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July 21, 2014

Joyce Tang, Esq.
Trustee
NMI Settlement Fund
P.O. Box 501247
Saipan MP 96950

Re: Northern Marianas College

Dear Ms. Tang:

This morning I attempted to clarify your position in this matter. The response I received was that you do have legal counsel, but that I should direct correspondence to you anyway. After a follow up, I still received no response as to the identity of your legal counsel.

It is therefore with some reservation that I communicate with you directly. I did speak to Ms. Alepuyo this afternoon, and explained the problem, and she suggested that I go ahead and communicate with you.

My hesitation to communicate with you directly on this is due, in part, to previous problems created by similar confusion over your role in the previous litigation. I am now hyper-sensitive to the issue due to your own misconduct.

You will recall that there were two days of hearings on the settlement that took place on August 5 & 6, 2014. At some point during the first day's hearings, I informed both the Court and all present that because I had an appearance in the U.S. Immigration Court on the 6th, I would be late to the second day's hearings.

As I was leaving the U.S. Immigration Court the next morning, I checked my messages and learned that my office had received several frantic calls from the District Court asking where I was, and why hadn't NMC signed the agreement yet. I proceeded to the District Court ready to explain NMC's position.

When I arrived at the District Court, you were at the podium accurately explaining NMC's position to the Judge, even though I had never spoken to you or anyone else about NMC's position.

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I learned later that afternoon that for some reason you had actually called the NMC President yourself. The President would herself state that you did not clearly identify yourself as a lawyer, or as an opposing party in the litigation, but only that you were calling from the court, demanding information about NMC's position.

I subsequently called Mr. Huesman to ask if he knew that you had done this, and explained that I may have to report your misconduct to disciplinary authorities. Mr. Huesman explained that in this case, you were acting more as a represented party, and less as a lawyer. Due to this explanation, and because of my own assessment that NMC hadn't suffered any real harm due to your misconduct, I have not reported this misconduct.

It seems I may have been wrong, however, about the harm caused to NMC because you are now pushing an interpretation of the agreement that is contrary to the plain language, and also contrary to NMC's understanding of that language.

The Trustee *Ad Litem* sued NMC for one reason; he believed that NMC's contribution to the retirement fund was deficient. In other words, the issue that we now dispute today is the same issue that was in dispute at the time NMC was sued. For NMC, the issue was resolved by the settlement agreement.

You are aware of NMC's position, and call it "unreasonable and unsupported by the law or the Settlement Agreement." We disagree. NMC's position is that it relies on the plain language of the agreement.

You can seek a court order, I suppose, but in order to get one against NMC in this instance you will have to ask the court to ignore some of the most basic rules of interpretation.

The Court will first look to the plain language of the agreement. The plain language of Section 5.0 states that "...the CNMI Autonomous Agencies shall make supplemental payments to the Settlement Fund in the amount of the employer contributions for these Settlement Class members at the same contribution rates they were paying as of June 26, 2013." The language is unambiguous. NMC was paying at the contribution rate of 20% on June 26, 2013, and NMC is paying "the same contribution rate [NMC was] paying as of June 26, 2013.

NMC signed the agreement, under pressure from you, Joyce Tang, based on this plain language, and based on the fact that for NMC, nothing changed.

You attempt to support your new position by pointing to extrinsic evidence such as Judge Govendo's order, and an alleged conversation about NMC's rate with Governor Inos. Given the plain language, we don't believe that the Court will ignore another of the rules of interpretation, that which provides

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that the Court will only go outside the four corners when the agreement is ambiguous. It isn't.

By the way, NMC was not a party in the case in which Judge Govendo made that ruling, and the case was later stayed. NMC received no due process in that case.

In the unlikely event that the Court finds some ambiguity, we will ask the Court, irrespective of Section 36.0, to apply the rule of interpretation that requires the Court to construe such ambiguities against the drafter.

NMC participated in this agreement in exactly two ways. We sent our position statement as ordered by Judge Farris, and we signed when asked. I myself went to the Court on the first day of discussions, and was told by the Judge that my presence was not necessary. NMC did not know anything about the agreement, not even that NMC's signature was required, until the agreement was produced to us.

NMC was not consulted, not once, about the contribution rate, and was instead given a document that said, in plain language, "...the CNMI Autonomous Agencies shall make supplemental payments to the Settlement Fund in the amount of the employer contributions for these Settlement Class members at the same contribution rates they were paying as of June 26, 2013."

Your letter states that only NMC is taking this position. That implies that other agencies have taken any position at all other than to pay at the rate they were paying previously. I also happen to know that PSS has taken no position as of yet, so the implications of your statement are disingenuous.

What it seems like on this side of things is that the Trustee is trying to now fix an error that the Trustee had a hand in creating – one that NMC had absolutely no involvement in. It seems apparent now that the language "at the same contribution rates they were paying as of June 26, 2013" was inserted into the agreement without any of the negotiators actually checking to see what was the rate that NMC was paying on June 26, 2013. This is especially strange given that the dispute between NMC and the Trustee *Ad Litem* was exactly this one issue – the correct contribution rate for NMC.

If changes to the contribution rate were discussed or considered, they were certainly never discussed or considered with NMC. It is unclear to me whether NMC would have signed any agreement if it had known that the payment rate was being changed, another reason to construe any ambiguity against the Trustee.

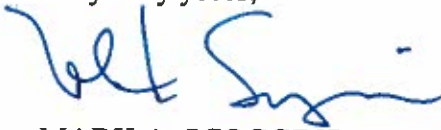
NMC has always taken the position, consistent with law and our own discussions with Governor Inos and others, that differences between NMC's contribution rate and the rate required by the fund would be shouldered by the central government. It matters naught that other agencies may pay a different rate. NMC is NMC.

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With this letter, NMC now considers this issue closed. Further litigation over this issue, the plain language of the agreement being clear, would be frivolous, and NMC would respond accordingly.

I ask that if you insist on further communication on this topic, it be through your attorney as I requested this morning. Thank you.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Mark A. Scoggins', written over a light blue horizontal line.

MARK A. SCOGGINS
Attorney for Northern Marianas College

cc: Jesus C. Borja, Esq.
Reena Patel, AAG
Viola Alepuyo, Esq.