

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
MIMAROPA REGION

DENR MIMAROPA RECORDS SECTION	
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**ARNEL RECIO** **DENR** Case No. M-14-21-L  
**Rep. by Teodora P. Recio,** **ADR** Case No. 20221700000-  
Claimant-Protestant 0003

**-versus-**

**SPOUSES BERNADETTE AND** **Lot No. 345 Cad 1296-D (Area 2,506 sq**  
**ROMAL TRIA** **m)**  
Applicants-Respondents, **Lot No. 346 Cad 1296-D (Area: 4,069 sq**  
Sitio Lagundian, Brgy. Balansay **m)**  
Mamburao, Occidental Mindoro

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**MOTION FOR RECONSIDERATION**  
**[Decision dated 2 May 2023]**

Applicant-Respondent Bernadette Tria, through the undersigned counsel respectfully files this motion for reconsideration of the decision of this Honorable Office dated 2 May 2023 and most respectfully states as follows:

1. On 2 May 2023, this Honorable Office rendered its decision in the instant case, to wit:

**WHEREFORE**, premised considered, the following are hereby ordered:

1. The Free Patent Application (FPA) No. 045106-1029 of Bernadette Y. Tria over Lot No. 345 is **REJECTED**. Any amount paid on account thereof is forfeited in favor of the government. Having submitted false statement in her FPA No. 045106-1029, she shall not be entitled to apply for any public in the Philippines;
2. Lot No. 345, Cad. 1296-D is to be **SUBDIVIDED** into two (2) portions:

- a) Lot No. 345-A (1,726 square meters portion) adjoining Lot 344
- b) Lot No. 345-B (780 square meters portion) adjoining Lot 346

3. Arnel S. Recio is **DIRECTED TO SUBMIT** the appropriate public land application over Lot No. 345-B. The CENRO Sablayan, Occidental Mindoro is **DIRECTED TO GIVE DUE COURSE** thereto.

4. Lot No. 345-A is **DECLARED OPEN FOR PUBLIC DISPOSITION** thru Miscellaneous Sales subject to bidding under DAO No. 2009-05.

5. The CENRO Sablayan, Occidental Mindoro to **GIVE DUE COURSE** to the public land application of Romal C. Tria over Lot 346.

**2.** That this motion for reconsideration is directed only to paragraph 1 to 4 of the foregoing decision based on reversible error in the appreciation of facts and application of the relevant laws by this Honorable Office.

**3. First**, the protest filed by Arnel Recio ("Mr. Recio") failed to comply with the requirements set forth by DENR Administrative Order No. 2016-31 ("DAO No. 2016-31") and the said protest was filed beyond the period allowed by the Notice of Application for Free Patent<sup>1</sup>. Hence this protest should not have given due course by the DENR-PENRO.

**4.** Under Section 4 and 5 of DAO No. 2016-31, the formal requirements of a Protest are as follows:

**Section 4. Formal Requirement of a Protest.** The Protest shall be written in clear, brief and concise language either in Filipino or English and must contain the names of the parties, their addresses, the material allegations, the grounds relied upon, and the

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<sup>1</sup> Annex 18 of the Position Paper of the Applicants-Respondents

documentary and other forms of evidence to support the allegations.

The Protest must be accompanied by the following documents:

- a) Certificate to file action from the barangay concerned, if applicable;
- b) Verification and Certification of Non-forum Shopping;
- c) Proof of payment of the Protest Fee; and
- d) A recent 2x2 picture of the protestant and his or her duly authorized representative and the subject lot/s

The Protest and its supporting documents must be filed in three (3) copies.

**Section 5. Evaluation.** The CENRO shall determine within one (1) day from receipt of the Protest whether the same is in due form and is within those contemplated in Section 4 of this Order. If in due fore, the CENRO shall evaluate and forward the Protest to the PENRO; otherwise, the CENRO shall return the protest and inform the protestant in writing of the deficiencies in the formal requirements for compliance.

The protestant shall have a non-extendible period of fifteen (15) days within which to comply with the aforesaid requirements. In case of non-compliance, the protest shall be dismissed without prejudice. The protestant shall be notified thereof in writing.

If the protest was filed at the Regional Office, the same shall be forwarded to the CENRO within one (1) day.

In NCR and Implementing PENROs, the Legal Division and the PENRO respectively, shall evaluate the Protest.

**5.** Applying the foregoing in the instant case, the protest<sup>2</sup> filed by the claimant-protestant Mr. Recio is just a mere-handwritten letter subscribed before a notary public without the required accompanying documents and the same was received by DENR-CENRO on **23 September 2016**.

**6.** That the said protest was not accompanied by the required accompanying documents as shown by the records of this case. The Certificate<sup>3</sup> from Barangay Balansay attesting to the fact that they tried to resolve the conflict at the barangay level has a date of **10 November 2016**. The protest fee<sup>4</sup> of 500.00 pesos was paid only on 1 January 2017 or almost three months after the filing of the protest. Neither was the protest accompanied by a verification and certification of Non-Forum Shopping and a recent 2x2 picture of the protestant.

**7.** More importantly, the Special Power of Attorney given by Mr. Recio to Teodora Recio was executed only 27 December 2016 or more than three months after the filing of the handwritten protest.

**8.** Based on the foregoing and following Section 5 of **DAO No. 2016-31** the protest should have been dismissed without prejudice and should not have been given due course.

**9.** That in addition to the foregoing, the protest should not be given due course by the PENRO because as provided by Notice of Application for Free Patent<sup>5</sup> filed by Bernadette Tria, "*All adverse claims to the tract of land above described must be filed in this office on or before 16<sup>th</sup> December 2015. Any claim not so filed will be forever barred*".

**10.** As shown under paragraph 5 of this motion for reconsideration and assuming that the protest filed was sufficient in form and substance, the said protest was filed only on **23 September 2016** which is way beyond the limit set forth under the said notice (*on or before 16<sup>th</sup> December 2015*). Therefore, any claims by Mr. Recio are already barred and the protest should not have been given due course by the PENRO.

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<sup>2</sup> Annex 8-D of the Position Paper of Applicants-Respondents

<sup>3</sup> Annex 8-F of the Position Paper of Applicants-Respondents

<sup>4</sup> Annex 8-E of the Position Paper of Applicants-Respondents

<sup>5</sup> Annex 18 of the Position Paper of the Applicants-Respondents

**11. Second**, Bernadette Tria did not make any false statement or misrepresentation in her FPA No. F-045106-1029 by leaving blank Item Nos. 5 and 6 in her application, contrary to the findings of this Honorable Office.

**12.** That the FPA No. F-045106-1029<sup>6</sup> for the issuance of Free Patent over Lot No. 345 per CAD No. 1296-D filed by Bernadette Tria on 27 November 2015 before the DENR-PENRO sufficiently complies with the requirements for the issuance of a Free Patent because the lack of data under paragraph 5 and 6 can be harmonized with the Joint Affidavit in Support of Free Patent<sup>7</sup> which stated that "*that the said applicant has continuously occupied and cultivated the land himself or thru his predecessor in interest since April 16, 1960 or prior thereto and it is free from claims and conflicts*". Moreover, the said Joint Affidavit was executed by disinterested persons and actually residing within the area that is the subject of this case.

**13.** In addition, the said FPA No. F-045106-1029 were filed and received by the DENR-PENRO despite blank spaces under paragraphs no. 5 and 6 thereof. It is even allowed by Abigail S. Azul to be subscribed before her. Hence, Bernadette Tria has a right to assume that her FPA No. F-045106-1029 is in order and has sufficiently complied with all the requirements. Indeed, Abigail S. Azul can just easily require Bernadette Tria to fill-in the blanks prior to administering the oath if FPA No. F-045106-1029 is fatally defective.

**14.** Nevertheless, after the filing of the FPA No. F-045106-1029 by Bernadette Tria an investigation was conducted and during such investigation, Bernadette's predecessor-in-interest was discovered. Her predecessor in interest was Jose Medina who stated in his sinumpaang salaysay<sup>8</sup> duly subscribed before a notary public, that "*Na ang posisyong lupa na aking inilipat sa mag-asawang Bernadette Tria, pagkakakilanlan na Lot No. 345 na katabi ng Lot 346 at Lot 344, CAD-1296-D na may sukat na humigit kumulang na 2,506 metro kwadrado.*

**15.** Neither was there omission of facts which alters, changes or modifies the consideration of facts set forth in such statements<sup>9</sup> in FPA No. F-045106-1029 due to blank spaces under paragraph 5 and 6

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<sup>6</sup> Annex 15 of the Position Paper of Applicants-Respondents

<sup>7</sup> Annex 17 of the Position Paper of Applicants-Respondents

<sup>8</sup> Annex 21 of the Position Paper of Applicants-Respondents

<sup>9</sup> Section 91 of C.A. 141

thereof because if such omission exists the same is immaterial. It is noteworthy that the Joint Affidavit in Support of Free Patent<sup>10</sup> expressly provides that Bernadette has a predecessor in interest which in fact is further supported by the sinumpaang salaysay of such predecessor in interest in the person of Jose Medina. Therefore, assuming that any omission was committed, such omission does not alter, changes or modifies the fact that Bernadette Tria has a predecessor-in-interest.

**16.** Consequently, the order of this Honorable Office under Paragraph 1 of its decision rejecting the Free Patent Application has no legal basis. Neither was the order disqualifying Bernadette from applying for any public land in the Philippines supported by facts.

**17.** Item No. 13 of Bernadette's FPA No. 045106-1029 cannot be applied in this case. Under such Item, it is expressly stated that the requirement is "*willfully and knowingly submit false statement or executes false affidavit in connection with his application*". However, as stated above, no false statement was made by Bernadette and she did not execute any false affidavit. In addition, the element of willfully and knowingly is absent in this case, also as discussed above.

**18. Third**, Bernadette Tria established by clear and convincing evidence that she has possessed Lot 345 within the required number of years through herself and through her predecessor in interest.

**19.** The Sinumpaang Salaysay<sup>11</sup> of **Jose Medina** is clear and leaves no room for doubt that he was Bernadette's predecessor-in-interest. The relevant portions thereof are hereto reproduced for easier reference, to wit:

1. Na dahil sa matindiing pangangailangan ng aking pamilya ay tumanggap ako ng halagang 7,000.00 piso bilang kabayaran sa aking pagpapagal noong **Mayo 25, 2005** sa mag-asawang Bernadette at Romal Tria bilang paglilipat ng aking Karapatan sa posisyon lupa na katapat ng aming bahay na tinitirhan.

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<sup>10</sup> Annex 17 of the Position Paper of Applicants-Respondents

<sup>11</sup> Annex 21 of the Position Paper of Applicants-Respondents

2. Na ang posisyong lupa na **aking inilipat** sa mag-asawang Bernadette Tria ay pagkakakilanlan na **Lot No. 345** na katabi ng Lot 346 at Lot 344, CAD-1296-D na may sukat na humigit kumulang na 2,506 metro kwadrado.
3. Na **wala** po akong ginagawang ibang kasunduan ng **paglilipat ng karapatan maliban sa mag asawang Tria.**
4. Na ang **mag-asawang Bernadette at Romal Tria** ang siyang **naglilinis, nagtatanim at nag palawak** ng kanyang lugar simula noong **2005**.
5. Na ang mag-asawang Tria ang siyang **nagtanim ng mga puno ng Niyog** sa kanyang posisyong lupa at iba pang halaman noong akoy nasa Lagundian pa.
6. Na **wala akong nakikitang ibang taong umuukupa sa Lot 345**, lalong lalo na ang mag-asawang Alan Recio at Rhodora Recio na minsan ay hindi ko nakita sa nasabing lupa na naglinis, nagkultiba at namosisyon maliban kay Gng. Bernadette Ygar Tria at G. Romal Tria.

**20.** That the foregoing sinumpaang salaysay of Jose Medina is corroborated by the sinumpaang-salaysay<sup>12</sup> of **Sotero Arsenal Petalbero** who was the appointed **caretaker** of the spouses Romal and Bernadetter Tria over Lot 345. The relevant portions of said sinumpaang-salaysay is hereto reproduced as follows:

1. Na ako'y naging katiwala ng mag-asawang Bernadette at Romal Tria sa lupang kanilang posisyon sa Sitio Lagundian na mapagkakakilanlan na Lot 345 na may sukat na humigit kumulang 2,506 metro kwadrado at Lot 346 na may sukat na humigit kumulang na 4,099 metro kwadrado.
2. Na ang Lot 345 at 346 ay napapaligiran ng mga bakod na gawa sa kawayan at barbed wire.

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<sup>12</sup> Annex 22 of the Position Paper of Applicants-Respondents

3. Na ang Lot 345 ay nanggaling kay G. Jose Medina na inilipat kay Gng. Bernadette Tria.
4. Na kami ng aking asawa ay **nagpagawa ng isang bahay kubo** noong **2007** sa loob ng nasasakupang lupa na Lot 345 na nakapangalan kay Bernadette Y. Tria.
5. Na kami ng aking asawa ang siyang ginawang tagapangisiwa ng kanyang mga **pananim na mga Niyog** at iba pang bungang kahoy na kanilang **itinanim sa Lot 345 at Lot 346**, na kami ay nasa pamamamatnubay ni G. Romal Tria.
6. Na kung minsan ay doon siya natutulog sa kanyang bahay pahingahan na nasasakupan sa Lot 346 tuwing sabado dahil mayroon siyang sakahing lupa na malapit doon.
7. Na minsan isang araw taong **2008** na ako ay nasa trabaho ay nagulat na lamang ako ng mayroong nagtanim sa **giliid ng bakuran ng Lot 345 at Lot 344** na mga ilang puno ng Eucalyptus at agad kung nakumpirma sa mga tagaroon na si Allan Recio ang nagpatanim at kahit kailan ay hindi ko nakikita ang mag-asawang Allan Recio at kanyang tauhan na nagbalik sa Lot 345.

**21.** The foregoing sinumpaang-salaysays are further corroborated by the sinumpaang-salaysay of Bernadette Tria<sup>13</sup> and the pinagsamang sinumpaang-salaysay<sup>14</sup> of the residents around Lot No. 345.

**22.** To counter the foregoing statements and claims of Bernadette, Mr. Recio presented a kasunduan<sup>15</sup> dated **8 September 2008** and the sinumpaang-salaysay<sup>16</sup> of Eusebio M. Garcia dated **3 May 2018**.

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<sup>13</sup> Annex 23 of the Position Paper of Applicants-Respondents

<sup>14</sup> Annex 20 of the Position Paper of Applicants-Respondents

<sup>15</sup> Annex B of the Position Paper of Claimant-Protestant

<sup>16</sup> Annex C of the Position Paper of Claimant-Protestant

**23.** Careful perusal of the kasunduan dated **8 September 2008** would reveal that the subject matter of the said kasunduan is not determinate nor determinable as required by the law on sales particularly Article 1460<sup>17</sup> of the New Civil Code. Hence, the said Kasunduan is void for lack of object/subject matter of sale.

**24.** Indeed, what was mentioned in the said Kasunduan is that the subject of the sale between Eusebio Garcia and Mr Recio is a parcel of land with an area of 13x60 sq. meters located at sitio Lagundian, Brgy. Balansay, Mamburao without specifying the boundaries of such land. Therefore, for lack of sufficient identification of the subject of the sale the kasunduan must be declared void and has no force and effect.

**25.** Neither does the sinumpaang-salaysay<sup>18</sup> of Eusebio Garcia can shed light on the matter because the same is contrary to the declaration of Jose Medina in his own sinumpaang-salaysay<sup>19</sup>.

**26.** Eusebio Garcia is claiming that he was the one who is originally in possession of Lot 346 but admitted that he transferred the same to Romal Tria after swapping of land in possession of Jose Medina (Lot 345). The relevant portion of his sinumpaang-salaysay is hereto reproduced as follows:

**3.** Ang kabuuang lupa na aking orihinal na pinupusiyunan sa marine zone ng So. Lagundian, Brgy. Balansay Mamburao Occidental Mindoro ay may sukat na 30x60 sq m. Humigit kumulang taong **2004 ng aking isaling ang kalahati ng aking lupa kay G. Romal Tria** na may sukat na 15x60, particular ang karatig ni Leone Abeleda. Nagbigay ako ng 2x60 sq m na daan pabor kay Romal Tria. Kung kaya, ang natira sa akin ay 13x60 na lamang.

**4.** Pagkalipas ng ilang buwan, inialok ni Jose Medina ang kalahati ng kanyang lupa kay Romal Tria ngunit hindi ito pumayag dahil nakapagitan pa sa aming ang

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<sup>17</sup> Article 1460. A thing is determinate when it is particularly designated or physically segregated from all others of the same class.

The requisite that a thing be determinable is satisfied if at the time the contract is entered into, the thing is capable of being made determinate without the necessity of a new or further agreement between the parties.

<sup>18</sup> Annex C of the Position Paper of Claimant-Protestant

<sup>19</sup> Annex 21 of the Position Paper of Applicants-Respondents

natitira kong 13x60 sq m. Upang matuloy ang paglilipat kay Romal Tria ng natitirang lupa ni Jose Medina, **sumang-ayon ako na ipagpalit ang pwesto ng aking lupa sa lupa ni Jose Medina**. Ang nasabing palitan o swapping ng aming lupa ni Jose Medina ay alam ng aming Samahan at nirerespeto itong aming kasunduan. Iyon ang dahilan kung kaya **nabuo ng 30x60 ang lupang pinupusisyunan ni Romal Tria, na ngayon ay kilala bilang Lot 346** matapos ang ginawang survey ng DENR.

**27.** Based on the foregoing, Eusebio Garcia is claiming that he was the original possessor of Lot 346 and admitted that he transferred his rights over such Lot to Romal Tria after swapping with Jose Medina. In other words, Eusebio Garcia is claiming that by virtue of the alleged swapping with Jose Medina (Lot 345), he has the right to transfer the rights over Lot 345 to Mr. Recio on 8 September 2008 which is the date of their Kasunduan.

**28.** However, this alleged swapping is denied by none other than Jose Medina in his sinumpaang-salaysay<sup>20</sup> which provides under paragraph 3 thereof that "*Na wala po akong ginawang ibang kasunduan ng paglilipat ng Karapatan maliban sa mag-asawang Tria*"

**29.** Moreover, the date of this alleged swapping was never established with convincing proof. To the contrary, the sinumpaang-salaysay of Jose Medina and the Recibo<sup>21</sup> are consistent when they state that Lot 345 was transferred by Jose Medina to Bernadette Tria to the exclusion of any other persons.

**30.** To counter the sinumpaang salaysay of Jose Medina, Mr. Recio presented a private document<sup>22</sup> alleging that it contains the true signature of Jose Medina. However, this document cannot prevail over the sinumpaang-salaysay of Jose Medina which is a public document. Moreover, under such private document a signature appears beside the name Eusebio Garcia which is also entirely different from the signature appearing in the sinumpaang-salaysay of Eusebio Garcia.

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<sup>20</sup> Ibid

<sup>21</sup> Annex 21-A of the Position Paper of Applicants-Respondents

<sup>22</sup> Annex G of the Position Paper of Claimant-Protestant

**31.** In view of the failure of Eusebio Garcia to fully substantiate with reliable documents the alleged swapping arrangement with Jose Medina other than his self-serving statements in his sinumpaang-salaysay, it follows that the Kasunduan executed by him in favor of Mr. Recio is also void for lack of right on his part to transfer any right to Mr. Recio. Consequently, Mr. Recio has no right whatsoever over Lot No. 345 because his right is dependent only on the alleged swapping of lands between Eusebio Garcia and Jose Medina.

**32.** Even assuming arguendo that the Kasunduan is valid and Eusebio Garcia obtained the right over Lot 345 from Jose Medina, there was no evidence presented by Eusebio Garcia that he actually possessed Lot 345. This is in great contrast to the evidence presented by Bernadette Tria that she was in possession of Lot 345 as early as **25 May 2005** when she stated in her sinumpaang-salaysay<sup>23</sup> that, "*Kami, ng aking asawa ay agad nagsagawa ng pag-sasaayos ng lupa sa pamamagitan ng pagpapatabas ng mga matataas na damo at aroma, nagpabakod ng mga puno ng kawayan na isinagawa nina G. Romeo Garcia bilang upahan.*"

**33.** Based on the foregoing, Bernadette Tria has sufficiently proven by preponderance of evidence that she was the **actual possessor** of Lot 345 as early as **25 May 2005**. Hence, her possession precedes that of the possession of Mr. Recio which was only made sometime on 2008 by planting Eucalyptus trees near the fence of Lot 345 and Lot 344 as stated under paragraph 7 of the sinumpaang-salaysay of Sotero Arsenal Petalbero who is the caretaker of Bernadette Tria of Lot 345.

**34.** All in all, Bernadette Tria has sufficiently proven that she possessed the requisite number of years of **actual possession** over Lot 345 through herself and through her predecessor in interest. Moreover, the alleged possession of Mr. Recio evidenced by planting of Eucalyptus Trees sometime on 2008 cannot prevail over the possession of Bernadette Tria for the simple reason that during such time, Bernadette Tria is already in actual possession of Lot 345 through her caretaker and by virtue of the transfer of rights executed by her predecessor in interest, Mr. Jose Medina.

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<sup>23</sup> Annex 23 of the Position Paper of Applicants-Respondents

**35. Lastly**, Bernadette Tria has already declared Lot 345 and the improvements therein for taxation purposes and has paid the realty tax for both the land and the improvements. The Honorable Supreme Court in the case of *Kawayan Hills Corporation v. The Honorable Court of Appeals*<sup>24</sup> ruled as follows:

Although **tax declarations or realty tax payments** of property are not conclusive evidence of ownership, nevertheless, they are **good indicia of possession in the concept of owner** for no one in his right mind **would be paying taxes for a property that is not in his actual or at least constructive possession**. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. **Such an act strengthens one's bona fide claim of acquisition of ownership.**

**36.** Therefore, the payment of real estate taxes by Bernadette coupled by her actual possession of Lot 345 from 25 May 2005 is proof that she possesses Lot 345 in the concept of owner and shows that she has a bona fide claim of acquisition of ownership.

#### **PRAYER**

**WHEREFORE**, premises considered, it is most respectfully prayed of this Honorable Office that its decision dated **2 May 2023** be **REVERSED AND SET ASIDE** and a new Decision be issued ordering the CENRO Sablayan Occidental Mindoro to **GIVE DUE COURSE** to the public land application of Bernadette Tria over Lot 345.

Other relief and remedies, just and equitable, are likewise prayed for.

San Jose Occidental Mindoro for Quezon City, Metro Manila,  
26 May 2023.

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<sup>24</sup> G.R. No. 203090, September 5, 2018



**ATTY. RAYNALD A. LOPEZ, ME**

09176345871

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MCLE Compliance No. VII- 0017252

Valid until April 14, 2025

### **VERIFICATION**

We, **SPOUSES BERNADETTE AND ROMAL TRIA**, both of legal age, Filipino Citizen and with residence address at Mamburao, Occidental Mindoro, after having been duly sworn to in accordance with the law, hereby depose and state that:

1. We are the Applicants-Respondents above-entitled case;
2. We have caused the preparation and filing of the Motion for Reconsideration;
3. We have read and understood the allegations therein, and they are true and correct according to our personal knowledge and they are based on authentic records or documents;
4. The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
5. The factual allegations therein have evidentiary support or, if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

**IN WITNESS WHEREOF**, We have hereunto set our hand this \_\_\_\_\_ at Mamburao, Occidental Mindoro.



**BERNADETTE TRIA**

Affiant  
  
**ROMAL TRIA**  
Affiant

**SUBSCRIBED AND SWORN TO BEFORE ME,** this  
26 MAY 2023 at Mamburao, Occidental Mindoro, Philippines,  
affiants exhibited their ID with No. PRC - 0034267 and ID  
No. DRIVERS LICENCE NO2 - 92 - 192016

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Series of 2023

  
**ATTY. CIRILO Q. TEJOSO, JR.**

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Roll of Attorney's No. 41944, May 8, 1997  
MCLE No. VII-0010780/February 18, 2022  
IBP No. 180593/11-28-2022/Occ. Mindoro  
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#### **EXPLANATION**

Service of this pleading is done through registered mail instead of personal service because of distance and lack of personnel to effect personal service.

#### **Copy Furnished:**

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