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Saipan, MP 96950

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Plaintiff *Pro Se*

CLERK OF COURT  
7/27/09 10:48  


IN THE SUPERIOR COURT OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CHRISTINA-MARIE E. SABLAN,

Plaintiff

vs.

Benigno R. Fitial, in his official capacity  
as Governor of the Commonwealth of  
the Northern Mariana Islands;

Eloy Inos, in his official capacity  
as Secretary of Finance at the  
CNMI Department of Finance;

Gregory Baka, in his official capacity  
as Acting Attorney General at the  
CNMI Office of the Attorney General,

Defendants.

Civil Action No. 09-0066 (E)

**PETITION FOR MANDAMUS,  
DECLARATORY AND INJUNCTIVE  
RELIEF, AND OTHER RELIEF**

NOW COMES PLAINTIFF and for her Complaint alleges as follows:

PARTIES

- 1) Plaintiff is an adult and a resident of Saipan in the Commonwealth of the Northern Mariana Islands. She is currently an elected member of the CNMI House of Representatives for Precinct 1 (Saipan).

- 2) Defendant Benigno R. Fitial is the Governor of the Commonwealth of the Northern Mariana Islands pursuant to CNMI Constitution, Article III, and executes his duties in the Office of the Governor, organized pursuant to 1 CMC § 2051 *et seq.*
- 3) Defendant Eloy Inos is the Secretary of Finance of the Commonwealth of the Northern Mariana Islands and heads the Department of Finance pursuant to 1 CMC § 2551.
- 4) Defendant Gregory Baka holds the position of Acting Attorney General and is exercising the duties of the Office of the Attorney General, organized pursuant to 1 CMC § 2151.
- 5) Defendants are sued in their official capacities as Governor, Secretary of Finance, and Acting Attorney General.

#### JURISDICTION

- 1) This court has jurisdiction pursuant to the provisions of Title 1, Commonwealth Code (CMC) § 3202.
- 2) The case arises under the Open Government Act, 1 CMC §§ 9901-9918, and particularly §§ 9916 and 9917.

#### FACTS

- 1) By hand-delivered letter dated and stamped received October 16, 2008, and addressed to Defendant Benigno R. Fitial by name and as Governor, Plaintiff made demand for copies of records with respect to funding sources and contracts related to *CNMI v. USA, et al.*, 1:08-cv-01572 (hereinafter, "lawsuit"), which was filed by Defendant Fitial in his official capacity as Governor of the Commonwealth on September

12, 2008 in the U.S. District Court for the District of Columbia and which concerns U.S. Public Law 110-229.

2) Plaintiff specifically requested copies of all contracts related to the lawsuit, including contracts executed between the CNMI government and Jenner & Block, and any other private attorneys or law firms involved in the lawsuit; documents detailing payments made on said contracts to date; documents identifying the source(s) of funding on said contracts, whether private or public; and documents identifying the department(s), agency(ies), and/or instrumentality(ies) of the CNMI government from which public funds may have been reprogrammed in order to finance the lawsuit, and in what amounts. A true copy of the letter is attached as Complaint Exhibit A.

3) Plaintiff received a response by letter dated October 24, 2008 from Defendant Gregory Baka in his official capacity as Acting Attorney General, denying plaintiff's request for records. Defendant Baka did, however, state that the "sole public source of funding" for the lawsuit was from the Governor's operational account # 1011-6250. A true copy of the letter is attached as Complaint Exhibit B.

4) By hand-delivered letter dated and stamped received December 11, 2008, and addressed to Defendant Eloy Inos by name and as Secretary of Finance, Plaintiff requested to inspect all records, including all contracts related to the lawsuit, including contracts executed between the CNMI government and Jenner & Block LLP, and any other private attorneys involved in the lawsuit; all records detailing said payments to date, including but not limited to payments made out of Governor Fitial's operating account # 1011-6250; all records identifying the source(s) of funding on said contracts, whether private or public; all records identifying the department(s), agency(ies), and instrumentality(ies) of the CNMI government from which public funds have been reprogrammed to the Governor's

operating account # 1011-6250; and other documents. A true copy of the letter is attached as Complaint Exhibit C.

5) Plaintiff received a letter in response dated December 19, 2008 from Defendant Inos declining to disclose records identifying funding sources and contracts between the CNMI and private litigation counsel, claiming that such records would be exempt from disclosure under the Open Government Act. A true copy of the letter is attached as Complaint Exhibit D.

#### CLAIM FOR RELIEF

- 1) The Office of the Governor, the Office of the Department of Finance, and the Office of the Attorney General are public agencies within the scope of the Open Government Act; Defendants, as heads of those respective public agencies, are responsible for agency compliance with requests made under the Open Government Act.
- 2) Plaintiff is entitled to inspection and copying of requested materials. The requested materials are not exempt from disclosure.
- 3) The refusal of the Governor, Acting Attorney General, and Secretary of Finance to disclose records identifying funding sources and contracts connected to a lawsuit that has been filed on behalf of the people of the Commonwealth is a violation of the Open Government Act.
- 4) Plaintiff is entitled, pursuant to 1 CMC § 9916 to redress through mandamus or injunction: “any person may commence an act either by mandamus or injunction for the purpose of stopping violations ...of this chapter by members of a governing body.”

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant the following relief:

- 1) Set an immediate hearing, giving this case priority over other cases, pursuant to 1 CMC § 9916(b)(1).
- 2) Specifically direct Defendants or any person(s) under their control to “not transfer custody, alter, destroy, or otherwise dispose of the public record(s) sought to be inspected and examined” by plaintiff, as set out in 1 CMC § 9916(b)(4).
- 3) Order Defendants, by mandamus or mandatory injunction, to fulfill their obligations under Commonwealth law, as set out above; that is, that they now make available the requested materials within 48 hours of the court’s order directing them to do so, as provided by 1 CMC § 9916 (b)(2).
- 4) Award Plaintiff all costs, including reasonable fees, incurred in connection with this petition for mandamus or injunction, as provided by 1 CMC § 9915(b).
- 5) Hold Defendants personally liable for their failure to comply with the requests made upon them, including liability for all costs awarded to Plaintiff in connection with this legal action, in addition to any civil penalties deemed reasonable by this court.
- 6) Provide other such relief as this court may deem just and equitable.

DATED this 27<sup>th</sup> day of February, 2009, and signed by plaintiff under the penalties of perjury.



Christina-Marie E. Sablan  
Plaintiff *Pro Se*

# Complaint Exhibits



OFFICE OF REPRESENTATIVE CHRISTINA SABLAN

THE HOUSE OF REPRESENTATIVES

16<sup>TH</sup> COMMONWEALTH LEGISLATURE

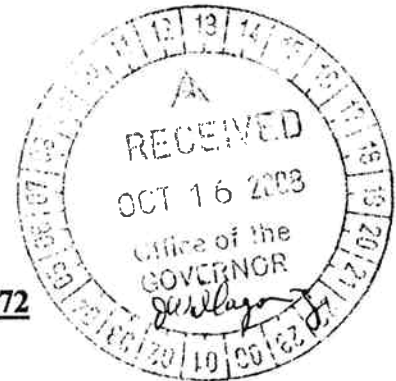
P.O. Box 500586 Saipan, MP 96950

Tel: (670) 664-8931 Cell: (670) 285-3935 Fax: (670) 664-8849

Email: [rep.sablanc@cnmileg.gov.mp](mailto:rep.sablanc@cnmileg.gov.mp) or [tinasantablan@gmail.com](mailto:tinasantablan@gmail.com)

October 16, 2008

Governor Benigno R. Fitial  
Office of the Governor  
Saipan, MP 96950



**RE: Request for information on CNMI v. USA, et al., 1:08-cv-01572**

Dear Governor Fitial,

I am writing to request information regarding *CNMI v. USA, et al.*, 1:08-cv-01572 (hereinafter, "lawsuit"), which was filed on September 12, 2008 in the U.S. District Court for the District of Columbia and which concerns U.S. Public Law 110-229.

Specifically, I am requesting:

1. Copies of all contracts related to the lawsuit, including contracts executed between the CNMI government and Jenner & Block, and any other private attorneys or law firms involved in the lawsuit;
2. Documents detailing payments made on said contracts to date;
3. Documents identifying the source(s) of funding on said contracts, whether private or public; and
4. Documents identifying the department(s), agency(ies), and/or instrumentality(ies) of the CNMI government from which public funds may have been reprogrammed in order to finance the lawsuit, and in what amounts.

In addition, it is my understanding that the Attorney General is not a signatory to either the lawsuit, or to any of the contracts related to the lawsuit, and that the Attorney General has not explicitly approved of the lawsuit in writing. Please explain whether or not the lawsuit complies with Article III, Section 11 of the CNMI Constitution, which requires that the CNMI Attorney General "shall be responsible for providing legal advice to the governor and executive departments, *representing the Commonwealth in all legal matters* [ . . . ]" [emphasis added] . Please also provide any related documents which would help to clarify the Attorney General's role, if any, in the lawsuit.

Finally, I understand based on media reports that on October 15, 2008 your special legal counsel Mr. Howard Willens delivered a presentation to you and the members of your cabinet that provided an update on the status of the lawsuit. I would greatly appreciate an update as well, and am therefore requesting a copy of that presentation, as well as the minutes of that meeting.

This letter of request is submitted pursuant to the Open Government Act, 1 CMC §§ 9901 *et seq.*, and as such requires your timely response within ten (10) calendar days.

Thank you.

Sincerely,



Rep. Christina Sablan  
Member, House Committee on U.S. and Foreign Relations

cc: House Speaker  
Senate President  
Chair, House Committee on U.S. and Foreign Relations  
Chair, Senate Committee on Federal Relations and Independent Agencies  
Chair, House Committee on Ways and Means  
Chair, Senate Committee on Fiscal Affairs  
All House and Senate Members  
Attorney General  
Secretary of Finance  
Public Auditor  
Media  
File



Commonwealth of the Northern Mariana Islands  
**Office of the Attorney General**

Hon. Juan A. Sablan Memorial Bldg., 2nd Floor  
Caller Box 10007, Capital Hill  
Saipan, MP 96950-8907

**Attorney General/Civil Division**  
Tel: (670) 664-2341  
Fax: (670) 664-2349

**Immigration Division**  
Tel: (670) 236-0922/23  
Fax: (670) 664-3190

**Criminal Division**  
Tel: (670) 664-2366  
Fax: (670) 234-7016

Friday, 24 October 2008

**Via electronic mail: [tinasablan@gmail.com](mailto:tinasablan@gmail.com)**

Hon. Christina-Marie E. Sablan  
House of Representatives, 16th Commonwealth Legislature  
P.O. Box 500586  
Saipan, MP 96950-0586

Re: Covenant Section 903 lawsuit funding—Open Government Act response

Dear Representative Sablan,

I write in response to your letter to the Governor of Thursday, 16 October 2008, requesting records and information under the Open Government Act (OGA) concerning the funding sources for our Covenant Section 903 litigation, Northern Mariana Islands v. United States, Civ. No. 08-01572 (D.D.C. Sep. 12, 2008).

As to your requests #1 & #2, documentation identifying funding sources and contracts between the CNMI and outside litigation counsel, relevant to the Section 903 controversy, are exempt from disclosure under the OGA because they are not discoverable by the United States either under the Attorney-Client Privilege, Fed. R. Evid. 501, or absent “substantial need of the materials” presenting “undue hardship” in obtaining otherwise. 1 CMC §9918(a)(8); Fed. R. Civ. P. 26(b)(3), ¶ 1; cf. 1 CMC §9917(a) (preparation of any action or proceeding). Absent these provisions, agents of the United States could use the OGA as a subterfuge to obtain records unavailable through discovery.

Concerning request #3, other than as set forth above there are no public records. 1 CMC §9902(f). As to your request #4, there are no responsive records, because the sole public source of funding was from the Governor’s operating account, # 1011-6250.

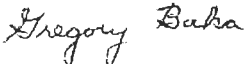
Hon. Christina-Marie E. Sablan  
House of Representatives, 16th Commonwealth Legislature  
Re: Covenant Section 903 lawsuit funding—Open Government Act response  
Friday, 24 October 2008  
Page 2

The OGA requires that all “public records” shall be available for inspection. 1 CMC §9917(a). It does not require the Government to create records or “explain” anything. Nevertheless, in full compliance with the CNMI Constitution the Office of the Attorney General (OAG) has for decades referred various matters to outside counsel, whether due to conflicts, lack of specialized experience, or resource constraints. There is no legal requirement that this delegation be in writing, or even express. Hundreds of pleadings are filed annually by the OAG without the AG’s personal review or signature. Yet as the Deputy Attorney General (currently Acting AG since Sunday, 28 September 2008) I did personally review and comment upon various drafts of the Complaint in our Section 903 litigation. Copies of such documents, however, are exempt from OGA coverage. 1 CMC §9918(a)(8).

As to the final paragraph at the bottom of page one, you cannot believe everything you read in the local media. Rather than a “presentation”, the Governor’s Special Legal Counsel gave some brief remarks at the Monday, 13 October 2008 cabinet meeting. There were no documents. Any such documents would, however, be protected by the Attorney-Client privilege and exempt under 1 CMC §9918(a)(8). No minutes of the cabinet meeting were prepared.

The Legislature is entitled to various information relevant to government expenditures through established procedures. On the other hand, the drafters of the Open Government Act wisely shielded certain litigation-related information from public disclosure, so as not to adversely affect in the courtroom the best interests of the Commonwealth and its people.

Very truly yours,

  
Gregory Baka  
Acting Attorney General



OFFICE OF REPRESENTATIVE CHRISTINA SABLAN

THE HOUSE OF REPRESENTATIVES

16<sup>TH</sup> COMMONWEALTH LEGISLATURE

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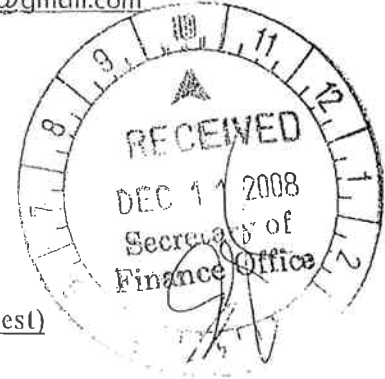
Email: [rep.sablanc@cnmileg.gov.mp](mailto:rep.sablanc@cnmileg.gov.mp) or [tinasantablan@gmail.com](mailto:tinasantablan@gmail.com)

HSE. Comm. (HOUSE)

16-90

December 11, 2008

Mr. Eloy Inos, Secretary of Finance  
CNMI Department of Finance  
Saipan, MP 96950



RE: CNMI v. USA, et al., 1:08-cv-0157 (Open Government Act Request)

Dear Secretary Inos,

I am writing to request information regarding *CNMI v. USA, et al.*, 1:08-cv-01572 (hereinafter, "lawsuit"), which was filed on September 12, 2008 in the U.S. District Court for the District of Columbia and which concerns U.S. Public Law 110-229.

Specifically, I request to inspect:

1. All records, including all contracts related to the lawsuit, including contracts executed between the CNMI government and Jenner & Block LLP, and any other private attorneys or law firms involved in the lawsuit;
2. All records detailing payments made on said contracts to date, including but not limited to payments made from the Governor's operating account #1011-6250;
3. All records identifying the source(s) of funding on said contracts, whether private or public;
4. All records identifying the department(s), agency(ies), and/or instrumentality(ies) of the CNMI government from which public funds have been reprogrammed to the Governor's operating account # 1011-6250;
5. All documents subject to your control containing the words or phrases "Jenner" "Block" "Jenner & Block" "Jenner & Block LLP" "Jenner and Block LLP" "Jenner & Block, LLP" or "Jenner and Block, LLP".

This letter of request is submitted pursuant to the Open Government Act, 1 CMC §§ 9901 *et seq.*, and as such requires your timely response within ten (10) calendar days.

Thank you.

Sincerely,

Rep. Christina Sablan  
Member, House Committee on U.S. and Foreign Relations

12/12/08  
426  
EXHIBIT C

cc: House Speaker  
Senate President  
Chair, House Committee on U.S. and Foreign Relations  
Chair, Senate Committee on Federal Relations and Independent Agencies  
Chair, House Committee on Ways and Means  
Chair, Senate Committee on Fiscal Affairs  
All House and Senate Members  
Attorney General  
Secretary of Finance  
Public Auditor  
Media  
File

EXHIBIT C



## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

December 19, 2008

**Timothy P. Villagomez**  
Lieutenant Governor

The Hon. Christina-Marie E. Sablan  
Member, House Committee on U.S. and Foreign Relations  
House of Representatives, 16th Commonwealth Legislature  
P.O. Box 500586  
Saipan MP 96950

Re: *CNMI V. USA, et al.*, 08-cv-0157 (Open Government Act Request)

Dear Representative Sablan:

This responds to your letter of December 11, 2008, requesting records and information under the Open Government Act (OGA), related to our Covenant Section 903 lawsuit, Northern Mariana Islands v. United States, Civ. No. 08-01572 (D.D.C. Sep. 12, 2008).

Documentation identifying funding sources and contracts between the CNMI and outside litigation counsel has been made indisputably relevant to the Section 903 controversy by your letter of October 16, 2008 to the Governor. See Defendants' Memo in Support of Motion to Dismiss at 23-26 & Exhibit D (D.D.C. filed Dec. 15, 2008). Hence, they are exempt from disclosure under the OGA because they are not discoverable by the United States either under the Attorney-Client Privilege, Fed. R. Evid. 501, or absent "substantial need of the materials" presenting "undue hardship" in obtaining otherwise. 1 CMC § 9918(a)(8); Fed. R. Civ. P. 26(b)(3), ¶ 1.

The above exemption from OGA disclosure applies only while the Commonwealth's Section 903 litigation remains pending. Once the suit is concluded, subsection 9918(a)(8) of the OGA will no longer pose a delay to your inspection of the pertinent records.

Thank you for your understanding.

Sincerely,

Eloy S. Inos  
Secretary of Finance