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4 **UNITED STATES DISTRICT COURT**  
5 **NORTHERN DISTRICT OF CALIFORNIA**  
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9 **CHARLES GRAGG *et al.*,**

10 **Plaintiff(s),**

11 **vs.**

12 **UNITED STATES OF AMERICA *et al.*,**

13 **Defendant(s).**  
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**Case No.: 12-CV-03813 YGR**

**ORDER DENYING CROSS-MOTIONS FOR  
SUMMARY JUDGMENT AND SETTING  
BRIEFING SCHEDULE FOR PARTIES TO  
REFILE CROSS-MOTIONS**

15 Plaintiffs Charles and Delores Gragg filed this taxpayer suit to recover a refund for taxes  
16 assessed for disallowed losses attributed to rental real estate activity for tax years 2006 and 2007. In  
17 their complaint, Plaintiffs allege that under 26 U.S.C. § 469 Ms. Gragg is a real estate professional  
18 and her real estate rental losses should not have been disallowed as passive activity losses.

19 The parties have filed cross-motions for summary judgment asking the Court to decide a  
20 legal issue—whether the rental activities of a real estate professional are subject to the material  
21 participation requirements of 26 U.S.C. § 469(c)(1) and/or 26 C.F.R. § 1.469-5T.

22 Having carefully considered the papers submitted, the pleadings, and the oral argument of  
23 Defendant's counsel,<sup>1</sup> the Court finds that there are insufficient facts in the record to determine  
24 whether any party is entitled to a judgment as a matter of law. The Court does not wish to issue an  
25 advisory opinion on the legal issue presented devoid of the context of the undisputed facts of this  
26 case. Further, the Court requires additional briefing regarding analogous situations and the larger  
27 context of the application of this principle to tax return activities generally.

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<sup>1</sup> Counsel for Plaintiffs did not appear at the April 2, 2013 hearing.

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Therefore, the Court **DENIES** both motions **WITH LEAVE TO REFILE** and **SETS** the following briefing schedule:

Event	Date
Defendant to file Motion for Summary Judgment	April 26, 2013
Plaintiffs to file Opposition/Cross-Motion for Summary Judgment	May 10, 2013
Defendant to file Opposition to Cross-Motion/Reply	May 17, 2013
Plaintiffs to file Reply	May 24, 2013
Hearing on Cross-Motions for Summary Judgment	June 11, 2013

A prefiling conference is not required but otherwise the parties are expected to comply with the Court's procedures for filing motions for summary judgment set forth in paragraph 9 of the Court's [Standing Order in Civil Cases](#).

This Order Terminates Docket Numbers 15 & 19.

**IT IS SO ORDERED.**

**Date: April 4, 2013**

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE