



1 **Introduction**

2 Plaintiff, Attorney Michael F. Phillips, Special Administrator for and on behalf of  
3 the Estate of Luke Imaizumi Atoigue (Estate), filed his Complaint on April 1, 2025  
4 alleging, *inter alia*, Negligence and Failure to Train. The Estate alleges that Defendant  
5 Guam Police Department (GPD) was somehow negligent in its conduct and in the  
6 manner in which GPD's police officers have been trained. Because there is no  
7 evidence to support these claims, they must be dismissed.  
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9 **FACTUAL BACKGROUND**

10 On Friday, April 8, 2022, a police officer of Guam Police Department observed a  
11 vehicle traveling at a high rate of speed in the city of Dededo, Guam. After activating  
12 his emergency lights and siren, the officer attempted to make a traffic stop. Instead,  
13 the vehicle continued refusing to acknowledge the police officer. The vehicle continued  
14 for some time at a high rate of speed with several police vehicles in pursuit. During the  
15 course of the pursuit, one police officer observed an AR rifle barrel from the vehicle.

16 Eventually, the vehicle came to a stop in the middle of an intersection. At that  
17 point, the decedent exited the vehicle, holding an assault rifle and yelling profanities.  
18 Police officers attempted to convince the decedent to put the weapon down. At that  
19 same time, the decedent's vehicle was beginning to show signs that it was on fire. As  
20 officers continued to negotiate with the decedent, he began to raise his weapon. A  
21 single shot was fired and the decedent went down. The police officers moved the  
22 decedent away from the burning vehicle and medical assistance was requested. A  
23 medic arrived and transported the individual to the hospital where he was pronounced  
24 dead.  
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## PROCEDURAL HISTORY

Plaintiffs filed their Complaint on April 1, 2025 for wrongful death and damages. That Complaint was subsequently amended on April 23, 2025. Defendants filed a Motion to Dismiss, which Plaintiffs opposed. On September 30, 2025, the Court entered an Order denying Defendants' motion to dismiss in part and striking portions of Plaintiffs' Complaint. On January 16, 2026, Defendants filed their Answer. Defendants have subsequently filed their rule 26 Initial Disclosures and proffered discovery requests to Plaintiffs.

## SUMMARY OF ARGUMENT

Plaintiffs' Complaint, while tragic, illustrates the pervasive nature of current society that holds that those in authority are required to be held accountable and punished even when they have done nothing wrong. Here, Plaintiffs have essentially made two claims against the Government of Guam and, more specifically, Guam Police Department.

Admittedly, Guam is a "notice pleading" jurisdiction. Notice pleading, however, does have its limits. Specifically, because Guam follows the federal rules of civil procedure, when there is no evidence to support the claims made by a plaintiff in their complaint, the complaint must be dismissed.

Specifically, under the United States Supreme Court's holding in *Celotex*, a plaintiff cannot simply make unsubstantiated claims with no evidence whatsoever to support such claims. Moreover, a plaintiff is not allowed to simply rest on its pleadings—the plaintiff must respond to the No Evidence Motion for Summary Judgment with sufficient admissible evidence to meet its minimum burden to

1 demonstrate the existence of such evidence. In the event that a plaintiff fails to  
2 produce sufficient admissible evidence, under the No Evidence Motion standard, the  
3 case must be dismissed.

4 Here, Plaintiffs contend that the decedent's demise was the direct and proximate  
5 result of a failure of training by the Guam Police Department. See Complaint at ¶ 43.  
6 To be clear, Plaintiffs offer no theory, no facts, no analysis and certainly no evidence to  
7 support their conclusory statement. Instead, Plaintiffs double down by stating, "GPD  
8 has failed to meaningfully train its officers on how to serve these members of its  
9 community, especially in situations where they are experiencing episodes of emotional  
10 or mental distress." *Id.* at ¶45.

12 In effect, Plaintiffs are using their unsubstantiated contentions to justify seeking  
13 open and unrestricted discovery on GPD in an effort to find something, anything, to  
14 buttress their claims. Because it is little more than a **theory** of the case, Plaintiffs'  
15 allegations are subject to a no evidence motion for summary judgment. "Upon  
16 information and belief" is not a substitute for facts and evidence.

#### 18 STANDARD OF REVIEW

19 As opposed to a traditional motion for summary judgment, a no evidence motion  
20 is submitted without affidavits or supporting documentation being required. Under  
21 Federal Rule of Civil Procedure 56, which applies in Guam, "the court shall grant  
22 summary judgment if the movant shows that there is no genuine dispute as to any  
23 material fact and the movant is entitled to judgment as a matter of law" Fed. R.Civ.  
24 P.56. When reviewing a summary judgment motion, the appellate court must determine  
25 "whether there are any genuine issues of material fact and whether trial court correctly

1 applied relevant substantive law." *In re Kelly*, 182 B.R. 255, 258 (B.A.P. 9th Cir. 1995),  
2 *aff'd*, 100 F.3d 110 (9th Cir. 1996).

3 In summary, Guam courts apply de novo review to summary judgment motions,  
4 whether characterized as "no evidence" motions or traditional summary judgment  
5 motions, requiring the appellate court to independently assess whether genuine  
6 disputes of material fact exist while viewing all evidence favorably to the nonmoving  
7 party.

### 8 **ARGUMENT AND AUTHORITIES**

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10 Plaintiffs are putting the cart before the horse. Plain and simple. Plaintiffs are  
11 actively engaging in the classic logical fallacy of *post hoc ergo propter hoc*. Plaintiffs  
12 are contending that because X happened, it must be caused by Y. That is the very  
13 nature of the fallacy. Because Mr. Atoigue was tragically killed, it does not necessarily  
14 follow that a member of the Guam Police Department was necessarily negligent. It  
15 does not follow that a member of the Guam Police Department was failed in his  
16 training. Indeed, there are a multitude of possibilities as to why the decedent was  
17 killed. In the absence of a proffer of admissible evidence from Plaintiffs, this case must  
18 be dismissed.

#### 19 **A. Summary Judgement Is Appropriate in the Absence of Evidence.**

20 A no-evidence motion for summary judgment functions as a procedural  
21 mechanism by which a party asserts that there is no evidence to support one or more  
22 essential elements of the opposing party's claim or defense after an adequate time for  
23 discovery. This type of motion, resembling a pretrial directed verdict, requires the non-  
24 moving party to produce summary judgment evidence raising a genuine issue of  
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1 material fact on the elements challenged. If the non-moving party fails to do so, the  
2 court must grant the motion.

3 "Under Rule 56(c), summary judgment is proper 'if the pleadings, depositions,  
4 answers to interrogatories, and admissions on file, together with the affidavits, if any,  
5 show that there is no genuine issue as to any material fact and that the moving party is  
6 entitled to a judgment as a matter of law.' *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–  
7 23, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). As explicated by the United States  
8 Supreme Court, "the plain language of Rule 56(c) mandates the entry of summary  
9 judgment, after adequate time for discovery and upon motion, against a party who fails  
10 to make a showing sufficient to establish the existence of an element essential to that  
11 party's case, and on which that party will bear the burden of proof at trial." *Id.*  
12 Effectively, the no evidence motion for summary judgment places the burden on the  
13 party who would ultimately have the burden of proof at time to produce evidence of its  
14 claims. "In such a situation, there can be 'no genuine issue as to any material fact,'  
15 since a complete failure of proof concerning an essential element of the nonmoving  
16 party's case necessarily renders all other facts immaterial. The moving party is 'entitled  
17 to a judgment as a matter of law' because the nonmoving party has failed to make a  
18 sufficient showing on an essential element of her case with respect to which she has  
19 the burden of proof." *Id.* (internal citations omitted).

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22 The trial court's determination of whether a genuine issue of material fact exists is  
23 a legal determination, and appellate courts review grants of summary judgment de  
24 novo, employing the same standards and analysis as the trial court. One of the  
25 principal purposes of summary judgment is to identify and dispose of factually

1 unsupported claims and defenses. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24  
2 (1986). Summary judgment must be granted against a party that fails to demonstrate  
3 facts to establish what will be an essential element at trial. See *id.* at 323. “A moving  
4 party without the ultimate burden of persuasion at trial—usually, but not always, the  
5 defendant—has both the initial burden of production and the ultimate burden of  
6 persuasion on a motion for summary judgment.” *Nissan Fire & Marine Ins. Co. v. Fritz*  
7 *Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

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9 The burden initially falls on the moving party to identify for the court those  
10 “portions of the materials on file that it believes demonstrate the absence of any  
11 genuine issue of material fact.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*,  
12 809 F.2d 626, 630 (9th Cir. 1987) (citing *Celotex Corp.*, 477 U.S. at 323). “When the  
13 moving party has carried its burden under Rule 56(c), its opponent must do more than  
14 simply show that there is some metaphysical doubt as to the material facts.”  
15 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (footnote  
16 omitted).

17 The nonmoving party must set forth specific facts showing that there is a genuine  
18 issue for trial. *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. At least some “significant  
19 probative evidence tending to support the complaint” must be produced. *Id.* (quoting  
20 *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 290 (1968)). “A scintilla of  
21 evidence or evidence that is merely colorable or not significantly probative does not  
22 present a genuine issue of material fact.” *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130,  
23 1134 (9th Cir. 2000). “[I]f the factual context makes the non-moving party’s claim  
24 implausible, that party must come forward with more persuasive evidence than would  
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1 otherwise be necessary to show that there is a genuine issue for trial." *Cal. Arch'l Bldg.*  
2 *Prods., Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987) (citing  
3 *Matsushita Elec. Indus. Co.*, 475 U.S. at 587). *Accord Addisu*, 198 F.3d at 1134  
4 ("There must be enough doubt for a 'reasonable trier of fact' to find for plaintiffs in order  
5 to defeat the summary judgment motion.").

6 **B. Plaintiffs' Complaint Is Merely Conclusory Statements, Not Facts.**

7 Here, Plaintiffs make the claim that Defendants were somehow negligent based  
8 on the training of the respective police officers. Plaintiffs' Complaint offers no basis for  
9 such conclusions. Indeed, Plaintiffs offer nothing more than supposition in an effort to  
10 blame an entity (GPD) for nothing more than doing its job.  
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12 Therefore, Plaintiffs are mandated to produce sufficient evidence to demonstrate  
13 a material issue of fact in order to sustain this cause of action. Plaintiffs' Complaint  
14 makes certain assumptions that have no basis in fact or in law. Pursuant to the  
15 auspices of *Celotex* and its progeny, if Plaintiffs are unable to produce some facts or  
16 evidence, the claim must be dismissed as a matter of law.  
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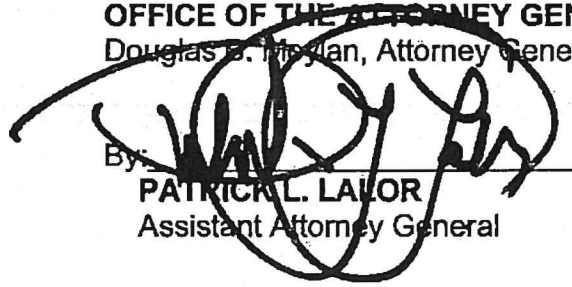
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**PRAYER**

Wherefore, the Defendants, the Government of Guam, Guam Police Department and DOES 1-10, pray that the Court grant it summary judgment as to all of Plaintiffs' claims arising out of the alleged negligence and improper training and for such other and further relief, general or special, legal or equitable, to which it may show itself justly entitled.

Dated this 31 day of March, 2026.

**OFFICE OF THE ATTORNEY GENERAL**  
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