to the United States Constitution, by Article I, section 2 of
2 the California Constitution, and by California law" is not based on matter appearing on the face of
3 the complaint or from any matter of which the court may take judicial notice, as required by section
4 430.30 of the Code of Civil Procedure.

5 There is nothing on the face of the complaint to support the demurrer, and plaintiff's
6 motion to compel deals exclusively with the foundational issue of whether the California newsman's
7 shield is applicable to the deposition questions at issue. If the shield is not applicable, then the
8 improperly stated basis for the demurrer collapses factually, as well as procedurally. The
9 determination of whether the shield is applicable is a discovery matter. Moreover, Mr. Pressman's
10 gratuitous argument that plaintiff's motion to compel will ultimately be unsuccessful is improper
11 because a demurrer must admit all facts alleged in the complaint, even where disputed by defendant.
12 *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.
13 The interests of justice and proper use of judicial resources will not be well served by briefing and
14 hearing this frivolous motion as a prerequisite to plaintiff's motion to compel, where the Discovery
15 Commissioner would be asked to consider, again, whether the California newsman's shield was,
16 indeed, applicable to the deposition questions at issue.

17 Similarly unfounded is Mr. Pressman's motion to strike, brought as an anti-SLAPP
18 motion pursuant to section 425.16 of the Code of Civil Procedure. The motion is falsely premised
19 on the assertion, in the Notice, that plaintiff has no possibility of winning its motion to compel and
20 that the "complaint arises from acts in furtherance of Defendant's free speech rights". As set forth in
21 sections 425.16(a) and (e), however, such suits must concern defendant's exercise of free speech on
22 a public issue and in a public forum. These requirements are mandatory. *Zhao v. Wang* (1996) 48
23 Cal.App.4th 1114, 1125-1127. Nowhere is there any authority for defendant's novel position that
24 objections to questions asked in a deposition somehow constitute the exercise of protected free
25 speech, nor is there any caselaw to suggest that a motion under section 425.16 has ever been used to
26 block the hearing of a motion to compel. Moreover, pursuant to section 425.16(b), motions under

1 this section are limited to complaints based on the exercise of free speech or right of petition; the
2 only speech at issue here consists of the objections and instruction not to answer of Mr. Pressman's
3 attorney.

4 Additionally, like the demurrer, this motion is based on the unsupported, and
5 disputed, premise that the California newsman's shield was applicable to the questions that are the
6 subject of the motion to compel.

7 III. ARGUMENT

8 Plaintiff's action in the San Francisco Superior Court is, in essence, a motion to
9 compel answers to deposition questions asked as part of the discovery conducted in an Illinois case.
10 Although Mr. Pressman's demurrer and motion to strike strive to malign the plaintiff and cast far-
11 fetched aspersions on plaintiff's reasons for taking Mr. Pressman's deposition, the court in the
12 Illinois action saw fit to issue a subpoena and commission for Mr. Pressman's deposition. It is
13 neither proper nor necessary, in the present forum, to comment on the merits of the Illinois action or
14 second-guess the Illinois court.

15 The only issue that is truly before the San Francisco court is the discovery matter
16 concerning Mr. Pressman's right to refuse to answer some 34 deposition questions. The hearing of
17 this discovery matter was properly set in the Discovery Department. Even if defendant's demurrer
18 and motion to strike were otherwise procedurally and substantively proper – and they are not – the
19 determination of this discovery matter is foundational to both the demurrer and the motion to strike.

20 Defendant's motions serve only to cause delay and mislead the court as to the nature
21 of the discovery motion. No legitimate purpose is served by these ill-founded motions.
22 Accordingly, no harm is done by scheduling the hearing of defendant's motion after the hearing of
23 the motion to compel, at which time the need to hear defendant's motions at all will most likely be
24 obviated.

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IV. CONCLUSION

For these reasons, plaintiff requests the court to grant plaintiff's motion to give scheduling priority to plaintiff's motion to compel and relief from the stay, pursuant to section 425.16(g) of the Code of Civil Procedure, such that defendant's motions are heard after the motion to compel.

Dated: November 6, 1997

ROPERS, MAJESKI, KOHN & BENTLEY

By Carol P. LaPlant
CAROL P. LaPLANT
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LANDMARK EDUCATION CORPORATION

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