

1 JASON M. FRIERSON  
United States Attorney  
2 District of Nevada  
Nevada Bar No. 7709

3 TROY K. FLAKE  
4 Assistant United States Attorney  
501 Las Vegas Blvd. So., Suite 1100  
5 Las Vegas, Nevada 89101  
(702) 388-6336  
6 Troy.Flake@usdoj.gov

7 *Attorneys for the United States*

8  
9 **UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

10  
11 Juanitta Darlynn,

12 Plaintiff,

13 v.

14 Department of the Air Force, *et. al.*,

15 Defendants.

Case No. 2:17-cv-02800-JAD-VCF

**MOTION FOR EXCEPTION FROM  
SETTLEMENT CONFERENCE  
ATTENDANCE REQUIREMENT**

16 **I. Introduction**

17 This is a personal injury case arising out of an automobile accident. The parties  
18 completed discovery in June, 2019. The Court set this matter for a settlement conference in  
19 September, 2019. ECF #29. In preparation for the settlement conference, the Court granted  
20 the United States request for an exception from the settlement conference attendance  
21 requirement and allowed AUSA Troy Flake to be the sole settlement representative for the  
22 United States. ECF #34.

23 However, before the parties were able to participate in the settlement conference,  
24 Plaintiff's counsel became seriously ill and she retained new counsel. ECF #38. After many  
25 delays resulting from the Covid-19 pandemic and other factors, the Court has set a  
26 settlement conference for August 8, 2023. ECF #69.

27 The order scheduling the settlement conference requires a "representative with  
28 binding authority to settle this matter up to the full amount of the claim to be present for

1 the duration of the SC.” *Id.* The United States requests that the undersigned AUSA be  
2 allowed to participate in this settlement conference as the representative for the United  
3 States.

4 **II. Argument**

5 The United States is unlike any other party because it is “the most frequent litigant  
6 in federal court.” *United States v. U.S. Dist. Court for N. Mariana Islands*, 694 F.3d 1051, 1058,  
7 1059 (9th Cir. 2012), as amended (Oct. 16, 2012). Because the government handles a very  
8 large number of cases, it would be impractical, if not physically impossible, for those with  
9 settlement authority to prepare for—and appear at—all settlement conferences. *Id.* at 1059.  
10 The Advisory Committee notes to the 1993 amendments to Federal Rule of Civil  
11 Procedure 16 acknowledge the unique position that the federal government occupies as a  
12 litigant:

13         Particularly in litigation in which governmental agencies or large amounts of money  
14         are involved, there may be no one with on-the-spot settlement authority, and the  
15         most that should be expected is access to a person who would have a major role in  
             submitting a recommendation to the body or board with ultimate decision-making  
             responsibility.

16 Fed. R. Civ. P. 16 advisory committee’s note.

17         The government delegates settlement authority to select individuals to promote  
18         centralized decision-making. *U.S. Dist. Court for N. Mariana Islands*, 694 F.3d at 1059-60.  
19         Centralized decision-making promotes three important government objectives. *Id.* First, it  
20         allows the government to act consistently in important cases. *Id.* Second, centralized  
21         decision-making allows the executive branch to pursue policy goals more effectively by  
22         placing ultimate authority in the hands of a few officials. *Id.* Third, by giving authority to  
23         high-ranking officials, centralized decision-making better promotes political accountability.  
24         *Id.* In light of these principles, the Ninth Circuit has determined that district courts should  
25         adopt a “practical approach” in deciding whether to require a government representative  
26         with full settlement authority to attend a pre-trial conference. *Id.* at 1061 (quotation  
27         omitted). Only as a “last resort” should the district court require an official with full  
28

1 settlement authority to participate in a pre-trial conference in person. *Id.* (quotation  
2 omitted). The full amount of the claim in this case is \$100,000,000.

3         The ultimate authority to settle this case rests with officials at the Department of  
4 Veterans Affairs, the United States Attorney’s Office for the District of Nevada, and  
5 officials within the Department of Justice, depending on the amount involved, and whether  
6 the client agency and Department of Justice officials agree with the proposed resolution. 28  
7 C.F.R. § 0.168(a). It is not feasible, however, for these officials to attend this settlement  
8 conferences or the many others that are conducted throughout the country. Moreover,  
9 AUSAs routinely participate in settlement conferences in this district as the United States’  
10 sole settlement representatives. Before the settlement conference, the AUSA discusses the  
11 case with the officials with appropriate settlement authority to determine the range of  
12 settlement offers the United States would accept. This approach has not hampered  
13 settlement discussions or impeded settlement in the hundreds of settlement conferences in  
14 which the United States has participated. Hundreds of cases involving the United States  
15 have settled over the years using this approach, including cases involving Plaintiff’s counsel  
16 and the undersigned AUSAs.

17         Accordingly, the United States requests that the Court allow AUSA Troy Flake to  
18 participate in the settlement conference as the sole representatives for the United States.  
19 AUSA Flake will brief the appropriate government officials on the case before the  
20 settlement conference to ensure the United States’ meaningful participation.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

