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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

**PLAINTIFFS MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

**[FILED CONCURRENTLY WITH
PLAINTIFFS' STATEMENT OF
GENUINE ISSUES; PLAINTIFFS'
OBJECTIONS TO EVIDENCE;
DECLARATION OF RAYMOND
MOBREZ; DECLARATION OF
DANIEL BLACKERT;
DECLARATION OF LISA
BORODKIN; DECLARATION OF
TINA NORRIS; DECLARATION
OF PATRICIA BRAST;
DECLARATION OF CHARLIE
YAN; DECLARATION OF ISRAEL
RODRIGUEZ; DECLARATION OF
JUSTIN LIN; DECLARATION OF
KRISTI JAHNKE]**

The Honorable Stephen V. Wilson

Hearing Date: June 28, 2010
Time: 1:30 P.M.
Courtroom 6

Pretrial Conference: August 2, 2010
Trial Date: August 3, 2010

Plaintiffs' Memorandum of Law in Opposition to Defendants' MSJ 10-cv-1360

TABLE OF CONTENTS

1. Preliminary Statement.....	2
2. Relevant Factual Background.....	3
3. Legal Discussion.....	3
A. This Motion Should Be Denied Because Discovery Is Not Complete.....	3
B. Plaintiffs Have Come Forth with Evidence Sufficient to Raise a Genuine Issue of Material Fact on Their Civil Extortion Claim.....	4
C. Plaintiffs Have Come Forth with Evidence Sufficient to Raise a Genuine Issue of Material Fact on the Rico Claim.....	7
1. Plaintiffs Were Harmed By a “Pattern” of Racketeering	8
2. Plaintiffs Have Evidence of RICO Damages.....	9
3. Plaintiffs Have Shown More than Reputational Damage	11
D. Plaintiffs Have Come Forth with Evidence Sufficient to Raise a Genuine Issue of Material Fact on the Defamation Claim.....	12
E. Plaintiffs Have Come Forth with Evidence Sufficient to Raise a Genuine Issue of Material Fact on their Business Torts Claims.....	12
F. Plaintiffs Have Come Forth with Evidence of the Unfair Competition and Unfair Business Practices Claim.....	13
4. Conclusion.....	13

TABLE OF AUTHORITIES

<u>Burlington Northern Santa Fe v. Assiniboine & Sioux Tribes,</u>	
323 F.3d 767, 774 (9th Cir. 2003).....	4
<u>Davis v. Gates</u> , 420 F.3d 897, 900 (9th Cir. 2005).	10
<u>Doctor’s Associates, Inc. v. QIP Holder LLC,</u>	
06-cv-1710 (D.Con.. Feb. 19, 2010).....	12
<u>Fireman’s Fund Ins. Co. v. Stites</u> , 258 F.3d 1016, 1021 (9th Cir. 2001).....	9
<u>Grupe v. Glick</u> , 26 Cal. 2d 680 (Cal. 1945).....	10
<u>H.J. Inc. v. Northwestern Bell</u> , 492 U.S. 220, 24-43 (1989).....	8
<u>Kids’ Universe v. In2labs</u> , 95 Cal. App. 4 th 870 (Cal. App. 2d Dist. 2002).....	10
<u>Korea Supply v. Lockheed Martin</u> , 29 Cal. 4th 1134, 1154 (Cal. 2003).....	13
<u>Mendoza v. Zirkle Fruit Co.</u> , 301 F.3d 1163, 1168, n. 4 (9th Cir. 2002)	10
<u>Monex Deposit Co. v. Gilliam</u> , U.S. Dist. LEXIS 85761, 3-6	
(C.D. Cal. Sept. 4, 2009).....	5, 9
<u>Religious Technology Ctr. V. Wollersheim</u> , 971 F.2d 364, 36-67	
(9th Cir. 1992).....	8
<u>Sedima, S.P.R.L. v. Imrex Co., Inc.</u> , 473 U.S. 479, 481 (1985).....	7
 Statutes	
18 U.S.C. § 1341.....	9
18 U.S.C. § 1343.....	8
18 U.S.C. § 1962(c).....	7,8
18 U.S.C. § 1962(d).....	7
18 U.S.C. § 1964(c).....	7
California Business and Professions Code § 17200 et. seq.....	13
Cal. Penal Code § 518.....	4
Cal. Penal Code § 519.....	4, 5

1 Cal. Penal Code § 523.....5

2 Restatement (Second) of Contracts § 352, comment b.....10

3

4

5 **Rules**

6 F.R.C.P. 56(f).....3,4

MEMORANDUM OF LAW

1. Preliminary Statement

This motion for summary judgment must be denied. Defendants' entire motion turns on the alleged credibility of one witness regarding immaterial details of the claim for extortion. The interests of justice require that this action proceed to trial on the RICO and extortion claims on August 3, 2010. At least one of the over 100,000 subjects of the Ripoff Report – a website seen by millions of viewers every day – must have its day in court.

The evidence that "Ripoff Report" is an extortion scam is overwhelming. Along with this Memorandum of Law, Plaintiffs submit the declarations of two other victims: Tina Norris ("Norris Dec.") and Patricia Brast ("Brast Dec."). DN-57, DN-58.

Defendants have previously fought off legal challenges in other courts under the guise of immunity under the Communications Decency Act. In this Court, the true nature of the "Corporate Advocacy Program" is about to be determined. Judgment day is near. Defendants have attempted to thwart Plaintiffs in their trial preparation by filing this meritless motion for summary judgment.

In addition, this motion is premature. Plaintiffs have not had an adequate opportunity to take discovery. Plaintiffs have tried to streamline discovery by asking to bifurcate discovery. DN-52. Plaintiffs have a pending motion for June 24, 2010 on the motion to bifurcate discovery. DN-52. Defendants have unreasonably refused. DN-52. There are too many unanswered questions, too many credibility contests, too many factual disputes, too much circumstantial evidence, and too many doubts as to the accuracy and reliability of evidence submitted by the Defendants for summary judgment to be granted. This motion should be denied, and this case should proceed with the bifurcated trial set for August 3, 2010.

1 **2. Relevant Factual Background**

2 The facts in Plaintiffs’ Statement of Genuine Issues are hereby
3 incorporated into this Memorandum of Law. DN-64. For the convenience of
4 this Court, portions of that Statement are set forth below.

5 Plaintiffs are Asia Economic Institute (“AEI”), Raymond Mobrez and
6 Iliana Llaneras (“Plaintiffs”). Mr. Mobrez and Ms. Llaneras are married. AEI
7 has been in the business of developing relationships between Asia and the
8 United States, and putting on seminars and conferences. That is, until
9 Ripoffreport.com shut them down.

10 In or around January 2009, the first Ripoff report about AEI was posted.
11 From January 2009 to July 2009, Plaintiffs attempted to discover the authors of,
12 or take down, the harmful reports. Plaintiffs’ Statement of Genuine Issues
13 (“PSGI”) Response ¶¶12-25. It was then that they discovered the nefarious
14 “Catch-22” of the Ripoff Report: Ripoff Report will not do anything about the
15 posts until the subject “admits responsibility” and pays to be in the Corporate
16 Advocacy Program (“CAP”). See Declaration of Daniel F. Blackert (“Blackert
17 Dec.”) ¶22, Ex. 21. Applicants must also agree not to sue Defendants and not to
18 sue the authors of reports. Id. In addition, Defendants claim that suing them is
19 nearly impossible, and that anyone who tries will end up paying Defendants’
20 legal fees. PSGI Material Fact ¶¶23, 44.

21 **3. Legal Discussion**

22 **A. This Motion Should Be Denied Because Discovery Is Not**
23 **Complete**

24 This motion for summary judgment should be denied because it is
25 premature.

26 Rule 56(f) of the Federal Rules of Civil Procedure states:
27
28

1 **(f) When Affidavits Are Unavailable.** If a party opposing the motion
2 shows by affidavit that, for specified reasons, it cannot present facts
3 essential to justify its opposition, the court may:
4 **(1)** deny the motion;
5 **(2)** order a continuance to enable affidavits to be obtained, depositions to
6 be taken, or other discovery to be undertaken; or
7 **(3)** issue any other just order

8 Fed. R. Civ. P. 56(f). Plaintiffs hereby request a continuance under Rule 56(f).
9 Under Federal Rule of Civil Procedure 56(f), a continuance should be granted as
10 a matter of course. See, e.g., Burlington Northern Santa Fe v. Assiniboine &
11 Sioux Tribes, 323 F.3d 767, 774 (9th Cir. 2003).

12 Discovery is ongoing, and Plaintiffs have filed a motion to bifurcate
13 discovery to match the bifurcated trial. DN-52. Plaintiffs have also moved to
14 compel discovery that is in the sole possession of Defendants. Id. Defendants
15 have refused to provide necessary discovery under claim of a protective order
16 regarding confidentiality. Id. See Declaration of Lisa J. Borodkin in support of
17 Plaintiffs’ Motion to Compel. DN-52. Therefore, this motion should be denied
18 or continued.

19 **B. Plaintiffs Have Come forth with Evidence Sufficient to Raise a**
20 **Genuine Issue of Material Fact on Their Civil Extortion Claim**

21 California’s extortion statute, Penal Code Section 518, defines “extortion”
22 as follows:

23 ”Extortion is the obtaining of property from another, with his consent, or
24 the obtaining of an official act of a public officer, induced by a wrongful
25 use of force or fear, or under color of official right.”

26 Cal. Penal Code § 518 (emphasis added).

27 “Fear” for purposes of California’s extortion statute, is defined in
28 California Penal Code Section 519 as follows:

Plaintiffs’ Memorandum of Law in Opposition to Defendants’ MSJ 10-cv-1360

1 “Fear, such as will constitute extortion, may be induced by a threat, either:
2 1. To do an unlawful injury to the person or property of the individual
3 threatened or of a third person; or,
4 2. To accuse the individual threatened, or any relative of his, or member
5 of his family, of any crime; or,
6 3. To expose, or to impute to him or them any deformity, disgrace or
7 crime; or,
8 4. To expose any secret affecting him or them.”

9 Cal. Penal Code § 519 (emphasis added).

10 Under California Penal Code Section 523, a person who attempts to
11 commit extortion and sends any writing referring to any “threat” as defined in
12 Penal Code Section 519 is punishable in the same way as if property were
13 obtained thereby:

14 Every person who, with intent to extort any money or other property from
15 another, sends or delivers to any person any letter or other writing,
16 whether subscribed or not, expressing or implying, or adapted to imply,
17 any threat such as is specified in Section 519, is punishable in the same
18 manner as if such money or property were actually obtained by means of
19 such threat.

20 Cal. Penal Code § 523 (emphasis added).

21 In Monex Deposit Co. v. Gilliam, the court defined extortion as “the
22 obtaining of property from another, with his consent, or the obtaining of an
23 official act of a public officer, induced by a wrongful use of force or fear.” 2009
24 U.S. Dist. LEXIS 85761, 3-6 (C.D. Cal. Sept. 4, 2009) (Selna, J.). The Monex
25 court recognized the implied cause of action under California Penal Code § 523.
26 Because Penal Code 523 penalizes attempts to extort as actual extortion as long
27 as the threat is evidenced in writing, it is immaterial that Plaintiffs never entered
28 into the Corporate Advocacy Program or never paid money to the Defendants.

Defendants’ threats are evidenced in writings. The threats take at least
two forms. One “threat” is the implied threat that negative statements about the
Plaintiffs’ Memorandum of Law in Opposition to Defendants’ MSJ 10-cv-1360

1 subject of a Ripoff Report will remain online and prominently featured in search
2 results unless the subject joins the Corporate Advocacy Program (“CAP”).
3 Thus, Defendants’ solicitations to join CAP are part of the implied threat. See,
4 e.g., Plaintiffs’ Statement of Genuine Issues in Opposition to Defendants’
5 Motion for Summary Judgment (“PSGI”) Material Fact ¶¶21, 26, 27, 28, 30
6 (emails attached to Declaration of Tina Norris); Material Fact ¶25 (emails
7 referencing links to RipoffReports.com website that explains how the CAP
8 ‘works’).

9 The price of joining CAP is set at the time the subject applies for the
10 program. PSGI Material Fact ¶¶28, 29. The cost of joining CAP has two
11 components: An initial set-up fee of generally \$7,500, see PSGI Material Fact
12 ¶28-29, and a monthly fee for a 36-month term of between \$100 and \$5,500 *per*
13 *month*, see PSGI ¶¶28, 32. Because the monthly cost of CAP is determined by
14 the number of reports about the prospective CAP applicant at the time of
15 application, the longer a target waits, the more expensive it will be to join CAP.
16 PSGI Material Fact ¶31. Because Defendants claim that reports are never
17 removed, and the price of joining CAP goes up as more reports are filed, PSGI
18 Material Fact ¶31, this system constitutes extortion under California Penal Code
19 Section 523. There is no evidence that CAP members receive value for their
20 enrollment costs, aside from a generic text that Defendants add to the top of
21 every previous negative report. PSGI ¶ 36.

22 The other type of “threat” is that Defendants threaten to counter-sue
23 anybody that sues them and that such litigants always lose and always pay
24 Defendants’ attorneys fees. Defendants send a standard email in response to
25 those inquiring about how to respond to Ripoff Reports that warn that a lawsuit
26 against Defendants is a losing battle, boasting that they have “NEVER lost a
27 case.” PSGI Material Fact ¶23. Defendants state that they hope their lawyers
28 are intimidating. PSGI Material Fact ¶44. Defendants admit that their attorneys

1 wrote the portion of the Ripoff Report Website that states “if you are thinking of
2 suing us, read this first.” Declaration of Lisa J. Borodkin (“Borodkin Dec.”) at
3 Ex. 8.

4 Plaintiffs have adduced evidence sufficient to raise a triable issue of fact
5 on a claim for attempted extortion. Plaintiffs have come forth with evidence of
6 writings from Defendants implying the threats to expose victims to disgrace or
7 exposing secrets. Defendants’ almost exclusive reliance on a credibility issue
8 regarding the accuracy of the recordings is not sufficient to defeat summary
9 judgment.

10 **C. Plaintiffs Have Come Forth with Evidence Sufficient to Raise a**
11 **Genuine Issue of Material Fact on the RICO Claim.**

12 The Racketeer Influenced and Corrupt Organizations Act (“RICO”)
13 makes it “unlawful for any person employed by or associated with any
14 enterprise engaged in, or the activities of which effect, interstate or foreign
15 commerce, to conduct or participate, directly or indirectly, in the conduct of
16 such enterprises’ affairs through a pattern of racketeering activity.” See 18
17 U.S.C. § 1962(c), or to conspire to do so. 18 U.S.C. § 1962(d). In addition to
18 the criminal penalties imposed for violations of RICO, Congress also set forth a
19 “far-reaching civil enforcement scheme” to include enforcement by private suit.
20 See Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 481 (1985). “[A]ny
21 person injured in his business or property by reason of a violation of section
22 1962 of this chapter” may recover treble damages, costs, and attorney’s fees.
23 See 18 U.S.C. § 1964(c).

24 In their motion for summary judgment, Defendants claim that the
25 Plaintiffs lack standing under RICO. Specifically, they contend that: (1) there is
26 no evidence that Plaintiffs were harmed by a “pattern” of racketeering; (2)
27 Plaintiffs have no evidence of RICO damages; and (3) reputational damages are
28 not recoverable under RICO. These arguments have no merit.

1 **1. Plaintiffs Were Harmed By a “Pattern” of Racketeering.**

2 Defendants appear to misguide the Court into believing the Plaintiffs’
3 case relies solely on communications between Plaintiff Raymond Mobrez and
4 Defendant Edward Magedson. Defendants fail to address the evidence which
5 suggests that Defendants’ Corporate Advocacy Program is a sham. Defendants
6 also appear to neglect the Plaintiffs’ allegations of wire fraud as defined by 18
7 U.S.C. § 1343. Moreover, Defendants’ argument that the Plaintiffs have not
8 suffered a compensable injury to its business or property is against case law. The
9 injury suffered by the Plaintiffs is casually connected to the Defendants’
10 attempted extortion and wire fraud. A violation of 18 U.S.C. § 1962(c) requires
11 proof of (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering
12 activity. See, e.g., H.J. Inc. v. Northwestern Bell, 492 U.S. 229, 240-43 (1989);
13 Religious Technology Ctr. v. Wollersheim, 971 F.2d 364, 36-67 (9th Cir. 1992).

14 Defendants do not dispute the existence of the first two elements but,
15 instead, chose to argue that the Plaintiffs cannot establish a “pattern of
16 racketeering activity.” To this end, they suggest that the telephonic and
17 electronic communication between Plaintiff Mobrez and Defendant Magedson is
18 insufficient proof of the pattern required under RICO. Citing case law from
19 outside of this jurisdiction, Defendants argue that the conversations are merely
20 “multiple acts in furtherance of a single extortion episode.” Defendants’ Brief at
21 15.

22 This argument completely mischaracterizes Plaintiffs’ RICO claims.
23 Defendants appear to intentionally overlook the allegations contained in ¶ 65 of
24 Plaintiffs’ Complaint, wherein Plaintiffs aver that “Defendants and individuals
25 associated with them have perpetrated this scheme upon other entities...”
26 Plaintiffs’ Complaint ¶ 65. Defendants do nothing to dispel this accusation. On
27 the other hand, Plaintiffs are able to provide testimony from other individuals
28 and businesses to substantiate this allegation. See Norris Dec. [DN-57], Brast

Plaintiffs’ Memorandum of Law in Opposition to Defendants’ MSJ 10-cv-1360

1 Dec. [DN-58]. Defendants have also testified that the minimum term of a CAP
2 agreement is three years. Blackert Dec. ¶6, Ex. 3. PSGI Material Fact ¶28.
3 Thus, the RICO pattern is open-ended and continuing.

4 Furthermore, in arguing that the aforementioned communication does not
5 establish a pattern of two or more predicate acts, Defendants neglect to address
6 the allegations of wire fraud averred in Plaintiffs' Complaint. However,
7 Paragraph 66 of Plaintiffs' Complaint specifically states that "[t]he overall
8 scheme and design of the websites as a means to extort money from companies
9 such as Plaintiff and the fraudulent claims made in furtherance of that scheme
10 constitute violations of 18 U.S.C. § 1341, particularly here where all of the
11 communications are made over the Internet." Plaintiffs' Complaint ¶ 66. Again,
12 Defendants do nothing to contest this allegation. Because it is the burden of the
13 moving party "to demonstrate an absence of genuine issue of material fact," it is
14 not necessary to address proof of this allegation at this stage. Plaintiffs will
15 prove a pattern of RICO wire fraud at trial.

16 **2. Plaintiffs Have Evidence of RICO Damages**

17 "[A RICO] plaintiff must...show that the defendant caused injury to his
18 business or property." See Fireman's Fund Ins. Co. v. Stites, 258 F.3d 1016,
19 1021 (9th Cir. 2001). Defendants contend that the Plaintiffs are unable to prove
20 this sort of injury because (1) "Plaintiffs never joined the Corporate Advocacy
21 Program" and (2) "AEI never produced any seminars, never attempted to do so,
22 and it never had any revenue or profits of any kind." These arguments not only
23 underestimate the damages incurred by the Plaintiffs in this case, but also ignore
24 case law rejecting these very arguments.

25 First, Plaintiffs unwillingness to accede to the Defendants' extortionate
26 demands does not indicate that the Plaintiffs were not injured. See Monex, 680
27 F. Supp. 2d 1148, 1156, 1159-60 (C.D. Cal. 2010) (Selna, J.).
28

1 Second, the Defendants' argument discounts the significance of lost
2 prospective profits. California recognizes damages for the loss of prospective
3 profits so long as "their nature and occurrence can be shown by evidence of
4 reasonable reliability." See Grupe v. Glick, 26 Cal. 2d 680 (Cal. 1945); Kids'
5 Universe v. In2labs, 95 Cal. App. 4th 870 (Cal. App. 2d Dist. 2002).
6 "[D]amages may be established with reasonable certainty with the aid of expert
7 testimony, economic and financial data, market surveys and analyses, business
8 records of similar enterprises, and the like." Kids' Universe, 95 Cal. App. 4th at
9 884, citing Restatement (Second) of Contracts § 352, comment b. Defendants do
10 not argue that the Plaintiffs lack sufficient proof of such damages. Such an
11 argument would be premature as both parties are undergoing discovering this
12 very evidence. Accordingly, an issue of material fact exists.

13 Third, Defendants fail to consider the damage suffered by the Plaintiffs
14 individually. Plaintiffs have submitted tax returns of AEI to show the
15 investments that were lost in building the company before its prospects were
16 prematurely cut short by Defendants' racketeering. See Declaration of Iliana
17 Llaneras. DN- 68.

18 Finally, the Defendants overlooked Plaintiffs' claims for intentional
19 interference with contract and interference with prospective business relations.
20 The Ninth Circuit has already held that interference with a persons' business
21 relations was a "property interest sufficient to provide standing under RICO."
22 Davis, 420 F.3d at 900, citing Mendoza v. Zirkle Fruit Co., 301 F.3d 1163, 1168
23 n.4 (9th Cir. 2002) (holding plaintiffs did allege an injury to a property interest,
24 the "legal entitlement to business relations unhampered by schemes prohibited
25 by the RICO predicate statutes"). In other words, California law "protects the
26 legal entitlement to both current and prospective contractual relations" and
27 interference with these interests constitutes an injury to business or property.
28 Accordingly, the Plaintiffs are able to show compensable damage as a result of

1 the alleged extortion.

2 **3. Plaintiffs Have Shown More than Reputational Damage**

3 Despite the various damages disclosed by the Plaintiffs in their Initial
4 Disclosures, Defendants appear to believe Plaintiffs have only suffered
5 reputational injury. Relying on case law from outside this jurisdiction,
6 Defendants argue that damage to a person's reputation is not "business or
7 property" within the meaning of RICO. Defendants' Brief on Motion for
8 Summary Judgment at 21-22. Assuming arguendo that the Defendants are
9 correct, Defendants fail to address other injuries alleged by the Plaintiffs –
10 allegations which once again are ignored by the Defendant.

11 Defendants also argue that there is "no casual connection between the
12 alleged predicate acts...and the harm to their reputation arising from the
13 postings made by third parties on the Ripoff Report." They contend that the
14 damage was caused by the defamatory posts authored by third parties. However,
15 this argument fails to consider the undisputed evidence that the Defendants
16 themselves create the defamatory meta tags which appear on popular search
17 engines such as Google.com and use this position as a mechanism for extorting
18 money from individuals and companies such as the Plaintiffs. See PSGI Material
19 Fact ¶¶11-12, 15-16. It is undisputed that, when asked to remove this content,
20 Defendants request a sum of at least "\$7,500." Blackert Dec. ¶13; PSGI ¶¶28-
21 29, to "change the negative listings into a positive." Blackert Dec. ¶43, Ex. 41.

22 Moreover, the Plaintiffs have been injured by Defendants regardless of
23 who authored the defaming Ripoff Reports. Alone, the posts may not cause all
24 of Plaintiffs' alleged injuries; it is Defendants' publication and prominent
25 placement of the content with Internet Search engines that comprises the
26 extortion scheme. Further, Defendants' solicitation, publication, and distribution
27 of defamatory materials is part of the extortionate scheme without which
28 Defendants could not create Plaintiff's fear of economic loss for refusing to pay

1 Defendants' extortionate demands. In essence, Defendants use the publications
2 on their Web site as a means for extorting money from those in a vulnerable
3 position. It is this use that harms Plaintiffs and those similarly situated.

4 Therefore, Plaintiffs have come forward with evidence of RICO damages.
5 The devastating effects of Defendants' RICO scheme on Plaintiffs' business and
6 livelihood is described in the Declarations of Charlie Yan [DN-59], Israel
7 Rodriguez [DN-60], Justin Lin [DN-62] filed with this Opposition, as well as the
8 effects on two other victims, Tina Norris [DN-57] and Patricia Brast [DN-58].

9 **D. Plaintiffs Have Come Forth with Evidence Sufficient to Raise a**
10 **Genuine Issue of Material Fact on the Defamation Claim**

11 The declarations of Amy Thompson, Kim Jordan and Lynda Craven state
12 that Defendants' employees redact portions of the reports at Defendants'
13 direction. In addition, Defendants create the meta-tags that cause the defamatory
14 substance to be highlighted in Google search results. Jahnke Dec. DN-66. The
15 only content that is solicited and published so prominently is negative, not
16 positive. See Brast Dec. DN-58. When a contributor attempts to upload a
17 positive review, it is only posted as a "comment," not a report with the same
18 prominence as a negative report. Id.

19 Such directed efforts are sufficient to raise a triable issue of fact as to
20 whether a defendant is "responsible for" defamatory content solicited from
21 third-parties, even under the Communications Decency Act. See Doctor's
22 Associates, Inc. v. QIP Holder LLC, 06-cv-1710 (D. Conn. Feb. 19, 2010)
23 (rejecting CDA defense) at 45-49, of which this Court is respectfully requested
24 to take judicial notice and a copy of which is attached to this Memorandum of
25 Law as Exhibit 1.

26 **E. Plaintiffs Have Come Forth with Evidence Sufficient To Raise a**
27 **Genuine Issue of Material Fact on their Business Torts Claims**
28

1 Under Korea Supply v. Lockheed Martin, 29 Cal. 4th 1134, 1154 (Cal.
2 2003), a plaintiff seeking to show a claim for intentional or negligent
3 interference with prospective or actual economic advantage may do so by
4 demonstrating the conduct is “independently wrongful” as a violation of an
5 objective legal standard, such as RICO. Plaintiffs have done so.

6 Plaintiffs have also submitted evidenc of specific transactions that were
7 lost as a result of Defendants’ extortionate scheme. See Declarations of Justin
8 Lin, DN-62, Israel Rodriguez, DN-60 and Charlie Yan, DN-59.

9 **F. Plaintiffs Have Come Forth with Evidence of the Unfair**
10 **Competition and Unfair Business Practices Claims**

11 The foregoing evidence put into the record is also sufficient to support a
12 triable issue of fact for Plaintiffs’ claims under Californai Business and
13 Professions Codes Section 17200 et seq. This case should proceed to trial.

14 **4. Conclusion**

15 For the foregoing reasons, Defendants’ motion for summary judgment
16 should be denied.

17 DATED: June 14, 2010

Respectfully submitted,

18 By: /s/ Lisa J. Borodkin
19 DANIEL F. BLACKERT
20 LISA J. BORODKIN
21 Attorneys for Plaintiffs,
22 Asia Economic Institute LLC,
23 Raymond Mobrez, and Iliana
24 Llaneras
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CERTIFICATE OF SERVICE

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

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES
IN OPPOSITION 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:**

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Honorable Stephen V. Wilson
U.S. District Judge

/s/Lisa J. Borodkin