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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

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

Plaintiffs,

v.

SHAWN RICHESON,

Defendant.

CIV '10 1931 PHX NVW

Case No.

EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER WITHOUT NOTICE AND APPLICATION FOR ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

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Plaintiffs Xcentric Ventures, LLC, an Arizona limited liability company ("Xcentric") and Jaburg & Wilk, P.C. ("Jaburg & Wilk") (collectively, "Plaintiffs") respectfully request the entry of a Temporary Restraining Order and Preliminary Injunction against Defendant Shawn Richeson, who has extorted Xcentric into removing his name from third-party postings on Xcentric's website, www.ripoffreport.com (the "Ripoff Report"). This campaign of threats and harassment began the morning of Friday,

September 3, 2010, and continued over the Labor Day weekend until Xcentric reluctantly, and temporarily gave in to Richeson's demands. Richeson engaged in extortion and harassment, with threats to destroy the reputation and business of Jaburg & Wilk, and execution on those threats.

This motion is brought pursuant to Fed.R.Civ.P. Rule 65(a) and (b), and is supported by the Verified Complaint filed concurrently herewith, as well as the Declaration of Maria Speth, attached hereto as **Exhibit "A"**. A proposed Order for the Court's signature is lodged with this Application.

I. INTRODUCTION

Xcentric is an Arizona-based limited liability corporation that operates a website known as the "Ripoff Report" which is located at www.RipoffReport.com. In short, the Ripoff Report website is essentially a message board that allows users to post complaints they may have about negative business practices they have experienced. Users of the Ripoff Report website may also read reports left by others and post responses which are known as "rebuttals." The Ripoff Report website charges nothing for users to post reports; it charges nothing for viewers to read reports; and it charges nothing to post rebuttals to reports.

Unfortunately, as a direct result of the business model of the Ripoff Report website, Xcentric is no stranger to litigation. In the past decade, no less than fifty lawsuits have been brought against it based on reports published on the Ripoff Report website. However, any attempt to impose liability on Xcentric for statements made by third-parties is strictly precluded by federal law—the Communications Decency Act, 47 U.S.C. § 230(c)(1) (the "CDA"). This federal statute, which was passed by Congress with the intent to "promote unfettered speech," provides in relevant part:

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

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47 U.S.C. § 230(c)(1) (emphasis added). The CDA preempts any inconsistent state law; "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." *Green v. America Online,* 318 F.3d 465, 470 (3rd Cir. 2003).

In no fewer than three recent decisions, four different federal courts have agreed that as the operator of Rip-Off Report, Xcentric was entitled to protection under the CDA where liability is premised on material created by a third party. *See Global Royalties, Ltd. v. Xcentric Ventures, LLC*, 544 F.Supp.2d 929, 933 (D.Ariz. 2008) (quoting *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003)); *see also Whitney Info. Network, Inc. v. Xcentric Ventures, LLC*, 2008 U.S. Dist. LEXIS 11632; 2008 WL 450095 (M.D.Fla. Feb. 15, 2008) (ordering summary judgment in favor of Xcentric and Magedson based on the CDA); *GW Equity, LLC v. Xcentric Ventures, LLC*, 2009 WL 62173 (N.D.Tex Jan. 9, 2009) (granting summary judgment based on the CDA); *Intellectual Art Multimedia, Inc. v. Milewski*, 2009 WL 2915273 (N.Y.Sup. Sept. 11, 2009) (granting motion to dismiss based on CDA immunity)[1].

What the CDA means, for the purpose of those demands made by Defendant Richeson, is that Xcentric has no legal obligation to remove or redact the content which underlies his extortive demands. Moreover, even absent the CDA, the statements about Richeson on the website would be protected by the First Amendment as being true statements of fact.

Knowing that he had no legal right to chill the free speech of his customers who complained about him on Ripoff Report, Richeson used illegal means to accomplish his goal.

II. FACTUAL BACKGROUND

The lengthy history between the parties is set forth in full in the Verified Complaint, and incorporated herein by reference. However, for ease of the Court, a brief recitation of the recent improper activities of Defendant Richeson is appropriate.

[1] JW was legal counsel for Xcentric and Magedson in each of these lawsuits.

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Defendant Richeson has a history of attempting to persuade, demand, convince, and extort Xcentric into removing the posts about him. Beginning on September 3, 2010, Richeson began a new and frightfully effective campaign to hide the truth about his business practices. Richeson decided to attack Jaburg & Wilk and Xcentric's general counsel (and former Jaburg & Wilk employee).

By email dated September 3, 2010, Defendant Richeson informed Xcentric and Magedson that he created and published a website detailing the supposed criminal history of Xcentric's general counsel, David Gingras. The website represented that David Gingras is currently a partner at Jaburg & Wilk and is a child molester. By that email, Defendant Richeson explained that his "offer still stands" and demanded that two reports about him from the Ripoff Report website be removed "today."

Throughout the day, Defendant Richeson's threats dramatically escalated. Less than an hour after sending his initial email, Defendant Richeson sent the link to the website about Mr. Gingras to all attorneys (almost thirty) employed by Jaburg & Wilk, stating that the website had been "updated." Defendant Richeson also sent another email to Jaburg & Wilk shortly after the initial demand, explaining that the website had "gone viral." He provided Jaburg & Wilk with a link to a third-party website, demonstrating that the exact content from his website had been copied and published on to the third-party website.

Maria Speth, an attorney with Jaburg & Wilk, immediately wrote to Defendant Richeson and requested that he stop publishing the defamatory statements about Mr. Gingras. Ms Speth also requested that Defendant Richeson speak with her about his demands. However, instead of communicating with Ms. Speth, Defendant Richeson sent another email containing a number of threats, including:

(a) That Defendant Richeson would file a false and frivolous lawsuit against Ms. Speth, "jaburg and wilk, Mr. Jaburg, Mr. Magedson, David Gingras and any other person" that Defendant Richeson believed to be involved in business with Xcentric;

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(b) That Defendant Richeson would "send my internet gurus back to the grind digging into all of your employees, clients etc."

(c) That Defendant Richeson would "make sure Jaburg and Wilk couldn't get a client if they stood on the corner with sign saying "we sue for food".

Defendant Richeson explained that he would not go through with the above threats if Xcentric (1) removed the name "Richeson" from any posting on the Ripoff Report website, and (2) removed the name "Clickanerd.com" from any posting on the Ripoff Report website.

Defendant Richeson did not cease his extortionate activities at the close of business on Friday. Instead, he began again with new emails and new threatening and harassing websites on Saturday, September 4, 2010. That morning, Defendant Richeson sent an email to Jaburg & Wilk, telling them to bookmark the website www.JaburgandWilkSucks.com (which Defendant Richeson had created). That website contained the same content as Defendant Richeson's previous website regarding the record of Xcentric's general counsel, Mr. Gingras.

Defendant Richeson also sent emails directly to Ms. Speth which contained links to additional websites containing the same content as the previous websites identified by Defendant Richeson.

Two hours later, still on Saturday morning, Defendant Richeson sent another email to Jaburg & Wilk and Magedson. That email was overtly threatening, and included statements regarding what Defendant Richeson planned on doing against Jaburg & Wilk, such as:

(a) "HAVE ALL OF [JABURG & WILK'S] CLIENTS CRIMINAL RECORDS SOON;"

(b) there was "NO TURNING BACK NOW" but that the "SAME OFFER [IS] ON THE TABLE," (insinuating that if Xcentric removed the reports from the Ripoff Report website, Defendant Richeson would cease making his threats);

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(c) "BY TUESDAY, WE WILL HAVE THIS SPREAD TO OVER 200 BLOGS"; and

(d) "CANT WAIT TO SEE YOU IN COURT DEAR."

Two hours later, Defendant Richeson sent yet another email to Jaburg & Wilk and Xcentric. In this email, Defendant Richeson explained that he was tracking all IP addresses which visited the website he had created, www.jaburgwilksucks.com. Defendant Richeson further explained that he would be "optimizing" that website, using certain terms related to Jaburg & Wilk, and that there would be 10,000 visitors to that website by Tuesday.

Also in that email, Defendant Richeson continued to escalate his extortionate demands and threats against the business associates of Xcentric. Referencing those individuals associated with Xcentric and Jaburg & Wilk, Defendant Richeson threatened to "start getting employees, family members and clients criminal records and past indiscretions." Defendant Richeson specifically identified four clients of Jaburg & Wilk by name whom he would "start with" in making information "unflattering, humiliating and very public." Disturbingly, Defendant Richeson also explained that his "desire to settle is fading as my excitement in this project increases."

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In response to these threats, Ms. Speth corresponded with Defendant Richeson, by email, explaining that Xcentric was considering surrendering to his demands and requesting that Defendant Richeson cease making additional postings about Xcentric and its vendors and associates. Instead of reasonably responding rationally to this email, Defendant Richeson explained that Xcentric had "20 minutes to fix" two postings about Defendant Richeson on the Ripoff Report website.

Defendant Richeson threatened that if his name and the name of his company was not removed from the two reports on the Ripoff Report website,

> I can assure before the weeks out, operation 'ass slam jaburg and wilk' will be a huge success.

After input from the police and independent counsel, Xcentric decided to temporarily remove Richeson's name from the postings during the long holiday weekend to give counsel enough time to file the necessary court papers and to avoid further irreparable damage to Jaburg & Wilk over the weekend. Xcentric would only agree to the removal on a temporary basis, and intended to restore the postings to their original versions by September 7, 2010. Xcentric has extended that deadline to accommodate unforeseen delays in filing this application.

On the afternoon of September 3, Richeson was notified that Xcentric would acquiesce to his demands and redact his names from the two reports he had identified from the Ripoff Report website. Plaintiffs did not disclose Xcentric's intent to restore the postings to their original versions, nor did Plaintiffs disclose their intent to file this action and application.

The actions of Xcentric in surrendering to Defendant Richeson's threats were not enough for Defendant Richeson. Although he acknowledged that "[e]verything is removed," he then identified a third report from the Ripoff Report website which he wanted removed.

Defendant Richeson's threatening activities continued into Sunday as well. That morning, Defendant Richeson sent an email to Jaburg & Wilk identifying three reports from the Ripoff Report website which he claimed "still have occurrences" of his name and requested that she "please remedy" that.

Less than an hour later, Defendant Richeson sent a second email to both Jaburg & Wilk and Xcentric identifying a report from the Ripoff Report website and saying "WTF: Are you going to fix this or not?" When this report was not "fixed" to Defendant Richeson's satisfaction, he began posting defamatory content about Mr. Gingras and Jaburg & Wilk on numerous third-party websites.

Defendant Richeson continued to transmit threatening emails on Sunday afternoon. He wrote to Jaburg & Wilk and Xcentric, stating "Pissing me off is not smart." Defendant Richeson continued to threaten Xcentric and Jaburg & Wilk, stating:

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(a) "If you are jerking me off to get through the weekend, I can promise you You will lose in ways you never dreamed of;" and

(b) "Keep your word and fix these posts, or Find out just how far I am willing to take this matter."

Late Sunday night, Defendant Richeson issued an additional threat to Xcentric. He offered Xcentric what he referred to as a "trade deal" related to the website www.jaburgandwilksucks.com. Defendant Richeson further threatened to "turn this into an SEO war" and warned Xcentric that he would "spend 250K in legal fees and lose anyway."

Despite it being a holiday, Defendant Richeson did not cease his activities on Monday, September 6, 2010. He sent three additional threatening emails to Jaburg & Wilk and Xcentric. Monday's first email explained that litigation would not deter Defendant Richeson. In fact, Defendant Richeson invited Jaburg & Wilk to "deal with the political fallout and sue me if they want." He continued to threaten that "By Monday, my copy of the report will have gone viral" and that it would be on "2000 + blogs."

Defendant Richeson made a number of knowingly false statements about the actions of Xcentric in that email as well.

Defendant Richeson further threatened Jaburg & Wilk, explaining:

(a) that he would "start contacting all the attorneys in suites opposite of you and share the recording" of Ms. Speth talking about Ripoff Report;

(b) "We will use our SEO knowledge and resources to cause those facts to rank on Google and Yahoo and make Jaburg and Wilk understand that when you dance with the devil (Ed Magedson), you will do it in hell;"

(c) "I will cause as much grief, public scrutiny and loss of revenue as humanly possible to you and the firm of Jaburg and Wilk;" and

(d) "I have polarized law firms and made the owners go to sleep and wake up in the middle of the night with hot flashes screaming my name."

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Defendant Richeson further attempted to extort Xcentric to remove the reports he identified, explaining that if Xcentric "take[s] care of this immediately... I give you my word that I will quietly go away and leave you and your law firm alone."

Monday's next email stated "Alrighty Then, Let the games begin" and referenced again the website www.jaburgandwilksucks.com.

The final email on Monday contained additional new threats against Xcentric and Jaburg & Wilk, including:

(a) "I promise and swear to god as my judge, I will not let you get away with this and the only non paying, time consuming and emotionally draining case you and your firm will be in for the next 3 years is jaburg v richeson v Speth v Magedson."

(b) "Every lawyer, paralegal and client you have will see all of their criminal records and any other unflattering piece of dirt that exists out their on the web right in the center of the Google and Yahoo search results."

(c) "Our SEO experts will make it so when you google your name the 1st 3 pages will be filled with nothing but the most embarrassing, negative shit there is."

(d) this was Xcentric and Jaburg & Wilk's "Last chance to survive the most unbelievable SEO war you have ever participated in."

In addition to communicating with Plaintiffs by email, Defendant Richeson also attempted to contact Maria Speth through her home telephone. On Sunday, September 5, 2010 and Monday, September 6, 2010 (Labor Day), Defendant Richeson called Ms. Speth's home three times. In one of those calls he spoke with Ms. Speth's husband and claimed that he was returning a call for computer service made to Click a Nerd. He also left a voice message on the Speth family answering machine claiming that he was "Rich" from Click A Nerd and that he was returning a call regarding computer service. The final call was made at 10:45 pm on Labor Day. When Defendant Richeson identified himself, Ms. Speth told him to never call her home again and hung up the phone.

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III. NOTICE HAS NOT BEEN GIVEN

Pursuant to Rule 65(b)(1), notice has not has been given to Defendant Richeson of the pendency of this Application. As set forth in the Verified Complaint, Plaintiffs will suffer immediate and irreparable injury if injunctive relief is not granted prior to Defendant Richeson's appearance before this Court. *See* Rule 65(b)(1)(A). Additionally, as set forth in the Declaration of Maria Speth, notice should not be required because Defendant Richeson has made threats specific to what he would do if Plaintiffs filed an application for an injunction. *See* Rule 65(b)(1)(B).

Defendant Richeson specifically threatened, "By the time you get an emergency TRO filed on Tuesday, this baby will have hit the 10K IP pull range." If notice is given before a restraining order is issued, Richeson will make every possible effort to inflict the maximum amount of damage on Plaintiffs before he is restrained from doing so. Thus, pursuant to Rule 65(b)(1), notice should not be required to Defendant Richseon prior to the entry of the injunctive relief requested herein.

IV. PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF

In determining whether to grant a preliminary injunction in this context, the Court must review the four traditional equitable factors:

(1) a strong likelihood of success on the merits;

(2) the possibility of irreparable injury;

(3) a balance of hardships favors the party seeking the injunction; and

(4) public policy favors the injunction.

See generally Earth Island Institute v. U.S. Forest Service, 442 F.3d 1147, 1158 (9th Cir. 2006); *Triad Sys. Corp. v. Southeastern Exp. Co.*, 64 F.3d 1330, 1335 (9th Cir.1995); *Johnson Controls v. Phoenix Controls Systems,* 886 F.2d 1173, 1174 (9th Cir. 1989). "Alternatively, a court may issue a preliminary injunction if the moving party demonstrates 'either a combination of probable success on the merits and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in his favor.' " *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984)

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(quoting *William Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 526 F.2d 86, 88 (9th Cir. 1975)). In analyzing each of these elements, the Court "may [ ] consider hearsay in deciding whether to issue a preliminary injunction." *Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009); *see Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9th Cir.1988) (en banc); *see also Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir.1984) ("The trial court may give even inadmissible evidence some weight, when to do so serves the purpose of preventing irreparable harm before trial."). Injunctive relief is historically designed to deter, not to punish, which is the exact result Plaintiffs are seeking here. *See Rondeau v. Mosinee Paper Corp.*, 95 S.Ct. 2069, 422 U.S. 49, 45 L.Ed.2d 12 (1975). Plaintiffs are able to demonstrate each of these elements and thus are entitled to entry of injunctive relief.

A. Plaintiffs Have A Strong Likelihood Of Success On The Merits

The Verified Complaint alleges, among other things, causes of action for intentional interference with business relationships and threat-based extortion.

1. Xcentric will succeed on its claim for intentional interference with business

Defendant Richeson has unequivocally stated that he will harass Xcentric and its legal counsel until they capitulate, which is sufficient to demonstrate Defendant Richeson's interference with contractual and business relationships and interference with economic advantage. Defendant Richeson knew about Xcentric's valid business expectancy and contractual relationships with Jaburg & Wilk. Defendant Richeson wrongfully interfered with those contracts and the prospective economic advantage by his actions. This interference is actionable and based on the foregoing, easily proved. *Snow v. Western Sav. & Loan Ass 'n*, 152 Ariz. 27, 33, 730 P.2d 211 (Ariz. 1986); *Wagenseller v. Scottsdale Memorial Hospital*, 147 Ariz. 370, 386 88, 710 P.2d 1025, 1041 43 (1985); and *Antwerp Diamond Exchange*, 130 Ariz. at 530, 637 P.2d at 740.

2. Jaburg & Wilk will succeed on its claim for intentional interference with business

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Similar to the interference with Xcentric's business contracts, the interference of Defendant Richeson in Jaburg & Wilk's business relationships is easily and clearly established. Defendant Richeson has already identified, by name, four clients of Jaburg & Wilk whom he intends to publicly harass by making and publishing false statements about those clients online. Obviously, Defendant Richeson is aware that Jaburg & Wilk has current business relationships with those clients, and intends to interfere with those relationships. Courts have specifically found that this type of interference between an attorney and its client can be actionable for intentional interference with contract. *See Plattner v. State Farm Mut. Auto. Ins. Co.*, 168 Ariz. 311, 316, 812 P.2d 1129, 1134 (App. 1991) (finding "an attorney may have a cause of action for the tort even when the interference is directed at the attorney and not at the client."); *see also State Farm Mutual Ins. Co. v. St. Joseph's Hospital*, 107 Ariz. 498, 489 P.2d 837 (1971).

Defendant Richeson has also expressed his intention to interfere with Jaburg & Wilk's prospective business relationships. He has stated that he will "make sure Jaburg and Wilk couldn't get a client if they stood on the corner with sign saying 'we sue for food.'" It is extraordinarily clear from Defendant Richeson's correspondences with Jaburg & Wilk that he intends to interfere with both Jaburg & Wilk's current clients, as well as its potential clients. Thus, Jaburg & Wilk will prevail on its cause of action for intentional interference with contract.

3. Plaintiffs will succeed on their claim for harassment

Arizona has statutorily defined "harassment" as "a series of acts over any period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose." A.R.S. § 12-1809(R). Under this statute, Plaintiffs are entitled to the issuance of an injunction against harassment. Pursuant to A.R.S. § 12-1809(E), if the court finds reasonable evidence of harassment of the Plaintiffs by Defendant Richeson, or that good cause exists to believe that great or irreparable harm would result to the Plaintiffs if the injunction is not granted before

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Defendant Richeson can be heard in opposition and the Court finds specific facts attesting to Plaintiffs' efforts to give notice to Defendant Richeson or reasons supporting Plaintiffs' claim that notice should not be given, the Court shall issue an injunction. Unquestionably, the actions undertaken by Defendant Richeson constitute statutory harassment of Plaintiffs. The emails and telephone calls from Defendant Richeson were a series of acts over a period of time. The emails and telephone calls from Defendant Richeson were directed specifically at Xcentric, its Manager, Jaburg & Wilk, and its attorneys. The emails and telephone calls from Defendant Richeson caused those reasonable individuals whom the communications were directed at to be alarmed, annoyed, and to feel harassed. The emails and telephone calls from Defendant Richeson were intended to extort Xcentric into performing certain actions, and therefore served no legitimate purpose. Thus, Plaintiffs will succeed on their claim for harassment.

B. Plaintiffs Will Be Irreparably Harmed If Injunctive Relief Is Not Granted

Likewise, the facts alleged and supported by sworn declaration fully support injunctive relief based on the likelihood of irreparable injury not remediable by damages if the requested relief is not granted. *See* Exhibit "A"; *see generally Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 375, 172 L. Ed. 2d 249 (2008). "[I]ntangible injuries, such as damage to ... goodwill qualify as irreparable harm." *Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991); *see Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374, 1377 (9th Cir. 1985). The Court may use a "sliding scale in which the required degree of irreparable harm increases as the probability of success decreases." *Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374, 1376 (9th Cir. 1985) (citing *Apple Computer, Inc. v. Formula International, Inc.*, 725 F.2d 521, 523 (9th Cir.1984)).

While it may appear to the Court that Defendant Richeson's activities have ceased for one day, there are two problems with that presumption[2]. First, given the erratic

[2] In considering the irreparable harm suffered by the parties, it is important to note that the Court has discretion to consider otherwise inadmissible evidence in ruling on the merits of an application for a preliminary injunction. *See Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir.1984).

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behaviors of Defendant Richeson and his proclivity for randomly issuing his extortive demands to Plaintiffs, there is no way for the Court to know whether he has truly stopped his improper activities absent an Order from this Court. Second, and of equal importance, is the fact that Xcentric has only consented to remove the content demanded by Defendant Richeson for the holiday weekend to allow itself and Jaburg & Wilk the opportunity to get to Court. *See* Exhibit "A." Operating under the consistent policy of "we do not negotiate with terrorists," Xcentric typically will not remove any content from the Ripoff Report website in response to threats or demands made by third parties. *Id.* Xcentric was very reluctant to remove the content demanded by Defendant Richeson even for this short period of time; however, it became clear from the improper actions of Defendant Richeson that absent removal of the content, Plaintiffs would suffer serious irreparable harm before injunctive relief could be granted, and by the time the parties would be able to address these issues before the Court, serious and irreparable reputational damage would have been done, rendering the issuance of the injunctive relief almost moot. *Id.* Therefore, absent the issuance of the requested injunctive relief, irreparable harm is likely to occur at the hands of Defendant Richeson.

C. A Balance Of Hardships Favors Plaintiffs

The hardships weigh heavily in favor of Plaintiffs. Were the Court not to enter the relief requested, Plaintiffs will be subject to continuous and ongoing attacks of their businesses by Defendant Richeson. As set forth in the emails from Defendant Richeson, he will publish false and defamatory statements about not only Plaintiffs, but their clients and customers as well. The likelihood of the damaging effects of Defendant Richeson's actions tips the scales of this element in favor of Plaintiffs.

Defendant Richeson, on the other hand, loses nothing if he is required to stop extorting Plaintiffs and threatening their businesses. In fact, Defendant Richeson has acknowledged that absent an Order from this Court, he will continue his extortive and harassing behavior. *See* Email from Richeson dated September 6, 2010 ("You can fuck around and file a lawsuit and get your TRO and maybe jam me up until the injunction

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hearing, but any Federal Judge with will see what you do for a living and once the TRO lifts, OMG Bend over ..."). Defendant Richeson will suffer no hardship if the injunctive relief is granted.

D. Public Policy Favors The Injunction

When the reach of an injunction is narrow, limited only to the parties, and has no impact on non-parties, the public interest will be "at most a neutral factor in the analysis rather than one that favor[s] [granting or] denying the preliminary injunction." Bernhardt v. Los Angeles County, 339 F.3d 920, 931 (9th Cir.2003). For the purposes of this case, the injunction only addresses the actions of the parties. Even so, public policy favors deterring individuals from engaging in extortionate activities. Therefore, this factor weighs in favor of Plaintiffs.

E. The Injunction Is Required To Preserve The Status Quo

"[T]he basic function of a preliminary injunction is to preserve the *status quo ante litem* pending a determination of the action on the merits." *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1200 (9th Cir.1980). Plaintiffs are seeking a prohibitory injunction, which would prohibit Defendant Richeson from taking action and "pre-serve [s] the status quo pending a determination of the action on the merits." *Chalk v. U.S. Dist. Court*, 840 F.2d 701, 704 (9th Cir.1988); *see also Heckler v. Lopez*, 463 U.S. 1328, 1333, 104 S.Ct. 10, 77 L.Ed.2d 1431 (1983) (a prohibitory injunction "freezes the positions of the parties until the court can hear the case on the merits"). Issuance of an injunction is necessary here to preserve the status quo, which is the scenario where Defendant Richeson is not publishing false and defamatory statements about Plaintiffs on thousands of website and blogs in an attempt to diminish their ability to operating their businesses. Absent the issuance of the requested injunctive relief, Defendant Richeson will retreat from the status quo and continue to perform the actions which he has specifically threatened to engage in throughout his email correspondence with Plaintiffs.

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F. The Court Should Not Require Plaintiffs To Post A Bond

The Court is permitted to grant preliminary injunctive relief "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed.R.Civ.P. Rule 65(c). Despite the seemingly mandatory language, "Rule 65(c) invests the district court 'with discretion as to the amount of security required, if any.' " *Jorgensen v. Cassiday*, 320 F.3d 906, 919(9th Cir.2003) (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir.1999)). In particular, "[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Id.* Because there is no possibility of any harm coming to Defendant Richeson if the Court enters injunctive relief in favor of Plaintiffs, it is not necessary for the Court to order that a bond be posted.

V. CONCLUSION

Based on the foregoing, Plaintiffs request that the Court grant them the injunctive relief requested herein and enter the Order in the form submitted herewith.

DATED this 9th day of September, 2010.

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