



Phoenix Corp. Ctr.
3003 N. Central Ave.
Suite 1200
P.O. Box 2199
Phoenix, Arizona
85001-2199

Telephone
602-604-2200

Facsimile
602-263-5333

1 John C. Scheller
(admitted pro hac vice; Wis. SBN No. 1031247)
2 Kevin M. St. John
(admitted pro hac vice; Wis. SBN No. 1054815)
3 MICHAEL BEST & FRIEDRICH LLP
One South Pinckney Street, Suite 700
4 Madison, Wisconsin 53703
(608) 257-3501

5 Don Bivens, State Bar No. 005134
6 Michael K. Dana, State Bar No. 019047
7 BIVENS & NORE, P.A.
3003 North Central Avenue
8 Suite 1200
Phoenix, Arizona 85012-2915
(602) 604-2200
9 dwbivens@bivens-nore.com
10 mdana@bivens-nore.com

11 *Attorneys for Plaintiff Hy-Cite Corporation*

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 Hy-Cite Corporation, a Wisconsin
corporation,

15 **Plaintiff,**

16 vs.

17
18 badbusinessbureau.com, L.L.C., a St.
19 Kitts/Nevis Corporation d/b/a
20 badbusinessbureau.com and/or
21 ripoffreport.com and/or
22 badbusinessbureau.com/Rip-
OffReport.com; Xcentric Ventures, LLC,
23 an Arizona Limited Liability Company
d/b/a badbusinessbureau.com and/or
24 ripoffreport.com and/or
badbusinessbureau.com/Rip-
OffReport.com; and Ed Magedson, an
Arizona resident,

25 **Defendants.**

Case No: CV-04-2856-PHX-EHC

**DECLARATION OF
KEVIN M. ST. JOHN**

26 I, Kevin M. St. John, state and declare as follows:

27 1. I am over 18 years old and competent to testify as to the facts stated herein,
28 which are based upon my personal knowledge.

Phoenix Corp. Ctr.
3003 N. Central Ave.
Suite 1200
P.O. Box 2199
Phoenix, Arizona
85001-2199

Telephone
602-604-2200

Facsimile
602-263-5333

1 2. I am one of the attorneys for Plaintiff Hy Cite Corporation (“Hy Cite”) in
2 the above-captioned matter.

3 3. As indicated in the Court’s electronic filing notice, shortly before 4 p.m.
4 MST on January 17, 2006, Plaintiff Hy-Cite filed an Application for Entry of Default
5 with a supporting affidavit of Michael K. Dana.

6 4. The next day, on January 18 during the late afternoon, I received a phone
7 call from Adam S. Kunz, Esq. Mr. Kunz represented to me that he was an attorney at
8 Jaburg & Wilk, P.C. He stated that he was a colleague of Maria Crimi Speth, Esq.,
9 Defendants’ attorney of record in this matter. Mr. Kunz explained to me that Maria Crimi
10 Speth was, at that time, in Utah.

11 5. Mr. Kunz told me that he had become aware of Plaintiff’s Application for
12 Entry of Default. Mr. Kunz stated that Ms. Speth failed to docket the date that the
13 Answer was due in this matter. He requested that I stipulate to withdraw the Application
14 for Entry of Default. He represented that such a stipulation was a professional courtesy in
15 the District of Arizona.

16 6. Mr. Kunz did not represent to me, on that call or at any other time that
17 Defendants’ error was due to Ms. Crimi Speth’s litigation schedule or due to the holidays.

18 7. I informed Mr. Kunz that Plaintiff would not stipulate to withdrawing the
19 Application for Entry of Default.
20

21 8. The next morning, on January 19, 2006, I reviewed a letter from Mr. Kunz
22 that appeared to have been sent the previous evening by fax. In that letter, Mr. Kunz
23 renewed his request to have Plaintiff withdraw its Application for Entry of Default. The
24 letter did not represent that Defendants’ failure to file an answer was due to Ms. Crimi
25 Speth’s litigation schedule or due to the holidays. Instead, the letter stated that Ms. Crimi
26 Speth “inadvertently mis-docketed or failed to docket the answer date.” A true and
27 correct copy of Mr. Kunz’s fax is attached hereto as Exhibit A.
28

Phoenix Corp. Ctr.
3003 N. Central Ave.
Suite 1200
P.O. Box 2199
Phoenix, Arizona
85001-2199

Telephone
602-604-2200

Facsimile
602-263-5333

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

446452

9. On January 20, 2006, I faxed Mr. Kunz a reply, with a copy to Ms. Crimi Speth, confirming that Hy Cite would not stipulate to withdrawing the Application for Entry of Default. A true and correct copy of my fax is attached hereto as Exhibit B.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 2, 2005.



Kevin M. St. John

EXHIBIT A

Gary J. Jaburg
 Roger L. Cohen
 Mitchell Reichman
 Krug J. Marton
 Kathi M. Sandweiss
 Lauren L. Garner
 Michelle C. Lombino
 Gregory P. Gillis
 Peter M. Gennrich
 Kelly Brown
 Jonathan Ibsen
 David S. Gungas
 David N. Farren
 Jill M. Hulsizer



**Jaburg & Wilk,
 P.C.**

ATTORNEYS AT LAW

3200 N. Central Ave., Suite 2000
 Phoenix, AZ 85012

Tel 602/248-1000
 Fax 602/248-0522

www.jaburgwilk.com

Lawrence E. Wilk
 Randy Nussbaum
 Beth S. Cohn
 Scott J. Richardson
 Mervyn T. Braude
 Maria Crimi Speth
 Neal H. Bookspan
 Ronald M. Horwitz
 Mark D. Boyard
 Kevin J. Ramsey
 Janessa E. Koening
 Adam S. Kunz
 Daniel L. Hulsizer
 James F. Murphy

Arly Reichau
Of Counsel

* ARIZONA CERTIFIED SPECIALIST: BANKRUPTCY
 ** ARIZONA CERTIFIED SPECIALIST: TAX LAW
 *** ARIZONA CERTIFIED SPECIALIST: FAMILY LAW

• BOARD CERTIFIED BUSINESS BANKRUPTCY LAW AMERICAN BOARD OF CERTIFICATION
 ** BOARD CERTIFIED BUSINESS AND CONSUMER BANKRUPTCY LAW AMERICAN BOARD OF CERTIFICATION

Writer's Direct Line
 602/248-1014

Writer's E-mail
 ask@jaburgwilk.com

January 18, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

John C. Scheller & Kevin M. St. John
 MICHAEL BEST & FRIEDRICH LLP
 One South Pinckney Street, Suite 700
 Madison, WI 53703
 FACSIMILE # (608) 283-2275

Don Bivens & Michael Dana
 BIVENS & NORE, P.A.
 3003 North Central Avenue, Suite 1200
 Phoenix, AZ 85012-2915
 FACSIMILE # (602) 241-8146

Re: *Hy-Cite Corporation v. badbusinessbureau.com, LLC, et al, CV-04-2856-PHX-EHC:
 Confirmation of telephone conference with Mr. St. John and second request for
 stipulation to allow answer to Plaintiff's remaining claims*

Dear Gentlemen:

This morning I became aware of Hy-Cite's December 17, 2006, Application for Entry of Default. Attorney Maria Speth, who represents Ed Magedson and Xcentric Ventures LLC in the lawsuit, is at an arbitration hearing out of state this week. She asked me to obtain your permission to file an Answer for her clients. As you know, Magedson and Xcentric have appeared and actively participated in the litigation through motions to dismiss, and certainly intend to answer Plaintiff's remaining claims.

When Maria received the Order granting in part and denying in part the motions to dismiss made by Magedson and Xcentric, she inadvertently mis-docketed or failed to docket the answer date. By my

Offices also in Scottsdale
 14500 N Northsight Blvd, Suite 116 - Scottsdale, AZ 85260 • Tel 480/609-0011 • Fax 480/609-0016

10207-ASK/ASK/512026_v1

Gentlemen
January 18, 2006
Page 2

calculations, pursuant to Civ.R. 12 Maria had 10 days from notice of the Court's action in partially denying the motions to dismiss, excluding the day of notice, Saturdays, Sundays, and legal holidays pursuant to Civ.R 5(a), and with three additional days pursuant to Civ.R. 6 (e) and 5 (b)(2)(D). That means the Answer was due today, January 18, 2006. You filed your application yesterday, January 17, 2006, before the answer was actually due, and refused my request for an extension today.

In the U.S. District Court, District of Arizona, the usual and best practice is to resolve this type of issue by stipulation without troubling the judge. Both judges and the Bar discourage us from wasting a court's time with petty disputes about technical procedure, rather than proceeding to the merits of the issues.

This morning I left voice mail for Michael Dana at Bivens & Nore asking for a return call to discuss the Application for Entry of Default. When he did not call back by 4:45 p.m., I attempted to reach him again, but only voicemail was available. Likewise, when I again called Bivens & Nore and asked for Mr. Bivens, I was put to voice mail.

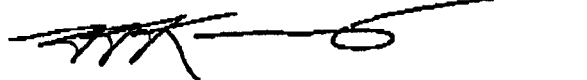
At that time I called the offices of Michael Best & Friedrich in Madison, Wisconsin, and reached Kevin St. John. I explained the situation and requested that Hy-Cite stipulate to withdraw the Application for Entry of Default and allow Maria to prepare an Answer by next week, as a professional courtesy. I explained that none of the attorneys representing Hy-Cite had made any contact with Maria to inquire whether her clients intended to Answer or default before filing the Application, and that the lack of answer had been an unintentional mistake. (At the time I didn't realize that Hy-Cite had filed the Application early, and presumed that Magedson and Xcentric were already late, and that professional courtesy would still be extended as a matter of course.) Mr. St. John refused to grant the courtesy. He specified that the Court would have to consider the circumstances.

I hope I will not have to trouble Judge Carol to consider all the circumstances each of us could possibly raise about this default application, the due date for the answer, Maria's mistake, etc.

Please reconsider the refusal, grant the professional courtesy of withdrawing the Application and allowing an answer by next Wednesday, and let us all preserve the court for more meaningful substantive disputes.

Sincerely,

JABURG & WILK, P.C.



Adam S. Kunz

ASK:ask

10297-ASK/ASK/512026_v1



Jaburg & Wilk, P.C.
ATTORNEYS AT LAW

3200 N. CENTRAL AVENUE, SUITE 2000 • PHOENIX, AZ 85012 • BUSINESS (602) 248-1000 • FACSIMILE (602) 248-0522
 14500 N. NORTHSIGHT BLVD, SUITE 116 • SCOTTSDALE, AZ 85260 • BUSINESS (480) 609-0011 • FACSIMILE (480) 609-0016

FACSIMILE TRANSMITTAL SHEET

TO: John C. Scheller & Kevin St. John	COMPANY: MICHAEL BEST & FRIEDRICH	FAX: (608) 283-2275
Don Bivens & Michael Diana	BIVENS & NORE	(602) 241-8146
FROM: Adam S. Kunz	DATE: January 18, 2006	TOTAL PAGES (INCLUDING COVER): 3
FILE/MATTER NUMBER: 10297-1	SENDER'S DIRECT LINE: 602/248-1014	SENDER'S E-MAIL: ASK@jaburgwilk.com
COMMENTS:		

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS CONFIDENTIAL, MAY BE ATTORNEY PRIVILEGED, AND IS INTENDED FOR THE USE OF THE ADDRESSEE ONLY. ANY UNAUTHORIZED DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE CALL US IMMEDIATELY.
10297-1/ASK/ASK/512031_v1

EXHIBIT B



Michael Best & Friedrich LLP
Attorneys at Law
One South Pinckney Street
Suite 700
Madison, WI 53703
P.O. Box 1808
Madison, WI 53701-1808
Phone 608.257.3501
Fax 608.283.2275
Kevin M. St. John
Direct 608.257.7483
Email kmsjohn@michaelbest.com

January 20, 2006

VIA FAX (602-248-0522)

Adam S. Kunz, Esq.
Jaburg & Wilk, P.C.
3200 North Central Avenue, #2000
Phoenix, AZ 85012

Re: *Hy Cite Corporation v. badbusinessbureau.com, LLC, et al.*;
Case No. CV-04-2856-PHX-EHC
Second Request for Stipulation to Withdraw Application for Entry of Default

Dear Mr. Kunz:

Yesterday morning I received your letter dated January 18, 2006. We appreciate your offer to allow us to reconsider our position on stipulating to a withdrawal of the application for entry of default. Our position, however, remains the same.

In response to the points you raise in your letter, we have calculated the date that your answer was due and we disagree that it was January 18, 2006. If the rules you cite in your letter apply, the date is January 13, 2006. The application was filed at the end of the day on January 17, 2006.

At any rate, we note that you did not file your answer until yesterday evening, January 19, 2006. Under either timeline, there is no dispute that the answer was not timely served and filed. Thus, the pending application is ripe for consideration.

As to your comments about professional courtesy, I have consulted with Arizona co-counsel on the question and neither of us is aware of any local or general principle of professional courtesy that would counsel us to stipulate to a withdrawal of our application. Were it the case that parties routinely stipulate to withdrawing applications for entry of default or the functional equivalent of stipulating to vacate default judgments, then default judgments would never be appropriate. Further, it is one thing for counsel to extend professional courtesies to address discovery deadlines, pre-trial scheduling, deposition scheduling, motion deadlines, and the like. It is quite another to suggest that professional courtesy extends to foregoing our client's right to seek dispositive relief.

Our refusal to stipulate to a withdrawal of our application must be viewed in the procedural and factual context of this litigation. This is not a situation where an unsophisticated defendant in a new lawsuit failed to recognize the significance of filing an answer or failed to timely retain competent counsel. This is a case that has been pending for over a year and no responsive pleading has been filed. This is a case in which Defendants filed dispositive motions that have

michaelbest.com



Adam S. Kunz, Esq.
January 20, 2006
Page 2

now been fully briefed and decided. This is a case where our client has had to incur significant costs to serve Defendant Ed Magedson, who evaded service while knowing full well that his company and co-Defendant, Xcentric Ventures, were served. This is a case where we were forced by Mr. Magedson's evasion to use some of the Court's valuable time to obtain an order to allow us to serve Mr. Magedson through alternative means. Mr. Magedson would not appear before the Court when it was inconvenient for him to do so. We would be hard-pressed to waive our client's rights in order to enable Mr. Magedson to make an untimely appearance now when it is convenient for him to do so.

We appreciate the fact that you are covering for Ms. Crimi Speth in her absence and that you may not have this background. And we further appreciate the opportunity you extended to allow us to reconsider our position. But we will not stipulate to withdrawing our application.

Truly yours,

MICHAEL BEST & FRIEDRICH LLP

A handwritten signature in black ink, appearing to read "Kevin M. St. John".

Kevin M. St. John

cc: Maria Crimi Speth, Esq. - Via fax (602-248-0522)
Michael K. Dana, Esq. - Via Fax (602-263-5333)
John C. Scheller, Esq.

Q:\client\047185\0010\B0718509.1

michaelbest.com



Madison Office
 Suite 700
 One South Pinckney Street
 Madison, WI 53703
 P.O. Box 1806
 Madison, WI 53701-1806
 Phone 608.257.3501
 Fax 608.283.2275

FACSIMILE TRANSMISSION

DATE: January 20, 2006

To:

NAME	FAX No.	PHONE No.
Adam S. Kunz -and- Maria Crimi Speth	602-248-0522	
Michael K. Dana	602-263-5333	

FROM: Kevin M. St. John

PHONE: 608-257-3501

SENT BY: Michele P. Leighton

EXTENSION: 7531

LOCATION: Madison

RE: Re: Hy Cite Corporation v. badbusinessbureau.com, LLC, et al.

NUMBER OF PAGES, INCLUDING COVER:	3		
CLIENT-MATTER NUMBER:	047188-0010	SENDER'S ACCOUNT NUMBER	891

NOTES/COMMENTS:

THE INFORMATION CONTAINED IN THIS FACSIMILE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, OR MAY BE PROPRIETARY CONFIDENTIAL INFORMATION OF A CLIENT, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, OR IF YOU EXPERIENCE FAX TRANSMISSION PROBLEMS, PLEASE CALL FAX DEPARTMENT AT 608.257.3501, EXT. 7209 AS SOON AS POSSIBLE.

michaelbest.com