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CONFIDENTIAL

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

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:
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

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COUNTY CLERK
NEW YORK

Of counsel:

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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 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:

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 acausted [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 psychological -- 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.

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Respectfully submitted,

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