

1 David S. Gingras, CSB #218793
Gingras Law Office, PLLC
 2 3941 E Chandler Blvd., #106-243
 Phoenix, AZ 85048
 3 Tel.: (480) 668-3623
 Fax: (480) 248-3196
 4 David@GingrasLaw.com

5 Maria Crimi Speth, (Admitted *Pro Hac Vice*)
Jaburg & Wilk, P.C.
 6 3200 N. Central Ave., Suite 2000
 Phoenix, AZ 85012
 7 Tel: (602) 248-1000
 Fax: (602) 248-0522
 8 mcs@jaburgwilk.com

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 10 Attorneys for Defendants
 Xcentric Ventures, LLC and
 Edward Magedson
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12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

GINGRAS LAW OFFICE, PLLC
 3941 E. CHANDLER BLVD., #106-243
 PHOENIX, ARIZONA 85048

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

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

AFFIDAVIT OF BEN SMITH

Hearing Date: Nov. 29, 2010
 Time: 1:30 PM
 Courtroom: 6 (Hon. Stephen Wilson)

1 I, BEN SMITH, declare as follows:

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

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

12 3. I previously submitted an affidavit in this case in May 2010. The
13 statements I made in that affidavit were true at the time I made them, and they remain
14 true today.

15 4. I am aware that in this case, the Plaintiffs claim they need to take my
16 deposition in order to obtain information that they believe would bear on various matters.
17 In addition, I am aware that Plaintiffs have explained the matters for which they seek to
18 depose me as including the following information:

19
20 Plaintiffs propose to obtain evidence sufficient to defeat Defendants'
21 motion for summary judgment through the Declaration of James P. Rogers,
22 written discovery and/or depositions of Justin Crossman, Scott Cates, Ben
23 Smith and/or the Lavidge Company, the continued deposition of Edward
24 Magedson and Xcentric, cross-examination of Ben Smith, Amy Thompson,
25 Kim Jordan and/or Lydia Craven, and/or voluntary statements from third-
26 party witnesses with first-hand knowledge of facts involving the
27 Defendants' use and offers to sell custom written computer code and meta
28 tags to make subjects of Reports appear in a more favorable light on Google
searches.

1 5. I am also aware that Plaintiffs have suggested that by deposing me (and
2 others) they will obtain information that relates to one or more of the following points:

3 The facts expected to be gained from such discovery will suffice to defeat
4 the pending motion for summary judgment because they would controvert
5 the assertions in Defendants’ statement of material facts 5, 7, 18-19 and 22-
6 25, 28-31 and 33 showing that Defendants actively play a large role in
7 determining what appears on Google search results about subjects of Reports
8 such as Plaintiffs, that servers do not “automatically” and “generically”
9 generate the HTML computer code and meta tags that determine how
10 subjects of Reports appear on Google searches in accordance with generally
11 accepted search engine optimization practices, that Defendants falsely or
12 misleadingly advertise themselves to be a neutral consumer complaint forum
when they are in fact a for-profit business seeking to make money from paid
endorsements and advertising, and that Defendants mislead the public
regarding the degree to which Defendants are willing to alter or suppress
Reports, which has a harmful effect on Plaintiffs.

13 6. As these claims relate to me, they are groundless. I do not have any
14 knowledge or information showing that “Defendants actively play a large role in
15 determining what appears on Google search results about subjects of Reports such as
16 Plaintiffs” On the contrary, I believe this statement to be entirely false; I do not have
17 any information showing that Defendants actively play a large role (or any role) in
18 determining what appears on Google search results whether related to Plaintiffs or
19 anyone else. If I was asked to testify on that issue, I could and would truthfully state that
20 I do not believe that Defendants have *any* role in determining what information Google
21 displays in response to search inquiries.

22 7. I have no “first-hand knowledge of facts involving the Defendants’ use and
23 offers to sell custom written computer code and meta tags to make subjects of Reports
24 appear in a more favorable light on Google searches” On the contrary, I believe this
25 statement to be entirely false as it relates to Plaintiffs. I am aware that as part of their
26 Corporate Advocacy Program, Defendants can and do make changes to reports by adding
27 positive language to the section of the page above the existing report (which is not
28 removed) and that by making these changes the underlying HTML for each page may

1 also be updated to reflect such changes. However, I am informed that Plaintiffs did not
2 join the Corporate Advocacy Program and I have no knowledge or information that
3 Defendants ever made any offer to “sell custom written computer code and meta tags” to
4 the Plaintiffs or that Defendants did anything to alter the original HTML code or meta
5 tags for any pages containing reports about Plaintiffs.

6 8. I have no knowledge that Defendants “servers do not ‘automatically’ and
7 ‘generically’ generate the HTML computer code and meta tags that determine how
8 subjects of Reports appear on Google searches in accordance with generally accepted
9 search engine optimization practices” On the contrary, I believe this statement to be
10 entirely false because as I have previously stated in this case and in other cases involving
11 Defendants, Defendants servers do automatically generate the HTML code for each
12 report page appearing on the Ripoff Report website, and this code normally does contain
13 a substantial amount of generic content (including the words “ripoff, rip-off, and rip off”)
14 which are common to every single page on the Ripoff Report website.

15 9. I have no knowledge “that Defendants falsely or misleadingly advertise
16 themselves to be a neutral consumer complaint forum when they are in fact a for-profit
17 business seeking to make money from paid endorsements and advertising” On the
18 contrary, I do not believe that Ripoff Report has ever represented itself to be a “*neutral*
19 consumer complaint forum” – if anything, Ripoff Report has always expressed a bias in
20 favor of consumers and against big businesses, but to the extent that Plaintiffs believe the
21 site is *not* neutral because it also offers “paid endorsements and advertising,” I do not
22 believe that this fact has been “falsely or misleadingly” concealed from anyone. On the
23 contrary, anyone viewing the Ripoff Report website can plainly see that it contains
24 advertisements, so this point is not misleading. To the extent the Corporate Advocacy
25 Program constitutes a “paid endorsement”, Ripoff Report has always freely and openly
26 disclosed that fact when endorsing a CAP member. In other words, Ripoff Report does
27 not “endorse” any company or individual as part of its CAP program without clearly
28 disclosing the fact that the endorsement is the result of that company joining the program.

1 10. I have no knowledge that “Defendants mislead the public regarding the
2 degree to which Defendants are willing to alter or suppress Reports, which has a harmful
3 effect on Plaintiffs.” To the extent I understand this statement, I disagree with it. Again,
4 I believe this statement is some type of reference to the Corporate Advocacy Program
5 (which I am informed Plaintiffs never joined), but I do not believe the statement is
6 accurate insofar as it suggests that Defendants “mislead the public” by failing to disclose
7 when company has joined the program or what the program entails. On the contrary, the
8 Ripoff Report website contains extensive information explaining the CAP program
9 including, but not limited to, the following pages:

10 <http://www.ripoffreport.com/CorporateAdvocacy.aspx>

11 <http://www.ripoffreport.com/CorporateAdvocacy/HowItWorks.aspx>

12 <http://www.ripoffreport.com/CorporateAdvocacy/BenefitsOfJoining.aspx>

13 <http://www.ripoffreport.com/CorporateAdvocacy/WhatCustomersSay.aspx>

14 <http://www.ripoffreport.com/CorporateAdvocacy/Application.aspx>

15
16 11. In addition to the specific points above, I am aware that Plaintiffs have
17 argued that they need my deposition in order to help them establish one or more of the
18 following points:

- 19 • It is Likely Discovery Would Yield Evidence to Oppose Defendants’
20 Claim that All HTML Code and Meta Tags Are Generated
21 “Automatically”
- 22 • It is Likely Discovery Would Yield Evidence to Refute Defendants’
23 Claim that all Meta Tags Are Generated from Content Contributed by
24 Third-Party Users
- 25 • It is Likely Discovery Would Yield Evidence to Refute Defendants’
26 Claim that Mr. Magedson has No Control Over How Google or Any
27 Other Search Engine Decides to Rank Content
28

1 12. I have no knowledge or other information that would assist Plaintiffs in
2 making these points. As noted above, to the extent these matters are within my
3 knowledge, I disagree with each of the points Plaintiffs are attempting to establish.

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

7 EXECUTED ON: November 8 2010.

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9 
10 BEN SMITH

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1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that on November 8, 2010 I electronically transmitted the attached
4 document to the Clerk’s Office using the CM/ECF System for filing, and for transmittal
5 of a Notice of Electronic Filing to the following CM/ECF registrants:

6
7 Mr. Daniel F. Blackert, Esq.
8 Ms. Lisa J. Borodkin, Esq.
9 Asia Economic Institute
10 11766 Wilshire Blvd., Suite 260
11 Los Angeles, CA 90025
12 Attorneys for Plaintiffs

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

16 /s/David S. Gingras
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