

1 representatives who do attend will submit a “recommendation” to those officials that agreed upon
2 settlement terms be accepted. *See* Fed. R. Civ. P. 16, Advisory Committee Notes (1993); *see also*
3 Docket No. 52. Indeed, defense counsel expressly agreed to “recommend” that the Board adopt the
4 settlement terms reached at the settlement conference. *See* Docket No. 201 at 6. The declaration
5 submitted in responding to the pending motion fails to state that such an affirmative recommendation
6 was made, however, asserting only that counsel “met with the Board . . . to present the terms” of the
7 settlement. *See* Docket No. 209-1 at ¶ 4. Such a statement is insufficient to show that counsel fulfilled
8 his obligations as represented to the Court to affirmatively recommend accepting the settlement terms
9 reached.²

10 Third, Plaintiffs contend that Defendant agreed to address the settlement terms in open session.
11 *See* Docket No. 203 at 3; *see also* Docket No. 211 at 2; Docket No. 212 at 4-5. Defendant’s counsel,
12 however, addressed the issue with the Board in closed session. *See* Docket No. 209-1 at ¶ 4. Defendant
13 shall respond to Plaintiffs’ contention that an open session discussion was required.

14 Defendant is hereby **ORDERED** to file, no later than August 11, 2017, a declaration stating
15 unequivocally that the Board has either rejected or accepted the settlement terms. In the event the Board
16 rejected the settlement, Defendant is further **ORDERED** to file, no later than August 11, 2017, (1) a
17 declaration as to whether its counsel affirmatively recommended that the Board accept the settlement
18 and (2) a response to Plaintiffs’ contention that an open session discussion was required.

19 IT IS SO ORDERED.

20 DATED: July 21, 2017

21 
22 _____
NANCY J. KOPPE
United States Magistrate Judge

23 _____
24 ² Based on such an understanding, the parties and the Court expended their resources preparing for
25 and participating in more than 17 hours of settlement conferences in this case. Docket No. 55 (minutes of
26 proceedings of first settlement conference lasting nearly four hours); Docket No. 61 (minutes of proceedings
27 of second settlement conference lasting more than four hours); Docket No. 200 (minutes of proceedings of
28 third settlement conference lasting more than nine hours); *see also* Docket Nos. 50, 51, 53, 59, 60, 62, 65,
67, 83, 189, 192, 194, 198, 199, 202, 204, 205, 207 (hearings and orders addressing issues related to
settlement conferences).