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13 Asia Economic Institute,
14 Raymond Mobrez, and
15 Iliana Llaneras

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 ASIA ECONOMIC INSTITUTE, a
19 California LLC; RAYMOND
20 MOBREZ an individual; and ILIANA
21 LLANERAS, an individual,

22 Plaintiffs,

23 vs.

24 Asia Economic Institute et al v. Xcentric Ventures LLC et al
25 XCENTRIC VENTURES, LLC, an
26 Arizona LLC, d/b/a as BADBUSINESS
27 BUREAU and/or
28 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; XCENTRIC
an individual, and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 2:10-cv-01360-SVW-PJW

**DECLARATION OF DANIEL F.
BLACKERT IN OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Doc. 65

1 I, Daniel F. Blackert, declare under penalty of perjury as follows:

- 2
- 3 1. My name is Daniel Blackert. I am a United States Citizen, a resident of
- 4 the State of California, am over 18 years of age, and if called to testify in
- 5 Court or other proceeding I could and would give the following testimony
- 6 which is based upon my own personal knowledge unless otherwise stated.
- 7
- 8 2. I am an attorney licensed to practice law in the State of California. I am
- 9 an active member, in good standing, of the State Bar of California. I am
- 10 also admitted to practice in the United States District Court for the Central
- 11 District of California.
- 12
- 13 3. Since December 2009, I have been employed by Asia Economic Institute
- 14 as its attorney for this matter. My co-counsel in this case is Lisa J.
- 15 Borodkin. I have been involved in the litigation since its inception. I
- 16 have possession of Plaintiffs' files with respect to this case, and I am
- 17 personally familiar with its contents.
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21 **THE DEPOSITION OF XCENTRIC**

- 22 4. On July 2, 2010, I deposed Defendant Xcentric Ventures, LLC
- 23 ("Xcentric"). Defendants produced Edward Magedson as their 30(b)(6)
- 24 witness. According to the Arizona Secretary of State's website, Xcentric
- 25 is managed and/or owned by Xcentric and Creative Business Investment
- 26 Concepts, Inc., a Nevada Corporation ("Creative"). Xcentric's 30(b)(6)
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1 witness failed to answer questions regarding Creative's role in Ripoff
2 Report ("ROR"), claiming he had no such knowledge. .
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4 5. Attached hereto as **EXHIBIT 1** is a true and correct copy of page 28 of
5 the rough copy of the June 2, 2010 Deposition transcript of Xcentric. The
6 relevant portions are bracketed in black ink. Mr. Magedson discusses
7 therein that there is a fee for the Corporate Advocacy Program ("CAP").
8 Mr. Magedson further explains that the fee is based on the number of
9 reports and complaints posted on the ROR website about a company. In
10 addition, Defendants' Counsel, David Gingras, objected based upon a
11 proposed protective order. Such a protective order is not in existence and
12 has never been in existence. If such a protective order was issued, it
13 would virtually make it impossible for Plaintiffs to take a meaningful
14 deposition in this case. The proposed protective order is the subject of a
15 pending discovery motion, to be heard by the Magistrate Judge assigned
16 to this action on June 24, 2010 [DN-52]. Attached hereto as **EXHIBIT 2**
17 is a true and correct copy of pages 18-21 of the rough copy of the
18 Deposition of Xcentric.
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25 6. Attached hereto as **EXHIBIT 3** is a true and correct copy of pages 29-30,
26 and 114 of the rough copy of the Deposition of Xcentric. Mr. Magedson
27 states that the enrollment fee for the CAP is \$7,500. Participants in the
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1 CAP are also required to pay a monthly fee for 36 months. Mr. Magedson
2 describes the CAP as an extension of a company's customer service
3 department. The monthly fee is determined by how many times a
4 company has been targeted on ROR. In Mr. Magedson's deposition
5 testimony, he made it very clear that no one else at Xcentric Ventures,
6 LLC ("Xcentric") deals with CAP membership.
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10 7. Attached hereto as **EXHIBIT 4** is a true and correct copy of page 29-30
11 of the rough copy of the Deposition of Xcentric. The relevant portions are
12 bracketed in black ink. According to Mr. Magedson, fees are quoted via
13 email. However, Mr. Magedson has quoted fees over the phone if he is
14 speaking with a person of importance, such as an attorney.
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17 8. Attached hereto as **EXHIBIT 5** is a true and correct copy of page 31 of
18 the rough copy of the Deposition of Xcentric. The relevant portions are
19 bracketed in black ink. Mr. Magedson admits that he negotiates the terms
20 of the CAP "indirectly" with individuals or businesses by email.
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23 9. Attached hereto as **EXHIBIT 6** is a true and correct copy of page 32-33
24 of the rough copy of the Deposition of Xcentric. The relevant portions
25 are bracketed in black ink. Mr. Magedson explains that after the subject
26 expresses an interest in the CAP, he/she completes the initial intake
27 questionnaire. This questionnaire asks for basic information, such as the
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1 name of the company, the number of complaints, and the nature of
2 complaints. Upon completion of this questionnaire, Mr. Magedson sends
3 out a detailed email about the program. The email is similar or exactly the
4 same as the email Mr. Mobrez received from Mr. Magedson regarding the
5 CAP. In his email, Mr. Magedson encourages the subject of a ROR (“the
6 subject”) to file rebuttals. **However, a rebuttal is not even remotely as**
7 **effective as an investigation members of the CAP receive.** In that
8 email there is an html link to ROR that discusses fees for the CAP. Later
9 on in the process Mr. Magedson asks the victimized company more
10 detailed questions.

11 10. Attached hereto as **EXHIBIT 7** is a true and correct copy of page 34-35
12 of the rough copy of the Deposition of Xcentric. The relevant portions are
13 bracketed in black ink. Mr. Magedson states that the CAP program is a
14 good idea because: “It’s on other different kinds of places, as well, and
15 because **we are so prominent**, this is really the best place in a way to go
16 ahead and clear the air and set the record straight, because it is so
17 prominent...” (*emphasis added*). Mr. Magedson contends that he does
18 not mention fees, however, attached hereto as **EXHIBIT 8** is a true and
19 correct copy of a similar email sent to Mr. Mobrez that links to a page on
20 ROR that describes, in detail, fees for the CAP.

1 11. Attached hereto as **EXHIBIT 9** is a true and correct copy of page 35-36
2 of the rough copy of the Deposition of Xcentric. The relevant portions are
3 bracketed in black ink. Although Mr. Magedson contends that he does
4 not mention fees in his initial email, as **EXHIBIT 10** illustrates, this
5 email links to a page on ROR that outlines fees for the CAP in detail.
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8 12. Attached hereto as **EXHIBIT 11** is a true and correct copy of page 37 of
9 the rough copy of the Deposition of Xcentric. The relevant portions are
10 bracketed in black ink. Mr. Magedson admits to authoring the initial
11 emails that are sent to prospective members of CAP, like the one Mr.
12 Mobrez received. He also admits that these emails contain a link to a
13 page on ROR that mentions fees.
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16 13. Attached hereto as **EXHIBIT 12** is a true and correct copy of page 38 of
17 the rough copy of the Deposition of Xcentric. The relevant portions are
18 bracketed in black ink. Mr. Magedson states that there is a \$7,500
19 enrollment fee. According to Mr. Magedson, there is no basis
20 determining the fee. Mr. Magedson arbitrarily made up this number.
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23 14. Attached hereto as **EXHIBIT 13** is a true and correct copy of page 35-36
24 of the rough copy of the Deposition of Xcentric. The relevant portions are
25 bracketed in black ink.
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1 15. Attached hereto as **EXHIBIT 14** is a true and correct copy of page 37 of
2 the rough copy of the Deposition of Xcentric. The relevant portions are
3 bracketed in black ink. Magedson admits that ROR discusses fees for the
4 CAP on its website. Mr. Magedson further admits to authoring this
5 section. In an email sent from Mr. Magedson to Mr. Mobrez, there is a
6 link to this section of ROR's website.
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10 16. Attached hereto as **EXHIBIT 15** is a true and correct copy of page 35-36
11 of the rough copy of the Deposition of Xcentric. The relevant portions are
12 bracketed in black ink. Mr. Magedson admits that there is a \$7,500
13 enrollment fee to joining the CAP.
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15 17. Attached hereto as **EXHIBIT 16** is a true and correct copy of page 35-36
16 of the rough copy of the Deposition of Xcentric. The relevant portions are
17 bracketed in black ink.
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19 18. Attached hereto as **EXHIBIT 17** is a true and correct copy of page 39 of
20 the rough copy of the Deposition of Xcentric. The relevant portions are
21 bracketed in black ink. Mr. Magedson admits that the \$7,500 enrollment
22 fee is based upon "what [he] thought was fair when he started this [...]."
23 He freely admits that he believes that the CAP is an extension of a
24 company's customer service department.
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1 19. Attached hereto as **EXHIBIT 18** is a true and correct copy of page 40 of
2 the rough copy of the Deposition of Xcentric. The relevant portions are
3 bracketed in black ink. Mr. Magedson admits that new negative reports
4 cannot be posted about CAP members. When a consumer attempts to
5 create a negative post about CAP members, Mr. Magedson emails the
6 person, informing him that the company is attempting to fix the problem.
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10 20. Attached hereto as **EXHIBIT 19** is a true and correct copy of page 41 of
11 the rough copy of the Deposition of Xcentric. The relevant portions are
12 bracketed in black ink. Mr. Magedson states that joining the CAP is
13 beneficial to a company because otherwise they may be forced to “just go
14 ahead, they change their name; they got to spend money to get a new
15 office or change corporation papers and do all kinds of things.”
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18 21. Attached hereto as **EXHIBIT 20** is a true and correct copy of page 42-43
19 of the rough copy of the Deposition of Xcentric. The relevant portions are
20 bracketed in black ink. Mr. Magedson admits that after paying the
21 monthly the one time initial fee of \$7,500, a CAP member must pay a
22 monthly fee determined by the number of times the member was targeted
23 on ROR. Mr. Magedson testified that, once the subject enrolls in the
24 CAP, people no longer perceive the subject as “the dirty SOB’s that
25 someone said we were.” The first thing that ROR does when a business
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1 or individual enrolls in the CAP is email the posters of the complaints
2 letting them know that the CAP enrollee wants to “make things right for
3 their customers.”
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5 22. Attached hereto as **EXHIBIT 21** is a true and correct copy of page 43-45
6 of the rough copy of the Deposition of Xcentric. The relevant portions are
7 bracketed in black ink. **Mr. Magedson admits that a lot of times that**
8 **those who post on ROR are not ripped off.** For example, “[...] a lot of
9 times that [the posters] are not really ripped off.” Magedson admits that
10 after the subject of a rip off report enrolls in the CAP he contacts the
11 posters and asks how to rectify the issues with the CAP member. Mr.
12 Magedson demands that the CAP member go “beyond the call of good
13 customer service and make it right.” According to Mr. Magedson, in
14 order to join the CAP the subject must admit fault, even if they
15 conclusively prove innocence. Mr. Magedson also admits that the
16 subject **agrees not to sue a real customer or an employee who had a**
17 **legitimate complaint.**
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24 23. Attached hereto as **EXHIBIT 22** is a true and correct copy of page 43-45
25 of the rough copy of the Deposition of Xcentric. The relevant portions are
26 bracketed in black ink. Mr. Magedson testified that the monthly fee for
27 CAP members ranges from approximately \$100 to \$3,500.
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1 24. Attached hereto as **EXHIBIT 23** is a true and correct copy of page 43-
2 45 of the rough copy of the Deposition of Xcentric. The relevant portions
3 are bracketed in black ink. Mr. Magedson testified that when an
4 individual breaks the 36 months contract “[...] I haven’t done anything
5 basically. [...] Do I Sue them, no.”
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8 25. Attached hereto as **EXHIBIT 24** is a true and correct copy of page 48 of
9 the rough copy of the Deposition of Xcentric. The relevant portions are
10 bracketed in black ink. Mr. Magedson testified that he is the only one
11 who operates the CAP.
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14 26. Attached hereto as **EXHIBIT 25** is a true and correct copy of page 49 of
15 the rough copy of the Deposition of Xcentric. The relevant portions are
16 bracketed in black ink. Mr. Magedson testified he may have discussed the
17 pricing of the CAP over the telephone.
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20 27. Attached hereto as **EXHIBIT 26** is a true and correct copy of page 53-
21 54 of the rough copy of the Deposition of Xcentric. The relevant portions
22 are bracketed in black ink. Mr. Magedson refused to testify as to whether
23 he’s ever had a CAP member with no customers.
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25 28. Attached hereto as **EXHIBIT 27** is a true and correct copy of page 55 of
26 the rough copy of the Deposition of Xcentric. The relevant portions are
27 bracketed in black ink. Mr. Magedson testified that once a subject emails
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1 him back and he is satisfied with the way the subject has responded, then
2 he discusses fees.¹ Mr. Magedson testified that at one time he solicited
3 fees for the CAP.
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5 29. Attached hereto as **EXHIBIT 28** is a true and correct copy of page 57-
6 58 of the rough copy of the Deposition of Xcentric. The relevant portions
7 are bracketed in black ink. Mr. Magedson testified that after a subject
8 enrolls in the CAP, and ROR finds out through their investigation, “which
9 is against our terms of service,” that the same person is posting then ROR
10 will help the subject sue that individual. Mr. Magedson will help sue that
11 individual if they are “abusing [ROR].”
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15 30. Attached hereto as **EXHIBIT 29** is a true and correct copy of page 60-
16 61 of the rough copy of the Deposition of Xcentric. The relevant portions
17 are bracketed in black ink. Mr. Magedson also boasts that he helps
18 organize class actions lawsuits. For example, Mr. Magedson read into the
19 record “**EXHIBIT G**” (at the June 2, 2010 Deposition of Excentric
20 attached to **Exhibit 29** of this Declaration.) into the record which is a
21 page from ROR’s website that reads “Attorneys interested in pursuing
22 litigation against a particular company reported on this website **must**
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27 ¹ This is contradictory to the email sent to Mr. Mobrez which has a link to
28 ROR’s webpage that discusses fees for the CAP.

1 **contact us directly** (*emphasis added*)." Mr. Magedson testified that he
2 wrote this entry.
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4 31. Attached hereto as **EXHIBIT 30** is a true and correct copy of page 65 of
5 the rough copy of the Deposition of Xcentric. The relevant portions are
6 bracketed in black ink. Mr. Magedson testified that " [...] if someone is
7 interested in doing --- in being involved in a class action lawsuit, either
8 I'll direct them to -- by e-mail, by phone, by e-mail, would direct them to a
9 legal directory. If I [happen] to know a lawyer in that particular field, I
10 would direct them to a particular in that state that they are."
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14 32. Attached hereto as **EXHIBIT 31** is a true and correct copy of page 88 of
15 the rough copy of the Deposition of Xcentric. The relevant portions are
16 bracketed in black ink. Mr. Magedson testifies that per instructions from
17 his attorneys, he began looking for the taped telephone conversations
18 between him and Mr. Mobrez after this court's ruling on Defendants'
19 Anti-SLAPP motion.
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22 33. Attached hereto as **EXHIBIT 32** is a true and correct copy of pages 80-
23 87 & 90 of the rough copy of the Deposition of Xcentric. The relevant
24 portions are bracketed in black ink. Mr. Magedson testified that his email
25 address is "EDitor@ripoffreport.com." According to Mr. Magedson the
26 email communications look familiar. However, he will not admit to any
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1 document being genuine. He states on the record that the emails look
2 familiar but he is suspicious that someone may have altered them. Mr.
3 Magedson provides no reason for why he is suspicious. Mr. Magedson
4 states that the following the July 24, 2009 email appears to be accurate.
5 On the other hand, Magedson has no problem authenticating his own
6 documents, such as the recordings which he seems to remember with
7 remarkable accuracy.
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11 34. Attached hereto as **EXHIBIT 33** is a true and correct copy of page 91,
12 92 & 104 of the rough copy of the Deposition of Xcentric. The relevant
13 portions are bracketed in black ink. In an email from Mr. Magedson to
14 Mr. Mobrez on July 24, 2009, Mr. Magedson explicitly states that there is
15 nothing he can do to help Mr. Mobrez and the vicious, defamatory, and
16 false reports, would not be removed under any circumstances. Mr.
17 Magedson boasts that “even if you were the pope it would not make a
18 difference.” He testified that Mr. Mobrez filed a rebuttal but fully admits
19 that such rebuttals are useless. Mr. Magedson states rebuttals are not
20 prominent on the search engine results and “[...] actually, very seldom do
21 they come on the search engine.”
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27 35. Attached hereto as **EXHIBIT 34** is a true and correct copy of pages 94-
28 95 & 109-113 of the rough copy of the Deposition of Xcentric. The

1 relevant portions are bracketed in black ink. Mr. Magedson testified that
2 ROR really does not investigate the truth or falsity of postings. When a
3 subject enrolls in CAP, Mr. Magedson conducts an "investigation" via
4 email. No third parties are hired to help, no private investigators are
5 utilized, and no in person interviews are conducted. Mr. Magedson does
6 not make a trip to the office of the subject of a complaint, etc.... During
7 this so-called "investigation," Mr. Magedson will hold off on posting
8 negative reports regarding a subject in the CAP. It seems that the \$7.5000
9 initial enrollment fee does not accurately reflect the cost or time it takes to
10 conduct these "investigations."
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15 36. Attached hereto as **EXHIBIT 35** is a true and correct copy of page 96-
16 99 of the rough copy of the Deposition of Xcentric. The relevant portions
17 are bracketed in black ink. According to Mr. Magedson ROR will redact
18 and remove statements and/or posts. For example, he contends "Those
19 certain words, certain offending words would be redacted so the
20 consumer, it would just say redacted." Likewise, the mention of certain
21 crimes will be removed. Mr. Magedson explains that this includes the
22 following personal information: Social Security numbers, threats of
23 violence, driver's license numbers, bank account numbers, tax fraud, and
24 "sexual stuff."
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1 37. Attached hereto as **EXHIBIT 36** is a true and correct copy of pages 101-
2 105 of the rough copy of the Deposition of Xcentric. The relevant
3 portions are bracketed in black ink. Mr. Magedson thinks that a subject
4 chooses the CAP over a rebuttal because there is a “perceived value”
5 because “[...] rip off report is so prominent.” Likewise, “the program is
6 an extension of a business with customer service.” According to Mr.
7 Magedson ROR is helpful because if a company is not operating correctly
8 the consumer can “[...] email them right now and tell them what a bunch
9 of SOB’s they are.”
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11 38. Attached hereto as **EXHIBIT 37** is a true and correct copy of page 106-
12 107of the rough copy of the Deposition of Xcentric. The relevant
13 portions are bracketed in black ink. According to Mr. Magedson ROR “It
14 gets a good ranking (on the search engines), the search engines, all the
15 search engines look at rip off report in a very favorable way.” Mr.
16 Magedson feels that the search engines “like ROR,” but, as with most of
17 his answers, Mr. Magedson can not remember.
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19 39. Attached hereto as **EXHIBIT 38** is a true and correct copy of page 108-
20 113, 116-118, 133, 135, 141-145 of the rough copy of the Deposition of
21 Xcentric. The relevant portions are bracketed in black ink. Mr.
22 Magedson testified that the CAP works as follows: first ROR gets a
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1 written commitment from the business to change certain aspects of how
2 they conduct business. The veracity of the complaints has not even been
3 investigated at this point. However, ROR takes them as true and forces
4 the CAP member to rectify their wrongdoing and/or change their business
5 model. It is completely backwards to make changes to a company based
6 on complaints that have not been investigated. This process gives a
7 disturbing amount of deference to the posters. If the subject wants to go
8 forward with the CAP, Mr. Magedson sends them "a more detailed
9 questionnaire about the company." Then the subject is sent a contract for
10 a 36 month monitoring term. Mr. Magedson testified that the contract
11 explains what a CAP member can expect from ROR. Mr. Magedson also
12 sends a rate sheet via email which is allegedly the same for everyone and
13 is based on the number of reports. The email with the rate sheet also
14 notifies the subject of the monthly rate terms. The first payment is made
15 after the contract is signed. The monthly monitoring fee is usually paid
16 either the first month or Mr. Magedson sometimes will give a subject the
17 first month free.

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25 40. Next, Mr. Magedson, on his own, decides whether to approve or deny
26 the subject for CAP. The subject is approved solely by Mr. Magedson,
27 i.e., there is no one else involved in the process and there is no set criterion
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1 by which a subject is either approved or denied. However, Mr. Magedson
2 testified that he does base his determination on whether he believes the
3 subject is "sincere" or not.
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5 41. According to Mr. Magedson the investigation phase is conducted as
6 follows: They ask the subject company what changes they have made.
7 Next, Mr. Magedson drafts a main report based on the "changed
8 "company. This whole process is done through email. Mr. Magedson
9 will not publish new reports on a company enrolled in the CAP, even if
10 they are true. The only way ROR follows up to make sure the subject has,
11 in fact, changed is the following: "Well, the only way we can follow up is
12 if the customer tells us they didn't. Because in that e-mail, they are told,
13 listen you need to let us know how this goes." It seems that Mr.
14 Magedson wants the unsatisfied consumer to notify him of wrong-doing,
15 rather than Mr. Magedson investigating the alleged wrong-doing of a
16 company beyond emails. This means that a customer who has been
17 "ripped off" by a subject in the CAP must do all the leg work and prove to
18 Mr. Magedson that the subject has not changed. In fact, Mr. Magedson
19 further admits that he makes the aggrieved consumer submit documents to
20 him proving his CAP member is not a very good business. In addition,
21 Mr. Magedson admits that he does not visit the subject of the CAP. It is
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1 done all via email. When Mr. Magedson was questioned on his sole
2 reliance on emails to verify whether a CAP member is reputable, he
3 responded as follows: "I don't physically go anywhere and go to a
4 business to make sure they made a change. That even would not do any
5 good if I did."
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8 42. Attached hereto as **EXHIBIT 39** is a true and correct copy of page 121
9 of the rough copy of the Deposition of Xcentric. The relevant portions are
10 bracketed in black ink. Mr. Magedson testified that he sent Mr. Mobrez
11 an email dated May 12, 2009, stating that Mr. Mobrez drove Mr.
12 Magedson crazy all day because he had not filled out the initial CSP
13 enrollment questionnaire which can be found on ROR's website. For the
14 convenience of this Court a true and correct copy of the print out from
15 ROR's website is attached hereto as **EXHIBIT 40**.
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19 43. Attached hereto as **EXHIBIT 41** is a true and correct copy of page 147-
20 148 of the rough copy of the Deposition of Xcentric. The relevant
21 portions are bracketed in black ink. Mr. Magedson testified regarding
22 meta tags. He was asked how the search engine results are affected when
23 a member enrolls in the CAP. Mr. Magedson's response is as follows:
24 "Usually the search engines will change and take new form of the new
25 title and stuff like that." Mr. Magedson testified that the search engine
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1 results say ROR investigation. However, he alludes to the fact that instead
2 of the negative being in the search engine results, there will be positive
3 results. Magedson testified that when a subject files a rebuttal it appears
4 “just under the complaint.” Magedson testified that the negative title still
5 remains on top.
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8 44. Attached hereto as **EXHIBIT 42** is a true and correct copy of page 147-
9 148 of the rough copy of the Deposition of Xcentric. The relevant
10 portions are bracketed in black ink. Mr. Magedson testified that when a
11 subject files a rebuttal it appears under the complaint. But the negative
12 title is still at the top.
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15 45. Attached hereto as **EXHIBIT 43** is a true and correct copy of page 150
16 of the rough copy of the Deposition of Xcentric. The relevant portions are
17 bracketed in black ink. Mr. Magedson testified that does not check the
18 authenticity of the rebuttals.
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21 46. Attached hereto as **EXHIBIT 44** is a true and correct copy of page 151
22 of the rough copy of the Deposition of Xcentric. The relevant portions are
23 bracketed in black ink. Mr. Magedson testified that the rebuttals are not
24 as prominent on the search engines as what members of the CAP receive
25 when they enroll in the CAP.
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1 47. Attached hereto as **EXHIBIT 45** is a true and correct copy of pages 156-
2 158 of the rough copy of the Deposition of Xcentric. The relevant
3 portions are bracketed in black ink. Mr. Magedson reads into the record
4 page 7 of 8 of **EXHIBIT I** to his deposition: "This program changes a
5 negative listing on a search engine into a positive – along with the reports
6 on rip off reports. Reports are never deleted."² When pressed as to the
7 meaning of the aforementioned statement, Mr. Magedson admitted that
8 "Because we are taking their commitment and throwing it into the title of
9 the report, the negative report, and the search engine usually pick that up."
10 This is important because it alters the reports meta tag, so now when an
11 report pops up on a search result on an internet search engine it will be a
12 positive report, instead of a negative one.
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18 48. Attached hereto as **EXHIBIT 46** is a true and correct copy of pages 158-
19 167 of the rough copy of the Deposition of Xcentric. The relevant
20 portions are bracketed in black ink. Mr. Magedson admits that the email
21 he sent to Mr. Mobrez on July 24, 2009 contains a link to a page on ROR.
22 The page that is linked **actually discusses fees for enrolling in the CAP**
23 **program.** To clear up any doubt whatsoever opposing counsel pulled up
24 the page from ROR that discusses fees. This page was read into the
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² This email was sent by Mr. Magedson to Mr. Mobrez on July 24, 2009.

1 record. It was exactly the same as the page that was linked in the July 24,
2 2009 email from Mr. Magedson to Mr. Mobrez. (This email is **EXHIBIT**
3 **I** to the deposition of Mr. Magedson.).
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5 **THE DEPOSITION OF RAYMOND MOBREZ**
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8 49. On May 7, 2010, Raymond Mobrez was deposed by Defendants. I
9 defended the deposition. Co-Counsel Lisa J. Borodkin was also present
10 for approximately half of Mr. Mobrez's deposition. Ms. Borodkin
11 departed at approximately 3:00 p.m. Defendants' counsel David Gingras
12 deposed Mr. Mobrez. Maria Speth was present at the deposition and
13 assisted Mr. Gingras by passing him notes throughout the deposition.
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17 50. Towards the end of the Deposition, Mr. Gingras threatened Mr. Mobrez
18 with several tape recordings which reflected alleged telephone
19 conversations between Mr. Magedson and Mr. Mobrez. At this point, Mr.
20 Gingras instructed my client that he had a "get out of jail free card" and
21 that he was going to offer it to my client. The catch was that Mr. Gingras
22 offered this so called "gift" to my client while my clients were under
23 duress and before the tapes had been played. According to Mr. Gingras if
24 my clients did not immediately agree to his deal then the offer would not
25 be available to them in the future.
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1 51. My Gingras then read the Federal Perjury Statute (Title 18, United States
2 Code, Section 1623). Mr. Gingras threatened my clients with the Federal
3 perjury Statute noting that each count carries up to 15 years in jail. I was
4 taken off-guard because the tapes had not been turned over in initial
5 disclosures, which they should have been according to Federal Rule of
6 Civil Procedure, Section 26. Neither I nor my clients had any knowledge
7 whatsoever about the tapes. This surprise revelation greatly prejudiced
8 my clients.
9

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12 52. Mr. Gingras demanded that myself and my clients leave the room for
13 five minutes. Mr. Gingras stated that, at the conclusion of the five
14 minutes, he would begin playing the telephone recorded conversations,
15 whether we were present or not.
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18 53. After the tapes were played Mr. Gingras frightened my clients and
19 accused them of committing perjury. Mr. Gingras also said the following
20 to me: "I do not want to put him in a position where he will lose his
21 license if he continues to represent you knowing, as he now knows, that
22 you have committed perjury in this case." I took this as a threat. In
23 addition, after the conclusion of the deposition, Mr. Gingras looked at me
24 smugly and stated I "called the state bar regarding you and co-counsel." I
25 asked him questions regarding this contact and he refused to answer any
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1 of my questions. I believe that he made this accusation deceptively vague
2 on purpose, to place me in a state of shock, thereby forcing my clients to
3 settle. I took this, again, as a direct threat on my license. Furthermore,
4 Mr. Gingras stated that he was glad Ms. Borodkin was not here because
5 she would have caused trouble and is a bad lawyer.
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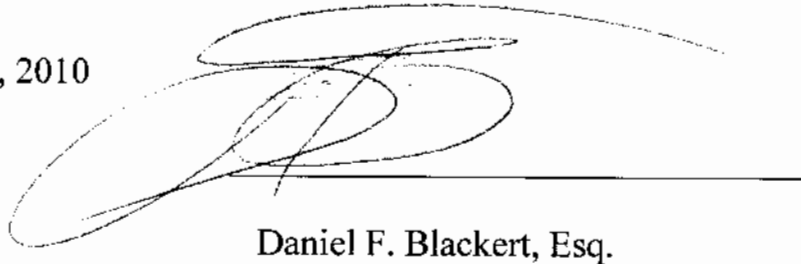
8 54. I immediately contacted the State Bar of California ethics hotline
9 ((“hotline’)) but it was Friday evening and it was closed. Frightened and
10 afraid, I sent Mr. Gingras 2 emails on approximately June 3, 2010 asking
11 him for advice and my intentions with the case which were spoken while I
12 was under severe and debilitating stress from Mr. Gingras’s threats. Mr.
13 Gingras has now put one of my emails into evidence knowing that I acted
14 under duress when I wrote them. Interestingly enough, Mr. Gingras has
15 not placed my other email into evidence. In the email currently not in
16 evidence, Mr. Gingras instructed me to call the State Bar Ethics Hotline
17 and act accordingly.
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22 55. On Monday morning, May 10, 2010, I called the hotline again and asked
23 to speak to someone. The operator told me someone would contact me
24 within 24 hours. The following day, May 11, 2010, I spoke with the
25 hotline and acted in accordance with their guidance. In addition, co-
26 counsel, I, and several law clerks researched this issue and acted, strictly I
27
28

1 might add, according to California's Legal and Ethical guidelines. To
2 date, Mr. Gingras continues to threaten me and co-counsel on a weekly
3 basis in the form of letters, emails, and phone calls.
4

5 56. As stated above, during and after Mr. Mobrez's deposition, Mr. Gingras
6 threatened both me and my clients with criminal and administrative legal
7 proceedings in order to gain the upper hand in a civil action. This is in
8 direct violation of California's ethics laws.³
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14 EXECUTED ON: June 17, 2010

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17 Daniel F. Blackert, Esq.

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CERTIFICATE OF SERVICE

I certify that on June 14, 2010 I electronically transmitted the attached document: **DECLARATION OF DANIEL F. BLACKERT** 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:

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U.S. District Judge

/s/Dan Blackert