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 10 Xcentric Ventures, LLC and
 Edward Magedson

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

15 **ASIA ECONOMIC INSTITUTE, LLC,**
 16 ***et al.*,**

17 **Plaintiffs,**

18 v.

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

20 **Defendants.**

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

**MOTION FOR SANCTIONS
 PURSUANT TO FED.R.CIV.P. 11**

Hearing Date: **November 1, 2010**
 Time: **1:30 p.m.**
 Courtroom: **6**

22 Pursuant to Rule 11(c), Fed.R.Civ.P., Defendants XCENTRIC VENTURES, LLC
 23 and EDWARD MAGEDSON (collectively, "Defendants") respectfully request that the
 24 Court enter an Order sanctioning Plaintiffs Asia Economic Institute, LLC, Raymond
 25 Mobrez, and Iliana Llaneras for their violations of Rule 11(b), Fed.R.Civ.P. Plaintiffs
 26 filed with the Court a First Amended Complaint which (1) has been presented for an
 27 improper purpose; (2) contains claims and legal contentions that are not warranted by
 28 existing law; and (3) contains factual allegations which have no evidentiary support, each

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1 of which is a direct violation of Rule 11(b). Defendants have presented this Motion to
2 Plaintiffs and requested that they withdraw the First Amended Complaint entirely or
3 correct each of the deficiencies identified within this Motion. In response, Plaintiffs have
4 moved to file a Second Amended Complaint, which does not include RICO claims, but
5 has once again asserted the vast majority of the allegations identified in this Rule 11
6 Motion as baseless. Twenty-one days have passed and Plaintiffs have elected to correct
7 some but not all of these problems. As a result, sanctions are warranted pursuant to Rule
8 11(c)(2).¹

9 This motion is made following a 21-day period after service on Plaintiffs, which
10 Defendants believes also complies with L.R. 7-3.

11 DATED this 30th day of September, 2010.

12
13 **JABURG & WILK, P.C.**

14
15 /s/Maria Crimi Speth
16 Maria Crimi Speth
17 Attorneys for Defendants

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27 ¹ This Rule 11 Motion and the Rule 11 Motion served on Plaintiffs 21 days ago are not identical because Plaintiffs
28 have removed some claims and allegations. In order to comply with the 21-day hold, Defendants have added no
content to this motion except a reference to the removed allegations. Defendants have, however, deleted some of the
arguments and updated the fact chart (below) to reflect the removed allegations and the new paragraphs.

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I. THEORY UNDERLYING RULE 11

“Filing a complaint in federal court is no trifling undertaking. An attorney’s signature on a complaint is tantamount to a warranty that the complaint is well grounded in fact” *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir.2002). “[T]he central purpose of Rule 11 is to deter baseless filings in district court and thus, consistent with the Rules Enabling Act’s grant of authority, streamline the administration and procedure of the federal courts.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393, 110 S. Ct. 2447, 2454, 110 L. Ed. 2d 359 (1990) (citing Advisory Committee Note on Rule 11, 28 U.S.C.App., p. 576). “Rule 11 imposes a duty on attorneys to certify that they have conducted a reasonable inquiry and have determined that any papers filed with the court are well grounded in fact, legally tenable, and ‘not interposed for any improper purpose.’” *Id.*

As the Notes of the Advisory Committee on Rules point out, the language of Rule 11 “stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule. The standard is one of reasonableness under the circumstances.... This standard is more stringent than the original good-faith formula and thus it is expected that a greater range of circumstances will trigger its violation.” Fed.R.Civ.P. 11, Notes of Advisory Committee, 28 U.S.C.A. Rules of Civil Procedure (Supp.1988); *see Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1508 (9th Cir.1987) (counsel has affirmative duty of investigation into law and fact before filing). Under Rule 11(b), an attorney has a “nondelegable responsibility” to “personally ... validate the truth and legal reasonableness of the papers filed,” *Pavelic & LeFlore v. Marvel Entm't Group*, 493 U.S. 120, 126, 110 S.Ct. 456, 107 L.Ed.2d 438 (1989), and “to conduct a reasonable factual investigation,” *Christian*, 286 F.3d at 1127. To determine whether the inquiry actually conducted was adequate, the court applies a standard of “objective reasonableness under the circumstances.” *Hudson v. Moore Business Forms, Inc.*, 836 F.2d 1156, 1159 (9th Cir.1987).

1 **II. PROCEDURAL HISTORY OF THIS LITIGATION**

2 Plaintiffs and their counsel have had plenty of opportunities to adequately
3 investigate their claims against Defendants, yet, as is made clear by the recent filing of the
4 First Amended Complaint, have either chosen not to do so, or otherwise ignored the facts
5 which they have been provided.

6 This lawsuit was first initiated on or around January 27, 2010. Defendants
7 immediately filed a Special Motion to Strike the Complaint under the anti-SLAPP statute,
8 explaining that each of the defamation-related causes of action failed as a matter of law.
9 On April 20, 2010, the Court denied Defendants' request, finding that the statements
10 posted on the Rip-Off Report website do not implicate matters of public interest. *See*
11 *Doc. No. 23 at p. 19.*

12 As the case progressed forward, it was proven that the individual Plaintiffs (Mr.
13 Mobrez and Ms. Llaneras) committed perjury in this case by manufacturing and
14 presenting sworn false testimony accusing Mr. Magedson of demanding \$5,000 in order to
15 make negative information disappear from the Rip-Off Report website. It was further
16 apparent that Plaintiffs could not establish the necessary predicate acts to prove their
17 RICO claims. Counsel for Defendants consistently communicated with counsel for
18 Plaintiffs, explaining that there was no good faith basis upon which they could base their
19 RICO or extortion claims. Counsel for Defendants also consistently requested that
20 Plaintiffs withdraw their claims, since there was no evidence or legal theory which could
21 support them; however, counsel for Plaintiffs refused to withdraw the Complaint against
22 Defendants.

23 At an initial case status conference, the Court bifurcated the trial in this case, and
24 allowed Plaintiffs to only litigate the issue of liability on their RICO claims as the first
25 matter to proceed to trial. Plaintiffs then filed a motion before Magistrate Judge Walsh to
26 bifurcate discovery so as to limit discovery prior to the trial to the RICO and extortion
27 claims only. This motion was granted. *See Doc No. 82.* Under these guidelines,
28 Defendants took the deposition of Plaintiff Mobrez, while Plaintiffs – twice – took the

1 deposition of Defendant Ed Magedson, once in his individual capacity, and once on behalf
2 of Defendant Xcentric. The parties also engaged in written discovery.

3 On or around May 24, 2010, Defendants filed a Motion for Partial Summary
4 Judgment, asserting that no material facts were in dispute and that Plaintiffs were unable
5 to prevail on their claims for RICO and extortion as a matter of law. *See* Doc. No. 40.
6 This Motion was supported by six declarations, as well as numerous other exhibits. *Id.*
7 On July 12, 2010, the Court granted Defendants' Motion, finding that no unlawful threats
8 were made by Defendants to Plaintiffs, and therefore no predicate acts had occurred which
9 would give rise to Plaintiffs' causes of action for RICO with extortion as the predicate act.
10 *See* Doc. No. 94.

11 At that same hearing, the Court raised the issue of whether the Plaintiffs'
12 Complaint was sufficient to state a plausible claim for RICO violations based on the
13 alleged predicate acts of wire fraud. Defendants argued that the Complaint was not
14 sufficient, and made an oral motion to dismiss those claims for failure to plead the alleged
15 acts of wire fraud with particularity. *See* Doc No. 94. Plaintiffs requested leave of the
16 Court, based on "newly discovered evidence," to file an amended complaint to allow them
17 to assert essentially the same causes of action which had just been dismissed. The Court
18 gave Plaintiffs the opportunity to file an amended complaint; however, in doing so, it
19 reminded Plaintiffs of their obligations under Rule 11 and suggested that appropriate
20 investigations be undertaken before any filings were made. *Id.*

21 Disturbingly, on July 27, 2010, Plaintiffs filed their eighty-four page First
22 Amended Complaint ("FAC"), alleging a variety of causes of action including, claims for
23 RICO violations. *See* Doc. No. 96. In filing this FAC, Plaintiffs violated a number of
24 provisions of Rule 11, since the FAC (1) has been presented for an improper purpose; (2)
25 contains claims and legal contentions that are not warranted by existing law; and (3)
26 contains factual allegations which have no evidentiary support.

1 On August 17, 2010, Plaintiffs sought leave to file their Second Amended
2 Complaint.

3 **III. PLAINTIFFS HAVE VIOLATED RULE 11(B)(3)**

4 Rule 11(b)(3) explains that by filing a pleading with the Court, the attorney
5 certifies that:

6 to the best of the person’s knowledge, information, and belief, formed after
7 an inquiry reasonable under the circumstances...the factual contentions
8 have evidentiary support or, if specifically so identified, will likely have
evidentiary support after a reasonable opportunity for further investigation
or discovery.

9 Fed.R.Civ.P. Rule 11(b)(3). The FAC is rife with factual contentions that are wholly
10 lacking in any evidentiary support. Moreover, as to most of these false allegations,
11 Plaintiffs and their counsel had actual knowledge that the allegations which they are
12 presenting are false. Even if Plaintiffs only “chose to state as a fact what was at the best a
13 guess and a hope, [they] engaged in misrepresentation.” *In re Curl*, 803 F.2d 1004, 1006
14 (9th Cir.1986), *overruled on other grounds, Partington v. Gedan*, 923 F.2d 686 (9th
15 Cir.1991) (en banc).

16 Due to the size of the FAC (84 pages and 371 paragraphs) and the quantity of
17 factual contentions made by Plaintiffs that are devoid of evidentiary support, for the ease
18 of the Court, Defendants have created a chart (Exhibit “A”) pointing out each allegation
19 made by Plaintiffs which is in violation of Rule 11(b)(3).² After serving this Rule 11
20 Motion, Defendants have updated this chart to reflect the paragraph in the proposed
21 Second Amended Complaint and to remove from the chart allegations that Plaintiffs did
22 not include in the proposed Second Amended Complaint.

23 The statements in the FAC are presented as facts; yet these statements are either
24 knowingly false or unsupported by any evidence, either existing or having potential to
25 exist. The Ninth Circuit has explained why misrepresentation by attorneys to a court
26 cannot be taken lightly:

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28 ² This chart does not include all allegations within the FAC which Defendants deny. It only contains those
allegations which violate Rule 11.

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The vice of misrepresentation is not that it is likely to succeed but that it imposes an extra burden on the court. The burden of ascertaining the true state of the record would be intolerable if misrepresentation was common. The court relies on the lawyers before it to state clearly, candidly, and accurately the record as it in fact exists.

In re Girardi, --- F.3d ----, 2010 WL 2735731 (9th Cir. 2010) (internal quotation omitted).

The complete absence of evidence to support the allegations identified above suggests that Plaintiffs, at best, failed to conduct a reasonable inquiry, and, at worst, made deliberate misrepresentations to this Court. *See Mezzetti v. State Farm Mut. Auto. Ins. Co.*, 346 F.Supp.2d 1058, 1067 (N.D.Cal.2004) (noting that “[g]obbledygook can be no less obfuscatory than an outright lie”). Each of Plaintiffs’ statements identified in the chart above demonstrates that the factual contentions they have made lack evidentiary support or even the potential to discover such evidentiary support, in violation of Rule 11(b)(3).

IV. PLAINTIFFS HAVE VIOLATED RULE 11(B)(2)

Rule 11(b)(2) explains that by filing a pleading with the Court, the attorney certifies that:

to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances... the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

Fed.R.Civ.P. Rule 11(b)(2). An attorney’s responsibility under Rule 11 to conduct reasonable pre-filing investigation is particularly important where, as here, claims have been made under Racketeer Influenced and Corrupt Organizations Act (RICO). *Burnette v. Godshall*, N.D.Cal.1993, 828 F.Supp. 1439, *affirmed* 72 F.3d 766

Plaintiffs have made frivolous legal arguments regarding the use of trademarks in HTML code, as well as the use of computer code itself, for the purpose of finding liability against a website. In Paragraphs 80 and 81 of the FAC, Plaintiffs reference two cases, citing them for propositions which neither can be read to support. Citing *Brookfield Commons. v. W. Coast Entm’t Corp.*, 174 F.3d 1036, 1065 (9th Cir. 1999), Paragraph 80 argues that courts “regularly enjoin” the use of infringing trademarks through their

1 inclusion in the “description and keyword metatags of HTML.” In *Brookfield*, the court
2 found that use of a confusingly similar mark in a web site’s metatags is actionable under
3 Lanham Act. *Id.* However, this holding was limited to the context of initial interest
4 confusion when the defendant uses the plaintiff’s trademark “in a manner calculated ‘to
5 capture initial consumer attention.’” *Interstellar Starship Services, Ltd. v. Epix, Inc.*, 304
6 F.3d 936, 941 (9th Cir. 2002) (quoting *Brookfield*, 174 F.3d at 1062). When determining
7 whether trademark infringement has occurred on a website, the Ninth Circuit has
8 explained that a court must evaluate “(1) the similarity of the marks, (2) the relatedness of
9 the goods or services, and (3) the parties’ simultaneous use of the Web as a marketing
10 channel,” coupled with the other four *Sleekcraft* factors. *Id.* (quoting *GoTo.Com, Inc. v.*
11 *Walt Disney Co.*, 202 F.3d 1199, 1204 (9th Cir.2000)); *see also AMF Inc. v. Sleekcraft*
12 *Boats*, 599 F.2d 341, 346 (9th Cir.1979). Plaintiffs neglected to provide the Court with a
13 complete, accurate recitation of current case law regarding initial interest confusion for
14 metatags.

15 Similarly, citing *Universal City Studios v. Corley*, 273 F.3d 429, 448 (2d. Cir.
16 2001), Plaintiffs assert that courts consider computer code to be “speech,” thereby
17 recognizing the “power and impression” of search results on the internet, and holding
18 parties accountable for what the HTML code contains. *See* FAC at ¶¶ 81-82. Again,
19 Plaintiffs neglect to explain the context and limitations of the holding in *Corley* in an
20 effort to mislead the Court. As the *Corley* court explained, “The functionality of
21 computer code [] affects the scope of its First Amendment protection.” *Corley*, 273 F.3d
22 at 452. Importantly, the computer code the *Corley* court was referring to was decryption
23 software, which possessed a “skeleton key” or a “combination that can open a locked
24 door.” *Id.* at 453. Notably, even though this decision has been present in the Second
25 Circuit for nine years, it has not yet been adopted by any court in the Ninth Circuit,
26 including this one, for the purpose advocated by Plaintiffs.

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1 Plaintiffs have also misinterpreted copyright law, and, in particular, 17 U.S.C. §
2 101. Plaintiffs are asking the Court to find that the transfer of an exclusive license in a
3 copyright protected work is the same thing as the transfer of ownership in that work. This
4 is not an accurate reflection of the law, and there is no statute or case law which interprets
5 the license granted to Xcentric in this manner. The Court *Effects Associates, Inc. v.*
6 *Cohen*, 908 F.2d 555 (9th Cir. 1990) explained that “Copyright ownership is comprised of
7 a bundle of rights” and the granting of a license is giving up “only one stick from that
8 bundle.” *Id.* at 559. The plain language of 17 U.S.C. § 201(d)(2) limits the rights of an
9 exclusive licensee to those “protections and remedies” afforded in the 1976 Act, thereby
10 identifying the distinction between an exclusive license and copyright ownership. *See*
11 *Gardner v. Nike, Inc.*, 279 F.3d 774, 780 (9th Cir. 2002). The Ninth Circuit in *Gardner*
12 analyzed – and rejected – the very argument advocated by Plaintiffs in trying to blur the
13 line between an exclusive licensee and a copyright owner. That court explained:

14 Appellants contend that, if a licensee of exclusive rights under the copyright
15 is characterized by the 1976 Act as an “owner” of those rights under §
16 201(d)(2), then it must follow that such “ownership” carries with it an
17 unrestricted right to freely transfer the license. However, Appellants’
18 argument ignores the plain language of § 201(d)(2), which states that the
19 owner of such exclusive rights is entitled only to “the protection and
remedies” accorded the copyright owner under the 1976 Act. This explicit
language limits the rights afforded to an owner of exclusive rights. Based
on basic principles of statutory construction, the specific language of §
201(d)(2) is given precedence over the more general language of § 101 and
§ 201(d)(1).

20 *Id.* Instead of the granting of an exclusive right being the equivalent to blanket copyright
21 ownership, as Plaintiffs have advocated, the Ninth Circuit has explained that the exclusive
22 licensee becomes the *owner of the particular right* in the copyright which was transferred
23 to them. *See Silvers v. Sony Pictures Entm't, Inc.*, 402 F.3d 881, 886 (9th Cir. 2005).
24 There is no basis to argue as Plaintiffs have that this exclusive license is a transfer of the
25 entirety of the copyright ownership. *Id.* Plaintiffs again have made legal contentions that
26 are not justified under the law as it currently stands, nor is there any reason to believe that
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1 a court will change their standing interpretation of the language of the 1976 Copyright
2 Act.

3 Plaintiffs have also made legal conclusions in Paragraphs 183-184 which are
4 unsupportable as a matter of law regarding Xcentric being in violation of Section 5 of the
5 FTC Act, 15 U.S.C. § 45, and the Codes of Federal Regulations, 16 C.F.R. Part 255.0 *et*
6 *seq.* Plaintiffs argue that Xcentric is obligated to “disclose that it is paid money to make
7 these testimonials and endorsements.” Plaintiffs are asking that the Court impose a much
8 broader regulation on Defendants than the FTC does. Moreover, what Plaintiffs have
9 pointed to are FTC’s Endorsement Guides. These are not new legal principles; they
10 simply provide new examples to show how these standards apply in social media. In full,
11 those FTC endorsement guidelines can be found at
12 <http://ftc.gov/os/2009/10/091005revisedendorsementguides.pdf>. However, the FTC has
13 recognized that since these guidelines were published in October, 2009, a general state of
14 confusion has occurred regarding what, if anything, website owners need to do. To
15 address the confusion, the FTC created a fact sheet on the Revised Endorsement Guides.
16 *See* <http://ftc.gov/bcp/edu/pubs/business/adv/bus71.shtm>. Interestingly enough, these
17 Guides are simply intended to “provide the basis for voluntary compliance.” *See* 16
18 C.F.R. § 255.0(a) (emphasis added). The Guides were issued under the authority of 15
19 U.S.C. § 45, which outlaws “unfair methods of competition in or affecting commerce, and
20 unfair or deceptive acts or practices in or affecting commerce,” and authorizes the FTC to
21 enforce this prohibition by the adoption of rules and by issuing orders to cease and desist
22 against violators. It does not, notably, contemplate using these guides as the basis for a
23 private right of action, nor is there any basis to believe such an extension is warranted,
24 given that the FTC itself as exclaimed it will not likely be policing websites for violations
25 of these Guides. *See* <http://ftc.gov/bcp/edu/pubs/business/adv/bus71.shtm>.

26 Before filing a civil action, an attorney has a duty to make an investigation to ascertain
27 that it has at least some merit, and further to ascertain that the damages sought appear to
28

1 bear a reasonable relation to injuries actually sustained. *Rhinehart v. Stauffer*, 638 F.2d
2 1169 (9th Cir. 1979). Plaintiffs have identified certain damages, which they claim are
3 recoverable. However, certain items identified are not recoverable damages as a matter of
4 law, including (1) Plaintiffs’ rent for their office space for the entire time Plaintiffs have
5 been in business; (2) Plaintiffs’ phone and internet connections for the entire time
6 Plaintiffs have been in business; (3) Plaintiffs’ move-in costs for starting up their
7 business; (4) Plaintiffs’ start-up costs for their business; (5) Plaintiffs’ lobbying costs; (6)
8 amounts spent on SEO consultants and services; (7) cost of registering and maintaining
9 domain names; and (8) lost profits from commercial transactions Plaintiffs allegedly
10 would have entered into. None of these “damages” are actually recoverable as a matter of
11 law. In *Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258, 268, 112
12 S.Ct. 1311, 117 L.Ed.2d 532 (1992), the Supreme Court held that a plaintiff may sue
13 under § 1964(c) only if the alleged RICO violation was the proximate cause of the
14 plaintiff’s injury.

15 Plaintiffs knew or should have known that they needed a causal connection
16 between their alleged damages and the predicate acts. This Court warned Plaintiffs’
17 counsel at the oral argument on the motion for summary judgment that it is a Rule 11
18 violation to plead a wire fraud claim without knowing what the damages are and how
19 those damages are related to the predicate acts. Instead of heeding this Court’s warning,
20 Plaintiffs pled that virtually every expense that Plaintiffs incurred in the conduct of AEI’s
21 business is a damage causally related to the predicate acts. Plaintiffs go so far as to
22 include their rent in the damages even though they know they can not allege with a
23 straight face that the rent was incurred as a result of the predicate acts.

24 In Paragraphs 309-355, Plaintiffs attempt to allege a cause of action against
25 Xcentric for “common law defamation,” “defamation per se,” “false light,” “intentional
26 interference with prospective economic relations,” “negligent interference with
27 prospective economic relations,” “negligent interference with economic relations,” and
28

1 “injunction.” Plaintiffs are aware that every court of law which has addressed this
2 question, including the current Court before which this case is pending, has held that
3 Xcentric is immune from liability for defamation for statements authored by third parties
4 pursuant to the Communications Decency Act, 47 U.S.C. § 230. Thus, Plaintiffs have
5 asked this Court to find these causes of action exist when no existing case law would
6 allow them to do so, and where no reasonable extension of case law or creation of new
7 law would allow them to do so.

8 **V. PLAINTIFFS HAVE VIOLATED RULE 11(B)(1)**

9 Rule 11(b)(1) explains that by filing a pleading with the Court, the attorney
10 certifies that:

11 to the best of the person’s knowledge, information, and belief, formed after
12 an inquiry reasonable under the circumstances... it is not being presented
13 for any improper purpose, such as to harass, cause unnecessary delay, or
14 needlessly increase the cost of litigation.

15 Fed.R.Civ.P. Rule 11(b)(1). The Court in Townsend noted that sanctions must be
16 imposed if either (a) the paper is filed for an improper purpose or (b) the paper is
17 frivolous. *See, e.g., Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th
18 Cir.1990). The word “frivolous” is shorthand used to denote a filing that is both (i)
19 baseless and (ii) made without a reasonable and competent inquiry. *Id.* Although the
20 “improper purpose” and “frivolousness” inquiries are separate and distinct, they will often
21 overlap since evidence bearing on frivolousness or non-frivolousness will often be highly
22 probative of purpose. *Id.* The standard governing both inquiries is objective. *Id.* (citing
23 *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 829 (9th Cir.1986)). Plaintiffs here have
24 filed their FAC both for an improper purpose, as well as it being a frivolous pleading.

25 “The key question in assessing frivolousness is whether a complaint states an
26 arguable claim-not whether the pleader is correct in his perception of the law.” *Hudson v.*
27 *Moore Bus. Forms, Inc.*, 836 F.2d 1156, 1159 (9th Cir. 1987). Evidence of the
28 frivolousness of Plaintiffs’ filing is abundant, and can be easily understood if the Court is
to look at the big picture of the FAC. Although Plaintiffs throw a number of baseless and

1 unsubstantiated claims out for review, these are, at least facially, potentially salacious
2 enough to give the Court pause. Yet the analysis is not whether Plaintiffs individual
3 “fact” allegations are interesting, but whether Plaintiffs have stated an arguable claim.
4 Unquestionably, they have not.

5 The Court recognized the serious problems with Plaintiffs’ original complaint at
6 the July 12, 2010 hearing. Plaintiffs had in their possession each piece of evidence and
7 information utilized in crafting the FAC. Generally speaking, the arguments identified by
8 Plaintiffs as to *why* they could pursue their claims are directly in line with the arguments
9 which they actually advocate in the FAC. Yet the Court specifically addressed these
10 arguments, and explained to Plaintiffs that, absent something more, they still would be
11 unable to state a cognizable claim for wire fraud. In fact, the Court explained to Plaintiffs
12 not only the deficiencies in their pleading, and specifically, in their allegations concerning
13 the predicate act of wire fraud, but the Court also cautioned Plaintiffs about its concerns
14 regarding the reasonable investigation necessary before a pleading is filed :

15 See, that’s the problem, ma’am. This is, in my view, pretty – I’m looking for
16 a word that is not pejorative that still makes the point -- pretty unacceptable
17 lawyering because under Rule 11 you’ve now admitted to a Rule 11
18 violation. You filed a wire fraud allegation as a predicate act for your RICO.
19 As you stand at the lectern, you can’t even, in a best-world sense, articulate a
20 wire fraud. You now say you have to speak to your client. The rules clearly
21 say that you have to have a good-faith basis for alleging something in a
22 complaint, and how could you have had a good-faith basis without speaking
23 to your client and now being totally unable to articulate a basis?

24 *See* Transcript for July 12, 2010 hearing at p. 7. Unfortunately, it appears that Plaintiffs
25 failed to heed the Court’s warning.

26 A major purpose of the 1983 amendments to Rule 11 was to enable district courts
27 to deter dilatory or abusive pretrial tactics and to streamline litigation. *See Golden Eagle*
28 *Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1536 (9th Cir.1986) (discussing views
of advisory committee members). Recognizing that that sanctions should not be used to
“chill an attorney’s enthusiasm or creativity in pursuing factual or legal theories,” *In re*
Yagman, 796 F.2d 1165, 1182, amended, 803 F.2d 1085 (9th Cir.1986), the Ninth Circuit

1 has also explained that it must “draw the line between creative lawyering and abuse of the
2 judicial process.” *Stewart v. Am. Int’l Oil & Gas Co.*, 845 F.2d 196, 201 (9th Cir. 1988).
3 Here, the process was abused. While “[a] district court confronted with solid evidence of
4 a pleading’s frivolousness may in circumstances that warrant it infer that it was filed for
5 an improper purpose,” the Court does not need to make such an inference, since Plaintiffs
6 have also filed the FAC for an improper purpose. *Townsend*, 929 F.2d at 1365. An
7 example of the improper purpose of Plaintiffs’ filing is the fact that Plaintiffs failed to
8 heed the Court’s advice about the necessary elements of wire fraud, namely, the causation
9 elements. The Ninth Circuit has held that that “[w]ithout question, successive complaints
10 based upon propositions of law previously rejected may constitute harassment under Rule
11 11.” *G.C. & K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096, 1110 (9th Cir. 2003)
12 (internal citations omitted). This is now Plaintiffs’ second bite at the apple, and they are
13 no closer to pleading any legally cognizable claim than they were when the Court
14 dismissed the original Complaint.

15 Plaintiffs’ improper purpose appears to be to cost Xcentric so much money in the
16 litigation that it will give in and remove or edit the posting about Plaintiff regardless of the
17 merits of the claim. Without a doubt, the filing of the FAC was done for the purpose of
18 harassing Defendants and costing them money, which is an improper purpose under
19 Rule 11.

20 VI. SANCTIONS ARE WARRANTED

21 “An attorney who signs the paper without such a substantiated belief ‘**shall**’ be
22 penalized by ‘an appropriate sanction.’” *Hartmax*, 496 U.S. at 393 (emphasis added).
23 The Court in *Hartmax* succinctly explained why Plaintiffs and their counsel must be
24 sanctioned: “Baseless filing puts the machinery of justice in motion, burdening courts and
25 individuals alike with needless expense and delay.” *Id.* at 398. As established herein,
26 Plaintiffs are in violation of three separate sections of Rule 11. Because each violation
27 subjects Plaintiffs – and their counsel – to sanctions, Defendants request that the Court
28

1 order Plaintiffs to pay all of Defendants' attorney fees incurred in defending this frivolous
2 lawsuit and such other relief as the Court deems appropriate.

3 **VII. CONCLUSION**

4 For all of the foregoing reasons, Defendants request that the Court order Plaintiffs
5 and their counsel to pay all of Defendants' attorney fees incurred in defending this
6 frivolous lawsuit and such other relief as the Court deems appropriate.

7 DATED this 30th day of September, 2010.

8
9 **JABURG & WILK, P.C.**

10
11 /s/Maria Crimi Speth
12 Maria Crimi Speth
13 Attorneys for Defendants
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JABURG & WILK, P.C.
ATTORNEYS AT LAW
3200 NORTH CENTRAL AVENUE
SUITE 2000
PHOENIX, ARIZONA 85012

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 30th day of September, 2010, I electronically transmitted the
3 attached document to the Clerk’s Office using the CM/ECF System for filing, and for
4 transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

5 Ms. Lisa Borodkin, Esq.
6 Mr. Daniel F. Blackert, Esq.
7 Asia Economic Institute
8 11766 Wilshire Blvd., Suite 260
9 Los Angeles, CA 90025
10 Attorneys for Plaintiffs
11 lisa_borodkin@post.harvard.edu
12 daniel@asiaecon.org

13 And a courtesy copy of the foregoing delivered to:

14 Honorable Stephen V. Wilson
15 U.S. District Court Judge

16 /s/Debra Gower

17 JABURG & WILK, P.C.
18 ATTORNEYS AT LAW
19 3200 NORTH CENTRAL AVENUE
20 SUITE 2000
21 PHOENIX, ARIZONA 85012

EXHIBIT A

FAC ¶	SAC ¶	False Allegation by Plaintiffs	Why Allegation Lacks Evidentiary Support
6	1	AEI has its principal place of business at 11766 Wilshire Blvd.	Plaintiff Mobrez has testified under oath that AEI is no longer in business.
16	11	Entire paragraph	The elements of this conclusory, summarizing paragraph are addressed separately later.
17	12	Entire paragraph	The elements of this conclusory, summarizing paragraph are addressed separately later.
18	13	The Ripoff Report enterprise solicits purely negative...and in many instances, judicially recognized as defamatory – content.	There is no evidence that Xcentric solicits reports for the RipOff Report website. Additionally, individuals and companies are invited, and, indeed, encouraged, to submit positive information to the website. Furthermore, Plaintiffs are aware that only a few postings have been adjudicated to be false.
18	13	[Xcentric] sometimes redact[s] or disclaim[s] portions of the content, at times in a manner that significantly changes its meaning	There are an abundance of declarations that are publicly available regarding the extent to which Xcentric redacts information from reports, including information on the RipOff Report website itself. Redactions are not done to change the character of any report.
18	13	in certain cases (often under a financial arrangement) [Xcentric], for a fee, suppresses the Reports from publication altogether.	Plaintiffs took the deposition of Ed Magedson, wherein he made it clear that Xcentric will not suppress reports from publication for a fee.
19	14	Unbeknownst to the victims, the “free” rebuttals come at a cost. A rebuttal is likely to make the negative content in a Report go up in page rank in search engine queries, while doing nothing to alter the snippets of negative content that appear in search results.	There have been no empirical studies done which reach this conclusion. Indeed, Google has stated on numerous occasions that there is nothing an individual website can do which will enhance its placement in search results. Further, Google itself encourages the posting of rebuttals as a reputation management tool.

			http://googlewebmastercentral.blogspot.com/2009/10/managing-your-reputation-through-search.html
19	14	The Ripoff Report enterprise does not disclose its own financial self-interest in having victims file rebuttals – fresh content and page visits that make the ROR Website more attractive to search engines and online advertisers.	Xcentric does not have a financial interest in the filing of reports on the RipOff Report website. It is not possible to generate revenue from search engines. Xcentric has specifically defined advertising standards, meaning that <i>it</i> chooses its advertisers, not the other way around. <i>See</i> http://www.ripoffreport.com/ConsumersSayThankYou/AdvertisingStandards.aspx
19	14	The Ripoff Report enterprise does not disclose that some Reports do come down...	Plaintiffs know that Reports do not come down. Plaintiffs believed that they found two exceptions to this policy, but learned the truth before signing this pleading.
21	15	The victims have sat on their rights, business has evaporated, houses have gone into foreclosure, and the Reports have been pushed so far up in page rankings that it takes significant additional money and time to post alternative, positive content about themselves to the Web to undo the damage to their online reputations.	This presumes a number of facts which Plaintiffs have not and cannot prove. First and foremost, it assumes that the reports are false. Since all authors are required to avow to the truth of their reports, this cannot be assumed. Second, Plaintiffs are stating as fact that, as a result of postings on the RipOff Report website, people have (a) lost their business and (b) had their homes be foreclosed. Given that Plaintiffs are speaking in generalities, there can be no evidence that supports this assertion. Third, this presumes, without basis, that money must be expended to “repair” online reputations.
22	16	for a price, the Ripoff Report enterprise will sell something even more valuable – the opportunity to change a negative Google search engine result into a positive.	Plaintiffs are aware that Xcentric has no control or influence over the results of any Google search, or the results from any other search engine.

22	16	By joining CAP or otherwise making financial arrangements with the Ripoff Report enterprise, a subject can buy the privilege of essentially writing (or approving) her own Google search result.	Plaintiffs are aware that there are no “other financial arrangements” wherein individuals can partake in the same program offerings as CAP. Indeed, the recordings reveal that Plaintiffs attempted to lure Ripoff Report into making some other financial arrangement and had no success. Additionally, Plaintiffs are aware that Xcentric has no control or influence over the content of Google search results. Information regarding how Google generates its search results can be found at http://www.google.com/support/webmasters/bin/answer.py?hl=en&answer=35264
22	16	Because Google’s search algorithms are generally influenced to select text that “matches,” between both a web page and the corresponding HTML (that is, identical text that is present in both), putting the positive content in the strategic location in the HTML, a long with a matching block of text [sic] in the Report effectively negates the harmful effect of the Report with the Google search engine, while allowing Defendants to continue claiming (falsely) that they “never remove reports.”	Google’s search algorithms are highly protected and continuous evolving trade secrets which no one outside of Google, including Plaintiffs and Xcentric, is privy to. Further, Google has publicized, since September, 2009, that it does not utilize keywords meta tag in web rankings. http://googlewebmastercentral.blogspot.com/2009/09/google-does-not-use-keywords-meta-tag.html
23	17	In order to preserve the fiction that they “never lose a case” and that plaintiffs pay all their attorneys’ fees, the Ripoff Report enterprise sometimes settles difficult cases by channeling the plaintiffs into CAP or similar arrangements.	Plaintiffs have no support for their allegation that it is a “fiction” that Xcentric has never lost a case. Indeed, with one exception (a default judgment in the West Indies that was never domesticated and eventually deemed satisfied) the operators of Ripoff Report have never lost a case. Plaintiffs allegations that a settlement is a loss are without any evidentiary support where Plaintiffs do not know the terms of the settlement.

27,59,60	20,51,52	The Ripoff Report enterprise earns revenues from the sale of goods	Plaintiffs are aware that neither Xcentric nor Magedson sells any goods through the RipOff Report website. Plaintiffs are aware, and public records reflect, that the “Do-it-Yourself Guide: How to get Rip-off Revenge” book is sold by a third-party company. The book is advertised on the Rip-Off Report website, but is not sold by Xcentric.
30	23	For each web page comprising the ROR Website, there is an accompanying page of Hypertext Markup Language code (“HTML”).	Plaintiffs are implying that a website consists of two separate areas of content – the web page itself, which a user sees if they go to the URL, and the “behind the scenes” HTML code. That is not how a website works. Instead, it is the HTML code that <i>generates</i> what an internet user sees when they go to a web page. In essence, the HTML and the web page are simply different translations of the same thing.
34	27	The Ripoff Report enterprise...exploits the gap between web pages and their respective HTML.	Plaintiffs are aware there is no such concept as a “gap between web pages and their respective HTML.”
39	32	In addition to selling two-dimensional advertisements on its static web pages, Ripoff Report also sells links to paid advertisements in the body of the “rebuttals” that users post to its web pages.	As Plaintiffs should be aware (in that it is clear from a cursory visit to the Ripoff Report website), Xcentric utilizes the services of a company called Kontera, which provides in-text advertising. These ads appear not only in rebuttals, but in reports as well. The advertisements are placed solely by Kontera, a third-party corporation, after it performs a dynamic analysis of the content of the page and chooses relevant key words from that content in which to place advertisements.
41	34	Ripoff Report does much more, behind the scenes, that destroys livelihoods, reputations and businesses.	This summary and conclusory allegation lacks any factual or evidentiary support.

46, 47, 49, 50, 51	39, 42, 43, 44, 88	Ripoff Report takes <u>ownership</u> of the copyright and content of every Report, rebuttal and user comment	This is a misstatement of what the transfer of rights grants to Xcentric. Xcentric is not the <u>owner</u> of the copyright; it is the <u>exclusive licensee</u> of the content. The author of the report still retains the <u>ownership</u> of the copyrighted works themselves.
47	40	unlike community websites such as Facebook, Craigslist, and Roommates.com, Ripoff Report makes it mandatory for a user wishing to contribute content to the ROR Website to register and accept the ROR Website's Terms of Service	Each of the websites identified by Plaintiffs requires users to be bound by their respective Terms of Service.
56	49	Ripoff Report also has designed the ROR Website with various technical restrictions that make it much more difficult to reproduce, memorialize or share the rebuttal and comment sections purportedly attached to the Reports.	The rebuttals are as accessible and easy to memorialize as the Reports.
72	64	Many members of the public influenced by a Rip-off Report do not locate it by navigating to the ROR Website by a domain name – ripoffreport.com – and then searching the ROR Website for a company or a person.	Plaintiffs have performed no survey or investigation to support this theory. Yet, Plaintiffs present this as a fact instead of a theory.
73	65	Instead, many – if not most – discover Rip-off Reports by searching for that company or person on the Web generally	Plaintiffs have performed no survey or investigation to support this theory. Yet, Plaintiffs present this as a fact instead of a theory.
77	69	Among other things, a web page's HTML influences (1) the order in which a search engine query returns and displays results for a particular web page ("page rank") and (2) how the description of the web page returned by the search query appears ("search result").	Google publishes articles regarding helping website owners ensure that Google finds, indexes, and ranks websites. This information can be found at http://www.google.com/support/webmasters/bin/answer.py?answer=35769 .

85	77	The order of prominence in which the search results appear are known as “page rank” or “page rankings.”	This is an incorrect definition of “page rank.” According to Google, “When a user enters a query, our machines search the index for matching pages and return the results we believe are the most relevant to the user. Relevancy is determined by over 200 factors, one of which is the PageRank for a given page. PageRank is the measure of the importance of a page based on the incoming links from other pages. In simple terms, each link to a page on your site from another site adds to your site's PageRank.” http://www.google.com/support/webmasters/bin/answer.py?answer=70897&hl=en
93	85	Defendants improperly assassinate the goodwill of the subject in search results.	This is a baseless allegation. Defendants host a forum. The authors and submitters of content write the content.
93	85	They do this for their own direct pecuniary gain, either (1) in the form of sales of goods and services, or (2) in the form of increased Web traffic to its ROR Website, which drives up the statistics in web analytics that partially determines the amount of advertising revenue they receive from online advertisements.	Plaintiffs have no basis for their assertion of why Defendants operate the website.
103	95	Having high “authority” means a website’s individual web pages rank consistently highly in search query page rankings.	Search engines do not utilize the concept of “authority;” instead, they return search results based on how relevant they deem them to be to the user. http://www.google.com/support/webmasters/bin/answer.py?answer=70897&hl=en
106	98	One of the factors that influence a particular web page’s rankings in responses to Google search engine queries is the domain name and URL assigned to it.	Google outlines guidelines for a website to follow so that it appears in Google search results. The website’s domain name and URL are <u>not</u> included in Google’s identified criteria.

			http://www.google.com/support/webmasters/bin/answer.py?answer=35769
110	102	This inclusion of the subject's personal or business name in the unique URL for a Report, always combined with the "riporffreport.com" domain names for Rip-off Report web pages influences Google's search engine to give higher page rankings to Reports than web pages located at URLs that do <u>not</u> include such business or personal names in the URL.	Google uses more than 200 signals, including its PageRank algorithm, to determine relevancy for its search results. The PageRank algorithm itself considers more than 500 million variables and 2 billion terms. http://www.google.com/corporate/tech.html
111	103	This URL visibly incorporates the words "riporff," "riporffreport," "work," "work at home," "home," "jobsformoms," and "jobsformoms.com" and would result in a higher page ranking for the web page hosting Report 621543 in search queries for those words than a web page located at a URL that did not include those words in the URL itself.	By claiming that the words "riporff" and "riporffreport" are two separate searchable words from the URL, this paragraph misrepresents the content of the URL by including more words than it does. Additionally, Plaintiffs are implying that if someone searched for the word "work," the URL they referenced would appear in the search results because of the content of the URL, as opposed to the content of the website itself.
114	106	For example, Defendants published to the Web	Defendants do not publish the reports and, pursuant to federal law, can not be deemed a publisher.
117	109	The Ripoff Report enterprise has since "optimized" it for search engines.	The URL reflects (1) the name of the business being reported, and (2) the title of the report itself (or a portion thereof). Xcentric does not author or choose either of these subjects for inclusion in the URL. The author of the report provides Xcentric with the content, which is used to create the URL.
118	110	Defendants updated Report number 417493 on or about May 21, 2010 at 3:30 p.m. Pacific Standard Time.	Plaintiffs are aware that Defendants did not author the report about Plaintiffs. An explanation as to what the word

			<p>“update” means for the purpose of the Rip-Off Report website has been provided to Plaintiffs. Defendants did not “update” or otherwise change any content within the report about Plaintiffs at any time, including on May 21, 2010. There is no indication from the report itself that it was “updated” or modified in any way.</p>
118	110	Defendants continuously publish Report number 417493 to the Web.	<p>Plaintiffs are implying that Defendants affirmatively take action to ensure the report about Plaintiffs is published on the Rip-Off Report website, instead of it being a static item which was published to the Rip-Off Report website on a <u>single</u> occasion, on January 28, 2009, when the author of the report published it.</p>
119	111	Entire paragraph	<p>Defendants did not cause those specific terms to be included in the report. The author of the report provides Xcentric with the content, including the term “Asia Economic Institute,” which is used to create the “header” and the URL.</p>
120	112	Entire paragraph	<p>There is no empirical evidence to support this assertion. In fact, recent articles indicate that the internet is running out of IP addresses, a clear indication that the vast majority of people and businesses are, in fact, creating websites. http://www.cnn.com/2010/TECH/innovation/07/23/internet.addresses/index.html</p>
121	113	Ripoff Report actively and deliberately encourages users to prefer Google as a search engine above others, invoking Google frequently by name.	<p>In 2009, the word “google” was added to the World English Dictionary as a verb, meaning “to search for (something on the internet) by using a search engine.” http://dictionary.reference.com/browse/Google. Defendants are not encouraging anyone to specifically use the Google search</p>

			engine, but merely, to do their own research.
135	127	Entire paragraph	Mr. Magedson did <u>not</u> testify that he or Xcentric does business with Google. Mr. Magedson testified that an anonymous individual threatened to file phony reports about Google or “anybody [the individual] could find out that I was doing business with.” He further testified that the individual retaliated against Xcentric for its refusal to remove a report about the individual, by publishing a false report about Google and its co-founder, Sergey Brin, because Google refused to cease indexing the Rip-Off Report about that individual.
136	128	Therefore, Defendants added the additional material in Report number 607436 and changed the names in Reports.	This mischaracterizes the testimony of Mr. Magedson. There is no testimony by Mr. Magedson regarding Report No. 607436. That report has no relevance to this lawsuit, nor is it even tangentially related to the preceding sentence of this paragraph regarding Sergey Brin.
139	131	There are at least two ways to become a member of Defendants’ Corporate Advocacy Program.	CAP is a program offered by Xcentric. There is only one way to become a member, which is to apply and be accepted into the program by Xcentric.
169	161	A second, “unofficial” way to get into CAP is to file a lawsuit against Defendants.	Filing a lawsuit is not a “way to get into CAP.” In the past certain Plaintiffs in lawsuits chose to become CAP members and joined the program as part or contemporaneously with a settlement. In the past, when a Plaintiff joined CAP, the company was still required to meet all the criteria of any other business wishing to join CAP, pay the fees, and be bound by the same terms and conditions of CAP as any other CAP member.

171 172	163, 164	Among Defendants' most striking false representations, both on the ROR Website on both June 26, 2009 and October 27, 2009, and in emails to individuals seeking information about Rip-off Reports, is that "WE DO NOT Remove any Rip-off Reports" and <u>never</u> removes reports for money.	Plaintiffs know that Defendants do have a policy against removing reports and that the statements by Defendant were true.
173	165	This is absolutely false. Ripoff Report has taken down at least two reports after litigation, and for a sum of over \$100,000, in October 2009 and December 2009.	Plaintiffs are aware this is a false statement and that reports were <u>not</u> removed as a result of litigation or for payment of any sum of money, including \$100,000.
174	166	The true facts are that Ripoff Report has removed Rip-off Reports, and for substantial amounts of money.	Plaintiffs are aware this is a false statement and that reports were <u>not</u> removed for payment of any sum of money.
174	166	For substantial amounts of money, Rip-off Report...has taken down Rip-off Reports.	Plaintiffs are aware this is a false statement and that reports were <u>not</u> removed for payment of any sum of money.
175	167	Entire paragraph	Plaintiffs are aware this is a misrepresentation (by omitting material portions) of the content of the Settlement Agreement entered into between Xcentric and Magesdon, as the <u>plaintiffs</u> of that litigation, and QED Media Group, LLC and Robert Russo, as the <u>defendants</u> .
176	168	Entire paragraph	Plaintiffs claim that filing a rebuttal which explains the company's side of the story "aggravates their injuries" is baseless and frivolous. Likewise, the claim that the ability to file a rebuttal deters companies from exercising their rights is ridiculous. Plaintiffs are also aware, as public records reflect, that Defendants do not mislead

			anyone regarding their success record in litigation. Defendants have <u>never lost a case</u> on the merits.
178	170	filing a rebuttal is likely to increase the prominence of the negative statements, and does so in a way that only the negative appears in search results, not the positive	Plaintiffs are aware that there is no empirical evidence to substantiate the claim that filing a rebuttal increases the relevancy of a report with a search engine. The declaration which Plaintiffs use to support this statement neglects to inform the Court that websites cannot control the frequency of indexing of the website. http://www.google.com/support/webmasters/bin/answer.py?hl=en&answer=182072
179	171	Entire paragraph	Defendants have previously explained that filing a rebuttal (a) is not tied to an increase in visitor traffic; and (b) cannot “strengthen the overall authority” of the RipOff Report website, because the <i>relevancy</i> of a website is something which is determined by a Google algorithm.
180	172	ROR also does not tell those to whom it advocates filing a rebuttal that ROR then sells advertising links from the rebuttals	As explained previously, Xcentric contracts with a company called Kontera for the placement of link ads throughout the RipOff Report website. This is evident from even the briefest viewing of the website.
181	173	ROR claims that you can always file a free rebuttal. This is false.	All rebuttals are free. There have been no instances when Xcentric charged someone to file a rebuttal.
183	174	Defendants fail to make material disclosures that would affect consumer’s perception of Defendant’s endorsement of such programs as paid advertisements and are not neutral and objective.	Plaintiffs are aware that Defendants are not obligated to make the types of disclosures which they are intimating must be made. Plaintiffs are also aware that there is clear information on the RipOff Report website regarding CAP members and CAP statements by Xcentric, as well as what qualifies an advertiser as “verified safe.”

185	175	ROR has altered content concerning Google to maintain its good favor.	Plaintiffs are aware there is no evidence that the RipOff Report website is in “good favor” with Google or has any other relationship with Google apart from that of being one website among the billions of other websites which Google indexes and includes in its search results.
188	176	Desperate, the subjects of Reports are overwhelmed in the aftermath of having a report go up about them.	This is rhetoric, not an allegation of fact or law, and in unsupportable by any facts currently available or potentially available to Plaintiffs.
189	177	The distress of a subject is well known among a business sector of consultants who purport to have knowledge as to how to address the existence of a Report.	This is rhetoric, not an allegation of fact or law, and in unsupportable by any facts currently available or potentially available to Plaintiffs.
190	178	Victims are deluged with calls, e-mails and faxes from services soliciting fees to “repair” online reputation caused by the ROR.	Plaintiff has admitted that Plaintiff received only one telephone call from a third party service. It is false to call this a “deluge.”
191	179	Entire paragraph	Plaintiffs are aware that Defendants did not know of the existence of Plaintiffs until they initiated communications with Mr. Magedson after the report about Plaintiffs had been filed by the third-party author. Thus, Plaintiffs are aware that Defendants did not use the RipOff Report website to try to obtain money from Plaintiffs. The Plaintiffs are also aware that Defendants do not acquire, nor distribute, the content on the RipOff Report website.
192	180	Promising media attention and monetary compensation via class action lawsuits, Defendants solicit purely negative content	Plaintiffs are aware from the face of the RipOff Report website that Defendants make no promises of media attention or monetary compensation to authors of reports.

193	181	Defendants then label these business or individuals a "Ripoff"	Defendants do not provide any labeling or content for the reports. The author of the report, by filing a report on the RipOff Report website, has labeled the business to be a "ripoff."
198 201 204	186 189 192	Defendants statements about not removing reports are false.	Plaintiffs are aware that Defendants adhere to their policy of never taking reports down from the RipOff Report website.
205	193	The true facts are that Reports do, in fact, come down, for substantial sums of money, and after a lawsuit	Plaintiffs are aware this is a false statement, that reports do not get removed, either for money, or as part of a settlement agreement after a lawsuit.
205	193	Defendants' Counsel has admitted that Reports have, on occasion, been removed from the ROR Web site, including pursuant to the QED Agreement, and that Russo owed significant sums of money to the Ripoff Report enterprise under the agreement providing for such removal.	Plaintiffs are aware and have been informed repeatedly that this is a false statement. This is an inaccurate representation of the Settlement Agreement between Xcentric and QED Media/Robert Russo. Plaintiffs' counsel are mischaracterizing communications between themselves and Defendants' counsel. Counsel for Defendants has explained to counsel for Plaintiffs that on two separate occasions, reports regarding QED Media were erroneously missed as part of the monitoring process which QED Media was entitled to through its Settlement Agreement, and erroneously posted to the RipOff Report website prior to the confirmation of the authorship of those reports, as required by the Settlement Agreement between those parties. Those two reports were then removed from the RipOff Report website pending authentication of the report from the author, to cure a default under the Settlement Agreement. Further, money was paid by QED Media/Russo to RipOff Report in settlement of the more than \$450,000 in damages that QED caused to Xcentric which were the subject of the lawsuit. The

			<p>payment of money had nothing to do with removal of reports. Plaintiffs' counsel had extensive communications with counsel for QED and knew or should have known that the money paid under the agreement was a compromise of Xcentric's claim for damages.</p>
210	194	Entire paragraph	<p>Plaintiffs are aware that the declaration of Kenton Hutcherson is false and misleading. The declaration infers that as a result of the settlement between his clients, the <u>defendants</u> in a lawsuit with Xcentric (the <u>plaintiff</u>), he simply demanded that RipOff Report remove reports and it complied. As is made clear in the Settlement Agreement, Xcentric agreed to <u>monitor</u> reports which were submitted to the RipOff Report website for publication about QED. Pursuant to that settlement agreement, Xcentric would hold reports about QED pending confirmation from the author of the report that they were an actual customer of QED. If such confirmation could not be provided by the report's author, the report would not be published on the RipOff Report website. As Plaintiffs are aware, the <u>only</u> reason the posting was removed was because it was inadvertently permitted without the requisite verification. Mr. Hutcherson's declaration fails to disclose that the removal became necessary to cure a default of the Settlement Agreement by Xcentric.</p>
211	195	On July 20, 2010, during a conference between both parties, counsel for Defendants, Maria Speth, confirmed that two reports concerning Mr. Hutcherson's former client, QED Media Group, LLC, were removed on two separate occasions.	<p>This conversation took place during the Court-ordered confidential <u>settlement conference</u> and therefore all aspects of this conversation were intended to remain privileged, confidential, and not to be used in any manner outside of settlement discussions. Plaintiffs are aware that the statements made in this Paragraph</p>

			<p>are false, because Ms. Speth explained, in full detail, the circumstances surrounding the Settlement Agreement between Xcentric and QED Media, and the resultant monitoring of reports. Ms. Speth also explained that the only reason Xcentric agreed to monitor postings about QED was because QED insisted on such provision out of (unfounded) fear that Xcentric would create postings about QED to retaliate for the substantial damages that QED had caused to Xcentric. This Paragraph ignores entirely all such explanation.</p>
212	196	<p>These false statements lead those victimized to believe they have very limited courses of action. If they wish to mitigate the damage caused by these reports, they must either pay Defendants to be in the CAP or pay an information technology (“IT”) consultant to publish alternative online content to repair their reputation via search engines.</p>	<p>There is no causal relationship between any statements made by Defendants and the reputational harm that a company may incur as a result of a third party posting a report.</p>
213	197	<p>On October 24, 2009, Plaintiffs posted a listing on Craigslist seeking an on site web product developer with SEO skills in order to combat the defamatory reports. Plaintiffs paid \$25.00 to post this advertisement.</p>	<p>Plaintiffs are falsely implying that they required the services of an employee to perform SEO services for them and that there was a causal relationship between that and any statements made by Xcentric. They are also falsely asserting that they needed to advertise to obtain such an individual. As alleged elsewhere within the FAC, Plaintiffs claim to have been “deluged” with offers to provide these types of services. Further, as indicated in the subsequent paragraphs of the FAC, Plaintiffs did not actually hire an employee to serve in this capacity, but instead, hired “consultants” to which they paid a flat-fee.</p>

222	206	The Ripoff Report Enterprise also makes these false representations that reports are never removed even if you sue, to intimidate the victims, deflect litigation to the contributors, and reinforce the myth that Defendants are immune, thus causing victims to sit on their rights while the statute of limitations runs	Plaintiffs filed a lawsuit and did not sit on their rights or permit the statute of limitations to run.
227 228	211 218	Defendants Falsely State That Victims Can File A Free Rebuttal and That Rebuttals Are Effective and Helpful	Plaintiffs are aware that anyone may file a rebuttal at no expense to them. Plaintiffs are also aware that providing the “other side of the story” and a balanced presentation is an effective tool to address the content of reports.
229	223	Defendant Edward Magedson sent Plaintiff Raymond Mobrez an e-mail containing the false statements	Plaintiffs are aware that each of the statements identified within this Paragraph are true.
229	223	“Just file a rebuttal...the truth shall set you free.”	Plaintiffs are aware that this is a true statement and/or an opinion.
229	223	“You can simply file a rebuttal and explain your side of the story...it’s free...and you don’t have to even read any further, just log on and file a rebuttal telling your side of the story, best not to be combative or insulting.”	Plaintiffs are aware that this is a true statement, and that Plaintiffs did, indeed file a free rebuttal.
229	223	“You can simply file a rebuttal and explain your side of the story...it’s free.”	Plaintiffs are aware that this is a true statement, and that Plaintiffs did, indeed file a free rebuttal.
239	226	Filing a rebuttal actually hurts those victimized on the ROR website and in search results more than it helps them.	Plaintiffs are aware there is no evidence to support this statement.
239	226	filing a Rebuttal refreshes Google’s search indexing	Plaintiffs are aware that this is a false statement, and that there is no method to automatically get Google to crawl a website.

239	226	filing a Rebuttal...raises the page ranking of the negative Report.	This is an incorrect definition of "page rank." According to Google, "When a user enters a query, our machines search the index for matching pages and return the results we believe are the most relevant to the user. Relevancy is determined by over 200 factors, one of which is the PageRank for a given page. PageRank is the measure of the importance of a page based on the incoming links from other pages. In simple terms, each link to a page on your site from another site adds to your site's PageRank." http://www.google.com/support/webmasters/bin/answer.py?answer=70897&hl=en
242	228	wish to exercise their First Amendment right of petition against Defendants in the courts.	Plaintiffs are aware this statement contains a false implication about what relief users of the RipOff Report have utilized the court systems for. Moreover, Plaintiffs are aware that there is no such thing as a "First Amendment right of petition."
247	233	Defendants falsely misrepresent to the public that "Ripoff report has never, ever (not now, and not in the past) done anything to cause Google to rank our website higher in search results than other sites."	Plaintiffs are aware that they have no evidence to support the allegation that this is a false statement by Xcentric.
249	235	Ripoff Report has, in fact, done many things to support itself as a business model and cause Google to rank postings higher by circumventing punitive changes in algorithms.	Plaintiffs are aware that they have no evidence to support this allegation. Plaintiffs are further aware that there is no method through which to circumvent Google's proprietary algorithms.
256		Entire paragraph	Plaintiffs are aware that each statement identified within this Paragraph is true.
263	241	Ripoff report does not post negative reports about certain businesses, including negative reports about CAP members	Plaintiffs are aware that every CAP member has multiple

		and reports about CAP	negative reports posted about it and that those are not removed as part of CAP.
302	260	Defendants represent themselves as consumer advocates.	Plaintiffs are aware this is a true statement, and is neither false nor misleading.
302	260	Defendants mislead the public into believing they have presented an unbiased description of the targeted business or individual.	Plaintiffs are aware that the RipOff Report fully discloses that it is a place for making complaints about businesses and that those who post on Ripoff Report are biased in that they are relating their own experiences and opinions.
302	260	Defendants label businesses or individuals enrolled in the Corporate Advocacy Program as “verified safe” without investigating the veracity of this statement.	Plaintiffs are aware this is a false statement and that Xcentric does in fact conduct specific investigations of each member of CAP.
302	260	Defendants solicit false and defamatory complaints against Plaintiffs and others	Plaintiffs are aware that this is a false statement and that Xcentric does not solicit false statements for the website. Plaintiffs are further aware that Xcentric in fact requires anyone posting to the RipOff Report website to avow that the statements being published are true.
309	267	Defendants published defamatory materials on Defendants’ websites regarding Plaintiffs.	Plaintiffs are aware that Defendants legally can not be considered publishers of the content about Plaintiffs.
316	274	Defendants published the statements attached hereto	Plaintiffs are aware that Defendants legally can not be considered publishers of the content about Plaintiffs.
330	288	Defendants...knowingly publish[ed], creat[ed], and solicit[ed] negative, false, and defamatory content in exchange for their own business profit.	Plaintiffs are aware that Defendants did not publish, create, or solicit any statements on the RipOff Report website about Plaintiffs.

336	294	Defendants...knowingly publish[ed] and creat[ed] negative, false, and defamatory content in exchange for their own business profit.	Plaintiffs are aware that Defendants did not publish or create any statements on the RipOff Report website about Plaintiffs.
341	300	Defendants...falsely and publicly [made] these defamatory statements about Plaintiffs.	Plaintiffs are aware that Defendants did not publish any statements on the RipOff Report website about Plaintiffs.
342	301	Defendants...knowingly publish[ed] and creat[ed] negative, false, and defamatory content in exchange for their own business profit.	Plaintiffs are aware that Defendants did not publish or create any statements on the RipOff Report website about Plaintiffs.
347	306	Defendants...solicited, developed, and published on the Websites numerous false and misleading statements of fact concerning AEI and its owners.	Plaintiffs are aware that Defendants did not solicit, develop, or publish any statements on the RipOff Report website about Plaintiffs.
360	320	Entire paragraph	Plaintiffs are aware that the statements made by Defendants identified within this Paragraph are either true or were true at the time they were made.
361	322	Entire paragraph	Plaintiffs are aware that the statements made by Defendants identified within this Paragraph are either true or were true at the time they were made.
362	323	Entire paragraph	Plaintiffs are aware that the statements made by Defendants identified within this Paragraph are either true or were true at the time they were made.
367	328	Entire paragraph	Plaintiffs are aware that the statements made by Defendants identified within this Paragraph are either true or were true at the time they were made.
368	329	Entire paragraph	Plaintiffs are aware that the statements made by Defendants identified within this Paragraph

			are either true or were true at the time they were made.
369	330	Entire paragraph	Plaintiffs are aware that the statements made by Defendants identified within this Paragraph are either true or were true at the time they were made.