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6 Attorneys for Plaintiffs,
 7 Asia Economic Institute LLC,
 8 Raymond Mobrez, and
 Iliana Llaneras

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 ASIA ECONOMIC INSTITUTE, a
 12 California LLC; RAYMOND
 13 MOBREZ an individual; and ILIANA
 LLANERAS, an individual,

14 Plaintiffs,

15 vs.

16 XCENTRIC VENTURES, LLC, an
 17 Arizona LLC, d/b/a as BADBUSINESS
 BUREAU and/or
 18 BADBUSINESSBUREAU.COM
 and/or RIP OFF REPORT and/or
 19 RIPOFFREPORT.COM; BAD
 BUSINESS BUREAU, LLC, organized
 and existing under the laws of St.
 20 Kitts/Nevis, West Indies; EDWARD
 21 MAGEDSON an individual, and DOES
 1 through 100, inclusive,

22 Defendants.
 23)
 24)
 25)
 26)
 27)
 28)

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

The Honorable Stephen V. Wilson

**PLAINTIFFS' STATEMENT OF
 GENUINE ISSUES IN
 OPPOSITION TO MOTION FOR
 SUMMARY JUDGMENT**

Date: November 1, 2010

Time: 1:30 p.m.

Courtroom: 6

Pursuant to Central District of California Local Civil Rule 56-2, Plaintiffs Asia Economic Institute, LLC, Raymond Mobrez, and Iliana Llaneras (“Plaintiffs”) respectfully submit the following Statement of Genuine Issues in Opposition to Defendants’ Motion for Summary Judgment [DN-145].

Facts 1 through 34 correspond to the facts and supporting evidence presented in the Statement of Facts in Support of Defendants’ Motion for Summary Judgment [DN-146]. These facts are followed by additional material facts and supporting evidence showing a genuine issue.

| DEFENDANTS’ ALLEGED UNCONTESTED FACTS | RESPONSE TO OPPOSITION |
|---|---|
| 1. Defendant XCENTRIC VENTURES, LLC (“Xcentric”) operates the website www.RipoffReport.com . | Disputed. Defendant Magedson also operates the website www.Ripoffreport.com (the “Website”) in addition to Xcentric. See Declaration of Lisa J. Borodkin (“Borodkin Dec.”) [DN-163] at ¶2, Ex. 1 (June 2, 2010 30(b)(6) Deposition of Xcentric) at 143:15-19; Borodkin Dec. at ¶3, Ex. 2 (June 8, 2010 Deposition of Edward Magedson) at 56:19-25; 63:9-16; 68:23-25. |
| 2. Defendant EDWARD MAGEDSON (“Mr. Magedson”) is the manager of Xcentric and the founder and “ED”itor of the Ripoff Report site which he started in 1998. | Undisputed. |
| 3. Plaintiffs RAYMOND MOBREZ (“Mr. Mobrez”) and his wife ILIANA LLANERAS (“Ms. Llaneras”) are the principals of ASIA ECONOMIC INSTITUTE, LLC (“AEI”). | Undisputed; however they also engage in business as individuals outside of AEI. See Declaration of Raymond Mobrez (“Mobrez Dec.”) [DN-160] at ¶¶3, 4; Declaration of Iliana Llaneras (“Llaneras Dec.”) [DN-161] at ¶¶3-5. |
| 4. As of September 2010, six complaints | Disputed. The reports also concern |

(called “reports”) have been posted about AEI on the Ripoff Report site. All of these reports and any comments thereto are attached as Exhibit 22 to the First Amended Complaint. FAC Ex. 22

Plaintiffs Raymond Mobrez and Iliana Llaneras, and there has been a Report about witness Kenton J. Hutcherson that concerned Plaintiffs in this case. On August 6, 2010, Defendants Xcentric and/or Magedson personally posted Report #629379 about Kenton J. Hutcherson, a witness in this case, stating that Mr. Hutcherson was “bragging about a declaration he submitted in a lawsuit against Ripoff Report pending in federal court in California,” referring to this action. See August 23, 2010 Declaration of Daniel J. Blackert [DN-125] (“8/23/10 Blackert Dec.”) at ¶22 & Ex. 5; August 16, 2010 Declaration of Lisa J. Borodkin [DN-121] (“8/16/10 Borodkin Dec.”) at ¶11 & Ex. 5.

5. All of these reports were created by third parties, not by Defendants.

Disputed. Defendants created Report #629379 in its entirety. 8/23/10 Blackert Dec. ¶22 & Ex. 5; 8/16/10 Borodkin Dec. ¶11 & Ex. 5. Defendants create portions of the title and all of the HTML computer code that generates the meta tags, title tags and that influences Google Search Results for the Reports. See Request for Judicial Notice (“RJN”), Ex. 4 (October 4, 2010 Declaration of Justin Crossman) [DN-159-4] (10/4/10 “Crossman Dec”) at ¶¶5-6. Defendants create links that are embedded into the body of reports. See July 27, 2010 Declaration of Joe Reed [DN-96-25] (“Reed Dec”) at ¶¶14-15. Defendants create the portions of the titles of reports that said “Ripoff Report” and then later replaced with “Review.” See

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| <p>1 2 3 4 5 6 7 8 9 10</p> | <p>July 30, 2010 Declaration of Joe Reed [DN-102] (“Reed Dec. 2”) at ¶12. Defendants admit that “the title tag portion of the [Defendants’] code was rewritten and implemented on April 26, 2010 which resulted in a change in the way the title displays.” See August 4, 2010 Declaration of Justin Crossman [DN-109] (“8/4/10 Crossman Dec.”) at ¶¶13-14. Defendants have not disclosed the identity of the authors. Plaintiffs had not had an opportunity to conduct discovery. Discovery was bifurcated and stayed.</p> |
| <p>11 12 13 14</p> <p>6. Before it appeared on the site, each report about AEI was reviewed by one of Xcentric’s staff of content monitors.</p> | <p>Disputed. Defendants have not disclosed the identity of the authors. Plaintiffs had not had an opportunity to conduct discovery. Discovery was bifurcated and stayed.</p> |
| <p>15 16 17 18 19 20 21 22 23 24</p> <p>7. Xcentric’s servers automatically record the name of each content monitor who reviews a post made to the site.</p> | <p>Disputed. Defendants have not disclosed the identity of the authors. Plaintiffs had not had an opportunity to conduct discovery. Discovery was bifurcated and stayed. The data stored in Xcentric’s servers is unreliable. Defendants have admitted that “prior to July 4, 2009, if a report or rebuttal was modified in any way, the modification would overwrite the existing data.” See August 4, 2010 Declaration of Justin Crossman [DN-109] (“8/4/10 Crossman Dec.”) at ¶6. that they are unable to confirm that they have a complete record of all</p> |
| <p>25 26 27 28</p> <p>8. Each content monitor who reviewed the posts about AEI has testified that no changes, additions, or deletions were made to any of these reports, nor were any changes, additions or deletions</p> | <p>Disputed. There have been changes to the way the titles of reports are displayed since the inception of this action in January 2010. Defendants admit that “the title tag portion of the</p> |

made to the comments/rebuttals.

[Defendants'] code was rewritten and implemented on April 26, 2010 which resulted in a change in the way the title displays." See August 4, 2010 Declaration of Justin Crossman [DN-109] ("8/4/10 Crossman Dec.") at ¶¶13-14. Defendants have also inserted links into the text of reports, comments and rebuttals that were not submitted by the authors. See July 27, 2010 Declaration of Joe Reed [DN-96-25] ("Reed Dec") at ¶¶14-15.

9. The text of each report and each comment/rebuttal originated entirely with the third party author and was not created or altered by either Xcentric or Magedson.

Disputed. Defendants created Report #629379. 8/23/10 Blackert Dec. ¶22 & Ex. 5; 8/16/10 Borodkin Dec. ¶11 & Ex. 5. Defendants create the HTML computer code that generates the meta tags, title tags and that influences Google Search Results for the Reports. See Request for Judicial Notice [DN-159-4] ("RJN"), Ex. 4 (Declaration of Justin Crossman "Crossman Dec")) at ¶¶5-6. Defendants embed links and redact links in the encoding within the body of Reports that affects their behavior in Google Search Results. See Declaration of Joe Reed ("Reed Dec.") a [DN-96-25] at ¶¶14-16.

10. When an author submits a report to the Ripoff Report site, they are presented with a series of blank forms that help them to construct their report.

Disputed. The forms are not "blank." The forms contain detailed instructions on how defendants want the forms to be completed. Affidavit of Ben Smith [DN-148] ("Smith Aff") at ¶¶5-10 & Exs. A-E. The forms in Exhibit A tell the contributor to include "AKA"s and multiple names for companies and encourage the contributor to use multiple instances of the subject's name in the title. Smith Aff. Ex. A.

1 11. The forms ask the author for basic
2 information such as the name of the
3 person or company they want to write
4 about, and the address and phone
5 number of the company at issue.

Disputed. The information requested
by the forms is not “basic.” The
instructions are heavily biased. The
forms strongly recommend that the
contributor include the “Phone, FAX,
and e-mail address of Company or
Individual you are reporting” urging
that “The more information you
provide, the better.” See Smith Aff.
Ex. A. However, when it comes to the
contributor, the forms tell the
contributor – twice - “DO NOT sign
your name, or include any e-mail
addresses in the report” and “Enter
YOUR first name ONLY.” See Smith
Aff. Ex. C.

13 12. During this process, the author is
14 asked to prepare a title for their report
15 by entering data into four boxes.
16 The first box asks for the name of the
17 company being reported, the second box
18 asks for “descriptive words”
19 explaining what the report is about, the
20 third box asks for the city, and the
21 fourth box asks for the state.

Disputed. The contributor does not
prepare the title for the report.
Defendants determine what the title is,
not the contributor. The Defendants
combine certain elements furnished by
the contributor with a code written by
the Defendants to create the title. See
Crossman Dec. [DN-159-4] at ¶¶5-6.
The title of reports has changed during
the period covered by this action so
that, for example, Defendants changed
the top line of Report #417493 from
“Ripoff Report: Asia Economic
Institute, AEI, WorldEcon: Raymond .
. . .” as of January 1, 2010 to “Asia
Economic Institute, AEI, WorldEcon
Review | Rip-off Report #417493” as
of July 30, 2010. See 7/30/10 Reed
Dec. ¶15 & Ex. D [DN-102-4]

26 13. During this process, the site explains
27 “The title of your report is divided into
28 four boxes below but will appear as one
line after your report is submitted.”

Disputed. Defendants have not
disclosed the identity of the authors.
Plaintiffs had not had an opportunity to
conduct discovery. Discovery was

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| | |
| 1 | bifurcated and stayed. |
| 2 3 4 5 | Disputed. Defendants have not disclosed the identity of the authors. Plaintiffs had not had an opportunity to conduct discovery. Discovery was bifurcated and stayed. |
| 6 7 8 9 10 11 12 | Disputed. The box is not blank. The forms include highly suggestive, biased instructions to create a negative report, to avoid providing the author’s contact information. The forms tell the contributor – twice - “DO NOT sign your name, or include any e-mail addresses in the report” and “Enter YOUR first name ONLY.” See Smith Aff. Ex. C. |
| 13 14 15 16 17 18 | Disputed. The forms include highly suggestive, biased instructions to create a negative report, to avoid providing the author’s contact information. The forms tell the contributor – twice - “DO NOT sign your name, or include any e-mail addresses in the report” and “Enter YOUR first name ONLY.” See Smith Aff. Ex. C. |
| 19 20 21 22 23 24 25 26 27 28 | Disputed. The Smith Aff. ¶10 & Ex. E do not contain the full Terms of Service and do not show the portions quoted from regarding defamatory material. Plaintiffs had not had an opportunity to conduct discovery. Discovery was bifurcated and stayed. Irrelevant. Defendants do not enforce their terms of service and will not remove posts even if they violate the terms of service. |

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| <p>1 another party's rights (including, but not 2 limited to, intellectual property 3 rights, and rights of privacy and 4 publicity).”</p> | |
| <p>5 18. When a report is finally submitted to 6 the site, Xcentric’s servers automatically 7 combine the unique text supplied by the 8 author with various HTML code 9 that is generic to every page on the site.</p> | <p>Disputed. The HTML code is not generic to every page on the site. For members of the Corporate Advocacy Program and subjects that have entered into private agreements with defendants, Defendants have offered to and will manually insert 250 to 350 words chosen by the subject into the title meta tag of the HTML for the Report in a way that changes the Google search results. See Reed Dec. at ¶¶16-23, Exs. C & D; 8/16/10 Borodkin Dec. ¶3 & Ex. 1; ¶5, Ex. 3. Defendants admit that they have redacted names and identities of subjects from reports, which necessarily requires manually changing the HTML code for certain Reports. See July 14, 2010 Declaration of David Gingras and Letter [DN-125-6, DN- 125-7] [inadvertently filed in reverse order]. In particular, Defendants have expressly agreed that “Xcentric will insert into the body of Report number 311070, Report number 254798, and report number 261756 up to 250 words of content provided by QED.” See FAC ¶175 and Ex. 8.</p> |
| <p>10 19. During this process and using 11 keywords supplied 12 by the author (such as the name of the 13 company being 14 reported), Xcentric’s servers 15 automatically create “meta 16 tags” which are used by search engines</p> | <p>Disputed. For members of the Corporate Advocacy Program and subjects that have entered into private agreements with defendants, Defendants will manually insert 250 to 350 words chosen by the subject into the title meta tag of the HTML for the</p> |

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| <p>1 to index the 2 contents of the specific page at issue.</p> | <p>Report in a way that changes the Google search results. See Reed Dec. at ¶¶16-23, Exs. C & D; 8/16/10 Borodkin Dec. ¶3 & Ex. 1; ¶5, Ex. 3. In particular, Defendants have expressly agreed that “Xcentric will insert into the body of Report number 311070, Report number 254798, and report number 261756 up to 250 words of content provided by QED.” See FAC ¶175 and Ex. 8.</p> |
| <p>9 20. The meta tags for each page are not 10 normally visible to viewers, but they can 11 be seen by individuals with 12 basic technical knowledge who choose 13 to view the actual HTML code for a 14 report’s webpage.</p> | <p>Disputed. Title and description meta tags are displayed on search engine results such as Google and are known to be highly influential in determining the content of Google search results. Google’s “Search Engine Optimization Starter Guide” states “Description meta tags are important because Google might use them as snippets for you pages.” See Reed Dec. ¶¶16-19 & Ex. B at 5 [DN-96-25]</p> |
| <p>17 21. The term “Ripoff Report” is a 18 federally registered trademark, 19 Registration #2958949, used to identify 20 the website www.RipoffReport.com.</p> | <p>Disputed. A search of the Trademark Electronic Search System (“TESS”) at uspto.gov did not return a registration for a trademark in “Ripoff Report.” It returned a registration for a typed drawing mark in “Rip-off Report” registered to Defendant badbusinessbureau.com, LLC LTD, a Limited Liability Company in St. Christ-Nevis.</p> |
| <p>24 22. Every report page on the Ripoff 25 Report site includes meta tags based on 26 unique keywords supplied from the 27 author such as the name of the company 28 involved and other words used by the author to create the title for their report.</p> | <p>Disputed. In certain cases, the meta tags are not based on keywords supplied by the author but are altered to being with 250 words of content chosen by the subject of the report pursuant to membership in the Corporate Advocacy Program, private</p> |

1 agreement in settlement, or otherwise.
 2 See Reed Dec. at ¶¶16-23, Exs. C & D;
 3 8/16/10 Borodkin Dec. ¶3 & Ex. 1; ¶5,
 4 Ex. 3. In particular, Defendants have
 5 expressly agreed that “Xcentric will
 6 insert into the body of Report number
 7 311070, Report number 254798, and
 8 report number 261756 up to 250 words
 9 of content provided by QED.” See
 10 FAC ¶175 and Ex. 8. The addition of
 11 the 250 words has the effect of pushing
 12 the negative keywords so far down in
 the HTML coding as to disappear and
 be irrelevant to search engines. See
 Reed Dec. ¶¶16-23 & Exs. C-D [DN-
 96-25]

13 23. Xcentric’s servers also automatically
 14 include three different keywords—rip-
 15 off, ripoff, rip off—into the meta tags of
 every page on the site.

16 Disputed. Defendants manually alter
 17 the meta tags of some of the pages on
 18 the Website, for members in the
 19 Corporate Advocacy Program, those
 20 who have reached private settlements
 21 with Defendants and otherwise. See
 22 Reed Dec. [DN-96-25] at ¶¶16-23, Exs.
 C & D; 8/16/10 Borodkin Dec. ¶3 &
 Ex. 1; ¶5, Ex. 3. In particular,
 Defendants have expressly agreed that
 “Xcentric will insert into the body of
 Report number 311070, Report number
 254798, and report number 261756 up
 to 250 words of content provided by
 QED.” See FAC ¶175 and Ex. 8.

23 24. Again, these words are NOT visible
 24 in the title or body of any particular
 25 report; they are simply indexing
 26 references used by search engines in
 27 order to accurately reflect the source of
 28 the indexed page.

Disputed. The meta tags and key words
 are highly visible and influential in
 Google search results. See Google’s
 “Search Engine Optimization Starter
 Guide,” which states “Description
 meta tags are important because
 Google might use them as snippets for
 you pages.” See Reed Dec. ¶¶16-19 &

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| | Ex. B at 5 [DN-96-25] |
| <p>25. If the keywords “rip-off, ripoff, rip off” were removed from the meta tags for each report page, the page would appear physically unchanged to anyone viewing it.</p> | <p>Disputed. If Defendants removed the keywords “rip-off, ripoff, rip off” from the meta tags for each report page, the page might appear differently on Google search engine results because keyword redundancy in meta tags URLs, domain names and directory structures influence the text that appears as snippets in Google search results. See Reed Dec. ¶¶13-19 and Ex. B at 9-10 (“Making use of the ‘description’ meta tag”) [DN-96-25]; 7/30/10 Reed Dec. at ¶¶12-14 [DN-102].</p> |
| <p>26. Mr. Mobrez admitted in his deposition that he had no evidence Defendants created or altered any of the postings about AEI.</p> | <p>Disputed and irrelevant. Defendants altered the titles of the postings about AEI, added links in the body of the postings and in the comments, altered the directory structure of the URL to optimize search results for the reports about AEI and otherwise directly engaged in conduct harmful to Plaintiffs Mobrez and and Llaneras as well as AEI. See Reed Dec. ¶¶ 10-19. [DN-96-25]; 7/30/10 Reed Dec. ¶¶14-15 & Exs. C-D [DN-102, DN-102-3, DN-102-4]. Discovery has not yet begun on the claims in this case. Discovery was stayed.</p> |
| <p>27. The First Amended Complaint alleges that Defendants committed fraud by representing to Plaintiffs that “filing a rebuttal has only a positive effect . . .” but no such representation was ever made.</p> | <p>Disputed. Defendant Magedson sent Plaintiff Mobrez an email on May 5, 2010 stating, <i>inter alia</i>, “Best to respond to the report . . . Just file a rebuttal” and “file a rebuttal . . . We know it works.” See May 3, 2010 Declaration of Raymond Mobrez at ¶11 & Ex. G. Defendants cannot point to any representations from Defendants</p> |

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| | where a negative effect of posting rebuttals was disclosed. |
| 28. At no time did Defendants ever inform Plaintiffs that filing a rebuttal has only a positive effect. | Disputed. Defendant Magedson sent Plaintiff Mobrez an email on May 5, 2010 stating, <i>inter alia</i> , “Best to respond to the report . . . Just file a rebuttal” and “file a rebuttal . . . We know it works.” See May 3, 2010 Declaration of Raymond Mobrez at ¶11 & Ex. G. Defendants cannot point to any representations from Defendants where a negative effect of posting rebuttals was disclosed. |
| 29. When contacted by Plaintiff Raymond Mobrez in May 2009, Defendant Ed Magedson sent Mr. Mobrez a lengthy “form email” response. | Disputed as to whether the email is a standard “form email.” Defendant Magedson has testified inconsistently that there is one of two standard e-mails that are sent. See Borodkin Dec. at Ex. 2 [DN-162-2] at 201:13-15. |
| 30. Mr. Magedson honestly believes that filing a rebuttal is the best way of responding to a complaint. | Disputed. Plaintiffs contend that Magedson’s belief is self-interested, as filing a rebuttal refreshes content on the Website, raises the prominence of the Report on Google search results and generally benefits defendants more than it benefits the subjects of the Reports. See Declaration of Anthony Howard [DN-96-24] at ¶¶10-16 & Ex. A. Plaintiffs contend that Magedson is likely aware that rebuttals improve Google search rankings for the website, as Defendants engage in several other search engine optimization practices in the Google Search Engine Optimization Starter Guide. See Reed Dec. [DN-96-25] at ¶¶9-19 and Ex. B. |
| 31. Mr. Magedson has no control over how Google or any other search engine decides to rank content, and he | Disputed. Plaintiffs contend that it is well known in the search engine community that a rebuttal refreshes |

1 does not know and does not believe that
2 filing a rebuttal always increases the
3 prominence of a report in search
4 engines such as Google.

content on the Website, raises the
prominence of the Report on Google
search results and generally benefits
the web prominence of the Reports.
See Declaration of Anthony Howard
("Howard Dec") [DN-96-24] at ¶¶10-
16 & Ex. A. Plaintiffs contend that
Magedson is likely aware that rebuttals
improve Google search rankings for
the website, as Defendants engage in
several other search engine
optimization practices in the Google
Search Engine Optimization Starter
Guide. See Reed Dec. [DN-96-25] at
¶¶9-19 and Ex. B. Plaintiffs also
contend that Magedson and Xcentric
have shown favorable treatment to
Google and its founders by disclaiming
reports about Google, redacting or
changing their names from reports, see
FAC [DN-100] at ¶¶121-137; Borodkin
Dec. Ex. 2 [DN-162-2] at 40:25-42:20,
197:22-198:19; and that such actions
have been noted by members of the
search community as likely attempts by
Defendants to prevent being punished
by Google's search ranking algorithm.
See Howard Dec. at ¶¶8-9 & Ex. A.

21 32. Mr. Magedson is aware of reports
22 containing rebuttals which are not
23 prominently located in search
engine results such as Google.

Disputed. Irrelevant. Plaintiffs
attempted to complete the deposition of
Defendant Magedson prior to
discovery being suspended.

24 33. Neither Xcentric nor Mr. Magedson
25 had any knowledge of Plaintiffs'
26 relationships with their employees at the
time each report was posted.

Disputed. Report # 502429 itself states
that "I . . . googled his name, and found
all these bad reports" and "as a result of
these reports I am going to blow him
off." FAC at Ex. 22 at 1 [DN-96-22];
Report # 571232 states "I googled him
immediately . . . and found this site"

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and “I should have googled him sooner and saved myself the trip over there” and otherwise describing that potential employees or contractors were dissuaded from working with Plaintiffs as a result of the Reports on the Website retrieved by Google searches of Plaintiffs. See FAC at Ex. 22 at 9. Defendants were aware of the employment relationships between Plaintiffs and others because Defendants admit that their content monitors review the contents of Reports before they are posted. See Smith Aff. [DN-148]¶ 18; Declaration of Amy Thompson [DN-147]; Declaration of Kim Jordan [DN-151]; Declaration of Lynda Craven [DN-152].

34. At his deposition, Mr. Mobrez was unable to identify a single employee of AEI who quit as a result of any actions of Xcentric or Mr. Magedson.

Disputed. Mobrez was willing and able to complete his earlier answers at his deposition but Defendants’ attorney at several points in the deposition cut short his answers and refused to permit Mobrez to supplement his earlier answers. Defendants have not put the entirety of Mobeze’ deposition transcript into the record. Irrelevant. Prospective and past employees claim that the Reports influenced their decision to “blow off” employment with Plaintiffs Mobrez and AEI or not to pursue work with Plaintiffs. Report # 502429 itself states that “I . . . googled his name, and found all these bad reports” and “as a result of these reports I am going to blow him off.” FAC at Ex. 22 at 1 [DN-96-22]; Report # 571232 states “I googled him

immediately . . . and found this site” and “I should have googled him sooner and saved myself the trip over there” and otherwise describing that potential employees or contractors were dissuaded from working with Plaintiffs as a result of the Reports on the Website retrieved by Google searches of Plaintiffs. See FAC at Ex. 22 at 9.

Plaintiffs also contend that the following other material facts are in dispute:

| MATERIAL FACTS | EVIDENCE |
|---|---|
| 35. Report #502429 on the Website and the comments thereto are about individual plaintiffs Mobrez and Llaneras as well as plaintiff AEI. | FAC Ex. 22 at 1-2 [DN-96-22] |
| 36. Report #457433 on the Website and the comments thereto are about individual plaintiffs Mobrez and Llaneras as well as plaintiff AEI. | FAC Ex. 22 at 3-5 [DN-96-22] |
| 37. Report #423987 on the Website is primarily about individual plaintiffs Mobrez and Llaneras and only secondarily about plaintiff AEI. | FAC Ex. 22 at 6-8 [DN-96-22] |
| 38. Report #571232 on the Website is about individual plaintiff Mobrez as well as plaintiff AEI. | FAC Ex. 22 at 9-10 [DN-96-22] |
| 39. Report #564331 on the Website is about plaintiff Mobrez primarily and about plaintiff AEI secondarily. | FAC Ex. 22 at 11-12 [DN-96-22] |
| 40. Report #417493 on the Website is about plaintiffs Mobrez and Llaneras as well as plaintiff AEI. | FAC Ex. 22 at 13-17 [DN-96-22] |
| 41. AEI was not the only victim of Defendants’ conduct. Mobrez and Llaneras also suffered harm in their individual businesses as licensed commercial real estate brokers that coincided with the appearance of Reports on Defendants’ Website about them. | Mobrez Declaration [DN-160] at ¶¶3-15; Llaneras Declaration [DN-161] at ¶¶3-11. |
| 42. According to Charlie Yan, groups and entities that were previously interested in attending conferences organized by Mobrez lost interest after they became aware of derogatory statements about Plaintiffs on the Website Ripoffreport.com. | Declaration of Charlie Yan at ¶¶2-4 [DN-59]. |

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| 1 | 43. According to Israel Rodriguez, he planned to | Declaration of Israel |
| 2 | introduce Mobrez to the Board of Mission College but | Rodriguez at ¶¶3-5 |
| 3 | declined to do so after learning of the Reports about | [DN-60]. |
| 4 | 44. According to Justin Lin, he does not want to work | Declaration of Justin |
| 5 | with Mobrez on commercial real estate transactions | Lin [DN-62] at ¶¶3-6. |
| 6 | because he is afraid his clients will not want to work with | |
| 7 | him after they see Reports about Mobrez at the top of | |
| 8 | 45. Defendants do not disclose to the general public that | See the “Second |
| 9 | membership in the Corporate Advocacy Program can | Questionnaire”, |
| 10 | mean changing negative Google search results to positive | 8/16/10 Borodkin Dec. |
| 11 | results. | [DN-121, DN-121-1] |
| 12 | 46. This action is not treating Defendants as the speakers | ¶ 3, & Ex. 1 |
| 13 | of third party content. This action concerns Defendants’ | See FAC ¶¶16-21, 69- |
| 14 | electronic communications through Defendants’ website, | 136, 138-169, 196- |
| 15 | ripoffreport.com (the “Website”), undisclosed business | 246. |
| 16 | agenda in soliciting fresh content for their Website and | |
| 17 | Defendants’ conduct in selectively altering the HTML for | |
| 18 | certain web pages of the Website affecting Plaintiffs. | |
| 19 | 47. The gravamen of Plaintiffs’ claims is Defendants’ | |
| 20 | conduct in transmitting 5 web pages with associated | |
| 21 | HTML code concerning Plaintiffs (out of a database of | |
| 22 | over 627,870 web pages containing “Rip-off Reports”) to | |
| 23 | Internet search engines. | |
| 24 | 48. Defendants selectively encode the HTML for the web | See FAC ¶¶10, 19, 21- |
| 25 | pages concerning Plaintiffs and others to cause “positive” | 22, 30, 33, 35, 38, 69- |
| 26 | or “negative” snippets of text to appear in search results | 99, 106-120, 138-179, |
| 27 | yielded by queries on Google and otherwise. | 247-253. |
| 28 | 49. Defendants have strategically designed the HTML | See Reed Dec. [DN- |
| | encoding and server directory structure for the web pages | 96-25] at ¶¶5-19 & |
| | for the majority of Rip-off Reports, including those about | Ex. C. |
| | Plaintiffs, so that negative statements in the text submitted | |
| | by users appear in the Google search results for those | |
| | subjects. | |
| | 50. By contrast, for certain subjects of Rip-off Reports | See Reed Dec. [DN- |
| | who have settled lawsuits with Defendants or paid | 96-25] at ¶¶20-23 & |
| | consideration to Defendants pursuant to a program called | Ex. D; See Defendants |

1 the Corporate Advocacy Program “CAP”), Defendants
2 insert blocks of positive statements of 250 to 350 words
3 submitted by the settling party or paying CAP members
4 into a strategic meta tag in the HTML encoding for the
5 web pages concerning them, in a manner that is known to
6 “push” the negative content in the meta tag so far down in
7 the HMTL that it become insignificant to search engines.

manually alter the
meta tags of some of
the pages on the
Website, for members
in the Corporate
Advocacy Program,
those who have
reached private
settlements with
Defendants and
otherwise. See Reed
Dec. [DN-96-25] at
¶¶16-23, Exs. C & D;
8/16/10 Borodkin Dec.
¶3 & Ex. 1; ¶5, Ex. 3.
In particular,
Defendants have
expressly agreed that
“Xcentric will insert
into the body of
Report number
311070, Report
number 254798, and
report number 261756
up to 250 words of
content provided by
QED.” See FAC ¶175
and Ex. 8.

21 51. This practice is not disclosed to the public. The
22 Website appears to be a totally impartial review site
23 motivated solely by consumer advocacy, and the stigma
24 of having a Rip-off Report appear in Google search
results is especially damaging to its subjects.

25 52. During the time covered by this action, Defendants
26 renamed their server directories and took other deliberate
27 actions that raise the page ranking of the Rip-Off Reports
28 in search queries.

See August 3, 2010
Declaration of Lisa
Borodkin [DN-101]
 (“8/3/10 Borodkin
Dec.”) at ¶¶-1615 and
Ex. 5 [DN-101-5] and

| | |
|--|---|
| | Ex. 6 [DN-101-5]; Reed Dec. [96-25] at ¶13; 7/30/10 Reed Dec. ¶¶14-15 and Exs. C & D [DN-102, DN-102-3, DN-102-4]. |
| 53. Defendants entice the unknowing subjects of Reports to file rebuttals, which has the effect of refreshing the Website with search engines and otherwise increasing the prominence of the Reports and the Website. | See Howard Dec. at ¶¶10-16 [DN-96-24]. |
| 54. The negative Google search results about Plaintiffs resulting from the HTML for the reports on the Website are themselves damaging. | See FAC at Ex. 22; Lin Dec. [DN-62] at ¶¶3-6. |
| 55. Unbeknownst to the victims, a rebuttal is likely to make the negative content in a [Rip-off] Report go up in page rank in search engine queries. | Howard Dec. at ¶¶15-16 [DN-96-24]. |
| 56. In or around May 2010, Plaintiffs observed a major change occur to the Google search results for reports from Defendants' Website ("Rip-off Reports" or "Reports"). | See August 3, 2010 Declaration of Lisa Borodkin [DN-101] ("8/3/10 Borodkin Dec.") at ¶15 and Ex. 5 [DN-101-5]. |
| 57. On March 4, 2009, the first page of the Google search results for the query "Raymond Mobrez" yielded a search result (consisting of a title, snippets of text and the URL www.ripoffreport.com/reports/0/417/RipOff0417493.htm) in the fourth page rank (position from the top) with the title "Rip-off Report: Asia Economic Institute, AEI, WorldEcon: Raymond. . ." | See August 3, 2010 Declaration of Lisa Borodkin [DN-101] ("8/3/10 Borodkin Dec.") at ¶15 and Ex. 5 [DN-101-5]. |
| 58. Since in or about May 2010, the first page of the Google search results for the query "Raymond Mobrez" has yielded a revised search result with the revised URL www.ripoffreport.com/.../asia-economic-institute-aei-ef3f4.htm and pointing to the revised URL http://www.ripoffreport.com/Employers/Asia-Economic-Instit/asia-economic-institute-aei-ef3f4.htm , with the revised title "Asia Economic Institute, AEI, World Econ Review Rip-off Report . . ." | See 8/3/10 Borodkin Dec. at ¶16 and Ex. 6 [DN-101-6]. |

| | | |
|----|---|------------------------------|
| 1 | 59. Defendants will not follow a Court order demanding | See Request for |
| 2 | that they remove content that has been adjudicated | Judicial Notice |
| 3 | defamatory. | ("RJN") Ex. 3 (Nov. |
| 4 | | 10, 2009 Oral |
| 5 | | Argument in |
| 6 | | <u>Blockowicz v.</u> |
| 7 | 60. Defendants are aware of what a "no-follow" tag or | <u>Williams</u>) [DN-159-3] |
| 8 | "do not crawl" code is. | at 3:9-4:25. |
| 9 | 61. Defendants are aware of and do assert short statutes of | See RJN Ex. 3 at |
| 10 | limitations periods against subjects of Reports that delay | 22:14-21. |
| 11 | in naming them as defendants in lawsuits. | See RJN Ex. 3 at |
| 12 | 62. Defendants make statements that deter laypeople from | 22:14-21. |
| 13 | promptly pursuing all available legal remedies against | Borodkin Dec. Ex. 1 |
| 14 | Defendants, including by stating on the Website in a | at 137:17-25, 138:5-13 |
| 15 | section called "Want to sue Ripoff Report" that "one | and Ex. K; 7/30/10 |
| 16 | thing you can't do is sue Ripoff report." This statement | Reed Dec. ¶16 and Ex. |
| 17 | was written by Defendants' attorney, David Gingras. | E [DN-102, DN-102- |
| 18 | 63. Subjects cannot always post rebuttals. There have | 5] at 4. |
| 19 | been reported instances where a subject of a Report has | See August 23, 2010 |
| 20 | been unable to post rebuttals. | Declaration of Tina |
| 21 | 64. Defendant Magedson is aware that Ripoff Reports are | Norris [DN-126] at |
| 22 | well known among purported SEO and reputation repair | ¶7. |
| 23 | specialists and that such entities "inundate" subjects of | Borodkin Dec. Ex. 2 |
| 24 | Ripoff reports offering to sell them services with email | at 149:5-154:5 [DN- |
| 25 | blasts, just like they did to Raymond Mobrez. | 162-2]. |
| 26 | 65. Defendants redacted reports about Shawn Richeson. | RJN Ex. 3 [DN-159-3] |
| 27 | 66. Defendants concede that having negative Google, | at 15:1-3. |
| 28 | Yahoo or Bing search results can deter a potential | RJN Ex. 3 at 18:21- |
| | business partner or client from doing business with the | 25-19:1-5 [DN-159- |
| | subject of such negative reports. | 3]. |
| | 67. Defendants themselves are advancing the theory that | See RJN at 14:12-19 |
| | having negative Google, Bing and Yahoo search results | [DN-159-3]. |
| | can sustain a claim for intentional interference with | |
| | economic relations. | |
| | 68. Defendants "Verify Safe" on the Website John Beck, | See FAC at ¶¶24, 40, |

1 who was reported by the FTC to be under investigation,
2 and fail to disclose to the public that members in the
3 Corporate Advocacy Program pay many thousands of
4 dollars for Defendants' endorsement. The only
5 investigations Defendants do of these endorsees is by
6 email. Defendant stated that he does not physically go
7 anywhere to go to a business.

41, 62-68, 183-184,
267-270. Exs 16-17
[DN-96, DN-96-16,
DN-96-17] and Ex. 18
at ¶¶4-5 & Ex. A at
15:13-22.

69. Defendants sued a blogger, Sarah Bird, who wrote
7 about lawsuits against them in federal court in Arizona.
8 Defendants appealed the dismissal of the suit on
9 jurisdictional grounds. The appeal was dismissed by the
10 Ninth Circuit.

See RJN at Ex. 2 [DN-
159, DN-159-2]

11 DATED: October 6, 2010

Respectfully submitted,

12 By: /s/ Lisa J. Borodkin
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14 Lisa J. Borodkin
15 Attorneys for Plaintiffs
16 Asia Economic Institute LLC,
17 Raymond Mobrez, and Iliana