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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

The Honorable Stephen Wilson

**PLAINTIFFS' STATEMENT OF
GENUINE ISSUES IN OPPOSITION
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 2, 2010

Pursuant to Central District of California Local Rule 56-2, Plaintiffs Asia Economic Institute, LLC, Raymond Mobrez, and Iliana Llaneras respectfully submit the following Statement of Genuine Issues in Opposition to Defendants' Motion for Summary Judgment.

Facts 1 through 92 below correspond to the facts and supporting evidence presented in the Defendants' Statement of Uncontested Facts. These facts are followed by additional material facts and supporting evidence showing a genuine issue.

DEFENDANTS' ALLEGED UNCONTESTED FACTS	RESPONSE TO OPPOSITION
1. Defendant XCENTRIC VENTURES, LLC ("Xcentric") operates the website www.RipoffReport.com .	Undisputed.
2. Defendant EDWARD MAGEDSON ("Mr. Magedson") is the manager of Xcentric and the founder and "ED"itor of the Ripoff Report site which he started in 1998.	Undisputed.
3. Plaintiffs RAYMOND MOBREZ ("Mobrez") and his wife ILIANA LLANERAS ("Ms. Llaneras") are the principals of ASIA ECONOMIC INSTITUTE, LLC ("AEI").	Undisputed.
4. AEI was formed as a California LLC on February 7, 2007.	Undisputed.
5. According to Mr. Mobrez, before it became an LLC in 2007, AEI existed as an unincorporated entity of some nature for approximately six years.	Undisputed.
6. AEI's business was intended to focus on producing "seminars" of some type.	Disputed and inaccurate. The testimony reads: "Q: How did AEI make money or try to make money?"

	<p>A: AEI was in the R and D stage, and practically they reached the finish line. We were about to put our seminars, conferences, perhaps selling a membership to some of the programs.” See Mobrez Deposition at 42:19-24.</p>
<p>7. At its peak, AEI employed approximately 27 people.</p>	<p>Undisputed but irrelevant.</p>
<p>8. However, during its nine years in operation, AEI never actually produced any seminars nor did it even attempt to do so.</p>	<p>Disputed and inaccurate. Mr. Mobrez testified that AEI was in the process of developing these seminars. See Mobrez Deposition at 43:19-20.</p> <p>See also Declaration of Israel Rodriguez ¶¶ 4-5; Declaration of Charlie Yan ¶¶ 3-5.</p>
<p>9. During its nine years in operation, AEI’s total revenues were \$0 and its total profits were \$0.</p>	<p>Undisputed.</p>
<p>10. AEI ceased all business operations (to the extent it ever had any) in June 2009.</p>	<p>Undisputed.</p>
<p>11. According to Mr. Mobrez, AEI’s inability to succeed was the result of only one thing – a series of negative comments which appeared on the Ripoff Report website beginning with the first posting on January 28, 2009.</p>	<p>Disputed and inaccurate. The testimony reads:</p> <p>“ Q: Is there some specific event that sticks out in your mind as the day that you closed the doors or turned off the lights? Is there something that happened in June that made you make a decision to stop doing business with AEI? A: We were basically this reports, Ripoff Report, was in our throat and we were suffocating. I don't know what time the last breath came out. You're asking me when</p>

1		was the last breath, I don't know exact moments of it. But it did die, yes." Mobrez Depo. at 5:5-15.
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5	12. Postings about Plaintiffs appeared on the Ripoff Report on January 28, 2009.	Undisputed.
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7	13. Report #417493 was posted on the Ripoff Report site on January 28, 2009.	Undisputed.
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9	14. Report #423987 was posted on the Ripoff Report site on February 13, 2009.	Undisputed.
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11	15. Report #457433 was posted on the Ripoff Report site on June 1, 2009.	Undisputed.
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13	16. Report #502429 was posted on the Ripoff Report site on September 30, 2009.	Undisputed.
14		
15	17. Report #564331 was posted on the Ripoff Report site on February 3, 2010.	Undisputed.
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17	18. Report #571232 was posted on the Ripoff Report site on February 19, 2010.	Undisputed.
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19	19. After AEI ceased operations in June 2009, more posts were made to the Ripoff Report on September 30, 2009, February 3, 2010, and February 19, 2010.	Undisputed.
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21		
22	20. Negative postings about Mr. Mobrez were also made on other websites, including two on Mr. Mobrez;s own websites.	Undisputed but irrelevant.
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25	21. Mr. Mobrez first attempted to address these posts by sending an email to Ripoff Report on February 15, 2009.	Undisputed.
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27	22. He received no response.	Undisputed to the extent that Mr. Mobrez never received a response to the February 15, 2009 e-mail.
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<p>23. Several months later, Mr. Mobrez again tried to contact the Ripoff Report, this time by phone.</p>	<p>Undisputed.</p>
<p>24. As reflected in his own telephone records, on April 27, 2009, Mr. Mobrez placed three separate calls to the main phone number listed on the Ripoff Report website; (602) 359-4357.</p>	<p>Undisputed.</p>
<p>25. According to these phone bills, the first call (Call #1) lasted 3.5 minutes, the second call (Call #2) was 1.0 minute, and the third call (Call #3) was 2.9 minutes.</p>	<p>Undisputed.</p>
<p>26. In a declaration filed in this matter on May 3, 2010, Mr. Mobrez testified that during Call #1 to the Ripoff Report, he spoke to a man who identified himself as the “ED”itor.</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See Declaration of Raymond Mobrez filed on May 20, 2010. [DN-38] (“RM Dec 2”)</u></p>
<p>27. Mr. Mobrez testified that “[t]he speaker immediately inquired into the size and profitability of my business.”</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See RM Dec 2.</u></p>
<p>28. Mr. Mobrez also testified that the speaker asked “whether my company was internationally based, the size of the company, and how we were making money.”</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See RM Dec 2.</u></p>

<p>1 29. Finally, Mr. Mobrez testified that 2 the speaker “boasted that Ripoff 3 Report was at the top of all search 4 engines.”</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See</u> RM Dec 2.</p>
<p>7 30. The call was disconnected 8 immediately thereafter.</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20,2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See</u> RM Dec 2.</p>
<p>13 31. Mr. Mobrez testified that he 14 called back two other times on April 15 27, 2009 and had two other 16 conversations (Calls #2 and #3) with 17 the same person.</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See</u> RM Dec 2.</p>
<p>19 32. In these brief conversations, Mr. 20 Mobrez claimed that speaker asked if 21 he (Mr. Mobrez) had heard about the 22 site’s Corporate Advocacy Program.</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See</u> RM Dec 2.</p>
<p>25 33. After Mr. Mobrez responded that 26 he was not aware of the program, he 27 testified that the speaker directed him 28 to more information about the program online and instructed him to complete an application form for the program.</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic</p>

	communication between Mr. Mobrez and Mr. Magedson. <u>See RM Dec 2.</u>
34. Mr. Mobrez followed upon these calls by sending an email to the Ripoff Report on April 28, 2009.	Undisputed, but incomplete. Mr. Mobrez also followed up with other calls and emails.
35. As before, he never received any response from Defendants.	Disputed. Mr. Mobrez received responses later by email that referred to sections of the Ripoff Report Web site under circumstances that Plaintiffs content constitute attempted extortion.
36. About a week later, on May 5, 2009, Mr. Mobrez called the Ripoff Report again (Call #4) and reached a person who identified himself as “Ed Magedson.”	Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See RM Dec 2.</u>
37. During this conversation, Mr. Mobrez claimed that Mr. Magedson discussed the CAP program, explained that Ripoff Report “has immunity under the law and therefore could not be sued[]” and thus “it was best to just go with the [CAP] program.”	Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See RM Dec 2.</u>
38. After Mr. Mobrez’s first conversation with Mr. Magedson on May 5, 2009, Mr. Magedson sent a lengthy email to Mr. Mobrez which is a standard form that Mr. Magedson sends to anyone who contacts the site asking about how to remove or respond to reports.	Disputed. Mr. Magedson testified there are one of two standard e-mails. <u>See Borodkin Declaration, ¶ 8, Ex. 5.</u>
39. The email contained no threats, did not ask for money, and explained that Ripoff Report allows anyone to	Disputed, inaccurate, incomplete, and calls for a legal conclusion. The e-mail describes the “Rip-off

<p>post responses to complaints for free.</p>	<p>Report’s Corporate Advocacy, Business Remediation and Customer Satisfaction Program” which offers to change “the negative listings on search engines into a positive...” Declaration of Raymond Mobrez filed on May 3, 2010 (“RM Dec 1”) at 4:20-5:2; Exhibit A to RM Dec 1.</p> <p>The e-mail also referred Plaintiffs to Defendants’ Web site which clearly states that a “[f]ees for enrolling in the program are based upon the number of Reports filed and in some cases, the number of offices you have. Additionally, there is a flat set-up fee to offset the costs associated with programming and contract legalities. Rate sheets will be sent upon completion and verification of the intake questionnaire.” See Rough Deposition Transcript of Xcentric Ventures which took place on June 2, 2010 (“Xcentric Depo.”) at page 37.</p>
<p>40. After receiving this email, Mr. Mobrez called Mr. Magedson back on the afternoon of May 5, 2009 (Call #5).</p>	<p>Undisputed.</p>
<p>41. During this call, Mr. Mobrez and Ms. Llaneras both claim that Mr. Magedson demanded “at least ‘five grand’ [\$5,000] plus a monthly maintenance fee of a couple hundred dollars” to enroll Mr. Mobrez in the Corporate Advocacy Program.</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. See RM Dec 2.</p>
<p>42. Mr. Mobrez also claimed that Mr. Magedson told him during this call that the amount of money charged would be based on the amount of profit earned by the company, so “the more money a company made, the more they would be charged.”</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez’s admitted confusion between the telephone conversations and electronic communication between Mr.</p>

	Mobrez and Mr. Magedson. <u>See</u> RM Dec 2.
43. A week later, on May 12, 2009, Mr. Mobrez claimed that he spoke to Mr. Magedson by phone again (Call #7). During this call, which was the last one between the parties, Mr. Mobrez claims that he asked Mr. Magedson what he would receive if he paid the fee to participate in the CAP program.	Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez's admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See</u> RM Dec 2.
44. In response, Mr. Mobrez claims that Mr. Magedson told him that once Mr. Mobrez completed the CAP application form and entered the program, "all the negative goes away and you see the positive."	Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez's admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See</u> RM Dec 2.
45. Again, Ms. Llaneras claims she overheard this discussion.	Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez's admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. <u>See</u> RM Dec 2.
46. Mr. Mobrez never completed the CAP application form and never paid anything to Defendants.	Undisputed.
47. In April and May 2009, Mr. Mobrez called Mr. Magedson a total of seven times.	Disputed. Plaintiffs have not yet received Mr. Magedson's cell phone records and a dispute exists as to whether additional conversations took place. <u>See</u> Rough Transcript of Deposition of Edward Magedson, which took place on June 8, 2010 ("Magedson Depo.") at pgs. 86-

	89.
48. Mr. Magedson never called Mr. Mobrez.	Disputed. Plaintiffs have not yet received Mr. Magedson's cell phone records and a dispute exists as to whether Mr. Magedson called Mr. Mobrez. See Magedson Depo. at pgs. 86-89.
49. Table 1 (below) reflects the date, time, and duration of every call according to telephone bills produced by Mr. Mobrez.	Disputed. Plaintiffs have not yet received Mr. Magedson's cell phone records and a dispute exists as to whether additional conversations took place. See Magedson Depo. at pgs. 86-89.
50. With the exception of Call #2, all of these calls were automatically recorded for Xcentric.	Disputed. Plaintiffs have not yet received Mr. Magedson's cell phone records and a dispute exists as to whether additional conversations took place. See Magedson Depo. at pgs. 86-89.
51. Apparently, Call #2 was not recorded because when a person calls Xcentric's main telephone number, they are required to navigate through a series of menus before they are connected to Mr. Magedson.	Disputed. Defendants refused to disclose the service used to record these conversations See Magedson Depo. at pgs. 86-89.. Moreover, Defendant stated that he had no knowledge of this system. See Magedson Depo. at pgs. 126-130.
52. Completing this process takes between one minute and two minutes on average, and the recording process does not begin until the caller is actually connected to Mr. Magedson.	Disputed. Defendants refused to disclose the service used to record these conversations See Magedson Depo. at pgs. 86-89.. Moreover, Defendant stated that he had no knowledge of this system. See Magedson Depo. at pgs. 126-130.
53. Because Call #2 lasted only 1.0 minute according to Mr. Mobrez's phone bill, it appears that this call was not successfully connected, dropped, or Mr. Mobrez simply hung up before he reached Mr. Magedson. For that reason and as confirmed by a search of Xcentric's business records which revealed no recording of this call, Call #2 was not recorded because Mr. Mobrez never spoke to Mr. Magedson during this call.	Disputed. Defendants refused to disclose the service used to record these conversations See Magedson Depo. at pgs. 86-89.. Moreover, Defendant stated that he had no knowledge of this system. See Magedson Depo. at pgs. 126-130.

<p>54. This point is not significant, however, because Mr. Mobrez does not allege that any threats or demands for money occurred during the 1.0 minute of Call #2.</p>	<p>Disputed and inaccurate. Raymond Mobrez filed a Declaration on May 20, 2010, correcting his previous testimony. The Declaration explains Mr. Mobrez's admitted confusion between the telephone conversations and electronic communication between Mr. Mobrez and Mr. Magedson. See RM Dec 2.</p>
<p>55. Excluding Call #2, all of the other calls were recorded. A summary of dates, ending times, and caller id information captured by Xcentric's phone system is reflected in <u>Table 2</u> (below).</p>	<p>Disputed. Defendants refused to disclose the service used to record these conversations See Magedson Depo. at pgs. 86-89.. Moreover, Defendant stated that he had no knowledge of this system. See Magedson Depo. at pgs. 126-130.</p>
<p>56. Call 1 Transcript</p>	<p>Disputed, lacks foundation, is in admissible pursuant to California Penal Code § 623, and was not disclosed in Defendants' Initial Disclosures. See Plaintiffs' Evidentiary Objections.</p>
<p>57. Call 2 Not Recorded</p>	<p>Disputed, lacks foundation, is in admissible pursuant to California Penal Code § 623, and was not disclosed in Defendants' Initial Disclosures. See Plaintiffs' Evidentiary Objections.</p>
<p>58. Call 3 Transcript</p>	<p>Disputed, lacks foundation, is in admissible pursuant to California Penal Code § 623, and was not disclosed in Defendants' Initial Disclosures. See Plaintiffs' Evidentiary Objections.</p>
<p>59. Call 4 Transcript</p>	<p>Disputed, lacks foundation, is in admissible pursuant to California Penal Code § 623, and was not disclosed in Defendants' Initial Disclosures. See Plaintiffs' Evidentiary Objections.</p>
<p>60. Call 5 Transcript</p>	<p>Disputed, lacks foundation, is in admissible pursuant to California Penal Code § 623, and was not</p>

	disclosed in Defendants' Initial Disclosures. See Plaintiffs' Evidentiary Objections.
61. Call 6 Transcript	Disputed, lacks foundation, is in admissible pursuant to California Penal Code § 623, and was not disclosed in Defendants' Initial Disclosures. See Plaintiffs' Evidentiary Objections.
62. Call 7 Transcript	Disputed, lacks foundation, is in admissible pursuant to California Penal Code § 623, and was not disclosed in Defendants' Initial Disclosures. See Plaintiffs' Evidentiary Objections.
63. As of May 2010, there are six reports about AEI on the Ripoff Report site.	Undisputed.
64. All of these reports were created by third parties, not by Defendants.	Disputed. Defendants have not yet disclosed the identity of the posters. Discovery is ongoing and Plaintiffs have a pending motion to compel and motion to bifurcate discovery. [DN 52] See also Plaintiffs' Evidentiary Objections. [DN 61].
65. Before it appeared on the site, each report about AEI was reviewed by one of Xcentric's staff of content monitors.	Disputed. Defendants have not yet disclosed the identity of the posters. Discovery is ongoing and Plaintiffs have a pending motion to compel and motion to bifurcate discovery. [DN 52] See also Plaintiffs' Evidentiary Objections. [DN 61].
66. Xcentric's servers automatically record the name of each content monitor who reviews a post made to the site.	Disputed. Defendants have not yet disclosed the identity of the posters. Discovery is ongoing and Plaintiffs have a pending motion to compel and motion to bifurcate discovery. [DN 52] See also Plaintiffs' Evidentiary Objections. [DN 61].
67. Each content monitor who reviewed the posts about AEI has testified that no changes, additions, or	Disputed, irrelevant for purposes of the bifurcated trial and lacks foundation. The content monitors

<p>1 deletions were made to any of these 2 reports, nor were any changes, 3 additions or deletions made to the 4 comments/rebuttals.</p>	<p>do not purport to have any knowledge of HTML source coding and do not offer any testimony regarding changes, additions, or deletions of text within each reports' meta tags.</p>
<p>5 68. The text of each report and each 6 comment/rebuttal originated entirely 7 with the third party author.</p>	<p>Disputed and irrelevant for purposes of the bifurcated trial. Defendants have not disclosed the identity of these supposed "third party author[s]" and Defendants' relationship with these authors.</p>
<p>9 69. When an author submits a report 10 to the Ripoff Report site, they are 11 presented with a series of blank forms 12 that help them to construct their 13 report.</p>	<p>Disputed, irrelevant for purposes of the bifurcated trial, and inaccurate. When a user submits a report, they are required to disclose certain information regarding an individual or company at the Web site's direction. See Smith Aff. ¶ 5.</p>
<p>14 70. The forms ask the author for basic 15 information such as the name of the 16 person or company they want to write 17 about, and the address and phone 18 number of the company at issue.</p>	<p>Disputed, irrelevant for purposes of the bifurcated trial, and inaccurate. Users are required to submit information such as the name, address, and phone number of the person or company they wish to write about during Step 1 of the report creation process. See Smith Aff. ¶ 5.</p>
<p>19 71. During this process, the author is 20 asked to prepare a title for their report 21 by entering data into four boxes. The 22 first box asks for the name of the 23 company being reported, the second 24 box asks for "descriptive words" 25 explaining what the report is about, 26 the third box asks for the city, and the 27 fourth box asks for the state.</p>	<p>Disputed, irrelevant for purposes of the bifurcated trial and incomplete. The site also asks users to "be creative."</p>
<p>28 72. During this process, the site explains "The title of your report is divided into four boxes below but will appear as one line after your report is submitted."</p>	<p>Disputed. Defendants have not yet disclosed the identity of the posters. Discovery is ongoing and Plaintiffs have a pending motion to compel and motion to bifurcate discovery. [DN 52] See also Plaintiffs' Evidentiary Objections. [DN 61].</p>
<p>73. The site also shows the author a sample of how the report title would appear based on the data they have</p>	<p>Disputed. Defendants have not yet disclosed the identity of the posters. Discovery is ongoing and</p>

<p>1 entered.</p> <p>2</p> <p>3</p>	<p>Plaintiffs have a pending motion to compel and motion to bifurcate discovery. [DN 52] <u>See also</u> Plaintiffs' Evidentiary Objections. [DN 61].</p>
<p>4 74. The author is also asked to select a topic and category for their report.</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p>	<p>Disputed. Defendants have not yet disclosed the identity of the posters. Discovery is ongoing and Plaintiffs have a pending motion to compel and motion to bifurcate discovery. [DN 52] <u>See also</u> Plaintiffs' Evidentiary Objections. [DN 61].</p>
<p>9 75. The list of topics and categories includes hundreds of choices some of which are entirely benign (i.e., electronics) while some are more critical (i.e., Unusual Rip-Off).</p> <p>10</p> <p>11</p> <p>12</p>	<p>Disputed. Defendants have not yet disclosed the identity of the posters. Discovery is ongoing and Plaintiffs have a pending motion to compel and motion to bifurcate discovery. [DN 52] <u>See also</u> Plaintiffs' Evidentiary Objections. [DN 61].</p>
<p>13 76. Xcentric does not make any suggestion as to what topic or category an author should select.</p> <p>14</p> <p>15</p> <p>16</p>	<p>Disputed. Users are required to select from a predetermined list of topics and categories before proceeding to the next step of the report creation process. <u>See</u> Smith Aff. ¶ 7.</p>
<p>17 77. At the screen where the actual report text is entered, the author is presented with a blank box.</p> <p>18</p>	<p>Undisputed but irrelevant for purposes of the bifurcated trial.</p>
<p>19 78. Xcentric makes no suggestion as to what the author should say other than offering generic comments about style such as "DO NOT use ALL CAPITAL LETTERS, it makes it hard to read."</p> <p>20</p> <p>21</p> <p>22</p>	<p>Disputed and irrelevant for purposes of the bifurcated trial. Defendants advertise and sell a book entitled, "Ripoff Revenge," which advises readers on how to respond to these alleged "Ripoffs." S</p>
<p>23 79. Before the author is allowed to submit their report, they are required to review and agree to certain terms which state, among other things, "By posting this report/rebuttal, I attest this report is valid." The author must also separately agree to Xcentric's Terms of Service which state, among other things, "you will NOT post on ROR any defamatory, inaccurate, abusive, obscene, profane, offensive, threatening, harassing, racially</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Disputed, irrelevant for purposes of the bifurcated trial and inaccurate. Although this text appears on the Defendants' Web site, Defendants do not enforce their Terms of Service.</p>

1 2 3 4	offensive, or illegal material, or any material that infringes or violates another party's rights (including, but not limited to, intellectual property rights, and rights of privacy and publicity)."	
5 6 7	80. When a report is finally submitted to the site, Xcentric's servers automatically combine the unique text supplied by the author with various HTML code that is generic to every page on the site.	Disputed and incomplete. Defendants also add the term "Ripoff Report" to the text supplied by the author. See Jahnke Declaration ¶ 5.
8 9 10 11 12	81. During this process and using keywords supplied by the author (such as the name of the company being reported), Xcentric's servers automatically create "meta tags" which are used by search engines to index the contents of the specific page at issue.	Disputed to the extent that these keywords are used for "keyword meta tags" but Defendants do not proffer any evidence regarding the creation of the site's title and description meta tags.
13 14 15	82. The meta tags for each page are not normally visible to viewers, but they can be seen by individuals with basic technical knowledge who choose to view the actual HTML code for a report's webpage.	Disputed. Title and description meta tags are displayed on search engines and visible to individuals conducting Internet searches of any business or individual subject to a "Ripoff Report."
16 17	83. The term "Ripoff Report" is a federally registered trade.	Disputed. USPTO records indicate only a registered mark for "Ripoff Report Verified Safe"
18 19 20 21 22	84. Every report page on the Ripoff Report site includes meta tags based on unique keywords supplied from the author such as the name of the company involved and other words used by the author to create the title for their report.	Disputed and inaccurate. At the time Plaintiffs' Complaint was filed, Defendants themselves added the term "Ripoff Report" to each report's title meta tag. Moreover, the terms "rip-off, ripoff, and rip off" are added to the keyword meta tags.
23 24 25	85. Xcentric's servers also automatically include three different keywords – rip-off, ripoff, rip off – into the meta tags of every page on the site.	Disputed to the extent that these keywords are added to the "keyword" meta tags for each page.
26 27 28	86. Again, these words are not visible in the title or body of any particular report; they are simply indexing references used by search engines in order to accurately reflect the source of the indexed page.	Disputed. At the time Plaintiffs' Complaint was filed, Defendants themselves added the term "Ripoff Report" to each report's title meta tag. Title meta tags are displayed as search engine results and are visible to users of Internet

	search engines.
87. If they keywords “rip-off, ripoff, rip off” were removed from the meta tags for each report page, the page would appear physically unchanged to anyone viewing it.	Disputed. If Defendants removed “Ripoff” from the page’s title meta tags, search engine results would appear differently.
88. Plaintiffs never joined the Corporate Advocacy Program.	Undisputed.
89. Mr. Mobrez admitted in his deposition that he had no evidence Defendants created or altered any of the postings about AEI.	Disputed. Mr. Mobrez lacks foundation to admit whether Defendants created or altered any of the postings regarding AEI.
90. Neither Xcentric nor Mr. Magedson had any knowledge of Plaintiffs’ relationships with their employees at the time each report was posted.	Disputed and irrelevant for purposes of the bifurcated trial.
91. Defendants did not conspire with anyone to harm Plaintiffs.	Disputed and calls for a legal conclusion. Furthermore, Defendants would not disclose the owners and other persons responsible for Defendant Xcentric Ventures and its parent company, Creative Business Investments. See Xcentric Depo. at pages 12-13, 18, 20
92. At this deposition, Mr. Mobrez was unable to identify a single employee of AEI who quit as a result of any actions of Xcentric or Magedson.	Disputed and inaccurate. Mr. Mobrez was not asked to identify such employees anywhere in Mobrez Depo. at 174:12-178:2.

Plaintiffs also contend that the following other material facts are in dispute:

MATERIAL FACTS	EVIDENCE
1. Defendants’ Web site, Ripoff Report, is a “consumer reporting Web site and publication, by consumers, for consumers, to file and document <u>complaints</u> about companies or individuals.” (emphasis added).	Defendants’ Website, www.ripoffreport.com
2. Only complaints are published. Positive reports will not be posted.	Declaration of Patricia Brast (“Brast”) ¶ 10.

1		
2	3. To draft a complaint, users of the Defendants' Web site are guided through a five-step process.	Smith Aff. ¶ 5
3		
4	4. In Step 1 the Web site requires users to input certain information about the business or individual that is the target of the report such as its name, address, and telephone number.	Smith Aff. ¶ 5
5		
6		
7	5. In Step 2, the Web site requires users to create a "title" for their report. The title is composed of four parts: (1) the name of the company or individual that is the target of the report, (2) a "creative" description of the target's alleged wrongdoing, (3) the city in which the target is located in, and (4) the state in which the target is located.	Smith Aff. ¶ 6
8		
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12		
13	6. Later in Step 2, the user is required to categorize the complaint into one of many predetermined categories such as "Con Artists" and "Court Judges."	Smith Aff. ¶ 7
14		
15		
16	7. In Step 3, the Web site provides users with a blank text box in which to draft the body of the report.	Smith Aff. ¶ 8
17		
18	8. In Step 4, users have the option of including photographs with their reports.	Smith Aff. ¶ 9
19		
20	9. Step 5 allows users to finally submit their report.	Smith Aff. ¶ 10
21		
22	10. After this information is submitted, Defendants automatically combine the text supplied by the author with various HTML codes. This combined effort appears in the "meta tags" and are "used by search engines to index the contents of the specific page at issue."	Smith Aff. ¶ 13
23		
24		
25		
26	11. Specifically, Defendants input original content into the "title meta tag" of the particular webpage. Defendants create the title meta tag for each report by adding the phrase "Ripoff Report:" to the beginning of the title created in Step 2. This title	Declaration of Kristi Jahnke ("Jahnke Declaration") ¶¶ 6, 3
27		
28		

1	appears as a search result on Internet search engines such as Google and is visible to anyone conducting an online search of the target.	
2		
3		
4	12. Defendants also create “description meta tags” using the four-part title developed by the original poster. The description meta tag is displayed on Internet search engines in two lines beneath the title tag. Thus, the description meta tag is visible to anyone conducting an online search of the target.	Jahnke Declaration ¶ 3
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9	13. Finally, Defendants create “keyword meta tags” using the “unique keyword supplied by the author such as the name of the company” and three unique keywords – “rip-off, ripoff, rip off.” These keyword meta tags are “used by search engines in order to accurately reflect the source of the indexed page.”	Smith Aff. ¶¶ 14, 15, 16
10		
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14		
15	14. To date, the Defendants have published six reports referencing the Plaintiffs.	Magedson Aff. ¶ 58
16		
17	15. The title, description and keyword meta tags of these reports are attached as EXHIBIT 1 to the Declaration of Kristi Jahnke.	Jahnke Declaration ¶ 6
18		
19	16. Because of the combined efforts of the Defendants and the anonymous users of the Defendants’ Web sites, anyone conducting an online search of the Plaintiffs will see: “Ripoff Report: <i>Asia Economic Institute, AEI, WorldEcon: Raymond ...</i> <i>Asia Economic Insitute, AEI, WorldEcon: Raymond Mobrez And Iliana Llaneras Complete Exploitation as an employee. Do not work for the Asia Economic...</i> ”	Jahnke Declaration ¶ 3
20		
21		
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27		
28	17. The appearance of this text on Internet search engines has caused certain individuals to refuse to engage	See also Declaration of Israel Rodriguez ¶¶ 4-5; Declaration of Charlie Yan ¶¶ 3-5; Declaration

<p>1 in or discontinue engaging in 2 business with the Plaintiffs.</p>	<p>of Justin Lin ¶ 6.</p>
<p>3 18. Moreover, the appearance of this 4 text on Internet search engines have 5 caused others to decline employment 6 offers from the Plaintiffs after 7 conducting online searches of the 8 Plaintiffs.</p>	<p>Plaintiffs' Opposition to Defendants' Special Motion to Strike [DN 11] Exhibit B</p>
<p>9 19. On February 15, 2009, Mobrez 10 sent an e-mail to Ripoff Report 11 informing the Defendants of the 12 "outlandish lies" published on their 13 Web site. In an effort to avoid the 14 judicial process, Mobrez simply 15 requested that the Defendants remove 16 the posts from their Web site and 17 identify the individuals responsible. 18 Likewise, Mobrez informed 19 Defendants "Your false publishing 20 has caused me and others that you 21 have named hardship and enormous 22 loss." At this time, Mobrez made 23 Defendants aware of the damage we 24 were suffering because of these posts.</p>	<p>RM Dec 1 ¶ 4</p>
<p>25 20. After there had been no response, 26 AEI filed a "Rebuttal" on April 3, 27 2009 for each report listed on the 28 Ripoff Report Web site at that time. These "rebuttals," however, do not appear as "results" on Internet search engines such as Google and Yahoo.</p>	<p>RM Dec 1 ¶ 5</p>
<p>29 21. A business or individual may file 30 a rebuttal for free. However, as 31 Magedson admits, these rebuttals do 32 not appear as Internet search results.</p>	<p>Declaration of Tina Norris ("Norris Declaration") ¶ 14</p>
<p>33 22. A business or individual may file 34 a rebuttal for free. However, as 35 Magedson admits, these rebuttals do</p>	<p>Norris Declaration ¶ 14.</p>

<p>1 not appear as Internet search results.</p>	
<p>2 3 23. On May 5, 2009, Mr. Magedson 4 made a lengthy response describing, 5 among other things, the “Rip-off 6 Report’s Corporate Advocacy, 7 Business Remediation and Customer 8 Satisfaction Program.” The program, 9 as described by Mr. Magedson’s e- 10 mail, promised to change “the 11 negative listings on search engines 12 into a positive along with all the 13 Reports on Rip-off Report.” Mobrez 14 never threatened to sue Mr. 15 Magedson or his company; yet, the e- 16 mail warned that a lawsuit against the 17 Web site was a losing battle. The e- 18 mail boasted that the Web site 19 “NEVER lost a case” and that suing 20 would “only get [us] more publicity 21 and additional listings on search 22 engines.”</p>	<p>RM Dec 1 ¶ 12</p>
<p>17 24. This e-mail is one of two standard 18 e-mails sent to targeted businesses 19 and individuals who express interest 20 in removing or remedying the reports.</p>	<p>Declaration of Lisa Borodkin 21 (“Borodkin Declaration”) ¶ 8, 22 Exhibit 5.</p>
<p>20 25. The hyperlink included in the 21 May 12, 2009 e-mail from Mr. 22 Magedson directed Mr. Mobrez to 23 apply for Defendants’ Corporate 24 Advocacy Program. The application 25 form requires targeted businesses or 26 individuals to fill in certain 27 information, such as the name of the 28 business/individual, number of offices, average sales, and the number of complaints published by the Defendants.</p>	<p>Deposition of Xcentric Venutres Blackert Declaration</p>
<p>27 26. Once this application is 28 completed, applicants are sent a second generic e-mail. Among other things, the e-mail demonstrates that title and description meta tags of all</p>	<p>Norris Declaration, Exhibit 4</p>

<p>1 reports regarding CAP members are 2 changed. The e-mail states: "See how 3 other Corporate Advocacy Program 4 member listing look on search 5 engines. Then look at the beginning 6 of the reports that are listed on the 7 search engines. You will see about 8 250 words injected into the beginning 9 of the Report with your stated 10 commitments." This statement is 11 followed by several hyperlinks 12 exemplifying the final result.</p>	
<p>13 27. The e-mail includes their standard 14 "Rate Sheet." According to this 15 document, fees for the CAP are 16 calculated in three ways: (1) 17 calculation by amount of reports 18 filed, (2) by the number of offices, or 19 (3) by gross sale of a product or 20 service. Which methodology is 21 chosen is dependent on which 22 calculation is higher.</p>	<p>Norris Declaration Exhibit 5; Borodkin Declaration, Exhibit 6</p>
<p>23 28. According to the Defendants' rate 24 sheet, fees are calculated using the 25 amount of reports filed using the 26 following standard: 27 "1 to 20 Reports One time 28 charge \$7,500 Programming Plus \$600 Per Report.. Then Monthly Monitoring Fee 36 month minimum. \$40.00 per Report times the Reports originally filed. Minimum \$100.00 per month monitoring.</p> <p>NOTE: no matter how many Reports you have, ..the first 20 Reports will still cost \$600 per Report then the balance of the Reports will be calculated as stated below.</p> <p>21 to 50 Reports One time charge \$7,500 Programming Plus \$500 Per Report.. Then Monthly Monitoring Fee 36</p>	<p>Norris Declaration Exhibit 5</p>

1 month min. \$35.00 per Report
2 times the Reports originally
3 filed..

4 51 to 150 Reports One time
5 charge \$7,500 Programming
6 Plus \$425 Per Report.. Then
7 Monthly Monitoring Fee 36
8 month min. \$25.00 per Report
9 times the Reports originally
10 filed..

11 151 to 350 Reports One time
12 charge \$7,500 Programming
13 Plus \$400 Per Report.. Then
14 Monthly Monitoring Fee 36
15 month min. \$20.00 per Report
16 times the Report originally
17 filed.

18 351 to 500 Reports One time
19 charge \$8,500 Programming
20 Plus \$350 Per Report.. Then
21 Monthly Monitoring Fee 36
22 month min. \$15.00 per Report
23 times the Reports originally
24 filed..

25 501 to 1000 Reports One time
26 charge \$15,500 Programming
27 Plus \$300 Per Report.. Then
28 Monthly Monitoring Fee 36
moth min. \$15.00 per Report
times the Reports originally
filed..

1001 to 1500 Reports One
time charge \$20,500
Programming Plus \$250 Per
Report.. Then Monthly
Monitoring Fee 36 month min.
\$10.00 per Report times the

<p>1 Reports originally filed..”</p>	
<p>2</p> <p>3 29. The initial fee of \$7,500 is based 4 on what Mr. Magedson thought was 5 “fair.”</p>	<p>Xcentric Depo. at pg. 39</p>
<p>6 30. It also appears that the more 7 defamatory reports that appear on the 8 Defendants Web site, the higher the 9 cost of the CAP program.</p>	<p>Norris Declaration Exhibit 5</p>
<p>10 31. Furthermore, Magedson admits 11 that the longer a target waits, the 12 more expensive it will be to join the 13 CAP.</p>	<p>Magedson Depo. at pgs.100-104; Borodkin Declaration Exhibit 7</p>
<p>14 32. If higher, fees will be calculated 15 based on the amount of offices is 16 calculated using the following 17 standard: “There will be a minimum 18 one time charge for each office 19 location of \$2,500. Monthly 20 monitoring fees will be \$100 per 21 month per office for a minimum of 36 22 months from date of our agreement. 23 If you want our services after that 24 time, a new rate can be negotiated. 25 **initial programming and setup fees 26 to apply. \$5,500”</p>	<p>Norris Declaration Exhibit 5</p>
<p>27 33. If higher, fees will be based on 28 gross sale of a product or service. According to the Defendants’ rate sheet, Defendants “will look at the average cost of the product you sell (that was complained about) or the cost of the service you may provide and multiply that times an amount equal to one month of sales (in other words, your average monthly revenue from the product) as the down payment plus \$5,500 programming fee plus % per month for minimum</p>	<p>Norris Declaration Exhibit 5</p>

1	36 months thereafter.”	
2		
3	34. Monthly fees for the CAP must be paid by the 8 th of each month. If not	Norris Declaration Exhibit 5
4	paid, “all privileges incorporated	
5	within the Business Remediation	
6	Program will cease after 30 days.”	
7	35. Had the Plaintiffs been accepted	Judicial Notice
8	into the CAP, they would be required	
9	to pay an initial fee of \$11,100	
10	(\$7,500 + \$600 times 6 reports). They	
11	would also be required to pay \$240 a	
12	month for 36 months. At the end of	
13	these 36 months, Plaintiffs would	
14	have spent \$19,740.	
15	36. For this cost, Mr. Magedson	Norris Declaration Exhibit 4
16	sends a generic e-mail to the authors	
17	of the reports, commending the CAP	
18	member for wanting to “make it	
19	right.”	
20	37. In addition, Mr. Magedon adds a	Norris Declaration Ex 4
21	generic statement to the beginning of	
22	each report in red, bold lettering. This	
23	statement discredits the report and	
24	praises the CAP member for its	
25	dedication to customer satisfaction.	
26	38. The title meta tags of each report	Norris Declaration Ex 4
27	are then changed to include the	
28	positive affirmations. The once	
	negative title meta tags no longer	
	appear on Internet search engines.	
	Because Ripoff Report “gets a good	
	ranking” on search engines, there is	
	an added value to joining CAP.	

<p>39. Complaints made against CAP members are prevented from publication.</p>	<p>Declaration of Daniel Blackert (“Blackert Declaration”), Exhibit 17</p>
<p>40. No “investigation” takes place. No third parties are hired to conduct an investigation into the truth or falsity of the postings.</p>	<p>Blackert Declaration</p>
<p>41. If a targeted business or individual declines to pay this fee, the defamatory meta tags continue to appear on Internet search results and the damage incurred as a result of this image remains.</p>	<p>Blackert Declaration</p>
<p>42. Although the Plaintiffs feared continued economic loss, they refused to join CAP. As such, the content of the search result remains negative and more defamatory reports appear on the Defendants’ Web site.</p>	<p>Mobrez Declaration</p>
<p>43. Because of these reports, Plaintiffs continue to lose business opportunities and are unable to hire new employees.</p>	<p>Plaintiffs’ Opposition to MTS, Exhibit A See also Declaration of Israel Rodriguez ¶¶ 4-5; Declaration of Charlie Yan ¶¶ 3-5; Declaration of Justin Lin ¶ 6.</p>
<p>44. Mr. Magedson admits that targeted business and individuals may be too intimidated to bring a suit against the Defendants.</p>	<p>Magedson Depo. at pg. 211-212; Borodkin Declaration, Exhibit 8</p>