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EMPOWERS  
San Francisco County Superior Court

APR 15 1996

ALAN CARLSON, Clerk  
BY: B. DOUGLAS  
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO

13 LANDMARK EDUCATION )  
14 CORPORATION, a corporation, )  
15 Plaintiff, )  
16 vs. )  
17 MARGARET THALER SINGER, an )  
18 individual, JANJA LALICH, an individual, )  
19 and DOES 1 through 100, inclusive, )  
20 Defendants. )

Case No. 976037

NOTICE OF MOTION, MOTION, AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANTS' SPECIAL MOTION TO  
STRIKE COMPLAINT  
[C.C.P. § 425.16]

Date: May 1, 1996  
Time: 9:30 a.m.  
Place: Dept. 10, Rm. 414

(Trial Date: None)

Attached Documents: Declarations of  
Margaret Singer, Janja Lalich, Steven  
Pressman and Neil S. Jahss; Appendix of  
Non-California Authorities



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1 I. INTRODUCTION

2 Professor Margaret T. Singer has been a tireless and vocal advocate against groups  
3 that exploit individuals through the use of undue influence and persuasion, such as cults and  
4 others. As the leading expert in her field for more than two decades, she has spoken out as  
5 an expert witness in many federal and state courts, as a commentator and consultant on  
6 numerous radio and television shows, as a lecturer at countless public events, and as an  
7 expert before the U.S. Congress. In 1995, Professor Singer wrote a book with Janja Lalich,  
8 *Cults in Our Midst: The Hidden Menace in Our Everyday Lives* (the "Book"), setting forth her  
9 views on this issue of great public importance.

10 This libel action is a blatant attempt by plaintiff Landmark Education Corp.  
11 ("Landmark") to retaliate against Professor Singer for expressing her views in the courtroom  
12 and in the public arena and to stifle any further expression of those views. Although the  
13 lengthy Book refers to Landmark six times in a nondefamatory, true, and privileged  
14 manner, Landmark has ham-handedly sued the authors alleging sixty-eight instances of  
15 defamatory statements. Sixty-two of those statements are clearly not of or concerning  
16 Landmark, but are included in the Complaint on the remarkable theory that any negative  
17 statement in a book about cults can be attributed to Landmark merely because it is  
18 mentioned in the book.

19 This Court should strike the Complaint and award attorney's fees pursuant to Cal.  
20 Civ. Proc. Code ("CCP") § 425.16, the anti-SLAPP statute (Strategic Lawsuit Against Public  
21 Participation). Professor Singer's prior testimony and her public statements, including the  
22 publication of the Book, constitute acts "in furtherance of [defendants'] right of . . . free  
23 speech . . . in connection with a public issue." And Landmark cannot establish "a  
24 probability" of success on the merits of its claim because it cannot prove that: (1) any of  
25 the sixty-eight statements were made with "actual malice"; (2) the challenged statements  
26 other than the six that refer to Landmark are "of and concerning" plaintiff; or (3) any of the  
27 six statements are defamatory, false, and not privileged. Each of these failures provides an  
28 independent ground for striking the Complaint. Accordingly, this Court should grant this



1 motion to avoid the harassment of authors who have properly exercised their first  
2 amendment rights.

## 3 **II. FACTUAL BACKGROUND**

### 4 **A. THE BOOK**

5 The Book is a textbook collection of Professor Singer's previously stated views about  
6 undue influence and persuasion.<sup>1</sup> It explores the complexities of the cult phenomenon --  
7 why people join cults, how cults use thought-reform processes to induce attitude and  
8 behavior changes in their members, how cults employ threats, lawsuits and other acts of  
9 harassment to silence critics, and why members find it difficult to leave cults. The Book  
10 debunks many common myths about cults: that all cults are religious, require members to  
11 live on isolated compounds, and are far removed from mainstream society.

12 The Book's principal objective is to provide readers with the analytical tools to  
13 evaluate critically whether the group or program they are considering employs thought-  
14 reform techniques associated with cults. A fundamental premise of the Book is that not all  
15 organized groups or training programs are cults or use such techniques. The Foreword  
16 plainly states:

17 One person's cult, of course, is another's religion -- or, for that matter,  
18 political or commercial organization. One must make careful distinctions, as  
Singer cautions us, and judge each group by its own behavior.

19 (Book p. xii.)

20 In one of its twelve chapters, the authors discuss concerns raised when certain  
21 training programs enter the workplace. The introduction to Chapter 8 notes that "[t]here  
22 are many advancement programs, workshops, seminars, and training sessions utilized by  
23 companies and corporations in the United States and elsewhere that are legitimate in their  
24 intentions and often effective in their outcomes." (Book p. 182.) This chapter was  
25

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26 <sup>1</sup> Declaration of M.T. Singer ("MTS Dec.") ¶ 45. The declarations cited in this brief are  
27 being filed separately herewith. References to the Book are to the book filed with the  
28 Complaint. For the Court's convenience, defendants are attaching at the end of this brief  
excerpts from the Book that contain every reference to Landmark or The Forum. All  
exhibit references are to the Singer Declaration.

1 expressly written for "three primary reasons":

2 The first is to reiterate the ever-present need to evaluate the premises  
3 beneath the various offerings that are made to us daily .... The second ... is to  
4 bring attention to the fact that certain training programs use the same types  
5 of influence techniques that are identified with cults.... The third ... is that the  
6 philosophy of life espoused in many of these programs falls within the realm  
7 of religious issues and personal belief systems, an important matter for many  
8 people.

9 (Book p. 183.)

10 The discussion about Landmark and The Forum occupies about three pages of the  
11 372-page, multi-chapter Book. The Book, as alleged by the Complaint, refers to Landmark  
12 and/or The Forum six times -- once in stating that Dr. Singer had attended The Forum,  
13 twice in providing the historical context that The Forum is an offshoot of a training  
14 program named "est," and three times in summarizing articles from publications such as the  
15 *London Times* and the *Wall Street Journal* about some participants' experiences at The  
16 Forum. (Book pp. 42, 191, 202-204.)

#### 17 B. LANDMARK AND THE FORUM

18 Landmark claims to be an "internationally recognized leader" in the business of  
19 "transformation." (Exh. C, at 9.) It "promise[s] to design and provide education that . . .  
20 alters the very nature of what is possible in being human." (Exh. C, at 10.) Its programs,  
21 such as The Forum, purportedly produce "extraordinary and even miraculous results" and  
22 "unlimited possibilities." (Exh. C, at 9.) Landmark also promises to "generate ground-  
23 breaking thinking" and to create "futures that were not otherwise going to occur." (Exh. C,  
24 at 10.)

25 The Forum is based on the well-known New Age program called "est" (Erhard  
26 Seminars Training), created by Werner Erhard. Ney v. Landmark Educ. Corp., 16 F.3d 410  
27 (4th Cir. 1994) (unpublished). A 1993 internal memorandum from Landmark's Chief  
28 Operating Officer and brother of Werner Erhard confirms that The Forum is based on  
Werner Erhard's original "technology" (i.e., est):

The nature and material of Landmark Education's initiatives, projects, and  
programs is based on a technology originally developed by Werner Erhard  
with whom Landmark Education has a licensing arrangement for the rights to

1 this technology. It is on this technology that Landmark's work stands today  
2 and from which it continues to evolve.

3 (Exh. C, at 1 (emphasis added).)<sup>2</sup>

4 **C. THE PUBLIC CONTROVERSY SURROUNDING ERHARD, EST, AND THE  
5 FORUM AND THEIR AGGRESSIVE RESPONSE THERETO**

6 Erhard, est, The Forum, and Landmark have been the subject of public controversy  
7 in hundreds of newspaper and magazine articles, academic journals, television and radio  
8 programs. (MTS Dec. ¶ 14.) The public has debated for decades whether programs based  
9 on Erhard's "technology" use thought-reform techniques associated with cults. (MTS Dec.  
10 ¶¶ 14-19.) A 1991 *Newsweek* article -- which refers to The Forum as a "[y]uppified 1980s  
11 version" of est -- is typical:

12 Over the last 10 years, Erhard has found himself under an increasing barrage  
13 of allegations that he was running not so much an enlightenment program as  
14 an authoritarian cult. Former disciples have come forward with stories of  
15 violence and intimidation by Erhard and his staff.

16 (Exh. J.) The controversy continues today. See, e.g., "Inside The Forum," *The St. Louis  
17 Riverfront Times* (Apr. 2, 1996) (stating as lead-in to article that "[b]illed as a 'rigorous  
18 inquiry into the nature of human being,' the Forum is expensive, secretive, and highly  
19 controlling.") (Exh. J.)

20 Landmark has responded to this debate in an affirmative, combative, and public  
21 manner. In an attempt to shape public perception, Landmark has adopted a policy "to  
22 powerfully represent its work to the public" and "to take appropriate action to both  
23 generate consistent representations and to correct, aggressively where needed,  
24 misrepresentations." (Exh. C.) This aggression has taken the form of: (a) Erhard and

---

25 <sup>2</sup>The licensing agreement referenced in this internal memorandum further establishes  
26 the close, continuing relationship between Werner Erhard and Landmark. That agreement  
27 licenses Landmark to use Erhard's intellectual property in presenting The Forum. (Exh.  
28 D.) Control of the license passes to Martin Leaf in the event of Werner Erhard's death.  
Significantly, Mr. Leaf is a partner in the New York law firm that represents Landmark in  
this action. He is also the same lawyer who three months ago deposed Professor Singer on  
behalf of Landmark in an Illinois case, where she was questioned almost exclusively about  
the Book (even though she was subpoenaed ostensibly to testify as a percipient witness in  
that case). (MTS Dec. ¶ 25.)

1 Landmark employees appearing on television; (b) giving statements to newspapers; (c)  
2 attempting to screen material upon threat of suit; (d) menacingly seeking retractions; (e)  
3 threatening suits; and (f) filing suits whenever anyone describes The Forum as a cult, or in  
4 any other manner that conflicts with the way Landmark wishes to present itself to the  
5 public. (MTS Dec. ¶¶ 44; Exh. G; Pressman Dec. ¶¶ 4-7.)

6 Landmark's lawsuit here is merely the latest salvo in its protracted battle to both  
7 silence and punish critics. Lawsuits have been filed or threatened against other  
8 publications, authors, and entities. (Pressman Dec. ¶¶ 4-7 & Exh. G.) Werner Erhard even  
9 has tried to stifle Professor Singer by demanding that she agree not to criticize him or the  
10 programs he created. (MTS Dec. ¶ 43.)

11 **D. LANDMARK'S ATTEMPT TO STIFLE AND PUNISH PROFESSOR**  
12 **SINGER FOR HER PUBLIC STATEMENTS AND JUDICIAL TESTIMONY**

13 Landmark's desire to silence and punish Professor Singer for her public and judicial  
14 statements is evident. As a leading expert on group behavior and influence techniques,  
15 Professor Singer has testified as an expert in ten different cases on behalf of participants of  
16 est and The Forum. (MTS Dec. ¶ 33.) She also testified for Werner Erhard's ex-wife in  
17 the Erhards' acrimonious and highly publicized divorce case. (MTS Dec. ¶¶ 41-42.)

18 **E. LANDMARK'S MERITLESS LAWSUIT**

19 Two days before the apparent expiration of the statute of limitations, Landmark  
20 brought this libel action against the authors only, conspicuously opting not to name as a  
21 defendant the publisher (an obvious target were this a legitimate lawsuit that sought redress  
22 rather than harassment). Landmark alleges that the Book conveys the false impression that  
23 it is a cult, and that The Forum uses cultic thought-reform techniques. (Compl. ¶¶ 19-20.)

24 The Book specifically defines The Forum as a "large group awareness training  
25 group[]." (Book pp. 42-43 & 202-05.) Despite the fact that the Book refers to Landmark or  
26 The Forum only several times and discusses them briefly in a lengthy work, the Complaint  
27 lists 68 statements that are purportedly libelous as to Landmark. Landmark's action is  
28 based on the insupportable theory that the mere mention of The Forum in the Book allows

1 for the attribution of all statements about cults to it, notwithstanding the recurrent language  
2 that not every group mentioned in the Book is a cult.

3 **III. LANDMARK'S ACTION ARISES FROM DEFENDANTS' EXERCISE OF THEIR**  
4 **CONSTITUTIONAL RIGHT OF FREE SPEECH ABOUT A PUBLIC ISSUE.**

5 **A. THE ANTI-SLAPP STATUTE**

6 California recently enacted CCP § 425.16 in response to the "disturbing increase" in  
7 nonmeritorious actions that punish and chill the exercise of first amendment rights, known  
8 as SLAPP suits. Lafayette Morehouse, Inc. v. Chronicle Publ. Co., 37 Cal. App. 4th 855,  
9 858 (1995) (granting *San Francisco Chronicle's* § 425.16 motion to strike libel action arising  
10 from its news-reporting activities). Under section 425.16, a court must dismiss a lawsuit  
11 arising from an act "in furtherance of [a defendant's] right of . . . free speech . . . in  
12 connection with a public issue," unless the plaintiff can establish a "probability that [it] will  
13 prevail on the claim." Section 425.16(e) illustrates the type of act that triggers application  
14 of California's anti-SLAPP statute, which:

15 includes any written or oral statement or writing made before a legislative,  
16 executive, or judicial proceeding . . . , any written or oral statement or writing  
17 made in connection with an issue under consideration or review by a  
18 legislative, executive, or judicial body . . . , or any written or oral statement or  
19 writing made in a place open to the public or a public forum in connection  
20 with an issue of public interest.

21 Cal. Civ. Proc. Code § 425.16.

22 California courts have interpreted the anti-SLAPP statute broadly to protect first  
23 amendment speakers from the irreparable harm that results from allowing a lawsuit to  
24 proceed. See id.; see also Matson v. Dvorak, 40 Cal. App. 4th 539 (1995) (campaign mailer  
25 held to be within the purview of section 425.16 because it addressed a public issue);  
26 Lafayette Morehouse, 37 Cal. App. at 862 (newspaper article about matters of legislative  
27 and judicial interest triggered § 425.16). SLAPP suits are invidious because they:

28 are brought, not to vindicate a legal right but rather to interfere with the  
defendant's ability to pursue his or her interests. Characteristically, the  
SLAPP suit lacks merit; it will achieve its objective if it depletes defendant's  
resources or energy. The aim is not to win the lawsuit but to detract the  
defendant from his or her objective, which is adverse to the plaintiff.

Church of Scientology v. Wollersheim, 42 Cal. App. 4th 628, 629-30 (1996). For the three

1 separate reasons discussed in Section B, C, and D below, § 425.16 is applicable to this  
2 vexatious lawsuit.

3 **B. THE ANTI-SLAPP STATUTE APPLIES BECAUSE PUBLICATION OF THE**  
4 **BOOK CONSTITUTES SPEECH ABOUT A SIGNIFICANT PUBLIC ISSUE.**

5 As the Court of Appeal recently held, "the categories enumerated [in § 425.16(e)]  
6 are not all inclusive." Averill v. Superior Court, 42 Cal. App. 4th 1170, 1175, modified,  
7 1996 WL 111786 (1996). The critical consideration is whether the challenged speech  
8 addresses a "public issue." Id. (holding that private conversations with employer triggered  
9 section 425.16 because speech concerned public issue). The Book -- which explores how  
10 thought-reform processes can be used to persuade, control, and damage people -- addresses  
11 an important public issue. Coercive influence techniques pose a "substantial threat to  
12 public safety." Molko v. Holy Spirit Ass'n, 46 Cal. 3d 1092, 1118 (1988), cert. denied, 490  
13 U.S. 1084 (1989). As the California Supreme Court has held, "[t]he state clearly has a  
14 compelling interest in preventing its citizens from being deceived into submitting  
15 unknowingly to such a potentially dangerous process." Id.; see also Quantum Elec. Corp. v.  
16 Consumers Union, 881 F. Supp. 753, 764 (D.R.I. 1995) (reporting information that "relates  
17 to health and safety concerns" involves "matters of particular interest to the public").

18 The statements about Landmark's activities are plainly matters of public concern.  
19 With millions of dollars in annual revenues, tens of thousands of program participants each  
20 year, and a charter that promises to "alter[] the very nature of what is possible in being  
21 human" (Exh. A, at 10), Landmark not surprisingly is the subject of great public interest  
22 and debate. See Church of Scientology, 42 Cal. App. 4th at 633 (plaintiff is of public  
23 interest because of its size, ability to influence, media coverage, membership, and assets).  
24 As shown, prior to the Book's publication, numerous newspaper and magazine articles,  
25 academic journals, television and radio programs addressed The Forum and est, focusing in  
26 part on whether these programs use thought-reform processes associated with cults. Thus,  
27 the allegedly libelous statements in the Book "arose in the context of a public issue,"  
28 triggering application of § 425.16. See Averill, 42 Cal. App. 4th at 1175.

1  
2 C. THE COMPLAINT IS SUBJECT TO THE SPECIAL MOTION TO STRIKE  
3 UNDER § 425.16(e) FOR STATEMENTS MADE IN CONNECTION WITH  
4 AN ISSUE CONSIDERED BY A JUDICIAL BODY.

5 The Complaint is also subject to the special motion to strike because the Book  
6 reports about conduct and programs that have been the subject of judicial proceedings. See  
7 Lafayette Morehouse, 37 Cal. App. 4th at 863. In fact, Professor Singer herself has testified  
8 against The Forum, est, and Werner Erhard based on their conduct. In addition, the  
9 authors specifically address the legal controversy surrounding The Forum, including the  
10 discussion about the DeKalb Farmers Market lawsuit. (Book pp. 204-05.) As such, the  
11 statements in the Book fall within § 425.16(e) as having been made in connection with an  
12 issue considered by a judicial body. Id.

13 That Professor Singer has testified critically about matters now before this Court  
14 strongly implicates the core constitutional concerns that are at the heart of § 425.16. See  
15 Averill, 42 Cal. App. 4th at 1176 (noting that the suit "appears to have been filed solely to  
16 punish [defendant] for her criticism of" plaintiff). Not only has she testified repeatedly as  
17 an expert against est and The Forum, she also testified approximately one month before  
18 this action was filed about the subject matters discussed in the Book in a deposition taken  
19 by Landmark in yet another one of Landmark's lawsuits. (MTS Dec. ¶ 25.) In addition,  
20 Professor Singer testified in favor of Werner Erhard's ex-wife in a bitter divorce case that  
21 ended in Erhard leaving the country and going into exile. (MTS Dec. ¶¶ 41-42.)

22 Landmark's defamation claim is a thinly disguised attempt to punish Professor Singer  
23 for having testified against programs that use Erhard's "technology." Because her prior  
24 judicial statements were absolutely protected under the "litigation privilege" (CCP § 47(b)),  
25 the Book provided Landmark with its long-awaited opportunity to retaliate and to chill  
26 future criticism. As shown, Landmark has a history of using litigation to harass its critics.  
27 Where, as here, an organization "uses the litigation process to bludgeon [its] opponent[s]  
28 into submission, those actions must be closely scrutinized for constitutional implications"  
under § 425.16 (MTS Dec. ¶ 44; Pressman Dec. ¶¶ 4-7). Church of Scientology, 42 Cal.

1 App. 4th at 632; see Averill, 42 Cal. App. 4th at 1175 (applying § 425.16 to statements  
2 made by "outspoken critic" about public issue).

3 **D. THE COMPLAINT IS SUBJECT TO THE SPECIAL MOTION TO STRIKE**  
4 **UNDER 425.16(e) FOR STATEMENTS MADE IN A PLACE OPEN TO THE**  
5 **PUBLIC OR A PUBLIC FORUM IN CONNECTION WITH AN ISSUE OF**  
6 **PUBLIC INTEREST.**

7 Defendants also may invoke the provisions of the anti-SLAPP statute because the  
8 Book -- which addresses issues of public interest -- is distributed in bookstores and public  
9 libraries, "place[s] open to the public" under § 425.16(e). "In an era when the print and  
10 broadcast media furnish the most popular forums for discussion of matters of public interest  
11 and provide the most effective vehicle for most public critics to reach a large audience, it  
12 would be difficult to maintain that the California Legislature intended to exclude such  
13 discussion from the protection of the anti-SLAPP statute." James E. Grossberg and Dee  
14 Lord, California's Anti-SLAPP Statute, 13 Comm. Law. 3, 5 (1995).<sup>3</sup>

15 **IV. PLAINTIFF CANNOT ESTABLISH THAT IT PROBABLY WILL PREVAIL ON**  
16 **THE MERITS OF ITS LIBEL CLAIM.**

17 Under section 425.16, this Court must strike the Complaint unless Landmark can  
18 establish that it probably will prevail on its claim. This demanding burden requires  
19 Landmark to establish not only the merits of its claim, but also the improbability of "the

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20 <sup>3</sup>In Lafayette Morehouse, the court expressly left open the question whether a  
21 newspaper article constitutes "statements made in a place open to the public." 37 Cal. App.  
22 4th at 863 n.5. In dictum, however, the court expressed doubt in a cursory footnote based  
23 on the premise that a newspaper was "a controlled forum, not an uninhibited" one. Id.  
24 This dictum is flawed. First, § 425.16(e) nowhere speaks of an "uninhibited" public forum.  
25 Second, the court did not consider a line of authority that recognizes "limited" public  
26 forums, where First Amendment protections are available even though expressive conduct is  
27 not entirely uninhibited. See, e.g., Kreimer v. Bureau of Police for Town of Morristown,  
28 958 F.2d 1242, 1261-62 (3d Cir. 1992) (public library is a limited public forum). Third, the  
court was incorrectly focused on whether the publication itself constituted a public forum,  
rather than on the fact that newspapers are distributed in a place open to the public. "A  
logical reading of section 425(e) dictates that it should be so interpreted. Otherwise, for  
example, pamphlets or leaflets addressing even the most urgent political or social issues and  
handed out to passersby on a public sidewalk -- a paradigmatic form of protected speech in  
a public place on a public issue -- would fall outside the anti-SLAPP statute's protection, an  
absurd result that the Legislature could not have contemplated." Grossberg and Lord, 13  
Comm. Law. at 5.



1 defendant's constitutional defenses." Wilcox v. Superior Court, 27 Cal. App. 4th 809, 823-24  
2 (1994). Landmark can do neither here.

3 **A. LANDMARK CANNOT ESTABLISH BY CLEAR AND CONVINCING**  
4 **EVIDENCE THAT DEFENDANTS PUBLISHED ANY STATEMENTS IN**  
5 **THE BOOK WITH "ACTUAL MALICE."**

6 A public figure cannot sustain a libel action unless it can prove by clear and  
7 convincing evidence that the challenged statement was made with "actual malice" -- that is,  
8 "with knowledge that it was false or with reckless disregard of whether it was false or not."  
9 New York Times v. Sullivan, 376 U.S. 254, 279-80 (1964); see Curtis Publ. Co. v. Butts, 388  
10 U.S. 130, 162 (1967). There are two classes of public figures: (i) general-purpose public  
11 figures, or those who "achieve such pervasive fame or notoriety that [they] become[] a  
12 public figure for all purposes and in all contexts"; and (ii) limited-purpose public figures, or  
13 those who "voluntarily inject [themselves] or [are] drawn into a particular controversy."  
14 Gertz v. Robert Welch, Inc., 418 U.S. 323, 351 (1974).

15 **1. Landmark Is A Public Figure.**

16 Landmark is a public figure, and at the very least a limited-purpose public figure,  
17 because it has thrust itself into an existing public controversy about its activities.<sup>4</sup> See  
18 Reader's Digest Association v. Superior Court, 37 Cal.3d 244, 255-256 (1984), cert. denied,  
19 478 U.S. 1009 (1986). As discussed above, Landmark has played a tenacious role in the  
20 public debate about whether programs based on Werner Erhard's "technologies" use  
21 thought-reform techniques, adopting a policy to "powerfully represent its work to the public"  
22 and to "aggressively" attack unfavorable media coverage.

23 Shortly after Landmark began presenting the Forum, Werner Erhard took to the  
24 airwaves and defended the program on CNN's Larry King Live, and Beth Hanover, a  
25 Landmark employee, also promoted plaintiff's programs on CNN's Sonya Live. (Jahss Dec.  
26 ¶¶ 2-3.) Art Schreiber, Chairman of Landmark's Board of Directors, has championed  
27 Landmark's viewpoint by making statements to the media, such as the *Chicago Sun-Times*

28 <sup>4</sup>Whether a particular person is a public figure is an issue of law for the court to decide.  
Rosenblatt v. Baer, 383 U.S. 75, 88 (1966).

1 and the *San Diego Union-Tribune*. (Exh. J.) In addition, Landmark has aggressively sought  
2 retractions, threatened publications, and taken to the courtroom to advocate its position. It  
3 is this dogged response to media criticism and involvement in public debate that is the  
4 hallmark of public figure status.<sup>5</sup>

5 Landmark also must be deemed a public figure by virtue of its self-professed role as  
6 an "internationally recognized leader in its field" that presents "revolutionary" programs to  
7 the public. (Exh. A, at 9-10.)<sup>6</sup> Landmark's public figure status is particularly warranted  
8 here because it purports to deliver educational programs to the public as "one of the  
9 largest, most relevant, and most diverse 'campuses' in the world" (Exh. A, at 2.), see *Ithica*  
10 *College v. Yale Daily News Publ.*, 433 N.Y.S.2d 530, 533-34 (N.Y. Sup. 1980), *aff'd* 445  
11 N.Y.S.2d 621 (N.Y.A.D. 3d Dept. 1981), and because it "actively seek[s]" new participants,  
12 see *Church of Scientology v. Siegelman*, 475 F. Supp. 950, 954 (S.D.N.Y. 1979).

13 **2. Landmark Cannot Meet Its Burden of Showing "Actual Malice" By**  
14 **Clear and Convincing Evidence.**

15 Landmark cannot possibly, let alone "probably," demonstrate by clear and convincing  
16 evidence that defendants published any challenged statement in the Book with knowledge  
17 of its falsity or reckless disregard for the truth. The burden of proof is "a very difficult and  
18  
19

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20 <sup>5</sup> See, e.g., *Reader's Digest*, 37 Cal. 3d at 255-256 (Synanon held to be public figure  
21 based on its attempts to counter public criticism); *Velle Transcendental Research Ass'n v.*  
22 *Sanders*, 518 F. Supp. 512, 517 (C.D. Cal. 1981) (religious group held to be public figure  
23 based on its publication of four editions of a newspaper of relatively small circulation in  
24 order to enhance the group's reputation); *Denney v. Lawrence*, 22 Cal.App.4th 927, 935-36  
(1994) (plaintiff held to be public figure because he gave press interviews concerning his  
brother's arrest).

25 <sup>6</sup> See, e.g., *Church of Scientology Int'l v. Eli Lilly & Co.*, 778 F. Supp. 661, 666 (1991),  
26 *rearg. denied*, 1992 WL 80709 (S.D.N.Y. 1992) (church held to be public figure based on  
27 "visibility of plaintiffs, by their own admission 'the Mother Church of the Scientology  
28 religion ... and a public-service investigatory agency'"); *National Found. For Cancer*  
*Research v. Council of Better Bus. Bureaus*, 705 F.2d 98, 101 (4th Cir.) (charitable  
foundation "extolled its judicious use of donated funds ... [and] declared its objective to  
make '[plaintiff] a household word'"), *cert. denied*, 464 U.S. 830 (1983).

1 demanding burden." Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964).<sup>7</sup> Constitutional  
2 malice is

3 subjective in nature, provable only by evidence that the defendant 'realized  
4 that his statement was false or that he subjectively entertained serious doubt  
5 as to the truth of his statement.' Even an extreme departure from accepted  
6 professional standards of journalism will not suffice to establish actual malice  
... Only the existence of 'sufficient evidence to permit the conclusion that the  
defendant actually had a 'high degree of awareness of probable falsity' will  
suffice to meet [the actual malice test].

7 Newton v. National Broadcasting Co., 930 F.2d 662, 668-669 (9th Cir. 1990), cert. denied,  
8 502 U.S. 866 (1991) (citations omitted).

9 Defendants had no doubts about the veracity of any statement in the Book.  
10 Professor Singer has studied group behavior and thought reform for decades, reading,  
11 writing, and speaking extensively about these subjects. Prior to publishing the Book, she  
12 had interviewed not only thousands of current and former cult members and their relatives  
13 and friends, but also countless numbers of participants in various training programs like est  
14 and The Forum. In addition, she had attended The Forum and has had conversations with  
15 reliable sources about its evolution. (MTS Dec. ¶¶ 20, 26-27.) The Book was meticulously  
16 researched, with the majority of statements that directly refer to Landmark based on  
17 articles in publications such as the *London Times* and the *Wall Street Journal*. (MTS Dec.  
18 ¶¶ 45-46; Lalich Dec. ¶¶ 2-5.) Under these circumstances, Landmark cannot meet its  
19 constitutional burden here, and thus its complaint must be stricken.

20 **B. THE STATEMENTS THAT ARE "OF AND CONCERNING" LANDMARK  
21 ARE TRUE, NON-DEFAMATORY, OR ABSOLUTELY PRIVILEGED.**

22 To survive defendants' motion to strike, Landmark not only must make a sufficient  
23 showing of clear and convincing evidence of "actual malice," but also must "demonstrate to  
24 a certainty that the challenged language is 'of and concerning' [it]." Murray v. Bailey, 613  
25 F. Supp. 1276, 1283 (N.D.Cal. 1985). Landmark cannot satisfy this separate constitutional  
26 requirement either. See Blatty v. New York Times, 42 Cal. 3d 1033, 1042 (1986) (noting  
27

28 <sup>7</sup>Even opposing a special motion to strike, plaintiff must satisfy the "clear and  
convincing" standard. Evans v. Unkow, 38 Cal.App.4th 1490, 1496 (1995).

1 constitutional origin of "of and concerning" requirement), cert. denied, 485 U.S. 934 (1988).

2 **1. The Few Statements About Landmark and The**  
3 **Forum Are Clearly Not Actionable.**

4 None of the six references to Landmark and The Forum in the 372-page Book is  
5 even remotely actionable. Three of the statements provide general background:

6 (1) "LGAT groups included est and its offshoots, such as . . . the Forum"; (2)  
7 "Around 1971 . . . [est was established], which in 1985 reemerged as the  
8 Forum"; and (3) Professor Singer "attended six large group awareness training  
9 sessions (sponsored by ... the Forum)."

10 (Compl. ¶ 26(a)-(c).) These statements are nondefamatory, true, and published without  
11 "actual malice." (MTS Dec. ¶¶ 47-54; Lalich Dec. ¶¶ 2-9.)

12 The next three references are not only nondefamatory, true, and published without  
13 "actual malice," but also are absolutely privileged. The Book relied on reliable sources in  
14 reporting that:

15 (4) "one former employee filed a lawsuit against her employer claiming that  
16 she suffered a nervous breakdown as a result of a four-day course [The  
17 Forum]"; (5) eight former employees sued the DeKalb Farmers Market for  
18 allegedly "being fired or forced to resign for refusing to participate in Forum  
19 sessions"; and (6) staff members at the Ohio Children Services Agency  
20 "complained of pressure to take the [Forum] course and on-the-job  
21 discrimination against them if they didn't."

22 (Compl. ¶ 26(d)-(f).) The fourth and fifth statements are absolutely privileged as fair and  
23 true reports of a judicial proceeding, Cal. Civ. Code § 47(d); and the sixth statement is  
24 protected under California's neutral reportage privilege, Barry v. Time Inc., 584 F. Supp.  
25 1110 (N.D. Cal. 1984). The authors' discussion of the incidents involving the DeKalb  
26 Farmers Market and the Ohio Children Services Agency, moreover, contains assertions of  
27 opinion that are not provably false facts. Milkovich v. Lorain Journal Co., 497 U.S. 1  
28 (1990).

29 **2. Landmark's Claim that 62 Other Statements**  
30 **Concerns Plaintiff Is Contrived.**

31 Unable to rely on the six actual references to it as a colorable basis for bringing this  
32 libel claim, Landmark contrives a theory for asserting that 62 other statements are  
33 defamatory, despite the fact that they do not refer to Landmark and that the vast majority

1 of them are not even in the chapter in which Landmark is discussed. Under this  
2 overreaching theory, Landmark claims in essence that any statement made about cults or  
3 their thought-reform techniques defames it because its name appears in the Book. (Compl.  
4 ¶¶ 19-20.)

5 This Court should reject Landmark's tortured reading of the Book and its  
6 misapplication of the law. A plaintiff cannot be defamed when the challenged statement  
7 "cannot be reasonably understood to refer to [that plaintiff]." Blatty, 42 Cal. 3d at 1046; see  
8 Barger v. Playboy Enterp., 564 F. Supp. 1151, 1154 (N.D.Cal. 1983), aff'd, 732 F.2d 163 (9th  
9 Cir.), cert. denied, 469 U.S. 853 (1984) ("The court must interpret the article as it would  
10 appear to the average reader to decide whether it can reasonably bear the meaning  
11 ascribed to it by plaintiff.")<sup>8</sup> Here, no reasonable person could conclude that the Book  
12 refers to Landmark (other than the six references) based on the Book's language and  
13 structure.

14 First, the authors remind the reader throughout the Book that not every group  
15 mentioned is a cult or uses thought-reform techniques associated with cults. See, e.g., Book  
16 pp. xii, 40-41, 49, 182 (discussed supra). In fact, such reminders and cautionary language  
17 appear in close proximity to every reference to Landmark. (Book pp. xii, 40-41, 49, 182.)  
18 Thus, any reading that attributes all the Book's statements about cults to Landmark "is so  
19 obscure and attenuated as to be beyond the realm of reasonableness." Forsher v. Bugliosi,  
20 26 Cal. 3d 792, 805-06 (1980).<sup>9</sup>

21 Second, the Book's structure belies Landmark's reading. Like a classroom textbook,

22  
23 <sup>8</sup>Whether a complaint alleges facts sufficient to demonstrate a reasonable connection  
24 between the plaintiff and the alleged libel is a question [of law] for the court. Cardone v.  
Empire Blue Cross and Blue Shield, 884 F. Supp. 838, 847 (S.D.N.Y. 1995).

25 <sup>9</sup> See Smith v. Huntington Publ. Co., 410 F.Supp. 1270, 1274 (S.D. Ohio 1975), aff'd,  
26 535 F.2d 1255 (6th Cir. 1976) ("[N]o reasonable person could have reasonably believed that  
27 the article pointed to the plaintiff in the light of a clear statement by the author . . . that  
28 the names were fictitious"); Allen v. Gordon, 446 N.Y.S.2d 48, 49 (N.Y.A.D. 1 Dept.), aff'd,  
452 N.Y.S.2d 25 (N.Y. 1982) (observing "that there was a disclaimer prominently displayed  
... which indicated that all names used ... were fictitious" in concluding that plaintiff failed to  
show that the publication was "of and concerning" him).

1 the Book is divided into twelve stand-alone chapters. Each chapter discusses distinct topics,  
2 such as "Defining Cults," "A Brief History of Cults," "The Process of . . . Thought Reform" .  
3 . . . Five of the six references to Landmark are in a single chapter, Chapter 8. That  
4 chapter is further divided into subsections, in which the authors describe particular training  
5 programs. When the authors elected to refer to Landmark, they specifically wrote about it  
6 under the heading "The Forum and Transformational Technologies." (Book p. 202.)

7 It is unreasonable to treat the Book as though it contained no categories, headings,  
8 or distinctions. Under Landmark's libel theory, statements in subsections of Chapter 8  
9 entitled "Krone Training," "Lifespring," and "PSI World" could be attributed to Landmark.  
10 This is plainly nonsensical, as is Landmark's attempt to ascribe other statements in different  
11 chapters and sections to itself.<sup>10</sup> Landmark cannot challenge every negative comment in a  
12 lengthy book merely because its name is mentioned in it. See Fornhill v. Ruddy, 891 F.  
13 Supp. 1062 (D. Md. 1995) (holding that defamatory statements about the U.S. Park Police,  
14 of which plaintiff was a member, did not refer to plaintiff, even though plaintiff's name was  
15 mentioned elsewhere in the report). Cox Enterp. v. Babin, 426 S.E.2d 651 (Ga. App. 1992),  
16 cert. denied, 114 S. Ct. 193 (1993) (holding that 29 of 31 articles in a multi-part series were  
17 not "of and concerning" plaintiff because they did not specifically refer to him, even though  
18 plaintiff was featured in first two articles).

19 DATED: April 15, 1996

O'MELVENY & MYERS

20 By   
21

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22 Attorneys for Defendants

23 <sup>10</sup> See National Rifle Ass'n v. Dayton Newspapers, Inc., 555 F. Supp. 1299, 1312-13  
24 (S.D. Ohio 1983). There, the court held that:

25 it is obvious that the language in question does not refer to . . . Plaintiff. The  
26 editorial comment does *not* state that the NRA sells guns; what it does plainly  
27 state is that NRA 'folks' sell guns. This distinction between the NRA and  
28 NRA folks is particularly significant when viewed in the context of the  
remainder of the editorial, for in *all* other places therein where reference is  
made to the association itself . . . , only the terms NRA or National Rifle  
Association are employed."