

1 KEVIN V. RYAN (CSBN 118321)
 United States Attorney
 2 JAY R. WEILL (CSBN 75434)
 Assistant United States Attorney
 3 Chief, Tax Division (DCBN 423256)
 Assistant United States Attorney
 4 450 Golden Gate Avenue, Box 36055
 San Francisco, California 94102
 5 Telephone: (415) 436-7000
 Facsimile: (415) 436-6748
 6 JOSEPH A.SERGI (DCBN 480837)
 Trial Attorney, Tax Division
 7 U.S. Department of Justice
 P.O. Box 683
 8 Washington, D.C. 20044
 Telephone: (202)305-0868
 9 Facsimile: (202)307-0054

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

13 & CAPITAL PARTNERS, L.P.; DAVID C.)
 14 SOWARD, TMP; LEONARD BOSACK;)
 and SANDY LERNER, aka SANDRA K.)
 15 LERNER,)

Case No. C-01-4740 MJJ

16 Plaintiffs,)

17 v.)

18 UNITED STATES OF AMERICA,
 DEPARTMENT OF THE TREASURY, by)
 19 its agency, the INTERNAL REVENUE)
 SERVICE,)

20 Defendants.)

21 _____)
 22 LEONARD BOSACK, and SANDRA K.)
 LERNER,)

Case No. C-03-4579-MJJ

23 Plaintiffs,)

24 v.)

25 UNITED STATES OF AMERICA,
 DEPARTMENT OF THE TREASURY, by)
 26 its agency, the INTERNAL REVENUE)
 SERVICE,)

27 Defendants.)

FURTHER JOINT CASE
MANAGEMENT STATEMENT
AND ~~PROPOSED~~ ORDER

Date: November 1, 2005
 Time: 2:00 p.m.
 Place: Courtroom # 11, 19th Floor

28

1 The parties to this consolidated action jointly submit this Further Case Management
2 Statement in anticipation of the November 1, 2005, Case Management Conference, and for the
3 reasons stated below, respectfully request that this Court continue the November 1, 2005 Case
4 Management Conference to February 7, 2006, at 2:00 p.m. via telephone, or such other later date
5 in February 2006 as is convenient for the Court.

6
7 **1. PROCEEDINGS SINCE MARCH 30, 2004, CASE MANAGEMENT**
8 **CONFERENCE**

9 Since the March 30, 2004, Case Management Conference, the parties have continued to
10 conduct discovery on the procedural issues involved in this case. Several depositions have
11 already occurred, and additional relevant documents have been exchanged.

12 **2. FURTHER ANTICIPATED PROCEEDINGS**

13 _____ This case involves both procedural issues and issues relating to the substance of
14 the underlying transactions.

15 There has been significant discovery on the procedural issues and the parties anticipate
16 further discovery which they believe will be completed by January 31, 2006. Once discovery is
17 completed on the procedural issues, the parties anticipate briefing such issues and presenting
18 them to the Court. The remaining discovery will determine whether the parties can present all
19 procedural issues to the Court by cross-motions, or whether one or more of the procedural issues
20 will involve a trial because of disputed facts.

21 To date, there has been no discovery on the substance of the underlying transactions involved
22 in this case.

23 The parties request that the Court set a further status conference to occur on February 7,
24 2006, at 2:00 p.m. by telephone, at which time the parties anticipate that they will be able to
25 realistically set a motions hearing date on the procedural issues.

26 /

27 /

28 /

Further Joint Case Management Statement and ~~Proposed Order~~
Further Joint Case Management Statement and ~~Proposed Order~~

1 In light of the ongoing discovery regarding the procedural issues, this case is not currently
2 in the posture for assignment to an ADR process, nor is it ripe for trial setting.

3 Respectfully submitted,
4 MARTIN A. SCHAINBAUM
5 A Professional Law Corporation

6 Dated: October 20, 2005 By: /s/ Martin Schainbaum
7 Martin A. Schainbaum

8 Attorneys for the Plaintiffs

9 KEVIN V. RYAN
10 United States Attorney


11 Dated: October 20, 2005 By: /s/ Cynthia Stier
12 CYNTHIA STIER
Assistant U.S. Attorney

13 Attorneys for the United States of America

14
15 **ORDER**

16 In light of the parties' request, and for good cause shown,
17 **IT IS HEREBY ORDERED** that the Case Management Conference currently scheduled
18 for November 1, 2005, at 2:00 p.m., is continued to February 7, 2006, at ^{1:45}~~2:00~~ p.m. via telephone.
19

20 **IT IS SO ORDERED.**

21
22 Dated: 10/21/2005
23 
24 THE HONORABLE MARTIN J. JENKINS
United States District Judge

25
26
27
28 ~~Further Joint Case Management Statement and Proposed Order~~
~~Further Joint Case Management Statement and Proposed Order~~