

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

6 Don Bivens (#005134)  
 Michael K. Dana, (#019047)  
 SNELL & WILMER, LLP  
 7 One Arizona Center  
 Phoenix, AZ 85004-2202  
 8 (602) 382-6000

9 Attorneys for Plaintiff

10 Maria Crimi Speth  
 JABURG & WILK  
 11 3200 North Central Avenue, Suite 2000  
 Phoenix, AZ 85012  
 12 Fax: (602) 248-0522

13 Attorney for Defendants

14

15 **IN THE UNITED STATES DISTRICT COURT**  
 16 **FOR THE DISTRICT OF ARIZONA**

17 Hy Cite Corporation, a Wisconsin  
 Corporation, )

No: CV04-2856 PHX EHC

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Plaintiff,

v.

badbusinessbureau.com, L.L.C., a St.  
 Kitts/Nevis Corporation d/b/a  
 badbusinessbureau.com and/or  
 ripoffreport.com and/or  
 badbusinessbureau.com/Rip-Off Report.com;  
 Xcentric Ventures, LLC, an Arizona Limited  
 Liability Company d/b/a  
 badbusinessbureau.com and/or  
 ripoffreport.com and/or  
 badbusinessbureau.com/Rip-Off Report.com;  
 and Ed Magedson, an Arizona resident,

**JOINT PROPOSED CASE  
 MANAGEMENT PLAN**

Defendants.

1 Pursuant to Federal Rule of Civil Procedure 26(f) and the Court's Order Setting  
2 Scheduling Conference, the Plaintiff Hy Cite Corporation ("Hy Cite") and Defendants  
3 badbusinessbureau.com, LLC, Xcentric Ventures, LLC and Ed Magedson ("Defendants")  
4 submit the following Joint Proposed Case Management Plan.

5 **1. COUNSEL WHO PARTICIPATED IN DEVELOPING CASE**  
6 **MANAGEMENT PLAN**

7 Plaintiff: John C. Scheller  
(admitted pro hac vice; Wis. SBN No. 1031247)  
8 Kevin M. St. John  
(admitted pro hac vice; Wis. SBN No. 1054815)  
9 MICHAEL BEST & FRIEDRICH LLP  
One South Pinckney Street, Suite 700  
10 Madison, Wisconsin 53703  
(608) 257-3501  
(608) 283-2275  
11 jcscheller@michaelbest.com  
kmstjohn@michaelbest.com

12  
13 Don Bivens  
Michael K. Dana  
14 Snell & Wilmer, LLP  
One Arizona Center  
15 Phoenix, AZ 85004-2202  
(602) 382-6000  
(602) 382-6070  
16 E-mail: mdana@swlaw.com

17 Defendants: Maria Crimi Speth, Esq.  
18 Jaburg & Wilk  
3200 N. Central Ave., Suite 2400  
19 Phoenix, AZ 85012  
(602) 248-1000  
20 (602) 248-0522  
E-mail: mcs@jaburgwilk.com

21  
22 **2. NATURE OF THE CASE**

23 This is an action relating to certain postings published by Defendants. Hy Cite  
24 alleges that Defendants operate Internet websites purporting to be a consumer advocacy  
25 clearinghouse and that Defendants have posted negative, misleading, false, and  
26 defamatory content about Hy Cite. After filing an Amended Complaint in this action,  
27 Defendants moved to dismiss for failure to state a claim. This Court granted in part and

1 denied in part Defendants' motion. Currently pending before the Court are Hy Cite's  
2 counts alleging: (1) violation of 18 U.S.C. § 1962(c); RICO conspiracy; (3) common law  
3 defamation; (4) disparagement—trade libel; (5) tortious interference with business  
4 relationships; (6) common law trademark infringement and unfair competition; and (7)  
5 violation of Wis. Stat. §§ 110.18, 100.20.

6 **3. ELEMENTS OF PROOF NECESSARY FOR EACH COUNT AND**  
7 **DEFENSE**

8 Hy Cite's position is that the elements of its claims are as follows:

9 a. Violation of 18 U.S.C. § 1962(c) requires a showing that Defendants are an  
10 "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) and was engaged in  
11 activities that affected interstate commerce; that Defendant Ed Magedson is a "person"  
12 within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c); and that Magedson has control  
13 over the enterprises such that he can conduct and participate in the conduct of Defendant  
14 badbusinessbureau.com and Defendant Xcentric. Defendants requested payments from  
15 Hy Cite, and Hy Cite feared economic loss from refusing to cede to Defendants' demands.  
16 Defendants' program amounts to attempted extortion under 18 U.S.C. § 1951, which is a  
17 predicate act listed in 18 U.S.C. § 1961(1). The Defendants' several acts together  
18 constitute predicate acts sufficient to establish a "pattern of racketeering activity" as that  
19 term is defined in 18 U.S.C. § 1961(1) and (5). The overall scheme of the Defendants'  
20 websites as a means to extort money from companies such as plaintiff and the fraudulent  
21 claims made in furtherance of that scheme constitute a violation of 18 U.S.C. § 1343.  
22 These activities were undertaken intentionally and with full knowledge and appreciation  
23 of the intended results of the scheme to extort money, including knowledge of false and  
24 fraudulent representations to unlawfully deprive Plaintiff of its money for Defendants'  
25 pecuniary gain. Plaintiff has been injured in its business and property and reputation by  
26 the Defendants' extortionate scheme that comprises the violation of 18 U.S.C. § 1962(c)  
27 alleged in this claim.



1 f. Common law trademark infringement and unfair competition requires  
2 actions that constitute trademark infringement under the common law as well as unfair  
3 competition and damage to Hy Cite as a result of those actions.

4 g. Violation of Wis. Stat. §§ 110.18, 100.20 requires proof that Defendants  
5 made untrue, deceptive, or misleading representations about Hy Cite and/or Royal  
6 Prestige for the purpose of increasing Defendants' service revenues and resulting in losses  
7 and increased costs to Plaintiff.

8 For Defendants, the elements of their defenses are as follows:

9 a.. Counts I and II – Violation of 18 U.S.C. § 1962 and RICO Conspiracy  
10 Pursuant to the Racketeer Influenced and Corrupt Organizations act (“RICO”), it is  
11 “unlawful for any person employed by or associated with any enterprise engaged in, or in  
12 the activities of which affect, interstate or foreign commerce, to conduct or participate,  
13 directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of  
14 racketeering activity.” 18 U.S.C. §1962(c). Racketeering activity includes the predicate  
15 act of extortion under 18 U.S.C. § 1951. “Extortion” is defined as “the obtaining of  
16 property from another, with his consent, induced by wrongful use of actual or threatened  
17 force, violence or fear.” 18 U.S.C. § 1951(b)(2).

18 The predicate acts alleged by Plaintiff do not rise to the level of conduct  
19 contemplated by the statute. To support its claim for damages under 18 § 1962, Plaintiff  
20 has attempted to allege that Defendants “predicate act” was attempted extortion.  
21 However, extortion requires the wrongful use of actual or threatened force, violence or  
22 fear to obtain property. 18 U.S.C. § 1951. Plaintiff has not made an allegation of  
23 wrongful use of force or fear but instead alleges that it “feared economic loss from  
24 refusing to cede to Defendants’ demands, but nonetheless did not accept Defendant’s  
25 offer.” Plaintiff has alleged nothing more than an offer to provide services for  
26 compensation, which offer was rejected. Such a claim is not actionable under RICO. *See,*  
27 *e.g., Suirs v. Mew Metro Fed. Svgs. & Loan*, 873 P.2d 1401, 1401 (11<sup>th</sup> Cir. 1989).



1 **4. ISSUES IN DISPUTE**

2 **4.1 Factual Issues**

- 3 a. The corporate structures of Defendants (Defendants do not agree that this is  
4 a material issue
- 5 b. Defendants' involvement in providing content for their website
- 6 c. Defendants' processes for posting reports
- 7 d. Defendants' communications, if any, with alleged reporters
- 8 e. Identification of alleged reporters
- 9 f. Investigation into Defendants' corporate advocacy program
- 10 g. Details surrounding Defendants' request for money from Hy Cite
- 11 h. Defendants' knowledge of false postings (Defendants do not agree that this  
12 is a material issue
- 13 i. Defendants' investigation, if any, into postings (Defendants do not agree  
14 that this is a material issue)
- 15 j. Financial benefits reaped by Defendants connected to their postings
- 16 k. Whether there is any likelihood of confusion
- 17 l. Whether there was a wrongful use of actual or threatened force, violence, or  
18 fear to obtain property

19 **4.2 Legal Issues**

- 20 a. Whether Defendants can establish protection under the Communications  
21 Decency Act
- 22 b. Whether the Communications Decency Act, if applicable, provides an  
23 affirmative defense for "Publisher Liability"
- 24 c. Whether Defendants are liable under the counts alleged by Plaintiff

25 **5. JURISDICTIONAL BASIS OF CASE**

26 This Court has jurisdiction under 28 U.S.C. § 1331, 18 U.S.C. § 1964(a), (c), 28  
27 U.S.C. § 1338 and supplemental jurisdiction under 28 U.S.C. § 1367.

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**6. SERVICE OF PARTIES**

Defendants Xcentric Ventures, LLC and Ed Magedson have been served. Badbusinessbureau.com, L.L.C., an entity organized under the laws of St. Kitts/Nevis has not been served. Plaintiff understands that the entity has been dissolved, and that Xcentric Ventures, LLC and/or Ed Magedson have successor liability. Defendant denies that there is any successor liability.

**7. PARTIES EXPECTED TO BE ADDED OR AMENDED PLEADINGS**

The parties do not contemplate adding any other parties or otherwise amending the pleadings.

**8. DISPOSITIVE ISSUES TO BE DECIDED BY PRE-TRIAL MOTIONS**

**8.1 Hy Cite**

Hy Cite contemplates eventually filing motions for summary judgment on most, if not all, claims, following discovery.

**8.2 Defendants**

Defendants also contemplate filing motions for summary judgment following discovery.

**9. SUITABILITY FOR REFERENCE TO ARBITRATION, SPECIAL MASTER, OR UNITED STATES MAGISTRATE JUDGE FOR TRIAL**

The parties do not agree that this case is suitable for reference to arbitration, a special master, or a United States Magistrate Judge.

**10. STATUS OF RELATED CASES**

Not applicable.

**11. INITIAL DISCLOSURES**

The parties agree to make initial disclosures within 30 days of the scheduling conference.

1 **12. PROPOSED DEADLINES**

2 **12.1 Completion of Discovery.**

3 The parties propose discovery completion on February 28, 2007.

4 **12.2 Disclosure of Expert Testimony under Rule 26(a)(2)(C) of the Federal**  
5 **Rules of Civil Procedure.**

6 The parties propose that all experts and reports be disclosed pursuant to Rule  
7 26(a)(2)(B) no later than March 16, 2007, and that any and all rebuttal experts be  
8 disclosed, with reports, no later than April 30, 2007.

9 **12.3 Completion of Expert Depositions.**

10 The parties propose that expert depositions, not including rebuttal experts, be  
11 concluded no later than April 16, 2007, and that depositions of rebuttal experts conclude  
12 no later than May 31, 2007.

13 **12.4 Filing of Dispositive Motions.**

14 The parties propose that all dispositive motions be filed no later than June 15,  
15 2007.

16 **12.5 Settlement Talks.**

17 The parties have undertaken settlement talks and are currently negotiating a  
18 potential settlement of this matter.

19 **13. SCOPE OF DISCOVERY**

20 **13.1 The extent, nature and location of discovery anticipated by the parties.**

21 The parties intend to seek discovery of information reasonably calculated to lead  
22 to the discovery of admissible evidence relating to the factual and legal issues in this case  
23 to the full extent permitted by the Federal Rules of Civil Procedure.

24 The parties intend that discovery shall include depositions, document requests,  
25 inspection, interrogatories, and requests for admission. Unique issues presented in this  
26 case include issues arising out of the need to discover electronic information. Plaintiff  
27 intends to inspect Defendants electronic equipment. Plaintiff intends that all documents

1 produced shall include any and all “meta-data” or other “hidden” information contained in  
2 electronic documents, including, but not limited to IP addresses. The parties intend for  
3 the location of discovery to be taken in accordance with the Rules.

4 **13.2 Suggested changes, if any, to the discovery limitations imposed by the**  
5 **Federal Rules of Civil Procedure and LRCiv 16.2 of the Rules of**  
6 **Practice for the United States District Court for the District of Arizona**  
**(“Local Rules”).**

7 The parties understand this case to be on a “standard” track. The parties recognize  
8 that the standard time for the preliminary scheduling conference provided for by LRCiv.  
9 16.2 has been altered due to motion practice and the need for alternative service of  
10 process. All other dates are addressed herein.

11 **13.3 The number of hours permitted for each deposition, unless extended by**  
12 **agreement of the parties.**

13 The parties intend depositions shall be conducted in accordance with Rule 30, and  
14 that 7 hours shall be permitted for each deposition, absent a stipulation or court  
15 intervention by motion to extend or limit the same.

16 **14. ESTIMATED DATE AND LENGTH OF TRIAL**

17 5 days.

18 **15. JURY TRIAL REQUEST**

19 Plaintiff requests a jury trial.

20 **16. PROSPECTS FOR SETTLEMENT**

21 Settlement discussions have occurred and the parties are continuing to engage in  
22 productive discussions to resolve all claims.

23 **17. SUGGESTIONS ON HOW TO EXPEDITE DEPOSITIONS**

24 The Parties have no suggestions on how to expedite depositions.

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RESPECTFULLY SUBMITTED this 27th day of July, 2006.

**MICHAEL BEST & FRIEDRICH LLP**

By:  for  
John C. Scheller  
Kevin M. St. John  
One South Pinckney Street, Suite 700  
Madison, Wisconsin 53703

Don Bivens  
Michael K. Dana  
Snell & Wilmer, LLP  
One Arizona Center  
Phoenix, AZ 85004-2202  
(602) 382-6000

Attorneys for Plaintiff

**JABURG & WILK**

By:   
Maria Crimi Speth  
3200 North Central Avenue, Suite 2000  
Phoenix, AZ 85012  
Fax: (602) 248-0522

Attorney for Defendants

1 **CERTIFICATE OF MAILING**

2 I hereby certify that on July 27, 2006, I electronically transmitted the foregoing to the  
3 Clerk's Office using the CM/ECF System for filing to the following CM/ECF participant:

4 Maria Crimi Speth  
5 Jaburg & Wilk  
6 3200 North Central Avenue  
7 Suite 2000  
8 Phoenix, Arizona 85012  
9 Attorneys for Defendants

10 I further certify that on July 27, 2006, I served a courtesy copy of the aforementioned  
11 document and transmittal of a Notice of Electronic Filing by mail on the following:

12 The Honorable Earl H. Carroll  
13 United States District Court  
14 401 West Washington Street, SPC 48  
15 Suite 521  
16 Phoenix, AZ 85003-2151

17 John C. Scheller  
18 Kevin M. St. John  
19 MICHAEL BEST & FRIEDRICH LLP  
20 One South Pinckney Street  
21 Suite 700  
22 Madison, Wisconsin 53703

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