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Attorneys for Plaintiffs Global Royalties, Ltd.  
and Brandon Hall

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Global Royalties, Ltd., a Canadian  
corporation; Brandon Hall, a Canadian  
citizen,

Plaintiffs,

vs.

Xcentric Ventures, L.L.C., an Arizona  
limited liability company d/b/a  
ripoffreport.com and/or  
badbusinessbureau.com; Ed Magedson and  
Jane Doe Magedson, husband and wife,

Defendants.

NO. 2:07-CV-956-PHX-FJM

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTION TO  
DISMISS**

Global Royalties, Ltd. and Brandon Hall (collectively "Plaintiffs") respectfully requests that the Court deny Defendants Xcentric Ventures, L.L.C.'s and Edward Magedson's (collectively "Defendants") Motion to Dismiss.

**I. INTRODUCTION**

In their motion to dismiss, Defendants articulate their theories of defense and/or argue what they perceive to be the merits of the case. Defendants do not genuinely

1 challenge the sufficiency of the pleadings that constitute Plaintiffs' claims -- the proper  
2 function of a motion to dismiss. Moreover, Defendants do not (and cannot) argue that this  
3 Court, after liberally viewing and construing Plaintiffs' Complaint in the light most  
4 favorable to Plaintiffs, must conclude that it is beyond doubt that Plaintiffs can prove no  
5 set of facts entitling it to relief. For this reason, Defendants' motion must be dismissed.

6 **II. ARGUMENT**

7 **A. MOTION TO DISMISS STANDARD.**

8 In considering motions to dismiss, the Court must presume that the plaintiff's  
9 allegations are true, and grant the motion only if it appears beyond doubt that the plaintiff  
10 can prove no set of facts entitling it to relief. *See Resolution Trust Corporation v. Dean*,  
11 854 F.Supp 626, 631-32 (D.Ariz. 1994). The issue is not whether the plaintiff will  
12 ultimately prevail, but whether the plaintiff is entitled to offer evidence to support its  
13 claim. *Id.*; *see also J.K. v. Dillenberg* 836 F.Supp 694, 700 (D.Ariz. 1993) ("The purpose  
14 of a motion to dismiss is to test the formal sufficiency of the pleadings that constitute the  
15 claim. A motion to dismiss is not to be used as a procedure for resolving a contest about  
16 the facts or the merit of the case.") Under this standard, motions to dismiss are viewed  
17 with disfavor. *Dean*, 854 F.Supp. at 632.

18 It is with this standard in mind that the Court must determine Defendants' motion.  
19 Guided by this standard, and appropriately viewing the allegations in Plaintiffs'  
20 Complaint, the Court can only conclude that Plaintiffs have sufficiently alleged facts upon  
21 which they may be entitled to the enforcement of a foreign judgment against Defendants  
22 and to the recovery of damages against Defendants for their publication of defamatory  
23 statements. Accordingly, Defendants' motion must be dismissed.

1           **B. PLAINTIFFS HAVE SUFFICIENTLY STATED A CLAIM FOR**  
2           **ENFORCEMENT OF A FOREIGN JUDGMENT AGAINST**  
3           **DEFENDANTS.**

4           Arizona courts use the Restatement (Third) of Foreign Relations Law of the United  
5           States (the “Restatement”) to analyze whether to recognize and enforce a foreign  
6           judgment. *Alberta Securities Commission v. Ryckman*, 200 Ariz. 540, 545, 30 P.3d 121,  
7           126 (Ariz. App. 2001). The Restatement creates a strong presumption of the validity of a  
8           foreign judgment. *Id.*

9           Pursuant to Section 481 of the Restatement, subject to certain exceptions, a final  
10          judgment of a foreign court is entitled to recognition in Arizona. An Arizona court may  
11          not recognize a judgment of a foreign court if the judgment was rendered under a judicial  
12          system that does not provide impartial tribunals or procedures compatible with due  
13          process of law or the court that rendered the judgment did not have jurisdiction over the  
14          defendant in accordance with its laws and the rules set forth in Section 421 of the  
15          Restatement. *See* Restatement at § 482.

16          As alleged in Plaintiffs’ Complaint, on February 26, 2007 the Ontario Superior  
17          Court of Justice (the “Ontario Court”) entered its order (the “Ontario Order”) which (a)  
18          required Defendants to remove statements that Plaintiffs claimed were defamatory from  
19          the ripoffreport.com website and any other website that Defendants operate; (b) forbade  
20          Defendants from posting any further defamatory messages concerning Plaintiffs on the  
21          riporffreport.com website or any other website that Defendants operate; and (c) referred  
22          the issue of the amount of damages suffered by Plaintiffs as a result of the defamatory  
23          statements for trial. Additionally, Plaintiffs allege that the Ontario Court had subject  
24          matter jurisdiction over the claims asserted in that action, personal jurisdiction over  
25          Defendants and that the Ontario Order is a valid act of a foreign court entitled to  
26          recognition and enforcement in Arizona. In other words, Plaintiffs have alleged the  
27          existence of a final judgment of a foreign court that was rendered by a court of competent

1 jurisdiction in a proceeding that comports with due process of law. Plaintiffs have  
2 undoubtedly alleged facts upon which they may be entitled to enforcement of the Ontario  
3 Order.

4 **C. PLAINTIFFS HAVE ALLEGED FACTS SUFFICIENT TO STATE A**  
5 **CLAIM FOR DEFAMATION AGAINST DEFENDANTS.**

6 Plaintiffs have alleged that Defendants adopted and published false and defamatory  
7 statements they knew or should have known were false, or that Defendants published the  
8 defamatory statements in reckless disregard of the truth of falsity of the statements.  
9 Plaintiffs further allege that Defendants knew or should have known that the false and  
10 defamatory statements would cause them to suffer pecuniary and reputational harm and  
11 that the false and defamatory statements have caused such harm.

12 In order to prove its defamation claim, a plaintiff must show:

- 13 (a) a false and defamatory statement(s);
- 14 (b) an unprivileged publication of the statement(s);
- 15 (c) fault amounting at least to negligence on the part of the  
16 publisher; and
- 17 (d) harm caused by the statement(s).

18 Restatement (Second) of Torts § 558. Plaintiffs have alleged facts upon which they may  
19 be entitled to recovery against Defendants for defamation. Defendants do not contend  
20 otherwise. Instead, Defendants make arguments as to why they believe they will prevail  
21 on this claim. This is not the purpose of a motion to dismiss.

22 Defendants first argue that the statute of limitations bars Plaintiffs' defamation  
23 claim as far as one of the defamatory statements is concerned. In this regard, Defendants  
24 rely on the date that the alleged defamatory statement was published by its original  
25 publisher, Spencer Sullivan, an individual who is not a party to this action. Defendants  
26 ignore, however, that Plaintiffs' defamation claim is based upon the allegations that  
27 Defendants adopted as their own and published the defamatory statements after the

1 statements' original publication date. Assuming these facts to be true, as the Court must,  
2 it is clear that Plaintiffs have alleged facts upon which relief may be granted against  
3 Defendants on the defamation claim.

4 Defendants next argue that one or more of the defamatory statements are not  
5 actionable as a matter of law or are subject to the defense of truthfulness. Here,  
6 Defendants improperly focus on the merits of Plaintiffs' defamation claim rather than on  
7 the sufficiency of the allegations contained in the Complaint. For this reason also,  
8 Defendants' motion to dismiss Plaintiffs' defamation claim must be denied.

9 Finally, Defendants dedicate a significant amount of time to their argument that  
10 Plaintiffs' defamation claim is subject to dismissal because Defendants are entitled to  
11 immunity under the Communications Decency Act, 47 U.S.C. § 230 (the "CDA").  
12 However, Defendants' reliance on this argument at this stage in the proceeding is  
13 misguided.

14 In *Hy Cite Corporation v. BADBUSINESSBUREAU.COM, LLC*, 418 F.Supp.2d  
15 1142 (D.Ariz. 2005), the seller of dinnerware and cookware brought an action against  
16 Defendants and a limited liability company owned or controlled by Defendants. There, as  
17 here, Defendants moved to dismiss the plaintiff's claims for defamation citing the  
18 immunity afforded by the CDA. The court held that whether the Defendants were entitled  
19 to immunity under the CDA could not be determined on a motion to dismiss. 418 F.Supp  
20 at 1149. Central to the court's holding was the question whether Defendants could be  
21 considered to have created or developed the allegedly wrongful content posted on their  
22 website. 418 F.Supp.2d at 1148-1149. The same question exists in this case.

23 Here, Plaintiffs have alleged that the Defendants adopted the defamatory content  
24 posted on its website as its own. This allegation could support a finding that Defendants  
25 are responsible for the creation or development of the defamatory content and, therefore,  
26 not entitled to immunity under the CDA. Indeed, this fact once proven, will render the



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**CERTIFICATE OF SERVICE**

I hereby certify that on August 14, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

Copy mailed to:

Honorable Frederick J. Martone  
United States District Court  
Sandra Day O'Connor U.S. Courthouse, Suite 526  
401 West Washington Street, SPC 62  
Phoenix, AZ 85003

/s/ Lisa Fox