COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



COMMONWEALTH REGISTER

VOLUME 43 NUMBER 11 NOVBER 28, 2021

COMMONWEALTH REGISTER

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NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514, Saipan, MP 96950-0514 Email: nmhc@nmhc.gov.mp

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PUBLIC NOTICE

EMERGENCY AMENDMENTS TO PROCUREMENT REGULATIONS FOR THE NORTHERN MARIANAS HOUSING CORPORATION

EMERGENCY ADOPTION AND IMMEDIATE EFFECT: The Northern Marianas Housing Corporation (NMHC) finds that:

- (1) the attached Amendments to its Procurement Regulations for the Northern Marianas Housing Corporation (NMHC), shall be adopted immediately on an emergency basis because the public interest so requires, for the reasons stated below. 1 CMC § 9104(b), (c) and I CMC § 9105(b)(2)); and
- (2) the same proposed Amendments to its Procurement Regulations shall be adopted, after a proper notice and comment period, as permanent regulations pursuant to the Administrative Procedure Act, 1 CMC § 9104(a).

AUTHORITY: These proposed regulations are promulgated under the authority of the Board of Directors, through its Chairperson, to promulgate rules and regulations pursuant to 2 CMC § 4433(t).

The Administrative Procedure Act provides that an agency may adopt an emergency regulation upon fewer than 30 days' notice if it states its reasons in writing:

- (1) If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than 30 days' notice, and states in writing its reasons for that finding, it may, with the concurrence of the Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulation may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsections (a)(1) and (a)(2) of this section is not precluded.
- (2) No regulation adopted is valid unless adopted in substantial compliance with this section.

1 CMC § 9104(b), (c).

THE TERMS AND SUBSTANCE: The Amendments to the Procurement Rules and Regulations affect the regulations relating to Small Purchases (NMIAC § 100-60-220(c)) and

Construction Procurement – Contract Performance and Payment Bonds (NMIAC § 100-60-301 (c)).

THE SUBJECTS AND ISSUES INVOLVED: The Amendments modify the regulations set forth for Small Purchases and Construction procurement.

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The Northern Marianas Housing Corporation "NMHC" has followed the procedures of 1 CMC § 9104(b) to adopt these Proposed Regulations on an emergency basis for 120 days.

REASONS FOR EMERGENCY ADOPTION: The Northern Marianas Housing Corporation (NMHC) finds that the public interest requires adoption of these Amendments to the Procurement Regulations on an emergency basis, for the following reasons:

- 1. NMHC must be able to use a modified Small Purchase and Construction Procurement procedures in a more efficient manner due to the time constraints of the Community Development Block Grant-Disaster Relief funding programs. Over \$123 million has been allocated to the Housing Program alone and there are time constraints on using the money. In order to expend this funding in the next five (5) years, a more efficient procurement process must be established while at the same time, the federal interest of the grantor agency is protected. It is in the public interest to create this more efficient process immediately to avoid losing any funds. To that end
 - a. With the Amendments, NMHC procurement regulations will include federal prevailing Simplified Acquisition Threshold (SAT) and Simplified Acquisition Procedures (SAP) as authorized by 2 CFR 200.88;
 - b. By including SAT and SAP, and aligning the affected regulations with federal and CNMI procurement regulations, the Amendments will facilitate and speed up public infrastructure and housing construction projects funded by Community Development Block Grant Disaster Recovery (CDBG-DR) funds, other federal funds, or NMHC funds; and
 - c. The Amendments will ensure procurement regulatory uniformity and conformity with HUD requirements by partner government entities receiving CDBG-DR funds as local match and that may be utilizing NMHC and CNMI procurement regulations.

DIRECTIONS FOR FILING AND PUBLICATION: The Amendments to NMHC's Procurement Regulations shall be published in the Commonwealth Register in the section/s on emergency and proposed regulations (see 1 CMC § 9102(a)(1)) and posted in convenient places in the Civic Center and in local government offices in each senatorial district. (1 CMC § 9104(a)(1))

The Northern Marianas Housing Corporation (NMHC) shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them (1 CMC 9105(b)(2)).

IMMEDIATE EFFECT: These emergency rules and regulations become effective immediately upon filing with the Commonwealth Register and delivery to the Governor. (1 CMC § 9105(b)(2)) The Northern Marianas Housing Corporation (NMHC) has found that this effective

date is required by the public interest or is necessary because of imminent peril to the public health, safety, or welfarc. (1d.)

TO PROVIDE COMMENTS: No comments are required for these emergency rules and regulations. However, the related Notice of Proposed Amendments to the Procurement Regulations will specify comment procedures. Please see the notice regarding these emergency Amendments to the Procurement Regulations being presented as proposed regulations, in the November 2021, Commonwealth Register.

The attached emergency regulations were approved by the Northern Marianas Housing Corporation (NMHC) on October 15, 2021.

Submitted by:

Eric Reves

Acting Chairman

NMHC Board of Directors

Received by:

Mathilda A. Rosario

Special Assistant for Administration

Concurred by:

Governor

2 4 NOV 2021

Filed and

Recorded by:

ESTHER R.M. San Nicolas

Commonwealth Registrar

11.28.2021 Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), the proposed Amendments to the Procurement Regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (I CMC § 2153(f) (publication of rules and regulations)).

day of November, 2021.

EDWARD MANIBUSAN

Attorney General

Proposed Amendments to NMIAC Title 100 Northern Marianas Housing Corporation Procurement Regulations Subchapter 100-60 Sections 100-60-220(c) and 100-60-301(c)

Regulation	Current Language	Proposed Amendment #1 – Repeal of the current § 100-60-220(c) and replaced with the language below:
§ 100-60-220 (c)	(c) Bidding is not required but is encouraged for procurement over \$3,000.00 and under \$50,000.00. The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at \$3,000 to \$50,000. Any price quotations obtained must be written, documented, and submitted for the record.	(c) Bidding is not required but is encouraged for procurement valued at \$250,000.00 or below the <i>Prevailing Simplified Acquisition Threshold set forth in 2 CFR § 200.88</i> , which is periodically updated based on inflation. (1) Simplified Acquisition Threshold (SAT). The simplified acquisition threshold authorizes purchase of goods, services, or property using small purchase procurement method not to exceed the prevailing SAT threshold (\$250,000). (2) Simplified Acquisition Procedures. (i) The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at no more than the prevailing SAT (\$250,000). Any price quotations obtained must be written, documented, and submitted for the record. (ii) The official with expenditure authority shall document all informal solicitation of bids/prices obtained through Request for Quotations (RFQs) and solicitation information shall be uniform and consistent for all vendors. (iii) The official with expenditure authority shall perform and document cost/price reasonableness. (iv) The official with expenditure authority shall ensure that required and applicable federal contracting language, e.g., Davis Bacon and Related Acts, is in the contract.

)	•)
COMI			(v) The prevailing SAT includes modifications, e.g., change orders, that increase total cost.
MONWEAL	Regulation	Current Language	Proposed Amendment #2 – Repeal of the current language of NMIAC § 100-60-301(c) and replaced with the language below:
COMMONWEALTH REGISTER VOLUME 43 NUMBER 11 NOVEMBER 28, 2021 PAGE 047886	§ 100-60-301 (c)	(c) Contract Performance and Payment Bonds. (1) When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the NMHC and shall become binding on the parties upon the execution of the contract: (i) A performance bond satisfactory to the NMHC pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the NMHC, in an amount equal to one hundred percent (100%) of the price specified in the contract; and (ii) A payment bond satisfactory to the NMHC pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the NMHC, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract. (2) Acceptability of payment and performance bonds. The Procurement Officer shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation. Prior to the execution of the contract, the Procurement Officer shall require the selected contractor to submit: (i) A current license from the bonding company showing that it has authority to issue bonds, and (ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding	(c) For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, HUD may accept the bonding policy and requirements of NMHC provided that HUD has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows: (1) A bid guarantee from each bidder equivalent to 5 percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. (2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. (3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. (4) The Procurement Officer shall ensure that the bonding company's pledged assets are sufficient to cover the bond
7886		commitments on other bond obligations) exceed the penal amount of each bond.	obligation. Prior to the execution of the contract, the

(3) A contractor submitting an unacceptable payment or performance bond may be permitted a reasonable time, as determined by the Procurement Officer, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the Procurement Officer, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the Procurement Officer shall confirm the acceptability of the bonding company from other government agencies, such as the Insurance Office under the Department of Commerce.

Procurement Officer shall require the selected contractor to submit:

- (i) A current license from the bonding company showing that it has authority to issue bonds, and
- (ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of each bond.



Commonwealth Utilities Corporation

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CUC is an Equal Opportunity Provider and Employer.



PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF THE COMMONWEALTH UTILITIES CORPORATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED AMENDMENTS TO THE PROCUREMENT REGULATIONS OF THE COMMONWEALTH UTILITIES CORPORATION Volume 43, Number 09, pp 047636-047649, of September 28, 2021

Amendments to the Commonwealth Utilities Corporation's Procurement Regulations

ACTION TO ADOPT PROPOSED REGULATIONS: Pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a), the Commonwealth Utilities Corporation ("CUC") HEREBY ADOPTS AS PERMANENT the Proposed Amendments to CUC's Procurement Regulations which were published in the Commonwealth Register at the above-referenced pages. CUC announced that it intended to adopt them as permanent, and now does so.

I also certify by signature below that as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Amendments to CUC's Procurement Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The proposed regulations were published as Volume 43, Number 09, pp 047636-047649, of September 28, 2021 of the Commonwealth Register.

COMMENTS, MODIFICATION, AND AGENCY CONCISE STATEMENT, IF ANY: During the 30-day comment period, the CUC received no comments regarding the proposed regulations as referenced above. No individual requested a concise statement of the principal reasons for or against the adoption of the proposed regulations.

AUTHORITY: The proposed regulations and amendments have been fully reviewed by the CUC Board of Directors, which exercises all powers vested in the Commonwealth Utilities Corporation. During the Board of Director's meeting held on September 2, 2021, the Board of Directors approved the proposed amendments to CUC's Procurement Regulations for publication in the Commonwealth Register for notice and comment pursuant to the Administrative Procedure Act and for approval by the Attorney General pursuant to 1 CMC § 2153(e). The Commonwealth Utilities Corporation has the authority to promulgate these regulations pursuant to 4 CMC §§ 8122 and 8123.

EFFECTIVE DATE: Pursuant to the Administrative Procedures Act, 1 CMC § 9105(b), these adopted regulations are effective 10 days after compliance with the Act, 1 CMC §§ 9102, and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

ATTORNEY GENERAL APPROVAL FOR NON-MODIFIED REGULATIONS: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law.). As such, further approval is not required.

Certified and ordered by:

GARY P. CAMACHO

Executive Director

Commonwealth Utilities Corporation

Filed and recorded by:

ESTHER R.M. SAN NICOLAS

Commonwealth Registrar

11.15.2021

Date ///12/2004

Date



Commonwealth Healthcare Corporation

Commonwealth of the Northern Mariana Islands
1 Lower Navy Hill Road Navy Hill, Saipan, MP 96950



PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF RULES AND REGULATIONS OF THE COMMONWEALTH HEALTHCARE CORPORATION

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED RULES AND REGULATIONS
Volume 43, Number 10, pp. 0477018-0477026, of October 28, 2021

AMENDMENTS TO THE CHCC CHARGEMASTER FOR VARIOUS NEW SERVICES

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, COMMONWEALTH HEALTHCARE CORPORATION ("CHCC"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act,1 CMC § 9104(a). The CHCC announced that it intended to adopt them as permanent, and now does so. (Id.) A true copy is attached. I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations,

and that they are being adopted as published.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

AUTHORITY: The Corporation is empowered by the Legislature to adopt these rules and regulations pursuant to 3 CMC Section 2826(c).

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the Corporation has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the Corporation, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a

P.O. Box 500409 CK, Saipan, MP 96950 Telephone: (670) 236-8201/2 FAX: (670) 233-8756 concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e)

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 22 day of 100 member 1, 2021 at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

ESTHER L. MUNA

Chief Executive Officer, CHCC

EDWARD DELEON GUERRERO Chairman, CHCC Board of Trustees 10. 22, 2021

Date

Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the $\frac{13}{2}$ day of $\frac{1}{2}$, 2021.

EDWARD MANIBUSAN

Attorney General

Filed and Recorded by:

ESTHER M. SAN NICOLAS

Commonwealth Registrar

11.23.20

Date



Commonwealth of the Northern Mariana Islands Department of Finance

David DLG Atalig, Secretary of Finance P.O. Box 5234, CHRB Dandan Commercial Center, Saipan, MP 96950 Tel: 664.1100

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF

The Department of Finance, Division of Revenue and Taxation

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED REGULATIONS Volume 43, Number 10, pp 0477027-0477087, of October 28, 2021

Regulations of the Department of Finance: Chapter 70-40.6 Revenue and Taxation

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Finance ("DOF"), HEREBY ADOPTS AS PERMANENT the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act,1 CMC § 9104(a). The DOF announced that it intended to adopt them as permanent, and now does so. (Id.) I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None

AUTHORITY: These regulations are promulgated under the authority set forth in the Commonwealth Code including, but not limited to, 1 CMC § 2553, 1 CMC § 2557, 1 CMC § 25201, 4 CMC § 1104, 4 CMC § 1402, 4 CMC § 1425 and 4 CMC § 1820.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC § 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with non-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 30th day of November, 2021, at Saipan, Commonwealth of the Northern Mariana Islands.

Mergaret Bertha C. Torres Acting Secretary of Finance	November 30,2021 Date
Filed and Recorded by: Sanualor	11.28.2021
Esther SN Neshitt	Date

Commonwealth Registrar

NORTHERN MARIANAS HOUSING CORPORATION



P.O. BOX 500514, Saipan, MP 96950-0514 Email: nmhc@nmhc.gov.mp Website: http://www.nmhcgov.net

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PUBLIC NOTICE OF PROPOSED ADOPTION OF AMENDMENTS TO PROCUREMENT REGULATIONS FOR THE NORTHERN MARIANAS HOUSING CORPORATION PROCUREMENT REGULATIONS

Notice of Intended Action: The Board of Directors of the Northern Marianas Housing Corporation intends to adopt the following amendments to NMHC's Procurement Regulations pursuant to the Administrative Procedure Act, 1 CMC § 9104(a). If adopted, these Amendments to the Regulations will become effective ten (10) calendar days after publication of a Notice of Adoption in the Commonwealth Register after compliance with 1 CMC §§ 9102, 9104(a), and 9105(b).

Authority: The proposed Amendments are promulgated under the authority of the Board of Directors, through its Chairperson, to promulgate rules and regulations pursuant to 2 CMC § 4433(t).

Terms and Substance: The proposed Amendments to the Procurement Rules and Regulations affect the regulations relating to Small Purchases and Construction Procurement.

Citation of Related and/or Affected Statutes, Rules and Regulations. Amendments were formulated to amend NMHC's Procurement Regulations, namely, NMIAC §§ 100-60-220 (c) (Small Purchases) and 100-60-301(c) (Construction Procurement - Contract Performance and Payment Bonds).

Directions for Filing and Publication: These proposed Amendments to the Procurement Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district; the Public Notice of Proposed Adoption shall be both in English and in the principal vernacular (1 CMC § 9104(a)(1)).

Comments: Interested parties may submit written comments on the proposed amendments to Jesse S. Palacios, Corporate Director, NMHC, to the following address, fax or email address, with the subject line "Proposed Amendments to the NMHC Procurement Regulations:"

> NORTHERN MARIANAS HOUSING CORPORATION PO Box 500514 Saipan, MP 96950 Fax: 234-9021

> > Email address: jspalacios@nmhcgov.net

Comments, data, views, or arguments are due within thirty (30) calendar days from the date of publication of this notice. 1 CMC § 9104(a)(2). If you have any questions, you may reach NMHC at telephone nos. 234-6866/234-9447, 234-7689.

The attached proposed Amendments to the Procurement Regulations were approved by the Northern Marianas Housing Corporation (NMHC) on October 15, 2021.

Submitted by:

Eric Reves

Acting Chairman

NMHC Board of Directors

// 22-21 Date

Received by:

Mathilda A. Rosario

Special Assistant for Administration

Concurred by:

Ralph DLG. Torres

Governor

2 4 NOV 2021

Filed and

Recorded by:

Esther R.M. San Nicolas

Commonwealth Registrar

11.28.2021

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the proposed Amendments to the Procurement Regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

day of November, 2021.

EDWARD MANIBUSAN

Attorney General

CONTO

NORTHERN MARIANAS HOUSING CORPORATION

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NUTISIAN PUPBLIKU

I MANMAPROPRONI NA REGULASION PARA HU MA ADÅPTA I TINILAIKAN I REGULASION PROCUREMENT SIHA GI NORTHERN MARIANAS HOUSING CORPORATION

NOTISIA I MA'INTENSION NA AKSION: I Kuetpun Direktot siha gi Northern Marianas Housing Corporation maproponi para hu ma adåpta i tinattiyi na tinilaikan i NMHC Procurement Regulations sigun para i Åktun Administrative Procedure, I CMC § 9104(a). Kumu ma'adåpta, esti na regulasion siha para u ifektibu gi hålum dies (10) dihas ni mafetcha dispues di pupblikasion i Nutisian i Adåptasion gi hålum i Rehistran Commonwealth dispues di compliance yan i CMC §§ 9102 yan 9104 (a), yan 9105(b).

ÅTURIDÅT: Esti na mapropoponi na tinilaika manmacho'gui gi påpa' i aturidåt i Kuepun Direktot siha, ginin iyon-ñiha Chairperson, para u macho'gui i areklamentu yan regulasion siha sigun para i 2 CMC § 4433 (i).

I TEMA YAN SUSTÅNSIAN I PALÅBRA SIHA: Esti i maproponi na tinilaika gi regulasion procurement para hu afekta i regulasion Small Purchases yan Construction Procurement.

SITASION I ASOSIÅT YAN/PAT I MANINA FEKTA NA STATUTES, AREKLAMENTU YAN REGULASION SIHA: I maproponi na regulasion siha para hu amenda i régulasion procurement gi NMIAC §§ 100-6-220 (c) (Small Purchases) yan 100-60-301(c) (Construction Procurement - Contract Performance and Payment Bonds).

DIREKSION SIHA PARA U MAPO'LU YAN PUPBLIKASION: Esti i maproponi na amendan regulasion debi na u mapupblika gi hålum i Rehistran Commonwealth gi hålum seksion i maproponi yan nuebu na ma'adåpta na regulasion siha (1 CMC § 9102(a)(1) yan u mapega gi hålum i mangkumbinienti na lugåt gi hålum i Civic Center yan i hålum ufisinan gubietnamentu siha gi kada distritun senadot; i nutisian publiku pot i propositun adåptasion debi na gi finu' English yan i dos na lingguåhi Chamorro yan Refaluwasch. (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI UPIÑON SIHA: I intirisao na petsona siha siña muna'hålum tinigi' upiñon siha put i manmaproponi na amendasion siha guatu gi as Jesse S. Palacios, Corporate Director, NMHC gi sigienti na address, fax, pat email address, yan i råyan suhetu "Proposed Amendments to the NMHC Regulations."

NORTHERN MARIANAS HOUSING CORPORATION

PO Box 500514 Saipan, MP 96950 Fax: 234-9021

Email address: jspalacios@nmhcgov.net

I upiñon, infotmasion yan kuntestasion siha debi na u fanhålum gi hålum trenta (30) dihas ginin i fetchan pupblikasion esti na nutisia. Kumu guaha maseha håfa na kuestion-mu, siña un hågan i NMHC gi numerun tilifon gi 234-6866/234-9447, 234-7689.

Esti na mapropoponi na amendasion para i Procurement Regulations ma aprueba ni Northern Marianas Housing Corporation (NMHC) gi Octubre 15, 2021.

Nina'halum as:	Eric Reyes Acting-Kabesiyu Kuetpun Mandirektot NMHC	Fetcha:
Rinisibi as:	Mathilda A. Rosario Ispisiåt Na Ayudånti Para I Atministrasion	Fetcha: 1123 21
Konfotme as:	Ralph DLG. Torres Governor	Fetcha: 2 4 NOV 202
Pine'lu yan Ninota as:	Esther R.M. San Nicolas Rehistran Commonwealth	Fetcha: 11-28-2021

I Abugådu Heneråt CNMI ha' sitifikåo, sigun para i 1 CMC § 2153(e) yan 1 CMC § 9104(a)(3), yan ha' ribisa yan aprueba esti siha na propositun amedasion i Procurement Regulations kumu para u fotma yan ligåt na sufisienti pues para hu ma publika (1 CMC § 2153(f) (publikasion areklamento yan regulasion)).

EDWARD MANIBUSAN

Abugådu Heneråt

Fetcha: 1/12/2021

NORTHERN MARIANAS HOUSING CORPORATION



P.O. BOX 500514, Saipan, MP 96950-0514 Email: nmhc@nmhc.gov.mp Website: http://www.nmhcgov.net

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ARONGORONGOL TOULAP REEL POMWOL ADOPTION REEL IKKAAL LLIIWEL LLÒL MWÒGHÚTÚGHÚTÚÚL PROCUREMENT NGALI NORTHERN MARIANAS HOUSING CORPORATION MWÒGHÚTÚGHÚTÚÚL PROCUREMENT

Arongorong reel Mangemangil Mwoghut: Board of Directors sangi Northern Marianas Housing Corporation e màngily cbwc adopt ikkaal Iliiwel ngàli NMHC's Mwòghùtùghùtùl Procurement sàngi Administrative Procurement Act, 1 CMC § 9104(a) ngare a adopt lò lliiwel kkaal me mwòghùtùghùtùl nge ebwe bwungulò lòll seigh(10) ral mwiril arongorongol iyeel adoption, mellol Commonwealth Register mwiril anguungu fengal mc 1 CMC § § 9102, 9104(a) bwal 9105(b).

Bwangil: Rccl pomwol Lliiwel a akkatèèlò faal bwangil Board of Directors, mercel Chairperson, rcel cbwe akkatèèlò afal me mwòghùtùghùtùl aileewal mereel 2 CMC § 4433(t).

Kkapasal me Aweeweel: Reel pomwol Lliiwel kkaal reel afal me mwòghùtùghùtùl Procurement reel ebwe affect ikkaal mwòghùtùghùt kka eghil ngàli Small Purchase bwal Construction Procurement.

Citation reel ikka eghil me/ngare Affected Statutes, Afal me Mwòghùtùghùtùl: Reel pomwol lliwel kkaal a ammwalaalò reel ebwe lliiwel NMHC's Mwòghùtùl Procurement, maas ngàli, NMIAC § § 100-60-220(c) (Small Purchases) bwal 110-60-30(c) (Construction Procurement-Contract Performance me Payment Bonds).

Afal reel Ammwelil me Akkatèèwowul: Reel ikkaal pomwol Lliiwel me Mwòghùtùghùtùl Procurement a akkatèèlong Commonwealth Register lòll tàlil pomwol me ffèètààl yaal adopted ikkaal mwòghùtùghùt (1 CMC § 9102(a) (1) me ebwe appaschetà llòl ghal ikkeey bwuley civic center bwal government offices llòl ghal ikkeey senatorial district; Arongorongol Toulap reel Pomwol Adoption nge ebwe sàssàl llòl kkapasal English bwal llòl Mwaleyasch (1 CMC § 9104(a)(1).

Kkapas: Schòò kka re tipeli rebwe ischilong yaar kkapas reel ikkaal pomwol lliiwel ngali Jesse S. Palacios Corporate Director, NMHC, reel ikkeey address, fax ngare eew email, ebwe lo subject line ebwe "Pomwol Lliiwel reel NMHC Mwoghùtùghùtùl Procurement"

> NORTHERN MARIANAS HOUSING CORPORATION PO Box 500514 Saipan, MP 96950 Fax: 234-9021

> > Email address: jspalacios@nmhcgov.net

Kkapas, data, views, ngare eew wosommwong ebwe isiisilong llol eliigh(30) ral sangi bweletaal yaal arongowow iyeel arongorongol toulap. 1 CMC § 9104(a)(2). Ngare eghal yoor yòòmw aiyegh, emmwel ubwe ffaingi NMHC reel telephone kkaal. 234-6866 / 234-9447, 234-7689.

Ikkaal pomwol Lliiwel reel Mwòghùtùghùtùl Procurement a lleghelo mereel Northern Marianas Housing Corporation (NMHC) wòòl October 15, 2021.

Isaliyalong:

Eric Reyes

Acting Chairman

NMHC Board-il Directors

11-22-21 Rààl

Bwugiyal:

Mathilda A. Rosario

Special Assistant ngàli Administration

Alùghùlùgh:

Ammwelil:

Ralph DLG. Torres

Governor

Esther R.M. San Nicolas

Commonwealth Registrar

2 4 NOV 2021

Rààl

11.28.2021 Rààl

Ailecwal I CMC § 2153(e) me I CMC § 9104(a)(3) ikkaal pomwol Lliiwel reel Mwòghùtùghùtùl Procurement a takkal amweril me llèghèlè reel ebwe afiisi me legal sufficiency iye toowow mercel CNMI Attorney General me ebwc published (1 CMC § 2153(f) (akkatèèlòòl afal me mwoghtughutul).

llòl November, 2021.

EDWARD MANIBUSAN

Soulemelemil Allègh Lapalap

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Proposed Amendments to NMIAC Title 100 Northern Marianas Housing Corporation Procurement Regulations Subchapter 100-60 Sections 100-60-220(c) and 100-60-301(c)

ſ	Regulation	Current Language	Proposed Amendment #1 – Repeal of the current § 100-60-
			220(c) and replaced with the language below:
	§ 100-60-220 (c)	(c) Bidding is not required but is encouraged for procurement over \$3,000.00 and under \$50,000.00. The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at \$3,000 to \$50,000. Any price quotations obtained must be written, documented, and submitted for the record.	(c) Bidding is not required but is encouraged for procurement
			(2) Simplified Acquisition Procedures.
			(i) The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at no more than the prevailing SAT (\$250,000). Any price quotations obtained must be written, documented, and submitted for the record.
			(ii) The official with expenditure authority shall document all informal solicitation of bids/prices obtained through Request for Quotations (RFQs) and solicitation information shall be uniform and consistent for all vendors.
		·	(iii) The official with expenditure authority shall perform and document cost/price reasonableness.
	•		(iv) The official with expenditure authority shall ensure that required and applicable federal contracting language, e.g., Davis Bacon and Related Acts, is in the contract.

)	
		(v) The prevailing SAT includes modifications, e.g., change orders, that increase total cost.
Regulation	Current Language	Proposed Amendment #2 – Repeal of the current language of NMIAC § 100-60-301(c) and replaced with the language below:
§ 100-60-301 (c)	(c) Contract Performance and Payment Bonds. (1) When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the NMHC and shall become binding on the parties upon the execution of the contract: (i) A performance bond satisfactory to the NMHC pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the NMHC, in an amount equal to one hundred percent (100%) of the price specified in the contract; and (ii) A payment bond satisfactory to the NMHC pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the NMHC, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract. (2) Acceptability of payment and performance bonds. The Procurement Officer shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation. Prior to the execution of the contract, the Procurement Officer shall require the selected contractor to submit: (i) A current license from the bonding company showing that it has authority to issue bonds, and (ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of each bond.	(c) For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, HUD may accept the bonding policy and requirements of NMHC provided that HUD has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows: (1) A bid guarantee from each bidder equivalent to 5 percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. (2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. (3) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. (4) The Procurement Officer shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation. Prior to the execution of the contract, the

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(3) A contractor submitting an unacceptable payment or performance bond may be permitted a reasonable time, as determined by the Procurement Officer, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the Procurement Officer, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the Procurement Officer shall confirm the acceptability of the bonding company from other government agencies, such as the Insurance Office under the Department of Commerce.

Procurement Officer shall require the selected contractor to submit:

- (i) A current license from the bonding company showing that it has authority to issue bonds, and
- (ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of each bond.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) Labor Case No. 21-041
Arnel A. Gruspe, Complainant, v.)) ADMINISTRATIVE DECISION). DISMISSING COMPLAINT FOR LACK) OF SUBJECT MATTER JURISDICTION) AND FAILURE TO STATE A CLAIM
Imperial Pacific International (CNMI), LLC, Respondent.)))

This matter came for an Order to Show Cause Hearing on October 26, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Arnel A. Gruspe ("Complainant") was present and self-represented. Respondent Imperial Pacific International (CNMI), LLC ("Respondent") was present and represented by Senior Vice President Tao Xing and Human Resource Director Redie Dela Cruz.

On July 15, 2021, Complainant filed a labor complaint for unpaid wages, unsafe working conditions, retaliation, and a violation for 20 CFR § 655.423 regarding employer obligations to foreign national workers. Pursuant to 3 CMC § 4947(a), "the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit." Based on the applicable law and available evidence, the undersigned finds dismissal appropriate.

First, with respect to the alleged violations of employer obligations under 20 CFR § 655.423, this office lacks subject matter jurisdiction. The CNMI Department of Labor's Administrative Hearing Office only has jurisdiction to hear labor violations of CNMI law and regulations. See 3 CMC § 4942; see also NMIAC § 80-20.1-450; see also 42 Com. Reg 044063 (Aug. 28, 2020). The employer obligations under 20 CFR 655.423 were promulgated and enforced by the US Department of Labor ("USDOL"). In order to pursue this claim, Complainant must seek relief with USDOL.

Second, with respect to Complainant's other claims, Complainant fails to state a claim within the six-month statute of limitations. Here, Complainant's Intake and Complaint form provide that: (1) Complainant is seeking damages occurring from October 1, 2019 to March 28, 2020; and (2) the last date he performed work was March 27, 2020. However, the complaint was not filed until July 15, 2021—well beyond the six-month statute of limitations. Further, there is no showing of good cause for filing late. For that reason, Complainant's claims are time-barred and must be dismissed.

After notice and opportunity to be heard, the undersigned finds that dismissal is appropriate. Accordingly, pursuant to 3 CMC § 4947, this complaint is hereby **DISMISSED**, with prejudice. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.²

So ordered this 26th day of October, 2021.

/s/

JACQUELINE A. NICOLAS Administrative Hearing Officer

¹ Pursuant to 3 CMC § 4962, "[n]o labor complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event." "If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice." NMIAC § 80-20.1-465(e). Emphasis added.

The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.



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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:) Labor Case No. 21-046
Chun Jee Wong,)
Complainant,) ADMINISTRATIVE DECISION DISMISSING COMPLAINT FOR
v.) FAILURE TO STATE A CLAIM
Plumeria International Corporation, Ltd.,)
Respondent.)

This matter came for an Order to Show Cause Hearing on November 10, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Chun Jee Wong ("Complainant") was present and self-represented. Respondent Plumeria International Corporation, Ltd. ("Respondent") was present and represented by Shun Lin Zeng and Attorney Samuel I. Mok. Also, interpreter Monique Kramer was present.

On August 12, 2021, Complainant filed the above-captioned labor case alleging unpaid wages for over time earned and a violation of the employment preference statute. Based on a review of the filings, the matter was scheduled for the present Order to Show Cause Hearing.¹

With respect to his claim for unpaid wages, Complainant's allegations are time-barred. Pursuant to 3 CMC § 4962, "[n]o labor complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event." "If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice." NMIAC § 80-20.1-465(e). Emphasis added. During the Order to Show Cause Hearing, Complainant confirmed that his claim was based on overtime worked sometime between 2018 to 2020. Complainant's last

¹ "The hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit." 3 CMC § 4947.

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day of work was on or around December 2020. However, Complainant did not file his labor complaint until August of 2021—approximately 2 months after the six-month statute of limitations. Considering that the claim is outside the statute of limitations, Complainant fails to state a claim upon which relief can be granted.

Further, with respect to his claim for a violation of the employment preference statute, Complainant misunderstands the applicable law. First, the employment preference law requires CNMI employers to give preferential employment opportunities to U.S. citizens, U.S. permanent residents, and CNMI permanent residents. 3 CMC §§ 4521 et. seq.; 2 see also NMIAC § 80-20.1-220.3 The employment preference law does not provide any protections or preference to Commonwealth Transitional Only Workers ("CW-1"). See 3 CMC §§ 4521 et. seq; see also NMIAC § 80-20.1-240(f).4 During the Order to Show Cause Hearing, Complainant confirmed that he was not a U.S. Citizen, CNMI permanent resident, or US permanent resident. Instead, Complainant stated he was a CW-1 worker at all times relevant to this claim. Considering that Complainant was a CW-1, he does not have standing to initiate a claim for employment preference. Additional allegations cannot cure this deficiency.

After notice and opportunity to be heard, the undersigned finds that Complainant fails to state a claim upon which relief can be granted and there is no merit to Complainant's allegations. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.⁵

So ordered this 10th day of November, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer

² "A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a) (emphasis added).

³ "Employers shall give qualified citizens, CNMI permanent residents, and U.S. permanent residents preference over foreign national worker, transitional worker, or other nonimmigration aliens."

⁴ "The employer shall layoff foreign national workers, transitional worker, and other nonimmigrant aliens before laying off citizens, CNMI permanent residents, and U.S. permanent residents"

⁵ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.



c)

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:) Labor Case No. 21-047
Chun Jee Wong,	
Complainant, v.) ADMINISTRATIVE DECISION) DISMISSING COMPLAINT FOR) FAILURE TO STATE A CLAIM
Ping Shun Corporation.,)
Respondent.)

This matter came for an Order to Show Cause Flearing on November 10, 2021 at approximately 9:30 a.m. at the Administrative Flearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Chun Jee Wong ("Complainant") was present and self-represented. Respondent Ping Shun Corporation ("Respondent") was present and represented by Shun Lin Zeng and Attorney Samuel I. Mok. Also, interpreter Monique Kramer was present.

On September 8, 2021, Complainant filed the above-captioned labor case alleging unpaid wages for over time earned and a violation of the employment preference statute. Based on a review of the filings, the matter was scheduled for the present Order to Show Cause Hearing.¹

With respect to his claim for unpaid wages, Complainant's allegations are time-barred. Pursuant to 3 CMC § 4962, "[n]o labor complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event." "If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice." NMIAC § 80-20.1-465(e). Emphasis added. During the Order to Show Cause Hearing, Complainant confirmed that his claim was based on overtime worked sometime between June 2019 to December 2020.

The hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit." 3 CMC § 4947.

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Complainant's last day of work was on or around December 2020. However, Complainant did not file his labor complaint until September of 2021—approximately 3 months after the six-month statute of limitations. Considering that the claim is outside the statute of limitations, Complainant fails to state a claim upon which relief can be granted.

Further, with respect to his claim for a violation of the employment preference statute, Complainant misunderstands the applicable law. First, the employment preference law requires CNMI employers to give preferential employment opportunities to U.S. citizens, U.S. permanent residents, and CNMI permanent residents. 3 CMC §§ 4521 et. seq.; ² see also NMIAC § 80-20.1-220.³ The employment preference law does not provide any protections or preference to Commonwealth Transitional Only Workers ("CW-1"). See 3 CMC §§ 4521 et. seq; see also NMIAC § 80-20.1-240(f).⁴ During the Order to Show Cause Hearing, Complainant confirmed that he was not a U.S. Citizen, CNMI permanent resident, or US permanent resident. Instead, Complainant stated he was a CW-1 worker at all times relevant to this claim. Considering that Complainant was a CW-1, he does not have standing to initiate a claim for employment preference. Additional allegations cannot cure this deficiency.

After notice and opportunity to be heard, the undersigned finds that Complainant fails to state a claim upon which relief can be granted and there is no merit to Complainant's allegations. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.⁵

So ordered this 10th day of November, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer

^{2.} "A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job." 3 CMC § 4528(a) (emphasis added).

³ "Employers shall give qualified citizens, CNMI permanent residents, and U.S. permanent residents preference over foreign national worker, transitional worker, or other nonimmigration aliens."

[&]quot;The employer shall layoff foreign national workers, transitional worker, and other nonimmigrant aliens before laying off citizens, CNMI permanent residents, and U.S. permanent residents "

⁵ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.





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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 21-0133
Matthew Berton Stuart,)
Appellant,)
v.) ADMINISTRATIVE ORDER
CNMI Department of Labor, Division of Employment Services-PUA,)
Appellee.)))

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on September 23, 2021 at 9:00 a.m. at the Administrative Hearing Office. Appellant Matthew Berton Stuart ("Appellant") appeared telephonically and was self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Acting PUA Supervisor Zachary Taitano and PUA Coordinator Jacqueline Takai. There were no other witnesses that provided testimony at the hearing. The following documents were admitted into evidence:

Exhibits:

- 1. Exhibit 1: Copy of the Appellant's Application Snapshot, filed December 9, 2020;
- 2. Exhibit 2: Copies of three Case Notes, dated April 5, 2021, June 30, 2021, and June 30, 2021;
- 3. Exhibit 3: Copy of Appellant's boarding passes with United Airlines for flights on April 5, 2020;
- Exhibit 4: Copy of Appellant's Affidavit Regarding Previous Employer, signed on March 26, 2021;
- 5. Exhibit 5: Copy of Department's Disqualifying Determination, dated June 30, 2021;

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- 6. Exhibit 6: Copy of Department's Disqualifying Determination (amended), dated September 20, 2021;
- 7. Exhibit 7: Copy of Appellant's Request for Appeal Form, filed July 1, 2021;
- 8. Exhibit 8: Copy of Appellant's Written Statement, filed on September 20, 2021;
- 9. Exhibit 9: Copy of the Notice of Hearing issued on July 1, 2021:
- 10. Exhibit 10: Copy of Email from the Department's Benefit Payment Control Unit dated September 22, 2021;
- 11. Exhibit 11: Copy of Appellant's Former Employer SMS Software, Inc.'s Certificate of Incorporation filed in the state of Delaware, dated March 1, 2018;

For the reasons stated below, the Department's Determination dated September 20, 2021, effective April 12, 2020 to May 15, 2021 is AFFIRMED. Claimant is not eligible for benefits for the period of April 12, 2020 to May 15, 2021.

II. **JURISDICTION**

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")1 and Federal Pandemic Unemployment Compensation ("FPUC").2 On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021. On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

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III. PROCEDURAL BACKGROUND & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs on December 9, 2020.⁵ Upon review of Appellant's application and supporting documents, the Department issued a Disqualifying Determination on June 30, 2021.⁶ On July 1, 2021, Appellant filed the present appeal⁷ and the matter was scheduled for a hearing.⁸ As stated in the Notice of Hearing, the issues on appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds should be returned.⁹

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

- 1. Appellant is a U.S. citizen.
- 2. Before relocating to the CNMI on April 5, 2020, Appellant resided in the state of California.
- Prior to COVID-19 pandemic, Appellant was employed as a Software Developer at SMS Software, Inc., a Delaware registered corporation located and based in the State of California. ("Appellant's Employer" or "SMS").
- SMS had very little business activities and opportunities and Appellant's work activities and hours as Software Developer at SMS were already significantly reduced prior to SMS closing;
- 5. Appellant's employer ceased operations and terminated Appellant's employment in March 2020 because business activities slowed, exacerbated by COVID-19 pandemic.¹¹
- 6. Appellant was never recalled by his employer after March 2020.
- 7. Appellant's employment was affected in the state of California where his employer is located and based in to transact and conduct its business activities.
- 8. Appellant has not applied for and/or received state or other federal unemployment benefits from California.

⁵ Exhibit 1.

⁶ Exhibit 5.

⁷ Exhibit 7.

⁸ Exhibit 9.

⁹ *Id*

¹⁰ See Exhibits 1, 4 and 11.

¹¹ See Exhibit 4.

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- 9. On or about April 5, 2020, Appellant relocated to Saipan, CNMI with his family.¹² Appellant decided to relocate to Saipan, CNMI based on promising but speculative discussions he had with an online group whose CNMI resident members discussed with the Appellant the prospects for software development businesses or similar businesses in the CNMI
- 10. At the time he relocated from California to the CNMI, Appellant was not scheduled to commence employment in the CNMI and he did not have any bona fide job offer or specific job prospects in the CNMI.
- 11. On June 17, 2020, the Department launched the PUA and FPUC programs.
- 12. On December 9, 2020, Appellant submitted an application¹³ for unemployment assistance under the PUA and FPUC programs.
- 13. In his application, ¹⁴ Appellant self-certified under penalty of perjury that:
 - a. Appellant is a Citizen of U.S. or U.S. Territory;
 - Appellant's employment was directly affected by COVID-19 when his place of employment closed as a direct result of the COVID-19 public health emergency;
 and
 - c. Appellant's employment was affected since April 15, 2020.¹⁵
- 14. The answers provided in Appellant's initial application were submitted under penalty of perjury. It is Appellant's responsibility to provide true, accurate, and complete answers. Moreover, it is Appellant's responsibility to be informed about the program by reading the PUA Benefit Rights Information Handbook and other official written material regarding PUA.
- 15. Appellant did not submit employment certifications, notices of termination, notices of separation, or other documentation to substantiate his claim that his employment is affected as a direct result of the specific COVID-19 qualifying reasons in the CNMI.

¹² See Exhibit 3.

¹³ Exhibit 1.

¹⁴ Id.

¹⁵ Exhibit 1.

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- 16. The Department investigated and reviewed Appellant's claim and self-certifications in his application. The adjudicator in this case contacted Appellant and asked him to provide documents to support his self-certifications. ¹⁶
- 17. On June 30, 2021, the Department issued a determination disqualifying Appellant from PUA and FPUC benefits from April 12, 2021 to May 15, 2021 because the Department found that Appellant was "residing in the United States when affected by Covid-19 pandemic on March 2020. The interruption of [Appellant's] employment did not satisfy [his] eligibility. Therefore, [Appellant is] not eligible for Pandemic Unemployment Assistance in the Northern Mariana Island. For the weeks indicated [], [Appellant was] off-island. Being off-island does not satisfy Eligibility Requirement #6 of the Benefits Rights Handbook (6. Be Physically and Mentally Able to Work)."17
- 18. On July 1, 2021, Appellant filed the present appeal and the matter was scheduled for an Administrative Hearing. 18
- 19. Upon filing the present Appeal, the Department reviewed Appellant's claims and, on September 20, 2021, the Department issued an amended determination disqualifying Appellant from PUA and FPUC benefits from April 12, 2020 to May 15, 2021 because the Department found that "Based on the documents [Appellant] had provided, [Appellant was] residing in California when [his] employment was interrupted before moving to Saipan, Commonwealth of the Northern Mariana Island on April 5, 2020. It was found that there was no interruption of [Appellant's] employment in the Commonwealth of the Northern Marianas Island, nor [was Appellant] ever tied to the CNMI Workforce. Therefore, [Appellant is] not eligible for the Pandemic Unemployment Assistance [] Program under the CNMI."
- 20. As discussed during the Administrative Hearing, Appellant is appealing the Department's Determination dated September 20, 2021 for the period of April 12, 2020 to May 15, 2021.

¹⁶ Exhibit 2.

¹⁷ See Exhibit 5.

¹⁸ Exhibit 7.

¹⁹ Exhibit 6.

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21. With respect to the overpayment issue, upon Appellant filing his present appeal, the Department conducted further review and confirmed with the Department's Benefit Payment Control Unit ("BPC") that no overpayment occurred in this case.²⁰ Appellant and the Department also confirmed during testimony under oath at the Administrative Hearing that Appellant has not received any payments for federal unemployment benefits. Therefore, there is no overpayment issue in this matter.

V. **CONCLUSIONS OF LAW**

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's employment was not affected as a direct result of COVID-19 in the CNMI.

In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;²¹ (2) self-certifies²² that the individual is unemployed, partially unemployed, or unable or unavailable to work²³ as a direct result²⁴ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides required documentation of employment/self-employment within the applicable period of time.²⁵

²⁰ Exhibit 10.

²¹ See UIPL 9-21, Attachment 1: Coordination of Unemployment Benefit Programs. This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.

²² The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of periury.

²³ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible for benefits. See HAR § 12-5-35.

²⁴ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

²⁵ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020. "Individuals who do not provide

- the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
- (3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
- (4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.²⁸

As a preliminary matter, the undersigned recognizes the impact of COVID-19 on employees, their families, and companies. Further, the undersigned recognizes the significance of Appellant deciding to relocate with his family to Saipan, CNMI. However, based on applicable law and evidence provided, Appellant is not a "covered" individual eligible for PUA benefits. As further discussed below, Appellant does not meet the eligibility criteria in federal law, federal guidance, and state law.

With respect to condition two, stated above, Appellant's employment was not affected as a direct result of COVID-19 in the CNMI. Considering that this program applies a combination of federal and state law to determine eligibility, a claimant must file for unemployment benefits in the state or territory where their employment was affected by the COVID-19 pandemic.²⁹ "The [] individual must file with the state [or territory] where he or she was working at the time of becoming unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3(A)(ii)(I) of the CARES Act."³⁰ "[A]n individual may not file a PUA claim with a state [or territory] which they did not work."³¹

²⁸ *Id*.

²⁹ See UIPL 16-20, Change 1 Attachment I, question 7.

³¹ UIPL 16-20, Change 6(4)(c). See also PUA Benefit Rights Handbook.

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Here, Appellant's employment was not affected in the CNMI because he was not employed or scheduled to begin employment in the CNMI. Instead, it appears that Appellant's employment was affected in California where his employer is located, transacts and conducts its business activities. Therefore, Appellant may not file a PUA claim with the CNMI. Appellant should have applied in the state that he worked at the time of becoming unemployed, partially unemployed, or unable or unavailable to work because of COVID-19 related reasons.

Appellant submitted a claim for PUA and FPUC benefits and self-certified, under penalty of perjury, that his employment was affected as a direct result of COVID-19 because his "place of employment is closed as a direct result of the COVID-19 public health emergency."³² However, based on the evidence and testimony provided, the closure of Appellant's place of employment occurred outside of the CNMI prior to his relocation to the CNMI, and was the result of circumstances and events that occurred outside of the CNMI and prior to Appellant's relocation to the CNMI. First, SMS is neither a CNMI business nor a foreign corporation licensed or authorized to do business in the CNMI. SMS also did not conduct business or perform services for any person or organization in the CNMI. Second, based on Appellant's signed affidavit and sworn testimony, Appellant's employer ceased operations and terminated Appellant's employment in March 2020.³³ After Appellant's employer closed and Appellant was terminated, Appellant relocated to Saipan, CNMI on or about April 5, 2020.34 Appellant also testified that Appellant's work activities as Software Developer was already significantly reduced and SMS had very little business activities and opportunities before Appellant made the decision to relocate to the CNMI. Therefore, based on the evidence and testimony provided, Appellant's unemployment occurred prior to his relocation to Saipan, outside of the CNMI, and due to circumstances outside of the CNMI.

With respect to condition 3, stated above, Appellant has failed to submit employment certifications, notices of termination or separation, or other documentation to substantiate his claim that his employment is affected as a direct result of the specific COVID-19 qualifying reasons in the CNMI. "Individuals who do not provide documents substantiating employment/self-employment (or planned employment/self-employment) within the required

³² Exhibit 1.

³³ See Exhibit 4.

³⁴ See Exhibit 3.

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timeframe . . . are not eligible for PUA."35 Therefore, failure to supply said documents, and any other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j). Simply, there is no showing of Appellant's employment was affected as a direct result of COVID-19 reason in the CNMI.

Moreover, Appellant's employment in the CNMI after his relocation was not affected as a "direct result" of any COVID-19 qualifying reason. Appellant's inability to find employment after his relocation to the CNMI is not a COVID-19 reason listed above. When questioned under oath as to whether he was scheduled to commence employment in the CNMI or whether he received a job offer in the CNMI, Appellant responded in the negative. Appellant also testified that he had no guaranteed projects or bona fide job offer of employment in the CNMI when he relocated to the CNMI on or about April 5, 2020.

Accordingly, based on the evidence and testimony provided, Appellant's employment was not affected by a COVID-19 qualifying reason in the CNMI. For that reason, Appellant is not eligible for unemployment benefits under the PUA and/or FPUC programs.

VI. **DECISION**

For the reasons stated above, it is ORDERED that:

- 1. The CNMI Department of Labor's Disqualifying Determination, dated September 20, 2021, is **AFFIRMED**; and
- 2. The Appellant is **NOT ELIGIBLE** to receive PUA and FPUC benefits for the period of April 12, 2020 to May 15, 2021.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI

³⁵ UIPL 16-20, Change No. 4, I-11.

Administrative Order PUA-21-0133 Page 11 of 11

Superior Court under the local Administrative Procedures Act. See 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this 19th day of November, 2021.

/s/

CATHERINE J. CACHERO

Pro Tem Administrative Hearing Officer

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 21-0157
Yuping Guo,)
Appellant,) ADMINISTRATIVE DECISION DISMISSING APPEAL PURSUANT TO
v.) PARTIES' REQUEST
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

Pursuant to Appellant's Request to Appeal, the matter was scheduled for an Administrative Hearing on January 25, 2022 at 9:00 a.m. On November 3, 2021, Appellant filed a written request to voluntarily withdraw the appeal. Further, on November 22, 2021 the Department filed a Motion to Dismiss confirming that the issues in dispute were resolved and that no overpayment occurred.

In consideration of above, the undersigned finds that the parties no longer contest the issues on appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for January 25, 2022 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

NUMBER 11

So ordered this **22nd** day of November, 2021.

JACQUELINE A. NICOLAS
Administrative Hearing Officer



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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 21-0166
Alfonso R. Dela Cru	ız,)
	Appellant,) ADMINISTRATIVE ORDER
	v.)
CNMI Department Division of Employ	of Labor, ment Services-PUA,)
	Appellee.))

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on October 19, 2021 at 9:00 a.m. and October 20, 2021 at 1:30 p.m. at the Administrative Hearing Office. Appellant Alfonso R. Dela Cruz ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Coordinator Jessica Ichihara and Labor Certification Worker Dennis Cabrera. There were no other witnesses that provided testimony at the Administrative Hearing.

The following documents were admitted into evidence:

Exhibits:

- 1. Exhibit 1: Copy of the Appellant's Manual Application Snapshot, received by the Department on June 1, 2021 and inputted by the Department on July 20, 2021;
- Exhibit 2: Copies of Manual Weekly Certification, dated February 2, 2020 to February 8, 2020 and August 2, 2020 to August 8, 2020;
- Exhibit 3: Copy of Department's Disqualifying Determination, dated September 30, 2021, effective February 2, 2020 to December 26, 2020;
- 4. Exhibit 4: Copy of Department's Disqualifying Determination (amended), dated October 14, 2021, effective February 2, 2020 to August 8, 2020;

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- 5. Exhibit 5: Copy of Email Communication from the Department's Benefit Payment Control Unit, dated October 14, 2021;
- 6. Exhibit 6: Copy of Appellant's Request for Appeal; filed on October 6, 2021;
- 7. Exhibit 7: Copy of Notice of Hearing, issued on October 6, 2021;
- 8. Exhibit 8: Copy of Email Communication from the Appellant, dated October 9, 2021;
- 9. Exhibit 9: Copy of Second Notice of Hearing, issued on October 14, 2021;
- 10. Exhibit 10: Copies of Appellant's Employment Certifications, dated June 21, 2021, July 28, 2021, and August 3, 2021;
- 11. Exhibit 11: Copy of a Portion of RJ Corporation's Job Vacancy Announcement posted on the website of the Department (www.marianaslabor.net);
- 12. Exhibit 12: Copy of a Form 1099-MISC for 2019, issued by RJ Corporation to Appellant;
- 13. Exhibit 13: Copies of the following Press Releases:
 - a. Press Releases issued by the CNMI Office of the Governor titled "USDOL approves CNMI's PUA and FPUC implementation plan", dated May 24, 2020;
 - b. Press Release issued by the CNMI Office of the Governor titled "Pandemic Unemployment Assistance (PUA) and Federal Unemployment Compensation (FPUC) available for Workers and Self-Employed Individual in the CNMI", dated June 10, 2020;
 - c. Press Release issued by the CNMI Office of the Governor titled "CNMI DOL to hold another webinar on PUA and FPUC programs on Thursday", dated July 7, 2021;
 - d. Press Release issued by the Department titled "December 26, 2020 is the last day to apply for Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC)", dated December 15, 2020;
 - e. Press Release issued by the Department titled "Labor prepares for reopening of PUA program for new application", dated January 24, 2021;
 - f. Press Release issued by the Department titled "CNMI DOL announces second round of Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) for the CNMI", dated February 11, 2021; and

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g. Press Release issued by the Department titled "CNMI DOL announces new round of unemployment assistance under ARPA", dated May 25, 2021.

- 14. Exhibit 14: Copy of the PUA Benefit Rights Information Handbook; and
- 15. Exhibit 15: Copy of Order Continuing Hearing, issued on October 19, 2021.

For the reasons stated below, the Department's Determination dated October 14, 2021 is **AFFIRMED**. Claimant is not eligible for benefits for the period of February 2, 2020 to August 8, 2020.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021.

The CNMI Department of Labor is charged with the responsibility in administering the abovementioned programs in the CNMI in accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

Upon review of the records, Appellant's appeal of the Department's Disqualifying Determination is timely filed. The Department issued a Disqualifying Determination on September 30, 2021. On October 6, 2021, within the 10-day deadline, Appellant filed the present appeal. Accordingly, jurisdiction is established.

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

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III. PROCEDURAL BACKGROUND & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs on or around June 1, 2021.⁵ Upon review of Appellant's application and supporting documents, the Department issued a Disqualifying Determination on September 30, 2021.⁶ On October 6, 2021, Appellant filed the present appeal and the matter was scheduled for a hearing.⁷ On October 6, 2021, the Administrative Hearing Office issued a Notice of Hearing setting the Administrative Hearing for February 24, 2022 at 9:00 a.m. On October 8, 2021, Appellant submitted a written request for an earlier hearing date due to exigent circumstances.⁸ On October 14, 2021, the undersigned granted the Appellant's request and issued a Second Notice of Hearing setting the Administrative Hearing for October 19, 2021 at 9:00 a.m.⁹

During the Administrative Hearing on October 19, 2021, all parties appeared and were represented. It became evident during the Administrative Hearing that in-person testimony by the Appellant would be necessary to fully address the issue of eligibility. Accordingly, without objections by either of the parties, the undersigned continued the Administrative Hearing to October 20, 2021 at 1:30 p.m.¹⁰ All parties appeared at the Administrative Hearing.

As stated in the Notice of Hearing, Second Notice of Hearing, and Order Continuing Hearing, the issues on appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds should be returned.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witnesses' testimony, the undersigned issues the following findings of fact:

- 1. On or around June 1, 2021, Appellant submitted an application for unemployment assistance under the PUA and FPUC programs administered by the Department.¹¹ In his application, Appellant self-certified under penalty of perjury that:
 - a. Appellant is a citizen of the U.S. or U.S. Territory;

⁵ Exhibit 1.

⁶ Exhibit 3.

⁷ Exhibits 6-7.

⁸ Exhibit 8.

⁹ Exhibit 9. ¹⁰ Exhibit 15.

¹¹ Exhibit 1.

- Appellant's employment was directly affected by COVID-19 when his place of employment was closed as a direct result of the COVID-19 public health emergency; and
- c. The last date that Appellant last performed work was "March 2020-September 2020."¹²
- 2. Appellant submitted weekly certifications to claim benefits only for weeks beginning February 2, 2020 to February 8, 2020 and for August 8, 2020 to August 8, 2020. In each of these weekly certifications, Appellant reported that:
 - a. His employment was still affected by COVID-19 because his place of employment was closed as a direct result of the COVID-19 public health emergency; and
 - b. He is able and available for work during the claimed week. 14
- 3. The answers provided in Appellant's application and weekly certifications were submitted under penalty of perjury. It is Appellant's responsibility to provide true, accurate, and complete answers. Moreover, it is Appellant's responsibility to be informed about the program by reading the PUA Benefit Rights Information Handbook and other official written material regarding PUA.
- 4. Based on the evidence presented and testimony provided, Appellant's self-certifications in his application and his weekly certifications were inaccurate and untrue. Specifically, contrary to Appellant's self-certifications in his application and his weekly certifications, Appellant was not employed immediately prior to COVID-19 pandemic and his place of employment was not closed as a direct result of COVID-19.
 - a. Beginning in 2018, Appellant performed, from time-to-time certain realtor-and/or broker-like services for Jose C. Ayuyu, including but not limited to finding real property on Saipan for Mr. Ayuyu to consider and purchase;¹⁵

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¹² *Id*.

¹³ Exhibit 2

^{28 || 14} *Id*.

¹⁵ Exhibit 10.

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28 16 Exhibit 12 (Form 1099 on 2019). ¹⁷ Exhibit 10.

- b. Appellant performed and provided these services only to Mr. Ayuyu and no other company or individual;
- c. Appellant was not an employee of Mr. Ayuyu or any company owned by Mr. Ayuyu;
- d. Appellant was not paid any wages or salary by Mr. Ayuyu or any company owned by Mr. Ayuyu;
- e. For these services, Mr. Ayuyu paid Appellant a commission;
- f. Appellant did not own a business and was not self-employed, and he did not have a valid business license;
- g. Appellant is not an independent contractor;
- h. Mr. Ayuyu, through his company, RJ Corporation, reported some of the commission paid to Appellant, 16 but Appellant did not report all the commissions that he received from Mr. Ayuyu;
- i. Appellant did not pay himself a wage or salary, and he could not provide testimony or documents to show how many hours he customarily worked performing these services for Mr. Ayuyu;
- j. During the months of March 2020 to August 2020, Appellant did not perform any of said services for Mr. Ayuyu, and therefore, Appellant did not earn any commissions from Mr. Ayuyu during this time. 17
- 5. In filing his claims for PUA and FPUC benefits, Appellant did not provide sufficient supporting documents to substantiate how COVID-19 affected his employment or the above-mentioned self-certifications.
- 6. With respect to Appellant's immigration status and employment authorization, Appellant is a U.S. citizen and his eligibility for benefits as a U.S. citizen is undisputed.
- 7. On September 30, 2021, after reviewing and investigating Appellant's claims and selfcertifications, the Department issued a Disqualifying Determination effective February 2, 2020 to December 26, 2020, and the stated grounds for disqualification is

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- that "Appellant does not meet the qualifications required of the CARES Act of 2020 for PUA assistance."18
- 8. On October 6, 2021, Appellant filed the present appeal 19 and the matter was scheduled for an Administrative Hearing.²⁰
- 9. On October 14, 2021, upon Appellant's request for appeal, the Department reviewed Appellant's claim and issued a second determination disqualifying Appellant from PUA and FPUC benefits, effective February 2, 2020 to August 8, 2020.²¹ In this amended, second Determination, the Department cited as the basis for denial UIPL Change 4, page I-19, "PUA initial claims filed after December 27, 2020 (the enactment date of the Continued Assistance Act) may be back dated no earlier than December 1, 2020."22
- 10. Appellant appeals the Department's Determination dated October 14, 2021, effective February 2, 2020 to August 8, 2020.
- 11. As demonstrated by an audit and confirmation from the Department's Benefit Payment Control Unit, Appellant was not paid any federal unemployment benefits.²³ Accordingly, there is no overpayment issue in this matter.

V. **CONCLUSIONS OF LAW**

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's claim for benefits is limited on backdating.

Under the CARES Act of 2020, PUA and FPUC benefits were made available retroactively to covered individuals.²⁴ Individuals could apply for PUA and FPUC benefits if they had a week(s) of unemployment, partial unemployment, or unable or unavailable work due to one or more of the COVID-19 related reasons (listed in Section 2102(a)(3)(A)(ii)(1) of the CARES Act)

¹⁸ Exhibit 3.

¹⁹ Exhibit 6,

²⁰ Exhibit 7.

²¹ Exhibit 4. ²² Id.

²³ Id.

²⁴ See Section 2102 of the CARES Act of 2020, Public Law 116-136; see also Question 4 of Attachment I to UIPL No. 16-20, Change 1; Section C.15 of Attachment I to UIPL No. 16-20, Change 4.

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³³ See, e.g., Exhibit 13. ³⁴ See Exhibits 1-2.

³¹ *Id*.

prior to their PUA claim filing date (but no earlier than from February 2, 2020).²⁵ Under the CARES Act of 2020, first time applicants had to submit an online application on or before December 26, 2020.²⁶

On December 27, 2020, the Continued Assistance Act amended and created new provisions of said federal unemployment insurance programs. Among other things, the Continued Assistance Act extended the PUA and FPUC programs through weeks of unemployment partial unemployment, or unable or unavailable work to March 13, 2021.²⁷ However, Section 201(f) of the Continued Assistance Act provided limitations on the availability of backdating for claims that are filed after December 27, 2020 to weeks of unemployment, partial unemployment, or unable or unavailable work that occurred no earlier than December 1, 2020.²⁸ In other words, claims filed on or before December 27, 2020 (the enactment date of the Continued Assistance Act) may be backdated no earlier than the week that begins on or after February 2, 2020. Initial PUA claims filed after December 27, 2020 may be backdated no earlier than December 1, 2020.²⁹ On or around December 15, 2020, the Department announced to the general public that the last day to apply for PUA and FPUC is December 26, 2020.³⁰ In consideration of the application deadline falling on a Saturday, the Department extended the paper application submission through Monday, December 28, 2020.³¹ The Department announced that any claim submitted after December 28, 2020 will be rejected.³² Prior to this announcement, the Department and the CNMI

Here, Appellant filed weekly certifications only for weeks beginning February 2, 2020 to February 8, 2020 and for August 2, 2020 to August 8, 2020.³⁴ As discussed in the foregoing, under the applicable law and backdating limitations, Appellant's deadline to submit his paper

Government issued multitudes of press releases and conducted outreach including virtual

webinars announcing when and how individuals could apply for PUA and FPUC benefits.³³

²⁵ UIPL No. 16-20, Change 4, Section C.15 of Attachment I, p. 1-18. See also UIPL No. 16-20, Change 6, p. 6 ²⁶ UIPL No. 16-20, Change 4, p. I-19.

²⁷ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A, Section 201(a). ²⁸ UIPL No. 16-20, Change 4, p. 4; 1-18; 1-19.

²⁹ UIPL No. 16-20, Change 4, Section C.15 of Attachment I, pp. 1-18 and 1-19. 30 Exhibit 13.

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35 Exhibit 1.

application to the Department was December 28, 2020. Appellant did not file his paper application with the Department until June 10, 2021, more than six months after the filing deadline.³⁵ When questioned why he submitted his paper application so late, Appellant admitted that he did not have any reason for the delay. Appellant testified only that the lines were "long".

Accordingly, because Appellant's claims were filed months after the deadline of December 28, 2020, Appellant's claims are limited by the backdating limitations under applicable law, and Appellant is not eligible to receive benefits.

DECISION

For the reasons stated above, it is ORDERED that:

- 1. The CNMI Department of Labor's Disqualifying Determination, dated October 14, 2021, is AFFIRMED; and
- 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February 2, 2020 to August 8, 2020.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. See 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this <u>17th</u> day of November, 2021.

CATHERINE J. CACHERO

Pro Tem Administrative Hearing Officer



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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS DEPARTMENT OF LABOR ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 21-0171
Juan Borja Cepeda,)
	Appellant,) ADMINISTRATIVE ORDER
v.)
CNMI Department of La Division of Employmen)
	Appellee.)
		,

Pursuant to Appellant's Request to Appeal, the matter was scheduled for an Administrative Hearing on March 22, 2022 at 9:00 a.m. On October 28, 2021, Appellant filed a written request to withdraw the appeal. Further, on November 3, 2021, the Department filed a Motion to Dismiss confirming that the issues in dispute were resolved and a subsequent requalifying determination was issued that found Appellant eligible, effective May 9, 2021.

In consideration of above, the undersigned finds that there are no issues on appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for March 22, 2022 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 5th day of November, 2021.

JACQUELINE A. NICOLAS Administrative Hearing Officer