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 10 Xcentric Ventures, LLC and
 Edward Magedson

11
 12
 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.**
 21

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

**SECOND 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 have filed with the Court an Ex Parte Application for Temporary Restraining Order
 27 (Document 101)(the "Application") and supporting declarations which (1) have been
 28 presented for an improper purpose; (2) contain claims and legal contentions that are not

MOTION FOR SANCTIONS

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1 warranted by existing law; and (3) contain factual allegations which have no evidentiary
2 support, each of which is a direct violation of Rule 11(b). Defendants have presented this
3 Motion to Plaintiffs and requested that they withdraw the Application entirely or correct
4 each of the deficiencies identified within this Motion. However, twenty-one days have
5 passed and Plaintiffs have elected to not correct these problems. As a result, sanctions are
6 warranted pursuant to Rule 11(c)(2). This motion is made following a 21-day period after
7 service on Plaintiffs, which Defendants believes also complies with L.R. 7-3.

8 9 **I. THEORY UNDERLYING RULE 11**

10 “Filing a complaint in federal court is no trifling undertaking. An attorney's
11 signature on a complaint is tantamount to a warranty that the complaint is well grounded
12 in fact” *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir.2002). “[T]he central
13 purpose of Rule 11 is to deter baseless filings in district court and thus, consistent with the
14 Rules Enabling Act’s grant of authority, streamline the administration and procedure of
15 the federal courts.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393, 110 S. Ct.
16 2447, 2454, 110 L. Ed. 2d 359 (1990) (citing Advisory Committee Note on Rule 11, 28
17 U.S.C.App., p. 576). “Rule 11 imposes a duty on attorneys to certify that they have
18 conducted a reasonable inquiry and have determined that any papers filed with the court
19 are well grounded in fact, legally tenable, and ‘not interposed for any improper purpose.’”
20 *Id.*

21 As the Notes of the Advisory Committee on Rules point out, the language of Rule
22 11 “stresses the need for some prefiling inquiry into both the facts and the law to satisfy
23 the affirmative duty imposed by the rule. The standard is one of reasonableness under the
24 circumstances.... This standard is more stringent than the original good-faith formula and
25 thus it is expected that a greater range of circumstances will trigger its violation.”
26 Fed.R.Civ.P. 11, Notes of Advisory Committee, 28 U.S.C.A. Rules of Civil Procedure
27 (Supp.1988); *see Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1508 (9th Cir.1987)

1 (counsel has affirmative duty of investigation into law and fact before filing). Under Rule
2 11(b), an attorney has a “nondelegable responsibility” to “personally ... validate the truth
3 and legal reasonableness of the papers filed,” *Pavelic & LeFlore v. Marvel Entm't Group*,
4 493 U.S. 120, 126, 110 S.Ct. 456, 107 L.Ed.2d 438 (1989), and “to conduct a reasonable
5 factual investigation,” *Christian*, 286 F.3d at 1127. To determine whether the inquiry
6 actually conducted was adequate, the court applies a standard of “objective reasonableness
7 under the circumstances.” *Hudson v. Moore Business Forms, Inc.*, 836 F.2d 1156, 1159
8 (9th Cir.1987).

9
10 **II. PLAINTIFFS HAVE VIOLATED RULE 11(b)(1) and (2)**

11 Rule 11(b)(1) provides that by filing a pleading with the Court, the attorney
12 certifies that it is not being presented for any improper purpose and that it is warranted by
13 existing law or nonfrivolous argument for extension of the law. Plaintiffs request in the
14 Application that the Court enter a TRO ordering that Defendants “insert the meta tag
15 <meta name-“Robots” content=”noindex,nofollow”> into the HTML for the 5 web pages
16 concerning plaintiffs pending the outcome of this litigation” violates this provision of
17 Rule 11.

18 As admitted by Plaintiffs’ own expert, (Document 102), a “no index, no follow”
19 code is a code which tells the search engines to not index the website. In other words, it
20 prevents the website from showing up on search engine results.

21 Plaintiffs, therefore, have requested that the Court violate the First Amendment and
22 suppress the postings on Ripoff Report about Plaintiffs so that the public cannot find the
23 postings. This is the equivalent of an order that the postings be removed from the
24 Internet. Plaintiffs have made this request to chill free speech without even an attempt at
25 showing a strong likelihood of success on the merits, irreparable injury, balance of
26 hardships, or that public policy favors the injunction. *See generally Earth Island Institute*

1 v. *U.S. Forest Service*, 442 F.3d 1147, 1158 (9th Cir. 2006); *Johnson Controls v. Phoenix*
2 *Controls Systems*, 886 F.2d 1173, 1174 (9th Cir. 1989).

3 In addition to the improper purpose of suppressing negative content about
4 Plaintiffs' (without any showing that it is false), Plaintiffs additional improper purpose
5 appears to be to waste Xcentric's money in the hopes that it will give in and remove or
6 edit the posting about Plaintiff regardless of the merits of the claim. Plaintiffs filed an 84
7 page, more than 300 paragraph Amended Complaint on July 27, 2010, and then, knowing
8 that the Motion to Dismiss that complaint is due by August 6, 2010, filed this *Ex Parte*
9 application on August 3, 2010. This is despite the fact that Plaintiff claims that ESI has
10 been an issue for months.

11
12 **III. PLAINTIFFS HAVE VIOLATED RULE 11(b)(1)**

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

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

18 Fed.R.Civ.P. Rule 11(b)(3). Much like the Amended Complaint, the Application is rife
19 with factual contentions that are wholly lacking in any evidentiary support. Moreover, as
20 to most of these false allegations, Plaintiffs and their counsel had actual knowledge that
21 the allegations they are presenting are false. Even if Plaintiffs only "chose to state as a
22 fact what was at the best a guess and a hope, [they] engaged in misrepresentation." *In re*
23 *Curl*, 803 F.2d 1004, 1006 (9th Cir.1986), *overruled on other grounds, Partington v.*
24 *Gedan*, 923 F.2d 686 (9th Cir.1991) (en banc).

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Pg	False Allegation by Plaintiffs	Why Allegation Lacks Evidentiary Support
3	That Ripoff Report solicits rebuttals through false statements.	Every statement regarding rebuttals that Plaintiffs allege is false is accurate. Plaintiffs know that Ripoff Report allows free rebuttals to be filed because Plaintiffs filed rebuttals. I
17	The Ripoff Report Enterprise makes false statements that induce subjects to submit rebuttals (which acts to their detriment by refreshing the negative, more prominent, Reports for search engines).	Plaintiffs are aware that there is no evidence to substantiate the claim that filing a rebuttal increases the relevancy of a report with a search engine. 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.
3	Plaintiffs have been damaged “including loss of property interests in Plaintiffs’ formerly robust business in brokering real estate transactions, payments to reputation repair consultants, and otherwise.”	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 set forth in detail in the Motion to Dismiss, there is no causal relationship between these alleged damages and the alleged conduct.
14	Defendants it appears have deleted an entire category of Ripoff Reports	There has never been a category called “suspicious activities.” Plaintiffs failed to investigate this baseless allegation and if they had done so, they would have confirmed that no such category ever existed. Plaintiffs have demonstrated a familiarity with webarchive.org which they could have used to investigate this allegation before making it.

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3	Defendants have indicated that they have and will continue to permit overwriting of ESI by their SQL servers;	Defendants have made no such statement
3	the requested ESI preservation measures are to preserve the status quo	As set forth above, a “do not follow” code clearly would not preserve status quo.
4 (Borodkin Declaration)	At the April 27, 2010 discovery plan conference, the parties discussed ESI and electronic evidence preservation... Ms. Speth insisted there was no way to preserve this type of information...	This is a blatant misrepresentation of the conversation. It should be noted that undersigned requested permission to record this conversation and Ms. Borodkin refused to consent.
5 (Borodkin Declaration)	Defendants’ counsel, on May 10, 2010, admitted that Defendants do not preserve all ESI and feigned ignorance as to what ESI needed to be preserved:	This is a misstatement of the May 10, 2010 communication.

Each of the above statements are false and unsupported by any evidence, either existing or having potential to exist. The Ninth Circuit has explained why misrepresentation by attorneys to a court cannot be taken lightly:

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

1 above demonstrates that the factual contentions they have made lack evidentiary support
2 or even the potential to discover such evidentiary support, in violation of Rule 11(b)(3).

3
4 **IV. SANCTIONS ARE WARRANTED**

5 “An attorney who signs the paper without such a substantiated belief ‘**shall**’ be
6 penalized by ‘an appropriate sanction.’” *Hartmax*, 496 U.S. at 393 (emphasis added).
7 The Court in *Hartmax* succinctly explained why Plaintiffs and their counsel must be
8 sanctioned: “Baseless filing puts the machinery of justice in motion, burdening courts and
9 individuals alike with needless expense and delay.” *Id.* at 398. As established herein,
10 Plaintiffs are in violation of three separate sections of Rule 11. Because each violation
11 subjects Plaintiffs – and their counsel – to sanctions, Defendants request that the Court
12 order Plaintiffs to pay all of Defendants’ attorney fees incurred in defending this frivolous
13 lawsuit and such other relief as the Court deems appropriate.

14
15 **V. CONCLUSION**

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

19 DATED this 30th day of September, 2010.

20
21 **JABURG & WILK, P.C.**

22
23 /s/Maria Crimi Speth
24 Maria Crimi Speth
25 Attorneys for Defendants
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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

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