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Attorney For Counter-Defendant
Manuel D. Martinez

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT CALIFORNIA
SAN FRANCISCO DIVISION

STEVEN A. GRAY,

Plaintiff ,
vs.
UNITED STATES OF AMERICA; and
DOES 1 through 30, inclusive.

Defendant.
UNITED STATES OF AMERICA,

Counter-Claimant,
vs.
MANUEL MARTINEZ and STEVEN A.
GRAY

Counter-Defendants

Case No. CV 11-0680 SC

STIPULATION & ~~PROPOSED~~
ORDER TO CONTINUE PRETRIAL
AND TRIAL DEADLINES

Case filed: February 15, 2011

1 IT IS HEREBY STIPULATED by and between Plaintiff/ Counter-Defendant STEVEN A.
2 GRAY (sometimes hereinafter "Plaintiff GRAY"), Defendant/Counter-Claimant UNITED
3 STATES OF AMERICA (sometimes hereinafter "Defendant USA"), and Counter-Defendant
4 MANUEL D. MARTINEZ (sometimes hereinafter "Counter-Defendant MARTINEZ") by and
5 through their attorneys of record, that GOOD CAUSE exists and the parties request that the Court
6 continue the pretrial and trial deadlines based on the following:

7 1. The suit involves liability for the Trust Fund Recovery Penalty for quarters ending
8 March 31, 2007, September 30, 2007, December 31, 2007, March 31, 2008, and June 2008 as to
9 federal employment taxes owed by Ace Roofing, Inc., a California corporation owned by Manuel
10 Martinez.

11 2. Plaintiff/ Counter-Defendant GRAY disputes allegations that he was a responsible
12 officer of Ace Roofing, Inc. and allegations that he willfully failed to collect, account for or turn
13 over withholding and F.I.C.A. taxes with respect to Ace Roofing's employees for said periods.
14 Mr. GRAY asserts that he was not a "Responsible Person" nor was he "Willful" within the
15 meaning of 26 U.S.C § 6672 and the applicable court cases there under, nor under any other
16 federal law provision. Counter-Defendant MARTINEZ seeks a determination that he is not liable
17 as a "responsible person" under the Internal Revenue Code Section 6672 for payment of taxes or
18 penalties owed by Ace Roofing, Inc.

19 3. Plaintiff GRAY has filed a *Certification of Interested Entities or Persons* as follows:

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Name	Connection or Interest
ACE ROOFING, INC., a California corporation Agent For Service Process – Manuel D. Martinez	Principal debtor failing to tender federal employment taxes due to Defendant United States of America
MANUEL D. MARTINEZ 9065 Lakewood Drive Windsor, CA 95492	Principal debtor failing to tender federal employment taxes due to Defendant United States of America
MADELINE M. MARTINEZ 9065 Lakewood Drive Windsor, CA 95492	Spouse of Principal debtor failing to tender federal employment taxes due to Defendant United States of America and transferee of assets belonging to MANUEL MARTINEZ AND ACE ROOFING, INC.

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1 4. Counter-Defendant MARTINEZ has filed a *Certification of Interested Entities or*
2 *Persons* as follows:

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Name	Interest
ACE ROOFING, INC., a California corporation	Principal liable for underlying tax.
MADELINE M. MARTINEZ 9065 Lakewood Drive Windsor, CA 95492	Spouse MANUEL MARTINEZ

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8 5. Pursuant to Federal Rule of Civil Procedure 16(b)(4), good cause exist for the Court to
9 modify the July 22, 2011 *Status Conference Order Setting Times For Compliance With Certain*
10 *Rules of Court*.

11 6. At the time of the Initial Status Conference, the parties were engaged in settlement
12 negotiations and expected that this matter would be resolved via settlement. Such expectation
13 was disclosed on the record to the Honorable Judge Conti.

14 7. Although the parties agreed to early neutral evaluation in the joint case management
15 statement filed herein on July 12, 2011, no mediation or other alternative dispute resolution
16 orders have been issued. On July 22, 2011, expedited trial and trial related deadlines were set
17 based on the Court's and the named parties' settlement expectations and belief that this case could
18 be handled on an expedited basis with streamlined procedures assuming availability of pertinent
19 IRS officers and employees for deposition and other discovery responses.

20 8. Settlement: Settlement negotiations have stalled and the parties have resumed the
21 discovery process. This case can no longer be handled on an expedited basis with streamlined
22 procedures for additional reasons discussed herein above and below. The expected length of trial
23 in this matter is four (4) days.

24 9. Joinder of Parties & Amendment To Pleadings: Plaintiff contends that not all
25 necessary and indispensable parties have been joined.¹

26 10. Counter-Defendant MANUEL MARTINEZ did not appear in the above captioned

27 ¹ Internal Revenue Code Section 3505 provides for the liability of third parties paying or providing
28 for wages. See also Plaintiff Gray's Complaint 5:19-9:22.

1 matter until June 20, 2011 and the expedited calendar does not provide sufficient time to prepare
2 for trial.

3 11. Early Neutral Evaluation Request: Plaintiff requests referral to mediation in these
4 matters.

5 12. The parties are mindful of and respectful of the Court's July 22, 2011 *Status*
6 *Conference Order Setting Times For Compliance With Certain Rules of Court* ("Status
7 Conference Order") but continuing the discovery cut-off and pretrial deadlines is necessary for
8 effective completion of discovery, participation in early neutral evaluation, and preparation for
9 trial.

10 13. Based on the foregoing, the parties respectfully request that this Court 1) modify its
11 July 22, 2011 Status Conference Order, 2) continue the current discovery cut-off and all pre-trial
12 and trial related dates for at least ninety (90) days including but not limited to the dates requested
13 below, and 3) issue an order directing the parties to mediation:

	Current Deadline	Proposed Deadline
Discovery Cut-Off	October 5, 2011	January 4, 2012
Motion Hearing Cut-Off	October 21, 2011	January 20, 2012
Pre-Trial Conference	November 29, 2011	February 28, 2012
Trial	December 5, 2011	March 5, 2012

18 Dated: September 2, 2011

The McGary Firm

19 By: /s/ Andrea D. McGary
20 Andrea D. McGary, Esq.

21 Attorneys for Plaintiff/Counter-Defendant
22 STEVEN A. GRAY

23 Dated: September 2, 2011

United States Attorney Office,
24 Tax Division

25 By: /s/ Blake Stamm
26 Blake Stamm
27 Assistant United States Attorney
28 Tax Division

Attorneys for Defendant/Counter-Claimant
UNITED STATES OF AMERICA

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Dated: September 2, 2011

Jeffrey A. Titus, Attorney At Law

By: /s/ Jeffrey A. Titus
Jeffrey A. Titus, Esq.

Attorneys for Counter-Defendant
MANUEL D. MARTINEZ

ORDER

Upon consideration of the parties' *Stipulation And [Proposed] Order To Continue Pretrial And Trial Deadlines*, and good cause appearing therefor,

IT IS HEREBY ORDERED that the pretrial and trial deadlines be continued as follows:

	Previous Deadline	Revised Deadline
Mediation/Early Neutral Evaluation		
Discovery Cut-Off	October 5, 2011	January 5, 2012
Motion Hearing Cut-Off	October 21, 2011	January 13, 2012
Pre-Trial Conference	November 29, 2011	February 24, 2012
Trial	December 5, 2011	March 5, 2012

IT IS SO ORDERED.

Dated: September 8, 2011

