

1 IT IS HEREBY STIPULATED by and between Plaintiff and Counter Defendant, MAXIMUS,
2 INC. (“MAXIMUS”) and Defendant and Counter Claimant NIMBUS DATA SYSTEMS, INC.
3 (“Nimbus”) (collectively the “Parties”), through their respective counsel, that the August 6, 2014 Status
4 (Pre-trial Scheduling) Order be amended to change the current trial date and related deadlines.

5 I. PROCEDURAL HISTORY

6 On August 6, 2014, the Court entered a Status (Pre-trial Scheduling) Order setting the following
7 deadlines:

8 Expert Witness Disclosures: April 10, 2015

9 Supplemental/Rebuttal Expert Disclosures: April 17, 2015

10 Discovery Cutoff: June 15, 2015

11 Dispositive Motion Deadline: July 22, 2015

12 Final Pre-Trial Conference: September 25, 2015 at 10:00 a.m.

13 Trial: November 2, 2015 at 9:00 a.m.

14 ECF No. 8.

15 On or about September 19, 2014, MAXIMUS propounded a first set of discovery requests on
16 Nimbus and served key deposition notices. On or about October 30, 2014, Nimbus served its responses
17 and objections to MAXIMUS’s discovery requests. Over approximately the next six months the Parties
18 engaged in extensive meet and confer efforts regarding Nimbus’s discovery responses. The Parties have
19 also been meeting and conferring in an attempt to schedule Nimbus’s Person Most Knowledgeable
20 deposition as well as the deposition of a key Nimbus employee. The discussions are still ongoing.

21 II. LEGAL STANDARD

22 Following the Court entering a Status (Pre-trial Scheduling) Order, Federal Rule of Civil
23 Procedure 16 provides that a pretrial schedule “may be modified only for good cause and with the judge’s
24 consent.” Fed. R. Civ. P. 16(b)(4). The Parties must demonstrate that they acted with diligence in
25 complying with the scheduling order’s deadlines and in seeking leave to amend. *Johnson v. Mammoth*
26 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “Good cause” exists when a deadline “cannot
27 reasonably be met despite the diligence of the party seeking the extension.” *Johnson*, 975 F.2d at 609
28 (citation omitted). Thus, “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the

1 party seeking the amendment.” *Id.*; see also *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir.
2 2000).

3 III. DISCUSSION

4 The Parties stipulate that good cause exists to amend the scheduling order because, despite due
5 diligence and good faith efforts, certain key witnesses have been unavailable for depositions and there
6 has been extensive meet and confer needed before the parties could complete written and oral discovery
7 (past the June 15, 2015 cutoff).

8 When the Joint Status Report, ECF No. 7, was developed the Parties were unaware of the
9 significant amount of time that would be spent in meeting and conferring in the initial stages of the
10 discovery process and scheduling key depositions. This initial meet and confer process extended over a
11 period of approximately six months. As a result of the time expended on meeting and conferring, the
12 usual and customary pace of litigation was suspended and critical discovery has not been undertaken by
13 either Party. Despite their diligence, the Parties have not been able to complete meaningful discovery
14 efforts and will be prejudiced if they are not afforded adequate time to propound all the necessary
15 discovery, take depositions of relevant witnesses and consult with the expert witnesses that will be
16 required to properly litigate this case. The Parties were also unaware of scheduling conflicts that would
17 arise.

18 As soon as it became apparent that the time remaining for conducting discovery was not going to
19 be adequate because of the time expended on initial discovery and deposition scheduling, the Parties met
20 and conferred and agreed that a continuance of the trial date would be necessary to accommodate further
21 discovery. The Parties are making this request in a reasonable amount of time in advance of the current
22 trial date so as to give the Court adequate notice with regard to the management of its docket. Also, this
23 is the first such continuance that the Parties have requested or received, and neither Party will be
24 prejudiced by a continuance.

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1 Accordingly, the Parties hereby stipulate to continue the trial date from November 2, 2015 to
2 February 29, 2016, or to such a date thereafter that is convenient for the Court, and that would not
3 include a trial date or any day of trial occurring between March 28–April 8, 2016. The Parties propose
4 the following amended schedule:

5 Expert Witness Disclosures: August 7, 2015

6 Supplemental/Rebuttal Expert Disclosures: August 14, 2015

7 Discovery Cutoff: October 13, 2015

8 Dispositive Motion Deadline: November 18, 2015

9 Final Pre-Trial Conference: January 15, 2016 at 10:00 a.m.

10 Trial: February 29, 2016 at 9:00 a.m.

11 IV. CONCLUSION

12 Based on the foregoing, the Parties respectfully request that the Court issue an Order amending
13 the Status (Pre-trial Scheduling) Order.

14 IT IS SO STIPULATED.

15 Respectfully submitted,

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17 DATED: May 20, 2015

GREENBERG TRAURIG, LLP

18
19 By /s/ Anthony J. Cortez
20 Jeremy A. Meier
21 Anthony J. Cortez
22 Attorneys for Plaintiff and Counter Defendant
23 MAXIMUS, Inc.

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27 DATED: May 20, 2015

SEUBERT FRENCH FRIMEL & WARNER LLP

1 By /s/ William J. Frimel (as authorized on May 20, 2015)
2 William J. Frimel
3 Attorneys for Defendant and Counter Claimant
4 Nimbus Data Systems, Inc.

5 **ORDER (AS MODIFIED BY THE COURT)***

6 Pursuant to the stipulation of the Parties herein and for good cause shown, it is hereby ordered
7 that the Status (Pre-trial Scheduling) Order is amended as follows:

8 Expert Witness Disclosures: August 7, 2015

9 Supplemental/Rebuttal Expert Disclosures: August 14, 2015

10 Discovery Cutoff: October 13, 2015

11 Dispositive Motion: November 18, 2015

12 Dispositive motion hearing: December 16, 2015 at 9:30 a.m.*

13 Joint pretrial statement due: January 8, 2016*

14 Final Pre-Trial Conference: January 15, 2016 at 10:00 a.m.

15 Trial: February 29, 2016 at 9:00 a.m.

16 IT IS SO ORDERED.

17 Dated: 5/20/2015

18 /s/ John A. Mendez
19 Hon. Judge John A. Mendez
20 United States District Court Judge