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IN THE UNITED STATES
DISTRICT COURT OF GUAM

John Ryan,
Plaintiff

vs

DAFNE MANSAPIT-SHIMIZU in her official
and individual capacities as the Director the
Guam Department of Revenue and Taxation,
MARIE LIZAMA in her official and individual
capacities as the Deputy Director of the Guam
Department of Revenue and Taxation,
EVELYN VILLAPANDO, in her official and
individual capacities and JOHN DOES 1-13

Defendants

CIVIL CASE NO: 23-00015

**DEFENDANTS' MOTION TO DISMISS
PURSUANT TO Fed.R.Civ.P. 12(b)(6)
AND MEMORANDUM IN SUPPORT**

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MOTION TO DISMISS

Defendants Director of the Guam Department of Revenue and Taxation **DAFNE MANSAPIT-SHIMIZU**, Deputy Director of the Guam Department of Revenue and Taxation **MARIE LIZAMA**, and Guam Department of Revenue and Taxation employee **EVELYN VILLAPANDO** move the court to dismiss the complaint in the above-styled matter pursuant to Fed.R.Civ.P. Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

Guam enacted its False Claims and Whistleblower Act (“Whistleblower Act” or “Act”) in August 2018. The Act provides that if information is received from a private individual regarding persons or entities who have violated Guam’s tax laws by underpaying their taxes, and an administrative or judicial action to collect any unpaid taxes in connection with the violation is commenced, the individual may receive an award of a percentage of the proceeds collected pursuant to that action. 5 GCA §37103(b).

The Act also provides that an individual may directly bring a civil action “for the person and for the government of Guam” for underpayment of taxes. 5 GCA§37202(a). Once the action is filed, the government of Guam may elect to intervene in the action, or it may decline to do so. 5 GCA §37203(a) and (c). If the government declines to intervene, the individual has the right to conduct the court action to collect the unpaid taxes. 5 GCA §37203(c).

Notwithstanding the commencement and pursuit of the court action by an individual, the government of Guam may elect to pursue its claim for the unpaid taxes through any alternate remedy available to the government. 5 GCA §37203(e).

On November 5, 2019, Plaintiff John Ryan availed himself of the Whistleblower Act and filed a complaint in the Superior Court of Guam for Alcoholic Beverage Control taxes that were unpaid and owed by Titan Imports, a business entity operating on Guam. Superior Court of Guam Civil Case No. 1278-19 (Complaint at 31), hereafter referred to as the “Qui Tam action” or the “Titan case”.

On January 6, 2020, the Department of Revenue and Taxation (“DRT”) filed a Notification of Declination to Intervene in the Titan case. Complaint at 32.

On January 9, 2020, the Superior Court entered an order in the Titan case acknowledging DRT’s declination and recognizing Plaintiff Ryan’s authority to proceed in the case.

On March 25, 2022, Titan filed for Bankruptcy. Complaint at 57.

Because of the bankruptcy matter, a stay was filed in the Titan case in the Superior Court of Guam. The Titan case remains open in the Superior Court of Guam. *See* Exhibit A, Docket Sheet, Superior Court of Guam Case No CV1278-19.

On May 18, 2023, Plaintiff Ryan filed the present complaint before this Court. He alleges the Defendants engaged in conduct that interferes with his right to an award under the Whistleblower Act. Specifically, he contends that Defendants had discussions with Titan Imports regarding settlement of its unpaid taxes. He further alleges that but for Defendants’ actions, Titan Imports Bankruptcy proceeding would have been avoided; and if the bankruptcy was avoided, he would have been paid the attorney’s fees, expenses, and costs to which he believes he would be

entitled to under the Act. In summary, Mr. Ryan contends that after he filed his Whistleblower suit, Defendants conspired with Titan Imports to collect less in taxes than Mr. Ryan speculates he would have collected in his suit, all for the purpose of interfering with his right to collect an award under the Act.

Plaintiff Ryan brings his complaint before the court under 42 U.S.C. §1983, claiming, among other things, a violation of his due process. He alleges that: Defendants' actions deprived him of his right to a property interest in the Whistleblower award (Count I); that Defendants conspired to interfere with his property right (Count II); that Defendants engaged in fraud and intentional interference with prospective relations (Counts III, IV, and V); and negligently breached their duties to him (Count VI). Plaintiff seeks compensatory and punitive damages from Defendants, as well as injunctive relief against Defendants to cause them to cease taking actions that he alleges are illegal under the Whistleblower Act.

STANDARD OF REVIEW – MOTION TO DISMISS

“A Rule 12(b)(6) dismissal ‘can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.’” *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1208 (9th Cir. 2019) (quoting *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)). “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “Plausibility requires pleading facts, as opposed to conclusory allegations or the ‘formulaic recitation of the elements of a cause of action,’ and must rise above the mere conceivability or possibility of unlawful conduct that

entitles the pleader to relief. *Somers v. Apple, Inc.*, 729 F.3d 953, 959-60 (9th Cir. 2013) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); and citing *Iqbal*, 556 U.S. at 678-79). “Conclusory allegations and unreasonable inferences, however, are insufficient to defeat a motion to dismiss.” *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007); *Fazaga v. Federal Bureau of Investigation*, 965 F.3d 1015, 1025 (9th Cir. 2020).

ARGUMENT

Plaintiff Ryan’s complaint is flawed in several ways. It makes statements of fact describing the filing of the Titan Whistleblower action in the Superior Court of Guam and the filing of the Titan Bankruptcy case. But it does not contain facts to support his conclusions that Defendants’ conduct was unlawful. Instead, his complaint makes unwarranted deductions and unfounded claims of a relationship between Defendants’ actions and Mr. Ryan’s purported rights. These conclusions are not enough to meet his burden, under the federal rules of procedure, to support his claim that he is entitled to relief.

Mr. Ryan’s complaint is also flawed in that it relies on 42 U.S.C. §1983 to support his claims, but fails to meet the requirement of §1983 that a claim involve a violation of a constitutional or federal right. Additionally, Mr. Ryan seeks to hold Defendants liable for damages under §1983, but Defendants are not “persons” within the meaning of that section, rendering his claims for damages statutorily invalid.

Further, Mr. Ryan makes his claims against the Defendants in their capacities as employees of the government of Guam, despite their being immune from suit.

As to his claims for injunctive relief, there are no circumstances justifying such relief from the Court.

Finally, relying on the principles underlying the *Younger* doctrine, specifically the principle of comity, the Court should not entertain Mr. Ryan's prayers for relief, but instead allow Guam's courts to address the issues herein, in the suit already filed in the Superior Court of Guam.

For these reasons, the Complaint should be dismissed in its entirety.

A. Plaintiff's complaint fails to show that he is entitled to relief.

"Under Federal Rule of Civil Procedure (8)(a)(2), a pleading must contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.' As the Court held in *[Bell v] Twombly*, 550 U.S.544, 127 S.Ct. 1955, 167 L.Ed.2d 929, the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v Iqbal*, 556 U.S. 662, 677-78, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (internal citation omitted). "Taken together, *Iqbal* and *Twombly* require well-pleaded facts, not legal conclusions, that 'plausibly give rise to an entitlement to relief.'" *Whitaker v. Tesla Motor, Inc*, 985 F.3d 1173, 1176 (9th Cir. 2021) (citing *Twombly* and *Iqbal*, *supra*.)

The allegations in the Complaint do not amount to more than Plaintiff's version of events and his assertion that Defendants' actions do not meet his expectation of what they should have done. To accept the conclusions in his complaint, the Court would have to accept Mr. Ryan's unsupported claim that Defendants' actions caused Titan to file for bankruptcy, and that the bankruptcy filing alone leaves him unable to collect his award under the Whistleblower Act. "But for DRT Defendants' and [Titan's] actions, Titan's Bankruptcy Proceeding may have been avoided, and Mr. Ryan would then have been paid the attorney's fees, expenses, and costs he is entitled to under the Whistleblower Statute." Complaint at 149. While Mr. Ryan proclaims these conclusions, he provides no facts that would reasonably support them.

Mr. Ryan's allegations, without supporting factual claims, clearly do not meet the requirement under Fed.R.Civ.P. 8(a)(2) to provide a plain statement, plausible on its face, that he is entitled to relief. "Dismissal of a complaint at the 12(b)(6) stage is proper when the plaintiff has failed to allege 'enough facts to state a claim to relief that is plausible on its face.'" *Estate of Strickland v Nevada County*, No 22-15761, 2023 WL 3732551(9th Cir. May 31, 2023) at 2. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft*, 556 U.S. at 678 (internal quotation marks and citations omitted).

The lack of a plausible claim for relief is a flaw present in each of the causes of action within Mr. Ryan's complaint, as discussed below.

1. Plaintiff's Count I: 42 U.S.C. §1983 Due Process and Count II: 42 U.S.C. §1983 Conspiracy to deprive Mr. Ryan of Due Process

In his first and second claims for relief, Plaintiff claims that he "had a clearly established right to his property interest in the [Whistleblower] award." Complaint at 146 and 154. This is a misstatement of the procedure involved in the Whistleblower Act and of Mr. Ryan's interest in an award under it. As discussed in the Introduction herein, the government of Guam declined to intervene in the civil suit brought by Mr. Ryan in Guam's Superior Court to establish and collect unpaid taxes due from Titan Imports. Guam's Whistleblower Act states, "[I]f the government of Guam does not proceed with an action under this Section, the person bringing the action or settling the claim shall receive an amount ***which the court decides is reasonable*** for collecting the civil penalty and damages. (1) The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30) of ***the proceeds of the***

action or settlement and shall be paid out of such proceeds.” 5 GCA §37204(b)(1) (*emphases added*).

The Act also states, “If the government of Guam elects not to proceed with the action ... the Tax Enforcement Division shall award not less than thirty percent (30%) of the *collected proceeds* ... resulting from the action.” 5 GCA §37103(b)(7) (*emphasis added*).

Using the Whistleblower process to file a civil suit, as Mr. Ryan did, means he is not entitled to an award by the mere filing of the suit; rather, his property interest is established if there are “collected proceeds resulting from the action” and when the court decides an amount of award that is reasonable, or if proceeds have been collected by settling the claim brought in the action. Neither of those instances have happened here, as the underlying case in the Superior Court has not yet been decided, nor settled. Without either of these triggering events, Plaintiff’s claim of an award, and of a property interest, is unripe; he has not yet acquired a right to property. Without property, there is no right to property, meaning Plaintiff fails to state a plausible claim for relief for the deprivation of or interference with a right, and Counts I and II of his Complaint should be dismissed.

2. Plaintiff’s Count III: Fraud in the Inducement and Count V: Fraud by Nondisclosure.

In his third cause of action in the Complaint, Mr. Ryan claims Fraud in the Inducement. In his fifth cause, he claims Fraud by Nondisclosure.

In addition to the pleading requirements described in Federal Rule of Civil Procedure Rule 8(a), Rule 9(b) contains the following requirement: “Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting the fraud or mistake....” Fed.R.Civ.P. Rule 9(b). Rule 9(b) has been interpreted to require clear information in a complaint. “To satisfy Rule 9(b)’s particularity requirement, the complaint must include an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations. In other words, the pleading must identify the who, what, when, where, and how of

the misconduct charges, as well as what is false or misleading about the purportedly fraudulent statement, and why it is false.” *Depot, Inc v. Caring for Montanans*, 915 F.3d 643, 668 (9th Cir. 2019), (internal quotation marks and citations omitted). “To state a claim for fraud, a plaintiff must allege with particularity: (1) a misrepresentation; (2) knowledge of falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage.” *Eurosemillas v. Uttarwar*, 854 F.App’x. 137, 139 (9th Cir. 2021).

In his causes of action relating to fraud, Mr. Ryan does not identify a misrepresentation made by Defendants or an intent to defraud. And, as discussed above, no award or collection resulting from the Titan case in the Superior Court of Guam has yet been determined, so Mr. Ryan cannot identify a viable right to property, much less damages to him because of loss of that property. Mr. Ryan’s allegations of fraud in both counts III and V are not plead with sufficient particularity to comply with Rule 9(b) and identify the “who, what, when, where, or how” of Defendants’ alleged misconduct. For this reason, these counts should be dismissed.

3. Plaintiff’s Count IV: Intentional Interference with Prospective Relations

In his fourth cause of action, Mr. Ryan alleges that “DRT assigned Mr. Ryan economic rights when it assigned collection of DRT’s claim to him,” and “[b]y taking the actions described in this Complaint, DRT Defendants intended to disrupt the relationship between DRT and Mr. Ryan.” Complaint at 166 and 170. Though couched in terms of “prospective relations,” it appears Mr. Ryan alleges interference with the prospective economic advantage that would arise from his Whistleblower suit, as well as interference with a purported agency contract between him and DRT. Claims for interference with prospective economic advantage and interference with contract are subject to similar legal analyses. “Tortious interference with prospective economic advantage is similar, protecting the same interests and stable economic relationships as does the tort of interference with contract, with the chief practical distinction being that a broader range of privilege to interfere is recognized when the

relationship or economic advantage interfered with is only prospective. In addition, a claim for interference with prospective economic advantage requires proof that the defendant not only interfered with the plaintiff's expectancy, but engaged in conduct that was wrongful by some legal measure other than the fact of interference itself." *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d. 1119, 1125 (9th Cir. 2014) (internal quotation marks and citations omitted).

Again, Mr. Ryan does not have a legitimate expectancy for a specific award under the Act, because no amounts have yet been settled upon or collected as part of the underlying Whistleblower suit. Mr. Ryan also fails to identify that Defendants' actions are "wrongful by some legal measure" other than his opinion of it. This count should be dismissed.

4. Plaintiff's Count VI: Negligence

Mr. Ryan's expectation of a duty owed by Defendants, and of his rights to an award under the Whistleblower Act, arise from Guam law. This court has recognized "[t]o recover under a theory of negligence under Guam law, a plaintiff must establish 'the existence of a duty, the breach of such duty, causation, and damages.'" *Carlberg v. Guam Industrial Services*, No. 14-00002, 2016 WL 7493951 (D. Guam Dec. 30, 2106) at 5 (citing *Guerrero v. McDonalds Int. Prop. Co.* 2006 Guam 2 ¶9). Absent from Plaintiff's complaint is a description of an actual duty owed by Defendants to Plaintiff. Mr. Ryan does not refer to the Whistleblower Act as ascribing to the Defendants an obligation to have refrained from conducting its business and communicating with Titan Imports solely because he had filed an action under the Act. He provides no authority to support the conclusion that "Defendants had a duty to disclose the information to Mr. Ryan," as he claims in his fifth cause of action. In short, Mr. Ryan does not adequately identify a duty owed to him by Defendants. Simply believing Defendants had an obligation to him does not make it so. In the absence of any facts supporting a conclusion that Defendants had a duty, the Complaint fails to meet the standard of Rule 8(a), and should be dismissed.

B. The Complaint fails to identify a constitutional or federal right, which is required in a §1983 claim.

Plaintiff makes his claims in Counts I and II of the complaint under 42 U.S.C. §1983, which provides:

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

42 U.S.C. §1983.

To support his §1983 claim, Plaintiff offers only that he was vested with a property right under the Whistleblower Act, which is a creation of Guam law. A problem with this claim is that Mr. Ryan's property right has not yet vested. The Act states "[i]f the government of Guam does not proceed with an action under this Section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable...." 5 GCA §37204(b). Even if the allegations in his complaint are taken as true, that Defendants' actions have somehow interfered with his right to an award, the fact that the award is as yet undetermined means he is claiming interference only with a potential property right, not actual property. If he does not yet have that property, it stands to reason that there is no violation of his due process, as no property or even right to property has suffered interference.

This leaves only Mr. Ryan's claim that Defendants' actions somehow violated his procedural rights under the Whistleblower Act; there is no associated claim for a constitutional or federal right. A violation of only Mr. Ryan's state-granted rights does not meet the requirements for a viable §1983 claim, which include a deprivation of rights secured by the Constitution and federal law. "We recognize the rule that when a violation of state law causes the deprivation of a right protected by the United States

Constitution, that violation may form the basis for a Section 1983 action. However, Section 1983 limits a federal court's analysis to the deprivation of rights secured by the federal Constitution and laws. 42 U.S.C. §1983. To the extent that the violation of a state law amounts to the deprivation of a state-created interest that reaches beyond that guaranteed by the federal Constitution, Section 1983 offers no redress.” *Lovell v Poway Unified School District*, 90 F.3d 367, 370 (9th Cir. 1996).

Given Plaintiff's reliance only on a potential state-granted right to a local Whistleblower award, and his failure to allege a violation of a U.S. Constitutional or federal right, Plaintiff fails to state a viable claim for relief under §1983.

C. To the extent Plaintiff seeks damages against Defendants, they are not “persons” under §1983, and his claims should be dismissed.

Plaintiff seeks compensatory and punitive damages from the Defendants, who are all officials of the government of Guam. Defendants are not considered “persons” for the purpose of a §1983 claim, and to the extent Plaintiff seeks damages, he has no basis for relief under §1983. The U.S. Supreme Court has held “that neither the Territory of Guam nor its officers acting in their official capacities are “persons” under §1983.” *Ngiraingas v. Sanchez*, 495 U.S. 182, 192, 110 S. Ct. 1737 (1990). “[S]tate officers, when sued for damages in their official capacities are ‘like states, ‘not ‘persons’ within the meaning of [§]1983’ because a judgment against a state official in his or her official capacity runs against the state and its treasury.” *Paeste v Government of Guam*, 798 F.3d 1228, 1236 (9th Cir. 2015) (citing *Guam Society of Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366, 1371 (9th Cir. 1992)).

Considering the *Ngiraingas*, *Ada*, and *Paeste* decisions together, and distinguishing a claim for damages against a claim for prospective injunctive relief, this court recently opined that the type of relief a plaintiff seeks determines whether there is cognizable §1983 claim. “What *Ngiraingas*, *Ada*, and

Paeste establish together is that the Government of Guam and its officials may be sued for prospective injunctive relief, as they are ‘persons’ for purposes of a §1983 claim But if they are instead being sued for retroactive damages, the Government of Guam and Guam’s officials do not meet the §1983 statutory definition of a ‘person.’” *Law Offices of Phillips & Bordallo v. Birn*, No. 20-00018, 2021 WL2229037 (D. Guam Jun. 2, 2021) at 4. “Petitioner is seeking relief tied to retroactive damages, and thus outside the scope of the type of relief contemplated by the *Ex part Young* doctrine, and thus the court finds that the Amended Complaint does not allege a cognizable §1983 claim for which relief may be granted.” *Id.* at 6. “Because this is a suit for retroactive money damages, neither GovGuam nor [Defendant] are ‘persons’ under §1983 and therefore [Plaintiff] fails to state a cognizable §1983 claim for which relief may be granted.” *Gumataotao v. Highsmith*, No. 21-00019 2022 WL892244 (D. Guam Mar. 29, 2022) at 2.

Because Defendants are not “persons” under §1983, Plaintiff does not make a viable claim for damages under §1983 and his claims should be dismissed.

D. To the extent Plaintiff seeks injunctive relief, Defendants may be considered “persons” for the purposes of §1983. However, considerations of equity, comity, and federalism support the court’s refusal to consider injunctive relief, and to dismiss the Complaint.

As discussed above, this court has held that where a Plaintiff seeks injunctive relief, government of Guam officials such as the Defendants may be considered “persons” under §1983. But even if Defendants are considered “persons” subject to those portions of Plaintiff’s complaint that pray for injunctive relief, there are no extraordinary circumstances prompting the Court to provide such relief, particularly in light of ongoing state civil proceedings.

In its analysis of a Plaintiff’s prayer for injunctive relief under §1983, the Supreme Court has acknowledged that the principles of federalism which weigh heavily against federal court intrusion on

state criminal proceedings may apply to civil proceedings as well, especially where a state civil proceeding has begun. “[T]he underlying notions of federalism which Congress has recognized in dealing with the relationships between federal and state courts still have weight. Where an injunction against a criminal proceeding is sought under [§]1983, the principles of equity, comity, and federalism must nonetheless restrain a federal court. But even where the prayer for injunctive relief does not seek to enjoin the state criminal proceedings themselves, we have held that the principles of equity nonetheless militate heavily against the grant of an injunction except in the most extraordinary circumstances.” *Rizzo v. Goode*, 423 U.S. 362, 379, 96 S. Ct. 598, 608 (1976) (internal quotation marks and citations omitted).

In considering extending the policy against injunctive relief to civil proceedings, the Court states, “[t]hus the principles of federalism which play such an important part in governing the relationship between federal courts and state governments, though initially expounded and perhaps entitled to their greatest weight in cases where it was sought to enjoin a criminal prosecution in progress, have not been limited either to that situation or indeed to a criminal proceeding itself. We think these principles likewise have applicability where injunctive relief is sought, not against the judicial branch of the state government, but against those in charge of an executive branch of an agency of state or local governments....” *Id.* at 608.

Plaintiff Ryan has asked this Court to issue an order restraining Defendants from interfering with his Whistleblower rights, which amounts to asking the court to severely limit Defendants’ ability to engage in the business of DRT on behalf of the government of Guam . Mr. Ryan already has a civil proceeding under the Act before the Superior Court of Guam, which can address his concerns about Defendants’ actions. The considerations in *Rizzo v. Goode*, the notions of equity and comity, and the underlying case in Guam’s courts suggest that the Court should neither entertain nor grant the requested injunctive relief. Additionally, as discussed above, Mr. Ryan’s award in the underlying Whistleblower

action has not yet been determined. He is not subject to an immediate loss of property, and his complaint presents no extraordinary circumstance to support his request for injunctive relief.

E. Defendants have qualified immunity from suit.

Defendants, as officials of the government of Guam, are generally entitled to qualified immunity. “The doctrine of qualified immunity protects government officials ‘from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. Qualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.’” *Pearson v Callahan*, 555 U.S. 223, 231, 129 S.Ct. 808, 815, 172 L.Ed.2d 565 (2009) (internal quotation marks and citation omitted). “[O]ur decisions consistently have held that government officials are entitled to some form of immunity from suits for damages. As recognized at common law, public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability.” *Harlow v. Fitzgerald*, 457 U.S. 800, 806, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). “[B]are allegations of malice should not suffice to subject government officials either to the costs of trial or to the burdens of broad-reaching discovery ... government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Id.* at 817-18.

The test for determining whether a government official enjoys qualified immunity has two prongs, violation of a constitutional right, and that the right is clearly established. Either prong may be considered first. “A government official is entitled to qualified immunity from a claim for damages

unless the plaintiff raises a genuine issue of fact showing (1) ‘a violation of a constitutional right’ and (2) that the right was clearly established at the time of [the] defendant’s alleged misconduct.” *Evans v. Skolnik*, 997 F.3d 1060, 1064 (9th Cir. 2021) citing *Pearson*, 555 U.S. at 232.

“In considering what constitutes ‘clearly established’ law for purposes of qualified immunity, the Supreme Court has taken a narrow approach. A government official ‘violates clearly established law when, at the time of the challenged conduct, [t]he contours of [a] right [are] sufficiently clear that every reasonable official would [have understood] that what he is doing violates that right.” *Id.* at 1066,(citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 742, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011)). “We conclude that [Defendant] is immune from [Plaintiff]’s suit for damages based on the Supreme Court’s admonition that qualified immunity attaches unless we identify precedent placing the constitutional right at issue ‘beyond debate’ at the time of the challenged conduct.” *Id.* at 1071 (internal citation omitted).

The Whistleblower Act was enacted only five years ago. It contains no direction as to whether employees of the DRT must limit or modify their communications with taxpayers during the pendency of a Whistleblower legal action. Mr. Ryan has offered no court orders or law that Defendants were not to engage in discussion with Titan Imports after Mr. Ryan commenced his action under the Act. In his complaint, Mr. Ryan offers no support for his conclusion that he had a clearly established right to prohibit Defendants from communicating with Titan after he commenced the Whistleblower action. Absent a clearly established right, Plaintiff does not meet the test to defeat Defendant’s qualified immunity. They remain immune from suit in this instance, and the Complaint herein should be dismissed.

F. If the Complaint can survive the objections above, the principles underlying the *Younger* abstention doctrine support dismissal by the Court.

Abstention usually applies when both federal and state courts have jurisdiction over the same matter. Given the lack of a constitutional or federal issue in this case, as discussed above, this Court may lack jurisdiction, and the abstention doctrine may not be fully on point. However, the principles underlying the doctrine still apply. “*Younger v. Harris*, ... and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances. The policies underlying *Younger* abstention have been frequently reiterated by this Court. The notion of comity includes a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. Minimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights. The policies underlying *Younger* are fully applicable to noncriminal judicial proceedings when important state interests are involved.” *Middlesex County Ethics Comm .v Garden State Bar Ass’n*, 475 U.S. 423, 431-32, 102 S. Ct. 2515, 2520, 73 L.Ed.2d 116 (1982) (internal quotation marks and citations omitted).

At issue in the present case is how the Guam Department of Revenue and Taxation may conduct itself in situations where a citizen has used the Whistleblower Act to bring a judicial action to establish and collect taxes owed to the government. The method of assessing and collecting taxes within Guam is a vital state interest. The opportunity for a private citizen to put himself in the place of the Government, such as that granted by the Whistleblower Act, does not diminish the importance of the taxation process where both the private citizen and the Government must abide by established reasons and methods for determining how much tax may be owed. Additionally, the Whistleblower Act does not change the fact that any taxes owed are owed to the Government, not to the private citizen; the citizen’s interest in an

award under the Whistleblower Act is only present because an amount was first due and owing to the Government. The establishment and collection of taxes, with or without application of the Whistleblower Act, is a vital state interest, and the federal Court, applying the principles espoused in the *Younger* doctrine, should refrain from acting on matters involving that state interest. “Where vital state interests are involved, a federal court should abstain unless state law clearly bars the interposition of the constitutional claims.” *Id.* at 432 (internal quotation marks and citation omitted).

This is especially true where the private citizen, in this case the Plaintiff, has adequate opportunity to raise concerns in the underlying state civil proceeding. “The importance of the state interest in the pending state judicial proceedings and in the federal case calls *Younger* abstention into play. So long as the constitutional claims ... can be determined in the state proceedings and so long as there is no showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate, the federal courts should abstain.” *Id.* at 435.

“It would trivialize principles of comity and federalism if federal courts failed to take into account that an adequate state forum for all relevant issues has clearly been demonstrated to be available prior to any proceedings on the merits in federal court.” *Id.* at 437.

An adequate state forum exists for issues related to an action and potential award under Guam’s Whistleblower Act. The Act itself provides “Appeal of Award Determination. Any determination regarding an award ... may, within (30) days of such determination, be appealed to the Unified Judiciary of Guam (and the Unified Judiciary of Guam shall have jurisdiction with respect to such matter).” 5 GCA §37103(b)(4).

Guam’s courts have demonstrated they provide an adequate state forum for Whistleblower Act issues. In 2020, Frank San Agustin, a private citizen filed a whistleblower complaint with DRT, which was denied. The citizen thereafter petitioned Guam’s Superior Court to review the denial, which it did

and dismissed on sovereign immunity grounds, finding the waiver of sovereign immunity contained in the Whistleblower Act was inorganic. The matter was appealed to Guam's Supreme Court, which reversed the Superior Court's dismissal on the grounds that the Whistleblower Act's waiver of sovereign immunity is proper under Guam's Organic Act. "The trial court held the Whistleblower Act's waiver of sovereign immunity was inorganic because the Organic Act allows Guam's waiver of immunity only in cases of tort or breach of contract, but not administrative appeals. We disagree and find the Whistleblower Act's waiver is proper under the Organic Act." *San Agustin v Mansapit-Shimizu*, 2020 Guam 25, ¶13.

The *San Agustin* decision is important in the present matter not because of its analysis of Guam's waiver of its statutory immunity, but because it demonstrates that Guam's law provides an adequate state forum in which to challenge government action and raise relevant legal issues related to the Whistleblower Act.

The principles underlying the *Younger* doctrine, particularly comity, are relevant to the present case because the issues at hand are a matter of state law for which there is adequate opportunity to resolve questions in state courts. This court should allow these questions to be addressed the state court, and dismiss the complaint herein.

CONCLUSION

The complaint filed herein is insufficient under the federal rules of procedure. It also fails to meet the requirement that a §1983 claim involve a constitutional or federal right, and fails to consider that Defendants are immune from suit. Mr. Ryan does not cite an authority for his proposition that the Defendants owed him a duty simply because he filed a Whistleblower action. The action filed by Plaintiff in the Superior Court of Guam is before an adequate forum to address

Plaintiff's concerns herein. For the foregoing reasons, the complaint in its entirety should be dismissed.

**OFFICE OF THE
PRINCIPAL INCOME TAX ATTORNEY**

/s/

REBECCA MP COPPER

Counsel for Defendants Mansapit-Shimizu, Lizama, and
Villapando

CERTIFICATE OF SERVICE

I certify that I am a member of the Bar of this court and that I have this day served the foregoing document using the CM/ECF system on the following counsel:

Braddock J. Huesman
Fisher Huesman P.C.
545 Chalan San Antonio, Tamuning Guam 96913

This 15th day of June 2023.

**OFFICE OF THE
PRINCIPAL INCOME TAX ATTORNEY**

/s/

REBECCA MP COPPER
Counsel for Defendants Mansapit-Shimizu, Lizama,
and Villapando

EXHIBIT A

Docket Sheet

Superior Court of Guam Case No CV 1278-19

Titan Imports, Inc, Territory of Guam Ex Rel John Ryan

Exhibit A, Ryan v Mansapit-Shimizu et al, CV23-00015

Docket Sheet

Titan Imports, Inc, Territory of Guam Ex Rel John Ryan, Unsealed CV1278-19, Unsealed CV1278-19 ~ Civil Other - Court Number - CV1278-19		
Case Type: Civil	Case No.: CV1278-19	Agency: Superior Court of Guam
Case Status: Active	Status Date: 01/10/2020	

Case Involvements

Defendant	Titan Imports, Inc
Attorney	Fisher Huesman P.C.
Attorney	Office of the Attorney General
Attorney	Blair Sterling Johnson & Martinez, P.C.
Judge	Alberto E Tolentino

Date	Event Status Desc.	Document Name
11/05/2019	Filed	Notice of Judge Assignment.pdf
11/05/2019	Filed	Verified Complanit Jury Trial Demand _Redacted CV1278-19.pdf
11/05/2019	Filed	CV1278-19 Verified Complaint Jury Trial Demand.pdf
11/05/2019	Filed	Ex Parte Motion to File Complaint Under Seal and in Camera 5 GCA § 37202(B)(1) .pdf
11/05/2019	Filed	CVR 7.1 Form 1 Notice of Motion (To Seal Complaint) .pdf
11/05/2019	Filed	Summons (To Titan Imports, INC) .pdf
11/07/2019	Filed	Notice of Serivce Filed Under Seal.pdf
11/07/2019	Filed	Minute Entry 11.07.19.pdf
11/08/2019	Filed	Order (Filed in Camera and Under Seal) 11.8.19.pdf
01/06/2020	Filed	Government of Guam's Notification of Declination to Intervene; Request for Service of Pleadings.pdf
01/09/2020	Filed	Minute Entry 1-9-20.pdf
01/10/2020	Filed	Order (Filed in Camera).pdf
01/27/2020	Filed	Declaration of Service.pdf
02/14/2020	Filed	Verified Answer of Defendant Titan Imports INC.pdf
06/26/2020	Filed	Notice of Submittal of Proposed Scheduling Order and Discovery Plan and Request for Scheduling Conference.pdf
07/17/2020	Filed	Mediation Certification MR 4.1 Form B1.pdf
08/11/2020	Filed	Mediation Certification MR 4.1 Form B1 filed 8-11-2020.pdf
09/22/2020	Filed	Minute Entry 9-22-20 CV1278-19.pdf
12/03/2020	Filed	Minute Entry 12-3-20 CV1278-19.pdf
12/30/2020	Filed	Scheduling Order CV1278-19.pdf
01/08/2021	Filed	CVR 7.1 Form 1.PDF
01/08/2021	Filed	Declaration of Deborah E. Fisher.PDF
01/25/2021	Filed	Order Setting Case Schedule.pdf
01/25/2021	Filed	Scheduling Order.pdf
01/25/2021	Filed	CVR 16.1 Form .pdf
09/16/2021	Filed	Notice of Judge Assignment CV1278-19.pdf
09/28/2021	Filed	Stipulation of Counsel Pursuant to CVR 7.1 and Order CV1278-19.pdf

03/31/2022	Filed	Notice of Automatic Stay; Exhibit A; Certificate of Service.pdf
06/24/2022	Filed	Remote Notice of Hearing by Zoom 6-24-2022.pdf
07/01/2022	Filed	Minute Entry 07-01-22.pdf

Prepared by Alexis Tenorio
Date 06/05/2023