



Lisa Borodkin <lborodkin@gmail.com>

AEI et al. v. Xcentric (C.D. Cal. 10-cv-1360) Draft Rule 26f Report

Lisa Borodkin <lborodkin@gmail.com>

Sun, May 2, 2010 at 2:22 PM

To: "<david@ripoffreport.com>" <david@ripoffreport.com>

Cc: Lisa Borodkin <lisa_borodkin@post.harvard.edu>, Maria Crimi Speth <mcs@jaburgwilk.com>, Daniel Blackert <blackertesq@yahoo.com>, "alexandra@asiaecon.org" <alexandra@asiaecon.org>, "kristi@asiaecon.org" <kristi@asiaecon.org>

Hi David,

We can agree to keep the date/time/location of the deposition confidential. I included the date in the draft 26f report so you may want to revise that not to identify the date.

We got the protective order last Thursday. Our deposition of our client is not for a couple weeks. We will get comments to you before Mr. Magedson's deposition.

We will produce evidence relating to computation of damages. I haven't looked closely at the subpoena but I expect you have also asked for such information for Mr. Mobrez's deposition this Friday. We will gather and produce what we have starting this week, whether pursuant to our Rule 26a disclosures or the deposition subpoena.

Generally I anticipate the computation of damages to include, without limitation, money invested in building the business before the alleged injury - that is, investments in the infrastructure, space leased, planning, promotion in reliance on future return.

Likewise, please voluntarily disclose to us all evidence you intend to use in your motion for summary judgment except for evidence to be developed specifically in this case.

As the Court's minutes of the proceedings on April 19 clearly stated that the trial would be on extortion only, we ask that you reconsider our proposal to bifurcate discovery and limit your motion to extortion only. We have ordered the expedited transcript and will give it to you as soon as we get it.

If you are planning to file a motion for summary judgment on all claims, I would request that you give plaintiffs reasonable time to review the deposition of your client and include discussion of that evidence in your pre-filing meet and confer conversation.

I do believe that there would be time to bring at least one discovery motion before trial, whether to compel or for a protective order. I would propose that we try to get together and bring all such motions at once, so as to avoid having to go to Magistrate Walsh piecemeal.

We will take care of the corporate disclosure statement as well.

Lisa

On May 2, 2010, at 1:53 PM, "David Gingras" <david@ripoffreport.com> wrote:

Lisa,

Thanks; we will review this and get you our input on Monday.

Some unrelated housekeeping issues:

1.) I still have received no disclosure whatsoever from AEI or Mr. Mobrez or Ms. Llaneras regarding a computation of damages as required by Rule 26(a)(1)(A)(iii). As this disclosure is already overdue, I will repeat our position as stated to Dan – given the expedited nature of this case which occurred entirely at plaintiffs' request, there is simply no excuse for the plaintiffs to miss deadlines on crucial issues. You told the court two weeks ago that you were ready to take this case to trial immediately, so disclosure on basic matters such as damages should be a non-issue.

Normally, when important discovery is missing as is the case here, I would meet and confer with opposing counsel in anticipation of bring a Motion to Compel under Rule 37. Here, there is simply not enough time to go that route given our impending trial date.

As such and as I already indicated to Dan, Xcentric plans to bring a Motion for Summary Judgment as soon as possible; hopefully within no more than 2 weeks. If plaintiffs have still not complied with their disclosure obligations on or before the date that motion is filed, I will ask the court to refuse to consider any non-disclosed evidence as required under Rule 37(c)(1). Because damages are a mandatory element of your RICO claims, the continued failure to disclose evidence of damages will require the court to enter summary judgment in favor of Xcentric as to those claims. If this is acceptable to you, then I agree no further disclosure of damages is needed.

2.) I was looking at the docket recently and I do not believe that plaintiffs have filed a corporate disclosure statement as required by Rule 7.1. This is a minor but important point, so please comply with your obligations under the rule.

3.) I have not received any substantive response from you or Dan regarding my email last Thursday which included a draft protective order and which asked for assurances from you that the date/time/place of Mr. Magedson's deposition has not been disclosed to any third parties. As I stated before, the protective order itself is not urgent insofar as it relates to the production of documents since we don't yet know what documents plaintiffs are seeking.

However, the protective order is crucial as it relates to the confidentiality of Mr. Magedson's deposition. This is a serious security concern for Mr. Magedson, so we need to address this prior to his deposition. Please let me know where you stand on that issue, and just so we're clear – if you agree to keep all information about the date/time/location of the deposition confidential, and if you agree to keep the contents confidential until such time as a protective order is actually entered, then I believe our concerns will be resolved. On the other hand, if you are not willing to agree to these terms, then the deposition will not take place until an appropriate protective order has been entered.

I looking forward to hearing from you re: the above points.

David Gingras, Esq.

General Counsel

Xcentric Ventures, LLC

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

David@RipoffReport.com

<image001.jpg>

PO BOX 310, Tempe, AZ 85280

Tel.: (480) 668-3623

Fax: (480) 639-4996

From: lborodkin@gmail.com [mailto:lborodkin@gmail.com] **On Behalf Of** Lisa Borodkin

Sent: Saturday, May 01, 2010 5:05 PM

To: david@ripoffreport.com; Maria Crimi Speth

Cc: Daniel Blackert; alexandra@asiaecon.org; Kristi Jahnke

Subject: AEI et al. v. Xcentric (C.D. Cal. 10-cv-1360) Draft Rule 26f Report

David,

I am not sure if you got the email version of this on Friday. Here is a confirming letter and our draft Rule 26f report.

For your convenience, I am sending the draft report in Word as well as PDF. If you'd like to make changes or additions, feel free to do so directly in the document.

Lisa

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Lisa J. Borodkin

lisa@lisaborodkin.com

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