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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 ASIA ECONOMIC INSTITUTE, a California)
12 LLC; RAYMOND MOBREZ an individual;)
13 and ILIANA LLANERAS, an individual,)

13 Plaintiffs,

14 vs.

16 XCENTRIC VENTURES, LLC, an Arizona)
17 LLC, d/b/a as BADBUSINESS BUREAU)
18 and/or RIP OFF REPORT and/or)
19 RIPOFFREPORT.COM; BAD BUSINESS)
20 BUREAU, LLC, organized and existing under)
21 the laws of St. Kitts/Nevis, West Indies;)
22 EDWARD MAGEDSON an individual, and)
23 DOES 1 through 100, inclusive,)

24 Defendants.

Case No.: 2:10-cv-01360-SVW-PJW

PLAINTIFFS' OPPOSITION TO SPECIAL
MOTION TO STRIKE AND MOTION TO
REQUIRE RICO CASE STATEMENT

Hearing Date: April 19, 2010

Time: 1:30 PM

Courtroom: 6 (Hon. Stephen V. Wilson)

Complaint Filed: January 27, 2010

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants failed to meet their burden of proof as required by the Anti-SLAPP statute.
4 The arguments made in Defendants' Special Motion to Strike are unsupported by California state
5 and federal case law. In an attempt to broaden the application of the Anti-SLAPP statute to
6 matters that courts have considered to be outside its scope, Defendants have misconstrued and
7 misinterpreted the case law that serves as the foundation for their arguments. Without support for
8 their argument, the burden can not shift to the Plaintiffs. Nevertheless, Plaintiffs can and will
9 demonstrate a probability of success on the merits.

10 **II. BACKGROUND**

11 **A. Parties**

12 Plaintiff, Asia Economic Institute ("AEI"), conducted business in California for the past
13 nine years. At the time the defamatory posts appeared on Defendants' Web site, AEI operated as
14 a free, on-line, non-governmental publication of current news and events. They were not
15 involved in sales or marketing. Moreover, AEI was a small, virtually unknown operation
16 employing approximately 10 individuals including principals, Raymond Mobrez and Iliana
17 Llaneras. Plaintiffs' business was still in its early stages of development and had not yet made a
18 name for themselves in the financial industry. Any progress Plaintiffs had made was thwarted by
19 the patently false and outrageous comments appearing on Defendants' websites. In fact, these
20 allegations forced AEI out of business.

21 Defendants are in the business of defamation for profit. Defendants purport to be
22 consumer advocates, but this could not be further from the truth. Behind this façade, Defendants
23 operate as an Internet extortion scheme. They use the Communications Decency Act ("CDA")
24 as both a sword and a shield to extort monies from individuals and businesses who find
25 themselves in the unfortunate predicament of being victimized by Defendants' Web sites.

26 According to Magedson's Affidavit "[he] is the manager of Xcentric Ventures, LLC and
27 the founder and Editor of the website ripoffreport.com." See Affidavit of Edward Magedson
28 ("Magedson Aff.") ¶ 2. Magedson claims his "staff of monitors is 'authorized' to make minor,

1 non-substantive editorial changes.” Magedson Aff. ¶ 6. However, Defendants admission fails to
2 fully disclose the extent to which they alter third-party posts. As this motion will demonstrate,
3 Defendants add to and alter the posts submitted by third parties. Therefore, Defendants are
4 “information content providers” and should not be afforded CDA immunity.

5 **B. Facts**

6 On or about February 2009, Plaintiffs conducted a search on Google.com (“Google”)
7 and/or Yahoo.com (“Yahoo”) using the following terms: Raymond Mobrez, Mobrez, Iliana
8 Llaneras, Llaneras, and AEI. To their surprise, Plaintiffs appeared on said search engines as
9 individuals and businesses who had been defamed on Defendants’ websites. More shocking, this
10 defamatory description of Plaintiffs appeared within the first two to three search results.
11 Therefore, when an individual goes on Yahoo and types in “Raymond Mobrez” the following
12 will appear as two (2) of the search hits:

13
14 **Ripoff Report: Raymond Mobrez - Illana Mobrez - Asia Economic ...**

15 **Raymond Mobrez - Illana Mobrez - Asia Economic Institute lie cheat tax fraud Los**
16 **Angeles California**
17 **ripoffreport.com/... /raymond-mobrez-illana-mobrez-2M9XM.htm - 54k - Cached**

18 **Ripoff Report: Asia Economic Institute, AEI, WorldEcon ...**

19 Asia Economic Institute, AEI, WorldEcon: **Raymond Mobrez** And Iliana Llaneras
20 Complete exploitation as an employee. Do not work for the Asia Economic Institute its a
21 ...
22 **ripoffreport.com/Employers/ Asia-Economic-Instit/... - 74k - Cached** (EXHIBIT A for a
23 screenshot of this result.)

24 To date, there are six (6) reports regarding Plaintiffs on Defendants’ websites.
25 (EXHIBIT B for copies of the six (6) reports, including comments from the original author as
26 well as other posters). These posts initially written by former employees are defamatory, false,
27

28 ¹ At the time the Complaint was filed, there were only four (4) reports. However, Plaintiffs intend to amend their
Complaint to add any additional reports as they appear.

1 and malicious. They have severely injured Plaintiffs' reputation and virtually halted their
2 business.

3 Defendants' Web sites posted the following accusations against Plaintiffs (note, this list
4 is not an exhaustive list of the allegations posted on the Ripoffreport Web site):

- 5 A. "Asia Economic Institute lie cheat tax fraud. (sic)."
- 6 B. "Promised work visas, reference letters, and numerous raises and they have failed
7 every time."
- 8 C. "They reduce pay illegally."
- 9 D. "Knowingly take advantage of workers."
- 10 E. "Internet sweatshop."
- 11 F. "Complete disorganization."
- 12 G. "They are laundering money."
- 13 H. "They have no idea how to run any business and continue to ruin people's lives."
- 14 I. "Credentials of Raymond Mobrez [...] and Iliana Llaneras, are as muddled as
15 they possibly can be [...] The truth is there are no credentials to back up the
16 scheme that they are running."
- 17 J. "Raymond explained to me that he hires & fires based on race, religion, gender,
18 etc. Raymond told me girls are good for administrative tasks, especially Filipinas,
19 because they do what they are told. Raymond told me not to trust Persians and
20 Muslims. He told me the 'blacks' only want to work in entertainment so you
21 should not hire them. This is offensive and illegal. Obviously."
- 22 K. "Asia Economic Institute it's a SCAM."
- 23 L. "Mobrez and Llaneras deserve serious legal punishment for ruining my life."
- 24 M. "[...] Raymond Mobrez ?? [...] sewage, unscrupulous, mendacious, buffoonish
25 cretin."
- 26 N. "They routinely ignore employment laws."
- 27 O. "[...] Shady business practices [...] in which he and Iliana engage."

28 As explained below in detail, Defendants add content to these third party posts, thereby stripping
them of CDA immunity.

On February 15, 2009, Plaintiffs sent a letter to Defendants asking that they remove the
defamatory posts. See EXHIBIT C. On or about May 2009, Plaintiffs contacted Magedson via
telephone informing him that the posts were false and written by former disgruntled employees.
Moreover, Plaintiffs offered to prove the falsity of the posts. Magedson was not responsive.

Shortly thereafter, Plaintiffs emailed Magedson and again asked that the posts be
removed. Copies of Plaintiffs' and Defendants' email exchanges are attached hereto collectively

1 as EXHIBIT C. Moreover, Plaintiffs asked to meet with Magedson to discuss the matter.² In an
2 email Magedson responded as follows: “I am in California... I live here now. But wh[sic.] the
3 sense of meeting. [...] we do not remove posts [...] no amount of money can change this. Even
4 if you were the pope.. (sic.) It would not make a difference. A (sic.) pope (sic.) has access to a
5 computer m (sic.) sure.”

6 In another phone conversation between Plaintiffs and Magedson, Magedson offered to
7 enroll Plaintiffs in the CAP program for a fee of at least five thousand dollars (\$5,000), plus a
8 monthly monitoring fee. Defendants sent Plaintiffs a lengthy email regarding the CAP.

9 In an email from Defendants to Plaintiffs, dated May 12, 2009, Magedson explained that
10 the CAP works as follows:

11 “This program changes the negative listings on search engines into
12 a positive along with all the Reports on Rip-off Report (Reports
13 are never deleted).

14 As a condition of joining this program, the Reported business
15 allows us to email everyone who filed a complaint that the
16 business has contacted Rip-off Report and wants to make things
17 right . This weeds out false Reports and shows your commitment
18 to your customers and is later Reported in our findings about your
19 company [sic.]we post to every Report about your business.

20 You must live up to your stated commitments through our program
21 requirements.

22 Read about this program and how it changes all the negative into a
23 positive - fill out our Corporate Advocacy Program intake form.”

24 See EXHIBIT C. It is important to note that Defendant, Magedson, by his own admission,
25 clearly states that the CAP “[...] changes the negative listing on search engines into a positive
26 along with all the Reports on Rip-off Report...” As a result, Defendants can not be afforded

27 ² In Magedson’s Affidavit at ¶31, he alleges that Plaintiffs threatened him. This allegation is completely baseless.
28 Plaintiffs wanted to have dinner with Magedson and discuss how to have the posts removed. More troubling is the
fact that in a telephone conversation between Plaintiff’s Counsel and Defense Counsel, Defense Counsel admitted
that his client lied about living in California in order to benefit of the Anti-SLAPP statute, *not* because Plaintiffs had
threatened him. Plaintiff’s Counsel sent Defense Counsel a letter confirming their telephone conversation whereby
Defense Counsel admitted that his client lied about living in California in order to get the benefit of the Anti-SLAPP
statute. Plaintiffs are considering whether to pursue perjury charges against Magedson for such a blatant lie. (A
copy of Plaintiff’s letter to Defense Counsel is attached hereto as EXHIBIT D.)

1 protection under §230 of the CDA. For this reason, and the reasons set forth below, Defendants
2 do not deserve the protection of the CDA.

3 **III. ARGUMENT**

4 **A. Defendants cannot meet their initial burden because the defamatory posts do not** 5 **constitute a matter of public concern as defined by the Anti-SLAPP statute.**

6 California Code of Civil Procedure § 425.16 requires California courts to evaluate a
7 defendant's motion under the anti-strategic lawsuit against public participation statute (Anti-
8 SLAPP) in two steps. Hilton v. Hallmark Cards, 580 F.3d 874, 882 (9th Cir. 2009). First,
9 Defendants must make a threshold showing that the speech at issue were taken in furtherance of
10 the Defendant's right of petition or free speech under the United States or California Constitution
11 in connection with a public issue, as defined in Cal. Code Civ. Proc. § 425.16(e). Kronemyer v.
12 Internet Movie Data Base, Inc., 150 Cal. App. 4th 941 (Cal. App. 2d Dist. 2007). Only if
13
14 defendants make this initial showing does the burden then shift to plaintiffs to demonstrate a
15 probability of prevailing on the underlying claims.
16

17 Defendants, therefore, must argue that the act underlying plaintiff's complaint is a
18 protected activity. Here, Defendants argue that the speech and conduct at issue fall within the
19 meaning of "protected activity" as defined by Cal. Code Civ. Proc. § 425.16(e)(3) and (4). Under
20 both (e)(3) and (4), Defendants must prove the speech was made in connection with "an issue of
21 public interest." Defendant have not and can not make such a showing. For this reason, the
22 burden will never shift to Plaintiffs.
23

24 **1. Workplace disputes affecting a small number of people are not a** 25 **matter of public interest.**

26
27 Defendants assert in their motion that the posts at issue deal with "consumer protection
28 information" and "information ostensibly provided to aid consumers." However, Plaintiffs

1 provide no services or products for public use or consumption. Furthermore, none of the posts at
2 issue claim that Plaintiffs are engaged in that type of business, nor do they caution anyone from
3 using any products or services allegedly produced by Plaintiffs. Rather, the posts involve false
4 and outrageous allegations of workplace misconduct by disgruntled former employees. For
5 example, one of the posts states that the author was an employee and saw Plaintiffs fire
6 employees for “no apparent reason.” See EXHIBIT B. Other posts are as simple as “Raymond
7 is an idiot.” *Id.* These allegations are solely related to the disputes between Plaintiffs and their
8 former employees. It is well settled, however, that “disputes in the workplace do not involve
9 matters of public interest as defined in Code Civ. Proc. § 425.16, even though the issue may
10 involve free speech.” Dyer v. Childress, 147 Cal.App.4th 1273, 1282 (Cal. App. 2d Dist. 2007).

11 Furthermore, many of the posts accuse Plaintiffs of improper treatment of their
12 employees. Allegations of unlawful workplace activity below some threshold level of
13 significance are not an issue of public interest. Rivero v. American Federation of State, County
14 and Municipal Employees, AFL-CIO, 105 Cal. App. 4th 913 (Cal. App. 1st Dist. 2003).
15 Defendants cannot show that the content of these posts rise to the level of significance required
16 to transform employer-employee disputes into a matter of public interest. California courts have
17 stated that such disputes must impact a larger group of people in order to become a matter of
18 public interest under the Anti-SLAPP statute. Olaes v. Nationwide Mutual Ins. Co., 135 Cal.
19 App. 4th 1501, 1511 (Cal. App. 3d Dist. 2006)(stating “a dispute among a small number of
20 people in a workplace does not implicate a broader public interest subject motion to strike under
21 section 425.16, subdivision(e).); Terry v. Davis Community Church, 131 Cal. App. 4th 1534,
22 1546 (Cal. App. 3d. Dist. 2005)(stating “a matter of public interest should be something of
23 concern to a substantial number of people”); Rivero, 105 Cal.App.4th at 925 (noting that
24 Defendants failed to establish that the actions at issue in the case affected more than the eight
25 custodians involved in the dispute. Therefore, the dispute could not be an issue of public
26 interest.); Du Charme v. International Brotherhood of Electrical Workers, 110 Cal. App. 4th 107,
27 117 (Cal. App. 1st Dist. 2003)(stressing the importance of widespread public interest); Weinberg
28 v. Feisel, 110 Cal. App. 4th 1122, 1136 (Cal. App. 3d Dist. 2003)(stating that the Defendant had

1 not shown that the comments related to anything but a private controversy, as the dispute only
2 affected a small group of other private parties. The mere publication of such accusations did not
3 transform a private dispute into a matter of public interest.). Because Plaintiffs have only
4 employed a small number of people and, at the present time, have no employment opportunities,
5 these posts cannot be a matter of public interest.

6 Moreover, the Anti-SLAPP statute does not apply to allegations of criminal conduct
7 made when there were no charges pending against a plaintiff and when defendant had not taken
8 action intended to result in criminal investigation or prosecution. Weinberg, 110 Cal. App. 4th at
9 1136. In Weinberg, the court stated that allegations of criminal conduct are the “most clear and
10 egregious types of defamatory statements.” Id. Accordingly, it reasoned that granting these
11 types of unsupported criminal allegations protection under the Anti-SLAPP statute would
12 “unduly undermine the protection accorded by paragraph 1 of Civil Code, Section 46, which
13 includes as slander any false and unprivileged communication charging a person with a crime,
14 and the California rule that false accusations of crime are libel per se.” Id. Many of the posts
15 found on Ripoff Report accuse Plaintiffs of engaging in criminal activity. Such allegations are
16 unsupported by any evidence. Moreover, the posts do not indicate a desire to spark any official
17 investigation. They simply contain statements accusing Plaintiffs of failing to pay state taxes
18 and laundering money with no subsequent call to action. Therefore, these false allegations of
19 criminal activity cannot fall within the purview of the public interest as required by the Anti-
20 SLAPP statute.

21 Finally, statements about the character of a person not in the public eye are not a matter
22 of public interest. Dyer, 147 Cal. App. 4th at 1281. Plaintiffs in this case are private individuals,
23 not in the public eye. Rather, they operate a small company which is still very early in its stages
24 of development. Therefore, discussions of their character cannot be in the public interest as
25 required by the Anti-SLAPP statute.

1 person at issue in Sipple, by Defendants own admission, was a nationally known political
2 consultant, the Plaintiffs in this case are not well-known. They are two private individuals
3 operating a very small business. Therefore, Defendants cannot rely on this case in establishing
4 that the posts at issue involve a matter of public interest.

5 Next, Defendants cite Barrett v. Rosenthal, 40 Cal. 4th 33 (Cal. 2006). This citation is
6 problematic for a number of reasons. Firstly, although the trial court did hold that statements
7 posted on the Internet which criticized the character and competence of a doctor were within the
8 scope of the Anti-SLAPP statute, this decision was vacated by the Court of Appeal. Id. at 41.
9 The page of the decision Defendants cite only summarizes the lower court's decision. Secondly,
10 when the California Supreme Court heard the case on appeal, it barely addressed the Anti-
11 SLAPP issue. It did not state that the Court of Appeal erred in vacating the trial court's order
12 granting the motion to strike, nor did it indicate, in any way, that statements criticizing the
13 character and competence of a doctor should fall within the scope of the Anti-SLAPP statute. In
14 fact, the only issue the court addressed was related to the Communications Decency Act,
15 indicating that it did not believe that a motion to strike should have been granted in this case.
16 Finally, Defendants cite footnote 4 in their table of authorities. While Defendants were actually
17 correct with this citation in that it does deal with the Anti-SLAPP statute, it has absolutely
18 nothing to do with the public interest requirement. It simply notes that the Defendant's speech is
19 protected by the First Amendment and a Web site is a public forum for the purposes of the Anti-
20 SLAPP statute. Plaintiffs concede that a Web site is a public forum. Therefore, Barrett has no
21 application to the present case.

22 Defendants also cite to Global Telemedia Int'l Inc. v. Doe, 132 F.Supp.2d 1261 (C.D. Cal
23 2001), stating it held "statements posted on Internet by investors criticizing business practices of
24 company were matters of public concern." SMTS at 7. However, this case is also
25 distinguishable. The court's finding that the business practices of Global Telemedia were a
26 matter of public interest was based on the fact that Global Telemedia was a publicly traded
27 company with as many as 18,000 investors. Id. at 1265. Because of the thousands of investors,
28

1 the company's "successes or failures will affect not only individual investors, but in the case of
2 large companies, potentially market sectors or the markets as a whole." Id. Furthermore, the
3 court stressed that the company had "inserted itself into the public arena and made itself a matter
4 of public interest by means of numerous press releases." Id. Additionally, the court pointed to
5 the fact that the chat-room dedicated to Global Telemedia had generated over 30,000 postings as
6 further evidence the company is of public interest. Id. All of these facts, taken together, were
7 what brought posts regarding Global Telemedia within the purview of the public interest. Global
8 Telemedia was not held to be a matter of public interest simply because an Internet message
9 board questioned its business practices. In fact, the Global Telemedia court specifically notes
10 that its holding does not foreclose "defamation cases against individuals, as not all business will
11 be found to be a public issue." Id. at 1266.

12 It is clear that based on the court's reasoning in Global Telemedia, Plaintiffs business
13 practices are not a public issue. AEI is a very small business and is not publicly traded. As such,
14 its successes or failures have no bearing on anyone outside the company and certainly have no
15 affect on the markets. These facts are supported by the small number of comments that appear
16 under the posts on Ripoff Report. The six (6) reports about Plaintiffs that appeared on
17 Defendant's Web site received a grand total of 12 comments. (Ripoff Reports, EXHIBIT B). It
18 is abundantly clear, based on the court's reasoning in Global Telemedia, that it did not intend to
19 state that all posts relating to ethics and business practices are matters of public interest. For this
20 reason, this case cannot support the assertion that posts relating to the business practices in an
21 extremely small, privately-held company are a matter of public interest.

22 Finally, Defendants use Gilbert v. Sykes in constructing an argument that the statements
23 at issue involve a matter of public interest. 147 Cal. App. 4th 13 (Cal. App. 3d Dist. 2007). This
24 case is also distinguishable on the facts, making the reasoning utilized by the Gilbert court
25 inapplicable to the present case. As Defendants rightfully state, "the Gilbert court noted that the
26 website contributed to the broader discussion about the topic of plastic surgery in general, and
27 that because the public viewed that topic as important and interesting, CCP § 425.1[6](e)(3)
28

1 applied because the site ‘contributes toward public discussion about the benefits and risks of
2 plastic surgery in general, and particularly among persons contemplating plastic surgery.’ ”
3 SMTS at 9 (citing Gilbert, 147 Cal. App. 4th at 23). Defendants then attempt to draw a parallel
4 between those facts and the facts present in this case, arguing that employment issues in difficult
5 economic times are “public issues.” While it is arguable that unemployment is a public issue in
6 such harsh economic times, Plaintiffs employment of a very small number of people does
7 nothing to contribute to discussions of this matter. It is very clear that debates regarding plastic
8 surgery, which involves highly intrusive procedures for superficial benefits, are extremely
9 different from false allegations of poor business practices by a very small company.

10 Additionally, Defendants fail to discuss the reasoning supporting the court’s decision that
11 the review of the plastic surgeon contributed to a broader debate about plastic surgery. The
12 Gilbert court reached this conclusion based on the fact that the plastic surgeon at issue is a
13 prominent and well-respected plastic surgeon that held himself out as an expert in the field.
14 Gilbert, 147 Cal. App. 4th at 15. The court reasoned that information regarding such a horrific
15 experience at the hands of a prominent plastic surgeon may be very useful in aiding those
16 members of the public that were considering plastic surgery. Id. Plaintiffs do not hold
17 themselves out as an expert nor are they involved in any activities that have the potential to
18 permanently disfigure individuals.

19 Moreover, “the assertion of a broad or amorphous public interest is not sufficient” to
20 allow for protection under the Anti-SLAPP statute. Terry, 131 Cal. App. 4th at 1546. That is
21 exactly what Defendants attempt in this case. The poor economy is much too broad to bring the
22 posts within the scope of the Anti-SLAPP statute. After all, virtually everything can be
23 tangentially related to the poor economy. Therefore, it would defeat the purpose of the statute as
24 interpreted by California courts to allow such an argument to succeed.

25 Based on the above discussion of the cases Defendants cite, it is clear that their argument
26 is unsupported by any case law. The cases cited either do not stand for the proposition
27 Defendants claim or contain very specific reasoning that is inapplicable here. Moreover,
28

1 Defendants final argument that Plaintiffs' suitability as an employer is an "important topic
2 covered by the news media on a frequent basis" is also unsupported by any evidence. SMTS at
3 9. Defendants point to *Fortune Magazine's* list of top 100 companies to work for. However,
4 including a company on a list commending it for its practices is extremely different from false
5 allegations from disgruntled employees. Furthermore, it is laughable to imply that Ripoff Report
6 should even be mentioned in the same sentence as *Fortune Magazine*. Nevertheless, Defendants
7 use of such a list further makes our point that large, publicly traded companies are the only
8 businesses that have the potential to be matters of public interest within the meaning of the Anti-
9 SLAPP statute. National news media rarely, if ever, covers stories related to the business
10 practices of a small business who, at the time the posts were written, never had more than 15
11 employees, unless there is another newsworthy component to the story. Finally, the article to
12 which Defendants cite makes no reference to AEI and is, therefore, completely irrelevant to the
13 issue before the Court.

14 **3. Even under CCP § 425.16(e)(4), Defendants must still show that**
15 **posts relate to a matter of public concern.**

16 Defendant's Motion to Strike also asserts that the conduct alleged in Plaintiffs' Unfair
17 Business Practices claim is "protected activity" under CCP § 425.16(e)(4). SMTS at 11. Firstly,
18 Defendant misconstrues the nature of Plaintiffs' claim. In the initial complaint, Plaintiffs unfair
19 business practices claim (made pursuant to Cal. Bus. & Prof. Code § 17200) is based on
20 Defendants attempts to solicit defamatory posts and extort money for the removal of such posts.
21 Compl. at 18-19. Although it mentions Defendants attempts to represent themselves as
22 consumer advocates, this is a collateral fact to the main issue of extortion. Many courts have
23 held that speech involving illegal activity cannot receive First Amendment protection. See
24 Flatley v. Mauro, 39 Cal.4th 299, 317 (Cal. 2006)("Section 425.16 cannot be invoked by a
25 defendant whose asserted protected activity is illegal.").

26 Secondly, even if Defendants' conduct is protected activity, section 425.16(e)(4)
27 specifically requires that the constitutionally protected activity to be made "in connection with a
28 public issue or an issue of public interest." Cal. Code. Civ. Proc. § 425.16(e)(4). Defendants

1 present no arguments or evidence that any of Defendants' statements mentioned in Plaintiffs'
2 cause of action for unfair business practices were made in connection with a public issue.
3 Therefore, they cannot meet their initial burden based on Cal. Code Civ. Proc. § 425.16(e)(4).
4

5 **B. Assuming *arguendo* Defendants meet their initial burden, Plaintiffs can show**
6 **a probability of success on the merits.**

7 Recall Cal. Code Civ. Proc. § 425.16 requires that defendants demonstrate that the acts of
8 which the plaintiffs complains fall within the public interest. Only then does the burden shift to
9 the plaintiffs to demonstrate a probability of success of the merits. For the reasons laid out above,
10 Defendants have not met this burden. Therefore, it is unnecessary for Plaintiffs to demonstrate a
11 probability of prevailing in their underlying claim. Nevertheless, Plaintiffs can establish the
12 merits of their claim and do so to preserve their objections.
13

14 Defendants' Special Motion to Strike claims Defendants are immune from liability
15 pursuant to 47 U.S.C. § 230(c), otherwise known as the Communications Decency Act ("CDA").
16 Section 230 of the CDA specifies that "no provider or user of an interactive computer service
17 shall be treated as the publisher or speaker of any information provided by another information
18 content provider."47 U.S.C. § 230(c). However, this immunity applies only if the "interactive
19 service provider" is not also an "information content provider." An information content provider
20 is defined by statute as one who is "responsible, in whole or in part, for the creation or
21 development of" the offensive content. As the Ninth Circuit in Fair Housing Council of San
22 Fernando Valley v. Roommates.com, LLC notes, "a website operator can be both a service
23 provider and a content provider" if it "creates itself, or is 'responsible, in whole or in part' for
24 creating or developing" the content at issue. 521 F.3d 1157 (9th Cir. 2007) (citing 47 U.S.C. §
25 230(f)(3)). The opinion written by Chief Judge Alex Kozinski emphasized that "the party
26
27
28

1 responsible for putting information online may be subject to liability, even if the information
2 originated with the user.” *Id.* at 1165.

3 As explained below, Defendants are both “interactive service providers” and
4 “information content providers” for the following reasons: (1) Defendants encourage, solicit, and
5 instruct third parties on how to draft complaints; (2) Defendants create and add defamatory meta
6 tags to each post; and (3) Defendants transform third-party complaints into partial
7 advertisements. Therefore, as “information content providers,” Defendants are not entitled to
8 CDA immunity.
9
10

11 **1. Court have held that encouraging, soliciting, and/or instructing**
12 **consumers on how to draft complaints and/or posts and gather**
13 **information goes beyond the traditional publisher role**
14 **protected by the CDA.**

15 In MCW, Inc. v. Badbusinessbureau.com,L.L.C., 2004 U.S. Dist. LEXIS 6678 (N.D.
16 Tex. Apr. 19, 2004), a case factually analogous to this case, the United States District Court for
17 the Northern District of Texas held that website operators satisfied the definition of information
18 content provider concerning disputed consumer complaints posted on the website. *Id.* at 31-36.

19 First, courts have noted that encouraging and instructing consumers how to draft
20 complaints and gather information goes beyond the traditional publisher role protected by the
21 CDA and constitutes creating and developing the content of the complaints/posts. *Id.* at 34.
22 (“The defendants cannot disclaim responsibility for disparaging material that they actively
23 solicit.”).

24 The court in MCW, Inc. found that the web site operators were “information content
25 providers” because they were responsible, in whole or in part, for the creation or development of
26 third party defamatory messages created by the web site users. *Id.* At 33-36. The court reasoned
27 that:

28 [t]he defendants cannot disclaim responsibility for disparaging
material that they actively solicit. Furthermore, actively

1 encouraging and instructing a consumer to gather specific detailed
2 information is an activity that goes substantially beyond the
3 traditional publisher's editorial role. The defendants are clearly
4 doing more than making minor alterations to a consumer's
5 message. They are participating in the process of developing
6 information. Therefore, the defendants have not only incurred
7 responsibility for the information developed and created by
8 consumers, but have also gone beyond the publisher's role and
9 developed some of the defamatory information posted on the
10 websites. Id. at 34-35

11 In reaching its conclusion, the court explained that an interactive computer service
12 provider is transformed into an information content provider when it creates or develops content
13 provided by third parties:

14 [t]he CDA requires courts to consider whether a party is
15 responsible, in whole or in part, for the creation or development of
16 information. Therefore, the statute does not require a court to
17 determine only whether a party creates or develops the information
18 at issue. Being responsible for the creation or development of the
19 information is sufficient. This distinction is significant because a
20 party may be responsible for information created or developed by a
21 third party without actually creating or developing the information
22 itself. Some courts have ignored this distinction, broadening the
23 scope of immunity to protect those who do not create or develop
24 the information themselves, but are still responsible for the
25 creation or development of information. Id.

26 Additionally, in FTC v. Accusearch, Inc., 2007 U.S. Dist. Lexis 74905 (D.Wyo. Sept 28,
27 2007), the court applied similar logic. It held that a website that solicited the purchase of
28 telephone records participated in the creation or development of the information, despite the fact
that the phone records themselves were created by third-parties. Therefore, they were denied
immunity under the CDA for alleged unfair trade practices. Id.

Defendants undeniably instruct its Web site users how to craft complaints so that they
will be more appealing to the media and class action lawyers. For example, below are excerpts
from Defendants' websites:

1 media and consumer class action lawyers for a potential lawsuit, various portions of the website
2 that refer to the Plaintiffs' identity and reinforce specific categories of alleged misconduct by
3 Plaintiffs – specifically, disputes over pricing, advertising, and extended warranties. Users of
4 Defendants' Web sites can pick different categories in order to determine the type of alleged rip-
5 off. Then, as explained below, Defendants use meta tags to create headers that appear on popular
6 search engines. Defendants admit that it forwards complaints to class action lawyers, for the
7 purpose of having the complaints reviewed for possible lawsuits - a very similar type of conduct
8 cited in Accusearch as the basis for finding the website was not protected by the CDA. By
9 providing guidance and channeling complaints against Plaintiffs into specific categories designed
10 to attract class action lawyers' attention, Defendant is helping shape and develop the content of
11 the complaints.

12
13 **2. Defendants created and added defamatory meta tags and**
14 **applied them to each post concerning Plaintiffs, thereby,**
15 **making them information content providers.**

16 Despite arguments to the contrary, Defendants are not passive conduits of third-party
17 complaints. Rather, Defendants materially contribute to the defamatory Ripoff Reports, adding
18 their own original content to posts submitted by third parties. Specifically, Defendants create the
19 unique meta tags hidden in the HTML script of the report's webpage. Meta tags provide
20 information about a given webpage and assist search engines in classifying those Web sites.
21 More importantly, the meta tags lead to high rankings in Internet search engines and increase
22 traffic to the Web site. For that reason, these meta tags are the greatest source of damage to the
23 Plaintiffs.

24
25 **a. Defendants automatically add to and alter the posts by**
26 **creating unique meta tags to each third-party**
27 **complaint.**

28 Creation of these meta tags coexists with the operation of the Defendants' websites,
which operate as follows:

1 First, the Web site asks users to enter specific information about the targeted business or
2 individual. The following illustration is a true and accurate portrayal of Defendants' websites.
3 See EXHIBIT E. Second, the Web site prompts users to create a "title" for their report. As
4 illustrated in EXHIBIT F, the title consists of four parts: (1) the name of the targeted business or
5 individual, (2) descriptive words describing what the business or individual did to the party, (3)
6 city in which the company or individual is located, and (4) the state in which the company or
7 individual is located. See EXHIBIT F. Third, the Web site provides users with a blank text box
8 and asks users to draft the body of the report. See EXHIBIT G.

9 After this information is submitted, Defendants add their own unique content to each
10 report. As Defendants admitted in previous litigation, Defendants create the "title meta
11 tag," "description meta tag," and "keyword meta tag" found in the HTML script of the report's
12 unique webpage. (See Defendants' Answer, ¶ 35, attached hereto at EXHIBIT H).

13 The "title tag" is found in the HTML script underlying each report. The title meta tag is
14 created from the information collected during the second phase of the report creation process.
15 Defendants then add "Ripoff Report:" to the beginning of the report's title. Together this
16 language makes up the post's title meta tag. Each post, therefore, has a title that begins with
17 "Ripoff Report:". This title appears on the title bar of Internet browsers; but, even more
18 troublesome, the title meta tag appears as a search result on Internet search engines such as
19 Google. (See Defendants' Answer, ¶ 42, attached hereto at EXHIBIT H).

20 Defendants also create the "description meta tag," using the four-part title developed by
21 third-party posters. Like the title meta tag, the description meta tag appears in the HTML script
22 of the report's unique webpage. The HTML script of each report is attached hereto as EXHIBIT
23 I. The description meta tag is displayed in two lines beneath the title. Like the title meta tag, this
24 text appears as search results on Internet search engines. (See Defendants' Answer, ¶ 43,
25 attached hereto at EXHIBIT H.)

26 Defendants also create "keyword meta tags" for each webpage. Although these meta tags
27 are not displayed in Internet search results, Internet search engines to determine the content of
28 the Web site. For each webpage, Defendants add the following keyword meta tags: "rip-off,"

1 “ripoff,” “rip off,” the names of the victimized business or individual, and the category chosen in
2 the fourth step of the report creation. (See Defendants’ Answer, ¶ 35, 43, attached hereto at
3 EXHIBIT H.)

4 **b. Defendants Conspired with The Posters to Defame**
5 **Plaintiffs.**

6 On January 28, 2009,³ John or Jane Doe used the Defendants’ Web site to post a report
7 about Plaintiffs. Under the guise “Ray” from “Los Angeles,” John or Jane Doe wrote the
8 allegations contained in the report attached hereto as EXHIBIT B. Following the Web site’s
9 prompts, John or Jane Doe supplied the following four-part title: “Asia Economic Institute, AEI,
10 WorldEcon: Raymond Mobrez And Iliana Llaneras Complete exploitation as an employee. Do
11 not work for the Asia Economic Institute its (sic.) a SCAM! West Los Angeles California”.

12 After John or Jane Doe completed this phase, Defendants added their own defamatory
13 content to the report. First, Defendants added “Ripoff Report:” to the beginning of the report’s
14 title, creating the title meta tag “Ripoff Report: Asia Economic Institute, AEI, WorldEcon:
15 Raymond Mobrez And Iliana Llaneras Complete exploitation as an employee. Do not work for
16 the Asia Economic Institute its a SCAM! West Los Angeles California”. This title meta tag is
17 displayed in the HTML script as follows:

18 <title>Ripoff Report: Asia Economic Institute, AEI, WorldEcon:
19 Raymond Mobrez And Iliana Llaneras Complete exploitation as an
20 employee. Do not work for the Asia Economic Institute its a
SCAM! West Los Angeles California</title>

21 A true and accurate copy of the post’s HTML is attached hereto as EXHIBIT I.

22 Defendants then created the “description meta tag” using the four-part title provided by John
23 or Jane Doe. Like the title meta tag, the description meta tag reads, “Asia Economic Institute,
24 AEI, WorldEcon: Raymond Mobrez And Iliana Llaneras Complete exploitation as an employee.
25

26
27 ³ For simplicity purposes, Plaintiffs will utilize the report dated January 28, 2009 to exemplify
28 Defendants’ conduct towards the Plaintiffs. As evidenced by EXHIBIT, the same process was
used for each of the reports created by Defendants’ website.

1 Do not work for the Asia Economic Institute its (sic.) a SCAM! West Los Angeles California”.

2 This meta tag appears in the HTML as:

```
3 <meta name="description" content="Asia Economic Institute, AEI,  
4 WorldEcon: Raymond Mobrez And Iliana Llaneras Complete  
5 exploitation as an employee. Do not work for the Asia Economic  
6 Institute its a SCAM! West Los Angeles California " />
```

7 Defendants also created the keyword meta tags from the report. Here, Defendants used
8 the following keywords in their complaints against Plaintiffs: “rip-off, ripoff, rip off, Asia
9 Economic Institute, AEI, WorldEcon, Employers.” The keyword meta tag appears in the HTML
10 as follows:

```
11 <meta name="keywords" content="rip-off, ripoff, rip off, Asia  
12 Economic Institute, AEI, WorldEcon, Employers" />
```

13 Defendants also added the defamatory logo that appears on each report. The logo adds
14 these charged words: “...by consumers, for consumers”, “Ripoff Report”, and “Don’t let them
15 get away with it...let the truth be known!” These efforts combine to create the webpage viewable
16 at EXHIBIT J.

17 But, perhaps more importantly, the title and description meta tags created by the
18 Defendants combined to create the following:

19 **Ripoff Report: Asia Economic Institute, AEI, WorldEcon: Raymond ...**
20 ***Asia Economic Institute, AEI, WorldEcon: Raymond Mobrez And Iliana Llaneras***
21 ***Complete exploitation as an employee. Do not work for the Asia Economic...***

22 At the time the Complaint was filed, this result appeared within the first five search results on
23 Google. See also EXHIBIT A.

24 **c. These meta tags proximately caused Plaintiffs’ damage.**

25 The significance of the meta tags is two-fold. First, it discredits Magedson’s assertion
26 that Defendants do not create or alter the postings in any way. Second, it redefines Defendants as
27 an “information content provider.” An “information content provider” is any “person or entity
28

1 that is responsible, in whole or in part, for the creation or development of information provided
2 through the Internet...” 47 U.S.C. § 230(f)(3).

3 Recall that Defendants are wholly responsible for the creation of the meta tags. It is the
4 title and description meta tags that are displayed on Internet search engines such as Google. As
5 such, at or about the time the Complaint was filed, users searching for “Asia Economic
6 Institute,” “Raymond Mobrez,” or “Iliana Llaneras” were confronted with the following:

7 **Ripoff Report: *Asia Economic Institute, AEI, WorldEcon: Raymond ...***
8 ***Asia Economic Institute, AEI, WorldEcon: Raymond Mobrez And Iliana Llaneras***
9 ***Complete exploitation as an employee. Do not work for the Asia Economic ...***

10 Because this text appears almost immediately in ordinary searches, the meta tags, over which
11 Defendants are exclusively in control, are most injurious to Plaintiffs.

12 Moreover, the description of the Plaintiffs as a “Ripoff” is defamatory in and of itself. In
13 an era where the term “Google” has become commonplace, the millions of people using this
14 search engines will believe that Plaintiffs are “rip-offs” for the reasons set out in the reports. This
15 is particularly troublesome because these reports appear within the first few results of an Internet
16 search. See EXHIBIT A.

17 Plaintiffs anticipate that Defendants will argue the term “Ripoff” is hyperbolic and, for
18 this reason, does not constitute defamation. However, guided by the United States Supreme
19 Court, lower courts have required that this phrase be evaluated within its overall context. See
20 Phantom Touring, Inc. v. Affiliated Pub., 953 F.2d 724 (1st Cir. 1992) (citing Milkovich v.
21 Lorain Journal Co., 49 US 1 (1990)) (“In addition to considering whether the challenged speech
22 contained ‘loose, figurative, or hyperbolic language which would negate the impression’ that a
23 factual statement was being made, the Court also indicate that the context in which language
24 appears must be evaluated to see whether ‘the general tenor of the article negates this
25 impression”).

26 Taken in context, the report claims Plaintiffs are a “Ripoff” for the reasons stated within
27 the post. As the title and description meta tags illustrate, Defendants appear to accuse Plaintiffs
28 of being a “Ripoff” for exploiting employees. Exploitation of employees is very serious

1 accusation. Appending “Ripoff” to that accusation enhances the defamatory sting of the search
2 result. Furthermore, the post itself attempts to support this accusation with specific instances of
3 employer misconduct. Such allegations include illegal reduction of pay and refusal to submit
4 claims for unemployment benefits. While Plaintiffs maintain that these allegations are patently
5 false, a reasonable reader of the posts could be swayed by the supposed factual basis for this
6 complaint. Therefore, viewing “Ripoff” within this context requires a finding that the language is
7 more than hyperbolic rhetoric; instead, it bolsters the impression that a factual statement was
8 being made.

9 Because Defendants materially contribute to the defamatory nature of the posts, they can
10 not hide behind CDA immunity.

11 **3. Defendants alter the posts by turning them into**
12 **advertisements.**

13 Defendants change the purported consumer complaints into advertisements. Several
14 words in each consumer post appear in the color blue. When a user of Defendants’ websites
15 moves the cursor over the blue text an advertisement is displayed directly above that text. This
16 allows Defendants to profit from each post. To illustrate this practice, attached hereto,
17 collectively, as EXHIBIT K, are screen shots from Defendants’ websites illustrating
18 advertisements appearing in posts regarding Plaintiffs. These advertisements appear on each
19 user’s post and advertise a number of consumer products or services. This practice alters nature
20 of each post. In essence, a post disparaging one business or individual becomes an advocate for
21 another business or individual.

22 The original poster has no control over these advertisements and did not create or place
23 the advertisement there. Defendants can no longer claim that they provide a neutral forum for
24 third party complaints. Rather, they materially alter the essence of each “consumer complaint.”

25
26 **C. Plaintiffs can demonstrate a probability of succeeding on the merits of each**
27 **of the causes of action subject to Defendants’ Motion to Strike.**
28

1 **1. Plaintiffs Can Demonstrate a Probability of Succeeding on the**
2 **Merits of Their Common Law Defamation, Defamation Per se, and**
3 **False Light Claims**

4 The posts at issue were published by the Defendants on their Web site, Ripoffreport.com.
5 See EXHIBIT B. These posts are false and misleading. See Mobrez Aff. ¶ 4. Defendants knows
6 the reports were false but continue to display them on their Web site. See Mobrez Aff. ¶ 5. These
7 patently false and outrageous comments have harmed Plaintiffs’ reputation and were the
8 proximate cause of the loss of Plaintiffs’ business. See Mobrez Aff. ¶ 4. Furthermore, the posts
9 accuse Plaintiffs of engaging in illegal conduct. See EXHIBIT B. This constitutes defamation per
10 se. As such, Plaintiffs are not required to prove damages.

11 Additionally, these posts place Plaintiffs in a false light by representing Plaintiffs as scam
12 artists, criminals, racists, and unqualified. See EXHIBIT B. Such accusations would be highly
13 offensive to a reasonable person. Knowing these statements were false, offensive and injurious to
14 Plaintiffs’ business, Defendants nonetheless continued to publish the comments. See Mobrez
15 Aff. ¶ 5. As a direct and proximate result of Defendants’ wrongful statements, Plaintiffs have lost
16 their business. See Mobrez Aff. ¶ 4.

17 **2. Plaintiffs Can Demonstrate a Probability of Succeeding on the**
18 **Merits of Their Intentional Interference with Prospective Economic**
19 **Relations, Negligent Interference with Prospective Economic**
20 **Relations, and Inducing Breach of Contract Claims.**

21 AEI had valid contractual relationships with current and prospective employees and had
22 expected relationships with persons who, but for Defendant’s libelous publications, would have
23 entered into valid contractual relationships. See Mobrez Aff. ¶ 4. Defendants knew, when falsely
24 and publicly making these statements, that Plaintiffs had these valuable contracts and business
25 expectancies. Defendants intentionally and wrongfully interfered with these relationships by
26 knowingly publishing, creating, and soliciting negative, false, and defamatory content in
27 exchange for their own business profit. As a result, the relationships between Plaintiffs and their
28 employees have been disrupted. See Mobrez Aff. ¶ 4. In fact, in one post, a prospective

1 employee claims that he was “considering starting a position at this company...” until he “came
2 home and googled his name, and found all these bad reports.” EXHIBIT B. The complaint
3 further asserts that “as a result of these results, [he is] going to blow him off.” Id.

4 Plaintiffs have been damaged in their good name and reputation, suffered diminution in
5 its value as a business entity, has lost current and prospective employees, and continues to suffer
6 damages. See Mobrez Aff. ¶ 4.

7
8 **3. It is Unnecessary for Plaintiffs to Demonstrate a Probability of**
9 **Success on the Merits of Their Unfair Business Practice Claim**

10 The conduct for which Plaintiffs complain is in violation of California Business Code §
11 17200 stems from Defendants’ extortionate demands. As Defendants admit, this conduct is
12 outside the scope of the anti-SLAPP statute. Therefore, it is not required that Plaintiffs address
13 the substance of these claims.

14
15 **D. The complaint is sufficiently detailed so that no RICO case statement is necessary.**

16
17 Any such statement is a waste of this Court’s time and resources. Plaintiffs’ Complaint is
18 very detailed and provides sufficient facts in order for Defendants to understand the entire nature
19 of Plaintiffs’ RICO allegations.

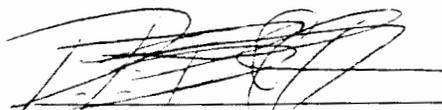
1 **CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants'
3 Special Motion to Strike and Motion to Require a RICO Case Statement in their entirety.

4
5 DATED: March 29, 2010

Asia Economic Institute

6
7 By:



DANIEL F. BLACKERT
Attorneys for Plaintiffs,
Asia Economic Institute, Raymond
Mobrez, and Iliana Llaneras

CERTIFICATE OF SERVICE

I certify that on March, 29, 2010 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:

David S. Gingras
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Phoenix, AZ 85048
Attorney for Defendants

And a courtesy copy of the foregoing delivered to:
Honorable Stephen V. Wilson
U.S. District Judge