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

ASIA ECONOMIC INSTITUTE, a
California LLC; RAYMOND
MOBREZ an individual; and ILIANA
LLANERAS, an individual,

Plaintiffs,

vs.

XCENTRIC VENTURES, LLC, an
Arizona LLC, d/b/a as BADBUSINESS
BUREAU and/or
BADBUSINESSBUREAU.COM
and/or RIP OFF REPORT and/or
RIPOFFREPORT.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.

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

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
BENCH TRIAL; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF LISA J.
BORODKIN AND
CERTIFICATION OF
COMPLIANCE WITH LOCAL
CIVIL RULE 7-3**

Judge: The Hon. Stephen V. Wilson

Date: June 28, 2010

Time: 1:30 p.m.

Place: 312 North Spring Street
Los Angeles, California 90012

Courtroom: 6

Complaint Filed:

Pretrial Conference: August 2, 2010

Trial Date: August 3, 2010

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on June 28, 2010 at 1:30 p.m., in
3 Courtroom 6 of the above-entitled Court, located at 312 N. Spring Street, Los
4 Angeles, California, 90012, the above-named plaintiffs will and hereby do move
5 this Honorable Court for an order granting Plaintiffs a bench trial in the August 3,
6 2010 trial of this matter.

7 The Motion is based on the grounds that the right to a jury trial has
8 been waived pursuant to Federal Rules of Civil Procedure 38 and 81 because no
9 demand for a jury trial has been filed in this action and it has been more than
10 fourteen (14) days since the last pleading was filed directed at the causes of action
11 set for trial on August 3, 2010; a bench trial would serve judicial economy;
12 Plaintiffs would suffer prejudice from a jury trial because Plaintiffs have been
13 preparing for trial in reliance on the lack of a jury demand; and the interests of
14 justice would be served by a bench trial by sparing Plaintiffs the additional burden
15 and expense of preparing jury instructions.

16 This Motion is based on Federal Rules of Procedure 38 and 81, Local
17 Civil Rule 7, the attached Memorandum of Points and Authorities and Declaration
18 of Lisa J. Borodkin, the pleadings, papers and proceedings in this action, and such
19 other matters as the Court deems proper. This motion is made following the
20 conference of counsel pursuant to L.R. 7-3 which took place on May 11, 2010.

21 DATED: May 31, 2010

22 Respectfully submitted,

23
24 By: /s/ Lisa J. Borodkin
25 DANIEL F. BLACKERT
26 LISA J. BORODKIN
27 Attorneys for Plaintiffs
28 Asia Economic Institute LLC, Raymond
Mobrez, and Iliana Llaneras

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. Preliminary Statement**

3 Plaintiffs Asia Economic Institute LLC, Raymond Mobrez and Iliana
4 Llaneras (“Plaintiffs”) hereby move pursuant to Federal Rules of Civil Procedure
5 38 and 81 for an order granting Plaintiffs’ motion for a bench trial. Defendants
6 Xcentric Ventures, LLC and Edward Magedson (“Defendants”) failed to serve and
7 file a timely demand for a jury trial and thus, waived the right to a jury under Rule
8 38. The interests of justice require a bench trial. Plaintiffs have been preparing for
9 a bench trial in reliance on the lack of a jury trial demand and would be prejudiced
10 by the granting of any late request for a jury.

11 **2. Background**

12 On January 27, 2010, Plaintiffs commenced this action by filing the
13 Complaint in Los Angeles Superior Court. DN-1 at Ex. A.¹ Plaintiffs claim
14 violations of the federal Racketeering Influenced and Corrupt Organizations Act,
15 18 U.S.C § 1962(c) and (d) (“RICO”), extortion, common law defamation, unfair
16 business practices, civil conspiracy, defamation per se, false light, intentional and
17 negligent interference with prospective economic relations, and inducing breach of
18 contract. DN-1. On or about February 24, 2010, Defendants Xcentric Ventures,
19 LLC and Edward Magedson removed the action to this Court. DN-1.

20 On February 24, 2010, Defendants filed an Answer. DN-4.
21 Defendants’ Answer did not include a demand for a jury trial. DN-4.

22 On April 19, 2010, proceedings were held before this Court. DN-26.
23 This Court denied Defendants’ Special Motion to Strike and Motion To Require
24 RICO Case Statement, bifurcated the action, and set a trial date of August 3, 2010:

25 THE COURT: And so anyway, I'm going to keep the
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28 ¹ References to “DN-__” are to entries on the civil docket for this action.

1 dates, and then we'll be flexible if we have to. But, you know, I'll know more
2 when you make your summary judgment motion, and I'll react accordingly.

3 So the date is when again, Paul?

4 THE CLERK: August 3rd at 9:00 a.m.

5 THE COURT: And the pretrial the day before. And the trial is
6 bifurcated, RICO extortion only, no damages. And you can set a motion any
7 time that you feel you have the wherewithal to make it.

8
9 Declaration of Lisa J. Borodkin (“Borodkin Dec.”) ¶4; Ex. 1; DN-26. To date,
10 Defendants have not served or filed a demand for a jury trial.

11 **3. Legal Argument**

12 **A. Defendants Waived the Right to a Jury by Failing to Serve and**
13 **File a Timely Jury Demand Pursuant to Fed. R. Civ. Proc. 38(d).**

14 Federal Rule of Civil Procedure 38 provides in part:

15 (b) Demand. On any issue triable of right by a jury, a party may
16 demand a jury trial by:

17
18 (1) serving the other parties with a written demand--which may
19 be included in a pleading--no later than 14 days after the last
20 pleading directed to the issue is served; and

21
22 (2) filing the demand in accordance with Rule 5(d).

23 * * *

24 (d) Waiver; Withdrawal. A party waives a jury trial unless its demand
25 is properly served and filed[.]

26 Fed. R. Civ. Proc. 38(b), (d) (emphasis added).

27 The federal “rules apply to a civil action after it is removed from a
28 state court.” Fed. R. Civ. Proc. 81(c)(1). Federal Rule 81 provides, in part:

1 A party who, before removal, expressly demanded a jury trial in
2 accordance with state law, need not renew the demand after removal.
3 If the state law did not require an express demand for a jury trial, a
4 party need not make one after removal unless the court orders the
5 parties to do so within a specified time. The court must so order at a
6 party's request and may so order on its own. A party who fails to
7 make a demand when so ordered waives a jury trial.

8 Fed. R. Civ. Proc. 81(c)(3)(A).

9 Under California law, a litigant waives a jury trial, inter alia, by
10 failing to “announce that a jury is required” at the time the trial is set:

11 (d) A party waives trial by jury in any of the following ways:

12 (1) By failing to appear at the trial.

13 (2) By written consent filed with the clerk or judge.

14 (3) By oral consent, in open court, entered in the minutes.

15 (4) By failing to announce that a jury is required, at the time the cause
16 is first set for trial, if it is set upon notice or stipulation, or within five
17 days after notice of setting if it is set without notice or stipulation.

18 (5) By failing to deposit with the clerk, or judge, advance jury fees as
19 provided in subdivision (b).

20 (6) By failing to deposit with the clerk or judge, at the beginning of
21 the second and each succeeding day's session, the sum provided in
22 subdivision (c).

23 Cal. Code. Civ. Proc. §§ 631(d) (emphasis added).

24 The Ninth Circuit interpreted this statute as requiring an “express
25 demand.” See Lewis v. Time, 710 F.2d 559, 556 (9th Cir. 1983). Therefore, a
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1 demand for a jury trial must be filed “not later than [14]² days after the service of
2 the last pleading directed to such issue [to be tried].” *Id.* Failure to file a jury
3 demand within this time is a waiver of the right to trial by jury. See *id.*

4 Defendants have not served or filed a demand for a jury trial. It has
5 been approximately three months since the Defendants filed the Answer. See DN-
6 4. Defendants have been aware since at least April 30, 2010 that Plaintiffs want a
7 bench trial. See Borodkin Dec. ¶7. Even after May 11, 2010, when counsel for the
8 parties met and conferred regarding Defendants’ failure to file a jury demand,
9 Defendants have not served or filed a jury demand. *Id.* ¶5.

10 These failures are more than simple inadvertence or mistake of law. They
11 are knowing waivers of the right to a jury. Therefore, this Court should grant
12 Plaintiffs’ motion for a bench trial.

13 **B. This Court Should Not Exercise Its Discretion To Relieve**
14 **Defendants Of Their Obligation To Demand A Jury Trial.**

15 While district courts are afforded some discretion to relieve parties of
16 this burden under F.R.C.P. 39(b), this discretion is narrow and “does not permit a
17 court to grant relief when the failure to make a timely demand results from
18 oversight or inadvertence.” The Court of Appeals for the Ninth Circuit has held
19 that where no demand for a jury trial has been made, and the failure to do so is no
20 more than inadvertence, a litigant waives his right to a jury trial:

21
22 A district court’s discretion [to relieve a party of a failure to
23 timely demand a jury] is narrow and ‘does not permit a court to grant
24 relief when the failure to make a timely demand results from an

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27 ² The quotation from *Lewis v. Time* states that 10 days is the standard. However,
28 in 2009 the statute was amended to allow for jury demand 14 days after the last
pleading.

1 oversight or inadvertence’ such as a good faith mistake of law with
2 respect to the deadline for demanding a jury trial.

3 See Zivkovic v. S. Cal. Edicson Co., 302 F.3d 1080, 1086-87 (9th Cir. 2002)
4 (emphasis added). See also Rook v. Universal Songs of Polygram, 350 Fed. Appx.
5 102, 104 (9th Cir. 2009) (district court did not abuse its discretion when it denied
6 untimely motion for a jury trial because movant “did not demonstrate that his
7 failure to request a jury trial in a timely manner was anything more than
8 inadvertence.”); Pacific Fisheries Corp. v. H.I.H. Cas. & Gen. Ins., Ltd., 239 F.3d
9 1000, 1002 (9th Cir. 2001) (“An untimely request for a jury trial must be denied
10 unless some cause beyond mere inadvertence is shown.”); Russ v. Standard Ins.
11 Co., 120 F.3d 988, 989-90 (9th Cir. 1997) (holding that the district court could not
12 employ another rule to circumvent this circuit's prohibition on granting untimely
13 jury demands due to inadvertence); Kletzelman v. Capistrano Unified Sch. Dist.,
14 91 F.3d 68, 71 (9th Cir. 1996) (denying untimely jury demand when due to
15 counsel's oversight and inadvertence); Wall v. Nat'l R.R. Passenger Corp., 718
16 F.2d 906, 910 (9th Cir. 1983) (holding district court's denial of untimely jury
17 demand not an abuse of discretion where counsel's inadvertence was the only
18 reason shown). Defendants have made no showing that their failure to demand a
19 jury trial was anything other than a mistake on their part.

20 Furthermore, due to Defendants’ failure to make a jury trial demand,
21 Plaintiffs have been operating under the assumption that they are preparing for a
22 bench trial. Changing the nature of the trial at this stage would be extremely
23 prejudicial to the Plaintiffs. Preparing jury instructions would be burdensome and
24 expensive for Plaintiffs, and add unnecessarily to the length of trial. Therefore,
25 this Court should grant this motion for a bench trial.

27 **CONCLUSION**

28 For the foregoing reasons, this motion should be granted in its entirety.

1 DATED: May 31, 2010

Respectfully submitted,

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3 By: /s/ Lisa J. Borodkin
4 DANIEL F. BLACKERT
5 LISA J. BORODKIN
6 Attorneys for Plaintiffs,
7 Asia Economic Institute LLC,
8 Raymond Mobrez, and Iliana Llaneras
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1 **DECLARATION OF LISA J. BORODKIN AND CERTIFICATION OF**
2 **COMPLIANCE WITH LOCAL CIVIL RULE 7-3**

3 I, Lisa J. Borodkin, declare:

4 1. I am an attorney at law, duly admitted to practice before all the
5 courts of the State of California and this Honorable Court. I am co-counsel of
6 record for Plaintiffs Asia Economic Institute LLC, Raymond Mobrez and Iliana
7 Llaneras (“Plaintiffs”) in this action. I have first-hand, personal knowledge of the
8 facts set forth below and, if called as a witness, I could and would testify
9 competently thereto.

10 2. This Declaration is made in support of Plaintiffs’ Motion for
11 Bench Trial.

12 3. Attached hereto as **Exhibit “1”** is a true and correct copy of the
13 Reporter’s Transcript of the April 19, 2010 proceedings before this Court by Ms.
14 Deborah K. Gackle.

15 4. On April 19, 2010, this Court set a trial date of August 3, 2010
16 for the RICO extortion claims in this action:

17 THE COURT: And so anyway, I'm going to keep the
18 dates, and then we'll be flexible if we have to. But, you know, I'll know more
19 when you make your summary judgment motion, and I'll react accordingly.

20 So the date is when again, Paul?

21 THE CLERK: August 3rd at 9:00 a.m.

22 THE COURT: And the pretrial the day before. And the trial is
23 bifurcated, RICO extortion only, no damages. And you can set a motion any
24 time that you feel you have the wherewithal to make it.

25 Ex. 1 at 22:11-:20.

26 5. Counsel for Defendants, David S. Gingras, did not make a
27 request for jury trial on April 19, 2010, when this Court set a trial date. Defendants
28 have not otherwise filed a jury demand.

