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 Xcentric Ventures, LLC and
 14 Edward Magedson

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17
 18 **ASIA ECONOMIC INSTITUTE, LLC, et al.,**

19 **Plaintiffs,**

20 **vs.**

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

22 **Defendants.**

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

**NOTICE RE: PLAINTIFFS'
 CORRECTED DECLARATIONS**

23
 24 As is true of all attorneys admitted to practice before this Honorable Court,
 25 undersigned counsel owes the court a duty of candor which is taken extremely seriously.
 26 Pursuant to that duty and in order to avoid the appearance of any attempt to mislead the
 27 court by presenting an incomplete discussion of the facts relating to Defendants' Motion
 28 for Summary Judgment, counsel respectfully offers this short notice which addresses two

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1 pleadings recently filed by Plaintiffs—Doc. #36 (filed 5/20/2010) and Doc. #38 (filed
2 5/20/2010). These pleadings are an attempt to affect Defendants’ concurrently filed
3 Motion for Summary Judgment, but they are not mentioned in the motion itself. As such,
4 pursuant to his duty of candor undersigned counsel feels it is necessary to briefly explain
5 to the court why these new pleadings are not discussed in the motion.

6 As the court may recall, pursuant to an order entered in April 19, 2010 (Doc. #26),
7 Plaintiffs were ordered to file declarations explaining the factual basis for their extortion
8 claims. On the final day to do so (Monday, May 3), Mr. Mobrez and Ms. Llaneras filed
9 their declarations as ordered. Mr. Mobrez’s initial declaration is Doc. #28 and Ms.
10 Llaneras’ initial declaration is Doc. #27. These declarations both allege that during a
11 series of telephone calls from Mr. Mobrez to Mr. Magedson in April and May 2009, Mr.
12 Magedson committed extortion by demanding \$5,000 plus a monthly fee in order to
13 change negative postings about Plaintiffs on the Ripoff Report website.

14 A few days after these declarations were filed, Mr. Mobrez was deposed by
15 undersigned counsel on Friday, May 7, 2010. During his deposition, Mr. Mobrez
16 repeatedly alleged that he had been extorted by Mr. Magedson during the phone calls in
17 April and May 2009. In addition to confirming the testimony in his declaration, Mr.
18 Mobrez supported his allegations with handwritten notes taken during the calls and
19 telephone bills showing the date/time of each call.

20 After repeatedly affirming that his May 3rd declaration was a truthful and accurate
21 reflection of his conversations with Mr. Magedson, it was revealed to Mr. Mobrez that all
22 of his conversations with Mr. Magedson were automatically recorded by a third party
23 vendor who operates Xcentric’s phone system. The actual substance of these recordings
24 is explained in the Motion for Summary Judgment, but it suffices to say that the
25 recordings conclusively demonstrate that Mr. Mobrez and Ms. Llaneras perjured
26 themselves by fabricating their extortion claims.

27 Because the parties met and conferred regarding Defendants’ Motion for Summary
28 Judgment as required by the local rules, Plaintiffs were aware that Defendants intended to

1 move for summary judgment based, in part, on the fact that Mr. Mobrez's and Ms.
2 Llaneras's stories were provably and incontrovertibly false. Nevertheless, just days
3 before Defendants' motion was filed, Plaintiffs filed new affidavits seeking to "correct"
4 the false testimony given in their declarations filed with the court on May 3, 2010 as well
5 as the false deposition testimony given by Mr. Mobrez in his May 7th deposition.

6 Notwithstanding their late disclosure in violation of the court's April 19th order,
7 undersigned counsel would ordinarily include at least some discussion of these new
8 affidavits in the Motion for Summary Judgment because the failure to do so might appear
9 to give the court an incomplete picture of all salient facts. Under the unusual
10 circumstances of this case, however, this is not necessary because assuming the
11 "corrected" affidavits are relied upon in Plaintiffs' opposition papers, they would be
12 patently insufficient to preclude summary judgment based on the "sham affidavit" rule;
13 "The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an
14 affidavit contradicting his prior deposition testimony." *Nelson v. City of Davis*, 571 F.3d
15 924 (9th Cir. 2009) (quoting *Kennedy v. Allied Mutual Insurance Co.*, 952 F.2d 262 (9th
16 Cir.1991)).

17 Because the "corrected" affidavits from Mr. Mobrez and Ms. Llaneras¹ are plainly
18 shams created after Plaintiffs were caught lying, they cannot be used to defeat summary
19 judgment. For that reason, and because they were not produced until after the Motion
20 For Summary Judgment was completed, these affidavits will not be discussed in
21 Defendants' motion. Assuming they are relied upon at all in Plaintiffs' opposition brief,
22 they will be addressed in Defendants' Reply.

23 Respectfully submitted: May 24, 2010.

24 _____
25 /s/David S. Gingras
26 David S. Gingras

27 _____
28 ¹ Ms. Llaneras has not yet been deposed, so her "corrected" affidavit does not conflict
with her prior deposition testimony. The corrected affidavit does, however, conflict with
Ms. Llaneras' prior declaration as well as the deposition testimony of Mr. Mobrez.

