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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ART OF LIVING FOUNDATION, a
California corporation,

Plaintiff,

vs.

DOES 1-10, inclusive,
Defendants.

Case No. 10-cv-5022-LHK-HRL

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS DOE/KLIM AND
DOE/SKYWALKER'S SPECIAL
MOTION TO STRIKE UNDER CAL.
C.C.P. 425.16 & EVIDENTIARY
OBJECTIONS**

Date: May 12, 2011
Time: 1:30 PM
Judge: The Honorable Lucy H. Koh
Ct rm: Courtroom 4, 5th Floor

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Plaintiff Art of Living Foundation ("Plaintiff"), by and through its counsel of record, respectfully submits the following memorandum of points and authorities in opposition to the Special Motion to Strike Under Cal. C.C.P. 425.16 of Defendants Doe/Klim and Doe/Skywalker (collectively, "Defendants").

INTRODUCTION

In their special motion to strike, Defendants offer a sinister story, but a false one, with no admissible evidentiary support. Defendants describe Plaintiff as a large, corrupt religious cult seeking to silence dissidents. Defendants describe themselves as warriors for the truth, seeking to expose Plaintiff's supposed corruption at great personal risk to themselves and their family.

The truth is far less salacious than Defendants would have the Court believe. Plaintiff is not a religious organization or a cult, but rather a non-denominational educational and humanitarian organization, which offers classes on breathing, meditation, and yoga. Defendants published false statements about Plaintiff on their blogs, accusing Plaintiff of criminal activity and financial misconduct. Defendants also published Plaintiff's trade secrets and copyrighted materials. Unlike Defendants' rhetoric, these facts are established by admissible evidence. And based on this admissible evidence, Defendants' special motion to strike must be denied. More specifically, Defendants' motion must be denied because:

- Plaintiff has not had the opportunity to conduct discovery of facts essential to its claims, and such discovery is required under Federal Rule of Civil Procedure 56;
- Plaintiff has submitted prima facie evidence that Defendants' statements on the blogs are false, defamatory, unprivileged, and were made with actual malice;
- Plaintiff has submitted prima facie evidence in support of its trade libel claim, showing that Defendant' statements disparaged the quality of Plaintiff's services and induced others not to deal with Plaintiff;
- Plaintiff has submitted prima facie evidence that its manuals and teaching principles are trade secrets where Plaintiff has used diligent efforts to keep these

materials confidential, and where Plaintiff derives economic value from their secrecy; and

- Defendants' arguments that Plaintiff's practices violate public policy and that Defendants' misconduct is protected by the Communications Decency Act (the "CDA") are not based on recognized law or admissible evidence. Rather, the law and evidence establish that Plaintiff's use of confidentiality agreements to protect its trade secrets has been endorsed by California courts, and that Defendants' direct misconduct is not protected by the CDA.

Despite Defendants' efforts to recast this case as a tale of a religious cult muffling dissident opinion, nothing could be further from the truth. As the evidence shows, this case is actually about a group of individuals who have chosen to publish false accusations of criminal activity and financial misconduct behind the cloak of anonymity. From no perspective can such false and malicious speech be protected. The Court should deny Defendants' special motion to strike.

BACKGROUND

Defendants' motion is filled with invective, unsupported assertions of fact, and hearsay denigrating Plaintiff and its teachings.¹ Even if this evidence were admissible—and it is not—such information is irrelevant to Defendants' motion. Plaintiff thus seeks to set forth the relevant background facts, supported by admissible evidence.

A. Plaintiff & Plaintiff's Teachings

Plaintiff, the Art of Living Foundation, is a California non-profit corporation based in Goleta, California. (Declaration of Ashwani Dhall ("Dhall Decl.") ¶11.) Plaintiff is not a religious organization or a cult. (*Id.* ¶12.) Rather, Plaintiff is a non-denominational educational and humanitarian organization dedicated to the teachings of His Holiness Sri Sri Ravi Shankar ("Shankar"). (*Id.* ¶13.) Plaintiff offers courses on breathing, meditation,

¹ Defendants offer the declarations of Klim and Skywalker in support of their motion to quash, special motion to strike, and motion to dismiss. Plaintiff has objected to the admissibility of Defendants' declarations in support of all three motions in its opposition to the motion to quash, and incorporates those objections in this opposition.

and yoga. (*Id.* ¶14.) At the core of Plaintiff's teachings is Sudarshan Kriya, which is a rhythmic breathing exercise. (*Id.* ¶15.) While Shankar's teachings serve as a pillar of Plaintiff's courses, Shankar is not an officer, employee, or director of Plaintiff. (*Id.* ¶16.)

In addition to offering courses at its own facilities, Plaintiff offers its courses in partnership with public and private schools, corporations, and government agencies. (Dhall Decl. ¶17.) Generally, individuals who wish to take a course offered by Plaintiff must register and pay the course fee. (*Id.* ¶18.) Plaintiff uses the money it raises through its courses to maintain its facilities, to train new teachers for its courses, and to provide humanitarian aid and community service. (*Id.* ¶19.)

B. Plaintiff's Training of its Teachers & Plaintiff's Trade Secrets

Many organizations in the U.S. offer courses on breathing, yoga, and meditation. (Dhall Decl. ¶20.) Plaintiff distinguishes its courses from other courses by requiring the specialized training of its teachers. (*Id.* ¶21.) The training of Plaintiff's teachers results in a direct financial benefit to Plaintiff in the form of course fees (both from new and continuing students). (*Id.* ¶22.)

Given the importance Plaintiff places on teacher training, Plaintiff—in consultation with Shankar—has developed detailed processes by which its courses are to be taught. (Dhall Decl. ¶23.) These processes are contained in several written manuals developed by Plaintiff in consultation with Shankar. (*Id.* ¶24.) These manuals include a) the Training Guide Phase One Manual, b) the Phase One Supplement Manual (the Continuation Manual), and c) the Yes! Teacher Notes (collectively, the "Manuals"). (*Id.* ¶¶25-28 & Exs. A-C.) Plaintiff has intentionally not memorialized the teaching processes for Sudarshan Kriya in a formal manual to prevent the unlawful distribution of its Sudarshan Kriya teaching principles (the "Principles"). (*Id.* ¶29.) Instead, Plaintiff trains its teachers of Sudarshan Kriya through oral presentations. (*Id.* ¶30.)

Plaintiff keeps the Manuals and Principles strictly confidential. (Dhall Decl. ¶32.) Plaintiff stores the Manuals and Principles on password protected computers, using

password protected files. (*Id.* ¶34.) Plaintiff only allows access to these electronic files to those people for whom access is necessary. (*Id.*) Before the Manuals or Principles are disclosed to student-teachers, they must agree not to disclose the Manuals or Principles. (*Id.* ¶¶34-36.) Student teachers must also agree not to use the Manuals or Principles for any purpose other than teaching Plaintiff's courses. (*Id.*) Out of an abundance of concern, Plaintiff does not provide student-teachers with written manuals containing Plaintiff's confidential information on Sudarshan Kriya. (*Id.* ¶¶29-30.) Rather, Plaintiff provides the confidential information through oral presentations, and again, requires student-teachers to agree not to disclose or misuse any notes they take regarding the Principles. (*Id.* ¶¶29-31 & Ex. D.)

C. Plaintiff's Breath Water Sound Manual

Plaintiff authored and published an informational booklet entitled the Breath Water Sound Manual in 2003, which Plaintiff registered with the United States Copyright Office, Registration No. TX0007240203. (Dhall Decl. ¶¶37-38 & Ex. E.) The Breath Water Sound Manual is used by Plaintiff in connection with its Breath Water Sound course. (*Id.* ¶39.) The Breath Water Sound Manual explains some basic teachings of Plaintiff, including some basic breathing exercises, sound relaxation methods, meditation techniques, tools for healthy living, and effective processes to work together as a community. (*Id.* ¶40.)

D. Defendants' Blogs

In or around November 2009, Defendant Klim started the blog entitled "Leaving the Art of Living" and located at <artoflivingfree.blogspot.com> (the "Blogspot Blog"). (Dhall Decl. ¶43; Declaration of Doe/Klim ("Klim Decl.") ¶2.) In or before May 2010, Defendant Skywalker (in coordination with other anonymous Defendants) started the blog entitled Beyond the Art of Living and located at <aolfree.wordpress.com> (the "Wordpress Blog"; the Blogspot Blog and the Wordpress Blog are referred to collectively as the "Blogs"). (Dhall Decl. ¶44; Declaration of Doe/Skywalker ("Skywalker Decl.") ¶3.)

The ostensible purpose of the Blogs is to provide former students of Plaintiff and those doubting Plaintiff's teachings a space to heal, find answers, and understand the

experiences they went through as students of Plaintiff. (Declaration of Jeffrey M. Rosenfeld in Opp. to Defendants' Motions ("Rosenfeld Decl.") ¶¶3-5 & Exs. A-C.) In fact, the Blogs contain numerous false and defamatory statements about Plaintiff. (Dhall Decl. ¶46.) Each anonymous Defendant has posted false and defamatory statements on the Blogs (hereinafter the 18 defamatory statements identified in the complaint and Skywalker's additional defamatory statements identified in Paragraphs 7-8 of the Rosenfeld Declaration are referred to as the "Statements"). (Rosenfeld Decl. ¶¶6-8 & Exs. D-F.)

In addition to publishing false and defamatory Statements on the Blogs, Defendant Skywalker (possibly with other Defendants) posted Plaintiff's confidential, trade-secret materials on the Wordpress Blog. (Skywalker Decl. ¶9 & Exs. B-D.) Specifically, during June and July of 2010, Skywalker posted the Manuals and a link to a written description of Plaintiff's Principles on the Wordpress Blog. (*Id.*) Additionally, Defendant Skywalker (possibly with other Defendants) published the full text of the Breath Water Sound Manual on the Wordpress Blog. (*Id.* & Ex. E.)

The Blogs are viewed by thousands of people each month. (Declaration of Dr. Frederick B. Cohen in Opp. to Defendants' Motions ("Cohen Decl.") ¶2-7 & Exs. A-B.) Of these thousands of people the vast majority are located in the United States. (*Id.*) Approximately 78% of the Blogspot Blog's viewers are located in the U.S., and approximately 73% of the Wordpress Blog's viewers are located in the United States. (*Id.*)

The Blogs have had their intended effect—*i.e.* to discourage people from taking Plaintiff's courses. (Dhall Decl. ¶¶49-53.) Plaintiff has received numerous inquiries about the truthfulness of the Statements. (*Id.* ¶50.) Many of these people have expressed anger, frustration, or outrage to Plaintiff based on the Blogs' false Statements—particularly the Blogs' accusation of physical abuse, sexual abuse, financial misconduct, and fraud. (*Id.* ¶52.) Many have also informed Plaintiff that they would not register for Plaintiff's courses as a result of the Statements. (*Id.* ¶53.)

ARGUMENT

California Code of Civil Procedure section 425.16 allows a defendant to file a

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special motion to strike a cause of action arising from the defendant's free speech rights ("anti-SLAPP motion"). If the court finds that the defendant has shown that the cause of action arises from protected activity, the court must then decide whether the plaintiff has shown the cause of action is legally sufficient and supported by sufficient prima facie evidence. See *Taheri Law Group v. Evans*, 160 Cal. App. 4th 482, 488 (2008). Sufficient prima facie evidence is that which supports a ruling in favor of the plaintiff if no controverting evidence is presented; it may be slight evidence that creates a reasonable inference of fact sought to be established and need not eliminate all contrary inferences. See *Evans v. Paye*, 32 Cal. App. 4th 265, 285 (1995). In ruling on an anti-SLAPP motion, a court does not weigh the evidence, but instead accepts as true all evidence favorable to the plaintiff. See *Dixon v. Superior Court*, 30 Cal. App. 4th 733, 746 (1994).

These rules change when an anti-SLAPP motion is brought in federal court. The Ninth Circuit has found that section 425.16 conflicts with Federal Rule of Civil Procedure 56 to the extent section 425.16 permits a stay in discovery and early dismissal of a cause of action. See *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001). This conflict exists because Rule 56 requires an opportunity for a non-moving party to conduct discovery essential to its claims. *Id.* Thus, the anti-SLAPP provisions that limit discovery and authorize early dismissal are restricted in federal court to only those situations where the motion can be resolved purely as a matter of law. *Aeroplast Corp. v. Arch Ins. Co.*, No. 06-1099, 2006 WL 3257487, *7-9 (E.D. Cal. Nov. 9, 2006).

Defendants' anti-SLAPP motion fails because Plaintiff has not had the opportunity to conduct discovery of facts essential to its claims. But even if Defendants' motion could be resolved without discovery, it would still fail because a) evidence demonstrates that Defendants' Statements are false, defamatory, and of and concerning Plaintiff; b) evidence demonstrates that Defendants committed trade libel by falsely disparaging Plaintiff's services; c) Plaintiff's misappropriation of trade secrets claim is not subject to an anti-SLAPP motion, and in any event, Plaintiff's Manuals and Principles constitute valuable trade secrets; and d) the Communications Decency Act does not protect

Defendants from the Statements they made or from their intellectual property violations.

A. Plaintiff is entitled to discovery of information essential to its claims.

As discussed above, Federal Rule of Civil Procedure 56 conflicts with California's anti-SLAPP law and requires that Plaintiff be afforded an opportunity to conduct discovery essential to its claims. Plaintiff has had no such opportunity, and thus Defendants' motion must be denied on this basis alone.

As an initial matter, Plaintiff is entitled to discover the identities of the anonymous Defendants, each of whom made defamatory statements and/or posted infringing materials. This information is essential to Plaintiff's claims as Plaintiff must attribute the misconduct at issue to specific Defendants. Moreover, this information is in the exclusive control of Defendants and third parties (e.g. Google, Inc. and Automattic, Inc.). Additionally, Plaintiff is entitled to discovery about each Defendant's state of mind, as such mental states may be relevant to several of Plaintiff's claims. Direct evidence of each Defendant's mental state is in the exclusive possession of Defendants. Evidence supporting other elements of Plaintiff's claims is in the exclusive control of Defendants and third parties. As examples, Plaintiff is entitled to discovery about:

- The people involved in drafting each defamatory statement and each instance of infringement;
- The accuracy of Skywalker and Klim's declarations, particularly as relates to their involvement in drafting the Statements and posting the infringing material;
- Defendants' intent in posting the Statements;
- The website traffic data for the Blogs, which relates to Plaintiff's actual damages, as well as Defendants' unjust enrichment resulting from their misconduct.

Because this information is in Defendants' and third parties' exclusive control, and because this information is essential to Plaintiff's claims, Plaintiff is entitled to discovery before Defendants' anti-SLAPP motion can be addressed.

B. Plaintiff has submitted prima facie evidence of Defendants' defamation.

Defendants argue that Plaintiff cannot submit sufficient evidence of its defamation claim, and that the claim should be stricken under anti-SLAPP. To establish a defamation claim, a plaintiff must offer evidence of: a) a publication by the defendant, b) that is of and concerning the plaintiff, and c) that is provably false, defamatory, and unprivileged. See *Ferlauto v. Hamsher*, 74 Cal. App. 4th 1394, 1401, 1404 (1999). Moreover, where the plaintiff is a public-figure or official, the plaintiff must establish the defendant's actual malice. See *Reader's Digest Assn. v. Superior Court*, 37 Cal. 3d 244, 252 (1984). Plaintiff has submitted sufficient prima facie evidence to establish all of these elements, and thus Defendants' motion should be denied. However, if there is any question as to the sufficiency of Plaintiff's evidence, Plaintiff is entitled to discovery under Rule 56.

1. The defamatory Statements were authored by Defendants.

Each of the 18 defamatory statements identified in the complaint is displayed on the Blogs in connection with a Doe Defendant, who is identified as one of the authors. (Rosenfeld Decl. ¶6 & Ex. D.) Thus, Plaintiff has submitted prima facie evidence that each Doe Defendant authored at least one defamatory statement.

In his motion, Skywalker argues that the defamatory statements identified in the complaint—even those associated with his name—were not actually authored by him. (Mot. at 8:4-8.) As an initial matter, the Court should not consider Skywalker's anonymous declaration in ruling on Defendants' anti-SLAPP motion because the Court must accept as true all evidence in favor of Plaintiff and not weigh the evidence. See *Dixon*, 30 Cal. App. 4th at 746. At a minimum, Plaintiff is entitled to discovery to assess the accuracy of Skywalker's statement. But even if Skywalker's assertion is accepted as true, Skywalker admits that he/she authored other defamatory statements published on the Blogs. (Skywalker Decl. ¶3; Rosenfeld Decl. ¶¶7-8 & Exs. E-F.) Thus, despite Skywalker's argument, Plaintiff has attributed defamatory statements to Skywalker.

While Skywalker argues that the Court should only consider the 18 statements identified in the complaint, this argument is not supported by the law. A defamation complaint must either identify the defamatory words or the substance of the defamatory

statement. *Chaconas v. JP Morgan Chase Bank*, 713 F. Supp. 2d 1180, 1190 (S.D. Cal. 2010). Even if Skywalker did not author any of the 18 statements in the complaint, he/she authored other defamatory statements of comparable substance and defamatory meaning. (Rosenfeld Decl. ¶¶7-8 & Exs. E-F.) Given that the statements on the Blogs were posted anonymously making it impossible for Plaintiff to know which ones Skywalker authored, and given that in the complaint Plaintiff identified several defamatory statements ostensibly authored by Skywalker, the Court should have no qualms about considering additional defamatory statements that Skywalker admittedly authored—even if those statements are not specifically identified in the complaint. Based on all of these facts, Plaintiff has demonstrated that at least one defamatory Statement was authored by each Defendant.

2. The Blogs—and the Statements—are “of and concerning” Plaintiff.

In their motion Defendants argue that the defamatory Statements are not “of and concerning” Plaintiff. However, Defendants’ argument is belied by the evidence and Ninth Circuit case law.

Defendants are correct that in a defamation action, the statements at issue must be “of and concerning” the plaintiff in some way. *Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1042 (1986). However, the “of and concerning” requirement does not require that a defendant refer to the plaintiff by name, so long as the plaintiff could be identified by clear implication. *Yow v. Nat’l Enquirer, inc.*, 550 F. Supp. 2d 1179, 1184 (E.D. Cal. 2008). A statement is “of and concerning” the plaintiff if from the evidence a juror could infer that the statement refers to the plaintiff, or that the publication points to the plaintiff by description or circumstances tending to identify the plaintiff. *Id.* To determine whether statements apply to a plaintiff, the statements must be examined in context, considering the totality of the circumstances. *D.A.R.E. America v. Rolling Stone Magazine*, 101 F. Supp. 2d 1270, 1290 (C.D. Cal. 2000). Whether a statement is “of and concerning” a plaintiff is a question of fact to be resolved by a jury. *See Dworkin v. Hustler Magazine, Inc.*, 668 F. Supp. 1408, 1417 n.11 (C.D. Cal. 1987).

1 In a substantially similar action, *Church of Scientology of California v. Flynn*, 744
 2 F.2d 694, 697 (9th Cir. 1984), the defendant argued that the defamatory statements at
 3 issue did not refer to the Church of Scientology of California but rather to Scientology as
 4 a whole, which referred to over 300 churches. The Ninth Circuit rejected this argument,
 5 finding that a jury could reasonably conclude that the defamatory statements referred to
 6 the Church of Scientology of California based on the context and language of the
 7 defendant's statements. See also *D.A.R.E.*, 101 F. Supp. 2d at 1090 (finding that
 8 magazine article about teaching methods used by drug awareness organization was of
 9 and concerning organization where the organization was referred to by implication
 10 though not named in article). *Id.* at 1290.

11 Here, a reasonable viewer of the Blogs—and the Statements—would understand
 12 them as referring to Plaintiff. The Blogs refer to Plaintiff by name—*i.e.* the Art of Living
 13 Foundation. (Rosenfeld Decl. ¶9 & Ex. G.) The Blogs refer to Plaintiff's website, located
 14 at <www.artofliving.org>. (*Id.* ¶10 & Ex. H; Dhall Decl. ¶54.) The Blogs refer to Plaintiff's
 15 U.S.—and California—presence. (*Id.* ¶¶11-12 & Exs. I-J.) The Blogs refer to specific
 16 officers and directors of Plaintiff. (*Id.* ¶13 & Ex. K; Dhall Decl. ¶55.) Moreover, the vast
 17 majority of the Blog's readers are in the United States, where Plaintiff is headquartered.
 18 (Cohen Decl. ¶¶2-7 & Exs. A-B.) In fact, readers of the Blogs have understood them as
 19 referring to Plaintiff. (Declarations of Shalin Desai, Shravan Bharathulwar, Nandan
 20 Udiavar, Narendar Shankar ¶¶2-4.) Perhaps most importantly, Plaintiff has received
 21 numerous inquiries from viewers of the Blogs who understood the Blogs to refer to
 22 Plaintiff. (Dhall Decl. ¶¶49-53.) Based on these facts, a reader of the Blogs would
 23 understand them as referring to Plaintiff.

24 Defendants argue that the Blogs—and the defamatory Statements—do not refer
 25 to Plaintiff but to “other unspecified national chapters of Art of living” or “specific
 26 individuals.” (Mot. to Dismiss. at 9:14-15.) However, Defendants' argument is belied by
 27 Plaintiff's evidence—and Defendants' themselves offer no evidence to the contrary.
 28 Moreover, Defendants' case citation, *Church of Scientology v. Adams*, 584 F.2d 893 (9th

Cir. 1978), is inapposite. The court in *Adams* only addressed the “of and concerning” standard in dicta, in which the Court highlighted facts at odds with the situation here: in *Adams* no California readers were principal or secondary targets of the article, the article did not mention any California residents, and the organization was not mentioned in the article. The opposite situation exists here where the vast majority of the readers of the Blogs are located in the United States, the Blogs specifically refer to the name of Plaintiff, Plaintiff’s employees, and Plaintiff’s website, and Plaintiff has received numerous inquiries from viewers of the Blogs who understood the Blogs to refer to Plaintiff. (Rosenfeld Decl. ¶¶9-13 & Exs. G-K; Dhall Decl. ¶¶49-53.) In light of this evidence, a reasonable juror would understand the Blogs—and Statements—to refer to Plaintiff.

3. The defamatory Statements are provably false, defamatory, and unprivileged.

Defendants also argue that Plaintiff cannot demonstrate that the Statements are false assertions of fact instead of protected opinions. (Mot. p 11:1-22.) Contrary to Defendants’ briefing, the Supreme Court has held that statements of opinion are not constitutionally protected. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990). Rather, the dispositive question is whether a reasonable juror reading the statement at issue could conclude that it implies a provably false factual assertion. *Rodriguez v. Panayiotou*, 314 F.3d 979, 985 (9th Cir. 2002). In evaluating whether a statement implies a provably false assertion, courts examine: a) the statement’s broad context, b) the statement’s specific context, and c) whether the statement is susceptible of being proved true or false. *Underwager v. Channel 9 Australia*, 69 F.3d 361, 366 (9th Cir. 1995). While the issue of whether the Statements are provably false assertions is a question of law, if the Statements can reasonably be construed as either fact or opinion, the issue should be resolved by a jury. *Rodriguez*, 314 F.3d at 985-86.

Contrary to Defendants’ unsupported arguments, a reasonable juror would understand the Statements as implying provably false assertions. However, if there is any question, the issue should be resolved by a jury.

a. The broad context indicates that the Statements would be understood as assertions of fact.

In analyzing a statement's broad context, courts look at whether the tenor and format of the publication suggests that the statement is purely opinion. See *Underwager*, 69 F.3d at 366. For example, a reader is likely to view formats such as parodies, critical reviews, letters to the editor, and radio talk shows as containing statements of pure opinion. See, e.g., *Gardner v. Martino*, 563 F.3d 981, 988 (9th Cir. 2009) (opinionated and hyperbolic talk show format reduced expectation of learning objective fact). Courts also look at whether the tenor of the publication is adversarial in nature—such as a television debate or an article about a contentious public meeting—in determining whether a statement contains purely opinion. See *Ferlauto v. Hamsher*, 74 Cal. App. 4th 1394, 1401 (1999).

There is nothing about the Blogs suggesting they would be understood as containing purely opinion. (Rosenfeld Decl. ¶¶14-15 & Exs. L-M.) The Blogs do not fall into a traditional opinionated format, such as a parody, a letter to the editor, or radio talk show. Rather, the ostensible purpose of the Blogs is to set forth facts about Plaintiff. (*Id.* ¶¶3-5 & Exs. A-C.) The Blogs are presented in a traditional layout, using sobering color tones and fonts, and without pictures or other whimsical elements that would suggest that they contain parodies or opinions. (*Id.* ¶¶14-15 & Exs. L-M.) Nor do the Blogs offer a two-way debate between Plaintiff and Plaintiff's critics. (*Id.*; Dhall Decl. ¶45.) Plaintiff has never been invited to respond to the Blogs' posts or to contribute to the Blogs. (Dhall Decl. ¶56.) Perhaps most significantly, Plaintiff has received numerous inquiries about the truthfulness of the Statements, indicating that readers understand the Blogs as assertions of fact. (*Id.* ¶¶49-53.) Thus, the broad context of the Blogs suggests that the Statements would be understood as assertions of fact.

Defendants argue that statements on Internet discussion groups are less likely to be construed as statements of fact. (Mot. at 16:2-28, 17:1-2) However, the relevant case law and leading treatises disagree, finding that today, blogs are often viewed as conveying facts. See ROBERT D. SACK, SACK ON DEFAMATION, §4:2.4[C] (4th ed. 2010). In

1 *Cohen v. Google, Inc.*, 887 N.Y.S.2d 424, 428 (N.Y. Sup. Ct. 2009), the court said:

2 The court also rejects the Anonymous Blogger's argument that this court
3 should find as a matter of law that Internet blogs serve as a modern day
4 forum for conveying personal opinions, including invective and ranting,
5 and that the statements in this action when considered in that context,
6 cannot be reasonably understood as factual assertions. To the contrary,
7 "In that the Internet provides a virtually unlimited, inexpensive, and almost
8 immediate means of communications with tens, if not hundreds, of
9 millions of people, the dangers of its misuse cannot be ignored.

10 Thus, the fact that the Statements were published on blogs—as opposed to a traditional
11 news medium—does not suggest that they are purely opinion.

12 Defendants also argue that because the Blogs offer heated debate, they would be
13 construed as offering only opinions. (Mot. at 15:16-28, 16:1.) However, Defendants'
14 authority is distinguishable from this case. In each of Defendants' cases, the court found
15 that the statements were made as part of a heated two-way debate. See *Greenbelt Co-*
16 *op. Pub. Ass'n v. Bresler*, 398 U.S. 6, 7-8 (1970); *Nicosia v. De Rooy*, 72 F. Supp. 2d
17 1093, 1101 (N.D. Cal. 1999); *Underwager*, 69 F.3d at 367. These cases do not apply
18 here. The purpose of the Blogs is to publish statements about the poster's experiences
19 with Plaintiff; the Blogs do not seek to engage in a debate with Plaintiff and Plaintiff has
20 never been invited to participate in the Blogs. (Dhall Decl. ¶¶56.) Moreover, the fact that
21 Plaintiff has received numerous inquiries about the truthfulness of the Blogs shows that
22 viewers do not understand the Blogs as a forum for heated debate—but rather a forum
23 for assertions of fact. (*Id.* ¶¶49-53.)

24 Because nothing about the Blogs suggests that they contain statements of pure
25 opinion, the broad context of the Blogs indicates that they contain assertions of fact.

26 **b. The specific context shows that the Statements would be**
27 **understood as assertions of fact.**

28 To determine whether a defamatory statement implies a factual assertion, courts
also look at the statement in its specific context, noting the content of the statement and
the use of figurative or hyperbolic language. See *Rodriguez*, 314 F.3d at 986. However,
the mere use of conditional language will not immunize an otherwise defamatory
statement. See *id.* at 987; *Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 902 (2004).

Here, none of the Statements is couched as an opinion or contains conditional or hyperbolic language. (Rosenfeld Decl. ¶¶6-8 & Exs. D-F.) To the contrary, each Statement is set forth as a simple assertion of fact. Moreover, each Statement implies the author's knowledge of facts underlying the Statements and does not reference any source for the defamatory accusations. (*Id.*) In the absence of such conditional language and references, a reasonable juror would conclude that the Statements contain assertions of fact.

c. The Statements are susceptible of being proved true or false.

Most importantly, a straightforward reading of the Statements demonstrates that each is susceptible of being proved true or false. Moreover, each of the Statements is in fact false.² As limited examples:

- Contrary to Statements Nos. A, B, D & R, neither Plaintiff—nor its teachers or volunteers—has exploited, swindled, cheated, physically abused, threatened, or sexually abused or raped its students. (Request for Judicial Notice of Defendants Doe/Klim and Doe/Skywalker (“Defendants’ RJN”) at 6-8; *supra* n.2);
- Contrary to Statements Nos. F, J, P & S, Plaintiff has used the proceeds from its charitable programs and courses to support Plaintiff’s charitable works. (Defendants’ RJN at 6-8; *supra* n.2);
- Contrary to Statement No. G, Plaintiff has never laundered money, engaged in fraud, or engaged in other illegal activities. (Defendants’ RJN at 6-8; *supra* n.2.)

Instead of looking at the straightforward meaning of the Statements, Defendants fabricate rules of construction to show that the Statements are opinion. However, Defendants’ rules are not supported by Defendants’ authority. Contrary to Defendants’ argument, there is no rule that statements alleging the commission of crimes are not inherently defamatory. See *Yow v. Nat’l Enquirer, Inc.*, 550 F. Supp. 2d 1179, 1183

² Dhall Decl. ¶¶2-10, 46; Declarations of Kalpana Singh, John Osborne, Rajshree Patel, Michael Fischman, Patricia A. Montella, Vijay Srinivasan, Jasbir Singh, Jeffrey Houk, David McColgin, and Marc Inzelstein (collectively, “Art of Living Decls.”) at *passim*.

(E.D. Cal. 2008). Contrary to Defendants' argument there is no rule that statements alleging financial misconduct are not defamatory per se. See *Kelly v. Gen. Tel. Co.*, 136 Cal. App. 3d 278, 286 (1982); *Gallagher v. Connell*, 123 Cal. App. 4th 1260, 1270 (2004). And contrary to Defendants' argument, statements alleging physical and mental abuse are not protected "evaluative opinions" when they are not couched as opinions and are not based on accurate third party information simultaneously disclosed to the public (e.g. a video showing the alleged abuse). See *People for the Ethical Treatment of Animals v. Bobby Berosini Ltd.*, 895 P.2d 1269, 1275 (Nev. 1995) (finding that accusations of animal abuse were "evaluative opinions" when they were accompanied by video of a trainer punching and shaking animals). Defendants' supposed rules are simply not recognized in the law and do not apply to this case.

In summary, because the Statements appear on fact-oriented Blogs, are not couched as opinions, and are provably false, the Statements are not protected opinion.

d. Defendants' defamatory Statements are not protected religious conduct.

Defendants argue that even if the Statements are false and defamatory, they are absolutely privileged as speech urging people to avoid a religious organization. (Mot. at 15:1-8.) Defendants' argument fails. As an initial matter, Defendants' factual predicate, that Plaintiff is a religious organization, is incorrect, and Defendants offers no evidence to the contrary. But even if Plaintiff were a religious organization, Defendants' argument would still fail. There is no First Amendment right to publish false and defamatory statements, regardless of whether the statements are about a religious organization. See *Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1089 (9th Cir. 2002); see also, e.g., *McNair v. Worldwide Church of God*, 197 Cal. App. 3d 363, 378 (1987) (finding defamation action could be brought for statements made during church doctrinal discussion).

Defendants' authority carves out two limited exceptions that do not apply here. First, the ministerial exception precludes liability for otherwise actionable defamation based on statements about a church's governance of ecclesiastical matters, such as

theological controversy, church discipline, or church administration. *See Higgins v. Maher*, 210 Cal. App. 3d 1168, 1170 (1989). Second, courts have recognized a limited exception for a church's exercise of religious conduct in the form of "shunning," where as part of a church's theology, it instructs members to shun former members. *See Paul v. Watchtower Bible & Tract Soc. of New York, Inc.*, 819 F.2d 875, 880 (9th Cir. 1987); *Sands v. Living Word Fellowship*, 34 P.3d 955, 959 (Alaska 2001). Neither the ministerial exception nor the religious conduct/shunning exception applies here. The Blogs don't purport to serve as a religious organization that might invoke these exceptions. Moreover, the Statements on the Blogs are not religious conduct—e.g. shunning—nor do they serve to facilitate a religious organization's governance of ecclesiastical matters. Rather, the Blogs seek to publish statements about Plaintiff's organization, Plaintiff's teachers, and Plaintiff's finances. (Rosenfeld Decl. ¶¶3-5 & Exs. A-C.) Such statements are not covered by the ministerial exception or the religious conduct/shunning exception.

Finally, Defendants' supposed privilege makes no sense: it would immunize from liability any statement about religion or a religious organization no matter how false or defamatory. Such an extreme privilege has been rejected by California courts.

4. While Plaintiff need not prove malice, it has submitted evidence that Defendants made the Statements with malice.

To succeed on a defamation claim, a public-figure plaintiff must plead and prove actual malice, *i.e.* that the defendant acted intentionally or in reckless disregard of the statement's falsity. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342, 345-46 (1974). However, a private-figure plaintiff need only prove that the defendant was negligent in making the defamatory statement. *See id.* Contrary to Defendants' unsupported argument, Plaintiff is not a public-figure. (Dhall Decl. ¶¶56-60.) But even if Plaintiff were a public-figure, it has submitted sufficient evidence of Defendants' actual malice.

a. Plaintiff is not a public figure where it has a limited media presence and has not thrust itself into Defendants' controversy.

There are two types of public-figures who are required to prove actual malice in a defamation action: an all-purpose public-figure and a limited-purpose public-figure. An

all-purpose public-figure is a person that has achieved pervasive fame or notoriety. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974). By comparison, a limited-purpose public-figure is a person that voluntarily injects itself into a particular public controversy and thereby becomes a public-figure as to the issues raised by the controversy.

The same public-figure/private-figure analysis applies to corporations as to individuals. See *Vegod Corp. v. American Broadcasting Companies, Inc.*, 25 Cal. 3d 763, 769-71 (1975). Unless a corporation has enjoyed pervasive fame or has purposefully interjected itself into a public controversy, it should be treated as a private-figure. *Id.* Pervasive fame exists where a corporation has acquired substantial media access, particularly as to the controversy at issue. See *id.* at 767. However, the fact that a corporation has accessed various media to advertise its goods or services will not transform a corporation into a public-figure. See *Melaleuca, Inc. v. Clark*, 66 Cal. App. 4th 1344, 1362 (1998); *Rancho La Costa, Inc. v. Superior Court*, 106 Cal. App. 3d 646, 660 (1980).

While Plaintiff's services have been praised in several articles in the national and international press, Plaintiff enjoys limited media access. (Dhall Decl. ¶57.) While Plaintiff currently seeks to establish a larger media presence, this journey has proved slow and difficult for Plaintiff. (*Id.* ¶58.) Particularly as relates to the controversy at issue—*i.e.* the Statements on the Blogs—Plaintiff has struggled to find an appropriate forum to respond. (*Id.* ¶59.) And in fact, Plaintiff has made no response in the media to the Statements. (*Id.* ¶60.) Because Plaintiff has limited media access and has not used the media to respond to the Statements, Plaintiff cannot be considered a public figure, and thus need not prove Defendants' malice.

b. Circumstantial evidence shows that Defendants acted with malice, and Plaintiff is entitled to discovery regarding the same.

Even if Plaintiff is treated as a public figure, circumstantial evidence shows that Defendants acted with malice in publishing the Statements, *i.e.* that Defendants acted knowingly or in reckless disregard of the truth. Malice may be established by direct or circumstantial evidence. *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal. App. 4th

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688, 709 (2007). Evidence of motive and intent, anger or hostility toward the plaintiff, reliance on unreliable sources, and a known bias against the plaintiff all indicate that a defendant acted with actual malice. See *id.* at 709. An inference of malice may also be drawn where the defamatory statement is inherently improbable or where there are obvious reasons to question its truthfulness. See *Nguyen-Lam v. Cao*, 171 Cal. App. 4th 858, 869 (2009).

Here, the circumstantial evidence shows that Defendants acted with malice. Defendants admittedly harbor ill will toward Plaintiff, and the overt purpose of the Blogs is to publish statements criticizing Plaintiff. (Rosenfeld Decl. ¶¶3-5 & Exs. A-C.) The Statements at issue are of the most serious nature, accusing Plaintiff of criminal activity and financial fraud—the allegations are so serious that they are inherently improbable without corroborating evidence. (*Id.* ¶¶6-8 & Exs. D-F.) The defamatory statements are not limited to a single occurrence, but appear throughout both Blogs. (*Id.*) None of the Statements contains any reference to external sources supporting the defamatory accusations. (*Id.*) Finally, Defendants published the Statements anonymously in an effort to disassociate themselves from the Statements. (*Id.*) In fact, Skywalker has used a photograph of a senior teacher—without the teacher’s consent—in his or her Wordpress profile, to hide his misconduct. (*Id.* ¶23 & Ex. U.) This circumstantial evidence is sufficient prima facie evidence to establish Defendants’ malice. However, if there is any question about Defendants’ malice, Plaintiff is entitled to conduct discovery as direct evidence of malice is in Defendants’ exclusive control—namely Defendants’ intent in publishing the Statements. See *Paterno v. Superior Court*, 163 Cal. App. 4th 1342, 1349 (2008) (addressing discovery regarding malice upon showing of falsity).

In summary, because Plaintiff has submitted prima facie evidence supporting its defamation claim—including evidence that the Statements are false, defamatory, unprivileged, and were made with malice—Defendants’ anti-SLAPP motion fails.

C. Plaintiff has submitted prima facie evidence of Defendants’ trade libel.

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To succeed on a claim for trade libel, a plaintiff must plead and prove: 1) an intentional disparagement of the quality of the plaintiff's services, 2) which induces others not to deal with the plaintiff, and 3) which causes the plaintiff special damages. See *Aetna Cas. & Sur. Co., Inc. v. Centennial Ins. Co.*, 838 F.2d 346, 351 (9th Cir. 1988). Plaintiff has submitted prima facie evidence of a trade libel claim.

First, the Statements disparage Plaintiff's services—namely Plaintiff's classes and teachers—accusing Plaintiff of physical and sexual abuse and financial misconduct. Moreover, these Statements are false. (Art of Living Decls. at *passim*.) Second, the Statements have induced others not to deal with Plaintiff. (Dhall Decl. ¶¶49-53.) To wit, Plaintiff has received multiple inquiries from existing and prospective students asking about the Statements on the Blogs. (*Id.*) These people have expressed concern that the Statements are true, and that Plaintiff is a corrupt organization that puts its students at risk. (*Id.*) Finally, Plaintiff has suffered damages as a result of the Statements. Since the Statements were published, Plaintiff's enrollment and revenue have dropped, at least partly as a result of the Statements. (*Id.* ¶¶64-69 & Ex. F.) This is corroborated by the fact that some people have told Plaintiff that they would not enroll in Plaintiff's courses as a result of reading the Statements. (*Id.* ¶¶49-53.)

Defendants argue that Plaintiff's trade libel claim is just a re-characterization of Plaintiff's defamation claim, and should be stricken for the same reasons. (Mot. to Dismiss at 20:21-22:6.) However, because Plaintiff has adequately pled and proved its defamation claim, Defendants' argument is moot, and their motion should be denied.

D. Anti-SLAPP does not apply to the misappropriation of trade secret claim; in any event Plaintiff has submitted evidence of Defendants' misappropriation.

Anti-SLAPP does not apply to a claim for misappropriation of trade secrets unless the defendants' disclosure of the trade secrets furthered the defendant's other protected speech. See *World Fin. Group, Inc. v. HBW Ins. & Fin. Services, Inc.*, 172 Cal. App. 4th 1561, 1568-69 (2009); *City of Cotati v. Cashman*, 29 Cal. 4th 69, 78 (2002). That is not the case here. Defendants did not publish any additional speech when they disclosed

1 Plaintiffs' trade secrets. (Rosenfeld Decl. ¶¶16-17 & Exs. N-O.) Rather the disclosures
 2 consisted only of Plaintiff's trade secrets without additional content. (*Id.*) Defendants'
 3 other speech on the Blogs—such as the defamatory Statements—were not made in
 4 connection with the Disclosures, and to the extent there was any connection, such a
 5 connection was “merely incidental to the conduct upon which the complaint is based and
 6 would therefore be insufficient to trigger the requirements of the anti-SLAPP statute.”
 7 *World Fin. Group, Inc.*, 172 Cal. App. 4th at 1569. Thus, anti-SLAPP does not apply to
 8 Plaintiff's claim for misappropriation of trade secrets.

9 Even if anti-SLAPP applied, Plaintiff has submitted sufficient evidence in support
 10 of its misappropriation of trade secrets claim. Specifically, Plaintiff has established: a)
 11 that it possesses trade secrets, b) that Defendants disclosed Plaintiff's trade secrets
 12 through improper means, and c) that Defendants' actions harmed Plaintiff. See *Cytodyn,*
 13 *Inc. v. Amerimmune Pharmaceuticals, Inc.*, 160 Cal. App. 4th 288, 297 (2008).

14 **1. Plaintiff's Manuals and Principles are capable of trade secret**
 15 **protection and are kept confidential by Plaintiff.**

16 A trade secret is information that is kept secret by reasonable means and that
 17 derives economic value from its secrecy. See *Alderson v. United States*, 718 F. Supp.
 18 2d 1186, 1199 (C.D. Cal. 2010). Defendants argue that religious and spiritual texts
 19 cannot be trade secrets. (Mot. at 2:18-20). Defendants are wrong. Even if Plaintiff's
 20 Manuals and Principles contain religious beliefs—and they do not—they would still be
 21 protected as trade secrets. See *Religious Tech. Ctr. v. Netcom On-Line Commc'n*
 22 *Services, Inc.*, 923 F. Supp. 1231, 1254 (N.D. Cal. 1995) (finding church's religious
 23 documents were entitled to trade secret protection); *Bridge Publications, Inc. v. Vien*, 827
 24 F. Supp. 629, 635 (S.D. Cal. 1993) (finding that religious organization's religious
 25 materials were trade secrets). Thus, Defendants are simply incorrect that religious or
 26 spiritual texts cannot be trade secrets.

27 Here, the Manuals and Principles constitute trade secrets where Plaintiff has used
 28 reasonable means to keep them confidential. The secrecy requirement for trade secret

1 protection is treated as a relative concept and requires a fact-intensive analysis. *DVD*
 2 *Copy Control Ass'n Inc. v. Bunner*, 116 Cal. App. 4th 241, 250 (2004). In *Religious Tech.*
 3 *Ctr.*, 923 F. Supp. at 1253, the court found that the plaintiff had used reasonable efforts
 4 to protect the secrecy of its religious texts by advising employees of their secretive
 5 nature, limiting access to the texts, and requiring confidentiality agreements. These
 6 efforts were reasonable even though the trade secrets had been disclosed to thousands
 7 of worshippers under a confidentiality agreement. See *id.*; see also *Morlife, Inc. v. Perry*,
 8 56 Cal. App. 4th 1514, 1522 (1997).

9 Here, Plaintiff keeps the Manuals and Principles on password protected
 10 computers, using password protected files. (Dhall Decl. ¶¶33-36.) Plaintiff only allows
 11 access to these electronic files to those people for whom access is necessary. (*Id.*)
 12 Before the Manuals or Principles are disclosed to student-teachers, those student-
 13 teachers must agree not to disclose the Manuals or Principles. (*Id.*) Student teachers
 14 must also agree not to use the Manuals or Principles for any purpose other than teaching
 15 Plaintiff's courses. (*Id.*) Out of an abundance of concern, only provides the Principles to
 16 student-teachers through oral presentations, requiring student-teachers to agree not to
 17 disclose or misuse any notes they take. (Dhall Decl. ¶¶29-30.) Thus, Plaintiff has used
 18 reasonable means to keep its Manuals and Principles confidential.

19 Defendants argue that Plaintiff's Principles cannot be trade secrets when they
 20 were disclosed by another anonymous Defendant on a different website. (Mot. at 13:4-
 21 10). Obviously this is wrong. The fact that Skywalker worked with another anonymous
 22 Defendant to disclose Plaintiff's trade secrets does not somehow make the trade secrets
 23 public knowledge. The critical inquiry is whether Plaintiff used reasonable efforts to
 24 protect the confidentiality of the Manuals and Principles. See *Cypress Semiconductor*
 25 *Corp. v. Superior Court*, 163 Cal. App. 4th 575, 588 (2008). As discussed above, Plaintiff
 26 has consistently used diligent efforts. Moreover, once Plaintiff learned of the disclosure
 27 of its trade secrets, Plaintiff sought to have the material removed. (Dhall Decl. ¶48.)
 28 Because Plaintiff uses reasonable means to keep its Manuals and Principles secret, the

1 Manuals and Principles constitute trade secrets.

2 **2. Defendants disclosed Plaintiff's trade secrets.**

3 In order to establish trade secret misappropriation, a plaintiff must also prove that
4 the defendant disclosed the plaintiff's trade secrets through improper means. Here,
5 Skywalker has admitted that he/she disclosed Plaintiff's trade secrets. (Skywalker Decl.
6 ¶9.) Specifically, Skywalker published the text of the Manuals and a link to a description
7 of Plaintiff's Principles on the Blogs. (*Id.*)

8 Moreover, Defendants' disclosure of Plaintiff's trade secrets was unlawful. Plaintiff
9 requires all persons accessing its Manuals and Principles to agree not to disclose the
10 materials or use them for other purposes. (Dhall Decl. ¶¶33-36.) Plaintiff never
11 authorized any person to disclose the Manuals or Principles on the Blogs. (*Id.* ¶47.)
12 Moreover, Defendants knew that their disclosure of the Manuals and Principles was
13 unlawful as the Blogs contain numerous references to Plaintiff's efforts to safeguard the
14 confidentiality of these materials. (Rosenfeld Decl. ¶18 & Ex. P.) Thus, the Defendants
15 unlawfully disclosed Plaintiff's trade secrets.

16 **3. Plaintiff derives independent economic value from its trade secrets
17 and was damaged by Defendants' disclosures.**

18 In order to establish trade secret misappropriation, a plaintiff must also show that
19 the trade secret derives independent economic value, actual or potential, from its
20 secrecy. *Religious Tech Ctr.*, 923 F. Supp. at 1252. California courts have found that an
21 organization's need for revenue is no less important because the organization is a non-
22 profit or religious organization. *Id.* at 1251-53. For non-profit organizations, the
23 economic value of a trade secret can be shown by: a) the effect of the disclosure on the
24 organization's revenue generation, b) the resources invested in protecting the trade
25 secret, and c) the willingness of others to pay for access to the trade secret. *Id.* at 1253.
26 In particular, where a non-profit organization uses its trade secrets to generate
27 revenue—whether through donations or course fees—such revenue generation reflects
28 independent economic value. See *Bridge Publications, Inc. v. Vien*, 827 F. Supp. 629,

633 (S.D. Cal. 1993). The presence of other organizations offering similar services also serves as direct evidence that an organization derives economic value from its trade secrets. *Religious Tech Ctr.*, 923 F. Supp. at 1253. Thus, Defendants' argument that "Plaintiff cannot rely on its own mystical belief system concerning the value of the 'secret' knowledge at issue," is not supported by California case law. (Mot. at 14:10-12.)

Plaintiff has submitted evidence that it derives economic value from its trade secrets. To wit, Plaintiff's courses generate revenue for Plaintiff. (Dhall Decl. ¶64.) Much of the success of Plaintiff's courses derives from Plaintiff's teaching methods, which are based on Plaintiff's Manuals and Principles. (*Id.* ¶65.) Thus, a direct link exists between the secrecy of the Manuals and Principles and the success of Plaintiff's courses. (*Id.* ¶66.) Moreover, as Defendants point out, other organizations offer courses in breathing, yoga, and meditation. (*Id.* ¶20.) Plaintiff's confidential teaching methods enable Plaintiff to distinguish its courses from those offered by other organizations, which in turn increases Plaintiff's revenue. (*Id.* ¶67.) These benefits and costs establish the independent economic value of Plaintiff's trade secrets under California law.

Defendants' disclosure of Plaintiff's trade secrets harmed Plaintiff by diverting course revenue and weakening Defendants' investment in keeping the Manuals and Principles confidential. (Dhall Decl. ¶¶64-69 & Ex. F.) Since the disclosure of Plaintiff's trade secrets, Plaintiff's enrollment and course revenue have fallen. (*Id.*) At the same time, Plaintiff has received inquiries by current and prospective students stating that they would not register for Plaintiff's courses as a result of the Blogs. (*Id.* ¶¶49-53.) Moreover, there are several postings on the Blogs about using Plaintiff's confidential teaching methods outside of Plaintiff's classes. (Rosenfeld Decl. ¶18 & Ex. P.) Thus, there is a direct correlation between Defendants' unlawful disclosures of Plaintiff's trade secrets and Plaintiff's decrease in enrollment and revenue. All of these facts establish that Plaintiff's trade secrets have economic value, and that Defendants harmed Plaintiff by disclosing Plaintiff's trade secrets.

//

1 In summary, because Plaintiff's Manuals and Principles constitute trade secrets
 2 deriving economic value, and because the disclosure of the Manuals and Principles
 3 harmed Plaintiff, Plaintiff has established its claim for misappropriation of trade secrets.
 4 Thus, Defendants' anti-SLAPP motion fails as to the misappropriation claim.

5 **4. Defendants' arguments regarding a public policy against**
 6 **confidentiality agreements is not supported by the law.**

7 In a last ditch effort, Defendants argue that Plaintiff's contracts maintaining the
 8 confidentiality of the Manuals and Principles are void as against public policy. (Mot. at
 9 14:25-15:24.) Specifically, Defendants argue that a contract cannot prevent a student
 10 from disclosing the contents of his or her coursework. (*Id.*) However, Defendants'
 11 argument is not supported by the law—not even the law cited by Defendants.

12 As an initial matter, California courts have recognized the lawful use of
 13 confidentiality agreements to limit the disclosure of religious or spiritual texts—even when
 14 those texts are disclosed in the context of coursework. See *Religious Tech Ctr.*, 923 F.
 15 Supp. at 1254; *Bridge Publications, Inc.* 827 F. Supp. at 633. Moreover, Defendants'
 16 authority does not establish any such public policy. Rather, Defendants' authority
 17 addresses situations that seek to limit a medical patient's ability to report on his or her
 18 treatment. See *McCoy v. Hearst Corp.*, 42 Cal. 3d 835 (1986); *Bindrim v. Mitchell*, 92 Cal.
 19 App. 3d 61 (1979). Because Plaintiff has never purported to offer professional medical
 20 services, Defendants' authority is inapposite. (Dhall Decl. ¶70.) Thus, Plaintiff's
 21 confidentiality agreements regarding the Manuals and Principles are not void as against
 22 public policy.

23 **E. The CDA does not protect Defendants' from their own statements; nor does**
 24 **it protect Defendants' from their intellectual property violations.**

25 Defendants argue that the Communications Decency Act, 47 U.S.C. §230(c),
 26 immunizes Defendants from defamation liability based on statements they did not create
 27 or edit or otherwise develop. (Mot. at 16:3-17:2.) Plaintiff does not dispute this.
 28 However, this argument is irrelevant where each Defendant "created" or "developed"
 more than one defamatory Statement. Moreover, Klim and Skywalker's anonymous, self-

1 serving declarations that they were not involved in the creation of defamatory Statements
 2 associated with their names are entitled to no weight at this point. See *Dixon v. Superior*
 3 *Court*, 30 Cal. App. 4th 733, 746 (1994). At a bare minimum, Plaintiff is entitled to
 4 discovery about who created the defamatory Statements appearing on the Blogs.

5 Moreover, the CDA does not immunize Skywalker's misappropriation of trade
 6 secrets or Defendants' violations of federal copyright law. As relates to Plaintiff's
 7 misappropriation claim, Skywalker has admitted to disclosing Plaintiff's trade secrets. At
 8 a minimum, Plaintiff is entitled to discovery about who else took part in the disclosure. As
 9 relates to Plaintiff's copyright claim, the CDA does not immunize conduct that violates
 10 federal intellectual property laws. See *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102,
 11 1118 (9th Cir. 2007). Skywalker has admitting to reproducing Plaintiff's copyrighted
 12 materials in coordination with other anonymous Defendants who operate the Wordpress
 13 Blog. (Skywalker Decl. ¶9.) At a minimum, Plaintiff is entitled to discovery about who
 14 else took part in the reproduction of Plaintiff's copyrighted materials.

15 In summary, the CDA is of little relevance where the Statements are attributable to
 16 each Defendant, where the CDA does not immunize Defendants' copyright infringement,
 17 and where discovery is needed to determine who created and developed the Statements at
 18 issue, disclosed Plaintiff's trade secrets, and reproduced Plaintiff's copyrighted materials.

19 CONCLUSION

20 For all of the reasons set forth above, the Court should deny Defendants' special
 21 motion to strike. At a minimum, the Court should delay any ruling on Defendants' motion
 22 and provide Plaintiff the opportunity to conduct discovery.

23 DATED: March 17, 2011

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