UNIVERSITY OF GUAM
UNIBETSEDÅT GUÅHAN

OFFICE OF THE PRESIDENT

December 4, 2019

VIA EMAIL: speaker@guamlegislature.org
AND HAND DELIVERY

3561-19-1303
Speaker Tina Rose Muña Barnes

DEC 04 2019
Time 11:20 (✓)AM ( )PM
Received By: Ellen

Honorable Tina Rose Muña Barnes
Speaker
I MINA' TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
163 W. Chalan Santo Papa
Hagåtña, Guam 96910

2019 DEC -4 PM 1:58

Re: Legal Services and Settlements of the University of Guam

Dear Madam Speaker:

Thank you for your November 29, 2019 letter. I appreciate that you have afforded the University of Guam (the "University") this opportunity to respond to your concerns, based on media reports, about the settlement of the lawsuit Dr. Ronald McNinch brought against the University.

The media reports I have seen did not seek or report any response on the part of the University. That is unfortunate, because in some instances the reporting has merely repeated some of Dr. McNinch's misconceptions about the matter without any apparent fact-checking. Please allow me to address these misconceptions and help set the record straight.

The Guam Government Claims Act does not apply to Dr. McNinch's lawsuit for the simple reason that his suit did not result from a Government Claim. In fact, Plaintiff McNinch never made a government claim pursuant to the Claims Act. Thus, Section 6102 of the Claims Act is inapplicable. The suit was not brought as a negligence or contract claim but instead as a Title VII federal civil rights suit, alleging workplace retaliation under federal law. The suit arose based not on a government claim but rather based on Dr. McNinch's complaints to the U.S. Equal Employment Opportunity Commission, which ultimately found no basis for Dr. McNinch's claims, but nevertheless provided him with "right to sue" letters, as it does in most cases.

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The other Claims Act provision cited in your letter, Section 6206, is inapplicable for the same reason. Additionally, Section 6206 does not apply because Dr. McNinch's grievance was not settled "before action" as specified in that Section. The case was instead settled during a judicial settlement conference, after many months of litigation in federal court.

Both Dr. McNinch and his lawyer expressly agreed in writing that the settlement terms should remain confidential and under seal. It is therefore difficult to understand how Dr. McNinch can now plausibly maintain that the settlement needs to be unsealed and made public. We attach a copy of the November 14, 2019 order denying Dr. McNinch's recent motion to unseal the settlement term sheet. In that order, Judge Munson ruled as follows:

> As Defendant University correctly points out, "[a] deal is a deal," . . . and this court agrees. Plaintiff cannot now alter the terms agreed upon by the parties and in which the parties negotiated at length and in which the court facilitated on November 8, 2018.

The attorney the University utilized for the McNinch litigation, R. Todd Thompson, Esq. of the Thompson Thompson & Alcantara law firm (the "Thompson Firm"), was expressly appointed on May 31, 2016 as a Special Assistant Attorney General for that purpose. Please see the attached appointment letter. In fact, Mr. Thompson met personally with then-Attorney General Barrett Anderson when he began working on the case and he worked in consultation with the Attorney General's office during the course of the litigation.

The University has in-house counsel who attends to most of the University's diverse range of legal requirements. However, in kind with many other agencies, the University retains experienced litigation counsel to assist it with matters in the courts. The amount indicated for outside attorneys' fees cited in your letter—$456,292—is the total for contracted fees for all legal matters by more than just the Thompson Firm over a six-year period—most of which had nothing to do with Dr. McNinch's case. The attorneys bill the University on an hourly fee-for-services basis, not a fixed fee.

Moreover, it should also be noted that the Thompson Firm was retained pursuant to standard Request for Proposals procurement procedures. The University negotiated a competitive-bid contract with the Thompson Firm at a rate of $210 per hour, which is substantially lower than the rates that the firm charges private clients and is well below the prevailing market rate for professional legal services on Guam.

To be clear, the University firmly denied and continues to deny all of Dr. McNinch's alleged claims. However, in an effort to seek closure to this matter and to avoid spending additional time and many thousands of additional dollars defending against

Dr. McNinch's lawsuit, the University elected to reach an amicable settlement with Dr. McNinch. As you know, the vast majority of civil lawsuits are ultimately settled in such confidential negotiations even where, as here, liability is emphatically disputed.

I hope that this response has been helpful. Please let me know if I might provide further information.

Sincerely,

THOMAS W. KRISE, Ph.D.
President

Attachments

cc: R. Todd Thompson, Esq. (via email)
Leevin Camacho, Esq. (via email)

FILED
DISTRICT COURT OF GUAM
NOV 14 2019
JEANNE G. QUINATA
CLERK OF COURT

THE DISTRICT COURT OF GUAM

RONALD L. MCNINCH, JR., Plaintiff, vs. UNIVERSITY OF GUAM, Defendant.	CIVIL CASE NO. 16-00021 **ORDER**

Before the court is Plaintiff Ronald L. McNinch Jr.'s Motion to Unseal Term Sheet. *See* ECF No. 100. Therein, Plaintiff requests that the court grant the unsealing of the Settlement Agreement ("Term Sheet") in order to enforce certain terms therein. For the reasons stated herein, the motion to unseal is hereby **DENIED**.

As part of the Term Sheet, the terms of the settlement are to remain confidential. As Defendant University of Guam correctly points out, "[a] deal is a deal," ECF No. 102 at 1, and this court agrees. Plaintiff cannot now alter the terms agreed upon by the parties and in which the parties negotiated at length and in which the court facilitated on November 5, 2018. The court notes that both parties were represented by counsel at the settlement conference.

"[C]ourts are not permitted to modify settlement terms or in any manner to rewrite

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agreements reached by parties." *Jeff D. v. Andrus*, 899 F.2d 753, 758 (9th Cir. 1989) (citation omitted). To grant the motion would be to modify or rewrite the agreements reached by the parties. Accordingly, the motion to unseal is **DENIED**.

SO ORDERED this 14th day of November, 2019.

ALEX R. MUNSON
Senior Judge

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Office of the Attorney General

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APPOINTMENT OF SPECIAL ASSISTANT ATTORNEY GENERAL

Pursuant to my authority under 48 U.S.C. § 1421g(d)(1), 10 G.C.A. § 51A110(c) and 5 G.C.A. §§ 30102 and 30109(c), I hereby appoint **R. Todd Thompson, Esq.**, as a Special Assistant Attorney General for the purpose of representing *Ronald L. McNinch Jr. v. University of Guam, Guam District Court Civil Case No.* 16-00021. The appointment herein may be terminated by the Attorney General of Guam at any time and for any reason.

Dated this 31st day of May, 2016.

ELIZABETH BARRETT-ANDERSON
Attorney General of Guam

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