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 Edward Magedson

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

ASIA ECONOMIC INSTITUTE, LLC, *et al.*,

Plaintiffs,

vs.

XCENTRIC VENTURES, LLC, *et al.*

Defendants.

Case No: 2:10-cv-01360-RSWL-PJW

**DEFENDANTS' OBJECTION TO
 DECLARATION OF
 DANIEL F. BLACKERT**

Hearing Date: June 28, 2010

Time: 1:30 PM

Courtroom: 6 (Hon. Stephen Wilson)

Defendants Xcentric Ventures, LLC and Edward Magedson respectfully submit the following objection to the Declaration of Daniel F. Blackert, Esq. (Doc. #65) filed in this matter on June 14, 2010 in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment. In his declaration, Mr. Blackert offers routine foundational testimony supporting the admissibility of various pages from the uncertified, non-final deposition transcripts of both Xcentric Ventures and Ed Magedson. Defendants do not object to such foundational testimony.

1 However, Mr. Blackert’s declaration goes much, much further. Specifically,
2 nearly every paragraph of Mr. Blackert’s declaration is permeated by inappropriate and
3 sometimes emotional editorializing and testimony given from the perspective of a
4 percipient witness rather than an advocate.

5 For instance, in ¶ 7 of his declaration, Mr. Blackert offers foundational testimony
6 as to two pages from the rough copy of the Mr. Magedson’s deposition along with a short
7 summary of certain testimony. Beyond this and without citing any evidence to support
8 his statements, Mr. Blackert interjects his own argument and factual testimony in an
9 effort to rebut and contradict Mr. Magedson’s statements; “However, Mr. Magedson has
10 quoted fees over the phone if he is speaking with a person of importance, such as an
11 attorney.” Blackert Decl. ¶ 7 at 4:14–15.

12 The severity of this inappropriate editorializing and testimony grows with each
13 passing page. For instance, ¶ 9 of Mr. Blackert’s declaration begins with a foundational
14 reference to two pages from Mr. Magedson’s deposition followed by a lengthy diatribe
15 attacking Mr. Magedson and the Ripoff Report’s rebuttal process; **“However, a rebuttal**
16 **is not even remotely as effective as an investigation members of the CAP receive.”**
17 Blackert Decl. ¶ 9 at 5:8–9 (emphasis in original).

18 This form of inappropriate testimony and argument is even worse later in Mr.
19 Blackert’s declaration. For instance, in ¶¶ 39–41, Mr. Blackert essentially abandons his
20 role as advocate and offers nothing but page after page of testimony personally attacking
21 Mr. Magedson. Again, Mr. Blackert offers no evidence whatsoever to support this attack.

22 It goes without saying that Mr. Blackert is not a witness in this matter and even if
23 he was, he has failed to demonstrate any personal knowledge of any of the facts he
24 purports to testify about as required by Fed. R. Evid. 602. Moreover, as is true in every
25 case, “[A]rguments and statements of counsel are not evidence and do not create issues of
26 material fact capable of defeating an otherwise valid motion for summary judgment.” *In*
27 *Re Ahaza Systems, Inc.*, 482 F.3d 1118, 1122 n. 1 (9th Cir. 2007) (quoting *Barcamerica*
28 *Int’l USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 593 n. 4 (9th Cir. 2002)).

1 For this reason, although Defendants have no objection to the deposition excerpts
2 offered by Mr. Blackert, it is clear that Mr. Blackert's self-serving and unsupported
3 testimony spanning 24 pages is improper and is entitled to no weight when determining
4 the existence or absence of factual disputes for the purposes of summary judgment.

5 Dated: June 23, 2010.

6 /S/David S. Gingras

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2010 I electronically transmitted the attached document 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:

Ms. Lisa Borodkin, Esq.
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And a courtesy copy of the foregoing delivered to:
Honorable Stephen V. Wilson
U.S. District Judge

/s/David S. Gingras
