

1 MELINDA HAAG (CABN 132612)  
United States Attorney

2 THOMAS MOORE (ALBN 4305-078T)  
3 Chief, Tax Division

4 THOMAS M. NEWMAN (NYSBN 4256178)  
Assistant United States Attorney  
5 11th Floor Federal Building  
450 Golden Gate Avenue, Box 36055  
6 San Francisco, CA 94102  
Telephone: (415) 436-6888  
7 Fax: (415) 436-7009  
Attorneys for the United States of America

8 UNITED STATES DISTRICT COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA  
11  
12 SAN FRANCISCO DIVISION

|    |                            |   |                               |
|----|----------------------------|---|-------------------------------|
| 12 | ERG AEROSPACE CORPORATION, | ) | CASE NO. 13-2973 JSW          |
| 13 | Plaintiff,                 | ) |                               |
| 14 | v.                         | ) | MOTION TO CONTINUE SETTLEMENT |
| 15 | UNITED STATES OF AMERICA,  | ) | CONFERENCE TO AUGUST 26, 2014 |
| 16 | Defendant.                 | ) | ORDER                         |
| 17 |                            | ) |                               |

18 Pursuant to this Court Civil Local Rules 6-3 and 7-11, defendant the United States moves to  
19 continue the March 31, 2014 settlement conference to August 26, 2014. This motion is made for at least  
20 three reasons. The primary reason is that a settlement discussion involving the court is not practical at  
21 this time.

22  
23 As an initial matter, Plaintiff ERG Aerospace filed this suit on June 27, 2013. (Dkt. No. 1). In  
24 the complaint, ERG Aerospace alleges that the IRS is (wrongfully) attempting to levy payments made to  
25 plaintiff in order to satisfy a \$24 million tax debt owed by a company called ERG (Energy Research and  
26 Generation). (Dkt. No. 1). On October 16, 2013, defendant the United States filed an Answer to  
27 plaintiff's complaint, and a counterclaim against ERG Aerospace and ERG. (Dkt. No. 8). In the  
28

1 counterclaim, the defendant sought a judgment for the past-due taxes owed by ERG, a declaration that  
2 ERG Aerospace is the nominee or successor of ERG, and an injunction barring ERG or ERG Aerospace  
3 from failing to file tax returns, selling assets, and otherwise interfering with the Internal Revenue Laws.  
4 (Dkt. No. 8). These issue directly relate to any settlement as, from the government's perspective, ERG  
5 and ERG Aerospace are a single entity and both owe the tax debts at issue.  
6

7           Consequently, any settlement requires an analysis and review of ERG's and ERG Aerospace's  
8 assets and income. To date, the government has served ERG Aerospace with five document requests  
9 that includes information that would be vital to assessing settlement. Those requests have not been  
10 satisfied and as of March 21, 2014, the parties discussed through e-mail that plaintiff be ordered to  
11 provide documents it received as part of an unrelated case for counsel to review here. As noted in the  
12 stipulation filed in this case, government counsel will not receive those documents until March 25, 2014.  
13 (Dkt. No. 26). Stated simply, the government lacks information about ERG's and ERG Aerospace's  
14 assets, income and the purported sale of this business in 2006. Requests for this information have been  
15 made formally and informally starting in November 2013.  
16

17           As a second matter, the government has received no clear indication who owns ERG Aerospace.  
18 The government's counterclaim asserts ERG Aerospace and ERG are (or were) owned by substantially  
19 the same people. (Dkt. No. 8, at ¶ 65). While the documents claim that ERG Aerospace is run by Eric,  
20 Mark, and Bradley Benson; plaintiff also claimed that Burton Benson owns ERG Aerospace. (Dkt. No.  
21 8, at ¶ 67; Dkt. No. 22). At this point, no clear answer has been offered explaining who owns ERG  
22 Aerospace and in terms of settlement who will make a decision at the company.  
23

24           In addition, the settlement conference was to be attended by trial counsel, and Thomas Moore,  
25 the Tax Division Chief. Mr. Moore is no longer available on March 31, 2014, and the request to  
26 continue is also made to accommodate his schedule.  
27  
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1 For all of these reasons, the government believes that the settlement conference should be  
2 rescheduled to August 26, 2014. By that time, the parties should have exchanged discovery and the  
3 issues can be more fully discussed and addressed.<sup>1</sup>  
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5 Respectfully submitted,

6 MELINDA HAAG  
7 United States Attorney

8 /s/ Thomas M. Newman  
9 THOMAS M. NEWMAN  
10 Assistant United States Attorney  
11 Tax Division  
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26 <sup>1</sup> As a separate matter, the government attempted to obtain a stipulation to continue the  
27 settlement conference and more fully discuss this request. See Civil L.R. 6-11. Plaintiff's counsel  
28 agreed that they would call at 1:30 pm on March 24, 2014, to discuss an ongoing discovery dispute and  
would report their position about continuing the settlement conference. This meeting was previously set  
for March 21, 2014. Plaintiff's counsel did not call as agreed on March 21 or 24.

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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
6 SAN FRANCISCO DIVISION  
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8 ERG AEROSPACE CORPORATION, )

9 Plaintiff, )

10 v. )

11 UNITED STATES OF AMERICA, )

12 Defendant. )

13 

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 UNITED STATES OF AMERICA, )

14 Counterclaim-Plaintiff, )

15 v. )

16 ERG AEROSPACE CORPORATION, )  
17 ENERGY RESEARCH & GENERATION, )  
18 INC., individually, and d/b/a ERG )  
MATERIALS & AEROSPACE CORP., )

19 Counterclaim-Defendants. )  
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CASE NO. 13-2973 JSW

~~proposed~~ ORDER

21 IT IS ORDERED THAT the settlement conference is continued to August 26, 2014. at 9:30 a.m.

22 The Settlement Conference Order issued on 1/22/2014, ECF No. 20 remains in affect.

23 IT IS SO ORDERED.

24 Dated March 31, 2014

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 LAUREL BEELER  
27 U.S. MAGISTRATE JUDGE  
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