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SUPERIOR COURT  
OF GUAM

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CLERK OF COURT

BY: \_\_\_\_\_

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**IN THE SUPERIOR COURT OF GUAM  
HAGATNA, GUAM**

THOMAS J. FISHER *as Taxpayer and  
in his Official Capacity as a Senator of  
the 37<sup>th</sup> Guam Legislature,*

Plaintiff,

v.

IGNACIO C. SANTOS, *in his official  
capacity as a Government of Guam  
Federal Programs Administrator and in  
his private capacity,* and DOES 1-5,

Defendants.

Civil Case No.

CV CV 0392-23

**VERIFIED COMPLAINT**

**COMES NOW** Plaintiff, through undersigned counsel, and hereby files a  
Complaint in the above-captioned case:

**GENERAL ALLEGATIONS**

1. This Court has jurisdiction over this matter pursuant to 7 GCA § 3105 and 5 G.C.A. § 7103 et seq.
2. Plaintiff Thomas J. Fisher is a taxpayer and resident of Ipan, Talofofo, Guam. Plaintiff Fisher is also an elected senator in the 37<sup>th</sup> Guam Legislature.

1           3.       Upon information and belief and at all times relevant to this  
2 Complaint, Defendant Ignacio C. Santos was the Federal Programs Administrator  
3 for the Guam Department of Education. Defendant Santos is an employee of the  
4 Executive Branch of the Government of Guam who assumed responsibility for  
5 and represented the right to certify the availability of funds or the spending of  
6 money belonging to the Territory of Guam. As such, Defendant Ignacio stands in  
7 a fiduciary relationship with the people of Guam regarding the management of  
8 public money. *See 5 Guam Code Ann. §7102.*

9  
10  
11           4.       Although required to do so by law, Defendant Santos did not  
12 discharge his duties with respect to the management of public money solely in  
13 the interest of the people of the territory of Guam.

14  
15           5.       Although required to do so by law, Defendant Santos did not  
16 discharge his duties with the care, skill, prudence and diligence under the  
17 circumstances that a prudent person acting in like capacity and familiar with such  
18 matters would use in the conduct of an enterprise of like character and with like  
19 aims.

20  
21           6.       Those defendants named by the fictitious designation as DOES 1  
22 through 5 are individuals, officers, agents, or other legal entities who are in some  
23 way liable to Plaintiffs for the damages alleged herein. Plaintiffs are presently  
24 unaware of the identity of DOES 1 through 5 but will move to amend this  
25

1 Complaint to allege their true names and capacities when the same have been  
2 ascertained.

3 **FACTS**

4 7. On or about April 10, 2023, the Office of Public Accountability  
5 (hereinafter "OPA") released an investigative audit report (hereinafter "Audit  
6 Report") of overtime payments from March 2020 to September 2022 awarded to  
7 employees from the Federal Programs Division (hereinafter "FPD") of the Guam  
8 Department of Education (hereinafter "GDOE"). Attached as Exhibit "A" is a  
9 true and correct copy of the OPA Audit Report dated April 11, 2023.  
10  
11

12 8. The Audit Report identified the following relevant conduct  
13 challenged in this suit: that overtime payments were unlawfully made to  
14 ineligible employees and paid under the FPD, that payments were made from  
15 local funds for ineligible overtime compensation and thereby shorted local  
16 appropriations for GDOE, and that overtime payments certified by Defendant, an  
17 unauthorized certifier of funds, were improper.  
18

19 9. The Audit Report concluded that GDOE management was aware of  
20 the improper payments since July 2020. Upon information and belief, GDOE  
21 management and DOES 1-5 ignored information that improper overtime  
22 payments were being paid by the FPD and therefore GDOE management was  
23 also jointly liable for improper payments of overtime in violation of expenditure  
24  
25

1 laws. As the identity of DOES 1-5 and management becomes known, Plaintiff  
2 may move to amend this Complaint.

3 10. From about March 2020 through September 2022, certain GDOE  
4 employees were wrongfully paid overtime compensation by the FPD contrary to  
5 law and regulation.  
6

7 11. In May 2020, GDOE received funds from the Education Stabilization  
8 Fund-State Education Agency (ESF I-SEA) to address the immediate safety  
9 needs of students and employees and support the shift to distance learning during  
10 the COVID pandemic which began in March 2020. In January 2021, GDOE  
11 received a second round of funding totaling \$110.6M in federal program funds  
12 from the ESF (ESF II-SEA).  
13

14 12. GDOE, through the acts of Defendant Santos, DOES 1-5 and  
15 management, paid at least Six Hundred Forty Thousand and Fifty-Five Dollars  
16 (\$640,055.00) in overtime payments to ineligible employees and through  
17 improper certification of funds.  
18

19  
20 **FIRST CAUSE OF ACTION:**  
21 **ILLEGAL EXPENDITURES**

22 13. Plaintiff repeats and realleges each and every allegation of  
23 paragraphs 1-10 of the Complaint herein.  
24  
25

1           14.     GDOE Personnel Rules and Regulations Section 907.404 states that  
2 employees are not to work overtime unless they receive the Superintendent's  
3 certification that overtime pay was available.

4           15.     Personnel costs of employees funded by USDOE grants are paid on a  
5 reimbursement basis. Appropriations to the General Fund operations initially pay  
6 for the personnel costs which are reimbursed from the Third-Party Fiduciary  
7 Agent (TPFA). The reimbursement process provides that certification of  
8 availability of local funds must be made by GDOE Certifying Officers and for  
9 federal funds by the TPFA prior to overtime work.  
10

11           16.     GDOE Certifying Officers did not certify the availability of local  
12 funds but Defendant Santos intentionally, wrongfully and illegally approved  
13 overtime pay requests when he was unauthorized to do so, knew he was not  
14 authorized to do so, and with the consent or knowledge of DOES 1-5.  
15  
16

17           17.     DOES 1-5 knew or should have known the payroll reimbursement  
18 process by department regulations, but allowed retroactive approval to overtime  
19 work beginning May 2020 even when COVID overtime plans were not  
20 implemented until September 2021.  
21

22           18.     Overtime payments were processed as special check runs and were  
23 charged to the ESF II-SEA grant and a corresponding accounts receivable was  
24 recorded for reimbursement. However, because Defendant Santos and DOES 1-5  
25

1 violated GDOE rules and regulations for overtime pay and the federal  
2 reimbursement process and knew they had done so, federal funds were not  
3 requested or received by GDOE for reimbursement of local funds from the  
4 federal government.

5  
6 19. Defendant Santos and DOES 1-5 expended public funds without  
7 proper appropriation, without proper authority, illegally, or contrary to law.

8 20. As a direct and proximate cause of Defendants' actions, local  
9 appropriations to GDOE are deprived of an amount of no less than Six Hundred  
10 Forty Thousand and Fifty-Five Dollars (\$640,055.00) and an amount to be  
11 proven at trial.  
12

13 **SECOND CAUSE OF ACTION:**  
14 **ILLEGAL EXPENDITURES**

15 21. Plaintiff repeats and realleges each and every allegation of  
16 paragraphs 1-18 of the Complaint herein.  
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18 22. Defendant Santos and DOES 1-5 are accountable officers pursuant to  
19 4 G.C.A. § 14104. Sometime between March 2020 through September 2022, in  
20 violation of law, rule and regulation, Santos signed personnel actions for  
21 overtime pay without the execution of other necessary certifying officers and  
22 notated that personnel actions for overtime pay were certified allowable use of  
23 federal funds.  
24  
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1 and in an amount to be proven at trial to forty-six (46) ineligible employees in  
2 violation of Guam law and department rules and regulations.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as  
5 follows:  
6

- 7 1. That Plaintiff's claims be established against Defendants;
- 8 2. That Defendants be enjoined from expending money without proper  
9 appropriation, without proper authority, illegally, or contrary to law;
- 10 3. That the Court issue judgment against Defendant Santos and DOES 1-5  
11 and in favor of the Plaintiff and Government of Guam for the return to the  
12 Government of Guam of any money which has been expended improperly,  
13 but no less than Six Hundred Forty Thousand and Fifty-Five Dollars  
14 (\$640,055.00) and in an amount to be proven at trial.
- 15 4. For pre-judgment and post-judgment interest at the legal rate;
- 16 5. For reasonable attorney's fees and costs of suit incurred in the  
17 prosecution of this action pursuant to 5 G.C.A. § 7112.
- 18 6. That the Court order Plaintiff post bond in an amount not to exceed  
19 \$25.00; and
- 20 6. For such other and further relief as this Court may deem just and proper.
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