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8 **UNITED STATES DISTRICT COURT FOR THE**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

11	JOSEPH T. CENA and)	
12	DAWN N. HASEGAWA,)	No. C-06-03339-JF
13	Plaintiffs,)	
14	v.)	<u>STIPULATION AND ORDER</u>
15	UNITED STATES OF AMERICA)	
16	Defendant.)	

17 IT IS HEREBY STIPULATED AND AGREED by and between plaintiffs Joseph T. Cena
 18 and Dawn N. Hasegawa and defendant United of States of America, through their undersigned
 19 attorneys, as follows:

20 1. On May 19, 2006, plaintiffs filed a complaint seeking a tax refund in the amount
 21 of \$85,478 with respect to their 2001 federal income tax return.

22 2. In a Joint Case Management Statement filed on November 9, 2006, the parties
 23 agreed that there were no factual issues in dispute and that the sole legal issue in dispute was
 24 whether the capital loss limitations of I.R.C. §§ 1211 and 1212 apply for purposes of calculating
 25 alternative minimum taxable income. The parties informed the Court that the same issue was
 26 presented to this Court in *Paul Norman v. United States*, Docket No. 05-02059-RMW. In that
 27 case, an Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendant's
 28 Motion for Summary Judgment was entered July 19, 2006. A timely Notice of Appeal was filed

1 September 18, 2006. The case was docketed before the Ninth Circuit as *Paul Norman v. United*
2 *States*, Docket No. 06-16741.

3 3. The parties filed cross-motions for summary judgment which were scheduled to
4 be heard on April 6, 2007.

5 4. Because the parties agreed that the decision by the Ninth Circuit in *Paul Norman*
6 *v. United States*, Docket No. 06-16741 (9th Cir.), may be determinative of the issues raised in the
7 cross-motions, this Court continued the hearing on the cross-motions.

8 5. The *Norman* case was argued and submitted to the Ninth Circuit panel on June 3,
9 2008. In an unpublished Memorandum Opinion filed July 29, 2008, affirming the district court,
10 the Ninth Circuit held that Norman's "AMT capital losses are deductible only directly against
11 AMT income, and that deduction is capped at \$3,000 in excess of AMT capital gains pursuant to
12 § 1211(b)." A copy of the Memorandum Opinion is attached hereto as Exhibit A.

13 6. After a further Case Management Conference on September 26, 2008, the Court
14 reinstated the cross-motions for summary judgment and directed counsel to set the case for oral
15 argument. The parties were permitted to file additional letter briefs not to exceed five pages.

16 7. The parties hereby now stipulate and agree that the Ninth Circuit's Memorandum
17 Opinion in *Paul Norman v. United States*, Docket No. 06-16741 (9th Cir.), controls the issues
18 raised in the cross-motions and agree to be bound by the Ninth Circuit's reasoning and holding in
19 that case.

20 8. Plaintiffs, however, contend that the holding in *Norman* results in a small refund
21 due to them. The government will consider the plaintiffs' contention. The parties agree that
22 plaintiffs will submit to the government a calculation of the refund to which they believe they are
23 entitled on or before October 24, 2008. The government then will have an IRS agent review
24 plaintiff's calculation to determine whether it agrees. If the parties are in agreement, the case
25 will be settled. If the parties disagree, the Court will be required to resolve the dispute.

26 9. The parties suggest that the case be set for a further Case Management
27 Conference on November 28, 2008, to report on the status of the plaintiffs' refund calculation.

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Dated: October 8, 2008

/s/ Brian G. Isaacson
BRIAN G. ISAACSON
Isaacson & Wilson, P.S.
Attorney for Plaintiffs

JOSEPH P. RUSSONIELLO
United States Attorney

Dated: October 9, 2008

/s/ David L. Denier
DAVID L. DENIER
Assistant United States Attorney
Tax Division
Attorneys for United States of America

ORDER

Pursuant to the Stipulation of the parties and for good cause shown, the Court hereby vacates its order to set the case for oral argument on the cross-motions for summary judgment December 5, and schedules the case for a further case management conference on ~~November 28~~, 2008, at 10:30 a.m. The parties are directed to file a joint case management statement by November 21, 2008.

ORDERED this 16th day of October, 2008, at San Jose, California.



JEREMY FOCHEL
United States District judge