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17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

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 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

) SIXTH STIPULATION AND ORDER TO
 EXTEND DISCOVERY SCHEDULE,
 28) 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.)
 _____)

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 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 submitted their first written settlement offer to defendant offering
 12 to settle all issues in this action on August 2, 2006. The Department of Justice, in
 13 concert with the Internal Revenue Service, evaluated that settlement offer under its
 14 normal procedures. A revised offer was submitted on May 19, 2010.

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. On January 26, 2010, the parties filed a stipulation (Document 61):

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

23 12. On February 1, 2010, this Court issued an order (Document 62) approving
24 the stipulation to continue discovery and trial deadlines, and set the following revised
25 calendar in this action:

26 Completion of Fact Discovery: on or before June 15, 2010

27 Mandatory Settlement Conference no later than: July 19, 2010

28 Completion of Expert Discovery: on or before October 18, 2010

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

2 2:00 P.M. on December 16, 2010

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

5 A pre-trial conference on: June 28, 2011, at 2:00 P.M.

6 A four-day Court Trial beginning at 8:30 A.M. on: July 18, 2011

7 13. On February 4, 2010, the parties filed a stipulation (Document 63),
8 notifying the Court that the settlement conference scheduled for March 2, 2010, had
9 been rescheduled for July 9, 2010.

10 14. Since the Court ordered the last extension of deadlines, plaintiffs filed with
11 the Internal Revenue Service all of the back tax returns that would be affected if their
12 settlement offer were accepted.

13 After defendant had an opportunity to review the returns and the recalculations of
14 tax liability that form the bases for plaintiffs' settlement offer, the parties scheduled and
15 participated in a telephonic conference on April 30, 2010, addressing the offer and the
16 necessary remaining steps for completing any settlement. Participating on the call were
17 plaintiffs' attorney, plaintiffs' accountant, defendant's lead attorney, and an attorney from
18 the IRS.

19 As a result of the conference, plaintiffs revised their settlement offer and
20 submitted the revised offer to settle all issues in these consolidated cases to the
21 Department of Justice on May 19, 2010.

22 15. The parties continue to believe that settlement is likely and are working
23 diligently towards a final action by the Department of Justice on plaintiffs' revised offer
24 to settle all issues in this case. Settlement efforts are continuing and there has been no
25 breakdown of communications and no impasse has arisen.

26 16. The parties appreciate the Court's patience as the parties work to finalize
27 the settlement. The parties believe that requiring the parties to prepare for settlement
28 conferences or trial would be counterproductive to reaching a settlement in this action.

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ORDER

Based on the facts and stipulation set forth above,

IT IS ORDERED:

- 1. Fact Discovery shall be completed on or before: **October 15**, 2010;
- 2. A Mandatory Settlement Conference shall be conducted before Magistrate Judge Maria-Elena James no later than **November 19**, 2010, at the convenience of Magistrate James' calendar;
- 3. Expert Discovery shall be completed on or before: **February 18**, 2011;
- 4. All case-dispositive motions and a further case management conference shall be heard at 2:00 P.M. on **April 14**, 2011;
- 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: **November 1**, 2011, at 2:00 P.M.;
- and
- 7. A four-day Court Trial will begin at 8:30 A.M. on: **November 14**, 2011.

Date: May 27, 2010



The Honorable Claudia Wilken
United States District Court Judge