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8 Attorneys for Daren R. Brinkman

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11 ENCOMPASS HOLDINGS, INC., a Nevada
 12 corporation,
 13 Plaintiff,
 14 v.
 15 CAREY F. DALY II, an individual, and
 16 RANDALL J. LANHAM, an individual,
 17 Defendants.

18 Case No. 3:09-cv-01816-BZ

19 **STATEMENT OF NON-RIPE ISSUES AND
 20 JURISDICTION ISSUES RELATING TO
 21 SETTLEMENT CONFERENCE**

22 Settlement Conference Date and Time:
 23 Date: June 2, 2011
 24 Time: 9: 30 A.M.

25 CAREY F. DALY II, an individual, and
 26 RANDALL J. LANHAM, an individual,
 27 Counter-Claimants,
 28 v.
 29 ENCOMPASS HOLDINGS, INC., et. al.,
 30 Cross-Defendants.

31 Cross-Defendant Daren Brinkman submits this Statement of Non-Ripe Issues and Jurisdiction
 32 Issues Relating to Settlement Conference (“Notice”) and respectfully submits as follows:

33 Cross-Defendant Daren Brinkman (“Brinkman”) cannot participate in the settlement
 34 conference scheduled for June 2, 2011 in the above-entitled action for the following reasons:

- 1 1. On March 11, 2011, Brinkman filed motions to set aside entry of default against him and
2 a motion to dismiss defendants Carey Daly’s and Randall Lanham’s (collectively,
3 “Defendants”) claims against Brinkman (the “Motions”).
- 4 2. Prior to the hearing, the Court issued a tentative ruling (“Tentative”) which would have
5 granted Mr. Brinkman’s Motions in their entirety, while allowing Defendants the costs of
6 seeking an entry of default against Mr. Brinkman and opposing the Motion. Docket no.
7 156.
- 8 3. On May 6, 2011, a hearing was held on the Motions and the Court granted the motion to
9 set aside entry of default against Brinkman, denied the motion for dismissal of the claims
10 against Brinkman without prejudice and allowed Defendants until May 25, 2011 to amend
11 the third party complaint as it relates to Brinkman. Docket No. 159.
- 12 4. Defendants have not yet filed the amended third party complaint (“Amended Third Party
13 Complaint”) and, therefore, the issues are not ripe for settlement.
- 14 5. Brinkman has no knowledge regarding the amendments Defendants intend to make and
15 Brinkman cannot reasonably engage in a meaningful settlement conference until
16 Brinkman is aware of the accusations made against him.
- 17 6. Brinkman has not and cannot file a responsive pleading to the Amended Third Party
18 Complaint until after it is filed, however it is highly likely Brinkman will file a motion to
19 dismiss the claims against him and the Court will not have ruled on such motion before
20 the Settlement Conference.
- 21 22 23 24

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1 7. Brinkman is considering filing counterclaims against Daly and Lanham and those claims
2 would not be filed or at issue before the Settlement Conference.

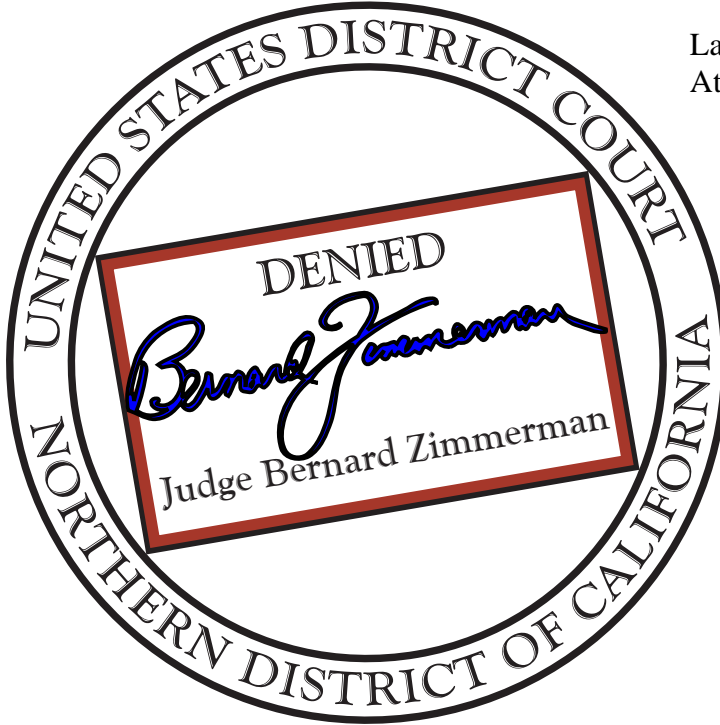
3
4 Dated: May 19, 2011

Respectfully submitted,

BRINKMAN PORTILLO, PC

By: /s/ Laura J. Portillo

Laura J. Portillo
Attorneys for Daren R. Brinkman



Dated: 5/25/2011

1 **CERTIFICATE OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 The undersigned certifies and declares as follows:

4 I am employed in the City of Westlake Village and County of Los Angeles, in the State of
5 California. I am over the age of 18 and am not a party to the within action. I am employed by
6 Brinkman Portillo, PC whose business address is 4333 Park Terrace Dr., Ste 205, Westlake Village,
California 91361.

7 On **May 19, 2011**, I served the following document described as:

8 **STATEMENT OF NON-RIPE ISSUES AND JURISDICTION ISSUES RELATING TO**
9 **SETTLEMENT CONFERENCE**

10 On the interested parties in this action

11 [X] by placing [] the original [X] a true and correct copy thereof enclosed in sealed envelopes as
12 follows:

13 **SEE ATTACHED SERVICE LIST**

14 [X] I deposited such envelope in a United States Postal Service Drop Box at Westlake Village,
15 California. The envelopes were mailed with postage fully prepaid.

16 [] I am readily familiar with the firm's practice of collecting and processing correspondence
17 for mailing. Under that practice it would be deposited with a United States Postal Service Drop Box
18 on that same day with postage fully prepaid at Westlake Village, California in the ordinary course of
19 business. I am aware that on motion of the party served, service presumed invalid if postal
20 cancellation date or postage meter date is more than one day after the date of deposit of mailing in
affidavit.

21 [X] **(Federal)** I declare under penalty of perjury under the laws of the United States of
22 America that the forgoing is true and correct.

23 Executed on this 19th day of May 2011, at Westlake Village, California.

24 Orson Baumann

25 /s/ Orson Baumann
26
27
28

1 **SERVICE LIST**

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10
11
12 **By Overnight Mail:**

13 Magistrate Judge Joseph C. Spero
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