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IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 GOVERNMENT OF GUAM, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

CIVIL CASE NO. 02-00022

**ORDER**

On October 13, 2009, the “Government of Guam” by and through the Guam Legislature filed a Motion to Recuse pursuant to 28 U.S.C. § 455(a) and (b). *See* Docket No. 498. Therein, the below-signed judge’s impartiality was questioned. Counsel asserted the existence of a conflict of interest because a family member, Jeanette Gogue Leon Guerrero (“Mrs. Leon Guerrero”), allegedly has property interests in close proximity to a proposed private landfill site. For the reasons set forth herein, the court finds no basis for recusal.

**I. IMPROPER FILING**

At the outset, the court notes that the defendant in this civil action – Government of Guam, which includes both the Executive and Legislative branches – is represented by the Attorney General of Guam. The Attorney General has represented the Government of Guam in this litigation from its inception, through the negotiations and signing of the Consent Decree, and

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1 up to the present.<sup>1/</sup> The Attorney General did not file the instant motion; rather, the motion was  
2 filed by Attorney Stephanie G. Flores (“Ms. Flores”). Ms. Flores has not made an entry of  
3 appearance nor is she recognized as counsel of record for the Government of Guam.<sup>2/</sup> And, the  
4 Guam Legislature has not sought to intervene in this action through separate counsel. The long  
5 period of quiescence which followed the entry of the Consent Decree indicates that the Guam  
6 Legislature’s interests were presumably considered and adequately represented by the Attorney  
7 General. *See Delaware Valley Citizens' Council for Clean Air v. Com. of Pa.*, 674 F.2d 970 (3d  
8 Cir. 1982) (denying state legislators’ motion for intervention since Commonwealth’s interests  
9 already adequately represented by Commonwealth defendants).

10 Ms. Flores does not cite to any authority permitting the filing, nor is the court aware of  
11 any that would permit what appears to the undersigned to be a procedural impropriety and  
12 possible unethical conduct. To allow this type of filing would set a harmful precedent of  
13 permitting individuals and entities who are “non-parties” to an action, to file motions and  
14 “weigh-in” with their opinions. As is true in this case, such filings are distracting, wasteful of  
15 judicial resources, and nothing short of disruptive of the orderly flow of the judicial process.

16 Counsel is cautioned that, absent a proper and authorized motion to intervene or request  
17 to submit *amicus curiae* briefing, this court will not recognize any further filings on behalf of the  
18 defendant entity in this case– the Government of Guam unless it is filed by the Attorney General  
19 of Guam.

20 Notwithstanding the improper filing, this court finds that respect for the judiciary  
21 depends upon public confidence in the integrity and independence of judges. It is on this basis

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24 <sup>1/</sup> Except for a brief period spanning from September 2002 to February 2003 when the  
25 Government of Guam was represented by a private law firm, the Attorney General has been  
counsel of record on behalf of the Government of Guam. *See* Docket Nos. 6 and 21.

26 <sup>2/</sup> In addition, the court questions whether counsel even sought a Legislative resolution  
27 approving this motion. There is no indication that that was done, or any mention as to which  
28 Senators Ms. Flores is representing.

1 alone that this decision is rendered, addressing the issues raised in the motion.<sup>3/</sup>

## 2 II. RECUSAL ANALYSIS

### 3 A. Consent Decree Background

4 It is well-known that this case stemmed from the Government of Guam's violation of the  
5 Clean Water Act. After twenty-two years of violating the Clean Water Act, the parties entered  
6 into the Consent Decree, which mandates the closure of the Ordot Dump and the opening of a  
7 new landfill. It is important to underscore the fact that the new landfill site was selected by the  
8 parties to this action well before the undersigned judge was appointed to the federal bench. As  
9 this court has recognized previously, pursuant to the procedures set forth in the Consent Decree,  
10 the Government of Guam selected Layon as the new landfill site, with the concurrence of the  
11 United States Environmental Protection Agency ("USEPA") after several other sites were  
12 considered by professionals and dismissed as unsuitable. After initial identification of 20 sites,  
13 two screening processes resulted in six sites being evaluated and scored, with Layon receiving  
14 the highest scores. *See* Docket No. 272 at p. 11. Thus, Layon was selected and agreed upon by  
15 the parties without the court's involvement; to be clear, the issue of *where* to site the new landfill  
16 **has never been, and is not now,** an issue before this court.

### 17 B. The Motion is Untimely

18 It is well established that a recusal motion under section 455 must be filed "with  
19 reasonable promptness after the ground for such a motion is ascertained." *Preston v. United*  
20 *States*, 923 F.2d 731, 733 (9th Cir. 1991). The Ninth Circuit requires "recusal motions to be  
21 lodged in a timely fashion because the absence of such a requirement would result in increased  
22 instances of wasted judicial time and resources and a heightened risk that litigants would use  
23 recusal for strategic purposes." *Id.* Timeliness is therefore clearly very important in bringing a  
24 motion for recusal.

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28 <sup>3/</sup> The court however, will not make a ruling as to the motion, since the court finds it was  
improperly filed. Even assuming the motion was properly filed it would be denied.

1           The Guam Legislature claims that its motion is timely because it is filing this motion  
2 shortly after the court’s September 3, 2009 order which has somehow “directly impacted the  
3 *Guatali B* project.” *See* Motion, Docket No. 498, p. 14. In its September 3, 2009 Order, this  
4 court essentially found that there had been undue interference with the permitting process at the  
5 Guam Environmental Protection Agency (“GEPA”) and again ordered that all work associated  
6 with the opening of the Layon landfill be the priority of the Government of Guam. *See* Docket  
7 No. 481, p. 1-2. There was no mention whatsoever of the *Guatali B* project in the court’s  
8 September 3<sup>rd</sup> Order. Clearly, this is not the first time that the court has ordered the Government  
9 of Guam and its agencies, including GEPA, to make the permitting for Layon a priority. As far  
10 back as November 6, 2008, the court ordered GEPA “to give the highest priority to the  
11 hydrogeological report.” *See* Docket No. 285, p. 2. On December 10, 2008, this court stated that  
12 it was “imperative that GEPA expedite its permitting process.” *See* Docket No. 312, p. 2. There  
13 is no explanation as to why the September 3<sup>rd</sup> Order impacted the *Guatali B* project more so  
14 than the previous orders. Moreover, the Guam Legislature’s logic suggests that all other pending  
15 projects before GEPA have been subsumed into the instant litigation and thereby made relevant  
16 to the issues before the court because of the court’s orders enforcing the Consent Decree. This is  
17 an untenable proposition.

18           In addition, the court understands that counsel has missed the deadline for filing her  
19 opening brief for the Guam Legislature in its appeal to the Ninth Circuit from a March 20, 2009  
20 contempt order of this court.<sup>4/</sup> The last entry on that docket sheet is the United States’ Motion to  
21 Dismiss filed on July 29, 2009. The United States sought to dismiss the appeal arguing that it  
22 was untimely filed and that the court was without jurisdiction. There has been no response or  
23 any other pleading filed by the Guam Legislature after that date. The court finds the timing of  
24 this motion suspicious in light of the lack of prosecution in the appellate case.

25           Nevertheless, this court will not dodge the critical question of whether its continued role  
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27 <sup>4/</sup> The Appellant Government of Guam’s opening brief was due on September 4, 2009. *See*  
28 *United States of America v. Government of Guam*, Appellate Case No. 09-16066 (9th Cir. 2009)  
Docket No. 1.

1 in this case is appropriate under the circumstances, even though it would have been entirely  
2 justified in denying the Guam Legislature’s motion on timeliness grounds alone.<sup>5/</sup>

3 **C. Disqualification Law and Standard**

4 “Judicial impartiality is presumed.” *First Interstate Bank of Arizona, N.A. v. Murphy,*  
5 *Weir & Butler*, 210 F.3d 983, 987 (9th Cir. 2000). “A party introducing a motion to recuse  
6 carries a heavy burden of proof; a judge is presumed to be impartial and the party seeking  
7 disqualification bears the substantial burden of proving otherwise.” *Pope v. Federal Exp. Corp.*,  
8 974 F.2d 982, 985 (8th Cir. 1992).

9 Title 28 U.S.C. § 455 enumerates the criteria for mandatory disqualification of all federal  
10 judges. Section 455(a) contains a general disqualification provision and mandates  
11 disqualification whenever a judge’s “impartiality might reasonably be questioned.” Next,  
12 subsection (b) delineates specific examples of situations where recusal is required.<sup>6/</sup>

13 **D. Recusal Under Section 455(b)(5) is not Applicable**

14 Before analyzing the court’s disqualification under 28 U.S.C. § 455(a), it will first  
15 address 28 U.S.C. § 455(b)(5). As set forth in the motion, there is a concern that the  
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17 <sup>5/</sup> The court will not surmise what may be the motivation in seeking recusal at this time, but  
18 notes that this is the *fourth* time that Senator Benjamin J. F. Cruz (“Senator Cruz”) has sought  
19 this judge’s recusal from the case. *See* Docket Nos. 228, 238 and 393.

20 <sup>6/</sup> Title 28 U.S.C. § 455(b) in pertinent part states:

21 [A judge] shall also disqualify himself in the following circumstances:

22 (5) He or his spouse, or a person within the third degree of relationship to either  
23 of them, or the spouse of such a person:

- 24 (i) Is a party to the proceeding, or an officer, director, or trustee of a party;  
25 (ii) Is acting as a lawyer in the proceeding;  
26 (iii) Is known by the judge to have **an interest that could be**  
**substantially affected** by the outcome of the proceeding;  
27 (iv) Is to the judge's knowledge likely to be a material witness in the  
28 proceeding. (Emphasis added).

1 undersigned's "aunt" (Mrs. Leon Guerrero) allegedly owns property in Santa Rita – the village  
2 where a private entity proposes to construct a landfill.<sup>7/</sup> According to counsel for the Guam  
3 Legislature these facts require my recusal under 28 U.S.C. § 455(b)(5).

4 Pursuant to subsection (b)(5) a judge shall disqualify herself when a person within the  
5 third degree of relationship to the judge has an interest that could be substantially affected by the  
6 outcome of the proceeding. The statute is directed to the judge whose recusal is in question and  
7 demands that the judge decide for herself whether to recuse. *See United States v. Sibla*, 624 F.2d  
8 864, 868 (9th Cir. 1980)(“section 455 includes no provision for referral of the question of recusal  
9 to another judge; if the judge sitting on a case is aware of grounds for recusal under section 455,  
10 that judge has a duty to recuse himself or herself.”). Based on the court's understanding of the  
11 facts, subsection (b)(5) is inapplicable and is not a basis for recusal in this matter.

#### 12 **1. Not Related in the Third Degree**

13 The relationship between an aunt and a niece is within the third degree of relationship.  
14 However, it is the court's understanding that Mrs. Leon Guerrero is not related to the  
15 undersigned either by blood or marriage. The court's paternal grandmother Oliva Castro  
16 (*familian Eron*) Zafra (“Ms. Castro Zafra”) co-habitated with Vicente R. (Tun Ben) Gogue (“Mr.  
17 Gogue”).<sup>8/</sup> It is the court's belief that Ms. Castro Zafra and Mr. Gogue never married. The  
18 undersigned's family members are likewise of the belief that they remained unwed. Mrs. Leon  
19 Guerrero is the daughter of Mr. Gogue from a prior marriage. She is not the sibling – whether by  
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21 <sup>7/</sup> The court uses the word “allegedly” with regard to Mrs. Leon Guerrero's property holdings  
22 because the report attached to the motion itself cautions that “to guarantee ownership a  
23 Preliminary Title Report must be ordered.” *See* Declaration, Docket No. 499, Ex. A, attachment  
24 thereto. No such title report was presented for this court's review. This type of careless  
25 investigation by counsel demonstrates a lack of due diligence as required under Rule 11 of the  
26 Federal Rules of Civil Procedure. Additionally, the court notes that this limited report was  
27 drafted in 2007 and sent to the private entity in question, and then presumably provided to  
28 Senator Cruz. *Id.*

It appears to this court that there are some members of the Legislature willing to advocate  
for the interests of a private company to the exclusion of the well-being of the people.

<sup>8/</sup> Guam law does not recognize cohabitating for a period of years as a “common law” marriage.

1 blood or marriage – of the undersigned’s father. While the undersigned has referred to Mrs.  
2 Leon Guerrero as an “aunt,” such reference is given out of respect for local custom and tradition,  
3 and is not rooted in any disqualifying familial relationship with Mrs. Leon Guerrero. Because  
4 Mrs. Leon Guerrero is not related to the undersigned by blood or marriage, the undersigned does  
5 not find there are any grounds supporting recusal in this case under Section 455(b)(5).

6 In addition to the facts as disclosed above, the undersigned’s personal contact with Mrs.  
7 Leon Guerrero is very limited. She is a very private individual and has never discussed her  
8 personal assets and/or real estate holdings, if any, with the undersigned. Moreover, on the  
9 occasions the undersigned has spoken to Mrs. Leon Guerrero, there have never been discussions  
10 regarding any of the court’s cases.

11 Even if the undersigned was related to Mrs. Leon Guerrero within the third degree, there  
12 still would be no need for recusal under 28 U.S.C. § 455(b)(5). A recusal under Section  
13 455(b)(5) requires a finding that Mrs. Leon Guerrero has an interest that could be substantially  
14 affected by the outcome of the proceeding. 28 U.S.C. § 455(b)(5). There is simply none. If  
15 Mrs. Leon Guerrero owns property in Santa Rita, her interests will not be substantially affected  
16 by the opening of the Layon Landfill and the closing of the Ordot Dump as provided for under  
17 the Consent Decree.<sup>9/</sup>

## 18 **2. Paragraph 10(b) of the Consent Decree is Inapplicable**

19 In its motion, the Guam Legislature argues that a private party’s proposed plans to  
20 construct a landfill on Santa Rita property abutting Mrs. Leon Guerrero’s property is related to  
21 the Consent Decree. This premise appears to rest on a misinterpretation of the Consent Decree.  
22 Paragraph 10(b) in its entirety states as follows:

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24 \_\_\_\_\_  
25 <sup>9/</sup> The issue was raised when Senator Cruz sought this court’s recusal because its law clerk owns  
26 property in Santa Rita. See Docket No. 238, letter attached thereto. The court found there was  
no need to recuse itself.

27 The court need not go into detail herein on the reasons supporting its decision but finds  
28 the rationale set forth in its March 3, 2008 Order, pp. 7-9, applicable here and therefore adopts it.  
See Docket No. 238.

1 b. Notwithstanding any of the time frames set forth in Paragraph 8 or 9 above,  
2 upon the opening of a properly licensed and permitted municipal solid waste  
3 landfill prior to the times set forth in Paragraphs 8 and 9 above, no further  
4 dumping of any kind will be permitted at the Ordot Dump.

5 See Docket No. 55, p. 11-12.

6 Rather than quote Paragraph 10(b) in its entirety and read it in context with the Consent  
7 Decree as a whole, the Guam Legislature has parceled out a single phrase and claims that  
8 Paragraph 10(b) is essentially a “race to build.” Such a misinterpretation of this provision is  
9 unreasonable and unacceptable.

10 “Without question courts treat consent decrees as contracts” and must look within its four  
11 corners when discerning the intent of the parties. *United States v. Asarco*, 430 F.3d 972, 980  
12 (9th Cir. 2005). When reading section 10(b) in its proper context, it is clear that it merely  
13 provides for the closure of the Ordot Dump earlier than was anticipated if the Government of  
14 Guam was successful in completing the new landfill prior to the deadlines set forth in Paragraphs  
15 8 and 9 of the Consent Decree. It is also imperative to note that since the Government of Guam  
16 failed to meet the deadlines set forth in Paragraphs 8 and 9, Paragraph 10(b) it is now of no  
17 consequence for purposes of the Consent Decree.

18 Contrary to the interpretation suggested by the Guam Legislature, there is no provision  
19 in the Consent Decree that permits a private entity to satisfy the requirements of the Consent  
20 Decree. In fact, the opposite is true. The plain language of the Consent Decree requires the  
21 Government of Guam to build a landfill. It sets forth explicit and detailed mandates for the  
22 planning and construction of the new landfill that is to be built. The Consent Decree is replete  
23 with reference to “DPW” and directives to “DPW” to perform specific activities designed to  
24 achieve results within set time frames. Accordingly, the proposed private project in Santa Rita  
25 seemingly advocated by the Guam Legislature through counsel, simply fails to be relevant to,  
26 much less satisfy any sections or requirements of the Consent Decree and is not, nor will it likely  
27 ever be a matter that is before this court. Any representations suggesting otherwise are  
28 unfounded.

Counsel states that this court cannot ignore Paragraph 10(b) in order to “push forward her

1 preferred alternative.” It bears repeating that when the undersigned assumed the federal bench  
2 there were no alternatives to choose from as the site selection had long been decided by the  
3 Government of Guam.<sup>10/</sup> In a November 29, 2007 email from Pankaj Arora (“Mr. Arora”)<sup>11/</sup> to  
4 the Guam Environmental Protection Agency, he states in pertinent part:

5 I would like to re-emphasize one issue that has been on the table for [a] few  
6 weeks now. According to USEPA (US Govt.) Dandan<sup>12/</sup> is the selected site for  
7 the new landfill. The Dandan site was proposed by GovGuam under the Consent  
Decree and accepted by the US as part of the Consent Decree. Therefore, there  
should not be any confusion about the Dandan site being the new landfill site.

8 Last week, I [was] surprised to see that a permit application was submitted to Guam EPA  
9 for the Guatali site. The permit application ties the Guatali site to the Consent Decree.  
This is unacceptable to the US. As stated earlier, Dandan is the site for the new landfill  
10 that was proposed by GovGuam and accepted by the US.

11 *See* Motion, Docket No. 499, Ex. B.<sup>13/</sup>

12 Mr. Arora included in his email to GEPA portions of an email he received from the US  
13 Attorney’s office which stated:

14 The Decree set a specified time period to debate over where the new landfill  
15 should be placed. Then there was a specified time period for studies. The  
16 Decree required that a list be compiled. Each of the locations on that list had to  
be studied and evaluated. That was done. A specified time was set for making  
the decision on which site would be used. **THAT HAPPENED.**

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17 <sup>10/</sup> The Government of Guam selected Layon as the new landfill site, with the concurrence of  
18 USEPA after several other sites were considered by professionals and dismissed as unsuitable.  
19 There were **more than 20 sites** initially identified. A first level screening narrowed the number  
20 of potential sites to the following 12 sites: Dandan, Kurason Estates Subdivision, Baza Gardens  
21 Area, Kaskada, Cotal West, Tenjo River Basin, Malaa, Majulosna, Sabana Baeta, Lonfit, Nimitz  
22 Hill COMNAVMAR and Sasa River Basin. Further screening eliminated another six sites, and  
the remaining six were evaluated and scored, with **Layon** receiving the highest scores. *See*  
Docket No. 272, at p. 11. **Guatali B** was not among these twelve sites for consideration.

23 <sup>11/</sup> At that time, Mr. Arora was the Environmental Engineer for EPA assigned as the Remedial  
24 Project Manager for the Ordot Dump. *See* Declaration, Docket No. 159.

25 <sup>12/</sup> Dandan is also referred to herein as Layon.

26 <sup>13/</sup> Not only are counsel’s arguments blatantly unfounded she also has filed exhibits that  
27 likewise undercut her arguments (*e.g.* Exhibits A and B). The undersigned is concerned  
28 whether, as an officer of the court bound by Rule 11 of the Federal Rules of Civil Procedure,  
Legislative counsel did due diligence by reading the exhibits she attached to her “motion.”

1 The site chosen by the Government of Guam under the Consent Decree is Dan  
2 Dan. (Guatali, incidentally, was NOT chosen, it also did not pass the criteria  
mandated.)

3 It has to be understood that there is no more debate about where the site will be.  
4 To comply with the Consent Decree the site chosen, Dan Dan, must remain the  
focus of all efforts. . . .

5 **If anyone is attempting to go back to the debate and search phase about**  
6 **where the landfill should be placed, they are in defiance of the Consent**  
7 **Decree. They are also indulging in the malady that has led us to this**  
8 **problem. A correct and proper decision had been made and it will be**  
9 **enforced by the Federal Court.**

8 Dan Dan is the location of the new landfill that the Government of Guam must  
9 build.

10 *Id.* (Emphasis added).

11 It is evident that the United States found the issue regarding site selection had been  
12 firmly settled.

13 Finally, the court would like to comment briefly on the “theory” counsel has presented in  
14 support of the motion. Counsel’s argument that a non-party (*i.e.* GRRP) can interject itself into  
15 this action without court permission and claim it has an independent right to perform under the  
16 terms of the Consent Decree is patently wrong. By way of further example, if party A and party  
17 B in a lawsuit negotiated an agreement, party C, a non-party in the litigation, cannot argue that it  
18 has an independent right to fulfill that agreement. This contorted interpretation of law proposed  
19 by counsel is thus summarily dismissed by this court.

20 For the above stated reasons, the court finds there are no grounds under 28 U.S.C. §  
21 455(b) for its recusal. The proposed project in Santa Rita is irrelevant to matters before this  
22 court and Mrs. Leon Guerrero’s purported interests are in no way connected to or substantially  
23 affected by this action.

24 **E. The Undersigned Judge’s Impartiality Under 455(a)**

25 The mandate found in 28 U.S.C. 455(a) is identical to the one found in Canon 3(E)(1) of  
26 the Code of Judicial Conduct. Section 455(a) states: “Any justice, judge, or magistrate judge of  
27 the United States shall disqualify himself in any proceeding in which his impartiality might  
28 reasonably be questioned.” *Cf.* Canon 3(E)(1) (“A judge shall disqualify himself or herself in a

1 proceeding in which the judge’s impartiality might reasonably be questioned. . . .”).

2 The court recognizes that “the test for recusal is ‘whether a reasonable person with  
3 knowledge of all the facts would conclude that the judge's impartiality might reasonably be  
4 questioned.’” *Milgard Tempering, Inc. v. Selas Corp. of America*, 902 F.2d 703, 714 (9th Cir.  
5 1990) (quoting *Herrington v. Sonoma Cty.*, 834 F.2d 1488, 1503 (9th Cir. 1987)). “It must be  
6 noted that in the recusal context, a reasonable person means a ‘well-informed, thoughtful  
7 observer,’ as opposed to a ‘hypersensitive or unduly suspicious person.” *Ortega Melendres v.*  
8 *Arpaio*, 2009 WL 2132693 \*12 (D. Ariz. 2009).

9 “Discretion is confided in the district judge in the first instance to determine whether to  
10 disqualify [herself].” *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988).  
11 This is because “[t]he judge presiding over a case is in the best position to appreciate the  
12 implications of those matters alleged . . . the trial judge must carefully weigh the policy of  
13 promoting public confidence in the judiciary against the possibility that those questioning his  
14 impartiality might be seeking to avoid the adverse consequences of [her] presiding over their  
15 case.” *Id.*

16 As the Judicial Conference’s Committee on Codes of Conduct has noted, “[r]espect for  
17 the judiciary depends upon public confidence in the integrity and independence of judges.  
18 Understanding and observing ethics standards is an important element in upholding the public’s  
19 confidence and ensuring an independent and honorable judiciary.” *Ethics Essentials: A Primer*  
20 *for New Judges on Conflicts, Outside Activities, and Other Potential Pitfalls* (Office of the  
21 General Counsel, Administrative Office of the United States Courts) at iv.

22 A motion for recusal must identify cold, hard facts which create the appearance of  
23 partiality. Mere speculations are not enough. *See, e.g., Hansen v. Commissioner of I.R.S.*, 820  
24 F.2d 1464, 1467 (9th Cir.1987) (“a clear and precise showing of prejudice must be made”).

25 This court does not take lightly the trust given to it by the public, and thus these ethical  
26 principles have been the foundation of every decision made by the court. Having thoroughly  
27 investigated the concerns raised in the motion, the court finds that a reasonable person with  
28 knowledge of the facts as set forth above would not conclude that this court’s impartiality might

1 reasonably be questioned. <sup>14/</sup> *Yagman v. Republic Ins.*, 987 F.2d 622 (9th Cir. 1993) (stating the  
2 reasonable person standard is to be used with regard to determining a judge’s impartiality). As  
3 stated repeatedly by this court, the site selection for the new landfill was made **well before** this  
4 judge assumed the federal bench. A reasonable person would be much less likely to question the  
5 undersigned’s impartiality knowing that this judge had nothing to do with either the actual site  
6 selection or approval process.

7 Lastly, as a judge, there is a duty to sit in all cases that come before the court when there  
8 is no legitimate reason for recusal. *United States v. Holland*, 501 F.3d 1120 (9th Cir. 2007); *see*  
9 *also In re Drexel Burnham Lambert Inc.*, 861 F.2d at 1312 (“A judge is as much obliged not to  
10 recuse himself when it is not called for as he is obliged to when it is.”). “The unnecessary  
11 transfer of a case from one judge to another is inherently inefficient and delays the  
12 administration of justice.” *United States v. Synder*, 235 F.3d 42, 46 (1st Cir. 2000). A judge has  
13 an affirmative duty not to disqualify herself unnecessarily, particularly where a request for  
14 disqualification was not made at the threshold of litigation and the judge has acquired valuable  
15 background of experience. *McGann v. Kelly*, 891 F. Supp. 128 (S.D.N.Y.1995). Counsel has  
16 failed to articulate why a reasonable person, knowing all of these facts, would think the  
17 undersigned is partial, nor has she offered sound justification requiring this court’s recusal.

### 18 III. CONCLUSION

19 In accordance with the foregoing, the undersigned finds that the Motion to Recuse fails in  
20 all respects. Judicial impartiality is presumed, and the undersigned finds that counsel has failed  
21 to meet her substantial burden in proving otherwise. While counsel has failed to cite any  
22 authority permitting the untimely filing of the instant motion to recuse on behalf of the  
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25 <sup>14/</sup> Counsel refers this court to a comment by a reader in response to a newspaper article that was  
26 posted online as empirical evidence of the public’s question about this judge’s impartiality. *See*  
27 Motion, Docket No. 498, p. 13 at fn. 2. This court will not rely on such evidence in making its  
28 determination regarding whether there are grounds for recusal. This court has always made its  
decisions based upon the law as it pertains to the facts, not on the speculations or whims of an  
anonymous blogger.

1 Government of Guam, in the interest of promoting the public trust and confidence in the  
2 judiciary and its independence, the undersigned finds that no reasonable person with knowledge  
3 of all the facts would conclude that the judge's impartiality might reasonably be questioned. To  
4 reiterate, the Government of Guam selected Layon as the new landfill site, with the concurrence  
5 of USEPA, prior to the undersigned taking the federal bench. Layon was selected without the  
6 undersigned's involvement and for this reason, the issue of the site for the new landfill has never  
7 been and is not now an issue before the court. For this reason alone, the undersigned's  
8 relationship with Mrs. Leon Guerrero bears no relevance. Despite this however, and in the  
9 interest of public trust and confidence in the judiciary, the undersigned discloses that Mrs. Leon  
10 Guerrero is not related to this court by blood or marriage within the third degree of kinship.

11 The undersigned recognizes her duty to sit in all cases that come before the court when  
12 there is no legitimate reason for recusal. This is such a case. Accordingly, the court shall not  
13 recuse itself.

14 **IT IS SO ORDERED.**



15 /s/ Frances M. Tydingco-Gatewood  
16 Chief Judge  
17 Dated: Oct 17, 2009

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