

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SMALL JUSTICE, LLC and
RICHARD A. GOREN,

Plaintiffs,

v.

XCENTRIC VENTURES, LLC,

Defendant.

Case No. 1:13-CV-11701

**AFFIDAVIT OF DAVID S. GINGRAS
IN SUPPORT OF DEFENDANT
XCENTRIC VENTURES, LLC'S
MOTION TO DISMISS**

1. My name is David Gingras. I am a United States citizen, a resident of the State of Arizona, am over the age of 18 years, and if called to testify in court or other proceeding I could and would give the following testimony which is based upon my own personal knowledge.

2. I am an attorney licensed to practice law in the States of Arizona and California, I am an active member in good standing with the State Bars of Arizona and California and I am admitted to practice and in good standing with the United States Court of Appeals for the Sixth and Ninth Circuits, the United States District Court for the District of Arizona, and the United States District Court for the Northern, Central, and Eastern Districts of California.

3. I have represented Xcentric Ventures, LLC ("Xcentric") in numerous matters since 2005 through the present. In addition, from July 2009 through July 2013, I was employed as Xcentric's general counsel. As Xcentric's general counsel, I was closely involved with and personally responsible for various legal decisions relating to

the operation of the Ripoff Report website. Among other things, my duties as general counsel included preparing and occasionally updating the Terms of Service (“TOS”) for the Ripoff Report website.

4. Xcentric operates a website located at www.RipoffReport.com (the “Ripoff Report”) which is an online consumer advocacy forum that allows users to post free complaints called “reports” about companies and/or individuals who they feel have wronged them in some manner. Subjects of reports are also allowed to post a free response—known as a “rebuttal”—explaining their side of the story. Since it was founded in 1998, the Ripoff Report site has received more than 1.6 million unique user-submitted reports and tens of millions of responses/rebuttals.

5. Before a user is allowed to post anything, they are required to create a free account with the Ripoff Report site. As part of this process users must affirmatively accept and agree to Xcentric’s Terms of Service. A true and correct copy of Xcentric’s current TOS is attached hereto as Exhibit A. This version of the TOS has been used continuously on the Ripoff Report website since April 8, 2010.

6. Section 6 of Xcentric’s Terms of Service provides as follows:

6. Proprietary Rights/Grant of Exclusive Rights

By posting information or content to any public area of www.RipoffReport.com, you automatically grant, and you represent and warrant that you have the right to grant, to Xcentric an irrevocable, perpetual, fully-paid, worldwide exclusive license to use, copy, perform, display and distribute such information and content and to prepare derivative works of, or incorporate into other works, such information and content, and to grant and authorize sublicenses of the foregoing. (emphasis added)

7. Users who do not agree to Xcentric's Terms of Service are prohibited from posting any content on the Ripoff Report site.

8. In addition to drafting and revising the Terms of Service, as Xcentric's general counsel I was also responsible for, among other things, registering and occasionally updating Xcentric's copyrights with the United States Copyright Office.

9. On March 7, 2012 on behalf of Xcentric, I prepared and submitted a supplemental copyright registration which applied to all new content posted on the Ripoff Report website from January 1, 2012 to March 7, 2012. This registration was a supplement to an earlier original copyright registration that I filed on behalf of Xcentric in 2008 which applied to all third-party content posted on the Ripoff Report website at that time.

10. After submitting the supplemental registration in March 2012 to the U.S. Copyright Office, I received a Certificate of Registration for that work bearing Reg. No. TX 7-491-670. A true and correct copy of the Certificate of Registration for this work is attached hereto as Exhibit B. Again, this registration applied to all new content posted on the Ripoff Report website from January 1, 2012 to March 7, 2012.

11. I have personally reviewed the Complaint filed in this matter by Plaintiffs Small Justice, LLC and Richard Goren (collectively, "Mr. Goren"). I understand from reviewing the Complaint and also from previous correspondence I exchanged with Mr. Goren that this case involves a single report posted on the Ripoff Report website on January 31, 2012 entitled: "Complaint Review: Richard A. Goren".

12. As is true of all reports posted on the Ripoff Report website, the report concerning Mr. Goren was automatically assigned a “report number” by Xcentric’s servers at the time the report was uploaded to the site. I understand from reviewing the Complaint and also from previous correspondence I exchanged with Mr. Goren that the report at issue in this case is Report #831689.

13. A true and correct copy of Report #831689 (which includes three rebuttals) is attached hereto as Exhibit C.

14. As is true of all reports appearing on Xcentric’s website, Report #831689 contains a footer immediately following the report. This footer includes certain information about the location of the report including the date/time it was first posted on the site. This footer also includes the following text: “Ripoff Report has an exclusive license to this report. It may not be copied without the written permission of Ripoff Report.”

15. This footer was automatically added to every report appearing on the Ripoff Report website beginning in mid-2010. Since that time, the same footer has appeared immediately after all existing and all new posts on the Ripoff Report website including Report #831689.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United State of America that the foregoing is true and correct.

Executed on August 8, 2013.



David Gingras