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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF GUAM**

**MAEDA PACIFIC CORPORATION,**

Plaintiff,

vs.

**GMP HAWAII, INC., et al.,**

Defendants,

**AND DERIVATIVE AND OTHERWISE  
RELATED LITIGANTS.**

Civil Case No. 08-00012

**ORDER RE: HEARING ON GOOD-  
FAITH SETTLEMENT ISSUE;  
BRIEFING ON CERTIFICATION**

It is hereby **ORDERED** that an evidentiary hearing be set in this case for 9:30 a.m. on Monday, January 18, 2010. The hearing shall be of the sort contemplated in Section 24606 of Title 7, Guam Code Annotated.<sup>1</sup> Its specific purpose shall be to take evidence needed to resolve the question whether third-party defendant Smithbridge Guam, Inc. (“Smithbridge”) in fact entered into a good-faith settlement with plaintiff Maeda Pacific Corporation (“Maeda”).

Notwithstanding what it has already filed, should Smithbridge wish to file any affidavit(s) of the of the sort contemplated in Section 24606(b), it shall do so by Thursday, December 3, 2009. Likewise, notwithstanding what they have already filed, should any other party wish to file

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<sup>1</sup> Smithbridge asserts that it is *entitled* to this hearing under Section 24606 of Title 7, Guam Code Annotated. *See* Docket No. 100 at 5:25-6:2. The provision Smithbridge relies on is procedural rather than substantive, and so does not govern actions in federal court. *See Federal Sav. and Loan Ins. Corp. v. Butler*, 904 F.2d 505, 511 (9th Cir. 1990); *see also Zamani v. Carnes*, 491 F.3d 990, 995 (9th Cir. 2007). Nonetheless, “nothing is to *prevent* the district court from granting a motion for an early determination of the good faith question,” and, “[i]n fact, it makes eminent good sense to do so.” *Butler*, 904 F.2d at 511 (emphasis added).

1 any counteraffidavit(s) in response to any affidavit(s) Smithbridge files, they shall do so by  
2 Thursday, December 10, 2009.

3 The *sole* issue to be dealt with at the hearing shall be the purported good-faith settlement  
4 between Maeda and Smithbridge, and the legal standards relevant thereto (which may include  
5 argument on whether defendant Jorgensen & Close Associates, Inc. (“JCA”), may be deemed an  
6 implied beneficiary of any Maeda-Smithbridge settlement).

7 Consequently, Smithbridge’s and JCA’s motions for summary judgment based on the  
8 economic loss doctrine shall *not* be dealt with or considered at the hearing. Should Smithbridge  
9 fail to prove that it entered into a good-faith settlement with Maeda, the court intends to resolve  
10 the summary judgment motions by certifying to the Supreme Court of Guam a question designed  
11 to elicit a concise, authoritative and dispositive statement on whether, and to what extent, Guam  
12 law recognizes the economic loss doctrine. *See* Guam R. App. P. 20(b); *see also* *Arizonans for*  
13 *Official English v. Arizona*, 520 U.S. 43, 77-80 (1997); *Elkins v. Moreno*, 435 U.S. 647, 662  
14 (1978); *Lehman Bros. v. Schein*, 416 U.S. 386, 387-88, 391-92 (1974). The court so intends  
15 because this question of local law is not only unsettled but—in light of the impending military  
16 buildup and the obvious relevance of the economic loss doctrine to construction  
17 contracts—hugely important.

18 Accordingly, the court also **ORDERS** that the parties file proposed certification orders,  
19 *see* Guam R. App. P. 20(b)(3), together with any objections they may have to the possibility of  
20 certification, by Monday, January 11, 2010.

21 **SO ORDERED.**



22 /s/ **Frances M. Tydingco-Gatewood**  
23 **Chief Judge**  
24 **Dated: Nov 25, 2009**