1		
2		
3		
4	For Publication	
5	IN THE SUPERIOR COURT	
6	OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS	
7		
8	PACIFIC AMUSEMENT et al,) CIVIL ACTION NO. 02-0378
9	Plaintiffs,))
10	V.	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS
11	FRANK C. VILLANEUVA et al,) MOTION TO DISMISS
12	Defendants.))
13))
14		.)
15	THIS MATTER came on for hearing June 30, 2003 on a motion to dismiss the Second Amended	
16	Complaint. Present were Assistant Attorneys General Joseph L.G. Taijeron, Jr. and Deborah L.	
17	Covington, counsel for Defendants Frank C. Villaneuva in his official capacity as the Secretary of Finance	
18	and the CNMI Department of Finance, and David G. Banes, counsel for Plaintiff Pacific Amusement. After	
19	carefully considering the pleadings and the arguments made during the hearing, the Court is prepared to	
20	rule.	
21	This case is about the poker machine industry. Pacific Amusement and its co-Plaintiffs are all	
22	operators of poker machines in the Commonwealth. The Defendants are a number of other operators of	
23	poker machines and the Government entity charged with regulating them. Plaintiffs alleged that the operator	
24	Defendants were not complying with the rules that govern poker machines, and that the Government was	
25	impermissibly lax in enforcing those rules. Since that time, all of the Plaintiffs except Pacific Amusement	
26	and all Defendants except the Government have settled. What remains is a "taxpayer suit" brought under	
27	Article 10, Section 9 of the Commonwealth Constitution between Pacific Amusement and the Government.	
28	The Commonwealth Constitution allows t	axpayers to "bring an action against the government or
	ii	

1 or 2 or 3 al 4 re 5 G th 7 in

one of its instrumentalities in order to enjoin the expenditure of public funds for other than public purposes or for a breach of fiduciary duty." N.M.I. Const. art. X, § 9. Pacific Amusement and it co-Plaintiffs alleged that the Government had done both in failing to adequately and effectively enforce the law and regulations concerning the operation of poker machines. Subsequent to the filing of the original suit, the Government reached settlements with all Plaintiffs except Pacific Amusement. These agreements require the Government to make a number of changes in the way it regulates the operation of poker machine industry. The agreements also have the effect of giving Pacific Amusement all the relief it seeks in the instant matter, with the exception of reimbursement of attorney fees and costs.¹

Normally each party in litigation is required to bear its own costs. However, Pacific Amusement argues that it is entitled to fees under N.M.I. Const. art. X, § 9, which requires the Court to "award costs and attorney fees to any person who prevails in [a taxpayer suit] in a reasonable amount relative to the public benefit of the suit." Specifically, Pacific Amusement argues that it has prevailed, because the Government made substantial changes in its policy and procedures as a result of the suit. By contrast, the Government disputes that the policy changes were a result of the lawsuit and challenges the legal basis for Pacific Amusement's claim that it is a "person who prevails." Thus the Court must decide what to do when the substantive issues in a taxpayer suit have been effectively settled, but a potentially valid constitutional claim for attorney fees remains. The Court concludes that proceeding to trial would be a waste of resources, as Pacific Amusement's substantive claims for relief have been mooted by the actions of the Government. Therefore, Plaintiff's complaint must be and is DISMISSED.²

However, the Court still must consider whether fees and costs should be awarded in this case. To help decide the matter (and having already received sufficient written briefing on the relevant issues), the Court will hear arguments on August 5, 2003 at 9:00 a.m. on the following questions:

Can a plaintiff be considered a "person who prevails" under N.M.I. Const. art. X, § 9 where its complaint is dismissed, but the substantive relief sought is nonetheless obtained through settlement

¹ In the settlements with the other three Plaintiffs, the Government apparently agreed to pay fees to the settling Plaintiffs only if Pacific Amusement was successful in obtaining such fees in the instant action.

² The Government sought to dismiss the complaint on a number of other grounds. Finding mootness to be sufficient, the Court will not address these other grounds.

1	between the Government and other plaintiffs?	
2	2. In deciding whether a non-settling plaintiff is a "person who prevails," what significance, if any,	
3	should the Court attach to evidence that the Defendant would have initiated some or all of the relief	
4	eventually obtained even in the absence of the lawsuit?	
5	As these are strictly questions of law, no use of witnesses or other evidence will be permitted. If the Court	
6	later concludes that fact-finding is necessary, the Court will schedule an evidentiary hearing with appropriate	
7	time for discovery.	
8	CONCLUSION	
9	For the reasons stated above, Defendant's motion to dismiss Plaintiff's Second Amended	
10	Complaint is GRANTED and the complaint is DISMISSED.	
11	A hearing on the questions above shall be held on August 5, 2003 at 9:00 a.m.	
12	SO ORDERED this 25th day of July 2003.	
13		
14	/s/	
15	JUAN T. LIZAMA, Associate Judge	
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		