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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY

6 Attorneys for United States of America

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

<p>9 ENTRUST RETIREMENT TRUST XV, etc.,</p> <p style="text-align: center;">10 Plaintiff,</p> <p style="text-align: center;">11 v.</p> <p>12 DONNER CREEK VILLAGE CONDOMINIUM ASSOCIATION, et al.,</p> <p style="text-align: center;">13 Defendants.</p>	<p>Case No.: 3:17-cv-00490-LRH-VPC</p> <p><b>UNOPPOSED MOTION REQUESTING EXCEPTION TO SETTLEMENT CONFERENCE ATTENDANCE REQUIREMENT</b></p>
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16 I. INTRODUCTION

17 A settlement conference in this case is scheduled for February 26, 2018, at 9:00 a.m.  
18 before United States Magistrate Judge Valerie P. Cooke. The Order (#27) setting the settlement  
19 conference provides:

20 Unless excused by order of the court, clients or client representatives with complete  
21 authority to negotiate and consummate a settlement shall be in attendance at the  
22 settlement conference. This requires the presence of the client or if a corporate,  
governmental, or other organizational entity, an authorized representative of the  
client.

23 For a defendant, such representative must have final settlement authority to commit  
24 the organization to pay, in the representative's own discretion, a settlement up to  
the plaintiff's prayer, or up to the plaintiff's last demand, whichever is lower.

25 (Underscore text in original.)

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1 Defendant U.S. Department of Housing and Urban Development (“HUD”) requests that  
2 the Court authorize Assistant United States Attorney (“AUSA”) Greg Addington to participate in  
3 the settlement conference in person, along with HUD agency counsel as the settlement  
4 representatives for HUD. In addition to AUSA Addington and HUD agency counsel being  
5 personally present at the settlement conference, HUD program officials with pertinent  
6 responsibilities for oversight of HUD programs will be available by telephone throughout the  
7 duration of the settlement conference.<sup>1</sup>

8 Counsel for the two other parties in this action (James M. Walsh and Christopher Lund)  
9 have each stated they have **no objection** to the relief requested herein.

10 **II. ARGUMENT**

11 **A. Applicable Case Law**

12 The United States Supreme Court has stated that the federal Government is unlike any  
13 other civil litigant:

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

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

19 Because the Government handles a very large number of civil cases, it would be  
20 impractical, if not physically impossible, for those Government officials with settlement authority  
21 for the full claim amount to prepare for and appear at all settlement conferences. *United States v.*  
22 *U.S. Dist. Court*, 694 F.3d 1051, 1059 (9th Cir. 2012) (district court abused its discretion in  
23 ordering a Government representative with full settlement authority to appear in person for a  
24 settlement conference). The Advisory Committee notes that accompany the 1993 amendments to

25 \_\_\_\_\_  
26 <sup>1</sup> Final approval of travel funds for HUD counsel to travel from San Francisco to Reno has not  
been obtained as yet; however, final approval has been requested and is expected.

1 Federal Rule of Civil Procedure 16 acknowledge the unique position of the Government in that  
2 regard:

3           Particularly in litigation in which governmental agencies . . . are involved, there  
4           may be no one with on-the-spot settlement authority, and *the most that should be*  
5           *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.

6 *Id.* at 1060 (italics added).

7           The Government delegates settlement authority to select individuals in order to promote  
8 centralized decision-making. *Id.* at 1059. Centralized decision-making promotes three important  
9 Government objectives. *Id.* at 1060. First, it allows the Government to act consistently in  
10 important cases. *Id.* Second, it allows the Executive Branch to pursue policy goals more  
11 effectively by placing ultimate authority in the hands of a few designated officials. *Id.* Third, by  
12 giving authority to high-ranking officials, centralized decision-making better promotes political  
13 accountability. *Id.*

14           In light of those principles, the Ninth Circuit has determined that the courts should adopt  
15 a “practical approach” in assessing the need for a Government representative with full settlement  
16 authority to attend a pretrial conference. *Id.* at 1061. In the Ninth Circuit’s view, the courts should  
17 consider less drastic steps, such as telephonic participation, before requiring in-person  
18 participation. *Id.* Only as a “last resort” should the District Court require an official with full  
19 settlement authority to participate in a pretrial conference in person. *Id.*

20           **B. Discussion**

21           This is a “quiet title” action brought by Plaintiff against HUD seeking a judgment  
22 regarding a property interest asserted by HUD to a condominium unit in Reno, Nevada. Broadly  
23 speaking, Plaintiff alleges HUD did not properly exercise its redemption rights following a  
24 foreclosure sale of the property and, consequently, HUD has no existing interest in the property.  
25 HUD claims that it exercised its redemption rights in accordance with the operative statute and,  
26 consequently, Plaintiff’s property interest was extinguished.

1           Although this is a “quiet title” action against HUD and no monetary judgment is sought  
2 against HUD, it is likely that any negotiated settlement would have some monetary component  
3 given the competing interests in the subject property. From HUD’s perspective, a monetary  
4 component to any proposed settlement (whether paid *by* HUD or paid *to* HUD) would implicate  
5 one or more HUD-administered programs concerning HUD-managed properties, HUD-  
6 administered mortgage interests, and/or HUD-managed property disposition functions. These  
7 varied HUD program functions are conducted and managed by different HUD officials exercising  
8 their program responsibilities in accordance with their respective program priorities. It is simply  
9 not feasible, however, for all of these HUD program officials to attend the settlement conference  
10 on the off-chance a settlement proposal might implicate the HUD program within their individual  
11 area of responsibility.

12           AUSAs routinely participate in settlement conferences in this district as sole settlement  
13 representatives for the United States and federal agencies. In fact, the Department of Justice  
14 (including the U.S. Attorney’s Office) has utilized this approach with much success for many  
15 years and, as a result, hundreds of cases involving the United States and federal agencies have  
16 settled.

17           HUD recognizes the important role settlement conferences play in civil litigation and the  
18 need for meaningful participation in those conferences. Counsel for HUD routinely participates  
19 in such conferences conducted by this Court without the presence of high-ranking agency  
20 officials. It would be unduly burdensome to require multiple agency personnel to attend the  
21 settlement conference when HUD agency counsel (from San Francisco) and the assigned AUSA  
22 will have thoroughly evaluated the case in advance of the settlement conference and consulted  
23 with the agency personnel whose program responsibilities will be most likely implicated by any  
24 proposed settlement.

25           Accordingly, HUD respectfully requests that the Court authorize AUSA Greg Addington  
26 to participate in the February 26, 2018, settlement conference in person, along with HUD agency

1 counsel as the settlement representatives for HUD. In addition to AUSA Addington and HUD  
2 agency counsel being personally present at the settlement conference, HUD program officials  
3 with pertinent responsibilities for oversight of HUD programs will be available by telephone  
4 throughout the duration of the settlement conference. This motion is **unopposed**.

5 **III. CONCLUSION**

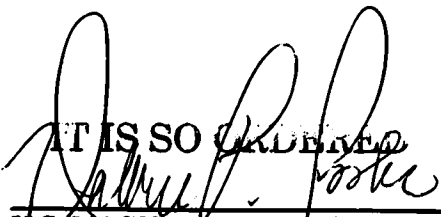
6 For the reasons discussed above, HUD respectfully requests that the Court permit AUSA  
7 Greg Addington to participate in the settlement conference scheduled for February 26, 2018, in  
8 person, along with HUD agency counsel as the settlement representatives for HUD. In addition  
9 to AUSA Addington and HUD agency counsel being personally present at the settlement  
10 conference,<sup>2</sup> HUD program officials with pertinent responsibilities for oversight of HUD  
11 programs will be available by telephone throughout the duration of the settlement conference.

12 DATED: February 14, 2018.

Respectfully submitted,

13 DAYLE ELIESON  
14 United States Attorney

15 s/ Greg Addington  
16 GREG ADDINGTON  
17 Assistant United States Attorney

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IT IS SO ORDERED  
U.S. MAGISTRATE JUDGE  
DATED: February 15, 2018

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<sup>2</sup> See n.1, *supra*.

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing UNOPPOSED MOTION REQUESTING EXCEPTION TO SETTLEMENT CONFERENCE ATTENDANCE REQUIREMENT was made to all parties through the Court's CM/ECF service and notification system.

DATED: February 14, 2018.

s/ Greg Addington  
GREG ADDINGTON