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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ASIA ECONOMIC INSTITUTE, LLC, *et al*., **Plaintiffs,** **vs.** **XCENTRIC VENTURES, LLC, *et al*.,** **Defendants.**	Case No: 2:10-cv-01360-SVW-PJW **DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO STRIKE** Hearing Date: April 19, 2010 Time: 1:30 PM Courtroom: 6 (Hon. Steven Wilson) Complaint Filed: Jan. 27, 2010

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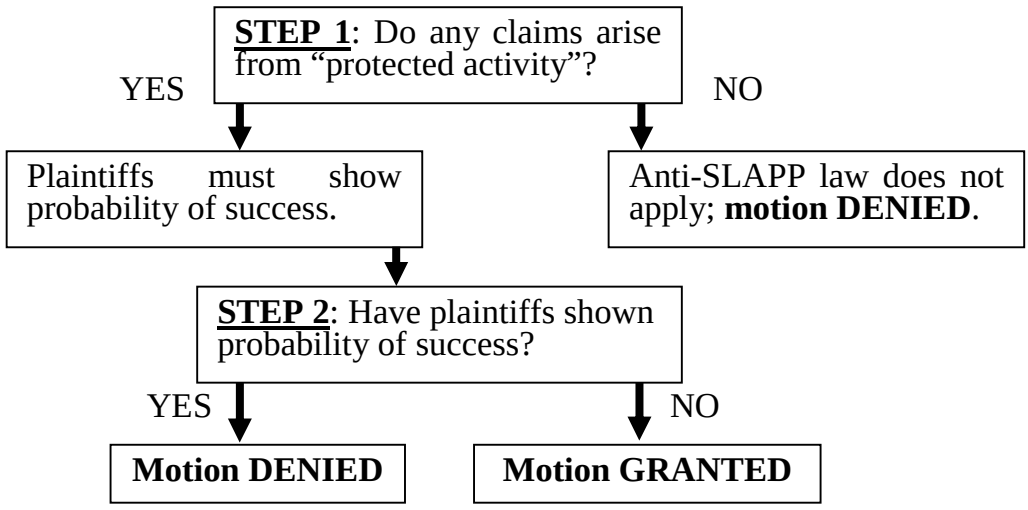
I. INTRODUCTION

The decision tree for the disposition of this motion involves two simple steps:



Defendants' position is that this motion can be resolved entirely on the first question—do any claims in the Complaint arise from "protected activity" within the meaning of the anti-SLAPP statute? Upon reviewing Plaintiffs' Opposition, it appears that Plaintiffs have placed all their efforts into demonstrating why the anti-SLAPP statute does not apply. Because that first question is potentially dispositive and because it is clearly the more debatable point among the two, Plaintiffs' opposition focuses almost entirely on this initial question without making any serious attempt to show that their claims are likely to succeed at trial.

As explained below, Defendants continue to maintain that the anti-SLAPP statute applies here. Because Plaintiffs' claims arise from protected activity (both speech and conduct), they are required to show that these claims will probably succeed at trial. However, Plaintiffs have not offered any evidence that would defeat Defendants' immunity under 47 U.S.C. § 230(c)(1). For that and other reasons, Plaintiffs' claims are not likely to succeed and the motion should therefore be granted.

II. ARGUMENT

a. The Reports Involve Public Issues Under CCP § 425.16(e)(3)

On pages 5:16–10:4 of the Motion to Strike, Defendants argued that the four reports at issue here involve "public issues" or matters of "public interest" within the meaning of CCP § 425.16(e)(3) because the topic of whether AEI is a good company to work for is of public interest, particularly in light of the terrible economic conditions and high unemployment rates presently affecting California. Each of the reports adds something to the discussion of that topic and therefore this speech qualifies as protected activity under the anti-SLAPP statute.

In response, Plaintiffs argue quite correctly that "[u]nlawful workplace activity below some threshold level of significance is not an issue of public interest, even though it implicates a public policy." *Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO*, 105 Cal.App.4th 913, 924, 130 Cal.Rptr.2d 81 (1st DCA 2003). Of course, this exact issue was mentioned in Defendants' motion at 7:23–25.

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This leads to the exact dilemma noted in *Rivero*; "a 'public concern' test amounts to little more than a message to judges and attorneys that no standards are necessary because they will, or should, know a public concern when they see it." *Rivero*, 105 Cal.App.4th at 924. If the *Rivero* court was correct and the "public issue/concern" standard is really so nebulous and unhelpful, how can this court decide which way to rule?

Although Defendants agree that the answer to this question is highly subjective and not really capable of precise definitions, the following points are worth noting.

First, courts will usually find the "public issue/concern" requirement is not present when the statements at issue relate to a narrow personal dispute which does not involve a matter of broader public interest and which primarily affects only two parties—the defendant whose speech is at issue and the plaintiff who is targeted by that speech. For instance, in *Rivero*, the speech at issue criticized the conduct of one person—the plaintiff—and it related solely to his supervision of a very small group of eight employees. Because the speech did not affect anyone outside this small group and because the comments were really nothing more than a personal attack on one individual, the *Rivero* court held the anti-SLAPP law did not apply:

> [T]he [defendant's] statements concerned the supervision of a staff of eight custodians by Rivero, an individual who had previously received no public attention or media coverage. Moreover, the only individuals directly involved in and affected by the situation were Rivero and the eight custodians. Rivero's supervision of those eight individuals is hardly a matter of public interest.

Rivero, 105 Cal.App.4th at 924. Based on these facts, the court concluded that although discussions about workplace activity could potentially fall within the anti-SLAPP law, the remarks about Mr. Rivero simply had not reached that level; "unlawful workplace activity below some threshold level of significance is not an issue of public interest." *Id.* Of course, the *Rivero* court did not hold that speech about workplace events was never a public concern, it only held the line was not crossed under the facts of that case.

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Here, Plaintiffs analogize this case to *Rivero* because like in that case, Plaintiffs operate (or operated) a business and the speech in the Ripoff Report postings criticizes them and their treatment of employees. However, unlike in *Rivero*, the speech at issue here was not solely about a personal attack on the Plaintiffs, nor was the speech about matters that could only affect a tiny handful of employees.

Rather, the reports at issue here criticized the Plaintiffs' for their systemic and habitual mistreatment of all of their employees by, among other things, "hiring vulnerable recent grads and international students," "promis[ing] many pervious workers work visas, reference letters for university, and numerous raises," and also reducing pay illegally and failing to pay employees overtime and failing to pay in a timely manner. Unlike the narrow criticism in *Rivero* which arose from the conduct of one person and which affected no one other than the plaintiff, this speech goes to the very heart of a much broader question—whether or not AEI is a good place to work for someone who is currently unemployed.

Put differently, the speech in *Rivero* was limited to criticism of the plaintiff in that case, suggesting that he was suspended for mistreating employees, among other things. Particularly in light of the fact that Mr. Rivero quit his job as a result of these remarks, nothing about this speech could have impacted the public at large, nor would it affect the decisions of future job-seekers looking for work in a terrible economy.

In this case, the speech is something that would be relevant and important to *anyone* looking for work in Los Angeles which is certainly a large segment of the population; *a fortori* the statements involve public issues. *See Damon v. Ocean Hills Journalism Club*, 85 Cal.App.4th 468, 479, 102 Cal.Rptr.2d 205 (2000) (finding statements that impacted 3,000 individuals were public issues because they involved, "private conduct that impacts a broad segment of society … .") Paradoxically, this point is demonstrated by Plaintiffs' allegation that the reports caused potential employees of AEI to seek work elsewhere; if the statements in question were not material to the quality of AEI as an employer, then they would not impact the decisions of job-seekers.

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Inasmuch as people want to know which companies are good places to work, the public is interested in knowing, and has a First Amendment right to discuss, which companies are *not* good places to work. Thus, although the speech in *Rivero* was found to be below a minimal "threshold level of significance", the speech here is *above* that threshold level. If it is true that AEI routinely fails to pay employees and/or that it requires employees to arrive early and stay after hours without receiving overtime, such actions would violate Cal. Labor Code § 510(a) (requiring overtime pay) and would significantly impact AEI's suitability as a place to work.

It is these factors which makes this case different from *Rivero* and analogous to the more recent decision in *Gilbert v. Sykes*, 147 Cal.App.4th 13, 53 Cal.Rptr.3d 752 (3rd CDA 2007) which is discussed on pages 8–9 of Defendants' motion. The speech in *Gilbert* arose from a private event between only two people (a patient and her doctor). Despite the private nature of the underlying dispute, the speech at issue was not just critical of one person (a plastic surgeon), it also added to the broader public discussion about plastic surgery in general. Because of that, the *Gilbert* court found that the anti-SLAPP statute applied and that the speech was protected.

In light of these standards, Defendants' position can be restated as simply as this—if elective plastic surgery is a public issue, then so is the question of which company is a good place to work. Indeed, with millions of Americans and many Californians unemployed and looking for work, this topic is particularly apropos, a point which Plaintiffs nearly concede; "it is unarguable that unemployment is a public issue in such harsh economic times … ." Plaintiffs' Opp. At 11:5–6 (emphasis in original). Because this issue impacts a significant number of people and because the reports at issue add to that discussion, they are public issues within the scope of CCP § 425.16(e)(3).

b. ROR/Magedson's Conduct Implicates CCP § 425.16(e)(4)

Pages 10:6–11:14 of Defendants' Motion to Strike argue that to the extent Plaintiffs' claims arise from Mr. Magedson's operations of the Ripoff Report website in general (which they clearly do), that conduct is protected by CCP § 425.16(e)(4). At a

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minimum, this issue applies to Plaintiffs' statutory unfair business practices claim under Bus. & Prof. Code § 17200 which appears to be based entirely on the operation of the Ripoff Report website in general.

In a very cursory response on pages 12–13 of their Opposition, Plaintiffs seem to acknowledge that conduct falling within the scope of CCP § 425.16(e)(4) is protected, but they respond by suggesting that "speech involving illegal activity cannot receive First Amendment protection." Opp. at 12:23 (citing *Flatley v. Mauro*, 39 Cal.4th 299, 317 (Cal. 2006)). The problem with this position is that Plaintiffs fail to realize *claiming* something and *proving* something are two different things. Plaintiffs cannot defeat an anti-SLAPP motion simply by *alleging* that something unlawful has occurred; they have to prove this is so with supporting law and admissible evidence.

The *Flatley* case is a good example of this. In *Flatley*, the defendant (an attorney) threatened to falsely accuse the plaintiff (famed Irish "Riverdance" founder Michael Flatley) of raping a woman. *See Flatley*, 39 Cal.4th at 308–09. In his letter demanding a settlement payment in excess of $1 million, Mr. Mauro ended with a conclusion stating that if Mr. Flatley refused to pay, embarrassing press releases would be distributed to media outlets worldwide. Since these demands were written, Mr. Mauro admitted making the threats.

The trial court, the Court of Appeal and the California Supreme Court each agreed that based on the undisputed facts which Mr. Mauro conceded, his conduct qualified as extortion as a matter of law and he therefore could not avail himself of CCP § 425.16:

> We conclude, therefore, that where a defendant brings a motion to strike under section 425.16 based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, but either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action.

Flatley, 39 Cal.4th at 320, 46 Cal.Rptr.3d at 621–22 (emphasis added).

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Here, unlike in *Flatley*, Defendants Xcentric and Magedson do not concede that any of their conduct is illegal as a matter of law. In addition, to the extent AEI accuses Defendants of engaging in extortion by making threats of some kind or demanding money, Defendants expressly deny such conduct. *See* Magedson Aff. at ¶ 33 (denying that any threats were made to plaintiffs). Because Defendants dispute the factual allegations which Plaintiffs' "extortion" claim is based upon, this case cannot be compared to *Flatley* because no "evidence conclusively establishes" that Defendants have done something which is "illegal as a matter of law". No such showing has been made here.

In their Opposition, Plaintiffs only argument on this point is to recite a conclusory allegation from their pleadings; "[i]n the initial complaint, Plaintiffs unfair business practices claim … is based on Defendants attempts to solicit defamatory posts and extort money for the removal of such posts." Opp. at 12:18–20 (emphasis added). Of course, unlike in *Flatley*, Defendants expressly deny engaging in these actions and Plaintiffs have offered no evidence whatsoever to show that these events actually occurred. To be sure, if the matter before the court was a Motion to Dismiss under Rule 12(b)(6) in which unsupported allegations are presumed true, Plaintiffs would not be required to introduce any evidence. However, as already explained on page 17 of the Motion to Strike; "In opposing an anti-SLAPP motion, the plaintiff cannot rely on the allegations of the complaint, but must produce evidence that would be admissible at trial. Thus, declarations may not be based upon 'information and belief' and documents submitted without the proper foundation are not to be considered." *HMS Capital, Inc. v. Lawyers Title Co.*, 118 Cal.App.4th 204, 212 (2004).

Plaintiffs surely have not met their evidentiary burden as to their third cause of action for unfair business practices. This claim does not arise from the handful of reports about Plaintiffs, nor does it rely upon the discussion of public issues in those reports. Rather, the claim is a direct attack upon Mr. Magedson's right to operate a website which provides a forum for speech on numerous public issues involving frauds, scams, corporate

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malfeasance, and the like. This claim attacks Mr. Magedson's First Amendment right to engage in consumer advocacy, and to the extent it accuses Defendants of committing "fraudulent business acts or practices," Compl. ¶ 55, the claim must be supported by competent proof and admissible evidence. Because Plaintiffs offer nothing whatever to support what they have alleged, the claim has no chance of success at trial and it should be stricken from the Complaint.

c. Plaintiffs Will Not Prevail At Trial

In the introduction to this reply, Defendants noted that the disposition of this motion involved two steps. The second step requires the Plaintiffs to show that their claims are likely to succeed at trial.

On pages 12–17 of their Motion to Strike, Defendants argued that none of Plaintiffs' claims will succeed because as numerous courts have previously held, Defendants are entitled to immunity pursuant to 47 U.S.C. § 230(c)(1) as to any content provided by third parties. Because all of the content here was provided by third parties and was never altered or changed by Defendants, Plaintiffs have failed to show that CDA immunity does not apply. As such, this renders this matter procedurally identical to the California Supreme Court's decision in *Barrett v. Rosenthal*, 40 Cal.4th 33, 146 P.3d 510 (2006) in which the court affirmed the granting of a Special Motion to Strike under CCP § 425.16 because the defendant was immune under the CDA.

Plaintiffs seek a different result here by making wild, sweeping allegations claiming that Mr. Magedson somehow selected the handful of reports at issue in this case among the 500,000+ unique reports on the site and then materially changed them in various ways. The problem with these allegations is that they are simply untrue; Mr. Magedson has provided an affidavit expressly denying that he had any involvement in creating, altering, or modifying the posts, and Plaintiffs have offered no evidence to the contrary. Based on this complete lack of evidence and as in prior cases involving the Ripoff Report, Plaintiffs have failed to prove that any evidence supports their counter-CDA position.

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i. Defendants Are Immune Under The CDA

In an effort to demonstrate why the CDA does not apply, Plaintiffs cite *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008) for the principle that Ripoff Report can be held be held liable for material even where the material was originally created by a third party. Among other things, the main problem with this argument is that it ignores subsequent rulings from other federal courts which considered and rejected the exact same argument.

For example, in *GW Equity, LLC v. Xcentric Ventures, LLC*, 2009 WL 62173 (N.D.Tex. 2009) the District Court rejected the plaintiff's argument that *Roommates II* had any impact on Xcentric's immunity under the CDA; "*Roommates II* is distinguishable from this case." 2009 WL 62173, *5. In *Roommates II*, the Ninth Circuit concluded that the CDA did not protect the website from claims arising under the Fair Housing Act because the website itself created illegal questions which asked its users to indicate whether they were willing to rent an apartment to someone based on race, religion, sexual orientation, or family status. These questions were *not* generated by users of the site; they were created by the site itself and the questions had to be answered by anyone using the site to look for housing. Because liability in that case was not based on material provided to the site by a third party, the Ninth Circuit found the CDA simply did not apply.

In *GW Equity*, the court concluded that the CDA applied to the Ripoff Report because unlike in *Roommates II*, the plaintiff was trying to hold Defendants liable for material they did not create. Even though the plaintiff claimed (as AEI does here), that Defendants were not entitled to immunity because they "solicited" posts or otherwise "contributed" to their creation, the court found such generic allegations could not overcome the CDA's immunity; "The Court finds that there is no genuine issue of fact that Defendants' provision of a broad choice of categories did not create or develop the alleged harmful conduct here … . Defendants' provision of a broad choice of categories from which a user must make a selection in order to submit a report is not sufficient to treat Defendants as information content providers." *GW Equity*, 2009 WL 62173, *5–6.

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Anticipating this problem, Plaintiffs cite an old decision against the entity which previously operated the Ripoff Report site. In *MCW, Inc. v. Badbusinessbureau.com, LLC*, 2004 WL 833595 (N.D.Tex. 2004), the plaintiff alleged that Mr. Magedson personally wrote and created defamatory messages about the plaintiff. *See MCW*, 2004 WL 833595, *9. Faced with a Motion to Dismiss under Rule 12(b)(6), the court was obligated to assume this allegation was true even if it was not. As such, the court concluded that given the allegations, the plaintiff had pleaded facts sufficient to overcome CDA immunity.

Of course, the decision in *GW Equity* did not involve a Rule 12(b)(6) Motion to Dismiss. Rather, *GW Equity* involved a Rule 56 Motion for Summary Judgment. In that posture, as here, the allegations in the Complaint were required to be supported by admissible evidence. Because the plaintiff had no evidence to support its claims, the court in *GW Equity* found that the decision in *MCW* was inapposite and that Defendants were fully protected by the CDA. *See GW Equity*, 2009 WL 62173, *4 (finding "*MCW* does not demonstrate that there is a genuine issue of fact regarding whether Defendants are information content providers here.") The same result was reached by the district court in *Whitney Information Network, Inc. v. Xcentric Ventures, LLC*, 2008 WL 450095, *8 (M.D.Fla. 2008) (noting that in the context of a Rule 56 Motion for Summary Judgment, "As these circumstances [in *MCW*] are factually distinct from those before the Court, the *MCW Inc.* decision is not determinative.")

Since these cases were decided, plaintiffs who do not agree with the CDA have noticed an obvious point—if they *allege* that Xcentric/Magedson created defamatory posts, they can defeat an early motion under Rule 12(b)(6). Of course, as is true in a Rule 56 motion, a plaintiff opposing an anti-SLAPP motion cannot rest on the pleadings; the motion cannot be defeated without admissible evidence showing that Mr. Magedson and/or Xcentric actually created the material at issue. In this case as was true in *GW Equity* and *Whitney*, Plaintiffs have offered no evidence whatsoever to defeat Defendants' immunity under the CDA.

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1. General Solicitation Is Irrelevant to CDA Immunity

Parroting claims made unsuccessfully in other cases, pages 14–16 of the Opposition argue that Defendants have lost CDA immunity because they generally encourage or "solicit" defamatory postings. Of course, that exact argument was considered and rejected by the district court in *Global Royalties, Ltd. v. Xcentric Ventures, LLC*, 544 F.Supp.2d 929 (D.Ariz. 2008) in which the court explained that such generic allegations of solicitation were not sufficient to defeat immunity:

> [P]laintiffs allege that defendants encourage defamatory postings from others for their own financial gain and, therefore, are partly responsible for the "creation or development" of the messages.
>
> It is obvious that a website entitled Ripoff Report encourages the publication of defamatory content. However, there is no authority for the proposition that this makes the website operator responsible, in whole or in part, for the "creation or development" of every post on the site. Essentially, that is plaintiffs' position. After all, plaintiffs have not alleged that defendants solicited Sullivan's postings in particular, or that they specifically solicited any postings targeting Global. Nor have they alleged that defendants altered Sullivan's comments, or had any more than the most passive involvement (providing a list of possible titles) in composing them.
>
> Unless Congress amends the statute, it is legally (although perhaps not ethically) beside the point whether defendants refuse to remove the material, or how they might use it to their advantage. Through the CDA, "Congress granted most Internet services immunity from liability for publishing false or defamatory material so long as the information was provided by another party." Here, the material was unequivocally provided by another party.

Global Royalties, 544 F.Supp.2d at 933. As in *Global Royalties*, Plaintiffs do not claim and certainly have no evidence showing that Mr. Magedson or Xcentric specifically asked users to create and post reports about AEI, Mr. Mobrez or Ms. Llaneras. As numerous other courts have held, this type of general solicitation theory does not mean that Defendants are responsible for material that was unequivocally created by a third party, as is the case here.

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2. Defendants Do Not Create Defamatory Metatags

On pages 17–18 of their Opposition, Plaintiffs suggest that Defendants should be denied CDA immunity because "Defendants create the unique meta tags hidden in the HTML script of the report's webpage." Opp. at 17:17–18. To support this allegation, Plaintiffs attach an Answer filed in a different case against Ripoff Report in which Defendants admitted that the Ripoff Report website servers automatically create various HTML codes using the third party supplied material in order to create the finished version of the web pages that appear on the Ripoff Report site. Insofar as Defendants understand these claims, it seems Plaintiffs accuse Defendants of increasing the visibility of user-generated material by indexing or coding the material in such a way that search engines such as Google rank the reports higher than would otherwise occur.

Plaintiffs offer no legal authority for the conclusion that this activity affects Defendants' immunity under the CDA and as obvious frequent CDA litigators, Defendants are unaware of any case which has ever accepted this theory. However, in *Roommates II* the Ninth Circuit seemed to anticipate this type of "creative lawyering" and cautioned courts against applying it:

> We must keep firmly in mind that this is an immunity statute we are expounding, a provision enacted to protect websites against the evil of liability for failure to remove offensive content. Websites are complicated enterprises, and there will always be close cases where a clever lawyer could argue that something the website operator did encouraged the illegality. Such close cases, we believe, must be resolved in favor of immunity, lest we cut the heart out of section 230 by forcing websites to face death by ten thousand duck-bites, fighting off claims that they promoted or encouraged-or at least tacitly assented to-the illegality of third parties. Where it is very clear that the website directly participates in developing the alleged illegality-as it is clear here with respect to Roommate's questions, answers and the resulting profile pages-immunity will be lost. But in cases of enhancement by implication or development by inference-such as with respect to the "Additional Comments" here-section 230 must be interpreted to protect websites not merely from ultimate liability, but from having to fight costly and protracted legal battles.

Roommates II, 521 F.3d at 1174–75 (emphasis added).

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Plaintiffs also claim that Defendants are not immune under the CDA because the words "Ripoff Report" are automatically included on every page posted on the Ripoff Report website. Putting aside the fact that the term "Ripoff Report®" is a registered trademark which, in this context, is simply used to inform readers that they are viewing a page located on the website RipoffReport.com, it simply is not relevant that this term is included in each report because the term does not alter the meaning of the original third party content nor is the term "ripoff" defamatory. *See Beilenson v. Superior Court*, 44 Cal.App.4th 944, 947, 52 Cal.Rptr.2d 357 (2nd CDA 1996) (granting anti-SLAPP motion based on statement that plaintiff "Ripped Off California Taxpayers" because use of the term "ripped off" was non-defamatory opinion); *see also Rizzuto v. Nexxus Products Co.*, 641 F.Supp. 473 (S.D.N.Y. 1986) (statements warning consumers "DON'T LET THEM RIP YOU OFF!" held non-defamatory opinion); *Jaillett v. Georgia Television Co.*, 238 Ga.App. 885, 891 (Ga.App. 1999) (holding use of the phrase "ripped off" in news report was non-defamatory opinion because, "To say that a person has been 'ripped off' could mean simply that the person has gotten a bad deal … .")

Viewed in context and as the district court noted in *Global Royalties*, it is obvious that the term "ripoff" carries a negative connotation to some degree, but this does not mean that Mr. Magedson or Xcentric created the reports about Plaintiffs, nor does it make Defendants responsible for the accuracy of the hundreds of thousands of reports posted by third parties to the Ripoff Report website. Likewise, the inclusion of the term "ripoff" in the HTML coding of a page that appears on the Ripoff Report site does not materially alter the meaning of the user-generated statements and text contained on each page. For those reasons, Plaintiffs' arguments are amount to nothing more than the exact sort of "enhancement by implication or development by inference" which the Ninth Circuit found was insufficient to defeat CDA immunity.

3. Advertisements Do Not Alter The Original Reports

Plaintiffs' final argument against CDA immunity is based on the fact that certain words appearing in a report are colored blue and then linked to various third party

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advertisements. Again, Plaintiffs offer no authority for the concept that these activities are sufficient to affect CDA immunity because they alter the meaning of the words originally submitted to the site by a third party, nor are Defendants aware of any such authority. However, it bears repeating that the Ninth Circuit rule is that a website operator cannot be held liable for third party material unless the site alters or modifies the content in a way that contributes to its illegal nature; "a website operator who edits in a manner that contributes to the alleged illegality-such as by removing the word 'not' from a user's message reading '[Name] did *not* steal the artwork' in order to transform an innocent message into a libelous one-is directly involved in the alleged illegality and thus not immune." *Roommates II*, 521 F.3d at 1169.

Here, changing the color of text from black to blue in order to indicate that the word is a hyperlink to another page does not change the meaning of the original message. As such, this activity does not affect Defendants protection under the CDA.

ii. No Evidence Supports Plaintiffs' Interference Claims

In closing, Plaintiffs argue that they have established a likelihood of success on their other claims (including intentional interference with contract and inducing breach of contract), but their Opposition does nothing other than restate the conclusory allegations of the Complaint. These types of unsupported allegations do not show a likelihood of success particularly where, as here, the tort claims contain specific elements requiring Plaintiffs to show that Defendants were aware of and knew of Plaintiffs contracts with third parties. *See*, *e.g.*, California Civil Jury Instructions § 2200 (Inducing Breach of Contract); § 2201 (Intentional Interference With Contractual Relations); § 2202 (Intentional Interference With Prospective Economic Relations). In order to prevail, each one of these claims requires proof that the defendant knew of plaintiff's contract with a third party. Despite this, Plaintiffs offer no admissible evidence whatsoever to support their allegation that, "Defendants knew, when falsely and publicly making these statements, that Plaintiffs had these valuable contracts and business expectancies." Opp. at 23. Without such proof, these claims cannot succeed at trial.

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III. CONCLUSION

As noted in Defendants' original motion, this is a case about incorrectly assigning blame to the *wrong* party. Defendants did not create any of the reports about Plaintiffs, nor did Defendants change these reports in any way. Defendants' only involvement here was to provide a forum for someone else's speech.

Under these simple facts the common-sense conclusion of the California Supreme Court applies; "Plaintiffs are free under section 230 to pursue the originator of a defamatory Internet publication. Any further expansion of liability must await Congressional action." *Barrett*, 40 Cal.4th at 63. In addition, no small weight should be given to the fact that every previous court to have considered this question on the merits (excluding *MCW* which was a non-merits decision) has agreed that Ripoff Report and Mr. Magedson are entitled to complete protection under the CDA.

As a few others have done, Plaintiffs clearly understand the law but believe they can obtain a different result by presenting inflammatory allegations of "extortion" and other wrongful conduct. If such allegations were true as was the case in *Flatley*, there would be little question about how the court should resolve this motion.

Here, Plaintiffs' inflammatory allegations should be viewed for what they are—a strategic lawsuit against public participation; the precise evil that CCP § 425.16 was created to address. For that reason, Defendants' motion should be granted.

DATED this 5th day of April 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 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:

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

/s/David S. Gingras

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