DISTRICT COURT OF GUAM

TERRITORY OF GUAM

UNITED STATES OF AMERICA, Plaintiff, vs. GOVERNMENT OF GUAM, Defendant.	Civil Case No. 02-00022 **ORDER RE: CONTEMPT**

Before this court is the Order to Show Cause why the Government of Guam (the "Government") should not be held in contempt for its failure to make the first in a series of weekly payments ordered by this court. *See* Docket No. 372. After reviewing the parties' submissions (*see* Docket Nos. 377 & 383), as well as the relevant authorities, the court now finds the Government in civil contempt, declares Section 6 of Guam Public Law 30-1 ("PL 30-1") null and void under the Supremacy Clause of the U.S. Constitution, and sanctions the Government accordingly.

I. CIVIL CONTEMPT FINDING

"Civil contempt occurs when a party fails to comply with a court order." *Gen'l Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986). Civil contempt sanctions "may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard." *Int'l Union, UMWA v. Bagwell*, 512 U.S. 821, 827 (1994). However, "an opportunity to be heard does not require an oral or evidentiary hearing on the issue." *Pacific Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000) (dealing with sanctions for "bad

faith" conduct under 28 U.S.C. § 1927). Rather, "[t]he opportunity to brief the issue *fully satisfies due process requirements*." *Id.* (emphasis added); *see also United States v. Ayres*, 166 F.3d 991, 995 (9th Cir. 1999) (Ninth Circuit "has repeatedly held . . . that finding a party in civil contempt without a full-blown evidentiary hearing does not deny due process of law to a contemnor"); *Wilson-Simmons v. Lake County Sheriff's Dep't*, 207 F.3d 818, 822 (6th Cir. 2000). This is particularly so where—as here—the papers before the court reveal *no* dispute as to the facts relevant to the contempt inquiry. *See Ayres*, 166 F.3d at 995.

The Government disputes neither the court's power to enforce an order by civil contempt sanctions, nor the "wide latitude" the court has in determining whether there has been contemptuous defiance of an order enforcing a consent decree. *See* Docket No. 377 at 4:9-21 (*citing*, *inter alia*, *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 432 (2004); *Shillitani v. United States*, 384 U.S. 364, 367 (1966); *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995); *Gifford v. Heckler*, 741 F.2d 263, 266 (9th Cir. 1984)). And, the Government clearly had adequate notice of the contempt charge it faces, as shown by its detailed brief raising some spurious defenses, but challenging *none* of the relevant underlying facts. *See* Docket No. 377 at 1:22-14:3.

A. The Government's Conduct Satisfies The Elements Of Civil Contempt

Before holding a party in civil contempt, a court must make two findings: (1) the party must have disobeyed a "specific and definite court order," and (2) the party must have "fail[ed] to take all reasonable steps within [its] power to comply." *Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006) (*quoting In re Dual-Deck Video Cassette Recorder Antitrust Litig'n*, 10 F.3d 693, 695 (9th Cir. 1993)). The relevant evidentiary standard is "clear and convincing." *FTC v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999).

1. The Government Disobeyed A "Specific and Definite Court Order"

The first issue is whether the Government disobeyed a "specific and definite court order." *Reno Air Racing*, 452 F.3d at 1130. Rule 65(d) of the Federal Rules of Civil Procedure requires that any injunction be "specific in terms" and describe "in reasonable detail, and not by reference

to the complaint or other document, the act or acts sought to be restrained." FED. R. CIV. P. 65(d). "If an injunction does not clearly describe prohibited or required conduct, it is not enforceable by contempt." *Gates v. Shinn*, 98 F.3d 463, 468 (9th Cir. 1996). *See also Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) ("[T]he specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.").

Here, the relevant court order is the court's February 13, 2009 "Order re: Cash Payments." *See* Docket No. 359. That Order contained the following language:

> To achieve compliance with the Consent Decree and this court's Order of October 22, 2008, the court **HEREBY ORDERS** that beginning March 1, 2009, the Government of Guam shall deposit the amount of $993,700.00 with Citibank. Thereafter, on a weekly basis, the Government of Guam shall make deposits in accordance with the funding schedule as attached hereto. As previously stated herein, it is the Government of Guam's responsibility to determine the source(s) of these payments.

Id. at 18:20-19:1.

This Order could not be more "specific and definite." *See Reno Air Racing*, 452 F.3d at 1130. It unequivocally told the Government what it was to do, and when it was to do it.[1] No reasonable person (or entity) could be confused as to what was required. The Government itself acknowledged that payment was required, and admits that it simply did not make the payment. *See* Docket No. 377 at 4:4-5 (acknowledging the Government's "non-payment" of the "first court-ordered payment"). Again, the Order did not specify the source of the funds; it simply required that they be paid.[2]

In sum, the court finds by clear and convincing evidence that the Government disobeyed a "specific and definite court order."

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[1] Because March 1, 2009 fell on a Sunday, the payment was in fact due on March 2, 2009. *See* FED. R. CIV. P. 6. The Government understood this. *See* Docket No. 377 at 4:1-5.

[2] In fact, the court has *never* required that the Government of Guam make payments from any particular source.

2. The Government "Fail[ed] To Take All Reasonable Steps Within [Its] Power To Comply"

The second issue is whether the Government "fail[ed] to take all reasonable steps within [its] power to comply." *Reno Air Racing*, 452 F.3d at 1130. A party will be found to have failed to take "every reasonable step" to comply when there was "little conscientious effort" on its part to comply. *Stone v. City and County of San Francisco*, 968 F.2d 850, 857 (9th Cir. 1992) (*quoting Sekaquaptewa v. MacDonald*, 544 F.2d 396, 406 (9th Cir. 1976)).

The Government states that "[t]he submission for the District Court's consideration of Public Law 30-1 represented the [Government's] good faith efforts to find a viable alternative to the weekly payment and which would not delay or impede the timetable the Court had previously ordered." Docket No. 377 at 13:16-19. Setting aside the fact that "there is no good faith exception to the requirement of obedience to a court order," *In re Dual-Deck Video*, 10 F.3d at 695, the court cannot imagine how PL 30-1 could qualify as a *reasonable* step taken in compliance with the court's February 13, 2009 Order.[3]

Section 6 certainly cannot be viewed as a reasonable step towards compliance with the court's February 13, 2009 Order because it specifically prohibits making the required payments and was clearly enacted in direct contravention of the Order. Indeed, the enactment of this kind of legislation has been a key factor in cases where contempt has been found. *See*, *e.g.*, *Hook v. Arizona Dep't of Corrections*, 107 F.3d 1397, 1403-04 (9th Cir. 1997) (upholding contempt

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[3] The court notes that the Governor's original bill (Bill 51), as submitted to the 30th Guam Legislature, did not contain Section 6. Prior to the Legislature's radical amendments, Bill 51 proposed a more viable financing plan—namely, the Section 30-backed revenue bonds proposed by the Receiver and recommended by the financial experts: the expert retained by the United States, Jonathan Shefftz; Bureau of Budget Management and Research ("BBMR") Director, Bertha Duenas; Government of Guam's Bond Counsel, Stanley J. Dirks; Acting Guam Economic Development Authority, Rita Nauta; and Public Finance Management, Inc. *See* Docket No. 359 at 10 n.14.

Additionally, the court recognizes that Bill 51, in its original form, was the *second* attempt by the Governor to seek legislation approving Section 30-backed bond financing; the first attempt was with the 29th Guam Legislature (Bill No. 399). Throughout these proceedings, the Governor has been cooperative in seeking the necessary financing.

sanction against governmental defendant where legislature set up barrier to court-ordered payment); *Delaware Valley Citizens' Council for Clean Air v. Com. of Pennsylvania*, 678 F.2d 470, 476 (3d Cir. 1982), *cert. denied*, 459 U.S. 969 (1982) (same); *Halderman v. Pennhurst State School & Hosp.*, 673 F.2d 628, 638 (3d Cir. 1982), *cert. denied*, 465 U.S. 1038 (1984) (same). *See also Shuffler v. Heritage Bank*, 720 F.2d 1141, 1147 (9th Cir. 1983) (upholding contempt sanction against private defendant who deliberately set up barriers to court-ordered payment).

It is no defense that PL 30-1 provides alternative financing methods. This court's February 13, 2009 Order did not give the Government the option of either making weekly payments *or* providing the court with a viable financing plan. It categorically ordered the Government to make certain payments. The Order stated that the *court* would suspend the weekly payments, if *it* were satisfied that a viable financing plan had been submitted. The Order did *not* say, or even imply, that the *Government* could unilaterally suspend its payment obligations by submitting what it considered viable alternative financing methods.

Moreover, the Government's own consultants have pointed out flaws in PL 30-1. As the United States pointed out:

> The Bank of America, [the Government's] bond consultant, opined that the system revenue pledge (section 51822) is not a viable option; for the second option (section 51823), the bank could not provide a definitive time frame for completing a bond financing package. Both the Bank of America and [the Government's] bond counsel stated that PL 30-1 created two other uncertainties for the issuance of financing for the Consent Decree projects: (1) the legislation provides that the Deficit Financing Bonds must be issued at the same time or before the landfill system bonds; and (2) the Legislature did not increase the debt ceiling. As a result, [the Government's] bond counsel stated that PL 30-1 is *likely not to be legally sufficient* to authorize the issuance of the full amount of the bonds necessary for the Consent Decree projects. Moreover, he stated that the other financing options contained in PL 30-1, lease-leaseback and private financing bonds, required further legislative approvals.

See Docket No. 383 at 13:23-14:7 (citations omitted) (emphasis in original).

In sum, the court finds by clear and convincing evidence that the Government's enactment of PL 30-1 was not a reasonable step taken within its power to comply with the court's Order. Thus, since the Government (1) disobeyed a "specific and definite court order,"

and (2) "fail[ed] to take [any] reasonable steps within [its] power to comply," the elements of civil contempt are met. *Reno Air Racing*, 452 F.3d at 1130.

B. The Government Raises No Successful Defense To Civil Contempt

The Government purports to raise the following defenses to civil contempt: (1) impossibility; (2) good faith; and (3) the invalidity of the underlying order.[4] None has any merit.

1. Impossibility

The Government asserts that "[a] demonstration that compliance is impossible is a defense in a civil contempt proceeding." Docket No. 377 at 4:22-23 (*citing United States v. Rylander*, 460 U.S. 752, 757 (1983)). In this instance, the Government contends that Section 6 of PL 30-1 made it impossible to comply with the court's Order because it was placed "in the untenable position of contravening a valid and duly enacted provision of Guam law that prohibits the payment of that sum, or any other amount, for Consent Decree projects unless there is a legislative authorization or appropriation for the expenditure." *Id*. at 5:13-16.

However, as the Government aptly acknowledges, "the impossibility defense does not apply when 'the person charged is responsible for the inability to comply.'" *Id*. at 5:5-6 (*citing United States v. Asay*, 614 F.2d 655, 660 (9th Cir. 1980); *Delaware Valley Citizens' Council*, 678 F.2d at 475-6). The Government is silent on the obvious point: the Government *itself* is entirely responsible for the law purportedly making it impossible to comply with the court's

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[4] Although it is not relevant to the Order to Show Cause, the court notes that the concept of force majeure was raised in the Government's "Motion for Reconsideration" and in the United States' response. *See* Docket Nos. 369 & 383. The force majeure argument is unfounded here. First, although force majeure may be a defense to penalties for a delay in performance, it is *not* an excuse for non-performance on the basis of economic hardship. As the Consent Decree explicitly states, "[e]conomic hardship . . . shall not be considered [an event] beyond the reasonable control of the Government of Guam for purposes of determining whether an event is force majeure." *See* Docket No. 55 at 19:4-7. Second, the Government has demonstrated that it has the ability to make payments, and that it has the option of pursuing Section 30-backed bond financing. Third, the Government has failed to make the force majeure argument in its proper procedural setting, which is the dispute resolution process. *See id.* In sum, the court finds this argument frivolous. Future assertions thereof will be cause for sanctions.

Order.[5] *See* Docket No. 377 at 3 n.1 (making clear, without acknowledging, that PL 30-1 was enacted after the court's February 13, 2009 Order). The Government's enactment of Section 6 completely negates its impossibility defense. *See*, *e.g.*, *Hook*, 107 F.3d at 1403-04 (rejecting state director's impossibility defense that was based on later-enacted state law designed to make compliance impossible); *Delaware Valley Citizens' Council*, 678 F.2d at 475-76 (rejecting state's impossibility defense that was based on fact that state legislature had prohibited expenditure of state funds on court-ordered projects in furtherance of environmental consent decree); *Halderman*, 673 F.2d at 638 (rejecting state director's impossibility defense that was based on later-enacted state law designed to make compliance impossible).

The court recognizes the fundamental conflict between Section 6 of PL 30-1 and the February 13, 2009 Order. Section 6 purports to make compliance with court-ordered payments in this case contingent upon "legislative authorization or appropriation." Docket No. 377 at 3 n.1. In effect, Section 6 makes compliance with the Consent Decree subject to the whims of those in political office. This is simply unacceptable.

The Supreme Court has repeatedly and consistently held that the Supremacy Clause[6] of the U.S. Constitution renders invalid any state authority conflicting with a federal court order. *See*, *e.g.*, *Washington v. Washington State Comm'l Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 695 (1979); *North Carolina State Bd. of Educ'n v. Swann*, 402 U.S. 43, 46 (1971); *Griffin v. County School Board*, 377 U.S. 218, 231-34 (1964); *Cooper v. Aaron*, 358 U.S. 1 (1958); *see also Morgan v. McDonough*, 540 F.2d 527 (1st Cir. 1976); *United States v. Indianola Municipal Separate School District*, 410 F.2d 626, 630-31 (5th Cir. 1969); *State of New Jersey, Dep't of Envtl. Protection v. Gloucester Envtl. Mgmt. Srvs., Inc.*, Civ. Nos. 84-0152(JBS), 92-3860(JBS),

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[5] The court finds the Government's silence on this point deafening.

[6] Art. VI, cl. 2 states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2005 WL 1129763 at **11-14 (D.N.J. May 11, 2005) (striking state statute designed to interfere with projects proceeding under CERCLA consent decree).

The Government knows all too well the reaches of the Supremacy Clause; the court has previously stricken similar legislation in this very action. *See* Docket No. 218 (declaring PL 29-19 null and void under the Supremacy Clause, for similar reasons, and citing, *inter alia*, *Hook*, 107 F.3d at 1397; *Rust v. Johnson*, 597 F.2d 174, 179 (9th Cir. 1979)); Docket No. 377 at 10:2-21 (discussing the Supremacy Clause and the inability of a "[s]tate law prohibition against compliance with the District Court's decree [to] survive the command of the Supremacy Clause of the United States Constitution," especially where "the federal court order involves the utilization of public funds to vindicate a federal court's application or enforcement of federal law."). Enactment of Section 6 is simply another obstructionist tactic to prevent compliance with the court's Order and to further delay progress toward the closure of the Ordot Dump and the opening of the Layon landfill.[7]

In sum, the court rejects the Government's impossibility defense, and declares Section 6 of PL 30-1 null and void under the Supremacy Clause of the U.S. Constitution.

2. Good faith

The Government attempts to articulate a good faith defense to the contempt charge. *See* Docket No. 377 at 13:16-20. However, as stated above, "there is no good faith exception to the requirement of obedience to a court order." *In re Dual-Deck Video*, 10 F.3d at 695. Thus, there is no defense available on this argument.

3. Invalidity of underlying order

Finally, the Government implicitly defends itself against the contempt charge by making some exceptionally specious arguments to the effect that the court exceeded its authority in the February 13, 2009 Order. *See* Docket No. 377 at 5:16-21; 7:3-9:22. These arguments are not only specious, they are irrelevant: as the Government itself notes, "[a] party in contempt cannot

[7] Again, the court did not participate in selecting the Layon as the site of the new landfill. Rather, that choice was entirely the Government's. *See* Docket No. 359 at 5 n.5.

collaterally attack the underlying order in a contempt proceeding and . . . an order by a court with subject matter and personal jurisdiction must be observed until reversed by orderly and proper proceedings, 'without regard for even the constitutionality of the Act under which the order was issued.'" *Id*. at 13:12-15 (*citing Hook v. State of Arizona*, 907 F. Supp. 1326, 1338 (D. Ariz. 1995)). The Government's arguments that the court exceeded its authority constitute just such collateral attacks. Accordingly, they constitute no defense.

Thus, because the elements of civil contempt have been met and the Government has failed to raise any successful defense, the court finds it in civil contempt. The question now is determining the appropriate sanction.

II. CIVIL CONTEMPT SANCTION

"Sanctions for civil contempt may be imposed to coerce obedience to a court order, or to compensate the party pursuing the contempt action for injuries resulting from the contemptuous behavior, or both." *Gen'l Signal Corp.*, 787 F.2d at 1380. The record must make clear whether the sanctions are intended to be coercive or compensatory. *Id*.; *see also FTC v. Kuykendall*, 371 F.3d 745, 763 (10th Cir. 2004) (*en banc*) (a district court, in imposing contempt sanctions, "must set forth clear reasons for its findings"). When crafting a civil contempt sanction, the factors to be considered include: (1) the harm from noncompliance; (2) the probable effectiveness of the sanction; (3) the contemnor's financial resources, and the burden the sanctions may impose on them; and (4) the contemnor's willfulness in disregarding the court's order. *United States v. UMWA*, 330 U.S. 258, 303-04 (1947).

An assessment of these factors indicates that a coercive fine is proper here. The harm from the Government's noncompliance with the court's February 13, 2009 Order would potentially delay the closure of the Ordot Dump. As the court has stated before, the operations of the Ordot Dump pose an immense hazard to Guam's public health and its environmental integrity. *See*, *e.g.*, Docket Nos. 239 & 359. And the Government's willfulness in disregarding the court's Order was certainly extreme. The court has been unable to find any other case in which a state or local legislature enacted a law that identified a specific court order and blatantly

prohibited compliance with that order. *See* Section 6 of PL 30-1, *quoted in* Docket No. 377 at 3 n.1 ("*No* public official of the government of Guam . . . *shall* transfer *or* expend any public funds to comply with the February 13, 2009 Order of the Chief Judge of the District Court of Guam, relative to Civil Case No. 02-00022 . . . *or* any other order that purports to legally direct any official of the government of Guam to expend funds without any legislative authorization *or* appropriation.") (emphasis in original).

Moreover, a coercive sanction is appropriate because the court's goal here is compliance. To that end, the court is acutely aware of the Government's long history of noncompliance with the requirements of the Consent Decree in this case. *See* Docket No. 383 at 8:6-9:3 (detailing the Government's noncompliance with the court's financing orders). The Government is reminded that stipulated penalties continue to accrue.[8] *See id.* at 19:2-20:16 (detailing the $15,336,000.00 in *stipulated* penalties and $280,750.00 in additional fines that the Government has incurred by failing to comply with various deadlines in this case). Finally, the court finds the Government is capable of making the weekly payments required in the court's February 13, 2009 Order, insofar as the Government has been setting the funds aside for such use.[9] Since compliance is factually possible, the Government may purge its contempt and avoid the actual payment of the coercive sanction by immediately coming into compliance.[10] As such, the probable effectiveness of the sanction is high.

III. ETHICAL COMMENTS

Before concluding, the court makes a few observations on this phase of the litigation.

A. Rule 11 Concerns

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[8] Should the United States subsequently move for the payment of these penalties, the court will strongly consider such a request. Pursuant to federal law, any such funds paid as penalties must go to the United States Treasury; they cannot be used for Consent Decree projects.

[9] The court appreciates that the Governor has set aside the funds as the court ordered. *See* Docket No. 372.

[10] The court reiterates that there are less onerous ways of financing the Consent Decree projects, such as the use of Section 30-backed revenue bonds.

Rule 11(b) of the Federal Rules of Civil Procedure provides that "[b]y presenting to the court a pleading, written motion, or other paper —whether by signing, filing, submitting, or later advocating it—an attorney . . . certifies that [the pleading meets certain minimal conditions], to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . ." FED. R. CIV. P. 11(b). Such conditions include that (1) the pleading "is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;" and (2) that "the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." *Id*. 11(b)(1)-(2).

As has been indicated throughout this Order, the court doubts that the Government's response to the court's "Order to Show Cause" satisfies these conditions. This is true for an embarrassing number of reasons. A few examples:

- As noted above, the brief acknowledges that the impossibility defense to contempt does not apply when the person charged is responsible for the inability to comply, and then obscures the fact that this defense is unavailable by ignoring that the Government created its purported inability to comply. *See supra* I.B.1.
- The brief, while extolling the authority of the Guam Legislature, notes that the Legislature's power to legislate extends "to all *rightful* subjects of *legislation* not inconsistent with . . . the laws of the United States applicable to Guam," and then says nothing about how, in light of that language, the Legislature could possibly have authority to pass a law explicitly designed to contravene a federal court order enforcing the Clean Water Act—one of "the laws of the United States applicable to Guam." Docket No. 377 at 6:8-12.
- The brief devotes several pages to an attack on the court's February 13, 2009 Order as in excess of court authority, notwithstanding an explicit acknowledgment that such attacks have *no* role in a defense to contempt. *See* Docket No. 377 at 7:3-9:22, 13:12-15. And even if the attack were formally

appropriate, it would still be analytically obtuse, as it is based *entirely* on cases that have no bearing on the facts at hand, for a simple reason: in none of the cited cases was the legislature bound by a consent decree. *See id.*; *see also Rochester Pure Waters District v. Environmental Protection Agency*, 960 F.2d 180, 185-6 (D.C. Cir. 1992) (United States Congress not bound by court's order, and sheltered in any event by Appropriations Clause); *San Francisco NAACP v. San Francisco Unified School Dist.*, 896 F.2d 412 (9th Cir. 1990) (legislature not bound by consent decree); *Brewster v. Dukakis*, 675 F.2d 1 (1st Cir. 1982) (same); *New York State Ass'n for Retarded Children, Inc. v. Carey*, 631 F.2d 162 (2d Cir. 1980) (same). By contrast, the Consent Decree in this case binds the *entire* Government of Guam.[11]

- The brief acknowledges the priority, under the Supremacy Clause, of the laws of the United States, yet does not bring this important rule to bear on its analysis. *See* Docket No. 377 at 10:2-15.
- The brief acknowledges that "all parties have an unequivocal obligation to obey [court orders] while they remain in effect," and then is silent on how this rule might bear on its case, and on why it should be excepted from this rule. *See id.* at 10:10-11.

For these and other reasons, the court is skeptical that the Government's response to the court's "Order to Show Cause" satisfies the requirements of Rule 11(b) of the Federal Rules of Civil Procedure. Going forward, the court cautions Government counsel to be mindful of its obligations under Rule 11.

B. Oath of Office Violations

Section 1423d of the Organic Act of Guam provides:

Every member of the legislature and *all officers of the Government of Guam*

[11] Whether the Government failed to notice this distinction or simply ignored it, the court cannot tell; either way, the conduct is troubling and, again, embarrassing.

shall take the following oath or affirmation:

> "I solemnly swear (or affirm) in the presence of Almighty God that I will well and faithfully support *the Constitution of the United States, the laws of the United States applicable to Guam* and the laws of Guam, and that I will conscientiously and impartially discharge my duties as a member of the Guam Legislature (or as an officer of the Government of Guam)."

48 U.S.C. § 1423d (emphasis added).

The Government argues that "the Government [itself], its boards, directors, agencies, authorities and departments are duty-bound to uphold and enforce a duly enacted law of Guam." Docket No. 377 at 6:20-21. While that is true, as the above-quoted passage from the Organic Act makes clear, the Government's various authorities and officers also have a duty to "well and faithfully support"—*i.e.*, uphold—"the Constitution of the United States [and] the laws of the United States applicable to Guam."

Thus, *every officer* of the Government of Guam who supported enactment of (the patently unconstitutional) Section 6 of PL 30-1 violated his or her oath of office.

The Supreme Court has written that

> No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. Chief Justice Marshall spoke for a unanimous Court in saying that: "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery . . . ." A Governor who asserts a power to nullify a federal court order is similarly restrained. If he had such power, said Chief Justice Hughes, in 1932, also for a unanimous Court, "it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases . . . ."

Cooper, 358 U.S. at 18-19 (citations omitted) (*quoting United States v. Peters*, 9 U.S. (5 Cranch) 115, 136 (1809); *Sterling v. Constantin*, 287 U.S. 378, 397-398 (1932)).

In sum, not only have our island's officials wasted time and money by enacting patently unconstitutional legislation designed to frustrate compliance with a valid court order effecting federal law, they have "war[red] against the Constitution," thereby violating their oath of office.

IV. CONCLUSION

Persons who make private determinations of the law and refuse to obey a court order always risk contempt. *Maness v. Meyers*, 419 U.S. 449, 458 (1975). Thus, "[a]bsent a stay, 'all orders and judgments of courts must be complied with promptly.'" *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983) (*quoting Maness*, 419 U.S. at 458).[12]

The Government should not have resorted to frivolous modes of self-help, such as enacting patently unconstitutional laws designed to relieve it of its obligations under the court's February 13, 2009 Order. Clear and convincing evidence shows that the Government disobeyed a "specific and definite court order," and that it "fail[ed] to take all reasonable steps within [its] power to comply." The Government's defenses and excuses are unavailing. Section 6 of PL 30-1 is declared null and void under the Supremacy Clause.

Finding the Government in civil contempt, the court hereby **ORDERS** it to comply with its February 13, 2009 Order immediately. By 12:00 noon on Monday, March 23, 2009, the Government shall deposit all monies due and owing under the court's February 13, 2009 Order with Citibank, N.A. According to the court's schedule, that amount is $3,974,800.00. Failure to do so will result in the immediate imposition of daily civil contempt sanctions, beginning in the amount of $10,000.00 and then doubling each day thereafter, up to a daily limit of $250,000.00. Thus, the payment schedule for the contempt sanctions is as follows:

- If the Government fails to deposit $3,974,800.00 with Citibank, N.A. by 12:00 noon on Monday, March 23, 2009, a $10,000.00 fine shall be immediately assessed and due to the court by 9:00 a.m. on Tuesday, March 24, 2009.[13]

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[12] *See also United States v. Galin*, 222 F.3d 1123, 1127 (9th Cir. 2000) (same); *Britton v. Co-op Banking Group*, 916 F.2d 1405, 1410 (9th Cir. 1990) (same); *In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir. 1987) (same); *Chapman v. Pacific Tel. & Tel. Co.*, 613 F.2d 193, 197 (9th Cir. 1979) (same).

[13] The Clerk of Court is hereby ordered to deposit all monies received as contempt sanctions into the Bank of Hawaii interest-bearing savings account created by this court's order of January 24, 2008. *See* Docket Nos. 216 & 217. Said funds shall remain on deposit pending further order of the

- If the Government fails to deposit $3,974,800.00 with Citibank, N.A. by 12:00 noon on Tuesday, March 24, 2009, a $20,000.00 fine shall be immediately assessed and due to the court by 9:00 a.m. on Wednesday, March 25, 2009.
- If the Government fails to deposit $3,974,800.00 with Citibank, N.A. by 12:00 noon on Wednesday, March 25, 2009, a $40,000.00 fine shall be immediately assessed and due to the court by 9:00 a.m. on Thursday, March 26, 2009.
- If the Government fails to deposit $3,974,800.00 with Citibank, N.A. by 12:00 noon on Thursday, March 26, 2009, an $80,000.00 fine shall be immediately assessed and due to the court by 9:00 a.m. on Friday, March 27, 2009.
- If the Government fails to deposit $3,974,800.00 with Citibank, N.A. by 12:00 noon on Friday, March 27, 2009, a $160,000.00 fine shall be immediately assessed and due to the court by 9:00 a.m. on Saturday, March 28, 2009.
- If the Government fails to deposit $4,968,500.00[14] with Citibank, N.A. by 12:00 noon on Monday, March 30, 2009, a $250,000.00 fine shall be immediately assessed and due to the court by 9:00 a.m. on Tuesday, March 31, 2009.

Thereafter, the coercive sanctions shall continue to accrue at the rate of $250,000.00 per business day until the Government comes into compliance with the payment schedule set forth in the court's February 13, 2009 Order.[15]

In light of this ruling, the Government's "Motion for Reconsideration" is hereby

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court, and shall be used to pay for expenditures that will facilitate the enforcement of the Consent Decree.

[14] The increase in the figure is attributable to the additional $993,700.00 due pursuant to the court's schedule. *See* Docket No. 359.

[15] On the basis of the parties' briefs, the court is persuaded that it could have resorted to more drastic measures to enforce compliance with its February 13, 2009 Order. The court designed the contempt sanction as it did because, in selecting contempt sanctions, "a court must exercise the least possible power adequate to the end proposed." *Spallone v. United States*, 493 U.S. 265, 280 (1990) (internal quotation omitted).

DENIED as moot. *See* Docket No. 369.

Finally, the court unequivocally states its respect for the sovereignty of the Government of Guam. However, once a court has found a federal statutory violation, a state law cannot prevent implementation of the necessary remedy. Under the Supremacy Clause, the federal remedy prevails. "To hold otherwise would fail to take account of the obligations of local governments, under the Supremacy Clause, to fulfill the requirements that the Constitution imposes on them." *Missouri v. Jenkins*, 495 U.S. 33, 57-58 (1990). The court and the people of Guam have been more than patient in expecting Guam's leaders to jointly arrive at a solution to this crisis. Inaction and obstacles will no longer be tolerated. Only 860 days of airspace remain in the Ordot Dump. It is the court's hope that this Order will spur the action desperately needed to safeguard the health, safety and welfare of our island's people.

SO ORDERED.

/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Mar 20, 2009