

**Lisa Borodkin** <lborodkin@gmail.com>

## XCentric Ventures case

**David Gingras <david@ripoffreport.com>**

**Fri, Jul 2, 2010 at 12:22 PM**

Reply-To: david@ripoffreport.com

To: Lisa Borodkin <lborodkin@gmail.com>

Cc: Maria Crimi Speth <mcs@jaburgwilk.com>, "paul@berra.org" <paulsberra@gmail.com>, Daniel Blackert <blackertesq@yahoo.com>

Lisa,

Per Magistrate Walsh's order, attached is our response to your letter re: unanswered deposition questions.

For purposes of clarity and ease of reference, I have attached a copy of your letter to this email as well.

Have a good holiday weekend.

David Gingras, Esq.

General Counsel

Xcentric Ventures, LLC

<http://www.ripoffreport.com/>

[David@RipoffReport.com](mailto:David@RipoffReport.com)



PO BOX 310, Tempe, AZ 85280

Tel.: (480) 668-3623

Fax: (480) 248-8326

**2 attachments**



**AEI letter Defendant\_2010-06-25.pdf**

84K



**Ltr - Dan & Lisa - 7-2-2010.pdf**

161K

GINGRAS LAW OFFICE, PLLC

---

4072 E Mountain Vista, Phoenix, AZ 85048 • Tel: (480) 668-3623 • Fax: (480) 248-3196

July 2, 2010

Mr. Daniel F. Blackert, Esq.  
Ms. Lisa J. Borodkin, Esq.  
Asia Economic Institute, LLC  
11766 Wilshire Blvd., Suite 260  
Los Angeles, CA 90025

Re: Asia Economic Institute, et al. v. Xcentric Ventures, LLC, et al.  
Case No. 10-CV-01360SVW

Dan and Lisa:

This letter is in response to yours dated June 25, 2010 which I understand was sent based on the order of Magistrate Walsh. As indicated in Ms. Speth's previous email, we do not believe you complied with Magistrate Walsh's order insofar as you apparently provided a list of *all* unanswered questions rather than narrowing the list to only the salient points you really need answered. Nevertheless, I have reviewed your letter closely and have compared it with the two depositions at which Mr. Magedson gave testimony—the June 2, 2010 30(b)(6) deposition of Xcentric where Mr. Magedson was the only witness, and the June 8, 2010 deposition of Mr. Magedson in his individual capacity. As you know, both of these depositions were lengthy (more than 5+ hours each), and except for a few areas, Mr. Magedson answered a wide variety of questions.

I realize that your letter cites to general pages from the rough drafts of each transcript. Unfortunately, I did not order rough versions of the transcripts (I do have the finals). Nevertheless, I scoured each transcript thoroughly and I believe I was able to locate the specific areas of testimony raised in your letter. To avoid any confusion, I have copied and pasted each section of testimony from the final transcripts into this letter (except where prohibitively lengthy). This should allow us to review the actual Q&A which took place so we can confirm that we're both talking about the same thing.

As you can see, I have taken each point raised in your letter and provided a short explanation of the dispute as I understood it. Next, I have provided you with our specific position on each point followed by the actual deposition text as to most of the questions. As you can see, this wasn't necessary as to every question.

I believe a close review of these questions and answers shows that a third deposition of Mr. Magedson is unnecessary for several reasons.

First, in many instances, Mr. Magedson fully answered your questions to the best of his ability. The fact that a witness does not know the answer to a question does not justify asking the same question again in multiple serial depositions.

Second, many (if not all) of the questions identified in your letter are simply irrelevant to Plaintiffs' extortion claims. While Maria and I agree that discovery is generally broad, in this case you have asked for and received a stay preventing Defendants from taking any discovery as to anything other than the RICO/extortion claims set for trial in August. Because that stay applies equally to your clients, clearly you would not be entitled to take a third deposition of Mr. Magedson solely for the purpose of obtaining testimony unrelated to your clients' extortion claims.

Third, many of the questions identified in your letter were subject to a financial privilege objection which remains unresolved. As I have explained to you, under both Arizona and California law, information pertaining to the financial condition of a defendant is not discoverable absent a court order which you have not yet requested or received. As such, all other issues aside, these financial objections remain outstanding and I will continue to instruct Mr. Magedson to refuse to answer any such questions until you comply with the legal requirements for obtaining this information (also bearing in mind that Defendants' financial condition is not part of the trial in August and is therefore subject to the discovery stay). For those reasons, I believe questions about any financial issues are simply "off the table" at this time.

Finally, the only issues which I believe are actually fair game relate to the existence of Mr. Magedson's phone bills. That issue is addressed fully below. In light of these comments, here are our specific responses as to each point raised in your letter:

### **30(b)(6) Deposition of Xcentric Ventures**

1. 16:5-17. This was a question about the role of Creative Business Investment Concepts. Ed answered the question by stating that he could not remember the answer. After the answer, I also objected on the basis that this was not one of the topics listed on the 30(b)(6) deposition notice.

In short, our position is as follows—the question was asked and answered. In addition, it is unrelated to any part of Plaintiffs' extortion claims and is therefore part of the discovery stay entered in this case on June 24, 2010 by Magistrate Walsh.

5 Q And I also notice on here that under  
6 manager/member information, there is a group called  
7 Creative Business Investment Member Concepts, Inc., a  
8 Nevada corporation. Can you explain to me what their  
9 role in Xcentric is?

10 A It's like -- you know, I can't remember what  
11 the answer is to that question.  
12 MR. GINGRAS: I'll also object to the  
13 question as being beyond the scope of the 30(b)(6) depo  
14 notice. If Ed doesn't know the answer, I guess that's  
15 the best answer you can give, but I don't believe  
16 that's one of the topics designated in the notice.  
17 MR. BLACKERT: Okay. Objection noted.

2. 18:6-23. This was a series of questions about David Bedore, whether or not he was ever the president of Xcentric Ventures, etc.

There was an objection followed by an instruction that the witness was permitted to answer the question if he could. Based on that instruction, the witness did subsequently answer the question.

In short, our position is as follows—the question was asked and answered. In addition, it is unrelated to any part of Plaintiffs' extortion claims and is therefore part of the discovery stay entered in this case on June 24, 2010 by Magistrate Walsh.

6 Q Okay. And if you can turn to the second page.  
7 It lists a gentleman -- if you can follow me -- David  
8 J. Bedore as the president of Xcentric Ventures. Was  
9 he at any time the president of Xcentric Ventures?  
10 MR. GINGRAS: Objection. Again, beyond  
11 the scope of the 30(b)(6) depo notice.  
12 You can answer the question, if you can.  
13 THE WITNESS: I can't answer the  
14 question.  
15 Q BY MR. BLACKERT: Do you recall ever being  
16 associated -- do you recall Xcentric ever being  
17 associated with Mr. Bedore?  
18 A Yes.  
19 Q In what capacity was Mr. Bedore associated  
20 with Xcentric?  
21 MR. GINGRAS: Same objection.  
22 THE WITNESS: I don't -- I shouldn't  
23 answer that question.  
24 MR. GINGRAS: You can answer it if you  
25 know the answer.

1 THE WITNESS: I don't really understand  
2 the question.  
3 MR. BLACKERT: Can you --  
4 THE WITNESS: Can you rephrase it or  
5 just ask me it again? What was the question?  
6 (The requested portion of the record was  
7 read by the court reporter.)  
8 THE WITNESS: I think it says here  
9 president.  
10 Q BY MR. BLACKERT: So Mr. Bedore was the  
11 president at the time he signed this?  
12 A Correct.

3. 22-23:12-5. This is a long discussion about Creative Business Investment Concepts (too long to quote). There were some objections as to the line of questioning being beyond the scope of the 30(b)(6) deposition notice, but then the witness answered the questions anyway.

In short, these questions were, for the most part, asked and answered, and, in any event, this line of questions had nothing to do with Plaintiffs' extortion claim and is therefore subject to the discovery stay.

4. 26-27:18-10 [sic?]. This was another series of questions about Creative Business Investment Concepts. Ed gave a partial answer to some of the questions but then did not go further based on an instruction from counsel.

This line of questions had nothing to do with Plaintiffs' extortion claim and is therefore subject to the discovery stay.

4 Q BY MR. BLACKERT: So again, my question to you  
5 is, how is Creative Business Investment Concept  
6 involved with Xcentric?  
7 MR. GINGRAS: Objection. Beyond the  
8 scope of the 30(b)(6) depo notice, and the same  
9 protective order issue I've just mentioned.  
10 You can answer the question if you want  
11 to, but you don't have to.  
12 THE WITNESS: I think from this document  
13 it's obvious that Creative Business Investment  
14 Concepts, Inc. is the member for -- of the corporation.  
15 That's the way I understand it.  
16 Q BY MR. BLACKERT: Okay.  
17 A But I'm really not even sure.  
18 Q Okay. And to the extent you are sure, what --  
19 what role do they play in Xcentric on a day-to-day  
20 basis?  
21 MR. GINGRAS: Same objections.  
22 THE WITNESS: I don't want to answer  
23 that question.  
24 Q BY MR. BLACKERT: So you are refusing to  
25 answer that question?  
  
1 A Originally you had agreed to doing a  
2 protective order, but you have seemed to -- you don't  
3 want to do a protective order. You have changed.  
4 MR. GINGRAS: Ed, do not argue with  
5 counsel. Let me do that, please.  
6 Q BY MR. BLACKERT: You can continue if you'd  
7 like.  
8 MR. GINGRAS: No, I'm instructing the  
9 witness not to answer any further.

5. 75:8-18. This was a question about Xcentric's phone call recording vendor. If this information is still requested by Plaintiffs, we will provide the name of the vendor pursuant and subject to the protective order.

6. 99:7-22. This series of questions is not accurately described in your letter. It was not a discussion of the "steps that ROR goes through in order to take down posts." Rather, as reflected in the actual Q&A shown below, this was a question about the process that a party must follow when sending a subpoena to Ripoff Report which seeks the identity of an anonymous author. There was an objection to this question (it called for a legal conclusion), but the witness was allowed to answer and the witness answered the question.

Our position is that the witness answered the questions asked, and to the extent the questions asked the witness to explain the process for obtaining and serving a subpoena on Xcentric, the question called for a legal conclusion and was improper. Furthermore, this series of questions is not related to Plaintiffs' extortion claim and is therefore stayed.

10 When someone has Ripoff Report filed  
11 against them and they want to ascertain the identity of  
12 the posters, how do they go through Xcentric to do  
13 that?  
14 MR. GINGRAS: Objection. Beyond the  
15 scope of the 30(b) (6).  
16 You can answer if you want to and if you  
17 know the answer.  
18 THE WITNESS: I think it's called  
19 Mobrez.  
20 MR. GINGRAS: Mobilisa.  
21 THE WITNESS: Mobilisa. Okay. They  
22 have to comply with Mobilisa. I forget. I can't  
23 pronounce it.  
24 Q BY MR. BLACKERT: Are you referring to like a  
25 subpoena?

1 A No. What they need to do is they can put a  
2 notice -- file a rebuttal. They have to put a notice.  
3 It's a law. It's an actual law, if they want, and  
4 there is certain steps that they would have to go  
5 through. Whether or not they would end up getting it  
6 or not, it depends.  
7 Q Can you explain to me what those steps are  
8 that they have to go through?  
9 MR. GINGRAS: Objection. Calls for a  
10 legal conclusion.  
11 THE WITNESS: Yeah, I'm not -- I'm not a  
12 lawyer. You can look it up. You know, I'll mix it up,  
13 and I'll probably get some things wrong, so I'm best  
14 off not explaining it.

7. 121-122:18-12. This was a question asking how many people are in the CAP program. The witness refused to answer the question based on the lack of a protective order.

Nevertheless, this information is not relevant to Plaintiffs' extortion claims and is not relevant to any other claims in this case. The question (even if relevant) is subject to the discovery stay.

8. 194-5:6-4. This question asked for the names of Xcentric's content monitors. The witness refused to answer due to a lack of protective order.

Although the current protective order resolves the privacy concerns, this information is not relevant to Plaintiffs' extortion claims and therefore is subject to the discovery stay.

### **Ed Magedson Deposition**

9. 27-28. Your letter states that on pages 27-28 of the rough copy of Ed's individual depo, he was instructed not to answer a question about the number of companies in the CAP program. In the final transcript this question was posed at 30:21 and an objection/instruction not to answer was given at 30:22-25.

Our position remains the same—Plaintiffs never joined the CAP program and no part of their claims are based on the actions of anyone in the CAP program. As such, this information is not relevant to any fact at issue in the case nor is it reasonably calculated to lead to any admissible evidence. In addition, the number of companies in the CAP program is not relevant to Plaintiffs' extortion claim and is therefore subject to the discovery stay.

10. 54. Your letter does not identify any question other than "who owns Xcentric."

Assuming this was the only question asked, it is not relevant to any fact at issue in this case, nor is it relevant Plaintiffs' extortion claims. The question is subject to the discovery stay.

11. 55. Your letter states that the witness was instructed not to answer "questions regarding payment". Due to the difference in page numbering between the rough and the final, it is unclear what this refers to.

However, on pages 57:16-58:18 the witness was asked questions about his salary and compensation. These questions were objected to on the basis that the financial condition of a defendant is protected under both Arizona law, see *Larriva v. Montiel*, 143 Ariz. 23, 691 P.2d 735 (App. 1984), and California law, see Cal. Civ. Code § 3295(c).

Our position is as follows—information relating to the financial condition of either Xcentric or Mr. Magedson is protected under Arizona and California law and is not discoverable absent compliance with those standards. In

addition, this information is not relevant to Plaintiffs' extortion claims and is therefore subject to the discovery stay.

16 Q How are you compensated by Xcentric Ventures?  
17 A Aside from the satisfaction of knowing, as we  
18 sit here today, that consumers have successfully warned  
19 each other about how not to get ripped off, which is  
20 the biggest payment.  
21 Q Yes, sir.  
22 A Okay. The other payment is I would receive --  
23 I was -- actually, you know, I don't even want to  
24 answer that question.  
25 MR. GINGRAS: If you are asking for  
  
1 specific financial information, that information is  
2 privileged under Arizona law and under California law,  
3 and you are not entitled to it under either of those.  
4 So I'm instructing the witness not to answer to the  
5 extent she asked for specific numbers. I think the  
6 question was more general than that.  
7 Q BY MS. BORODKIN: That's right.  
8 Do you have a salary?  
9 A Yes.  
10 Q And does -- do you have an incentive-based  
11 component of your compensation?  
12 A No.  
13 Q You have a fixed annual salary?  
14 A No.  
15 Q How is your salary computed?  
16 MR. GINGRAS: Without telling her any  
17 numbers, you can answer that question, if you are  
18 comfortable.

12. 59. Your letter states that the witness was instructed not to answer questions about "who keeps track of what [Ed Magedson] does not." This appears to be a reference to a line of questions in the final transcript at 61:11-62:2. The actual Q&A is reflected below. These questions appear to relate to employment benefits offered to employees of Xcentric and the name of the person who "keeps track" of such benefits. The witness was instructed not to answer due to the lack of a protective order.

Although the order entered in this case resolves the privacy concerns, the name of Xcentric's employee who keeps track of employee benefits is not relevant to Plaintiffs' extortion claim and is therefore subject to the discovery stay.

11 Q Does Xcentric provide insurance benefits to  
12 these employees?  
13 A It's been offered.  
14 Q Has anyone taken --  
15 A No. 16 Q Are they full-time employees?



Mr. Daniel F. Blackert, Esq.

Ms. Lisa J. Borodkin, Esq.

July 2, 2010

Page 8 of 16

17 A You know, I'm not sure. I don't keep track of  
18 what -- I'm not sure.

19 Q Who keeps track of whatever you don't keep  
20 track of with respect to these employees?

21 A As far as that goes, there's one gal who --  
22 who deals with that specifically.

23 Q Who's that?

24 MR. GINGRAS: That's information that we  
25 would provide subject to a protective order. Because  
1 there is not one in place, I'm instructing the witness  
2 not to answer.

13. 61 & 63. Your letter states that the witness was instructed not to answer questions regarding David J. Bedore.

As noted in Point #2 above, this same issue also arose during the 30(b)(6) deposition of Xcentric, but the witness was allowed to answer the question which he did.

As with Point #2 our position is as follows—the question about Mr. Bedore was asked and answered. In addition, Mr. Bedore is not a party to this action and he is unrelated to any part of Plaintiffs' extortion claims and is therefore part of the discovery stay entered in this case on June 24, 2010 by Magistrate Walsh.

14. 68. Your letter does not identify any specific question, but simply states that a question was objected to but the witness was allowed to answer. This appears to be a reference to a series of question on pages 70:4–20 of the final transcript in which Mr. Magedson was asked whether he had any other companies.

As you point out, although there was an objection, the witness fully answered the question. Even if that wasn't the case, information about other companies that Mr. Magedson may have is not relevant to any part of Plaintiffs' extortion claims and is therefore subject to the discovery stay.

15. 69. Your letter states that the witness was instructed not to answer a question about other sources of income. However, the witness did fully answer the question (which occurred on page 71:2–10 of the final transcript) despite the objection. As such, this question has been asked and answered and, in addition, it does not relate to Plaintiffs' extortion claim and is therefore subject to the discovery stay.

2 Q Do you have any source -- any other sources of  
3 income besides your work for Xcentric Ventures?

4 MR. GINGRAS: I will object on financial

5 privilege grounds and instruct the witness not to  
6 answer that question.  
7 You don't have to answer that, Ed. Ed,  
8 you do not have to answer that.  
9 THE WITNESS: There is no other -- just  
10 what I do to the website. There is nothing else.

16. 86–89. These pages (89:24–90:3 of the final) reflect a question about whether or not Mr. Magedson uses more than one cell phone. The witness refused to answer the question.

We agree that the existing protective order resolves the privacy concern as to whether Mr. Magedson uses more than one phone, however, these questions (which I assume would lead to additional questions about specific phone numbers and a demand that Mr. Magedson produce billing records for those phones) are improper and irrelevant for several reasons.

First, as a practical matter, no matter how many phones Mr. Magedson has, if he produces records for all his phones and they do not show any calls made to Plaintiffs, this does not conclusively establish that no such calls were made. If Mr. Magedson's phone bills do not show any calls to Mr. Mobrez, then Mr. Mobrez could simply allege that Mr. Magedson must have called from a pay phone, an untraceable IP phone (i.e., Skype/Vonage/Yahoo!), or some other method.

Second, as a purely legal matter, your clients are barred from alleging that Mr. Magedson ever called Mr. Mobrez. This is due to the fact that in their May 3, 2010 declarations, Mr. Mobrez and Ms. Llaneras explained the factual basis of their extortion claims as the court ordered them to do. In their declarations, Mr. Mobrez and Ms. Llaneras described the extortion as occurring during a series of calls from Mr. Mobrez to Ripoff Report. Neither Mr. Mobrez nor Ms. Llaneras ever testified that the extortion took place on a call made from Mr. Magedson to Mr. Mobrez, and neither of their declarations state that Mr. Magedson ever called Mobrez for any reason.

This new allegation about Mr. Magedson making calls to Mr. Mobrez only arose after Mr. Mobrez was proven to have perjured himself in his May 3 declaration. As explained in our MSJ Reply, the sham affidavit rule bars Plaintiffs from changing their stories in an effort to create a factual dispute for summary judgment. As such, because Plaintiffs never alleged that any incoming calls were made from Mr. Magedson (until after they were caught lying), the existence of any such calls is irrelevant and therefore Mr. Magedson's phone bills on this point are irrelevant.

Nevertheless, in an effort to resolve this dispute, Defendants are willing to agree to the following—Mr. Magedson will produce copies of all his phone bills for February–July 2009 (the range of dates during which calls would have occurred). These bills will not be provided to Plaintiffs' counsel.

Rather, the bills will be provided to Magistrate Walsh who will review them *in camera* and compare them to a list of phone numbers for Mr. Mobrez to be provided by you. If the bills do not reflect any calls from Mr. Magedson to Mr. Mobrez, then the matter will be resolved and the bills will not be produced to you. On the other hand, if the bills do show calls from Mr. Magedson to Mr. Mobrez, then any bills reflecting such calls will be produced to Plaintiffs' counsel (with information as to any other calls redacted).

18 Q BY MS. BORODKIN: Do you use a cell phone?

19 A I use a cell phone, yes.

20 Q Do you use more than one cell phone?

21 A I don't want to answer any of these questions  
22 regarding cell phones.

23 Q Why not?

24 A Because I'm not looking to be tracked or  
25 anything like that. I mean, there's a whole host of

1 reasons why.

2 Q I'm asking because a big part of your defense  
3 is that you know from taped telephone calls to Xcentric  
4 that certain allegations made by the plaintiffs are  
5 false, and I'm trying to discover whether there's  
6 another explanation for some of these allegations.  
7 A There could be no explanation, because no one  
8 would ever ask somebody for money by phone. Nobody  
9 would threaten anybody for money by phone, and it's  
10 already been proven that by your client's own little  
11 detailed little notes with his wife listening on the  
12 phone. They both have the same dates and times and  
13 everything of exactly what was said on those dates and  
14 times, so we know there is really -- there is no other  
15 time that this could have been.

16 So I understand that counsel is trying  
17 to do the best job they can. My answer is no, I'm not  
18 giving out any information. There is no protective  
19 order, and I don't call -- I don't call clients. I've  
20 had that rule for a long time. I just don't call them,  
21 so it ain't gonna -- there's no -- there's nothing  
22 there. There couldn't be anything there.

23 Q Without identifying the carrier or the number,  
24 do you use more than one cell phone?

25 A Do I use -- what I do personally and what

1 Xcentric does is two different things, and I just -- I  
2 just -- I don't want to answer any of these questions.

3 Q Okay. Today, you are Mr. Magedson. You are  
4 not Xcentric. I don't hear an objection from your  
5 lawyer, so you can answer.

6 A You are not my lawyer either.

7 Q True.

8 A Is it okay? I'm not -- I think he's not  
9 objecting because I've already given my answer that I'm

10 not going to answer any of these questions, so there is  
11 nothing for him to object to. He didn't say, no, Ed,  
12 you can answer those.  
13 MR. GINGRAS: Ed, to the extent it  
14 matters, I ratify your objection and agree with it.  
15 Without a protective order, these questions ask for  
16 information that could be used to harass Mr. Magedson  
17 that has caused him to be harassed in the past. We  
18 believe it --  
19 MS. BORODKIN: Okay. That's enough,  
20 David. No speaking objections under California Rules  
21 of Court, CCP in the federal rules. If you want to  
22 have a dispute about it, we'll make another motion.  
23 Please do not coach the witness anymore.  
24 THE WITNESS: I already gave my answer.  
25 He didn't -- how could he have coached me? I already

1 gave my answer. You asked and I answered you, so I  
2 don't even understand what he was saying, so he  
3 didn't -- he wasn't coaching me.

17. 123-124. Your letter states that Mr. Magedson refused to answer questions as to whether Xcentric was losing money. The actual exchange occurs on pages 123:20-124:14 of the final transcript. This line of questioning was objected to on the basis that it sought financial information which was privileged and protected under both Arizona and California law.

Our position remains the same—financial information is protected and Plaintiffs are not entitled to it without first obtaining a court order. In addition, this information is not relevant to any part of Plaintiffs' extortion claim and is therefore subject to the discovery stay.

20 Q BY MS. BORODKIN: And before that, were you  
21 operating at a loss?  
22 A Let me just tell you something. I'm -- let me  
23 tell you why -- I'm not trying to be a wise guy -- I'm  
24 refusing to answer any of these questions. Because you  
25 indicated to counsel, my counsel, you intended to use  
1 this on the Internet.  
2 And a lot of things that you are saying  
3 or that you want me to say will only instigate and  
4 facilitate people to just mess with me, as your clients  
5 clearly have, for no reason. And now you are doing  
6 more digging, which I understand you are trying to be a  
7 good lawyer, and I respect that, but I don't even want  
8 to give you any of these answers because there is no  
9 protective order and --  
10 MR. GINGRAS: Ed, if you are done, I  
11 will object on the grounds that it calls for financial  
12 information which is privileged under Arizona law and  
13 California law, and plaintiffs are not entitled to  
14 that.

18. 147. Your letter states that Mr. Magedson "refuses to discuss any instance where a positive post was posted on ROR." This appears to be a reference to a series of questions on pages 147:7-149:4 of the final transcript.

Based on a review of the actual Q&A, your letter does not accurately reflect the discussions which took place. The witness was never instructed not to answer any questions and he did provide answers as best he could.

Our position is that the witness asked the questions asked and, in addition, these questions are irrelevant to Plaintiffs' extortion claims and therefore are subject to the discovery stay.

7 Q You think Ripoff Report is a negative  
8 complaint site?

9 A It's -- people post negative and positive on  
10 Ripoff Report.

11 Q What kind of positive do they post?

12 MR. GINGRAS: Foundation.

13 Q BY MS. BORODKIN: You can answer it.

14 A Yeah, could you be more specific?

15 Q Whatever you were referring to.

16 A They file positive rebuttals to any kind of a  
17 complaint. They are filed -- as we sit here, they are  
18 being filed.

19 Q Anything else?

20 A Anything else?

21 Q That's positive that gets posted on Ripoff  
22 Report that you can think of?

23 A Positive. A positive is positive. I mean, I  
24 don't know how you want me to elaborate.

25 Q Well, besides rebuttals, who are written by

1 the subjects of the reports, are there any other  
2 positive kinds of things that are posted on Ripoff  
3 Report?

4 A Sure. There is stuff that we post about the  
5 CAP members.

6 Q Aside from the things that the subjects of the  
7 Ripoff reports post as rebuttals and the things that  
8 you post as CAP reports and investigation results, are  
9 there any other -- are there any other kinds of  
10 positive things that are posted on RipoffReport.com?

11 A Those positive things can include a number of  
12 different things, which I can't even imagine, so I'm  
13 not sure if this is a loaded question or not. I don't  
14 know. I can't sit here -- I could start guessing what  
15 kind of things could be posted, but I'm sure birth  
16 announcements and happy birthdays --

17 Q I don't want you to guess, Mr. Magedson.

18 A Okay. But I don't know. There's no way I  
19 know. It's usually positive things, experiences the  
20 companies -- consumers would have.

21 Q Have any of those types of things been posted

22 on Ripoff Report?  
23 MR. GINGRAS: Foundation.  
24 THE WITNESS: All day long.  
25 Q BY MS. BORODKIN: Could you give me one

1 example?  
2 A No, I wouldn't even -- I wouldn't want to pick  
3 on a company or pick out something that's used in this  
4 deposition.

19. 168. Your letter states that "Mr. Magedson was instructed by his attorney, [David Gingras] not to answer questions regarding whether the CAP pays for itself." This appears to be a reference to pages 168:7-169:8.

Your letter does not accurately reflect the exchange which is shown below. The witness was never instructed not to answer, nor was the objection based on the absence of a protective order. The only objection made was based on financial condition privilege.

Our position is the same as Point #17—information about Xcentric's financial condition is protected and not subject to disclosure without a court order. In addition, even if that was not the case, this information is not relevant to Plaintiffs' extortion claim and is therefore stayed.

7 Q Is CAP self-sustaining?  
8 A Form.  
9 MR. GINGRAS: Was that question about --  
10 was that question about money? I'm not sure what she  
11 means by that.  
12 THE WITNESS: Yeah, I'm not sure,  
13 self-sustaining. Can you be more explicit?  
14 MS. BORODKIN: Please make your  
15 objection and do not coach the witness.  
16 THE WITNESS: I didn't even hear what he  
17 said, so I said form joking around. He said something.  
18 I don't even know what he said, and I'm asking you, can  
19 you please explain. I'm not sure what you mean.  
20 Q BY MS. BORODKIN: Does CAP pay for itself?  
21 MR. GINGRAS: Objection. Financial  
22 privilege that has been discussed before already.  
23 You don't have to answer the question,  
24 Ed. You can answer it if you want to.  
25 THE WITNESS: Yeah, there's no reason to  
1 answer that question.  
2 MS. BORODKIN: I'm going to just state  
3 it for the record that plaintiffs reserve the right to  
4 seek to re-depose Mr. Magedson and the Xcentric  
5 Rule 30(b)(6) witness to the extent questions are not  
6 being answered based on a potential protective order.  
7 MR. GINGRAS: That objection had nothing  
8 to do with a protective order.

20. 173. Your letter refers to a question about whether *Mobilisa* requires a subpoena and states, "Mr. Magedson refuses to answer even though he knows what a subpoena is." This appears to refer to an exchange which took place on page 172:3-22 of the final transcript.

Your letter does not accurately describe this exchange. Mr. Magedson did not "refuse to answer" – he simply explained that he was not a lawyer and did not know what *Mobilisa's* exact requirements were.

In any event, this line of questioning was inappropriate to the extent it asked Mr. Magedson to prove a legal opinion or express opinions about what the law does or does not require. In addition, these questions have nothing to do with Plaintiffs' extortion claims and are subject to the discovery stay.

3 Q Do you think complying with Mobilisa requires  
4 a subpoena?  
5 MR. GINGRAS: Objection. Calls for a  
6 legal conclusion.  
7 THE WITNESS: I'm not -- I'm not a  
8 lawyer. He took the words out of my mouth. I'm not a  
9 lawyer. There's no way that I can properly answer that  
10 question.  
11 Q BY MS. BORODKIN: Do you know what a subpoena  
12 is?  
13 A Yes.  
14 Q Do you think complying with Mobilisa has  
15 anything to do with a subpoena?  
16 MR. GINGRAS: Same objection.  
17 THE WITNESS: You know, I don't know if  
18 a subpoena is involved with if you comply with  
19 Mobilisa. I have no idea what comes first, the chicken  
20 or the egg in this case. And I don't know.  
21 Q BY MS. BORODKIN: Who would know?  
22 A My attorney.

21. 178. Your letter refers to a question about Rule 11; the actual Q&A took place on pages 178:21-179:2 of the final transcript. There was an objection but the witness answered the question by stating he did not know the answer.

This question was asked, answered, it is not relevant to any part of Plaintiffs' extortion claims and it is therefore subject to the discovery stay.

21 Q What does Rule 11 of the Federal Rules of  
22 Civil Procedure say?  
23 MR. GINGRAS: Objection. Calls for a  
24 legal conclusion.  
25 THE WITNESS: You know, one would think  
1 by now I would know all these laws with what I've been

2 through, but -- I've heard of it, but I have no clue.

### **Document Production**

Page 3 of your letter sets forth a series of documents which you requested in a subpoena dated June 4, 2010. This subpoena was objected to on June 8, 2010. Because an objection was made to the subpoena, unless and until you move to compel, Defendants are under no obligation to produce any of the requested documents at this time.

Nevertheless, our position with respect to each request is as follows (and to be clear – the objections stated here are not intended to be comprehensive):

1. Emails re: CAP price quotes....

**Response:** Plaintiffs have already received these from Tina Norris.

2. CAP rate sheet...

**Response:** Plaintiffs have already received this from Tina Norris

3. Second questionnaire sent to CAP applicants....

**Response:** Plaintiffs have already received this from Tina Norris

4. Sample CAP agreement

**Response:** This is irrelevant to Plaintiffs' claims; Plaintiffs did not join CAP.

5. Example of typical response by successful CAP applicant to "Second Questionnaire"

**Response:** The request is vague insofar as there is no such thing as a "typical" response. In addition, this is irrelevant to Plaintiffs' claims; Plaintiffs did not join CAP.

6. Documents showing the recorded messages played to Raymond Mobrez when he called Ripoff Report...

**Response:** Defendants have no such documents. Defendants do not know exactly what menu choices were selected by Mr. Mobrez at the time he called (only Mr. Mobrez knows this). If Plaintiffs wish to review the phone menu recordings on Xcentric's voicemail system, they may do so by calling (602) 359-4357.



7. Documents showing the new message which explains that calls may be recorded.

**Response:** Defendants have no such documents. If Plaintiffs wish to review the phone menu recordings on Xcentric's voicemail system, they may do so by calling (602) 359-4357.

8. Documents sufficient to show the date Xcentric changed its outgoing message to inform callers that calls may be recorded.

**Response:** Irrelevant; Defendants agree that callers were not notified that calls may be recorded at the time Mr. Mobrez called the site in April/May 2009. In addition, Defendants have no documents showing the date the change was made. This change was requested by phone at some time after the calls by Mr. Mobrez.

9. Documents showing a "typical request from a person to be enrolled in CAP ..."

**Response:** The request is vague insofar as there is no such thing as a "typical" request. In addition, Plaintiffs have already received an example of this from Tina Norris.

**VERY TRULY YOURS,**



David Gingras, Esq.

cc: Maria Crimi Speth, Esq.