

as is provided for by CUC regulations," consists of the persons whose names will be set forth in Settlement Exhibit 1, which is to be filed within thirty days from the entry of this Order.

3. Within forty-five days from entry of this Order, the stipulated "Notice to Class Members of Proposed Settlement of Class Action" shall be mailed to all class members. The notice is attached hereto. The envelope addressed to each class member shall state "Please Forward." Also within forty-five days from entry of this Order, the notice shall be printed on at least one occasion in a newspaper published in the Commonwealth. Finally, a copy of the notice will be posted at CUC's offices in Lower Base and in San Jose where customers pay their bills.

(a) The cost of preparing the addresses of class members, copying the notices to be mailed to class members, postage, the administrative costs of mailing the class notice and the cost of newspaper publication shall be born by CUC. The attorney for CUC shall file a proof of mailing and of publication prior to the hearing referred to in paragraph 4 below.

(b) The Court finds that the mailings and publication provided in paragraph 3 (a) above constitute the best notice to the class practicable under the circumstances, that such notice comports with due process, and is due and sufficient notice for all purposes to all persons entitled to such notice.

4. A hearing shall be held on the 10th day of JUNE, 1994 at 9:30 a.m./~~p.m.~~, to determine the lawfulness, reasonableness, adequacy and fairness of the proposed settlement, and whether such settlement should be approved as fair, reasonable and adequate, and whether judgment should be entered thereon.

5. Any member of the class who objects to the approval of the proposed settlement or to the judgment to be entered thereon, may appear at the aforesaid hearing and show cause why the proposed settlement should not be approved as fair, reasonable and adequate, and why judgment should not be entered thereon.

6. Any member of the class may also object to the approval of the proposed settlement by submitting a letter or other writing addressed to the Court. Any written objections shall be received no later than ^{JUNE 1, A.R.M.} [insert date], 1994 to be considered by the Court .

7. Counsel for plaintiffs are authorized to respond to inquiries from class members concerning the proposed settlement or this Order. CUC shall refer any inquiries it receives from class members to counsel for plaintiffs.

8. Under the supervision of the Court, counsel for plaintiffs and defendants shall be jointly responsible for the administration of this Order.

DATED: April 15, 1994

Alex R. Munson
ALEX R. MUNSON
UNITED STATES DISTRICT JUDGE

APR 15 1994

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IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF THE NORTHERN MARIANA ISLANDS

FRANCISCA OSILEK, *et al.*,

Plaintiffs,

vs.

COMMONWEALTH UTILITIES
CORPORATION, *et al.*,

Defendants.

CIVIL ACTION NO. 93-0004

**STIPULATION OF
PROPOSED SETTLEMENT
ON DAMAGES**

In order to settle the issue of damages in this litigation the parties stipulate and agree as follows:

Plaintiffs, two residential customers of the defendant Commonwealth Utility Corporation [hereinafter "CUC"], filed this suit individually and on behalf of a class of past, present and future residential electrical customers against CUC, its Executive Director, and its Board members, challenging CUC's electrical power termination practices. The first amended complaint seeks declaratory and injunctive relief on behalf of the class in order to end the challenged termination practices of CUC. Plaintiffs also seek monetary damages and attorney fees. Defendants filed an answer which denies each and all of these claims.

On July 9, 1993, the Court entered an order certifying this case as a class action with the class defined as follows:

[A]ll past, current, and future residential customers of CUC who have had their electrical services terminated or who are threatened with termination of electrical services without adequate notice or an opportunity for a pre-termination hearing, or such notice and opportunity for pre-termination hearing as is provided for by CUC regulations.

Order on Plaintiffs' Motion for Class Certification (filed July 9, 1993) at 5.

The Court has not ruled on any of the substantive contentions of the parties. On October 25, 1993, the parties filed a stipulation addressing declaratory and injunctive relief, and the liability of defendants. *Stipulation of Settlement on Declaratory and Injunctive Relief* (filed Oct. 25, 1993). The stipulation left open for further negotiation the issue of damages to be paid to members of the class. *Id.* at ¶ 6. Agreement on the issue of damages has now been reached by the parties.

Each named plaintiff maintains that she, individually, and as class representative, would ultimately prevail on all issues in this action, but deems the proposed settlement set forth herein to be in the best interest of the class. The defendants maintain that they would ultimately prevail on all issues in this action in the trial court or upon appeal but deem the proposed settlement set forth below to be in their best interest.

It is therefore stipulated and agreed by and among the parties that the issue of damages for members of the class shall be settled and compromised, subject to Court approval, upon the terms and conditions hereinafter set forth.

1. The Class: The class, as defined by the Court in its *Order on Plaintiffs' Motion for Class Certification* (filed July 9, 1993), and as further addressed in the *Notice of Ruling Granting Motion to Add Class Members* (filed Feb. 11, 1994) and the *Stipulation of the Parties / Order* (filed March 3, 1994), consists

of the persons whose names will be set forth on Settlement Exhibit 1 which is to be filed with the Court within 30 days after entry of the Order set forth in paragraph 2 below. Should the parties need additional time to compile Settlement Exhibit 1, a stipulation will be filed requesting an extension of time.

2. Submission of Stipulation to Court: The parties shall promptly submit this stipulation to the Court and jointly request the Court to enter its Order in the form of Exhibit A attached hereto.

3. Definitions: As used herein, the following terms shall have the meaning indicated :

(a) "CUC" means the Commonwealth Utilities Corporation.

(b) "LIHEAP program" means the Low Income Home Energy Assistance Program as set forth in 42 U.S.C. §§ 8621-28.

(c) "LIHEAP regulations" means those regulations under which the Commonwealth has implemented the LIHEAP program, COMMONWEALTH REGISTER, Vol. 12, No. 03, March 15, 1990 at 6854 (adopting regulations proposed in COMMONWEALTH REGISTER, Vol. 1, No. 11, November 15, 1989).

4. Consideration for Settlement: In addition to the terms agreed upon in the *Stipulation of Settlement on Declaratory and Injunctive Relief* (filed Oct. 25, 1993), the parties agree to the following terms of settlement on damages:

(a) All class members will receive a credit from CUC, to first be applied to their past due account (if any) and the balance to be applied against current and future billing. The amount of credit for members of the class shall be based upon the following schedule:

(i) A credit of \$130.00 for any reconnection fee paid by a class member and not previously refunded by CUC following a disconnection of electrical service without proper notice;

(ii) a credit of \$120.00 for an initial disconnection of electrical service without proper notice; and

(iii) a credit of \$90.00 for each additional disconnection of electrical service without proper notice.

In granting the credits provided for in this subsection to the accounts of class members who participate in the LIHEAP program, the credit will be first applied against the entire bill where the class member's bill exceeds the amount of her LIHEAP voucher, as tendered to CUC. Otherwise, the credit shall be applied only to the water and sewer portion of the bill. Furthermore, should the credit afforded to a class member who participates in the LIHEAP program adversely affect her eligibility under the program, then the credits shall be applied only to the water and sewer portion of the bill so that the class member's eligibility under the LIHEAP program is not affected.

Any class member who has a closed account on the date of the entry of the Court's final judgment and order can assign any credit to which she is entitled as a member of the class to another customer with whom she currently shares living arrangements.

The maximum size of any past due balance, for the purposes of application of the credit, will be the past due balance as of the billing date for a particular class member in March, 1994.

Depending on the total amount of the credit remaining after all offsetting against past due amounts, CUC may elect to spread the credit over time, either to all qualifying accounts over a period of twelve (12) months, or dividing the class into as many as three groups and giving part of the class their entire credit in a given period.

(b) CUC will remove any remaining past due balance of any class member (after off-setting under the formula described in subsection (a) above)

from the customer's utility account. Class members will not be subject to disconnection due to past due balances accrued prior to the billing date for the particular class member in March, 1994. CUC reserves the right to use methods other than disconnection to collect the balances due, with the exception of the restrictions set forth in subsection (c) below.

(c) In determining whether to collect a past balance due from a class member, CUC will not pursue collection from the following:

(i) Any class member whose household income is below the poverty line, as defined in 42 U.S.C. § 9902, which refers to the definition in the 1990 CENSUS OF POPULATION AND HOUSING, Commonwealth of the Northern Mariana Islands (March, 1992) at p. B-20, and who owns no assets or owns only assets which are exempt from attachment by creditors as defined in the Commonwealth's statutes (7 CMC § 4210);

(ii) Any class member who is a recipient of the LIHEAP program, unless CUC determines that such class member is in fact able to pay the past due balance;

(iii) Any class member whom CUC determines is in fact unable to pay the past due balance.

(d) In addition to the relief described in subsection (b) above, class members who participate in the LIHEAP program will have their accounts individually reconciled by CUC employees and counsel for plaintiffs. CUC reserves the right to collect the LIHEAP past due amount for any class members' account from the proper agency of the Commonwealth government, if possible.

(e) In addition to the benefits they will receive as class members, the named class members, Francisca Osilek and Rita Tudela, will be paid a sum of \$800.00 each for damages they claim as allegedly arising out of conduct by

defendants and which forms the basis of the amended complaint. CUC will not attach any portion of the payment for any amount due on the bills of the named plaintiffs. In exchange for these payments to the named plaintiffs, each named plaintiff will execute and deliver to defendants a General Release of her claims against defendants upon receipt of the payment of \$800.00.

(f) CUC shall pay a penalty of \$250.00 for the disconnection of a customer in violation of the procedures set forth paragraph 4 (g) (ii) of the *Stipulation of Settlement on Declaratory and Injunctive Relief* (filed Oct. 25, 1993). CUC shall pay \$100.00 for each day that a customer remains improperly disconnected after the customer reports the improper disconnection to CUC.

(g) CUC will mail with the class notice described in paragraph 5 below a description of the remedies available under the *Stipulation of Settlement on Declaratory and Injunctive Relief* (filed Oct. 25, 1993) to a customer who is improperly disconnected under the procedures of the stipulation. *See id.* at ¶ 4 (g) (ii). In addition, this description will be printed on at least one occasion in a newspaper published in the Commonwealth. CUC will also post the description of remedies at its offices where customers pay bills in San Jose and Lower Base.

(h) CUC will keep accurate records on future disconnections of customers which will include the date of issuance of a disconnection notice, the type of delivery utilized by CUC, date of actual disconnection, date of reconnection and whether a reconnection fee is paid by the customer.

(i) The class members will release the defendants, their past and present officers, directors, employees, and agents and their respective successors and assigns, whomever, from all claims of members of the class, their heirs, representatives, agents, attorneys, successors, or assigns or any one claiming on their behalf, which have been asserted in this action.

5. Notice of Settlement under Rule 23 (e), FED. R. CIV. P.: The members of the class will be notified of this proposed settlement by mailing a settlement notice, a copy of which is attached hereto as Exhibit B. The notice will be mailed to each member of the class at the most current address known by CUC. CUC will absorb the costs of preparing the addresses of class members, preparing and copying the notices to be mailed to class members, postage and the administrative costs of mailing the class notice. For notices that are mailed to the most recent address known to CUC but returned as undeliverable, no further effort must be made by CUC to serve the notice. To assure adequate notice is provided to all members of the class, the notice of settlement will also be printed on at least one occasion in a newspaper published in the Commonwealth. CUC will also bear the cost of the newspaper notice. Finally, a copy of the notice will be posted at CUC's offices where customer's pay their bills in Lower Base and San Jose.

6. Judgment to be Entered Upon Approval of the Settlement: If the Court approves the settlement embodied in this Stipulation and the Exhibits hereto without modification, and enters the Order in the form presented in Exhibit A attached hereto, then final judgment shall be entered in this action after notice and hearing as follows:

(a) Approving the settlement contemplated in this Stipulation as lawful, fair, just, reasonable and adequate, after considering among other things, that the settlement was reached after good faith, arm's length negotiations by experienced and capable counsel for the class and in the absence of collusion; the amount of the settlement; the likelihood of plaintiffs' success in obtaining all relief prayed for; the cost, complexity, and duration of the litigation if pursued through trial; the disruption to the business activities of defendants; and any other matters bearing on the best interests of the parties, and directing its

consummation and that all parties perform in accordance with the terms of this Stipulation and the Exhibits hereto;

(b) Permanently and finally certifying under Rule 23 (b) (2), FED. R. CIV. P., the class defined in the *Order on Plaintiffs' Motion for Class Certification* (filed July 9, 1993), and as enumerated in the Settlement Exhibit 1 to be subsequently filed by the parties;

(c) Entering an Order declaring that under both CUC's regulations and the due process clauses of the Federal and Commonwealth Constitutions, CUC must properly issue written notice of a proposed disconnection which advises the customer of his right to an informal conference with CUC personnel and/or to request an administrative hearing under the Administrative Procedure Act not less than the number of days required by due process and by CUC's Regulations;

(d) Entering an order enjoining defendants from future violations of CUC's regulations and from prospectively depriving customers of their Constitutional right to due process; from disconnecting customers without mailing or personally delivering proper notice prior to the proposed disconnection; from terminating customers' electrical service subsequent to issuance only of a forty-eight hour notice; from disconnecting customers' electrical service while a request for an informal meeting or an administrative hearing is pending; and from disconnecting customers' electrical service more than forty-five days after proper service of the most recent disconnection notice. Furthermore, ordering each CUC employee to fully comply with the disconnection regulations and the terms of this stipulation;

(e) Providing for the release of the defendants, their past and present officers, directors, employees, and agents and their respective successors and assigns, from all claims of the named plaintiffs and members of the class, their

heirs, representatives, agents, attorneys, successors, or assigns or any one claiming on their behalf, which have been asserted in this action;

(f) Reserving for negotiation or litigation the issue of attorney fees, if any, to be awarded plaintiffs;

(g) Reserving jurisdiction over consummation of the settlement provided for herein;

(h) Determining there is not just reason for delay of enforcement or appeal.

A proposed *Final Order and Judgment* is attached hereto as Exhibit C.

7. Defending against Collateral Attacks: Plaintiffs and their counsel will cooperate with defendants or any of them in resisting a collateral attack on the judgment contemplated hereby.

8. Consequences of Court's Non-Approval of Stipulation: If the Court fails to approve this stipulation or a final order based upon it, then the parties agree that the actions and all issues raised in this litigation shall thereupon forthwith be deemed to have reverted to their respective status as of the date the stipulation is entered and the action shall proceed in all material respects as if this stipulation and related orders and papers had not been executed, all substantive and procedural issues having been fully preserved for litigation.

The parties hereto through their counsel execute this Stipulation.

DATED: 4/15/94


for TRED R. EYERLY
Micronesian Legal Services Corp.
Attorney for Plaintiffs

DATED: 4/14/99



Handwritten signature of Bruce J. Napell, consisting of a stylized 'B' and 'N' followed by a horizontal line.

BRUCE J. NAPELL
Special Assistant Attorney General
Attorney for Defendants CUC, Ramon
S. Guerrero, Jose M. Taitano, Angie S.
Iba, Eloy S. Inos, Frank S. Rosario,
Gabriel F. Boyer, Jeffrey Hofschneider,
Joseph Apatang, Laura I. Manglona,
Maria D. Cabrera and Gregorio C.
Sablan

DATED: 4/14/99



Handwritten signature of Douglas H. Strand, consisting of a stylized 'D' and 'S' followed by a horizontal line.

DOUGLAS H. STRAND
Assistant Attorney General
Attorney for Defendant David Sablan

I certify that the foregoing stipulation and Exhibits A, B, and C were hand delivered on the 14th day of April to the following:

BRUCE J. NAPELL
Special Assistant Attorney General
Attorney for Defendants CUC, Ramon S. Guerrero, Jose M. Taitano,
Angie S. Iba, Eloy S. Inos, Frank S. Rosario, Gabriel F. Boyer, Jeffrey
Hofschneider, Joseph Apatang, Laura I. Manglona, Maria D. Cabrera
and Gregorio C. Sablan
CUC Offices
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DOUGLAS H. STRAND
Assistant Attorney General
Attorney for Defendant David Sablan
CNMI Administration Building
Capitol Hill, Saipan, MP

Linda M. Wignibael
4/15/94