

1 **Thomas P. Riley, SBN 194706**
 2 **LAW OFFICES OF THOMAS P. RILEY, P.C.**
 3 **First Library Square**
 4 **1114 Fremont Avenue**
 5 **South Pasadena, CA 91030-3227**

6 **Tel: 626-799-9797**
 7 **Fax: 626-799-9795**
 8 **TPRLAW@att.net**

9 **Attorneys for Plaintiff**
 10 **Joe Hand Promotions, Inc.**

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN JOSE DIVISION**

14 **JOE HAND PROMOTIONS, INC.,**

CASE NO. 3:13-cv-03003-SI

15 **Plaintiff,**

PLAINTIFF'S EX PARTE
APPLICATION FOR AN ORDER
CONTINUING THE INITIAL CASE
MANAGEMENT CONFERENCE AND
EXTENDING TIME TO COMPLETE
SERVICE; AND ORDER (Proposed)

16 **v.**

17 **DOMINIC J. AFFINITO, et al.**

18 **Defendants.**

19 **TO THE HONORABLE SUSAN ILLSTON, THE PARTIES AND THEIR**
 20 **ATTORNEY/S OF RECORD:**

21 As of this date, Plaintiff has been unable to successfully serve its initiating suit papers upon
 22 defendants Dominic J. Affinito and Juliette C. Affinito, individually and d/b/a Joe Peppers BBQ
 23 Lounge.

24 **WHEREFORE,** Plaintiff makes the following representations and recommendations:

- 25 1. On June 28, 2013, Plaintiff's Complaint was filed against Defendants Dominic J.
 26 Affinito and Juliette C. Affinito, individually and d/b/a Joe Peppers BBQ Lounge.

27 ///

28 ///

1 2. Plaintiff has *not* perfected service of the initiating suit papers upon the Defendant,
2 Dominic J. Affinito and Juliette C. Affinito, individually and d/b/a Joe Peppers BBQ Lounge, despite
3 diligent efforts to do so.

4
5 3. As of this writing, Plaintiff's process server has made numerous different attempts to
6 serve defendants Dominic J. Affinito and Juliette C. Affinito with its suit papers. These attempts
7 have been unsuccessful (Please find a true and correct copy of the process server's Status Reports
8 attached hereto and made part hereof as Plaintiff's Exhibit 1).

9
10 4. In addition, Plaintiff's counsel in this instant action is ordered to appear for three (3)
11 mediations in the United States District Court for the Central District of California, Western Division in
12 Los Angeles in the matters of *J & J Sports Productions, Inc. v. Nguyen*; Case No. 8:12-cv-01953-
13 WDK-FMO, *J & J Sports Productions, Inc. v. Lorena Moreno*; Case No. 2:11-cv-02022-WDK-
14 PLA, and *J & J Sports Productions, Inc. v. Rubalcaba*; Case No. 8:12-cv-00705-WDK-FMO at
15 11:00 AM, 1:00 PM, and 2:00 PM that very same day.

16 5. Plaintiff Joe Hand Promotions, Inc., hereby applies *ex parte* for an order further
17 continuing the Initial Case Management Conference presently set for September 20, 2013 at 2:30 PM.
18 As set forth below, Plaintiff respectfully requests this Honorable Court continue the Status Conference
19 and extend the time to complete service an additional Thirty (30) days to Forty-Five (45) days.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Plaintiff respectfully requests that this Honorable Court continue the Status Conference, presently scheduled for May 4, 2012 at 10:30 AM and permit Plaintiff an additional Thirty (30) days to Forty-Five (45) days from today's date to effectuate service of the Summons and Complaint filed in this matter, or to file a motion for service by publication, or in the alternative, a Notice of Voluntary Dismissal as to the named defendant.

Respectfully submitted,

Dated: April 26, 2012

/s/ Thomas P. Riley

LAW OFFICES OF THOMAS P. RILEY, P.C.
By: Thomas P. Riley
Attorneys for Plaintiff
Joe Hand Promotions, Inc.

///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///

Exhibit 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) THOMAS P. RILEY, ESQ. THOMAS P. RILEY PC, LAW OFFICES OF 1114 FREMONT AVENUE tprlaw@att.net SOUTH PASADENA, CA 91030 TELEPHONE NO.: (626) 799-9797 FAX NO.: (626) 799-9795 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): PLAINTIFF	FOR COURT USE ONLY SBN: 194706
UNITED STATES DISTRICT COURT STREET ADDRESS: 450 GOLDEN GATE #1111 MAILING ADDRESS: CITY AND ZIP CODE: SAN FRANCISCO, CA 94102 BRANCH NAME: NORTHERN DISTRICT	
PLAINTIFF/PETITIONER: JOE HAND PROMOTIONS, INC. DEFENDANT/RESPONDENT: DOMINIC J. AFFINITO	
DECLARATION OF DILIGENCE	CASE NUMBER: CV 13 3003 DMR

I received the within process on July 19, 2013 and that after due and diligent effort I have been able to serve said person. The following itemization of the dates and times of attempts details the efforts required to effect personal service. Additional costs for diligence are recoverable under CCP §1033.5 (a)(4)(B).

Servee: **DOMINIC J. AFFINITO, INDIVIDUALLY AND D/B/A JOE PEPPERS BBQ & LOUNGE A/K/A PEPPERS**

Documents: **summons;complaint;Civil Cover Sheet; Certification and Notice of Interested Parties; Order Setting Initial Case Management Conference and ADR Deadlines**

As enumerated below:

- 07/24/2013 -- 03:20 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE);NO ACTIVITY.TAGS ON DOOR KNOB AND STEP. MIGHT BE A VACATION HOME.
- 08/05/2013 -- 03:30 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).
- 08/06/2013 -- 08:10 am 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).
- 08/10/2013 -- 05:30 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).
- 08/14/2013 -- 04:45 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).
- 08/18/2013 -- 05:15 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE). NO ONE HAS ENTERED THE GARAGE SINCE 8/5/13 WHEN DOOR WAS TAGGED.
- 08/24/2013 -- 11:00 am 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).
- 08/31/2013 -- 01:40 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE);NO ACTIVITY.
- 09/04/2013 -- 06:10 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE);LOOKS LIKE SOMEONE ENTERED, MARKER GONE.

Continued on Next Page

County: **SAN BENITO**
 Registration No.: **37**
Rezac Meyer Attorney Service
1610 Beverly Blvd., Ste. 1
Los Angeles, CA 90026
(213) 481-1770

I declare under penalty of perjury under the laws of the State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on **09/18/2013.**

Signature: _____
ANDREW WILLIAMS

DECLARATION OF DILIGENCE

Order#: LA124090/DilFormat.mdl

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) THOMAS P. RILEY, ESQ. THOMAS P. RILEY PC, LAW OFFICES OF 1114 FREMONT AVENUE tprlaw@att.net SOUTH PASADENA, CA 91030 TELEPHONE NO.: (626) 799-9797 FAX NO.: (626) 799-9795 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): PLAINTIFF	FOR COURT USE ONLY
UNITED STATES DISTRICT COURT STREET ADDRESS: 450 GOLDEN GATE #1111 MAILING ADDRESS: CITY AND ZIP CODE: SAN FRANCISCO, CA 94102 BRANCH NAME: NORTHERN DISTRICT	
PLAINTIFF/PETITIONER: JOE HAND PROMOTIONS, INC. DEFENDANT/RESPONDENT: DOMINIC J. AFFINITO	
DECLARATION OF DILIGENCE	CASE NUMBER: CV 13 3003 DMR

I received the within process on July 19, 2013 and that after due and diligent effort I have been able to serve said person. The following itemization of the dates and times of attempts details the efforts required to effect personal service. Additional costs for diligence are recoverable under CCP §1033.5 (a)(4)(B).

Servee: **DOMINIC J. AFFINITO, INDIVIDUALLY AND D/B/A JOE PEPPERS BBQ & LOUNGE A/K/A PEPPERS**

Documents: **summons; complaint; Civil Cover Sheet; Certification and Notice of Interested Parties; Order Setting Initial Case Management Conference and ADR Deadlines**

As enumerated below:

Continued from Previous Page

09/10/2013 -- 04:45 pm 206 VIA LANTANA, APTOS, CA 95003
 NO ANSWER (RESIDENCE).

County: **SAN BENITO**
 Registration No.: **37**
Rezac Meyer Attorney Service
1610 Beverly Blvd., Ste. 1
Los Angeles, CA 90026
(213) 481-1770

I declare under penalty of perjury under the laws of the State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on **09/18/2013.**

Signature: _____
ANDREW WILLIAMS

DECLARATION OF DILIGENCE

Order#: LA124090/DilFormat.mdl

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) THOMAS P. RILEY, ESQ. SBN: 194706 THOMAS P. RILEY PC, LAW OFFICES OF 1114 FREMONT AVENUE tprlaw@att.net SOUTH PASADENA, CA 91030 TELEPHONE NO.: (626) 799-9797 FAX NO.: (626) 799-9795 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): PLAINTIFF	FOR COURT USE ONLY
UNITED STATES DISTRICT COURT STREET ADDRESS: 450 GOLDEN GATE #1111 MAILING ADDRESS: CITY AND ZIP CODE: SAN FRANCISCO, CA 94102 BRANCH NAME: NORTHERN DISTRICT	
PLAINTIFF/PETITIONER: JOE HAND PROMOTIONS, INC. DEFENDANT/RESPONDENT: DOMINIC J. AFFINITO	
DECLARATION OF DILIGENCE	CASE NUMBER: CV 13 3003 DMR

I received the within process on July 19, 2013 and that after due and diligent effort I have been able to serve said person. The following itemization of the dates and times of attempts details the efforts required to effect personal service. Additional costs for diligence are recoverable under CCP §1033.5 (a)(4)(B).

Servee: **JULIETTE C. AFFINITO, INDIVIDUALLY AND D/B/A JOE PEPPERS BBQ & LOUNGE A/K/A PEPPERS**

Documents: **summons;complaint;Civil Cover Sheet; Certification and Notice of Interested Parties; Order Setting Initial Case Management Conference and ADR Deadlines**

As enumerated below:

- 07/24/2013 -- 03:20 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE);NO ACTIVITY.TAGS ON DOOR KNOB AND STEP. MIGHT BE A VACATION HOME.
- 08/05/2013 -- 03:30 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).
- 08/06/2013 -- 08:10 am 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).
- 08/10/2013 -- 05:30 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).
- 08/14/2013 -- 04:45 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).
- 08/18/2013 -- 05:15 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE). NO ONE HAS ENTERED THE GARAGE SINCE 8/5/13 WHEN DOOR WAS TAGGED.
- 08/24/2013 -- 11:00 am 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).
- 08/31/2013 -- 01:40 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE);NO ACTIVITY.
- 09/04/2013 -- 06:10 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE);LOOKS LIKE SOMEONE ENTERED, MARKER GONE.

Continued on Next Page

County: **SAN BENITO**
 Registration No.: **37**
Rezac Meyer Attorney Service
1610 Beverly Blvd., Ste. 1
Los Angeles, CA 90026
(213) 481-1770

I declare under penalty of perjury under the laws of the State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on **09/18/2013.**

Signature: _____
ANDREW WILLIAMS

DECLARATION OF DILIGENCE

Order#: LA124092/DilFormat.mdl

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) THOMAS P. RILEY, ESQ. SBN: 194706 THOMAS P. RILEY PC, LAW OFFICES OF 1114 FREMONT AVENUE tprlaw@att.net SOUTH PASADENA, CA 91030 TELEPHONE NO.: (626) 799-9797 FAX NO.: (626) 799-9795 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): PLAINTIFF	FOR COURT USE ONLY
UNITED STATES DISTRICT COURT STREET ADDRESS: 450 GOLDEN GATE #1111 MAILING ADDRESS: CITY AND ZIP CODE: SAN FRANCISCO, CA 94102 BRANCH NAME: NORTHERN DISTRICT	
PLAINTIFF/PETITIONER: JOE HAND PROMOTIONS, INC. DEFENDANT/RESPONDENT: DOMINIC J. AFFINITO	
DECLARATION OF DILIGENCE	CASE NUMBER: CV 13 3003 DMR

I received the within process on July 19, 2013 and that after due and diligent effort I have been able to serve said person. The following itemization of the dates and times of attempts details the efforts required to effect personal service. Additional costs for diligence are recoverable under CCP §1033.5 (a)(4)(B).

Servee: **JULIETTE C. AFFINITO, INDIVIDUALLY AND D/B/A JOE PEPPERS BBQ & LOUNGE A/K/A PEPPERS**

Documents: **summons;complaint;Civil Cover Sheet; Certification and Notice of Interested Parties; Order Setting Initial Case Management Conference and ADR Deadlines**

As enumerated below:

Continued from Previous Page

09/10/2013 -- 04:45 pm 206 VIA LANTANA, APTOS, CA 95003
NO ANSWER (RESIDENCE).

County: **SAN BENITO**
Registration No.: **37**
Rezac Meyer Attorney Service
1610 Beverly Blvd., Ste. 1
Los Angeles, CA 90026
(213) 481-1770

I declare under penalty of perjury under the laws of the State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on **09/18/2013**.

Signature: _____
ANDREW WILLIAMS

DECLARATION OF DILIGENCE

Order#: LA124092/DiiFormat.mdl

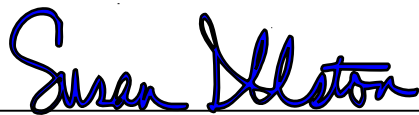
ORDER (Proposed)

1
2
3 It is hereby ordered that the Status Conference in civil action number 3:13-cv-03003-SI styled
4 *Joe Hand Promotions, Inc. v. Dominic J. Affinito, et al.*, is hereby continued from 2:30 PM, September
5 20, 2013 to November 8, 2013, at 2:30 p.m.

6 Plaintiff is granted an additional thirty (30) days to forty-five (45) days from today's date to
7 effectuate service of the Summons and Complaint filed in this matter, or to file a motion for service
8 by publication, or in the alternative, a Notice of Voluntary Dismissal as to defendant Dominic J.
9 Affinito, individually and d/b/a Joe Peppers BBQ Lounge, where service has not been made or service
10 by publication requested.

11 Plaintiff shall serve a copy of this Order on the Defendant and thereafter file a Certification of
12 Service of this Order with the Clerk of the Court.

13
14
15 **IT IS SO ORDERED:**

16
17 

18 9/18/13

19 Dated: _____

20 **THE HONORABLE SUSAN ILLSTON**
21 **United States District Court**
22 **Northern District of California**

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **PROOF OF SERVICE (SERVICE BY MAIL)**

2 I declare that:

3 I am employed in the County of Los Angeles, California. I am over the age of eighteen years
4 and not a party to the within cause; my business address is 1114 Fremont Avenue, South Pasadena,
5 California. I am readily familiar with this law firm's practice for collection and processing of
6 correspondence/documents for mail in the ordinary course of business.

7
8 On September 18, 2013, I served:

9
10 **PLAINTIFF'S *EX PARTE* APPLICATION FOR AN ORDER CONTINUING THE**
11 **INITIAL CASE MANAGEMENT CONFERENCE AND EXTENDING TIME TO**
12 **COMPLETE SERVICE; AND ORDER (Proposed)**

13 On all parties in said cause by enclosing a true copy thereof in a sealed envelope with postage
14 prepaid and following ordinary business practices, said envelope was duly mailed and addressed to:

15 Dominic J. Affinito (Defendant)
16 6269 East Highway 20
17 Lucerne, CA 95458

18 Juliette C. Affinito (Defendant)
19 6269 East Highway 20
20 Lucerne, CA 95458

21 The fully sealed envelope with pre-paid postage was thereafter placed in our law firm's
22 outbound mail receptacle in order that this particular piece of mail could be taken to the United States
23 Post Office in South Pasadena, California later this day by myself (or by another administrative
24 assistant duly employed by our law firm).

25 I declare under the penalty of perjury pursuant to the laws of the United States that the
26 foregoing is true and correct and that this declaration was executed on September 18, 2013, at South
27 Pasadena, California.

28 Dated: September 18, 2013

/s/ Stefanie Martinez
STEFANIE MARINEZ