

FILED
SUPERIOR COURT
OF GUAM

2025 SEP -5 PM 4: 44

CLERK OF COURT

BY: *Bm*

IN THE SUPERIOR COURT OF GUAM

**TAMMY L. MENO and MELVIN J.D.
MENO, as parents and guardians of T.J.M.,**

Plaintiffs,

v.

**DEPARTMENT OF EDUCATION,
GOVERNMENT OF GUAM; GUAM
EDUCATION BOARD; SUPERINTENDENT
OF EDUCATION; JOHN DOE INSURANCE
COMPANIES 1 THROUGH 5,**

Defendants.

CIVIL CASE NO. CV0789-21

ORDER FOR FURTHER BRIEFING

This matter came before the Honorable Dana A. Gutierrez on September 4, 2025 for a hearing on Defendants Department of Education, Government of Guam, Guam Education Board, and Superintendent of Education's ("Defendants") motion to set aside the entry of default. Present at the hearing was Attorney Charles H. McDonald on behalf of Plaintiffs Tammy L. Meno and Melvin J.D. Meno and Attorney Joseph A. Guthrie on behalf of Defendants.

Prior to the hearing, Attorney Guthrie, in his Reply to Plaintiff's Opposition to Motion to Set Aside Entry of Default, cited to an opinion from a District Court of Guam case, *Ogawa v. U.S. Explore & Study, Inc.*, No. Civil Case 11-00002, 2013 WL 2256220 (D. Guam May 20,

ORDER FOR FURTHER BRIEFING
CV0789-21; Meno v. Dep't of Educ., et al.

2013),¹ as a basis to justify relieving Defendants from the Clerk of Court's entry of default filed on March 16, 2023. *Reply to Opp'n to Mot. to Set Aside Entry of Default* at 2. Attorney Guthrie did not raise this authority in his initial Motion to Set Aside Entry of Default. Furthermore, Attorney Guthrie argued at the hearing on his Motion that the doctrine discussed in the *Ogawa* case, primary assumption of the risk, constitutes a "bar [to] the Court hearing this matter." Minute Entry at 11:03 AM (September 4, 2025). Accordingly, as this was raised in his Reply Brief, the Plaintiffs did not have an opportunity to address this issue.

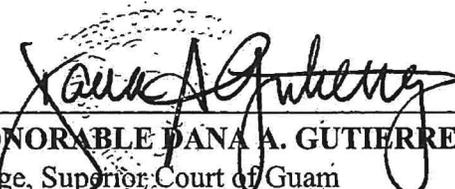
Based upon the issues raised and after discussion with the parties at the hearing, the Court **ORDERS** that:

1. The parties must support the Further Briefing by relevant case law, statutes, or other pertinent authority, and address the following questions:
 - a. Has Guam adopted the doctrine of primary assumption of the risk? If not, is the doctrine applicable in Guam?
 - b. If the doctrine has been adopted in Guam or is applicable in Guam, does the doctrine of primary assumption of the risk act as a complete bar to Plaintiffs' negligence action?
2. Plaintiffs shall file their further briefing by **September 22, 2025**.
3. Defendants shall respond by **September 29, 2025**.
4. If necessary, the Court shall set a hearing for oral argument on the Further Briefing. Otherwise, the Court shall issue a notice taking the motion under advisement.

¹ The Court notes that Attorney Guthrie cited to "Koich Ogawa and Mina Ogawa v. U.S. Explore and Study, Inc. and First Net Insurance Company, Civil Case No. 11-0002," which is the same case.

ORDER FOR FURTHER BRIEFING
CV0789-21; Meno v. Dep't of Educ., et al.

SO ORDERED this 5th day of September, 2025.


HONORABLE DANA A. GUTIERREZ
Judge, Superior Court of Guam

SERVICE VIA E-MAIL
I acknowledge that an electronic copy of the original was e-mailed to:
McDonald Law,
AG's Civil
9/5/25 4:50pm
Date Time
BTMESA / gm
Deputy Clerk, Superior Court of Guam

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I acknowledge that an electronic copy of the original was e-mailed to:
jguthrie@oagguam.org
9/5/25 4:50pm
Date Time
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Deputy Clerk, Superior Court of Guam



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OF GUAM

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BY: _____ *mn*

Douglas B. Moylan
Attorney General of Guam
Office of the Attorney General
Civil Division
590 S. Marine Corps. Drive
ITC Bldg., Ste. 802
Tamuning, Guam 96913 · USA
671-475-2709/10 (tel) · 671-477-2493 (fax)
www.oagguam.org

Attorneys for the Government of Guam

IN THE SUPERIOR COURT OF GUAM

TAMMY L. MENO AND MELVIN J.D.)
MENO, AS PARENTS AND)
GUARDIANS OF TEEGAN J. MENO,)

Civil Case No. CV0789-21

Plaintiffs,)

vs.)

**MOTION TO SET ASIDE
ENTRY OF DEFAULT**

DEPARTMENT OF EDUCATION,)
GOVERNMENT OF GUAM; GUAM)
EDUCATION BOARD;)
SUPERINTENDENT OF)
EDUCATION; JOHN DOE)
INSURANCE COMPANIES 1-5)

Defendants.)

COMES NOW, Joseph A. Guthrie, Attorney for Defendants and moves the Court to vacate the Default entered on March 16, 2023. This Motion is supported by the accompanying Memorandum.

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Dated this 29th day of April, 2025.

OFFICE OF THE ATTORNEY GENERAL
Douglas B Moylan, Attorney General

By: 
JOSEPH A. GUTHRIE
Chief Deputy Attorney General

1 Dismiss.

2 On March 15, 2023, the Plaintiffs filed a Declaration and Application for Entry of
3 Default.

4 On March 16, 2023, the Court Clerk entered Default.

5 On March 11, 2024, Plaintiff's Counsel and the undersigned a Stipulation and
6 Request to continue Default Judgment hearing.

7 On Tuesday, May 14, 2024 the Court signed the Stipulation and Request to
8 Continue Default Judgment hearing.

9 Finally, on June 11, 2024, Department of Education legal counsel, Jesse Nasis,
10 substituted Chief Deputy Attorney General for himself as Counsel for the Guam
11 Department of Education, Government of Guam.

12 Since becoming attorney of record, the undersigned has learned of matters
13 constituting grounds for dismissal for failure to state a claim upon which relief can be
14 granted court, but which not have been asserted.

15 Namely, lack of the "duty" which is essential to a negligence claim.

16 In Hyung Gon Kim and Sol Young Euh vs. Antonio A. Sablan, and Paul Sablan,
17 and Primos Heavy Equipment and Rental Services, Civil Case No. CV0188-22, the
18 Guam Superior Court, in a Decision and Order granting Defendant, Antonio Sablan's
19 Motion to Set Aside Entry of Default dated April 20, 2023, states:

20 In determining whether to vacate an entry of default, the Court must
21 consider whether "(1) the defendant's culpable conduct led to the default,
22 (2) the defendant has no meritorious defenses, or (3) the plaintiff would be
23 prejudicated if the judgment is set side, "*Midsea Industiral, Inc. vs. HK
Engineering, Ltd.*, 1998 Guam 14 paragraph 5. A finding of any of these
factors supports rejection of setting aside a default.

24 The plaintiff applied for entry of default on March 15, 2023, and the Clerk of
25

1 Court entered an Entry of Default on March 16, 2023. The Court ordered default on
2 November 17, 2023.

3 In the Court's Order Re Default on November 17, 2023, the Court stated:

4 Based on review of the file, the court finds that Defendant has not
5 submitted any substantive pleadings prior to the Entry of Default.

6 Therefore, the first criteria is met – culpable conduct on the defendant's part did
7 not lead to the default.

8 Also, the defendant has a meritorious defense - the primary assumption of risks
9 doctrine.

10 The primary assumption of risk doctrine is an exception to the general rule that
11 persons have a duty to exercise due care. Knight v. Jewett, 3 Cal. 4th 296, 315-16
12 (1992); Andia, 2007 WL 4258634, at *4. The doctrine applies when "by virtue of the
13 nature of the activity and the parties' relationship to the activity, the defendant owes no
14 legal duty to protect the plaintiff from the particular risk of harm that caused the injury."
15 Knight, 3 Cal. 4th at 314-15. See also Kalter v. Grand Circle Travel, 631 F. Supp. 2d
16 1253, 1257 (C.D. Cal. 2009); Andia, 2007 WL 4258634, at *4.

17 Within the context of public playgrounds, in the absence of any unusual hidden
18 hazard, the risk of injury associated with falling from a reasonably safe piece of
19 playground equipment is typically considered an open, obvious, and assumed risk for
20 recreational users of any age. Under such circumstances, there would be no legal
21 basis for imposing negligence liability on the landowner.
22

23 The California Supreme Court has states that the "primary assumption of risk
24 doctrine rests on a straightforward policy foundation: the need to avoid chilling
25

1 vigorous participation on or sponsorship of recreational activities by imposing a tort
2 duty to eliminate or reduce the risks of harm inherent in those activities." Nalwa v.
3 Cedar Fair, L.P., 55 Cal. 4th 1148, 1156 (2012). Defendants argue that the doctrine
4 applies is a question of law that can be divided on a summary judgment motion.(8)

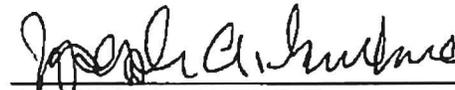
5 Finally, the Plaintiff has been somnambulant in this case since default was
6 entered on November 17, 2023, and would hardly be prejudiced if the default was
7 vacated and defendant allowed to argue that, because of assumption of risk.
8 Defendant owes no duty with respect to injuries occurring on its public playgrounds.
9

10 The entry of default should be set aside.

11 Dated this 29th day of April, 2025.

12 **OFFICE OF THE ATTORNEY GENERAL**
13 **Douglas B Moylan, Attorney General**

14 By:

15 
16 **JOSEPH A. GUTHRIE**
17 Chief Deputy Attorney General
18
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OF GUAM

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CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM

BY: [Signature]

TAMMY L. MENO and MELVIN J.D.
MENO, as parents and guardians of T.J.M.,

Plaintiffs,

v.

DEPARTMENT OF EDUCATION,
GOVERNMENT OF GUAM; GUAM
EDUCATION BOARD;
SUPERINTENDENT OF EDUCATION;
JOHN DOE INSURANCE COMPANIES 1
THROUGH 5,

Defendants.

Superior Court Case No. CV0789-21

**ORDER
RE DEFAULT**

On March 15, 2023, Plaintiff filed two Declarations and Requests for Entry of Default. On March 16, 2023, the Clerk of Court entered an Entry of Default as to all named Defendants. Based on review of the file, the Court finds that the Plaintiff has not submitted any pleadings subsequent to the Entry of Default. The Court **ORDERS** that Plaintiff submit an application for default judgment in accordance with Rule 55 of the Guam Rules of Civil Procedure **within 30 days** of the filing of this Order.

SO ORDERED: NOV 17 2023

SERVICE VIA EMAIL

I acknowledge that an electronic copy of the original was e-mailed to:

McDonald

Jessie NAIU-DOE

Date: 11/17/23 Time: 1:34pm

Stronassilla

Deputy Clerk, Superior Court of Guam

[Signature]
HONORABLE DANA A. GUTIERREZ
Judge, Superior Court of Guam

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CLERK OF COURT

By: *[Signature]*

1 **McDONALD LAW OFFICE, LLC**
2 173 Aspinall Avenue, Suite 207A
3 Hagåtña, Guam 96910
4 Telephone: (671) 588-8866
5 Facsimile: (671) 472-9616
6 Email: pleadings@mcdonald.law
7 Attorneys for Plaintiffs

8 **IN THE SUPERIOR COURT OF GUAM**

9 TAMMY L. MENO and MELVIN J.D.
10 MENO, as parents and guardians of
11 TEEGAN J. MENO,
12
13 Plaintiffs,

14 vs.

15 DEPARTMENT OF EDUCATION,
16 GOVERNMENT OF GUAM; GUAM
17 EDUCATION BOARD;
18 SUPERINTENDENT OF EDUCATION;
19 JOHN DOE INSURANCE COMPANIES
20 1-5,

21 Defendants.

CIVIL CASE NO. CV 0789-21

COMPLAINT AND DEMAND
FOR JURY TRIAL

22 COMES NOW Plaintiffs TAMMY L. MENO and MELVIN J.D. MENO, as parents and
23 guardians of TEEGAN J. MENO ("Plaintiff" or "Teegan"), and for their Complaint allege and
24 state as follows:

25 **JURISDICTION**

- 26 1. Jurisdiction over this matter is vested in this Court pursuant to 7 GCA § 3105.

27 **PARTIES**

- 28 2. Plaintiff, Teegan J. Meno (DOB 07/17/2014), is a minor, seven (7) years of age.
Tammy L. Meno and Melvin J.D. Meno are Teegan's natural parents and guardians for the
purpose of bringing this action. Plaintiff and his parents reside in Yona, Guam.

1 in the playground, Teegan played on a dome climber (hereinafter referred to as the "apparatus"
2 or "dome climber") and he was seriously injured when his left leg lodged into a hole on the
3 apparatus thereby causing him to fall to the ground from a height of approximately four (4) feet.
4
5 Teegan remained on the ground after his fall and was unable to move.

6 8. Defendant's agent, a school aid or teacher, discovered Teegan on the ground and
7 another agent came to assist. Upon discovering Teegan, Defendant's agents asked Teegan to
8 move his leg but he was unable to do so. The agents then carried Teegan to the nurse's office.
9 It is believed that Teegan was carried in a manner that further exacerbated his injury.

10 9. Teegan's parents were then alerted of his injury and his mother, Tammy, went to
11 the school to check Teegan. Upon Tammy's arrival, she was advised that Teegan hurt his leg
12 while playing in the playground, but he was otherwise fine. The school nurse even squeezed
13 Teegan's left thigh to show Tammy that her son was fine. When Tammy inquired about the
14 injury, school staff were unable to describe what happened.

15 10. However, noticing that her son was in great pain and not fine as suggested by the
16 school nurse, Tammy decided to take Teegan to the Guam Regional Medical Center ("GRMC")
17 emergency room for further evaluation. While in the emergency room, Teegan was examined
18 by an orthopedic surgeon and x-rays were performed. The x-rays revealed that Teegan suffered
19 a fracture of the distal left femur at the diaphyseal level. Teegan was then transported and
20 admitted to the pediatric ward of Guam Memorial Hospital ("GMH").

21 11. The orthopedist at GMH confirmed the fracture of the distal left femur. The
22 orthopedist then applied a 1.5 spica cast over Teegan's entire left leg.

23 12. Teegan was discharged from the hospital on November 15, 2019.

24 13. Teegan's recovery and rehabilitation caused him to miss school for four months.

1 During that time, Teegan was unable to walk, play or otherwise enjoy life normally and he
2 would experience pain and suffering. As a result of the accident, Teegan's left leg was 1/2 inch
3 longer than his right leg.

4
5 14. Within the time required by law, Plaintiff filed a claim pursuant to the Guam
6 Government Claims Act. Plaintiff's claim was denied thereby resulting in this lawsuit.

7 **FIRST CLAIM FOR RELIEF NEGLIGENCE**

8 15. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 14 of this
9 Complaint as if fully set forth herein.

10
11 16. On or about November 12, 2019, at about 12:46 p.m., Teegan was injured when his
12 left leg was lodged into the hole of one of the playground devices furnished and provided by
13 Defendant in the school playground. Plaintiff suffered a fracture of the distal left femur at the
14 diaphyseal level.

15 17. As a pupil of the school, Defendant owed Plaintiff a duty to maintain the playground
16 and the apparatus in a safe condition for the use of its pupils.

17
18 18. As a pupil of the school, Defendant owed Plaintiff a duty to inspect the apparatus
19 regularly to ensure that it is in a safe condition for the use of its pupils.

20 19. As a pupil of the school, Defendant owed Plaintiff a duty to warn of potential
21 dangers with the playground and the apparatus and to instruct on how to properly use the
22 apparatus.

23
24 20. As a pupil of the school, Defendant owed to Plaintiff a duty to provide adequate
25 supervision over Plaintiff and all other students of the school.

26 21. Defendant breached its duties owed to Plaintiff thereby causing injury to Plaintiff.

27 22. The injury sustained by Teegan was a direct and proximate result of the negligence
28

1 of Defendant, its agents, servants, and employees as follows:

2 a) Defendant failed to implement and provide adequate safety measures and
3 procedures concerning the dome climber apparatus.

4 b) Defendant failed to provide any safeguard or other means to ensure the
5 proper and reasonable use of the apparatus without undue risk and harm to the children using it.
6

7 c) Defendant failed to take adequate precautions to protect the safety of its
8 pupils, including Teegan, from reasonably foreseeable hazards of the dome climber apparatus
9 provided on the premises.

10 d) Defendant failed to warn or instruct, or adequately warn and instruct, its
11 pupils, including Teegan, of the hazards posed by its premises and the apparatus.
12

13 e) Defendant failed to provide reasonable or adequate supervision and control
14 of the playground during the time the apparatus was played on and used by the school children.

15 f) Defendant failed to adequately inspect the playground and the apparatus
16 for disrepair and hazards prior to Teegan's injury.
17

18 g) Defendant failed to adequately maintain the apparatus against foreseeable
19 injuries that could result from playing on the apparatus.

20 h) Defendant failed to maintain the playground and the apparatus in
21 accordance with industry standards.
22

23 23. For some time prior to November 12, 2019, such apparatus and the playground had
24 been in a state of disrepair and without proper maintenance in accordance with industry standards,
25 and defendant by and through its officers, agents, and employees knew, or in the exercise of due
26 observation and care should have known, of such disrepair and inadequate maintenance, but
27

1 Defendant carelessly and negligently permitted it to be used by children. Such use was hazardous
2 and dangerous to children playing on and around the apparatus.

3 24. As a direct and proximate result of the negligence of Defendant, its agents, servants,
4 and employees, Plaintiff has been caused to suffer great pain of mind and body and has incurred
5 great expense for medical care. Plaintiff's ability to enjoy life has been diminished. Plaintiff
6 will continue to require medical care and incur additional medical expenses.
7

8 **SECOND CLAIM FOR RELIEF AGAINST INSURANCE POLICY**

9 25. Plaintiff realleges and incorporates by reference all the allegations contained in
10 paragraphs 1 through 24 of the Complaint.
11

12 26. Defendant John Doe Insurance Co., whose identify is currently unknown to Plaintiff,
13 issued a policy or policies of liability insurance covering the Defendant.

14 27. Pursuant to the coverage contained in these policies and 22 G.C.A. § 18305, Plaintiff
15 is entitled to maintain a direct action against said John Doe Insurance Company in an amount equal
16 to any judgment recovered against its insured, up to the limits of any such policy or policies.
17

18 **PRAYER**

19 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 20 1. For general damages according to proof.
21 2. For special damages according to proof.
22 3. For costs of suit.
23 4. For such other and further relief as the court deems appropriate.
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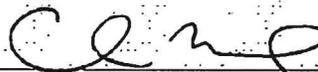
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DEMAND FOR JURY TRIAL

A jury of six (6) persons is hereby demanded on all issues triable by a jury.

DATED this 10th day of November, 2021.

McDONALD LAW OFFICE, LLC



CHARLES H. McDONALD II