

EXHIBIT 1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE STEPHEN V. WILSON, U.S. DISTRICT JUDGE PRESIDING

ASIA ECONOMIC INSTITUTE, LLC,)
et al.,)
Plaintiffs,)
vs.)
XCENTRIC VENTURES, LLC, et al.)
Defendants.)

No. CV 10-1360-SVW

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, APRIL 19, 2010

DEBORAH K. GACKLE, CSR, RPR
United States Courthouse
312 North Spring Street, Room 402A
Los Angeles, California 90012
(213) 620-1149

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APPEARANCES OF COUNSEL:

For the Plaintiff:

ASIA ECONOMIC INSTITUTE
BY: LISA J. BORODKIN
BY: DANIEL F. BLACKERT
11766 Wilshire Boulevard, Suite 260
Los Angeles, California 90025

For the Defendant:

LAW OFFICES OF DAVID S. GINGRAS
BY: DAVID S. GINGRAS
4072 E. Mountain Vista Drive
Phoenix, Arizona 85048

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1 presenting as you -- take the lectern, if you would, sir -- by
2 way of evidence, realizing that you haven't had discovery which
3 may shape some of your approaches. But as of now, how would
4 you expect to present your case?

5 MR. BLACKERT: As of now, we would like to do
6 discovery.

7 THE COURT: I didn't ask you that. I said what would
8 you do knowing what you know now? In other words, the basic
9 allegation is that the defendant had this website, ripoff.com,
10 in which it posted comments by parties who had views, critical
11 views, of companies, among those are your client; and your
12 position, in its broadest sense, is that the defendant then
13 approached you, your client, and said, Join our program. If
14 you join our program for a fee, we will post a notice on the
15 part of our site which was critical of your company that you
16 have joined this program and are in some sense of
17 rehabilitation, something like that, and you're claiming that
18 you're being compelled to join that program is an act of
19 extortion.

20 MR. BLACKERT: Correct, Your Honor.

21 THE COURT: Yes.

22 So is there a dispute as to what was posted?

23 MR. BLACKERT: There is not a dispute as to what was
24 posted, Your Honor.

25 THE COURT: Is there a dispute that -- or do you

1 envision a dispute as to whether the defendant asked you to
2 join this CAP program?

3 MR. BLACKERT: I do believe there would be a
4 dispute --

5 THE COURT: Is there any documentary or written
6 communications regarding your being asked to join this CAP
7 program?

8 MR. BLACKERT: Yes, Your Honor. There are several
9 emails between my client and defense -- the defendant Edward
10 Magedson, where Magedson is -- explicitly refers to the CAP
11 program and breaks it down and asks my client to join the CAP
12 program. More specifically, there is a very specific email
13 from Mr. Magedson to my client where he is verbally upset at my
14 client for not joining the program and not submitting the
15 proper paperwork for the program.

16 So, yes, there is clear evidence of that issue.

17 THE COURT: And so if there is clear evidence of that
18 fact, what other evidence do you have now regarding that being
19 an act of extortion? Isn't there another spin that could be
20 placed on that request?

21 MR. BLACKERT: Yes. It's our position that the
22 defendant had done this under -- put our client in a position
23 of duress, basically, that these posts would not be
24 investigated, these posts would not be looked at, nothing would
25 be resolved at all until money was paid. So he put our client

1 in a position to --

2 THE COURT: Is that what was said in the emails, or
3 is that something that would be the subject of oral testimony?

4 MR. BLACKERT: That was said in the emails, Your
5 Honor, yes.

6 THE COURT: In other words, you say that you have
7 emails where the defendant said to your client, Unless you join
8 the CAP program, defendant won't investigate these postings,
9 which are critical?

10 MR. BLACKERT: That's correct. He said --

11 THE COURT: And so let's say that that is fact. Why
12 does that equal extortion?

13 MR. BLACKERT: Well, because the -- we feel that our
14 client was compelled to pay the money or basically suffer the
15 damage of having these posts up for the rest of -- however they
16 may exist indefinitely --

17 THE COURT: Why couldn't the defendant say that, We
18 have this business where we allow these postings. We don't
19 investigate whether these postings are true or false, but if
20 these postings are adverse and you want us to investigate, you
21 have to join this program? Isn't that sort of the essence
22 of -- you're shaking your head.

23 Is that a yes?

24 MR. GINGRAS: Yes, Your Honor. I'm nodding in
25 agreement. To some extent, I'm agreeing with you.

1 THE COURT: To what extent are you not agreeing with
2 me?

3 MR. GINGRAS: Well, because I think the program
4 involves a heck of a lot more than just posting something
5 favorable on top of something negative.

6 THE COURT: But the defendant is in business, and the
7 defendant is saying, We have this business where we allow
8 postings, and we don't create the postings, correct?

9 MR. GINGRAS: Correct.

10 THE COURT: They're created by third parties.

11 MR. GINGRAS: Right.

12 THE COURT: We don't pass upon whether they're true
13 or false, correct?

14 MR. GINGRAS: Correct.

15 THE COURT: And then if they're on and you -- if the
16 company who was the subject of the posting wants us to
17 investigate, something like, I would say, public advocate, but
18 you're sort of like a private advocate, correct?

19 MR. GINGRAS: Correct.

20 THE COURT: You would do it, but you want to be
21 compensated because it takes time and effort.

22 MR. GINGRAS: Right, and that would -- our
23 position --

24 THE COURT: Is that what the CAP program is?

25 MR. GINGRAS: Yes. And our position would be, Your

1 Honor, that there are multiple options available to people that
2 are in the plaintiffs' position. The CAP program is only one
3 of them, and that is the only one that has any --

4 THE COURT: Let me get to that in a minute.

5 MR. GINGRAS: Sure.

6 THE COURT: So at this point, your principal evidence
7 is contained in these -- in what is not in dispute, that is,
8 these postings and the emails, correct --

9 MR. BLACKERT: Correct --

10 THE COURT: -- at this point?

11 MR. BLACKERT: At this point, and also there is some
12 other evidence that the defendants on their website encourage
13 people to make these posts as defamatory as possible. They
14 tell people to craft the post to make them as damning as
15 possible to put the business in the worse light.

16 THE COURT: Where does that come from?

17 MR. BLACKERT: That appears right on their website --

18 THE COURT: What is the specific language?

19 MR. BLACKERT: The specific language is -- it is in
20 our motion papers. I don't have it off the top of my head now,
21 but it is in there. I believe they offer to help --

22 THE COURT: But they're not telling these people to
23 lie, are they?

24 MR. BLACKERT: Oh, no, Your Honor. No, I do not
25 believe so.

1 THE COURT: Maybe they're telling them to be as
2 graphic as they can, correct?

3 MR. BLACKERT: Correct.

4 THE COURT: I see.

5 Let me hear from you, Mr. --

6 MR. GINGRAS: Your Honor, I'll help you with the
7 phonetic. It's "Gin" like the drink and grass like you mow but
8 only one "s," and you say it just that way, Gingras.

9 THE COURT: Gingras.

10 Tell me what your position is beyond that which we've
11 already discussed.

12 MR. GINGRAS: I'm not sure if I understand your
13 question.

14 THE COURT: Well, I mean I asked the plaintiff what
15 its position was. They're relying on the emails and the
16 postings, and I've suggested to the plaintiff that there could
17 be a very business-oriented reason for what the plaintiff
18 claims is extortion, that is, that defendant doesn't pass upon
19 the truth or accuracy or intention of the posting.

20 MR. GINGRAS: Right.

21 THE COURT: And then if there's an adverse posting,
22 it approaches the company or party and says, If you want us to
23 investigate this posting, you can join this program, which, in
24 effect, as I understand it, compensates you for that effort.

25 MR. GINGRAS: Right.

1 THE COURT: So that sounds like a business
2 relationship.

3 MR. GINGRAS: Right. And, Your Honor, I think to
4 be --

5 THE COURT: Is there something I'm missing?

6 MR. GINGRAS: So far you're doing pretty well. It
7 gets a little more complicated.

8 THE COURT: Go ahead and tell me what the
9 complication is.

10 MR. GINGRAS: The complications are the fact that
11 we've been focusing on -- what I just heard Your Honor talking
12 about -- was this extortion/RICO component of the case, which I
13 think is a very, very small component of this case. We've had
14 cases identical to this one in the past. Every single one of
15 those times the plaintiff dropped the RICO claims from the case
16 either voluntarily or as a result of the court ordering them to
17 file a RICO case statement. I understand that is not happening
18 here but regardless --

19 THE COURT: There's still summary judgment.

20 MR. GINGRAS: Sure, absolutely, but the RICO claims
21 we've seen in other cases have gone away; they've never been
22 litigated, they've never been, sort of, more fully
23 investigated. So to some degree I'm writing on a blank slate
24 and I'm not sure where we'll go with it.

25 But the reason I say it's more complicated is this

1 case has a lot of other aspects to it. There are defamation
2 claims, and I understand the plaintiff doesn't want to talk
3 about those because that would get back into the issue of the
4 Communications Decency Act and whether they can even impose
5 liability on a website for statements that we didn't write.

6 As --

7 THE COURT: But the defamation was not something you
8 created, it was just something you posted on your site.

9 MR. GINGRAS: I would agree with that, but I don't
10 think they would agree with that. They've argued -- and I've
11 seen this in other cases that we've prevailed on summary
12 judgment, if the claim is a third party wrote something, and I
13 want to hold the website responsible for it, everyone knows the
14 Communications Decency Act bars that claim, and we've won that
15 argument so many times that what's happened is plaintiffs have
16 tried to get more creative; and this is exactly what the Ninth
17 Circuit cautioned about in the recent *Roommates Two* case. You
18 sort of see creative lawyering coming into play as far as what
19 the plaintiff claims happened.

20 This case is extremely simple, Your Honor. The
21 plaintiff approached us, approached ripoffreport, and said I
22 have the four reports -- or how many at the time -- what can be
23 done about them? And Mr. Magedson, who is the editor of the
24 site --

25 THE COURT: Is that in writing?

1 MR. GINGRAS: Yes, yes.

2 THE COURT: In other words, you have writings that
3 would support your argument that the plaintiff approached the
4 defendant and said, in words or effect, How can we remove or
5 temper the effect of these postings?

6 MR. GINGRAS: Exactly. It begins with the plaintiff
7 sending an email to rippoffreport saying, I contacted your
8 office by phone. I wasn't able to speak to anybody. What can
9 be done about these reports? And then Mr. Magedson follows up
10 to that inquiry with this kind of 10-page-long email which
11 talks about his philosophies on life and a lot of other things
12 I've asked him not to get into. But in any event, there's a
13 reference in this long response email -- which is a form email
14 that goes to everybody -- there is a reference in there to the
15 corporate advocacy program, and plaintiff is trying to
16 characterize that as a threat of extortion. They put a gun to
17 our head and demanded money. Your Honor, the evidence is just
18 not going to bear that out in any way.

19 So to some degree, I think if you're talking about
20 the extortion, the facts that give rise to it, I believe are
21 going to be undisputed to the extent that they're based on
22 these emails.

23 There also was one or two or maybe more phone calls.
24 I don't know -- because I haven't taken any discovery yet, I
25 don't know that the plaintiff is going to claim was said in

1 those calls. So there may be some factual disputes about that.

2 But then the other part of the case that relates to
3 these defamation claims and then this also tortious
4 interference claims and an unfair business practices claim,
5 that is a very different and fact-intensive issue to deal with,
6 Your Honor. There's always the issue of truth. I always
7 investigate whenever anyone sues the ripoffreport for
8 defamation, we try to defend on the CEA and say it's not our
9 responsibility at all, but to err on the side of caution, we
10 also investigate the truth of the statements.

11 So we need to expect there would be discovery on
12 those issues.

13 THE COURT: I have enough of a sense from your
14 presentation where you think the case is going.

15 When will you be ready to try the case?

16 MR. BLACKERT: As soon as possible, Your Honor.

17 THE COURT: Stand up when you address the court.

18 You would be ready to try the case next month?

19 MS. BORODKIN: Absolutely, Your Honor. We'd be happy
20 to try as soon as possible. We just want our day in court. We
21 have not exchanged initial disclosures yet. That would
22 definitely hasten our ability.

23 THE COURT: You have to do that. So I'm going to
24 order you within 10 days of today to arrange a meeting to do
25 that.

1 MS. BORODKIN: Very good. Thank you.

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

7 So to be realistic, understanding that the parties
8 are anxious for a trial, I'll set the case for trial, unless I
9 hear some objection, beginning of August.

10 MS. BORODKIN: Very good.

11 THE COURT: Summary judgment motions can be filed any
12 time. In other words, you can file a summary judgment motion
13 two, three weeks, four weeks from now. Based on what you've
14 said, I suspect you will.

15 MR. GINGRAS: Your Honor, first of all, I've been
16 involved in, like I said before last week, dozens and dozens of
17 these cases. I've never seen one that was resolved in less
18 than 12 to 18 months in terms of discovery. I realize that
19 what Your Honor just did in terms of the bifurcation makes that
20 a lot simpler, but I have no idea what the plaintiffs'
21 extortion claim is based on in terms of verbal allegations, and
22 I also --

23 THE COURT: Hold on. Tell you what I'm going to do:
24 I want you to prepare declarations of -- how many witnesses are
25 actually involved in this extortion aspect of the case from

1 your side? I'm not talking about the other side. In other
2 words, who is going to say that they were in a conversation
3 that had an extortion flavor?

4 MR. BLACKERT: I believe it would just be the two
5 individuals in the conversation.

6 THE COURT: Who are they?

7 MR. BLACKERT: My client and Ed Magedson.

8 MS. BORODKIN: Raymond Mobrez.

9 MR. BLACKERT: Raymond Mobrez.

10 THE COURT: That would be the defendant, right?

11 MR. BLACKERT: One of the plaintiffs and the
12 defendant Edward Magedson.

13 THE COURT: From your side, there's only one witness,
14 correct?

15 MR. BLACKERT: That's correct, Your Honor.

16 THE COURT: So I want you within two weeks to file a
17 declaration wherein your client describes each and every
18 meeting that he had with any representative of the defendant to
19 state in specifics when the meeting occurred, who was present,
20 what the plaintiff said, what the defendant said; and I want it
21 to be set forth in a way that doesn't incorporate conclusions.
22 In other words, I don't want the witness to then say, He said
23 this to me, and I interpreted it to mean this. It was a
24 meeting, how the meeting started, who called whom, if there are
25 notes that relate to the meeting, if there are emails that

1 relate to the meeting, if there are emails that exist aside
2 from the meetings, all that, okay? And then once you have
3 that, then I want you to do the same with your client, respond.

4 And then if after looking -- now, in terms of
5 discovery, what kind of discovery would you be looking towards?
6 You want a quick trial date so you don't want a lot of
7 discovery, correct?

8 MS. BORODKIN: Correct. Your Honor, and --

9 THE COURT: In other words, the way I'm understanding
10 it -- and don't let me put words in your mouth -- from your
11 standpoint, you're pretty well ready to go based upon what you
12 think you have.

13 MS. BORODKIN: We're willing and ready to call
14 witnesses and examine them in front of the court and ask them
15 what's the basis of the defense. In other words, the minimum
16 discovery -- he's saying they didn't write it, so who did?
17 We'd like them to identify --

18 THE COURT: Didn't write what?

19 MS. BORODKIN: The posts that are the subject of the
20 claims.

21 THE COURT: But that's not relevant to the extortion
22 claim. The defendant is not going to say that they didn't
23 write the postings. They're in a business. Here's a site,
24 post what you want, that's their business. And then their
25 business is, If you want us to investigate the accuracy of

1 these things, then you join our program. You didn't join the
2 program; they didn't investigate. That's their position.

3 So what is it that you are going to seek by way of
4 discovery?

5 MS. BORODKIN: Well, Your Honor, I would just take
6 issue with the characterization that their business is post
7 what you want. We would say it's post what you want as long as
8 it's negative.

9 THE COURT: But how would you argue that? From what
10 evidence that you know of now?

11 MS. BORODKIN: We would say that we know of evidence
12 that has come to light in other cases in which there's been
13 testimony that the defendant has encouraged negative postings
14 particularly targeted at profitable companies. In other words,
15 to identify selectively businesses that would be a good
16 target --

17 THE COURT: Well, let's say, for example, that that's
18 what they do. Let's say that they say, You know, we're going
19 to have a site and we're going to find out if there's some
20 negative stuff that exists out there about otherwise successful
21 companies. Is that actionable? I mean isn't that what happens
22 all the time? I mean isn't that at the heart of journalism?
23 Isn't that what American journalism is about?

24 MS. BORODKIN: Yes and no, Your Honor.

25 THE COURT: Did the *L.A. Times* ever write an article

1 that Luftansa landed safely at 7:47 yesterday at L.A.? Is that
2 a story?

3 MS. BORODKIN: Your Honor --

4 THE COURT: I mean journalists are constantly looking
5 to find stuff that is of interest that sort of goes against the
6 grain, and if that's what they're doing, in other words, if
7 they're interested in having people talk about negative
8 experiences they had with -- I don't know -- doctors,
9 companies, whatever, I mean so what?

10 MS. BORODKIN: Well, Your Honor, we don't think
11 that's what they're doing. We don't think they play the same
12 role as the *L.A. Times*. They are not objective. The
13 difference is people have tried to report their own business --

14 THE COURT: I suppose the newspapers are objective?

15 MS. BORODKIN: You're correct, Your Honor.

16 THE COURT: Why don't you sue the *L.A. Times*?

17 MS. BORODKIN: Because the *L.A. Times* is not offering
18 to change the content that they distribute if we pay them.

19 THE COURT: Well, that is at the heart of the case.
20 I mean, in other words, the fact that they may be in the
21 business of trying to find some negative things about otherwise
22 successful companies, that doesn't strike me, unless I'm
23 persuaded by other evidence, that that is inherently bad. And
24 if they then say under the guise of investigating, Pay me a
25 certain amount to join my club, maybe you get closer to

1 extortion, but that's why I wanted to ask you what is it that
2 you want to pursue in terms of discovery?

3 You want to depose -- what is the gentleman's name,
4 the defendant? Starts with an "M," is it?

5 MS. BORODKIN: Yes, we did Edward Magedson.

6 THE COURT: Who else do you want to depose? Is he
7 the principal person at the company?

8 MS. BORODKIN: Yes, he is.

9 MR. GINGRAS: Yes.

10 THE COURT: And so it seems to me you probably know a
11 lot about the company's position and their business approaches,
12 because there have been other lawsuits, right?

13 MS. BORODKIN: Correct.

14 THE COURT: And you're aware there's other lawsuits,
15 correct?

16 MS. BORODKIN: Correct.

17 THE COURT: Have those lawsuits gone to trial, any of
18 them?

19 MS. BORODKIN: Not that I know of.

20 THE COURT: And have they been the subject of summary
21 judgment motions?

22 MS. BORODKIN: Correct.

23 THE COURT: Do you have those summary judgment
24 motions?

25 MS. BORODKIN: Some of them we do and some of them we

1 don't.

2 THE COURT: So you probably already know what this
3 Mr. Magedson --

4 MS. BORODKIN: We don't, Your Honor, because each
5 case is different on the facts.

6 THE COURT: All right. Well, at least you have some
7 general notion.

8 MS. BORODKIN: Yes, Your Honor.

9 THE COURT: And so you're not objecting, then, to the
10 trial date in August.

11 MS. BORODKIN: Absolutely not. We embrace it.

12 THE COURT: I see. Unless there's -- they have the
13 burden here, and the case is bifurcated, and unless you can
14 show me why you need more time -- obviously, you're going to
15 take his deposition. You're going to have his position in two
16 weeks. So that certainly should make your deposition more
17 meaningful. I'm trying to make it as helpful to you and to the
18 defendant -- the plaintiff by giving your side of the story to
19 them.

20 You do that within 10 days of your getting his, okay?

21 And then unless something comes up that puts this off
22 track, I would suspect that at some point, given what I've
23 heard, you're going to test their case with a summary judgment
24 motion.

25 MR. GINGRAS: Correct. But, Your Honor, could I go

1 back to something else? I think I would be remiss if I didn't
2 explain to you my clear and strong objection to what the
3 plaintiffs are proposing in terms of an August trial date is
4 just totally and completely unrealistic, and let me tell you
5 why.

6 I don't think this is a declaratory relief case; I
7 think that they're looking for damages. I don't know what
8 those damages are because it seems undisputed that the
9 plaintiffs paid nothing to ripoffreport.

10 THE COURT: Can I help you for a moment on that?

11 MR. GINGRAS: Yes.

12 THE COURT: I'm also bifurcating damages.

13 MR. GINGRAS: Okay. So if the issue for trial, then,
14 is did extortion occur, the only -- the removal of damages from
15 that is helpful, but I don't think it's necessarily the only
16 simplification that matters because, Your Honor, I am certain,
17 I just know in my heart that the argument that plaintiffs are
18 going to make is going to be an emotional one based on these
19 statements are false. It is an entirely different case if
20 they -- I understand we're not litigating the defamation
21 claims, but they're going to use them anyway.

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

24 MR. GINGRAS: If the plaintiffs --

25 THE COURT: They are not going to use them. I'm the

1 judge here, and not the plaintiffs, and I don't see any way
2 that these -- the truth or falsity of these statements gets
3 into the case because -- unless the plaintiff can show that you
4 knew they were false, and that's not their premise. Their
5 premise is that you encourage people to come out of the
6 woodwork to say bad things -- to paraphrase the great book
7 about good people, you know, the book, *Why Bad Things Happen to*
8 --

9 MR. GINGRAS: I think I was personally featured in
10 that book, Your Honor.

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

15 So the date is when again, Paul?

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

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

21 MR. GINGRAS: It almost sounds like I could ask for
22 clarification if I need to move in limine to exclude the
23 plaintiff from referring to the statements as false or how are
24 we going to deal with that?

25 THE COURT: I would think you just make the motion

1 and then respond. I don't think you have to make any motion in
2 limine.

3 Thank you.

4 MS. BORODKIN: Thank you, Your Honor. And for
5 clarification, you're ordering that the parties meet and confer
6 about initial disclosures?

7 THE COURT: I don't clarify. I told you what you
8 have to do.

9 MS. BORODKIN: Thank you, Your Honor.

10 THE COURT: Thank you.

11 THE CLERK: Pretrial conference will be at 3:30,
12 August 2nd.

13 THE COURT: And it is true you have to meet and
14 confer within 10 days and don't forget the schedule about the
15 declarations.

16 MR. BLACKERT: Yes, Your Honor.

17 THE COURT: Thank you.

18 MR. GINGRAS: Thank you, Your Honor.

19 MR. BLACKERT: Thank you, Your Honor.

20 (Proceedings concluded at 2:45 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the stenographic record of the proceedings in the foregoing matter.

May 4, 2010

Deborah K. Gackle
Official Court Reporter
CSR No. 7106

Date