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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 XCENTRIC VENTURES, LLC, an
11 Arizona limited liability company,

11 Plaintiff,

12 vs.

13 MICHAEL ROBERTS, d/b/a
14 AuthorizedStatement.org; KIRILL U.
15 VIKTOROVICH; A BHAR SONS,
16 LTD., a Seychelles corporation d/b/a
17 BadForPeople.org; COMMON
18 DECENCY, INC., an Iowa corporation,

17 Defendants.

Case No. CV2013-012936

**DEFENDANTS MICHAEL ROBERTS
AND COMMON DECENCY, INC.'S,
MOTION FOR SUMMARY
JUDGMENT**

(Assigned to Honorable Randall Warner)

18 Defendants Michael Roberts (“Roberts”) and Common Decency, Inc. (“Common
19 Decency”) (collectively, “Boycotters”), by and through undersigned counsel, and
20 pursuant to Rule 56(c), *Ariz.R.Civ.P.*, hereby move for summary judgment on the claims
21 asserted by Plaintiff Xcentric Ventures, LLC.

22 Plaintiff operates a website on which a person posted false and defamatory
23 statements about Roberts. Roberts, in turn, formed Common Decency for the purpose of
24 organizing a boycott against Plaintiff. The Boycotters communicated factually accurate
25 information to third parties that did business with Plaintiff. These third parties were
26 horrified to learn about the nature of Plaintiff’s business and promptly cancelled their
27 contracts with Plaintiff, whereupon Plaintiff sued Boycotters for wrongful interference
28 with contract and business expectancies. Plaintiff does not seek money damages; instead

1 Plaintiff wants an injunction prohibiting Boycotters from speaking to anyone about
2 Plaintiff.

3 The Court should grant summary judgment because the parties agree on all
4 material facts, and the law clearly holds that Boycotters' conduct is not actionable. The
5 First Amendment protects Boycotters' right to say true things, offer their opinions, and
6 encourage other people to stop doing business with Plaintiff. There is nothing wrongful
7 about such conduct, and Arizona case law specifically holds that boycotts may not form
8 the basis of a wrongful interference claim. Also, Plaintiff is a public figure, which
9 requires it to demonstrate that Boycotters acted with actual malice, and in this case
10 Plaintiff has neither alleged nor established actual malice.

11 This Motion is supported by the following Memorandum of Points and
12 Authorities, the concurrently filed Separate Statement of Facts ("SSOF"), and the Court's
13 entire case file.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. FACTS.**

16 Plaintiff operates the website ripoffreport.com, where people can post complaints
17 about companies and individuals. SSOF ¶ 1. When a complaint about a person is posted
18 on Plaintiff's website, that complaint will often become the first result that appears in an
19 internet search for the person's name. SSOF ¶ 2. Plaintiff does not verify whether the
20 complaints are true. SSOF ¶ 3. Plaintiff also refuses to remove a complaint from its
21 website under any circumstances. SSOF ¶ 4. Plaintiff claims that it cannot be held liable
22 for hosting false and defamatory webpages because it is protected by Section 230(c) of
23 the Communications Decency Act of 1996, a federal statute that protects websites from
24 liability for false material authored by third parties. SSOF ¶ 5.

25 Plaintiff knowingly hosts false and defamatory material on its website, including
26 false and defamatory material about Roberts, his family members, businesses, business
27 associates, and minor children. SSOF ¶ 6. Even if a complaint is demonstrably false and
28 harmful, Plaintiff will not remove it, and will actively oppose any attempts to force it to

1 remove content. SSOF ¶ 7. Instead, Plaintiff offers a “Corporate Advocacy Program”
2 (the “CAP program”). SSOF ¶ 8. If a person signs up for the CAP program, Plaintiff
3 will “investigate” the complaint and post a disclaimer that the complaint is untrue in
4 exchange for a sum of between \$5,000 and \$25,000 initially, and then hundreds or
5 thousands of dollars per month perpetually thereafter. SSOF ¶ 9. The result of Plaintiff’s
6 business is a website where people can post false and horribly damaging things against
7 other people, and the victims have to choose between living life with a ruined reputation
8 or paying Plaintiff’s monthly extortion fee. SSOF ¶ 10.

9 Plaintiff has been sued many times, and there are quite a few published decisions
10 condemning its business model. The Florida Court of Appeals stated

11
12 The business practices of Xcentric, as presented by the
13 evidence before this Court, are appalling. Xcentric appears
14 to pride itself on having created a forum for defamation. No
15 checks are in place to ensure that only reliable information is
16 publicized. Xcentric retains no general counsel to determine
17 whether its users are availing themselves of its services for
18 the purpose of tortious or illegal conduct. Even when, as
19 here, a user regrets what she has posted and takes every effort
20 to retract it, Xcentric refuses to allow it. Moreover,
21 Xcentric’s ... policy is never to remove a post... However
22 much as this Court may disapprove of business practices like
23 those embraced by Xcentric, the law on this issue is clear.
24 Xcentric enjoys complete immunity from any action brought
25 against it as a result of the postings of third party users of its
26 website.

22 *Giordano v. Romeo*, 76 So. 3d 1100, 1102 (2011). SSOF ¶ 11. Similarly, the Seventh
23 Circuit Court of Appeals issued an opinion recognizing that although Plaintiff’s website
24 knowingly hosts demonstrably false material that has destroyed people’s lives, Plaintiff
25 cannot be forced to remove the content because of the way in which the Communications
26 Decency Act was written. *Blockowicz v. Williams*, 630 F.3d 563, 569 (7th Cir. 2010).
27 SSOF ¶ 12. Political pundit Bill O’Reilly recently hosted a show wherein Plaintiff’s
28 website was selected as the worst website in America. SSOF ¶ 13.

1 Several years ago a third party posted several defamatory reports about Roberts on
2 Plaintiff's website. SSOF ¶ 14. The reports stated that Roberts was a child molester and
3 computer hacker who operated a fraudulent company and violated federal laws by
4 vandalizing websites. SSOF ¶ 15. Whenever someone did a Google search for "Michael
5 Roberts," the first results were links to these reports. SSOF ¶ 16. This had a very
6 damaging effect on Roberts' reputation and destroyed his business. SSOF ¶ 17.

7 Roberts communicated with Plaintiff to determine whether it would remove the
8 false reports, but Plaintiff refused to take any action. SSOF ¶ 18. The county attorney
9 for Sac County Iowa later determined in a criminal investigation that the person who
10 posted this and other reports about Roberts is in fact Darren Mitchell Meade. Meade has
11 been indicted and is awaiting trial [02811 FECR012634 (Iowa)]. Sac County Attorney
12 Ben Smith, according to his court filings, discovered that Plaintiff has paid Meade in
13 excess of \$90,000.00 since the Boycotters launched their boycott against Plaintiff. SSOF
14 ¶ 19. Roberts refused to pay Plaintiff's fee, which he considers to be extortion and/or
15 "emotional terrorism." SSOF ¶ 20. Roberts' research showed him that he had no legal
16 recourse against Plaintiff, so he had to find a different way to clear his name. SSOF ¶
17 21. Roberts ultimately turned to the only avenue available to him: a consumer boycott.
18 SSOF ¶ 22.

19 Roberts incorporated Common Decency to organize and operate the boycott.
20 SSOF ¶ 23. Common Decency created and began publishing on two websites,
21 AuthorizedStatement.org and BadForPeople.com. SSOF ¶ 24. The websites contain true
22 information about Plaintiff and quotes from published court opinions that condemned
23 Plaintiff's business practices. SSOF ¶ 25. Roberts also posted emphatically worded
24 opinions about Plaintiff's business practices which were rationally based on his
25 experience as one of its victims. SSOF ¶ 26. Boycotters also sent an email to companies
26 that did business with Plaintiff. SSOF ¶ 27. Boycotters explained that in their opinion
27 Plaintiff was a bad company that had harmed a lot of people, and Boycotters encouraged
28 the recipients to stop doing business with Plaintiff. SSOF ¶ 28. Boycotters further stated

1 that any entity that continued to do business with Plaintiff would be boycotted as well.
2 SSOF ¶ 29.

3 The boycott is expressly political. SSOF ¶ 30. Roberts launched the boycott with
4 the aim of promoting public awareness about Plaintiff's abuse of the Communications
5 Decency Act. SSOF ¶ 31. He hopes the boycott will result in Congressional action
6 modifying or limiting the application of the Communications Decency Act. SSOF ¶ 32.
7 At the very least, Roberts hoped that the boycott would apply pressure on Plaintiff to stop
8 exploiting the Communications Decency Act as a weapon to be used against the public
9 for its own personal profit, and would encourage Plaintiff to put a procedure in place
10 whereby innocent victims could clear their names without paying Plaintiff up to \$300,000
11 per year. SSOF ¶ 33.

12 Some of the companies that Boycotters contacted were horrified to learn about
13 Plaintiff's conduct and promptly terminated their relationships with Plaintiff. SSOF ¶ 34.
14 Plaintiff responded by filing this lawsuit against Boycotters. SSOF ¶ 35. Plaintiff does
15 not seek any money damages. SSOF ¶ 36. Instead, Plaintiff seeks an injunction
16 prohibiting Boycotters from continuing the boycott. SSOF ¶ 37.

17 The First Amended Complaint states that Plaintiff has been an advisor to "the FBI,
18 the FTC, the US Postal Inspection Service, Homeland Security, the SEC, and various
19 Attorney Generals, [sic] as well as local and state authorities." SSOF ¶ 38. Plaintiff states
20 that it has worked with "every network and most local affiliates and to every major TV
21 News Magazine including Dateline, 20/20, 48 Hours, 60 Minutes, Inside Edition, W2
22 Canada, CNN, along with most major newspapers including, NY Times, Wall Street
23 Journal, Forbes, Money, Inc. and hundreds of others." SSOF ¶ 39. Plaintiff further states
24 that its services have proven "important to government and media agencies." SSOF ¶ 40.
25 There have been over eight billion visits to Plaintiff's website. SSOF ¶ 41.

26 In the First Amended Complaint Plaintiff alleges that Defendant Kirill Viktorovich
27 went further than Boycotters by posting fictitious reviews of Plaintiff's customers on the
28 website scamgroup.com. SSOF ¶ 42. Boycotters did not participate in any of the

1 scamgroup.com activity. SSOF ¶ 43. Boycotters have no affiliation with Viktorovich or
2 scamgroup.com. SSOF ¶ 44. Boycotters never posted any information on
3 scamgroup.com. SSOF ¶ 45. Boycotters did not collude with any person to cause a post
4 on scamgroup.com. SSOF ¶ 46. Nor did Boycotters ever cross the line into disparaging
5 Plaintiff's customers on grounds other than their association with Plaintiff and its
6 appalling business practices. SSOF ¶ 47.

7 Despite the fact that this case has been in litigation for fifteen (15) months,
8 Plaintiff has not produced any evidence linking Boycotters to Viktorovich or
9 scamgroup.com. This Court recognized the lack of evidence tying Boycotters to
10 scamgroup.com nearly a year ago, in its order denying Plaintiff's application for a
11 preliminary injunction. SSOF ¶ 48. The Court held that there is "insufficient evidence
12 that Mr. Roberts owns scamgroup.com." SSOF ¶ 49. And the Court recognized that "the
13 circumstantial evidence presented at the hearing is not enough to show that Mr. Roberts
14 owns or operates scamgroup.com." SSOF ¶ 50.

15 Despite the fact that over a year has passed since that order was issued, Plaintiff
16 still has not identified any evidence supporting a relationship between Boycotters and
17 scamgroup.com. This evidence Boycotters' own denial of involvement with Viktorovich
18 and scamgroup.com, and the uncontroverted evidence that Boycotters are not responsible
19 for that website—the only one that arguably exceeded the bounds a constitutionally
20 protected consumer boycott—demands a summary judgment.

21 **II. LEGAL ARGUMENT.**

22 The First Amendment is an absolute defense for Boycotters because the boycott
23 consists exclusively of speech protected by the First Amendment. "[W]hen a claim of
24 tortious interference with business relationships is brought as a result of constitutionally-
25 protected speech, the claim is subject to the same first amendment requirements that
26 govern actions for defamation." *Gardner v. Martino*, 563 F.3d 981, 992 (9th Cir. 2009).
27 Two important First Amendment doctrines protect Boycotters in this case.

28

1 First, the First Amendment specifically protects consumer boycotts from tortious
2 interference claims. The rule protects Boycotters from Plaintiff's tortious interference
3 claims, because these claims are based on nothing more than a consumer boycott. Second,
4 as a public figure, Plaintiff must prove actual malice to hold Boycotters liable for
5 allegedly tortious speech. Plaintiff has not disclosed any evidence of actual malice. In
6 fact, Plaintiff has not even alleged that Boycotters acted with actual malice.

7 Arizona tort policy is consistent with these First Amendment standards, and
8 liability attaches only to interference which is improper. Arizona law does not regard a
9 consumer boycott as improper, so Boycotters are entitled to summary judgment based on
10 the common law elements of tortious interference as well.

11 **A. The First Amendment protects consumer boycotts.**

12 Plaintiff's claims for tortious interference fail because it cannot prove that
13 Boycotters did anything other than organize a consumer boycott. The First Amendment
14 protects boycotts and the speech associated with them. Boycotts invoke "the kind of
15 'uninhibited, robust and wide open' debate on public issues that lies at the core of the first
16 amendment." *State v. Steiger*, 162 Ariz. 138, 145, 781 P.2d 616, 623 (App. 1989)
17 (citation omitted). Because of that, an appeal to friends, associates, or the general public
18 stop dealing with a business that has injured an activist in some manner "cannot fairly be
19 termed an interference" with a plaintiff's business expectancy. *Truax v. Bisbee Local*,
20 *No. 380*, 19 Ariz. 379, 390, 171 P. 121, 125 (1918). And the fact that speech may carry
21 economic consequences does not mitigate the speaker's First Amendment protection.
22 *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971) ("The claim that the
23 expressions were intended to exercise a coercive impact on respondent does not remove
24 them from the reach of the First Amendment.")

25 The leading United States Supreme Court case analyzing the First Amendment
26 protection afforded to boycotts is *N.A.A.C.P. v. Claiborne Hardware Company*. 458 U.S.
27 886 (1982). The Supreme Court held that the First Amendment protected the speech
28

1 associated with a consumer boycott and struck down a state court judgment finding the
2 boycotters liable for tortious interference. *See generally, id.*

3 In *Claiborne*, the defendants were black citizens boycotting white merchants in
4 their community. The defendants included a group of “black hats” who monitored the
5 boycotted merchants and recorded the names of blacks who patronized them. *Id.* at 903-
6 04. The boycotters then disciplined boycott violators by reading their names aloud in
7 NAACP meetings and publishing their names in a newspaper called the “Black Times.”
8 *Id.* They were branded as “traitors” to the black cause and socially ostracized for trading
9 with whites. *Id.* at 904. The *Claiborne* boycotters also used speeches with hysterical
10 rhetoric to encourage participation in the boycott. For example, one organizer warned his
11 audience that if they failed to honor the boycott: “we’re gonna break your damn neck.”
12 *Id.* at 903-04.

13 The United States Supreme Court held that the First and Fourteenth Amendments
14 to the United States Constitution preclude a court from imposing liability based on this
15 boycott. The court explained that encouraging the boycott “through public address and
16 through personal solicitation” involved “speech in its most direct form.” *Id.* at 909.
17 Shaming someone into honoring the boycott, for instance, by reading or publishing his
18 name, is also protected. *Id.* at 909-10. “Speech does not lose its protected character,
19 however, just because it may embarrass others or coerce them into action.” *Id.* at 910.

20 Even the speaker who said he was “gonna break your damn neck” had First
21 Amendment immunity. *Id.* at 903-04, 926-28. The statement did not rise to the level of
22 fighting words and, in context, was “an impassioned plea for black citizens to unify.” *Id.*
23 at 928. The court recognized that effective advocacy “cannot be nicely channeled in
24 purely dulcet phrases.” *Id.* Therefore, a boycott promoter “must be free to stimulate his
25 audience with spontaneous and emotional appeals for unity and action in a common
26 cause.” *Id.* So, even a threat to “break your damn neck” will be “regarded as protected
27 speech.” *Id.*

28

1 In *Environmental Planning and Information Council of Western El Dorado*
2 *County, Inc., v. Super. Ct.*, the California Supreme Court relied on *Claiborne* to reverse a
3 lower court’s denial of a defendant’s motion for summary judgment because permitting
4 a tortious interference claim against a boycotter to proceed to trial is a violation of the
5 First Amendment privilege to boycott. 680 P.2d 1086, 1087 (Cal. 1984). In that case,
6 the defendant boycotters circulated a newsletter suggesting that consumers in their
7 community call the businesses that advertised in the plaintiff’s newspaper and ask them
8 to stop advertising there. *Id.* at 1088. The boycotters did this specifically to exert
9 economic pressure on the newspaper. *Id.* at 1089. Applying *Claiborne*, the California
10 Supreme Court recognized that the First Amendment protects the defendants and allowing
11 a trial would create an improper chilling effect on First Amendment protected activity.
12 *Id.* at 1087 (“defendants’ constitutional rights of free speech which would be implicated
13 if the action were permitted to proceed.”).

14 In this case, it is undisputed that Boycotters did nothing other than organize a
15 boycott. Like the “black hat” defendants in *Claiborne*, Boycotters are accused of
16 monitoring Plaintiff, identifying its customers, and truthfully informing the public that
17 certain persons have violated the boycott. Like the defendants in *Environmental*
18 *Planning*, Boycotters have asked the public to pressure Plaintiff’s customers, hoping that
19 the lost revenue will motivate Plaintiff to change its “appalling” business practice of
20 creating a “forum for defamation” and then extorting the victims for large monthly
21 payments. *Giordano v. Romeo*, 76 So.3d 1100, 1102 (Fla. App. 3d. 2011).

22 The worst thing that Boycotters are accused of doing is threatening to destroy
23 businesses; and even that is property attributed to scamgroup.com, not to the Boycotters.
24 Notwithstanding, this rhetoric, though hyperbolic, is more tame than the *Claiborne*
25 boycotter’s threat that he was “gonna break your damn neck.” In context, this threat was
26 merely a bold prediction about the consequences of public association with Plaintiff.
27 And, even if it proved coercive, publishing truthful information about who patronizes
28 Plaintiff is a constitutionally protected activity.

1 Plaintiff has no evidence of any conduct beyond a consumer boycott, so the First
2 Amendment demands summary judgment.

3 **B. Plaintiff cannot prevail because it lacks evidence of actual malice.**

4 Plaintiff cannot hold Boycotters liable in tort for their internet communications
5 because Plaintiff is a public figure and Boycotters did not act with actual malice. A
6 plaintiff's status as a public figure is an appropriate issue for the court to decide on
7 summary judgment. *See Khawar v. Globe Int'l., Inc.*, 19 Cal.4th 254, 79 Cal.Rptr.2d 178,
8 965 P.2d 696, 701 (Cal. 1998) ("At trial, whether a plaintiff in a defamation action is a
9 public figure is a question of law for the trial court."). Anyone who "assume[s] a role of
10 public prominence with respect to a matter of public concern" is a public figure. *Dombey*
11 *v. Phoenix Newspapers, Inc.*, 150 Ariz. 476, 483, 724 P.2d 562, 569 (1986).
12 Independently, a person may become a public figure if his "position with respect to
13 matters of public concern gives him access to the media on a regular and continuing
14 basis." *Id.*, quoting *Hutchinson v. Proxmire*, 443 U.S. 111, 135 (1979).

15 Plaintiff and its owner, Ed Magedson, are public figures because they assumed a
16 role of public prominence with respect to online speech and consumer protection.
17 Plaintiff claims to advise various government agencies including "the FBI, the FTC, the
18 US Postal Inspection Service, Homeland Security, the SEC, and various Attorney
19 Generals, [sic] as well as local and state authorities." SSOF ¶ 38. And Plaintiff's own
20 website boasts about its access to "every network and most local affiliates and to every
21 major TV News Magazine including Dateline, 20/20, 48 Hours, 60 Minutes, Inside
22 Edition, W2 Canada, CNN, along with most major newspapers including, NY Times,
23 Wall Street Journal, Forbes, Money, Inc. and hundreds of others." SSOF ¶ 39. Its own
24 admissions make it a public figure.

25 Moreover, Plaintiff is collaterally estopped from challenging its public figure
26 status. Several years ago the Arizona Court of Appeals specifically held that Plaintiff and
27 Magedson are public figures:

28 Magedson is the editor of [Xcentric] which is a consumer advocacy forum
for members of the public to voice their concerns regarding interactions

1 with businesses. People make complaints about issues of public concern.
2 Magedson's website tries to resolve those public issues by making other
3 potential consumers aware of pitfalls in transacting business. Accordingly,
4 we conclude Magedson is a public figure for purposes of this claim because
5 through his website, he has thrust himself into the public forum seeking
6 resolution of matters of public concern.

7 *Xcentric Ventures v. Brewington*, No. CA-CV 11-0042, available at 2011 WL 6747458
8 (Ariz. Ct. App., Dec. 22, 2011).

9 As a public figure, Plaintiff cannot recover for allegedly tortious speech unless it
10 proves that Boycotters spoke with actual malice. *Gardner v. Martino*, 563 F.3d 981, 992
11 (9th Cir. 2009). Actual malice means that the defendant made statements that he knew to
12 be false when he said them. *New York Times, Co. v. Sullivan*, 376 U.S. 254, 279-80
13 (1964); accord *Dombey v. Phoenix Newspapers, Inc.*, 150 Ariz. 476, 487, 724 P.2d 562,
14 573 (1986). "Actual malice is subjective." *Scottsdale Publ'g, Inc. v. Super. Ct.*, 159 Ariz.
15 72, 86, 764 P.2d 1131, 1145 (App. 1988) (citation and quotation omitted). Mere
16 negligence in investigating or verifying facts does not equate to actual malice. See
17 *Sullivan*, 376 U.S. at 286-88 (no actual malice despite newspaper's failure to check its
18 files to confirm accuracy of material published, even though check would have revealed
19 inaccuracies); *Heuisler v. Phoenix Newspapers, Inc.*, 168 Ariz. 278, 283, 812 P.2d 1096, 1101
20 (App. 1991) (careless investigation of facts "hardly establish[ed] reckless disregard for
21 the truth"). Nor will evidence of "bad motives" or "personal ill-will" establish actual
22 malice. *Heuisler*, 168 Ariz. at 282, 812 P.2d at 1100 (rejecting plaintiff's "attempt[] to
23 rest his claim of actual malice primarily upon evidence that [the defendant] was 'out to
24 get him'").

25 In this case it is undisputed that Roberts believes that his statements are true. Many
26 of his statements about Plaintiff's conduct are backed up with hard evidence and quotes
27 from published court cases. He sincerely believes that the companies he identified as
28 customers of Plaintiff are, in fact, customers of Plaintiff. And he sincerely holds his
negative opinion of Plaintiff based on things he has seen from the Florida Court of
Appeals and the Seventh Circuit, his personal experience, and his knowledge of Plaintiff's
policies and practices. Plaintiff has not pled one fact showing actual malice, and it has

1 not disclosed any evidence of actual malice. Boycotters are entitled to summary
2 judgment.

3 **C. Arizona tort law does not recognize a consumer boycott as improper.**

4 A plaintiff asserting a claim of tortious interference with a contract or business
5 expectancy must show that the defendant acted improperly. To be actionable, the
6 interference must “be *both* intentional and improper.” *Safeway Ins. Co. v. Guerrero*, 210
7 Ariz. 5, 11, ¶ 20, 106 P.3d 1020, 1026 (2005). “If the interferer is to be held liable for
8 committing a wrong, his liability must be based on more than the act of interference alone.
9 Thus, there is ordinarily no liability absent a showing that defendant's actions were
10 improper.” *Id.* “The ‘improper’ element generally is determined by weighing the social
11 importance of the interest the defendant seeks to advance against the interest invaded.”
12 *Id.* at ¶ 21.

13 Arizona has adopted a seven-factor test to determine whether a specific action is
14 wrongful. Courts consider “(a) the nature of the actor's conduct, (b) the actor's motive,
15 (c) the interests of the other with which the actor's conduct interferes, (d) the interests
16 sought to be advanced by the actor, (e) the social interests in protecting the freedom of
17 action of the actor and the contractual interests of the other, (f) the proximity or
18 remoteness of the actor's conduct to the interference and (g) the relations between the
19 parties.” *Wagenseller v. Scottsdale Mem'l Hosp.*, 147 Ariz. 370, 387-88, 710 P.2d 1025,
20 1042 (1985). Each of these factors favors Boycotters:

21 A. “The nature of the actor's conduct” – Boycotters conducted a consumer
22 boycott supported with truthful speech. Significantly, they restricted their
23 conduct to revealing true information and opinions on the
24 AuthorizedStatement.org and BadForPeople.com websites. No evidence
25 links Boycotters to the scamgroup.com website or its purported owner
26 Viktorovich.

27 B. “The actor's motive” – The motive is to cause Plaintiff to stop operating as
28 a “forum for defamation.” Boycotters hope to draw public attention to

1 Plaintiff's abuse of the Communications Decency Act and, eventually,
2 achieve legislative reform.

3 C. "The interests of the other with which the actor's conduct interferes" –
4 Plaintiff's only interest is to continue its appalling business practice of
5 charging innocent victims thousands of dollars to clear their good names.
6 Plaintiff's interest in operating a "forum for defamation" with impunity
7 deserves little weight.

8 D. "The interests sought to be advanced by the actor" – Boycotters are
9 advancing the public interest of preventing online defamation. It is in the
10 public interest to speak out against companies that generate huge profits by
11 exploiting a loophole in the law that allows them to host false and harmful
12 content without legal liability or any legal mechanism to force them to
13 remove that content.

14 E. "The social interests in protecting the freedom of action of the actor and the
15 contractual interests of the other" – Plaintiff's "freedom" is adequately
16 protected by the Communications Decency Act. It can operate its "forum
17 for defamation" without legal liability for the content on its website. It has
18 no need to muzzle a consumer boycott to accomplish its ostensible mission
19 of consumer protection. In fact, given that Plaintiff advises people to post
20 public complaints about companies that they dislike, it is ironic that
21 Plaintiff is now trying to silence people who complain about Plaintiff.

22 F. "The proximity or remoteness of the actor's conduct to the interference" –
23 Boycotters have no coercive power to enforce the boycott. Instead, they
24 rely on persuasion, convincing consumers that Plaintiff's business model
25 is, as the Florida Court of Appeals found, "appalling." *Giordano v. Romeo*,
26 76 So.3d 1100, 1102 (Fla. App. 3d. 2011). The conscience of the
27 community stands between Boycotters and any successful interference with
28 Plaintiff's contracts, so their conduct is removed from the interference.

1 G. "The relations between the parties" – Roberts is a victim of Plaintiff's
2 appalling business practices. He began his protest after learning that he has
3 no other remedy for the lies Plaintiff continues publishing, daily, on its
4 forum for defamation. Roberts's status as a victim counsels in favor of
5 finding that his protest—the only remedy he has left—is not improper.

6 Many of these factors apply in favor of all boycotts, so it is no surprise that the
7 Arizona Supreme Court has categorically held that boycotts, as a matter of law, "cannot
8 fairly be termed an interference" with a plaintiff's business expectancy. *Truax v. Bisbee*
9 *Local, No. 380*, 19 Ariz. 379, 390, 171 P. 121, 125 (1918).

10 **III. CONCLUSION.**

11 Plaintiff styles itself a consumer advocacy website where people can post
12 complaints about companies that they dislike. But when someone complains about
13 Plaintiff, it promptly sues them in a thinly veiled attempt to use its superior financial
14 position to silence its critics. Plaintiff's argument appears to be that the Court should stop
15 the boycott solely to protect Plaintiff's immoral and unscrupulous method of generating
16 profits. Of course, the First Amendment protects consumer boycotts, and it protects the
17 speech associated with them. The First Amendment's protection for consumer boycotts
18 is at its zenith in a case like this because the boycott targets a public figure notorious for
19 pushing the envelope of the Communications Decency Act. This public figure did not
20 plead and cannot prove actual malice, so it must lose. And Arizona courts have long held
21 that, as a matter of law, a consumer boycott cannot form the basis of a tortious interference
22 claim.

23 For all the foregoing reasons the Court should grant summary judgment in favor
24 of Defendants Roberts and Common Decency.

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RESPECTFULLY SUBMITTED this 11th day of February, 2015.

ROSE LAW GROUP, P.C.

By /s/ Christopher B. Ingle
Christopher B. Ingle
Samuel Doncaster
*Attorneys for Defendants Roberts and
Common Decency, Inc.*

1 ORIGINAL of the foregoing electronically filed via Turbocourt
2 with the Maricopa County Superior Court
3 this 11th day of February, 2015.

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6 this 11th day of February, 2015, to:

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