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

ASIA ECONOMIC INSTITUTE, a
California LLC; RAYMOND
MOBREZ an individual; and ILIANA
LLANERAS, an individual,

Plaintiffs,

vs.

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

Defendants.

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

The Honorable Stephen V. Wilson

**REQUEST OF PLAINTIFFS TO
TAKE JUDICIAL NOTICE OF
JURY INSTRUCTIONS AND
CONVICTION IN UNITED STATES
V. SYPHER, 09-CR-85 (W.D. KY.
AUG 4-6, 2010) IN SUPPORT OF
PLAINTIFFS' MOTION FOR
RECONSIDERATION**

[FED. R. EVID. 201]

Date: September 20, 2010

Time: 1:30 p.m.

Ctrm: 6

1 Pursuant to Federal Rule of Evidence 201 and the inherent authority
2 of this Court, Plaintiffs Asia Economic Institute, LLC, Raymond Mobrez, and
3 Iliana Llaneras (“Plaintiffs”) respectfully request that the Court take judicial notice
4 of the Jury Instructions [DN-109] and Order of Conviction [DN-115] entered in
5 United States v. Karen Sypher, case 1:09-cr-85 in the Western District of Kentucky
6 on August 4, 2010 and August 6, 2010 respectively. A true and correct copy of
7 these documents are attached hereto as **Exhibits “A”** and **“B”** respectively.
8

9 MEMORANDUM OF POINTS AND AUTHORITIES

10

11 The Federal Rules of Evidence mandate that judicial notice be taken
12 where it is “requested by a party and supplied with the necessary information,”
13 Fed. R. Evid. 201(d), and authorizes judicial notice “at any stage of the
14 proceeding.” Fed. R. Evid. 201(f). Moreover, “a judicially noticed fact must be one
15 not subject to reasonable dispute in that it is either (1) generally known within the
16 territorial jurisdiction of the trial court or (2) capable of accurate and ready
17 determination by resort to sources whose accuracy cannot reasonably be
18 questioned.” Fed. R. Evid. 201(b). Here, the requested fact is “not subject to
19 reasonable dispute” in that it is “capable of accurate and ready determination by”
20 referring to the Seventh Circuit docket, a source “whose accuracy cannot
21 reasonably be questioned.” FRE 201(b). Thus, the documents are readily verifiable
22 and the proper subject to judicial notice.

23 Moreover, courts may take judicial notice of court filings and other
24 matters of public record. Reyn’s Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d
25 741, 746 n. 6 (9th Cir. 2006); see also Allen v. City of Los Angeles, 92 F.3d 842,
26 850 (9th Cir. 1992) (federal courts may take judicial notice of proceedings in other
27 courts, both within and without federal judicial system, if those proceedings have a
28 direct relation to matters at issue) (overruled on other grounds); Bryant v.

1 Carleson, 444 F.2d 353, 357 (9th Cir. 1971) (court took judicial notice of
2 proceedings and filings in other courts).

3 These documents support Plaintiffs’ allegations of extortion pursuant
4 to 18 U.S.C. § 875(d), which “makes it a federal crime for anyone to knowingly
5 and willfully transmit in interstate commerce a threat to injure another person’s
6 reputation or a threat to accuse another person of a crime,” as predicate acts of
7 supporting Plaintiffs’ claims for violation of the Racketeer Influenced and Corrupt
8 Organizations Act, 18 U.S.C. § 1962(c), (d).

9 Plaintiffs respectfully request that this Court take judicial notice of the
10 fact that the jury instructions used in United States v. Sypher, filed as DN-109,
11 instructed the jury on the elements of a violation of 18 U.S.C. § 875(d) as follows:

12 **“Count 1**

13 First: That on or about February 26, 2009 and February 28, 2009, the
14 defendant, Karen Cunagin Sypher, willfully caused another person to
15 transmit a communication in interstate commerce containing a true threat to
16 injure the reputation of Richard Pitino, or to accuse Richard A. Pitino of a
17 crime; and

18 Second: That the defendant did so with the intent to extort money or other
19 thing of value to the defendant.

20 **Count 2**

21 First: That on or about March 6, 2009, , the defendant, Karen Cunagin
22 Sypher, willfully caused another person to transmit a communication in
23 interstate commerce containing a true threat to injure the reputation of
24 Richard Pitino, or to accuse Richard A. Pitino of a crime; and

25 Second: That the defendant did so with the intent to extort money or other
26 thing of value to the defendant.

27 ...

28 To ‘transmit a communication in interstate commerce’ means to send
the communication from a place in one state to a place in another state. It

1 does not matter whether the defendant intended or even knew that the
2 communication would cross a state line.

3 A ‘true threat’ is a serious threat – not idle talk, a careless remark, or
4 something said jokingly – that is made under circumstances that would lead
5 a reasonable person to believe that the defendant intended to injure the
6 reputation of another person, or to accuse another person of a crime.

7 To act with ‘intent to extort’ means to act with the purpose of
8 obtaining money or something of value from someone by means of the
9 wrongful use of a threat to injure someone’s reputation or to accuse someone
10 of a crime. When a threat of harm to a person’s reputation, or to accuse a
11 person of a crime involves a demand for money or property under
12 circumstances where the threatener does not have, and cannot reasonably
13 believe he or she has a claim of right to that money or property, the threat is
14 inherently wrongful.

15 The essence of the crime charged in Counts 1 [and] 2 is intentionally
16 sending a communication in interstate commerce to extort something of
17 value. The United States does not have to prove that the defendants intended
18 to carry out the threat or succeeded in obtaining the money or any other
19 thing of value.”

20 See Exhibit A.

21 Plaintiffs also respectfully request that this Court take judicial notice of the
22 fact that on August 6, 2010, defendant Karen Sypher was convicted on Counts 1
23 and 2, among others, in United States v. Sypher. See Exhibit B.

24 As explained in greater detail in Plaintiffs’ Motion for
25 reconsideration, 18 U.S.C. § 875(d) is a general intent crime, and that the threats
26 can be made regarding the reputation of a third party and still be actionable. See
27 United States v. Von Der Linden, 561 F.2d 1340, 1341 (9th Cir. 1977). Truth or
28 falsity of the information threatened to be exposed is immaterial. See id.

The extortion can consist of exposing information generated by third parties;
it is not necessary that the defendant generated the content threatened with
exposure itself. See United States v. Adjani, 452 F.3d 1140, 1143 (9th Cir. Cal.
2006). In Adjani, the defendants were accused of a plot to extort money by
threatening to sell a database of sensitive financial information unless they were

1 paid \$3 million; there was no allegation that the defendants had personally input
2 the data into the database. See id. (holding it was error for District Court to
3 exclude evidence of email communications retrieved during search warrant
4 pursuant to charge under 18 U.S.C. § 875(d)).

5 Therefore, the recent jury instruction in United State v. Sypher for violations
6 of 18 U.S.C. § 875(d) support Plaintiffs' causes of action for civil RICO and RICO
7 conspiracy, 18 U.S.C. § 1962(c) and (d) as it clarifies and provides an alternative
8 ground for the elements of predicate acts of extortion supporting Plaintiffs' RICO
9 claims.

10 Pursuant to these rules, Plaintiffs request that this Court take judicial notice
11 of the documents attached hereto as **Exhibit A** and **Exhibit B** filed with the United
12 States District Court for the Western District of Kentucky on August 4 and 6, 2010
13 in United States v. Sypher, (W.D. Ky. Case No. 1:09-cr-85), respectively, and the
14 contents thereof.

15 16 CONCLUSION

17
18 For all the reasons set forth above, the Plaintiffs respectfully request that the
19 Court consider the documents filed herewith in connection with Plaintiff's Motion
20 for Reconsideration.

21
22 Dated: August 16, 2010

Respectfully Submitted,

23
24
25 /s/ Daniel F. Blackert

26 Daniel F. Blackert, Esq.
27 Lisa J. Borodkin, Esq.
28 Attorneys for Plaintiffs