



1 document with the court, nor provide the court with any declaration to support the claim of  
2 attorney/client privilege which it no longer asserts. The court deems HUD's statement of "intent"  
3 not to submit the materials ordered by the court to be a request for relief from the court's order.<sup>1</sup>

4 Based on HUD's most recent filing and the file herein,

5 IT IS FURTHER ORDERED that HUD's request for relief is DENIED. As indicated in the  
6 court's order of September 10, 2008, the court was disturbed by HUD's unexplained failure to timely  
7 produce documents in response to the August 4<sup>th</sup> subpoena. HUD's withholding of the Quesada  
8 Memo pursuant to a claim of privilege, only to abandon the privilege claim when ordered to submit  
9 the document for *in camera* review, gives the court further cause for concern. Rule 45(e) provides  
10 that:

11 "The issuing court may hold in contempt a person who, having been served, fails  
12 without adequate excuse to obey the subpoena. A nonparty's failure to obey must be  
13 excused if the subpoena purports to require the nonparty to attend or produce at a  
14 place outside the limits of Rule 45(c)(3)(A)(ii)."

15 The court has not yet determined whether to issue an order to show cause why HUD should  
16 not be held in contempt for failing to timely comply with or object to the August 4<sup>th</sup> subpoena.<sup>2</sup> The  
17 court wishes to review the Quesada Memo before making that decision. HUD may also submit a  
18 brief explaining why it asserted privilege with regard to the Quesada Memo.

19 Dated: 9/17/08

20   
21 PATRICIA V. TRUMBULL  
22 United States Magistrate Judge  
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26 <sup>1</sup> The court notes that a party who is *ordered* to submit a document to the court may not  
27 simply tell the court it is no longer necessary and then disregard the order. A party who wants relief  
28 from a court order must request such relief from the court.

<sup>2</sup> HUD claims in a footnote that it "did, in fact, respond in writing to plaintiff's subpoena,"  
referencing a May 30, 2008 letter from HUD to Plaintiff. However, the May 30<sup>th</sup> letter cannot be a  
response to the August 4, 2008 subpoena because it was sent before *that* subpoena was ever served on  
HUD.

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*Counsel automatically notified of this filing via the court's Electronic Case Filing system.*

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/s/ Donna Kirchner for  
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