

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

9  
 10 Attorneys for Defendants  
 Xcentric Ventures, LLC and  
 Edward Magedson  
 11

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

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

14  
 15 **ASIA ECONOMIC INSTITUTE, LLC, et al.,**  
 16  
 17 **Plaintiffs,**  
 18 **vs.**  
 19 **XCENTRIC VENTURES, LLC, et al.,**  
 20 **Defendants.**  
 21

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

**AFFIDAVIT OF BEN SMITH  
 IN SUPPORT OF  
 DEFENDANTS' MOTION FOR  
 SUMMARY JUDGMENT**

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

1 I, BEN SMITH, declare as follows:

2 1. My name is Ben Smith. I am a resident of the State of Arizona, am over the  
3 age of 18 years, and if called to testify in court I could and would truthfully testify to the  
4 following information based upon my own personal knowledge.

5 2. As an independent contractor I provide computer information technology  
6 services to Xcentric Ventures, LLC relating to the operation of the Ripoff Report website.  
7 I have provided such services to Xcentric and the previous operator of the Ripoff Report  
8 for over seven years. As part of the services I provide to the Ripoff Report site, I am  
9 extremely familiar with the technical aspects of the site's operations including the manner  
10 in which reports, rebuttals, updates, and similar submissions to the site are created. I am  
11 also extremely familiar with the meta tags, HTML, and other coding used on the site.

12 **HOW REPORTS ARE CREATED—OVERVIEW**

13 3. As of May 2010, the Ripoff Report site contains more than 600,000 unique  
14 reports. When expanded to include comments to reports (known as "rebuttals") the site  
15 contains many millions of unique posts with up to 1,000 new submittals each day.

16 4. When a user wishes to submit a report to the Ripoff Report, they are  
17 required to create a free user account before they are allowed to post anything. During  
18 this process, the user is asked for his/her name, address, phone number, and other contact  
19 information, all of which may be falsified by the user. The user is also required to  
20 provide an email address which the site's server automatically confirms by sending an  
21 email to that address which must be verified before the user is allowed to post anything.  
22 Our server also automatically records the IP address of the user at the time his/her  
23 account is created and also each time they submit a report to the site.

24 5. When a user wants to create a report, they are guided through a five-step  
25 process. Step 1 of the process is reflected in the screenshot attached hereto as **Exhibit A**.  
26 As this image shows, at Step 1 the user is presented with a series of blank forms asking  
27 for basic information (name/address/phone) about the company or individual that the  
28 report is about.

1           6.     Step 2 of the process is reflected in the screenshot attached hereto as  
2     **Exhibit B**. In Step 2, the user is asked to create a “report title” and to choose a category  
3     for their report. As this image shows, the title is created entirely by the user via a series  
4     of four blank boxes into which the user can enter: A.) the company’s or individual’s  
5     name; B.) words explaining what the report is about; C.) the city where the company or  
6     individual is located; and D.) the state where the company or individual is located. As  
7     the user enters information into each of these four boxes, the website automatically  
8     combines the text from each box into a single title which the user is shown on-the-fly as  
9     it is created. Every word in the title is based solely on the information entered by the user  
10    into these four boxes.

11           7.     Later in Step 2, the user is asked to select a topic and a category for his or  
12    her report. There are more than 500 available choices. Depending on the specific topic  
13    chosen, the site will offer a different list of categories. For instance, if the topic chosen is  
14    “dining” the list of categories will change to reflect words which relate to that topic such  
15    as “Bake shops, catering, Restaurants” and so forth. The selection of both the topic and  
16    the category is a decision made solely and exclusively by the user.

17           8.     Step 3 of the process is reflected in the screenshot attached hereto as  
18    **Exhibit C**. This is the step where the user enters the actual text for the body of their  
19    report. As this image shows, the user is presented with a blank box into which they can  
20    type their text. Other than some generic style guidelines such as “DO NOT use ALL  
21    CAPITAL LETTERS...” which are visible near the text entry box, the page does not  
22    encourage or solicit users to say anything in particular; they are free to say whatever they  
23    wish.

24           9.     Step 4 of the process is reflected in the screenshot attached hereto as  
25    **Exhibit D**. At this step, users are allowed to attach images to their report. This step is  
26    optional and users are allowed to submit their reports without anything attached.

27           10.    Step 5 of the process is reflected in the screenshot attached hereto as  
28    **Exhibit E**. As this image shows, the user is asked to review the Terms of Service (which

1 require them, among other things, to refrain from posting anything false or defamatory).  
2 The user is also asked to review and affirm that their report is valid. If the user refuses  
3 to check this box, their report cannot be submitted to the site.

4 11. Every user-generated submission to the site is screened and reviewed by a  
5 staff of monitors who are authorized to make minor editorial changes in order to redact  
6 certain types of content (primarily offensive language, profanity, threats, etc., and also  
7 including certain types of personal information such as social security numbers, bank  
8 account numbers and so forth). Other than such redactions, the staff is not authorized to  
9 make any changes to reports.

10 12. After a report has been reviewed by the staff, it is posted to the site using a  
11 standardized layout as depicted in **Exhibit F**. Although the area around the report itself  
12 contains various artwork, links, advertisements, etc., the body of the actual report itself is  
13 entirely and completely supplied by the user.

14 13. Anyone who wishes to respond to a report by posting a rebuttal may do so  
15 for free at any time. The only requirement for posting a rebuttal is that the user must  
16 create a free account with the Ripoff Report site, just as they would when posting a  
17 report. Rebuttals appear directly below the report they are responsive to.

18 14. When a report is submitted to the Ripoff Report, Xcentric's servers  
19 automatically combine the unique text supplied by the author with various HTML code  
20 that is generic to every page on the site. During this process and using keywords  
21 supplied by the author (such as the name of the company being reported), Xcentric's  
22 servers automatically create "meta tags" which are used by search engines to index the  
23 contents of the specific page at issue. The meta tags for each page are not normally  
24 visible to viewers, but they can be seen by individuals with basic technical knowledge  
25 who choose to view the actual HTML code for a report's webpage.

26 15. Every report page on the Ripoff Report site includes meta tags based on  
27 unique keywords supplied from the author such as the name of the company involved and  
28 other words used by the author to create the title for their report. Xcentric's servers also

1 automatically include three different keywords—rip-off, ripoff, rip off—into the meta  
2 tags of every page on the site. These tags are NOT visible in the title or body of any  
3 particular report; they are simply indexing references used by search engines in order to  
4 accurately reflect the source of the indexed page.

5 16. If the keywords “rip-off, ripoff, rip off” were removed from the meta tags  
6 for each report page, the page would appear physically unchanged to anyone viewing it.

7 17. Ripoff Report’s servers create a log showing the identity of each Ripoff  
8 Report content monitor who reviewed each report before it was posted. According to the  
9 site’s records, the six reports at issue were reviewed by the following employees of  
10 Xcentric:

Report #	Content Monitor
417493	Amy T.
423987	Kim J.
457433	Amy T.
502429	Lynda C.
564331	Lynda C.
571232	Amy T.

11  
12  
13  
14  
15  
16 18. Submitted with this affidavit are affidavits of each of the above employees  
17 affirming that they did not create or modify any of these reports, nor did they solicit  
18 anyone else to do so.

19 19. I am informed that negative postings about Mr. Mobrez have appeared on  
20 other websites including two websites that are owned or operated by Mr. Mobrez. For  
21 instance, **Exhibit 11** to Mr. Mobrez’s deposition is a page located at  
22 <http://asiaecon.org/linkex> which contains a link to one of the reports about Mr. Mobrez  
23 on the Ripoff Report site. I am informed that this site is owned or operated by Mr.  
24 Mobrez. Also, **Exhibit 12** to Mr. Mobrez’s deposition is a page located at another site  
25 which I am informed is owned or operated by Mr. Mobrez:  
26 [http://asiabusinessinstitute.com/ component/content/15.html?task=view](http://asiabusinessinstitute.com/component/content/15.html?task=view). This page  
27 contains an anonymous comment which reads: “No shit, asshole...a non-PhD could have  
28 figured it out. You are a fake, a rip-off artist, immoral, and did I say asshole?”

1           20. On September 16, 2009, a report (#495708) was submitted to the Ripoff  
2 Report regarding a company called Overnightmattress.com. The report (which is  
3 available here: [http://www.ripoffreport.com/Bed-Bath/Overnightmattress-](http://www.ripoffreport.com/Bed-Bath/Overnightmattress-co/overnightmattress-com-over-nig-355ee.htm)  
4 [co/overnightmattress-com-over-nig-355ee.htm](http://www.ripoffreport.com/Bed-Bath/Overnightmattress-co/overnightmattress-com-over-nig-355ee.htm)) generally complained about the quality of  
5 a mattress purchased by the author, referring to it as follows: “this thing feels like a  
6 glorified futon.” In addition, the author stated that the company’s return policy was  
7 misleading and unfair. In closing, the author issued a strongly-worded warning  
8 instructing other consumers to refrain from doing business with this company: “I would  
9 never use overnightmattress.com ever again and would STRONGLY suggest you never  
10 use them the transaction was horrible and expensive.”

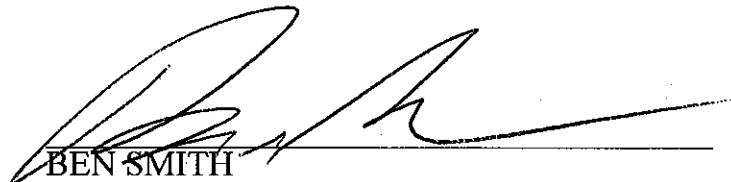
11           21. On February 26, 2010, the president of Overnightmattress.com posted a  
12 clear and simple rebuttal to the complaint which explained his side of the story. The  
13 rebuttal, reflected in the screenshot below, accepted responsibility for the author’s  
14 dissatisfaction and it informed readers that in order to improve customer satisfaction, the  
15 company had changed its return policy in a way that resolved the concerns expressed in  
16 the original report:

The screenshot shows a web browser window with a blue address bar containing a star icon, a 'Favorites' button, and the text 'Ripoff Report: Overnightmattress.com Over night...'. The main content area has a light gray background. On the left, it says '#2 Owner of Company'. In the center, the heading reads 'WE'VE IMPROVED OUR RETURN POLICY.' followed by 'Overnight Mattress - Johnson City (United States of America)'. On the right, there is a section titled 'Respond to this report!' with a 'File a Rebuttal' button and a red question mark icon. Below this, the 'SUBMITTED:' and 'POSTED:' dates are both 'Friday, February 26, 2010'. The main text of the rebuttal states: 'WE'VE IMPROVED OUR RETURN POLICY. Based on a few complaints about our return process, we've improved the return policy to never charge any fees for returning a mattress with stains, hairs, dirt, etc. A customer can simply package the mattress they wish to return, and we'll have it picked up at our expense and issue a full 100% refund. Out of tens of thousands of mattresses we've sold, we've had only a couple disgruntled customers that did not receive a full refund for returning a stained mattress and have posted negative reviews on various websites about the return policy. In response to this to improve customer satisfaction, we've have implemented this new policy. To inquire more about this new return policy, please call our customer care at 888-883-6251.' The text concludes with 'Thank you,' and 'Brad S., President Overnight Mattress'.

1           22.    The term "Rip-off Report" is a federally registered trademark that has been  
2 assigned USPTO Registration # 2958949.    This mark has been used to identify the  
3 website www.RipoffReport.com and the services offered on that site since 1998.

4  
5 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the  
6 United States of America that the foregoing is true and correct.

7 EXECUTED ON: May 24 2010.

8  
9   
10 BEN SMITH

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
GINGRAS LAW OFFICE, PLLC  
4072 EAST MOUNTAIN VISTA DRIVE  
PHOENIX, ARIZONA 85048





# Exhibit A

## Company or Individual you are reporting

All the information in **Step 1** is on the Company or Individual you are reporting.  
**YOU ARE NOT reporting your personal information here.**

### ▶ Name of Company or Individual you are reporting:

- If you have more than one Company or Individual named in your report, or if the company goes by more than one name (AKA's), put the other names in the "Other Name's" box

Name of Company or Individual:

Additional names (AKA's):  (optional)

### ▶ Address of Company or Individual you are reporting:

- You must enter either a physical street address and/or a web address.
- You may enter both, BUT If the Company or Individual is on the Internet and only on-line based, or you don't have a physical address, you MUST enter their Web address

Street Address:  physical (street) address only, city and state go below

Web Address:

### ▶ City, State, Zip Code, and Country of Company or Individual you are reporting:

- Multiple cities can be entered for more than one location.
- If the Company or Individual is on the Internet and only on-line based, and you have entered the Web address: the city, zip code, and country boxes can be left blank. Enter "Internet" in the State box.

City:

State/Province:  Select Internet if online only.

Zip Code:  (optional)

Country:

### ▶ Phone, FAX, and e-mail address of Company or Individual you are reporting:

- This information is not required, but they are good tools for sympathetic Consumers to let the Company or Individual know how they feel about what they did to you and will only help your situation.
- This information may also be helpful to other victims reading your Ripoff Report.
- The more information you provide, the better.

Fax:

Phone:

E-mail address:

**Continue**

# Exhibit B

### Report Title and Category

#### ▶ Title Your Rip-off Report

The title of your report is divided into four boxes below but will appear as one line after your report is submitted.

**Your title will look like this:**

**Infomercial Central Infomercial Central Scam! Ordered Magic Bullet on 9-24-2007 and have not received it yet (2-4-2008)!! Internet,**

#### A. Enter all the names of the Company or Individual you are reporting

- Be sure to include AKAs

Company or Individual's names:

<-----(a)----->  
If the company name does not appear, please enter.

#### B. Enter Descriptive words to your title... to describe what the Company or Individual did to you.

- Be creative when using the example words, it will make your report more interesting.

Descriptive Words:

<-----(b)----->  
Please limit to 20 words, you can add several phrases and edit them too.

#### C. Enter the City where the Company or Individual is located

- If the Company or Individual is on the Internet and only on-line based, the city may be left blank

City:

<-----(c)----->  
If the city name does not appear, please enter.

#### D. Enter the State where the Company or Individual is located

- If the Company or Individual is on the Internet and only on-line based, and you have entered a Web address in Step 1, you must enter "Internet" or "Nationwide" in the State box. Additional States may be added.

State:

<-----(d)----->  
If the state name does not appear, please enter.

#### ▶ Categorize Your Ripoff Report:

First choose a topic, and then locate the best category that suits your report.

Check these out for future reference!

#### 1 First choose a Topic:

- Automotive
- Community
- Computers & Internet
- Dining
- Education & Instruction
- Electronics
- Entertainment
- Finance
- Health & Fitness
- Home & Garden**
- Outrageous & Popular Rip-Off
- Services
- Sports & Recreation
- Stores
- Travel
- Unusual Rip-Off

#### 2 Second choose a Category:

- Appliances**
- Architects & Designers
- Artist Galleries
- Bed & Bath
- Blinds / Shutters / Window Care
- Builders & Contractors
- Building Products
- Building Services
- Carpet & Tile Installers
- Carpet & Tile Stores
- Cleaning Services
- Exterminating Services
- Fuel Companies
- Furniture & Furnishings
- Furniture Manufactures
- Garage Door Companies

Continue

Back

# Exhibit C

# File a Report

- 1 Company or Individual
- 2 Report Title and Category
- 3 Write your Report**
- 4 Add Photos
- 5 Submit your Report

## Write Your Report

To help format our reports to be more easily read:  
PLEASE....

- DO NOT** use ALL CAPITAL LETTERS, it makes it hard to read.
- DO NOT** indent paragraphs.
- DO NOT** write your report all in one paragraph. Use 2 or 3 sentences to each paragraph and leave a space between each paragraph.
- DO NOT** sign your name, or include any e-mail addresses in the report.

▶ Write your report in the following text box:

**DO NOT** sign your name, or include any e-mail addresses in the report. Use the boxes below to automatically put your **FIRST** name, City and State at the very end of your Ripoff Report.

**B I U** ABC

Called them, emailed them, faxed them. They said that they don't have an order. Called my credit card company to cancel the payment. Still trying to get this resolved. It has been since Sept. of 2007 and it is now Feb. 2008.

Do not order from this company!

▶ Enter YOUR first name ONLY and the City and State:

This will automatically place your first name, your City and State at the very end of your report and will add credibility to your Ripoff Report. If you are afraid of retaliation and/or would like to remain anonymous, please change your first name, city, state, and country here.

First name only:

City:

State:

# Exhibit D



...by consumers, for consumers ...scams, consumer complaints, and frauds reported. File a report, post your review or ex

# Ripoff Report

[File a Report](#) |

Don't let them get away with it.® Let the truth be known! [HOME](#)

- [File a Report](#)
- [Update Report](#)
- [Latest Reports](#)
- [Consumer Resources](#)
- [Consumers Say Thank You](#)
- [Legal Directory](#)

[Corporate Advocacy](#)

SEARCH COMPANIES  
Use Advanced Search

## File a Report

- 1 Company or Individual
- 2 Report Title and Category
- 3 Write your Report
- 4 Add Photos**
- 5 Submit your Report

### (Optional) Add Photos to your Ripoff Report

Photos are optional. If you have photos or images that you would like to add to your report you can upload them now. Click Browse to find a picture on your computer and then click upload to add the photo to your report.

Don't have photos handy? No problem, you can add them to your report later.

Photo File:  No file chosen

Caption:

Just click next if you don't have any photos to add

- 
- 
- 

## Ripoff Report

- [Home](#) | [File a Report](#) | [Consumer Resources](#) | [Search](#) | [Link to Ripoff Report](#) |
- [Privacy Policy](#) | [Terms of Service](#) | [FAQ](#) | [About Us](#) | [Contact Us](#) | [Why Ripoff Report will not release author information!](#) |
- [Thank You Emails!](#) | [Corporate Advocacy Program: How to repair your business reputation.](#) | [Ed Magedson - Ripoff Report Founder](#) |
- [Want to sue Ripoff Report?](#) | [Donate to our Legal Defense](#) |



# Exhibit E

...by consumers, for consumers ...scams, consumer complaints, and frauds reported. File a report, post your review or

# Ripoff Report

[File a Report](#)

Don't let them get away with it.® Let the truth be known! [HOME](#)

- [File a Report](#)
- [Update Report](#)
- [Latest Reports](#)
- [Consumer Resources](#)
- [Consumers Say Thank You](#)
- [Legal Directory](#)

[Corporate Advocacy](#)

SEARCH COM  
Use Advance

## File a Report

- 1 Company or Individual
- 2 Report Title and Category
- 3 Write your Report
- 4 Add Photos
- 5 Submit your Report**

### Submit your Report

#### Terms and Conditions:

##### 1. Ripoff Report Membership Terms & Conditions

To use this service, you must be at least 14 years old.

www.RipoffReport.com ("ROR") is an online forum created to help keep consumers informed. ROR is operated by Xcentric Ventures, L.L.C. located at:

##### Xcentric Ventures, L.L.C.

Ripoff Report  
P.O. Box 310  
Tempe, AZ 85280  
(602) 359-4357

By posting this report/rebuttal, I attest this report is valid. I am giving Rip-off Report irrevocable rights to post it on the website. I acknowledge that once I post my report, it will not be removed, even at my request. Of course, I can always update my report to reflect new developments by clicking on UPDATE. Further, I agree that by posting the report/rebuttal that the State of Arizona has exclusive jurisdiction over any disputes between me and the operators of Rip-off Report arising out of this posting.

#### Contact me if there is an investigation:

I am willing to be contacted by the media, a consumer advocate, lawyer or government authority to help further my cause or to help with an investigation against the business or individual I am reporting.

[Continue](#)

[Back](#)

## Ripoff Report

[Home](#) | [File a Report](#) | [Consumer Resources](#) | [Search](#) | [Link to Ripoff Report](#)

[Privacy Policy](#) | [Terms of Service](#) | [FAQ](#) | [About Us](#) | [Contact Us](#) | [Why Ripoff Report will not release author information!](#)

# Exhibit F

...by consumers, for consumers ...scams, consumer complaints, and frauds reported. File a report, post your review or experience

# Ripoff Report

[File a Report](#) | [Logout](#)

Don't let them get away with it.® Let the truth be known! [HOME](#)

Welc

[My Profile](#)

[File a Report](#)
[Update Report](#)
[Latest Reports](#)
[Consumer Resources](#)
[Consumers Say Thank You](#)
[Legal Directory](#)
[Corporate Advocacy](#)

[Use Advanced Search](#)

Use our complaint form to report a scam. Site problems? Use our [support form](#).

Read "Thank You" e-mails from consumers...Ripoff Report protects consumer's right to speak out.

Report: #306385

## Report: Infomercial Central

Reported By: (Perrysburg Ohio)

**Infomercial Central Scam! Ordered Magic Bullet on 9-24-2007 and have not received it yet (2-4-2008)!! Internet**

**Infomercial Central**  
 www.infomercialcentral.com  
 Internet  
 U.S.A.  
 Phone: 800-736-0681  
 Web Address:

**Category:** [Appliances](#)

**Submitted:** Tuesday, February 05, 2008  
**Posted:** Tuesday, February 05, 2008

### Report & Rebuttal:

**1**
**0**
**0**  
 Author    Consumer    Employee

#### Respond to this report!

#### Victim of this person/company?

Called them, emailed them, faxed them. They said that they don't have an order. Called my credit card company to cancel the payment. Still trying to get this resolved. It has been since Sept. of 2007 and it is now Feb. 2008.

Do not order from this company!

MI  
 Perrysburg, Ohio  
 U.S.A.

[Click Here to read other Ripoff Reports on Infomercial Central](#)

### Related Reports

#### Search for additional reports

If you would like to see more Rip-off Reports on this company/individual, search here:



How to get  
**Ripoff Report**  
 Don't let them get away with it.

**Ripoff Report**  
 verified & safe  
 ...businesses you can trust

Victim of a Rip-off?  
 Don't get mad  
 get revenge!

**Sell Your Gold!**

### Video Spotlight

- Data recovery scams often steal private data from hard drives.  
[Play Video](#)
- Loan modification offers those facing foreclosure up front!  
[Play Video](#)
- Questionable pyramid schemes take advantage of consumers.  
[Play Video](#)
- Companies steal from your account. Find out how.  
[Play Video](#)
- Fox 11 Los Angeles - Ripoff Report Redux  
[Play Video](#)
- WBZ - Be Wary of Door-to-Door Scams