



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

RAMONA TAISAKAN REBUENOG,)
)
 Plaintiff,)
)
 vs.)
)
 COMMONWEALTH ELECTION)
 COMMISSION and TOBIAS DELA)
 CRUZ ALDAN)
)
 Defendants.)
)
 _____)

Civil Action No. 09-0463E

**FINAL ORDER
DECLARING PLAINTIFF
RAMONA T. REBUENOG
MAYOR OF THE NORTHERN
ISLANDS**

THIS MATTER was tried before this Court commencing on December 1, 2009 at 9:30 a.m. and was completed on December 17, 2009. Plaintiff Ramona Taisakan Rebuenog, (hereinafter “Plaintiff”) filed a Complaint pursuant to 1 CNMI § 6601 against Defendant Commonwealth Election Commission (hereinafter “Defendant CEC”) and Defendant Tobias Dela Cruz Aldan (hereinafter “Defendant Aldan”) regarding the Northern Island Mayoral Election that was held on November 7, 2009. Counsel Richard W. Pierce appeared on behalf of Plaintiff Rebuenog. Counsel Robert T. Torres appeared on behalf of Defendant Aldan. Counsel Meaghan H. Shearer and Michael Ernest appeared on behalf of Defendant CEC. Having considered the oral and written submissions of the parties and the applicable law, this Court issues its ruling below.

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I. SYNOPSIS

On November 12, 2009, Plaintiff Rebuenog filed a Complaint against Defendants claiming that Defendant CEC permitted approximately 21 individuals to vote in election Precinct 4d, who were ineligible to vote in the Northern Island Mayoral Election. Plaintiff Rebuenog argues that out of the 137 votes that were cast for the Northern Island Mayoral Election, 21 voters were not qualified to vote in the election. Plaintiff Rebuenog further claims that upon the disqualification of the alleged 21 illegal voters, the result of the election would have been different. Defendant Aldan won the election by one vote.

Plaintiff's Complaint prays for and urges this Court to: (1) Declare Plaintiff Rebuenog Mayor of the Northern Islands because she had the largest number of legal votes in the November 7, 2009 Northern Islands Mayoral Election; (2) Order that any certification of election issued to Defendant Aldan be declared void, and order that Defendant CEC issue a certification of election to Plaintiff Rebuenog; and (3) Issue a judgment that Defendant Aldan and Defendant CEC are jointly and severally liable to Plaintiff Rebuenog for her fees, costs, and expenses. The Court will address each of these issues in turn.

II. DISCUSSION

A. The Court Disqualified Seventeen (17) of the Alleged Twenty-One (21) Illegal Voters Because They Failed to Meet the Residency Requirements Pursuant to 1 CNMI § 6204.

In order to determine whether or not an individual will be deemed a qualified voter the Court must first turn to 1 CNMI § 6204 to determine if the voter meets certain residency requirements to be eligible to vote in the Northern Island Mayoral Election. 1 CNMI § 6204 deals with an individual's residency and lists out the rules to determine whether or not a person is deemed a resident of the place in which his or her vote was cast. In addition, statutes governing election contests must be strictly construed. *Mundo v. Superior Court.*, 4 N.M.I. 392 (1996). As such, the Court must strictly interpret each of the subsections and make a determination as to whether each of the challenged voters was a legal resident of

1 the Northern Islands at the time he or she cast their vote for Northern Island Mayor.

2 Subsection (A) of said section states that the residence of a person is that place in which the
3 persons' habitation is fixed, and to which, whenever the person is absent, the person has the intention to
4 return. The Court interpreted this statute to mean that a person must not only have the intent to return to
5 the Northern Islands, but must also have a fixed habitation on the Northern Islands as well.¹

6 Subsection (B) states that a person does not gain residence in any precinct into which the person
7 comes without the present intention of establishing the person's permanent dwelling place within such
8 precinct.

9 Subsection (C) states that if a person resides with the person's family in one place, and does
10 business in another, the former is the person's place of residence; but any person having a family, who
11 established the person's dwelling place other than with the person's family, with the intention of
12 remaining there, shall be considered a resident where the person has established such dwelling place.

13 Subsection (D) states that the *mere intention to acquire a new residence without physical*
14 *presence* at such place, *does not establish residency*, neither does mere physical presence without the
15 concurrent present intention to establish such place as the person's residence. (Emphasis Added). The
16 Court was able to disqualify a majority of the alleged illegal voters because while the voters did express
17 an intent to return to the Northern Islands there were no actions, plans or steps undertaken to carry out
18 such intent. These individuals had made Saipan their permanent home by establishing their lives here.

19 Subsection (E) states that a person does not gain or lose residence solely by reason of the
20

21 ¹The Court would like to note that certain Northern Islands were declared uninhabitable during the 1980's and 1990's
22 due to tremors, volcanos and typhoons. Anatahan, in particular, has been declared uninhabitable by the government from
23 May 2003 until the present time. As a result, many Northern Island residents were forced to leave their homes on the
24 Northern Islands and move to Saipan. The Court found that this did not affect an individual's residency under the residency
25 requirement.

1 person's presence or absence while employed in the service of the United States or this Commonwealth,
2 or while a student of an institution of learning. The Court interpreted this subsection when determining
3 whether or not a voter would lose his or her residency by leaving the Northern Islands for the purpose of
4 education or governmental work and determined that neither of these factors would change a voter's
5 residency pursuant to the statute. In other words, if a Northern Island resident was forced to leave the
6 Northern Islands to attend school in the Commonwealth or to work for a public school system, that
7 individual would still be found to be a resident of the Northern Islands.

8 Subsection (F) states that no member of the armed forces of the United States, the member's
9 spouse or the member's dependent is a resident of the Commonwealth solely by reason of being
10 stationed in the Commonwealth. While this is a factor in determining an individual's residency, at no
11 time during trial was a voter challenged because he or she was a member of the armed forces.

12 Finally, Subsection (G) states that a person loses his residence in this Commonwealth if the
13 person registers to vote in another state or area under the United States or other jurisdiction.²

14 Therefore, 1 CNMI § 6204 can be broken down into four (4) factors to determine whether the
15 alleged illegal voters were residents of the Northern Islands: (1) Was there a fixed habitation; (2) Did
16 the voter intend to return after being absent; (3) Was there a permanent dwelling; and (4) Was there
17 physical presence? The Court made its ruling as to disqualification based on the above mentioned
18 factors and came to the conclusions stated below.

19 The Court qualified Antonio Litulimar Kaipat and Tobias Dela Cruz Aldan as meeting the
20 residency requirements set forth under 1 CNMI § 6204. In addition the Court disqualified the following
21 seventeen (17) Northern Island voters (Angelica Dela Cruz Aldan, Martin Palacios Ayuyu Jr., Alvin
22

23 ² The Court would like to note that many Northern Island voters testified that because of certain natural disasters that
24 had occurred on the Northern Islands, the Election Committee did not allow the voter to vote in the Northern Islands when
25 asked, but instead informed them that if they wished to vote, they would need to do so in a district within Saipan.

1 Kaipat Buekis, Isabel Kaipat Davis, Barcelisa Anastasia Saures Inos, Francisco Litulumar Kaipat Jr.,
2 Jacinta Ayuyu Kaipat, Natividad Carmen Romolor Litulumar, Rita Rafaela Satur Romolor, Linda Cruz
3 Santos, Menjor Kaipat, Merced Litulumar, Clotilde Kaipat Aldan, Cabrini Celina Somol Hambros,
4 Alfred Michael Kileleman, Santiago Litulumar Saures, and Juan Iguel) for the reasons stated in open
5 court because each of these voters failed to meet the residency requirements set forth under 1 CNMI §
6 6204. Upon disqualification, these seventeen (17) illegal voters were required to state whom he or she
7 had voted for in the Northern Island Mayoral Election.

8 **B. Disqualified Voters Have No Right To A Secret Ballot.**

9 The Court determined that finding out who each voter had voted for was an indispensable
10 requirement under the election contest rules. 1 CNMI § 6602(b) states “[a]n election may not be set
11 aside on account of illegal votes cast, unless the number of votes given to the person enabled him or her
12 to win or to tie the election, and if the illegal votes were taken from him, would reduce his legal votes so
13 that he would have less votes than necessary to win or tie the election.” Thus, the Court had to
14 determine who each of the illegal voters cast their vote for, in order to see if this would affect the
15 outcome of the election. In order to do so, examination of the unlawful voters was necessary to
16 determine whether or not their vote would be taken away from their prospective candidate based on the
17 credibility of their testimony. *Cf. In re Contest of November 8, 2005 General Election for Office of*
18 *Mayor of Tp. Of Parsippany-Troy-Hills*, 192 N.J. 546, 566-567 (N.J. 2007) (the power to compel any
19 voter to reveal whom the vote was cast for is reserved to the court; at a trial on the merits).

20 Initially, the Court required that a challenged voter be examined for qualifications to vote in the
21 Northern Islands. After the first witness testified, he was asked in open court whom he had voted for in
22 the Northern Island Mayoral Election. However, Defendant CEC objected to this procedure. The Court
23 then entertained a suggestion by one or both of the parties that upon disqualification, the witness would
24 mark down on his or her Voter Affidavit Exhibit whom he or she had voted for in the Northern Island
25 Mayoral Election. The Court proceeded in this fashion for the next eight (8) witnesses. However,

1 during the course of trial, the Court became concerned with this procedure and after a briefing by both
2 parties the Court decided that the law provides that the court may require each voter, after being
3 disqualified, to state in open court whom he or she had voted for in the Northern Island Mayoral
4 Election.

5 At that time, Defendant Aldan argued that the Court did not have the right to compel the
6 disqualified voters to state whom he or she voted for in open court and further stated that the Court
7 “ha[d] to balance the privacy interest of and/or concerns of a voter against any intimidation or
8 consequence with a party’s purported concerns regarding the veracity of testimony.” In other words,
9 Defendant Aldan claimed that the Court did not have the authority to compel disqualified voters to
10 announce in open court whom he or she had voted for in the Northern Island Mayoral Election. The
11 Court was not persuaded by Defendant Aldan’s argument since he could not provide the Court with any
12 authority for his position. On the other hand, the Court has authority that states that disqualified voters
13 have no right to a secret ballot.

14 No privilege or privacy right attaches to an unlawful vote. *Patterson v. Hanley*, 136 Cal. 265, 276,
15 68 Pac. 821, 825 *quoted in Robinson v. McAbee*, 64 Cal.App. 709,718, 222 P. 871, 875 (Cal.App. 3 Dist.
16 1923). The right to cast a secret ballot is limited and will give way to a substantial government interest.
17 *King v. Board of Elections*, 2 N.M.I. 398 (1991). There need not be a determination that a voter is not
18 qualified before their right to secrecy is infringed. *King* makes clear that the right is limited. Here, the
19 substantial government interest was the need for a fair and true election that reflects the true will of the
20 people. The Court found that a substantial government interest existed in the integrity of the election.
21 Therefore, the right to secrecy gave way to the government interest and thus the voter’s right to a secret
22 ballot was waived. In other words, when a voter is disqualified, his or her right to a secret ballot no
23 longer exists.

1 **C. The Number of Disqualified Voters Makes a Difference in the Northern Island Mayoral**
2 **Election Pursuant to Statute.**

3 Once a voter was disqualified, the Court had to decide how that vote would affect the overall
4 election contest. In other words, the Court had to determine whether the illegal voters' testimony was
5 credible, and if so, their vote would be stricken from the Northern Island Mayoral Election Contest. The
6 Court determined that the best way to do this would be to give each party the opportunity to challenge
7 the testimony of the witness to determine if the voter's testimony was credible. At that time, Defendant
8 Aldan argued that cross-examination should not be allowed stating that a party does not have the right to
9 cross examine its own witness. Plaintiff countered by stating that under Rule 607, the credibility of a
10 witness may be attacked by any party, including the party calling the witness. After hearing both
11 arguments and assessing the law in the matter the Court concluded that cross examining each witness
12 was necessary to assist in the fact finding process and also highly relevant as to the veracity of the
13 witness' testimony.

14 As the U.S. Supreme Court has said, "[d]ocuments or objective evidence may contradict the
15 witness' story; or the story may itself be so internally inconsistent or implausible on its face that...the
16 court of appeals may well find clear error even in a finding purportedly based on a credibility
17 determination." *Anderson v City of Bessemer City*, 470 U.S. 564, 575 (1985). The Court believes that a
18 credibility determination of each witness was necessary and thus, each witness was subject to open
19 examination as to whom he or she had voted for in the Northern Island Mayoral Election.³

20 In addition, witness credibility involving their testimony is a matter for this Court to decide.
21 However, the Court is careful to note that for the evidence to be improbable on its face it must assert
22 something has occurred that does not seem possible and the falsity 'must be apparent without resorting
23

24 ³The Court would like to note that Alvin Kaipat Buekis was disqualified as an illegal voter, but could not remember
25 whom he voted for in the Northern Island Mayoral Election.

1 to inferences or deductions.’ See generally, *People v. Mayberry* 15 Cal.3d 143, 150 (1975). Defendant
2 Aldan provided the Court with 9th Circuit Jury Instructions regarding the Credibility of Witnesses, which
3 the Court finds helpful in making its determination. The Jury Instructions state the following:

4 CREDIBILITY OF WITNESSES:

5 In deciding the facts in this case, you may have to decide which testimony to believe and
6 which testimony not to believe. You may believe everything a witness says, or part of it,
7 or none of it. In considering the testimony of any witness, you may take into account:

- 8 1. The opportunity and ability of the witness to see or hear or know the
9 things testified to;
- 10 2. The witness’ memory;
- 11 3. The witness’ manner while testifying;
- 12 4. The witness’ interest in the outcome of the case and any bias or prejudice.
- 13 5. Whether other evidence contradicted the witness’ testimony;
- 14 6. The reasonableness of the witness’ testimony in light of all the evidence;
15 and
- 16 7. Any other factors that bear on believability

17 MODEL NINTH CIRCUIT CRIMINAL JURY INSTRUCTIONS (2000).

18
19 The Court made the determination to strike an illegal voter’s vote based on the credibility of the
20 voters’ testimony applying the above factors, as well as, any and all other documents that were
21 submitted to the Court by counsel on both sides. Plaintiff stated that the credibility issue of each witness
22 boiled down to how much weight the Court would give to family relations. While the Court took family
23 relations into account when making its determination, it was not the sole deciding factor. The Court
24 ruled as follows:

25 The Court found that neither party challenged the credibility of the following six (6) disqualified

1 witnesses who stated that they voted for Defendant Aldan in the Northern Island Mayoral Election:
2 Angelica Dela Cruz Aldan, Martin Palacios Ayuyu Jr., Isabel Kaipat Davis, Natividad Carmen Romolor
3 Litulumar, Menjor Kaipat and Clotilde Kaipat Aldan. The Court further found that neither party
4 challenged the credibility of two (2) of the disqualified witnesses who stated that they voted for Plaintiff
5 in the Northern Island Mayoral Election: Barcelisa Anastasia Saures Inos and Merced Litulumar. The
6 Court found these eight (8) witnesses to be credible with respect to whom each had voted for in the
7 Northern Island Mayoral Election. As such, these eight (8) votes will be stricken from their prospective
8 candidates.

9 In Plaintiff's Finding of Fact, she challenges the credibility of four (4) of the following
10 disqualified voters who stated that they voted for her in the Northern Island Mayoral Election: Francisco
11 Litulumar Kaipat Jr., Jacinta Ayuyu Kaipat, Rita Rafaela Satur Romolor and Linda Cruz. Defendant
12 agrees that the credibility of Jacinta Ayuyu Kaipat and Linda Cruz Santos was called into question. The
13 Court agrees with counsel and thus finds that Jacinta Ayuyu Kaipat's and Linda Cruz Santo's vote will
14 not affect the election contest, however Francisco Litulumar Kaipat Jr. and Rita Rafaela Satur
15 Romolor's vote will be stricken from their perspective candidate since their testimony was credible.⁴

16 In Defendant Aldan's Finding of Fact, he challenged the credibility of Plaintiff's "new illegal
17 voters," claiming their testimony was suspect, implausible, and incredible so as to be discounted in their
18 entirety.⁵ The primary basis for Defendant Aldan's concerns was based on the fact that each of the new
19 illegal voters had an allegiance or an affiliation with Plaintiff. Defendant Aldan further stated that

21 ⁴Plaintiff stated that Francisco Litulumar Kaipat Jr. was Defendant Aldan's brother-in-law and Rafaela Satur
22 Romolar was Defendant Aldan's first cousin, but the Court will not discount their votes on the sole basis that they had family
23 ties with Defendant Aldan.

24 ⁵The following four (4) witnesses were part of the "new list of illegal voters" that were being challenged by
25 Defendant Aldan: Celina Taisakan Somol Hambros, Santiago Litulumar Saures, Alfred Michael Kileleman and Juan Iguel.

1 Plaintiff called on these witnesses to claim that they had voted for Defendant Aldan in the Northern
2 Island Mayoral Election in order to gain an advantage in the contest. While Defendant Aldan presented
3 no direct evidence to substantiate his concerns, the Court does acknowledge that the last (4) four
4 witnesses did state that they voted for Mr. Aldan. In addition, the Court does note that Plaintiff
5 requested each of the following four affidavits on December 10, 2009, and all four witnesses were
6 served on or about December 12, 2009. However, the Court will not use this as a decisive factor in
7 determining each of the four witnesses' credibility since the Court ruled that Plaintiff was not bound to
8 the original list of the alleged twenty-one (21) illegal voters. With that said, the Court makes the
9 following determinations as to witness credibility:

10 The Court does not find Celina Taisakan Somol Hambros' testimony to be credible. Ms.
11 Hambros claims that even though her aunt was a candidate in the Northern Island Mayoral Election that
12 this had nothing to do with her actions to vote in that election, however the Court is doubtful as to the
13 sincerity of Ms. Hambros' testimony. Ms. Hambros had been disqualified to vote in 1997 and had made
14 no attempt to vote in the Northern Islands until 2009. The Court finds this suspect and does not find Ms.
15 Hambros to be a credible witness since bias was shown based on the fact that Ms. Hambros' aunt was a
16 candidate, she did not attempt to vote in the Northern Islands for twelve years, and finally she had no
17 association on political, familial, or community grounds with Defendant Aldan, yet she claimed to have
18 voted for him. Thus, her vote will not be counted in the overall contest and will not be stricken from
19 Defendant Aldan's votes.

20 The Court does not find Santiago Litulumar Saures' testimony to be credible. Mr. Saures has a
21 sibling Leo who is married to Plaintiff's sister. He also has another sibling, Edward Suares, who works
22 for the outgoing mayor Valentine Taisakan, Plaintiff's brother. Mr. Saures admitted that he had never
23 spoken with Mr. Aldan prior to the election. He admitted never having attended any political gatherings
24 or meetings for Mr. Aldan. In addition, another factor which affected Mr. Saures credibility was when
25 he was asked who had told him to register to vote and he claimed that some friends had told him to vote,

1 but he could not remember which friends. Mr. Saures further stated that he never discussed the election
2 with his social partner, Plaintiff's sister, Domitilia, even though her sister was running in the election.
3 In light of the evidence and disposition for bias, Mr. Saures' testimony and claim that he voted for Mr.
4 Aldan is highly suspect, incredible and implausible. As such, his vote will not be counted in the overall
5 contest and will not be stricken from Defendant Aldan's votes.

6 The Court does not find Juan Taisakan Iguel's testimony to be credible. Mr. Iguel claimed that
7 he voted in the election in order to obtain special grant money for college, however he never applied to
8 college. Mr. Iguel further claimed to have voted for Mr. Aldan, however he had no political affiliations
9 or connections with Mr. Aldan. They did not socialize. He claimed that while he was related to Mr.
10 Aldan's wife's family, there were people on both sides of the family which he did not like. In addition,
11 Mr. Iguel stated that he had an emotional affinity to his close family and especially to Plaintiff
12 Rebuénog who was his "auntie," whom he spent much time growing up with. Mr. Iguel's demeanor and
13 testimony against the above evidence undermines his credibility. The motive to fabricate was there - to
14 benefit his aunt whom he loved and was his mother's sister. There was no logical explanation as to why
15 Mr. Iguel would have voted for Mr. Aldan based on the testimony presented. As such, his vote will not
16 be counted in the overall contest and will not be stricken from Defendant Aldan's votes.

17 The Court finds that Alfred Michael Kileleman is a credible witness. Mr. Kileleman is a retired
18 firefighter and stated that he did not attend any of the rallies for Plaintiff or for Defendant Aldan. In
19 addition, he has no familial ties to Plaintiff. The Court is not persuaded by Defendant Aldan's argument
20 that because Mr. Kileleman rode a fishing vessel with Mr. Ogumoro, the chairman of Plaintiff's
21 Committee-to-Elect, that he would necessarily vote for Plaintiff in the Northern Island Mayoral
22 Election. The correlation between Mr. Kileleman's vote for Northern Island Mayor and a trip he took
23 on Mr. Ogumoro's fishing vessel is too speculative, and the Court cannot state without resorting to
24 inference or deduction that Mr. Kileleman did in fact vote for the Plaintiff. As such, his vote will be
25 counted in the overall election contest and will further be stricken from Defendant Aldan's votes.

1 The Court found that Angelica Dela Cruz Aldan, Martin Palacios Ayuyu Jr., Alvin Kaipat
2 Buekis, Isabel Kaipat Davis, Barcelisa Anastasia Saures Inos, Francisco Litulumar Kaipat Jr., Natividad
3 Carmen Romolor Litulumar, Rita Rafaela Satur Romolor, Menjor Kaipat, Merced Litulumar, Clotilde
4 Kaipat Aldan, and Alfred Michael Kileleman were credible witnesses and thus their vote will be stricken
5 from the Northern Island Mayoral Election. With respect to Jacinta Ayuyu Kaipat, Linda Cruz Santos,
6 Celina Taisakan Somol Hambros, Santiago Litulumar Saures, and Juan Taisakan Iguel the Court cannot
7 accept the credibility of the witness' testimony. Therefore, the Court will not allow these disqualified
8 voter's votes to affect the outcome of the election contest.

9 **D. Plaintiff's Motion for the Court's Reconsideration for Jesus Wabol is GRANTED.**

10 Defendant Aldan correctly states the applicable law governing a motion to reconsider. Motions
11 for reconsideration are governed by Commonwealth Rule of Civil Procedure 59(e) and are well within
12 the Court's discretion. *See Yuba Natural Res., Inc. v. United States*, 904 F.2d 1577, 1583(Fed Cir.
13 1990). The Plaintiff filed a Motion for Reconsideration of Certain Voters on December 15, 2009. The
14 Commonwealth Supreme Court has delineated a limited number of grounds that warrant a court to
15 revisit a matter previously decided. Where there exists an "intervening change of controlling law, the
16 availability of new evidence, or the need to correct clear error or prevent manifest injustice,"
17 reconsideration is warranted. *See Camacho v. J.C. Tenorio Enter., Inc.*, 2 N.M.I. 407, 414 (1992)
18 (quoting CA. Wright, Et. Al., *Federal Practice and Procedure: Jurisdiction* § 4478 (1981)).

19 In her Motion, Plaintiff states that the Court should reconsider its ruling for Jesus Igisomar
20 Wabol. Although the Court found Mr. Wabol to be a qualified voter in the Northern Island Mayoral
21 Election based on its mistaken view that he had a fixed habitation in the Northern Islands, after
22 reviewing the Court record, the Court finds that Mr. Wabol stayed in any place he could find and did not
23 have his own dwelling in the Northern Islands.
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1 In addition, Mr. Wabol had also registered to vote in a district other than the Northern Islands
2 during 1991-2005, which would also negate his residency in the former district.⁶ The Court believes
3 that reconsideration is warranted in order to have consistency in its residency requirement rulings
4 pursuant to statute. 1 CMC § 6205 (B)(1) states “[e]xcept as provided in 1 CMC § 6214, no person may
5 register to vote or vote in an election district other than that in which he is a resident. *A person has a*
6 *residence in, or is a resident of, the election district where that person is factually living and has an*
7 *abode.*” (Emphasis Added.) As stated above, since Mr. Wabol would only stay at houses that were
8 empty when he went up to the Northern Islands, the Court finds that he did not meet the residency
9 requirements pursuant to statute and thus his vote will be disqualified. In addition, even though Mr.
10 Wabol’s vote is disqualified the Court does not need to make a determination as to who Mr. Wabol
11 voted for in the Northern Island Mayoral Election because his vote would not affect the outcome of the
12 said election contest.

13 **E. Defendant Aldan’s Challenge to a Specific List of Plaintiff’s Twenty-One (21) Alleged Illegal**
14 **Voters that were named in the Complaint is DENIED.**

15 While the Court does agree that Plaintiff may only challenge twenty-one (21) voters pursuant to
16 Plaintiff’s Complaint, the Court is not persuaded by Defendant Aldan’s argument that Plaintiff be
17 confined to challenge only the twenty-one (21) alleged illegal voter affidavits that were sent via email to
18 Defendant CEC on November 13, 2009. Plaintiff was not bound to the list of requested affidavits since
19 this list was not lodged with the Court in the Complaint, there was no pretrial order requiring a specific
20 list of witnesses nor was it part of the Court’s record prior to Defendant Aldan’s filing on December 15,
21 2009. Therefore, Plaintiff was entitled to challenge twenty-one (21) alleged illegal voters, even if those
22 voters were not named on the email sent to Defendant CEC.

23
24 ⁶ Registering in a district should be a renunciation of the old district. *Dupree v Hiraga*, 2009 WL 3358168, (Hawai’I
25 2009)

1 However, Defendant Aldan has brought to the Court’s attention that the credibility of certain
2 “new illegal voters” should be called into question since these voters were not named in the original list
3 that was requested by Plaintiff on November 13, 2009.⁷ Defendant Aldan challenges these “new illegal
4 voters” (Celina Taisakan Somol Hambros; Alfred P. Kileleman; Santiago Litulumar Saures; and Juan
5 Taisakan Iguel) claiming that their credibility is at issue since despite their substantial familial ties to
6 Plaintiff and lack of political or personal affiliation with Mr. Aldan, all claimed to have voted for Mr.
7 Aldan. The Court notes Defendant Aldan’s concerns and took such concerns into account when making
8 its ruling as to whether or not to accredit or discredit such voter’s testimony.

9 **F. Plaintiff Is Found To Be A Qualified Voter In Northern Island Mayoral Election.**

10 1 CNMI § 6603 (a)(2) states that a voter who challenges a contestant in the election must be “a
11 voter of the election district in which the contested election was held.” During trial, Defendant Aldan
12 attempted to challenge Plaintiff’s qualifications as a voter in the Northern Island Mayoral Election.
13 Defendant Aldan presented evidence to the Court that Plaintiff has a homestead in Saipan, works in
14 Saipan and has raised her family in Saipan and thus should be considered a resident of Saipan. In
15 regards to Plaintiff’s employment, Defendant Aldan presented evidence that Plaintiff has worked in
16 Saipan since 2001/2003 and has not returned to the Northern Islands since that time. Defendant Aldan
17 further provided banking documents showing that Plaintiff had listed her Saipan address in order to
18 obtain a loan. Notwithstanding Defendant Aldan’s argument the Court finds that Plaintiff is qualified to
19 vote in the Northern Islands pursuant to 1 CNMI § 6204 on the following facts stated below.

20 The Court finds Plaintiff to be a resident of the Northern Islands because Plaintiff was born in the
21 Northern Islands, raised there, and traveled back and forth to school on Saipan when she reached middle
22 school. After Plaintiff finished high school, she had a child and continued to go back and forth to
23 Anatahan to stay with her parents in the 1970's and 1980's, primarily in the summers.

24
25 ⁷ The list of “new illegal voters” was requested by Plaintiff on December 10, 2009.

1 In the 1980's, Plaintiff learned from the Board of Elections that she could vote in the Northern
2 Islands if she established a residence up there. Thus, Plaintiff went to Anatahan in the late 1980's, built
3 a home near her parents and came back around July 1989 and registered as a Northern Island voter. The
4 Board of Elections accepted her, and she has voted in the Northern Island district in every election for
5 twenty (20) years without challenge.

6 Plaintiff then moved back to Saipan with her parents until 1995 when she returned to Anatahan
7 with her husband to build a new home and to live. She would bring the children back for school to set
8 them up and then return to Anatahan, until she returned to Saipan for her mother's death in 1999 and
9 then went back to Anatahan. Plaintiff has a home in Anatahan.

10 In 2001, Plaintiff traveled from Anatahan with her daughter and son-in-law to Saipan for the son-
11 in-law's medical treatment. Plaintiff and her daughters cared for the son-in-law until his death from
12 colon cancer in about November of 2003

13 In May 2003, the Anatahan volcano erupted and all residents fled. The CNMI government closed
14 Anatahan to human occupation, and it remains closed to this day. Plaintiff has seen photographs of her
15 house, which is covered in ash, but stated that she would rebuild if necessary.

16 Plaintiff further testified that she intends to return to Anatahan when it is open since it is her
17 home. Plaintiff described the homestead in Kagman as the temporary dwelling that she can pass to one
18 of her children when she returns to Anatahan and further hopes that a homestead program will start for
19 the Northern Islands.⁸

20 Therefore, the Court finds that Plaintiff came to Saipan due to medical reasons, remained on
21 Saipan because of her children's education, and has consistently voted in the Northern Islands since
22 1989. Plaintiff has expressed her intent to give her homestead to her children and return to the Northern
23

24 ⁸A law for such a program passed the House and then stalled in the Senate. In addition, Plaintiff testified that a
25 lands officer told her along with others to apply for a homestead on Saipan.

1 Islands. Plaintiff returned to the Northern Islands on several occasions. There was undisputed
2 testimony that the MPLA told Plaintiff that she could apply for a homestead on a temporary basis while
3 homestead legislation for the Northern Islands was still pending. In addition, Plaintiff has the present
4 intent to return to the Northern Islands now that her children are done with school and also has a fixed
5 habitation on the Northern Islands. As such, the Court finds Plaintiff to be a qualified voter and further
6 finds that Plaintiff was allowed to challenge Defendant Aldan in the Northern Island Mayoral Election
7 Contest.

8 **G. Plaintiff's Qualifications as a Candidate for the Northern Island Mayoral Election Are Not At**
9 **Issue.**

10 During trial, Defendant Aldan attempted to challenge Plaintiff's qualifications for Mayor of the
11 Northern Islands. At the time Defendant Aldan issued his Answer, he stated that he was unaware of
12 Plaintiff's qualifications both as a voter and as a candidate for Northern Island Mayor. However, if
13 Defendant wished to challenge Plaintiff's qualifications as a candidate, Defendant Aldan could have
14 filed an election contest challenge pursuant to 1 CNMI § 6601. 1 CNMI § 6601 (A) lists out five (5)
15 reasons that would allow a Commonwealth voter to challenge an election contest.

16 Defendant Aldan argues that he could not challenge Plaintiff's candidacy because there was no
17 basis for such a challenge. Defendant Aldan further states that since he was officially declared the
18 winner he could not bring a counterclaim that Plaintiff was ineligible to hold office because she had not
19 been declared the victor of the Northern Island Mayoral Election. The Court acknowledges Defendant
20 Aldan's argument, however the Court is not persuaded that a mere denial in an answer to a complaint
21 would invoke 1 CNMI § 6601. The Court believes that Defendant Aldan could have filed a counterclaim
22 along with his Answer to Plaintiff's Complaint. However, because he failed to contest the election,
23 pursuant to statute, the Court will not allow Mr. Aldan to challenge Plaintiff's qualifications as to her
24 candidacy at this time since the Commission of Elections deemed Plaintiff qualified to run in the
25 Northern Island Mayoral Election. In addition, if Mr. Aldan wanted to challenge Plaintiff's

1 qualifications he should have done so administratively.⁹ Moreover, to contest an election under the
2 statute there are many time requirements, as well as, standards and parameters a voter must go through
3 when challenging an election contest none of which were undertaken by Defendant Aldan.

4 Furthermore, 1 CNMI § 6603 (a)(2) states that a voter who challenges a contestant in the
5 election must be “a voter of the election district in which the contested election was held.” There is no
6 mention in the statute, or otherwise, that the challenger must be a qualified candidate. Therefore, since
7 the Court must strictly construe 1 CNMI § 6603 and has deemed Plaintiff a qualified voter, Plaintiff
8 does have standing to challenge Defendant Aldan in the election contest. Thus, any other issue
9 regarding Plaintiff’s candidacy is not at issue in this pending proceeding and is not for this Court to
10 decide.

11 12 **III. CONCLUSION**

13 This Court is bound to follow the procedures set forth under the CNMI Code of Elections. As
14 such, this Court concludes that eighteen (18) of the alleged twenty-one (21) voters were not qualified to
15 vote in the Northern Island Mayoral Election. This Court further finds that the outcome of the Northern
16 Island Mayoral Election was affected by the number of illegal voters. Seven (7) disqualified individuals
17 voted for Mr. Aldan and four (4) disqualified individuals voted for Mrs. Rebuenog.¹⁰ Thus, the outcome
18 of the election contest stands at 64 votes for Mrs. Rebuenog and 62 votes for Mr. Aldan. Based on the
19 foregoing, the Court issues its Order below.

20
21 _____
22 ⁹ The Court does not rule as to whether the counterclaim would have satisfied the statute pursuant to 1 CNMI §
23 6601.

24 ¹⁰Five (5) witnesses were disqualified, but their testimony was not found to be credible, one (1) witness could not
25 remember who he had voted for and one (1) witness was later disqualified upon reconsideration.

