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 11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF ARIZONA**

13 XCENTRIC VENTURES, LLC, an
 Arizona limited liability corporation, and
 14 JABURG & WILK, P.C., a professional
 corporation,

15 Plaintiffs,

16 v.

17 SHAWN RICHESON,

18 Defendant.

Case No.: 2:10-cv-1931-PHX-NVW

**RESPONSE TO DEFENDANT'S
 MOTION FOR LEAVE TO APPEAR
 TELEPHONICALLY**

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 21 Plaintiffs Xcentric Ventures, LLC and Jaburg & Wilk, P.C. (collectively,
 22 "Plaintiffs") hereby respond to the Motion for Leave to Appear Telephonically filed by
 23 Defendant Shawn Richeson and request that the Motion be denied. Defendant Richeson
 24 has articulated no hardship or other basis upon which the Court may grant his Motion.
 25 Merely residing in another state does not justify a *carte blanche* order of telephonic
 26 appearance in this litigation.

27 Plaintiffs do not wish to appear unreasonable, and therefore, to the extent that the
 28 Court sets hearings or other appearance dates that do not require the presentation of

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1 witnesses or evidence, Plaintiffs understand that there may be circumstances where it
2 would be appropriate for Defendant Richeson to appear telephonically. However, the
3 upcoming Order to Show Cause hearing is not one of those situations. Given that the
4 upcoming hearing on Plaintiffs' Application for Preliminary Injunction will require the
5 examination of witnesses and the presentation of numerous exhibits, it would not be
6 prudent to allow Defendant Richeson to participate in such a hearing telephonically. In
7 fact, the personal appearance of Defendant Richeson is crucial at this hearing, because it is
8 his conduct which gave rise to the basis for the issuance of the Temporary Restraining
9 Order, and it is his conduct that will give rise to the issuance of the Preliminary
10 Injunction. Defendant Richeson is expected to testify to his role in creating the
11 threatening and harassing emails, which will be difficult, if not impossible, to do
12 efficiently without his physical presence and the utilization of the emails themselves as
13 exhibits. Plaintiffs also anticipate utilizing various other documentary exhibits consisting
14 of the websites which Defendant Richeson published the statements at issue on, which
15 will need to be verified by Defendant Richeson as containing information authored by
16 him. Again, to conduct this type of examination without Defendant Richeson being
17 present in the courtroom will be difficult and inefficient.

18 Defendant Richeson's personal appearance is also necessary for the Court to weigh
19 his credibility. It is presumed, based on the statements made by Defendant Richeson in
20 his recently filed Answer, that Defendant Richeson will defend his actions based on his
21 supposed "belief" that the statements authored and published by him are true and that he
22 did not act improperly. *See* Doc. No. 15. Credibility determinations are based on not just
23 the tone of voice, but also on other important physical actions such as eye contact, body
24 language, and many other signals that just can't be interpreted through a phone call. In
25 fact, the Ninth Circuit specifically identifies a "witness's manner while testifying" as one
26 of the factors to take into consideration when determining credibility of that witness. *See*
27 Ninth Circuit Model Civil Jury Instructions 1.11. The Court must be able to see
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1 Defendant Richeson as he provides his testimony so that it may adequately weigh his
2 credibility.

3 Based on the foregoing, Plaintiffs request that the Court deny Defendant
4 Richeson's Motion to Appear Telephonically.

5 DATED this 17th day of September, 2010.

6
7 **JABURG & WILK, P.C.**

8
9 s/Maria Crimi Speth
10 Maria Crimi Speth
11 David S. Gingras
12 Attorneys for Plaintiffs

13 *Certificate of Service*

14 I hereby certify that on the 17th day of September, 2010, I electronically transmitted the
15 attached document to the Clerk's Office using the CM/ECF System for filing.

16 I have also caused to be delivered to Defendant, who is not registered with the CM/ECF
17 System, a copy of the attached document by First Class Mail and E-Mail:

18 Shawn Richeson
19 1906 Twilight Drive
20 Killeen, Texas 76543
21 Shawn@ClickaNerd.com
22 Defendant Pro Per

23 I have also caused to be delivered a courtesy copy of the foregoing to:

24 Honorable Neil V. Wake
25 United States District Court
26 Sandra Day O'Connor Courthouse, Suite 524
27 401 W. Washington St., SPC 52
28 Phoenix, Arizona 85003

s/Debra Gower