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4 Attorneys for Plaintiff  
 5 Marketing Information Masters, Inc.

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 9 **UNITED STATES DISTRICT COURT**  
 10 **SOUTHERN DISTRICT OF CALIFORNIA**

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 12 Marketing Information Masters, Inc., a  
 California corporation,

13 Plaintiff,

14 vs.

15 The Board of Trustees of the California State  
 16 University System, a public entity acting  
 through its subdivision San Diego State  
 17 University; and Robert A. Rauch, an  
 individual,

18 Defendants.

Case No. 06 CV 1682 JAH (JMA)

**PLAINTIFF'S EX PARTE APPLICATION  
 (1) TO CONTINUE HEARINGS ON  
 DEFENDANTS' MOTION TO DISMISS  
 SECOND AMENDED COMPLAINT  
 RULE 11 MOTION; AND (2) FOR  
 EXTENSION OF TIME TO FILE  
 OPPOSITON TO MOTION TO DISMISS  
 SECOND AMENDED COMPLAINT AND  
 RULE 11 MOTION**

Current Hearing Date:

Date: May 5, 2008

Time: 2:30 p.m.

Court: 11 (Hon. John A. Houston)

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 24 **EX PARTE APPLICATION**

25 Plaintiff Marketing Information Masters, Inc. ("Plaintiff") submits this ex parte application  
 26 ("Application") to request a continuance of the hearing (the "Hearing") on Defendants' motion to  
 27 dismiss Plaintiff's second amended complaint and Defendants' Rule 11 motion. Such motions  
 28 currently are scheduled for hearing at 2:30 p.m. before the Honorable John A. Houston. By this

**PLAINTIFF'S EX PARTE APPLICATION TO CONTINUE HEARING DATE ON MOTION TO DISMISS  
 SECOND AMENDED COMPLAINT AND RULE 11 MOTION AND FOR EXTENSION**

1 Application, Plaintiff respectfully asks the Court to continue such hearings for two weeks, to May  
2 19, 2008 or the next available date thereafter, and to extend Plaintiff's time to submit his  
3 opposition to Defendants' pending motions.

4 This request for a continuance has been made necessary because Plaintiff's counsel has not  
5 yet been able to complete Plaintiff's opposition papers because of computer crash in his office and  
6 out-of-state travel for an appellate argument in the Sixth Circuit in Cincinnati. Because this case  
7 is not proceeding on an expedited basis, there will not be any prejudice to Defendants from the  
8 short extension sought by this Application.<sup>1</sup> This is especially true if the Court follows its usual  
9 practice and takes the pending motions under submission without oral argument.

10 However, there will be substantial prejudice to Plaintiff if the extension sought by this  
11 Application is not granted, especially given the seriousness of the relief sought by Defendants'  
12 Rule 11 motion. Accordingly, Plaintiff respectfully asks the Court to grant the short two-week  
13 extension sought by this Application.

14 Plaintiff ordinarily would have filed this Application during the week of April 21, 2008, as  
15 soon as Plaintiff's counsel discovered the problems that have led to the need for this Application.  
16 However, Plaintiff's counsel wanted to have a better idea of how long it was going to take to re-  
17 create and re-draft Plaintiff's opposition papers before submitting this Application, so that Plaintiff  
18 could request a realistic continuance and extension.

19 The factual basis for this Application is summarized below and set forth in the  
20 accompanying Declaration of Gregory P. Goonan.

### 21 DISCUSSION

22 The two motions presently before the Court are a motion to dismiss Plaintiff's second  
23 amended complaint and a companion Rule 11 motion filed by Defendants. Such motions  
24 presently are set for hearing on May 5, 2008 at 2:30 p.m.

25 As explained in the accompanying Declaration of Gregory P. Goonan, Plaintiff's counsel  
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27 <sup>1</sup> Indeed, this case was filed in August 2006, and the pleadings still are not closed more than 20  
28 months later.

1 had made substantial progress on Plaintiff's opposition papers and was preparing to file such  
2 papers by the April 21, 2008 due date for such papers. However, late in the day on April 16, 2008,  
3 the computer on which Plaintiff's opposition papers and legal research were stored suffered a  
4 massive hard drive failure. Plaintiff's counsel immediately took steps to try to rectify the problem  
5 and recover the computer data, including Plaintiff's opposition papers and legal research.  
6 However, by mid-day on April 21, 2008, Plaintiff's counsel concluded that the opposition papers  
7 would not be recovered, so that Plaintiff's counsel essentially would have to recreate and draft the  
8 opposition papers again from the start.

9 Under ordinary circumstances, Plaintiff's counsel immediately would have re-drafted the  
10 opposition papers and filed them later in the week of April 21, 2008. But on April 21, 2008,  
11 Plaintiff's counsel had to fly to Cincinnati, Ohio to prepare for and participate in an appellate  
12 argument before the Sixth Circuit Court of Appeals on April 23, 2008.

13 Plaintiff's counsel did not get back to his office from such trip until the afternoon of April  
14 24, 2008. He immediately resumed work on re-drafting Plaintiff's opposition papers. But  
15 Plaintiff's counsel also is about to commence a two-week jury trial starting on May 20, 2008, and  
16 the trial readiness conference (the equivalent of the federal pretrial conference) in such case was  
17 scheduled on April 25, 2008. Consequently, Plaintiff's counsel had to spend substantially all of  
18 his time on April 24, 2008 preparing for such trial readiness conference.

19 Plaintiff's counsel has made substantial progress in re-creating Plaintiff's opposition  
20 papers and expects to have Plaintiff's papers finalized and ready to file in the next day or two.  
21 However, to be on the safe side, by this Application Plaintiff asks for a two-week continuance (to  
22 May 19, 2008) of the hearing on Defendants' pending motions, and an extension to May 5, 2008  
23 of the due date for Plaintiff's opposition papers.

24 For the reasons discussed herein, Plaintiff respectfully submits that there is good cause to  
25 grant the extension sought by this Application. There will not be any prejudice to Defendants if  
26 the extension sought by this Application is granted. The motion to dismiss is a pleading motion,  
27 and the pleadings in this case have not yet been closed. There have not been any pretrial or trial  
28 dates scheduled in this case. Indeed, this case is not moving at an expedited pace and there is no

1 exigency that mandates that the pending motions be heard on May 5, 2008.

2 In sharp contrast, Plaintiff will suffer substantial prejudice if the continuance and extension  
3 sought by this Application are not granted. The pending motions – especially the pending Rule 11  
4 motion – raise serious issues that must be carefully addressed. This is especially true with respect  
5 to the Rule 11 motion, which wrongfully accuses Plaintiff’s counsel of misconduct and asks for  
6 monetary sanctions of more than \$7,000.00.

7 Plaintiff should not be penalized and prejudiced in addressing such serious matters because  
8 of an unexpected and devastating computer problem. Accordingly, Plaintiff asks that the Court  
9 grant the continuance and extension sought by this Application.

10 **LOCAL RULE 83.3(h)**

11 In accordance with Local Rule 83.3(h), the undersigned attorney hereby certifies and  
12 declares under the penalty of perjury that this Application was filed with the Court by the Court’s  
13 ECF/CM system, and served on Defendants’ counsel by operation of the ECF/CM system. The  
14 undersigned attorney further certifies and declares under penalty of perjury that a copy of this  
15 Application also was served on Defendants’ counsel by facsimile transmission.

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18 DATED: April 28, 2008

THE AFFINITY LAW GROUP APC

19  
20 By:  /s/ Gregory P. Goonan  
21 Gregory P. Goonan  
22 Attorneys for Plaintiff  
23 Marketing Information Masters, Inc.  
24 E-Mail: ggoonan@affinity-law.com  
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**DECLARATION OF GREGORY P. GOONAN**

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3           1. I am an attorney duly licensed to practice law in the State of California and before this  
4 Court, and am a shareholder in The Affinity Law Group APC, attorneys of record for Plaintiff. I  
5 have personal knowledge of the facts set forth in this declaration and if called as a witness, I could  
6 and would testify competently thereto.

7           2. The two motions presently before the Court are a motion to dismiss Plaintiff’s second  
8 amended complaint and a companion Rule 11 motion filed by Defendants. Such motions  
9 presently are set for hearing on May 5, 2008 at 2:30 p.m.

10           3. I had made substantial progress on Plaintiff’s opposition papers and was preparing to  
11 file such papers by the April 21, 2008 due date for such papers. However, late in the day on April  
12 16, 2008, the computer on which Plaintiff’s opposition papers and legal research were stored  
13 suffered a massive hard drive failure.

14           4. I immediately took steps to try to rectify the problem and recover the computer data,  
15 including Plaintiff’s opposition papers and legal research. However, by mid-day on April 21,  
16 2008, I concluded that the opposition papers would not be recovered. That meant that I was going  
17 to have to recreate and draft the opposition papers again from scratch.

18           5. Under ordinary circumstances, I immediately would have re-drafted the opposition  
19 papers and filed them later in the week of April 21, 2008. But on April 21, 2008, I had to fly to  
20 Cincinnati, Ohio to prepare for and participate in an appellate argument before the Sixth Circuit  
21 Court of Appeals on April 23, 2008. Consequently, I could not work on Plaintiff’s opposition  
22 papers during such period.

23           6. I did not get back to his office from such trip until the afternoon of April 24, 2008. I  
24 immediately resumed work on re-drafting Plaintiff’s opposition papers. But I also am about to  
25 commence a two-week jury trial starting on May 20, 2008, and the trial readiness conference (the  
26 equivalent of the federal pretrial conference) in such case was scheduled on April 25, 2008.  
27 Consequently, I had to spend substantially all of my time on April 24, 2008 preparing for such  
28 trial readiness conference.



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**Certificate of Service**

The undersigned hereby certifies that on this 28<sup>th</sup> day of April 2008, a true and accurate copy of the attached document was electronically filed with the Court, to be served by operation of the Court's electronic filing system, upon the following:

Jonathan S. Pink, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
650 Town Center Drive, Suite 1400  
Costa Mesa, CA 92626  
Attorneys for Defendants

/s/ Gregory P. Goonan