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

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11 LANDMARK EDUCATION CORPORATION,

12 Plaintiff,

13 v.

14 STEVEN PRESSMAN,

15 Defendant.

CASE NO. 989890

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ORDER COMPELLING ANSWERS
TO DEPOSITION QUESTIONS, AND FOR
SANCTIONS

Date: November 10, 1997
Time: 10:30 a.m.
Discovery Dept: Room 450, D-2
Trial Date: Not Applicable

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19 **I.**
INTRODUCTION

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21 Plaintiff LANDMARK EDUCATION CORPORATION ("Landmark") brings this
22 motion to compel answers to deposition questions that were asked as part of Landmark's trial
23 preparation in an action pending in the Circuit Court of Cook County, Illinois, *Landmark Education*
24 *Corporation v. Cult Awareness Network, et al.*, No. 94-L-11478 ("the Illinois action"). The
25 complaint in the Illinois action alleges that defendants Cult Awareness Network and affiliated
26 organizations and individuals disseminated false and defamatory information about Landmark. The

1 complaint states causes of action for defamation, injurious falsehood, interference with prospective
2 economic advantage, false light in the public eye, commercial disparagement, conspiracy, deceptive
3 trade practice, and consumer fraud.

4 STEVEN PRESSMAN ("Mr. Pressman") is a journalist who wrote a book entitled
5 *Outrageous Betrayal: The Dark Journey of Werner Erhard from Est to Exile*, published in 1993.
6 Defendants in the Illinois action distributed Mr. Pressman's book, which contains some of the
7 defamatory material about Landmark that gave rise to the lawsuit. In addition, Landmark has reason
8 to believe that Mr. Pressman provided information about Landmark directly to the defendants in the
9 Illinois action. Mr. Pressman is not a defendant in the Illinois action.

10 Landmark determined that the deposition of Mr. Pressman was necessary discovery
11 and obtained a Commission and Subpoena ("Illinois Subpoena") for Mr. Pressman's deposition,
12 setting the deposition at the San Francisco offices of Ropers, Majeski, Kohn & Bentley.
13 (Declaration of Carol P. LaPlant, Exh. A.) Based on the Commission and Illinois Subpoena, the San
14 Francisco Superior Court issued a Subpoena ("California Subpoena") for Mr. Pressman's deposition,
15 and Landmark caused Mr. Pressman to be served. (Decl. of LaPlant, ¶ 3, and Exh. B thereto.)

16 Mr. Pressman appeared for deposition on the agreed date of June 5, 1997 and was
17 deposed by James A. Lassart, of Ropers, Majeski, Kohn & Bentley, for Landmark. Mr. Pressman
18 was represented at the deposition his counsel, Judy Alexander. In many instances, Mr. Pressman
19 refused to answer, as instructed by counsel, asserting the so-called newsman's shield found in
20 California Evidence Code section 1070 and Article I, section 2(b) of the California Constitution. As
21 will be demonstrated below and in the accompanying Separate Statement of Questions and
22 Responses in Dispute, the questions asked were proper discovery that was relevant to the Illinois
23 action, the California newsman's shield was inapplicable, and Mr. Pressman's refusal to answer was
24 made without substantial justification.

25 Plaintiff's counsel has attempted unsuccessfully to resolve this matter with Mr.
26 Pressman's counsel, who agreed to extend to October 2, 1997 the time in which plaintiff could move

1 to compel. (Decl. of LaPlant, ¶¶ 4 and 5, and Exhs. C and D thereto.) Landmark then filed a
2 complaint in the San Francisco Superior Court seeking an order compelling Mr. Pressman to answer
3 the questions set forth in the accompanying Separate Statement, and Landmark brings the present
4 motion on the jurisdictional basis provided by the aforesaid complaint and the California Subpoena.

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II. FACTS

Landmark is in the business of providing educational programs and services,
including a core program called The Forum, originally developed in part from the ideas and teaching
technology of Werner Erhard. Defendants in the Illinois action disseminated defamatory materials
concerning the corporate character, reputation, business, financial interests, and educational
endeavors of Landmark, including false and disparaging statements about The Forum. A copy of the
complaint in the Illinois action is attached to the Declaration of Carol P. LaPlant as Exh. E. In
essence, the Illinois defendants have wrongly accused Landmark of being a cult and of committing
fraud, deceit, criminal offenses, unfair and illegal business practices, and of an assortment of immoral
and illegal acts.

Mr. Pressman is a journalist and has authored a highly sensationalistic book that
discusses Landmark and The Forum, *Outrageous Betrayal: The Dark Journey of Werner Erhard
from Est to Exile*, published in 1993 by St. Martin's Press. (Pressman Deposition, 28:1-9.)¹ The
book contains false, disparaging statements about Landmark and The Forum, wrongfully accusing
them of being cults or "cult-like". Among the materials disseminated by the Illinois defendants is
Mr. Pressman's book. (Decl. of LaPlant, ¶ 7 and Exh. F thereto.)

Mr. Pressman conducted research for his book between 1991 and 1993 while under
contract with St. Martin's Press to write the book. (Pressman Deposition, 21:3-9; 21:21-22:2.)
Prior to writing the book, Mr. Pressman, who had been employed as a journalist ever since

¹ All excerpts from Mr. Pressman's deposition cited herein are included in the transcript
lodged with the court.

1 graduating from college in 1977, was last employed as an editor at the California Lawyer Magazine,
2 and he quit this job in order to "research and write" the book. (Pressman Deposition, 12:24-13:1;
3 20:7-21:5.) Mr. Pressman worked as a freelance journalist during and after writing the book and,
4 for the past two years, Mr. Pressman has been employed as an editor for the San Francisco Daily
5 Journal. (Pressman Deposition, 33:19-34:5.)

6 The only other publication written by Mr. Pressman that has any relationship to the
7 subject matter of the book is an article that appeared in 1993 in the California Lawyer Magazine, and
8 that article deals instead with the process of writing the book, rather than dealing substantively with
9 the material covered in the book. (Pressman Deposition, 30:10-31:4; 32:19-33:1.) During his
10 deposition, Mr. Pressman's counsel never asserted that this magazine article provided any basis for
11 application of the California newsman's shield law.

12 Although Mr. Pressman admittedly completed his research in 1993, he has apparently
13 maintained contact with individuals who are strident critics of Landmark, such as self-styled cult
14 expert Margaret Singer, whose publications are also distributed by the Illinois defendants. (Decl. of
15 LaPlant, Exh. F.) Ms. Singer and a colleague, Ms. Lulich, published statements about Landmark and
16 The Forum that were false and injurious, resulting in a lawsuit filed by Landmark in the San
17 Francisco Superior Court, *Landmark Education Corporation v. Margaret Singer, et al.*, Case No.
18 976037. On April 12, 1996, Mr. Pressman issued a declaration in support of a motion by defendants
19 Singer and Lulich to strike the complaint. (Decl. of LaPlant, Exh. G (Pressman Declaration).)

20 Some of the many questions that Mr. Pressman was instructed not to answer in his
21 deposition concerned statements made in paragraph 3 of his declaration, which contains the
22 following statement about his research for his book.

23 "3. On numerous occasions while I was writing the book, I tried
24 to interview employees of Landmark Education Corporation
25 ("Landmark"), including Harry and Joan Rosenberg, whom I
26 understand to be Werner Erhard's brother and sister. No one at
Landmark would agree to an interview or otherwise to provide me
with information related to the book."

1 Landmark determined that the deposition of Mr. Pressman was necessary because
2 Mr. Pressman was believed to have knowledge concerning the efforts of the defendants in the Illinois
3 action to malign Landmark and The Forum. Additionally, he was believed to have knowledge that
4 could lead to the identification of potential witnesses and the discovery of admissible evidence.
5 Testimony from Mr. Pressman was also expected to establish actual malice, within the meaning of
6 *New York Times v. Sullivan* (1964) 376 U.S. 254, 279-280.

7 At his deposition, Mr. Pressman's attorney, Judy Alexander, instructed him not to
8 answer numerous questions on the basis of the California newsman's shield law. All of Ms.
9 Alexander's instructions not to answer were based on the assertion that the answer would somehow
10 reveal a source of information for the book or research done in connection with writing the book.
11 (Pressman Deposition, 22:10-23.) Ms. Alexander asserted, incorrectly, that the newsman's shield,
12 contained in California Evidence Code section 1070 and Article I, section 2(b) of the California
13 Constitution, provided a privilege not to answer. Ms. Alexander was incorrect primarily because the
14 newsman's shield applies exclusively to the preparation of a "newspaper, magazine or other
15 periodical publication" (Evidence Code § 1070; California Constitution, Art. I, § 2(b)), and not to
16 the preparation of a book.

17 Ms. Alexander's instructions not to answer were also arbitrary and inconsistent. The
18 witness was instructed not to answer even though most of the questions were unlimited as to time,
19 spanning the witness's entire lifetime, both before and after the period of 1991 to 1993 when he was
20 researching his book. For example, the witness was usually (but not always) allowed to answer
21 whether he met or knew various people, but he was usually instructed not to answer questions about
22 whether he ever talked with any of these people. Ms. Alexander also instructed him not to answer
23 questions concerning statements made in his declaration in Landmark's lawsuit against Margaret
24 Singer. The witness was not even allowed to define the terms used in his book, such as "cult" and
25 "cult-like".

26 Following the deposition, Landmark's counsel, Carol LaPlant, met and conferred

1 with Ms. Alexander, primarily by letter, concerning the many questions that Mr. Pressman was
2 instructed not to answer. (Decl. of LaPlant, ¶ 5 and Exh. D thereto.) Although Ms. Alexander
3 relented in seven of the more egregious instances, such as the definition of "cult" and "cult-like",
4 Ms. Alexander maintained her objections without logic or authority in regard to the majority of the
5 unanswered questions. (Decl. of LaPlant, Exh. D-3.) By letter of September 25, 1997, Ms. LaPlant
6 advised Ms. Alexander of Landmark's intent to bring this motion and to seek sanctions. (Decl. of
7 LaPlant, Exh. D-4.)

8 In her meet and confer letter of September 29, 1997, Ms. Alexander then went
9 through the charade of "responding" to each question herself, on behalf of her client, with each
10 uniform response providing no substantive information whatsoever. (Decl. of LaPlant, Exh. D-5.)
11 Ms. Alexander's responses on behalf of her client were necessarily devoid of content, because those
12 responses exempted the period that Mr. Pressman was engaged in newsgathering *of any variety*,
13 with the result that his entire adult life since graduating from college twenty years ago was
14 exempted.

15 Late in the afternoon of October 1, 1997, on the eve of the October 2 deadline for
16 filing this motion, Ms. Alexander faxed a letter containing the entirely new argument that, even
17 though California law does not extend the shield to the production of books, federal caselaw in the
18 9th Circuit has allowed a qualified privilege, requiring a balancing of factors, to the writers of books.
19 (Decl. of LaPlant, Exh. D-7.) This new basis for instructing the witness not to answer, however,
20 was never raised during the deposition. There, Ms. Alexander stated explicitly on the record that her
21 instructions not to answer were based on the California Constitution and section 1070 of the
22 California Evidence Code.

III. APPLICABLE LAW

A. Jurisdiction in this Court Is Proper

26 The San Francisco Superior Court obtained jurisdiction over Mr. Pressman by issuing

1 the California Subpoena, which ordered him to appear and testify, enforceable by punishment for
2 contempt. Sections 2020(g) and (h) of the Code of Civil Procedure provide in pertinent part,

3 (g) Personal service of any deposition subpoena is effective to require
4 of any deponent who is a resident of California at the time of service
... the deponent's attendance at a court session to consider any issue
arising out of the deponent's refusal ... to answer any question...

5 (h) A deponent who disobeys a deposition subpoena in any manner
6 described in subdivision (g) may be punished for contempt under
7 Section 2023 without the necessity of a prior order of court directing
compliance by the witness...

8 It is well settled that a deponent has subjected himself to the jurisdiction of the court
9 by appearing under subpoena at a deposition and refusing to answer proper questions. *In re*
10 *Marriage of Lemen* (1980) 113 Cal.App.3d 769, 780; *Person v. Farmers Insurance Group* (1997)
11 52 Cal.App.4th 813, 818. Accordingly, on September 26, 1997, Landmark filed a Complaint for
12 Order Compelling Answers to Deposition Questions against Mr. Pressman in the San Francisco
13 Superior Court, and this motion is made pursuant to that Complaint and the California Subpoena.

14 **B. The Shield Law Is Inapplicable on Its Face**

15 Mr. Pressman was instructed not to answer all of the questions that are the subject of
16 this motion on the basis of the California newsman's shield law. The shield law, found in Evidence
17 Code section 1070 and in Article I, section 2(b) of the California Constitution, provides in pertinent
18 part,

19 "A publisher, editor or reporter, or other *person connected with or*
20 *employed upon a newspaper, magazine, or other periodical*
21 *publication ... cannot be adjudged in contempt ... for refusing to*
22 *disclose ... the source of any information procured while so connected*
23 *or employed for publication in a newspaper, magazine or other*
24 *periodical publication, or for refusing to disclose any unpublished*
25 *information obtained or prepared in gathering, receiving or processing*
26 *of information for communication to the public." (Evidence Code §*
1070(a); identical wording found in Art. I, § 2(b) of the California
Constitution. Emphasis added.)

25 By its own terms, the newsman's shield law is plainly inapplicable to the preparation
26 of a book and is unavailable to someone whose research and writing is for the purpose of writing a

1 book. The shield law applies to periodical publications and is available to journalists who work for
2 periodicals. Any broader interpretation is precluded by the explicit terminology of the statute.

3 "The rules governing statutory construction are well settled. We begin
4 with the fundamental premise that the objective of statutory
5 interpretation is to ascertain and effectuate legislative intent.
6 [Citations.] In determining intent, we look first to the language of the
7 statute, giving effect to its 'plain meaning.' [Citations.] ... Where the
8 words of the statute are clear, we may not add to or alter them to
9 accomplish a purpose that does not appear on the face of the statute
10 or from its legislative history. [Citation.] The language of a statute is
11 to be construed according to its usual, ordinary meaning. [Citation.]"
12 *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 523-4.

13 Mr. Pressman's publication that was the basis for Ms. Alexander's instructions not to
14 answer is a book, and Mr. Pressman wrote the book while under contract with St. Martin's Press.
15 Whether Mr. Pressman dabbled in freelance journalism involving other subjects while writing the
16 book, is immaterial. The shield law applies to "a publisher, editor or reporter, or other person
17 connected with or employed upon a newspaper, magazine or other periodical publication".
18 Although Mr. Pressman has worked in varying capacities in the field of journalism during his career,
19 his work on the book was a different endeavor, for purposes of the shield law, and he was not
20 employed in that endeavor by any periodical publication.

21 All of Ms. Alexander's instructions not to answer were based on the assertion that
22 the answer would somehow disclose a source or research for the book. Although Mr. Pressman
23 worked as a journalist before and after writing this book, he quit his job as an editor at the California
24 Lawyer Magazine in order to write the book between 1991 and 1993. Mr. Pressman testified,

25 A. When I left the magazine, I left in order to write my book,
26 write and research my book. Rather, research and write my book.

Q. What year was it you began this combined project of
researching and writing the book?

A. In 1991.

Q. And when was it you completed the book, to include up to its
last revisions just before publication?

1 A. 1993.

2 (Pressman Deposition, 20:24-21:9.)

3 The only magazine publication Mr. Pressman wrote that dealt in any way with
4 Landmark was his 1993 article in the California Lawyer Magazine about the subject of writing the
5 book itself. He described it as, "a piece about my experience in writing the book, in terms of being
6 legally reviewed by lawyers prior to publication." (Pressman Deposition, 30:26-31:4.) With the
7 possible exception of a single question concerning the timing of research done for a magazine article
8 on Scientology, all of the instructions not to answer were based on the unfounded assertion that Mr.
9 Pressman's research for his book was subject to the newsman's shield.

10 C. The Questions Were within the Proper Scope of Discovery

11 Questions directed at matters that are admissible in evidence, or appear reasonably
12 calculated to lead to the discovery of admissible evidence, or directed at ascertaining the identity of
13 persons with knowledge of relevant facts are all within the proper scope of discovery, as set forth in
14 section 2017(a) of the Code of Civil Procedure. As set forth in the Separate Statement of Questions
15 and Responses in Dispute, the questions that are the subject of this motion all pertain to facts that
16 relate to the Illinois action and identification of potential witnesses.

17 D. The Deponent Bears the Burden of Justifying His Refusals to Answer

18 While the California newsman's shield law contains no language of privilege, the
19 shield has been characterized as creating a privilege on which an instruction not to answer may be
20 based. The California Supreme Court has held that in civil litigation a non-party reporter to whom
21 the shield is applicable has an absolute immunity from contempt that is tantamount to a privilege.
22 *New York Times Co. v. Superior Court* (1990) 51 Cal.3d 453, 461.

23 To the extent that the shield is analogous to a statutory privilege, the burden is on the
24 deponent to justify the claim of privilege. "[A] party claiming privilege has the burden to show that
25 the communication sought to be suppressed falls within the terms of the statute." *Alpha Beta v.*
26 *Superior Court* (1984) 157 Cal.App.3d 818, 825.

1 Realizing perhaps belatedly that the California shield law is inapplicable to the
2 preparation of Mr. Pressman's book, on the eve of the deadline for filing this motion, Ms. Alexander
3 suddenly attempted to justify her instructions not to answer on an entirely new basis, relying for the
4 first time on federal caselaw. An assertion of privilege, however, is waived unless made at the time
5 of the deposition. (Code of Civil Procedure section 2025(m)(1).) No assertion of privilege on the
6 basis of federal caselaw was made during the deposition, where, instead, Ms. Alexander stated
7 specifically that her instructions not to answer were based on California law.

8 The newsman's shield under federal law is substantially different than the California
9 newsman's shield, because the federal shield is qualified, is not statutory, and requires a balancing of
10 discovery factors, while the California shield is absolute in civil actions involving non-party reporters
11 and is completely statutory. The federal circuits are divided: the 6th, 7th and 11th do not recognize a
12 federal newsman's shield, and only the 9th and 2nd Circuit have ever applied the federal shield to the
13 writers of books. *Schoen v. Schoen* (1993) 5 F.3d 1289, 1292-1293. Moreover, no federal case has
14 ever applied the shield to "a person writing a book about a recent historical figure". *Schoen* at
15 footnote 9. Werner Erhard, the subject of Mr. Pressman's book, is a recent historical figure, in that
16 he and his est seminars gained prominence and became a force in popular culture over twenty years
17 ago.

18 Accordingly, Ms. Alexander's new and untimely reliance on federal caselaw is
19 precluded by section 2025(m)(1) of the Code of Civil Procedure, because the federal shield is
20 entirely different from the California shield, both procedurally and substantively, and the federal
21 shield was never raised during the deposition as a basis for Ms. Alexander's instructions not to
22 answer. Ms. Alexander's belated reliance on federal caselaw is therefore misplaced.

23 IV.
24 **THE SHIELD IS INAPPLICABLE TO THESE QUESTIONS**

25 A. **The Book and Research for the Book Are Outside the Shield Law**

26 The California shield law pertains exclusively to the preparation of a "newspaper,

1 magazine or other periodical publication". Mr. Pressman's counsel based all of her instructions not
2 to answer on the assertion that the shield protected the sources and research associated with the
3 writing of Mr. Pressman's book. The shield law is intrinsically inapplicable to the production of Mr.
4 Pressman's book.

5 **B. The Questions Are Beyond the Scope of the Shield Law**

6 Even if the shield were applicable to Mr. Pressman's research and writing of his
7 book, the shield law would nonetheless be inapplicable to the questions that are the subject of this
8 motion. As set forth in the accompanying Separate Statement, the majority of the questions are
9 foundational to determine whether the witness has any relevant knowledge about specific individuals
10 and any contact with them. Moreover, the most of the questions are unlimited as to time, asking
11 merely whether Mr. Pressman has *ever* spoken to these individuals.

12 The instruction not to answer was applied in an arbitrary and capricious manner.
13 While Mr. Pressman was usually allowed to answer whether he ever met certain people, he was
14 usually not allowed to answer whether he ever spoke with that person. The distinction between
15 meeting someone and talking to that person defies logic, but Judy Alexander's meet and confer letter
16 of September 22, 1997 contains the following novel explanation,

17 "meeting someone is not in and of itself a newsgathering activity,
18 while talking to someone is a newsgathering activity. If Mr. Pressman
19 talked with someone *to obtain information for his book*, then
revealing that he talked to that person is revealing the identity of a
source." (Decl. of LaPlant, Exh. D-3. Emphasis added.)

20 Ms. Alexander's explanation of the distinction between meeting someone and talking
21 to him or her is misleading because the witness was never asked whether he talked with any
22 individual *for the purpose of* obtaining information for his book. Nor was the witness even asked
23 whether he talked with any individual *while* he was working on his book. Instead, he was merely
24 asked whether he *ever* talked to that individual, with both the purpose and the timeframe
25 unspecified. There is no authority for Ms. Alexander's apparent position that a journalist gains
26

1 lifelong immunity to discovery involving any subject matter he has ever mentioned in a publication.
2 For the same reason that Ms. Alexander saw fit to allow the witness to answer questions about the
3 persons who he ever met or knew, the witness should be allowed to answer foundational questions
4 about who he ever spoke with, places he ever visited, and seminars he ever attended.

5 The broad scope of the questions at issue here is in sharp contrast to Mr. Pressman's
6 testimony that he researched and wrote his book between 1991 and 1993, and that his book is his
7 only publication that deals substantively with Landmark or The Forum. Even if the shield law were
8 applicable to the writing of books, Mr. Pressman's activities, acquaintances and conversations before
9 and after the writing of his book would not be subject to the shield, and questions that do not ask the
10 witness to identify sources or disclose research are beyond the proper scope of the shield.

11 **C The Shield Is Waived in regard to Matters in the 1996 Declaration**

12 Some of the questions giving rise to this motion concern statements made in a
13 declaration submitted in 1996 by Mr. Pressman in support of defendants in the San Francisco
14 Superior Court case, *Landmark Education Foundation v. Margaret Singer, et al.* Even where the
15 newsman's shield is otherwise applicable, when a newsman brings a lawsuit or otherwise interjects
16 himself into litigation, the veracity of statements that the newsman has put before the court is subject
17 to discovery, and the newsman cannot hide behind the shield. *Dalitz v. Penthouse International*
18 (1985) 168 Cal.App.3d 468, 480-481. "The shield of privilege cannot be used as a sword." *Dalitz*
19 at 477.

20 Moreover, Mr. Pressman admittedly ceased his research and writing about Landmark
21 in 1993, his 1996 declaration was issued well beyond the period of his production of the book, and
22 the content of the declaration represents a waiver of the shield in regard to the matters stated therein.
23 In *Dalitz*, the court found that cross-complainant publishers "put in issue the veracity of their
24 reporters' sources when they filed their cross-complaint" consequently disclosure of sources was
25 appropriate because, "[w]ithout the disclosure of these sources, we are left to believe merely on
26 faith" in the veracity of the publisher's allegations. *Id.*, at 481. Here, Mr. Pressman seeks to assist

1 defendants in a lawsuit brought by Landmark by using his declaration as a "sword" while asserting
2 that the veracity of statements made in his declaration is protected by the shield. The law does not
3 permit such a contradiction, and Mr. Pressman has waived the shield in regard to the matters in his
4 declaration.

5 **V.**
6 **SANCTIONS SHOULD BE AWARDED TO LANDMARK**

7 Landmark was precluded from taking a meaningful deposition of Steven Pressman
8 because Ms. Alexander refused to allow him to answer numerous questions. The instructions not to
9 answer were made without legal foundation, in that they were premised on the assumption that Mr.
10 Pressman's work on his book was subject to the newsman's shield while, to the contrary, the shield
11 is explicitly limited to production of a "newspaper, magazine or other periodical publication".
12 Moreover, even if the shield were applicable, none of the questions fell within the scope of the shield
13 because none asked for the identification of sources or disclosure of relevant research, and the
14 instructions not to answer were arbitrarily made, without logic or authority.

15 The result was that Ms. Alexander's bad faith tactics disrupted the deposition and
16 prevented Landmark from effectively deposing this witness. Although counsel exchanged several
17 meet and confer letters, Ms. Alexander only agreed to change her position and allow Mr. Pressman
18 to answer seven of these questions, maintaining her objection to all the questions listed in the
19 accompanying Separate Statement and asserting that Mr. Pressman's entire 20-year professional life
20 is protected by the shield. In sum, Ms. Alexander's efforts to meet and confer appear to be another
21 bad faith tactic aimed at delay and stonewalling discoverable information.

22 Section 2023(a)(5) of the Code of Civil Procedure provides sanctions for, "Making,
23 without substantial justification, an unmeritorious objection to discovery" and section 2023(b)(1)
24 provides that, "one engaging in the misuse of the discovery process, or any attorney advising that
25 conduct, or both pay the reasonable expenses, including attorneys' fees, incurred by anyone as a
26 result of that conduct." Landmark has spent, and will spend, at least \$3654 in expenses and

1 attorneys' fees in connection with the meet and confer process, the filing of the complaint to obtain
2 the requested order, the preparation and filing of the instant motion, the preparation and filing of the
3 reply, and the argument of the motion. Accordingly, Landmark respectfully requests that \$3654 be
4 awarded in sanctions.

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6 **VI**
CONCLUSION

7 Landmark is endeavoring to conduct discovery that is necessary for the prosecution
8 of the Illinois action, and the deposition of Steven Pressman was taken as part of that discovery.
9 Landmark's efforts to depose Mr. Pressman were obstructed, however, by the constant, ill-founded
10 objections and instructions not to answer that were made by Mr. Pressman's attorney. All of the
11 instructions not to answer were made on the basis of the newsman's shield. These objections were
12 improper, because the shield is inapplicable and, even if applicable, the questions asked were outside
13 the scope of the shield or subject to waiver by virtue of Mr. Pressman's 1996 declaration.
14 Accordingly, Landmark respectfully requests this Court to compel answers by Mr. Pressman to the
15 questions listed in the accompanying Separate Statement, and to award sanctions to compensate
16 Landmark for expenses associated with bringing this motion.

17 Dated: October 2, 1997

18 ROPERS, MAJESKI, KOHN & BENTLEY

19
20 By Carol P. LaPlant
21 CAROL P. LaPLANT
22 Attorney for Plaintiff
23 LANDMARK EDUCATION CORPORATION
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