



By the order of the court, Judge David A Wiseman

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1 FOR PUBLICATION

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6 IN THE SUPERIOR COURT  
7 OF THE  
8 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

9 RAMON K. QUICHOCHO, for himself and ) CIVIL CASE No. 14-0108  
10 on behalf of the taxpayers of the CNMI, )

11 Plaintiff, )

12 v. )

13 EULOGIO S. INOS a.k.a. ELOY S. INOS, ) SUPPLEMENT TO  
14 COMMONWEALTH LOTTERY ) ORDER DENYING  
15 COMMISSION, AND ) PLAINTIFF'S MOTION FOR A  
16 COMMONWEALTH OF THE ) PRELIMINARY INJUNCTION  
17 NORTHERN MARIANA ISLANDS, )

18 Defendants. )

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INTRODUCTION

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**THIS MATTER** came before the Court on May 30, 2014 at 1:30 p.m., on Plaintiff's Motion for Preliminary Injunction, filed on May 20, 2014. Plaintiff Ramon K. Quichocho appeared *pro se*; Assistant Attorney Generals Dave Lochaby appeared on behalf of the CNMI and Governor Eloy S. Inos in his official capacity; Reena Patel appeared on behalf of the Commonwealth Lottery Commission, and Teresita Sablan appeared on behalf of Governor Eloy S. Inos in his personal capacity. The Court continued the hearing on the matter of the preliminary injunction to Friday, May 30, 2014, and Plaintiff thereafter orally moved for a temporary restraining order, thereby giving notice to the parties present before the Court.

1 **BACKGROUND**

2 On May 15, 2014, the Court ordered a status conference on May 16, 2014 at 10:00 a.m., with the  
3 purpose of scheduling a hearing on Plaintiff’s Temporary Restraining Order and Preliminary Injunction.  
4 At that hearing, the Honorable Associate Judge Joseph Camacho of the Commonwealth Superior Court  
5 expressed his concern for an expeditious resolution of a motion for a preliminary injunction, citing the  
6 difficulty in collecting the 25% from the retirees once disbursed if the Court eventually strikes PL 18-38 and  
7 18-43 as unconstitutional. On May 19, 2014, the Court issued an Order setting a briefing schedule and a  
8 hearing for a preliminary injunction.

9 As such, Plaintiff moved for a Preliminary Injunction shortly thereafter, on May 20, 2014, not on the  
10 basis suggested by the Court but rather to enjoin defendants Inos and the CNMI to “pay the constitutionally  
11 guaranteed retirement fund pensions from the general fund, and further order defendants to stop gambling  
12 with the retirees’ pensions . . . to perform on the contracts between any of the Defendants and casino  
13 investigator B2G Global Strategies and gaming consultant The Innovation Group of Companies, until a final  
14 adjudication of Plaintiff[‘s] claims.” (Pl.’s Mot. for Prelim. Inj., at 7-8.)

15 The same day, on May 20, 2014, the Honorable Judge Camacho recused himself from the case and  
16 referred the matter to the Presiding Judge for reassignment, and was later reassigned to be heard before this  
17 Court. On May 28, 2014, this Court denied Plaintiff’s oral motion for a Temporary Restraining order and  
18 continued the hearing on the Preliminary Injunction Motion until May 30, 2014 at 1:30 p.m. Defendants  
19 filed their response on May 28, 2014, and Plaintiff filed his Reply on May 30, 2014.

20 Finally, in an order dated June 12, 2014, the Court issued a brief order denying Plaintiff’s Motion  
21 for Preliminary Injunction, stating that a more detailed order would follow. This is that order.

22 **LEGAL STANDARD**

23 Commonwealth Rule of Civil Procedure 65 permits the Superior Court to issue a preliminary  
24 injunction using its sound discretion. See NMI R. Civ. P. 65; *Villanueva v. Tinian Shipping & Transp., Inc.*,  
25 2005 MP 12 ¶ 20. In order to obtain injunctive relief, Plaintiff must first show that he “is being threatened

1 by some injury for which he has no adequate legal remedy.” *Dana Corp. v. Celotex Asbestos Settlement*  
2 *Trust*, 251 F.3d 1107, 1118 (6th Cir. 2001) (citations omitted). If such is the case, the court considers the  
3 following when deciding whether to grant a preliminary injunction: (1) whether the plaintiff has a strong  
4 likelihood of success on the merits; (2) the level of the threat of irreparable harm to the plaintiff if the relief  
5 is not granted; (3) the balance between of harms to the parties; and (4) the public interest. *Villanueva v.*  
6 *Tinian Shipping & Transp., Inc.*, 2005 MP 12 ¶ 20 (citing *Johnson v. California State Bd. of Accountancy*,  
7 72 F.3d 1427, 1430 (9th Cir. 1995)).

8 Alternatively, a court may issue a preliminary injunction if the moving party demonstrates either a  
9 combination of probable success on the merits and the possibility of irreparable harm or the existence of  
10 serious questions going to the merits and a balance of hardships sharply tipping in its favor. *Pacific Am.*  
11 *Title Ins. & Escrow (CNMI), Inc. v. Anderson*, 1999 MP 15 ¶ 9.

12 However, “a preliminary injunction is an extraordinary and drastic remedy, one that should not be  
13 granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*,  
14 520 U.S. 968, 972 (1997). The purpose of a preliminary injunction is to preserve the status quo pending a  
15 final determination on the merits. *Friends of Marpi v. Commonwealth Government*, 2012 MP 9 ¶ 10 (citing  
16 *Villanueva*, 2005 MP 12 ¶ 19); *Pacific Am.*, 1999 MP 15 ¶ 8. The status quo is defined as the last  
17 uncontested status prior to the pending controversy. *Pacific*, 1999 MP 15 ¶ 8.

## 18 **DISCUSSION**

19 Having reviewed the filings of the parties in the instant matter and reviewing the applicable legal  
20 standards, the Court now evaluates each factor of the preliminary injunction standard articulated above.

### 21 **I. Threat of Irreparable Harm**

22 First, the Court examines arguably the most important factor in deciding whether to grant a  
23 preliminary injunction — the threat of irreparable harm to the movant.

24 As an initial matter, it is well established that monetary harm alone does not constitute irreparable  
25 harm, *Los Angeles Memorial Colliseum Comm’n v. NFL*, 634 F.2d 1197, 1202 (9th Cir. 1980); see *Kevin*

1 *Int'l Corp. v. Super. Court of the N.M.I.*, 2006 MP 3 ¶ 17 (stating that “as a general rule, when a party is  
2 entitled to a remedy at law, no preliminary injunction should issue.”). Further, Plaintiff has the burden of  
3 showing that the legal remedy or monetary damages are “seriously deficient as compared to the harm  
4 suffered.” *Foodcom Int'l v. Barry*, 328 F.3d 300, 304 (7th Cir. 2003); *Celsis In Vitro, Inc. v. CellzDirect,*  
5 *Inc.*, 664 D.3d 922, 930 (Fed. Cir. 2012).

6 Here, Plaintiff claims that “unless enjoined and restrained by the Court, Defendants wrongful acts  
7 and conducts will cause Plaintiff . . . to suffer immediate and irreparable injury, loss, or damage because .  
8 . . the CNMI’s health, safety, and well-being will continue to be compromised and jeopardized, as the  
9 [CNMI’s resources] are diverted to fund an illegal contract.” (Pl.’s Mot. for Prelim. Inj., at 11.) Further,  
10 Plaintiff argues that there is no adequate remedy at law for the injuries suffered and may continue to be  
11 suffered because it will be impossible to determine the precise amount of damage in terms of their safety,  
12 health, and well-being lost . . .” (*Id.*)

13 Defendant argues that Plaintiff merely requests relief from monetary harm, specifically, the \$400,000  
14 alleged to be spent on the contracts presented, and that the Plaintiff only alleges conclusory and unsupported  
15 harms to CNMI citizens by way of being unable to pay for vital care at the CNMI’s only hospital, without  
16 presenting any evidence that the money alleged to be spent on the various contracts would otherwise be  
17 appropriated to the hospital. (Def.’s Opp., at 9-10.) Defendant further explains that Public Laws 18-38 and  
18 18-43 provide that the application fees shall be used for costs related to the operation of the Casino, so  
19 Plaintiff will not suffer irreparable injury in the injunction is not granted, and the taxpayers of the CNMI may  
20 be fully compensated by monetary damages in the amount spent to hire and retain the two consultants. (*Id.*)

21 The Court agrees with the Defendants insofar as the Plaintiff, to date, has only claimed monetary loss  
22 as the irreparable harm to support his Motion for Preliminary Injunction, and continuously alleged  
23 unsupported allegations of some harrowing injury to the people of the CNMI through purportedly displaced  
24 allocations of public funds. The real injury Plaintiff claims will result from Defendants performing under  
25 the contracts alleged is the \$400,000 to be spent on hiring the consultants to investigate the applicants. This

1 monetary amount may be compensated in the form of compensatory damages as part of the ultimate  
2 disposition of the case, and thus no preliminary injunction is necessary at this stage based upon some  
3 irreparable harm to Plaintiff and CNMI citizens.

4 Thus, the Court finds that the first factor, and likely the most important one in deciding the instant  
5 motion, does not weigh in favor of granting Plaintiff's motion for a preliminary injunction at this stage.

6 **II. Likelihood of Success on the Merits**

7 Second, the Court evaluates the likelihood that Plaintiff succeeds on the merits of his claim in its  
8 final disposition.

9 Since Plaintiff moved for a preliminary injunction prior to any discovery or fact-finding, Plaintiff's  
10 Complaint must contain sufficient factual allegations to support a finding of a strong likelihood or  
11 probability of success on the merits, except under the standard contemplating the existence of serious  
12 questions going to the merits and a balance of hardships tipping in its favor. *Loadholt v. Moore*, 844 F.  
13 Supp. 2d 1274, 1283 (S.D. Ga. 2012) (stating that "Plaintiff's motion . . . merely restates the allegations of  
14 the Complaint and fails to demonstrate a substantial likelihood of success on the merits); *Ford Motor Co.*  
15 *v. 2600 Enterprises*, 177 F. Supp. 2d 661, 662-63 (E.D. Mich. 2001).

16 Here, Plaintiff argues that there is a strong likelihood of success on the merits both because the  
17 expenditure of alleged public funds under the contracts with the casino investigator and the gaming  
18 consultant is not for a public purpose, and the Commonwealth Casino Commission has not been formed  
19 contrary to the requirements imposed by PL 18-38, § 203(b). (Pl.'s Mot. for Prelim. Inj., at 9-10.)  
20 Defendants claim Plaintiff's complaint includes numerous irrelevant and immaterial statements that are not  
21 substantial factual allegations and subject to a motion to strike, claiming that much of the language used in  
22 the Complaint is clearly prejudicial and should be stricken by the Court as "impertinent, immaterial, and  
23 slanderous comments and matters that do nothing to advance Plaintiff's claims." (Def.'s Opp., at 4-5.)  
24 Defendant further claims the complaint will not be able to survive a motion to dismiss, arguing that each  
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1 of the numerous allegations made in Plaintiff's Complaint do not pass factual and legal muster to support  
2 the arguments made in his complaint. (Def.'s Opp., at 5-8.)

3 While the Court refuses to explicitly acknowledge the merits of the legal arguments and the factual  
4 allegations made thus far in the instant case, the Court does recognize the potential success of certain of  
5 Plaintiff's legal arguments. The legal arguments dealing with the illegality of the contracts entered into thus  
6 far – especially regarding the limited scope of the Lottery Commission's authority – are of great concern to  
7 the Court, and it will be examining those aspects of the case more closely moving forward. However, any  
8 concern the Court has about the legal aspects of the merits of Plaintiff's case does not mean the Court  
9 necessarily agrees with Plaintiff's legal position or that it believes he has a strong likelihood of success on  
10 the merits of his case. The Court is merely acknowledging the arguments brought up in Plaintiff's  
11 Complaint without taking an official position on the merits relating to the ultimate disposition of the case.

12 Thus, the Court finds that Plaintiff has not demonstrated a strong likelihood of success on the merits  
13 of his case based upon the factual allegations made in his Complaint, and stresses that this factor is  
14 outweighed by ability of the Court to fashion a legal remedy in the form of a monetary judgment.

### 15 **III. Balance of Respective Harms**

16 Third, the Court weighs the respective harms to each of the parties in attempting to strike a balance  
17 of hardships to decide whether granting a preliminary injunction would benefit one party more than it would  
18 cause a detriment for the other.

19 In deciding whether to issue an injunction, the court must weigh the harm to the defendant if an  
20 injunction is granted against the harms to the Plaintiff if an injunction is not granted. *See Winter v. Natural*  
21 *Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). It is well settled that where the harm likely to be  
22 suffered by the defendant outweighs any injury threatened by the defendant's conduct, plaintiff must make  
23 a stronger showing of a likelihood of success on the merits. *MacDonald v. Chivago Park Dist.*, 132 F.3d  
24 355, 357 (7th Cir. 1997); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

1 Here, Plaintiff alleges that a balance of the respective hardships to the parties greatly favors Plaintiff  
2 and the people of the CNMI, as the allegedly illegal contract for investigation and consultation services  
3 entered into by Defendant Lottery Commission, the casino investigator B2G Global Strategies and gaming  
4 consultant The Innovation Group of Companies would cost over \$400,000 in a few days. (Pl.'s Mot. for  
5 Prelim. Inj., at 11-12.) Plaintiff further claims that the CNMI Government can "barely pay the salaries and  
6 medical supplies and air conditioners in patients' rooms, including the Intensive Care Unit, are not  
7 functioning at the only hospital in the CNMI," and that any inconvenience to the Defendants would be far  
8 outweighed by the injury Plaintiff and the people of the CNMI will suffer. (*Id.*)

9 Defendant argues that while the only harm alleged by Plaintiff may be adequately remedied by a  
10 monetary judgment, the harms to the Defendants if the injunction is granted are great. (Def.'s Opp., at 10-  
11 11.) Specifically, Defendant illustrates the following potential circumstances: (1) if any substantial delay  
12 results in the processing of the casino applicants as a result of the instant motion, one or more of the  
13 applicants will likely withdraw their applications and the CNMI would lose at least the minimum \$15  
14 million in license fees per year plus any tax revenue; and (2) without the license fees and tax revenues from  
15 the Casino, the Commonwealth will be in a critical financial position, as the impending reduction in  
16 available government revenue and funding will necessarily result in a drastic reduction of the CNMI  
17 government's workforce, including police officers on the street and health care professionals in the hospital.  
18 (*Id.* at 11-12.)

19 The Court is not persuaded that a \$400,000 potential harm outweighs the possibility of critical and  
20 debilitating financial disaster in the CNMI should the revenue from the Casino projects assist our troubled  
21 economy, especially in light of any monetary judgment that would be rendered should Plaintiff win on the  
22 merits of his case and prove the compensatory damages involved with contracting for the investigation into  
23 the viability of each of the casino applicants. Thus, the Court finds that the balance of the potential  
24 hardships weighs against granting the preliminary injunction at this stage.

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1 **IV. Public Interest**

2 Lastly, the Court examines whether the public interest would be served by granting a preliminary  
3 injunction.

4 Here, Plaintiff refuses to acknowledge any harm that would be imposed on the public interest  
5 because “the public interest lies in the legal and constitutional expenditure of public funds.” (Pl.’s Mot. for  
6 Prelim. Inj., at 12.) Further, Plaintiff states that the “[i]ssuance of a preliminary injunction is in the public  
7 interest because it seeks to restrain or prevent Defendants from improperly, illegally, and unconstitutionally  
8 expending public funds to benefit a few, without legal justification or right to do so.” (*Id.*)

9 On the contrary, Defendants argue that the Commonwealth is facing a dire fiscal situation, where  
10 the costs of providing essential government services – such as the public hospital, school systems, public  
11 safety, and utilities – continue to rise while the current rate of increase in the Commonwealth’s revenues is  
12 not sufficient to meet these rising costs. (Def.’s Opp., at 12.) Defendants further state that “faced with this  
13 dilemma, the Commonwealth’s political leaders decided that establishing a well-regulated casino in the  
14 Commonwealth would address this need for a new revenue source and stimulate the economy.” (*Id.* at 12-  
15 13.) Defendants claim that “to bring a halt to [the initial] review process could chase away the parties who  
16 are willing to invest in the Commonwealth and with them will go the expected revenues from the license  
17 fees and taxes,” and that delaying the process would be “in and of itself harmful to the public interest”  
18 because “[t]ime is of the essence.” (*Id.* at 13.)

19 While the Court acknowledges and agrees with Plaintiff that there is a general public interest in  
20 enjoining improper expenditures and preventing the incidental effects of corruption and government officials  
21 exceeding the scope of the authority vested in them, the Court is of the opinion that the public interest will  
22 better be served by refusing to enjoin the review process as it stands currently, allowing the process to further  
23 proceed, and addressing Plaintiff’s legal arguments and factual allegations as the present case progresses  
24 through its evolution -- which may end in a monetary judgment deemed adequate to address Plaintiff’s  
25 concerns. Thus, the Court agrees with Defendant in that granting the preliminary injunction at this stage



