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9 **Attorneys for Defendants**

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 11 **IN THE SUPREME COURT OF THE**  
 12 **FEDERATED STATES OF MICRONESIA**  
 13 **TRIAL DIVISION - STATE OF POHNPEI**

14 **STATE OF CHUUK, STATE OF KOSRAE, ) Civil Action No. 1995-085**  
 15 **STATE OF POHNPEI, and STATE OF YAP, )**  
 16 **Plaintiffs, ) DEFENDANT'S RESPONSE TO**  
 17 **vs. ) PLAINTIFF'S MOTION FOR RELIEF**  
 18 **) FROM JUDGMENT**  
 19 **SECRETARY OF DEPARTMENT OF )**  
 20 **FINANCE, FEDERATED STATES OF )**  
 21 **MICRONESIA and the National Government )**  
 22 **of the FEDERATED STATES OF )**  
 23 **MICRONESIA, )**

24 **Defendants**

25 **Statement of the Case**

26  
 27 On July 28, 1995 plaintiffs, the four states of the Federated States of Micronesia, filed a  
 28 complaint seeking declaratory judgment on the proper division of the fishing access fees collected  
 29 by the defendants, the Federated States of Micronesia National Government, from foreign fishing  
 entities permitted to fish within the Federated States of Micronesia's (hereinafter FSM) Exclusive  
 Economic Zone (hereinafter EEZ). On November 1, 1995, plaintiffs filed a Second Amended

1 Complaint which included claims pursuant 24 FSMC 510 regarding division of fines and penalties  
2 collected from fishing law violators.

3 Although contained in Paragraph 13 of Count 1 and Paragraph 3 of the Claim for Relief of  
4 the Second Amended Complaint, the issue of the division of fishing fines and penalties was never  
5 truly in dispute. The National Government recognized early on in conversations with opposing  
6 counsel the obligation to share the money collected through fishing fines and penalties.  
7 Resolution of this matter was, and still is, essentially an accounting function.  
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10 On September 23, 1997, plaintiffs filed a motion for summary judgment.

11 On November 17, 1997, defendants filed an opposition to plaintiff's motion for summary  
12 judgment and filed their own cross-motion for summary judgment. On November 24, 1997,  
13 plaintiffs filed a reply to defendants' cross-motion. All motions for summary judgment were  
14 argued before the court on December 16, 1997, in a hearing that lasted the entire day. On April  
15 8, 1998, plaintiffs filed a notice of supplemental authority. None of these documents or oral  
16 presentations proffered arguments regarding the claims made under 24 FSMC 510.  
17  
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19 Judgment was entered on July 17, 1998, in favor of the defendants and the case was  
20 dismissed with prejudice. The Judgment and attendant opinion was disseminated to the parties on  
21 July 24, 1998. Plaintiffs now move this Court for relief from this judgment in so far as it relates  
22 to the issue of the division of fishing fines and penalties.  
23  
24

25 The FSM National Government has no opposition to this court issuing an amended order  
26 which dismisses the claims made in Paragraph 13 of Count 1 and Paragraph 3 of the Claim for  
27 Relief of the Second Amended Complaint without prejudice.  
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**Under FSM Rules of Civil Procedure 60(b)(1)  
the Court Can Amend the Judgment**

The FSM Rules of Civil Procedure 60(b)(1) allows a court to relieve a party from a judgment where there is mistake, inadvertence, surprise, or excusable neglect. In the present case, it is understandable that the Court, after reviewing the briefs and oral arguments, concluded that the parties had already resolved the issue of the division of fishing fines and penalties under 24 FSMC 510.

In Plaintiff's motion for summary judgment, they argue that the division of fines and penalties required by 24 FSMC 510 was tacit admission on the part of the National Government that the States were the underlying owners of the ocean. (Plaintiff's Motion for Summary Judgment, page 23.) Defendant's respond that this provision was intended to reimburse the States for their expenses and encourage continued cooperation in enforcement of fishing laws, not to delineate ownership of the ocean.

In these arguments, both sides implicitly agree that the states are entitled to half of the fines and penalties derived from fishing violations. These points were repeated in oral argument. The issue of *whether* the National Government was required to share fines and penalties was never argued, only the significance of such a requirement was addressed.

**Dismissing the Claims Without Prejudice  
Provides the Necessary Relief**

Plaintiff ask this court for relief from the court order entered July 17, 1998, stating that "the parties cannot settle claims which have already been mistakenly or inadvertently dismissed with prejudice." Of course, strictly speaking, the parties can settle the dispute whether or not

1 there is a viable threat of a lawsuit. However, by amending the order to dismiss the claims  
2 without prejudice, the parties retain the ability to seek the court's assistance if they are for some  
3 reason unable to resolve the dispute on their own.  
4

### 5 Conclusion

6 Plaintiffs' motion requests relief from dismissal with prejudice of claims involving an issue  
7 not argued in the summary judgment motions. Defendant's have no opposition to the court  
8 issuing an amended order dismissing without prejudice the claims regarding sharing of fines and  
9 penalties pursuant to 24 FSMC 510.  
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11 Respectfully submitted

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14 Emilio Musrasrik, Secretary  
15 Department of Justice, FSM

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17 Date: 9/7/98

18 by Julia Freis  
19 Julia Freis, Assistant Attorney General  
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## CERTIFICATE OF SERVICE

I hereby certify that copies of the DEFENDANT'S  
RESPONSE TO PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT  
was served by mail and fax on the following individuals,  
on this 8<sup>th</sup> day of September, 1998.

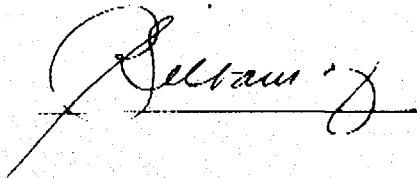
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