

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

8 Maria Crimi Speth, (Admitted *Pro Hac Vice*)
9 **Jaburg & Wilk, P.C.**
10 3200 N. Central Ave., Suite 2000
11 Phoenix, AZ 85012
12 Tel: (602) 248-1000
13 Fax: (602) 248-0522
14 mcs@jaburgwilk.com

15 Attorneys for Defendants
16 Xcentric Ventures, LLC and
17 Edward Magedson

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

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

21 **Plaintiffs,**

22 **vs.**

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

24 **Defendants.**

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

**AFFIDAVIT OF
DAVID GINGRAS**

Hearing Date: Nov. 29, 2010

Time: 1:30 PM

Courtroom: 6 (Hon. Stephen Wilson)

25 I, David S. Gingras declare as follows:

26 1. My name is David Gingras. I am a United States citizen, a resident of the
27 State of Arizona, am over the age of 18 years, and if called to testify in court or other
28 proceeding I could and would give the following testimony which is based upon my own
personal knowledge unless otherwise stated.

2. I am an attorney licensed to practice law in the States of Arizona and
California, I am an active member in good standing with the State Bars of Arizona and

1 California and I am admitted to practice and in good standing with the United States
2 District Court for the District of Arizona and the United States District Court for the
3 Northern, Central, and Eastern Districts of California.

4 3. Since July 2009 I have been employed as General Counsel for Plaintiff
5 Xcentric Ventures, LLC. In my capacity as counsel for Xcentric Ventures I have been
6 involved in the litigation of this action since its inception. I have possession of
7 Xcentric's files relating to this case, and I am personally familiar with the contents
8 thereof.

9 4. On the morning of October 22, 2010, I contacted Plaintiffs' counsel Lisa
10 Borodkin by phone to discuss the issue of scheduling a deposition of James Rogers whom
11 I am personally familiar with as the former assistant of Ed Magedson. I contacted Ms.
12 Borodkin to discuss the possibility of scheduling an immediate deposition of Mr. Rogers
13 because I recently became aware that Mr. Rogers was involved in discussions with Ms.
14 Borodkin and others, offering to supply them with information about the Ripoff Report
15 website in exchange for money and/or other consideration.

16 5. Based on my knowledge of Mr. Rogers and my familiarity with previous
17 statements he had made including a sworn statement given on October 20, 2010, it was
18 my belief that he had no information that was relevant to any part of this lawsuit. Of
19 course, I did not expect Ms. Borodkin to simply accept my word on this. For that reason,
20 I told Ms. Borodkin on the phone that I anticipated that she might attempt to file a last-
21 minute Rule 56(f) motion asking for leave to depose Mr. Rogers not because he had any
22 relevant information, but solely because Plaintiffs wanted to obtain a continuance of the
23 Nov. 1, 2010 hearing on Defendants' Motion for Summary Judgment. Ms. Borodkin
24 acknowledged her intent to bring a Rule 56(f) motion relating to Mr. Rogers.

25 6. In an effort to avoid any further delay of the disposition of this case, I told
26 Ms. Borodkin on the phone that although I did not believe she was entitled to relief under
27 Rule 56(f), I was willing to agree to the immediate deposition of Mr. Rogers at any time
28 and at any place. I am aware that Mr. Rogers resides in Mesa, Arizona and I would

1 normally have insisted that his deposition occur here in Phoenix for that reason.
2 However, at the time of my conversation with Ms. Borodkin on October 22, I was aware
3 that Plaintiffs had purchased an airline ticket for Mr. Rogers to travel to Los Angeles the
4 following day (Saturday, October 23) to meet privately with Plaintiffs. For that reason,
5 although I told Ms. Borodkin that I would prefer to have the deposition in Phoenix, I also
6 explained to her that the choice of location was entirely up to her and that I would travel
7 to Los Angeles the following day or any other day of her choosing during the next week
8 as necessary to complete the deposition.

9 7. I never told Ms. Borodkin that she should “fly to Phoenix the next day” to
10 take Mr. Rogers’s deposition. On the contrary, I specifically explained to Ms. Borodkin
11 on the phone (as I later confirmed in writing) that I was placing no restrictions
12 whatsoever on either the time or the place of the deposition because, frankly, I did not
13 want Ms. Borodkin to have any excuse for failing to complete the deposition before the
14 next hearing on Nov. 1, 2010.

15 8. Following my phone conversation with Ms. Borodkin, I sent her an email
16 summarizing our discussion about Mr. Rogers. Attached hereto as **Exhibit A** is a true
17 and correct copy of that email which I sent on October 22, 2010 at 12:26 PM. I am
18 certain that Ms. Borodkin received this email because I received a response from her
19 about 30 minutes later. A copy of Ms. Borodkin’s response is also included as part of
20 **Exhibit A**.

21 9. Attached hereto as **Exhibit B** is a true and correct copy of a sworn
22 statement given by James Rogers on October 20, 2010.

23 10. Attached hereto as **Exhibit C** is a true and correct copy of an email I
24 received from Ms. Borodkin on June 4, 2010 relating to the scheduling of the deposition
25 of Ben Smith. Prior to this email, Ms. Borodkin informed me that she wanted to take Mr.
26 Smith’s deposition. I had no objection to that request and I made efforts to determine
27 Ms. Smith’s availability until I received Ms. Borodkin’s email indicating that she no
28 intended to “hold off on deposing Ben Smith.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. Since June 2010, Plaintiffs have never re-raised the issue of taking Mr. Smith's deposition until they filed their current (second) Rule 56(f) motion.

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

EXECUTED ON: November 8th 2010.



DAVID GINGRAS

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

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
17
18
19
20
21
22
23
24
25
26
27
28

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