

1 David S. Gingras, CSB #218793  
**Gingras Law Office, PLLC**  
 2 4072 E Mountain Vista Dr.  
 Phoenix, AZ 85048  
 3 Tel.: (480) 668-3623  
 Fax: (480) 248-3196  
 4 David.Gingras@webmail.azbar.org

5 Maria Crimi Speth, (Admitted *Pro Hac Vice*)  
**Jaburg & Wilk, P.C.**  
 6 3200 N. Central Ave., Suite 2000  
 Phoenix, AZ 85012  
 7 Tel: (602) 248-1000  
 Fax: (602) 248-0522  
 8 mcs@jaburgwilk.com

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 10 Attorneys for Defendants  
 Xcentric Ventures, LLC and  
 Edward Magedson  
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12 **UNITED STATES DISTRICT COURT**  
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **ASIA ECONOMIC INSTITUTE, LLC, *et al.*,**

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

15 **Plaintiffs,**

**DEFENDANTS' SEPARATE  
 STATEMENT OF FACTS IN  
 SUPPORT OF DEFENDANTS'  
 MOTION FOR SUMMARY  
 JUDGMENT**

16  
 17 **vs.**

18 **XCENTRIC VENTURES, LLC, *et al.***

19 **Defendants.**

Hearing Date: Nov. 1, 2010  
 Time: 1:30 PM  
 Courtroom: 6 (Hon. Stephen Wilson)

GINGRAS LAW OFFICE, PLLC  
 4072 EAST MOUNTAIN VISTA DRIVE  
 PHOENIX, ARIZONA 85048

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 23 Pursuant to Fed. R. Civ. P 56, Defendants Xcentric Ventures, LLC and Edward  
 24 Magedson respectfully submit the following Statement of Uncontested Facts in Support  
 25 of their Motion for Summary Judgment.  
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FACT(S)	EVIDENCE
1. Defendant XCENTRIC VENTURES, LLC (“Xcentric”) operates the website www.RipoffReport.com.	Affidavit of Ed Magedson In Support of Defendants’ Motion for Summary Judgment (“Magedson Aff.”) ¶ 2
2. Defendant EDWARD MAGEDSON (“Mr. Magedson”) is the manager of Xcentric and the founder and “ED”itor of the Ripoff Report site which he started in 1998.	Magedson Aff. ¶ 2
3. Plaintiffs RAYMOND MOBREZ (“Mr. Mobrez”) and his wife ILIANA LLANERAS (“Ms. Llaneras”) are the principals of ASIA ECONOMIC INSTITUTE, LLC (“AEI”).	Plaintiffs’ First Amended Complaint (“FAC”) ¶¶ 6–8.
4. As of September 2010, six complaints (called “reports”) have been posted about AEI on the Ripoff Report site. All of these reports and any comments thereto are attached as <u>Exhibit 22</u> to the First Amended Complaint.	FAC Ex. 22
5. All of these reports were created by third parties, not by Defendants.	Magedson Aff. ¶ 6
6. Before it appeared on the site, each report about AEI was reviewed by one of Xcentric’s staff of content monitors.	Affidavit of Ben Smith (“Smith Aff.”) ¶ 11
7. Xcentric’s servers automatically record the name of each content monitor who reviews a post made to the site.	Smith Aff. ¶ 17
8. Each content monitor who reviewed the posts about	Smith Aff. ¶ 18; Declaration of Amy

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<p>AEI has testified that no changes, additions, or deletions were made to any of these reports, nor were any changes, additions or deletions made to the comments/rebuttals.</p>	<p>Thompson; Declaration of Kim Jordan; Declaration of Lynda Craven</p>
<p>9. The text of each report and each comment/rebuttal originated entirely with the third party author and was not created or altered by either Xcentric or Magedson.</p>	<p>Magedson Aff. ¶ 6</p>
<p>10. When an author submits a report to the Ripoff Report site, they are presented with a series of blank forms that help them to construct their report.</p>	<p>Smith Aff. ¶¶ 5–10</p>
<p>11. The forms ask the author for basic information such as the name of the person or company they want to write about, and the address and phone number of the company at issue.</p>	<p>Smith Aff. ¶ 5</p>
<p>12. During this process, the author is asked to prepare a title for their report by entering data into four boxes. The first box asks for the name of the company being reported, the second box asks for “descriptive words” explaining what the report is about, the third box asks for the city, and the fourth box asks for the state.</p>	<p>Smith Aff. ¶ 6</p>
<p>13. During this process, the site explains “The title of your report is divided into four boxes below but will appear as one line after your report is submitted.”</p>	<p>Smith Aff. ¶ 9, Ex. B</p>
<p>14. The site also shows the author a sample of how the report title will appear based on the data they have entered.</p>	<p>Smith Aff. ¶ 9, Ex. B</p>
<p>15. At the screen where the actual report text is entered,</p>	<p>Smith Aff. ¶ 8, Ex. C</p>

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the author is presented with a blank box.	
16. Xcentric makes no suggestion as to what the author should say other than offering generic comments about style such as “DO NOT use ALL CAPITAL LETTERS, it makes it hard to read.”	Smith Aff. ¶ 8, Ex. C
17. Before the author is allowed to submit their report, they are required to review and agree to certain terms which state, among other things, “By posting this report/rebuttal, I attest this report is valid.” The author must also separately agree to Xcentric’s Terms of Service which state, among other things, “You will NOT post on ROR any defamatory, inaccurate, abusive, obscene, profane, offensive, threatening, harassing, racially offensive, or illegal material, or any material that infringes or violates another party's rights (including, but not limited to, intellectual property rights, and rights of privacy and publicity).”	Smith Aff. ¶ 10, Ex. E
18. When a report is finally submitted to the site, Xcentric’s servers automatically combine the unique text supplied by the author with various HTML code that is generic to every page on the site.	Smith Aff. ¶ 14
19. During this process and using keywords supplied by the author (such as the name of the company being reported), Xcentric’s servers automatically create “meta tags” which are used by search engines to index the contents of the specific page at issue.	Smith Aff. ¶ 15
20. The meta tags for each page are not normally visible	Smith Aff. ¶ 15

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<p>to viewers, but they can be seen by individuals with basic technical knowledge who choose to view the actual HTML code for a report’s webpage.</p>	
<p>21. The term “Ripoff Report” is a federally registered trademark, Registration #2958949, used to identify the website <a href="http://www.RipoffReport.com">www.RipoffReport.com</a>.</p>	<p>Smith Aff. ¶ 22</p>
<p>22. Every report page on the Ripoff Report site includes meta tags based on unique keywords supplied from the author such as the name of the company involved and other words used by the author to create the title for their report.</p>	<p>Smith Aff. ¶ 15</p>
<p>23. Xcentric’s servers also automatically include three different keywords—rip-off, ripoff, rip off—into the meta tags of every page on the site.</p>	<p>Smith Aff. ¶ 15</p>
<p>24. Again, these words are <u>NOT</u> visible in the title or body of any particular report; they are simply indexing references used by search engines in order to accurately reflect the source of the indexed page.</p>	<p>Smith Aff. ¶ 15</p>
<p>25. If the keywords “rip-off, ripoff, rip off” were removed from the meta tags for each report page, the page would appear physically unchanged to anyone viewing it.</p>	<p>Smith Aff. ¶ 16</p>
<p>26. Mr. Mobrez admitted in his deposition that he had no evidence Defendants created or altered any of the postings about AEI.</p>	<p>Mobrez Depo. Excerpts (Ex. A to Declaration of David Gingras) at 98:5–99:5; 107:22–108:17</p>
<p>27. The First Amended Complaint alleges that Defendants committed fraud by representing to</p>	<p>Magedson Aff. ¶ 9</p>

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Plaintiffs that “filing a rebuttal has only a positive effect ...” but no such representation was ever made.	
28. At no time did Defendants ever inform Plaintiffs that filing a rebuttal has only a positive effect.	Magedson Aff. ¶ 9
29. When contacted by Plaintiff Raymond Mobrez in May 2009, Defendant Ed Magedson sent Mr. Mobrez a lengthy “form email” response.	FAC Ex. 10
30. Mr. Magedson honestly believes that filing a rebuttal is the best way of responding to a complaint.	Magedson Aff. ¶ 8
31. Mr. Magedson has no control over how Google or any other search engine decides to rank content, and he does not know and does not believe that filing a rebuttal always increases the prominence of a report in search engines such as Google.	Magedson Aff. ¶ 14
32. Mr. Magedson is aware of reports containing rebuttals which are not prominently located in search engine results such as Google.	Magedson Aff. ¶¶ 12–13
33. Neither Xcentric nor Mr. Magedson had any knowledge of Plaintiffs’ relationships with their employees at the time each report was posted.	Magedson Aff. ¶ 15
34. At his deposition, Mr. Mobrez was unable to identify a single employee of AEI who quit as a result of any actions of Xcentric or Mr. Magedson.	Mobrez Depo. at 174:12–178:2

1 DATED this 27<sup>th</sup> day of September, 2010.

2 **GINGRAS LAW OFFICE, PLLC**

3 /S/ David S. Gingras  
4 David S. Gingras  
5 Attorneys for Defendants  
6 Ed Magedson and  
7 Xcentric Ventures, LLC

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GINGRAS LAW OFFICE, PLLC  
4072 EAST MOUNTAIN VISTA DRIVE  
PHOENIX, ARIZONA 85048

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 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:

Mr. Daniel F. Blackert, Esq.  
Ms. Lisa J. Borodkin, Esq.  
Asia Economic Institute  
11766 Wilshire Blvd., Suite 260  
Los Angeles, CA 90025  
Attorneys for Plaintiffs

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

/s/David S. Gingras

GINGRAS LAW OFFICE, PLLC  
4072 EAST MOUNTAIN VISTA DRIVE  
PHOENIX, ARIZONA 85048