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

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

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

14 **Plaintiffs,**

15 **vs.**

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

17 **Defendants.**

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

**DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' REQUEST FOR
 ENLARGEMENT OF TIME TO
 FILE BRIEF**

Hearing Date: Nov. 1, 2010

Time: 1:30 PM

Courtroom: 6 (Hon. Stephen Wilson)

20 Defendants Xcentric Ventures, LLC and Edward Magedson respectfully submit
 21 the following opposition to Plaintiffs' Request for Enlargement of time (Doc. #165) to
 22 file their opposition to Defendants' Motion for Summary Judgment. As explained in
 23 Defendants' Request For Waiver of Oral Argument (Doc. #164), on September 20, 2010
 24 this court ordered Plaintiffs to file their opposition to Defendants' Motion for Summary
 25 Judgment by October 4, 2010, with Defendants' Reply due a week later on October 12.

26 Two days after the October 4 deadline had passed, Plaintiffs had still not filed any
 27 opposition nor did they request an extension of time pursuant to Fed. R. Civ. P. 6(b).
 28 Instead, Plaintiffs simply ignored this court's order and took no action until after the

OPPOSITION TO PLAINTIFFS' REQUEST FOR ENLARGEMENT OF TIME

1 court-ordered deadline had passed and only after Defendants requested waiver of oral
2 argument on the unopposed summary judgment motion.

3 If Plaintiffs genuinely needed additional time to prepare their opposition, they
4 were obligated to request an extension “before the original time ... expires.” Fed. R. Civ.
5 P. 6(b)(1)(A). No timely request was made. As such, pursuant to Rule 6(b)(1)(B), an
6 extension may only be granted “on motion made after the time has expired if the party
7 failed to act because of excusable neglect.” (emphasis added). Here, Plaintiffs have not
8 brought a motion under Rule 6(b)(1)(B) nor have they identified any excusable neglect
9 sufficient to justify their failure to comply with the court’s October 4th deadline.

10 Defendants recognize that the court has broad discretion in such matters. *See Aros*
11 *v. Robinson*, 331 Fed.Appx. 485 (9th Cir. 2009) (extension under Rule 6(b) is within the
12 court’s discretion). As the same time, the mandatory requirements of Rule 6(b)(1)(B) are
13 not satisfied by an after-the-fact “request” dropped into a response brief. Rather, as the
14 U.S. Supreme Court has explained:

15 Rule 6(b) establishes a clear distinction between “requests” and “motions,”
16 and the one cannot be converted into the other without violating its
17 provisions-or at least cannot be converted on the basis of such lax criteria
18 that conversion would be not only marginally permissible but positively
19 mandatory in the present case. Rule 6(b)(1) allows a court (“for cause
20 shown” and “in its discretion”) to grant a “request” for an extension of
21 time, whether the request is made “with or without motion or notice,”
22 provided the request is made before the time for filing expires. After the
23 time for filing has expired, however, the court (again “for cause shown”
and “in its discretion”) may extend the time only “upon motion.” To treat
all postdeadline “requests” as “motions” (if indeed any of them can be
treated that way) would eliminate the distinction between predeadline and
postdeadline filings that the Rule painstakingly draws.

24 *Lujan v. National Wildlife Federation*, 497 U.S. 871, 897 n. 5, 110 S.Ct. 3177, 3193 n.5
25 (1990) (emphasis added). It is important to note that this issue is not merely academic.
26 Plaintiffs’ strident efforts to prolong this action and to avoid any merits-based disposition
27 is inherently prejudicial in the context of the Communications Decency Act immunity.
28 This is so because “Section 230 immunity, like other forms of immunity, is generally

1 accorded effect at the first logical point in the litigation process. As we have often
2 explained in the qualified immunity context, ‘immunity is an immunity from suit rather
3 than a mere defense to liability’ and ‘it is effectively lost if a case is erroneously
4 permitted to go to trial.’” *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d
5 250, 254–55 (4th Cir. 2009); *see also Fair Housing Council of San Fernando Valley v.*
6 *Roommates.com, LLC*, 521 F.3d 1157, 1175 (9th Cir. 2008) (explaining “section 230 must
7 be interpreted to protect websites not merely from ultimate liability, but from having to
8 fight costly and protracted legal battles.”)

9 Plaintiffs know they cannot overcome the CDA on the merits so they are seeking
10 to delay any consideration of the merits in order to do precisely what the CDA
11 prohibits—force Defendants to fight a costly and protracted legal battle. In this manner,
12 Plaintiffs are effectively depriving Defendants of any benefit of immunity under the CDA
13 simply by delaying consideration of that issue.

14 It is time for these games to end. To have any meaning, CDA immunity must be
15 applied at the earliest possible stage of an action or its value is lost. Indeed, an early
16 determination as to CDA immunity is so important that the Ninth Circuit has determined
17 that it is an immediately appealable issue under the collateral order doctrine. *See Batzel*
18 *v. Smith*, 333 F.3d 1018 (9th Cir. 2003). Because the timely resolution of the issue is so
19 essential, this court must not permit Plaintiffs to continue delaying without a showing of
20 good cause which has not been made here.

21 For these reasons, the court should deny Plaintiffs’ untimely request for an
22 extension of time to file their opposition to Defendants’ Motion for Summary Judgment.

23 DATED this 7th day of October 2010.

24 **GINGRAS LAW OFFICE, PLLC**

25 /S/ David S. Gingras
26 David S. Gingras
27 Attorneys for Defendants
28 Ed Magedson and
Xcentric Ventures, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2010 I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing, and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Ms. Lisa Borodkin, Esq.
Mr. Daniel F. Blackert, Esq.
Asia Economic Institute
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Attorneys for Plaintiffs

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

/s/David S. Gingras

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