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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 MELVIN KORNBERG,)
)
13 Plaintiff,) Case No: 2:12-cv-01961-JAD-PAL
)
14 v.)
)
15 UNITED STATES OF AMERICA, et al.,)
)
16 Defendants.)
)
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18 **MOTION REQUESTING EXCEPTION**
19 **TO SETTLEMENT CONFERENCE ATTENDANCE REQUIREMENT**

20 **I. INTRODUCTION**

21 A Settlement Conference in this case is scheduled for August 28, 2015, at 9:30 a.m. before
22 United States Magistrate Judge Peggy A. Leen. ECF No. 48. The Order setting the Settlement
23 Conference provides:

24 In the case of non-individual parties, counsel shall arrange for an officer or representative
25 with binding authority to settle this matter up to the full amount of the claim or last demand
made to be present for the duration of the conference....

1 A request for an exception to the above attendance requirements must be filed and served at
2 least one week prior to the settlement conference. Counsel of record, individual parties, and
3 a fully authorized representative shall appear in person unless the court enters an order
4 granting a request for exception.

5 The United States requests that the Court authorize Assistant United States Attorney Justin E.
6 Pingel to participate in the Settlement Conference in person as the sole settlement representative for the
7 Government.

7 **II. ARGUMENT**

8 The United States Supreme Court has stated that the federal Government is unlike any other
9 litigant:

10 We have long recognized that the Government is not in a position identical to that of a
11 private litigant, both because of the geographic breadth of government litigation and also,
12 most importantly, because of the nature of the issues the government litigates. It is not
13 open to serious dispute that the government is a party to a far greater number of cases on
14 a nationwide basis than even the most litigious private entity.

15 *United States v. Mendoza*, 464 U.S. 154, 159 (1984) (internal citation omitted).

16 Because the Government handles a very large number of cases, it would be impractical, if not
17 physically impossible, for those with settlement authority for the full claim amount to prepare for and
18 appear at all settlement conferences. *United States v. U.S. Dist. Court*, 694 F.3d 1051, 1059 (9th Cir.
19 2012) (district court abused its discretion in ordering a Government representative with full settlement
20 authority to appear in person for a settlement conference). The Advisory Committee notes that
21 accompany the 1993 amendments to Federal Rule of Civil Procedure 16 acknowledge the unique
22 position of the Government in that regard: “Particularly in litigation in which governmental agencies
23 ... are involved, there may be no one with on-the-spot settlement authority, and the most that should
24 be expected is access to a person who would have a major role in submitting a recommendation to the
25 body or board with ultimate decision-making responsibility.” *Id.* at 1060.

26 The Government delegates settlement authority to select individuals in order to promote
centralized decision-making. *Id.* at 1059. Centralized decision-making promotes three important
Government objectives. *Id.* at 1060. First, it allows the Government to act consistently in important

1 cases. *Id.* Second, it allows the executive branch to pursue policy goals more effectively by placing
2 ultimate authority in the hands of a few officials. *Id.* Third, by giving authority to high-ranking
3 officials, centralized decision-making better promotes political accountability. *Id.*

4 In light of those principles, the Ninth Circuit has determined that the courts should adopt a
5 “practical approach” in deciding whether to require a Government representative with full settlement
6 authority to attend a pretrial conference. *Id.* at 1061. In the Ninth Circuit’s view, the courts should
7 consider less drastic steps, such as telephonic participation, before requiring in-person participation. *Id.*
8 Only as a “last resort” should the District Court require an official with full settlement authority to
9 participate in a pretrial conference in person. *Id.*

10 The ultimate authority to settle this case rests with the United States Attorney, the Civil
11 Division Chief, or higher ranking officials within the Department of Justice (“DOJ”), depending on
12 whether the client agency and DOJ officials agree with the proposed resolution. 28 C.F.R. § 0.168(a).
13 It is simply not feasible, however, for these officials to attend each and every settlement conference.
14 Moreover, Assistant United States Attorneys routinely participate in settlement conferences in this
15 district as sole settlement representatives for the Government. In fact, the Government has utilized this
16 approach with much success for many years and, as a result, hundreds of cases involving the United
17 States have settled.

18 Accordingly, the United States respectfully requests that the Court authorize Assistant United
19 States Attorney Pingel to participate in the Settlement Conference in person as the sole settlement
20 representative for the Government. He will ensure that the case is thoroughly evaluated by the
21 appropriate Government officials in advance of the settlement conference so as to provide meaningful
22 participation.

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1 **III. CONCLUSION**

2 For the reasons above, the United States respectfully requests that the Court permit Assistant
3 United States Attorney Pingel to participate in the Settlement Conference scheduled for August 28,
4 2015, as the sole settlement representative for the Government.

5 Respectfully submitted this 21st day of August 2015.

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7 DANIEL G. BOGDEN
United States Attorney

8 /s/ Justin E. Pingel
9 JUSTIN E. PINGEL
Assistant United States Attorney

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13 IT IS SO ORDERED:

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15 UNITED STATES DISTRICT JUDGE
16 UNITED STATES MAGISTRATE JUDGE

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20 DATED: August 24, 2015

1 **PROOF OF SERVICE**

2 I, Justin E. Pingel, AUSA, certify that the following individual was served with the **MOTION**
3 **REQUESTING EXCEPTION TO SETTLEMENT CONFERENCE ATTENDANCE**
4 **REQUIREMENT** on this date by the below identified method of service:

4 **Electronic Case Filing:**

5 Kirk T. Kennedy
6 815 S. Casino Center Blvd.
7 Las Vegas, Nevada 89101

7 Attorney for Plaintiff

8
9 DATED this 21st day of August 2015.

10 /s/ Justin E. Pingel
11 JUSTIN E. PINGEL
12 Assistant United States Attorney
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