

FILED
DATE: 1/7/15 TIME: 4 am/pm

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

1 Michael J. Sipos, Esq.
P.O. Box 2069
2 Pohnpei, FM 96941
Tel: (691) 320-6450
3 Fax: (691) 320-6451
E-mail: MSipos@mail.fm
4
5 Attorney for Plaintiff
Bank of Hawaii

6 IN THE SUPREME COURT OF THE
7 FEDERATED STATES OF MICRONESIA
8 TRIAL DIVISION - POHNPEI STATE

9 BANK OF HAWAII,

10 Plaintiff,

11 v.

12 MARLENE HELGENBERGER, and YALMER
HELGENGERGER,

13 Defendants.

- 14) CIVIL CASE No. 2004-023
- 15)
- 16) 1. REQUEST FOR ISSUANCE OF ORDER
- 17) TO SHOW CAUSE WHY MIJU MULSAN
- 18) AND ITS DIRECTOR SHOULD NOT BE
- 19) HELD IN CONTEMPT OF COURT FOR
- 20) REFUSING TO COMPLY WITH
- 21) DOCUMENT PRODUCTION SUBPOENA;
- 22)
- 23) 2. REQUEST FOR RULING ON MOTION
- 24) FOR ORDER IN AID OF JUDGMENT AND
- 25) TO GARNISH FUNDS;
- 26)
- 27) 3. REQUEST FOR RULING ON MOTION
- 28) TO ORDER TURNOVER OF PASSPORT
- 29) AND ISSUANCE OF WRIT OF NE EXEAT
- 30) AGAINST YALMER HELGENBERGER AS
- 31) CONTEMPT SANCTION FOR FAILURE TO
- 32) PROVIDE DISCOVERY AND PAY FEES;
- 33)
- 34) 4. REQUEST FOR RULING ON
- 35) MOTION FOR ISSUANCE OF ORDER
- 36) CORRECTING SPELLING OF DEFENDANT
- 37) MARILYN HELGENBERGER'S NAME;
- 38)
- 39) 5. REQUEST FOR RULING ON MOTION
- 40) TO AWARD FEES AGAINST MRS.
- 41) HELGENBERGER AND HER COUNSEL FOR
- 42) UNJUSTIFIED FAILURE TO PROVIDE
- 43) DISCOVERY REQUIRING MOTION TO
- 44) COMPEL.
- 45)

1 1. Request for Order to Show Cause re Contempt

2 On or about December 10, 2014, the Clerk of this Court
3 issued a subpoena duces tecum pursuant to FSM Rule of Civil
4 Procedure, Rule 45, requiring Miju Mulsan (FSM) Inc., through
5 its director Kwang Sub Lee, to produce its files on Yalmer
6 Helgenberger. The subpoena required the production of Miju
7 Mulsan's file on Mr. Helgenberger to include any writings
8 setting forth the nature and scope of services provided and
9 documents showing the amount and basis for all compensation he
10 has received from Miju Mulsan Inc. and/or Miju Mulsan (FSM) Inc.

11 A true and correct copy of the subject subpoena is attached
12 hereto as Exhibit "A". This subpoena was duly served on Miju
13 Mulsan (FSM), Inc. at its offices at the port in Dekehtik by
14 hand delivery to Mr. Lee. The content of the subpoena was
15 explained by the police officer performing the service with
16 explanation provided to Mr. Lee through his interpreter, Mr. Ki
17 Yeol Jang, as further described in the certificate of service
18 filed in this action, a copy of which is attached as Exhibit
19 "B".

20 Miju Mulsan (FSM) Inc. responded to this subpoena by
21 delivering the letter attached hereto as Exhibit "C" to the law
22 office of the undersigned, which as the court can see states
23 refusal to provide the requested documents on the alleged
24 grounds that Miju Mulsan (FSM) Inc. has no employment contract
25 with Mr. Helgenberger.

1 The written explanation provided by Miju Mulsan fails to
2 excuse it from producing the requested information and
3 constitutes an unjustified and unlawful resistance to court
4 process.

5 Indeed, as the court will recall bank records produced from
6 Mr. Helgenberger's account with Bank of Guam that were admitted
7 into evidence at the last hearing in this case prove that he is
8 receiving substantial monetary compensation from Miju Mulsan on
9 the order of several thousand dollars per month for services
10 rendered. The details of such payments, the basis therefore,
11 and writings demonstrating the nature of his relationship with
12 this entity and the extent to which it remains ongoing and
13 subject to future compensation is directly relevant and
14 discoverable in this post judgment collection proceeding.

15 Thus, the court is respectfully requested to notice a
16 hearing and issue an order requiring the attendance of Miju
17 Mulsan (FSM) Inc, through its director Kwang Sub Lee and his
18 interpreter Ki Yeol Jang, to appear and show cause why they
19 should not be held in contempt for court for the unjustified
20 refusal to provide the requested documents in full subpoena
21 compliance. The legal basis for this request follows:

22 § 119. Contempt.

23 (1) Any Justice of the Supreme Court shall have the
24 power to punish contempt of court. Contempt of court is:
25

1 (a) Any intentional obstruction of the administration
2 of justice by any person, including any Clerk or officer of
3 the Court acting in his official capacity; or

4 (b) Any intentional disobedience or resistance to the
5 Court's lawful writ, process, order, rule, decree, or
6 command.

7
8 (2) All adjudications of contempt shall be pursuant to
9 the following practices and procedures:

10 (a) Any person accused of committing any civil
11 contempt shall have a right to notice of the charges and an
12 opportunity to present a defense and mitigation. A person
13 found in civil contempt may be imprisoned until such time
14 as he complies with the order or pays an amount necessary
15 to compensate the injured party, or both...

16 2. Request for Issuance of Ruling on OIA Motion

17 At the last hearing held in this matter on or about October
18 21, 2014, the court entertained Mr. Helgenberger's motion to
19 modify the pending order in aid of judgment to allow him to pay
20 only \$10 monthly. Plaintiff BOH provided oral argument and
21 introduced evidence showing that Mr. Helgenberger's claims of
22 inability to pay more than \$10 monthly was based on a false and
23 fraudulent claim of only having income in the form of social
24 security retirement benefits with no other sources of revenue.

25 BOH also reminded the court that it remained handicapped by
Mr. Helgenberger's continuing contemptuous refusal to produce

1 answers to discovery and compliance with subpoenas requiring him
2 to produce financial information at previous hearings and at the
3 hearing in question.

4 Based on the records of Mr. Helgenberger's BOG account that
5 were introduced into evidence at the hearing, however, it was
6 established that Mr. Helgenberger did indeed have the capacity
7 to pay the judgment at issue in this case promptly and in full
8 from the proceeds coming to him from his work for Miju Mulsan.
9 Since it has long since become clear that Mr. Helgenberger will
10 refuse to comply with any order issued by this court regardless
11 of any findings of contempt or threat of sanction, plaintiff
12 requested the issuance of a writ of garnishment directed to Miju
13 Mulsan and Bank of Guam requiring them to turn over any funds
14 that may otherwise be owed to Mr. Helgenberger.

15 To date the court has not ruled on that motion nor has Mr.
16 Helgenberger paid anything toward judgment satisfaction for
17 several years now. The court is therefore respectfully
18 requested to issue the garnishment orders and to provide any
19 other appropriate relief in support of the contract rights and
20 money judgment favoring plaintiff in this case.

21 3. Request for Issuance of Order Enforcing Contempt
22 Findings

23 At the October 21, 2014 hearing plaintiff also requested
24 the court to issue an order obligating Mr. Helgenberger to turn
25 over his passport and in the form of a writ of ne exeat directed
to FSM Immigration and United Airlines. The requested writ will

1 prevent Mr. Helgenberger from leaving Pohnpei until such time as
2 he complies with the court's contempt order directing him to
3 provide complete discovery disclosure and for the payment of
4 fees to plaintiff's counsel that were incurred as a result of
5 his contemptuous wrongdoing.

6 In support of its position plaintiff BOH supplied the court
7 with copies of orders issued by its Pohnpei trial division under
8 similar circumstances in FSM Civil Action No. 2001-007. In that
9 case the judgment debtors, Bob and Patty Arthur, were ordered to
10 turn over their passports to the Clerk of Court, which they did,
11 and where then committed to a term of house arrest for their
12 contemptuous refusal to comply with the court's order in aid of
13 judgment requiring them to sell assets and turn over proceeds to
14 the court for purposes of judgment satisfaction.

15 Plaintiff respectfully submits that if it wishes to give
16 meaning to the rule of law the court must demand compliance with
17 its lawful orders. When it becomes apparent, as here, that the
18 judgment debtor defendant will posture as if he is above the law
19 for as long as he is able, the court must take action to stop
20 him.

21 4. Request for Issuance of Order on Motion to Amend Judgment
22 to Correct spelling of Marilyn Helgenberger's Name.

23 The court ruled from the bench at the October 21, 2014
24 hearing to grant plaintiff's motion to correct the spelling of
25 Marilyn Helgenberger's from "Marlene" to the correct spelling

1 "Marilyn." However, no order was subsequently issued
2 documenting the granting of this motion.

3 Thus, the court is respectfully requested to issue an order
4 approving the relief requested by the judgment name change
5 motion.

6 5. Request for Issuance of Ruling on Motion for Award of
7 Fees on Motion to Compel against Marilyn Helgenberger.

8 The plaintiff's motion to compel further compliance with
9 written discovery from Marilyn Helgenberger included a request
10 for a fee award as provided by rule. This motion relates to
11 discovery dating back more than six months. It has been the
12 subject of oral argument twice and was also briefed initially
13 and then a second time in accordance with an order for
14 supplemental briefing on the fee award issue.

15 Plaintiff submits that it is entitled to an award of fees on
16 the basis of the plain language of the rule and in view of the
17 lack of any justifiable excuse for the defendant's failure to
18 provide discovery as required by rule. Its position is more
19 fully set forth in the submitted briefs but no ruling has been
20 issued to date.

21 Thus, the court is respectfully requested to issue an order
22 on this motion without further delay. Indeed, as the court can
23 see from this filing, almost all aspects of this case are being
24 stalled without an apparent reason. And in spite of dozens of
25 filings, multiple hearings, continuing contemptuous wrongdoing
by the defendants, their lawyers, and now third parties too, no

1 payments of any sort have been made toward satisfaction of the
2 judgment or in compliance with any of the court's orders for
3 many years now.

4 Respectfully submitted.

5 DATED: January 7, 2015



6
7 MICHAEL J. SIPOS
8 Attorney for Plaintiff
9 Bank of Hawaii

10 Certificate of Service

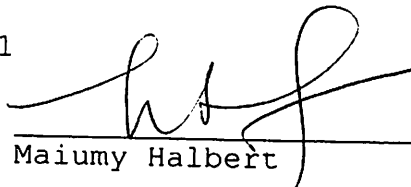
11 I certify that on January 7, 2014 I mailed true and
12 correct copies of the attached Request for OSC against Miju
13 Mulsan and for other relief to all appearing parties and to Miju
14 Mulsan (FSM) Inc. as follows:

15 Marstella E. Jack, Esq.
16 P.O. Box 2210
17 Kolonia, Pohnpei FM 96941

18 Joey Sapelalut, Esq.
19 P.O. Box PS 174
20 Palikir, Pohnpei FM 96941
21 Attorney for Defendant
22 Marilyn Helgenberger

23 Joseph Phillip
24 P.O. Box 464
25 Kolonia, Pohnpei, FM 96941
Attorney for Defendant
Yalmer Helgenberger

Miju Mulsan (FSM) Inc.
C/O Kwang Sub Lee and Ki Yeol Jang
P.O. Box K-3113
Kolonia, Pohnpei FM 96941



Maiumy Halbert

Exhibit “A”

12/10 FILED
DATE: 1/5 TIME: 2:50 PM

1
2 IN THE SUPREME COURT OF THE
3 FEDERATED STATES OF MICRONESIA
4 TRIAL DIVISION - POHNPEI STATE

By: 
CLERK, FSM SUPREME COURT
POHNPEI
TRIAL DIVISION

5 BANK OF HAWAII,) CIVIL CASE No. 2004-023
6 Plaintiff,)
7 v.) SUBPOENA DUCES TECUM
8 MARLENE HELGENBERGER, and)
9 YALMER HELGENGERGER,)
10 Defendants.)

11 TO: MIJU MULSAN (FSM) INC. and KWANG SUB LEE its DIRECTOR

12 You are hereby ordered and subpoenaed to produce for
13 examination and duplication if necessary, copies or originals,
14 or print-outs, your entire file on Yalmer Helgenberger including
15 but not limited to any employment contracts, letter agreements,
16 memoranda of understanding, and all other writings setting forth
17 the nature and scope of services provided by Yalmer Helgenberger
18 to or for Miju Mulsan, Inc. and/or Miju Mulsan (FSM), Inc., as
19 well as copies of all paychecks, wire transfer confirmations, or
20 documents showing other payments made to Yalmer Helgenberger
21 during the past 24 months, plus documents or summaries showing
22 the amount and basis for all compensation he has received from
23 you or Miju Mulsan, Inc. and/or Miju Mulsan (FSM), Inc. at any
24 time during the past five years, and documents showing all
25

1 compensation or other forms of remuneration he is scheduled to
2 receive in the future.

3 Production shall be made on or before December 31, 2014.
4 The requested material shall be delivered or mailed to the
5 following address:
6

7 The Law Office of Michael J. Sipos
8 Ace Commercial Center - 2nd Floor
9 P.O. Box 2069
10 Kolonia, Pohnpei FM 96941
11 Tel: (691) 320-6450
12 E-mail: MSipos@mail.fm

13 This subpoena is made at the request of Plaintiff Bank of
14 Hawaii, in the above styled case, and is brought pursuant to
15 Rule 45 (b), FSM Rules of Civil Procedure. Your failure to
16 comply may subject you to sanctions available under law.

17 If there are any questions as to the scope of this subpoena
18 or the manner, time or place of compliance please contact
19 attorney Michael J. Sipos at the above numbers or by e-mail at
20 MSipos@mail.fm .

21 Issued this 10th day of December, 2014

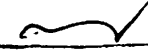
22 

23 _____
24 Clerk of Court
25 FSM Supreme Court

Exhibit “B”

12/11/14 FILED
DATE: TIME: 2:45 pm

1 Michael J. Sipos, Esq.
2 P.O. Box 2069
3 Pohnpei, FM 96941
4 Tel: (691) 320-6450
5 E-mail: MSipos@mail.fm

By: 
CLERK, FSM SUPREME COURT
POHNPEI
TRIAL DIVISION

6 Attorney for Plaintiff
7 BANK OF HAWAII

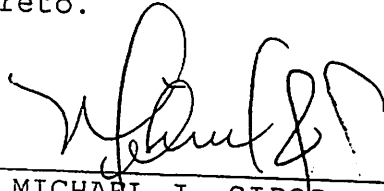
8 IN THE SUPREME COURT OF THE
9 FEDERATED STATES OF MICRONESIA
10 TRIAL DIVISION - POHNPEI STATE

11 BANK OF HAWAII,) CIVIL CASE No. 2004-023
12 Plaintiff,)
13 v.) NOTICE OF FILING AND SERVICE OF
14) SUBPOENAS
15)
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17)
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19)
20)
21)
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23)
24)
25)
MARLENE HALGENBERGER AND YALMER)
HELGENBERGER,)
Defendant.)

15 Please take notice that the attached subpoena issued and
16 filed on December 10, 2014 was served on Miju Mulsan (FSM) Inc..
17 A return of service is attached hereto.

18 Respectfully submitted.

19 DATED: December 11, 2014


MICHAEL J. SIPOS
Attorney for Plaintiff BOH

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Certificate of Service

I certify that on December 11, 2014 I served a true and correct copy of this notice of filing and service of subpoenas by Mail to defendant's counsel as follows:

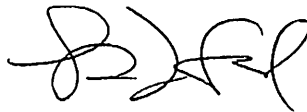
Marstella E. Jack, Esq.
P.O. Box 2210
Pohnpei FM 96941

Joey Sapelalut, Esq.
P.O. Box 174
Palikir, Pohnpei FM 96941

Attorney for Defendant
Marilyn Helgenberger

Joseph Phillip
P.O. Box 464
Kolonia, Pohnpei FM 96941


Attorney for Defendant
Yalmer Helgenberger



Kehlen Halbert

12/10 FILED
DATE: 12/10 TIME: 2:50 PM

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION - POHNPEI STATE

By: 
CLERK, FSM SUPREME COURT
POHNPEI
TRIAL DIVISION

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4		
5	BANK OF HAWAII,) CIVIL CASE No. 2004-023
6	Plaintiff,)
7	v.) SUBPOENA DUCES TECUM
8	MARLENE HELGENBERGER, and)
9	YALMER HELGENGERGER,)
10	Defendants.)

11 TO: MIJU MULSAN (FSM) INC. and KWANG SUB LEE its DIRECTOR

12 You are hereby ordered and subpoenaed to produce for
13 examination and duplication if necessary, copies or originals,
14 or print-outs, your entire file on Yalmer Helgenberger including
15 but not limited to any employment contracts, letter agreements,
16 memoranda of understanding, and all other writings setting forth
17 the nature and scope of services provided by Yalmer Helgenberger
18 to or for Miju Mulsan, Inc. and/or Miju Mulsan (FSM), Inc., as
19 well as copies of all paychecks, wire transfer confirmations, or
20 documents showing other payments made to Yalmer Helgenberger
21 during the past 24 months, plus documents or summaries showing
22 the amount and basis for all compensation he has received from
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1 compensation or other forms of remuneration he is scheduled to
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11 Tel: (691) 320-6450
12 E-mail: MSipos@mail.fm

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15 Rule 45 (b), FSM Rules of Civil Procedure. Your failure to
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17 If there are any questions as to the scope of this subpoena
18 or the manner, time or place of compliance please contact
19 attorney Michael J. Sipos at the above numbers or by e-mail at
20 MSipos@mail.fm .

21 Issued this 10th day of December, 2014

22 
23 _____
24 Clerk of Court
25 FSM Supreme Court

RETURN OF SERVICE

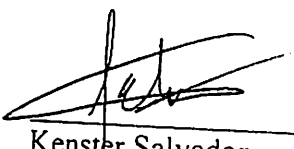
1. I KENISTER SALVADOR, a Police Officer for Pohnpei State Police Department, personally served a copy of the below-described document in the matter of BANK OF HAWAII v. MARILYN HELGENBERGER and YALMER HELGENBERGER, in FSM Civil Action No. 2004-023 to MIJU MULSAN (FSM) INC. and KWANG SUB LEE its DIRECTOR on December 11, 2014 at (time) 2 : 35 p.m., at Muji Mulsan (FSM) Inc. office, at Dekehkit, Nett.

Document Served:

A. SUBPOENA DUCES TECUM to Miju Musan (FSM) Inc. and Kwang Sub Lee its Director entered in FSM Civil Action No. 2004-023 on December 10, 2014;

Person Served:

a. Personal delivery to KWANG SUB LEE - DIRECTOR at MIJU MULSAN (FSM) INC. at (Former Pohnpei Cold Storage Building) to whom I explained the substance of the documents in Pohnpei and/or English language(s).


Kenster Salvador
Pohnpei State Police Officer

12/11/14
Dated

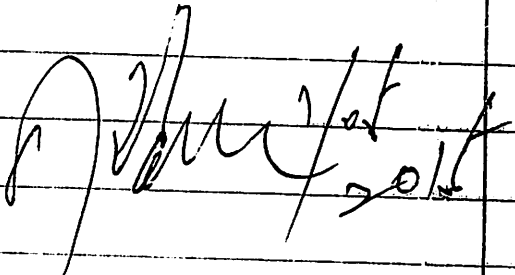
Exhibit “C”

Dear Mr. Sipas

Jan/05/2015

We regret to inform you that our local office has no employment contract with Mr. Yalmer Helgenberger, and therefore, we feel that we have no legal right to disclose any personal information on him. However, we suggest that you contact him directly or his lawyer for further assistance.

Respectfully Yours

Kwang Sub Lee  1/5/2015

KI YEOL JANG -Translator

Daniel is the American name.