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10 Attorneys for Plaintiff
 11 ENTREPRENEUR MEDIA, INC.

12 **THE UNITED STATES DISTRICT COURT**
 13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 ENTREPRENEUR MEDIA, INC., a)
 15 New York corporation,)
 16 Plaintiff,)

Case No. SACV08-0608 DOC
 (MLGx)
 Complaint filed June 2, 2008

17 vs.)

JOINT RULE 26(f) REPORT

18 EYGN Limited, ERNST & YOUNG)
 19 LLP and ERNST & YOUNG)
 ADVISORY, INC.,)
 20 Defendants.)

Sched. Conf.: November 3, 2008
 Time: 8:30 a.m.
 Ctrm.: 9-D

21

 EYGN Limited and ERNST &)
 22 YOUNG LLP,)
 23 Counterclaimants,)

24 vs.)
 25 ENTREPRENEUR MEDIA, INC.,)
 26 Counter-Defendant.)
 27

BERRY & PERKINS
 A PROFESSIONAL CORPORATION

1 York Action”), seeking, *inter alia*, (1) an injunction prohibiting EMI from using the
2 ENTREPRENEUR OF THE YEAR trademark, (2) monetary relief, and (3)
3 cancellation of various U.S. trademark/service mark registrations owned by EMI
4 for ENTREPRENEUR-inclusive marks. EYGN (subject to an assertion that it is
5 not amenable to jurisdiction in California) and E&Y also filed counterclaims in the
6 California Action on this date, alleging the same causes as in the New York Action.

7
8 EMI has filed a motion with this Court to enjoin prosecution of the
9 New York Action. (EMI has also filed a motion in the New York Action to stay
10 and/or transfer that action pending determination of the motion filed in this Court;
11 that motion is not yet scheduled for hearing.) The E&Y California Defendants
12 intend to file cross motions for dismissal and/or transfer of the California Action.
13 Although the EMI motion is currently on calendar for November 10, 2008, the
14 parties will be submitting a stipulation and proposed order setting a schedule that
15 will allow both parties’ motions to be heard at the same time. The parties have not
16 conducted discovery in either action, and have been engaged in extensive and
17 ongoing settlement negotiations.

18 **CLAIMS AND DEFENSES**

19 EMI

20 EMI has asserted that (1) the claimed ENTREPRENEUR OF THE YEAR
21 mark of EYGN is invalid, unenforceable and should be canceled, and (2) EMI’s use
22 of the designation "Entrepreneur® Magazine's 2008 Entrepreneur® of the Year" for
23 its contest and awards program is non-infringing and/or otherwise allowed even if
24 the claimed ENTREPRENEUR OF THE YEAR mark is not wholly invalid or
25 unenforceable.

26 EMI seeks declaratory relief that the claimed mark is invalid and
27 unenforceable and should be canceled, that EYGN’s alleged rights in the phrase
28

1 “ENTREPRENEUR OF THE YEAR” are non-existent, invalid and unenforceable,
2 and/or that use of the designations “Entrepreneur Magazine’s 2008 Entrepreneur®
3 OF THE YEAR” and “Entrepreneur Magazine’s 2008 Emerging Entrepreneur® OF
4 THE YEAR” are, under federal law and state common law, (a) fair use, (b)
5 nominative use, (c) non-infringing, and/or (d) an otherwise allowed use of the
6 registered (and purported common law) ENTREPRENEUR OF THE YEAR mark.
7

8 E&Y California Defendants

9 The E&Y California Defendants assert that this Court lacks authority to hear
10 the claims against EYGN (owner of the ENTREPRENEUR OF THE YEAR marks)
11 and Advisors due to lack of personal and/or subject matter jurisdiction, and that this
12 venue is inappropriate because, *inter alia*, EMI’s complaint was an anticipatory
13 filing. The E&Y California Defendants also assert that there is no merit to EMI’s
14 genericness claim and claim that EYGN’s ENTREPRENEUR OF THE YEAR
15 mark is weak, particularly in view of the two decades of use and EYGN’s
16 ownership of incontestable rights in the mark. The E&Y California Defendants
17 have also asserted as defenses that the Complaint fails to state a claim upon which
18 relief may be granted; improper service; waiver, acquiescence, estoppel and/or
19 laches; and unclean hands.

20 EYGN (subject to an assertion that it is not amenable to jurisdiction in
21 California) and E&Y have asserted counterclaims for infringement of EYGN’s
22 federally registered trademark under 15 U.S.C. § 1114(1); federal unfair
23 competition under 15 U.S.C. § 1125(a); unfair competition under New York
24 common law; violation of the New York Deceptive and Unfair Trade Practices Act;
25 and Cancellation of EMI registrations for various ENTREPRENEUR-inclusive
26 marks on the grounds that they are, when used on or in connection with EMI’s
27 goods or services, generic and/or merely descriptive and lacking secondary
28 meaning.

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NATURE OF THE CASE

This case does not involve complex issues nor will it require procedures set forth in the Manual on Complex Litigation. There are no unusual legal issues to be presented in this case. At this time, this case does not require the need for severance, bifurcation or other ordering of proof.

STATUS OF SETTLEMENT DISCUSSIONS

There have been extensive settlement discussions and such discussions are ongoing. Pursuant to Local Rule 16-15.4, the parties are agreeable to Proposal 2 (Attorney Settlement Officer Panel).

RULE 26 DISCLOSURES

The parties have agreed to exchange initial witness and documents by January 30, 2009.

PROPOSED DATES

The parties propose the following dates:

Fact Discovery Cutoff:	October 30, 2009
Expert Discovery Cutoff	December 30, 2009
Last day for motions to be heard:	February 15, 2010
Final Pretrial Conference:	April 19, 2010
Trial Date:	June 22, 2010

This is a jury trial. The parties estimate eight (8) days for trial.

DISCOVERY PLAN

The parties agree it will not be necessary to conduct discovery in phases. Discovery shall proceed consistent with the limitations contained in the Federal Rules of Civil Procedure.

ANTICIPATED MOTIONS

In addition to the motions described above, the parties anticipate making motions for summary judgment.

1 DATED: October 21, 2008


Respectfully submitted

2 ALLEN MATKINS LECK GAMBLE
3 MALLORY & NATSIS LLP

4 By: Michael R. Adele
5 Michael R. Adele
6 Cheryl A. Withycombe
7 Attorneys for Plaintiff
8 ENTREPRENEUR MEDIA, INC.

9 DATED: October 21, 2008

BERRY & PERKINS
A Professional Corporation

10 By: 
11 Kevin R. Lussier
12 Attorneys for Defendants

And

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24 Of Counsel for Defendants

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action, and my business address is Berry & Perkins (the "business"), 2049 Century Park East, Suite 950, Los Angeles, California 90067.

On October 21, 2008, I caused the following document to be served: **JOINT RULE 26(f) REPORT** on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Michael R. Adele, Esq.
ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
12348 High Bluff Drive, Suite 210
San Diego, California 92130

BY REGULAR U.S. MAIL: I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Los Angeles, California.

BY FACSIMILE TRANSMISSION: I sent a true and complete copy of the document(s) described above by facsimile transmission to the telephone number(s) set forth opposite the name(s) of the person(s) set forth above.

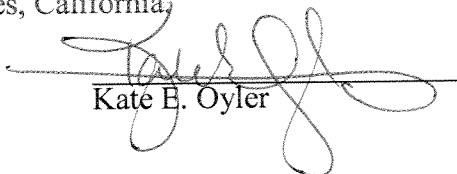
BY FEDERAL EXPRESS OVERNIGHT DELIVERY OR OTHER EXPRESS OVERNIGHT SERVICE: I declare that the foregoing described document(s) was(were) deposited on the date indicated below in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person(s) on whom it is to be served, at the address as last given by that person on any document filed in the cause and served on this office.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the above address(es).

BY ELECTRONIC MAIL: I caused such document to be delivered electronically to the e-mail address(es) above.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 21, 2008, at Los Angeles, California,


Kate E. Oyler