

NMI SETTLEMENT FUND

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS**

BETTY JOHNSON, on behalf of herself,
and as a representative of a class of
similarly-situated persons,

Plaintiffs,

v.

ELOY S. INOS, Governor of the
Commonwealth of the Northern Mariana
Islands (“CNMI”), *et al.*,

Defendants.

CIVIL CASE NO. 09-0023

STIPULATION

The undersigned stipulate and agree as follows:

1. This matter came before the Court for hearing on September 9, 2014 on the NMI Settlement Fund Trustee’s request that the Court approve the Settlement Fund to substitute as the claimant in an arbitration proceeding styled as *Taitano et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (Case No. 12-02942) before the Financial Industry Regulation Authority (“Merrill Lynch Litigation”). The Court approved the Trustee’s request in principle by an Order dated September 11, 2014 [ECF 677] but deferred ruling on the proposed Assignment of Claims Agreement [ECF 672-8], and rejected the proposed Engagement Agreement [ECF 672-9].

2. The Merrill Lynch Litigation asserts claims that Merrill Lynch is liable to the benefit of the Fund for the adverse financial consequences of its investment advice to the Fund.

3. By an Assignment Agreement dated December 2, 2011 [ECF 672-7], the Board of Trustees of the Northern Mariana Islands Retirement Fund (“NMIRF”) assigned to Mariano Taitano, Roman Tudela, and Patricia Guerrero (“Assignees”) the claims asserted in the Merrill Lynch Litigation.

4. The Assignees, attorneys for the Assignees (O’Connor Berman Dotts & Banes (the “O’Connor firm”), and Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A. (the “Levin firm”), the NMIRF, and the Trustee have executed an Assignment of Claims Agreement and revised Engagement Agreement which are attached hereto as **Exhibits A & B**.

5. The Assignees, the attorneys for the Assignees, and all parties to this action and the Assignment Agreement and any agreements relating thereto acknowledge that the Assignees and their attorneys have at all times been acting as constructive trustees for the Fund and holding all rights to the claims in a constructive trust for the NMIRF and later the Settlement Fund and their respective members and beneficiaries.

6. Paragraph 1.1 of the Class Settlement Agreement finally approved by the Court in this action, transferred “[a]ny and all rights the Fund has relating in any way to the proceeds arising from” the Merrill Lynch Litigation to the Settlement Fund created by the Settlement, [ECF 468-1].

7. The Assignees and the O’Connor firm, who have been acting as constructive trustees for the ultimate benefit of the members, now wish to assign their interests in the Merrill Lynch Litigation to the Settlement Fund, so the Settlement Fund can prosecute that action in its own name.

8. The Trustee has accepted assignment on the terms set forth as set forth in Assignment Agreement (*see* **Exhibit A** hereto), which was approved by the NMIRF.

9. The Trustee renegotiated the terms upon which the Levin Firm and associated counsel will represent the claimants in the Merrill Lynch Litigation as reflected in the Engagement Agreement (*see* **Exhibit B** hereto). This Engagement Agreement supersedes and replaces any prior agreement regarding fees and costs that relate in any way to the Merrill Lynch Litigation and governs all of the fees and costs that the NMIRF and the Settlement Fund are liable to pay to all attorneys who may be engaged to work on the matter but does not restrict the Levin firm and the Settlement Trustee from engaging additional associated counsel in the event they conclude it is in the best interests of the Settlement Fund. The Government reserves the right to object to the association of counsel and payments to the law firm of Bronster Hoshibata under Section 6.B of the Engagement Agreement.

10. The undersigned parties agree and stipulate that it is in the best interest of the Settlement Fund and the Class in this action for the Trustee to accept the assignment by the Assignees pursuant to the terms of the Assignment Agreement attached hereto as **Exhibit A**.

11. The undersigned parties further agree and stipulate that is in the best interests of the Settlement Fund and the Class in this action for the Trustee to enter into the revised Engagement Agreement attached hereto as **Exhibit B**.

12. The undersigned further agree and stipulate that they will seek approval by the Court of this stipulation and its attached agreements (Assignment Agreement and Engagement Agreement, **Exs. A and B** hereto), and support entry of a proposed Order attached hereto as **Exhibit C**.

Respectfully submitted this 21st day of October, 2014.

SETTLEMENT CLASS:

/s/

By: MARGERY BRONSTER
Class Counsel

NMI SETTLEMENT FUND:

/s/

By: JOYCE C.H. TANG
Trustee

NMI RETIREMENT FUND:

/s/

By: REENA PATEL
*Attorney General for the Commonwealth
of the Northern Mariana Islands*

Pending

By: HON. ELOY S. INOS
Governor

COUNSEL FOR INDIVIDUAL CLAIMANTS:

LEVIN, PAPANTONIO, THOMAS, MITCHELL,
RAFFERTY & PROCTOR, P.A.

/s/

By: PETER J. MOUGEY

O'CONNOR BERMAN DOTTS & BANES

/s/

By: MICHAEL DOTTS