

DANIEL F. BLACKERT, ESQ., CSB No. 255021  
 LISA J. BORODKIN, ESQ., CSB No. 196412  
**Asia Economic Institute**  
 11766 Wilshire Blvd., Suite 260  
 Los Angeles, CA 90025  
 Telephone (310) 806-3000  
 Facsimile (310) 826-4448  
[Daniel@asiaecon.org](mailto:Daniel@asiaecon.org)  
[Blackertesq@yahoo.com](mailto:Blackertesq@yahoo.com)  
[lisa@asiaecon.org](mailto:lisa@asiaecon.org)  
[lisa\\_borodkin@post.harvard.edu](mailto:lisa_borodkin@post.harvard.edu)

Attorneys for Plaintiffs,  
 Asia Economic Institute, LLC  
 Raymond Mobrez, and  
 Iliana Llaneras

**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

The Honorable Stephen V. Wilson

**PLAINTIFFS' EVIDENTIARY  
 OBJECTIONS TO DEFENDANTS'  
 MOTION FOR SUMMARY  
 JUDGMENT**

Date: June 28, 2010

Time: 1:30 p.m.

Ctm: 6

Discovery Cut-off.: None

Pretrial Conf. Date: August 2, 2010

Trial Date: August 3, 2010

**TABLE OF CONTENTS**

1

2

3 **I. Evidence of Recorded Telephone Calls Should Be Excluded.....1**

4 **A. Recordings of California-Arizona Telephone Calls Are Inadmissible**

5 **under California Penal Code Section 632(d) .....1**

6 i. The Recordings Were Made Without Plaintiffs’ Consent.....2

7 ii. California's Two-Party Consent Rule Should Govern the

8 Admissibility of Recordings in this Proceeding .....4

9 iii. Plaintiffs Had a Reasonable Expectation of Privacy .....6

10 **B. The Recordings Should Be Excluded as Evidence Sanctions under**

11 **Federal Rule 37(c) for Defendants’ Failure to Identify them in Their Initial**

12 **Rule 26(a) Disclosures.....7**

13 **II. Specific Objections ..... 11**

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Plaintiffs Asia Economic Institute, LLC (“AEI”), Raymond Mobrez, and  
2 Iliana Llaneras (“Plaintiffs”) hereby object to, and move to strike, the following  
3 evidence and exhibits submitted in support of Defendants’ Motion for Summary  
4 Judgment.

5 **I. Evidence of Recorded Telephone Calls Should Be Excluded**

6 In addition to the specific objections set forth in the following tables,  
7 Plaintiffs move to strike evidence of purported sound recordings of telephone calls  
8 between Mr. Mobrez and Defendants, and transcripts thereof.

9 First, such sound recordings were made without the knowledge or consent of  
10 Mr. Mobrez, in violation of California Penal Code Section 632. Thus, they are  
11 inadmissible in this action. Second, the recordings were not identified in  
12 Defendants’ Initial Rule 26 Disclosures dated April 21, 2010. Therefore, they  
13 should be excluded as an evidence sanction under Federal Rule 37(c).

14 **A. Recordings of California-Arizona Telephone Calls Are**  
15 **Inadmissible under California Penal Code Section 632(d).**

16 California Penal Code § 632(a) makes it a crime to:

17 intentionally and without the consent of all parties to a confidential  
18 communication, by means of any electronic amplifying or recording device,  
19 eavesdrops upon or records the confidential communication, whether the  
20 communication is carried on among the parties in the presence of one  
21 another or by means of a telegraph, telephone, or other device, except a  
22 radio[.]

21 Cal. Penal Code § 632(a).

22 Section 632(c) of the California Penal Code defines “confidential  
23 communication” to include:

24 any communication carried on in circumstances as may reasonably indicate  
25 that any party to the communication desires it to be confined to the parties  
26 thereto, but excludes . . . other circumstance in which the parties to the  
27 communication may reasonably expect that the communication may be  
28 overheard or recorded.

27 Cal. Penal Code § 632(c).

1 Evidence obtained in violation of this section is not admissible in any  
2 proceeding, (except a prosecution for violation of this section):

3  
4 [N]o evidence obtained as a result of eavesdropping upon or recording a  
5 confidential communication in violation of this section shall be admissible in  
6 any judicial, administrative, legislative, or other proceeding.

7 Cal. Penal Code § 632(d).

8 **i. The Recordings Were Made Without Plaintiffs' Consent**

9 It is undisputed that Plaintiffs did not know they calls were being recorded.  
10 Defendant Ed Magedson admits in his May 11, 2010 Affidavit, "At the time their  
11 declarations were filed on May 3, 2010, Mr. Mobrez and Ms. Llaneras did not  
12 know that these calls had been recorded." DN-31 at ¶12 (emphasis added).

13 It is also undisputed that Xcentric had a business practice, until a few weeks  
14 ago, of not informing callers that their calls may be recorded, apparently relying on  
15 Arizona state law. At the June 2, 2010 Deposition of Xcentric Ventures, LLC  
16 ("Xcentric") under Rule 30(b)(6), Xcentric's designee testified as follows:

17 Q. Do you notify callers that you record telephone conversations?

18 A. I'm a one party -- Arizona is a one party state.

19 Q. So why don't you notify callers?

20 A. Well there is -- there is notification on the recording. If you listen,  
21 before it comes to me, there is a part that says calls may be recorded.

22 Q. What specific language I'm asking for?

23 A. I don't remember and I don't call myself, so I can't remember.

24 Q. Yeah, I'm going to make a request for that voice recording, the actual  
25 system that you use the prompts and everything, I will make a request for  
26 that.

27 A. Anyone can do that. You can call a number and get them all yourself.

28 Q. How long is that particular prompt -- okay. Let's back up. The prompt  
that my clients went through?

1 A. Uh-huh.

2 Q. How long had that been in existence for?

3 MR. GINGRAS: Form. Objection.

4 Q. BY MR. BLACKERT: Since the first phone call my clients called  
5 you?

6 A. It's never changed.

7 Q. It's never changed.

8 A. Until recently there was a minor change.

9 Q. When did it change?

10 A. I forget the exact date.

11 Q. What was the minor change?

12 A. About the recorded phone calls.

13  
14 See Declaration of Lisa J. Borodkin ¶6, Ex. 3.

15 At the June 8, 2010 Deposition of Edward Magedson, Mr. Magedson  
16 testified that callers were first notified that "calls may be recorded" starting only a  
17 few weeks ago:

18  
19 Q. What I'm getting at is how do we know what these outgoing prompts  
20 and automated messages said at the time of approximately May 2009?

21 A. It's always been the thing, except for one little part when you press  
22 number one, there's to get to me, because it says, after you press five to get  
23 to me, and then it says, you know, would you like us to locate somebody or  
24 something like that, and that's really coming to me, because it says Ripoff  
25 Report editor, okay, and I forget if that comes before or right after you press  
26 one. But when you press one, it's like an automated message part, and that's  
27 because I had to figure out where should I put the notification because of  
28 this lawsuit, I just decided well, I'll go ahead and put -- even though we are a  
one party state here in Arizona, I will go ahead and put in advice by counsel,  
why don't I just go ahead and add calls may be recorded, so that's the only  
thing that's just changed. That one little thing was etched right in will in the

1 middle of it, calls may be recorded. Everything else is a hundred percent the  
2 same. Nothing has stopped. Nothing else has been changed.

3 Q. When was that changed?

4 A. I don't -- it was some time after -- I don't know maybe about a week  
5 and a half ago.

6 Borodkin Dec. ¶7, Ex. 4 (emphasis added).

7  
8 **ii. California' Two-Party Consent Rule Should Govern the**  
9 **Admissibility of Recordings in this Proceeding**

10 Defendants may argue that the recordings were made legally because  
11 Arizona is a one-party consent state. However, under a conflict of laws analysis,  
12 California – the forum state – has a strong interest in enforcing its more restrictive  
13 laws regarding wiretapping and eavesdropping.

14 Federal courts sitting in diversity must look to the law of the forum state in  
15 making a choice of law determination. See Arno v. Club Med Boutique, 134 F.3d  
16 1424, 1425 (9th Cir. Cal. 1998); Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S.  
17 487, 497 (1941). This action was brought in California state court and removed to  
18 United States District Court in California. Therefore, we look to the choice of law  
19 rules of California.

20 California applies a three-step “governmental interest” analysis to choice-of-  
21 law questions: (1) “the court examines the substantive laws of each jurisdiction to  
22 determine whether the laws differ as applied to the relevant transaction”, (2) “if the  
23 laws do differ, the court must “determine whether a true conflict' exists in that each  
24 of the relevant jurisdictions has an interest in having its law applied”, and (3) “if  
25 more than one jurisdiction has a legitimate interest ... the “court [must] identify  
26 and apply the law of the state whose interest would be more impaired if its law  
27 were not applied.” See Downing v. Abercrombie & Fitch, 265 F.3d 994, 1006 (9th  
28 Cir. Cal. 2001); Abogados v. AT&T, Inc., 223 F.3d 932, 934 (9<sup>th</sup> Cir. 2000); Liew  
v. Official Receiver & Liquidator, 685 F.2d 1192, 1196 (9th Cir. 1982).

1 The California Supreme Court's decision in Hurtado v. Superior Court, 11  
2 Cal. 3d 574 (Cal. 1974), is the primary case setting forth California's choice of law  
3 rules and analyzing the approach to be taken in determining the interest of each  
4 jurisdiction in enforcing its own law:

5 Generally speaking the forum will apply its own rule of decision unless a  
6 party litigant timely invokes the law of a foreign state. In such event he must  
7 demonstrate that the latter rule of decision will further the interest of the  
8 foreign state and therefore that it is an appropriate one for the forum to apply  
to the case before it.

9 Id. at 670 (internal citations omitted); see also Downing v. Abercrombie & Fitch,  
10 265 F.3d 994, 1006 (9th Cir. 2001) (Hawaii had no interest in having its law  
11 applied in California forum).

12 The laws of California and Arizona regarding the admissibility of the tape  
13 recordings are substantially different. California prohibits the electronic recording  
14 of any “confidential communication” without the consent of all parties to the  
15 communication. See Cal. Penal Code § 632(a).

16 By comparison, Arizona law offers more limited protection against the  
17 electronic interception of oral communications. In Arizona, any persons present at  
18 a conversation may record the conversation without obtaining the consent of the  
19 other parties involved. See Ariz. Rev. Stat. § 13-3005 (prohibiting the  
20 “intentional[] interception [of] a conversation or discussion at which [one] is not  
21 present...without the consent of a party to such conversation or discussion”); Ariz.  
22 Rev. Stat. § 13-3012 (excepting from the statute’s eavesdropping prohibition “the  
23 interception of any ... oral communication by any person, if the interception is  
24 effected with the consent of a party to the communication or a person who is  
25 present during the communication...”). Thus, Arizona law “reflects a policy  
26 decision by the state that the secret recording of a private conversation by a party  
27 to that conversation does not violate another party’s right to privacy.” See Medical  
28

1 Lab. Management Consultants v. American Broadcasting Co., 306 F.3d 806, 816  
2 (9th Cir. 2002).

3 California, on the other hand, criminalizes this conduct. See Cal. Penal Code  
4 632(a). California has a more legitimate interest in the enforcement of its laws  
5 within its borders. Therefore, California’s law should be applied.

6 **iii. Plaintiffs Had a Reasonable Expectation of Confidentiality**

7 Defendants may also argue that Plaintiffs did not have an expectation that  
8 their telephone calls were “confidential” because Plaintiffs have put evidence into  
9 the record that Ms. Llaneras, Mr. Mobrez’s spouse, was listening to one of the  
10 conversations. DN-36 at ¶¶4-5.

11 However, this does not necessarily destroy confidentiality. A marital  
12 privilege exists between Mr. Mobrez and Ms. Llaneras. Thus, the confidential  
13 nature of these communications is preserved unless it is waived. See, e.g., United  
14 States v. Strobehn, 421 F.3d 1017, 1021 (9th Cir. 2005) (“marital communications  
15 privilege protects statements or actions that are intended as a communication by  
16 one spouse to the other, that are made during the existence of a valid marriage, and  
17 that are intended as confidential by the spouse who makes the communication.”)  
18 (emphasis added). Moreover, Ms. Llaneras only overheard one of the calls.  
19 Therefore, it is undisputed that an expectation of confidentiality existed with  
20 respect to all other calls.

21 In addition, the California Supreme Court has recognized an “expectation of  
22 limited privacy” against the electronic recording of a communication even though  
23 the speaker lacks an expectation of complete privacy. See Sanders v. Am. Broad.  
24 Cos., 20 Cal. 4<sup>th</sup> 907, 916 (1999). In Sanders, the California Supreme Court held  
25 that the plaintiff could have a reasonable expectation of privacy against the covert  
26 videotaping of a conversation between two coworkers despite the fact the plaintiff  
27 lacked a reasonable expectation of complete privacy because he was visible and  
28 audible to other coworkers. See id., 10 Cal. 4th at 916. Accordingly, the Court



1 stated that the “possibility of being overheard by coworkers does not, as a matter of  
2 law, render unreasonable an employee's expectation that his or her interactions  
3 within a nonpublic workplace will not be [recorded] in secret.” See *id.*

4 Sanders does suggest that a conversation may still be confidential despite  
5 being overheard by a coworker in a non-public place. Therefore, the “expectation  
6 of limited privacy” may apply to Ms. Llaneras and Mr. Mobrez in their capacities  
7 as co-Directors of Asia Economic Institute LLC in a non-public workplace, where  
8 the conversation was overheard.

9 Therefore, the communications were confidential despite Ms. Llaneras  
10 overhearing one of them. Plaintiffs had an expectation of confidentiality in their  
11 phone calls. Evidence of these recordings should be excluded under California  
12 Penal Code Section 632(a).

13 **B. The Recordings Should Be Excluded as Evidence Sanctions under**  
14 **Federal Rule 37(c) for Defendants’ Failure to Identify them in**  
15 **Their Initial Rule 26(a) Disclosures.**

16 Federal Rule of Civil Procedure 37(c) provides in part:

17 **(c) Failure to Disclose, to Supplement an Earlier Response, or to Admit.**

18 **(1) *Failure to Disclose or Supplement.*** If a party fails to provide  
19 information or identify a witness as required by Rule 26(a) or (e), the party  
20 is not allowed to use that information or witness to supply evidence on a  
21 motion, at a hearing, or at a trial, unless the failure was substantially justified  
or is harmless. In addition to or instead of this sanction, the court, on motion  
and after giving an opportunity to be heard:

22 **(A)** may order payment of the reasonable expenses, including attorney's fees,  
caused by the failure;

23 **(B)** may inform the jury of the party's failure; and

24 **(C)** may impose other appropriate sanctions, including any of the orders  
25 listed in Rule 37(b)(2)(A)(i)-(vi).

26 Fed. R. Civ. P. 37(c) (emphasis added).

27 Defendants failed to disclose the recordings as information required under  
28 Rule 26(a). The failure was not substantially justified or harmless. The recordings

1 should have been disclosed as defense material. The failure to identify the  
2 existence of such recordings at the earliest possible opportunity was deliberate,  
3 harmful, and caused undue surprise and embarrassment. There is evidence in the  
4 record that, on April 20, 2010, defense counsel instructed Defendant Edward  
5 Magedson to gather and provide such recordings for use in this action.  
6 Therefore, the recordings of telephone calls should be excluded from evidence on  
7 this motion.

8 On April 21, 2010, Defendants served their Initial Disclosures. Defendants  
9 failed to identify the existence and location of such recordings in Defendants'  
10 Initial Rule 26 Disclosures dated April 21, 2010. See Declaration of Lisa J.  
11 Borodkin at ¶¶4-5, Ex. 1. Defendants had a positive duty to disclose all  
12 information "reasonably available" to them as of April 21, 2010 pursuant to Fed.  
13 R. Civ. Pro 26(a)(1)(E).

14 Later-filed evidence reflects that Defendant Magedson makes and keeps  
15 recordings in the ordinary course of Xcentric Ventures LLC ("Xcentric")'s  
16 business. In the May 11, 2010 Affidavit of Edward Magedson ("May 11, 2010  
17 Magedson Aff."), Mr. Magedson states, in pertinent part that defense counsel  
18 instructed him on April 20, 2010 to gather the recordings:

19 "6. After these [the March 22, 2010 Affidavit of Edward Magedson, and  
20 the April 5, 2010 affidavit of Edward Magedson] affidavits were filed, I  
21 recalled that I had recordings of all my telephone conversations with Mr.  
22 Mobrez which had taken place approximately a year earlier. I had not yet  
23 retrieved or listened to any of these recordings before my affidavits were  
filed with the court.

24 7. At the request of my attorneys following the Court's denial of our  
25 anti-SLAPP motion on April 19, 2010, on April 20, 2010 I spent several  
26 hours conducting a search of my records. I was able to eventually locate six  
27 recordings of calls and/or voicemails from Raymond Mobrez to the main  
28 number for the Ripoff Report site; (602) 359-4357. The first time I listened  
to any of these recordings was on April 20, 2010. I also provided copies of  
these calls to my counsel for the first time on that same day."

1  
2 May 11, 2010 Affidavit of Ed Magedson, DN-31 at ¶¶6-7 (emphasis added).

3 Defendants have had a business practice of recording calls for approximately  
4 two years. Defendant Xcentric Ventures LLC (“Xcentric”) testified at its June 2,  
5 2010 30(b)(6) deposition that it has had a practice of recording phone calls since  
6 “more than two years ago” and that the reason was, among other things:

7 “so somebody couldn’t say I said something like your clients saying in detail  
8 handwritten notes and date and time and da da da saying I said certain  
9 things, which we all know never happened, nothing even close.”

10 Borodkin Dec. ¶7, Ex. 3 (pages from June 6, 2010 Deposition of Xcentric 30(b)(6)  
11 witness at 70-71).

12 Despite the automatic disclosure duties imposed under Federal Rule 26(a),  
13 Defendants failed to identify the existence of such audio recordings in their Initial  
14 Rule 26 Disclosures served April 21, 2010. Instead, Defendants deliberately  
15 suppressed the existence of these audio recordings, despite actual knowledge of  
16 their existence, until May 7, 2010, the date of Plaintiff Raymond Mobrez’s  
17 deposition.

18 Defendants’ failure to disclose the recordings of the conversations in their  
19 Rule 26(a) disclosures was not justified and was harmful. Although impeachment  
20 evidence does not need to be identified in initial disclosures, see Davis v. Los  
21 Angeles West Travelodge, 2009 U.S. Dist. LEXIS 119173 (“[T]he fact that  
22 Plaintiff withheld the video recordings during discovery is not a bar to their  
23 admissibility as impeachment evidence”)(excluding evidence used “solely for  
24 impeachment” from pretrial and discovery disclosures); Gribben v. United Parcel  
25 Serv., Inc., 528 F.3d 1166, 1172 (9th Cir. 2008) (“impeachment evidence does not  
26 have to be revealed in pretrial disclosures”), the recordings of telephone  
27 conversations in this case are not solely impeachment material. The recordings are  
28 central to Defendants’ defense as presented in this motion for summary judgment.  
Defendants devote most of their motion for summary judgment to the recordings.

1 Defendants are attempting to introduce the recordings of the telephone calls  
2 through the Declaration of David Gingras, via Exhibit A (Transcript of May 7,  
3 2010 Deposition of Plaintiff Raymond Mobrez). DN-47. Mr. Gingras' Declaration  
4 purports to authenticate audio recordings of telephone calls from Plaintiff  
5 Raymond Mobrez to Defendants (identified as calls "1, 3, 4, 5, 6, and 7"). See DN-  
6 47, Ex. A. Aside from the specific objections below, these are subject to mandatory  
7 exclusion under Federal Rule of Civil Procedure 37(c).

8 In situations such as this, Rule 37(c)(1) prevents the use of such undisclosed  
9 evidence to support a motion or at trial. Rule 37(c)(1) mandates the exclusion of  
10 those recordings from evidence under the mandatory automatic exclusion sanction.  
11 For purposes of challenging an affidavit filed in support of a Rule 56 motion, "a  
12 party must either move to strike the affidavit or otherwise lodge an objection with  
13 the district court." See Douglas v. Pfingston, 284 F.3d. 999, 1003 (9<sup>th</sup> Cir. 2002).

14 This Court should exclude the telephonic recordings and transcripts thereof  
15 from this motion. The recordings were not created and utilized to impeach the  
16 veracity of Plaintiff but were created and kept in the ordinary course of business.  
17 See Borodkin Dec. at Ex. 3. They were improperly withheld, seemingly for the  
18 purpose of ambushing Plaintiff at deposition. The purpose of this ambush is clear  
19 from Defendants' Rule 56 motion. The documents and associated testimony are  
20 being used to prove a defense and not solely to impeach Plaintiffs' credibility.  
21 Therefore, Rule 26's impeachment exception does not apply.

22 These issues are also the subject of Plaintiff's Motion to Strike, which will  
23 be filed under separate cover, with a request to advance the hearing to June 28,  
24 2010, the date of the hearing on Defendants' Motion for Summary Judgment.

1 **II. Specific Objections**

2 **DECLARATION OF DAVID GINGRAS**

3

<b>Para.</b>	<b>Testimony</b>	<b>Objections</b>
¶4	Gingras Exhibit “A”, Deposition Transcript of Raymond Mobrez at 271:7-273:9, constituting the purported “transcription” of recorded Call 1.	Lack of foundation; lack of personal knowledge failure to authenticate recordings. (Fed. R. Evid. 901). Original recordings not provided and withheld under claim of confidentiality (Fed. R. Evid. 1002). Disputed as to who actually creates the recordings and keeps them. Attorney Gingras states that Xcentric Ventures recorded the audio files. Magedson testifies in his May 11, 2010 Affidavit, 3:27-28; 4:1-2 [DN-31], that Xcentric automatically creates recordings as a regular business practice. However, Defendant Magedson also testifies that a third party recording service produced these recordings off-site and that he has no access to them. Magedson Affidavit, 8:5-8 [DN-31]; Magedson Uncertified Depo. of June 2, 2010, at 74, 187-88; Magedson Uncertified Depo. of June 2, 2010, at 128. Lack of foundation; Declarant lacks credibility (Fed. R. Evid. 806): Magedson testifies that he has no knowledge of what the voice recording prompts say within the system itself or how long each may take. Magedson has no knowledge of why there is a discrepancy between the telephone records of Mobrez and

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

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

		<p>the audio recordings. Magedson Uncertified Depo. of June 8, 2010 at pp. 125-130. Borodkin Dec. ¶7, Ex. 4.</p> <p>Gingras has no competence to authenticate the recordings in Exhibit 25 to the Deposition of Raymond Mobrez. (Fed. R. Evid. 901). If attorney Gingras is the source of authentication, Plaintiff's have a right to cross-examine him.</p>
¶4	Gingras Exhibit "A", Deposition Transcript of Raymond Mobrez at 276:3-277:6, constituting the purported "transcription" of recorded Call 3.	<p>Lack of foundation; lack of personal knowledge failure to authenticate recordings. (Fed. R. Evid. 901). Original recordings not provided and withheld under claim of confidentiality (Fed. R. Evid. 1002). Disputed as to who actually creates the recordings and keeps them. Attorney Gingras states that Xcentric Ventures recorded the audio files. Magedson testifies in his May 11, 2010 Affidavit, 3:27-28; 4:1-2 [DN-31], that Xcentric automatically creates recordings as a regular business practice. However, Defendant Magedson also testifies that a third party recording service produced these recordings off-site and that he has no access to them. Magedson Affidavit, 8:5-8 [DN-31]; Magedson Uncertified Depo. of June 2, 2010, at 74, 187-88; Magedson Uncertified Depo. of June 2, 2010, at 128. Lack of foundation; Declarant lacks</p>

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

		<p>credibility (Fed. R. Evid. 806): Magedson testifies that he has no knowledge of what the voice recording prompts say within the system itself or how long each may take. Magedson has no knowledge of why there is a discrepancy between the telephone records of Mobrez and the audio recordings. Magedson Uncertified Depo. of June 8, 2010 at pp. 125-130. Borodkin Dec. ¶7, Ex. 4.</p> <p>Gingras has no competence to authenticate the recordings in Exhibit 25 to the Deposition of Raymond Mobrez. (Fed. R. Evid. 901). If attorney Gingras is the source of authentication, Plaintiff's have a right to cross-examine him.</p>
¶4	Gingras Exhibit "A", Deposition Transcript of, Raymond Mobrez at 278:12-279:10 <sup>1</sup> , constituting the purported "transcription" of recorded Call 4.	Lack of foundation; lack of personal knowledge failure to authenticate recordings. (Fed. R. Evid. 901). Original recordings not provided and withheld under claim of confidentiality (Fed. R. Evid. 1002). Disputed as to who actually creates the recordings and keeps them. Attorney Gingras states that Xcentric Ventures recorded the audio files. Magedson testifies in his May 11, 2010 Affidavit, 3:27-28; 4:1-2 [DN-31], that Xcentric automatically creates recordings as a regular business practice.

<sup>1</sup> See Footnote 1.

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

		<p>However, Defendant Magedson also testifies that a third party recording service produced these recordings off-site and that he has no access to them. Magedson Affidavit, 8:5-8 [DN-31]; Magedson Uncertified Depo. of June 2, 2010, at 74, 187-88; Magedson Uncertified Depo. of June 2, 2010, at 128. Lack of foundation; Declarant lacks credibility (Fed. R. Evid. 806): Magedson testifies that he has no knowledge of what the voice recording prompts say within the system itself or how long each may take. Magedson has no knowledge of why there is a discrepancy between the telephone records of Mobrez and the audio recordings. Magedson Uncertified Depo. of June 8, 2010 at pp. 125-130. Borodkin Dec. ¶7, Ex. 4. Gingras has no competence to authenticate the recordings in Exhibit 25 to the Deposition of Raymond Mobrez. (Fed. R. Evid. 901). If attorney Gingras is the source of authentication, Plaintiff's have a right to cross-examine him.</p>
¶4	Gingras Exhibit "A", Deposition Transcript of Raymond Mobrez at 280:4-281:7 <sup>2</sup> , constituting the purported "transcription" of recorded Call 5.	Lack of foundation; lack of personal knowledge failure to authenticate recordings. (Fed. R. Evid. 901). Original recordings not provided and withheld under

<sup>2</sup> See Footnote 1.



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

--	--

claim of confidentiality (Fed. R. Evid. 1002). Disputed as to who actually creates the recordings and keeps them. Attorney Gingras states that Xcentric Ventures recorded the audio files. Magedson testifies in his May 11, 2010 Affidavit, 3:27-28; 4:1-2 [DN-31], that Xcentric automatically creates recordings as a regular business practice. However, Defendant Magedson also testifies that a third party recording service produced these recordings off-site and that he has no access to them. Magedson Affidavit, 8:5-8 [DN-31]; Magedson Uncertified Depo. of June 2, 2010, at 74, 187-88; Magedson Uncertified Depo. of June 2, 2010, at 128. Lack of foundation; Declarant lacks credibility (Fed. R. Evid. 806): Magedson testifies that he has no knowledge of what the voice recording prompts say within the system itself or how long each may take. Magedson has no knowledge of why there is a discrepancy between the telephone records of Mobrez and the audio recordings. Magedson Uncertified Depo. of June 8, 2010 at pp. 125-130. Borodkin Dec. ¶7, Ex. 4. Gingras has no competence to authenticate the recordings in Exhibit 25 to the Deposition of Raymond Mobrez. (Fed. R. Evid. 901). If attorney Gingras is

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

		the source of authentication, Plaintiff's have a right to cross-examine him.
¶4	Gingras Exhibit "A", Deposition Transcript of, Raymond Mobrez at 282:10-283:20, constituting the purported "transcription" of recorded Call 6.	Lack of foundation; lack of personal knowledge failure to authenticate recordings. (Fed. R. Evid. 901). Original recordings not provided and withheld under claim of confidentiality (Fed. R. Evid. 1002). Disputed as to who actually creates the recordings and keeps them. Attorney Gingras states that Xcentric Ventures recorded the audio files. Magedson testifies in his May 11, 2010 Affidavit, 3:27-28; 4:1-2 [DN-31], that Xcentric automatically creates recordings as a regular business practice. However, Defendant Magedson also testifies that a third party recording service produced these recordings off-site and that he has no access to them. Magedson Affidavit, 8:5-8 [DN-31]; Magedson Uncertified Depo. of June 2, 2010, at 74, 187-88; Magedson Uncertified Depo. of June 2, 2010, at 128. Lack of foundation; Declarant lacks credibility (Fed. R. Evid. 806): Magedson testifies that he has no knowledge of what the voice recording prompts say within the system itself or how long each may take. Magedson has no knowledge of why there is a discrepancy between the telephone records of Mobrez and the audio

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

		<p>recordings. Magedson Uncertified Depo. of June 8, 2010 at pp. 125-130. Borodkin Dec. ¶7, Ex. 4.</p> <p>Gingras has no competence to authenticate the recordings in Exhibit 25 to the Deposition of Raymond Mobrez. (Fed. R. Evid. 901). If attorney Gingras is the source of authentication, Plaintiff's have a right to cross-examine him.</p>
¶4	Gingras Exhibit "A", Deposition Transcript of Raymond Mobrez at 284:3-296:6, constituting the purported "transcription" of recorded Call 7.	<p>Lack of foundation; lack of personal knowledge failure to authenticate recordings. (Fed. R. Evid. 901). Original recordings not provided and withheld under claim of confidentiality (Fed. R. Evid. 1002). Disputed as to who actually creates the recordings and keeps them. Attorney Gingras states that Xcentric Ventures recorded the audio files. Magedson testifies in his May 11, 2010 Affidavit, 3:27-28; 4:1-2 [DN-31], that Xcentric automatically creates recordings as a regular business practice. However, Defendant Magedson also testifies that a third party recording service produced these recordings off-site and that he has no access to them. Magedson Affidavit, 8:5-8 [DN-31]; Magedson Uncertified Depo. of June 2, 2010, at 74, 187-88; Magedson Uncertified Depo. of June 2, 2010, at 128. Lack of foundation; Declarant lacks credibility (Fed. R. Evid. 806):</p>

		<p>Magedson testifies that he has no knowledge of what the voice recording prompts say within the system itself or how long each may take. Magedson has no knowledge of why there is a discrepancy between the telephone records of Mobrez and the audio recordings. Magedson Uncertified Depo. of June 8, 2010 at pp. 125-130. Borodkin Dec. ¶7, Ex. 4.</p> <p>Gingras has no competence to authenticate the recordings in Exhibit 25 to the Deposition of Raymond Mobrez. (Fed. R. Evid. 901). If attorney Gingras is the source of authentication, Plaintiff’s have a right to cross-examine him.</p>
¶4	Gingras Exhibit “A”, Deposition Transcript of Raymond Mobrez at 98:5-99:5; 107:22-108:17	Attorney Gingras mischaracterizes the testimony of Mobrez. Mobrez never states that he has no evidence.
¶4	Gingras Exhibit “A”, Deposition Transcript of Raymond Mobrez at 174:12-178:2	Attorney Gingras mischaracterizes the testimony of Mobrez. Mobrez never states that he did not have the name of a single employee who quit as a result of any actions of Xcentric or Mr. Magedson.

**AFFIDAVIT OF ED MAGEDSON**

<b>Para.</b>	<b>Testimony</b>	<b>Objections</b>
¶2	“Serving as a forum for speech concerning bad business practices among other things, the Ripoff Report is the leading complaint reporting website and is the most ardent supporters of free speech anywhere.”	Lacks Foundation; Irrelevant as free speech is not at issue in this case. (Fed. R. Evid. 401)
¶22	On May 5, 2009, Mr. Mobrez re-sent me a copy of the email he previously sent on April 28, 2009 which also began “Dear Editor, I spoke with someone at your office yesterday...”	Best Evidence Rule, the document speaks for itself.
¶22	The “form email” I sent to Mr. Mobrez on May 5, 2009 does not demand money and does not contain any threats; it simply explains my views	Best Evidence Rule, the document speaks for itself.

for anyone wishing to address a report on our site.

¶31

“According to my search, Xcentric’s phone system recorded six phone calls from Mr. Mobrez in April and May of 2009. These calls are summarized in the table below. It should be noted that the table actually reflects a total of seven calls were made even though only six calls were recorded.

**TABLE OF RECORDINGS**

Call #	Date	End Time	Call From #	Length Min:Sec
1	4/27/2009	3:25 PM	(310) 806-3000	1:35
2	4/27/2009	N/A	N/A	N/A
3	4/27/2009	3:32 PM	(310) 806-3000	1:20
4	5/5/2009	11:33AM	(310) 806-3000	0:51
5	5/5/2009	1:10PM	(310) 806-3000	0:35
6	5/9/2009	1:38 PM	(310) 801-5161	1:36
7	5/12/2009	3:05 PM	(310) 806-3000	14:45

Lacks personal knowledge of how the recordings are kept and as to their completeness as represented by affiant, lacks foundation as the table created does not exist and was created by either Magedson or his attorneys. None of whom have personal knowledge of how the recordings were kept in the regular course of business and whether the recordings are complete or excerpted. Moreover, Magedson has no personal knowledge of how Xcentric Phone System works. Magedson Uncertified Depo. of June 8, 2010 at pp. 126. Counsel for Plaintiff has asked to depose a representative of the third party vendor who records for Xcentric but has been consistently rebuffed by counsel for defense, Gingras who states that neither the identity nor a representative will be produced without a protective order. E-mail correspondence between attorney Gingras and attorney Borodkin dated May 27, 2010. Exhibit \_\_\_ to Borodkin Dec. Uncertified depo. Ed Magedson dated June 2, 2010, pg. 74. Exhibit \_\_\_ to Borodkin Dec. Hearsay to the extent that Affiant is utilizing information and/ or

		third party commentary to prove the truth of the matter asserted, best evidence rule. The recordings should speak for themselves.																					
¶59	<p>“I understand that screenshots of portions of the report as well as well as copies of the text of each of each report are attached to the Declaration of David Gingras submitted herewith as follows:</p> <table border="1" data-bbox="321 604 1044 846"> <thead> <tr> <th>Exhibit</th> <th>Report #</th> <th>Submission Date</th> </tr> </thead> <tbody> <tr> <td>1 A/B</td> <td>417493</td> <td>January 28, 2009</td> </tr> <tr> <td>2 A/B</td> <td>423987</td> <td>February 13, 2009</td> </tr> <tr> <td>3 A/B</td> <td>457433</td> <td>June 1, 2009</td> </tr> <tr> <td>4 A/B</td> <td>502429</td> <td>September 30, 2009</td> </tr> <tr> <td>5A/B</td> <td>564331</td> <td>February 3, 2010</td> </tr> <tr> <td>6A/B</td> <td>571232</td> <td>February 19, 2010</td> </tr> </tbody> </table>	Exhibit	Report #	Submission Date	1 A/B	417493	January 28, 2009	2 A/B	423987	February 13, 2009	3 A/B	457433	June 1, 2009	4 A/B	502429	September 30, 2009	5A/B	564331	February 3, 2010	6A/B	571232	February 19, 2010	Lacks Personal Knowledge; Irrelevant as the Exhibit attached to the Gingras Declaration speaks for itself.
Exhibit	Report #	Submission Date																					
1 A/B	417493	January 28, 2009																					
2 A/B	423987	February 13, 2009																					
3 A/B	457433	June 1, 2009																					
4 A/B	502429	September 30, 2009																					
5A/B	564331	February 3, 2010																					
6A/B	571232	February 19, 2010																					
¶32	<p>“The only phone call not recorded-Call #2 in this table-was a call made from Mr. Mobrez’s office phone to the Ripoff report on April 27, 2009. According to phone records produced by Mr. Mobrez which I have reviewed, I am aware that Call #2 was made at 3:27 PM on April 27, 2009, but the duration of the call as reflected on the phone bill was only <u>1.0 minute</u>. It is my belief that no recording of this call was made because Mr. Mobrez never actually spoke to me during Call #2; this call was either dropped, did not connect successfully, or Mr. Mobrez hung up before reaching me.</p>	Lacks personal knowledge, lacks foundation, hearsay to the extent that Affiant is utilizing information and/ or third party commentary to prove the truth of the matter asserted, best evidence rule, speculative as to why call was not recorded																					
¶32	<p>“The only phone call not recorded-Call #2 in this table-was a call made from Mr. Mobrez’s office phone to the Ripoff report on April 27, 2009. According to phone records produced by Mr. Mobrez which I have reviewed, I am aware that Call #2 was made at 3:27 PM on April 27, 2009, but the duration of the call as reflected on the phone bill was only <u>1.0 minute</u>. It is my belief that no recording of this call was made because Mr. Mobrez never actually spoke to me during Call #2; this call was either dropped, did not connect successfully, or Mr. Mobrez hung up before reaching me.</p>	Lacks personal knowledge, lacks foundation, hearsay to the extent that Affiant is utilizing information and/ or third party commentary to prove the truth of the matter asserted, best evidence rule, speculative as to why call was not recorded																					
¶33	<p>“In order to reach me directly, a caller is required to listen to <u>two</u> different series of options and then push two different keys to indicate that they would like to speak to the Ripoff Report’s editor. Listening to only the main menu of options takes 40 seconds. If the caller chooses option 1, which relates to requests</p>	Lacks personal knowledge, lacks foundation as to Mr. Magedson’s competence to testify on this subject, speculative as the exact																					

	<p>to remove reports, they get a recorded message regarding our policy, including the policy to not speak by telephone. It takes one minute and thirty seconds to listen to the main menu plus the recorded message in option 1.”</p>	<p>amounts of time utilized in each menu options, failure to authenticate content of the menu options or to verify their exact timeframe</p>
¶34	<p>“If the caller follows the phone tree to reach me, the phone system then asks the caller to state their name which is recorded, and then they are placed on hold while the system forwards the call to me. The automatic recording process does not begin unless and until the call is connected directly to me, and the audio recording only captures what was said after the call is connected to me.”</p>	<p>Lacks personal knowledge, lacks foundation as to Mr. Magedson’s competence to testify on this subject, speculative as the exact amounts of time utilized in each menu options and as to the timing of the recording sequence, failure to authenticate content of the menu options</p>
¶34	<p>“So, for instance, if a person spent 1 ½ minutes navigating through the phone menu system and waiting for the system to connect the call and then spoke to me for a total of 30 seconds, Xcentric’s system would only record the actual length of the conversation (30 seconds), but the caller’s phone bill would likely indicate a total call duration of around 2.0 minutes.”</p>	<p>Lacks personal knowledge, lacks foundation as to Mr. Magedson’s competence to testify on this subject, speculative as the exact amounts of time utilized in each menu option and as to the timing of the recording sequence, inappropriate hypothetical</p>
¶35	<p>“Although a person could reach me in under a minute if they knew the exact sequence of buttons to push and did not wait to hear each menu listing, normally completing each step of the phone menu process takes anywhere from approximately one minute to nearly two minutes. It is my belief that the time it takes to complete this process is why Mr. Mobrez’s phone bills show that each call was approximately 90 seconds longer than the audio recording that was captured for each call.”</p>	<p>Lacks personal knowledge, lacks foundation as to Mr. Magedson’s competence to testify on this subject, speculative as the exact amounts of time utilized in each menu option and as to the timing of the recording sequence, speculative as to why there is a discrepancy between Mr. Mobrez’s phone records and the audio recordings, best evidence rule as the original documents</p>

		speaks for themselves
¶46	“The second call from Mr. Mobrez was on April 27, 2009 at 3:47 PM. His telephone bill shows the length of this call was 1.0 minute. Xcentric’s system did not record any audio from this call which I believe is due to the fact that the call was either dropped for some reason, or Mr. Mobrez hung up before he completed the phone menu process. Because Mr. Mobrez never spoke to me, no recording was made.”	Lacks personal knowledge, lacks foundation, failure to authenticate, hearsay to the extent that Affiant is utilizing information and/ or third party commentary to prove the truth of the matter asserted, best evidence rule, speculative as to why telephone call was not recorded
¶56	“Mr. Mobrez never completed the CAP application, never joined the CAP program, and neither he nor AEI have ever paid anything to me or to Xcentric.”	Lacks personal knowledge, speculative as to whether Mr. Mobrez actually completed the application
¶58	“Based upon my review of the Complaint and the exhibits thereto, I am aware that there are six reports which plaintiff’s allege contain various false statements about them.”	Lacks personal knowledge, best evidence rule as the documents speak for themselves
¶60	“All of these reports and rebuttals were created by third parties, not by me or Xcentric.”	Lacks personal knowledge, speculative as plaintiff purports to speak for all employees who may have acted on behalf of Xcentric
¶61	“I am aware that on March 20, 2010, Mr. Mobrez filed a “corrected” affidavit in this matter in which he attempted to recant much of his testimony. I am also aware that in his “corrected” affidavit Mr. Mobrez testified, “In addition, there were a number of incoming calls to me from Ripoff Report.” This statement is completely false and is just another lie by Mr. Mobrez.”	Lacks personal knowledge, lacks foundation, failure to authenticate, hearsay to the extent that Affiant is utilizing information and/ or third party commentary to prove the truth of the matter asserted, best evidence rule, speculative as to telephone calls that may have been made by others at Ripoff report

**AFFIDAVIT OF BEN SMITH**

<b>Para.</b>	<b>Testimony</b>	<b>Objections</b>
¶11	“Every user-generated submission to the site is screened and reviewed by a staff of monitors who are authorized to make minor editorial	Lacks personal knowledge, lacks foundation as to Mr.



	<p>changes in order to redact certain types of content (primarily offensive language, profanity, threats, etc., and also including certain types of personal information such as social security numbers, bank account numbers and so forth). Other than such redactions, the staff is not authorized to make any changes to reports.”</p>	<p>Smith’s competence to testify on this subject. Lack of reliability, as Mr. Magedson testified inconsistently on June 8, 2010 that redactions are also made of links to competitors’ sites.</p>														
¶17	<p>“Ripoff Report’s servers create a log showing the identity of each Ripoff Report content monitor who reviewed each report before it was posted. <u>According to the site’s records</u>, the six reports at issue were reviewed by the following employees of Xcentric:”</p> <table border="1" data-bbox="321 667 1024 905"> <thead> <tr> <th data-bbox="321 667 695 705">Report #</th> <th data-bbox="695 667 1024 705">Content Monitor</th> </tr> </thead> <tbody> <tr> <td data-bbox="321 705 695 737">417493</td> <td data-bbox="695 705 1024 737">Amy T.</td> </tr> <tr> <td data-bbox="321 737 695 768">423987</td> <td data-bbox="695 737 1024 768">Kim J.</td> </tr> <tr> <td data-bbox="321 768 695 800">457433</td> <td data-bbox="695 768 1024 800">Amy T.</td> </tr> <tr> <td data-bbox="321 800 695 831">502429</td> <td data-bbox="695 800 1024 831">Lynda C.</td> </tr> <tr> <td data-bbox="321 831 695 863">564331</td> <td data-bbox="695 831 1024 863">Lynda C.</td> </tr> <tr> <td data-bbox="321 863 695 894">571232</td> <td data-bbox="695 863 1024 894">Amy T.</td> </tr> </tbody> </table>	Report #	Content Monitor	417493	Amy T.	423987	Kim J.	457433	Amy T.	502429	Lynda C.	564331	Lynda C.	571232	Amy T.	<p>Lacks foundation; Hearsay (Fed. R. Evid. 801) not admissible under Fed. R. Evid. 803 because lacks certification under Fed. R. Evid. 902(11) or (12). Declarant does not testify that he made the table based upon the log. Best Evid. Rule (Fed. R. Evid. 901). Failure to authenticate log and reports and/ or content of Xcentric records. (Fed. R. Evid. 901). Original log should have been produced to prove its content (Fed. R. Evidence 1002). Hearsay to the extent that content of reports is used to prove the truth of the matter asserted (Fed. R. Evid. 801).</p>
Report #	Content Monitor															
417493	Amy T.															
423987	Kim J.															
457433	Amy T.															
502429	Lynda C.															
564331	Lynda C.															
571232	Amy T.															
¶19	<p>“I am informed that negative postings about Mr. Mobrez have appeared on other websites including two websites that are owned by Mr. Mobrez.”</p>	<p>Lacks personal knowledge, lacks foundation. Hearsay to the extent that Affiant is utilizing third party commentary to prove the truth of the matter asserted (Fed. R. Evid. 801).</p>														
¶19	<p>“For instance, Exhibit 11 to Mr. Mobrez’s deposition is a page located at <a href="http://asiaecon.org/linkex">http://asiaecon.org/linkex</a> which contains a link to one of the reports about Mr. Mobrez on the Ripoff Report site.”</p>	<p>Lacks personal knowledge, lacks foundation, failure to authenticate reports and/ or content of link, (Fed. R. Evid. 901) hearsay to the extent that content of reports being utilized to prove</p>														

		the truth of the matter asserted (Fed. R. Evid. 801).
¶19	“I am informed that this site is owned or operated by Mr. Mobrez.”	Lacks personal knowledge, lacks foundation, hearsay to the extent that Affiant is utilizing third party commentary to prove the truth of the matter asserted (Fed. R. Evid. 801).
¶19	Also, Exhibit 12 to Mr. Mobrez’s deposition is a page located at another site which I am informed is owned or operated by Mr. Mobrez: <a href="http://asiabusinessinstitute.com/component/content/15.html?task=view">http://asiabusinessinstitute.com/component/content/15.html?task=view</a> . This page contains an anonymous comment which reads: “No shit, asshole...a non-PhD could have figured it out. You are a fake, a rip-off artist, immoral, and did I say asshole?”	Lacks personal knowledge, lacks foundation, failure to authenticate reports and/ or content of link (Fed. R. Evid. 901), hearsay to the extent that content of reports being utilized to prove the truth of the matter asserted (Fed. R. Evid. 801).
¶20	On September 16, 2009, a report (#495708) was submitted to the Ripoff Report regarding a company called Overnightmattress.com. The report which is available here: <a href="http://www.ripoffreport.com/Bed-Bath/Overnightmattress-co/overnightmattress-com-over-nig-355ee.htm">http://www.ripoffreport.com/Bed-Bath/Overnightmattress-co/overnightmattress-com-over-nig-355ee.htm</a> ) generally complained about the quality of a mattress purchased by the author, referring to it as follows: “this thing feels like a glorified futon.” In addition, the author stated that the company’s return policy was misleading and unfair. In closing, the author issued a strongly-worded warning instructing other consumers to refrain from doing business with this company: “I would never use overnightmattress.com ever again and would STRONGLY suggest you never use them the transaction was horrible and expensive.”	Lacks relevance to the case at issue. (Fed. R. Evid. 401). Lacks foundation and failure to authenticate reports and/ or content of Xcentric records (Fed. R. Evid. 901). Original report should have been produced to prove its content, best evidence rule (Fed. R. Evid. 1002), hearsay to the extent that content of reports being utilized to prove the truth of the matter asserted (Fed. R. Evid. 801).
¶21	On February 26, 2010, the president of Overnightmattress.com posted a clear and simple rebuttal to the complaint which explained his side of the story. The rebuttal, reflected in the screenshot below, accepted responsibility for the author’s dissatisfaction and it informed readers that in order to improve customer satisfaction, the company had changed its return policy in a way that resolved the concerns expressed in its original	Lacks relevance to the case at issue. (Fed. R. Evid. 401). Lacks foundation and failure to authenticate reports and/ or content of Xcentric records. (Fed. R. Evid. 901). Original report should have been produced to prove

	report:”	its full content, best evidence rule (Fed. R. Evid. 1001).
--	----------	--

**DECLARATION OF AMY THOMPSON**

<b>Para.</b>	<b>Testimony</b>	<b>Objections</b>
¶¶4, 5	<p>“My job is to remove the following information from new postings: personal financial information, credit card numbers, bank account numbers, social security numbers, obscenities, and threats of violence.”</p> <p>“Except as described in the previous paragraph, I am not permitted to, nor do I, change or add any content to (1) any posting; (2) any title or heading of any posting, and/or (3) any other part of the Rip-off Report website.”</p>	<p>Lacks foundation; Lacks credibility (Fed. R. Evid. 806) because Ed Magedson stated that content monitors “are supposed to redact foul language, social security numbers, something I forgot to tell you last week, which would be links to competitive business.” Rough transcript of Deposition of Ed Magedson at p. 33 (emphasis added).</p>
¶6	<p>“I am aware that a lawsuit has been filed against Xcentric and others in which relates to the following Reports: 417493, 423987, 457433, 502429, 564331, and 571232. I understand that according to Xcentric’s records, I was the content monitor who reviewed one or more of these reports before they were posted to the site.”</p>	<p>Lacks foundation; hearsay to the extent it describes the contents of Xcentric’s records; Best Evid. Rule; irrelevant to the extent testimony relates to “one or more” reports, rather than specifying the reports.</p>
¶7	<p>“I have personally reviewed each of these reports”</p>	<p>Lacks foundation; lack of personal knowledge as to whether “each of these” refers to “one” or “more” of Reports 417493, 423987, 457433, 502429, 564331, and 571232</p>
¶7	<p>“Nor do I have information that such reports may have been created or altered by another employee or agent of Xcentric.”</p>	<p>Irrelevant. According to the 30(b)(6) Deposition of Xcentric Venutres, LLC, Xcentric employs “six or eight” workers that “monitor the website.” Deposition of Xcentric Ventures LLC 30(b)(6) witness at p. 186.</p>

**DECLARATION OF LYDIA CRAVEN**

In addition to the specific evidentiary objections below, the entire declaration of Lydia Craven should be stricken under the automatic exclusion sanction of Federal Rule 37 for Defendants’ failure to identify the witness in their Initial Rule 26(a)(1)(A) disclosures dated April 21, 2010 and not supplemented to date. See Borodkin Dec. at ¶¶3-4, Ex. 1.

Para.	Testimony	Objections
¶¶4, 5	<p>“My job is to remove the following information from new postings: personal financial information, credit card numbers, bank account numbers, social security numbers, obscenities, and threats of violence.”</p> <p>“Except as described in the previous paragraph, I am not permitted to, nor do I, change or add any content to (1) any posting; (2) any title or heading of any posting, and/or (3) any other part of the Rip-off Report website.”</p>	<p>Lacks foundation; Lacks credibility (Fed. R. Evid. 806) because Ed Magedson stated that content monitors “are supposed to redact foul language, social security numbers, <u>something I forgot to tell you last week, which would be links to competitive business.</u>” Rough transcript of Deposition of Ed Magedson at p. 33 (emphasis added).</p>
¶6	<p>“I am aware that a lawsuit has been filed against Xcentric and others in which relates to the following Reports: 417493, 423987, 457433, 502429, 564331, and 571232. I understand that according to Xcentric’s records, I was the content monitor who reviewed one or more of these reports before they were posted to the site.”</p>	<p>Lacks foundation; hearsay to the extent it describes the contents of Xcentric’s records; Best Evid. Rule; irrelevant to the extent testimony relates to “one or more” reports, rather than specifying the reports.</p>
¶7	<p>“I have personally reviewed each of these reports”</p>	<p>Lacks foundation; lack of personal knowledge as to whether “each of these” refers to “one” or “more” of Reports 417493, 423987, 457433, 502429, 564331, and 571232</p>
¶7	<p>“Nor do I have information that such reports may have been created or altered by another employee or agent of Xcentric.”</p>	<p>Irrelevant. According to the 30(b)(6) Deposition of Xcentric Venutres, LLC, Xcentric employs “six or eight” workers that “monitor the website.” Deposition of Xcentric</p>

**DECLARATION OF KIM JORDAN**

In addition to the specific evidentiary objections below, the entire declaration of Kim Jordan should be stricken under the automatic exclusion sanction of Federal Rule 37 for Defendants’ failure to identify the witness in their Initial Rule 26(a)(1)(A) disclosures dated April 21, 2010 and not supplemented to date. See Borodkin Dec. at ¶¶3-4, Ex. 1.

Para.	Testimony	Objections
<p>¶¶4, 5</p>	<p>“My job is to remove the following information from new postings: personal financial information, credit card numbers, bank account numbers, social security numbers, obscenities, and threats of violence.”</p> <p>“Except as described in the previous paragraph, I am not permitted to, nor do I, change or add any content to (1) any posting; (2) any title or heading of any posting’ and/or (3) any other part of the Rip-off Report website.”</p>	<p>Lacks foundation; Lacks credibility (Fed. R. Evid. 806) because Ed Magedson stated that content monitors “are supposed to redact foul language, social security numbers, <u>something I forgot to tell you last week, which would be links to competitive business.</u>” Rough transcript of Deposition of Ed Magedson at p. 33 (emphasis added).</p>
<p>¶6</p>	<p>“I am aware that a lawsuit has been filed against Xcentric and others in which relates to the following Reports: 417493, 423987, 457433, 502429, 564331, and 571232. I understand that according to Xcentric’s records, I was the content monitor who reviewed one or more of these reports before they were posted to the site.”</p>	<p>Lacks foundation; hearsay to the extent it describes the contents of Xcentric’s records; Best Evid. Rule; irrelevant to the extent testimony relates to “one or more” reports, rather than specifying the reports.</p>
<p>¶7</p>	<p>“I have personally reviewed each of these</p>	<p>Lacks foundation; lack of</p>

	reports”	personal knowledge as to whether “each of these” refers to “one” or “more” of Reports 417493, 423987, 457433, 502429, 564331, and 571232
¶7	“Nor do I have information that such reports may have been created or altered by another employee or agent of Xcentric.”	Irrelevant. According to the 30(b)(6) Deposition of Xcentric Venutres, LLC, Xcentric employs “six or eight” workers that “monitor the website.” Deposition of Xcentric Ventures LLC 30(b)(6) witness at p. 186.

DATED: June 14, 2010

Respectfully submitted,

By: /s/ Lisa Borodkin

---

DANIEL F. BLACKERT  
LISA J. BORODKIN  
Attorneys for Plaintiffs,  
Asia Economic Institute LLC,  
Raymond Mobrez, and Iliana  
Llaneras

Of counsel: Timothy M. Hoffman

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

**CERTIFICATE OF SERVICE**

I certify that on June 14, 2010 I electronically transmitted the attached document:

**PLAINTIFFS' EVIDENTIARY OBJECTIONS TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

to the Clerk's Office using the CM/ECF system for filing, and for transmittal of a Notice of Electronic Filing, to the following CM/ECF registrants:


David S. Gingras  
**Gingras Law Office, PLLC**  
4073 E. Mountain Vista Drive  
Phoenix, AZ 85048

David@ripoffreport.com  
David.Gingras@webmail.azbar.org

Marie Crimi Speth  
mes@jaburgwilk.com

Paul S. Berra  
Paul@berra.org  
Attorney for Defendants

Honorable Stephen V. Wilson  
U.S. District Judge



---