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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ASIA ECONOMIC INSTITUTE, a)	CV 10-1360 SVW (PJWx)
California limited liability)	
company, RAYMOND MOBREZ, an)	
individual, and ILIANA LLANERAS,)	
an individual,)	
)	
Plaintiffs,)	ORDER DENYING DEFENDANTS'
)	MOTION TO STRIKE UNDER THE
v.)	CALIFORNIA ANTI-SLAPP STATUTE
)	AND DENYING DEFENDANTS' REQUEST
XCENTRIC VENTURES, LLC, an)	FOR A RICO CASE STATEMENT [9]
Arizona limited liability)	
company, d/b/a/ as BADBUSINESS)	
BUREAU and/or)	
BADBUSINESSBUREAU.COM, and/or RIP)	
OFF REPORT and/or RIPOFF)	
REPORT.COM; BAD BUSINESS BUREAU,)	
LLC, organized and existing under)	
the laws of St. Kitts/Nevis, West)	
Indies; EDWARD MAGEDSON, an)	
individual, and DOES 1 through)	
100, inclusive,)	
)	
Defendants.)	

I. Introduction

Plaintiffs Asia Economic Institute, LLC ("AEI") and its principals, Raymond Mobrez and Iliana Llaneras (collectively, "Plaintiffs" or "AEI") brought this action on January 27, 2010. The

1 case was removed to this Court in February 2010. Plaintiffs generally
2 allege that Defendant Xcentric Ventures, LLC ("Xcentric") operates a
3 website, www.RipoffReport.com ("Ripoff Report"), and that defamatory
4 comments regarding AEI and its principals were posted on the website by
5 third parties. Plaintiffs assert several claims against Xcentric
6 arising out of these posts (and Defendants' conduct related thereto)
7 including defamation, unfair business practices, intentional and
8 negligent interference with prospective economic advantage, and
9 violation of the Racketeer Influenced and Corrupt Organizations Act
10 ("RICO").

11 On March 22, 2010, Defendants Xcentric and its founder, Ed
12 Magedson ("Magedson"), brought the present Special Motion to Strike the
13 Complaint under the anti-SLAPP statute, California Civil Code § 425.16.
14 Defendants seek to dismiss the defamation-related causes of action,
15 arguing that such claims arise out of protected speech under Section
16 425.16(e). Defendants note that the RICO claims, which are predicated
17 on certain communications between Magedson and Mobrez that Plaintiffs
18 allege constitute extortion, are arguably are not based on "protected
19 conduct" within the meaning of Section 425.16. Thus, the RICO claims
20 are not part of Defendants' Motion to Strike.

21 Additionally, Defendants request that the Court order Plaintiffs
22 to fill out a RICO Case Statement, so as to clarify the RICO claims.

23 For the reasons stated below, Defendants' Special Motion to Strike
24 is DENIED. The Court also DENIES Defendants' request for a RICO Case
25 Statement.

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1 **II. Facts and Procedural Background**

2 **A. Asia Economic Institute ("AEI")**

3 Plaintiff AEI has conducted business in California for the past
4 nine years. AEI operates as a free on-line, non-governmental
5 publication of current economic news and events. AEI does not sell
6 products nor are they engaged in marketing. AEI is operated by its
7 principals, Plaintiffs Mobrez and Llaneras. At the time of the events
8 giving rise to this Complaint, AEI was a small, virtually unknown
9 company that employed approximately 10 persons, including Mobrez and
10 Llaneras.

11 **B. Xcentric and www.RipoffReport.com**

12 Defendant Xcentric operates a website at www.RipoffReport.com
13 ("Ripoff Report"), which started in 1998. Ed Magedson ("Magedson") is
14 the founder and manager of Xcentric and the "ED"itor of the website.
15 Ripoff Report allows third-parties to post reports regarding the
16 business practices (among other things) of persons or companies. The
17 posting service is free, and third-parties can also post comments about
18 the reports. Magedson contends that "the Ripoff Report is the leading
19 complaint reporting website on the Internet" (Magedson Decl. ¶
20 2.) As of March 2010, the Ripoff Report website contains more than
21 500,000 unique reports. (Id. ¶ 5.) Every user-generated report is
22 screened and reviewed by Xcentric staff members, who are authorized to
23 make minor non-substantive editorial changes to the reports, including
24 the removal of offensive language, profanity, racial comments, threats
25 of violence, and certain types of personal information such as social
26 security numbers, bank account numbers, and so forth. (Id. ¶ 6.)

1 When someone posts a negative report on Ripoff Report, the subject
2 of the complaint has various options for dealing with the negative
3 report. First, the subject may post free "rebuttals" or comments to
4 the third-party reports explaining its side of the story.
5 Additionally, a company or individual can deal with negative reports by
6 joining Ripoff Report's Corporate Advocacy Program ("CAP"). Magedson
7 describes the CAP program as follows: The purpose of the program is "to
8 ensure that complaints submitted by unhappy customers are resolved and
9 that the root problems which caused these complaints are fixed so that
10 future complaints can be reduced or avoided." (Magedson Decl. ¶ 15.)
11 A company who joins the CAP program is required to state in writing
12 that it will work with Ripoff Report and the complainants to resolve
13 the complaints. (Id. ¶¶ 15-16.) The company is required to accept
14 some level of responsibility for customer complaints even if it does
15 not agree with them. This **must** include offering a full refund if
16 requested by the complaining customers. (Id. ¶ 16.) In exchange,
17 Ripoff Report agrees to act as a liaison between the CAP member and the
18 complainants by contacting each author who has submitted a report and
19 informing them that the company has joined CAP and is committed to
20 resolving the complaints. (Id. ¶ 17.) If the complaint is resolved,
21 Ripoff Report asks the complainant to post an update to his or her
22 report so that readers can see that the matter has been addressed.
23 (Id.) Further, regardless of the resolution of the complaint, when a
24 company joins the CAP program, Ripoff Report posts information
25 explaining this fact as an introduction to each report about the
26 company on the website.

1 The reports posted by third-parties are **never** removed from the
2 website. This is true regardless of whether a company or individual
3 joins the CAP program - in other words, membership in the program **never**
4 results in a report being removed. Ripoff Report will not remove a
5 complaint in the exchange for money. That said, joining the CAP
6 program does require the payment of a fee, although the amount of the
7 fee is not clear.

8 C. Reports About AEI

9 On or about February 2009, Plaintiffs Mobrez and Llaneras
10 conducted a search on Google.com for Internet sources referring to the
11 terms "Raymond Mobrez," "Mobrez," "Iliana Llaneras," "Llaneras," and
12 "AEI." Plaintiffs discovered that there were four reports about AEI,
13 Mobrez, and/or Llaneras posted on the Ripoff Report website. To date,
14 there are six reports regarding Plaintiffs on Defendant's website.
15 Generally, the reports are written by former employees of AEI
16 contending that AEI is a bad place to work. Among other things, the
17 reports state the following: "They reduce pay illegally;" "Complete
18 disorganization;" "[T]hey have no idea to [sic] run any business and
19 just continue to ruin people's lives . . .;" "[O]nce you start working,
20 nothing ever gets done. . . . There are a couple of theories that could
21 explain this paradox. One is that they are laundering money . . .;"
22 "They treat their employees like dirt;" "Asia Economic Institute it's a
23 SCAM;" and "They routinely ignore employment laws." (Magedson Decl.,
24 Exhs. F-I.) The reports also call into question whether Mobrez's
25 stated credentials are accurate and state that Mobrez hires and fires
26 on the basis of race, religion and gender. (Id.) Other more innocuous
27 comments include that Mobrez and Llaneras are "boring," "crazy," and
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1 "secretly married." (Id.)

2 It appears that the reports have had some effect on AEI's
3 business. For example, one comment about AEI was posted by a person
4 who had purportedly interviewed for a job with AEI and was offered a
5 position, but upon reading the reports on RipoffReport.com, decided not
6 to accept the position. (Magedson Decl., Exh. I.)

7 **D. Communications Between the Parties**

8 On May 5, 2009, Plaintiff Mobrez sent an email to Magedson asking
9 for his assistance in removing the unflattering posts regarding AEI
10 from the Ripoff Report website. (Mobrez Decl. Exh. C.) Mobrez
11 contends that shortly thereafter, he contacted Magedson via telephone
12 and told him that the posts were untrue and that Mobrez could prove it.
13 Magedson was not responsive. (Id. ¶ 5.) On May 12, 2009, Magedson
14 sent Mobrez an email responding to his request that the posts be
15 removed from the website. The email was in the form a "form response"
16 to common requests. (Magedson Decl., Exh. B.) In the email, Magedson
17 provided a lengthy explanation of the Ripoff Report website, including
18 answers to various frequently asked questions about the website. The
19 email also contained information about filing a free rebuttal to a
20 negative report and general information about the CAP program. (Id.)
21 After sending the email, Magedson received a call from Mobrez inquiring
22 about the CAP program. (Id. ¶ 28.) Mobrez contends that Magedson
23 offered to enroll AEI in the CAP program for a fee of at least \$5,000,
24 plus a monthly monitoring fee. (Mobrez Decl. ¶ 7.) Magedson told
25 Mobrez that inquires about the CAP program must be done in writing and
26 directed Mobrez to the CAP application form available on the website.
27 (Magedson Decl., Exh. C.)

1 On July 24, 2009, Mobrez again contacted Magedson via email and
2 told him that AEI could not complete the CAP Application Form because
3 it required AEI to stipulate to things that they did not do, and AEI
4 was not willing to admit responsibility for acts described in the
5 former employees' reports. (Magedson Decl., Exh. D.) Mobrez also
6 indicated that he would like to meet with Magedson in person to try and
7 resolve the matter. (Id.) In response, Magedson wrote to Mobrez on
8 the same day stating that a meeting in person would not be necessary
9 because there was nothing Magedson could do. (Magedson Decl., Exh. E.)
10 Magedson explained that Xcentric never removes reports from the Ripoff
11 Report website, and would not do so even if a large sum of money were
12 offered. (Id.) Magedson encouraged Mobrez to file a free rebuttal to
13 the report. (Id.)

14 The July 24, 2009 email chain was the last contact between
15 Plaintiffs and Defendants prior to the filing of this lawsuit. As far
16 as the Court is aware, the six reports regarding Plaintiffs are still
17 posted on the Ripoff Report website.

18 On January 27, 2010, Plaintiffs filed this action against
19 Defendants in Los Angeles Superior Court. The action was subsequently
20 removed to this Court in February 2010. Plaintiff alleges the
21 following claims against Xcentric and Magedson: (1) common law
22 defamation; (2) unfair business practices in violation of California
23 Business and Professions Code § 17200 *et. seq.*; (3) violation of 18
24 U.S.C. § 1962(c), RICO, based on the predicate act of extortion; (4)
25 violation of 18 U.S.C. § 1962(d), RICO, based on the predicate act of
26 extortion; (5) civil conspiracy based upon the alleged solicitation,
27 development and publication of defamatory posts; (6) defamation per se;

1 (7) false light; (8) intentional interference with prospective economic
2 relations; (9) negligent interference with prospective economic
3 relations; (10) inducing breach of contract; (11) preliminary
4 injunction; and (12) permanent injunction.

5 In this Motion, Defendant seeks an order dismissing the First and
6 Second, and Fifth through Tenth causes of action under the anti-SLAPP
7 statute, California Code of Civil Procedure § 425.16. The RICO claims
8 are not at issue in this motion.

9 **III. Motion to Strike Under California Civil Code § 425.16**

10 **A. Legal Standard**

11 California's anti-SLAPP statute protects against lawsuits arising
12 out of "any act . . . in furtherance of [one's] right of petition or
13 free speech under the United States Constitution or the California
14 Constitution in connection with a public issue." Cal. Civ. Code
15 § 425.16(b)(1). The statute provides for a motion to strike a
16 complaint so as "to allow early dismissal of meritless first amendment
17 cases aimed at chilling expression through costly, time-consuming
18 litigation." Metabolife Intern., Inc. v. Wormick, 264 F.3d 832, 839
19 (9th Cir. 2001). California anti-SLAPP motions to strike (and for
20 motions for attorneys' fees) are available to litigants proceeding in
21 federal court. Thomas v. Fry's Electronics, Inc., 400 F.3d 1206 (9th
22 Cir. 2005); Batzel v. Smith, 333 F.3d 1018, 1025-26 (9th Cir. 2003)
23 ("[T]he protection of the anti-SLAPP statute [acts] as a substantive
24 immunity from suit.")

25 When considering a motion to strike under the anti-SLAPP statute,
26 the court must perform a two-step analysis. First, the defendant must
27 make a threshold showing that the challenged cause of action is one
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1 arising from protected activity as defined in section 425.16.¹
2 Kronemyer v. Internet Movie Data Base, Inc., 150 Cal. App. 4th 941, 946
3 (Ct. App. 2007). This showing is met by demonstrating that the act
4 underlying plaintiff's cause of action fits one of the categories
5 spelled out in section 425.16, subdivision (e). City of Cotati v.
6 Cashman, 29 Cal. 4th 69, 78 (2002). Relevant to the current lawsuit,
7 subdivision (e) of section 425.16 includes the following:

8 (3) any written or oral statement or writing made in a place
9 open to the public or a public forum in connection with an
10 issue of public interest;

11 (4) or any other conduct in furtherance of the exercise of
12 constitutional right of petition or the constitutional right
13 of free speech in connection with a public issue or an issue
14 of public interest.

15 Cal. Code Civ. Proc. § 425.16(e)(3) and (4). If, and only if, the
16 defendant can show that the claims at issue arise from one of these
17 categories, the defendant has met the first step. See Hilton v.
18 Hallmark Cards, 580 F.3d 874, 882 (9th Cir. 2009) ("If the first
19 question is answered in the negative, then the motion must fail, even
20 if the plaintiff stated no cognizable claim."); Commonwealth Energy
21 Corp. v. Investor Data Exchange, Inc., 110 Cal. App. 4th 26, 32 (Ct.
22 App. 2003) ("[I]f the moving defendant cannot meet the *threshold*
23 showing, then the fact that he or she might be able to otherwise
24 prevail on the merits under the [second] step is irrelevant.")
(emphasis in original).

25 Once the defendant establishes that the anti-SLAPP statute
26 applies, the burden shifts to the plaintiff to establish "a probability
27 that the plaintiff will prevail on the claim." Church of Scientology

28 ¹ All future section references are to the California Civil Code unless
otherwise noted.

1 v. Wollersheim, 42 Cal. App. 4th 628, 646 (Ct. App. 1996), *disapproved*
2 *in part on other grounds*, Equilon Enters. v. Consumer Cause, Inc., 29
3 Cal. 4th 53, 68 n.5 (2002). To meet this burden, the "plaintiff [is]
4 required both to plead claims that [are] legally sufficient, and to
5 make a prima facie showing, by admissible evidence, of facts that would
6 merit a favorable judgment on those claims, assuming plaintiff's
7 evidence [is] credited." 1-800 Contracts, Inc. v. Steinberg, 107 Cal.
8 App. 4th 568, 584 (Ct. App. 2003) (citing Wilson v. Parker, Covert &
9 Chidester, 28 Cal. 4th 811, 821 (2002), Wilcox v. Superior Court, 27
10 Cal. App. 4th 809, 823-24, 830 (Ct. App. 1994), and Evans v. Unkow, 38
11 Cal. App. 4th 1490, 1497-98 (Ct. App. 1995)). The court may not weigh
12 evidence, but instead must determine whether plaintiff's evidence
13 would, if credited, be sufficient to meet the burden of proof for the
14 claim. McGarry v. University of San Diego, 154 Cal. App. 4th 97, 108
15 (Ct. App. 2007). The court must consider the pleadings and any
16 supporting and opposing affidavits stating the facts upon which the
17 liability is based. Cal. Code Civ. Proc. § 425.16(b)(2). The court
18 must also examine the defenses to the pleaded claims and whether there
19 is any evidence to negate such defenses. McGarry, 154 Cal. App. 4th at
20 108. The plaintiff's burden on an anti-SLAPP motion has often been
21 described as akin to the burden in opposing summary judgment. 1-800
22 Contracts, Inc., 107 Cal. App. 4th at 584.

23 **B. First Step: Whether the Anti-SLAPP Statute Applies**

24 Defendants contend that both subsection (e)(3) and (e)(4) of
25 section 425.16 apply to the claims at issue in this motion to strike.
26 Specifically, Defendants argue that subsection (e)(3) applies to the
27 reports and comments posted by third-party users on the Ripoff Report
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1 website, and that subsection (e)(4) applies to the speech and conduct
2 of Magedson and the Ripoff Report, apart from anything written by
3 Ripoff Report's users. (Mot. at 6.)

4 Subsection (e)(3) requires that a written or oral statement be
5 made in a "place open to the public or a public forum." Websites
6 accessible to the public, such as www.RipoffReport.com, are "public
7 forums" for purposes of the anti-SLAPP statute. Barrett v. Rosenthal,
8 40 Cal. 4th 33, 41, n.4 (2006) (citing extensive authority for the
9 premise); Kronemyer v. Internet Movie Data Base, Inc., 150 Cal. App.
10 4th 941, 950 (2007) ("We are satisfied that respondent's website
11 constitutes a public forum."); Global Telemedia Int'l, Inc. v. Doe 1,
12 132 F. Supp. 2d 1261, 1264 (C.D. Cal. 2001) (statements posted on an
13 Internet message board were made in a public place or public forum
14 within the meaning of Section 425.16(e)). Thus, this requirement of
15 subsection (e)(3) is met.

16 Additionally, both subsection (e)(3) and (e)(4) require that the
17 speech or conduct be related to issues of public interest. The parties
18 vigorously dispute whether the speech posted on Ripoff Report concerns
19 an issue of public interest.

20 **1. Whether the Reports Involve Public Issues Under**
21 **California Civil Code § 425.16(e)(3)**

22 The requirement that speech implicate an issue of public interest²
23 is "intended . . . to have a limiting effect on the types of conduct
24 that come within the third and fourth categories of the statute."
25 Weinberg v. Feisel, 110 Cal. App. 4th 1122, 1132 (Ct. App. 2003).

26 _____
27 ² Although subsection (e)(4) uses the term "public issue" or "issue of public
28 interest" disjunctively, there appears to be no substantive difference between
them. WEIL, BROWN, & RYLAARSDAM, CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL § 7:780
(Rutter Group 2009).

1 Nonetheless, the "public interest" requirement is broadly construed to
2 include "not only governmental matters, but also private conduct that
3 impacts a broad segment of society and/or that affects a community in a
4 manner similar to that of a governmental entity." Damon v. Ocean Hills
5 Journalism Club, 85 Cal. App. 4th 468, 479 (2000) (statements
6 criticizing the manager of a homeowners' association governing 3,000
7 individuals and 1,633 homes concerned the manner in which a large
8 residential community would be governed; thus, the statements related
9 to an issue of public interest); see e.g., Church of Scientology of
10 California, 42 Cal. App. 4th at 650 (the Church of Scientology was a
11 matter of public interest because of the amount of media coverage the
12 Church received and the extent of its membership and assets); Global
13 Telemedia Int'l, Inc. v. Doe 1, 132 F. Supp. 2d 1261, 1264 (C.D. Cal.
14 2001) (statements regarding a publicly-traded company that thrust
15 itself in the public eye through numerous press releases and had over
16 18,000 shareholders were matters of public interest).

17 Although the statute does not define "an issue of public
18 interest," cases in which the requirement is met generally fall within
19 at least one of the following three categories:
20

21 (1) statements concerning a person or entity in the public eye
22 (see Sipple v. Foundation for Nat'l Progress, 71 Cal. App. 4th 226
23 (Ct. App. 1999) [statements that a political consultant had abused
24 his spouse, where consultant had made the prevention of domestic
25 violence a cornerstone of his advertising campaigns]; Seelig v.
26 Infinity Broadcasting Corp., 97 Cal. App. 4th 798 (Ct. App. 2002)
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1 [statements regarding a contestant on a nationally-broadcast and
2 controversial reality television show]);

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4 (2) conduct that could directly affect a large number of people
5 beyond the direct participants (see Damon, 85 Cal. App. 4th 468
6 [discussed above]; Church of Scientology, 42 Cal. App. 4th at 650-
7 51 [discussed above]; Ludwig v. Superior Court, 37 Cal. App. 4th 8
8 (Ct. App. 1995) [development of a mall with potential
9 environmental effects on the community, such as increased
10 traffic]), or;

11
12 (3) a topic of widespread public interest (see Terry v. Davis
13 Community Church, 131 Cal. App. 4th 1534 (Ct. App. 2005)
14 [statements that church youth group leaders had sexual relations
15 with minors implicated the societal interest in protecting
16 children from predators]; M.G. v. Time Warner, Inc., 89 Cal. App.
17 4th 623 (Ct. App. 2001) [*Sports Illustrated* cover story regarding
18 incidents of child molestation in youth sports implicated public
19 interest]; McGarry v. University of San Diego, 154 Cal. App. 4th
20 97 (2007) [termination of university football coach for the past
21 26 years was a matter of widespread public interest, and coach was
22 a limited public figure]).

23
24 Further, the extent of publication is not relevant to whether the issue
25 is one of public interest. That is, a person "cannot turn otherwise
26 private information into a matter of public interest simply by
27 communicating it to a large number of people." Weinberg, 110 Cal. App.
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1 4th at 1133; Rivero v. American Federation of State, County and
2 Municipal Employees, AFL-CIO, 105 Cal. App. 4th 913, 926 (Ct. App.
3 2003); WEIL, BROWN, & RYLAARSDAM, CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE
4 TRIAL § 7:784 (Rutter Group 2009).

5 California courts have routinely held that "a matter of concern
6 [only] to the speaker and a relatively small, specific audience is not
7 a matter of public interest." Weinberg, 110 Cal. App. 4th at 1132; see
8 e.g., Du Charme v. Int'l Brotherhood of Electrical Workers, Local 45,
9 110 Cal. App. 4th 107, 118-19 (Ct. App. 2003). Weinberg v. Feisel
10 nicely illustrates this point. In Weinberg, plaintiff and defendant
11 were both aficionados of token collecting and belonged to the National
12 Token Collectors' Association ("NTCA"). Id. at 1127. At the relevant
13 time, the NTCA had approximately 700 members and published a monthly
14 newsletter for such members. Id. In 1998 or 1999, both plaintiff and
15 defendant attended a token show where collectors exhibited their
16 collections. One of defendant's tokens went missing at the show, and
17 he accused plaintiff of stealing it. Id. Thereafter, defendant
18 published an advertisement in the NTCA monthly newsletter and
19 personally sent letters to over 20 token collectors accusing plaintiff
20 of the theft. Id. at 1128. Plaintiff filed a defamation suit, and
21 defendant brought a motion to strike under section 425.16.

22 The Weinberg court held that defendant's advertisements and
23 letters did not concern matters of public interest within the meaning
24 of the anti-SLAPP statute. Id. at 1134. After surveying numerous
25 cases on the issue of public interest, the court reasoned, "[the]
26 defendant did not present any evidence to show that plaintiff was
27 anything other than a private, anonymous token collector; that their
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1 dispute was anything other than a private controversy; or that the
2 communications were made to anyone other than a small group of other
3 private parties." Id. at 1132. In short, plaintiff was not a public
4 figure and the statements were only of interest to a narrow group of at
5 most 700 token collectors. The court concluded, "private
6 communications about private matters . . . warrant no special
7 protection" under the anti-SLAPP statute. Id. at 1132.

8 The Weinberg court also rejected the defendant's argument that his
9 statements concerned the public interest because they accused plaintiff
10 of criminal acts. Id. at 1134-35. The court held that while
11 accusations of criminal conduct may be protected when one attempts to
12 expose wrongdoing to the authorities or initiate civil proceedings, the
13 mere fact that defendant's statements accuse plaintiff of criminal
14 conduct "does not automatically make them a matter of public interest."
15 Id. at 1135. In Weinberg, defendant did not report his suspicions to
16 law enforcement, no criminal charges or investigations were pending,
17 and there was no evidence that he had initiated civil proceedings
18 against plaintiff. Id. at 1135. Under those circumstances, the
19 accusations were not a matter of public interest.

20 In Rivero v. American Federation of State, County and Municipal
21 Employees, AFL-CIO, 105 Cal. App. 4th 913 (Ct. App. 2003), a case
22 closely analogous to the present case, the court addressed whether a
23 private employment dispute could be a matter of public interest.
24 There, the plaintiff, David Rivero, was a supervisor of eight janitors
25 at the International House on the campus of the University of
26 California at Berkeley. Id. at 916. The janitors supervised by Rivero
27 were members of the defendant labor union ("the Union"). Id. The
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1 janitors made allegations of misconduct against Rivero, which were not
2 substantiated. Nonetheless, Rivero was demoted, and then fired when he
3 would not accept the demotion. Id. After Rivero's termination, the
4 Union published and distributed three documents to union members which
5 heralded Rivero's termination and accused Rivero of soliciting bribes,
6 hiring family members, and abusing or mistreating the eight janitors
7 who worked for him. Id. at 917. Rivero sued the Union for defamation.

8 The Union argued that its statements involved matters of public
9 interest because "abusive supervision of employees throughout the
10 University of California system" impacts a community of 17,000 public
11 employees, and unlawful workplace activity is a matter of particular
12 interest when it occurs at a publicly-financed institution. Id. at
13 919. The California Court of Appeals flatly disagreed. The court
14 explained:

15 Here, the Union's statements concerned the supervision of a
16 staff of eight custodians by Rivero, an individual who had
17 previously received no public attention or media coverage.
18 Moreover, the only individuals directly involved and affected
19 by the situation were Rivero and the eight custodians.
20 Rivero's supervision of those eight individuals is hardly a
21 matter of public interest.

22 Id. at 924. The court also rejected the Union's claim that, because
23 public policy favors criticism of unlawful workplace activity, such
24 issues are always a matter of public interest. Id. at 925. The court
25 noted that, were the Union's argument accepted, nearly every workplace
26 dispute would qualify as a matter of public interest. Id. Finding
27 this conclusion far too sweeping, the court held that, "unlawful
28 workplace activity below some threshold level of significance is not an

1 issue of public interest, even though it implicates a public policy.”

2 Id.³

3 The court reached a similar conclusion in Olaes v. Nationwide
4 Mutual Insurance Co., 135 Cal. App. 4th 1501 (2006). In Olaes, the
5 plaintiff was discharged from employment with the defendant after two
6 employees complained that he had sexually harassed them. Id. at 1504.
7 The plaintiff later filed a defamation complaint against defendant,
8 claiming that defendant falsely accused him of harassment and failed to
9 investigate the charges against him. Id. In response, defendant
10 brought a motion to strike under Section 425.16.

11 The court held that the defendant’s conduct did not meet the
12 public interest requirement of subdivision (e). Id. at 1510. As in
13 Rivero, the statements concerned an individual who was not in the
14 public eye, and directly impacted only a few individuals. See id. at
15 1511. While recognizing the “[undeniable] public interest in the fair
16 resolution of claims of sexual harassment,” the court held that “this
17 general public interest does not bring [plaintiff’s] complaint . . .
18 into section 425.16’s ambit.” Id. Citing to Weinberg and Rivero, the
19 court held that “a dispute among a small number of people in a
20 workplace does not implicate a broader public interest subject to a
21 motion to strike under section 425.16, subdivision (e).” Id.

22 Finally, in Du Charme v. Int’l Brotherhood of Electrical Workers,
23 Local 45, 110 Cal. App. 4th 107, 118-19 (Ct. App. 2003), the California
24 Court of Appeals again addressed the public interest requirement in the

25 _____
26 ³ Specifically, Rivero was accused of hiring family members, offering to
27 nominate an employee for a \$2,500 service award in exchange for a share of the
28 award, letting a custodian sleep on the job, and extorting or borrowing
\$10,000 from another custodian. The court found that this misconduct did not
rise to the level of public interest. Rivero, 105 Cal. App. 4th at 925.

1 context of a workplace dispute. In Du Charme, plaintiff was an
2 assistant business manager of a labor union. Id. at 113. Plaintiff's
3 supervisor was terminated for embezzlement of union funds, and shortly
4 thereafter, plaintiff was terminated for taking unauthorized vacation
5 and overtime pay. Id. The union then posted a statement on its
6 Internet website stating that plaintiff had been removed from office
7 for "fiscal mismanagement." Id. at 114. Plaintiff sued the union for
8 defamation. Id.

9 The Du Charme court held that the union's statement was not
10 protected by the anti-SLAPP statute as a statement made in connection
11 with a matter of public interest. Specifically, the court noted that
12 the statement was presumably of interest only to the union membership,
13 which was a limited but definable community. Id. at 118.
14 Additionally, the statement did not concern any ongoing debate or
15 controversy requiring participation by the union members - for example,
16 a vote on a particular issue or the future management of the union.
17 Id. Rather, the statement simply informed members of plaintiff's
18 termination. In light of these facts, the court held that "where the
19 issue is not of interest to the public at large, but rather to a
20 limited, but definable portion of the public . . . the constitutionally
21 protected activity must, at a minimum, occur in the context of an
22 ongoing controversy . . . such that it warrants protection by a statute
23 that embodies the public policy of encouraging *participation* in matters
24 of public significance." Id. at 119 (emphasis in original). Finding
25 that standard was not met, the court denied the motion to strike.⁴ Id.;
26 see also Dyer v. Childress, 147 Cal. App. 4th 1273, 1282 (Ct. App.

27 ⁴ The court also noted that there may be some limit on the size and/or nature
28 of a particular group, organization, or community, in order for it to come
within the rule announced. Du Charme, 110 Cal. App. 4th at 119.

1 2007) (“[C]ases involving disputes in the workplace do not involve
2 matters of public interest as defined in section 425.16, even though
3 the issue may involve free speech.”)

4 In light of the authorities listed above, the Court finds that the
5 third-party statements posted on the Ripoff Report website (and
6 Magedson’s conduct to the extent it furthers those statements) do not
7 implicate matters of public interest. In this case, the speech at
8 issue criticizes the employment practices of a small, virtually unknown
9 company. The reports range from suggesting that AEI and its principals
10 engage in criminal conduct, such as laundering money or paying workers
11 illegally, to benign comments such as calling AEI’s principal an idiot
12 or stating that he does not know how to run a business. None of these
13 comments rise to the level of a public issue.

14 First, unlike in Sipple or Seelig, AEI is not a public company,
15 and there is no evidence that it has thrust itself in the public eye in
16 any meaningful way. AEI’s principals, Mobrez and Llaneras, are not
17 public figures. Second, as in Rivero and Weinberg, the statements here
18 are not of interest to the general public. The comments relate to
19 employment disputes between a private company and a very small universe
20 of private individuals. The only persons who would possibly be
21 interested in the website reports are AEI’s principals and employees (a
22 group totaling on average ten persons) or potential employees of AEI.
23 Indeed, the limited interest in the statements is evidenced by the fact
24 that the Internet reports, which are freely available to the public
25 world-wide and have been posted in some instances for over a year, have
26 generated a total of only 12 comments. (Opp’n at 10; Pls. Exh. B.)
27 An interest of such limited magnitude is not protected under section
28

1 425.16. Weinberg, 110 Cal. App. 4th at 1127 (the interest of a
2 community of 700 token collectors was not sufficient meet the public
3 interest requirement).

4 Finally, while the some of the reports accuse AEI of criminal
5 conduct, such statements do not automatically fall within the
6 protection of section 425.16(e). Much like the situation in Rivero,
7 here, there is no evidence that any criminal charges are pending
8 against AEI, that allegations of misconduct have been reported to
9 prosecutorial authorities, or that the authors of the reports are
10 involved in civil disputes with AEI. As stated above, the bald
11 assertion of criminal conduct, on its own, is insufficient to implicate
12 the public interest.

13 **a. Defendants' Arguments**

14 Defendants launch several arguments in support of the public
15 interest requirement, none of which are persuasive. First, Defendants
16 argue that the statements posted on the Ripoff Report website
17 constitute consumer protection information, which is protected under
18 the anti-SLAPP statute. Second, Defendants argue that the statements
19 implicate the current unemployment crisis and workplace best-practices,
20 issues of undisputed widespread public interest. Finally, Defendants
21 contend that statements which "question and criticize the business
22 practices or ethics of individuals who interact with the public" are
23 matters of public interest. The Court addresses each of these
24 arguments below.

25 **i. Consumer protection information**

26 Defendants rely primarily on Wilbanks v. Wolk, 121 Cal. App. 4th
27 883, 89-100 (2004) to support the proposition that consumer protection
28

1 information falls within the scope of the anti-SLAPP statute. In
2 Wilbanks, the defendant, a former insurance agent, wrote several books
3 and operated a website regarding viatical settlements. Id. at 889. A
4 viatical settlement is an arrangement that allows a dying person with a
5 life insurance policy to sell his or her policy to investors for a
6 percentage of the death benefits. Id. The policies are sold through
7 independent sales agents or brokers, like the plaintiff in Wilbanks.
8 Id. Defendant's website, in part, offered information to assist
9 persons in finding a reputable broker. Id. As part of this service,
10 defendant posted a "warning" about plaintiff's company on the website.
11 Id. at 890. The warning stated that plaintiff's firm was unethical and
12 provided incompetent advice, was under investigation by regulatory
13 authorities, and had been subject to a judgment in a suit brought by "a
14 California viator." Id. Upon discovering the warning, plaintiff
15 brought a defamation suit against defendant. Defendant countered that
16 her speech was protected by the anti-SLAPP statute.

17 In deciding whether the anti-SLAPP statute applied, the Wilbanks
18 court held: "Consumer information, . . . **at least when it affects a**
19 **large number of persons**, also generally is viewed as information
20 concerning a matter of public interest." Id. at 898 (citing Paradise
21 Hills Association v. Procel, 235 Cal. App. 3d 1528 (Ct. App. 1991)
22 (emphasis added)). The court noted that "the viatical industry touches
23 a large number of persons, both those who sell their insurance policies
24 and those who invest in viatical settlements." Id. at 899. Indeed,
25 plaintiff's business alone generated an average monthly income of
26 \$58,333. Id. Moreover, the court pointed to the fact that defendant
27 had studied and written about the industry, and her website provided
28

1 consumer information about the industry as a whole, including educating
2 consumers about the potential for fraud. Id. Importantly, "the
3 statements made by [defendant] were not simply a report of one broker's
4 business practices, of interest only to that broker and to those who
5 had been affected by those practices." Id. at 900. To the contrary,
6 "in the context of information ostensibly provided to aid consumers
7 choosing among brokers, the statements, therefore, were directly
8 connected to an issue of public concern." Id. at 900.

9 Wilbanks is readily distinguishable from the present case.⁵ First,
10 unlike the viatical settlement industry, it cannot be said that AEI's
11 employment practices affect a large number of persons. As stated
12 above, Plaintiffs have introduced evidence that AEI employs an average
13 of 10 persons, including Mobrez and Llaneras.⁶ Thus, this information
14 only affects a small universe of AEI employees and potential hires.
15 Second, unlike the defendant Wilbanks, the persons who posted the
16 reports about AEI did not provide information about industry-wide
17 employment practices, nor do such persons purport to have any knowledge
18 or expertise in these areas. Thus, the context of the reports is
19 wholly dissimilar from that in Wilbanks. Here, unlike in Wilbanks, "the
20 statements made by [the third-party authors] **were** . . . simply a report
21 of one [business's] practices, of interest only to that [business] and
22 to those who had been affected by those practices." Id. at 900.

24 ⁵ The present case does not involve consumer information in the traditional sense,
25 as AEI does not offer any goods or services for charge to consumers. Nonetheless,
the employment decisions at issue in the reports - i.e., whether to work for AEI -
can be analogized to a consumer choice, such as which product to buy.

26 ⁶ It may be that the service AEI provides - i.e., the economic information
27 provided on the AEI website - might reach a large number of persons.
However, the reports on defendant's website do not address the information
28 AEI disseminates to others. Instead, the reports address only the
employment practices of AEI, a small and relatively unknown company.

1 Other cases in which consumer information was at issue further
2 establish that such information is only protected where it affects a
3 large number of persons - such as where the company at issue is large
4 and publicly-traded. For example, in DuPont Merck Pharmaceutical Co.
5 v. Superior Court, 78 Cal. App. 4th 562 (Ct. App. 2000), the plaintiffs
6 alleged that a manufacturer of Coumadin, an anticoagulant medication,
7 had made false statements about the drug. The court found that the
8 manufacturer's statements met the public interest requirement and were
9 protected by the anti-SLAPP statute. Id. at 567. The court noted that
10 the plaintiffs had alleged that "more than 1.8 million Americans have
11 purchased Coumadin . . . for the prevention and treatment of blood
12 clots that can lead to life-threatening conditions." Id. Thus, "both
13 the number of persons allegedly affected and the seriousness of the
14 conditions treated establish that the issue is one of public interest."
15 Id.

16 Similarly, in ComputerXpress Inc. v. Jackson, 93 Cal. App. 4th 993
17 (Ct. App. 2001), the defendants made disparaging remarks to potential
18 customers about a company selling computer-related products to the
19 public. Id. at 998. The court concluded that the statements
20 implicated the public interest because the plaintiff's company was
21 publicly traded, with outstanding shares varying from 12,000,000 to
22 24,000,000. Id. at 1008. Additionally, the company had issued press
23 releases to promote itself, thereby voluntarily putting itself in the
24 public eye. Id. at 1007. Finally, the company's allegation that it
25 lost \$10 million as a result of defendant's statements suggested that
26 the information was of importance to a large segment of the public.
27 Id. at 1009.

1 The court reached a similar conclusion in Global Telemedia Int'l,
2 Inc. v. Doe 1, 132 F. Supp. 2d 1261, 1264 (C.D. Cal. 2001). There, the
3 plaintiff made disparaging remarks about GTMI, a publicly-traded
4 telecommunications company with over 18,000 investors. Id. at 1265.
5 GTMI had also "inserted itself into the public arena . . . by means of
6 numerous press releases." Id. In light of these facts, the court
7 held: "[A] publicly traded company with many thousands of investors is
8 of public interest because its successes or failures will affect not
9 only the individual investors, but in the case of large companies,
10 potentially market sectors or the markets as a whole." Id. In sum,
11 the size of the company and the number of persons affected by the
12 information satisfied the public interest requirement.

13 The other end of the spectrum is illustrated by Sandra Caron
14 European Spa, Inc. v. Kerber, No. A117230, 2008 WL 3976463 (Ct. App.,
15 Aug. 28, 2008).⁷ In Sandra Caron, defendants posted consumer reviews on
16 the Internet, which critiqued a local, family-owned day spa. Id. at
17 *1, *5. The reviews criticized the tacky décor of the spa, the rude
18 service, and the dirty and unhygienic conditions of the facilities.
19 Id. at *1. The defendants argued that their reviews constituted
20 consumer protection information and were protected by the anti-SLAPP
21 statute. Id. at *5-6. The California Court of Appeals disagreed.
22 Distinguishing Wilbanks, the court noted:

23 The Internet postings which [plaintiffs] contend are
24 protected speech under the anti-SLAPP statute critiqued a
25 local, family-owned spa Caron Spa is not an entity
that is in the public eye; nor are its owners. Further, the

26 ⁷ Sandra Caron is not a published opinion. California Rule of Court 8.1115(a)
27 prohibits citation or reliance by a court on an unpublished California Appeal
28 Court decision. However, the rule is not binding in the federal courts. Cole
v. Doe 1 thru 2 Officers of City of Emeryville Police Dept., 387 F. Supp. 2d
1084, 1103 n.7 (N.D. Cal. 2005). Moreover, Sandra Caron is not cited as
decisional law, but rather for its persuasive reasoning.

1 focus of each posting was extremely narrow and did not
2 constitute a topic of widespread, public interest. The
3 statements did not embrace the quality of spas in general or
4 within a widespread chain of facilities, or the health and
5 safety issues pertinent to the spa industry. . . . [W]e are
6 talking about a "mom and pop" local operation, not a large
7 scale program or chain of operations and the matters reported
8 on would not be of concern to a substantial number of people.

9 Id. at *5-6 (internal citations omitted). Thus, while the Internet
10 postings could be described as consumer protection information - i.e.,
11 counseling against going to Caron Spa - they were limited in scope and
12 did not affect a large number of persons. Id. at *5. As such, the
13 reviews were not protected by the anti-SLAPP statute.

14 Here, given the nature of AEI's business, the present case bears
15 much more resemblance to Caron Spa than to Wilbanks, ComputerXpress, or
16 Global Telemedia. Certainly, the information provided by the Ripoff
17 Reports can be construed as consumer protection information - the
18 information is designed to dissuade persons from working for AEI. But
19 there is no evidence whatsoever that this information affects a large
20 number of persons. AEI is not a publicly-traded company; neither it
21 nor its principals are in the public eye; no evidence indicates that
22 AEI's success or failure would have any effect on the market or a large
23 segment thereof. Much like Caron Spa, it appears that AEI is akin to a
24 "mom and pop" operation whose business practices would not be of
25 concern to a large number of persons. For these reasons, the reports
26 are not protected under the anti-SLAPP statute.

27 **ii. Issues of unemployment and employers' best**
28 **practices**

Next, Defendants argue that, because the reports discuss whether
AEI is a good place to work, the statements address the broader issues

1 of the nation-wide unemployment crisis and desirable employment
2 practices - issues of undisputed public concern. Defendant contends
3 that "the reports at issue relate directly to [those] topic[s];" thus,
4 "nothing further is needed" to find that the public interest
5 requirement is met. (Mot. at 8.) On this point, Defendant is simply
6 wrong.

7 In Weinberg, 110 Cal. App. 4th 1122, the court explained that
8 "there must be some degree of closeness between the challenged
9 statements and the asserted public interest; the assertion of a broad
10 and amorphous public interest is not sufficient." Id. at 1132. Where
11 the connection between the statements and the asserted public interest
12 is tangential at best, the statements cannot be said to implicate the
13 public interest. See id. For example, in Consumer Justice Center v.
14 Trimedica International, Inc., 107 Cal. App. 4th 595, (Ct. App. 2003),
15 the court found that advertising claims made on behalf of a company
16 offering herbal supplements for breast enlargement did not invoke a
17 public issue. Id. at 601. The court recognized that herbal medicine
18 **in general** may be an issue of public concern, but the advertisement was
19 not about herbal supplements generally; the ads concerned "the specific
20 properties and efficacy of a particular product." Id. (emphasis
21 added). Thus, the anti-SLAPP statute did not apply. Id.; see also,
22 Commonwealth Energy Corp. v. Investor Data Exchange, Inc., 110 Cal.
23 App. 4th 26 (Ct. App. 2003) (defendant's telemarketing campaign
24 offering one company's investment services to callers did not implicate
25 the public interest in investment scams generally).

26 The present case is analogous to Consumer Justice and
27 Commonwealth. Certainly, the national unemployment rate and the
28

1 economic downturn generally are matters of public concern. Further,
2 the issue of which major U.S. companies are the best to work for is
3 also a matter of public interest. (Mot. at 9 [citing Fortune
4 Magazine's list of "Top 100 Best Companies to Work For"].) That said,
5 the reports on Defendant's website do not implicate these issues. The
6 reports do not address what **general** characteristics make a company a
7 good place to work, nor do they comment on the unemployment crisis, job
8 creation policies, or other issues of widespread concern. Instead, the
9 reports relate solely to the personal employment experiences of third-
10 parties with AEI, a small and virtually-unknown company. Much like
11 the statements in Consumer Justice and Commonwealth, the fact that the
12 third-party reports may, in some abstract and tangential way, bear
13 relation to the national unemployment crisis is not sufficient to
14 satisfy the public interest requirement.⁸ Wilbanks, 121 Cal. App. 4th
15 at 898 ("[I]t is not enough that the statement refer to a subject of
16 widespread public interest; the statement must in some manner itself
17 contribute to the public debate.")

18 Moreover, Defendants' reliance on Gilbert v. Sykes, 147 Cal. App.
19 4th 13 (Ct. App. 2007), is misplaced. In Gilbert, the plaintiff
20 received various plastic surgery procedures at the hands of Dr. Sykes,
21 a "nationally recognized educator and leader in [plastic] surgery."
22 Id. at 18. Sykes was a prominent surgeon, as well as the Director of
23 Reconstructive Surgery at the U.C. Davis Medical Center, and had
24 published three books and over 90 articles on facial plastic surgery.
25 Id. Nonetheless, despite Sykes' excellent credentials, plaintiff was
26

27 ⁸ Indeed, were Defendant's argument accepted, virtually any comment about one's
28 dissatisfaction with his or her job, if made in a public forum, would be a matter
of public interest. The Court cannot accept this reasoning.

1 horrified by the results of her surgery. Id. at 19. Plaintiff created
2 a website titled "www.mysurgerynightmare.com," which, in addition to
3 publishing before and after photos and describing her own plastic
4 surgery experience, included information about how to select a doctor,
5 links to other research references, "red flags" or things to look out
6 for when choosing a surgeon, and a contact page where readers could
7 share their own experiences. Id. at 24.

8 Sykes brought a defamation suit against plaintiff, but plaintiff
9 argued that her speech was protected by the anti-SLAPP statute. The
10 California Court of Appeals agreed. The court held that, contrary to
11 Sykes' contentions, the website was not limited to information about
12 Gilbert's experience with Sykes, which on its own, was a private
13 matter. See id. at 23. Instead, the website contributed to the
14 overall public debate about plastic surgery - a subject of widespread
15 public concern - for numerous reasons: First, Sykes was a widely-known
16 and revered plastic surgeon who had published books and articles and
17 had appeared on local television shows regarding plastic surgery.
18 Second, the website was not limited to Sykes' services, but rather
19 provided information about how to select a doctor, research references,
20 warning signs when selecting a doctor, and allowed persons to post
21 their own stories to contribute to the public debate. Id. at 24. In
22 sum, the website "was not limited to attacking Sykes, but contributed
23 to the general debate over the pros and cons of undergoing cosmetic
24 surgery." Id.

25 The present case is entirely distinguishable from Gilbert. Here,
26 unlike the plaintiff's website in Gilbert, the reports on Defendants'
27 website **are limited to attacking AEI and its principals**. The reports
28

1 do not contribute to the widespread national debate regarding
2 unemployment rates; indeed, apart from a passing reference to the
3 economic downturn, none of the reports even mention the economy or
4 unemployment rates. As stated above, the issues raised in the reports
5 are narrowly directed only at AEI; as such, the reports do not
6 implicate the public interest.

7 **iii. Statements criticizing the ethics of persons**
8 **dealing with the public**

9 Defendants' final argument warrants the least discussion.
10 Defendants broadly assert that statements made in a public forum which
11 question the ethics and business practices of persons dealing with the
12 public are matters of public concern. (Mot. at 7.) However, none of
13 the cases cited by Defendants are applicable here.

14 First, as stated above, Sipple v. Foundation for National
15 Progress, 71 Cal. App. 4th 226 (Ct. App. 1999), involved statements
16 about a nationally-known political consultant abusing his former
17 spouse. Additionally, the consultant had devised media strategies for
18 political candidates that capitalized on the issue of domestic violence
19 prevention. Id. at 239-40. Thus, the consultant was a public figure
20 who had made his success, in part, by campaigns connected to the very
21 issue addressed in the allegedly defamatory statements. Similarly, in
22 Global Telemedia, 132 F. Supp. 2d at 1265-66, the company about which
23 the statements were made was a large, publicly-traded company and its
24 business practices affected a large segment of the market. Id. at
25 1265. In each of these cases, the plaintiffs were public figures or
26 entities whose business practices affected many persons. As stated
27 above, AEI does not fit this mold.

1 Moreover, Barrett v. Rosenthal, 40 Cal. 4th 33 (2006) does not
2 assist Defendant. Contrary to Defendant's assertion, the California
3 Supreme Court in Barrett did **not** hold that statements criticizing the
4 character and competence of two physicians were matters of public
5 interest within the meaning of section 425.16. Although the trial
6 court had come to that conclusion, the plaintiffs did not challenge
7 that ruling on appeal. Id. at 41. Thus, the California Supreme Court
8 did not rule one way or another on the public interest issue. Id.
9 Furthermore, the trial court's ruling, which found that the criticisms
10 implicated an issue of public interest, was based at least in large
11 part on the fact that the physicians had become public figures with
12 regard to the topic of health care fraud. Barrett v. Clark, No.
13 833021-5, 2001 WL 881259, at *5 (Sup. Ct., July 25, 2001). Each of
14 the physicians operated websites, published articles and books, and
15 spoke publicly about alternative medicine and health care fraud. Id.
16 The trial court held, "the substantial publicity received by these
17 plaintiffs is more evidence that the issue is a matter of public
18 interest." Id. Thus, like the plaintiff in Sipple, the physicians had
19 voluntarily inserted themselves into a matter of public controversy and
20 debate. Here, however, there is no evidence that AEI or its principals
21 have any notoriety or have ever sought public attention on the issue
22 workplace best practices.

23 In sum, Defendant has not cited, and the Court has not found, any
24 authority indicating that criticism of the business ethics of private
25 persons running a small, virtually unknown company are matters of
26 public concern. See Dyer, 147 Cal. App. 4th at 1281 (statements about
27 the character of a person not in the public eye are not a matter of
28

1 public interest). For the reasons stated above, the Court concludes
2 that the statements about AEI posted on Defendants' website are not a
3 matter of public interest.

4 **2. Whether Magedson's and Ripoff Report's Conduct**
5 **Implicates Section 425.16(e)(4)**

6 Defendants contend that the conduct of Magedson, independent of
7 the statements made by third parties on the Ripoff Report website,
8 implicate matters of public interest and are protected under section
9 425.16(e)(4). For example, Defendants argue that Xcentric and Magedson
10 use the Ripoff Report website to solicit non-tax-deductible donations,
11 which is protected First Amendment speech. Further, Defendants argue
12 that the CAP program implicates Magedson's First Amendment right to
13 engage in "corporate or consumer advocacy." (Mot. at 10.) Thus,
14 Defendants conclude that, to the extent Plaintiffs' claim of unfair
15 business practices under California Business & Professions Code § 17200
16 is based on this conduct, such conduct is protected by the anti-SLAPP
17 statute.

18 The Court agrees with Plaintiffs that Defendants' argument
19 misconstrues Plaintiffs' unfair business practices claim. While the
20 allegations in the Complaint mention that Defendants represent
21 themselves as consumer advocates, this appears to be only for purposes
22 of context. The crux of the unfair business practices claim is that
23 Defendants allegedly extort money from the subjects of complaints on
24 the Ripoff Report website in exchange for promising to favorably alter
25 such complaints. (Compl. ¶¶ 53(a), 55.) As Defendant conceded in its
26 moving papers, the claims based on alleged extortion "are arguably not
27 based on 'protected conduct' within the meaning of CCP § 425.16."
28

1 (Mot. at 3.); see Flately v. Mauro, 39 Cal. 4th 299, 320 (2006) (speech
2 or activity that is "illegal as a matter of law," such as extortion, is
3 not constitutionally protected under the anti-SLAPP statute).

4 Plaintiffs have indicated (Opp'n at 12), and the Court agrees, that the
5 unfair business practices claim is predicated on Defendants' alleged
6 extortion scheme, and not on Xcentric's solicitation of non-tax
7 deductible donations or general acts of "corporate advocacy." Thus, it
8 is immaterial whether these latter acts are protected activity under
9 the anti-SLAPP statute.

10 **C. Second Step: Whether Plaintiff Will Prevail on the Merits**

11 Having concluded that Defendants did not meet their burden of
12 establishing that the anti-SLAPP statute applies, the Court need not
13 address whether Plaintiffs' claims are likely to succeed on the merits.
14 Further, the Court believes that this issue will be better addressed by
15 way of a summary judgment motion, which will give the Court a greater
16 understanding of how the Ripoff Report website operates, what
17 alterations (technical or otherwise) are made to third-party's reports,
18 and the significance of those alterations under the Communications
19 Decency Act.

20 For the reasons stated, Defendants' Motion to Strike under section
21 425.16 is DENIED.

22 **IV. Request for a RICO Case Statement**

23 Defendant's final request is that the Court order Plaintiffs to
24 file a "RICO Case Statement," which would outline the factual and legal
25 basis for Plaintiff's RICO claims. RICO case statements are not
26 required by any Federal Rule of Civil Procedure. However, several
27 district courts require plaintiffs to supply the defendant with a RICO
28

1 case statement. See Wagh v. Metris Direct, Inc., 363 F.3d 821, 827
2 (9th Cir. 2003) (discussing "widespread use" of standing orders for
3 RICO case statements). Defendant has submitted the RICO case statement
4 forms used by Judge Selna and Judge Matz, and asks that this Court
5 require Plaintiff's to use Judge Selna's form, as it is more detailed.

6 Having reviewed the Complaint, and listed to the arguments made at
7 the initial status conference attended by both parties, the Court
8 concludes that a RICO Case Statement is not necessary. The factual
9 allegations and legal predicates underlying the RICO claims are
10 reasonably clear and appear to be understood by both parties.
11 Therefore, Defendants' request for a RICO case statement is DENIED.

12 **v. Conclusion**

13 For the reasons stated, Defendants have not met their burden of
14 demonstrating that the anti-SLAPP statute applies to Plaintiffs' First
15 and Second, and Fifth through Tenth causes of action. Defendants'
16 motion to strike under Section 425.16 is therefore DENIED. Defendant's
17 request for an order requiring Plaintiffs to submit a RICO case
18 statement is also DENIED.

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24 IT IS SO ORDERED.

25 DATED: 04/20/10



26 _____
STEPHEN V. WILSON
27 UNITED STATES DISTRICT JUDGE
28