

1 ¶3 Immediately following the execution of the Acquisition Agreement, DPW immediately
2 entered Plaintiff's property and constructed a paved road. Other public agencies have since
3 entered the property to erect utility lines and other infrastructure while also removing soil
4 and vegetation.
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6 ¶4 The Acquisition Agreement was followed with a June 11, 1991, Certification for Land
7 Exchange letter from then Governor Lorenzo I. Deleon Guerrero issued to a William R.
8 Concepcion, Executive Director of MPLC, the MPLA predecessor in which the Governor
9 stated, *inter alia*, that it was "an absolute necessity" that the Camacho Property be acquired
10 by the government "for a public purpose."
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12 ¶5 Thereafter, MPLC commissioned P&R Enterprise to do an appraisal of the land, which gave
13 a total just compensation appraisal of \$38,000 for Lot E.A. 225-3-7-R/W and \$310,000 for
14 E.A. 225 NEW-1-R/W.
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16 ¶6 Based on the P&R appraisal, MPLC used the market approach to determine the fair market
17 value as of October 17, 1991. Consistent with its determination, MPLC offered the sum of
18 \$90.00 per square meter plus severance damages in the amount of \$348,000. Plaintiff
19 accepted MPLC's offer, using the acceptance form letter provided by Plaintiff by MPLC
20 with its offer.
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22 ¶7 Despite the offer and acceptance, MPLC failed to tender payment to Plaintiff. Instead, on
23 January 6, 1993, MPLC issued another offer letter to Plaintiff, which valued the Plaintiff's
24 land at \$150.00 per square meter, and offered Plaintiff public land in the Obyan area in
25 exchange for Plaintiff's land. The letter went on to state, "If there is no strong public
26 sentiment opposing the proposed exchange, the Corporation will execute the Quitclaim Deed
27 of Exchange the following day.
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1 ¶8 Again, Plaintiff agreed to the offer, and MPLC, through its Executive Director, approved the
2 land exchange offer. Thereafter, at some point in 1994, MPLC entered into an agreement
3 with Pacific Resort Development, Inc (“PDRI”) and Haas & Haynie Resorts (“H&H”) for a
4 public lease of land that included the Obyan Area offered to Plaintiff.
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6 ¶9 Defendants offer no explanation regarding their failure to tender performance. Plaintiff has
7 still not received the property promised him, nor has he received any alternative
8 compensation of land or money.
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10 ¶10 On May 28, 2004, Plaintiff filed a verified complaint against Defendants MPLA and DPW,
11 for declaratory relief based on actions for Taking without Compensation, Breach of
12 Contract, Breach of Covenant of Good Faith and Fair Dealing, Promissory Estoppel, and
13 Unjust Enrichment.
14

15 **II. DISCUSSION**

16 A court may grant summary judgment when there are no issues as to any material fact and
17 the moving party is entitled to judgment as a matter of law. Com. R. Civ. P. 56(c); *Santos v. Santos*,
18 4 N.M.I. 206, 209 (1994). The moving party bears the initial burden of demonstrating to the court
19 that there is an absence of any genuine issue concerning any material fact and that as a matter of
20 law, the non-moving party cannot prevail. *Id.* To survive a motion for summary judgment, the non-
21 moving party must then show that there is evidence from which a jury might return a verdict in the
22 non-moving party’s favor. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990). Conclusory
23 allegations are not sufficient to defeat a motion for summary judgment. *Id.* The court must accept
24 all of the non-moving party's evidence as true and will view all inferences drawn from the
25 underlying facts in the light most favorable to the non-moving party. *Id.*
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28 Here, the facts, as presented above, are undisputed by either party and consequently the

1 matter is ripe for summary judgment. Indeed, this case presents facts directly analogous to Civil
2 Action No. 04-0220E involving Plaintiff's brother, who also had land taken by the government and
3 was subsequently awarded compensation for the taking by this Court. Indeed, this Court has
4 questioned counsel regarding the distinctions between the two cases, and upon examination of the
5 facts, struggles to find any, excepting the individual plaintiffs involved.
6

7 In the case involving Jose Camacho, Mr. Camacho owned a parcel of land which was
8 designated for use by DPW for right-of-way purposes in the early 90's. Pursuant to the designation
9 and use of the property by DPW, the MPLC, the then apropos organization for distributing
10 compensation on behalf of the CNMI, offered Mr. Camacho \$90.00 per square meter of land and a
11 severance premium of \$299,000 as compensation for the taking. Later, after failing to make good on
12 a cash compensation, the MPLC offered a land exchange in an amount higher than for the original
13 cash offer. Mr. Camacho gave his assent to both offers. However, the MPLC neither executed the
14 land exchange nor the cash promised for the taking, despite the CNMI's undisputed taking.
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17 After bringing suit under the takings clause and several contractual and quasi-contractual
18 remedies, Plaintiff Jose Camacho moved for summary judgment. In finding that Mr. Camacho was
19 entitled to partial summary judgment on all issues excepting the time of taking for the purposes of
20 calculating pre-judgment interest, this Court determined that while MPLA would not be held liable
21 for breach of contract damages, despite the fact that it had clearly neglected its predecessor in
22 interest's obligations to the extent that it failed to perform, MPLA was liable to Mr. Camacho under
23 the takings clause and by virtue of its position as the only organization in the CNMI with the
24 mandate to compensate those who have had their land taken by CNMI by either inverse
25 condemnation, eminent domain, or otherwise.
26
27

28 Here, like Mr. Camacho's case, Plaintiff was the fee simple owner of a tract of land which

1 was designated for use by DPW for utility easements and roadway construction. Plaintiff was also
2 offered a settlement amount in 1991 by the MPLC at a rate of \$90.00 per square meter and a
3 severance premium of \$348,000. And similar to Jose Camacho's case, MPLC returned to the
4 bargaining table in 1993, after Plaintiff accepted the first offer and offered Plaintiff a land exchange
5 instead wherein Plaintiff's land was revalued at \$150.00. Lastly, MPLA failed to compensate
6 Plaintiff, just as it failed to compensate Jose Camacho, but instead approached Plaintiff in 2003 with
7 an offer that was markedly lower than the appraisal and offer Plaintiff received in 1991 and 1993.
8

9
10 Even after explaining the striking similarities between the cases of Jose Camacho and
11 Plaintiff Antonio Camacho, and of the likelihood of a strikingly similar disposition, MPLA has
12 nevertheless chosen to fully contest Plaintiff's lawsuit at substantial cost to the taxpayer. In Jose
13 Camacho's case, MPLA erroneously relied on Mr. Camacho's alleged failure to exhaust his
14 administrative remedies through the MPLA in its failed motion to dismiss Jose Camacho's suit.
15 Then, as if a sudden sea change had occurred in the Commonwealth Superior Court in a matter of
16 weeks, the MPLA again relied on its "failure to exhaust argument" in its opposition to Mr.
17 Camacho's motion for summary judgment. This Court still struggles to identify a single
18 justification for the MPLA's feckless renewal of this argument, which has been firmly disposed by
19 the Court. In hope of preventing a rerun of a stubborn and costly motion battle which consumed the
20 Court and the parties in Jose Camacho's case this Court admonished the parties, in particular, Mr.
21 Quichocho, counsel for MPLA, to present and argue only those issues and interpretations of the law
22 which would actually change the disposition of this case from the disposition in Jose Camacho's
23 case.
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26 Despite this Court's admonition, the briefing of this case--a case which potentially could
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1 have raised unique and sophisticated questions of law--was reduced to disputations of irrelevant
2 facts, disorganized logic, and repetition of arguments which have long shed their luster.¹ Although
3 this Court was tempted to explore some of the issues involving the MPLA's role and its relation to
4 constitutional takings claims, it must play its proper role as an inertial referee in adversarial
5 proceedings, acting only if justly moved by an interested party. Therefore, the Court will analyze
6 Plaintiff's case through the Takings Clause, much in the way it did in Jose Camacho's case.
7

8 **A. Taking**

9
10 Like Jose Camacho's case, Plaintiff's claim must be analyzed under the Commonwealth's
11 taking jurisprudence. The due process clause of the Fifth Amendment of the United States
12 Constitution allows government takings of private property, i.e. a permanent physical invasion, only
13 for ostensibly public purposes and even then only in exchange for just compensation. U.S. CONST.
14 Amend. 5.
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16 Here, the undisputed facts indicate that in 1991, DPW permanently, and officially entered
17 Plaintiff's property and constructed a paved road. This was certified by then governor on June 11,
18 1991, in a Certification for Land Exchange letter from then a William R. Concepcion, Executive
19 Director of MPLC, the MPLA predecessor in which the Governor stated, *inter alia*, that it was "an
20 absolute necessity" that the Camacho Property be acquired by the government "for a public
21 purpose."
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23 Because the undisputed facts demonstrate that DPW and subsequently other CNMI agencies
24 permanently and physically invaded Plaintiff's land by using it to construct roadways and route
25 various utility easements, it was subject to a government taking compensable under the takings
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27 ¹As this Court's patience has been exceedingly taxed by MPLA's repetitious yet unavailing arguments,
28 MPLA's counsel should take notice that any further questionable filings shall be met with sanctions in accordance with
Com. R. Civ. P. Rule 11, and may include but not limited to, awarding attorney's fees to the prevailing party.

1 clause of the U.S. Constitution.

2 **B. “Just Compensation”**

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4 The proper measure of just compensation for the government’s permanent taking of
5 private property is “the fair market value of [the] property at the time of taking.” *See, e.g., Alмота*
6 *Farmers Elevator & Warehouse Co. v. United States*, 409 U.S. 470, 473-74, 93 S.Ct. 791, 795, 36 L.
7 Ed. 2d 1 (1973). Here, the time of taking can be identified by the combined actions of DPW in
8 constructing a roadway on Plaintiff’s land and by the governor’s certification letter in 1991. At the
9 time these actions occurred, Plaintiff’s land was appraised by a contractor of the MPLC at value of
10 \$90.00 per square meter and relying on a market approach to determine the “fair market value” of
11 the property, the MPLC offered Plaintiff \$90.00 per square meter and \$348,000 as compensation for
12 severance.
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15 According to the undisputed facts, the time of taking for the purposes of determining the
16 “fair market value” will be 1991. However, as in Jose Camacho’s case, MPLA again objects to the
17 valuation of the MPLC’s offer by claiming among other things that it was not a valid appraisal.
18 Although the MPLA submitted an affidavit by Ramon Salas supporting their claim, this Court has
19 already determined that the MPLC’s valuations pursuant to P&R appraisals were indeed valid, and
20 that Mr. Salas’s declaration is merely a self-serving affidavit which holds no bearing on the question
21 of “just compensation.” The Court refuses to take fault with the MPLC’s original determination or
22 second-guess the organization’s decision. It only takes issue with its subsequent failure to duly
23 execute its promises and the MPLA’s reintroduction of Mr. Salas’s testimony which has already
24 been given little weight by this Court.
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27 In conclusion, the Court finds that the MPLC’s original 1991 valuation, which coincided
28 with the Governor’s certification of the taking, properly determined the “fair market value” of

1 Plaintiff's property at the time of taking.

2 **C. Interest**

3
4 What now remains at issue is whether "just compensation" includes awarding interest to
5 compensate Plaintiff for the loss of use of his land and/or the compensation. As discussed in Jose
6 Camacho's case, the government may take a person's land and pay for it later. *See Camacho v.*
7 *Commonwealth*, Civ. No. 04-0220E (N.M.I. Super. Ct Aug. 5, 2005) (Order Granting in Part and
8 Denying in Part Plaintiff's Motion for Summary Judgment and Denying MPLA's Cross-Motion For
9 Summary Judgment at 2); *see also Kirby Forest Industries, Inc. v. U.S.*, 467 U.S. 1, 7, 104 S.Ct.
10 2187, 2194, 81 L. Ed. 2d 1 (1984). However, while *Kirby* did not place limits on compensation
11 time, it did recognize that if disbursement is delayed, "the owner is entitled to interest thereon
12 sufficient to ensure that he is placed in as good a position pecuniarily as he would have occupied if
13 the payment had coincided with the appropriation." *Kirby*, at 10-11 (*citing Phelps v. United States*,
14 274 U.S. 341, 344 (1927); *Seaboard Air Line R. Co. v. United States*, 261 U.S. 299, 306 (1923).).
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16

17 Here, the CNMI took Plaintiff's land in 1991 and as of today has yet to compensate Plaintiff
18 for it. Consequently, Plaintiff is entitled to interest in an amount that would place him in as good a
19 position as if he had been compensated at the time of taking. *See Camacho v. Commonwealth*, Civ.
20 No. 04-0220E (N.M.I. Super. Ct Aug. 5, 2005) (Order Granting in Part and Denying in Part
21 Plaintiff's Motion for Summary Judgment and Denying MPLA's Cross-Motion For Summary
22 Judgment at 5). However, no statutory provision specifically fixes the rate of pre-judgment interest
23 to be awarded to a Plaintiff who successfully brings an action to be compensated for a taking for
24 public purposes. *See Estate of Muna v. Commonwealth*, Civ. No. 96-0769 (N.M.I. Super. Ct. Dec.4,
25 2003) (Order Granting Summary Judgment in Part and Denying Summary Judgment in Part at 7).
26
27 "Without a specific statute to guide the Court, [the Court is] left with ascertaining a rate that
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1 exemplifies fairness.” *Id*; see also *Scneider v. County of San Diego*, 285 F.3d 784, 791 (9t Cir.
2 2002) (“This additional element of compensation has been measured in terms of reasonable
3 interest.”) (*citing Albrecht v. United States*, 329 U.S. 599, 602, 91. L. Ed. 532, 67 S. Ct. 606
4 (1947).).

5
6 Although neither of the parties offer any suggestion as to how to determine the reasonable
7 rate of interest to affix to the Court’s naked award of the MPLC’s 1991 determination of value, it
8 may nevertheless take judicial notice of the award granted in past cases. In the case of Jose
9 Camacho, a case which has demonstrated to be a virtual parallel factual situation, the Court awarded
10 three percent (3%) pre-judgment interest to Jose Camacho—the amount requested by Jose
11 Camacho—after reviewing the submissions of the parties.² Given that neither party in the instant
12 case has disputed the amount of pre-judgment interest that should be awarded to Plaintiff, and given
13 that the factual posture of this case bears such close resemblance to Jose Camacho’s dispute, this
14 Court will award the Plaintiff 3% interest, compounded annually, to the Plaintiff’s principal award
15 of \$90.00 per square meter for a fee simple interest and also on the additional \$348,000 severance
16 damage.
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19 Lastly, the post-judgment rate in the Commonwealth is fixed at 9%. 7 CMC § 4101.
20 Therefore, post-judgment interest will accrue on the Plaintiff’s principal award of \$90.00 per square
21 meter for a fee simple interest and also on the additional \$299,000 severance damage at a rate of 9%
22 per annum from the date entered below.
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26 _____
27 ² It should be noted that, “[a]t the trial on the issue of interest, MPLA established that land claimants seeking
28 compensation under PL 13-17, as amended, are [indeed] compensated at three percent interest compounded annually, in
addition to the appraised value at the time of taking.” *Camacho v. Commonwealth*, Civ. No. 04-0220E (N.M.I. Super.
Ct. Nov. 10, 2005) (OrderAwarding Interest to Plaintiff).

