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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

**PLAINTIFFS' SUPPLEMENTAL  
MEMORANDUM OF LAW IN  
FURTHER SUPPORT OF  
MOTION (1) BIFURCATING  
DISCOVERY; (2) REGARDING A  
PROTECTIVE ORDER; (3) TO  
COMPEL DEPOSITION OF  
EDWARD MAGEDSON; AND (4)  
REGARDING CONDUCT AT  
DEPOSITIONS**

**[Local Civ. Rule 37-2.3]**

Date: June 24, 2010

Time: 11:00 a.m.

Courtroom: 827A

Discovery Cut-off: None

Pretrial Conf. Date: August 2, 2010

Trial Date: August 3, 2010

1                                   **PLAINTIFFS’ SUPPLEMENTAL MEMORANDUM OF LAW**

2           Plaintiffs submit this Supplemental Memorandum of Law in further support  
3 of their motion on discovery matters. DN-52. The original hearing date of this  
4 motion was June 25, 2010. DN-25 However, on June 10, 2010, at the request of  
5 Defendants, the hearing date on this motion was advanced to June 24, 2010. DN-  
6 55. Plaintiffs respectfully request this Court to consider this brief as timely filed.

7           **1. Further Legal Argument on Issue II: Protective Order**

8                   **A. Defendants Fail To Show “Good Cause” for a Protective Order**

9           “In the [Ninth] circuit, we start with a strong presumption in favor of access  
10 to court records.” Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1135  
11 (9th Cir. 2003) (citing Hagestad v. Tragesser, 49 F. 3d 1430, 1434 (9<sup>th</sup> Cir. 1995)).  
12 As the Defendants correctly state, the common law right of access is not absolute  
13 and can be overridden given sufficiently compelling reasons for doing so. “[T]he  
14 party seeking a protective order has the burden of showing the existence of good  
15 cause.” See San Jose Mercury News, Inc., 187 F.3d 1096, 1103 (9th Cir. 1999).

16           The Defendants attempt to meet this burden by suggesting the Plaintiffs are  
17 seeking to proceed without a protective order solely “to gratify private spite,  
18 promote public scandal, circulate libelous statements or release trade secrets.” DN-  
19 52 (“Joint Stip.”) at 29. Defendants offer no proof of this claim. They rely on their  
20 experiences with non-parties to this action with whom the Defendants are currently  
21 or previously “embroiled in litigation.” Joint Stip. at 29-30. These individuals have  
22 no relevance to the present discovery dispute.

23           Plaintiffs have stated that this case should be blogged and reported on. That  
24 is an opinion, not an intention. This is a high-profile case likely to be of public  
25 interest. Plaintiffs’ counsel are mindful of California Rule of Professional Conduct  
26 5-120 regarding trial publicity. Plaintiffs were responding to Defendant Edward  
27 Magedson’s admission that “We will all be blogged.” Joint Stip. at 23.

1 Plaintiffs previously offered to protect any trade secrets identified by  
2 Defendants. See Borodkin Dec. at ¶24; Ex. 14. “If there is a particular algorithm  
3 for determining the cost of enrollment and monthly fee for the Corporate  
4 Advocacy Program (CAP), then we may consider a provisional proposal for solely  
5 that as well as the actual prices.” See Borodkin Dec. ¶24, Ex. 14 at 3. For reasons  
6 unknown to the Plaintiffs, this was unacceptable to the Defendants.

7 Defendants’ cursory arguments do not demonstrate “good cause” for a  
8 protective order. This case should proceed without one until good cause is shown.

9 **B. The Public Has a Great Interest in the Legitimacy of a Purported**  
10 **Consumer Advocate.**

11 The public interest in this litigation greatly outweighs the Defendants’ need  
12 for confidentiality. The products of pretrial discovery are, in the absence of a court  
13 order, presumptively public. See San Jose Mercury News, Inc. v. United States  
14 District Court, 187 F.3d 1096, 1103 (9th Cir. 1999); see also In re Coordinated  
15 Pretrial Proceedings in Petroleum Products Antitrust Litigation, 101 F.R.D. 34  
16 (C.D. Cal. 1984) (“American courts have long recognized the general presumption  
17 of open court records and proceedings.”) “[P]ublic access to court proceedings is  
18 one of the numerous ‘checks and balances’ of our system because  
19 ‘contemporaneous review in the forum of public opinion is an effective restraint on  
20 possible abuse of judicial power.’” Richmond Newspapers, Inc. v. Virginia, 448  
21 U.S. 555 (1980) (Brennan, J.), quoting In re Oliver, 333 U.S. 257 (1943). The  
22 interest in access to court proceedings is particularly forceful in cases which  
23 involve matters of significant public concern. See In re Petroleum Products  
24 Antitrust Litigation, 101 F.R.D. at 38.

25 This is a matter of great public concern. There are over 500,000 reports on  
26 Defendants’ website affecting over 100,000 businesses. Defendants purport to be  
27 consumer advocates. They describe themselves as a “worldwide consumer  
28 reporting Web site and publication, by consumers, for consumers...”

1 As a self-appointed regulatory body, Defendants have undertaken the task of  
2 discovering and publishing companies that are so-called “Ripoffs” with little to no  
3 due process. Having undertaken this responsibility on behalf of the public, the  
4 legitimacy of this “agency” would be important to the “millions of consumers”  
5 who view the Defendants’ Web site, <http://www.ripoffreport.com>. Defendants’  
6 business thrives on the publication of derogatory and negative statements affecting  
7 hundreds of thousands of people. They claim the nature of the Ripoff Report  
8 website is “exposing frauds, shams and similar conduct.” Joint Stip. at 29.

9 Accordingly, the operation of this site is of great public interest, and no  
10 protective order is warranted.

11 **2. Further Legal Argument on Issue III: Motion to Compel Deposition of**  
12 **Edward Magedson**

13 Defendants refuse to answer particular questions at the Rule 30(b)(6)  
14 depositions of Xcentric Ventures LLC and the deposition of Edward Magedson,  
15 citing the lack of a protective order as the reason. Relevant portions of the  
16 deposition transcripts will be provided upon the Court’s request.

17 Moreover, Defense counsel impermissibly “coached” Mr. Magedson  
18 throughout the June 7, 2010 deposition, even after admonitions by examining  
19 counsel. The coaching took the form of ambiguous and suggestive “objections”  
20 that were neither objections nor instructions not to answer. These ambiguous,  
21 speaking objections took the form of “object to the extent that . . .” and otherwise  
22 in a manner that frustrated a “fair examination.” See, e.g., Hall v. Clifton Precision,  
23 150 F.R.D. 525, 530 (E.D. Pa. 1993). See also Univ. Trading & Inv. Co. v.  
24 Kiritchenko, 2007 U.S. Dist. LEXIS 98149 (N.D. Cal. Aug. 2, 2007) at \*10-11  
25 (“under Rule 30(d)(1) of the Federal Rules of Civil Procedure, any objection “must  
26 be stated concisely and in a non-argumentative and non-suggestive manner”); C.D.  
27 Cal. “Professionalism and Civility Guidelines” Rule B.4.5 (“When a question is  
28

1 pending, we will not, through objections or otherwise, coach the deponent or  
2 suggest answers.”) (emphasis added).

3 Suggestive, partial, extended speaking objections by Defense counsel under  
4 the pretext of a pending protective order should not be permitted. An order  
5 compelling the deposition of Mr. Magedson is still necessary.

6 **3. Further Legal Argument on Issue IV: Conduct at Depositions**

7 After this motion was filed, Plaintiffs took the deposition of Defendant  
8 Edward Magedson on June 7, 2010. Relevant portions of the deposition transcript  
9 will be provided to this Court on request. The June 7, 2010 deposition transcript  
10 will show that Adam Kunz, another attorney at Jaburg & Wilk, who has not  
11 appeared in this action and who has not been admitted pro hac vice in this action,  
12 entered the June 7, 2010 deposition, appeared on the record, instructed the  
13 deponent not to answer, had side discussions with defense counsel David Gingras,  
14 and caused confusion in the transcript, including having defense counsel call the  
15 deponent by Mr. Kunz’s first name at one point.

16 Plaintiffs do not object to having more than one attorney defending any  
17 deposition in this action. Defendants are already doing it. Plaintiffs are entitled to  
18 an order that they may be represented by counsel of choice at depositions, and may  
19 have more than one attorney defending, so long as proceedings remain orderly.

20 **3. Conclusion**

21 For the foregoing reasons, Plaintiffs’ motion should be granted in its  
22 entirety.

23 DATED: June 11, 2010

Respectfully submitted,

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

**CERTIFICATE OF SERVICE**

**I certify that on June 11, 2010, I electronically transmitted the document:**

**“Plaintiffs’ Supplemental Memorandum of Law in Further Support of Motion (1) Bifurcating Discovery; (2) Regarding a Protective Order; (3) To Compel Deposition of Edward Magedson; and (4) Regarding Conduct at Depositions”**

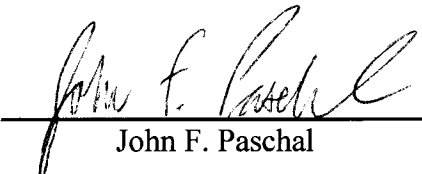
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**And a courtesy copy of the forgoing delivered to:**  
Honorable Patrick J. Walsh  
U.S. Magistrate Judge

  
John F. Paschal