

1 TOMAS E. MARGAIN, Bar No. 193555  
 2 HUY TRAN, Bar No. 288196  
 Justice at Work Law Group  
 3 84 West Santa Clara Street, Suite 790  
 San Jose, CA 95113  
 Telephone: (408) 317-1100  
 Facsimile: (408) 351-0105  
 4 Tomas@JAWLawGroup.com  
 Huy@JAWLawGroup.com

5 Attorneys for Plaintiffs  
 6 ALVARO PENA ROJAS and  
 HUMERTO VILLEGAS

7 UNITED STATES DISTRICT COURT  
 8 FOR NORTHERN DISTRICT OF CALIFORNIA  
 9

10 ALVARO PENA ROJAS and HUMERTO  
 11 VILLEGAS,

12 Plaintiffs,

13 v.

14 MICHAEL F. WALLAU ENTERPRISES,  
 15 INC.; MICHAEL F. WALLAU,  
 16 Defendants.

Case No.: 15-CV-05002-NC

**MOTION TO CONTINUE INITIAL CASE  
 MANAGEMENT CONFERENCE AND  
 INITIAL CASE MANAGEMENT ORDERS;  
 DECLARATION OF TOMAS E.  
 MARGAIN; ORDER**

CIVIL L.R. 6-3; FRCP RULE 6(b)(1)

17 TO ALL PARTIES AND ATTORNEYS OF RECORD IN THIS ACTION.

18 Notice is hereby given that Plaintiffs move to continue the Initial Case Management  
 19 Conference from February 17, 2016 to Wednesday April 20, 2016 as Defendants have not yet  
 20 been served despite three service attempts. The related Rule 26 and ADR Deadlines are also  
 21 requested to be moved according to the proposed April 20, 2016 date. This motion is based on  
 22 CIVIL L.R. 6-3 and FRCP RULE 6(b)(1) and is supported by the Declaration of Tomas E.  
 23 Margain, the Court's File and the proposed Order filed herein.

**FOR PLAINTIFFS**

24 DATED: February 10, 2016

By: //s// Tomas E. Margain  
**Tomas E. Margain**

**DECLARATION OF TOMAS E. MARGAIN IN SUPPORT**

I, TOMAS E. MARGAIN, declare as follows:

1. I am an attorney duly authorized to practice before this Court and Plaintiff's attorney of record in this action. I base this declaration on my personal knowledge unless otherwise indicated.

2. This lawsuit was filed on October 30, 2015. Docket 1. The Original Complaint only included one Plaintiff, ALVARO PENA ROJAS. However, after filing the Complaint, I was hired by another former employee HUMERTO VILLEGAS who was added to the lawsuit by the filing of a First Amended Complaint on January 12, 2016. Docket 5.

3. I was delayed in serving the Complaint because I wanted to wait until the Complaint was amended to then serve Defendants.

4. To date I have attempted to serve Defendants on three occasions the first attempt being on January 28, 2016. I am attaching as Exhibit 1 a true and correct copy of an email from my process server One Legal.

5. I attempted to serve Defendants at the home of Michael Wallau and not his restaurant. This was the address listed with the Secretary of State. However, based on the three failed attempts, I am going to serve Mr. Wallau at his restaurant to make sure there are no more delays.

I declare under penalties of perjury under the laws of the United States that the foregoing is true and accurate. Executed in San Jose, Santa Clara California.

Dated: February 10, 2016.

By: \_\_\_\_\_//s// Tomas Margain\_\_\_\_\_  
Tomas E. Margain

**MOTION**

The Court both under its inherent authority and under CIVIL L.R. 6-3; FRCP RULE 6(b)(1) has the authority to change and modify deadlines. The Court can also extend the time by which a Defendant can respond to the Complaint.

Plaintiffs respectfully request that the Initial Case Management Conference and related deadlines be continued approximately 60 days to Wednesday April 20, 2016. This will allow the First Amended Complaint to be served and give Defendants time to hire counsel and make an appearance.

The requested new dates are as follows:

(1) April 4, 2016 shall be the last day to:

- meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plans;
- file ADR Certification signed by Parties and Counsel
- file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference

(2) April 13, 2016 shall be the last day to:

- File Rule 26(f) Report,
- complete initial disclosures or state objection in Rule 26(f) Report and
- file Case Management Statement per attached Standing Order re Contents of Joint Case Management Statement

(3) The Initial Case Management Conference will be set for April 20, 2016 (Tuesday) in the Ronald Dellums Federal Building, 1301 Clay Street, Oakland, CA 94612 at 1:30 PM.

Dated: February 10, 2016

By: \_\_\_\_\_//s// Tomas Margain\_\_\_\_\_  
Tomas E. Margain

1 ALVARO PENA ROJAS and HUMERTO  
2 VILLEGAS,

3 Plaintiffs,

4 v.

5 MICHAEL F. WALLAU ENTERPRISES,  
6 INC.; MICHAEL F. WALLAU,  
7 Defendants.

Case No.: 15-CV-05002-NC

**ORDER GRANTING MOTION TO  
CONTINUE**

CIVIL L.R. 6-3; FRCP RULE 6(b)(1)

8 Based on good cause the Court hereby modifies and continues the initial Deadlines as  
9 follows:

10 (1) April 4, 2016 shall be the last day to:

- 11 • meet and confer re: initial disclosures, early settlement, ADR process selection, and
- 12 discovery plans;
- 13 • file ADR Certification signed by Parties and Counsel
- 14 • file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference

15 (2) April 13, 2016 shall be the last day to:

- 16 • File Rule 26(f) Report,
- 17 • complete initial disclosures or state objection in Rule 26(f) Report and
- 18 • file Case Management Statement per attached Standing Order re Contents of Joint Case  
19 Management Statement

20 (3) The Initial Case Management Conference will be set for April 20, 2016 (Wednesday) in the  
21 Robert F. Peckham Federal Building, 280 South 1st Street, San Jose, CA 9511394612 at 10:00  
22 AM.

23 Defendants are ordered to file a Consent/Declination to have this matter heard by a  
24 Magistrate Judge on or before April 4, 2016

25 **IT IS SO ORDERED.**

Dated: February 10, 2016

By:

NATHANAE  
UNITE  
JUDGE

