

1 **TORRES LAW GROUP**

285 CLUBHOUSE DRIVE  
2 YONA, GUAM 96915  
3 TELEPHONE: (671) 477-9891

4 *Attorneys for Defendants*  
5 *Kendall J.N. Diaz, Aren L. Fabila,*  
6 *John W. Barcinas, Patrick G. Corpuz*  
7 *and Donald Flickinger*

8 IN THE DISTRICT COURT OF GUAM

9 JOSE ARLINE DADIVAS DEVELLES,

CIVIL ACTION NO. 1-24-cv-00019

10 Plaintiff,

11 vs.

**MOTION FOR SUMMARY  
JUDGMENT IN FAVOR OF  
DEFENDANTS PATRICK G. CORPUZ  
AND DONALD FLICKINGER**

12 GOVERNMENT OF GUAM, KENDALL  
13 J.N. DIAZ, AREN L. FABILA, JOHN W.  
14 BARCINAS, PATRICK G. CORPUZ  
DONALD FLICKINGER and DOES 1 TO 10,

Defendants.

15 On June 25, 2025, JOSE ARLINE DADIVAS DEVELLES, (“Plaintiff” or “Develles”)  
16 filed a Second Amended Complaint adding Defendants JOHN W. BARCINAS  
17 (“BARCINAS”), PATRICK G. CORPUZ (“CORPUZ”) AND DONALD FLICKINGER  
18 (“FLICKINGER”). Corpuz and Flickinger, the Moving Defendants (collectively  
19 “Defendants” or “Moving Defendants”), by and through their undersigned counsel, hereby  
20 move the Court to dismiss Count IV (Negligence), Count VII (Deprivation of Federal Civil  
21 Rights), COUNT IX - (Government Custom or Policy/Failure to Supervise or Train, 48  
22 U.S.C. § 1983...in their Official Capacity for Prospective Injunctive Relief Only), Count X  
23 (Supervisor Liability), Count XI (Conversion of Money) and Count XII (“Attorneys Fees”)  
24 of the Second Amended Complaint (“SAC”) based upon Rules 8(a), 12(b)(6) and 56 of the  
25 Federal Rules of Civil Procedure (“FRCP”). This Motion is supported by the below  
26 Memorandum of Points and Authorities and the pleadings on filed herein.

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 This action arises from a traffic stop on March 4, 2023, during which Plaintiff alleges

1 he was subjected to excessive force by co-Defendants Diaz, Fabila, and Barcinas. Moving  
2 Defendants Corpuz and Flickinger were not present at the scene. Plaintiff admits they  
3 were added as defendants only because discovery later identified them as having  
4 “authority over the co-Defendants” as “supervisory officers” (SAC at ¶¶32 and 33).

5 Count VII must be dismissed because Moving Defendants lacked personal  
6 involvement.

7 Plaintiff alleges in Count VII that Moving Defendants violated his Fourth and  
8 Fourteenth Amendment rights by “unreasonably seizing him and using excessive force”.  
9 (See SAC at ¶97). However, liability under 42 U.S.C. § 1983 requires personal involvement.  
10 The SAC contains no factual allegations that Corpuz or Flickinger were present during the  
11 traffic stop or participated in the use of force.

12 Plaintiff asserts in its SAC claims against the Moving Defendants in Counts IV, VII,  
13 and IX. Plaintiff’s factual allegations relating to the claims asserted against Defendants are  
14 found at paragraphs 28, 29, 33, 34, and 119-127 of the SAC. Plaintiff’s deficient Second  
15 Amended Complaint has not set plead sufficient facts or elements of its claims against the  
16 Defendants nor has it plead or set forth claims upon which relief can be granted.  
17 Defendants are entitled to Summary Judgment in their favor and dismissal of all claims  
18 against them.

19 **A. Standard for Dismissal under FRCP Rules 8(a), 12(b)(6) and 56.**

20 Defendants seek dismissal of all claims asserted against them pursuant to FRCP  
21 Rules 8(a), 12(b)(6) and 56(e).

22 Rule 56 of the Federal Rules of Civil Procedure (“FRCP”) states summary judgment  
23 is appropriate “if the *pleadings*, depositions, answers to interrogatories, and admissions on  
24 file, together with the affidavits, if any, show that there is no genuine issue to any material  
25 fact and that the moving party is entitled to a judgment as a matter of law.” FRCP 56©.  
26 (emphasis added). When analyzing a summary judgment motion, a court “must view the  
27 evidence and draw inferences in the light most favorable to the non-movant.” (*Hemlani v.*  
28 *Hemlani*, 2015Guam 16, ¶13). The movant bears the initial burden of showing that

1 “undisputed facts in the record support a prima facie entitlement to the relief requested.”  
2 (*Hawaiian RockProducts Corp. v. Ocean Housing, Inc.*, 2016 Guam 4, ¶ 27). If such a  
3 showing is made, “the non-movant may not simply deny the allegations to create a factual  
4 dispute, but is obligated to set forth specific facts showing there is a genuine issue for trial.”  
5 (*Gayle v. Hemlani*, 2000 Guam 25, ¶ 21 (citations omitted)); GRCP 56(e).

6 A genuine dispute “occurs where there is ‘sufficient evidence’ which establishes a  
7 factual dispute requiring resolution by a fact finder.” (*Hawaiian Rock Products*  
8 *Corp.*,supra at ¶ 26). The dispute must be to a material fact, that is, a fact “that is relevant  
9 to an element of a claim or defense and whose existence might affect the outcome of the  
10 suit.”(*Bank of Guam v. Flores*, 2004 Guam 25, ¶ 8).

11 When reviewing a Rule 12(b)(6) motion, the trial court must “construe the pleading  
12 in the light most favorable to the non-moving party, and resolve all doubts in the  
13 non-moving party’s favor.” *First Hawaiian Bank*, 2007 Guam 2 ¶ 9 (citation omitted).  
14 Dismissal is appropriate only when the non-moving party “can prove no set of facts in  
15 support of his claim which would entitle him to relief. (*Vasques v. Los Angeles County.*,  
16 487 F.3d 1246, 1249 (9th Cir. 2007)).

17 Rule 8(a) of the Federal Rules of Civil Procedure provides, in relevant part, that “[a]  
18 pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement  
19 of the claim showing that the pleader is entitled to relief.” FRCP 8(a). (“Rule 8 requires  
20 only a short and plain statement of the claim.” *Conley v. Gibson*, 355 U.S. 41 (1957). *Conley*  
21 involved review of a dismissal of a Complaint under Rule 12(b)(6). The Court stated that  
22 a case should not be dismissed unless it appears beyond doubt that the plaintiff can prove  
23 no set of facts imposing liability. Here much of the pleadings against Defendants amount  
24 to conclusory allegations which do not equate to the plausibility of any unlawful actions  
25 or inactions by Defendants or an illicit accord by Defendants to violate Plaintiffs fourth  
26 amendment constitutional rights.

27 **B. Standards for Individual Liability under 42 U.S.C. § 1983.**

28 The United States Supreme Court has established that claims of excessive force by

1 law enforcement during an arrest, investigatory stop, or other “seizure” of a free citizen are  
2 analyzed under the Fourth Amendment by an “objective reasonableness” standard.  
3 *Graham v. O’Connor*, 490 US 386. Plaintiff asserts supervisor liability against Corpuz and  
4 Flickinger, claiming they "participated in or directed" the violations or "acquiesced" in  
5 them. These allegations are formulaic recitations of the legal standard and lack any  
6 supporting facts.

7 Dismissal of Count VII is warranted due to the lack of moving Defendants personal  
8 participation. In *Ashcroft v. Iqbal*, 556 US 662 (2009), the Supreme Court addressed  
9 “supervisory liability” which it termed a misnomer. 42 U.S.C. § 1983 liability requires  
10 personal involvement in the alleged constitutional violation. One is only liable for his or  
11 her misconduct. Stated another way, under § 1983, a defendant is only liable if they  
12 “personally participated” in the constitutional deprivation. Corpuz and Flickinger were  
13 not present during the March 4, 2023 incident. Corpuz and Flickinger were involved only  
14 through handling administrative paperwork presented by Plaintiff. The Second Amended  
15 Complaint fails to allege that either Corpuz or Flickinger were present during the March  
16 4, 2023, incident or that they participated in the use of force. (See SAC ¶ 28,29,33,34 and  
17 Count XII).

18 A defendant may be deemed to have “caused” a constitutional violation under §  
19 1983 under the Integrated Participant Standard. That standard requires that a defendant  
20 knew about and acquiesced in the conduct as part of a common plan or set in motion acts  
21 they knew would cause others to inflict the injury. *Peck v. Montoya*, 51 F.4th 877, 889 (9th  
22 Cir. 2022). Plaintiff presents no allegations of any such conduct, participation, or  
23 involvement by Defendants to inflict injury.

24 To impose Supervisor Liability (Count X) under 42 U.S.C. § 1983 requires more than  
25 a mere supervisory relationship to establish liability. Supervisors cannot be held liable  
26 under a theory of respondeat superior or vicarious liability solely for the actions of their  
27 subordinates. There must be a sufficient causal connection to sustain a supervisor liability  
28 claim between the supervisor’s wrongful conduct and the constitutional violation. *Monell*

1 *v. New York City Department of Social Services*, 436 U.S. 658,691 (1978). Liability must be  
2 based on the supervisor's own culpable action or inaction.

3 In *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011), the Court held that a plaintiff states  
4 a claim for deliberate indifference if they allege the supervisor knew of subordinates'  
5 unconstitutional conduct (such as a pattern of excessive force) and failed to act to prevent  
6 it. In that situation a supervisor would be held liable for his or her own culpable action or  
7 inaction not vicarious liability. No such allegation or claim has been asserted by Plaintiff  
8 against Defendants. Defendants were not directly involved in or directed the use of any  
9 force alleged by Plaintiff nor are alleged to have exercised any deliberate indifference  
10 towards Plaintiff. (See also, *Vazquez v. County of Kern*, 949 F. 3d 1153, 1173).

11 Overlapping the above facts and argument into Count IX claims, the Supreme Court  
12 clarified that a supervisor is only liable for their own misconduct and rejected the idea of  
13 "supervisory liability" as a distinct category from individual liability. *Ashcroft*, supra.  
14 Defendants do not set or ratify Guam Police Department policy. They are neither policy  
15 makers for the Government of Guam or the Guam Police Department. Defendants do not  
16 establish and execute discretionary policies, training procedures, customs and practices.  
17 Plaintiff has not alleged any causal connection between the supervisor's conduct and the  
18 alleged incident on March 4, 2023.

19 Furthermore, Plaintiff did not allege that Defendants knew of any training  
20 deficiency that made a violation "highly predictable". In *Flores v. County of Los Angeles*  
21 (2014) the Court of Appeals for the Ninth Circuit endorsed the requirement that the  
22 Plaintiff must allege facts to show that the individual defendants "... were deliberately  
23 indifferent to the need to train subordinates, and the lack of training actually caused the  
24 constitutional harm or deprivation of rights." *Connick v. Thompson*, 131 S. CT. 1350,1358.  
25 There is no substantiative allegations of training omission or that either Defendant  
26 implemented a policy or maintained a custom that directly caused the injury. (See, *Larez*  
27 *v. City of Los Angeles*, 946 F.2d 630 (1991).

28 Plaintiff has not shown a "sufficient causal connection" between any wrongful

1 conduct by Defendants and the alleged constitutional violation. The SAC fails to allege any  
2 specific “culpable action or inaction” regarding the training or control of the subordinate  
3 officers involved in the incident. Without specific facts showing that Defendants knew of  
4 a specific risk of constitutional violations and failed to act, this claim fails as a matter of  
5 law.

6 **C. Standards for Official Capacity and Prospective Relief.**

7 Count IX seeks prospective injunctive relief against Corpuz and Flickinger in their  
8 official capacities. A Guam official is considered a “person” for § 1983 purposes when sued  
9 in their official capacity for prospective relief. *Paeste v. Gov't of Guam*, 798 F.3d 1228,  
10 1235-40 (9th Cir. 2015). *Crawford v. Antonio B. Won Pat Int'l Airport Auth.*, 917 F.3d 1081,  
11 1089 n.8 (9th Cir. 2019). Corpuz has retired from the Guam Police Department. Flickinger  
12 has no allegations plausibly suggesting that he would commit any unlawful actions  
13 harming citizens constitutional rights. Simply stated an injunction should only issue if  
14 there is a likelihood of success on the merits and the constitutional harm being repeated  
15 against it citizens. For the reasons advanced by Flickinger and Corpuz warranting  
16 summary judgment and dismissal of the claims against them no Injunction is warranted and  
17 Count IX as it pertains to the Moving Defendants should be denied.

18 **D. Negligence.**

19 The Government of Guam waives sovereign immunity for torts arising from the  
20 negligent acts of employees acting at the government's direction. 5G.C.A. § 6105(b). While  
21 the government cannot be held liable for intentional torts, it can be held liable for negligent  
22 torts as can the individual employee. As set forth above the SAC fails to state any claim  
23 upon which relief can be granted against the Moving Defendants in their individual  
24 capacities. More specifically there is no dispute of facts here as Plaintiff failed to allege and  
25 a specific breach of a duty the proximately caused Plaintiff harm.

26 **E. Conversion.**

27 Count XI seeks judgment for conversions with a general allegation against all  
28 Defendants for theft of Two Thousand Dollars (\$2,000.00). That allegedly occurred at the

