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DATE: 1/23/13 TIME: 2:00 PM

By: [Signature]  
CLERK, FSM SUPREME COURT  
CHUUK  
TRIAL DIVISION

IN THE SUPREME COURT OF THE  
FEDERATED STATES OF MICRONESIA

TRIAL DIVISION – CHUUK STATE

AMANTO MARSOLO in his official capacity as the Mayor )  
of Tolensom Municipality, TOLENSOM MUNICIPALITY, )  
JOHNSON ELIMO in his official capacity as Governor of )  
Chuuk State and CHUUK STATE, )

**Plaintiffs,**

v. )

KISAUO ESA, LORENZO FARAWAY, MARCELINO ELIAS, )  
ROSE NAKANAGA, individually and in her official )  
capacity as the Acting Secretary of the FSM Department )  
of Finance and Administration, LEONITO BACALANDO, )  
JR., in his official capacity as Assistant Attorney General )  
of the Department of Justice, APRIL DAWN M SKILLING, )  
in her official capacity as the Secretary of the )  
Department of Justice, EVELYN ADOLPH, in his official )  
capacity as the Director of the Office of Statistics, )  
Budget & Economic Management, FSM NATIONAL )  
GOVERNMENT, FSM DEPARTMENT OF JUSTICE, FSM )  
OFFICE OF STATISTICS, BUDGET & ECONOMIC )  
MANAGEMENT )

**Defendants.**

Kisauo Esa, in his official capacity as Mayor of Tolensom, )  
and Tolensom Municipality, )

**Counterclaimants and Cross Claimant,**

JOHNSON ELIMO, in his official capacity as Chuuk State )  
Governor, AMANTO MARSOLO, as an individual, )

**Counter-defendants**

FEDERATED STATES OF MICRONESIA )

**Cross-Defendant**

**CIVIL ACTION NO. 2011-1000**

**FSM Defendants' Motion for  
Enlargement of Time to comply  
with Discovery Request:  
Motion to File by Facsimile  
Certification of Service**

**MOTION FOR ENLARGEMENT OF TIME**

The Defendants Federated States of Micronesia and her named officials, its named Department heads in their respective capacities and Departments as alleged in the complaint (hereinafter, FSM Defendants), by and through their attorney the Department of Justice, hereby file a Motion for Enlargement of Time pursuant to Rule 6 (b) of the FSM Rules of Civil Procedure, requesting this court for an enlargement of time to comply with the scheduling order setting deadlines for discovery by January 10, 2013, for the reasons set forth in the following memorandum of points and authorities.

**Memorandum of Points and Authorities**

1. This case was initially handled by Attorney Lorrie Asher, who ceased working with the Department of Justice on or about December 19, 2012. During the first week of January, 2013, Attorney Lorrie Asher had to come back to the Department of Justice to formally complete her Exit Report regarding her case-files and on January 10, 2013, counsel for the FSM Defendants obtained this case-file, refer to affidavit attached as Annex 1.
  
2. Counsel notes the complex nature of the case and requests this court for an enlargement of time of 60 days to comply with this court's scheduling order as she obtained carriage of the case-file on the day the discovery was due, and has to acquaint

herself with the case. Counsel respectfully submits that her reason for not being able to comply with the scheduling order amounts to excusable neglect, and that the non-compliance is done in good faith and on a reasonable basis. Medabalmi v. Island Imports Co., 10 FSM Intrm. 217, 218 (Chk. 2001)

3. The Court has the discretion to grant this motion pursuant to FSM Civ. R. 6(b) which states:

*(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.*

4. This motion would fall under Rule 6(b) (2) as it is made after the expiration of the specified period in the scheduling order, which is January 10, 2013. When a motion to enlarge time is filed after the time set by an order has expired, the court must determine whether the movants' failure to timely act was the result of excusable

neglect. In this particular case, counsel for the FSM Defendants submits that the reason

for failing to timely act amounts to excusable neglect. Medabalmi v. Island Imports Co.,  
10 FSM Intrm. 217, 218 (Chk. 2001).

5. In addition, counsel certifies that a reasonable effort has been made to obtain the agreement of acquiescence of the opposing part pursuant to FSM Civ. R. 6(d), as reflected in the following paragraphs 6, 7, 8, and 9.
6. On January 14, 2013, counsel for the FSM Defendants contacted the Chuuk State Attorney General's office and spoke with Attorney Ken, expressing her intent to seek an enlargement of time for 60 days to acquaint herself with the case-file.
7. On the same day, January 14, 2013, counsel for the FSM Defendants contacted Attorney Steven V Finnen, expressing her intent to seek an enlargement of time of 60 days to acquaint herself with the case-file. On that day, Attorney Finnen had no objections.
8. On January 23, 2013, counsel contacted the Chuuk State Attorney General's office again and spoke with Attorney Bravo, indicating her intent to seek an enlargement of time of 60 days to comply with the scheduling order setting deadlines for discovery by January 10, 2013.
9. On January 14, 2013, counsel tried calling Attorney Johnny Meippen at his listed phone number, 330-8920, but could not get through. On January 23, 2013, counsel for the FSM Defendants contacted Attorney Johnny Meippen on his listed phone number again, but could not get through. On the same day, counsel managed to obtain an e-mail

address for Attorney Johnny Meippen, and sent him an email indicating her intent to seek an enlargement of time to comply with scheduling order.

10. In light of the above, Counsel on behalf of the FSM Defendants moves this Court to grant the FSM Defendants at least 60 days, or until March 29, 2013 to comply with the discovery request.

**MOTION TO FILE BY FACSIMILE**

Counsel respectfully moves this Court to grant the FSM Defendants' motion for enlargement of time to be filed by facsimile as the time to comply with the scheduling order has already lapsed, coupled with the fact that the filing venue is in the State of Chuuk. All Defendants and their attorney are situated in Palikir, Pohnpei State. This request for permission to file by facsimile transmission is made pursuant to General Court Order 1990-1.

Respectfully submitted this 23<sup>rd</sup> day of January, 2013.



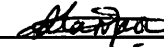
Pole Atanraoi-Reim

Assistant Attorney General

FEDERATED STATES OF MICRONESIA  
DEPARTMENT OF JUSTICE  
P.O. Box PS-105  
Palikir, Pohnpei 96941  
Phone: 320-2608/2644  
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*FSM Defendants Motion for Enlargement of Time – Civil Action No. 2011-1000  
Motion to file by Facsimile  
Certification of service  
January 23, 2013*

**CERTIFICATION**

I, Pole Atanraoi-Reim,  certify that I have caused copies of this motion for enlargement of time and motion to file by facsimile to be served upon counsel for plaintiffs and Defendant at their office addresses below on January 23, 2013.

*Attorney General's Office  
Chuuk State Government  
P.O. Box 1050  
Nantaku Village, Weno Island  
Chuuk FM 96942  
Mode of Delivery: Certified Mail; E-Mail*

*Johnny Meippen  
PO Box 705  
Weno, Chuuk 96942  
Mode of Delivery: Certified Mail; E-Mail*

*Steven V Finnen  
PO Box 1450  
Kolonias, Pohnpei FM 96941  
Mode of Delivery: Personal Delivery*

**Affidavit in support of FSM Defendant's Motion for Enlargement of Time to comply with Discovery Request in Civil Action No. 2011-1000**

I, Pole Atanraoi-Reim, being of sound mind, take oath and state as follows:

1. I am employed as an assistant attorney general with the FSM Department of Justice.
2. Civil Action No. 2011-1000 was initially handled by Attorney Lorrie Asher who is no longer working with the Department of Justice since December 2012.
3. On January 10, 2013, I acquired the case from Attorney Lorrie Asher who completed her exit report with the Department on that day.

  
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Pole Atanraoi-Reim

Sworn and subscribed to before me this 23 day of January, 2013

  
\_\_\_\_\_

Notary Public

CADRETA K. DORRE, NOTARY PUBLIC  
Federated States of Micronesia  
Dohnpei State  
MY COMMISSION EXPIRES ON  
14 DAY OF January 2013  
March eds

