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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
DISCOVERY MATTER
The Honorable Patrick J. Walsh

NOTICE OF MOTION AND LOCAL RULE 37-1 JOINT STIPULATION REGARDING PLAINTIFFS' MOTION (1) TO BIFURCATE DISCOVERY (2) REGARDING PROTECTIVE ORDER (3) TO COMPEL DEPOSITION OF EDWARD MAGEDSON AND (4) REGARDING CONDUCT AT DEPOSITIONS; DECLARATION OF LISA J. BORODKIN

[DECLARATION OF DAVID S. GINGRAS FILED CONCURRENTLY HEREWITH]

Date:	June 25, 2010
Time:	11:00 a.m.
Ctrm:	827A
Discovery Cut-off:	None Set
Pretrial Conf. Date:	August 2, 2010
Trial Date:	August 3, 2010

Dockets.Justia.com

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 25, 2010, at 11:00 a.m., in Courtroom 827A of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Asia Economic Institute LLC, Raymond Mobrez and Iliana Llaneras ("Plaintiffs") will and hereby do move this Honorable Court for an order (1) bifurcating discovery to match the bifurcated trial set for August 3, 2010 on solely the RICO extortion claims in this matter and expressly excluding damages, (2) determining that Defendants are not entitled to a blanket protective order regarding confidentiality and should respond to Plaintiffs' discovery requests, (3) compelling Defendant Edward Magedson to appear for deposition, and (4) permitting Plaintiffs to have more than one attorney defend depositions so long as the proceedings remain orderly, instructing counsel that deponents and witnesses must be permitted to answer fully and not to cut off deponents' answers, and permitting deponents to review and make corrections to deposition transcripts within a reasonable period of time.

This Motion is based on the attached Joint Stipulation pursuant to Local Civil Rule 37-1, the Declarations of Lisa J. Borodkin and David S. Gingras and attached exhibits, all pleadings, papers and proceedings in this action, and such other matters as the Court deems proper.

This motion is made following the conference of counsel pursuant to L.R. 37-1, which took place on May 11, 2010 and additional communications between counsel.

DATED: June 4, 2010 Respectfully submitted,

By: /s/ Lisa J. Borodkin
Daniel F. Blackert
Lisa J. Borodkin
Attorneys for Plaintiffs,
Asia Economic Institute LLC,
Raymond Mobrez, and Iliana
Llaneras

By: /s/ David S. Gingras
Gingras Law Office, PLLC
Maria Crimi Speth
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Attorneys for Defendants
Xcentric Ventures LLC and
Edward Magedson

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JOINT STIPULATION

I. Introductory Statements

a. Plaintiffs' Introductory Statement

This is an action for RICO, extortion, and a number of other causes of action arising from a website published by Defendants at "RipoffReport.com" and related conduct. DN-1.[1] Plaintiffs allege, inter alia, that the following actions by Defendants constitute extortion or attempted extortion under Californai Penal Code Section 583 and violations of the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962 et seq.: (1) Defendants solicit and publish on RipoffReport.com negative "reports" or postings about Plaintiffs and other targeted businesses, (2) Defendants personally write or cause headlines and "tags" to be generated that accompany the reports and cause such negative headlines and "tags" to be placed in strategic positions at the tops of web pages on RipoffReport.com and in the HTML source code for such web pages, (3) this deliberate placement causes search engines Google and Yahoo to display the negative headlines and tags written or generated by Defendants prominently and together with the names of targeted businesses, in Internet searches and corresponding search engine web page previews, (3) offering, and advertising, through their website, and in private correspondence or conversations, that in exchange for an enrollment fee, plus a monthly maintenance fee (which Plaintiffs allege is in the thousands of dollars), under the guise of the "Corporate Advocacy Program" ("CAP"), Defendants will write or cause different, positive headlines and tags about Plaintiffs and other targeted businesses to be generated that will replace the negative headlines and tags so that search engines Google and Yahoo display positive headlines and tags near the names of Plaintiffs and other targeted businesses if those businesses pay money to Defendants under CAP. Defendants

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[1] References to "DN-" are to entries in the civil docket for this action.

coerce and pressure targeted companies to join CAP by (a) refusing to investigate false or disparaging reports about targeted companies unless they join CAP, and (b) threatening retaliatory litigation to anyone contemplating legal action against them.

On April 19, 2010 the Court set a trial date of August 3, 2010 and bifurcated and advanced the trial date of the RICO extortion claims only [DN-26]:

> "THE COURT: And given the arguments, it seems to me that the extortion aspect of the case is very straightforward, and what I intend to do is bifurcate the case. So we'll only address extortion, RICO extortion, and I'll set a trial on the RICO extortion case, and we'll go from there."

Declaration of Lisa J. Borodkin ("Borodkin Dec.) ¶¶ 3-4, **Exhibit 1** at 14:2-6.

The Court expressly stated that evidence of damages and truth or falsity of the negative statements would not be admitted at the August 3, 2010 trial:

> "THE COURT: I'm also bifurcating damages.
> MR. GINGRAS: Okay. So if the issue for trial, then, is did extortion occur, the only -- the removal of damages from that is helpful, but I don't think it's necessarily the only simplification that matters because, Your Honor, I am certain, I just know in my heart that the argument that plaintiffs are going to make is going to be an emotional one based on these statements are false. It is an entirely different case if they -- I understand we're not litigating the defamation claims, but they're going to use them anyway.
> THE COURT: Well, look, they're not going to use them. They're not.
> MR. GINGRAS: If the plaintiffs --
> THE COURT: They are not going to use them. I'm the judge here, and not the plaintiffs, and I don't see any way that these -- the truth or falsity of these statements gets into the case because -- unless the plaintiff can show that you knew they were false, and that's not their premise[.]"

Id. **¶¶5-6, Ex. 1** at 21:12-25, 22:1-4 (emphasis added). The Court also stated:

> "THE COURT: And the pretrial the day before. And the trial is bifurcated, RICO extortion only, no damages."

Borodkin Dec. **¶6, Ex. 1** at 23:17-18 (emphasis added).

On April 26, 2010, Defendants served their First Requests for Production of

Documents, Requests for Admission and Interrogatories (the "Requests"). Borodkin Dec. ¶¶7, 10-11, Ex. 2. The Requests seek evidence on many topics not admissible at the August 3, 2010 trial. Id. They were served prematurely, before the conference of parties under Rule 26(f). DN-30. Thus, Plaintiffs are treating them as informal requests. Borodkin Dec. at **¶¶7-9, Exs. 3, 4.** On May 7, 2010, Defendants took the deposition of Plaintiff Raymond Mobrez and used portions of the deposition to support a motion for summary judgment filed May 24, 2010 without a protective order in place. Id. **¶¶12,13; DN-40-DN-48**. Plaintiffs objected on the record to the manner of taking of the deposition. Borodkin Dec. **¶19, Ex. 11**. On May 11, 2010, the parties conferred regarding discovery disputes. Borodkin Dec. **¶22, Exs. 11-12.** A settlement conference is set for July 14, 2010. [DN-32]

In this Motion, Plaintiffs request that the Court (1) bifurcate discovery to match the bifurcated trial, (2) order that a protective order regarding confidentiality is not a prerequisite to taking the depositions of Defendants, or otherwise obtaining discovery from Defendants; (3) compel the deposition of Edward Magedson; and (4) make an order regarding conduct at depositions. The grounds for the motion to bifurcate discovery are to avoid "annoyance, embarrassment, oppression or undue burden or expense" under Rule 26(c). The grounds for Plaintiffs' opposing a protective order regarding confidentiality is that the protective order Defendants propose is being used as a shield to stonewall discovery, without a legitimate justification. Plaintiffs offered to stipulate to protect the specific concerns of Ed Magedson regarding his personal safety through redaction as a compromise. Borodkin Dec. **¶20-21, Exs. 11, 12.** The grounds for the order compelling the deposition of Ed Magedson are fundamental fairness and Plaintiffs' need for discovery to oppose Defendants' motion for summary judgment, which was filed

1 May 24, 2010. The grounds for the order governing conduct of depositions is
2 fundamental fairness and the need to make an accurate record.
3 **b. Defendants' Introductory Statement**
4 This case is literally a sham proceeding in which Plaintiffs have supported
5 their claims through perjury. Specifically, on April 19, 2010, in the same hearing
6 in which this matter was set for trial (despite being a newly filed matter in which
7 discovery had been stayed due a Special Motion to Strike filed by Defendants) the
8 Court ordered Plaintiffs to file declarations explaining the factual basis for their
9 extortion claims. On the final day to do so (May 3, 2010), Plaintiffs filed two
10 declarations as ordered; Doc. #27 is the Declaration of Plaintiff Iliana Llaneras and
11 Doc. #28 is the Declaration of Plaintiff Raymond Mobrez.
12 In their declarations, both Mr. Mobrez and Ms. Llaneras testified that
13 Defendant Ed Magedson engaged in extortion during a series of phone calls made
14 by Mr. Mobrez to Mr. Magedson in April and May 2009. Mr. Mobrez's declaration
15 explained that he spoke to Mr. Magedson on April 27, May 5, and May 12, 2009,
16 and he produced telephone bills showing the date/time of each call. In ¶ 13 of his
17 declaration, Mr. Mobrez testified that he was extorted because during a call that
18 took place on May 5, 2009 around 1:05 PM, Mr. Magedson demanded a payment
19 of "at least five grand" in order to remove derogatory information about Mr.
20 Mobrez from the Ripoff Report website. Ms. Llaneras's declaration avows that she
21 was eavesdropping on this call and she testified that, in fact, Mr. Magedson
22 demanded money from Mr. Mobrez.
23 In his deposition on May 7, 2010, Mr. Mobrez repeatedly reaffirmed the
24 accuracy of his May 3 declaration, and he continued to testify that indeed, Mr.
25 Magedson had committed extortion. After given this testimony, <u>it was revealed to</u>
26 <u>Mr. Mobrez that all of his telephone calls to Defendants were automatically</u>
27 <u>recorded</u>. These recordings proved beyond any doubt that Mr. Mobrez and Ms.
28 Llaneras perjured themselves in this case by lying about every material aspect of

their claims; they were never asked for money at any time, they were never threatened, and they were never told that complaints would be removed.

At the close of Mr. Mobrez's deposition, undersigned defense counsel suspended the deposition of Ms. Llaneras (which had been set for the same day) in order to allow Plaintiff's counsel to take any remedial steps as may be required under the California Rules of Professional Conduct and/or other authority. Later that day, Plaintiff's lead counsel, Daniel Blackert, set an email (attached as **Exhibit A** to the Declaration of David S. Gingras submitted herewith) in which he announced his intention to withdraw from the case:

> David,
>
> In light of todays events I believe I have a serious conflict of interest between myself and my client. I will do whatever state bar mandates. I have called today but they do not resume until monday. In light if todays developments which were contradictory to anything I have heard, seen, or discussed w my clients. I will act in accordance w my ethical obligations 100 percent. You have to realize this is a shock to me. Per my own indepedent research I need to withdraw from the case and explain why. In light of todays events I have a serious conflict of interest and will withdraw as counsel. In addition I explained to my clients the implications of todays events and that I can no longer represent them per ethical obligations and will explain to the court why in a dec. My only concern is still seeking correct anaccurae advice from the state bar and acting accordingly. Moreover, I urged my client to dismiss this case. I need to review the ethical rules in more detail and talk w the ethics hotline. As lead counsel, I believe in good faith,sadly, that I can no longer move this case forward and do not intend to do so. I am taking this very seriously and am completely shocked.
>
> Daniel

For reasons unknown, Plaintiffs' counsel later changed his mind and decided to move forward with aiding and abetting Plaintiffs' criminal actions in this matter.

Given these shocking events, there is understandably a total and complete lack of trust between the parties and their counsel. Furthermore, because Plaintiffs (and now their attorneys) have demonstrated a proven willingness to engage in criminal activity in this case, Defendants must insist upon taking every available and appropriate precaution to protect their rights. This includes, but is not limited to, rejecting Plaintiffs demands to bifurcate discovery in this matter (which is merely a ploy to delay exposing their case for what it is—a complete sham), and also refusing to provide deposition testimony on sensitive financial issues without a protective order in place.

These issues aside, bifurcating discovery in this matter would potentially delay the disposition of Plaintiffs' claims and would substantially increase rather than decrease the costs to the parties. These results are, of course, completely consistent with Plaintiffs' goal of launching a frivolous lawsuit that they never expected to win for the purpose of harassing and defaming Defendants.

Defendants have repeatedly requested that Plaintiffs enter into a standard protective order to govern the disclosure of confidential information in this case. Initially, Plaintiffs' counsel expressed a willingness to agree with such an order. Later, after learning that their clients' lies had been exposed, Plaintiffs reneged on that position and have since refused to agree to any form of protective order. Making matters worse, Plaintiffs have now actually taken the position that one of their goals is to release private information gained in discovery to the public.

There is no dispute between the parties regarding the taking of Ed Magedson's deposition. Plaintiffs scheduled the deposition and then Plaintiffs unilaterally canceled it. As for Plaintiffs' deposition practices, it is inappropriate for two attorneys to simultaneously take or defend a deposition. Plaintiffs'

counsel disrupted the deposition of Raymond Mobrez by having two attorneys simultaneously objecting to the questions, talking over one another, and confusing the record. Defendants' counsel properly objected to that practice.

II. Issues in Dispute

a. Bifurcated Discovery

i. Plaintiffs' Position

Where a court has bifurcated trial, it is also implicit that the Court also has the power to limit discovery to the segregated issues. See Ellingson Timber Co. v. Great Northern Ry. Co., 424 F.2d 497, 499 (9th Cir. 1970); General Patnet Corp. v. Hayes Microcomputer, 1997 WL 1051899 at *3 (C.D. Cal. 1997). In this case, the Court expressly stated that that no evidence of the truth or falsity of the statements in question was to be considered or admitted at the August 3, 2010 trial. Borodkin Dec. **¶3-6, Ex. 1.** (Tr. at 21:22-23, 21:25, 22:1-4).

On April 26, 2010, Defendants purported to serve its First Set of Discovery Requests containing several requests outside the scope of the bifurcated trial. Borodkin Dec. **¶7, Ex. 2.** Specifically, Defendants' Requests for Production ("RFP") 1, 2, 7, 8, 9, 10, 11, 15, 16, 19, and 21, Defendants' Interrogatories 4, 5, 6, 7, 8, 9 and Defendants' Request for Admissions 5 all seek information that is not admissible or relevant to the RICO and extortion claims to be tried in the bifurcated trial on August 3, 2010. Borodkin Dec. **¶10-11, Ex. 2.**

Defendants will not be prejudiced by deferring any discovery as to the truth or falsity of the statements at issue, because the truth or falsity of the statements are immaterial to the elements of extortion under the California extortion statute, California Penal Code Section 523. See People v. Umana, 138 Cal. App. 4th 625, 638, 41 Cal. Rptr. 3d 573, 582 (Cal. App. 3d Dist. 2006); People v. Fox, 157 Cal. App. 2d 426, 431 (Cal. App. 1958); People v. Choynski, 95 Cal. 640, 642-43 (1892).

Defendants will not be prejudiced by deferring discovery on the element of damages, because the Court ordered that damages will not be part of the bifurcated trial on August 3, 2010. Borodkin Dec. **¶5, Ex. 1.**

Plaintiffs request that this Court order that Plaintiffs are excused from responding or supplementing responses to the following discovery requests until after the bifurcated trial on August 3, 2010, and to order that Defendants shall not seek any other discovery outside the scope of the RICO and extortion claims, Defendants until after the bifurcated trial on August 3, 2010:

DEFENDANTS' RFP NO. 1

1. Produce copies of each and every separate statement that appears (whether now, or in the past, if still available to YOU) anywhere on the ROR Site regarding or referring to YOU which YOU alleged to be false.

DEFENDANTS' RFP NO. 2

2. Produce copies of any and all documents which YOU have which show that any of the specific statements identified in YOUR response to Request #1 above are, in fact, false. If NONE, so state.

DEFENDANTS' RFP NO. 7

7. Produce copies of any/all documents reflecting complaints that have been made against YOU in the past five (5) years by either YOUR current and/or former customers and/or YOUR current and/or former employees (including independent contractors, if any). For the purpose of this request, "complaints" shall mean any form of complaint, grievance, objection or citation whether made directly to YOU or to any governmental

agency (i.e., State Attorney General) or non-governmental agency (i.e., Better Business Bureau), but shall NOT include criminal/civil matters pending in any state or federal court.

DEFENDANTS' RFP NO. 8

8. Produce copies of any/all documents which YOU claim are proof that YOU have been damaged by any of the specific statements identified in YOUR response to Request #1 above. If NONE, so state.

DEFENDANTS' RFP NO. 9

9. Produce copies of any/all documents which YOU claim are proof that YOU have been damaged by any threats made to YOU by Defendants. If NONE, so state.

DEFENDANTS' RFP NO. 10

10. Produce copies of any/all documents YOU have showing that any employees of AEI terminated their employment as a result of any statements about YOU posted on www.RipoffReport.com.

DEFENDANTS' RFP NO. 11:

11. Produce copies of any/all documents relating to any and all employees of AEI who terminated their employment with AEI for any reason since the inception of the company.

DEFENDANTS' RFP NO. 15:

15. Produce copies of all state and federal income tax returns for AEI since its inception.

DEFENDANTS' RFP NO. 16:

16. Produce copies of any and all profit/loss statements relating to AEI for the past five (5) years.

DEFENDANTS' RFP NO. 19:

19. Produce copies of any documents that establish that RAYMOND MOBREZ holds a Ph.D degree or any equivalent level of education.

DEFENDANTS' RFP NO. 21:

21. Produce copies of any documents YOU have showing that Defendants have engaged in a conspiracy to defame YOU.

Borodkin Dec. ¶ **11, Ex. 2.**

DEFENDANTS' INTERROGATORY NO. 4:

4. State the name, title, address, telephone number, and dates of employment for each former employee, independent contractor, paid or unpaid volunteer, intern, or worker however denominated of ASIA ECONOMIC INSTITUTE, LLC from the inception of the company to the present. If NONE, so state.

DEFENDANTS' INTERROGATORY NO. 5:

5. List every specific statement of fact about YOU appearing on the ROR Site that you claim is false and upon which you base your claim for defamation. If you produced a copy of the statements in response to a document request, you may only refer to the document produced as a response to this Interrogatory if you have highlighted, underlined, or in some manner identified the specific portion(s) of the documents produced that you claim are defamatory.

DEFENDANTS' INTERROGATORY NO. 6:

6. For each posting on the ROR Site that contains a statement that YOU claim is defamatory, identify any person(s) who YOU believe may be the original author of the statement(s) and state the reasons for YOUR belief.

DEFENDANTS' INTERROGATORY NO. 7:

7. List all current and prior civil and/or administrative complaints filed against YOU in the anywhere in the United States. For each separate matter, explain:

a. The nature of the dispute (i.e., suit for employment discrimination; claim for unpaid wages);
b. The jurisdiction (whether state, federal or other) where pending;
c. The date filed;
d. The date of final disposition (if any); and
e. The nature of final disposition (i.e., defense verdict).

DEFENDANTS' INTERROGATORY NO. 8:

8. State the name, addresses, and telephone numbers of three of YOUR primary competitors.

DEFENDANTS' INTERROGATORY NO. 9:

9. State the name, addresses, and telephone numbers of ten of YOUR primary customers.

Borodkin Dec. **¶11, Ex. 2.**

DEFENDANTS' RFA NO. 5

5. Admit that the statements quoted in ¶ 28(A)-(O) of the Complaint are the only statements that YOU claim are defamatory.

Borodkin Dec. **¶11, Ex. 2.**

At the May 11, 2010 conference of counsel, Plaintiffs suggested resolving this dispute by requesting that Defendants agree to limit discovery only to issues relevant to the RICO and extortion claims. Borodkin Dec. **¶21-23, Exs. 12-13.** In the alternative, Plaintiffs requested that Defendants grant an extension to respond to the above discovery requests pending an order on this Motion.

Defendants refused to so limit discovery and refused to grant such an extension. Borodkin Dec. **¶23.** Therefore, Plaintiffs request an order bifurcating discovery to match the bifurcated trial and excusing responding to Defendants' Requests for Production ("RFP") 1, 2, 7, 8, 9, 10, 11, 15, 16, 19, and 21, Defendants' Interrogatories 4, 5, 6, 7, 8, 9 and Defendants' Request for Admissions 5 until after the August 3, 2010 trial.

i. Defendants' Position

The Court ordered the bifurcation of the trial in this matter, but it did not order the stay of discovery on any topics. Plaintiffs are seeking a stay of

discovery on issues such as truth or falsity of the postings, matters relating to their credibility, and damages. This is entirely inappropriate.

Rule 42(b) provides that, "for convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, cross claims, counterclaims, or third party claims." "Rule 42(b) should be resorted to only in the exercise of informed discretion when the Court believes that separation will achieve the purposes of the rule." *Ayers v. Wal-Mart Stores, Inc.*, 941 F.Supp. 1163, 1165 (M.D. Fla. 1996) (quoting. 9 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, § 2388, at 474 (1995)). "To determine whether bifurcation is warranted, courts generally consider the following three factors: '1) whether significant resources would be saved by bifurcation, 2) whether bifurcation will increase juror comprehension, and 3) whether bifurcation will lead to repeat presentations of the same evidence and witnesses.'" WeddingChannel.*Com Inc. v. The Knot, Inc.*, 2004 WL 2984305, *1(S.D.N.Y.2004) (quoting *Gaus v. Conair Corp.*, 2000 WL 1277365, *3 (S.D.N.Y. Sept.7, 2000)).

Understanding that the Court has already ordered a bifurcated trial, Defendants note that they opposed the bifurcation of this trial at the time it was ordered and they continue to oppose that bifurcation now. In this case, bifurcation does not save resources, it will not lead to increased juror comprehension, and it will lead to repeated presentations of the exact same evidence and witnesses in multiple trials. Those points notwithstanding, Defendants' position is that this prejudice will be compounded if this Court also prevents Defendants from performing discovery as Plaintiffs are requesting.

First, in the first hearing held in this matter on April 19, 2010, Plaintiffs demanded the earliest possible trial date in this matter (over the objection of Defendants), avowing to the court that Plaintiffs were ready for trial on <u>all issues</u> as soon as possible. Although the court denied Plaintiffs' request to set a trial on

every claim in the case, having represented to the Court that they were ready to proceed immediately, there is no tenable reason why Plaintiffs should have any difficulty answering discovery in a timely manner.

Second, this matter was set for trial on an extremely short schedule; the Complaint was filed in state court on January 27, 2010 and removed to this court on February 24, 2010. A Special Motion to Strike was filed pursuant to Cal. Code Civ. P. § 425.16 on March 22, 2010 which was set for hearing on April 19, 2010. Because the Motion to Strike was denied on April 19, and because discovery in the case was stayed while that motion was pending, this means that from the start of discovery until trial, Defendants have been given slightly more than 90 days to conduct discovery and prepare their defense.

Because the Court has demonstrated a willingness to set trial on such an accelerated schedule, Defendants explained to Plaintiffs that unless the parties agreed to <u>stay</u> the non-RICO claims, they would not agree to bifurcate discovery of the non-RICO claims for an obvious reason—following trial in August, it is entirely likely that the Court could set a trial date on all remaining claims on similarly short notice in which case preparing a meaningful defense may be impossible unless Defendants are permitted to pursue discovery on all issues immediately. Indeed, based on Defendants' substantial experience defending similar cases, discovery typically requires <u>at least</u> 12 to 18 months depending on how cooperative and prompt Plaintiffs and counsel are.

In this case, despite representing to the Court that they were ready for trial immediately, Plaintiffs have demonstrated a total and complete lack of willingness to cooperate or expedite discovery. Specifically, two days after the April 19th hearing in which the case was set for trial, in an email dated April 21, 2010, defense counsel met and conferred with plaintiffs' counsel about the need for both sides to expedite discovery:

> Also, FYI – as noted in my comments to the plan, I would like to propose that given the expedited schedule, we agree to answer discovery faster than the usual 30 days. For my part, I can probably turn around any number of reasonable roggs or RFPs within about 5 business days or less, though I am okay with agreeing to use 10 calendar days for both sides. Of course, if any requests are particularly lengthy, we could agree to a reasonable extension of time (maybe 5 additional calendar days) when appropriate, but allowing 30 full days for responses to simple requests makes no sense given the short time available.

Gingras Decl., **Exhibit B**. Rather than agreeing to this reasonable request, Plaintiffs refused to expedite discovery without any explanation. Again, this conduct is consistent with the actions of a party who knows their claims are groundless and who wants to avoid discovery which would expose that fact.

Furthermore, Defendants' initial set of discovery requests were served on Plaintiffs on April 26, 2010. Plaintiffs' responses were served on the last day to do so, May 26, 2010. Disappointingly, but not surprisingly, Plaintiffs failed to provide even one single responsive document, and the vast majority of Plaintiffs' answers to Defendants' interrogatories were little more than hollow objections and other non-substantive responses. Given this track record of obstructive and evasive discovery practice, it is obvious that Defendants need as much time as possible to engage in discovery and to bring motions relating to Plaintiffs' failure to provide discovery.

As for their reasons for seeking a bifurcation of discovery, Plaintiffs argue that "Defendants will not be prejudiced by deferring any discovery as to the truth or falsity of the statements at issue, because the truth or falsity of the statements are immaterial to the elements of extortion under the California extortion statute." This argument misses an obvious point—evidence showing that Plaintiffs have made claims in this case which are factually groundless (including but not limited

1 to their defamation claims) is entirely relevant to an issue which is part of the
2 trial in August—the credibility of Mr. Mobrez and Ms. Llaneras.
3 Specifically, Plaintiffs' 33-page Complaint includes a wide variety of
4 factual allegations which Defendants believe are provably false. For instance, in
5 ¶ 97 of the Complaint, Plaintiffs allege that as a result of the postings about them
6 on Ripoff Report, they suffered harm from the loss of "current as well as
7 prospective employees… ."
8 In order to investigate the truth of that allegation, Defendants served
9 Plaintiffs with an interrogatory asking them to identify the names of each former
10 employee of AEI so that they could be contacted and asked if they ended their
11 employment as a result of Defendants' actions (as Plaintiffs have alleged).
12 Rather than responding, Plaintiffs have objected to this request and refused to
13 provide any information that Defendants could use to confirm or rebut the truth
14 of the allegations of ¶ 97 of the Complaint. Obviously, Plaintiffs have taken this
15 position in order to prevent Defendants from obtaining evidence that shows
16 Plaintiffs' allegations are false.
17 Clearly, if Plaintiffs have made factual allegations which they knew to be
18 false, evidence of that fact does relate to the viability of their non-RICO claims.
19 However, this information is also highly relevant to Plaintiffs' credibility. For
20 that reason, Defendants are entitled to discovery of such evidence both for the
21 purposes of the trial set in August and any other trial that may be set. Indeed, this
22 is exactly why Plaintiffs wish to avoid any discovery on such matters—they
23 know that such discovery will only serve to expose their dishonesty and lies.
24 This is not a valid reason to preclude Defendants from performing discovery in
25 this matter.
26 Plaintiffs claim that the only topic of the discovery requests that they seek
27 to stay are the truth or falsity of the reports. A brief review of the discovery that
28 they have refused to answer reveals that they also seek to stay discovery on the

issue of damages – an essential element to one of the claims that will be tried in August.

Plaintiffs are refusing to answer discovery requests related to the existence and the amount of damages. This position is ludicrous. In order to have standing to bring a RICO action, a plaintiff is required to prove "(1) that his alleged harm qualifies as injury to his business or property; and (2) that his harm was "by reason of" the RICO violation, which requires the plaintiff to establish proximate causation." *Canyon County v. Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008). Damages are a necessary element of RICO. If Plaintiffs have no damages, then Plaintiffs can not bring a private cause of action for RICO. Yet, Plaintiffs have refused to answer written discovery requests related to damages.

b. Need for a Protective Order

i. Plaintiffs' Position

On April 29, 2010, Defendants sent Plaintiffs a proposed form of Stipulated Protective Order regarding confidentiality. Borodkin Dec. **¶12.** On April 27, 2010, the parties discussed a potential protective order. Id. On May 7, 2010, Defendants took the deposition of Plaintiff Raymond Mobrez without a protective order. On May 10, 2010, the parties filed their joint Rule 26(f) report and discovery plan.

On May 11, 2010, counsel for the parties conferred regarding the need for a protective order. Plaintiffs stated their position as follows:

> *"We do not believe a protective order regarding confidentiality is necessary. Our position is that we would stipulate to a narrow protective order to facilitate Mr. Magedson's deposition to keep the location and time confidential and to redact from the transcript any information identifying his location or address if used in a public filing."*

Borodkin Dec. **¶ 21-22, Ex. 12-13.**

Defendants are "all or nothing" on a protective order. This is a tactic to stonewall and handicap Plaintiffs form preparing for trial or responding to Defendants' motion for summary judgment. The procedures proposed in Defendants' proposed form of Protective Order are too cumbersome to yield a workable discovery plan in time for the trial and hearing on summary judgment.

By pressuring Plaintiffs to agree to an overbroad protective order prior to producing the very narrow discovery sought by Plaintiffs, Defendants seek to continue their operations covertly and to perpetuate the false impression that they never lose a case. Plaintiffs believe there is a significant public policy in having the record of this case in the public record, because of a great number of similar cases already litigated and currently being litigated all over the country against defendants.

The Court's own comments indicate that review of other cases should streamline the trial in this action:

> THE COURT: And so it seems to me you probably know a lot about the company's position and their business approaches, because there have been other lawsuits, right?
> MS. BORODKIN: Correct.
> THE COURT: And you're aware there's other lawsuits,correct?
> MS. BORODKIN: Correct.
> THE COURT: Have those lawsuits gone to trial, any of them?
> MS. BORODKIN: Not that I know of.
> THE COURT: And have they been the subject of summary judgment motions?
> MS. BORODKIN: Correct.
> THE COURT: Do you have those summary judgment motions?
> MS. BORODKIN: Some of them we do and some of them we don't.
> THE COURT: So you probably already know what this Mr. Magedson --
> MS. BORODKIN: We don't, Your Honor, because each case is different on the facts.
> THE COURT: All right. Well, at least you have some general notion.

1
2 Borodkin Dec. **¶3, Ex. 1** at 19-20.
3 Likewise, the public availability of the court record in this action should
4 assist other potential litigants in evaluating a potential action for trial or settlement.
5 Without waiving Plaintiffs' position that Defendants should produce Mr.
6 Magedson for deposition without a protective order – just as Plaintiffs produced
7 Mr. Mobrez on May 7, 2010 -- Plaintiffs on May 19, 2010 also explained in depth
8 why the current form of Stipulated Protective Order proposed by Defendants was
9 burdensome and unworkable. Borodkin Dec. **¶ 24, Ex. 14.**
10 Specifically, on May 19, 2010, Plaintiffs advised Defendants of the
11 following prejudice that Plaintiffs would suffer by stipulating to Defendants'
12 proposed form of Protective Order regarding Confidentiality:
13 **"1. Paragraphs 2/3:**
14 These are too broad in that any person can designate material
15 "confidential" or "Confidential - Attorney's Eyes Only"within their sole
16 discretion. We think this is burdensome, and subject to bad-faith
17 designations for which there is no adequate remedy.
18 No trade secrets, or proprietary matter has been identified in this case
19 yet.
20 We already suggested that we would agree to a narrow protective
21 order purely to protect Mr. Magedson 's personal information in terms of his
22 address and whereabouts. If you want me to actually draft that into
23 something we can sign, I will. However, your comments in the May 11 meet
24 and confer indicated that would be futile.
25
26 Even if there is a trade secret, or personal or proprietary information,
27 we don't believe your clients have taken reasonable steps to preserve
28 confidentiality, with regard to the primary aspects of the business that are

subject to this litigation -- the Corporate Advocacy Program and your clients' SEO practices.

Much of our position on this is drawn from the your clients' own statements on the Internet. The entire premise of Ripoff Report's website is that it is allegedly public and objective. Your client's website states:

"Since all the Reports are out in the open, consumers, journalists, attorneys and investigators from all types of agencies can research existing problems and anticipate potential problems. We provide immediate access to all kinds of fraud and scams, all out in the open, all unedited and all for FREE."

That is on the Ripoff Report home page: http://www.ripoffreport.com/.

Mr. Magedson also states, literally repeatedly, on the website and/or in correspondence that "We will all be blogged."

We agree. This case should also be blogged and reported on.

Given the nature of your client's statements, and representations to the public, there is a great public interest in having a public record as to the actual transparency and legitimacy of the Corporate Advocacy Program, ad the objectivity of your Search Engine Optimization practices. If it is all neutral and above board, it should not be a problem.

We also think that would be consistent with Ripoff Report's statements to the public regarding the law as follows:

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

"If this seems unfair or unreasonable, consider this -- if someone sues you in court and makes outlandish claims that are completely false, you can fight the case and win and at the end a judgment will be entered in your favor proving that you were right and your accuser was wrong. ***However, the court clerk will NOT destroy the file or seal the records of the case simply because you won. Even when a lawsuit is shown to be 100% baseless, the documents remain part of a public record that is maintained for years or perhaps forever (trust us -- we KNOW about this from first-hand experience).*** *In this situation, the remedy you are entitled to is a court order or judgment proving that you were right, not the destruction of public records about the case."*

That is from the section at http://www.ripoffreport.com/ConsumersSayThankYou/WantToSueRipoffReport.aspx.

If there is a particular algorithm for determining the cost of enrollment and monthly fee for the Corporate Advocacy Program (CAP), then we may consider a provisional proposal for solely that as well as the actual prices. However, it says right on the Ripoff Report website that the cost depends on the following:

"Fees for enrolling in the program are based upon the number of Reports filed, the number of offices you have, and/or the size of an average sale. Additionally, there is a flat set-up fee to offset the costs associated with programming and contract legalities. Rate sheets will be sent upon completion and verification of the intake questionnaire."

That is from:

http://www.ripoffreport.com/CorporateAdvocacy/HowItWorks.aspx.

Because we do not now know if a legitimate reason to correlate the cost of enrolling in CAP to the number of offices, or -- in particular -- the size of an average sale, there is a chance that is illegal discriminatory pricing, and/or further supports the claim that the CAP is extortion rather than a legitimate sale of services. We think that at least part of that should be public record.

Also of concern are your clients' statements on the Internet regarding potential litigation:

"Victims & attorneys who are interested in pursuing litigation against a particular company reported on this website ***must*** *contact us* ***directly****. It is inappropriate to solicit business using this website other than through prior arrangement."*

That is on the home page at: http://www.ripoffreport.com/.

Given that that statements have a potentially restrictive chilling effect on legal rights, we think there is a strong public policy in having a public record of your clients' rationale for telling readers that they "must contact us directly." We do not think the rationale for that statement would qualify as a trade secret, and we eventually will seek more information about that.

. . . As I said, we would consider a reasonable proposal to limit what is truly confidential and as to which your client has taken reasonable steps to preserve confidentiality. We've only requested to things so far - depos of Ed

Magedson and your 30(b)(6) witness on a handful of topics. If you want to tell us what in there you think needs to be kept secret, we'll consider it."

2. Paragraph 6:

This is regarding automatic designation of all deposition transcripts as "Attorney's Eyes Only" until 20 days after receipt of the final deposition transcript. It is unduly broad, slow, burdensome and not acceptable given the August 3 trial date.

In any event, you took our client's deposition without a protective order. I gather from your email you intend to use portions of that transcript with your motion for summary judgment without a confidential designation and without filing under seal. I think it is equitable for us to do the same. I would be more inclined to consider this further if you were going to voluntarily abstain for 20 days [from] using that transcript.

Secondly, this is a bifurcated case with a trial in less than 3 months. All Plaintiffs have requested in the way of discovery so far (besides voluntary Initial Rule 26(a) Disclosures) are the depositions of Ed Magedson and Xcentric's designated Rule 30(b)(6) witness(es) on a few narrow topics pertinent to the bifurcated trial. Automatically designating all such discovery Attorneys' Eyes Only unreasonably burdens counsel's ability to explain the evidence to Plaintiffs and hampers our ability to prepare for trial or evaluate the case for settlement.

Plaintiffs must know what is said in depositions to evaluate the case for trial and for settlement.

If you want propose a more creative way of handling those deposition problems, we will consider it. If you want to suggest a list of topics to avoid in depositions, perhaps we can agree to something informally through email, but as it stands, we cannot agree to the proposed form of protective order.

3. Paragraph 11:

This requires a motion to challenge improper confidentiality, and no provision for fee shifting for bad-faith designations.

There is no incentive for a party not to designate every piece of evidence with the most restrictive designation, as this is written.

It is burdensome, raises the costs, and slows the discovery process down."

Borodkin Dec. **¶24, Ex. 14.**

As of May 27, 2010, Defendants had proposed no viable alternative for resolving this dispute. Defendants are "all-or-nothing" on a protective order, and use that excuse to refuse to provide reasonable, narrow discovery to Plaintiffs that is essential to preparing for the Settlement conference on July 14, 2010 and trial on August 3, 2010. Therefore, Plaintiffs request that this Court order that Defendants must respond to discovery requests without a protective order.

ii. Defendants' Position

Defendants have litigated perhaps 30+ cases similar to this one, and every such case has included a protective order, whether pursuant to an agreement of the parties or pursuant to an order following Defendants' motion. Because good cause exists to do so, this Court should enter a protective order pursuant to Rule

26(c) in order to safeguard the disclosure of private, confidential, proprietary and similar information.

Plaintiffs have already stated that they plan on blogging and reporting freely on this trial. While Defendants agree that certain facts and events in this case are appropriately matters of public interest, it is equally clear that private financial information, tax returns, customer lists, and information about the identities of anonymous authors are not appropriate for public disclosure. Absent an appropriate protective order, it appears that Plaintiffs plan on misusing this groundless litigation to obtain confidential information and release it to the public in an effort to continue their illegal attack on Defendants.

Federal courts have long recognized the potential for abuse through depositions and discovery, and therefore put into place procedures to protect those individuals subject to discovery. One such safeguard is Rule 26(c), which provides that upon a showing of good cause, the court "may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense ...." based upon several reasons. Reasons which appear pertinent to the present case include specifying "terms and conditions" of discovery, limiting "the scope of the disclosure ... to certain matters," requiring that "a deposition, after being sealed, be opened only by order of the court," and particularly "that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way...." Fed. R. Civ. P. 26(c)(2), 26(c)(4), 26(c)(6), 26(c)(7).

The party seeking a protective order has the burden of showing the existence of good cause. *See San Jose Mercury News, Inc. v. United States District Court*, 187 F.3d 1096, 1103 (9th Cir. 1999). The relevant standard for purposes of Rule 26(c) is whether "'good cause' exists to protect th[e] information from being disclosed to the public by balancing the needs for

discovery against the need for confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir.2002)..

Compelling reasons that would outweigh the public's interest in disclosure include the likelihood the record would be used for an improper purpose, such as to gratify private spite, promote public scandal, circulate libelous statements or release trade secrets. *Nixon v. Warner Communications*, 435 U.S. 589, 598, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978). Plaintiffs have indicated that they will do just this – spitefully attack Defendants in the public eye for the sole purpose of harassment and the creation of public scandal. Their intentions are not within the confines of what may be reasonably contemplated upon receipt of confidential information, and therefore, issuance of a protective order is appropriate.

Unfortunately, given the nature of the Ripoff Report website—exposing frauds, scams, and similar conduct—Defendants have more than their share of enemies who wish nothing more than to destroy Defendants personally and professionally. A number of parties have gone to great lengths to attempt to facilitate the demise of Defendants. These past experiences give Defendants more than enough specific examples of prejudice if the Protective Order is not entered. *See Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *see also Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

Defendants are currently embroiled in litigation with an individual named John F. Brewington in the Superior Court of Arizona for Maricopa County at Case No. CV2008-008275. In short, the Brewington litigation (in which Xcentric Venutres, LLC is the Plaintiff and Mr. Brewington is the Defendant) involves claims that Mr. Brewington aided and abetted third parties in a series of illegal attacks upon Mr. Magedson and the Ripoff Report which resulted in more than $400,000 in damages.

In sworn deposition testimony in a previous case, Mr. Brewington admitted being "obsessed" with Defendants, and professed that he had avowed to do everything he could to "take down" Defendant Ed Magedson. Mr. Brewington, who is a licensed private investigator, engaged in a pattern of investigating Mr. Magedson's personal information and then posting it on the Internet. Defendants are informed and believe that Plaintiffs have been in communication with Mr. Brewington about Defendants since prior to the inception of this litigation, and that those communications have continued on an ongoing basis.

Specifically, in his deposition Mr. Mobrez admitted having contact with Mr. Brewington, and a copy of Mr. Mobrez's deposition transcript was recently given to Mr. Brewington's attorneys before it was publicly available from any other source. Clearly, Mr. Mobrez and Mr. Brewington are sharing information with each other and it is likely they will continue to do so in the future.

Standing alone, Mr. Brewington's pattern of attempting to annoy, embarrass, and harass Mr. Magedson and his associates and neighbors, and Mr. Brewington's known communications with the Plaintiffs in this matter warrants the entry of a protective order restricting the use of materials obtained in discovery in this case. Disturbingly, Mr. Brewington is not the only individual who has plotted to attack Mr. Magedson. Another individual, William Stanley, has been previously adjudicated as threatening and otherwise harassing Defendants. Judgment has been entered in favor of Mr. Magedson and against Mr. Stanley by the United States District Court for the District of Arizona, Case No. 2:07-cv-00954 for his role in making verbal threats against Defendants' business, and in fact causing Defendants to lose hundreds of thousands of dollars as a result of Mr. Stanley's illegal actions. Another defendant in that same action, Robert Russo, threatened to put the Rip-Off Report website out of business "within 48 hours." Coincidentally, in that similar timeframe, Mr. Magedson received two threatening letters wherein an intent to commit unlawful acts of

violence against Mr. Magedson were communicated. These are just a few examples of actual threats that have been levied against Defendants by individuals, at least one of whom is known to be working with Mr. Mobrez.

Because discovery in cases such as this usually includes the disclosure of sensitive information such as financial reports, customer lists, and similar proprietary information, Defendants have always sought and received a protective order in their past cases. Here, a protective order is even more appropriate than usual because Plaintiffs have expressed their intent to make public any and all information obtained in this litigation, and particularly a number of topics which Defendants have consistently identified as confidential, proprietary, and/or trade secret information. Moreover, as explained above, Plaintiffs have already demonstrated that they cannot be trusted to maintain their duty of candor with the tribunal. If Plaintiffs are willing to lie to the Court to obtain relief to which they are not entitled, then it is certainly reasonable to fear that they will continue acting unlawfully without appropriate supervision by the Court.

Furthermore, the court may take all reasonable steps necessary to protect the witness during discovery, at trial, and thereafter. *Carhart v. Ashcroft*, 300 F.Supp.2d 921, 922 (D. Neb. 2004). The Federal Rules of Evidence grant this Court the ability to exercise reasonable control over both the mode and order of interrogating witnesses so as to protect a witness from harassment. Federal Rule of Evidence 611(a)(3). In extraordinary circumstances, "where the safety ... of a witness ... might be jeopardized by compelling testimony to be given under normal conditions, the courts have permitted testimony to be given in camera, outside the courtroom, or under other circumstances that afford protection." 28 Charles A. Wright & Victor J. Gold, FEDERAL PRACTICE AND PROCEDURE § 6164, at 350-51 (1993) (footnotes omitted). When the life of a witness is

endangered, as has occurred here, this is one of those "extraordinary cases" wherein a protective order must be granted. *See Carhart, supra.*

Plaintiffs' argument that entry of a protective order would prolong this litigation is illogical. Absent a protective order, Defendants will object to and refuse to answer any inappropriate lines of questioning that Plaintiffs have indicated they will address, thereby prolonging the deposition process and likely necessitating additional intervention by the Court. If an appropriate protective order is in place, Defendants are willing to respond to any relevant deposition questions thereby greatly simplifying and expediting the discovery process.

Plaintiffs also raise, for the first time in this pleading that the form of the proposed protective order is not acceptable. Plaintiffs blatantly misrepresent that Defendants have taken an all or nothing position. In reality, Defendants have repeatedly asked Plaintiffs to send back a red-line of the proposed protective order with their suggested changes. Plaintiffs have refused to do so and taken the position that there should be no protective order at all. Plaintiffs position in this joint stipulation that it is the form of the protective order that is the issue is a brand new position which Plaintiffs have given Defendants no time to respond to. (This draft was provided with a demand that it must be filed today).

c. Compelling Deposition of Edward Magedson

i. Plaintiffs' Position

On May 6, 2010, Plaintiffs served a Notice of Deposition for Edward Magedson. Borodkin Dec. **¶ 12, Ex. 5.** On May 7, 2010, Defendants took the deposition of Plaintff Raymond Mobrez. Borodkin Dec. **¶ 13.** Defendants used the deposition transcript from Mr. Mobrez' deposition, inter alia, to support their motion for summary judgment filed on May 24, 2010. DN-40-DN-48.

On May 10, 2010, the parties jointly filed a Report pursuant to Rule 26(f) stating in part, "The parties jointly agreed to set the deposition of Defendant Edward Magedson for the week of May 10, 2010." DN-30 at 3.

On May 11, 2010 at the conference of counsel, it became apparent that Defendants would not produce Mr. Magedson for deposition the week of May 10, 2010 as previously agreed. Borodkin Dec. **¶¶22-23, Ex. 13.** Defendants refuse to produce Mr. Magedson for deposition, citing the lack of a protective order as a reason. Borodkin Dec. **¶¶22-23, Ex. 13.**

As a matter of equity, Plaintiffs must be allowed to take the deposition of Mr. Magedson. Mr. Magedson's testimony is essential to oppose Defendants' Motion for Summary Judgment, to prepare for the July 14, 2010 settlement conference and to prepare for the August 3, 2010 trial.

Plaintiffs proposed to resolve the dispute by offering to keep Mr. Magedson's location and other identifying whereabouts confidential and offering to stipulate that any such information would be redacted from any portions of the transcript filed in this action. Borodkin Dec. **¶22-23, Ex. 13.**

Defendants refused this proposal, and continue to refuse to produce Mr. Magedson for deposition without a broad protective order.

Accordingly, Plaintiffs request this Court to issue an order compelling Defendants to produce Mr. Magedson for deposition, and to compel Defendants to produce Xcentric's Rule 30(b)(6) designee to testify on topics relevant to the bifurcated trial.

ii. Defendants' Position

Defendants do not oppose either the deposition of Mr. Magedson or the 30(b)(6) deposition of Xcentric Ventures. The only reason these depositions have not occurred is because Plaintiffs unilaterally noticed them and then cancelled them. Defendants have repeatedly told Plaintiffs that they can take this deposition. See Declaration of David Gingras.

As Plaintiffs accurately explain, the deposition of Mr. Magedson was originally set to take place the week of May 10. Plaintiffs, however, misrepresent to this Court that "Defendants refuse to produce Mr. Magedson for deposition,

citing the lack of a protective order as a reason. Borodkin Dec. **¶¶22-23, Ex. 13."** Notably, Ms. Borodkin's declaration does not support this representation. While she is willing to make that misrepresentation to this Court, she is apparently unwilling to declare it under oath.

Not only is there no dispute about this issue, Mr. Magedson's has already been deposed as a 30(b0(6) witness and his individual deposition is actually scheduled for next week. Gingras Declaration.

Defendants, on more than one occasion, and as recently as two days ago, requested the Plaintiffs agree to remove this issue from this joint stipulation because there is, and has never been, any dispute over this. Plaintiffs have refused to do so. Gingras Declaration.

As explained above, during the May 7, 2010 deposition of Mr. Mobrez, it was revealed that Mr. Mobrez and his wife, Ms. Llaneras had committed perjury and had lied about each and every material fact in this case.

The discovery of these matters resulted in a series of meet and confer discussions between counsel which included Plaintiffs' lead counsel, Daniel Blackert, explaining that he intended to withdraw from the case as required by Rule 3–700(B)(1) of the California Rules of Professional Conduct. In order to give Mr. Blackert time to comply with his ethical duties, the original deposition of Mr. Magedson was cancelled. Unfortunately, for reasons unknown, Mr. Blackert subsequently had a change of heart and has opted to move forward with this case despite the extremely series consequences he and Ms. Borodkin may face for doing so.

There is no need for the court to enter an order compelling the deposition of Mr. Magedson because Mr. Magedson is willing to appear without such an order.

d. Conduct at Depositions

i. Plaintiffs' Position

On May 7, 2010, Defendants took the deposition of Plaintiff Raymond Mobrez. Borodkin Dec. **¶¶13-21, Exs 6-12.** Both then-counsel of record for Defendants, David Gingras, and Ms. Marie Crimi Speth, who had not yet been admitted pro hac vice in this action, actively participated in examining Mr. Mobrez – sometimes at cross-purposes.

However, ***Ms. Speth*** – and later Mr. Gingras -- objected to the participation of Plaintiffs' co-counsel, Lisa Borodkin, in defending Mr. Mobrez's, deposition. Borodkin Dec. **¶¶16,19, Exs. 7, 10.** When asked for authority supporting that position, Defendants' counsel threatened to have Ms. Borodkin escorted out of the building by security. Borodkin Dec. ¶19, Ex. 10.

Prior to the deposition, Plaintiffs advised Defendants that both of Plaintiffs' counsel, Mr. Daniel F. Blackert, and Ms. Lisa J. Borodkin, would attend. Borodkin Dec. **¶¶14-15.** At the beginning of the May 7, 2010, Mr. Blackert and Ms. Borodkin both placed their appearances on the record without objection from Defendants' counsel, Mr. David Gingras. Borodkin Dec. **¶15, Ex. 6.** At that time, this Court had not yet granted the pro hac vice application of Ms. Marie Crimi Speth to appear for Defendants.

Mr. Gingras, Mr. Blackert and Ms. Borodkin all agreed on the record, that Ms. Speth would observe and assist, but not as counsel.

"THE WITNESS: [Raymond] Mobrez.

MR. BLACKERT: Daniel Blackert.

MS. BORODKIN: Lisa Borodkin for plaintiffs.

MS. LANNARES: Iliana [Llanares].

MR. GINGRAS: David Gingras on behalf of defendants Xcentric Ventures LLC and Edward Magedson. And she's not appearing but you can state your name.

MR. BLACKERT: Let me just clarify Daniel Blackert on behalf of plaintiffs.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

MS. SPETH: Maria Speth, but I'm not actually appearing.

MR. GINGRAS: She's just an assistant.

Borodkin Dec. ¶15, Ex. 6 at 7:18-8:5 (Portions of Transcript of May 7, 2010).

Throughout the deposition, Ms. Speth coached Mr. Gingras both on and off the record as to how to present documents, the order in which to examine the deponent, and when to take breaks.

In fact, it was *Ms. Speth* who sought to prevent Plaintiffs' counsel, Ms. Borodkin, from participating in the deposition of Mr. Mobrez, and then cutting off Defendants' counsel mid-sentence:

Q And are you prepared to produce tax returns that would show that?

A Yes --

MS. BORODKIN: Objection privacy.

BY MR. GINGRAS: Q Do you object to producing tax returns that relate to the truth of whether or not AEI's losses were ever used to produce taxable income for yourself, Ms. [Llanares] or --

MR. BLACKERT: Objection. Privacy.

MS. SPETH: Who is defending this?

MR. GINGRAS: First of all one lawyer per objection and secondly --

MS. SPETH: If you want me to ask questions, I will.

Borodkin Dec. ¶16, Ex. 7 at 67:22-68:11(emphasis added)

After protesting that one of Plaintiffs' counsel of record should not defend the deposition, Ms. Speth actively sought to direct the conduct of Defendants' deposition, arguing with Defense counsel as to whether he should take a break:

> Q But these reports generally say that working there is not a good thing; right?
>
> A I can't speak of somebody -- I don't know who they are. I mean, I have no idea if they even worked there.
>
> ***MS. SPETH: We should take a break maybe.***
>
> MR. GINGRAS: No, we shouldn't. I need to keep going here. Just hang on.

Borodkin Dec. ¶ 17, Ex. 8 at 168:11-16 (emphasis added).

Throughout the deposition, Ms. Speth, who had not been admitted yet in this case pro hac vice, also participated in the deposition by whispering in Defense counsel's ear:

> MR. BLACKERT: If you're going to say anything, you have to say it on the record.
>
> ***MS. SPETH: No, I don't. Excuse me?***
>
> MR. BLACKERT: You can't whisper things to counsel.
>
> ***MS. SPETH: I can whisper anything I want to counsel.***
>
> MR. BLACKERT: You're instructing him what to ask. That's improper.
>
> MR. GINGRAS: No, she's not.
>
> MR. BLACKERT: I'm going to state on the record that attorney [Speth] is whispering in David [Gingras]'s ear.
>
> [MS. SPETH] I whispered in his ear. Yes, thank you. Good observation.

MR. BLACKERT: Thank you.

Borodkin Dec. ¶18, Ex. 9 at 171:11 – 172:1 (emphasis added).

Despite Ms. Speth's ample participation in examining Mr. Mobrez, Defendants would not extend the same courtesy to Plaintiffs. When Plaintiffs' co-counsel, Ms. Borodkin, made a routine objection, Defendants responded by threatening to have her escorted from the building unless Plaintiffs obtained a Court order permitting her to participate:

> Q So in your mind, because the harm has already occurred, removing these reports wouldn't help you in any way, would it?
>
> MS. BORODKIN: Objection.
>
> MR. BLACKERT: Objection vague and ambiguous.
>
> THE WITNESS: I can't speak to that.
>
> MR. GINGRAS: Lisa, I'm going to have to ask that you not object. Dan is the one defending this deposition. If you do it again I'm going to have a problem with it okay.
>
> MS. BORODKIN: I don't know of any authority that says not more than one attorney can speak at a deposition.
>
> MR. GINGRAS: It's my authority. I'm taking this deposition and I'm going to take it in the manner I choose to take it. If you have any problem with that, you're welcome to call the court. ***If you interfere with my deposition again, I'm going to have building security escort you out of here. Do you understand me? Do you understand me?***
>
> MS. BORODKIN: I object.
>
> MR. GINGRAS: Thank you.

Borodkin Dec. ¶19, Ex. 10 131:13-132:11 (emphasis added).

Plaintiffs' counsel placed an objection on the record as to this conduct:

> MS. BORODKIN: I'm just going to place an objection on the record under Federal Rule of Civil Procedure 30(c)(2). And I'm just going to state it simply and none argumentatively. I don't think there's anything wrong with asking for your authority about the fact that you are telling us you get to choose which of clients ' counsel can speak at the deposition. And I'm going to request that you provide that authority to us or we can meet and confer on that as we've already agreed to do next Tuesday, May 11th, at 3 p.m.
>
> MR. GINGRAS: So noted. Break?

Borodkin Dec. ¶20, Ex. 11 at 211:16-212:3.

The parties met and conferred on May 11, 2010 and could not reach an agreement as to whether more than one attorney per side could speak at a deposition. Borodkin Dec. ¶23, Ex. 13. Plaintiffs contend that Defendants are not entitled to determine which of Plaintiffs' counsel would be able to make objections and defend Plaintiffs' deposition. Plaintiffs agree that only one objection per question is reasonable. However, as long as the proceedings are orderly and counsel are not interrupting one another or the deponent, Plaintiffs should have the right to be represented at depositions by counsel of their choice.

A client's right to be represented by counsel of choice is fundamental. Nothing in the California Code of Civil Procedure or the Federal Rules prevents a deponent from being defended by two attorneys. See Postronic v. Rockwell, 712 F.2D 1324 (9th Cir, 1983).

Such conduct may have prejudiced the outcome of the deposition. Defendants stated that Plaintiffs should get an order. Therefore, Plaintiffs request an order from this Court that both of Plaintiffs' counsel may appear and defend depositions, so long as it does not interfere with the orderliness of the examination, clutter the record, or otherwise prejudice Defendants.

In addition, Plaintiffs request an Order from this Court that Defendants should permit deponents to answer fully and not cut off a deponent's attempt to explain or answer fully.

At Mr. Mobrez' May 7, 2010 deposition, Defense counsel cut short Mr. Mobrez's attempts to answer fully, explain his answers to questions. This interference created an unreliable record in key portions. For example:

> Q Mr. Magedson never asked you for money that day or any other day, isn't that true?
>
> A He has asked me for $5,000. I don't know exactly which day.
>
> Q Come on, man. I mean, seriously.
>
> A I'm serious.
>
> Q You are in front of a federal judge and a federal jury and lie through your teeth like this? Is that what you're going to do?
>
> A ***I'm telling you --***
>
> Q Let's keep going. Let's keep going. You've already [du]g your grave. . . [.]

Borodkin Dec. ¶ 21, Ex. 12 at 281:16-282:2 (emphasis added).

Defendants should allow the deponent to finish his answers and not attempt to create a false record. See, e.g., Wolters Kluwer Financial Services, Inc. v. Scivantage, 525 F. Supp. 2d 448, 466 (S.D.N.Y. 2007), rev'd in part, aff'd in relevant part, 564 F.3d 110, 119 (2d Cir. 2009) (affirming sanctions for attorney Peter). Plaintiffs thought this was resolved at the conference of counsel on May 11, 2010, as both sides agreed that Defendants should permit the deponent to answer fully and not attempt to create a false record.

However, on May 19, 2010, Defendants refused Plaintiffs' request to permit Mr. Mobrez to review and make corrections to his deposition transcript. Borodkin Dec. ¶24, Ex. 14 (emphasis added). Plaintiffs proposed to resolve the dispute by expediting Mr. Mobrez's review of his deposition transcript. Defendants did not respond. Borodkin Dec. ¶25.

Therefore, Plaintiff requests an Order instructing all parties that they should permit deponents to answer fully, not attempt to manipulate the deposition to create a false record, and permit deponents reasonable time to review and make corrections to the transcripts.

ii. Defendants' Position

Having been caught perjuring themselves, it is disappointing but not surprising that Plaintiffs seek to shift blame by attacking defense counsel. There is no merit whatsoever to any of Plaintiffs' positions.

First, during the deposition of Mr. Mobrez on May 7th, Defendants' long-time attorney Maria Crimi Speth was present as an observer. Because she had not yet been admitted *pro hac vice*, Ms. Speth did not question the witness and did not engage in any disruptive conduct. Ms. Speth was subsequently admitted *pro hac vice* in this matter by order (Doc. #39) dated May 19, 2010. Whether Ms. Speth spoke to other defense counsel during the deposition or inquired about the timing of a break is entirely irrelevant and is not a violation of any rule.

Furthermore, Plaintiffs falsely state that Ms. Speth somehow "coached" Mr. Gingras as to how to present documents. This argument is both groundless and irrelevant. The entire deposition of Mr. Mobrez was conducted solely by Mr. Gingras, and each exhibit was selected solely by Mr. Gingras. Ms. Speth's only substantive role in the deposition was to pass exhibits to Mr. Gingras.

The colloquy quoted by Plaintiffs relating to exhibits demonstrates nothing more than Ms. Speth requesting clarification as to which exhibits Mr. Gingras needed next for his examination. This event is entirely a non-issue.

As for Plaintiffs argument that Defense counsel somehow improperly interfered with Mr. Mobrez' ability to review and correct his deposition transcript, this argument is entirely specious. Fed. R. Civ. P. 30(e) provides:

> On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:
>
> (A) to review the transcript or recording; and
> (B) if there are any changes in form or substance, to sign a statement listing the changes and the reasons for making them.

Here, at the conclusion of Mr. Mobrez's deposition, the court reporter specifically asked Mr. Mobrez's counsel if he was requesting review of the transcript to which counsel responded, "No, that's okay." The plain language of Rule 30(e) requires any request to review the transcript must be made "before the deposition is completed". Mr. Mobrez's counsel was given an opportunity to request a Rule 30(e) review which was expressly declined on the record before the deposition ended. It is simply not permitted for Mr. Mobrez to change his mind and request review weeks after the deposition has ended particularly when doing so would be highly prejudicial to Defendants' right to have their summary judgment motion ruled upon at the earliest possible date.

Plaintiffs falsely suggest that some agreement was made to the contrary and that Defendants have failed to respond to some request for accommodation. This is patently untrue.

On May 19, 2010, Ms. Borodkin sent an email to Mr. Gingras which asked, *inter alia*, that the parties agree that Mr. Mobrez would have 30 days from the date of the deposition (May 7) to review and correct the transcript. As has been a significant recurring problem with Ms. Borodkin, she also attempted to misrepresent the facts suggesting that the right to a Rule 30(e) review had been

preserved by Mr. Blackert; "I'd ask you to stipulate that the deponent, Raymond Mobrez has 30 days from May 7 to correct the transcript. Daniel [Blackert] very clearly said on the record that we want the transcript." A copy of Ms. Borodkin's email is attached as **Exhibit C** to Mr. Gingras' declaration submitted herewith.

Rather than failing to respond as Plaintiffs suggest, later that same day, Defendants' counsel responded to Ms. Borodkin and explained that Mr. Blackert has *not* preserved the right to a Rule 30(e) review. Counsel further explained that Defendants could not agree to grant any additional time for that review because they were preparing to bring a Motion for Summary Judgment which would substantially delayed by Plaintiffs' requests. A copy of Mr. Gingras's response email is attached as **Exhibit D** to Mr. Gingras' declaration.

In short, the record plainly shows that Mr. Mobrez waived the right to review the transcript, and now that Defendants have moved for summary judgment, Plaintiffs are seeking to use this issue in order to delay the disposition of this groundless case. The court should not permit this.

As for Plaintiffs' argument that Mr. Mobrez was not allowed to fully respond to questions, again this position is entirely groundless. The only example given of this was a purely *rhetorical* question by Defense counsel asking Mr. Mobrez if he was going to be honest or continue lying (he chose the latter). Other than that, no substantive question was pending and during the 300+ pages of deposition testimony given over the course of nearly seven hours, Mr. Mobrez was allowed to fully respond to each and every question asked of him. To the extent that Plaintiffs' request that the Court enter an order "instructing all parties that they should permit deponents to answer fully, not attempt to manipulate the deposition to create a false record, and permit deponents reasonable time to review and make corrections to the transcripts," Defendant do not object to this request other than to note it is entirely unnecessary.

As for Plaintiffs suggestion that Defendants made improper objections to having two lawyers defending the deposition simultaneously, it is improper and a violation of the rules for two attorneys to both defend a deposition and simultaneously object to questions which is what Mr. Blackert and Ms. Borodkin did during the deposition of their client. Rule 30(c) provides that depositions may proceed as permitted at the trial. At trial, only one lawyer for each side can question a witness and only one lawyer from each side can interpose objections. Having two attorneys conducting one examination would be confusing and harassing. *See Caplan v. Fellheimer Eichen Braverman & Kaskey*, 161 F.R.D. 32; 32 Fed.R.Serv.3d 842 (E.D.Pa 1995); *Cummins v. Cummins*, 144 B.R. 426 (W.D.Ark. 1992) (examination by multiple attorneys representing one party may be oppressive). In the case cited by Plaintiffs, *Postronic v. Rockwell*, 712 F.2D 1324 (9th Cir, 1983), the Court permitted two attorneys to both question the witness because, by stipulation of the parties, the deposition was being taken for two different cases.

At Raymond Mobrez's deposition, both Daniel Blackert and Lisa Borodkin were interposing objections, sometimes consistently and sometimes not. It was confusing and disruptive. Accordingly, Mr. Gingras indicated that only one attorney should defend the deposition and in that case, it appeared Mr. Blackert (who was sitting next to the witness and was wearing the microphone for the videographer) occupied that role. Despite Mr. Gingras' request, Ms. Borodkin continued to participate in the deposition as a second defending attorney. After Ms. Borodkin continued disrupting the deposition despite being asked not to do so, Mr. Gingras properly instructed her that she would be removed from the deposition if she continued to engage in such conduct. Of course, Ms. Borodkin was not removed and the deposition continued normally until Ms. Borodkin left (prior to the completion of the deposition) to attend another engagement.

None of Plaintiffs' assertions relating to the deposition of Mr. Mobrez have any merit.

DATED: June 4, 2010

Respectfully submitted,

By: /s/ Lisa J. Borodkin
Daniel F. Blackert
Lisa J. Borodkin
Attorneys for Plaintiffs,
Asia Economic Institute LLC,
Raymond Mobrez, and Iliana Llaneras

By: /s/ David S. Gingras
Gingras Law Office, PLLC
Maria Crimi Speth
Jaburg, & Wilk, P.C.
Attorneys for Defendants
Xcentric Ventures LLC and
Edward Magedson

DECLARATION OF LISA J. BORODKIN

I, Lisa J. Borodkin, declare:

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

2. This Declaration is made in support of Plaintiffs' Motion (1) To Bifurcate Discovery (2) Regarding Protective Order (3) To Compel Deposition Of Edward Magedson (4) Regarding Conduct At Depositions.

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

4. On April 19, 2010 the Court set a trial date of August 3, 2010 and bifurcated and advanced the trial date of the RICO extortion claims only.:

> "THE COURT: And given the arguments, it seems to me that the extortion aspect of the case is very straightforward, and <u>what I intend to do is bifurcate the case. So we'll only address extortion, RICO extortion, and I'll set a trial on the RICO extortion case</u>, and we'll go from there."

Exhibit 1 at 14:2-6 (emphasis added).

5. The Court stated that evidence of damages and truth or falsity of the negative statements would not be admitted at the August 3, 2010 trial:

> "THE COURT: <u>I'm also bifurcating damages</u>.
> MR. GINGRAS: Okay. So if the issue for trial, then, is did extortion occur, the only -- the removal of damages from that is helpful, but I don't think it's necessarily the only simplification that matters because, Your Honor, I am certain, I just know in my heart that the argument that plaintiffs are going to make is going to be an emotional one based on these statements are false. It is an entirely different case if they -- I understand we're not litigating

the defamation claims, but they're going to use them anyway.

THE COURT: Well, look, they're not going to use them. They're not.

MR. GINGRAS: If the plaintiffs --

THE COURT: They are not going to use them. I'm the judge here, and not the plaintiffs, and I don't see any way that these -- the truth or falsity of these statements gets into the case because -- unless the plaintiff can show that you knew they were false, and that's not their premise[.]"

Ex. 1 at 21:12-25, 22:1-4 (emphasis added).

6. On April 19, 2010, the Court also bifurcated damages:

> THE CLERK: August 3rd at 9:00 a.m.
>
> THE COURT: And the pretrial the day before. And the trial is bifurcated, RICO extortion only, no damages. And you can set a motion any time that you feel you have the wherewithal to make it.

Ex. 1 at 22:11-:20 (emphasis added).

7. Attached hereto as **Exhibit "2"** are Defendants' First Requests for Production of Documents ("RFPs"), Requests for Admission ("RFAs") and Interrogatories (collectively, the "Requests") served on April 26, 2010.

8. Attached hereto as **Exhibit "3"** is an email from me to David S. Gingras, counsel for Defendants, in which I objected, inter alia, that the Requests were prematurely served, before the Rule 26(f) conference of counsel, which took place on April 27, 2010. My email states in part:

"Rule 26(d)(1) states that

> 'A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.'
>
> While we fully want to agree on a discovery plan with you in a reasonable and non-adversarial manner, your discovery requests prior to our Rule 26(f) conference this afternoon are premature. In this District the meet and confer

> process is to be done telephonically or in-person, not in writing. We will have to discuss whether your premature discovery requests are valid[.]

Ex. 3 (emphasis added).

9. Attached hereto as **Exhibit "4"** is a true and correct copy of an email dated May 29, 2010 from me to Defendants' counsel stating in part that Plaintiffs believe Defendants' prematurely-served Requests are invalid:

> Unless there is an order granting early discovery, discovery requests served before the Rule 26(f) conference are void. See, e.g., Crutcher v. Fidelity National Ins. Co., 2007 WL 430655 (E.D.La. Feb. 5, 2007) at *3; Batiste v. Bonin, 2007 WL 1772010 (W.D. La. June 15, 2007) at *1. As informal requests, they cannot be the basis for a Motion to Compel. See James v. Wash Depot Holdings, Inc., 240 F.R.D. 693, 695 (S.D. Fla. 2006) ("Rule 37 does not authorize a court to compel documents or a release to obtain them based on an informal discovery request. "). I think if you try to enforce those, we may be entitled to fees.
>
> If you have any contrary authority, please let us know and we'll take a look at it.
>
> We have and will continue to treat Defendants' April 26, 2010 requests as informal requests.

Ex. 4.

10. Many of the Requests seek discovery from Plaintiffs that is not likely to lead to evidence that would be admissible at the August 3, 2010, trial. In particular, Defendants' Requests for Production 1, 2, 7, 8, 9, 10, 11, 15, 16, 19 and 21, Interrogatories 4, 5, 6, 7, 8 and 9 and Request for Admission 5 seek evidence relevant solely to the truth or falsity of the reports at issue in this case or evidence relevant to damages.

11. The Requests that Plaintiffs request this Court bifurcate and excuse compliance with until after the August 3, 2010 trial are as follows:

1
2
3 **DEFENDANTS' RFP NO. 1**
4
5 **1.** Produce copies of each and every separate statement that appears (whether now, or in the past, if still available to YOU) anywhere on the ROR Site regarding or referring to YOU which YOU alleged to be false.
6
7 **DEFENDANTS' RFP NO. 2**
8
9 **2.** Produce copies of any and all documents which YOU have which show that any of the specific statements identified in YOUR response to Request #1 above are, in fact, false. If NONE, so state.
10
11 **DEFENDANTS' RFP NO. 7**
12
13 7. Produce copies of any/all documents reflecting complaints that have been made against YOU in the past five (5) years by either YOUR current and/or former customers and/or YOUR current and/or former employees (including independent contractors, if any). For the purpose of this request, "complaints" shall mean any form of complaint, grievance, objection or citation whether made directly to YOU or to any governmental agency (i.e., State Attorney General) or non-governmental agency (i.e., Better Business Bureau), but shall NOT include criminal/civil matters pending in any state or federal court.
14
15
16
17
18
19
20 **DEFENDANTS' RFP NO. 8**
21
22 **8.** Produce copies of any/all documents which YOU claim are proof that YOU have been damaged by any of the specific statements identified in YOUR response to Request #1 above. If NONE, so state.
23
24 **DEFENDANTS' RFP NO. 9**
25
26 **9.** Produce copies of any/all documents which YOU claim are proof that YOU have been damaged by any threats made to YOU by Defendants. If NONE, so state.
27
28

DEFENDANTS' RFP NO. 10

10. Produce copies of any/all documents YOU have showing that any employees of AEI terminated their employment as a result of any statements about YOU posted on www.RipoffReport.com.

DEFENDANTS' RFP NO. 11:

11. Produce copies of any/all documents relating to any and all employees of AEI who terminated their employment with AEI for any reason since the inception of the company.

DEFENDANTS' RFP NO. 15:

15. Produce copies of all state and federal income tax returns for AEI since its inception.

DEFENDANTS' RFP NO. 16:

16. Produce copies of any and all profit/loss statements relating to AEI for the past five (5) years.

DEFENDANTS' RFP NO. 19:

19. Produce copies of any documents that establish that RAYMOND MOBREZ holds a Ph.D degree or any equivalent level of education.

DEFENDANTS' RFP NO. 21:

21. Produce copies of any documents YOU have showing that Defendants have engaged in a conspiracy to defame YOU.

DEFENDANTS' INTERROGATORY NO. 4:

4. State the name, title, address, telephone number, and dates of employment for each former employee, independent contractor, paid or unpaid volunteer, intern, or worker however denominated of ASIA ECONOMIC INSTITUTE, LLC from the inception of the company to the present. If NONE, so state.

DEFENDANTS' INTERROGATORY NO. 5:

5. List every specific statement of fact about YOU appearing on the ROR Site that you claim is false and upon which you base your claim for defamation. If you produced a copy of the statements in response to a document request, you may only refer to the document produced as a response to this Interrogatory if you have highlighted, underlined, or in some manner identified the specific portion(s) of the documents produced that you claim are defamatory.

DEFENDANTS' INTERROGATORY NO. 6:

6. For each posting on the ROR Site that contains a statement that YOU claim is defamatory, identify any person(s) who YOU believe may be the original author of the statement(s) and state the reasons for YOUR belief.

DEFENDANTS' INTERROGATORY NO. 7:

7. List all current and prior civil and/or administrative complaints filed against YOU in the anywhere in the United States. For each separate matter, explain:

f. The nature of the dispute (i.e., suit for employment discrimination; claim for unpaid wages);
g. The jurisdiction (whether state, federal or other) where pending;
h. The date filed;
i. The date of final disposition (if any); and
j. The nature of final disposition (i.e., defense verdict).

DEFENDANTS' INTERROGATORY NO. 8:

8. State the name, addresses, and telephone numbers of three of YOUR primary competitors.

DEFENDANTS' INTERROGATORY NO. 9:

9. State the name, addresses, and telephone numbers of ten of YOUR primary customers.

DEFENDANTS' RFA NO. 5

5. Admit that the statements quoted in ¶ 28(A)-(O) of the Complaint are the only statements that YOU claim are defamatory.

12. On April 29, 2010, Defendants sent Plaintiffs a proposed form of Stipulated Protective Order regarding confidentiality. On April 27, 2010, the parties discussed a potential protective order. On May 6, 2010, Plaintiffs served a Notice of Deposition for Edward Magedson, a true and correct copy of which is attached hereto as **Exhibit "5"**.

13. On May 7, 2010, Defendants took the deposition of Plaintiff Raymond Mobrez ("Mobrez Deposition") without a protective order in place.

14. Prior to the deposition of Mr. Mobrez, Plaintiffs advised Defendants that both of Plaintiffs' counsel, Mr. Daniel F. Blackert, and Ms. Lisa J. Borodkin, would attend. No objection was made by Defendants.

15. Attached hereto as **Exhibit "6"** are true and correct pages from the transcript of the Mobrez Deposition stating as follows:

"THE WITNESS: [Raymond] Mobrez.

MR. BLACKERT: Daniel Blackert.

MS. BORODKIN: Lisa Borodkin for plaintiffs.

MS. LANNARES: Iliana [Llanares].

MR. GINGRAS: David Gingras on behalf of defendants Xcentric Ventures LLC and Edward Magedson. And she's not appearing but you can state your name.

MR. BLACKERT: Let me just clarify Daniel Blackert on behalf of plaintiffs.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

MS. SPETH: Maria Speth, but I'm not actually appearing.

MR. GINGRAS: She's just an assistant.

Ex. 6 (Portions of Transcript of May 7, 2010) at 7:18-8:9.

16. Attached hereto as **Exhibit "7"** are true and correct pages from the transcript of the Mobrez Deposition stating as follows:

Q And are you prepared to produce tax returns that would show that?

A Yes --

MS. BORODKIN: Objection privacy.

BY MR. GINGRAS: Q Do you object to producing tax returns that relate to the truth of whether or not AEI's losses were ever used to produce taxable income for yourself, Ms. [Llanares] or --

MR. BLACKERT: Objection. Privacy.

MS. SPETH: Who is defending this?

MR. GINGRAS: First of all one lawyer per objection and secondly --

MS. SPETH: If you want me to ask questions, I will.

Ex. 7 (Portions of Transcript of May 7, 2010) at 67:22-68:11 (emphasis added).

17. Attached hereto as **Exhibit "8"** are pages from the transcripts of the Mobrez Deposition stating as follows:

Q But these reports generally say that working there is not a good thing; right?

A I can't speak of somebody -- I don't know who they are. I mean, I have no idea if they even worked there.

MS. SPETH: We should take a break maybe.

MR. GINGRAS: No, we shouldn't. I need to keep going here. Just hang on.

Ex. 8 (Portions of Transcript of May 7, 2010) at 168:11-16 (emphasis added).

18. Attached hereto as **Exhibit "9"** are true and correct pages from the transcript of the Mobrez Deposition stating as follows:

MR. BLACKERT: If you're going to say anything, you have to say it on the record.

MS. SPETH: No, I don't. Excuse me?

MR. BLACKERT: You can't whisper things to counsel.

MS. SPETH: I can whisper anything I want to counsel.

MR. BLACKERT: You're instructing him what to ask. That's improper.

MR. GINGRAS: No, she's not.

MR. BLACKERT: I'm going to state on the record that attorney [Speth] is whispering in David [Gingras]'s ear.

[MS. SPETH] I whispered in his ear. Yes, thank you. Good observation.

MR. BLACKERT: Thank you.

Ex. 9 (Portions of Transcript of May 7, 2010) at 171:11 – 172:1 (emphasis added).

19. Attached hereto as **Exhibit "10"** are portions of the transcript of the Mobrez Deposition stating as follows:

Q So in your mind, because the harm has already occurred, removing these reports wouldn't help you in any way, would it?

MS. BORODKIN: Objection.

MR. BLACKERT: Objection vague and ambiguous.

THE WITNESS: I can't speak to that.

MR. GINGRAS: Lisa, I'm going to have to ask that you not object. Dan is the one defending this deposition. If you do it again I'm going to have a problem with it okay.

MS. BORODKIN: I don't know of any authority that says not more than one attorney can speak at a deposition.

MR. GINGRAS: It's my authority. I'm taking this deposition and I'm going to take it in the manner I choose to take it. If you have any problem with that, you're welcome to call the court. ***If you interfere with my deposition again, I'm going to have building security escort you out of here. Do you understand me? Do you understand me?***

MS. BORODKIN: I object.

MR. GINGRAS: Thank you.

Ex. 10 (Portions of Transcript of May 7, 2010) at 131:13-132:11 (emphasis added).

20. Attached hereto as **Exhibit "11"** are true and correct pages from the transcript of the Mobrez Deposition stating as follows:

MS. BORODKIN: I'm just going to place an objection on the record under Federal Rule of Civil Procedure 30(c)(2). And I'm just going to state it simply and none argumentatively. I don't think there's anything wrong with asking for your authority about the fact that you are telling us you get to choose which of clients ' counsel can speak at the deposition. And I'm going to request that you provide that authority to us or we can meet and

confer on that as we've already agreed to do next Tuesday, May 11th, at 3 p.m.

MR. GINGRAS: So noted. Break?

Ex. 11 (Portions of Transcript of May 7, 2010) at 211:16-212:3.

21. Attached hereto as **Exhibit "12"** are true and correct copies of pages from the May 7, 2010 Mobrez Deposition stating:

Q Mr. Magedson never asked you for money that day or any other day, isn't that true?

A He has asked me for $5,000. I don't know exactly which day.

Q Come on, man. I mean, seriously.

A I'm serious.

Q You are in front of a federal judge and a federal jury and lie through your teeth like this? Is that what you're going to do?

A ***I'm telling you --***

Q Let's keep going. Let's keep going. You've already [du]g your grave. . . [.]

Ex. 12 at 281:16-282:2 (emphasis added).

22. On May 7, 2010 and May 11, 2010, I sent counsel for Defendants correspondence pursuant to Local Civil Rule 37-1 and Rule 26(c)(1) requesting to meet and confer on this contemplated discovery motion. Attached hereto as **Exhibit "13"** are true and correct copies of my correspondence. On May 11, 2010, the parties met and conferred telephonically in good faith pursuant to Local Civil Rule 37-1 in an attempt to eliminate the need for this motion.

23. The May 11, 2010 teleconference was unsuccessful in eliminating the need for this Motion.

24. On May 19, 2010, I sent Defendants' counsel correspondence confirming Plaintiffs' position on a protective order. A true and correct copy of my May 19 email is attached hereto as **Exhibit "14."**

25. On May 19, 2010, I requested that Defendants permit Mr. Mobrez to review and make corrections to his deposition transcript. A true and correct copy of my May 19, 2010 email is attached hereto as **Exhibit "15."** I proposed to resolve the dispute by expediting Mr. Mobrez's review of his deposition transcript. Defendants did not respond.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 3rd day of June, 2010, in Los Angeles, California.

/s/ Lisa J. Borodkin
Lisa J. Borodkin