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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

STANLEY T. TORRES and
JEANNE H. RAYPHAND,

Plaintiffs,

ALEX C. TUDELA and
NICOLAS C. SABLAN,

Intervenors,

v.

FROILAN C. TENORIO, Governor of the
Commonwealth of the Northern
Mariana Islands, BENIGNO M.
SABLAN, Secretary of Department
of Lands and Natural Resources,
Commonwealth of the Northern
Mariana Islands, BERTHA T. CAMACHO,
Director, Division of Public Lands,
Department of Lands and Natural
Resources, Commonwealth of the
Northern Mariana Islands and L&T
GROUP OF COMPANIES, LTD.,

Defendants.

CIVIL ACTION NO. 95-390

**MEMORANDUM DECISION
GRANTING MOTION TO
INTERVENE AND TO BE
DESIGNATED CLASS
REPRESENTATIVES**

On March 18, 1996, a hearing was held on Defendant L&T Group of Companies, Inc.'s ("L&T") Motion to Appoint New Class Counsel, and on Alex C. Tudela, and Nicolas C. Sablan's

FOR PUBLICATION

1 Motion to Intervene and be Designated Class Representatives (“Intervenors”).¹ Plaintiffs Jeanne H.
2 Rayphand (“Rayphand”) and Stanley T. Torres (“Torres”) opposed the motions *pro se*. The
3 Government Defendants, Froilan C. Tenorio, the Governor, Benigno M. Sablan, the Director of the
4 Department of Lands and Natural Resources, and Bertha T. Camacho, the Secretary of the Division
5 of Public Lands, did not participate in these motions. The Court now renders its decision.

6
7 **I. FACTS AND PROCEDURAL BACKGROUND**

8 Plaintiffs Jeanne H. Rayphand and Stanley T. Torres brought this action in their capacity as
9 taxpayers under Article X, § 9 of the Commonwealth Constitution.² Plaintiffs allege that the
10 Government defendants breached their fiduciary duty to the taxpayers of the CNMI by leasing public
11 land to L&T at commercially unreasonable terms.

12 On January 25, 1996, the Court issued a Memorandum Decision Disqualifying Plaintiffs'
13 Counsel (“Disqualification Order”). In recognition of the status of a taxpayer action as a form of
14 class action brought on behalf of all CNMI taxpayers, the Court found that Plaintiffs' counsel,
15 Theodore R. Mitchell (“Mitchell”) owed a fiduciary duty to serve the interests of the absent class
16 members. The Court found that Mitchell had breached this duty by placing his interests before those
17 of the CNMI taxpayers by conditioning settlement upon a \$2.25 million attorney fee, and by his
18 unduly antagonistic attitude. *See generally* Disqualification Order. In addition, the Court held that
19 the appearance of a conflict inherent in his representation of his law associate, in an action allowing
20 for court awarded attorney fees, rendered Mitchell ineligible to serve as counsel. *Id.*

21 Prior to the Disqualification Order, the Court directed Plaintiffs to comply with discovery in
22 four separate orders. *See* Order, Jan. 4, 1996, orally issued; Order Jan. 11, 1996; Order Jan. 16, 1996;
23 Order Jan. 19, 1996. Since that time, the Court has found Mitchell, Rayphand, and Torres in contempt

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25 ¹ Dorothy Tenorio McKinney withdrew from the Proposed Complaint and Motion to
26 Intervene. *See* Testimony of Darrin Class, March 18, 1996 Hearing on Motion to Intervene.

27 ² Rayphand filed the Complaint on April 27, 1995. On May 3, 1995, the Complaint was
28 amended to include Torres as an additional plaintiff.

1 for violating the Disqualification Order. *See* Memorandum Decision Granting Motion for Contempt,
2 filed March 28, 1996 ("Contempt Order").

3 On February 1, 1996, a scheduling conference was held in chambers. During the conference,
4 the Court stated that the February 5, 1996 trial date would be continued to afford Plaintiffs an
5 opportunity to obtain substitute counsel, and directed Plaintiffs to provide an estimate of the time
6 needed. In response, Plaintiffs filed an estimate which identified the time needed to appeal the
7 Disqualification Order, and intimated that successor counsel would be sought only if it was affirmed.
8 *Id.*, p. 6. Plaintiffs misrepresented the Court as having said that they would be given all the time they
9 needed to appeal the Disqualification Order or to obtain new counsel. *Id.*, p. 4. Despite their avowed
10 intent to appeal, and their two motions for a stay of proceedings pending appeal,³ Plaintiffs have yet
11 to file a notice of appeal.

12 Upon request, Plaintiffs were extended two additional weeks to oppose a Motion to Intervene,
13 a Motion to Appoint Class Counsel, and a Motion for Contempt against Rayphand. *See* Order
14 Granting Enlargement of Time, filed February 27, 1996. Plaintiffs did not use this opportunity to
15 obtain substitute counsel. Rather, Plaintiffs and Mitchell filed repetitious *ex parte* motions for leave
16 to allow Mitchell to represent Plaintiffs in the pending motions. *See* Plaintiffs' *ex parte* Motion for
17 Leave for Mitchell to Defend Rayphand against L&T's Motion for Contempt, To Compel, to Compel
18 and for Sanctions, and to Defend Against Motion to Intervene, filed Feb. 26, 1996; Mitchell's *ex parte*
19 Motion for Leave to Appear and Defend Rayphand Against L&T's Motion for Contempt, filed on
20 March 6, 1996; Plaintiffs' *ex parte* Motion for Leave to Defend Against Motion to Intervene, filed
21 March 11, 1996. The motions were respectively denied by orders issued February 27, 1996, March
22 7, 1996, and March 12, 1996. During the March 18, 1996 hearing on the Motion for Contempt against
23 Rayphand, the Court asked Rayphand and Torres what steps they had taken to find substitute counsel.
24 Rayphand responded that their energies had been focused on preparing for an appeal of the
25 Disqualification Order. *See* Testimony of Rayphand, March 18, 1996 Hearing on Motion for
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27 ³ The Motions for Stay were denied by Order dated Feb. 27, 1996 and March 12, 1996.

1 Contempt against Rayphand.⁴ Torres' made essentially the same response. *See* Testimony of Torres,
2 March 18, 1996 Hearing on Motion for Contempt against Rayphand.

3 On February 5, 1996, Defendant L&T Group of Companies, Ltd., ("L&T") filed a Motion to
4 Appoint New Class Counsel ("Motion to Appoint"). On March 1, 1996, Dorothy Tenorio McKinney,
5 Alex C. Tudela, and Nicolas C. Sablan filed a Proposed Complaint and a Motion to Intervene/Motion
6 to be Designated as Class Representatives ("Motion to Intervene").⁵ On March 11, 1996, L&T filed
7 a Memorandum in Support of the Motion for Intervention. L&T qualified its support on the condition
8 that intervention not unduly delay the trial, and asked the Court for a reciprocal limitation of
9 discovery. L&T stated that it would withdraw its Motion to Appoint if the Court granted the Motion
10 to Intervene.

11 II. ISSUES

- 13 A. Whether a right to intervene and to substitute plaintiffs exists based
14 upon inadequate class representation.
- 15 B. Whether the proposed intervenors will adequately represent the interests of the
16 CNMI taxpayers.

17 III. DISCUSSION

18 A. Intervention

19 Intervention of Right under Com.R.Civ.P. 24 (a) is granted upon timely application by a party
20 who holds an interest in the case and is "so situated that the disposition of the action may as a practical
21 matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately
22 represented by existing parties." Com.R.Civ.P. 24 (a). Similarly, in order to disqualify a class
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25 ⁴ L&T's Motion for Contempt against Rayphand was heard immediately after the Motion
26 to Intervene.

27 ⁵ Dorothy Tenorio McKinney withdrew from the Proposed Complaint and Motion to
28 Intervene. *See* Testimony of Darrin Class, March 18, 1996 Hearing on Motion to Intervene.

1 representative, it must be shown that he or she may not be adequately protecting the interests of the
2 absent class members due to a conflict of interest. *Newby v. Johnston*, 681 F.2d 1012 (1982); *Susman*
3 *v. Lincoln American Corp.*, 561 F.2d 86 (7th Cir. 1977). In the Disqualification Order, the Court
4 found that because a taxpayer suit is a form of class action, it was appropriate to look to jurisprudence
5 on other forms of class actions, specifically Rule 23 class actions, for guidance on the issue of the
6 propriety of the legal representation by Plaintiffs' counsel. In reaching its conclusion, the Court noted
7 that the two forms of class actions bear on questions common to the entire class, and effect a
8 resolution binding upon all members of the class. *See* Disqualification Order. Significantly, however,
9 taxpayer actions, unlike Rule 23 class actions, do not provide a class member with the opportunity to
10 "opt out". Thus, the need to insure adequate class representation is more critical in a taxpayer action.
11 The Court now turns to the same body of law to examine the question of the adequacy of class
12 representation by the named plaintiffs. In pursuing this question, the Court is discharging its
13 obligation to continually scrutinize the adequacy of class representation. *Newby v. Johnston*, 681 F.2d
14 1012 (1982); *Sessum v. Houston Community College*, 94 F.R.D. 316 (S.D.N.Y. 1982); *Gill v. Monroe*
15 *Country Dept. of Soc. Serv.*, 92 F.R.D. 14, 16 (W.D.N.Y. 1981); *Howard v. McLucas*, 87 F.R.D. 704
16 (1980).

17 **1. Timeliness.** Plaintiffs maintain that the Intervenors are time barred, as they filed their
18 motion ten months after commencement of this suit and after discovery was substantially complete.
19 However, timeliness of the motion is judged from the time the intervenors became aware that their
20 interests were not being adequately protected. *United Airlines, Inc. v. McDonald*, 97 S.Ct. 2462
21 (1977); *Hill v. Western Electric Co.*, 672 F.2d 381, 386 (4th Cir. 1982). Here, Intervenors claim a
22 right to intervene based upon the allegations that Plaintiffs are inadequately representing class
23 members by failing to prosecute this case. This claim did not mature until a reasonable period after
24 Mitchell was disqualified. Mitchell was disqualified on January 25, 1996; Intervenors filed this
25 motion on March 1, 1996. Hence, the Court finds intervenors acted promptly on this ground.

26 **2. Interest.** Intervenors have an interest in this case based upon their status as CNMI
27 taxpayers. The Intervenors' goal is to obtain the fair market value of the land at issue in a timely
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1 fashion. *See*, D.R. Class Testimony, March 18, 1996; Intervenor's Proposed Complaint, filed March
2 1, 1996; Motion to Intervene, filed March 1, 1996. The Court assumes this objective to be typical of
3 CNMI taxpayers. Hence, if the Court determines that Plaintiffs are not adequately pursuing the
4 interests of the intervenors, it will simultaneously find that they are not adequately representing the
5 interests of the CNMI taxpayers. Therefore, both intervention and substitution will be warranted.
6 *Newby v. Johnston*, 681 F.2d 1012 (1982) ("court must take some action to find an appropriate class
7 representative if it finds the named plaintiff to be inadequate").

8 **2. Fiduciary Duty.** Rayphand and Torres, as class representatives, owe a fiduciary duty
9 to the absent class members to adequately protect their interests. *In Re Am Intern., Inc. Securities*
10 *Litigation*, 108 F.R.D. 190 (S.D.N.Y. 1985); *Kline v. Wolf*, 88 F.R.D. 696 (S.D.N.Y. 1981); *Rossini*
11 *v. Ogilvy & Mather, Inc.*, 80 F.R.D. 131, 135 (S.D.N.Y. 1978). A breach of a fiduciary duty is
12 ground for rejecting the named plaintiffs as class representatives. *In Re Am Intern., Inc. Securities*
13 *Litigation, supra; Kline, supra; Rossini, supra.* Before addressing specific breaches of Plaintiffs'
14 fiduciary duty, the Court notes that Plaintiffs' assertion that they are not representing the CNMI
15 taxpayers (e.g. *see* Rayphand Testimony, March 18, 1996 Hearing) calls into question their
16 desirability as class representatives. *c.f. McGowan v. Faulkner Concrete Pipe Co.*, 659 F.2d 554 (5th
17 Cir. 1981). Likewise, their misstatements of the Court's directives in Plaintiffs Report on Chambers
18 Conference, and Plaintiffs' contempt of the Disqualification Order, instills doubt as to their ability to
19 forthrightly represent the people in this action.

20 **a) Failure to Monitor.** Class representatives owe a fiduciary duty to the absent class
21 members to monitor the actions of their attorney to ensure that they do not conflict with the interests
22 of the class. *Gill v. Monroe Country Dept. of Soc. Serv.*, 92 F.R.D. 14, 16 (W.D.N.Y. 1981) (removal
23 of class representative for failing to take action when class attorney breached his duties to class);
24 *Levine v. Berg*, 79 F.R.D. 95, 97 (S.D.N.Y. 1978). The Court has already determined that Plaintiffs
25 have failed in their duty to monitor to the extent that Mitchell's settlement posture and antagonistic
26 attitude interfered with the interests of the absent class members. *See* Disqualification Order, filed
27 Jan. 25, 1996. In addition, Plaintiffs have allowed their disqualified attorney to continue to act for
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1 them in contempt of the Disqualification Order. *See* Contempt Order.

2 **b) Duty to Prosecute.** Class representatives have a duty to vigorously prosecute the
3 claim on behalf of the class. *Kamen v. Local 363, Intern. Broth. of Teamsters*, 109 F.R.D. 391
4 (S.D.N.Y. 1986); *Rossini v. Ogilvy & Mather, Inc.*, 80 F.R.D. 131, 135 (S.D.N.Y. 1978). In the case
5 at bar, Plaintiffs have failed to take any steps to retain successor counsel since Mitchell's January 25,
6 1996 disqualification, despite the two week extension of time granted to prepare for motions. Instead
7 of taking positive steps to prosecute this matter, Plaintiffs spent their energy on repeated attempts to
8 circumvent the Disqualification Order. *See* Plaintiffs' ex parte Motion for Leave for Mitchell to
9 Defend Rayphand against L&T's Motion for Contempt, to Compel and for Sanctions, and to Defend
10 Against Motion to Intervene, filed Feb. 26, 1996; Mitchell's ex parte Motion for Leave to Appear and
11 Defend Rayphand Against L&T's Motion for Contempt, filed on March 6, 1996; Plaintiffs' ex parte
12 Motion for Leave to Defend Against Motion to Intervene. After the first motion for leave to defend
13 was denied, Plaintiffs essentially refiled the same request, not once, but twice. Plaintiffs similarly
14 filed two Motions for a Stay Pending Appeal without perfecting an appeal by filing a notice. *See*
15 Order Denying Motion for Stay, filed Feb. 27, 1996; Order Denying Second Motion for Stay, filed
16 March 12, 1996. To summarize their position, Torres stated: "I am demanding that the court stop all
17 proceedings in this case until the Supreme Court decides whether I have a right to be represented by
18 the attorney of my choice." Notwithstanding, Plaintiffs have not commenced an appeal.

19 **c) Settlement.** "A class representative must negotiate wisely and prudently when
20 settlement is in the long term interest of the class, even at the cost of possible total victory." *Kamen*
21 *v. Local 363, Intern. Broth. of Teamsters*, 109 F.R.D. 391 (S.D.N.Y. 1986). A class representative's
22 "duties include not only prosecuting litigation vigorously, but also include the duty to use wise
23 judgment in negotiating and approving a fair and proper settlement at the right time when possible."
24 *Rossini v. Ogilvy & Mather, Inc.*, 80 F.R.D. 131, 135 (S.D.N.Y. 1978).

25 Mitchell stated that he was following Plaintiffs' directives when he conditioned settlement
26 upon a \$2.25 million attorney fee. *See*, Hearing Transcript on January 19, 1996 Motion to Disqualify.
27 The result of such a condition is to benefit Mitchell, and perhaps his associate Rayphand. By ordering
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1 or allowing Mitchell to place his attorney fees before the interests of the public, Rayphand and Torres
2 breached their duty to the taxpayer class.

3 This conflict is ongoing. At one point, Torres made a counter offer to settle for \$18.8 million,
4 the full value of the second McCart appraisal. *See* McCart Decl., dated July 18, 1995, para. 6. This
5 does not appear to have been a good faith effort to settle the case, as \$18.8 million is the highest value
6 that could be assigned to the land at trial. Based upon this, and the inflammatory context in which this
7 offer was made,⁶ it is evident that Torres was actually attempting to foreclose further settlement
8 discussion. In addition, Torres is quoted as being unwilling to consider settlement of this case. *See*
9 Motion in Support, Exhibit B.

10 *d) Discovery.* Failure to comply with discovery is indicative of whether a class
11 representative is fulfilling his fiduciary duty. *Kline v. Wolf*, 88 F.R.D. 696 (S.D.N.Y. 1981); *Norman*
12 *v. Arc Equities*, 72 F.R.D. 502, 504 (S.D.N.Y. 1980); *Kamen v. Local 363, Intern. Broth. of*
13 *Teamsters*, 109 F.R.D. 391 (S.D.N.Y. 1986); *In Re Am Intern., Inc. Securities Litigation*, 108 F.R.D.
14 190 (S.D.N.Y. 1985); *Hernandez v. United Dire Ins. Co.*, 79 F.R.D. 419 (1978). Noncompliance with
15 discovery not only prolongs litigation, it indicates a lack of forthrightness unfitting in a fiduciary.

16 In this case, the Court has issued four court orders requiring Plaintiffs to comply with
17 discovery. *See* Order, Jan. 4, 1996, orally issued; Order Jan. 11, 1996; Order Jan. 16, 1996; Order,
18 Jan. 19, 1996. Here, the degree of “obfuscation, delay and argument” exceeds that which has been
19 found impermissible in a class representative. *Norman v. Arc Equities*, 72 F.R.D. 502, 504 (S.D.N.Y.
20 1980). Plaintiffs clearly “will not comply wholeheartedly and fully with the discovery requirements”
21 and are not ones whom “the important fiduciary obligation of acting as a class representative should
22 be entrusted.” *Id.*

23 Along the same lines, the Court has found Mitchell and Plaintiffs in contempt of the court's
24 decision disqualifying Mitchell as Plaintiffs' counsel. This determination, like noncompliance with
25 discovery, indicates a lack of forthrightness improper in a fiduciary.

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27 ⁶ The letter states that Banes is full of horse sh*t, and that if the case goes to the Supreme
28 Court, Baines will be in deep sh*t. *See* Motion in Support, Exhibit D.

1 e) *Unduly Antagonistic.* A class representative must not be motivated by an interest
2 which runs counter to that of the class as a whole. A personal vendetta or grudge presents a conflict
3 as it may cause the representative to subordinate the best interests of the class in order to achieve
4 personal vindication. Accordingly, “the spite or hostility of an unduly antagonistic litigant” may
5 render that litigant unfit for class representation. *Kamen v. Local 363, Intern. Broth. of Teamsters,*
6 *109 F.R.D. 391 (S.D.N.Y. 1986) (citing Norman v. Arc Equities, 72 F.R.D. 502, 504 (S.D.N.Y.*
7 *1980)); see also Rossini v. Ogilvy & Mather, Inc., 80 F.R.D. 131, 135 (S.D.N.Y. 1978).*

8 Plaintiffs allege that the people of the Commonwealth are being deprived of the value of their
9 land. However, Plaintiffs' demonstrated anger and spite appear to outweigh their desire to achieve the
10 best possible outcome for the public: a speedy trial or settlement. Torres' expletive-laden
11 correspondence with L&T's counsel shows him to be a obvious example of an unduly antagonistic
12 litigant.⁷ See L&T's Memorandum of Law in Support of Motion For Intervention, Exhibit D, filed
13 March 11, 1996 (“Memorandum in Support”); Motion in Further Support, filed March 13, 1996,
14 Attachment. Further, the ramifications of Torres' attitude are shown through his failure to prosecute
15 and refusal to enter into good faith settlement negotiations. Thus, even assuming that Torres has
16 “quite legitimate reasons for his antagonistic stance, it is not an appropriate attitude for a class
17 representative.” *Kammerman v. Ockap Corp., 112 F.R.D. 195 (S.D.N.Y. 1986).*

18 f) *Collusion.* Plaintiffs rely upon *Point Pleasant Canoe Rental v. Tinicum TP., 110*
19 *F.R.D. 166 (E.D. Pa. 1986)* for the principle that intervention is permitted only upon a finding of
20 collusion. Plaintiffs' reliance is egregiously misplaced. The Court in *Point Pleasant Canoe Rental,*
21 *supra* stated that:

22 Representation is generally considered adequate if no collusion is shown between the
23 representative and the opposing party, *if the representative does not represent an*
24 *interest that is not adverse to the proposed intervenor, and if the representative has*
been diligent in prosecuting the litigation.

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26 ⁷ Torres' written communications are phrased in belligerent terms such as: “you are full of
27 horse sh*t”, “if our case goes to the Supreme Court, you are in deep sh*t”, and “go to h*ll Banes, Ma-Da
28 fokker [sic]”. See Motion in Support, Exhibit D.; Motion in Further Support, filed March 13, 1996,
Attachment.

1 *Point Pleasant Canoe Rental, supra* (emphasis added). Here, both exceptions exist. First, Plaintiffs'
2 interests are adverse to that of the Intervenor, based on their many breaches of duty. Second, that
3 Plaintiffs have failed to vigorously prosecute this claim. Thus, a determination of collusion is
4 unneeded to support the Court's holding that intervention is warranted.

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6 **B. Adequacy of Intervenor as Representatives**

7 To determine whether named plaintiffs will adequately represent the interests of absent
8 parties, courts generally require that: the representative parties, through their attorneys,
9 will vigorously prosecute the class claims, and; there is no conflict of interest between
10 the named plaintiffs and the other members of the proposed class.

11 *Hernandez v. United Fire Ins. Co.*, 79 F.R.D. 419, 425 (N.D. Ill. 1978); *Howard v. McLucas*, 87
12 F.R.D. 704 (1980). Another factor to be considered is the probability that the case is collusive. *Amos*
13 *v. Board of Directors of City of Milwaukee*, 408 F.Supp. 765 (E.D. Wis. 1976).

14 **1. Competency.** The instant case is founded upon a basic legal principal, to wit a breach
15 of a fiduciary duty. The claim involves the evaluation of: the lease; the practices utilized in deciding
16 to enter into the lease; and the fair market value of the land, as it reflects upon those practices. This
17 is not complex. It does not require specialization. It does require sound skills as a general
18 practitioner, skills which the Intervenor's counsel, R. Darrin Class, associated with the Offices of
19 David Wiseman, has been shown to possess.

20 **2. Conflict/Collusion.** Intervenor aver that they have no relationship with any of the
21 defendants that could conflict with the interests of the absent class members. *See* R.D. Class
22 Testimony, March 18, 1996 Hearing. Conversely, Plaintiffs maintain that L&T's support of the
23 Motion to Intervene establishes that the Intervenor or their counsel are in collusion with the
24 defendants.

25 The Court finds Plaintiffs' claims of collusion between L&T and the Intervenor speculative
26 and implausible. Significantly, L&T filed their Motion to Appoint Substitute Counsel on February
27 5, 1996, nearly one month prior to the filing of the Motion to Intervene. Thus, L&T's position does
28 not appear to be linked to the Intervenor. Moreover, L&T conditioned its support of the Motion to

1 Intervene upon a reciprocal limitation of discovery, explaining that its willingness to forego extensive
2 discovery is based upon the necessity of promptly resolving this matter. In light of the circumstances
3 of this case, this is a credible explanation. Therefore, the Court finds no evidence of collusion
4 between the Intervenors or their counsel and the Defendants. Finally, the Court notes that there is
5 precedent for allowing a defendant to allege that a plaintiff is not an adequate representative of the
6 class. *Kline v. Wolf*, 88 F.R.D. 696, 699 (S.D.N.Y. 1981).

7 **3. Case and Controversy.** Plaintiffs argue that the proposed intervention would eliminate
8 any case or controversy. Plaintiffs contend that Defendants and Intervenors are only nominal
9 opponents because they seek the same goal.

10 The pleadings show otherwise. Intervenors maintain that the people's interest in public land
11 has been given away at less than its fair market value. See Proposed Complaint, filed March 1, 1996
12 ("Proposed Complaint"). Intervenors allege that the Government defendants breached their fiduciary
13 duty to the people of the Commonwealth by failing to: elicit opposing bids; evaluate the terms of the
14 lease; and evaluate the best use of the property. See Proposed Complaint. Defendants denied similar
15 allegations of a breach of duty made by Plaintiffs. See Defendants Government's Answer, filed June
16 7, 1995; L&T's Answer, filed Nov. 21, 1995; L&T's Motion to Dismiss or in the Alternative for
17 Summary Judgment, filed June 7, 1995). Accordingly, it is clear to the Court that Intervenors' and
18 Defendants' positions are opposed.⁸

19 It is undoubted that the Intervenors interests are being impaired and that intervention is
20 warranted. Nonetheless, the Court has considered ordering intervention without substitution and
21 appointing the Intervenors' counsel as attorney for the all plaintiffs. It has determined, however, that
22 this would be unworkable. Plaintiffs' unwillingness to seek new counsel on their own initiative and
23 their opposition to the Motion to Appoint, strongly suggests that they would reject court appointed
24

25 ⁸ It goes without saying that Intervenor Nicolas C. Sablan's comment that he believes this
26 matter could be settled (*see*, The Marianas Variety, Letter to the Editor section, March 8, 1996; The
27 Tribune, Letter to the Editor section, March 8, 1996), does not mean that his interests coincide with
28 L&T's. Plaintiffs cite, and the Court is unaware of, no case concluding that openness to engaging in
settlement discussion destroys a triable claim.

1 assistance, or utilize such counsel to perpetuate the conflicts set forth above. Therefore substitution
2 is necessary.

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4 **IV. CONCLUSION**

5 It is undoubted that the Intervenor's interests are being impaired and that intervention
6 is warranted. Nonetheless, the Court has considered ordering intervention, without substitution, and
7 appointing the Intervenor's counsel as attorney for all plaintiffs. It has determined, however, that this
8 would be unworkable. Plaintiffs' unwillingness to seek new counsel on their own initiative and their
9 opposition to the Motion to Appoint, strongly suggests that they would reject court appointed
10 assistance, or utilize such counsel to perpetuate the conflicts set forth above. Therefore substitution
11 is necessary.

12 For the foregoing reasons, the Court GRANTS Alex C. Tudela's, and Nicolas C. Sablan's
13 Motion to Intervene and to be Designated Class Representatives. Alex C. Tudela, and Nicolas C.
14 Sablan are hereby authorized to prosecute this case based upon the Amended Complaint, filed May
15 3, 1995. Alex C. Tudela, and Nicolas C. Sablan are hereby given leave to amend the Amended
16 Complaint to reflect their substitution as plaintiffs and as class representatives.⁹

17 SO ORDERED, this 29th day of March, 1996.

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21 EDWARD MANIBUSAN, Associate Judge

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26 ⁹ The Court may condition intervention to achieve the efficient conduct of the proceedings.
27 Com.R.Civ.Pro. 24 (a) Advisory Committee Note. The Court deems it necessary and just to confine this
28 action to the allegations pled in the Amended Complaint.