1 2	Jeffrey R. Patterson, Esq. (State Bar No. 126148) Michael R. Adele, Esq. (State Bar No. 138339) Michael J. Holmes, Esq. (State Bar No. 199311)	
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4		
5	Telephone: (858) 481-5055 Facsimile: (858) 481-5028	
6	Attorneys for Plaintiff/Counter-Defendant ENTREPRENEUR MEDIA, INC.	
7	UNITED STATES DISTRICT COURT	
8	FOR THE CENTRAL DISTRICT OF CALIFORNIA	
9		
10	ENTREPRENEUR MEDIA, INC.,)	Case No. SACV08-0608 DOC
11	Plaintiff,)	NOTICE OF MOTION AND MOTION OF PLAINTIFF
12	v.)	ENTREPRENEUR MEDIA, INC. FOR INJUNCTION REGARDING
13	EYGN LIMITED; ERNST & YOUNG) LLP; and ERNST & YOUNG) ADVISORY INC.,)	SECOND-FILED ACTION
14		
15	Defendants.	Date: December 22, 2008 Time: 8:30 a.m.
16	EYGN Limited and ERNST &	Ctrm: 9D Judge: Hon. David O. Carter
17	YOUNG LLP	vaage. Hon. Davia o. Carter
18	Counterclaimants,)	
19	v.)	
20	ENTREPRENEUR MEDIA, INC.)	
21	Counterdefendant.	
22		
23	TO THE COURT, COUNSEL OF F	RECORD AND ALL INTERESTED PARTIES:
24	PLEASE TAKE NOTICE THAT on	December 22, 2008 at 8:30 a.m. in courtroom 9D of
25	the United States District Court for the Central District of California, located at 411 West Fourth	
26	Street, Santa Ana, California 92701 Plaintiff Entrepreneur Media, Inc. ("Plaintiff") shall and hereby	
27	does move (the "Motion") the above-captioned Court to enjoin Counterclaimants EYGN Limited	
28	and Ernst & Young LLP ("Counterclaimants") from prosecuting the action that they filed against	
amble		
.LP	708592.01/SD	

1	Plaintiff in federal court for the Southern District of New York, specifically, EYGN Limited and		
2	Ernst & Young LLP v. Entrepreneur Media, Inc., Southern District of New York Civil Case		
3	Number 08-CIV-6734 (AKH) (the "New York Action"), which Counterclaimants filed nearly two		
4	months after commencement of the present action. Alternatively, Plaintiff requests that this Court		
5	enjoin the second-filed New York Action. ¹		
6	The grounds for this Motion are the first-to-file rule recognized by case law within the Ninth		
7	Circuit, as well as principals of comity and judicial efficiency, all as more particularly detailed in		
8	the Memorandum of Points and Authorities filed contemporaneously herewith.		
9	The bases for this Motion are this Notice of Motion and Motion, the Memorandum of Points		
10	and Authorities, the Declarations of Peter Shea, Randall Broberg and Michael Adele and the		
11	Request for Judicial Notice, all of which were filed with the Court on October 14, 2008 and served		
12	contemporaneously therewith, the pleadings and papers in the present action and the New York		
13	Action, any subsequent papers filed by counsel in this action and/or the New York Action, and any		
14	oral argument that may be had at the hearing on this Motion.		
15			
16	Dated: November 14, 2008 ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP		
17	WINDLOW! & WITGIS ELI		
18			
19	Milael Ray Odole		
20	Бу		
21	MICHAEL R. ADELE Attorneys for Plaintiff		
22	ENTRÉPRENEUR MEDIA, INC.		
23			
24			
25			
26	Ninth Circuit law appears to hold that the appropriate remedy relative to second-filed actions is to enjoin the parties from that action from prosecuting the action (as opposed to enjoining		
27	the proceedings themselves from continuing). Because there is some (albeit minor) ambiguity on this issue, Plaintiff brings this motion in the alternative seeking, in the first instance, to enjoin		
28	Counterclaimants from prosecuting the second filed action and, alternatively, seeking to enjoin the second-filed action from proceeding.		

LAW OFFICES

Allen Matkins Leck Gamble
Mallory & Natsis LLP

708592.01/SD

second-filed action from proceeding.