

1 Kraig J. Marton, #003816  
 2 [kjm@jaburgwilk.com](mailto:kjm@jaburgwilk.com)  
 3 Maria Crimi Speth, #012574  
 4 [mcs@jaburgwilk.com](mailto:mcs@jaburgwilk.com)  
 5 Adam S. Kunz, #018827  
 6 [ask@jaburgwilk.com](mailto:ask@jaburgwilk.com)  
 7 Laura A. Rogal, #025159  
 8 [lar@jaburgwilk.com](mailto:lar@jaburgwilk.com)  
 9 **JABURG & WILK, P.C.**  
 10 3200 North Central Avenue, Suite 2000  
 11 Phoenix, Arizona 85012  
 12 (602) 248-1000  
 13 *Attorneys for Plaintiffs*

10 **IN THE UNITED STATES DISTRICT COURT**  
 11 **DISTRICT OF ARIZONA**

12 XCENTRIC VENTURES, LLC, an Arizona  
 13 corporation, d/b/a “RIPOFFREPORT.COM”;  
 14 ED MAGEDSON, an individual

Case No: 07-954-PHX-NVW

14 Plaintiffs,

15 v.

**MEMORANDUM OF LAW IN  
 SUPPORT OF FINDING QED  
 MEDIA GROUP, LLC IN  
 CONTEMPT**

16 WILLIAM “BILL” STANLEY, an  
 17 individual; WILLIAM “BILL” STANLEY  
 18 d/b/a DEFAMATION ACTION.COM;  
 19 WILLIAM “BILL” STANLEY d/b/a  
 20 COMPLAINTREMOVER.COM; WILLIAM  
 21 “BILL” STANLEY aka JIM RICKSON;  
 22 WILLIAM “BILL” STANLEY aka MATT  
 23 JOHNSON; ROBERT RUSSO, an  
 24 individual; ROBERT RUSSO d/b/a  
 25 COMPLAINTREMOVER.COM; ROBERT  
 26 RUSSO d/b/a DEFENDMYNAME.COM;  
 27 ROBERT RUSSO d/b/a QED MEDIA  
 28 GROUP, L.L.C.; QED MEDIA GROUP,  
 L.L.C.; QED MEDIA GROUP, L.L.C. d/b/a  
 DEFENDMYNAME.COM; QED MEDIA  
 GROUP, L.L.C. d/b/a  
 COMPLAINTREMOVER.COM;  
 DEFAMATION ACTION LEAGUE, an  
 unincorporated association; and INTERNET  
 DEFAMATION LEAGUE, an  
 unincorporated association;

Defendants.

JABURG & WILK, P.C.  
 ATTORNEYS AT LAW  
 3200 NORTH CENTRAL AVENUE  
 SUITE 2000  
 PHOENIX, ARIZONA 85012

1 Plaintiffs Xcentric Ventures, LLC and Edward Magedson (collectively,  
2 “Plaintiffs”) hereby submit their Memorandum of Law addressing the authority of this  
3 Court to find Defendant QED Media Group, LLC in contempt for violations of the  
4 Preliminary Injunction dated June 21, 2007.

5 **I. INTRODUCTION**

6 Plaintiffs request that the Court find Defendant QED Media Group, LLC (“QED”)   
7 in contempt for its actions and inactions in violation of the Preliminary Injunction issued   
8 by this Court on June 21, 2007. In its Findings of Fact and Conclusions of Law dated   
9 June 21, 2007, this Court determined that the relationship between Defendants William   
10 Stanley and Robert Russo is inextricably intertwined. As testified to by Russo at the   
11 hearing on November 1, 2007, that relationship *has not changed*, and therefore, further   
12 evidence of that relationship need not be presented to the Court. Interestingly enough,   
13 Russo also presented testimony of a previously unexplored relationship – the relationship   
14 between Stanley and QED. As the President of QED, Russo has intimate knowledge of   
15 the workings of QED, as well as any employment and agency relationships established by   
16 QED. Despite Russo’s labeling of Stanley as a “reseller” for QED, the extent of the   
17 relationship between Stanley and QED is much more than that term would connote. As   
18 the evidence presented to this Court demonstrates, the relationship between Stanley and   
19 QED rises to such a level that QED can and should be liable for the actions of Stanley   
20 under a theory of respondeat superior.

21 Plaintiffs are aware that the Court has questioned whether QED’s “hands-off”   
22 attitude towards the actions of Stanley can constitute contempt. However, “[o]nce it is   
23 determined that the corporate agent willfully violated a clear contempt order, the   
24 corporation must bear responsibility.” *U.S. v. Twentieth Century Fox Film Corp.*, 882   
25 F.2d 656, 661 (2d Cir. 1989) (emphasis added). The Court has already made a   
26 determination that Stanley is in contempt of this Court’s Preliminary Injunction. It is   
27 indisputable that QED must bear responsibility for Stanley’s actions.

1           When considering the liability of QED for Stanley’s direct violation of the  
2 Preliminary Injunction, the Court should also note that an order binds parties *and* those in  
3 active concert with parties who have actual knowledge of the order. *U.S. v. Laurins*, 857  
4 F.2d 529, 535 (9th Cir. 1988); *see* Fed.R.Civ.P. 65(d); *United States v. Baker*, 641 F.2d  
5 1311, 1314 (9th Cir.1981). Unquestionably, QED was aware of the Preliminary  
6 Injunction. Furthermore, an order to a corporation binds those who are legally responsible  
7 for the conduct of its affairs. *NLRB v. Maine Caterers, Inc.*, 732 F.2d 689, 691 (1st  
8 Cir.1984); *see United States v. Wilson*, 221 U.S. 361, 376, 31 S.Ct. 538, 542-43, 55 L.Ed.  
9 771 (1911). At a minimum, QED is liable for contempt for its failure to comply with the  
10 Preliminary Injunction. In addition, because Stanley was acting as an agent of QED, and  
11 because it is undisputed that Stanley violated the Preliminary Injunction, QED is liable for  
12 Stanley’s contumacious acts.

13 **II. CIVIL CONTEMPT IS PROCEDURALLY PROPER UNDER THE FACTS**  
14 **PRESENTED**

15           “[C]ourts have [the] inherent power to enforce compliance with their lawful orders  
16 through civil contempt.” *Spallone v. United States*, 493 U.S. 265, 276, 110 S.Ct. 625, 107  
17 L.Ed.2d 644 (1990) (quoting *Shillitani v. United States*, 384 U.S. 364, 368, 86 S.Ct. 1531,  
18 16 L.Ed.2d 622 (1966)); *accord Waffenschmidt v. MacKay*, 763 F.2d 711 (5th Cir. 1985)  
19 (“Courts possess the inherent authority to enforce their own injunctive decrees.”) A party  
20 may be held in civil contempt where it “fail[ed] to take all reasonable steps within the  
21 party’s power to comply [with a specific and definite court order].” *In re Dual-Deck*  
22 *Video Cassette Recorder Antitrust Litigation*, 10 F.3d 693, 695 (9th Cir. 1993).  
23 Willfulness is not an element of contempt. *Id.* (“[T]here is no good faith exception to the  
24 requirement of obedience to a court order”).

25           Civil contempt is ordinarily used to compel compliance with an order of the Court,  
26 although in some circumstances a civil contempt sanction may be designed to  
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1 “compensate[ ] the complainant for losses sustained.” *Int'l Union, United Mine Workers*  
2 *v. Bagwell*, 512 U.S. 821, 828-829, 114 S.Ct. 2552, 2557-2558, 129 L.Ed.2d 642 (1994).

3 “The moving party has the burden of showing by clear and convincing evidence  
4 that the contemnors violated a specific and definitive order of the court.” *Federal Trade*  
5 *Comm’n v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999) (citation  
6 omitted); *Federal Trade Comm’n v. Enforma Natural Prods., Inc.*, 362 F.3d 1204, 1211  
7 (9th Cir. 2004). Once the moving party has met that burden, “[t]he burden then *shifts* to  
8 the contemnors to demonstrate why they were unable to comply.” *Id.* (emphasis added).

9 **III. THE PRINCIPAL IS LIABLE FOR THE CONDUCT OF ITS AGENT**

10 QED is liable for Stanley’s conduct because Stanley was, and is, QED’s agent  
11 acting within the scope of his agency. An agent is one who acts on behalf of another.  
12 *Barlage v. Valentine*, 210 Ariz. 270, 275, 110 P.3d 371, 376 (App. 2005). An essential  
13 element of the principal-agent relationship is the ability of the agent to act on behalf of his  
14 principal with third parties. *Equitable Life & Cas. Ins. Co. v. Rutledge*, 9 Ariz.App. 551,  
15 555, 454 P.2d 869, 873 (1969), citing *Valley Nat’l Bank v. Milmoie*, 74 Ariz. 290, 248 P.2d  
16 740 (1952); *see also In re Coupon Clearing Serv., Inc.*, 113 F.3d 1091, 1099 (9th  
17 Cir.1997) (“One of the chief characteristics of an agency relationship is the authority to  
18 act for and in the place of the principal for the purpose of bringing him or her into legal  
19 relations with third parties.”). Thus, when an agent acts, it is as if the principal himself  
20 has acted. *Barlage*, 210 Ariz. at 275, 110 P.3d at 376.

21 There are two types of agency, express and apparent. *Curran v. Indus. Comm’n*,  
22 156 Ariz. 434, 437, 752 P.2d 523, 526 (App.1988). If the principal has delegated  
23 authority by oral or written words which authorize the agent to do a certain act or series of  
24 acts, then the authority of the agent is express. *See Id.* Apparent agency exists when “the  
25 principal has intentionally or inadvertently induced third persons to believe that such a  
26 person was its agent although no actual or express authority was conferred on him as  
27 agent.” *Id.*

1 Similarly, an employer is vicariously liable for the negligent or tortious acts of its  
2 employee acting within the scope and course of employment. *See Wiper v. Downtown*  
3 *Development Corp.*, 152 Ariz. 309, 310, 732 P.2d 200, 201 (1987); *see also Robarge v.*  
4 *Bechtel Power Corp.*, 131 Ariz. 280, 283, 640 P.2d 211, 214 (1982). Conduct falls within  
5 the scope if it is the kind the employee is employed to perform, it occurs within the  
6 authorized time and space limits, and furthers the employer's business even if the  
7 employer has expressly forbidden it. *See Smith v. American Express Travel Services*, 179  
8 Ariz. 131, 135-36, 876 P.2d 1166, 1170-71 (1994); *Ohio Farmers Ins. Co. v. Norman*, 122  
9 Ariz. 330, 331-32, 594 P.2d 1026, 1027-28 (1979). *See also Santiago v. Phoenix*  
10 *Newspapers, Inc.*, 164 Ariz. 505, 508-09, 794 P.2d 138, 141-42 (1990) (whether a master-  
11 servant relationship exists is an objective determination to be made by the trier of fact).

12 “The general rule is that while an employer is liable for the negligence of its  
13 employee under the doctrine of respondeat superior, an employer is not liable for the  
14 negligence of an independent contractor.” *Wiggs v. City of Phoenix (Wiggs II)*, 198 Ariz.  
15 367, 369, ¶ 7, 10 P.3d 625, 627 (2000). There is, however, an exception to that rule where  
16 there is a non-delegable duty. *Id.* (citing *Ft. Lowell-NSS Ltd. P'ship v. Kelly*, 166 Ariz. 96,  
17 104, 800 P.2d 962, 970 (1990) (finding possessor of land vicariously liable for invitees'  
18 injuries even though they were caused by an independent contractor)). Therefore, if an  
19 employer delegates performance of a special duty to an independent contractor, and the  
20 independent contractor is negligent, the employer remains liable for any resulting injury  
21 as if the employer itself had been negligent. *See Id.* This exception exists because certain  
22 duties of an employer are so important that the employer cannot escape liability by  
23 delegating performance to another. *See Id.*

24 The *Wiggs II* court held that while an independent contractor is never a servant, it  
25 does not always follow that an independent contractor is never an agent. *Wiggs II*, 198  
26 Ariz. At 369, ¶ 10, 10 P.3d 625 (citing Restatement (Second) of Agency § 2 cmt. b  
27 (1958)). Such is the case because a client or principal instructs the independent contractor  
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1 or agent on what to do but not how to do it. *Id.* And, where there is a non-delegable duty,  
2 the principal is liable for the negligence of the agent, whether the agent is an employee or  
3 independent contractor. *Id.* (citations omitted).

4 **IV. QED MEDIA GROUP, LLC IS LIABLE FOR CONTEMPT**

5 A. The Language Of The Preliminary Injunction Specifically Obligates QED  
6 Media Group, LLC

7 1. QED Media Group, LLC was enjoined from making further  
8 defamatory statements.

9 The Preliminary Injunction states:

10 Defendants and their officers, agents, employees, independent  
11 contractors, or other persons acting under their supervision  
12 and control or at their request are preliminarily enjoined from  
13 . . . Knowingly making, or causing to be made, and  
14 transmitting to any third party any false and defamatory  
statement or representation . . . Posting on an Internet website  
or using in a domain name any false and defamatory  
statement or representation . . .

15 As used above, the term “Defendants” is an inclusive one, referencing both QED and  
16 Stanley. Specifically, no postings (or re-postings) were allowed to be made by QED.  
17 Importantly, the Preliminary Injunction also includes the phrase “knowingly making, or  
18 causing to be made” when referencing the transmittal of false and defamatory statements.  
19 As will be addressed further below, Russo (and, by virtue of his capacity as President,  
20 QED) knew that Stanley was in continuing violation of the Preliminary Injunction to their  
21 benefit. QED caused defamatory statements to be made on its behalf by Stanley, and  
22 therefore violated the Preliminary Injunction.

23 2. QED Media Group, LLC was required to ensure the removal of all  
24 defamatory statements and websites

25 The Preliminary Injunction also directs Stanley to “make reasonable efforts to  
26 remove or have removed any content incompatible with this preliminary injunction . . .”  
27 Although the Preliminary Injunction only specifies that this responsibility belongs to  
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1 Stanley, the responsibility may be imputed to QED as well through Federal Rule of Civil  
2 Procedure Rule 65(d).

3 Rule 65(d) provides: “Every order granting an injunction... is binding only upon  
4 the parties to the action, their officers, agents, servants, employees, and attorneys, and  
5 upon those persons in active concert or participation with them who receive actual notice  
6 of the order by personal service or otherwise.” (emphasis added) Even absent specific  
7 language requiring QED to be responsible for the removal of the false and defamatory  
8 content, the status of QED as both the principal of Stanley, as well as a “person in active  
9 concert or participation” with Stanley, necessitates that the portion of the Preliminary  
10 Injunction instructing the removal of the false and defamatory reports be directed to QED  
11 as well as Stanley. *See In re Transamerica Corp.*, 184 F.2d 319 (9th Cir. 1950), certiorari  
12 denied 71 S.Ct. 197, 340 U.S. 883, 95 L.Ed. 641, rehearing denied 71 S.Ct. 278, 340 U.S.  
13 907, 95 L.Ed. 656, rehearing denied 71 S.Ct. 279, 340 U.S. 907, 95 L.Ed. 656 (A  
14 corporate party or officer of corporation who acts through agents is not less amenable to  
15 an injunction than is a natural person acting individually).

16 B. William Stanley Is An Agent Of QED Media Group, LLC

17 Russo testified that QED makes “a very large profit each month” from clients who  
18 have contacted QED to get their name and/or company suppressed from  
19 www.ripoffreport.com. *See* Transcript of Show Cause Hearing dated November 1, 2007  
20 (“Transcript – Day 1”), p.138 at line 17. Stanley testified that he referred *all* clients he  
21 solicited who had issues with Rip-off Report to QED. Stanley does not perform services  
22 for these clients; these clients who initially contact Stanley ultimately become clients of  
23 QED. As a result of Stanley’s referrals, QED and Russo have profited. Stanley provided  
24 testimony which stated that his referrals generated “[m]aybe 7,000 or 8,000 [dollars] a  
25 month in new business” for QED. Transcript – Day 1, p. 22 at line 8. Russo also  
26 acknowledged the impact that Stanley has on QED’s profits:

27 Q. You didn’t ask him to stop being a reseller even after the  
28 Court issued a preliminary injunction he violated?

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A. Not only did I not ask him, it was a significant financial loss for our organization on a monthly basis.

Transcript – Day 1, p. 171 at lines 4-7. In his capacity as an agent of QED, Stanley is a material contributor to the financial well-being of QED.

Russo also testified that Xcentric’s Corporate Advocacy Program is not only in direct competition with the services of QED, it is the *only* source of competition for the services of QED.<sup>1</sup> Transcript – Day 1, p. 146 at lines 9-11. A company that has a report filed about it on Rip-off Report can choose a variety of ways address that report. The company may file a rebuttal to any report posted on Rip-off Report, the filing of which is free. The company may choose not to respond at all. The company, if eligible, may become a member of the Corporate Advocacy Program. A final alternative is that the company may hire QED to perform search engine optimization and reputation management services. If the person chooses to utilize the Corporate Advocacy Program, QED earns nothing. It is therefore in QED’s financial interest to promote its programs, while downplaying the effectiveness and quality of the Corporate Advocacy Program.

As the Court acknowledged, competition is the cornerstone of the American economy; however, such a principle only applies to competition that is achieved through lawful means. Stanley and Russo disseminated information throughout the Internet portraying Ed Magedson and the Corporate Advocacy Program as “extortion”. The intent of this attack was simple and conniving—people would be less likely to become a member of Xcentric’s Corporate Advocacy Program if they believed the false and defamatory statements made by Stanley and Russo. QED directly benefits when people utilize its services, not those of the Corporate Advocacy Program. By defaming Magedson, Stanley ensured that QED would reap the financial rewards of diverting business from the Corporate Advocacy Program to QED.

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<sup>1</sup> Plaintiffs are aware that the Court has not made any determination of the legality of either party’s services. However, for the purposes of this Memorandum, only the legality of the competition between the two services is at issue, not the legality of the services themselves.

1 C. QED Media Group, LLC Can Be Held In Contempt

2 “A corporation is guilty of criminal contempt when its agents violate a court order  
3 with knowledge that the order has been issued.” *U.S. v. 22 Rectangular or Cylindrical*  
4 *Finished Devices, More or Less, STER-O-LIZER MD-200...Halogenic Products Co.*, 941  
5 F.Supp. 1086, 1095 (D.Utah 1996) (emphasis added); *see also United States v. Greyhound*  
6 *Corp.*, 370 F.Supp. 881 (N.D.Ill.), *aff’d*, 508 F.2d 529 (7th Cir.1974). As Plaintiffs have  
7 addressed in their Memorandum of Law in Support of Criminal Contempt filed  
8 concurrently herewith, a finding of criminal contempt carries with it a higher burden of  
9 proof than one of civil contempt. It can be reasonably deduced that if QED would be  
10 automatically guilty of criminal contempt for the contemptuous actions of Stanley, it  
11 necessarily must be guilty of civil contempt which requires a *lower* burden of proof.

12 Russo has attempted to pawn off the entire responsibility for the contemptuous  
13 actions squarely onto Stanley. His defense, repeated as a refrain throughout his testimony,  
14 was that he did not control the actions of Stanley. However, a “corporation cannot hide  
15 behind the cloak of an unfaithful employee defenses in civil contempt proceeding. Under  
16 common law principles of respondeat superior, a principal is liable for the deceit of its  
17 agent, if committed in the very business the agent was appointed to carry out. This is true  
18 even though the agent’s specific conduct was carried out without the knowledge of the  
19 principal.” *Commodity Futures Trading Commission v. Premex, Inc.*, 655 F.2d 779  
20 (C.A.Ill., 1981) (emphasis added). There was no testimony presented that specifically  
21 describes the “scope” of Stanley’s employment or agency relationship with QED. There  
22 is testimony, however, which shows that Stanley was responsible for recruiting clients for  
23 QED, through whatever means were available to him. Stanley’s activities in failing to  
24 remove the defamatory postings and websites about Rip-off Report, as well as in creating  
25 new defamatory postings about Rip-off Report, were both done for the purpose of  
26 directing clients to QED. The principle of respondeat superior therefore governs the  
27 liability of QED, and QED must be held in contempt for these actions.  
28

1 Similarly, QED must also be held liable for contempt because it aided and abetted  
2 Stanley's violation of the Preliminary Injunction. Subsection (d) of Rule 65, defining  
3 scope of an injunction or restraining order, is derived from the common-law doctrine that  
4 a decree of injunction not only limits the parties defendant but also those identified with  
5 them in interest, in privity with them, represented by them or subject to their control, so  
6 that defendants may not nullify a decree by carrying out prohibited acts through aiders and  
7 abettors, though they were not parties to original proceeding. *Regal Knitwear Co. v.*  
8 *N.L.R.B.*, 65 S.Ct. 478, 324 U.S. 9, 89 L.Ed. 661 (1945); *see also* Fed.R.Civ.P. Rule  
9 65(d). This is, of course, exactly what happened in this case.

10 QED should therefore be held liable for contempt both because it abetted Stanley  
11 and because it is legally identified with Stanley; it may also be held liable for contempt  
12 because it was in active concert or participation with Stanley. *See N.L.R.B. v. Sequoia*  
13 *Dist. Council of Carpenters, AFL-CIO*, 568 F.2d 628 (9th Cir. 1977); *see also Reich v.*  
14 *U.S.*, 239 F.2d 134 (1st Cir. (Me.) 1956), certiorari denied 77 S.Ct. 563, 352 U.S. 1004, 1  
15 L.Ed.2d 549 (One who knowingly aids, abets, assists, or acts in active concert with a  
16 person who has been enjoined, in violating an injunction, subjects himself to civil as well  
17 as criminal proceedings for contempt).

18 **V. CONCLUSION**

19 Based on the foregoing, Plaintiffs respectfully request that this Court enter an  
20 Order finding Defendant QED Media Group, LLC in contempt for its violation of the  
21 Preliminary Injunction issued by this Court on June 21, 2007.

22 DATED this 9<sup>th</sup> day of November, 2007.

23  
24 **JABURG & WILK, P.C.**

25  
26 /Laura Rogal/  
27 Kraig J. Marton  
28 Maria Crimi Speth  
Adam S. Kunz  
Laura Rogal  
Attorneys for Plaintiffs

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**Certificate of Service**

I hereby certify that on November 9, 2007, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Teresa Kay Anderson  
Snell & Wilmer LLP  
One Arizona Center  
400 E Van Buren  
Phoenix, AZ 85004

Michael Kent Dana  
Snell & Wilmer LLP  
400 E Van Buren  
Phoenix, AZ 85004-0001

With a COPY of the foregoing emailed on the 9<sup>th</sup> day of November, 2007, to:

William “Bill” Stanley  
[videowebsites@yahoo.com](mailto:videowebsites@yahoo.com)  
[jorybernhard@yahoo.com](mailto:jorybernhard@yahoo.com)

With a COPY of the foregoing hand-delivered on the 9<sup>th</sup> day of November, 2007, to:

Honorable Neil V Wake  
United States District Court  
District of Arizona

/s/ Debra Gower \_\_\_\_\_