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FILE NO OPA-PA: 15-009

IN THE OFFICE OF PUBLIC ACCOUNTABILITY

In the Appeal of

Korando Corporation,

Appellant.

DOCKET NO. OPA-PA-15-009

**KORANDO CORPORATION'S MOTION
TO STRIKE DEPARTMENT OF PUBLIC
WORKS' MOTION FOR SUMMARY
JUDGMENT**

Korando Corporation (“Korando”) hereby requests that the Office of Public Accountability (“OPA”) strike the Motion for Summary Judgment (“SJ Motion”) filed by the the Department of Public Works (“DPW”) on November 6, 2015.

The basis for Korando’s Motion to Strike is that DPW’s SJ Motion was incomplete in that it relies heavily on two missing declarations attached as Exhibits B and C to the SJ Motion. The Declaration of Michael Lanning (Exhibit B) and Joe Pecht (Exhibit C) were not filed with the SJ Motion. The Declaration of Michael Lanning (Exhibit B) that was filed does not contain *any* of the statements referenced in the SJ Motion. The Declaration of Joe Pecht was not filed and states that it will “be filed early next week.”

The DPW’s filing of an incomplete motion to be supplemented after the motion filing deadline prejudices Korando. The motion filing deadline in this appeal was set for November 6, 2015 at 5:00 p.m., with oppositions to be filed by November 13, 2015 at 5:00 p.m. *Notice of Pre-Hearing Conference and Motion Filing Schedule*, 2. DPW filed its Motion for Summary Judgment at 4:35 p.m. on Friday, November 6, 2015, although Korando was not served until the following Monday, on November 9, 2015, at 10:11 a.m.

Regardless of DPW’s timely filing of the motion itself, late service and failure to include the necessary declarations before the November 6, 2015 filing deadline renders the motion as a whole incomplete and untimely.

A. DPW Attached the Wrong Exhibit B Declaration of Michael Lanning.

Beginning on Page 13 of the Motion for Summary Judgment, DPW quotes and cites extensively from a purported Michael Lanning declaration, named in the Motion for Summary Judgment as Exhibit B, in support of DPW’s argument that Stanley’s deleting submittal logs is not an uncommon practice. While Exhibit B of the Motion for Summary Judgment is in fact a

declaration by Michael Lanning, it is not the declaration referenced in the SJ Motion. DPW either failed to attach the correct Declaration of Michael Manning, or it simply did not attach it as it did not have such a declaration at the time of filing. None of the statements referenced in the SJ Motion attributed to Michael Lanning's Declaration can be found in the Declaration attached as Exhibit B to the SJ Motion.

B. DPW Failed to Timely File the Declaration of Joe Pecht (Exhibit C).

DPW's SJ Motion also relies heavily on the missing Declaration of Joe Pecht (Exhibit C to the S J Motion). This purported declaration is quoted in the SJ Motion. However, in place of a declaration, the Exhibit C attached to DPW's motion is a sheet of paper stating "Declaration subject to off island counsel's review and approval. Will be filed early next week." The use of a place-holder in order to meet the motion filing deadline which states:

Filing Deadline for all Motions	November 6, 2015 at 5:00 p.m. The Parties shall file all motions they may have and file and serve them on the other parties.
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See Notice of Pre-Hearing Conference and Motion Filing Schedule (Nov. 11, 2015).

Korando is prejudiced by DPW's attempts to get around the filing deadline, particularly because the filing deadline for Korando's opposition is Friday, November 13, 2015 at 5 p.m. *Ibid.* Korando has already lost two full days (Saturday and Sunday), and has not had the benefit of the full SJ Motion to review. Moreover, if the reason for the delay in filing the declaration is the need to have that declaration approved by PTG's counsel, DPW can have no way of knowing that the declaration will ever be approved and thus filed. In effect, DPW has submitted a motion reliant on two nonexistent declarations, which Korando cannot review and cannot be certain will be filed.

C. DPW's Consistently Late Service to Korando Prejudices Korando.

Although DPW timely filed its SJ Motion at 4:35 p.m. on November 6, 2015, there was no excuse for not serving Korando's counsel, Civile & Tang, whose office is located in Hagatña near the Office of Public Accountability. DPW failed to serve Civile & Tang on November 9, 2015 at 10:11 a.m. DPW previously served Civile & Tang a mere *13 minutes* after serving the OPA, so timely service was possible. *See Department of Public Works Rebuttal to Korando Corporation's Response.*

The late filing of the SJ Motion was not an isolated incident. In fact, DPW has been late in serving Civile & Tang with nearly every filing in this Appeal. For example, DPW filed its Entry of Appearance and Preliminary Agency Response & Agency Statement on September 16, 2015, following up with its Errata to Preliminary Agency Response & Agency Statement on September 17, and its Supplemental Agency Report on September 23, 2015. All four of these filings were served together on Civile & Tang on September 25, 2015—a week and a half after the first had been filed.

On October 12, 2015, Hearing Officer Anthony Camacho ordered DPW to augment its procurement record by October 19, 2015. The deadline came and went and DPW did not augment the files as required by the Hearing Officer. During a hearing on October 21, the Hearing Officer extended DPW's filing deadline to October 22, 2015 at noon. DPW filed with the OPA at 11:40, but did not serve Civile & Tang until the next day, four days after the filing was originally due. Korando has attempted to be understanding of DPW's untimely service, but at this point it has become egregious.

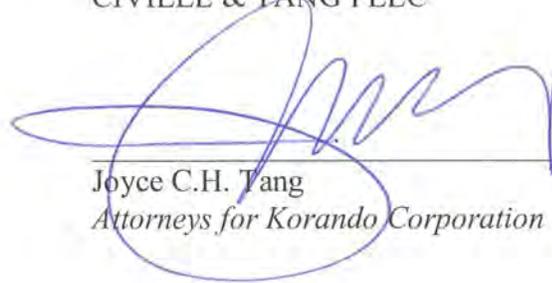
It is unfair for Korando to have to respond to a motion which was served on Civile & Tang only four days before the response deadline and which relies for support on unsigned and

un-filed declarations, to which Korando cannot evaluate or respond. If DPW is unable to obtain a supporting declaration prior to its filing deadline, DPW has the choice of requesting an extension, modifying its filing, or finding other evidence in support. DPW should not be permitted to bypass filing deadlines by submitting placeholders.

Based on its untimely and incomplete filing, Korando requests that DPW's Motion for Summary Judgment be stricken from the record.

Respectfully submitted this 9th day of November, 2015.

CIVILLE & TANG PLLC



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