

ASSIGNMENT OF CLAIMS AGREEMENT

This Assignment of Claims Agreement (“Agreement”) is executed on this _____ day of _____, 2014 (“Effective Date”), by and between **Mariano Taitano, Roman Tudela, and Patricia Guerrero** (the “Individual Claimants”), Attorneys for the Individual Claimants, O’Connor Berman Dotts & Banes (the O’Connor firm”), and Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A., the Northern Mariana Islands Retirement Fund (“NMIRF”), and Trustee, Civile & Tang, PLLC (the “Trustee”), acting through its principal representative, Joyce C.H. Tang, on behalf of the **Northern Mariana Islands Settlement Fund** (the “Settlement Fund”). All parties will be collectively referred to as the “Parties”.

RECITALS

WHEREAS, on or about October 9, 2009, Mariano Taitano, Roman Tudela, and Patricia Guerrero (“Individual Claimants”) filed Civil Action No. 09-0410, styled *Taitano et al. v. Merrill Lynch, et al.*, against Merrill Lynch Pierce Fenner & Smith, Inc. in the NMI Superior Court (hereinafter the “Superior Court Action”) on behalf of the Northern Marianas Islands Retirement Fund (“NMIRF”) which required a personal investment of their time, and which filing preserved the claims against Merrill Lynch;

WHEREAS, on December 2, 2011, Individual Claimants, pursuant to that certain *Option Agreement for Settlement, Assignment of Claims and Release* (the “Settlement and Assignment Agreement”), obtained an assignment of all of the claims (“Assigned Claims”) the NMIRF has against Merrill Lynch Pierce Fenner and Smith, Inc. (“Merrill Lynch”);

WHEREAS, the Individual Claimants have been vigorously pursuing the claims on behalf of all retirees without compensation and keeping the claims alive and the Individual Claimants and the O’Connor firm acknowledge that they have at all times been acting as constructive trustees for the NMIRF 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;

WHEREAS, the Individual Claimants are pursuing the Assigned Claims against Merrill Lynch on behalf of all Settlement Fund members in an arbitration proceeding pending before the Financial Industry Regulatory Authority entitled *Mariano Taitano, Roman T. Tudela, and Patricia Guerrero, on behalf of The Northern Mariana Islands Retirement Fund, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Respondent*, FINRA Case No. 12-02942 (the “FINRA Arbitration”);

WHEREAS, pursuant to the *Final Judgment Approving Class Action Settlement* entered on October 23, 2013 in the United States District Court for the District of the Northern Mariana Islands (the “Court”), in an action entitled *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, et al.*, Civ. No. 09-00023, the NMIRF’s entire interest in any and all proceeds recovered in the FINRA Arbitration were transferred to and are now held by the Settlement Fund under the control of the Trustee;

EXHIBIT A

WHEREAS, for the benefit of the beneficiaries of the NMIRF and the Settlement Fund, the Individual Claimants desire to assign the Assigned Claims to the Settlement Fund, and the Trustee is willing to accept the assignment for the Settlement Fund subject to the terms of this Agreement and approval by the Court; and

NOW, THEREFORE, in consideration of the preceding Recitals and of the mutual covenants, agreements, representations and promises contained in this Agreement, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1. On the “Effective Date” (defined as the date the NMI District Court issues an Order approving this Assignment and Settlement Agreement, the Stipulation, and the Engagement Agreement and the parties executing the same), the Individual Claimants assign and transfer to the Settlement Fund the Assigned Claims.

2. The Engagement Agreement between the Settlement Fund and Claimants’ counsel, the law firm of Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A. (“Claimant’s Counsel”) marked and attached as **Exhibit “A”** hereto (“Engagement Agreement”), supersedes and replaces any and all provisions in the Settlement and Assignment Agreement relating to payment of attorney fees and costs, a copy of which is marked and attached as **Exhibit “B”** hereto.

3. On the Effective Date, the Trustee accepts from the Individual Claimants all of their rights, title and interest in the Assigned Claims under and in the Settlement and Assignment Agreement. Except as provided in the Engagement Agreement, the Trustee does not assume any of the obligations and duties of the Individual Claimants under and in the Settlement and Assignment Agreement.

4. The Trustee accepts this assignment and transfer on the following conditions:

- a. The Court issues an order authorizing the Trustee to enter into this Agreement and substitute the Individual Claimants in the FINRA Arbitration.
- b. The Court issues an order approving the Engagement Agreement.
- c. The NMIRF and the O’Connor firm consents to this Agreement.

5. The NMIRF, being advised of the foregoing and having reviewed this Agreement, consents and agrees to the terms of this Agreement.

[Signatures on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement the date set forth above:

INDIVIDUAL CLAIMANTS:

NMI SETTLEMENT FUND

MARIANO TAITANO

By: JOYCE C.H. TANG
Settlement Trustee

ROMAN T. TUDELA

NMI RETIREMENT FUND

PATRICIA GUERRERO

By: Hon. Eloy S. Inos
Governor

COUNSEL FOR INDIVIDUAL CLAIMANTS:

OFFICE OF THE NMI ATTORNEY GENERAL

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

By: Gilbert Birnbrich
Attorney General

By: PETER J. MOUGEY

O'CONNOR BERMAN DOTTS & BANES

By: MICHAEL DOTTS

ENGAGEMENT AGREEMENT

This Engagement Agreement (“Agreement”) is dated on the “Effective Date” (defined in §19) by and between **JOYCE C.H. TANG OF CIVILLE & TANG, PLLC, AS TRUSTEE OF THE NORTHERN MARIANAS ISLANDS SETTLEMENT FUND** (“Client” or “Settlement Fund”), and the law firm of **LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY and PROCTOR, P.A.**, a Florida professional corporation, Pensacola, Florida (the “Levin Firm”), and class counsel, the law firm of **BRONSTER & HOSHIBATA** (“Bronster Hoshibata”), collectively referred to as the “Parties”.

RECITALS:

- A. On or about October 9, 2009, Mariano Taitano, Roman Tudela, and Patricia Guerrero (“Claimants”) filed Civil Action No. 09-0410, styled *Taitano et al. v. Merrill Lynch, et al.*, against Merrill Lynch Pierce Fenner & Smith, Inc. in the NMI Superior Court (hereinafter the “Superior Court Action”) on behalf of the Northern Marianas Islands Retirement Fund (“NMIRF”) which required a personal investment of their time, and which filing preserved the claims against Merrill Lynch. On or about December 2, 2011 the Claimants, their counsel, the Fund and the Board of Trustees entered into the *Option Agreement for Settlement, Assignment of Claims and Release* (the “Option Agreement”);
- B. The claims against Merrill Lynch in the Superior Court Action are currently being litigated in the arbitration proceeding styled *Taitano et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* pending before the Financial Industry Regulatory Authority (“FINRA”) (Case No. 12-02942) (the “FINRA Arbitration”); and
- C. Pursuant to the terms of the Stipulation filed currently with this Agreement with the NMI District Court in the class action case styled *Betty Johnson v. Eloy S. Inos et. al.*, CV 09-0023, the Claimants and the O’Connor Berman Dotts & Banes law firm in Saipan (“O’Connor Firm”), were deemed to be constructive trustees of the claims brought in the Superior Court Action and the FINRA Arbitration (“ML Claims”); and
- D. Pursuant to the terms of the Assignment Agreement dated _____, 2014, by and between the Claimants, the Settlement Fund, the NMIRF and attorneys for the parties, the ML Claims were assigned and transferred to the Settlement Fund; and
- E. Subject to court approval of the Stipulation, the Assignment Agreement, and this Agreement, the Settlement Fund wishes to enter into an agreement with the Levin Firm to represent the Settlement Fund in connection with the ML Claims in the FINRA Arbitration and any appeals; and

NOW THEREFORE, the Parties agree as follows:

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1. Scope of Representation.

A. The Levin Firm shall represent the Settlement Fund in the FINRA Arbitration and any appeals arising therefrom, including the collection or recovery of any arbitration award or settlement. The Levin Firm will provide legal services reasonably required to represent Client.

B. The Levin Firm will investigate and diligently pursue the ML Claims in the FINRA Arbitration. Client understands and agrees that Levin Firm is not required to investigate or pursue, and will not investigate or pursue, any action or any other action against accountants, accounting firms, any securities issuer, any securities issuers' officers and/or directors, or any broker dealer or money manager (collectively, the "Remaining Parties"). Therefore, Client alone is responsible for retaining other counsel to pursue the Remaining Parties if desired by Client. Client understands that if Merrill Lynch is successful in convincing the FINRA arbitration panel that Remaining Parties were partially at fault, then the Recovery may be reduced by the portion of fault that the arbitration panel places on the Remaining Parties.

C. Under the terms of the Assignment Agreement, the Settlement Fund did not assume the obligations of Claimants set forth in the Option Agreement.

3. Contingent Fee.

The Levin Firm understands and agrees that this Agreement is based upon a contingent fee and that Levin Firm will only be compensated for legal services rendered if a recovery is obtained for Client in connection with the ML Claims currently asserted in the FINRA Arbitration, regardless of whether recovery is effectuated by means of a settlement, stipulation, a FINRA Arbitration Panel award or decision, or otherwise (the "Recovery"). If a Recovery is obtained by the Levin Firm, Client agrees to pay Levin Firm a fee for services provided by the Levin Firm and Associate Counsel, as defined herein below (the "Fee") based on the Fee Schedule set forth in **Schedule 1** attached hereto. Said Fee shall include all amounts paid by or recovered from Merrill Lynch in connection with the ML Claims currently asserted in the FINRA Arbitration *before* the deduction of costs outlined below. If no Recovery is obtained on behalf of Client, Client is under no obligation to pay the Levin Firm for any legal service rendered under this Agreement. Client is not obligated to pay a retainer fee or deposit.

4. Costs.

A. The Levin Firm agrees that unless a Recovery is made on behalf of Client, there will be no obligation by Client to pay costs, fees, charges, and expenses incurred by the Levin Firm, O'Connor Firm, or any Associate Counsel (collectively "Costs"). Reimbursement of Costs shall be subject to approval of the NMI District Court.

Costs shall include, but not be limited to, cash and non-cash expenditures for: (1) filing fees; (2) subpoenas; (3) court reporting services; (4) depositions; (5) witness fees; (6) in-house and outside investigation services; (7) expert witness fees; (8) records and reports;

(9) Lexis/Nexis/Westlaw and other computer research and on-line service costs; (10) photographs; (11) in-house and outside photocopies; (12) facsimiles; (13) long-distance telephone calls; (14) postage, federal express, UPS, and other overnight service charges; (15) mediation fees; (16) reasonable travel costs, mileage, rental cars, lodging, meals, and related expenses; (17) in-house and outside trial exhibits; (18) in-house and outside multi-media services; (19) all pro hac vice and other fees associated with the Superior Court Action; and (20) other costs reasonably necessary for the representation of Client in the FINRA Arbitration. Client shall pay all Court approved costs first from the Recovery. The gross recovery shall be the amount for calculating the Fee.

- B. Prior to the execution of this Agreement, Levin Firm shall provide Client with a detail breakdown of the Costs incurred in the Superior Court Action and the FINRA Arbitration in a format acceptable to Client. At the end of each quarter, the Levin Firm shall provide a quarterly statement showing a breakdown of the Costs incurred for the last quarter, and on a cumulative basis. At Client's request, the Levin Firm will provide supporting documents for such Costs.

5. Recovery.

If a recovery is made in Client's favor, Client authorizes the Levin Firm to endorse and deposit into Levin Firm's trust account any checks written in Client's name. The Levin Firm shall not deduct or disburse any of the Recovery without first obtaining Client's prior written approval and court approval for any such deduction or disbursement.

6. Associate Counsel and Referral Fee.

- A. The Levin Firm may associate with other attorneys ("Associate Counsel") to assist the Levin Firm in its legal representation of Client in connection with the ML Claims currently asserted in the FINRA Arbitration. The Levin Firm shall obtain Client's written consent before engaging the services of another attorney or law firm. Such consent shall be in the Associate Counsel Consent and Disclosure Form attached hereto as **Exhibit A**, and incorporated herein by reference.
- B. The Levin Firm agrees to reimburse the law firm of Bronster Hoshibata, class counsel, for legal services and expenses incurred in connection with the FINRA Arbitration up to \$50,000 from the Fee. Class counsel will advise Client and the Levin Firm if the charges for services and expenses will exceed \$50,000. In the event that Bronster Hoshibata becomes Associate Counsel, this paragraph shall be superseded by the Associate Counsel agreement. Any payment or agreement to associate as counsel with the Bronster Hoshibata Firm shall be subject to Court approval.
- C. The Parties consent to the payment of a referral fee to the O'Connor Firm for work performed in connection with the Superior Court Action and the FINRA Arbitration to date ("Referral Fee"). Such consent shall be in the Referral Counsel Consent and Disclosure Form attached hereto as **Exhibit B** and said consent is incorporated here and made a part of this Agreement by reference. The Levin Firm shall deliver withdrawals

and substitution of counsel forms executed by the O'Connor Firm in the FINRA Arbitration and the Superior Court Action to Client with the execution and delivery of this Agreement, which shall become effective on the Effective Date.

D. Any fees or costs that may be due under the Option Agreement is hereby waived by the Levin Firm, the O'Connor Firm, and any Associate Counsel.

E. The Levin Firm further agrees that:

- i. Associate Counsel will assume joint legal responsibility for the representation of Client in the FINRA Arbitration and agrees to be available for consultation with Client;
- ii. Associate Counsel and the Referral Fee will be paid from the Fee which Levin Firm otherwise will earn under this Agreement;
- iii. The Levin Firm, the O'Connor Firm, and each of the Associate Counsel will fully disclose to Client the exact division of the Fee they will be receiving in exchange for their services, which shall be subject to Court approval;
- iv. The division of the Fee between Levin Firm, the O'Connor Firm, and each of the Associate Counsel will not increase or otherwise change the Fee Schedule (**Schedule 1**) agreed to under this Agreement should there be a recovery; and
- v. If no Recovery is obtained on behalf of Client in the FINRA Arbitration, Client will be under no obligation to pay the Fee, the Referral Fee, any fee to Associate Counsel, or for reimbursement of any Costs.

7. Confidentiality.

A. The Parties agree that all communications between the Client (including its agents) and its attorneys that have been and will be made in connection with the services rendered pursuant to this Agreement shall be regarded as confidential and subject to attorney-client privilege.

B. Client understands that all work, including all papers, reports, calculations, analyses and memoranda, whether prepared by or maintained in Levin Firm's possession or with others, will be the property of Levin Firm, O'Connor Firm and/or Associate Counsel, as part of their work product produced in anticipation of litigation.

8. Retention of Client File.

Client understands that Levin Firm will only retain Client's file for a period of six (6) years after the FINRA Arbitration is completed. After the six-year period, the entire file will be discarded, and Levin Firm will not retain a copy of any portion of the file. Thus, it is Client's responsibility to seek the return of all original documents immediately after the FINRA Arbitration is completed, and to request a copy of any portions of the file Client wishes to retain. Client understand that if Client waits more than six (6) years to request the file, then no portion of the file will be in existence at that time.

9. Termination.

Client has the right to terminate this Agreement by giving Levin Firm and Associate Counsel prior written notice at any time. If the services of the Levin Firm and Associate Counsel are terminated for any reason, such termination shall be effective only to terminate services prospectively and all other terms of this Agreement, including the rights of the Levin Firm and Associate Counsel to compensation and reimbursement of costs and expenses, shall survive any such termination. The Levin Firm and Associate Counsel retain the right to seek compensation on a *quantum meruit* basis, or as otherwise provided by law, out of amounts recovered, for any services provided up to termination, in the event this engagement is terminated by the Client and thereafter a Recovery is made the Client. Levin Firm and Associate Counsel have the right to terminate this Agreement, subject to an obligation to give the Client reasonable notice to permit it to obtain alternative representation or services and subject to applicable ethical provisions. Levin Firm will be expected to provide reasonable assistance in effecting a transfer of responsibilities to a successor.

10. Effect of Termination.

Upon termination of this Agreement, the Parties' obligations under this Agreement shall terminate, except for those obligations set forth in this Agreement which are expressly stated to survive after the termination of this Agreement; provided, however, that any rights or remedies accruing prior to such termination, including the right of Levin Firm to any unpaid fees or reimbursable expenses owed to it for services rendered, shall survive the termination of this Agreement. This Section and Sections 7 ("Confidentiality"), 8 ("Retention of Client File"), and 17 ("Dispute Resolution"), and those other sections that by their nature are intended to survive, shall survive any termination of this Agreement.

11. Conflict of Laws

The Levin Firm handles civil cases of all types for individual clients and upon referral from other attorneys from inside and outside of the State of Florida. Although attorneys from Levin Firm are licensed in multiple jurisdictions, Client understands that attorneys from Levin Firm may not be licensed in the jurisdiction in which Client is situated – the Commonwealth of the Northern Mariana Islands (the "CNMI"). Client also understands that this Agreement complies with the law of the State of Florida and the Florida Rules of Professional Conduct, but that the law of the CNMI might provide additional requirements or limitations and restrictions on contingency fee agreements. The objective and intent of Levin Firm is to conduct all of its business and provide representation to any client from any state in compliance with the applicable law. If any provision of this Agreement in any way does not comply with the law or ethics of the CNMI, then this Agreement shall be modified to comply with the law of the CNMI.

12. Notices.

All notices and other communications under this Agreement shall be: (i) in writing; (ii) delivered by hand (with receipt confirmed in writing), by registered or certified mail (return receipt requested), electronic mail, or by facsimile transmission (with receipt confirmed in writing), to

the address or facsimile number set forth below the Parties' signatures herein or to such other address or facsimile number as either party shall specify by a written notice to the other; and (iii) deemed given upon receipt.

13. Severability.

If any one or more of the provisions contained in this Agreement shall be deemed unenforceable in any respect, then such provision shall be deemed limited and restricted to the extent that such court shall deem it to be enforceable, and as so limited or restricted shall remain in full force and effect. If any such provision or provisions shall be deemed wholly unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

14. Assignment.

This Agreement may not be assigned by any party without the prior written consent of the other party.

15. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any previous agreement or understanding between the Parties.

16. Waiver; Amendment.

No term or provision of this Agreement shall be deemed waived and no breach consented to or excused, unless such waiver, consent or excuse shall be in writing and signed by the waiving party. Should either party consent, waive or excuse a breach by the other party, such shall not constitute a consent to, waiver of, or excuse of any other different or subsequent breach, whether or not of the same kind as the original breach. No amendment of this Agreement shall be effective unless in writing and signed by the Parties hereto.

17. Dispute Resolution.

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by final binding arbitration in Los Angeles, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. Judgment on the award may be entered in any court having jurisdiction.

18. Counterparts.

This Agreement may be signed and executed in counter parts, including facsimile or pdf, which, taken together, shall constitute the Parties' entire agreement. This Agreement shall become

binding when executed by all parties hereto without regard to whether such signatures are appended to the original Agreement or to a counterpart thereof. Signatures received by facsimile or pdf shall be deemed valid and binding as appended to the original.

19. Court Approval of Agreement; Effective Date.

The "Effective Date" shall be the date the NMI District Court issues an Order approving this Agreement, the Stipulation, and the Assignment of Claims Agreement.

IN WITNESS WHEREOF, the signatory for each party has duly executed this Agreement on the date hereof and certifies that he/she has the authority to bind the party on behalf of whom he/she has signed.

CLIENT:

LAW FIRM:

NORTHERN MARIANA ISLANDS
SETTLEMENT FUND, acting by and
through the Trustee of the Northern Mariana
Islands Settlement Fund:

LEVIN, PAPANTONIO, THOMAS,
MITCHELL, RAFFERTY and PROCTOR,
P.A.:

By: _____
Joyce C.H. Tang
Trustee

By: _____

Date: _____

Date: _____

Address For Notices:

Address For Notices:

Northern Mariana Islands Settlement Fund
330 Hernan Cortez Ave Suite 200
Hagåtña, Guam 96910

SETTLEMENT CLASS:

BRONSTER HOSHIBATA

By: _____
Margery S. Bronster
Class Counsel

Date: _____

APPROVAL AS TO FORM:

OFFICE OF THE NMI ATTORNEY GENERAL

By: _____

Reena Patel

Attorneys for the NMI Retirement Fund

Date: _____

SCHEDULE 1**FEE SCHEDULE**

A. If a Recovery is made by the Levin Firm in the FINRA Arbitration, the Fee to be paid to the Levin Firm will be a percentage of the Net Recovery, depending on the stage at which the recovery is made in the FINRA Arbitration.

B. Calculation of the Legal Fee.

- i. If Recovery is made during or shortly after the mediation scheduled for October 27 and 28, 2014 in San Francisco, the Fee will be calculated as follows (see example below):

	Recovery Amount	% Rate	FEE	
First 15M	\$ 15,000,000	21.00%	\$ 3,150,000	21.00%
Next 10M	\$ 10,000,000	18.00%	\$ 1,800,000	19.80%
Next 10M	\$ 10,000,000	15.00%	\$ 1,500,000	18.43%
Over 35M	\$ 10,000,000	12.00%	\$ 1,200,000	17.00%
			\$ 7,650,000	17.00%

- ii. If Recovery is made prior to commencement of arbitration (defined as a date after the FINRA Discovery Deadline) or during arbitration, or by an arbitral award, the Fee will be calculated as follows (see example below):

	Recovery Amount	% Rate	FEE	
First 15M	\$ 15,000,000	25.00%	\$ 3,750,000	25.00%
Next 10M	\$ 10,000,000	20.00%	\$ 2,000,000	23.00%
Next 10M	\$ 10,000,000	18.00%	\$ 1,800,000	21.57%
Over 35M	\$ 10,000,000	17.00%	\$ 1,700,000	20.56%
			\$ 9,250,000	20.56%

EXHIBIT A

ASSOCIATE COUNSEL CONSENT AND DISCLOSURE

This Associate Counsel Consent and Disclosure (“Consent and Disclosure”) is made by **CLAY CHAPMAN IWAMURA PULICE AND NERVELL LAW FIRM IN HAWAII** (“Associate Counsel”) and **LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY and PROCTOR, P.A.** (“Levin Firm”) pursuant to Section 1.5 of the Model Rules of Professional Conduct and Rule 4-1.5(g) of the Florida Rules of Professional Conduct, and any other applicable rules of professional conduct.

1. The Levin Firm was retained pursuant to the terms of the Engagement Agreement dated _____, 2014, to represent the **Northern Marianas Islands Settlement Fund** (“Client”) in the arbitration proceeding styled as *Taitano et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* that is currently pending before the Financial Industry Regulatory Authority (“FINRA”) (Case No. 12-02942) (the “FINRA Arbitration”);
2. Pursuant to Section 6 of the Engagement Agreement, the Levin Firm desires to associate with and retain Associate Counsel to assist Levin Firm in its representation of Client in the FINRA Arbitration;
3. In exchange for its services, the Levin Firm and Associate Counsel disclose that they are sharing the Fee (as such term is defined in the Engagement Agreement) as follows:
 - a. In the event a Recovery (as such term is defined in the Engagement Agreement) is made during or shortly after the mediation scheduled for October 27 and 28, 2014 in San Francisco in the FINRA Arbitration, the Levin Firm will receive 50% of the Fee, Associate Counsel will receive 20% of the Fee, the O’Connor Firm will receive 20% of the Fee as its “Referral Fee”, and Client will receive the remaining 10% of the Fee; and
 - b. In the event a Recovery is made prior to commencement of arbitration (defined as a date after the FINRA Discovery Deadline) or during arbitration, or by an arbitral award in the FINRA Arbitration, the Levin Firm will receive no less than 60% of the Fee, Associate Counsel will receive 20% of the Fee, and the O’Connor Berman Dotts & Banes law firm will receive 20% as its “Referral Fee”.
4. Client, by executing this Consent and Disclosure, consents to and approves the arrangement on the division of the Fee between the Levin Firm, Associate Counsel, and the O’Connor Firm, as set forth herein, subject to Court approval.
5. Associate Counsel’s Fee will be subject to Hawai’i Rules of Professional Conduct. Associate Counsel and the Levin Firm confirm that the Associate Counsel’s Fee will not be paid to any other individual or entity not disclosed to the Client in this Consent and Disclosure.

- 6. Associate Counsel’s Fee shall not be paid from the Client’s portion of the Recovery, but shall be paid in full from the Levin Firm’s Fee. In other words, payment of Associate Counsel’s Fee or approval of this Consent and Disclosure by the Client will not modify or change the Fee due to the Levin Firm under the agreed up on Fee Schedule (*Schedule 1* to the Engagement Agreement).
- 7. Any reimbursement for Costs claimed by Associate Counsel shall be subject to Section 4 of the Engagement Agreement, which section is incorporated herein by reference.
- 8. Associate Counsel assumes joint legal responsibility for the representation of Client in the FINRA Arbitration and agrees to be available for consultation with Client if required by Client.
- 9. No amendment of this Consent and Disclosure shall be effective unless in writing and signed by the parties hereto.

Based upon the foregoing representation and agreement, the Client consents to the hiring of Associate Counsel.

CLIENT:

NORTHERN MARIANA ISLANDS
SETTLEMENT FUND, acting by and
through the Trustee of the Northern Mariana
Islands Settlement Fund:

By: _____
Joyce C.H. Tang
Trustee

Date: _____

LEVIN FIRM:

LEVIN, PAPANTONIO, THOMAS,
MITCHELL, RAFFERTY and PROCTOR,
P.A.:

By: _____

Date: _____

ASSOCIATE COUNSEL:

CLAY CHAPMAN IWAMURA PULICE
AND NERVELL LAW FIRM IN HAWAII

By: _____

Date: _____

APPROVAL AS TO FORM:

OFFICE OF THE NMI ATTORNEY
GENERAL

By: _____

Reena Patel

*Attorneys for the NMI Retirement
Fund*

Date: _____

EXHIBIT B

REFERRAL COUNSEL CONSENT AND DISCLOSURE

This Associate Counsel Consent and Disclosure (“Consent and Disclosure”) is made by **O’CONNOR BERMAN DOTTS & BANES LAW FIRM IN SAIPAN** (“Referral Counsel”) and **LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY and PROCTOR, P.A.** (“Levin Firm”) pursuant to Section 1.5 of the Model Rules of Professional Conduct and Rule 4-1.5(g) of the Florida Rules of Professional Conduct, and any other applicable rules of professional conduct.

1. The Levin Firm was retained pursuant to the terms of the Engagement Agreement dated _____, 2014, to represent the **Northern Marianas Islands Settlement Fund** (“Client”) in the arbitration proceeding styled as *Taitano et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* that is currently pending before the Financial Industry Regulatory Authority (“FINRA”) (Case No. 12-02942) (the “FINRA Arbitration”);
2. Pursuant to Section 6 of the Engagement Agreement, the Levin Firm and Referral Counsel desires to disclose to Client that they are sharing the Fee (as such term is defined in the Engagement Agreement) as follows:
 - a. In the event a Recovery (as such term is defined in the Engagement Agreement) is made during or shortly after the mediation scheduled for October 27 and 28, 2014 in San Francisco in the FINRA Arbitration, the Levin Firm will receive 50% of the Fee, Clay Chapman Iwamura Pulice and Nervell law firm in Hawaii (“Associate Counsel”) will receive 20% of the Fee, the Referral Counsel will receive 20% of the Fee (“Referral Fee”), and Client will receive the remaining 10% of the Fee; and
 - b. In the event a Recovery is made prior to commencement of arbitration (defined as a date after the FINRA Discovery Deadline) or during arbitration, or by an arbitral award in the FINRA Arbitration, the Levin Firm will receive no less than 60% of the Fee, Associate Counsel will receive 20% of the Fee, and Referral Counsel will receive 20% of the Fee.
3. Client, by executing this Consent and Disclosure, consents to and approves the arrangement on the division of the Fee between the Levin Firm and Referral Counsel, as set forth herein, subject to NMI District Court’s approval.
4. Referral Counsel’s Fee is based upon the effort and time Referral Counsel provided to the Claimants in the Superior Court Action and FINRA Arbitration prior to withdrawing from these actions, the extraordinary results achieved during that period, and the assumption by Referral Counsel of joint responsibility for the representation of Claimants during that period. Referral Counsel and the Levin Firm confirm that the Referral Counsel’s Fee will not be paid to any other individual or entity not disclosed to the Client in this Consent and Disclosure.

5. The Referral Fee shall not be paid from the Client’s portion of the Recovery, but shall be paid in full from the Levin Firm’s Fee. In other words, payment of the Referral Fee or approval of this Consent and Disclosure by the Client will not modify or change the Fee due to the Levin Firm under the agreed up on Fee Schedule (*Schedule 1* to the Engagement Agreement). Any reimbursement for Costs claimed by Referral Counsel shall be subject to Section 4 of the Engagement Agreement, which section is incorporated herein by reference.
6. Referral Counsel shall execute and deliver withdrawals and substitution of counsel forms in the FINRA Arbitration and the Superior Court Action to the Levin Firm with the execution and delivery of this Consent and Disclosure.
7. No amendment of this Consent and Disclosure shall be effective unless in writing and signed by the parties hereto.

Based upon the foregoing representation and agreement, the Client consents to the hiring of Associate Counsel.

CLIENT:

NORTHERN MARIANA ISLANDS
SETTLEMENT FUND, acting by and
through the Trustee of the Northern Mariana
Islands Settlement Fund:

By: _____
Joyce C.H. Tang
Trustee

Date: _____

LEVIN FIRM:

LEVIN, PAPANTONIO, THOMAS,
MITCHELL, RAFFERTY and PROCTOR,
P.A.:

By: _____

Date: _____

REFERRAL COUNSEL:

O’CONNOR BERMAN DOTTS & BANES
LAW FIRM IN SAIPAN

By: _____

Date: _____

APPROVAL AS TO FORM:

OFFICE OF THE NMI ATTORNEY
GENERAL

By: _____
Reena Patel
Attorneys for the NMI Retirement Fund

EXHIBIT B
to Assignment of Claims Agreement

Option Agreement for Settlement, Assignment and Release
Friday, December 02, 2011
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**OPTION AGREEMENT FOR SETTLEMENT,
ASSIGNMENT OF CLAIMS AND RELEASE**

This Option Agreement for Settlement, Assignment of Claims and Release (“Agreement”) is entered into as of the latest date executed below. It is only effective, however, upon passage of the repeal of Public Law 17-51 (“Effective Date”). This Agreement is by and between Mariano Taitano, Roman Tudela, Patricia Guerrero (the “Plaintiffs”), their attorneys, O’Connor Berman Dotts & Banes (the “O’Connor Firm”), and the Board of Trustees (the “Board”) of the Northern Mariana Islands Retirement Fund (the “Fund”) (all parties collectively referred to as the “Parties”).

RECITALS

Whereas, Plaintiffs on or about October 9, 2009, filed Civil Action No. 09-0410, styled *Taitano v. Merrill Lynch, et al*, against Merrill Lynch Pierce Fenner & Smith, Inc., (“Merrill Lynch”) and the Board (hereinafter the “Action”); and

Whereas, on or about April 20, 2011, the Board filed its Answer denying the Plaintiffs’ claims and then on June 13, 2011, filed a cross claim against Merrill Lynch; and

Whereas, the Plaintiffs’ attorneys sought to represent the Board before they brought suit; and

Whereas, on or about November 18, 2011, the Plaintiffs filed their First Amended Complaint that dropped certain allegations made against the Board, and realigned the Board as a nominal plaintiff in the action pursuant to Public Law 17-51; and

Whereas, the Plaintiffs’ attorneys have consistently offered to represent the Board since the commencement of their suit; and

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Whereas, the Plaintiffs successfully lobbied to have PL 17-51 passed; and

Whereas, the Fund seeks to have PL 17-51 repealed; and

Whereas, the Plaintiffs have agreed to lobby to have PL 17-51 repealed, and not reenacted in any way; and

Whereas, the Plaintiffs seek to pursue these claims; and

Whereas, the Board denies any wrongdoing or any liability of any nature whatsoever with respect to the Plaintiffs' claims, demands and charges and denies that Plaintiffs suffered any injuries, damages or losses, or that they are due any money or suffered any other injuries or damages as claimed; and

Whereas, it is the desire of the parties to have PL 17-51 repealed, compromise and settle all disputed issues and claims between the parties and to achieve a mutually acceptable resolution of the dispute between them without incurring further expense, inconvenience, uncertainty and delay of litigation; and

Now, therefore, in consideration of the preceding Recitals and in consideration of the mutual covenants, agreements, representations and promises contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. **Acknowledgment.** The parties acknowledge that they are entering into this Agreement based upon their own investigation and in reliance on the representations contained in this Agreement and in reliance on their own counsel.
2. **No Admission of Liability or Guilt.** This Agreement does not constitute evidence of, or any admission of, any liability, omission, or wrongdoing of any kind, and it shall not be offered or received into evidence or otherwise filed or lodged in any proceeding against any party except as may be necessary to prove and enforce its terms. It is expressly understood and agreed that neither this Agreement nor any consideration provided pursuant to this Agreement are to be construed as an admission of liability on the part of the Board regarding any and all claims that may or could have been asserted in any forum. To the contrary, the Board specifically denies the allegations by the Plaintiffs previously made in their original Complaint and any liability for any

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claims made by the Plaintiffs. It is further understood and agreed that the consideration referenced herein is in full accord and satisfaction of the disputed claims by the Plaintiffs.

3. **Conditions Precedent, Obligations and Consideration.** Without admitting any liability, the parties agree and confirm as follows:

I. Repeal of PL 17-51:

- A. For purposes of this Agreement, it does not become effective until the full repeal of Public Law 17-51;
- B. Further, the Parties agree and confirm Plaintiffs will direct their full efforts at the repeal of PL 17-51. The repeal is a condition precedent to the effectiveness of this Agreement. Moreover the repeal must, at a minimum;
 - 1. Repeal, unequivocally, PL 17-51 and cut off any and all claims thereunder save any claims currently filed in Superior Court at the time of repeal; and
 - 2. Should the Commonwealth enact a new beneficiary derivative lawsuit act after PL 17-51 is repealed, this Agreement shall become null and void, and the claims assigned revert back to the Board.

II. Assignment of the Board's Claims in the Action;

- A. Plaintiffs believe the Board's claims as plead against Merrill Lynch are valuable.
- B. The Board no longer wishes to pursue its claims, and if PL 17-51 is repealed, it will assign all of its claims against Merrill Lynch.
- C. The assignment of the claims against Merrill Lynch to Plaintiffs, is effective upon the repeal of PL 17-51 ("Effective Date"). Upon the Effective Date of this Agreement, the Board assigns to Plaintiffs and Plaintiffs accept all claims and causes of action the Board has against Merrill Lynch that were made or could have been made in the Action (the "Assigned

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Claims”). Parties acknowledge that the Assigned Claims include unknown claims that arise out of the same activity that form the basis of the Action. Parties acknowledge that these unknown claims may have additional value and may require less work than the currently known claims. As such should the Plaintiffs prevail on an unknown claim or claims, Plaintiffs’ Attorneys’ Fees shall be adjusted as indicated in Paragraph 3.II.D.1.

- D. To the extent any amount of money is realized by Plaintiffs from the prosecuting of the Action as currently plead (the “Award”), the distribution of the Award shall be on a pro rata share between the Fund and the O’Connor Firm as and when received. Plaintiffs shall pay their attorneys one third of the gross amount of the Award before the deduction of costs (the “Attorneys’ Fee”). Plaintiffs or their attorneys may deduct costs incurred from the balance of the Award, capped collectively at \$175,000 if the case is arbitrated and \$325,000 if it is tried before a court of competent jurisdiction (the “Cost Cap”). The trial judge or arbitration panel shall have final approval of all costs and fees collected by Plaintiffs’ attorneys. The remainder of the Award shall be remitted to the Fund. In no event shall the Attorneys’ Fee be shared with any non-lawyer. This prohibition does not include *de minimis* celebration gifts that can be shown to be a common practice.

1. To the extent any amount of money is realized by Plaintiffs from the prosecuting of the Action an unknown claim or claims (the “Unknown Award”), the distribution of the Unknown Award shall be on a pro rata share between the Fund and the O’Connor Firm as and when received. Plaintiffs shall pay their attorneys thirty per cent (30%) of the

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gross amount of the Unknown Award before the deduction of costs (the "Unknown Award Attorneys' Fee"). Plaintiffs or their attorneys may deduct costs incurred from the balance of the Award, capped collectively at \$175,000 if the case is arbitrated and \$325,000 if it is tried before a court of competent jurisdiction. The trial judge or arbitration panel shall have final approval of all costs and fees collected by Plaintiffs' attorneys. The remainder of the Award shall be remitted to the Fund. In no event shall the Attorneys' Fee be shared with any non-lawyer. This prohibition does not include the giving of *de minimis* celebration gifts that can be shown to be a common practice for similarly situated law firms.

2. It is, however, understood and agreed that the Cost Cap described in paragraph D and its subparts is the total amount allowed to be reimbursed from the Award regardless of the number of claims, known or unknown, Plaintiffs prevail on. In no event can the costs deducted from the Award exceed \$175,000 if the case is arbitrated and \$325,000 if it is tried before a court of competent jurisdiction.

3. If Plaintiffs fail to prevail, the Fund and Board are not responsible for any costs or fees that may arise from the prosecution of the claims.

- E. This assignment is revocable if the Commonwealth enacts any beneficiary derivative act that enables beneficiaries to sue on behalf of the Fund. Otherwise this assignment is irrevocable unless allowed by law.
- F. On the Effective Date, the Plaintiffs shall succeed to the Assigned Claims. The O'Connor Firm on behalf of the Plaintiffs may then substitute for the Board in the Action, sue for, compromise and collect on the Assigned

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Claims, subject to its fiduciary duties to the Fund as the beneficiary of the Assigned Claims and to the terms of this Agreement.

III. **Miscellaneous:**

- A. Cooperation with any suit based upon the assigned rights:
1. Within thirty days of the Effective Date, the Board agrees to identify and turn over documents related to its claims against Merrill Lynch (to the extent they exist). The Board also agrees to make its Administrator available for a detailed interview to assist Plaintiffs' counsel in identifying more documents, information and testimony that will be helpful to the Action. The Board also agrees to make at least three witnesses, subject to the Board's control, to be selected by Plaintiffs available to testify at arbitration or at trial (if off-island travel is required, Plaintiffs' counsel shall advance the costs of airfare and lodging for the witnesses.) At least one of the three witnesses shall be a Trustee. Participation in the suit by the Board thereafter will be subject to the third party discovery rules of the Commonwealth Rules of Civil Procedure and the duties of good faith owed pursuant to this Agreement.
 2. Separately the Parties shall enter into a Protective Agreement that shall provide for the confidentiality of the information the Board shall disclose and limit the Plaintiffs' and their counsel's use of that information.
 3. The Board agrees not to interfere with the prosecution of the Assigned Claims. The Board cannot, however, contract around the Open Government Act and reserves the right to respond to public attacks whether legal, political, or otherwise.

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B. Covenant not to sue:

1. Plaintiffs and the O'Connor Firm acknowledge that they will have access to the Fund's highly confidential records and documents referenced above in paragraph 3.III.A.1. In consideration for this, the Plaintiffs and the O'Connor Firm, their agents, successors and assigns, each covenants not to sue the Board, Fund, its employees or agents for any liability, including future liability, or for any claim, resulting from or based upon information gained via prosecution of the Action or any documents received or found pursuant to prosecution of the Action. This restriction does not include the following:

- (a) NMIRF v. Martin B. Ada (Civ. No. 09-0308, App. No. 2010-SCC-0033); and the Administrative Appeal of Atalig (NMIRF Case No. 11-001)

2. The Plaintiffs, the O'Connor Firm, and any assignee further acknowledges and agrees that:

- (a) They shall not reveal information relating to the Board or Fund unless the Board first gives informed consent in writing.

- (b) Except the Pending Actions as provided in paragraph 3.III.B.1.a the O'Connor Firm shall not represent any new client(s) against the Board where the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

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(i) the representation of a new client will be directly adverse to the Board; or

(ii) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

3. The O'Connor firm may continue to represent the clients disclosed in paragraph III.B.1.a, other representation, however, is prohibited until the Action is concluded.

4. The O'Connor firm shall not enter into a business transaction with the Board or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to the Board unless:

(a) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the Board and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the Board;

(b) the Board is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of legal counsel on the transaction; and

(c) the Board gives informed consent, in a writing, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the Board in the transaction.

5. Even after this Action is resolved, the O'Connor Firm shall not use or reveal the information of the Board or Fund received in this Action to the

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disadvantage of the Board or Fund unless the Board gives informed consent, in writing, except as permitted by ABA Model Rule 1.6(b).

6. The O'Connor Firm shall not, after the conclusion of the Action, represent another person in the same or a substantially related matter as the Action in which that person's interests are materially adverse to the interests of the Board or Fund unless the Board or Fund gives informed consent, confirmed in writing.
7. At the Conclusion of the Action no attorney of the O'Connor Firm who has formerly represented the Board's claims or had access to any of the Board information may:
 - (a) use information relating to the representation to the disadvantage of the Board or Fund except as the ABA Model Rules would permit or require with respect to a client, or when the information has become generally known; or
 - (b) reveal information relating to the representation except as the ABA Model Rules would permit or require with respect to a client.
8. The O'Connor Firm shall not solicit any substantial gift from the Board, including a testamentary gift, or prepare on behalf of the Board an instrument giving them or a person related to them any substantial gift. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.
9. Prior to the conclusion of the Action the O'Connor Firm shall not make or negotiate an agreement with the Board giving the lawyer literary or media

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rights to a portrayal or account based in substantial part on information relating to the action.

10. The O'Connor Firm shall not provide financial assistance to the Board in connection with pending or contemplated litigation, except that they may advance court costs and expenses of litigation to the Plaintiffs the repayment of which may be contingent on the outcome of the matter.
11. The O'Connor Firm shall not acquire a proprietary interest in the cause of action or subject matter of the litigation except that they may:
 - (a) acquire a lien authorized by law to secure the lawyer's fee and expenses; and
 - (b) contract with the Plaintiffs for a reasonable contingent fee in the case. The parties have already agreed to a contingent fee taken from the gross amount of the recovery before the deduction of costs.
12. A prohibition in the foregoing paragraphs 3.III.B.2-3.III.B.10 applies to all of the attorneys in the O'Connor Firm or associated with it.
13. Further, the parties acknowledge and agree that every attorney, law office, law clerk, paralegal, individual, corporation or entity ("Associates") that has assisted or will assist, support, participate, or in any way have the same obligations and are bound by the same rules listed above. All of these groups will sign the Protective Agreement referred to in 3.II.A. 2 before they are given access to the Board's documents and information. If the Associate(s) refuse to sign the Protective Agreement, it is a breach of this Agreement to allow the Associate(s) access to any of the Board/Fund's documents or information or to participate in the action in any way.

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14. Upon the conclusion of the Action, all documents obtained by Plaintiffs and the O'Connor Firm or any Associate(s) not admitted into evidence shall be returned to the Board or certified destroyed. All recordings of investigative interviews of Fund personnel made by Plaintiffs and their counsel shall be delivered to the Board or certified destroyed.

C. Time is of the Essence. The Parties agree that if PL 17-51 is not repealed by February 8, 2012, at 9:00 a.m., (the date and time of the next scheduled hearing in the Action), this Agreement shall expire and have no effect or force. The Parties acknowledge, however, that they are currently in an adversarial posture in the Superior Court and, without settlement; the Board will exercise its rights to expunge Plaintiffs from this Action. Further, if this Agreement is not fully executed by December 8, 2011, it is null and void.

4. **General Damages.** It is specifically understood and agreed by and between the parties that the consideration above recited is not intended to compensate Plaintiffs for any expenses, loss of income, or other economic loss, but is intended to settle this matter without resort to bench trial. Provided, however, that Plaintiffs specifically agree that in consideration of the compensation above recited, they intend to release and do hereby release the Board from any and all claims that Plaintiffs may have against them for any and all items or damages whether general or special. Likewise, the Fund understands and agrees that the consideration is not intended to fully satisfy or compensate the Fund for any claims or other losses, but is intended to settle this matter without resort to trial.

5. **Mutual Releases.** The parties their agents, successors and assigns, hereby forever release and discharge the other and any and all of their agents, servants, employees, successors, heirs, executors, administrators and assigns and any agencies, departments, divisions and employees,

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servants and agents of the other, in their official and individual capacities, from any and all claims, injuries, demands, causes of actions, liabilities, legal claims, expenses or damages of whether known or unknown, suspected or unsuspected or hereafter discovered, whether in law or in equity, upon contract or tort, or under state or federal law or laws, or under common law or otherwise which they may have had, now have, or hereafter may have, or claim to have, or assert against them as a result of any actions or omissions by them and by all of their employees, agents and assigns, their heirs, and successors related in any manner to any claims, allegations or causes of action asserted in the Action.

6. **Intent of the Parties.** It is the express intent of the parties that this Agreement discharge all claims that any party may have against any other party officially or in an individual capacity, and operate as a bar to any subsequent proceedings, whether known or unknown, existing now or in the future, pertaining to any claim arising from Plaintiffs claims against the Board in the Action and likewise relating to the claims by the Board, if any, against Plaintiffs that were made or could have been made. The parties realize that they may have sustained or incurred unknown or unforeseeable bodily, personal or psychological injuries, damages to property, business or other losses, costs, expenses, damages, liabilities or claims, and the consequences thereof, and any actions of the parties in their individual or official capacities, up to the date of the execution of this Agreement. The parties expressly undertake and assume the risk that the settlement and underlying execution of this Agreement was made on the basis of mistake or mistakes, mutual or unilateral, as to the nature, extent, effects or consequences of any known or unknown, suspected or unsuspected, present or future, underlying losses or damages.

7. **Dismissal with Prejudice.** Upon the repeal of PL 17-51, the Board shall stipulate with the Plaintiffs to the dismissal with prejudice of *Board of Trustees of the Northern Mariana Islands Retirement Fund v. Benigno Fitial, et. al.*, Civ. No. 11-0230, as moot. Plaintiffs are intervenors in the action against Governor Fitial. Further, following the repeal of PL 17-51 and no later than on February 8, 2012, the parties shall stipulate to amend the Plaintiffs' First Amended Complaint in

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the Action to allege the receipt of the assignment of the claims from the Board and shall be substituted for the Board in the Action. It is anticipated that Merrill Lynch will oppose the substitution and the Board agrees to advocate for the substitution at any hearings held on the issue.

8. **Agreement to Defend and Indemnify.** Plaintiffs and the O'Connor Firm hereby agree, for the foregoing consideration, to defend, indemnify and hold harmless the Board, the Fund, and the individual trustees against loss or liability from any and all claims, liens, demands or actions, cross-claims and third-party claims related in any manner to the Action or this agreement, that may have or may be hereafter at any time made or brought against the Fund or the Board by anyone.

9. **Governing Law.** This Agreement and all performances hereunder shall be governed by the applicable federal laws and the laws of the Commonwealth of the Northern Mariana Islands.

10. **Costs and Expenses.** Each party agrees that he/it shall bear their own costs, expenses and attorney's fees.

11. **Integration.** This Agreement, and any attachments hereto, constitutes the entire agreement of the parties and all prior representations and discussions are merged and incorporated herein. This Agreement may not be amended absent a writing evidencing such an amendment executed by the parties.

12. **Waiver.** No waiver of any covenant or obligation of this Agreement shall be effective unless contained in a writing signed by the party against whom such waiver is asserted.

13. **No Prior Assignment.** The parties to this Agreement each represent and warrant that they are the sole and lawful owners of all rights, title and interests in and to every claim and

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other matter that each party purports to release or compromise or assign by this Agreement and that none of them have previously assigned or transferred, either by act or operation of law, any claim or other matter released or assigned by this Agreement. In particular but without limitation, the Board represents and warrants that it has not transferred, assigned or compromised the Assigned Claims, and that it will take no action before the Effective Date that will compromise or diminish the value of the Assigned Claims.

Notwithstanding the above, unless and until the Assignment is complete and the Board is substituted out of the Action, the Board will take any and all steps to litigate the Action to properly defend or to bolster its defense of the allegations against it. The Board reserves the rights to take any action until such time it is substituted out regardless of the impact, real or perceived, on Plaintiffs claims or the Assigned Claims.

Likewise, Plaintiffs, who are also intervenors in *Board of Trustees of the Northern Mariana Islands Retirement Fund v. Benigno Fitiaf, et. al.*, Civ. No. 11-0230 may take all steps necessary to litigate that action, to properly defend and bolster any defense until Public Law 17-51 is repealed.

In the event that either party is subjected to further claim by any person, firm, corporation or other entity, acting under any actual or purported lien, right or subrogation, or assignment, the party whose claim such person asserts will defend, indemnify and hold the other party harmless from any such claim or demand.

14. **Prohibition Against Assignment.** The obligations or any of them, of the parties to this Agreement shall not be assigned or delegated without the express consent of all other parties. However, it is agreed that Plaintiffs may assign the Assigned Claims assigned to them by virtue of these presence to a nonprofit corporate entity to be formed by them for the purpose of pursuing the Action, provided, however, that any assignee shall agree to be bound by the terms

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of this agreement. All assignees or subassignees shall be jointly and severally liable to the Fund for any violations of this Agreement or breach of any of the duties arising hereunder.

15. **Notice.** Any notice required by this Agreement shall be made in writing to Plaintiffs through their attorney, the O'Connor Firm through the O'Connor Firm, and the Board through its counsel. If Board counsel is not available, the Board may be noticed through its in-house counsel.

16. **Breach or Failure of Performance.**

(a) If the Board fails to comply with the terms of this Agreement as contemplated hereunder in a timely manner, Plaintiffs shall be entitled to enforce this agreement against the Board in any manner available under the law including an action for specific performance and any equitable or injunctive relief. Likewise, if Plaintiffs or the O'Connor Firm fail to comply with the terms of this Agreement as contemplated hereunder in a timely manner, the Board shall be entitled to enforce this Agreement against the breaching party in any manner available under the law including an action for specific performance and any equitable or injunctive relief.

(b) If any party at any time fails to perform any obligation required of such party under this Agreement and any other party seeks to or obtains judicial assistance in enforcing such obligation, the party or parties against whom the obligation is sought to be enforced shall pay, in addition to any damages, the reasonable attorney's fees and related costs of enforcement if the party seeking enforcement is successful in obtaining the relief which it seeks in such judicial action.

17. **Representation.** All parties acknowledge and represent that in negotiating this Agreement and the terms of this Agreement, they have been represented by and have conferred with legal counsel. Each party represents and warrants that they have carefully read this

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Agreement; they understand its contents and that each have executed it as their own free and voluntary act. The parties agree and affirm that the terms of this Agreement have been negotiated at arms' length between the parties. Any rule of law or construction or case precedent against liability releases and the rule of interpretation against the draftsman shall not apply in any dispute over interpretation or enforcement of this Agreement.

18. **Authorization.** The Parties, inclusive of counsel, each represent and warrant that she/he/it is legally authorized and competent to execute this Agreement and assumes full responsibility for and assumes the risk of all mistakes in fact or law regarding any damages, losses or injuries, whether disclosed or undisclosed.

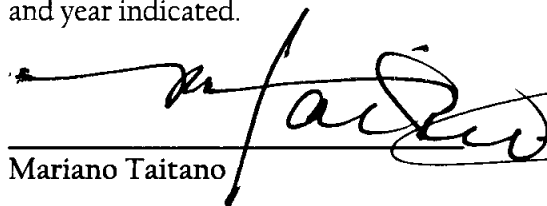
19. **Severability.** If any provision of this Agreement shall be or become legally void or unenforceable for any reason whatsoever, such invalidity and unenforceability shall not impair the validity or enforceability of the other provisions of this Agreement. In this event and to this extent only, the objectionable provision shall be severed and the remaining provisions shall be enforced.

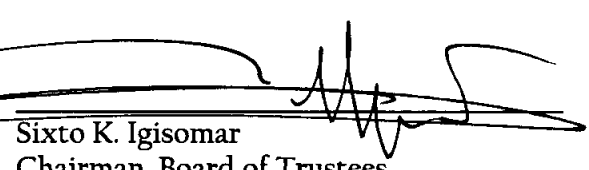
20. **Continuing Jurisdiction.** The Superior Court for the Northern Mariana Islands shall have continuing jurisdiction to enforce any provision of this Agreement, and any party to this Agreement may move to enforce this settlement. The Court may enter any order consistent with its jurisdiction and powers.

21. **Execution in Counterparts.** This Agreement may be executed in counterparts and this Agreement shall become binding when executed by all parties hereto without regard to whether such signatures are appended to the original Agreement or to a counterpart thereof. Signatures received by facsimile, or to a facsimile copy hereof, shall be deemed valid and binding as appended to the original.

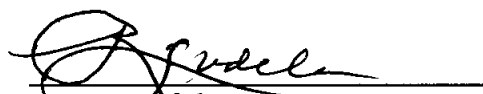
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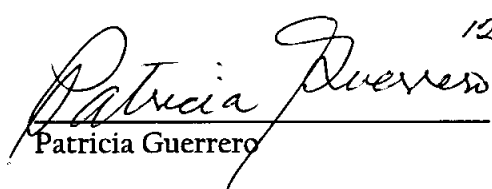
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date and year indicated.


Mariano Taitano


Sixto K. Igisomar
Chairman, Board of Trustees
Northern Mariana Retirement Fund

12/2/11



Roman Tudela


Patricia Guerrero

12/07/11


Legal Counsel for the Fund

12/2/11


Michael Dotts
O'Connor Berman Dotts & Banes

12/07/11

First Amendment to the Option Agreement for Settlement, Assignment and Release
Wednesday, December 07, 2011
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**FIRST AMENDMENT TO THE
OPTION AGREEMENT FOR SETTLEMENT,
ASSIGNMENT OF CLAIMS AND RELEASE**

This Amendment to the Option Agreement for Settlement, Assignment of Claims and Release ("Amendment") is entered into as of the latest date executed below. It is only effective, however, upon passage of the repeal of Public Law 17-51 ("Effective Date"). This Amendment is by and between Mariano Taitano, Roman Tudela, Patricia Guerrero (the "Plaintiffs"), their attorneys, O'Connor Berman Dotts & Banes (the "O'Connor Firm"), and the Board of Trustees (the "Board") of the Northern Mariana Islands Retirement Fund (the "Fund") (all parties collectively referred to as the "Parties").

RECITALS

Whereas, Plaintiffs on or about December 6, 2011, agreed to the terms and conditions contained in the Option Agreement for Settlement, Assignment of Claims and Release ("Agreement"); and

Whereas, paragraph 11 of the Agreement requires that any amendment be in writing and signed by all parties; and

Whereas, the Parties wish to amend paragraph 3.III.B.3.

Now, therefore, in consideration of the preceding Recitals and in consideration of the mutual covenants, agreements, representations and promises contained in this Agreement, the Parties agree as follows:

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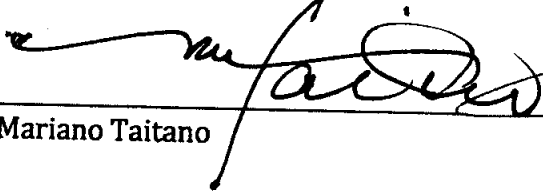
AGREEMENT

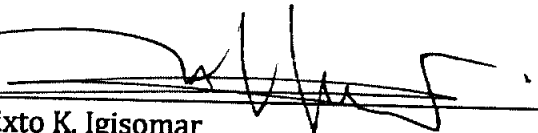
1. Paragraph 3.III.B.3 shall be amended to read as follows:

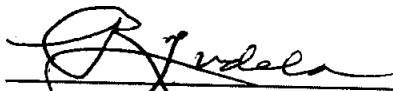
"The O'Connor firm may continue to represent the clients disclosed in paragraph III.B.1.a, other representation, adverse to the Board or Fund, however, is prohibited until the Action is concluded."

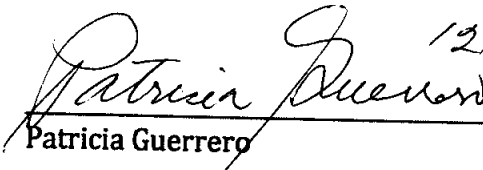
2. All other provision of the Agreement remain in full force and effect.

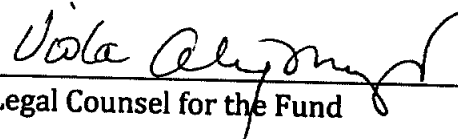
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date and year indicated.


Mariano Taitano


Sixto K. Igisomar
Chairman, Board of Trustees
Northern Mariana Retirement Fund


Roman Tudela


Patricia Guerrero ^{12/07/11}


Viola Alegria
Legal Counsel for the Fund


Michael Dotts ^{12/07/11}
O'Connor Berman Dotts & Baner