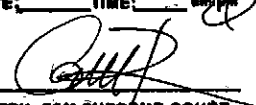


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9 PEOPLE OF THE MUNICIPALITY
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FILED
11/20/12 5:10
DATE: TIME: AM/PM
By 
CLERK, FSM SUPREME COURT
YAP
TRIAL DIVISION

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**IN THE SUPREME COURT OF
THE FEDERATED STATES OF MICRONESIA
TRIAL DIVISION – STATE OF YAP**

THE PEOPLE OF THE MUNICIPALITY OF
EAURAPIK, YAP STATE, by and through
SANTOS SARONGELFEG, JOHN
HAGLELGAM, and MOSES MOGLIG,

Plaintiffs,

vs.

F/V TERAKA 168, *in rem*, F/V FU KUAN 606, *in rem*,
F/V YUH YOW 127, *in rem*, their engines,
masts, bowspirits, boats, anchors, chains, cables,
rigging, apparel, furniture, and all necessaries
thereunto pertaining,

In Rem Defendants.

YUH YOW FISHERY COMPANY LTD.,
MARIN MARAWA, LTD., MASANAGA
SHIMAZU, CAPTAIN EDGAR R. PELAEZ,
MALAYAN TOWAGE AND SALVAGE
CORPORATION, CITY PRO MANAGEMENT
LIMITED, and HSIN HORNG FISHERY CO.,
LTD.

In Personam Defendants,

CIVIL ACTION NO. 2011-3002

**PLAINTIFFS' MOTION TO STAY
CLERK'S NOTICE FILED
NOVEMBER 1, 2012**

ORIGINAL

1
2 THE FEDERATED STATES OF MICRONESIA
3 NATIONAL GOVERNMENT,

4 Intervenor Plaintiff.
5

6 **I. MOTION**

7 NOW COMES, the People of the Municipality of Eaurapik, Yap State, by and
8 through SANTOS SARONGELFEG, JOHN HAGLELGAM, and MOSES MOGLIG
9 (hereinafter referred to as "Plaintiffs"), by and through their Attorneys of record, Daniel J.
10 Berman, Joseph C. Razzano, and Joshua D. Walsh and hereby files this Motion to Stay the
11 Clerk's Notice of November 1, 2012 pursuant to the Court's inherent power to control its
12 calendar and dispose of cases on its docket. *Pohnpei v. M/V Miyo Marv No. 11*, 9 FSM Intrm.
13 316, 329 (Pon. 2000). The Motion is based on the submitted Memorandum of Points and
14 Authorities and supported by the evidence obtained on October 24, 2012 through the Corporate
15 Representative deposition of City Pro Management, Ltd.

16 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

17 On November 1, 2012, the Clerk issued a Notice to the parties informing the parties
18 that in the event that the F/V Fu Kuan 606 and the F/V Yuh Yow 606 were not served on
19 November 21, 2012, that those *in rem* Defendants would be subject to dismissal. On that same
20 day, Defendants filed a Response to the Clerk's Notice filed November 1, 2012 by *in rem*
21 Defendant F/V Yuh Yow 127 ("Defendants Response"). Defendants Response details that the
22 F/V Yuh Yow 127 should be dismissed pursuant to the Clerk's Notice.

23 The Plaintiffs move to Stay the Clerk's Notice. First, the F/V Yuh Yow 127 is an
24 FSM flagship vessel hailing from the Port in Pohnpei. See Razzano Declaration at Exhibit "A"
25 filed contemporaneously herewith. Therefore, it is an *in rem* Defendant that the Plaintiff
26 should be allowed to effectuate service when in fact the vessel returns to FSM waters.
27

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2 Moreover, the evidence elicited on October 24, 2012 from the Corporate
3 Representative of City Pro Management, Derrick Wang is that in fact, Yuh Yow Fisheries
4 Company, Ltd. (“Yuh Yow”) is the operator of the F/V Yuh Yow 127. *See* Deposition of
5 Derrick Wang taken on October 24, 2012 at P.22, L.5 – 28, L.3 attached to Razzano
6 Declaration at Exhibit “B”. On July 13, 2012, a courtesy copy of the Second Amended
7 Complaint was transmitted to Yuh Yow’s Counsel for review and comment. *See* Razzano
8 Declaration at Exhibit “C”. On that very same day, the F/V Yuh Yow 127 was ordered by Yuh
9 Yow to leave the FSM waters bound for Kaohsiung, Taiwan. *Id.* at para 5; *see* also Wang
10 Deposition at P. 107, L.14 - 16. This fleeing of the jurisdiction is nothing more than an attempt
11 by Yuh Yow to secret assets under its control from the jurisdiction of this Court. This action
12 and apparent cover up requires the Court to allow Plaintiffs a reasonable amount of time to
13 serve the F/V Yuh Yow 127 when she in fact returns to her home port.

14 Finally, when City Pro’s 30(b)(6) deponent, Derrick Wang was questioned
15 regarding the whereabouts of the Yuh Yow 127, he was instructed by his Attorney not to
16 testify. *See* Wang Deposition at P. 102, L. 10 – P. 107, L.16. Recently, it has been discovered
17 that Yuh Yow in fact operates fishing boats in the FSM, yet they do not have a business license
18 and they do not pay taxes in the Federated States of Micronesia. *See* Wang Deposition at P. 80,
19 L. 12 – P. 84, L.19.

20 The FSM court has the inherent power to control its calendar and the disposition of
21 cases on its docket. *See Pohnpei v. M/V Miyo Maru No. 11*, 9 FSM Intrm. 316, 329 (Pon.
22 2000) (describing, in the context of a discovery dispute, the court’s inherent power to control
23 the orderly and expeditious disposition of cases). Part of this power includes the power to
24 entertain and weigh the merits of motions to stay proceedings. *See, e.g., FSM v. Zhong Yuan*
25 *Fishery Co.*, 9 FSM Intrm. 351, 353 (Kos. 2000) (deciding motion to stay civil case brought by
26 FSM). The United States Supreme Court has explicitly recognized this power, and has written
27 that” the power to stay proceedings is incidental to the power inherent in every court to control

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2 the disposition of the causes on its docket with economy of time and effort for itself, for
3 counsel, and for litigants. How this can best be done calls for the exercise of judgment, which
4 must weigh competing interests and maintain an even balance.” *Landis v. N. Am. Co.*, 299
5 U.S. 248, 254-55, 57 S. Ct. 163, 166, 81 L. Ed. 153 (1936).

6 Because Yuh Yow is the operator of the F/V Yuh Yow 127, and in fact instructed
7 the vessel to leave the jurisdiction of this Court on July 13, 2012 and has instructed the Yuh
8 Yow 127 to remain out of the jurisdiction and therefore, not subject to her arrest, requires this
9 Court to stay its Notice and allow the Plaintiffs a reasonable period of time to serve the F/V
10 Yuh Yow 127 when she returns to her home Port.¹

11 **III. CONCLUSION**

12 The Plaintiffs request that this Court Order a Stay of the Clerk’s Notice and allow
13 the Plaintiffs the opportunity to serve the F/V Yuh Yow 127 within ninety (90) days of her
14 return to her home port. In the alternative, order City Pro Management, Ltd. or the operator of
15 the F/V Yuh Yow 127 to accept service of the Complaint on behalf of the vessel, order the
16 vessel to return to Pohnpei or Yap and be subject to arrest, bond and release for her
17 participation in the ruinous attempt to free the Teraka No. 168 from the Eaurapik atoll and be
18 prepared to pay damages for same.

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27 ¹ It should also be noted that Yuh Yow denied knowing who the owner of the F/V Yuh Yow 127 was during their corporate representative deposition. See Chen Depo at P. 154, L. 4-25 (Mr. Chen denies any knowledge of the owner of the Yuh Yow 127 when Yuh Yow is the operator and paying a service fee to City Pro to fish the vessel). Exhibit “D” Razzano Declaration.

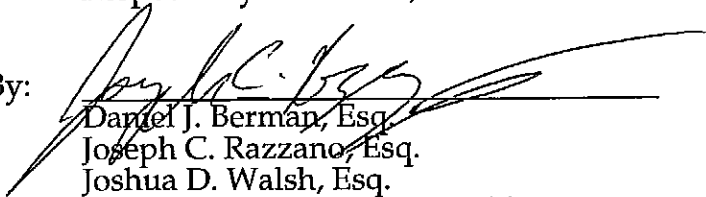
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WHEREFORE, Plaintiffs pray that the Court issue a Stay of the Clerk's November 1, 2012 Notice and order the Clerk to allow service to be affected ninety (90) days from the date the F/V Yuh Yow 127 returns to Pohnpei; or in the alternative, order the owner and operator of the F/V Yuh Yow 127 to accept service on her behalf and order her to be returned to either Pohnpei or Yap and be subject to arrest, bonding and release pursuant to FSM law.

Respectfully submitted this 20th day of November, 2012.

Respectfully submitted,

By:


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