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9 **IN THE SUPERIOR COURT**  
10 **OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

11 ) Civil Action No. 09-0066(e)  
12 )  
13 CHRISTINA-MARIE E. SABLAN, )  
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16 ) **PRIVILEGE LOG**  
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CHRISTINA-MARIE E. SABLAN,  
Plaintiff  
vs.  
BENIGNO R. FITIAL, in his official  
capacity as GOVERNOR of the  
COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS, and  
ELOY INOS, in his official capacity as  
SECRETARY OF FINANACE,  
Defendants

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24 In accordance with the Court's April 14, 2009, Order, Governor Fitial and  
25 Secretary of Finance Inos (the "Defendants") submit a privilege log for the public records  
26 responsive to plaintiff's request.  
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1 As noted in the Defendants' Motion to Withhold Documents, Representative  
2 Sablan's requests would generate the production of the following types of public records:  
3 (1) the Engagement letter or contract between the CNMI and Jenner & Block, LLP;  
4 (2) the current employment contract between the CNMI and Howard Willens;<sup>1</sup> (3) ACH or  
5 other payment receipts regarding payments to Jenner & Block, LLP; (4) ACH or other  
6 transaction reports showing the internal transfer of funds from CNMI accounts; and  
7 (5) billing statements from Jenner & Block, LLP.

9 At the hearing on Defendants' Motion to Withhold Documents, Defendants'  
10 offered to turn over two types of documents: (1) Mr. Willens's current contract; and  
11 (2) documents indicating "All records identifying the department(s), agency(ies), and/or  
12 instrumentality(ies) of the CNMI government from which public funds have been  
13 reprogrammed to the Governor's operating account #1011-6250."

15 Defendants produced Mr. Willens's current contract,<sup>2</sup> but did not produce any  
16 records of transfers from other government agencies to any of the Governor's accounts.  
17 In preparing the privilege log, Counsel for Defendants became aware of two documents  
18 that indicate *internal* Office of the Governor transfers that are not responsive to Plaintiff's  
19 request. Out of an abundance of caution, Defendants chose to list these documents in the  
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23 <sup>1</sup> As indicated to both Plaintiff and the Court, it was not initially apparent that  
24 Mr. Willens's contract was part of Plaintiff's request. Defendants do not currently believe  
25 that Mr. Willens's contract falls within the scope of Plaintiff's requests. Defendants,  
26 however, released the contract as it is a public record and a correct request would secure  
27 its release.

28 <sup>2</sup> Mr. Willens's current contract, apparently, contains two change orders. Defendants  
29 provided Plaintiff with a copy of not only the current contract, but a past one as well.  
30 Defendants released Mr. Willens's current contract without the first change order, which  
31 was not available at the time agreed for production. This change order will be produced.  
32 Counsel apologizes to the Court and Plaintiff for any inconvenience caused by the delay.

1 privilege log as numbers 24 & 25. Defendants do not believe these documents are  
2 responsive for two reasons.

3 First, document #24 indicates that money was transferred from one of the  
4 Governor's account into the Governor's Discretionary account. Document #25, however,  
5 indicates that the money was, in the same day, transferred back to the original account.  
6 Thus, the documents are not responsive because the original transfer was undone. The  
7 second reason the documents are not responsive is that the money was transferred from  
8 within the Office of the Governor. No other agencies were affected. In spite of this,  
9 Defendants have included the documents in the log for the Court's review.  
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11 The remaining types of documents are all listed, in general form, on the attached  
12 Privilege Log. As explained previously, however, none of these documents are  
13 discoverable because these records are not relevant for evidence purposes.<sup>3</sup> As they are  
14 not "available to another party under the rules of pretrial discovery[,]"<sup>4</sup> by the plain  
15 language of 1 CMC § 9918(a)(8) they are exempted from disclosure under the Open  
16 Government Act. Despite Plaintiff's protests, documents not likely to lead to the  
17 discovery of admissible evidence may still be relevant to a controversy in a broader sense.  
18 The Commonwealth is only seeking the same protection from its adversaries as the federal  
19 courts in the District of Columbia provide for the litigants before them, the right to keep  
20 litigation budgets and expenses secret from the opposing party.<sup>5</sup>  
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26 <sup>3</sup> *Robinson v. Duncan* 255 F.R.D. 300 (D.D.C. 2009).

27 <sup>4</sup> 1 CMC § 9918(a).

28 <sup>5</sup> *See, e.g., Banks v. Office of the Senate Sergeant-at-Arms and Doorkeeper*, 222 F.R.D.  
7, 13 (D.D.C. 2004) ("assessing one's settlement posture by knowing what one's opponent

