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 5 AUTOMATED MEDIA PROCESSING SOLUTIONS, INC.,
 dba EQUILIBRIUM
 6

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 8 UNITED STATES DISTRICT COURT
 9
 10 NORTHERN DISTRICT OF CALIFORNIA

11	AUTOMATED MEDIA PROCESSING)	CASE NO. 15-cv-05018 SI
12	SOLUTIONS, INC., dba EQUILIBRIUM, a)	
	corporation,)	EX PARTE APPLICATION FOR
13)	CONTINUANCE OF CASE
	Plaintiff,)	MANAGEMENT CONFERENCE AND
14)	SCHEDULING ORDER
	v.)	
15)	
	SCHAWK DIGITAL SOLUTIONS, INC., a)	
16	business entity; BLUE SOFTWARE, LLC, a)	
	business entity,)	Date: February 19, 2016
17)	Time: 2:30 PM
	Defendants.)	Dept.: Courtroom 1
18)	

19
 20 **I. APPLICATION AND GROUNDS**

21 Plaintiff AUTOMATED MEDIA PROCESSING SOLUTIONS, INC., dba
 22 EQUILIBRIUM (“EQUILIBRIUM”) respectfully requests that the Court continue the Case
 23 Management Conference presently scheduled for February 19, 2016, for a reasonable
 24 period of approximately three weeks. The reasons, as set forth further in the attached
 25 declaration of Michael Welch, counsel for plaintiff, are as follows. First and most
 26 significant is that plaintiff’s counsel has not received any notices or documents from the
 27

1 District Court regarding this case due to a never before experienced problem apparently
2 related to the e-mail address of record where said counsel has previously received and sent
3 documents under the Court’s “ECF” system for approximately 10 years. It was first
4 brought to counsel’s attention approximately 2 weeks ago and plaintiff’s counsel though he
5 had corrected it (by using the ECF on-line “help” system to change the e-mail address), but
6 it failed as the notice of the current Case Management Conference and scheduling order
7 was not received, and counsel was alerted to it only by a call from the Court’s clerk
8 yesterday. This is in the process of being corrected (hopefully more effectively) with an
9 outside consultant with the assistance of information and resources provided by the “ECF”
10 support group, and in the meantime this case’s docket is being monitored once per day for
11 any further notices or documents that may be filed or sent to counsel.

12 The second reason is that the defendants were just served with the summons and
13 complaint, so have not yet had the opportunity to respond and appear. Plaintiff’s counsel
14 filed this case in early November, 2015, and calendared the last dates, and also planned
15 dates and deadlines, for service of summons and complaint, based on Fed. Rule of Civ.
16 Proc. 4(m) at the time, which provided for 120 days to effect service (as had been the rule
17 for the 30 years of this counsel’s practice). The intent was not to wait until the last day
18 (i.e., solely for maximizing the time of service), but to allow for the anticipation that
19 additional events would occur in or by February that would likely require amending the
20 complaint to add or revise one or more claims. However, upon becoming aware of both
21 the newly scheduled Case Management Conference (through telephone follow-up by the
22 Court’s clerk) and the recent revisions to the Federal Rules after this action was filed that
23 reduce the time for service, plaintiff’s counsel immediately effected service on the two
24 defendants. To the extent that plaintiff needs to amend the current complaint in the near
25 future, it will do so through normal amendment procedures (i.e., by stipulation or motion).

26 Based on the above-stated lack of actual notice received by plaintiff’s counsel of
27 the currently scheduled Case Management Conference, and the need for some additional

1 time to consult with counsel for the newly served defendants to prepare the requisite
2 Scheduling Order (and their appearances), plaintiff respectfully requests that the Court
3 grant this Application for Continuance and issue an order setting a new date for the Case
4 Management Conference and scheduling order.

5 Respectfully submitted,

7 LAW OFFICES OF MICHAEL T. WELCH

9 Dated: February 18, 2016

10 By: /s/ Michael Welch
11 Michael T. Welch
12 Attorney for Plaintiff
13 AUTOMATED MEDIA PROCESSING
14 SOLUTIONS, INC., dba EQUILIBRIUM

14 The Initial Case Management Conference has
15 been continued to Friday, March 18, 2016 at
16 2:30 p.m.

17 The Joint Case Management Conference Statement
18 shall be filed on March 11, 2016.



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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 AUTOMATED MEDIA PROCESSING)
12 SOLUTIONS, INC., dba EQUILIBRIUM, a)
corporation,)

13 Plaintiff,)

14 v.)

15 SCHAWK DIGITAL SOLUTIONS, INC., a)
16 business entity; BLUE SOFTWARE, LLC, a)
business entity,)

17 Defendants.)

CASE NO. 15-cv-05018 SI

18) **DECLARATION OF MICHAEL**
19) **WELCH IN SUPPORT EX PARTE**
20) **APPLICATION FOR CONTINUANCE**
21) **OF CASE MANAGEMENT**
22) **CONFERENCE AND SCHEDULING**
23) **ORDER**

24) Date: February 19, 2016
25) Time: 2:30 PM
26) Dept.: Courtroom 1
27)
28)

21 I, Michael Welch, declare as follows:

22 1. I am an attorney duly admitted to practice in the State of California and in the
23 U.S. District Court for the Northern District of California, and am the attorney for the
24 plaintiff, AUTOMATED MEDIA PROCESSING SOLUTIONS, INC., dba
25 EQUILIBRIUM (“EQUILIBRIUM”) in this action. I have personal knowledge of the facts
26 stated in this Declaration.
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1 2. I filed this action in early November, 2015. At that time, as is my practice, I
2 calendared both the last date for service of the defendants under the Federal Rules, and the
3 date by which my client and I anticipated serving defendants based on what was perceived
4 as a likelihood of one or more events occurring regarding the contract claims in this action
5 that might necessitate amending the complaint. At that time, Federal Rule of Civil
6 Procedure 4 provided for the summons and complaint to be served within 120 days, so I
7 calendared the final date for service as March 1, 2016, and the last date by which we would
8 make service as February 22, 2016.

9 3. Thereafter I did not receive any notices or documents regarding this case by e-
10 mail under the Court's "ECF" system, but as it was still relatively early in the case and the
11 defendants had not been served, I was not anticipating any type of notice or document by
12 any date certain. However, on approximately February 2 I was contacted by Ada Means,
13 the clerk for Magistrate Judge Corley, who informed me of the deadline for filing a consent
14 or declination to have the case heard before Judge Corley, and who told me she had
15 attempted to e-mail me at the e-mail address listed on my "ECF" record, but that the e-mail
16 had "bounced back" to her. I telephoned her and she also informed me of another Notice
17 that had been sent to me regarding a scheduling order, which I had never received. At that
18 point I ascertained that there was some type of problem with the e-mail address or system
19 that served as my long-standing e-mail address in the "ECF" system, even after my normal
20 office e-mail address was changed several years ago to the above "gmail" address, as e-
21 mails sent to the former address were "bouncing back" and not being received by me on
22 that system from the court (but that address was still receiving other e-mails, e.g., personal,
23 business, "spam", etc.).

24 4. After receiving that information from Ms. Means, I promptly file a Notice of
25 declination of having the case heard by the Magistrate Judge. I also personally went to the
26 website of the Northern District and accessed the "ECF" system and its "help" sections that
27 provided instructions on changing or adding an attorney's website address on the system. I
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1 followed the instructions and steps provided, and I believe and understood that I had
2 successfully replaced my prior e-mail address (that appeared to be the cause of the “bounce
3 back” problem) with my current and fully functional e-mail address
4 (mwelchlaw@gmail.com). I assumed that the above problem had been corrected, and that
5 I would receive any further notices or documents filed in the case at this e-mail address.

6 5. Yesterday, February 17, I received a voice-mail message on my office telephone
7 from Tracy, a clerk of this Court. I telephoned her back right after I listened to the
8 message, and she told me she was calling to inquire of the status of the scheduling order
9 that was due in advance of the Case Management Conference set for this Friday, February
10 19. I did not receive a notice of either the Conference or the scheduling order at my e-mail
11 address, i.e., my “gmail” address that I had recently made as the main address for receiving
12 e-mails, and I informed Tracy of the problem described above that I had experienced, and
13 that I thought I had successfully corrected it. She also asked me about the status of a proof
14 or service on the defendants, and in the course of that discussion it came out that the Court
15 had recently changed / updated many of its rules and procedures, including a reduction of
16 the former 120 day service limit (which I subsequently confirmed by research of the
17 revised rules). I stated that the defendants were due to be served shortly, and I then
18 expedited that process so that both were served (by stipulation of counsel to accept service,
19 for defendant Schawk Digital Solutions, and by personal service on the registered agent of
20 defendant Blue Software, LLC, as of today, February 18. I intend to follow up with
21 counsel for Schawk as soon as possible to discuss the items in the scheduling order and
22 reach agreement on a joint scheduling order, and to do so with counsel for Blue Software
23 as soon as I learn who that is.

24 6. I also have asked my outside tech support vendor to assist me this time in going
25 back to the ECF site, and to work with any support staff attached to that site, if necessary,
26 to ensure that my proper e-mail address (my “gmail” account) is properly and fully
27 installed and functional, which I understand will occur within the next several days. In the

1 meantime I am checking the docket myself for this case on a daily basis to make sure I
2 know of any filings.

3 I declare under penalty of perjury under the laws of California and the United States
4 that the foregoing is true and correct.

5

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Dated: February 18, 2016

7

By: /S/ Michael Welch

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Michael T. Welch
Attorney for Plaintiff
AUTOMATED MEDIA PROCESSING
SOLUTIONS, INC., dba EQUILIBRIUM

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