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 10 Asia Economic Institute LLC,  
 11 Raymond Mobrez and  
 12 Iliana Llaneras

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

15 ASIA ECONOMIC INSTITUTE, a  
 16 California LLC; RAYMOND  
 17 MOBREZ an individual; and ILIANA  
 18 LLANERAS, an individual,

19 Plaintiffs,

20 vs.

21 XCENTRIC VENTURES, LLC, an  
 22 Arizona LLC, d/b/a as BADBUSINESS  
 23 BUREAU and/or  
 24 BADBUSINESSBUREAU.COM  
 25 and/or RIP OFF REPORT and/or  
 26 RIPOFFREPORT.COM; BAD  
 27 BUSINESS BUREAU, LLC, organized  
 28 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

**NOTICE OF MOTION AND  
 MOTION FOR ORDER  
 SHORTENING TIME TO FILE  
 BRIEF**

**PLAINTIFFS' MEMORANDUM  
 OF POINTS AND AUTHORITIES  
 IN SUPPORT OF MOTION FOR  
 RECONSIDERATION OF ORDER  
 GRANTING PARTIAL  
 SUMMARY JUDGMENT ON  
 PLAINTIFFS' RICO CLAIMS  
 PREDICATED ON EXTORTION  
 AND DENYING RELIEF UNDER  
 RULE 56(F); SUPPLEMENTAL  
 DECLARATION OF LISA J.  
 BORODKIN**

**[Local Rule 7-18, Fed. R. Civ. Proc.  
 59(e) and 60(b)]**

Date: September 20, 2010

Time: 1:30 p.m.

Ctrm: 6

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 20, 2010, at 1:30 p.m., in  
3 Courtroom 6 of the above-entitled Court, located at 312 N. Spring Street, Los  
4 Angeles, California 90012, Plaintiffs Asia Economic Institute LLC, Raymond  
5 Mobrez and Iliana Llaneras (“Plaintiffs”) will and hereby do move this Honorable  
6 Court for an order shortening the time to file the attached [Proposed]  
7 Memorandum of Points and Authorities, in support of Plaintiffs’ Motion for  
8 Reconsideration.

9 The grounds for the Motion is that it is unopposed, and Plaintiffs obtained  
10 the agreement of Defendants’ counsel to stipulate to shorten by one (1) day the  
11 time for filing the attached [Proposed] Memorandum in support of the Motion for  
12 Reconsideration, to account for the relief requested in Defendants’ Motion to  
13 Strike filed August 23, 2010 while preserving the hearing dates of September 20,  
14 2010.

15 This motion is made pursuant to this Notice, the Supplemental Declaration  
16 of Lisa J. Borodkin and following the exchange of messages with counsel  
17 pursuant to L.R. 7-3, which took place on August 24, 2010 and stipulation not to  
18 oppose this motion.

19 DATED: August 24, 2010

Respectfully submitted,

21 By: /s/ Daniel F. Blackert  
22 Daniel F. Blackert  
23 Lisa J. Borodkin  
24 Attorneys for Plaintiffs,  
25 Asia Economic Institute LLC,  
26 Raymond Mobrez, and Iliana  
27 Llaneras  
28



1 true but effectively misleading. Therefore, Plaintiffs respectfully request  
2 reconsideration.

## 3 **II. Relevant Background**

### 4 **A. Procedural History**

5 This is a motion for reconsideration of the portions of this Court's Order of  
6 July 19, 2010 ("Order"), DN-94,<sup>2</sup> granting Defendants partial summary judgment  
7 on Plaintiffs' claims for violation of the Racketeering Influenced and Corrupt  
8 Organizations Act ("RICO"), 18 U.S.C. § 1962(c) and § 1962(d)(conspiracy)  
9 predicated on extortion<sup>3</sup> and denying Plaintiffs' motion for leave to take discovery  
10 under Federal Rule of Civil Procedure 56(f).

11 This action was commenced on January 28, 2010 in California Superior  
12 Court. DN-1, Ex. 1. On February 24, 2010, Defendants removed the action to this  
13 Court and filed an Answer, DN-1, DN-4. On April 19, 2010, this Court set a trial  
14 date of August 3, 2010, bifurcating and advancing trial on the RICO claims  
15 predicated on extortion, and bifurcating damages. DN-23, DN-24, DN-26.

16 On May 24, 2010, Defendants moved for summary judgment as to Plaintiffs'  
17 entire case.<sup>4</sup> DN-40. Plaintiffs opposed the motion, supported in part by  
18 declarations of Tina Norris (DN-57), Patricia Brast (DN-58), Charlie Yan (DN-59),  
19 Israel Rodriguez (DN-60), Justin Lin (DN-62), Lisa Borodkin (DN-63), Daniel  
20

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21 <sup>2</sup> Citations to "DN-\_\_" are to the civil docket in this action.

22 <sup>3</sup> Plaintiffs' Request for Judicial Notice [DN-119] states in error at 5:5-9 that extortion  
23 under 18 U.S.C. § 875(d) provides an alternate ground for the predicate acts of extortion under  
24 RICO. Plaintiffs withdraw that contention. While the violation of a statute would be relevant to  
25 the element of "independently wrongful act" for Plaintiffs' California law cause of action for  
26 tortious interference with prospective economic advantage, see Korea Supply Co. v. Lockheed  
27 Martin Corp., 29 Cal. 4<sup>th</sup> 1134, 1141-42 (Cal. 2003); CRST Van Expedited Inc. v. Werner  
28 Enterprises, Inc., 479 F.3d 1099, 1110-11 (9<sup>th</sup> Cir. 2007), Plaintiffs do not rely on 18 U.S.C. §  
875(d) for this motion for reconsideration.

<sup>4</sup> The Order stated that Defendants' motion for summary judgment on Plaintiffs' entire  
case was "inappropriate given the Court's prior Order bifurcating the RICO/extortion claims  
from the remaining claims and from the issue of damages." DN-94 at 17:16-20.

1 Blackert (DN-65) and Kristi Janke (DN-66). On July 8, 2010, Plaintiffs filed an ex  
2 parte motion under Rule 56(f) to stay determination of Defendants’ motion for  
3 summary judgment and for leave to take additional discovery. DN-87.

4 On July 12, 2010, this Court ruled from the bench, granting partial summary  
5 judgment to Defendants on the RICO/extortion claims, dismissing Plaintiffs’  
6 RICO/wire fraud claims under Rule 9(b) and denying Plaintiffs’ Rule 56(f) motion.  
7 DN-92. This Court granted Plaintiffs leave to amend the complaint, and ordered  
8 that the case remained bifurcated as to RICO only. Id. A written order (“Order”)  
9 was entered on July 19, 2010. DN-94. This motion followed.<sup>5</sup>

10 **B. Summary of the Order for which Reconsideration Is Sought**

11 This Court based its Order granting Defendants partial summary judgment  
12 on Plaintiffs’ RICO/extortion claim on a single ground: “Plaintiffs have not  
13 presented sufficient evidence to establish a triable issue of fact that Defendants  
14 engaged in the predicate act of extortion or attempted extortion.” Order at 29:12-  
15 16; 40:11-15 (“In sum, for the reasons stated above, the Court finds that no triable  
16 issue of fact exists as to whether Defendants engaged in attempted extortion. The  
17 communications between Plaintiffs and Defendants do not, as a matter of law,  
18 suggest or imply any threat within the meaning of California Penal Code § 519.”

19 This Court stated that the Order “will only address facts that are relevant to  
20 the RICO/extortion claim.” Order at 4:8. Therefore, any genuine issue raised as to  
21 any of those relevant facts may be grounds for reconsideration of the Order.

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22  
23  
24 <sup>5</sup>Central District Local Civil Rule 7-18 permitting motions for reconsideration does not  
25 specify a time limit for filing motions for reconsideration. Plaintiffs filed the notice of motion  
26 and motion for reconsideration on August 16, 2010 to give Defendants as much notice as  
27 possible, and coordinate with Defendants’ pending Motion to Dismiss, scheduled for September  
28 20, 2010. Plaintiffs obtained the stipulation of Defendants to move for an order permitting this  
brief to be filed on 20 days’ notice rather than 21 days for the September 20, 2010 hearing date  
on both motions, and also on Defendants’ Motion to Strike. Plaintiffs requested the extra day in  
part to account for new authority raised in Defendants’ Motion to Strike. See Supplemental  
Declaration of Lisa J. Borodkin at ¶5, Ex. 8.

1  
2  
3 For the reasons below, newly-discovered evidence and new facts since the date of  
4 the Order merit reconsideration.

5 **III. Legal Argument**

6 **A. This Court Has Discretion To Grant Reconsideration of the Order**

7 “In [the Central District of California] motions for reconsideration are  
8 governed by Local Rule 7-18.” See Daghlian v. Debvry Univ., Inc., 582 F. Supp.2d  
9 1231, 1250 (C.D. Cal. 2008). Whether to grant a motion for reconsideration under  
10 Local Rule 7-18 is “committed to the sound discretion of the court.” See Navajo  
11 Nation v. Norris, 331 F.3d 1041, 1046 (9th Cir. 2003). Although the Federal Rules  
12 of Civil Procedure do not expressly recognize a “motion for reconsideration,”  
13 courts generally construe such a motion as one to alter or amend a judgment or for  
14 relief from a judgment or order under Federal Rules 59(e) or 60(b). See Lai v.  
15 Quality Loan Serv. Corp., 2010 U.S. Dist. LEXIS 61120 (C.D. Cal. June 2, 2010).

16 Local Rule 7-18 narrows the grounds for reconsideration to only those cases  
17 where (1) the party seeking reconsideration presents the court with newly-  
18 discovered evidence; (2) the court committed clear error or the initial decision was  
19 manifestly unjust; or (3) if there is an intervening change in controlling law. See  
20 Navajo Nation v. Norris, 331 F.3d 1041, 1046 (9<sup>th</sup> Cir. 2003); Chevron USA, Inc. v.  
21 M&M Petroleum Servs., 2008 U.S. Dist. LEXIS 91362 at \*5 (C.D. Cal. Oct. 27,  
22 2008) (granting motion for reconsideration to revoke stay).

23 Where the order is one for partial summary judgment, and the court has not  
24 made an express certification of finality under Federal Rule 54(b),<sup>6</sup> the court may

25  
26 <sup>6</sup> Rule 54 (b) provides in part, that “[w]hen an action presents more than one claim for  
27 relief. . . the court may direct entry of a final judgment as to one or more, but fewer than all,  
28 claims or parties only if the court expressly determines that there is no just reason for delay.  
Otherwise, any order or other decision . . . that adjudicates fewer than all the claims or the rights  
and liabilities of fewer than all the parties does not end the action as to any of the claims or

1 revise the order at any time before final judgment. See St. Paul Fire & Marine Ins.  
2 Co. v. F.H., 55 F.3d 1420, 1425 (9th Cir. 1995), overruled on other grounds, Gov't  
3 Empls. Ins. Co. v. Dizol, 133 F.3d 1220, 1223 (9<sup>th</sup> Cir. 1998). This is such a case.  
4 The Order was for partial summary judgment, did not dispose of all claims and did  
5 not expressly issue a certification of finality under Rule 54(b). Therefore, this  
6 Court, may modify the Order at any time before final judgment.

7 **B. Grounds for Reconsideration Under Local Rule 7-18**

8 A court may grant reconsideration where the movant submits *newly*  
9 *discovered evidence* or *new facts* not available at the time of the order for which  
10 reconsideration is sought. See Navajo Nation v. Norris, 331 F.3d 1041, 1046 (9<sup>th</sup>  
11 Cir. 2003).

12 “New facts” can include erroneous assertions relied on by the Court that  
13 were not discovered until the order was issued. In King Tuna, Inc. v. Anova Food,  
14 Inc., 2009 U.S. Dist. LEXIS 22901 at \*5-\*7 (C.D. Cal. March 10, 2009), the Court  
15 granted a motion for reconsideration under Local Civil Rule 7-18 of an order  
16 precluding plaintiffs’ expert witness from testifying at trial because the defendant  
17 led the court to believe, erroneously, that the plaintiff had failed to disclose its  
18 expert witness and report altogether. In fact, plaintiff had disclosed both but they  
19 were untimely by 41 minutes. Id. at \*5-\*6. These mistakes were not discovered  
20 until the Court made its order -- relying in part on the mistaken facts. In light of the  
21 new clarificaiton the Court granted relief from the order. See id. at \*6 (“These facts  
22 – King Tuna’s disclosure of Mr. Tregelis and its preliminary report and Anova’s  
23 improper objection – were not discovered until after the Court rendered its January  
24 28, 2009 decision”).

25 In Chevron USA, Inc. v. M&M Petroleum Servs., 2008 U.S. Dist. LEXIS  
26 91362 (C.D. Cal. Oct. 27, 2008), the Court granted a motion under Rule 7-18 for

27  
28 parties and may be revised at any time before the entry of a judgment adjudicating all the claims  
and all the parties' rights and liabilities.” Fed. R. Civ. Proc. 54(d).

1 reconsideration of a stay order. Chevron had believed (correctly as it turned out),  
2 that no opposition to its adversary’s motion for a stay was necessary because the  
3 motion had been untimely filed and the court had denied an enlargement of time.  
4 Upon Chevron’s motion for reconsideration under Local Rule 7-18, the court  
5 revoked the stay, which was granted only because it was unopposed. See *id.* at \*5  
6 (“this case meets the high bar that applies to motions for reconsideration”).

7 A court may also grant a motion for reconsideration under Local Rule 7-18  
8 where it overlooked allegations on the original motion, see, e.g., *M.Z. v. Lake*  
9 *Elsinor Unified Sch. Dist.*, 2008 U.S. Dist. LEXIS 81931 at \*15-\*16 (C.D. Cal.  
10 August 13, 2008) (“The May 23 Order overlooked Plaintiffs additional allegations  
11 regarding protected speech activity. Accordingly, the Court GRANTS Plaintiff’s  
12 request for reconsideration.”), or inadvertently overlooked evidence submitted on a  
13 prior order. In *Watson v. Palm Crest Apts.*, 2009 U.S. Dist. LEXIS 62002 at \*5  
14 (C.D.Cal. July 6, 2009), the Court granted a motion for reconsideration where it  
15 overlooked specific evidence on an attorneys’ fee award of case-related travel.

16 **C. Newly-Discovered Facts Not Previously Available to Plaintiffs**

17 Reconsideration is warranted under Local Rule 7-18(a) based on the  
18 following “material difference in fact . . . from that presented to the Court before  
19 such decision that in the exercise of reasonable diligence could not have been  
20 known to the party moving for reconsideration at the time of such decision.”

21 **1. The Second Questionnaire Shows a Retracted Report**

22 Prior to July 12, 2010, Plaintiffs had diligently attempted to discover the so-  
23 called “Second Questionnaire,” a prerequisite to membership in the CAP program,  
24 but were unable to do so. See Plaintiffs’ Ex Parte Application under Rule 56(f),  
25 DN-87 at 2:19-23, 8-10, 13, 15, 27-31. At the hearing on July 12, 2010, this Court  
26 ordered Defendants to provide the Second Questionnaire to Plaintiffs. Defendants  
27 did so on July 13, 2010. See Borodkin Dec. ¶3, Ex. 1.  
28

1 The previously-unavailable Second Questionnaire confirms that even if  
2 Defendants content that the Reports do not generally “come down,” Defendants  
3 knowingly advertise that, for money (1) CAP investigations may result in a  
4 complete retraction of the Report; and (2) Defendant will alter the text and HTML  
5 code on Reports to change how it appears in Internet search engine results. See  
6 Borodkin Dec. ¶3, Ex. 1 (Second Questionnaire); Reed Declaration ¶¶20-23, Ex.  
7 D; Blackert Dec. ¶6; Mobrez Dec. ¶¶9-10.

8 In the “Second Questionnaire,” Defendants solicit CAP applicants by telling  
9 them to send their “proposed comments you would like us to post . . . like this one .  
10 . . .” Borodkin Dec. Ex. 1 at 1. The actual example that the Second Questionnaire  
11 advertises as “like this one” is a Google search query for “Blue Coast Financial”  
12 ([http://www.google.com/search?hl=en&q=Blue+Coast+Financial&aq=f&aqi=g8g  
13 m1&aql=&oq=&gs\\_rfai=](http://www.google.com/search?hl=en&q=Blue+Coast+Financial&aq=f&aqi=g8gm1&aql=&oq=&gs_rfai=)). See Borodkin Dec. Ex. 1 at 1. The actual search results  
14 for that query point to Rip-off Report Number 412338 for Blue Coast Financial – a  
15 Report that was *completely retracted* by its original author, purportedly after a  
16 CAP investigation. The actual example Report pointed to by the example search  
17 query in the Second Questionnaire (number 412338 for Blue Coast Financial) as of  
18 July 25, 2010 stated:

19 “Dear Editor:

20 Please publish the following post:

21 *I would like to retract my original post.* I was completely wrong for posting  
22 what I did about Blue Coast Financial.

23 *After my post rip off report investigated the company and that made me*  
24 *think about what I was actually doing.* I would like to apologize to the  
25 company and staff that tried to help me make this business successful.”

26 A true and correct copy of Report 412338 as of July 25, 2010 was attached to the  
27 First Amended Complaint as Exhibit 7 [DN-96-7] and is attached to the  
28 Supplemental Declaration of Lisa Borodkin (“Supp. Borodkin Dec.”) as Ex. 1  
(emphasis added). The original text of the Report is nowhere to be found.

1 Thus, in the Second Questionnaire, Defendants offer an example for CAP  
2 members where the author *completely retracted* the original report. Given that  
3 example **completely retracting the original Report**, Defendants’ representations  
4 such as “for persons interested in joining the CAP Program, Reports are never  
5 deleted,” see Order of July 19, 2010 at 36:27-37:1, are true only to the extent that  
6 the Report number may remain the same. Advertising a complete retraction of a  
7 Report using the words “like this one. . .” is effectively an offer that joining CAP  
8 will result in an “investigation” yielding a retraction like the one for Blue Coast  
9 Financial in Report 412338.

10 Thus, the Second Questionnaire, by its terms, is a new material facts that  
11 requires reconsideration of this Court’s Order of July 19, 2010 to the extent it was  
12 based on a finding that “Membership in the CAP program never includes the  
13 removal of reports, nor does Ripoff Report change the text of the user-submitted  
14 reports for CAP members” at 9:3-5, and that “There is no evidence that Ripoff  
15 Report ever removed a report from its website in exchange for money, nor is there  
16 ay evidence that Defendants promised to do so,” Order of July 19, 2010 at 9:7-9.

## 17 **2. The Second Questionnaire Offers to Add 250 to 350 Words**

18 Defendant also claimed in its Motion for Summary Judgment that  
19 “membership in the CAP program never includes the removal of reports, nor does  
20 Ripoff Report change the text of the user-submitted reports for CAP members.”  
21 See Order of July 19, 2010 at 3:5 (relying on Magedson Dec. ¶13). In the “Second  
22 Questionnaire,” Defendants solicit CAP applicants by telling them that they should  
23 send Defendants the proposed comments they would like Defendants to use to talk  
24 about their companies, and state that “we send you the 250 to 350 words *you want*  
25 *us to put in front of the Reports found on search engines.*” See Borodkin Dec.,  
26 Ex. 1 at 1 (emphasis added).

27 Plaintiffs’ expert witness, Joe Reed, explains that the effect of inserting 250  
28 to 350 words of custom context at the top of the head in reports and associated

1 metatags is to change the appearance of the Reports as “*found on search engines.*”  
2 Although the negative portions of most Reports may remain, the negative meta tag  
3 *keywords* in the HTML for web pages containing Reports about CAP members are  
4 replaced with positive keywords about CAP members. See Reed Dec at ¶20.

5 Reconsideration is also requested on this Court’s reliance on Defendants’  
6 assertion that they are not responsible for damaging Google search results about a  
7 Report, attributing all such search result text to a combination of their automated  
8 server design and third-party user input. See Order of July 19, 2010 at 7:6-16  
9 (finding Xcentric’s servers “automatically” combine text supplied by users with  
10 generic HTML and “automatically” create metatags).

11 New evidence obtained for the first time after July 19, 2010 shows that not  
12 all HTML code for Reports is automatically generated. By express agreement,  
13 Defendants manually redact, alter HTML and metatags for web pages about  
14 Reports to influence Google search results under agreements for payment, either  
15 under CAP or in settlements. See Borodkin Dec. ¶¶ 3, 5, Exs. 1, 3. Moreover,  
16 Plaintiffs’ expert witness explains that examinations of the Reports and associated  
17 HTML for Reports for CAP Members show that both are saturated with positive  
18 statements, which has the net effect of pushing negative content so far down in the  
19 HTML for the web page for the Reports as to “virtually disappear,” that is, become  
20 virtually irrelevant in search results. See Reed Dec. ¶¶20-23 and Ex. D. Although  
21 the Reports may not be “removed,” for CAP members, the inclusion of positive  
22 content at the beginning of titles and in the beginning of the HTML for the head of  
23 the web page and body of the report effectively changes the character of the web  
24 page for the Report into a positive statement about the company for purposes of  
25 search engine results. See id.

26 Defendant’s offer to add custom text to Reports that pushes negative content  
27 to be virtually irrelevant to search engines has the same effect as removing the  
28 Report, from Google search results. Accordingly, in that light, Plaintiffs

1 respectfully request reconsideration of this Court’s finding in the Order at 38:9-16  
2 and passim that “none of the communications . . . contain any suggestion that the  
3 CAP Program (or the payment of fees) would result in negative reports being taken  
4 off the website or that such reports would **no longer be featured in search**  
5 **results.**” (emphasis added).

6 Moreover, Plaintiffs respectfully request this Court to consider evidence  
7 that may have been overlooked that was identified at Paragraph 39 of Plaintiffs’  
8 Statement of Genuine Issues in Opposition to Defendants’ Motion for Summary  
9 Judgment (“PSGI”) -- the May 5, 2009<sup>7</sup> email sent by Defendant Edward  
10 Magedson to Plaintiff Raymond Mobrez, that was referenced in the May 3, 2010  
11 Declaration of Raymond Mobrez at Paragraph 11, 4:20-5:2, and Exhibit G at 6.  
12 Page 6 of this email expressly promised that CAP Program “changes the negative  
13 listings on search engines into a positive along with all the Reports on Rip-off  
14 report.” The Court may have inadvertently overlooked such fact in making the  
15 findings that Plaintiff Mobrez does not dispute the fact that Magedson “never told  
16 Mobrez that the payment of a fee to Xcentric would result in negative information  
17 being changed into a positive,” Order at 36:5-10, and that “none of the  
18 communications Defendants sent to Plaintiffs contain any suggestion that the CAP  
19 Program (or the payment of fees) would result in . . . that such reports would no  
20 longer be featured in search results,” Order at 38:9-12. Plaintiffs do dispute this.

## 21 2. Not all Rebuttals Posted

22 This Court made findings that subjects of Reports can always post free  
23 rebuttals. See, e.g., Order at 7:1-2. Plaintiffs discovered after July 12, 2010 that  
24 certain subjects of Reports were unable to post rebuttals to certain reports at certain  
25 times. See Declaration of Tina Norris (“Norris Dec.”) at ¶7; See also Declaration of

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26  
27 <sup>7</sup> The May 5, 2009 email is incorrectly referred to in Plaintiffs’ Notice of Motion as a May 5,  
28 2010 email. Plaintiffs apologize for the error.

1 Jan M. Smith [DN-103] at ¶5 and Ex. B. Since subjects cannot always post free  
2 rebuttals, the Website does not always afford a balanced depiction of its subjects.

### 3 **3. Two Reports Were Removed Following Settlement**

4 Defendants have defended claims of extortion by misleading this Court and  
5 other persons that “Rip-off reports” (sometimes, “Reports”) on their Website do  
6 not come down or are not removed, or are not removed for money. See Order of  
7 July 19, 2010 at 9:7-9 (finding no evidence that Defendants promised or removed  
8 reports for money); 13:20-22 (quoting May 5, 2010 Magedson email stating Ripoff  
9 Report “never removes reports from the website, and that it will not do so for any  
10 amount of money”); 13:24 (same); 14:2 (“Reports are never deleted”); 16:2-4  
11 (quoting July 24, 2009 Magedson email that “We do not remove reports” and “We  
12 DO NOT REMOVE REPORTS . . . No amount of money can change this”);

13 On July 16, 2010, Plaintiffs discovered that Reports have been removed or  
14 deactivated following a breach notice from a party who executed a \$100,000  
15 promissory note to Defendants. Plaintiffs understand this relates to a failure in a  
16 verification process in a mutual settlement and release. See Borodkin Dec. at ¶4-5,  
17 Exs. 2-3; Declaration of Daniel F. Blackert (“Blackert Dec.”) at ¶¶8-13, Exs. 1-2.

18 Plaintiffs respectfully request this Court consider its findings that there is no  
19 evidence that reports are never removed, never removed for money, never taken  
20 down, or similar claims. See e.g., Order at 40:1-10.

### 21 **4. Positive Content Inserted Into Reports and HTML** 22 **Following Settlements and Payment of Fees**

23 New evidence discovered for the first time by Plaintiffs after the July 12,  
24 2010 hearing confirms that a member of Ripoff Report staff -- namely Ed  
25 Magedson-- does make changes to the Reports that significantly alter their  
26 meaning, contrary to this Court’s finding. See Order at 6:18-19 (“Ripoff Report  
27 staff is not authorized to make any other changes to the reports.”). After the July  
28

1 12, 2010 hearing, Plaintiffs learned that Defendants agreed in the QED/Russo case  
2 that included counter-claims against Defendants, to manually insert into the body  
3 of Reports about the settling party “up to 250 words of content provided by” that  
4 party. See Borodkin Dec. Ex. 3 (May 15, 2009 QED Settlement) at ¶2.d. Pursuant  
5 to a mutual settlement of claims *and counter-claims* between Defendants and the  
6 QED/Russo parties, the latter agreed to pay Defendants \$100,000, and Defendants  
7 agreed to inject a block of words beginning “Notice: This report is false and fake. .  
8 . .” into the beginning of the title of the three Reports about the settling party. *Id.*

9 On July 20, 2010, Plaintiffs also identified other settlements with  
10 Defendants where the Rip-off Reports about the settling parties were altered  
11 substantially to add favorable text at the beginning of the Reports or contained  
12 disclaimers regarding the contexts, following dismissals of the actions. See  
13 Blackert Dec. ¶¶6-7. On July 20, 2010, Defendants confirmed that all such cases  
14 were settled with payment in the form of Defendants’ attorneys’ fees. See *id.*

15 Defendants have already represented in the QED Settlement, Borodkin Dec.  
16 Ex. 3 at ¶2.c., and elsewhere that “[w]hen the Report titles are updated, *the title*  
17 *tags will automatically update.*” *Id.* Thus, Defendants have offered to, and have in  
18 fact, manually changed the titles and HTML title tags for Reports that were  
19 originally posted by third parties. See *id.*

20 Moreover, Defendants have admitted that they do more than just redact  
21 “offensive language, social security numbers, bank account numbers, profanity and  
22 threats,” the examples used in the Order of July 19, 2010 at 6:16-17. Defendants’  
23 counsel, David Gingras, admitted in a declaration first provided to Plaintiffs’  
24 counsel on July 14, 2010, that Defendants have redacted a subject’s *name* to  
25 remove it from search results (“redacting material from the site is much more  
26 complicated than simply deleting a file”). See Blackert Dec., Ex. 7<sup>8</sup> at top of p.2.

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27  
28 <sup>8</sup> Identified in the Blackert Dec. as Exhibit 6 but erroneously filed as Exhibit 7.

1 The significance of adding a disclaimer or altering the meaning of a Report  
2 that says “This report is false and fake,” as in the QED Settlement, is to bring the  
3 Report out of the protected ambit of Communications Decency Act immunity and  
4 within the zone of being a selective co-author, as in the example given by the  
5 Ninth Circuit in Fair Housing Council of San Fernando Valley v. Roommates.com,  
6 521 F.3d 1157, 1169 (9<sup>th</sup> Cir. 2008):

7 A website operator who edits user-created content-such as by correcting  
8 spelling, removing obscenity or trimming for length-retains his immunity for  
9 any illegality in the user-created content, provided that the edits are  
10 unrelated to the illegality. *However, a website operator who edits in a*  
11 *manner that contributes to the alleged illegality-such as by removing the*  
12 *word “not” from a user's message reading “[Name] did not steal the*  
13 *artwork” in order to transform an innocent message into a libelous one-is*  
14 *directly involved in the alleged illegality and thus not immune*

15 Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d  
16 1157, 1169 (9th Cir. 2008) (emphasis added).

17 In this case, Defendants are willing to disclaim some of the Reports on their  
18 site by stating “this report is false and fake” or to add additional 250 to 350 words  
19 of text to the Reports about CAP members that pushes down the original negative  
20 content so far down as to be virtually irrelevant to search results. That makes them  
21 “directly involved” in the alleged illegality under Roommates.

#### 22 **D. New Facts Emerging After the Order of July 19, 2010**

23 Reconsideration under Local Rule 7-18(b) may be based on the following  
24 “emergence of new material facts . . . occurring after the time of such decision.”

##### 25 **1. New Offer to Redact Reports for Money**

26 Defendants offered on July 20, 2010 to redact Plaintiffs’ names from Rip-off  
27 Reports about them in exchange for payment of \$35,000 or \$50,000 and dismissal  
28 of claims. Plaintiffs now understand that Defendants will offer to redact names out

1 of Reports, see Blackert Dec. ¶23, Ex. 6 at -7;<sup>9</sup> or, for money, insert new text or  
2 disclaimers of the Reports, even if the Reports are not taken down and the money  
3 is characterized as attorneys’ fees. See Blackert Dec. ¶¶6-7.

4 **2. New Threats to Plaintiff and Demand for Money**

5 This Court noted that California Penal Code § 524 criminalizes attempted  
6 extortion by means of a threat even where such threats are not made in writing.  
7 Order at 30:21-23. After the date of the Order of July 19, 2010, Defendants made  
8 new threats. See Mobrez Dec. ¶¶8-12, 15-16.<sup>10</sup>

9 On July 20, 2010, Defendant Magedson repeated the threat that “all  
10 businesses get complaints” and “Rip-off Reports happen to everybody” and was  
11 very upset that Plaintiffs were not agreeing to pay all the money Defendants  
12 demanded. See Mobrez Dec. ¶¶13-14. The statement “Rip-off Reports happen to  
13 *everybody*” is a threat because there are approximately 630,000 Rip-off Reports on  
14 the Website. Mathematically they do not happen to “everybody.”

15 When Mr. Magedson’s statement that “Reports happen to everyone” is  
16 combined with the fact that Defendants personally wrote and posted a Ripoff  
17 Report on August 6, 2010 (No. 629379) about witness Kenton Hutcherson in the  
18 category “Attorneys & Legal Services” for his testimony in this action (see  
19 discussion, below), Defendants’ statement that Ripoff Reports “happen” is more  
20 than an observation – it is a threat.

21 In the same way that Defendants made a Rip-off Report “happen” to Mr.  
22 Hutcherson, they could make one “happen” to Plaintiffs. Plaintiffs are reasonable  
23 in fearing that this threat will come true. Plaintiffs respectfully request also to this  
24 Court to reconsider in that light the portion of the May 5, 2010 email from

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25  
26 <sup>9</sup> The Exhibit numbers 6 and 7 were inadvertently reversed in the Declaration of Daniel Blackert  
27 filed as DN-125. Exhibit 6 should be the Gingras Declaration and Exhibit 7 should be the emails.

28 <sup>10</sup> These paragraphs are the subject of a Motion to Strike filed by Defendants on August 23, 2010  
[DN-

1 Magedson to Mobrez insisting that “all businesses will get complaints . . . ALL!”  
2 (cited by the Court as Mobrez Decl., Ex. G).

3 The Court also noted in its discussion of extortion based on Defendants’  
4 threats to counter-sue (Order at 31-34), that Plaintiffs had not introduced evidence  
5 that Defendants threatened to bring false claims with knowledge of their falsity, *id.*  
6 at 32:24-27, or that Defendants threatened to sue Plaintiffs unless Plaintiff paid a  
7 certain sum or delivered property to Defendants, *id.* at 33:14-16. Plaintiffs  
8 respectfully request this Court to reconsider the May 11, 2010 demand letter  
9 submitted by *Defendants* as Exhibit C to the June 24, 2010 Reply Declaration of  
10 David Gingras in Further Support of their Motion for Summary Judgment. DN-77  
11 at 19. Page 4 of the May 11, 2010 letter sets forth what appears to be Defendants’  
12 “playbook” settlement demand: (1) dismissal; (2) a round number in attorneys’ fees  
13 (here, \$25,000) and (3) incriminating evidence about Defendants’ “enemies.”  
14 Oddly, these are demands by Defendants, who have filed no counter-claims, made  
15 with the statement “Xcentric has successfully sued parties and their lawyers for  
16 knowingly commencing and continuing litigation that they knew was factually  
17 groundless, Xcentric intends to bring such claims against your clients...” *Id.*

18 Another oddity of the May 11, 2010 demand letter is that it is part of a  
19 pattern to almost “Gaslight” Plaintiffs by insisting that Mr. Gingras learned from  
20 Plaintiff Raymond Mobrez that Mobrez may have information of “substantial value  
21 to Xcentric,” and “Xcentric may be willing to reduce or even completely waive the  
22 amount of damages and fees [Plaintiffs] would have to pay depending upon how  
23 useful the information they are willing to provide is.” *Id.*

### 24 **3. New Threats to Plaintiffs’ Counsel and Demand for Money**

25 New facts emerged meriting reconsideration of this Court’s conclusion  
26 Plaintiffs have not come forward with evidence that Defendants’ threats unless the  
27 claims were false or demanded money. See Order of July 19, 2010 at 32:4-6, 3:24-  
28 27; 33:5-10 (finding no evidence that Defendants knowingly threatened to bring a

1 false claim); 33:14-16 (“this is not a case where the defendants threatened to sue  
2 the plaintiff unless the plaintiff paid a certain sum or delivered property to  
3 defendants”); 33:18-22 (same).

4 On July 20, 2010, Defendants used fear and threats towards persons related  
5 to this litigation to pressure Plaintiffs into a coerced settlement. Magedson told  
6 Plaintiffs’ counsel that a Rip-off Report “will happen to you.” Borodkin Dec. ¶6;  
7 told Plaintiffs’ counsel that she would be on the cover of a book casting the legal  
8 profession in a negative light; *id.*; Blackert Dec. ¶15; and offered Plaintiffs’  
9 counsel a release of future threatened affirmative claims of malicious prosecution  
10 against Plaintiffs’ counsel personally if they would cause Plaintiffs to pay \$35,000  
11 or \$50,000 and drop this case, even though such threats of litigation had no basis  
12 at the time they were made, Borodkin Dec. ¶¶8-9; Blackert Dec. ¶14.

13 On July 20, 2010, Defendants’ counsel offered to release Plaintiffs’  
14 attorneys from threatened future claims of malicious prosecution and abuse of  
15 process under Arizona state law. See Borodkin Dec. ¶¶ 8-9, Blackert Dec. ¶¶14,  
16 17-18. Such threats would be shams even under Arizona law, because this action  
17 would have to terminate favorably in order for Defendants’ counsel to have a good  
18 faith belief in the cause of action. See one the elements of the tort malicious  
19 prosecution under Arizona law is a that the underlying lawsuit "terminated in  
20 plaintiffs' favor." See Bradshaw v. State Farm Mut. Auto Ins. Co., 157 Ariz. 411,  
21 417, 758 P.2d 1313, 1319 (Ariz. 1988).

22 Defendants do much more than defend themselves. They threatened in bad  
23 faith affirmatively to *sue* Plaintiffs’ counsel in a separate, future action in  
24 retaliation based on future, unripe claims – and offered releases of such future  
25 claims that would be void under California Civil Code §1668 as contrary to public  
26 policy. See McQuirk v. Donnelley, 189 F.3d 793, 797-98 (9th Cir. 1999) (Cal. Civ.  
27 Code § 1668 explicitly renders invalid contracts that release liability for “willful  
28 injury to the person or property of another” and “contractual releases of future

1 liability for intentional wrongs”). Accordingly, new threats to Plaintiffs’ counsel  
2 regarding a threatened suit that was “objectively baseless” within the meaning of  
3 Sosa v. DIRECTV, Inc., 437 F.3d 923, 940 (9th Cir. 2006) (holding extortion  
4 predicated on threat to sue requires allegation that threatened suit was objectively  
5 baseless) is another predicate act of extortion that supports Plaintiffs’ claim for  
6 RICO and causing injury to Plaintiffs.

### 7 **3. Threats to Witness, Ripoff Report Written by Defendants**

8 Defendants claimed in their motion for summary judgment that they are  
9 “immune” under the Communications Decency Act because Reports are  
10 purportedly written by third parties, See Order of July 19, 2010 at 5:5-6 (adding  
11 “third party” to contention in Plaintiffs’ Statement of Genuine Issues (“PSGI”)  
12 regarding the Website’s claim to be “by consumers” ¶1); 5;13-6:13, 6:14 (based on  
13 assumption that all reports are “user-generated”); 7:25-27 (adding modifier “third-  
14 party report” to PSGI ¶¶20-21 regarding rebuttal).

15 Since the Order of July 19, 2010, new facts have emerged so that Defendants  
16 can no longer claim that they do not write any Reports.

17 On July 28, 2010, a fact witness in this case, Kent Hutcherson, forwarded  
18 Plaintiffs’ counsel a letter from Defendants’ counsel demanding that he remove a  
19 posting from a website, demanding that he file a second declaration with this  
20 Court, and demanding that he refrain from taking certain employment adverse to  
21 Defendants. See Blackert Dec. ¶19, Ex. 3. In an August 3, 2010 email, Defendants  
22 threatened Mr. Hutcherson that they would create a “Hall of Shame” on their  
23 Website to punish him for his testimony. See Borodkin Dec. ¶10, Ex. 5; Blackert  
24 Dec. ¶¶20-21, Ex. 4. On August 6, 2010, Defendants did personally post a Rip-off  
25 Report about that witness. claiming full credit for authorship. See Blackert Dec. at  
26 ¶¶22, Ex. 5; Borodkin Dec. ¶11, Ex. 5.

27 Plaintiffs respectfully request this Court to reconsider its findings that  
28 Plaintiffs have presented no evidence that Defendants ever threatened to impute

1 disgrace to Plaintiffs, Order at 34:11-16, or wrote any negative comments or  
2 reports, Order at 34:16-22. The headlines that Defendants wrote about Mr.  
3 Hutcherson -- "Published False and Misleading Statements" -- impute disgrace and  
4 could, with every reasonable inference drawn in Plaintiffs' favor, be interpreted as  
5 a threat, as the Report targets someone who has given assistance to Plaintiffs.

6 In addition, Plaintiffs also respectfully request this Court to reconsider its  
7 Order which may have been overlooked the following material facts Defendants'  
8 evidence that Defendants add the keywords "rip-off," "ripoff" and "rip off" into  
9 the meta tags of every page on the website, See Order of July 19, 2010 at 7:13-15  
10 (Ben Smith Declaration at 15) in making the finding that Plaintiffs do not offer  
11 any evidence that Defendants added the term "Ripoff Report" to user-generated  
12 reports at the times relevant to this action, Order of July 19, 2010 at 6:27-28, fn.3.  
13 This is a material fact, given that the meta tags influence the content of search  
14 results and are a significant part of the harm caused by Rip-off Reports.

15 **E. Legal Effect of New Facts on Plaintiffs' RICO/Extortion Claims**

16 A court may grant reconsideration under Local Civil Rule 7-18 for legal  
17 error. In Fahmy v. Hogge, 2009 U.S. Dist. LEXIS 87103 at \*17 (C.D. Cal. Oct. 14,  
18 2008), the Court granted a motion for reconsideration because it had erroneously  
19 accepted Plaintiffs' jurisdictional allegations as true without a sworn statement,  
20 where Defendant had supported jurisdictional challenges with a sworn statement.  
21 Plaintiffs respectfully request reconsideration of this Court's legal analysis as well  
22 as the factual findings in light of the foregoing new matter.

23 **1. Restriction to First-Party RICO/Extortion Predicate Acts**

24 In the Order, this Court concluded that Plaintiffs failed to show a triable  
25 issue of fact on whether Defendants had engaged in predicate act of extortion or  
26 attempted extortion. DN-94 at 29:15-16, 40:11-15. In making that conclusion, this  
27 Court restricted its consideration only to communications between Defendants and  
28 Plaintiffs, and refused to consider the overwhelming evidence of other predicate

1 acts of extortion involving third parties such as Tina Norris. See Order at 38:25-28  
2 fn. 16. In making such a conclusion on Plaintiffs' RICO/extortion claim, it appears  
3 this Court read into the RICO statute additional requirements that were not  
4 imposed by Congress. Id. ("Absent any evidence that Plaintiffs knew of these  
5 email communications in April and May 2009 when the alleged extortion took  
6 place, or that Defendants intended these email communications to reach Plaintiffs,  
7 they are not relevant to any alleged attempt by Defendants to induce Plaintiffs to  
8 pay money to Defendants by means of force or fear.") Plaintiffs respectfully  
9 submit that this was error, and that Plaintiffs show sufficient evidence of a pattern  
10 of racketeering that harmed Plaintiffs, as required by 18 U.S.C. § 1962(c) and (d).

11 As the Court noted, a plaintiff asserting a RICO claim under 18 U.S.C. §  
12 1962(c) must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of  
13 racketeering activity.' [consisting of at least two predicate acts (5) causing injury to  
14 Plaintiffs' business or property]," Odom v. Microsoft Corp., 486 F.3d 541, 547  
15 (9th Cir.2007) (quoting Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 496,  
16 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). See also Living Designs, Inc. v. E.I.  
17 Dupont de Nemours and Co., 431 F.3d 353, 365 (9th Cir.2005) ("The elements of a  
18 civil RICO claim are as follows: '(1) conduct (2) of an enterprise (3) through a  
19 pattern (4) of racketeering activity (known as 'predicate acts') (5) causing injury to  
20 plaintiff's 'business or property.' ' ") (quoting Grimmett v. Brown, 75 F.3d 506,  
21 510 (9th Cir.1996)).

22 Sedima itself holds that "RICO is to be read broadly":

23 "Where the plaintiff alleges each element of the violation, the compensable  
24 injury necessarily is the harm caused by predicate acts sufficiently related to  
25 constitute a pattern, for the essence of the violation is the commission of  
26 those acts in connection with the conduct of an enterprise. Those acts are,  
27 when committed in the circumstances delineated in § 1962(c), 'an activity  
28 which RICO was designed to deter.'"

1 Sedima v. Imrex Co., 473 U.S. 479, 497 (1985). Just as the Court in Sedima was  
2 unwilling to import into the RICO statute a requirement that the defendant had to  
3 have been convicted criminally of the predicate act, see 473 U.S. at 493, and was  
4 unwilling to import a requirement of a “racketeering injury” separate from the  
5 injury from the predicate act, see 473 U.S. at 500 (“Sedima may maintain this  
6 action if the defendants conducted the enterprise through a pattern of racketeering  
7 activity. The questions whether the defendants committed the requisite predicate  
8 acts, and whether the commission of those acts fell into a pattern, are not before  
9 us.”) (emphasis added).

10 Nowhere in the RICO statute is there a requirement that the victim of the  
11 predicate act must also be the same victim of the predicate acts in the pattern of  
12 racketeering. In fact, the Supreme Court in Bridge v. Phoenix Bond & Indemnity  
13 Co., 553 U.S. 639, 128 S. Ct. 2131 (2008) expressly held that the victims of the  
14 predicate acts of mail fraud need not be the same as the plaintiff with standing to  
15 seek recovery for damages caused “by reason of” the pattern of racketeering in the  
16 bidding scheme.

17 In Bridge, the Supreme Court permitted the RICO plaintiff, bidders for tax  
18 liens, to sue a competitor under RICO where the predicate acts were mail fraud in  
19 letters sent to property owners with various notices required under Illinois law. Id.,  
20 553 U.S. at --, 128 S. Ct. at 2136. The defendants had violated Illinois’ Single  
21 Simultaneous Bidder Rule to obtain a disproportionate amount of tax liens by  
22 arranging to have related firms bid for them and falsely attesting to the county that  
23 they were in compliance with the Single Simultaneous Bidder Rule. See id. The  
24 mailed notices themselves were sent to property holders. See id.

25 The Supreme Court affirmed the Seventh Circuit’s reversal of the District  
26 Court’s order dismissing the claim for lack of standing based on the argument that  
27 the plaintiff bidders had not relied on any false statements sent by the mails. The  
28 Supreme Court affirmed the Seventh Circuit’s holding that the plaintiffs suffered a

1 “real injury” when they lost the valuable chance to acquire more liens, and that the  
2 plaintiff had alleged proximate cause adequately under Holmes v. Securities  
3 Investor Protection Corp. , 503 U.S. 258 (1992) and Anza v. Ideal Steel Supply  
4 Corp., 547 U.S. 451 (2006), because “they (along with other losing bidders) were  
5 ‘immediately injured’ by petitioners’ scheme.” See Bridge, 553 U.S. at --, 128 S.  
6 Ct. at 2136-37 (emphasis added).

7 Declining to read into the RICO statute a requirement of first-party reliance  
8 that is not in the plain language of the RICO Act, the Supreme Court stated, “it is  
9 not for the judiciary to eliminate the private action in situations where Congress  
10 has provided it.” Id. at 2145. The Supreme Court noted a string of cases where it  
11 had declined to read extra elements into the RICO statute, and concluded that it  
12 was enough that someone had been defrauded, but it did not have to be the  
13 plaintiffs directly. Id. Based on the Supreme Court’s language in Bridge, there  
14 should be no need for Plaintiffs to know of Defendants’ attempt to extort Tina  
15 Norris, so long as Plaintiffs were damaged by Defendants’ pattern of conducting  
16 business through such predicate acts:

17 Nor is first-party reliance necessary to ensure that there is a sufficiently  
18 direct relationship between the defendant's wrongful conduct and the  
19 plaintiff's injury to satisfy the proximate-cause principles articulated in  
20 Holmes and Anza. Again, this is a case in point. ***Respondents' alleged***  
21 ***injury—the loss of valuable liens—is the direct result of petitioners' fraud.***  
22 ***It was a foreseeable and natural consequence of petitioners' scheme*** to  
23 obtain more liens for themselves that other bidders would obtain fewer liens.  
24 And here, unlike in Holmes and Anza, there are no independent factors that  
25 account for respondents' injury, there is no risk of duplicative recoveries by  
26 plaintiffs removed at different levels of injury from the violation, and no  
27 more immediate victim is better situated to sue.

28 Bridge v. Phoenix Bond & Indem. Co., 553 U.S. 639 (2008) (emphasis added).

Similarly, in this case, the alleged injury to , e.g., Plaintiff Raymond  
Mobrezy – the loss of valuable commissions from commercial real estate contracts,

1 see Declaration of Justin Lin, DN-62 at ¶¶3-6 – is the direct result of Defendants’  
2 conducting its business through a pattern of what amounts to attempted extortion.  
3 It was a foreseeable and natural consequence of Defendants’ conduct in that  
4 victims such as Plaintiffs would be harmed by the negative internet search results  
5 generated deliberately by Defendants to generate as much leverage possible over  
6 potential CAP members.

7 Predicate acts of racketeering under RICO need not have all been committed  
8 to a plaintiff personally. See Ticor Title Ins. Co. v. Florida, 937 F.2d 447, 450 (9<sup>th</sup>  
9 Cir. 1991). Thus, a racketeering pattern can have multiple victims, so long as the  
10 pattern is what injures the plaintiff. In Ticor, the plaintiff insurance company,  
11 predicated its RICO claim on acts of forgery to three different purchasers. The  
12 defendants had forged IRS tax lien releases for sales of property and filed them  
13 with the Country Recorder’s office. Id. at 449. Based on the forged lien releases,  
14 three separate purchasers closed purchasers of real property from the defendants.  
15 The plaintiff had insured the purchasers’ title to the properties, and was damaged  
16 by having to pay recoveries to the purchasers when the IRS foreclosed their liens.  
17 The Ninth Circuit stated that the pattern of business posed “a threat of continuing  
18 criminal activity” and that the forgeries “posed a threat of continued criminal  
19 activity.” See id. at 450.

20 Plaintiffs anticipate that Defendants will oppose this motion by conflating  
21 the standards of causation for first-party claims of attempted extortion under  
22 California Penal Code § 523 and § 524 with the “by reason of” causation standard  
23 under RICO. See Bridge v. Phoenix Bond & Indem. Co., 553 U.S. 639 (2008).  
24 However, a predicate act of RICO can have a different victim than the plaintiff  
25 harmed by the enterprise’s pattern of conducting. If Plaintiffs had to prove two  
26 fully completed acts of attempted extortion to Plaintiffs directly, Bridge’s  
27 elimination of first-party reliance as an element of RICO claims predicated on mail  
28 fraud would be meaningless.

1 This Court stated that email communications between Defendants and Tina  
2 Norris are not relevant to any attempt by Defendants to extort Plaintiffs “absent  
3 any evidence that Plaintiffs knew of these email communications in April and May  
4 2009 . . .or that Defendants intended these email communications to reach  
5 Plaintiffs. Order of July 19, 2010, DN-94 at 38:25-28, fn. 16. While that ruling  
6 may be correct to the extent it applies to a stand-alone claim of attempted extortion  
7 under Penal Code §523 or § 524, Plaintiffs respectfully submit that its evidence  
8 raises a triable issue of fact as to the existence of a pattern or extortion harming  
9 Plaintiffs, because a pattern of racketeering among several victims (Plaintiffs  
10 individually, Asia Economic Institute, Tina Norris, Patricia Brast), as in Ticor, or  
11 even third-party victims, as in Bridge, can be the cause of RICO injury.

12 Plaintiffs put forth evidence of harm by reason of the pattern of racketeering,  
13 including loss of property interests in Plaintiffs’ formerly robust business in  
14 brokering real estate transactions. See, e.g. Declarations of Charlie Yan (DN-59),  
15 Israel Rodriguez (DN-60) and Justin Lin (DN-62). The harm to Plaintiffs’  
16 reputation and property interests would not have occurred but for Defendants’  
17 racketeering to collect damaging Reports, optimize them for search, and then offer  
18 to change the way in which search results appear. See Second Questionnaire,  
19 Borodkin Dec. Ex. 1 at 1. Thus, Plaintiffs respectfully submit they have alleged  
20 causation and damages, in accordance with the standards of Bridge v. Phoenix  
21 Bond & Indem. Co., 553 U.S. 639 (2008), by reason of the enterprise’s acts of  
22 extortion in furtherance of the racketeering.

## 23 2. Claim for Conspiracy to Violate RICO

24 Plaintiffs also respectfully request this Court to reconsider its conclusions on  
25 Plaintiffs’ claim for conspiracy to violate RICO pursuant to 18 U.S.C. § 1962(d) in  
26 light of the new facts and evidence submitted on this motion. To assert a claim  
27 under Section 1962(d), conspiracy, a plaintiff need only supply “[p]roof of an  
28 agreement the objective of which is a substantive violation of RICO (such as

1 conducting the affairs of an enterprise through a pattern of racketeering).” See  
2 Marceu v. Int’l Broth. Of Elec. Workers, 618 F.Supp. 2d 1127, 1144 (D. Ariz.  
3 2009). “The illegal agreement need not be express as long as its existence can be  
4 inferred from the words, actions, or interdependence of activities and persons  
5 involved.” Id. (citing Oki Semiconductor Co. v. Wells Fargo Bank, Nat. Ass'n, 298  
6 F.3d 768, 775 (9th Cir.2002); United States v. Tille, 729 F.2d 615 619 (9th Cir.  
7 1984).

8 In this motion, Plaintiffs submit evidence of the pattern of racketeering,  
9 attempts to commit the inchoate offense of attempted extortion, and acts taken with  
10 knowledge of the purpose of the conspiracy that had the effect of damaging  
11 Plaintiffs.

12 DATED: August 24, 2010

Respectfully submitted,

14 By: /s/ Daniel F. Blackert  
15 Daniel F. Blackert  
16 Lisa J. Borodkin  
17 Attorneys for Plaintiffs,  
18 Asia Economic Institute LLC,  
19 Raymond Mobrez, and Iliana  
20 Llaneras



