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*Attorney for the Guam Solid Waste Authority (“GSWA”)
By and through Receiver Gershman, Brickner & Bratton, Inc. (“GBB”)*

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

v.

GOVERNMENT OF GUAM,

Defendant.

CIVIL CASE NO. 02-00022

**OPPOSITION TO
MOTIONS FOR RECONSIDERATION**

COMES NOW, the Guam Solid Waste Authority (GSWA) by and through Receiver Gershman, Brickner & Bratton, Inc. (the “Receiver”), through counsel, and submits this Opposition to the Motions for Reconsideration of the Court’s December 1, 2017 Order re Extension of Receivership.

BACKGROUND

On November 28, 2017, the Court and the parties discussed issues related to the transition of control over the Guam Solid Waste Authority (“GSWA”) from the federal Receivership to the Board of Directors (the “Board”) at a status hearing. This transition was scheduled to occur at the end of year 2017 pursuant to the timeline approved by the court. *See Order re Revised Transition Timeline for the Termination of the Federal Receivership and Financing Plan for the Post-Closure of Ordot Dump* (the “May 2, 2016 Order”) at 6-9, ECF No. 1668. The Court, however, expressed uncertainty over whether the Receivership should terminate on December 31, 2017, or whether only a portion of GSWA’s operations will be turned over to the Board for management.

1 On December 1, 2017, the Court issued an Order extending the transition from the
2 Receivership to the Board until at least June 30, 2018. *See* Order *re* Extension of the Federal
3 Receivership (the “December 1, 2017 Order”) at 9-10, ECF No. 1776.

4 On December 15, 2017, the Government of Guam filed a Motion for Reconsideration of
5 the Court’s December 1, 2017 Order. *See* Government of Guam’s Motion for Reconsideration,
6 ECF 1777. The Government requested the Court extend the Receivership until February 28, 2018
7 instead. *Id.* at 5. They stated that their suggested date will allow GSWA’s new management team
8 to have time to observe GSWA operations while the Receivership is still in place. The Board also
9 filed a Motion for Reconsideration on December 15, 2017. *See* GSWA Board of Director’s
10 Motion for Reconsideration Re. Court’s Order, ECF No. 1776.

11 On December 20, 2017, a status hearing was held between the parties. The Court stated
12 that there were numerous misstatements of the record in the both Government of Guam and the
13 Board’s Motions for Reconsideration.¹ Both parties were given until December 29, 2017 to
14 inform the court whether they wish to proceed with the motions filed or whether they intend to
15 make corrections to the motions; and ordered the parties to file any amended motions by the
16 deadline. *See* Civil Minutes (the “December 20, 2017 Civil Minutes). ECF 1781.

17 The Government of Guam then filed a Notice of Errata on December 29, 2017 amending
18 a statement on Page 1 of their motion. *See* Notice of Errata Re: Government of Guam’s Motion
19 for Reconsideration of Court Order at 1-2, ECF 1783. However, the Board did not file anything
20 pursuant to the Court’s December 29, 2017 Order.

21 The Receiver understood the Board’s failure to file anything by December 29, 2017 as
22 effectively withdrawing the Board’s Motion for Reconsideration. However, should the Court
23 choose to consider both motions, the Receiver now OPPOSES both the Government of Guam and
24 GSWA Board of Directors’ Motion for Reconsideration.

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27 ¹ The Receiver filed a Special Report on December 18, 2017 describing many confusing and
28 inaccurate statements contained in the Board’s Supplemental Status Report filed on December 1,
2017. The Board’s motion for reconsideration was largely based on the December 1, 2017
Supplemental Status Report.

ARGUMENT

I. Motion for Reconsideration Standards.

Pursuant to the court's Local Rules of Practice,

Motions for reconsideration are generally disfavored. A motion for reconsideration of the decision on any motion may be made only on the grounds of:

(A) a material difference in fact or law from that represented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or

(B) the emergence of new material facts or a change of law occurring after the time of such decision, or

(C) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion except to the extent necessary to demonstrate manifest error. Failure to comply with this subsection may be grounds for denial of the motion. The pendency of a motion for reconsideration shall not stay discovery or any other procedure.

CVLR 7(p)(1)(February 15, 2015).

The Ninth Circuit Court of Appeal has also stated that “[r]econsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *Nunes v. Ashcroft*, 375 F.3d 805, 807-808 (9th Cir. 2004) (quoting *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993), cert. denied, 512 U.S. 1236 (1994)).

II. The GM's Completion of Two Procurement Courses Does Not Justify Reconsideration of the Court's Order.

At the time of the Court's Order re Extension of the Federal Receivership, the position of chief financial officer or comptroller still had not been filled. Although the GSWA Board

1 represented that the selected candidate would begin by December 11, 2017², the Court found three
2 weeks was insufficient for the comptroller to gain the knowledge needed to properly assume his
3 role and responsibilities. ECF 1776 at 4-6.

4 In its Motion for Reconsideration, the Government of Guam focuses on the Court's
5 finding that if the Receivership were to end on December 31st, no one at GSWA would be
6 qualified to procure supplies and/or services until the comptroller and GSWA Manager Mr.
7 Martin finish mandatory procurement training. *Id.* at 6. The Government of Guam now notes that
8 other GSWA personnel and Mr. Martin have taken two out of the five introductory courses being
9 offered by the Office of the Attorney General. See Government of Guam's Motion for
10 Reconsideration, ECF 1777 at 4.

11 These facts are insufficient to warrant reconsideration of the Court's Order. Although
12 the Receiver requested that GSWA personnel be allowed to participate in the procurement
13 training offered by the Office of the Attorney General, this is not the procurement training that is
14 mandated by Guam law. Under Guam law, government of Guam personnel tasked with the
15 responsibility of procurement for the agency are required to receive four (4) modules of
16 procurement basic training, each with at least eighteen (18) hours of study and instruction,
17 provided by the Guam Community College. See 5 G.C.A. § 5141. Mr. Martin and the new
18 comptroller began these courses at the Guam Community College on January 10, 2018.

19 Furthermore, the Court's concern over the lack of procurement training was just one of its
20 many reasons for finding three weeks insufficient transition time. The Court also found the three-
21 week timeframe insufficient for the comptroller to orient himself and gain a thorough
22 understanding of GSWA's finances and financial management system such that he can properly
23 assume his role and responsibilities. The Court also found three weeks insufficient and
24 unreasonable given the Government and GSWA Board's earlier position that there should be at
25 least a six (6) month transition overlap. See ECF 1776 at 4, citing Government of Guam
26 Alternative Plan at 3, ECF No. 1648.

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28 ² The individual hired by the GSWA Board as Comptroller, arrived on Guam January 2, 2018
and officially became a GSWA employee on January 3, 2018.

1 The Court also found the extension of the federal receivership necessary because the
2 Board had not demonstrated it was ready to assume control over GSWA Operations. *See* ECF
3 1776 at 6. The Government of Guam’s newly presented facts and law regarding procurement
4 training do nothing to address the Court’s finding that “GSWA operations cannot be transferred
5 to the Board without the proper promulgation of the revised rules and regulations, a process which
6 will take several months.” *Id.* at 10. Therefore, the Government of Guam’s Motion for
7 Reconsideration should be denied.

8 9 **III. The GSWA Board of Directors’ Motion for Reconsideration.**

10 The GSWA Board has not filed anything to inform the court whether they wish to proceed
11 with their motion as filed, or whether they intended to make corrections to the motion. *See* Civil
12 Minutes (the “December 20, 2017 Civil Minutes), ECF 1781. The GSWA Board also did not file
13 any amended motions by the December 29, 2017 deadline as ordered by the Court at the
14 December 20, 2017 hearing. *Id.* However, to the extent that the Court might consider the Board’s
15 Motion for Reconsideration filed on December 15, 2017, the Receiver opposes the motion.

16 The Board’s Motion also addresses the timeframe for transition of the comptroller and
17 procurement training. However, the only new fact presented by the Board on this point is that the
18 Comptroller would not arrive in Guam until January 2, 2018. Accordingly, the Board moves the
19 Court to reconsider its extension of the Receivership to June 30, 2018, and instead transition
20 GSWA operations to the Board on March 31, 2018. The Board’s newly requested three (3) month
21 transition time does not reconcile with their earlier position that there should be at least a six (6)
22 month transition overlap. *See* ECF 1776 at 4, citing Government of Guam Alternative Plan at 3,
23 ECF No. 1648. Therefore, these facts are insufficient to justify reconsideration of the Court’s
24 December 1, 2017 Order.

25 In seeking reconsideration, the Board further contends that it will begin the process of
26 promulgating the permanent rules and regulations February 1, 2018. *See* ECF 1778 at 12-13. This
27 is not a material divergence from the timeframe presented to the Court prior to its December 1,
28 2017 Order warranting reconsideration. In extending the timeline, the Court noted that under the

1 previous approved transition timeline, review and upgrade of the solid waste rules and regulations
2 were to begin in September 2016. *See* ECF No. 1776 at 6 citing Status Report (Oct 21, 2015) at
3 54 Fig. 42, ECF No. 1634-1. Therefore, this fact is insufficient to justify reconsideration of the
4 Court's December 1, 2017 Order.

5 The Board also seeks reconsideration of the Court's order extending the receivership to
6 allow the Receiver to complete the work associated with the methane gas mitigation plan and the
7 Post-Closure Plan. The United States requested that the Receiver remain to manage the
8 completion of the methane gas mitigation plan. *See* ECF 1776 at 1. The Court found that neither
9 the Board nor the Government of Guam objected to this request. *Id.* at 2. The Board now contends
10 that they understood the United States' request to mean there would be a partial turnover of
11 operations to the Board. *See* ECF 1778 at 14. The Board has not presented any material
12 difference in fact or law on this point to warrant reconsideration. Therefore, their motion on this
13 point should be denied.

14 CONCLUSION

15 For the foregoing reasons, the Government of Guam and the GSWA Board of Directors'
16 Motions for Reconsideration of the Court's December 1, 2017 Order should be denied.

17 Respectfully submitted this 17th day of January, 2018.

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19 /s/ Vanessa L. Williams
20 VANESSA L. WILLIAMS, ESQ.
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