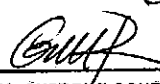


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**FILED**  
 3/28/13 8:05  
 DATE: \_\_\_\_\_ TIME: \_\_\_\_\_  
 By:   
 CLERK, FSM SUPREME COURT  
 YAP  
 TRIAL DIVISION

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 SANTUS SARONGELFEG, JOHN )  
 HAGLELGAM, and MOSES MOGLIG, )

Plaintiffs, )

vs. )

F/V TERAKA NO. 168, F/V YUH YOW 127, their engines, masts, )  
 bowsprits, boats, anchors, chains, cables, rigging, apparel, furniture, )  
 and all necessities thereunto pertaining, )

*In Rem* Defendants. )

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

*In Personam* Defendants. )

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FEDERATED STATES OF MICRONESIA, )

Plaintiff in Intervention, )

v. )

F/V TERAKA NO. 168, its engines, masts, bowsprits, boats, )  
 anchors, chains, cables, rigging, apparel, furniture, and all )  
 necessities thereunto pertaining, )

*In Rem* Defendant, )

YUH YOW FISHERY COMPANY, LTD., )  
 MARIN MARAWA, LTD., and MASANAGA SHIMAZU, )  
*In Personam* Defendants. )

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CIVIL ACTION NO. 2011-3002

**DEFENDANTS' MOTION  
 TO COMPEL  
 APPEARANCE AT  
 DEPOSITION OF  
 PLAINTIFFS' EXPERT  
 MIKE J. HASURMAI OF  
 THE MARINE  
 RESOURCES  
 MANAGEMENT DIVISION,  
 YAP STATE;**

**DECLARATION OF  
 SERVICE**

Pursuant to F.S.M. Civil Procedure Rule 37 Defendants respectfully move this Court for an Order compelling the appearance of Mike J. Hasurmai in his capacity as Plaintiffs' designated expert to appear on April 15, 2013 at the hour of 9:30 a.m. for his deposition.

### **MEMORANDUM AND POINTS OF AUTHORITIES**

Plaintiffs have identified Mike J. Hasurmai and Robert Richmond as their experts in this matter. Defendants have identified Babel SBF (Brett Kettle) as their expert. All experts have provided written reports and opinions and the parties have exchanged those reports. As permitted by F.S.M. Rule 29, the parties have stipulated to make all three experts available for their depositions, and have successfully arranged the depositions of Richmond and Kettle to be taken on April 18<sup>th</sup> and 19<sup>th</sup> 2013. However, notwithstanding much discussion and correspondence between Counsel since December 2012, Mr. Hasurmai's expert deposition has not been arranged, nor is there any indication that it will be prior to the discovery completion date of April 26, 2013. The reason or reasons for this are unexplained.

Concurrently filed herewith, Defendants have subpoenaed Mike J. Hasurmai for deposition in his individual capacity as a percipient witness for April 15, 2013 at 9:30 a.m. in Yap. Significantly, Mr. Hasurmai was an eye-witness to the activities taking place at Eaurapik Atoll during the time he served as a member of the Yap State Assessment Team. The Yap Team was onsite at Eaurapik Atoll in August and September 2011 and again in April 2012. Plainly Mr. Hasurmai has a wealth of important information.

Defendants now seek an order from this Court to compel the appearance of Mr. Hasurmai for deposition in his capacity as one of the two experts Plaintiffs have designated to testify at

trial.

### **Background**

In December 2012, the parties began in earnest and in good faith to select a mutually convenient date for Mr. Hasurmai's deposition. Defendants even offered to pay Mr. Hasurmai's reasonable expenses to appear in Guam for the convenience of both counsels. *Affd. David Ledger*. This offer still stands. Counsel for both parties discussed possible dates and locations for Mr. Hasurmai's deposition, and Plaintiffs' counsels were to confirm the dates with Mr. Hasurmai. *Affd. Ledger*. Yet no dates for the deposition were ever proposed.

On February 28, 2013 Counsels for Plaintiffs and Defendants held a meet and confer to discuss a variety of discovery issues, including the scheduling of Mr. Hasurmai's deposition. *Id.* At the conclusion of the meeting Mr. Hasurmai's deposition remained an open issue, and Plaintiffs' attorneys anticipated they would be able to provide deposition dates the following week. The following week passed, but no dates, or any other information regarding efforts to obtain dates from Mr. Hasurmai, was provided. *Id.*

On March 20, 2013, Defendants' counsel sent yet another correspondence to opposing counsels on the subject of Mike Hasurmai's deposition, noting the lack of any feedback from them regarding the scheduling of this deposition. *Id.* The correspondence informed that if the parties could not agree by March 27, 2013 upon on a date for the deposition that Defendants would have no choice except to subpoena Mike Hasurmai in his individual capacity and to seek Court intervention regarding an order for his deposition in his status as Plaintiffs' designated expert. *Id.* To date, there has been no response.

It is unexplained whether Plaintiffs' inability to provide dates for Mr. Hasurmai's deposition is the result of poor communications with Mr. Hasurmai, Mr. Hasurmai being away from Yap, or some other reason. The reasons no longer matter. Because the discovery cut-off date of April 26<sup>th</sup> is imminent, Defendants will subpoena Mr. Hasurmai to appear for deposition in his individual capacity, and hereby seek an order to compel Plaintiffs to produce Mr. Hasurmai in his capacity as their designated expert. If Plaintiffs no longer designate Mr. Hasurmai as their expert for trial then Plaintiffs should be ordered to disclose this. If Plaintiffs intend for Mr. Hasurmai to testify as an expert on their behalf at trial Defendants can wait no longer for Plaintiffs to identify deposition dates that are convenient for Counsel or Mr. Hasurmai.

The parties have already agreed to make their experts available for depositions and have set dates for Richmond and Kettle. Hasurmai is the hold-out. If he is to be allowed to testify as an expert for Plaintiffs at trial Defendants must be given the opportunity to take his deposition before trial.

Accordingly, Defendants request that the Court compel Plaintiffs to produce their expert Mike J. Hasurmai for deposition on April 15, 2013 beginning at 9:30 a.m., which is the same day set for Mr. Hasurmai's deposition as a percipient witness. Should Plaintiffs fail to produce Mr. Hasurmai for his deposition as their expert witness, the sanction would be to preclude Plaintiffs from proffering at trial any testimony or other evidence attributable to Mr. Hasurmai.

#### CONCLUSION

Based on the foregoing, Defendants respectfully request the Court issue an order compelling Plaintiffs to produce Mike Hasurmai for deposition on April 15, 2013 at 9:30 a.m. Such Order should also provide that failure of Mr. Hasurmai to so appear would preclude

plaintiffs from proffering at trial any testimony by or documentary evidence from Mr. Hasurmai.

DATED: March 28, 2013 at Tamuning, Guam.

**CABOT MANTANONA LLP**  
Attorneys for Defendants

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
**DAVID P. LEDGER**  
**HELKEI S. HEMMINGER**

**DECLARATION OF SERVICE**

I, **HELKEI S. HEMMINGER**, hereby declare that on March 28<sup>th</sup>, 2013 I served, via email, a true and correct copy of the foregoing pleading **DEFENDANTS' MOTION TO COMPEL APPEARANCE OF MIKE J. HASURMAI FOR DEPOSITION** upon Counsel of record as follows:

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Department of Justice  
Federated States of Micronesia  
P.O. Box PS-105  
Palikir, Pohnpei FM 96941

Executed this 28<sup>th</sup> day of March 2013, at Tamuning, Guam.

\_\_\_\_\_/s/  
**HELKEI S. HEMMINGER**