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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' REPLY
MEMORANDUM AND
SUPPLEMENTAL DECLARATION
OF LISA J. BORODKIN IN
FURTHER SUPPORT OF *EX*
PARTE MOTION (1) UNDER RULE
56(f) TO DENY OR CONTINUE
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT TO
CONDUCT FURTHER
DISCOVERY AND (2)
COMPELLING DEFENDANT ED
MAGEDSON TO APPEAR FOR
DEPOSITION WITH DOCUMENTS
AND (3) FOR SANCTIONS UNDER
LOCAL CIVIL RULES 37-4 AND
83-7**

Judge: The Hon. Stephen V. Wilson

Date: July 9, 2010 or t.b.a.
Place: 312 North Spring Street
Los Angeles, California 90012
Courtroom: 6

Summary Judgment Hearing Date:
July 12, 2010
Pretrial Conference: August 2, 2010
Trial Date: August 3, 2010

1 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs are seeking to continue the deposition of Defendant Edward
3 Magedson, as Ordered by this Court on June 24, 2010. DN-82: “Plaintiffs may
4 continue the deposition of Defendant Magedson, as discussed at the hearing.” DN-
5 82 (emphasis added), to have the pending Motion for Summary Judgment denied
6 in order to take that further discovery, and sanctions, if appropriate.

7 Such a continuation is necessary both because the Court ordered it
8 [DN-82], and because Defendant Xcentric Ventures, LLC (“Xcentric”) previously
9 failed to produce a prepared witness on certain topics in the Rule 30(b)(6) Notice
10 of Deposition. See Supplemental Declaration of Lisa J. Borodkin (“Borodkin
11 Dec.”) at ¶3, Ex. 38.

12 **1. Plaintiffs Have Diligently Pursued Narrow, Relevant, Focused**
13 **Discovery.**

14 Defendants argue in their Opposition that Plaintiffs have failed to
15 pursue discovery diligently. Plaintiffs have been diligent, but narrowly focused on
16 the issues for trial.

17 On May 28, 2010, Plaintiffs served a Deposition Notice to Xcentric
18 under Rule 30(b)(6) solely on the trial topics. See Borodkin Dec. ¶3, Ex. 38. One
19 June 4, 2010, two days after the Rule 30(b)(6) deposition on June 2, 2010,
20 Plaintiffs served a deposition document subpoena. Borodkin Dec. ¶5, Ex. 40.
21 After the June 8, 2010 Deposition of Defendant Magedson, Plaintiffs served
22 Requests for Admission tailored to the testimony. Borodkin Dec. ¶ Ex. 44.

23 On June 4, 2010, Plaintiffs moved to compel the deposition of
24 Defendant Magedson. DN-52. Since June 24, 2010, Plaintiffs have been
25 attempting to obtain cooperation with this Court’s Order permitting continuation of
26 that deposition. DN-82.

27 To the extent that Defendants present CAP as a legitimate business, as
28 in the April 19, 2010 hearing before this Court, see Borodkin Dec. Ex. 1, none of

1 this should be necessary. Defendants should have produced such materials in their
2 Initial Rule 26(a) Disclosures or supplements thereto. However, Defendants have
3 been fighting those obligations and trying to keep deadlines vague since the
4 beginning, even telling Plaintiffs not to meet and confer on Initial Rule 26(a)
5 Disclosures, notwithstanding this Court's Order. See Borodkin Dec. ¶¶ 3-5, Exs.
6 1, 2.

7 Defendants did not identify relevant material (such as the recordings)
8 in their Initial Disclosures, have never supplemented them, and instead have waged
9 this war on two fronts. Instead of cooperating by identifying the recordings (which
10 would have saved everyone time and mitigated their own purported damages),
11 Defendants propounded burdensome, overbroad discovery not relevant to the
12 bifurcated trial, which took an Order from this Court to stay. See DN-82 at 1-2
13 (bifurcating discovery to match trial).

14 The rest of Plaintiffs' efforts to obtain the bare essentials in evidence
15 for the trial are set forth at length in the rest of this application. Plaintiffs have
16 been diligent, but are prepared to go to trial on August 3, 2010 with the current
17 state of the record nonetheless.

18 **2. Plaintiffs Are Entitled to a Continued Deposition of Edward**
19 **Magedson on Relevant Rule 30(b)(6) Topics Based on Xcentric's**
20 **Failure to Produce a Prepared Rule 30(b)(6) Witness Alone.**

21 Federal Rule 30(b)(6) provides:

22 ***(6) Notice or Subpoena Directed to an Organization.*** In its notice or
23 subpoena, a party may name as the deponent a public or private corporation,
24 a partnership, an association, a governmental agency, or other entity and
25 must describe with reasonable particularity the matters for examination. The
26 named organization must then designate one or more officers, directors, or
27 managing agents, or designate other persons who consent to testify on its
28 behalf; and it may set out the matters on which each person designated will
testify. A subpoena must advise a nonparty organization of its duty to make
this designation. The persons designated must testify about information

1 known or reasonably available to the organization. This paragraph (6) does
2 not preclude a deposition by any other procedure allowed by these rules.

3
4 Fed. R. Civ. Proc. 30(b)(6) (emphasis added).

5 “When a corporation . . . designates a person to testify on its behalf
6 [under Rule 30(b)(6)], the corporation appears vicariously through that agent.”

7 Resolution Trust Corp. v Southern Union Co., 985 F.2d 196 (5th Cir.), reh’g
8 denied (5th Cir. 1993):

9 “If that [Rule 30(b)(6) agent is not knowledgeable about relevant
10 facts, the corporation has failed to designate an available,
11 knowledgeable, and readily identifiable witness, then appearance is,
12 for all practical purposes, no appearance at all.”

13 Id.

14 See also Bd. of Trs. of the Leland Stanford Junior Univ. v. Tyco Int’l
15 Ltd., 253 F.R.D. 524, 526 (C.D. Cal. 2008) (companies "have a duty to make a
16 conscientious, good-faith effort to designate knowledgeable persons for Rule
17 30(b)(6) depositions and to prepare them to fully and unevasively answer questions
18 about the designated subject matter") (emphasis added); Burdick v. Union Sec. Ins.
19 Co., 2008 U.S. Dist. LEXIS 99994, 2008 WL 5102851 at * 2 (C.D. Cal. Dec. 3,
20 2008) (“The corporation then must not only produce such number of persons as
21 will satisfy the request, but more importantly, must prepare them so that they may
22 give complete, knowledgeable and binding answers on behalf of the corporation.”)
23 (citing Marker v. Union Fidelity Life Insur., 125 F.R.D. 121, 126 (M.D.N.C. 1989)

24 On May 28, 2010, Plaintiffs served a Rule 30(b)(6) Notice of
25 Deposition to Xcentric Ventures, LLC. Borodkin Dec. ¶3, Ex. 38. The Rule
26 30(b)(6) topics include:

- 27 2. The operation and management of the Corporate Advocacy
28 Program (“CAP”)
 4. Xcentric’s method of establishing the cost of CAP for its
 participants. . . .

1 6. Xcentric's methods of soliciting participants in CAP[.]”

2
3 Borodkin Dec., Ex. 38.

4 On June 2, 2010, Plaintiffs took the deposition of Defendant Xcentric
5 in Phoenix, Arizona. Xcentric's designated witness was evasive and unprepared.

6 As to Xcentric's methods of soliting participants in CAP, Xcentric's
7 agent, Defendant Magedson testified in part:

8 Q BY MR. BLACKERT: Okay. Walk me through
9 how

10 14 it -- the steps -- how it gets from the rebuttal
11 15 e-mails to the business actually becoming enrolled in
12 16 the CAP.

13 17 A You would have to ask that again.

14 18 Q Okay. Walk me through the steps after the
15 19 rebuttal e-mail that the business gets enrolled into
16 20 the CAP program.

17 21 MR. GINGRAS: Objection. I don't think
18 22 this accurately reflects his testimony.

19 23 THE WITNESS: I'm not even understanding
20 24 your question.

21 25 Q BY MR. BLACKERT: Okay. Fine. I will
22 0123

23 1 rephrase it.

24 * * *

25 6 Q BY MR. BLACKERT: You testified earlier that
26 7 you -- strike that.

27 8 You testified earlier that you send an
28 9 e-mail after -- you send an e-mail suggesting that an
29 10 individual file a rebuttal, correct, an individual at a 1
30 11 business?

31 12 A Correct.

32 13 Q What happens next?

33 14 A I can't speculate on what happens next. I
34 15 don't know what you mean. What do you mean what
35 16 happens next?

36 17 Q If the individual or business wants to go
37 18 forward with the CAP program --

19 A Okay.
20 Q -- what's your next contact with them?
21 A They want to go next?
22 Q Yes.
23 A If they say they want to join the program, I
24 send them a more detailed questionnaire about the
25 company.
1 Q Is that questionnaire different from the
2 questionnaire on your website, on Ripoff Report's
3 website?
4 A Yes.
5 Q It is different. Okay.
6 And you said it's more detailed?
7 A Yes.
8 Q How is it more detailed?
9 A It gets into -- and this is still -- they
10 haven't been approved yet.
11 Q Right.
12 A So it depends on how they answer the questions
13 to these -- to this e-mail, but there is questions
14 like, why did you get complaints? What was the cause
15 of the complaints? What improvements? I want -- I
16 want information right now, you know. How are you
17 going to make -- what improvements have you made? What
18 was -- what were the problems and what are you doing to
19 avoid those problems in the future? The name of the
20 person who will be signing the agreement. What's the
21 name of the company that the agreement's gonna be in?
22 Why do you feel -- I think it's, why do you feel -- I
23 forget. I can't.
24 Q That's fine.
25 A I can't remember. I can't remember."

Borodkin Dec., Ex. 39 (June 2, 2010 Transcript) at 122:14-124:25 (emphasis added).

“Rule 30(b)(6) implicitly requires such persons to review all matters known or reasonably available to [the organization] in preparation for the Rule 30(b)(6) deposition. This interpretation is necessary in order to make the deposition a meaningful one and to prevent the "sandbagging" of an opponent by conducting a halfhearted inquiry before the deposition but a thorough and vigorous one before the trial. This would totally defeat the purpose of the discovery process.” See Beauperthuy v. 24 Hour Fitness United States, Inc., 2009 U.S. Dist. LEXIS 104906 (N.D. Cal. Nov. 10, 2009)

Defendant Xcentric Venture LLC's failure to designate a knowledgeable or prepared designee in response to specific and understandable requests would, standing alone, justify an Order from this Court requiring it to produce a knowledgeable person and to pay plaintiff's attorneys' expenses.

Plaintiffs have, and hereby do, request that this take place in the form of a Court-supervised deposition of Defendant Magedson both as an Xcentric 30(b)(6) witness and in his own right, on July 14, 2010 – the date of the mandatory Settlement Conference before the Honorable Patrick J. Walsh -- and any costs, fees or other remedies this Court deems appropriate.

For the foregoing reasons, this motion should be granted in its entirety.

DATED: July 9, 2010

Respectfully submitted,

By: /s/ Lisa J. Borodkin
DANIEL F. BLACKERT
LISA J. BORODKIN
Attorneys for Plaintiffs,
Asia Economic Institute LLC,
Raymond Mobrez, and Iliana Llaneras

1 **SUPPLEMENTAL DECLARATION OF LISA J. BORODKIN**

2 I, Lisa J. Borodkin, declare:

3 1. I am an attorney at law, duly admitted to practice before all the
4 courts of the State of California and this Honorable Court. I am co-counsel of
5 record for Plaintiffs Asia Economic Institute LLC (“AEI”), Raymond Mobrez and
6 Iliana Llaneras (“Plaintiffs”) in this action. I have first-hand, personal knowledge
7 of the facts set forth below and, if called as a witness, I could and would testify
8 competently thereto.

9 2. This Declaration is made in further support of Plaintiffs’ *Ex*
10 *Parte* Motion (1) Under Rule 56(f) To Deny Or To Continue Defendants’ Motion
11 For Summary Judgment To Conduct Further Discovery, (2) Compelling Defendant
12 Ed Magedson To Appear For Deposition With Documents and (3) For Sanctions.

13 3. Attached hereto as **Exhibit “38”** is a true and correct copy of
14 Plaintiff AEI’s Notice of Deposition to Defendant Xcentric Ventures, LLC under
15 F.R.C.P. 30(b)(6) dated May 28, 2010.

16 4. Attached hereto as **“Exhibit “39”** are true and correct pages
17 from the June 2, 2008 Deposition of Xcentric’s 30(b)(6) witness where Plaintiffs
18 call for production of documents relevant to the RICO extortion trial, including
19 emails in which Xcentric quotes prices for CAP (35:8-10), the CAP rate sheet and
20 Second Questionnaire, and the CAP Agreement (149:10-11) and the rate sheet for
21 CAP (150:15-16). Defendants’ counsel states on the record:

22 “Just to be clear, if you are making verbal requests for production of
23 documents, I don’t recognize that as being a legitimate request into
24 the rules. If you want to make a written request we’ll happily look at
25 those when and if you do that.”

26 Ex. 39 (150:17-21) (emphasis added).

27 5. Attached hereto as **“Exhibit 40”** is a true and correct copy of
28 Plaintiff AEI’s Subpoena to Defendant Edward Magedson to Produce Documents,
Information, or Objects or to Permit Inspection of Premises in a Civil Action dated

1 June 4, 2010 (“June 4, 2010 Deposition Document Subpoena”), seeking, among
2 other things, the Second Questionnaire and CAP Agreement.

3 6. Attached hereto as **“Exhibit 41”** is a true and correct copy of
4 Plaintiff AEI’s Notice of Deposition to Defendant Edward Magedson dated June 7,
5 2010.

6 7. Attached hereto as **“Exhibit 42”** is a true and correct copy of
7 Defendants’ email objections to the June 4, 2010 Deposition Document Subpoena,
8 dated June 8, 2010.

9 8. Attached hereto as **“Exhibit 43”** are true and correct copies of
10 relevant pages from the transcript of the June 8, 2010 deposition of Edward
11 Magedson, in which Plaintiffs’ counsel states:

12 “MS. BORODKIN: That’s okay. I’m still saying, even though
13 we may conclude today’s deposition, I’m not closing it in the sense
14 that plaintiffs reserve the right to seek to re-depose Mr. Magedson,
15 probably following the hearing on the motion to compel that has been
16 set for June 5th, to pick up answers that he’s not providing if there is
17 no protective order, unless Mr. Gingras would like to stipulate that we
18 can do that.”

19 Ex. 43 at 169:13-21 (emphasis added).

20 9. Attached hereto as **“Exhibit 44”** is a true and correct copy of
21 Plaintiffs’ First Set of Requests for Admissions to Defendant Xcentric Ventures,
22 LLC dated June 4, 2010 (“June 4, 2010 RFAs”).

23 10. Attached hereto as **“Exhibit 45”** is a true and correct copy of
24 Defendant Xcentric Ventures, LLC’s Responses to the June 4, 2010 RFAs, dated
25 July 6, 2010.

26 11. Attached hereto as **“Exhibit 46”** are true and correct copies of
27 relevant pages from the transcript of the June 24, 2010 hearing on discovery
28 matters before the Honorable Patrick J. Walsh, in which the Court states in part:

“THE COURT: I want him to have his deposition taken under
a Protective Order, and I want your clients’ depositions protected

1 under a Protective Order so we can get through this summer. And
2 after that we'll let the chips fall where they may."

3 Ex. 46 at 17:15-29 (emphasis added).

4 12. The Court states, consistently with Local Civil Rule 72-2.1:

5 "THE COURT: If you disagree with my Protective Order, you
6 can ask Judge Wilson to take another look at it. You have 14 days to
7 do that"

8 Ex. 46 at 17:23-25 (emphasis added).

9 13. There has been no appeal from the Order of June 24, 2010.

10 11. Attached hereto as "**Exhibit 47**" are true and correct copies of
11 relevant pages from the transcript of the June 24, 2010 hearing on discovery, in
12 which the Court states in part, "I don't need another joint stipulation. I don't need
13 to know what the law is on taking depositions" (24:18-18) and "Get me on the
14 phone if you can't work out things, and I'll try to resolve them." Tr. At 40:19-20.

15 14. Attached for the Court's ease of reference as "**Exhibit 48**" is
16 the entire transcript of the June 24, 2010 proceedings on discovery matters before
17 the Honorable Patrick J. Walsh.

18 I declare under penalty of perjury under the laws of the State of
19 California and the United States of America that the foregoing is true and correct.

20 Executed this 9th day of July, 2010, in Los Angeles, California.

21
22 /s/ Lisa J. Borodkin
23 Lisa J. Borodkin
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on July 9, 2010, I electronically transmitted the document:

**“PLAINTIFFS’ REPLY MEMORANDUM AND SUPPLEMENTAL
DECLARATION OF LISA J. BORODKIN IN FURTHER SUPPORT
OF *EX PARTE* MOTION (1) UNDER RULE 56(f) TO DENY OR
CONTINUE DEFENDANTS’ MOTION FOR SUMMARY
JUDGMENT TO CONDUCT FURTHER DISCOVERY AND (2)
COMPELLING DEFENDANT ED MAGEDSON TO APPEAR FOR
DEPOSITION WITH DOCUMENTS AND (3) FOR SANCTIONS
UNDER LOCAL CIVIL RULES 37-4 AND 83-7”**

**to the Clerk’s Office for the United States Court for the Central District of
California using the CM/ECF system for filing and for transmittal of a Notice of
Electronic Filing to the following CM/ECF registrants:**

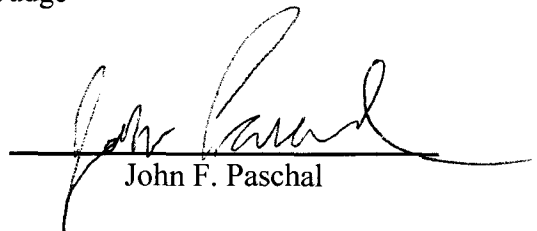
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And a courtesy copy of the forgoing delivered to:

Honorable Stephen V. Wilson
United States District Judge


John F. Paschal