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FILED  
SUPERIOR COURT  
OF GUAM

2021 JUL -6 PM 1:13

CLERK OF COURT

By: 

7 **IN THE SUPERIOR COURT OF GUAM**

8 **DAVID LUBOFSKY and CRISTINE**  
9 **SIMBAHAN,**

10 Plaintiffs,

11 vs.

12 **GUAM MEMORIAL HOSPITAL**  
13 **AUTHORITY, DR. JOHN GARRIDO**  
14 **and DR. DENNIS SARMIENTO,**

15 Defendants.

CIVIL CASE NO. CV1024-19

**JOINT MOTION FOR ORDER  
OF GOOD FAITH SETTLEMENT**

16 **I. INTRODUCTION**

17 Plaintiffs and defendants, by and through their respective  
18 undersigned counsel, request a determination from the court that  
19 the parties' settlement is made and entered in good faith.  
20

21 **II. STATEMENT OF FACTS**

22 Plaintiffs filed this lawsuit against defendants pursuant to  
23 the requirements of the Government Claims Act. Plaintiffs also have  
24 a pending lawsuit against defendants Shishin Miyagi, Ethan Snider,  
25 Seventh Day Adventist Clinic, and John Doe Insurance Company in the  
26 Superior Court of Guam, Civil Case No. CV0558-19 also pertaining to  
27 the death of plaintiffs' son, Asher Dean Lubofsky.  
28

1 No cross-claim has been filed by defendants in either civil  
2 action. This presents an atypical joint tortfeasor situation  
3 because the defendants herein are exclusively governed by 5 G.C.A.  
4 §6101, et. seq. otherwise known as the Government Claims Act and  
5 the defendants in Civil Case No. CV0558-18 are governed by 10  
6 G.C.A. §10100, et. seq. otherwise known as the Medical Malpractice  
7 Mandatory Arbitration Act. The parties hereto are nevertheless  
8 seeking court approval of this settlement to assure no unforeseen  
9 consequences will arise as a result of the within settlement.

### 11 **III. THE SETTLEMENT**

12 The parties herein have agreed to settle plaintiffs' claims  
13 against defendants for payment of the sum of \$200,000.00. The  
14 amount of the settlement being made between plaintiffs and  
15 defendants is the maximum amount allowable under Guam law for a  
16 wrongful death claim against defendants under the Government Claims  
17 Act. See, 5 GCA §6301(b) as amended by P.L. 35-111. This settlement  
18 is made in good faith.

### 20 **IV. LEGAL STANDARD**

21 The provisions of 7 G.C.A §24606 provide the framework for  
22 obtaining court approval of a good faith settlement by joint  
23 tortfeasors.

25 Any party to an action wherein it is alleged  
26 that two or more parties are joint tortfeasors  
27 shall be entitled to a hearing on the issue of  
the issue of the good faith of a settlement  
entered into by the plaintiff or other

1 claimant and one or more alleged tortfeasors,  
2 upon giving notice at least twenty (20) days  
3 before the hearing. In addition, the notice  
4 may be served by mail but in those cases the  
5 period of notice shall be twenty-five (25)  
6 days if the place of address is within the  
7 territory of Guam, at least thirty (30) days  
8 if the place of address is outside of the  
9 territory of Guam within the United States,  
10 and at least forty (40) days if the place of  
11 address is outside the United States. Upon a  
12 showing of good cause, the court may shorten  
13 the time for giving the required notice to  
14 permit the determination of the issue to be  
15 made before the commencement of the trial of  
16 the action, or before the verdict or judgment  
17 if settlement is made after the trial has  
18 commenced.

19 There is very little Guam case law on the issue of good faith  
20 settlements. However, it has been recognized that a settlement is  
21 not in done good faith "if it is made for significantly less than  
22 the reasonable value of the claim for which it is made...." Maeda  
23 Pacific Corporation v. GMP Hawaii, Inc., 2010 W.L. 672849 at \*9 (D.  
24 Guam). See also, Newby v. Government of Guam, 2010 Guam 4 at [34].  
25 Since this settlement is made for the maximum amount allowed by law  
26 under 5 GCA §6301(b) as amended by P.L. 35-111, there can be no  
27 credible argument that the settlement is not made in good faith.

## 28 V. CONCLUSION

29 The parties have settled for the maximum recoverable amount  
30 under the Government Claims Act. The moving parties have not  
31 entered into this settlement to prejudice any other non-settling  
32 party. They did not collude against non-settling parties and they  
33 did not defraud anyone. Instead, the settling parties have

1 fashioned an arm's length settlement agreement that provides  
2 maximum compensation to plaintiffs.

3  
4 Respectfully submitted,

5 **LAW OFFICE OF ROBERT L. KEOGH**  
6 Attorneys for Plaintiffs

7  
8 DATE: 7/6/2021

BY: 

ROBERT L. KEOGH

9  
10 **OFFICE OF THE ATTORNEY GENERAL**  
11 Leevin T. Camacho, Attorney General  
12 Attorneys for Defendants

13 DATE: July 2, 2021

BY: 

JORDAN PAULUHN

Assistant Attorney General