



1 action in the Superior Court of the CNMI, Case No. 06-0367. *See* Compl., ECF No. 1 and  
2 Settlement Agreement at §I.A, ECF No. 468-1.

3 Two years later, on May 5, 2011, the NMIRF filed suit in the NMI Superior Court against  
4 the Commonwealth Utilities Corporation (“CUC”) for essentially identical causes of action. *See*  
5 NMI Superior Court Civil Action No. 11-0114-CV (the “Superior Court Action”).<sup>1</sup> On May 17,  
6 2012, the Superior Court Action was removed to this court following the CNMIRF’s filing of a  
7 Chapter 11 bankruptcy petition. On August 15, 2012, the bankruptcy case was dismissed, and the  
8 court remanded the Superior Court Action back to the local court.

9 On August 6, 2013, the parties to this action entered into a Final Amended Stipulation and  
10 Agreement of Settlement (“Settlement Agreement.”). *See* ECF No. 468. Among other things, the  
11 Settlement Agreement created a Settlement Fund to accept a transfer of the NMIRF’s assets, to  
12 receive annual contributions and other payments as provided in the agreement, and to own the  
13 Consent Judgment entered by the court. *Id.* at §II, ¶1.26.

14 On October 23, 2013, the court entered a Final Judgment Approving Class Action  
15 Settlement (“Final Judgment”). *See* Final J., ECF No. 561.

16 On August 15, 2017, the NMIRF, the CUC, the Commonwealth and the Settlement Fund  
17 stipulated to the substitution of the Settlement Fund as the plaintiff in the Superior Court Action,  
18 based on the NMIRF’s assignment and transfer of all rights, title and interest in said matter to the  
19 Settlement Fund.<sup>2</sup> The NMI Superior Court granted the parties’ stipulation. *See* Ex. 5 to  
20 Settlement Fund’s Mot. Enforce, ECF No. 778-5.

21 According to the Settlement Fund, on March 26, 2018, the NMI Superior Court held a  
22 hearing on the Motion for Partial Summary Judgment that was originally filed by the CNMIRF

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24 <sup>1</sup> A copy of the Verified Complaint filed in the Superior Court Action is appended as  
Exhibit 1 to the NMI Settlement Fund’s motion. *See* ECF No. 778-1.

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26 <sup>2</sup> A copy of the Proposed Stipulation and Order re Assignment of Claims and Substitution  
of Plaintiff by Northern Mariana Islands Settlement Fund is appended as Exhibit 4 to the NMI  
27 Settlement Fund’s motion. *See* ECF No. 778-4.

1 prior to removal. *See* Settlement Fund’s Mot. Enforce at 3, ECF No. 778. In an Order dated April  
2 11, 2018, the NMI Superior Court denied the Motion for Partial Summary Judgment and ordered  
3 that “the pleadings be amended to include the updated information, arguments, and complaint in  
4 this case.” *Id.* and Ex. 6 thereto, ECF No. 778-6. The NMI Superior Court’s Order further stated,  
5 “the Court advises that the government be listed as a named Defendant in the new pleadings, as the  
6 Court considers the government a necessary party in this proceeding.” *Id.*

7 On April 10, 2019, the Settlement Fund filed its First Amended Verified Complaint in the  
8 Superior Court Action. *See* Ex. 7 to Settlement Fund’s Mot. Enforce, ECF No. 778-7.

9 On May 8, 2019, the CUC filed a Motion to Dismiss the Superior Court Action, arguing,  
10 among other things, that the Settlement Agreement resolved the CUC’s liabilities in the Superior  
11 Court Action. *See* Ex. 8 to Settlement Fund’s Mot. Enforce, ECF No. 778-8. The Commonwealth  
12 similarly filed its Motion to Dismiss the Superior Court Action. *See* Ex. 9 to Settlement Fund’s  
13 Mot. Enforce, ECF No. 778-9.

14 On June 6, 2019, the Settlement Fund filed an *Ex Parte* Emergency Motion for Temporary  
15 Stay of Proceedings and Request for Hearing in the Superior Court Action. *See* Exs. 10-12 to  
16 Settlement Fund’s Mot. Enforce, ECF Nos. 778-10 to 778-12. In its motion for stay, the Settlement  
17 Fund sought a stay in the Superior Court Action pending a review and interpretation by this court  
18 of the terms of the Settlement Agreement.

19 On June 7, 2019, the Settlement Fund filed the instant Motion to Enforce Final Judgment  
20 Approving class Action Settlement Against the Commonwealth Utilities Corporation (“Motion to  
21 Enforce”). *See* ECF No. 778. Therein, the Trustee for the Settlement Fund requested that the court  
22 issue an order finding that the claims asserted in the Superior Court Action were not resolved by  
23 the Settlement Agreement. *Id.* at 7.

24 On August 27, 2019, the Commonwealth filed the CNMI’s Motion to Enforce. *See* ECF  
25 No. 782. The Commonwealth moved the court to enjoin the Trustee of the Settlement Fund from  
26 prosecuting the Superior Court Action against the Commonwealth to recover the unpaid pension  
27 liabilities of the CUC. *Id.*

28 On September 10, 2019, the Settlement Fund filed an Opposition to the CNMI’s Motion to

1 Enforce and Cross Motion to Enforce Settlement Agreement. *See* Settlement Fund’s Opp’n and  
2 Cross Mot., ECF No. 784.

3 On September 19, 2019, the Commonwealth filed a Reply to the Settlement Fund’s  
4 Opposition and Opposition to Settlement Fund’s Cross Motion. *See* CNMI’s Reply & Opp’n, ECF  
5 No. 785.

6 On September 26, 2019, the Settlement Fund filed a Reply to the Commonwealth’s  
7 Opposition to its Cross Motion. *See* Settlement Fund’s Reply, ECF No. 791.

### 8 LEGAL STANDARD

9 The parties in their motions ask the court to interpret the provisions of and to enforce the  
10 Settlement Agreement approved herein on October 23, 2013. *See* Final J., ECF No. 561.<sup>3</sup> “An  
11 agreement to settle a legal dispute is a contract and its enforceability is governed by familiar  
12 principles of contract law.” *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). “The  
13 construction and enforcement of settlement agreements are governed by principles of local law  
14 which apply to interpretation of contracts generally.” *Id.* “[A] written contract must be read as a  
15 whole and every part interpreted with reference to the whole.” *Isla Dev. Prop., Inc. v. Jang*, No.  
16 2017-SCC-0009-CIV, 2017 WL 6404832, at \*2 (N. Mar. I. Dec. 15, 2017). The Supreme Court  
17 of the CNMI also has held that

18 the language in a contract is to be given its plain grammatical meaning unless doing  
19 so would defeat the parties’ intent. Furthermore, in determining the intention of the  
20 parties, we look only within the four corners of the agreement to see what is actually  
21 stated, and not at what was allegedly meant. Confining our inquiry to the four  
22 corners of a contract is the most equitable method of determining the parties’ intent.  
23 Doing so allows the court to interpret what both parties agreed to and not what the  
24 contract may have devolved into.

25 *Commonwealth Ports Auth. v. Tinian Shipping Co.*, No. CV-04-0017-GA, 2007 WL 3033499, at

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26 <sup>3</sup> The parties consented to this court’s “exclusive jurisdiction to enforce and interpret any  
27 provision of this [Settlement A]greement and to enjoin any person or entity from pursuing any  
28 action that is inconsistent with this [Settlement] Agreement[.]” Settlement Agreement at §VII,  
¶28.0. The Final Judgment contains similar language stating that “this court . . . retain[s]  
exclusive jurisdiction of this action and of all matters relating to the enforcement, effectuation,  
administration, interpretation, administration, or modification of this Judgment, the Agreement and  
the settlement.” Final J. at 6, ECF No. 561.

1 \*4 (N. Mar. I. Oct. 15, 2007) (internal citations omitted). This standard is consistent with the terms  
2 of the Settlement Agreement. *See* Settlement Agreement at §VIII, ¶38.0, ECF No. 468-1 (“This  
3 Agreement shall be governed by, construed and enforced . . . in accordance with general principals  
4 of contract law construction in the United States and shall not be construed as controlled by the  
5 laws, case law, statutes, or regulations of any particular State or territory of the United States.”)

## 6 ANALYSIS

### 7 1. Settlement Fund’s Motion to Enforce

8 The Settlement Fund asks the court to enforce the Settlement Agreement and find that the  
9 claims asserted in the Superior Court Action were not resolved by the Settlement Agreement. The  
10 court thus examines the terms of the Settlement Agreement that are pertinent to the Superior Court  
11 Action.

12 Section III, Paragraph 29.0 of the Settlement Agreement discusses the release of certain  
13 claims. In particular, Paragraph 29(b) states

14 The Plaintiff, the Settlement Class and the [NMIRF] for themselves and their legal  
15 successors and assigns, members[,] subsidiaries, affiliates, officers, directors,  
16 attorneys, agents, and employees which they have or may have, do hereby  
17 absolutely fully, and forever release, relieve, waive, relinquish and discharge the  
18 [Commonwealth], its instrumentalities and agencies and the Autonomous Agencies,  
19 and their legal successors and assigns, members, officers, directors, agents,  
20 attorneys, shareholders[,] parents, affiliates, subsidiaries, and employees and each  
21 of them, as applicable of and from any and all manner of action or actions, cause or  
22 causes of action, suits, debts, liabilities, demands, obligations[,] costs, expenses,  
23 sums of money controversies, damages, accounts, reckonings, and liens of every  
kind or nature whatsoever, whether known or unknown, suspected or unsuspected  
which Plaintiff, the Settlement Class or the [NMIRF] asserted or could have  
asserted in the Johnson Action prior to the date of Final Approval, including but not  
limited to any matter, cause or thing involved with or relating to or based upon any  
transactions or occurrences alleged in the Complaint and Cross Complaints;  
notwithstanding anything contained in this paragraph 29.0 or this subparagraph (b),  
any claims of the [NMIRF] against the Commonwealth Utility [sic] Corporation  
existing as of the date of Final Approval are not released and are Assets of the  
[NMIRF] under this Agreement[.]

24 Settlement Agreement at §VII, ¶29(b), ECF No. 468-1.

25 Based on the above language, it is clear and unambiguous that the parties’ did not agree to  
26 release the NMIRF’s claims against the CUC for unpaid employer contributions. Instead, these  
27 claims against the CUC were assigned and transferred to the Settlement Fund as “Assets of the  
28 CNMI Fund.” *See* Settlement Agreement at §II, ¶1.1 and §III, ¶8.0. This conclusion is further

1 supported by the language of Paragraph 8.1, which states

2 8.1 Assignment. Upon Final Approval, the [NMIRF] shall assign to the  
3 [Commonwealth] all right to collect employer contributions deficient as of  
4 August 6, 2013 and related costs from the Autonomous Agencies, or any other  
CNMI instrumentalities except with respect to rights and liabilities related to civil  
action 11-0114 in the CNMI Superior Court.

5 *Id.* at §III, ¶8.1.

6 The Settlement Agreement specifically excluded the NMIRF's claims against the CUC from  
7 settlement, and unlike the claims against all other autonomous agencies, these claims were not  
8 assigned to the Commonwealth as set forth in Paragraph 8.1. By carving out the exception with  
9 respect to the "rights and liabilities related to [the Superior Court Action]," the court finds that the  
10 parties agreed that the Settlement Fund would retain the right to collect the unpaid employer  
11 contributions from the CUC in the Superior Court Action, consistent with Paragraph 29(b) of the  
12 Settlement Agreement.

13 Accordingly, the court grants the Settlement Fund's Motion to Enforce and finds that the  
14 claims asserted against the CUC in the Superior Court Action were not resolved by the Settlement  
15 Agreement.

16 2. CNMI's Motion to Enforce and Settlement Fund's Cross Motion

17 The next issue before the court is to determine whether the Settlement Agreement explicitly  
18 prohibits the Settlement Fund from bringing any action against the Commonwealth with regard to  
19 unpaid pension obligations owed by the CUC. The Commonwealth asks the court to "enjoin the  
20 Settlement Fund from prosecuting any further action against the Commonwealth in the [NMI]  
21 Superior Court arising out of or relating to the Retirement Fund Act, including without limitation  
22 liability for employer contributions arising thereunder." CNMI's Reply at 7, ECF No. 785. The  
23 Settlement Fund, on the other hand, asks the court to affirm that the "Settlement Fund's claims  
24 against the CUC *and the [Commonwealth]* are alive and [that] the Settlement Fund has the right  
25 to pursue these [claims] against the CUC *and the [Commonwealth]*." Settlement Fund's Reply at  
26 5, ECF No. 791 (emphasis added).

27 The court's analysis again focuses on the four corners of the Settlement Agreement. In  
28 addition to the broad release language quoted above from Paragraph 29(b) of the Settlement

1 Agreement, the agreement also contained the following provision:

2 Each Party agrees and shall cause its Representatives to forever refrain and forebear  
3 from commencing, instituting, or participating either as a named or unnamed party  
4 in any lawsuit, action, administrative proceeding, complaint, charge or other  
5 proceeding against the other Party or its Representatives whether brought by such  
a Party, or by others on its behalf, or by any government authority based on,  
concerning and/or arising out of any dispute or related claim released by this  
paragraph 29.0[.]

6 Settlement Agreement at §VII, ¶29(d), ECF No. 468-1.

7 It is clear from the explicit language of Paragraphs 29(b) and 29(d), and the Settlement  
8 Agreement as a whole, that any claim against the Commonwealth, “whether known or unknown,  
9 suspected or unsuspected which Plaintiff, the Settlement Class or the [NMIRF] asserted or could  
10 have asserted in the Johnson Action prior to the date of Final Approval,” was released and any suit  
11 to assert such claim is barred. *Id.* at ¶29(b). This prohibition includes the Settlement Fund’s claims  
12 in the First Amended Verified Complaint against the Commonwealth in the Superior Court Action  
13 but does not include the claims asserted against the CUC as discussed above. This is because the  
14 Settlement Agreement was intended to be

15 a full, complete, final settlement and global resolution of all existing disputes and  
16 claims that relate to or arise out of the [Commonwealth] and its Autonomous  
17 Agencies’ failure to properly fund the [NMIRF] which resulted in the Johnson  
Action and other actions while preserving the Settlement Class’s constitutional  
rights to accrued retirement benefits that are not diminished or impaired.

18 *Id.* at §I.D.

19 The Settlement Fund, as the successor and assignee of the NMIRF, is bound by the terms  
20 of Paragraph 29(d). The only exception carved out of the broad release language contained in  
21 Paragraph 29(b) was for any claims the NMIRF had against the CUC existing as of the date of Final  
22 Approval. *Id.* at ¶29(b). Under the terms of the Settlement Agreement, the Settlement Fund, in  
23 place of the NMIRF, is permitted to continue to prosecute the Superior Court Action against the  
24 CUC to recover unpaid obligations owed by the CUC. The CUC is an Autonomous Agency,  
25 separate and distinct from the Commonwealth, with it’s own capacity to sue and be sued. The  
26 Settlement Fund, however, is explicitly forbidden from “commencing [or] instituting . . . any  
27 lawsuit or action . . . against the [Commonwealth] . . . concerning and/or arising out of any dispute  
28 or related claim released by . . . paragraph 29.0.” *Id.* at ¶29(d).

