

1 LGI LLP
 BRADLEY A. PATTERSON, Esq. (State Bar No. 155482)
 2 18101 Von Karman Ave., Ste. 330
 Irvine CA 92612
 3 Telephone: (949) 253-0500
 Facsimile: (949) 253-0505

4 Attorney for Plaintiffs

5 JOSEPH P. RUSSONIELLO (CSBN 44332)
 United States Attorney
 6 THOMAS MOORE (ASBN 4305-T780)
 Assistant United States Attorney
 7 Chief, Tax Division
 8 CYNTHIA STIER (DCBN 423256)
 Assistant United States Attorney
 9 9th Floor Federal Building
 450 Golden Gate Avenue, Box 36055
 10 San Francisco, California 94102
 Telephone: (415) 436-7017
 11 Facsimile: (415) 436-6748

ROBERT J. HIGGINS (DCBN 242966)
 12 Trial Attorney, U.S. Department of Justice
 BART D. JEFFRESS (CT Juris No. 419184)
 13 Trial Attorney, U.S. Department of Justice
 555 4th St., N.W., Room 8816
 14 Washington, D.C. 20001
 Telephone: (202) 307-6580
 15 Facsimile: (202) 514-9440
 Email: robert.j.higgins@usdoj.gov

16 Attorneys for Defendant United States of America

17
 18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

20
 21 AWS MANAGEMENT, LLC, by and
 through MARY CHANDLER PETTY, a
 22 Partner Other than the Tax Matters
 Partner,

23 Plaintiff,

24 v.

25 UNITED STATES OF AMERICA, by and
 through its Agent, the INTERNAL
 26 REVENUE SERVICE,

27 Defendant.

) Case No. 05-1056 CW
) Consolidated with Case No. 05-1058 CW
)
) FIFTH STIPULATION AND ORDER TO
) EXTEND DISCOVERY SCHEDULE,
) SETTLEMENT CONFERENCE, AND
) TRIAL DATE

1 AWS ACQUISITIONS, LLC, by and)
 through MARY CHANDLER PETTY, a)
 2 Partner Other than the Tax Matters)
 Partner,)
 3)
 Plaintiff,)
 4 v.)
 5 UNITED STATES OF AMERICA, by and)
 through its Agent, the INTERNAL)
 6 REVENUE SERVICE,)
 7 Defendant.)
 _____)

8
 9 This stipulation is entered into by and between the plaintiffs and the defendant
 10 and is based on the following facts:

11 1. Plaintiffs have submitted a written settlement offer to defendant offering to
 12 settle all issues in this action. The Department of Justice, in concert with the Internal
 13 Revenue Service, is in the process of evaluating that settlement offer under its normal
 14 procedures.

15 2. On February 2, 2009, the parties filed a stipulation (Document 49):
 16 (i) notifying this Court that the parties were continuing to work towards settlement; and
 17 (ii) requesting that this Court continue discovery and trial deadlines to avoid the
 18 substantial expenditure of resources and effort attendant to defendant's intended course
 19 of discovery and to allow time for the Department of Justice to complete its evaluation of
 20 plaintiffs' offer and to finalize any settlement.

21 3. On February 4, 2009, this Court issued an order (Document 50) approving
 22 the stipulation to continue discovery and trial deadlines, and set the following revised
 23 calendar in this action:

- 24 Completion of Fact Discovery: June 15, 2009
- 25 Mandatory Settlement Conference on: July 17, 2009
- 26 Completion of Expert Discovery: October 16, 2009
- 27 Case-dispositive motions to be heard at 2:00 P.M. on: December 17, 2009
- 28 The pre-trial exchange between the parties will occur by: March 17, 2010

1 A pre-trial conference will be held on: April 20, 2010

2 A four-day Court Trial will begin at 8:30 A.M. on: May 10, 2010

3 4. Notice from the Court's Clerk (Document 51) set the Mandatory
4 Settlement Conference on June 23, 2009;

5 5. On June 4, 2009, the parties filed a stipulation (Document 52):

6 (i) notifying this Court that the parties were continuing to work towards settlement; and

7 (ii) requesting that this Court continue discovery and trial deadlines to avoid the

8 substantial expenditure of resources and effort attendant to defendant's intended course
9 of discovery and to allow time for the Department of Justice to complete its evaluation of
10 plaintiffs' offer and to finalize any settlement.

11 6. On June 10, 2009, this Court issued an order (Document 53) approving
12 the stipulation to continue discovery and trial deadlines, and set the following revised
13 calendar in this action:

14 Completion of Fact Discovery: on or before October 15, 2009

15 Mandatory Settlement Conference no later than: November 17, 2009

16 Completion of Expert Discovery: on or before February 16, 2010

17 Case-dispositive motions and a further case management conference:

18 2:00 P.M. on April 8, 2010

19 The pre-trial exchange between the parties: pursuant to Court's Order for
20 Pretrial Preparation

21 A pre-trial conference on: October 26, 2010 at 2:00 P.M.

22 A four-day Court Trial beginning at 8:30 A.M. on: November 15, 2010

23 7. Following the request of the parties (Document 55), the Court entered an
24 Order (Document 56) re-assigning this case to a Magistrate Judge. On July 15, 2009,
25 the case was so re-assigned, and, on July 16, 2009, Chief United States Magistrate
26 Judge Maria-Elena James entered an Order (Document 57) scheduling a settlement
27 conference for October 5, 2009, at 2:00 p.m. in Magistrate James' chambers.

28 8. On September 17, 2009, the parties filed a stipulation (Document 58):

1 (i) notifying this Court that the parties were continuing to work towards settlement; and
2 (ii) requesting that this Court continue discovery and trial deadlines to allow the parties
3 to work towards finalizing a settlement without simultaneously preparing for trial.

4 9. On September 18, 2009, this Court issued an order (Document 59)
5 approving the stipulation to continue discovery and trial deadlines, and set the following
6 revised calendar in this action:

7 Completion of Fact Discovery: on or before February 15, 2010

8 Mandatory Settlement Conference no later than: March 17, 2010

9 Completion of Expert Discovery: on or before June 16, 2010

10 Case-dispositive motions and a further case management conference:

11 2:00 P.M. on August 12, 2010

12 The pre-trial exchange between the parties: pursuant to Court's Order for
13 Pretrial Preparation

14 A pre-trial conference on: February 22, 2011 at 2:00 P.M.

15 A four-day Court Trial beginning at 8:30 A.M. on: March 14, 2011

16 10. On September 25, 2009, the parties filed a stipulation (Document 60),
17 notifying the Court that the settlement conference scheduled for October 5, 2009, had
18 been rescheduled for March 2, 2010.

19 11. All parties continue to believe that settlement is likely and continue to work
20 diligently towards a final action by the Department of Justice on plaintiffs' offer to settle
21 all issues in this case. Settlement efforts are continuing and there has been no
22 breakdown of communications and no impasse has arisen.

23 Plaintiffs recently provided documents that are necessary for defendant's
24 analysis of plaintiffs' settlement offer. Plaintiffs are in the process of filing with the
25 Internal Revenue Service all recently completed back tax returns that would be affected
26 if their settlement offer is accepted. In addition, plaintiffs submitted to the defendant the
27 recalculations of tax liability that form the bases for their settlement offer. Additional
28 time is needed for defendant to review these materials and, if necessary, to seek

1 information from plaintiffs about them.

2 12. The parties appreciate the Court's patience as the parties work to finalize
3 the settlement. The parties believe that requiring the parties to prepare for settlement
4 conferences or trial would be counterproductive to reaching a settlement in this action.

5 13. Based on the facts presented, the plaintiffs and the defendant request an
6 extension of an additional four months for each of the existing deadlines.

7 Respectfully Submitted,

8 FOR THE PLAINTIFFS

9 LGI LLP
10 Bradley A. Patterson, Esq.

11 Date: January 26, 2010

12 By s/Bradley A. Patterson
13 Bradley A. Patterson
14 Attorney for Plaintiffs

15 FOR THE UNITED STATES

16 UNITED STATES ATTORNEY
17 Joseph P. Russoniello , Esq.
18 Thomas Moore, Esq.
19 Cynthia Stier, Esq.
20 Robert J. Higgins, Esq.
21 Bart D. Jeffress, Esq.

22 Date: January 26, 2010

23 By s/Robert J. Higgins
24 Robert J. Higgins
25 Attorneys for Defendant
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

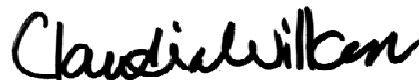
ORDER

Based on the facts and stipulation set forth above,

IT IS ORDERED:

1. Fact Discovery shall be completed on or before: June 15, 2010;
2. A Mandatory Settlement Conference shall be conducted before Magistrate Judge Maria-Elena James no later than July 19, 2010, at the convenience of Magistrate James' calendar;
3. Expert Discovery shall be completed on or before: October 18, 2010;
4. All case-dispositive motions and a further case management conference shall be heard at 2:00 P.M. on December 16, 2010;
5. The pre-trial exchange between the parties shall occur in accordance with the Court's Order for Pretrial Preparation.
6. A pre-trial conference will be held on: June 28, 2011, at 2:00 P.M.; and
7. A four-day Court Trial will begin at 8:30 A.M. on: July 18, 2011.

Date: February 1, 2010



The Honorable Claudia Wilken
United States District Court Judge