

FILED
Clerk
District Court

MAR 10 2016

for the Northern Mariana Islands
By _____
(Deputy Clerk)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

BETTY JOHNSON, on behalf of herself, and as
a representative of a class of similarly-situated
persons,

Plaintiff,

v.

ELOY S. INOS, Governor of the
Commonwealth of the Northern Mariana Islands
("CNMI"), *et al.*,

Defendants.

CIVIL CASE NO. 09-00023

ORDER

re Motion to Enforce Final Judgment
Approving Class Action Settlement Against
Northern Marianas College

This matter is before the court on the a Motion to Enforce Final Judgment Approving Class
Action Settlement Against Northern Marianas College (the "Motion"), filed by the Trustee of the
NMI Settlement Fund (the "Settlement Fund"). *See* Mot., ECF No. 700. Therein, the Trustee
requested the court order the Northern Marianas College ("NMC") to comply with the Settlement
Agreement by paying all outstanding and accrued employer contributions ("ERC") and penalties
in addition to requiring the NMC to pay all future ERC at the rate of 30%. The motion came before
the court for hearing on the Motion on March 8, 2016, and, based on the record, relevant case law
and the argument of counsel, the court hereby DENIES the Motion as more fully discussed below.

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BACKGROUND¹

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2 The CNMI Government (the “Government”) is required to “make contributions to the
3 [retirement] fund on an actuarially funded basis” at a rate to be “determined by the board upon
4 recommendation of the actuary.” 1 CMC § 8362. In 2010, the actuary recommended an employer
5 contribution rate of 72.7215%. See Tang Decl. at ¶3, ECF No. 701, and Ex. E thereto, ECF
6 No. 701-5. Because the Government had fallen behind on its obligations, Judge Govendo² issued
7 an order in the Superior Court Action that reduced the employer contribution rate to 30%.³ See
8 Judge Govendo Aug. 22, 2011 Order, Ex. F to Tang Decl., ECF No. 701-6.

9 On August 6, 2013, all the parties in this action executed a Final Amended Stipulation and
10 Agreement of Settlement (the “Settlement Agreement”). See ECF No. 468-1. The Settlement
11 Agreement received final approval from the court on September 30, 2015. See Minutes, ECF
12 No. 556 and Final Judgment, ECF No. 561. Relevant to the instant dispute is the interpretation of
13 Section 5.0 of the Settlement Agreement, which provides in pertinent part that “the CNMI and
14 Autonomous Agencies⁴ shall make supplemental payments to the Settlement Fund in the amount
15 of the employer contributions for these Settlement Class members at the same contribution rates
16 they were paying as of June 26, 2013.” Settlement Agreement at §5.0, ECF No. 468-1.

17 On February 11, 2014, the Trustee filed a Report for the period ending December 31, 2013.

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19 ¹ This action has been pending in this court for more than six years, and the related action
20 before the Superior Court of the CNMI (the “Superior Court Action”) has been pending for nine
21 years. See *Northern Mariana Islands Retirement Fund v. CNMI Government, et al.*, Superior Court
22 of the CNMI Civil Action No. 06-0367. Because the parties are familiar with the facts and
23 procedural history of this case, the court will not recite them here in great detail except as necessary
24 to provide a background for the issues discussed herein.

25 ² The Honorable Kenneth L. Govendo is an Associate Judge of Superior Court of the
26 CNMI.

27 ³ The Trustee contends that Judge Govendo reduced the ERC rate paid by the NMI
28 Government and its autonomous agencies to 30% because of the CNMI’s depressed economy and
the dismal financial condition of the government. Mot. at 4, ECF No. 700.

⁴ The NMC is a nonprofit public corporation of the NMI Government. See 3 CMC
§ 1304(b). Nevertheless, the term “Autonomous Agency” as defined in the Settlement Agreement
includes the NMC. See Settlement Agreement at §1.2, ECF No. 468-41.

1 See Report, ECF No. 613. Said Report stated that there were outstanding employer contributions
2 due from the CNMI Government, in addition to \$549,287.56 due from the autonomous agencies.
3 *Id.* at 2. On February 24, 2014, the Trustee filed a Supplemental Report stating that as of
4 January 25, 2014, the NMC owed about \$24,373.41 in employer contributions. *See* Supp. Report
5 at 2, ECF No. 621. On April 2, 2014, the NMC filed a Notice re Alleged Underpayment, *see* ECF
6 No. 631, therein refuting the Trustee's claims that there was an underpayment from the NMC. The
7 NMC stated it "has been paying into the fund at the same rate at which it has been paying for a
8 period of several years. Nothing has changed and there has been no underpayment from the NMC."
9 *Id.* at ¶3.

10 In the Report of the Trustee for the 2nd and 3rd Quarter of FY 2014, the Trustee reported
11 that the NMC "has not paid the full amount of the employer taxes required in Section 5.0 of the
12 Settlement Agreement. In fact, the NMC has refused to comply with Section 5.0 of the Settlement
13 Agreement. . . . NMC was notified of this requirement and still refused to pay the delinquent
14 balance." *See* Trustee Report (Sept. 7, 2014) at 1-2, ECF No. 672. The NMC's refusal to pay ERC
15 at the 30% rate was also discussed at the Status Hearing held on September 9, 2014. The court
16 ordered the parties to meet after the hearing in an attempt to resolve the dispute.⁵

17 The parties met the following day by telephone to discuss the NMC's position. *See* Tang
18 Decl. at ¶7, ECF No. 701. According to the Trustee, Mr. Scoggins (counsel for the NMC) stated
19 that in 2008, while undergoing the accreditation process, the NMC was behind on payment of its
20 ERC payments, and this outstanding debt was one of the issues affecting its accreditation. *See* Tang
21 Decl. at ¶8, ECF No. 701. The Government agreed to help fund the shortage as evidenced by a
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25 ⁵ The Trustee had previously made attempts to resolve this issue with the NMC. On
26 July 18, 2014, the Trustee sent a letter to the NMC demanding payment of the delinquency. *See*
27 Ex. G to Tang Decl., ECF No. 701-7. The NMC responded by letter on July 21, 2014, maintaining
28 its position that there was no underpayment on its part. *See* Ex. A to Tang Decl., ECF No. 701-1.
Because no resolution was reached, the Trustee formally brought it to the court's attention in her
report.

1 letter from then Governor Fitial to NMC President Dr. Carmen Fernandez.⁶ *See id.* and Ex. B to
 2 Tang Decl., ECF No. 701-2. In reliance on this letter, the NMC continued to pay 20% of the ERC
 3 and the Government paid the 10% difference for years. *See* Tang Decl. at ¶8, ECF No. 701. The
 4 Trustee claimed that the NMC’s understanding of its obligation under the Settlement Agreement
 5 was that the Government would continue to cover the 10% portion of the NMC’s ERC. *Id.*
 6 Counsel for the Government, Reena Patel, stated that she would discuss the matter further with then
 7 Governor Inos. *Id.*

8 On February 24, 2015, the Trustee had a conference with Governor Inos and his team. Tang.
 9 Decl. at ¶9, ECF No. 701. The Trustee asked Governor Inos whether the Government would be
 10 responsible to fund the shortage for the NMC’s ERC. *Id.* Governor Inos stated that the previous
 11 agreement between the Government and the NMC regarding the outstanding ERC was limited to
 12 2008 and was not intended to apply indefinitely. *Id.* The Trustee claims it was Governor Inos’s
 13 understanding that the NMC was responsible for the entire 30% ERC for its employees. *Id.*

14 Thereafter, the Trustee sent Mr. Scoggins a letter advising him of Governor Inos’s position
 15 on the matter and demanded payment in the amount of \$71,749.43.⁷ *Id.* at ¶10 and Ex C (Feb. 27,
 16 2015 Demand Letter) thereto, ECF No. 701-3. The Trustee’s letter stated that The NMC would
 17 have until March 15, 2015, to pay the outstanding amounts in full and failure to so pay would result
 18 in seeking court action to compel the payment. *Id.*

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 21 ⁶ In pertinent part, the letter stated “This will confirm that the CNMI Central Government
 22 will be responsible for amounts outstanding to the NMI Retirement Fund by the Northern Marianas
 23 College accumulated since the Fund increased the employer rate of contribution from 24% to
 24 36.77% during financial year 2005.” Ex. B to Tang Decl., ECF No. 701-2.

25 ⁷ This amount is broken down as follows

26 Outstanding amount (for pay period ending Sept. 21, 2013 through pay period ending Jan. 24, 2015)	\$57,399.54
27 25% penalty	\$14,349.89
TOTAL	\$71.749.43

28 *See* Ex C (Feb. 27, 2015 Demand Letter) to Tang Decl., ECF No. 701-3.

1 On March 3, 2015, the NMC responded by letter stating its “position on this issue will not
2 change. NMC will continue to rely on the plain language of the Settlement Agreement, and will
3 not increase its contribution.” Ex. D to Tang Decl. ECF No. 701-4.

4 Thereafter, the Trustee filed the instant Motion requesting the court to order the NMC to
5 comply with the Settlement Agreement by paying all outstanding and accrued employer
6 contributions (“ERC”) and penalties in addition to requiring the NMC to pay all future ERC at the
7 rate of 30%. *See* Mot., ECF No. 700.

8 ANALYSIS

9 1. Legal Standard

10 Federal courts view settlement agreements as “contract[s] and [their] enforceability is
11 governed by familiar principles of contract law.” *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir.
12 1990). “Contract terms are to be given their ordinary meaning, and when the terms of a contract
13 are clear, the intent of the parties must be ascertained from the contract itself.” *County of Santa*
14 *Clara v. Astra USA, Inc.*, 540 F.3d 1094, 1100 (9th Cir. 2008). “The plain language of the contract
15 should be considered first.” *Id.* A contract “is only ambiguous if reasonable people could find its
16 terms susceptible to more than one interpretation.” *Id.*

17 2. Discussion

18 The issue before the court involves the enforcement and interpretation of Section 5.0 of the
19 Settlement Agreement. In its entirety, the provision states:

20 **5.0 Additional Annual Contributions.** After Final Approval, all Settlement Class
21 **Members who are employed by the CNMI or an Autonomous Agency shall continue**
22 **to pay employee contributions as required by the laws of the CNMI existing on**
23 **August 6, 2013 excluding P.L. 17-82 and P.L. 18-02, but these contributions shall**
24 **be paid to the Settlement Fund not the CNMI Fund; and the CNMI and**
Autonomous Agencies shall make supplemental payments to the Settlement
Fund in the amount of the employer contributions for these Settlement Class
Members at the same contribution rates they were paying as of June 26, 2013.

25 Settlement Agreement at §5.0, ECF No. 468-1 (emphasis added).

26 The Trustee asserts that the applicable ERC rate referred to in Section 5.0 was the 30% rate
27 established per Judge Govendo’s August 22, 2011 Order. The Trustee contends that “[i]t was the
28 intent of the parties that all Government agencies would pay the same rate.” Mot. at 5, ECF

1 No. 400. The Trustee further argues that the plain language of Section 5.0 does not permit the
2 NMC to pay a lower rate than other government agencies.

3 The NMC, on the other hand, asserts that the plain language of the Settlement Agreement
4 controls, and it is from this language that the court may find the intent of the parties. The NMC
5 contends that the phrase “. . . rates they were paying as of June 26, 2013” is unambiguous. The
6 NMC argues that if it were truly the intent of the parties that autonomous agencies would pay the
7 same ERC rate, then the drafters of the agreement should have use the term “rate” – singular – as
8 opposed to the term “rates” as used in the Settlement Agreement. The NMC notes that the drafters
9 to the Settlement Agreement were aware that autonomous agencies were not all paying the 30% rate
10 the Trustee insists is required.

11 Federal courts interpret settlement agreements according to the principles of contract law
12 in the state where the action arose.⁸ See *Northwest Acceptance Corp. v. Lynnwood Equip., Inc.*, 841
13 F.2d 918, 920 (9th Cir. 1988). Because the Settlement Agreement arose in the CNMI, the court is
14 guided by how the Supreme Court of the CNMI has applied the principles of contract law to
15 interpret contracts and settlement agreements. According to the Supreme Court of the CNMI,

16 the language in a contract is to be given its plain grammatical meaning unless doing
17 so would defeat the parties’ intent. Furthermore, in determining the intention of the
18 parties, we look only within the four corners of the agreement to see what is actually
19 stated, and not at what was allegedly meant. Confining our inquiry to the four
corners of a contract is the most equitable method of determining the parties' intent.
Doing so allows the court to interpret what both parties agreed to and not what the
contract may have devolved into.

20 *Commonwealth Ports Auth. v. Tinian Shipping Co.*, No. CV-04-0017-GA, 2007 MP 22, ¶17, 2007

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22 ⁸ The NMC notes that the “Governing Law” provision of the Settlement Agreement
provides that:

23 [t]his Agreement shall be governed by, construed and enforced as an Order and
24 Judgment of the District Court in accordance with general principals (sic) of
25 contract law construction in the United States and shall not be construed as
controlled by the laws, case law, statutes, or regulations of any particular State or
territory of the United States.

26 Settlement Agreement at §38.0, ECF No. 468-1.

27 Although Section 38 appears to assert to that this court should apply only general principles
28 of contract law construction, the Ninth Circuit has consistently applied state contract law to
interpret settlement agreements.

1 WL 3033499, at *4 (N. Mar. I. Oct. 15, 2007).

2 Applying these principles, the court must begin its analysis by only looking within the four
3 corners of the Settlement Agreement to see what is actually stated, not what was allegedly meant.
4 The Settlement Agreement states that the Autonomous Agencies must pay ERC “at the same
5 contribution rates they were paying as of June 26, 2013.” There is nothing in the 42-page document
6 that refers to the 30% rate or Judge Govendo’s order setting said rate. The Settlement Agreement
7 does not set a uniform ERC rate. Instead the settlement agreement uses the plural term
8 “contribution rates” which plainly means there was more than one applicable rate as of June 26,
9 2013. As noted by the NMC, this language is clear and unambiguous. Thus, there is no need for
10 this court to resort to extrinsic evidence (such as Judge Govendo’s order)⁹ to ascertain the parties’
11 intent.

12 The drafters were aware that various agencies were paying different ERC rates when the
13 Settlement Agreement was drafted. According to the declaration of Lillian Pangelinan, the
14 Administrator of the Settlement Fund, “[a]lthough 30% was the applicable employer contribute rate
15 as of June 26, 2013, a number of government agencies were actually paying above the 30% ERC
16 rate.” Pangelinan Decl. at ¶4, ECF No. 708.¹⁰ As argued by the NMC, if the drafters really
17 intended for all the Autonomous Agencies to pay the same rate, then the Settlement Agreement
18 could have said, for example, that the “Autonomous Agencies shall all pay an equal and uniform
19 employer contribution rate.” Another option is the Settlement agreement could have said, “the
20 Autonomous Agencies shall pay employer contributions at the rate of 30%” or “the Antonymous
21 Agencies shall continue paying at the rate set forth in Judge Govendo’s order.” The Settlement
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23 ⁹ The NMC argues that Judge Govendo’s order and all other orders arising from the
24 Superior Court Action were rendered meaningless once this court approved the Settlement
25 Agreement. *See* Settlement Agreement at § 14.0 (“In the event of Final Approval [of the
26 Settlement Agreement] . . . , the judgment [in the Superior Court Action] shall be deemed satisfied
and substituted by the Johnson Action comprehensive Consent Judgment incorporating the terms
of this [Settlement] Agreement . . .”).

27 ¹⁰ Ms. Pangelinan notes that the Public School System and The Tinian Mayor’s Office were
28 both paying 37.3909% ERC. *Id.* “All other government agencies were paying 30%, with the
exception of the NMC, which was paying a 20% ERC rate as of June 26, 2013.” *Id.*

1 Agreement said none of these things.

2 The Trustee asserts that back in June 2013, the NMC had been paying 30% ERC.
3 According to the Trustee, payment for the NMC's 30% ERC was shared between the NMC and the
4 Government, with the NMC paying 20% and the Government paying the remaining 10%. The
5 Trustee argues that the funding source for the NMC's ERC payments is not the Settlement Fund's
6 concern, and she contends that the Settlement Fund should continue receiving the 30% ERC from
7 the NMC.

8 The record before the court, however, does not support the Trustee's assertion that the NMC
9 was paying ERC at the rate of 30% as of June 26, 2013. According to Ms. Pangelinan's declaration,
10 which was filed with the Reply Brief of the Trustee, the NMC paid 30% ERC from about October
11 22, 2010 to November 18, 2011. Pangelinan Decl. at ¶2, ECF No. 708. The NMC then reduced
12 its ERC rate to 20% in December 2011, and it has continued to pay this reduced rate since then.
13 *Id.* at ¶3. See also Spreadsheet of NMC Employer Contribution Rate Payment History attached to
14 Pangelinan Decl., ECF No. 708-1. The Settlement Fund's own records do not reflect that the NMC
15 was paying a 30% ERC rate. Ms. Pangelinan's declaration and supporting spreadsheet does not
16 support the Trustee's contention that as of June 26, 2013, the NMC was still paying a 30% rate,
17 with 10% coming from central government funding. While the Government may have paid any
18 shortage the NMC owed to the NMI Retirement Fund in the past, the Trustee's own discussions
19 with former Governor Inos reflects that this shared payment arrangement ended sometime in Fiscal
20 Year 2008. Thus, based on the facts presented, the court finds that the ERC rate the NMC was
21 paying or being credited for was only 20%.¹¹

22 The Trustee argues that applying the NMC's interpretation of the Settlement Agreement
23 leads to an absurd result since the NMC would pay a rate lower than all the other government
24 agencies. The Trustee notes that CNMI law requires that "[e]ach autonomous agency,
25 instrumentality or public corporation . . . shall contribute a similar amount as the government
26

27 ¹¹ If the Settlement Fund believes it has other facts that would support a finding that the
28 NMC was being credited for paying a 30% rate, then the court may be willing to revisit this issue.

1 contribution rate[.]” 1 CMC § 8362(b). But, the NMC counters that there is no absurdity here
2 because there is nothing irrational about having one autonomous agency pay a rate that is lower than
3 other agencies. The NMC argues that Section 8362(b) of the CNMI law is trumped by the
4 Settlement Agreement, which specifically provides that “[t]o the extent that there is any conflict
5 between any provision in this agreement and any CNMI case law, public law, or regulation, the
6 parties agree that this Agreement shall control.” Settlement Agreement at §38.1, ECF No. 468-1.

7 The court concurs with the NMC. The Settlement Agreement supersedes the requirement
8 in Section 8362(b) that the Autonomous Agencies shall pay the same ERC as the Government.
9 The Settlement Agreement only requires the Autonomous Agencies to pay the ERC rates each was
10 paying as of June 26, 2013. While the Trustee and Class Counsel believe that applying the plain
11 meaning to Section 5.0 would lead to unfairness because the Settlement Class would essentially be
12 subsidizing NMC, the court does not believe this result – while unintended by the Trustee and Class
13 Counsel – to be absurd, irrational or wildly unreasonable. The facts show that the NMC had been
14 treated differently in the past with regard to ERC payments, and that not all government agencies
15 were paying the same ERC rate. Thus, it is not unreasonable to expect the NMC to continue paying
16 the 20% ERC rate it was paying as of June 26, 2013. This is what the plain meaning of the
17 Settlement Agreement requires.

18 CONCLUSION

19 In interpreting the Settlement Agreement, the court must confine its inquiry to the four
20 corners of the Settlement Agreement. Doing so, the court finds that Section 5.0 of the Settlement
21 Agreement is plain and unambiguous. The Autonomous Agencies were required to pay ERC “rates
22 they were paying as of June 26, 2013.” The NMC was paying a 20% ERC rate as of June 26, 2013.
23 Thus, the Motion to Enforce Settlement Agreement, which requests an order that the NMC pay a
24 30% rate, is denied.

25 IT IS SO ORDERED.



26 /s/ Frances M. Tydingco-Gatewood
27 Designated Judge
28 Dated: Mar 10, 2016