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 12 COUPONS, INC.

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN JOSE DIVISION

16 COUPONS, INC.,

17 Plaintiff,

18 vs.

19 JOHN STOTTMIRE, and DOES 1-10,

20 Defendants.

Case No. 5:07-CV-03457 HRL

**COUPONS' OPPOSITION TO
 DEFENDANT'S MOTION FOR
 ADMINISTRATIVE RELIEF PURSUANT
 TO CIVIL L.R. 7-11 REQUESTING THAT
 THE COURT SET A STATUS
 CONFERENCE**

Judge: Honorable Howard R. Lloyd

21 Plaintiff Coupons, Inc. opposes Defendant John Stottlemire's motion filed November 23,
 22 2008 requesting a status conference regarding the collapse of the settlement. It is true that
 23 Stottlemire's breach constrained Coupons to rescind its settlement offer, to terminate the
 24 agreement and to proceed to obtain a judgment against Stottlemire. That judgment is necessary to
 25 repair the damage that Stottlemire caused and to stop the damage he will continue to cause to
 26 Coupons in the market place. But it would not be productive to discuss these issues informally in
 27 a conference with the Court.

28 There are, however, two alternative procedures available to Stottlemire and singularly
 appropriate for addressing the question. The first is for Stottlemire to bring a motion before this
 Court to enforce the settlement agreement. The second is to return to the ENE evaluator in front
 of whom the parties attempted to settle this matter in order to seek his guidance. A status

1 conference is not necessary at this time.¹ And certainly a request to enforce a settlement
2 agreement in the face of asserted settlement breaches is not the stuff of Local Rule 7-11
3 administrative motions for requests such as permission to file long briefs.

4 **I. ARGUMENT**

5 As previously communicated to the Court, Coupons and Stottlemire participated in what
6 then appeared as a successful Early Neutral Evaluation session with Mr. Harold McElhinny. The
7 parties entered into a settlement agreement at the ENE session. However, after the ENE session,
8 but before the final settlement agreement was fully executed and the case dismissed, Stottlemire
9 materially breached the agreement. He posted on his blog and disclosed to the press and bloggers
10 in interviews a confidential term of the settlement agreement, that he beat Coupons, and that he
11 paid no money to Coupons. The settlement agreement, however, explicitly provided that the
12 settlement terms were to remain confidential. Also improper, he combined his improper
13 disclosure of the settlement terms with inaccurate information apparently in order to boast about
14 his “victory” and to misguide the market.

15 Coupons immediately informed Stottlemire of his breach of the terms of the agreement
16 and that his conduct – specifically abusing the settlement process and disclosing confidential
17 terms alloyed with mischaracterizations – had injured and would continue to injure Coupons.
18 Coupons also provided a series of steps that Stottlemire could take to correct the breach and
19 repair the damage he caused to Coupons. These steps would cost Stottlemire no money, and
20 would simply require that he state the truth on his web site and to all reporters/bloggers with
21 whom he spoke. Stottlemire, however, has refused to remedy his breach.

22 Stottlemire’s abuse of the settlement process therefore compelled Coupons to continue
23 with the litigation to establish its rights against Stottlemire and to discourage others like
24 Stottlemire who would interfere with Coupons’ software and relationships with Coupons’
25 customers. But the continuation of the litigation and Stottlemire’s breach does not warrant a
26 status conference at this time, since there is no issue properly before the Court.

27 _____
28 ¹ The only outstanding issue is setting up a revised discovery schedule which can be done either
by stipulation or motion if the parties cannot agree on a schedule.

1 Indeed, there is nothing for the Court to address in this context. Mr. Stottlemire obviously
2 does not want to test his “no-breach” theory by filing a motion to enforce the settlement
3 agreement. For such a motion would require sworn testimony and would expose his disclosure of
4 confidential information, false facts and his improper use of a settlement agreement to injure
5 Coupons and encourage others to interfere with Coupons’ business.

6 If Stottlemire wants guidance and mediative services, Stottlemire should contact ENE
7 evaluator Harold McElhinny for guidance. This Court’s good offices are not the proper refuge
8 for Stottlemire’s tactics. Rather, Coupons’ counsel alerted Mr. McElhinny immediately when
9 Stottlemire made it clear that he would not repair the breach, and suggested that Mr. McElhinny
10 speak directly and ex parte with Stottlemire. Coupons hopes that Mr. McElhinny can provide
11 some additional guidance to the parties on a reasonable repair and resolution approach. Mr.
12 Stottlemire declined, and instead asked for the status conference with this Court.

13 **II. CONCLUSION**

14 In conclusion, Stottlemire’s motion should be denied because a status conference would
15 be a waste of the parties’ and the Court’s resources, and it is not necessary at this point.
16 Stottlemire has at least two other alternatives to address whatever concerns he has.

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18 Dated: November 25, 2008

FARELLA BRAUN & MARTEL LLP

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20 By: /s/ _____
Neil A. Goteiner

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COUPONS, INC.