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

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**
13 **FRESNO DIVISION**

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

15 **Plaintiff,**

16 **v.**

17 **GURDIR K. DHALIWAL, et al.**

18 **Defendants.**

19 **CASE NO. 1:10-cv-00389-LJO-JLT**

20 **PLAINTIFF'S *EX PARTE***
21 **APPLICATION FOR AN ORDER**
22 **CONTINUING INITIAL SCHEDULING**
23 **CONFERENCE; AND ORDER**
24 **(Proposed)**

25 **TO THE HONORABLE JENNIFER L. THURSTON, THE DEFENDANTS AND**
26 **THEIR ATTORNEY/S OF RECORD:**

27 Plaintiff Joe Hand Promotions, Inc., hereby applies *ex parte* for an order continuing the Initial
28 Scheduling Conference presently set for Wednesday, December 29, 2010 at 9:00 AM. As set forth
below Plaintiff respectfully requests that the Court continues the Initial Scheduling Conference to a new
date of to a new date approximately Thirty (30) to Forty-Five (45) days forward.

The request for the brief continuance is necessitated by the fact that Plaintiff has not yet
perfected service of the initiating suit papers upon the Defendants Gurdir K. Dhaliwal and Sharnjit
Kaur Dhaliwal, individually and d/b/a Papa O's Pizza; and Mantra Investments, LLC, an unknown
business entity d/b/a Papa O's Pizza. As a result, Plaintiff's counsel has not conferred with the
defendants concerning the claims, discovery, settlement, or any of the other pertinent issues
involving the case itself or the preparation of a Joint Status Report.

1 Plaintiff recently identified an alternative address that it believes will be successful to serve
2 its initiating suit papers, upon the Defendants.

3 **WHEREFORE**, Plaintiff respectfully requests that this Honorable Court continue the Initial
4 Scheduling Conference, presently scheduled for Wednesday, December 29, 2010 at 9:00 AM to a new
5 date approximately Thirty (30) to Forty-Five (45) days forward.

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7
8 Respectfully submitted,

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11 Dated: December 21, 2010

/s/ Thomas P. Riley

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

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1 **ORDER**

2 On March 5, 2010, the Court issued its "Order Setting Mandatory Scheduling Conference."
3 That Order set forth the obligations of counsel related to the Scheduling Conference. The Order reads,
4 "The Court is unable to conduct a scheduling conference until defendants have been served with the
5 summons and complaint. Accordingly, plaintiff(s) shall diligently pursue service of summons and
6 complaint and dismiss those defendants against whom plaintiff(s) will not pursue claims."

7 (Doc. 4 at 1, emphasis added) Notably, the Order sets forth the duty of counsel where it provides,

8 SHOULD COUNSEL OR A PARTY APPEARING PRO SE FAIL TO APPEAR AT
9 THE MANDATORY SCHEDULING CONFERENCE, OR FAIL TO COMPLY
10 WITH THE DIRECTIONS AS SET FORTH ABOVE, AN EX PARTE HEARING
11 MAY BE HELD AND JUDGMENT OF DISMISSAL, DEFAULT, OR OTHER
12 APPROPRIATE JUDGMENT MAY BE ENTERED, OR SANCTIONS, INCLUDING
13 CONTEMPT OF COURT, MAY BE IMPOSED AND/OR ORDERED.

14 Id. at 8, emphasis in the original. Moreover, according to Fed. R. Civ. P. Rule 4(m), Plaintiff is
15 obligated to serve the summons within 120 days after it is issued or the Court may, after notice to
16 Plaintiff, dismiss the action, unless good cause for the failure is shown. Here, the Court has no
17 information why the defendants have not been served.

18 Based upon the foregoing, the Court finds that there is good cause to continue the Scheduling
19 Conference. Accordingly, IT IS HEREBY ORDERED that:

20 1. The Scheduling Conference set for December 29, 2010 at 9:00 a.m. is vacated and reset
21 for February 15, 2011 at 9:00 a.m at 1200 Truxtun Avenue, Suite 120, Bakersfield, CA before
22 Magistrate Judge Jennifer L. Thurston;

23 2. The parties must file a Joint Scheduling Report no later than February 8, 2011;

24 3. Plaintiff is reminded of its obligation to comply with Fed. R. Civ. P. Rule 4(m);

25 4. Plaintiff is ORDERED to serve each defendant with a copy of this order with the
26 summons and complaint.

27 IT IS SO ORDERED.

28 Dated: December 22, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE