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THE DISTRICT COURT OF GUAM

GOVERNMENT OF GUAM and
DOUGLAS B. MOYLAN, in his official
capacity as the Attorney General of Guam,

Plaintiffs,

vs.

LOURDES A. LEON GUERRERO, in her
official capacity as the Governor of Guam and
GUAM HOUSING AND URBAN RENEWAL
AUTHORITY, a Public Body Corporate and
Politic,

Defendants.

CIVIL CASE NO. 24-00029

REPORT & RECOMMENDATION

1. to Grant Defendants’ Motion to Dismiss (ECF No. 5),¹
2. to Deny Plaintiffs’ Motion for Leave to File an Amended Complaint (ECF No. 20),
3. to Deny Plaintiffs’ Motions to Consolidate Cases (ECF Nos. 21 and 35), and
4. to Deny Defendants’ Motion to Strike as Moot (ECF No. 5)

This is an action involving the obligation and expenditure of funds allocated by the federal government to the Government of Guam pursuant to the American Rescue Plan Act of 2021 (“ARPA” or the “Act”). The Plaintiffs challenge the Defendants’ obligation or use of said funds and contend that the Defendants’ actions violate various federal and local laws and regulations, including the Organic Act of Guam (the “Organic Act”).

Now pending before the court are the following motions: (1) Defendants’ Joint Motion to Strike and to Dismiss, (2) Plaintiffs’ Motion for Leave to File an Amended Complaint, and (3) Plaintiffs’ two Motions to Consolidate Cases.² See ECF Nos. 5, 20, 21 and 35. The motions

¹ The ECF citations in this Report and Recommendation refer to the docket sheet in the instant action (24-CV-00029) unless otherwise specified.

² Plaintiff Attorney General of Guam (the “Attorney General”) requested that the instant action be consolidated with two other cases which he removed to this court. See *Guam Power*

1 have been referred to the below-signed Magistrate Judge. *See* Order re Referral, ECF No. 39. The
2 motions have been fully briefed, and oral argument will not aid the court in reaching a decision on
3 the pending matters. Having reviewed the case file and based on relevant authority, the court now
4 issues this Report and Recommendation to grant the Defendants’ Motion to Dismiss, to deny all of
5 the Plaintiffs’ motions, and to deny the Defendants’ Motion to Strike as moot.

6 **I. BACKGROUND**

7 The facts are generally not disputed.³ Rather, the issue is whether the Defendants’
8 obligation of ARPA funds toward the Mangilao Medical Campus Project (the “MMC Project”)
9 violate the Organic Act, various federal statutes and regulations governing the use of ARPA funds,
10 and other Guam laws.

11 **A. ARPA Funds and the SLFRF Program**

12 In March 2021, Congress enacted ARPA to provide additional relief to address the
13 continued impact of the COVID-19 pandemic. Pub. L. 117-2, 135 Stat. 4 (2021). Section 9901 of
14 the ARPA amended Title VI of the Social Security Act to establish the Coronavirus State and Local
15 Fiscal Recovery Funds (“SLFRF”) (codified as 42 U.S.C. §§ 802-803) for state, local, territorial and
16 tribal governments to cover pandemic-related costs and losses. Sections 602 and 603 of the Act
17 provided the following list of four permissible uses for SLFRF:

- 18 (A) to respond to the public health emergency with respect to the Coronavirus
19 Disease 2019 (COVID–19) or its negative economic impacts, including assistance
20 to households, small businesses, and nonprofits, or aid to impacted industries such
21 as tourism, travel, and hospitality;
22 (B) to respond to workers performing essential work during the COVID–19 public
23 health emergency by providing premium pay to eligible workers . . . that are
24 performing such essential work, or by providing grants to eligible employers that
25 have eligible workers who perform essential work;
26 (C) for the provision of government services up to [\$10 million for] . . . the
27 reduction in revenue . . . due to the COVID–19 public health emergency relative to
28 revenues collected . . . ; or
(D) to make necessary investments in water, sewer, or broadband infrastructure.

25 *Authority v. Attorney General of Guam*, 25-CV-00029, and *In re: Request of Lourdes A. Leon*
26 *Guerrero, I Maga ‘Hagan Guahan, Governor of Guam, Relative to the Authority of the Attorney*
General of Guam to Approve Autonomous Agency Contracts, 25-CV-00041.

27 ³ *See* Compl. at ¶ 18, ECF No. 1 (“This case . . . presents pure questions of law that do not
28 require any additional factual development.”).

1
2 42 U.S.C. §§ 802(c)(1) and 803(c)(1).

3 In January 2022, the U.S. Department of Treasury published a Final Rule, effective April 1,
4 2022, with regard to SLFRF, requiring that all funds must be obligated by December 31, 2024, and
5 spent by December 31, 2026. Coronavirus SLFRF, 87 Fed. Reg. 4338, 4340 (Jan. 27, 2022). The
6 Final Rule also reminded all recipients that “federal, state, and local laws and regulations, outside
7 of SLFRF program requirements, also apply, including for example, environmental laws and federal
8 civil rights and non discrimination requirements[.]” *Id.*

9 **B. Filing of Complaint re Guam’s Receipt and Use of SLFRF**

10 Under the ARPA, Guam was allocated approximately \$604 million in SLFRF. Defs.’ Joint
11 Opp’n to Pls.’ Mot. Leave File Am. Compl. at 1, ECF No. 25.⁴ As of December 20, 2024, the date
12 the Complaint herein was filed, over \$450 million in ARPA funds had been obligated. Mem.
13 P. & A. Supp. Defs.’ Joint Mot. Strike and Dismiss at 1, ECF No. 6.

14 The Complaint asserts that on May 28, 2024, defendant Guam Housing and Urban Renewal
15 Authority (“GHURA”) “‘accepted’ a loan from the Governor [of Guam (the “Governor”)] for up
16 to \$10 million for ‘community development projects[,]’” and an additional \$2.5 million on
17 November 26, 2024, for the same purpose. Compl. at ¶ 7, ECF No. 1. The Plaintiffs believe that
18 “some or all of this \$12.5 million originated from ARPA/SLFRF funds.” *Id.* The Plaintiffs further
19 believe that GHURA purchased property in Mangilao and will construct a hospital on the land or
20 will transfer the land to another government agency for purposes of constructing a hospital. *Id.* at
21 ¶¶ 10-11.

22 The Plaintiffs thus brought the instant action for injunctive and declaratory relief, asserting
23 this court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367. *Id.* at ¶¶ 1-2. The Complaint
24 asserts nine causes of action, including violations of the Organic Act, the ARPA/SLFRF and various
25 laws of Guam. Among other things, the Plaintiffs ask the court for “injunctive relief to prohibit the

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27 ⁴ See also Compl. at ¶ 5, ECF No. 1 (“The federal government, pursuant to ARPA, has
28 allocated the Government of Guam over five hundred million dollars (\$500,000,000) under
SLFRF[.]”).

1 Governor from using any ARPA/SLFRF without appropriation by the Legislature or unless pursuant
2 to a pre-existing program for which the Guam Legislature has already appropriated funds,” and to
3 “expressly prohibit GHURA from using or transferring the land it has purchased to date until
4 authorized by the Legislature[.]” *Id.* at 20.

5 In lieu of filing an answer, on January 13, 2025, the Defendants filed a Joint Motion to
6 Strike and to Dismiss. *See* ECF No. 5.

7 **C. Request to File Amended Complaint**

8 On or about December 27, 2024, the Guam Department of Administration (“DOA”) entered
9 into an Interagency Grant Agreement (“IGA”) with the Guam Economic Development Agency
10 (“GEDA”) for the administration and disbursement of approximately \$104.8 million in SLFRF.
11 *See* IGA, Ex. 1 to Decl. Leslie A. Travis (“Travis Decl.”), ECF No. 25-1. The stated purpose of the
12 IGA was “to fund the completion of the initial phase of the [MMC] project, including design and
13 construction of primary utility infrastructure (electrical power, water and sewer), and completion
14 of sampling and analysis of environmental, archaeological, physical, geology and other site
15 characteristics.” *Id.*, Cover Page. In turn, on or about March 2, 2025, and April 1, 2025, GEDA
16 entered into subgrant agreements with the Guam Power Authority (“GPA”) and the Guam
17 Waterworks Authority (“GWA”). *See* Travis Decl., Exs. 2 and 3. These agreements were
18 subsequently approved by the Consolidated Commission on Utilities (“CCU”). Joint Opp’n to Pls.’
19 Mot. Leave File Am. Compl. at 2, ECF No. 25.

20 On January 31, 2025, William Lyle Stamps, Acting Deputy of the Government Corruption
21 Division of the Office of the Attorney General of Guam, wrote a letter to GWA’s General Manager
22 stating that the Attorney General had issued two formal legal opinions which concluded that “the
23 Governor’s attempt to build a Mangilao medical facility with GHURA violated Guam law.” Ex. D
24 to Pet. Writ of Mandate, ECF No. 1-2 in *GPA v. Attorney General of Guam*, 25-CV-00029.⁵ The
25

26 ⁵ Pursuant to Rule 201 of the Federal Rules of Evidence, the court *sua sponte* takes judicial
27 notice of the facts set forth in the filings in 25-CV-00029, which the Attorney General requested
28 be consolidated with the instant action. *See* Att’y General’s Mot. Consolidate and Mem. Law, ECF
No. 21. The facts contained in said filings are largely undisputed.

1 letter requested that the GWA General Manager “not take any actions to authorize the expenditure
2 of ratepayer/taxpayer monies in furtherance of [the] Mangilao medical complex” because the “CCU
3 authorization to proceed with expending funds [is] illegal, and is now under criminal investigation.”

4 *Id.*

5 GPA prepared three invitations for bid for the MMC Project, which required the Attorney
6 General’s legal advice and review because each procurement exceeded the \$500,000 threshold
7 established in Guam Procurement Law, 5 GCA § 5150.⁶ *See* Pet. Writ of Mandate at ¶ 12, ECF
8 No. 1-2 in 25-CV-00029. Based on the Attorney General’s stated opinion as to the alleged illegality
9 of the MMC Project, on March 7, 2025, GPA wrote to the Attorney General requesting the
10 assignment of conflict-free counsel to conduct the Section 5150 procurement review. *Id.* at ¶ 13.

11 On March 13, 2025, the Attorney General responded to GPA’s letter and asked GPA to
12 produce certain information before he could make a final decision on GPA’s request for conflict-
13 free counsel. *Id.* at ¶ 14 and Ex. F thereto.

14 On March 31, 2025, GPA wrote to the Attorney General, reiterating its request for
15 “independent counsel to conduct a review” of the procurement and “a copy of the documents
16 establishing an ethical screening wall[.]” *Id.* at ¶ 15 and Ex. G thereto. GPA believed that the
17 Attorney General had a “concurrent conflict of interest that prevent[ed him] from working on a
18 potential criminal matter on behalf of the People of Guam against GPA and its officers on the one
19 hand, and representing GPA in the civil matter of [Section 5150] review on the other.” Ex. G at 2.

21 ⁶ In pertinent part, this statute provides:

22
23 Whenever . . . the head of any executive branch agency, autonomous agency,
24 instrumentality or public corporation of the government of Guam conducts any
25 solicitation or procurement which is estimated to result in an award of Five
26 Hundred Thousand Dollars (\$500,000) or more, the Attorney General or his
27 designees . . . shall act as legal advisor during all phases of the solicitation or
procurement process. The Attorney General, or his designee, . . . shall, in addition,
when he approves contracts, determine not only the correctness of their form, but
their legality.

28 5 GCA § 5150.

1 GPA's letter further stated:

2 In our request of March 7, 2025, for independent, conflict-free counsel, GPA is not
3 seeking to recuse the entire [Office of the Attorney General] from reviewing the
4 MMC infrastructure procurement. Rather, GPA is asking you to assign your staff
5 in a way that affords GPA independent legal counsel and representation, entirely
6 separate from your proposed prosecution. In other words, GPA is asking you, the
7 Attorney General, specifically, to recuse yourself, based on your statements in the
8 media and letters to GWA officials and testimony before the Legislature, opining
9 that criminal action has taken place or is about to take place regarding the utility
10 infrastructure projects in Mangilao.

11 *Id.* at 2-3.

12 On April 9, 2025, the Attorney General replied, informing GPA that it should direct the
13 procurement reviews to the attorneys in the Solicitors Division of his office. *See* Pet. Writ of
14 Mandate at ¶ 16, ECF No. 1-2 in 25-CV-00029, and Ex. H thereto. The letter did not provide
15 documents regarding the establishment of an ethical screening wall as requested by GPA. *Id.*

16 On April 10, 2025, GPA wrote to the Attorney General, repeating its request for a copy of
17 ethical screening documents. *Id.* at ¶ 17, and Ex. I thereto.

18 The Attorney General did not respond to GPA's April 10th letter. *Id.* at ¶ 18.

19 On June 12, 2025, GPA filed a Verified Petition for Writ of Mandate in the Superior Court
20 of Guam (the "GPA Superior Court Action"), requesting said court to compel the Attorney General
21 "to assign conflict-free counsel to GPA's procurement review and to erect an ethical wall in his
22 office screening off all conflicted attorneys, including himself, and provide documentation thereof
23 to . . . GPA[.]" *Id.* at 7.

24 On June 17, 2025, the Attorney General removed the GPA Superior Court Action to this
25 court. *See* Notice of Removal, ECF No. 1 in 25-CV-00029.

26 On July 22, 2025, the Plaintiffs filed a Motion for Leave to File an Amended Complaint,
27 with the proposed amended complaint ("PAC") appended thereto.⁷ *See* ECF No. 20. The PAC

28 ⁷ The PAC incorporates by reference a total of nine various exhibits, but the Attorney
General failed to include said exhibits when he filed the PAC. *See* PAC, ECF No. 20-1. For
example, paragraph 12, footnote 1 asserts that "[a] copy of the Interagency Grant Agreement which
contains the certification and costs [sic] estimates is attached hereto as Exhibit 1." *Id.* at ¶ 12, n.1.
The PAC further states that "[a] copy of the initial public records request and response is attached
as Exhibit 6, with the supplemental response attached as Exhibit 7." *Id.* at ¶ 32. Exhibits 6 and 7,

1 sought to add GPA, GWA, GEDA and the CCU as defendants in the instant action. The Plaintiffs
2 asserted that the instant lawsuit and the GPA Superior Court Action share “[c]ommon questions of
3 law and fact” such that the new defendants should be added to this action. *Id.* at 2.

4 **II. ANALYSIS**

5 The court will address the various motions in the order they were filed.

6 **A. Motion to Strike⁸**

7 The Defendants move to strike the Government of Guam as a plaintiff in this action
8 pursuant to Rule 21⁹ of the Federal Rules of Civil Procedure. The Defendants assert that the
9 Governor, as the chief executive officer of Guam, holds the executive power of the Government of
10 Guam, not the Attorney General. The Defendants argue that the “Attorney General’s authority to
11 direct and control litigation on behalf of the Government of Guam . . . is necessarily limited by the
12 Governor’s supreme executive power and duty to ensure faithful execution of the law under the
13 Organic Act.” Mem. P. & A. Supp. Defs.’ Joint Mot. Strike and Dismiss at 5, ECF No. 6. The
14 Attorney General opposes the motion and maintains that the Government of Guam is properly
15 named as a plaintiff in this action because he has the authority under common law and Guam law
16 to bring this action on behalf of the Government of Guam without the express consent of the
17 Governor.

18 If joinder is improper, Rule 21 provides that “[o]n motion or on its own, the court may at

19 _____
20 however, were not attached to the PAC.

21 ⁸ In part II.B. of this Report and Recommendation, the below-signed judge finds that this
22 court lacks subject matter jurisdiction over the action and recommends dismissal pursuant to Rule
23 Rule 12(b)(1). If the Chief Judge agrees with said finding and recommendation, then there is no
need to address the merits of the Motion to Strike, and it should be denied as moot.

24 ⁹ The Defendants also rely on Rule 12(f) in seeking to strike the Government of Guam as
25 a party. This rule provides that “[t]he court may strike from a pleading an insufficient defense or
26 any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). Reliance on
27 this rule is misplaced since Rule 12(f) “is the appropriate remedy for the elimination of redundant,
28 immaterial, impertinent, or scandalous matter in any pleading, and is the primary procedure for
objecting to an insufficient defense.” 5C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL
PRACTICE AND PROCEDURE § 1380 (3d ed.). The court finds that this rule is not relevant for
purposes of striking a misjoined party.

1 any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. Because Rule 21 does not provide
2 any standard for determining whether a party is inappropriately joined, courts often “incorporate
3 standards to be found elsewhere,” including Rules 19 and 20. *Pan Am World Airways, Inc. v. U.S.*
4 *Dist. Ct. for Cent. Dist. Cal.*, 523 F.2d 1073, 1079 (9th Cir. 1975). Rule 19 provides that joinder
5 of a party is required if, among other requirements, (1) “the court cannot accord complete relief
6 among existing parties” without the party’s presence, or (2) disposing of the action in the party’s
7 absence may “impair or impede the person’s ability to protect their interest” or “leave an existing
8 party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent
9 obligations.” Fed. R. Civ. P. 19(a). Rule 20 permits persons to join as plaintiffs in a single action
10 if they assert claims arising out of the same occurrence and if those claims share a common question
11 of law or fact. Fed. R. Civ. P. 20(a)(1).

12 The standards under Rules 19 and 20, however, are not quite applicable to the issue before
13 the court. The court is not being asked to determine whether the Government of Guam’s presence
14 as a plaintiff is required or permissive. Rather, the Defendants argue that the Attorney General has
15 no authority, statutory or otherwise, to bring the instant action on behalf of the Government of
16 Guam against the Governor.

17 The court begins its analysis with a review of the Organic Act, 48 U.S.C. § 1421 *et seq.*,
18 which “serves the function of a constitution for Guam.” *Haeuser v. Dep’t of L., Gov’t of Guam*,
19 97 F.3d 1152, 1156 (9th Cir. 1996). The Organic Act states that “[t]he government of Guam shall
20 consist of three branches, executive, legislative, and judicial[.]” 48 U.S.C. § 1421a. With regard
21 to the executive branch, the Organic Act provides in relevant part that “[t]he executive power of
22 Guam shall be vested in an executive officer whose official title shall be the ‘Governor of Guam.’”
23 48 U.S.C. § 1422. “The Governor shall have general supervision and control of all the departments,
24 bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam”
25 and “shall be responsible for the faithful execution of the laws of Guam and the laws of the United
26 States applicable in Guam.” *Id.*

27 In contrast, the Organic Act simply states that “[t]he Attorney General of Guam shall be the
28 Chief Legal Officer of the Government of Guam.” 48 U.S.C. § 1421g(d). Aside from this general

1 statement and providing options for appointing, electing and removing an Attorney General,
2 however, the Organic Act is silent as to the Attorney General’s powers and duties. In *A.B. Won Pat*
3 *Guam Int’l Airport Auth. ex rel. Bd. of Directors v. Moylan*,¹⁰ the Supreme Court of Guam held that
4 “the Attorney General, as Chief Legal Officer, is charged with all the powers and duties pertaining
5 to the office at common law, except insofar as they have been expressly restricted or modified by
6 statute.” 2005 Guam 5, ¶ 67 (Guam Feb. 8, 2005).

7 Based on a plain reading of the Organic Act, “the Governor is the executive officer of the
8 territory and has authority over the Attorney General.” *Santos v. Camacho*, No. 04-CV-00006,
9 2006 WL 581251, at *5 (D. Guam Mar. 10, 2006).¹¹ The Governor is vested with the responsibility
10 for the faithful execution of the laws of Guam, so she – not the Attorney General – has the ultimate
11 authority to speak on behalf of and make policy decisions for the Government of Guam. “The
12 Attorney General is [merely] the attorney representing his client, the Government of Guam[.]” he
13 “should not replace the Governor in setting policy whenever he disagrees with the Governor’s
14 positions.” *Id.* The *Santos* decision is consistent with the Supreme Court of Guam’s recent ruling
15 in *In re Leon Guerrero*, 2024 Guam 18 (Guam Dec. 31, 2024), where that court stated that “in the

16
17 ¹⁰ In *Moylan*, the Guam International Airport Authority (“GIAA”) executed a legal services
18 contract with a private law firm and sent the contract to the Attorney General for his approval as
19 to legality and form as required under Guam law. 2005 Guam 5, ¶ 2 (Guam Feb. 8, 2005). When
20 the Attorney General refused, GIAA filed a Petition for Writ of Mandamus in the Superior Court
21 of Guam, which was granted by the trial court. *Id.* The appeal followed, and the Supreme Court
22 of Guam held that although the Attorney General was “charged with the common-law powers and
23 duties pertaining to the office,” such power and duties are “subject to increase, alteration, or
24 abridgment by the legislature[.]” *Id.* at ¶ 62 (quoting 7 AM. JUR. 2D *Attorney General* § 8 (2004)).
Accordingly, the Supreme Court of Guam found that Section 1108(a) and (c) of Title 12, Guam
Code Annotated, and Section 30109 of Title 5, Guam Code Annotated, were “valid exercises of
the Legislature’s power to remove the common law power” of the Attorney General to act as legal
counsel for GIAA. *Id.* at ¶ 63.

25 ¹¹ In *Santos*, a taxpayer brought suit against the then governor of Guam and other
26 government officials concerning Guam’s Earned Income Tax Credit (“EIC”). The issue before
27 the court was “whether the Governor of Guam or Guam’s Attorney General represents the
28 ‘Government of Guam’ and which of the two, the Governor or the Attorney General, has final
settlement authority” over the matter. *Id.* at *1. The court ultimately found that the Governor had
“the final authority to both be the representative of the Government of Guam and to settle the issues
involved” with the Guam EIC. *Id.* at *7.

1 event of a conflict of interest or disagreement over the public interest with a [client] line agency,
2 the Attorney General is required to appoint a special assistant attorney general to represent the
3 agency through his common law power.” *Id.* at ¶ 29.

4 The Attorney General contends that his common law powers and authority provided by
5 Guam law permit him to bring this legal action on behalf of the Government of Guam without the
6 express consent of the Governor. In support of this contention, the Attorney General first cites to
7 Section 30103, which provides in pertinent part that he “shall have . . . those common law powers
8 which include, but are not limited to, the right to bring suit to challenge laws which he believes to
9 be unconstitutional and to bring action on behalf of Guam representing the citizens as a whole for
10 redress of grievances which the citizens individually cannot achieve, unless expressly limited by
11 any law of Guam to the contrary.” 5 GCA § 30103.

12 The Attorney General’s reliance on Section 30103 is misplaced. While Guam law
13 recognizes the Attorney General’s power to bring an action *on behalf of Guam representing the*
14 *citizens as a whole*, Section 30103 does not expressly authorize suit on behalf of the *Government*
15 *of Guam*. This conclusion is consistent with the ruling in *Santos*, where the court recognized the
16 distinction between “representing the ‘Government’ as a distinct legal entity and interest” versus
17 “representing the people of Guam or a generalized ‘public’ interest.” *Santos*, 2006 WL 581251, at
18 *5. Section 30103 permits the Attorney General to sue on behalf of a generalized public interest,
19 not on behalf of the Government of Guam.

20 The Attorney General next cites to the case of *State of Fla. ex rel. Shevin v. Exxon Corp.*,
21 526 F.2d 266 (5th Cir. 1976), to support his argument that he has the common law power to bring
22 an action on behalf of the Government of Guam. In that case, the state attorney general initiated
23 an antitrust action against major oil companies to recover damages sustained by departments,
24 agencies, and political subdivisions of the state which had not affirmatively authorized the suit. *Id.*
25 at 267. The district court dismissed the action as beyond the attorney general’s authority, but the
26 Fifth Circuit determined that the attorney general retained his common law powers to initiate “suits
27 under federal law without specific authorization of the individual government entities who allegedly
28 have sustained the legal injuries asserted.” *Id.* at 274.

1 As noted by the Defendants, however, *Shevin* is distinguishable from the case at bar. That
2 case involved a lawsuit initiated by the state attorney general against third parties where the interests
3 of the attorney general and the executive branch agencies were aligned. *Id.* at 273 (“[T]here is no
4 evidence in the record before us of any objection on the part of the government bodies which
5 allegedly have been injured by the defendants’ business practices.”). Here, however, the Attorney
6 General brought the instant action against the Governor of Guam on behalf of the Government of
7 Guam, over which she is vested with the power to control and supervise all executive branch
8 agencies, departments and instrumentalities. More importantly, the Governor objects to the
9 Attorney General’s actions and the legal position he has taken in this litigation purportedly on
10 behalf of the Government of Guam. Thus, the court finds that the *Shevin* decision does not bolster
11 the Attorney General’s assertion that he may bring suit on behalf of the Government of Guam even
12 when the Governor does not consent to such action.

13 Finally, the Attorney General relies on *Att’y Gen. of Guam v. Gutierrez*, 2011 Guam 10.¹²
14 There, the Supreme Court of Guam stated that “[s]ince the [Attorney General] pursuant to its
15 common law powers may institute, conduct and maintain prosecution to protect public interests,
16 it has standing to bring this suit to enforce proper spending by officers or employees of the
17 Executive Branch of the Government of Guam.” *Id.* at ¶ 40. The court notes, however, that while
18 the Attorney General brought that action for the return of public money, he did so in his own name;
19 the Government of Guam was not a party to that enforcement action.

20 This court recognizes that the Attorney General, as the Chief Legal Officer for the
21 Government of Guam, has common law powers that include initiating action on behalf of the people
22 and the public’s interest as provided for under Section 30103. Nonetheless, the Governor is vested

23
24 ¹² In *Gutierrez*, the Attorney General filed an action pursuant to the Enforcement of Proper
25 Government Spending Act, 5 GCA § 7101 *et seq.*, against the former governor, an Executive
26 Branch employee and others involved in the settlement of a purported claim against the Guam
27 Memorial Hospital Authority. 2011 Guam 10 ¶¶ 1, 4-11. After dismissing the claims against most
28 of the defendants, the trial court found that the two remaining defendants violated their fiduciary
duties as officers or employees of the Executive Branch and spent money without proper authority
under Guam law, and the defendants appealed, arguing, among other things, that the Attorney
General did not have standing to file the lawsuit under Guam law. *Id.* at ¶¶ 13-15, 19.

1 with ultimate responsibility for overseeing the executive branch and the responsibility for the
2 faithful execution of the laws of Guam and federal laws applicable to Guam. Accordingly, the
3 Governor holds the supreme executive power for the Government of Guam, and in the event of a
4 conflict or disagreement with the Attorney General over the Government of Guam's interest, the
5 Attorney General must yield control over litigation involving the Government of Guam to the
6 Governor. Having reviewed the parties' argument and relevant authority, the below-signed judge
7 recommends that the court grant the Defendant's Motion to Strike the Government of Guam as a
8 plaintiff in this action.¹³

9 **B. Motion to Dismiss**

10 The next motion before the court is the Defendants' Motion to Dismiss this action. The
11 Defendants argue that dismissal is warranted under Rule 12(b)(1) because this court lacks subject
12 matter jurisdiction. Additionally, the Defendants seek dismissal pursuant to Rule 12(b)(6), asserting
13 that the various counts in the Complaint fail to state a claim upon which relief can be granted.
14 Because the court has an obligation to assure itself of its jurisdiction, the court will first address
15 dismissal under Rule 12(b)(1) before addressing the merits of the Defendants' request for dismissal
16 under Rule 12(b)(6).

17 1. Federal Subject Matter Jurisdiction

18 Under Rule 12(b)(1), a party may move to dismiss based on the court's lack of subject
19 matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). "It is a fundamental principle that federal courts
20 are courts of limited jurisdiction." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374
21 (1978). A court must presume lack of jurisdiction until the plaintiff establishes otherwise.
22 *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

23 Here, the Complaint asserts that this court has jurisdiction "pursuant to 218 U.S.C.[]
24 §§ 1331 and 1367." Compl. at ¶ 2, ECF No. 1. Section 1331 provides that "[t]he district courts
25 shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties

26
27 ¹³ If the Chief Judge agrees with the Report and Recommendation's finding that this court
28 lacks subject matter jurisdiction as discussed *infra*, then there is no need to address the merits of
the Motion to Strike, which should then be deemed moot.

1 of the United States.” 28 U.S.C. § 1331. A case “arises under” federal law either where federal law
2 creates the cause of action or where plaintiff’s right to relief necessarily depends on resolution of
3 a substantial question of federal law. *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S.
4 677, 689-90 (2006). The supplemental jurisdiction statute provides in pertinent part that

5 in any civil action of which the district courts have original jurisdiction, the district
6 courts shall have supplemental jurisdiction over all other claims that are so related
7 to claims in the action within such original jurisdiction that they form part of the
8 same case or controversy under Article III of the United States Constitution.

8 28 U.S.C. § 1367(a). Supplemental jurisdiction cannot exist without original jurisdiction. *Herman*
9 *Family Revocable Tr. v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001).

10 Thus, in order to determine whether there is federal question jurisdiction, the court must
11 examine the Complaint to determine whether “federal law creates the cause[s] of action” asserted
12 or whether the Attorney General’s “right to relief necessarily depends on the resolution of a
13 substantial question of federal law.”

14 2. Count I - Alleged Violation of Organic Act

15 Count I of the Complaint purports to allege a violation of the Organic Act. Count I asserts
16 that “the Governor will continue to unlawfully spend funds from the ARPA/SLFRF account in
17 violation of the separation of powers doctrine enshrined in the Congressionally-adopted Organic
18 Act in violation of the Legislature’s power to appropriate public money granted to the state by the
19 federal government.” Compl. at ¶ 17, ECF No. 1. The Complaint alleges “the Governor has
20 exercised the Legislature’s appropriation authority unlawfully with respect to these ARPA funds,
21 and that the Governor will continue to do so unless enjoined by this court.” *Id.* at ¶ 20. Count I
22 asks the court to resolve “the fundamental question as to whether the Governor has the power and
23 and authority to ignore the express requirements of the Organic Act.” *Id.*

24 In asserting that Count I fails to raise a federal question, the Defendants rely on this court’s
25 decision in *L. Offs. of Phillips & Bordallo, P.C. v. Leon Guerrero*, No. 22-CV-0020, 2023 WL
26 5075374 (D. Guam Aug. 9, 2023), where the court examined whether references to specific
27 provisions of the Organic Act in a petition formed the basis for federal question jurisdiction. In
28 discussing federal question jurisdiction, this court stated:

1 Congress passed the Organic Act of Guam pursuant to the second clause of
2 Article IV, Section 3 of the Constitution, which is known as “the Territorial Clause.”
3 In determining whether laws passed by Congress pursuant to the Territorial Clause
4 are laws “of the United States,” courts have taken different approaches. The
5 Supreme Court of the Virgin Islands found that the Bill of Rights of its respective
6 Organic Act was not a law “of the United States” because it was enacted pursuant
7 to Article IV instead of Article I of the Constitution.

8 [I]t is well-established in the precedents of the Supreme Court of the
9 United States and the federal courts of appeal that whether Congress
10 enacts legislation pursuant to its Article I or Article IV powers is of
11 important constitutional significance, for while laws enacted by
12 Congress in its capacity as a national legislature pursuant to its
13 Article I powers are considered “laws of the United States,” laws
14 enacted by Congress through invocation of its Article IV powers are
15 not, but rather serve as laws of the territory, with Congress standing
16 in place of a state government.

17 *Balboni v. Ranger Am. of the V.I., Inc.*, 70 V.I. 1048, 1071-72 (V.I. 2019). The
18 Supreme Court of the Virgin Islands explained further, “The Bill of Rights
19 provisions in the Revised Organic Act are local law rather than federal law, in that
20 though enacted by Congress, the protections apply only within the borders of the
21 Virgin Islands and were never designed to have general protection throughout the
22 United States.” *Id.* at 1090.

23 When Hawaii was still a territory and governed by its own Organic Act, the
24 federal district court for Hawaii found that a section of its Organic Act was not a law
25 “of the United States” because it concerned local policy and because it did not
26 concern “fundamental rights[.]”

27 . . . The cases agree that laws concerning local policy are not laws “of the United
28 States.”

29 *Phillips & Bordallo*, 2023 WL 5075374, at *4.

30 “[T]he Organic Act of Guam is a federal statute concerning *only* Guam.” *Guam Soc. of*
31 *Obstetricians & Gynecologists v. Ada*, 776 F. Supp. 1422, 1427 (D. Guam 1990) (emphasis in
32 original), *aff’d*, 962 F.2d 1366 (9th Cir. 1992), as amended (June 8, 1992), *cert. denied*, 506 U.S.
33 1011 (1992). Thus, although the Organic Act was passed by Congress, a provision of the Organic
34 Act which addresses a matter of purely local concern will be construed as local law and not a law
35 “of the United States” that would give rise to federal question jurisdiction. *Phillips & Bordallo*,
36 2023 WL 5075374, at *4-5.

37 Here, the Defendants argue that the Organic Act’s “provisions relating to local
38 appropriations are matters of local concern[.]” Mem. P. & A. Supp. Defs.’ Joint Mot. Strike and
39 Dismiss at 8, ECF No. 6. The court concurs. The specific provision of the Organic Act at issue
40 here provides: “Appropriations, except as otherwise provided in this chapter, and except such

1 appropriations as shall be made from time to time by the Congress of the United States, shall be
2 made by the legislature.” 48 U.S.C. § 1423j(a). Whether the Governor violated this provision by
3 expending funds without the Guam Legislature first appropriating said funds is a matter of purely
4 local concern. Because Section 1423j(a) does not have general application throughout the United
5 States and concerns a matter of local policy, the court finds that this specific provision of the
6 Organic Act is not a law “of the United States” and cannot form the basis for federal question
7 jurisdiction.

8 The court notes that the Attorney General’s Opposition¹⁴ fails to address the Defendants’
9 argument that Count I does not arise under federal law. The Attorney General never even discusses
10 the *Phillips & Bordallo* case. Based on his failure to address the argument, the court concludes that
11 the Attorney General has conceded this issue. *See Pac. Dawn LLC v. Pritzker*, 831 F.3d 1166, 1178
12 n.7 (9th Cir. 2016) (“But the plaintiffs did not raise that argument to the district court in their ...
13 opposition to the defendants’ motion for summary judgment, so the argument was waived.”); *In re*
14 *Point Ctr. Fin., Inc.*, No. SACV 16-1336 DSF, 2016 WL 11723668, at *2 n.1 (C.D. Cal. Aug. 30,
15 2016) (“A party can waive an argument by failing to raise it in their opposition to a motion to
16 dismiss.”). Accordingly, the court finds that Count I fails to assert a claim that arises under federal
17 law.¹⁵

18
19 ¹⁴ See Pls.’Mem. P. & A. Supp. of Resp. to Joint Mot. Strike and Dismiss, ECF No. 17.
20 This document shall be referred to as the “Attorney General’s Opposition.”

21 ¹⁵ If the Chief Judge finds that Count I arises under federal law, the below-signed judge
22 would nonetheless find that dismissal is warranted under Rule 12(b)(6) for failure to state a claim.
23 “Dismissal for failure to state a claim is appropriate only if it appears beyond doubt that the
24 non-moving party can prove no set of facts in support of his claim which would entitle him to
25 relief.” *Vasquez v. L.A. Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007) (internal citations omitted).
26 Here, the ARPA funds at issue were funds from the U.S. Treasury given to Guam through an
27 appropriation of Congress for a specific purpose. “Where these appropriations or grants completely
28 fund a specific purpose without the need for local funding, and where the appropriation or grant
does not provide for local legislative control, there is no authority for the Guam Legislature to
assume the responsibility for reappropriating these funds.” *Wong v. Camina*, 2 Guam R. 132, 133
(D. Guam 1978). *See also Story-Bernardo v. Gov’t of Guam*, 2023 Guam 27 ¶ 46 (“The CARES
Act funding was a federal appropriation for a specific purpose, outside the control of the Guam
Legislature.”). Additionally, the Attorney General’s Opposition fails to address this argument, and

1 3. Count II - Alleged Violation of ARPA

2 The subheading of Count II of the Complaint alleges a “[v]iolation of ARPA/SLFRF.”
3 Compl. at 7, ECF No. 1. But aside from quoting and referencing various regulations and
4 requirements, Count II does not contain any new factual allegations,¹⁶ nor does it set forth any claim
5 for relief. Nevertheless, the Defendants seek dismissal of Count II and argue that ARPA does not
6 confer the Attorney General with a private right of action. Mem. P. & A. Supp. Defs.’ Joint Mot.
7 Strike and Dismiss at 11-12, ECF No. 6.

8 Essentially, the Defendants are arguing that the Attorney General lacks standing to assert
9 a claim under ARPA. The Ninth Circuit has held that a lack of *statutory* standing requires dismissal
10 for failure to state a claim under Rule 12(b)(6), but a lack of Article III standing requires dismissal
11 for lack of subject matter jurisdiction Rule 12(b)(1). *Maya v. Centex Corp.*, 658 F.3d 1060, 1067
12 (9th Cir. 2011).

13 With regard to statutory standing, the Defendants have cited to a number of decisions
14 throughout the country which found that ARPA does not confer a private right of action. *See* Mem.
15 P. & A. Supp. Defs.’ Joint Mot. Strike and Dismiss at 11-12, ECF No. 6. The Ninth Circuit has not
16 directly addressed the issue, but the District of Oregon has stated that “ARPA does not provide a
17 private right of action.” *Johnson v. HAF*, No. 6:24-CV-01141-AA, 2024 WL 4057520, at *4 (D.
18 Or. Sept. 5, 2024) (citing *Yaritz v. Internal Revenue Service*, Case No. 23-cv-452 (PJS/LIB), 2023
19 WL 5756462, at *3 (D. Minn. April 26, 2023) (“[F]ederal district courts have interpreted that
20 neither the CARES Act, nor the CAA, nor the ARPA as providing for a private right of action.”
21 (collecting cases))). The Attorney General fails to address this argument in his Opposition, and
22 similar to the other issues which he failed to address, the court deems this issue to be waived. The
23 court finds that the Attorney General has failed to provide this court with any authority that ARPA
24 provides him with a private right of action. Accordingly, the court finds that the Attorney General

25 _____
26 thus the court deems he has waived the issue. Accordingly, there can be no violation of the
Organic Act of Guam as alleged in Count I.

27 ¹⁶ Paragraph 25 in Count II simply “re-allege[s] and incorporate[s]” paragraphs 1-24 of the
28 Complaint. Compl. at ¶ 25, ECF No. 1.

1 lacks statutory standing to pursue Count II.

2 “Article III, § 2, of the Constitution restricts the federal ‘judicial Power’ to the resolution
3 of ‘Cases’ and ‘Controversies.’ That case-or-controversy requirement is satisfied only where a
4 plaintiff has standing.” *Sprint Communications Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 273
5 (2008). “[T]o satisfy Article III’s standing requirements, a plaintiff must show (1) it has suffered
6 an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural
7 or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3)
8 it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable
9 decision.” *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs., Inc.*, 528 U.S. 167, 180-81 (2000)
10 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). A failure to meet any one of
11 these three criteria constitutes a lack of Article III standing and requires dismissal for lack of subject
12 matter jurisdiction. *Maya*, 658 F.3d at 1067.

13 The court first examines whether the Attorney General has suffered an “injury in fact” that
14 is “concrete and particularized” and “actual or imminent.” *Friends of Earth*, 528 U.S. 180. With
15 regard to this issue, Supreme Court cases “have permitted pre-enforcement review under
16 circumstances that render the threatened enforcement sufficiently imminent.” *Susan B. Anthony*
17 *List v. Driehaus*, 573 U.S. 149, 159 (2014). The Supreme Court has “held that a plaintiff satisfies
18 the injury-in-fact requirement where he alleges ‘an intention to engage in a course of conduct
19 arguably affected with a constitutional interest, but proscribed by a statute, and there exists a
20 credible threat of prosecution thereunder.’” *Id.* (quoting *Babbitt v. Farm Workers*, 442 U.S. 289,
21 298 (1979)).

22 Here, the Attorney General asserts that he is bringing

23 a pre-enforcement challenge against the Governor and GHURA for their failure to
24 properly meet the requirements for the use of ARPA funds. Defendants’ failure to
25 meet those requirements put the Government of Guam at significant risk of an
enforcement action by the Federal Government for recoupment of ARPA funds
inappropriately appropriated and spent by Defendants.

26 Att’y General’s Opp’n at 11-12,¹⁷ ECF No. 17.

27
28 ¹⁷ The internal page numbers in the Attorney General’s Opposition were positioned so low
on the page that they were obscured by the CM/ECF-generated footer. The corresponding pages

1 The court finds that the Attorney General fails to satisfy the requirements to bring a pre-
2 enforcement challenge. First, the Attorney General has not alleged that *he* “intends to engage in a
3 course of conduct arguably affected with a constitutional interest.” *Susan B. Anthony List*, 573 U.S.
4 at 161. Rather, he alleges that the *Defendants* have used and intend to use ARPA funds for the
5 purpose of purchasing land and building a hospital. See Compl. at ¶¶ 5-11, ECF No. 1, and Att’y
6 General’s Opp’n at 12, ECF No. 17. The Attorney General challenges the Defendants’ course of
7 conduct – not his own intended future actions – as being in violation of the Organic Act, ARPA
8 and Guam laws. Accordingly, the Attorney General fails to satisfy the first requirement for a pre-
9 enforcement challenge.

10 The second requirement for a pre-enforcement challenge is for a plaintiff to show that his
11 intended future conduct is “arguably . . . proscribed by [the] statute” he intends to challenge.
12 *Babbitt*, 442 U.S. at 298. The Attorney General fails to satisfy this requirement. Again, he is not
13 challenging ARPA as applied to him or alleging that ARPA somehow impinges on his
14 constitutional rights. Instead, the Attorney General asserts that the *Defendants*’ use of funds
15 received through ARPA or the SLFRF program is proscribed by federal statutes and/or regulations
16 and that such actions by the *Defendants* may lead to enforcement actions by the U.S. Department
17 of Treasury. Even if the court were to accept as true the allegations in the Complaint, the court is
18 having difficulty concluding that the Complaint alleges the existence of any statute that proscribes
19 the Attorney General’s conduct or intended future conduct. Accordingly, the court finds that the
20 Attorney General failed to satisfy the second requirement for a pre-enforcement challenge.

21 Finally, the third requirement for a pre-enforcement challenge requires the plaintiff to
22 establish that “the threat of future enforcement of the . . . [proscribed] statute is substantial.” *Susan*
23 *B. Anthony List*, 573 U.S. at 164. Here, the Complaint fails to allege that the Defendants have
24 threatened to prosecute or bring an enforcement action against the Attorney General. The U.S.
25 Department of Treasury is vested with enforcing compliance with ARPA and its ensuing regulations
26 – not the Attorney General. Accordingly, the Attorney General has failed to establish the third

27 _____
28 on the CM/ECF footer are pages 16-17.

1 element for a pre-enforcement challenge.

2 The court finds that the Attorney General has failed to satisfy the injury-in-fact requirement
3 for Article III standing, and the court need not address the remaining two elements. A failure to
4 meet any one of the three criteria constitutes a lack of Article III standing and requires dismissal for
5 lack of subject matter jurisdiction. *Maya*, 658 F.3d at 1067. Assuming that Count II alleges a
6 violation of ARPA, a federal law, the court nonetheless finds that the Attorney General has failed
7 to establish that he has Article III standing to bring the purported pre-enforcement challenge.
8 Accordingly, the court recommends that Count II be dismissed for lack of subject matter jurisdiction
9 under Rule 12(b)(1).

10 4. Counts III-VIII - Alleged Violations of ARPA and Guam Laws

11 In Counts III through VIII of the Complaint, the Attorney General alleges the Defendants
12 violated ARPA by failing to maintain required records, by failing to do an environmental
13 assessment, and by failing to comply with various local laws (*i.e.*, Guam law with regard to
14 condemnation of property, the Open Government Law, Guam contract law and GHURA's enabling
15 statute). However, as discussed above in Count II, the Attorney General lacks Article III standing
16 to bring this pre-enforcement challenge and further lacks statutory standing because ARPA does
17 not provide him with a private right of action. Accordingly, to the extent that these causes of action
18 arise under federal law, they should nonetheless be dismissed for lack of subject matter jurisdiction
19 based on the Attorney General's lack of standing.

20 Furthermore, Counts III through VIII only make passing and vague references to ARPA's
21 provisions, however the gravamen of the allegations in Counts V through VIII are the purported
22 violations of Guam law. As this court noted in *Phillips and Bordallo*,

23 “[S]tate law claims cannot be alchemized into federal causes of action by incidental
24 reference” to federal law. *Sparta Surgical Corp. v. Nat'l Ass'n of Securities*
25 *Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998) (citing *Easton v. Crossland*
26 *Mortgage Corp.*, 114 F.3d 979, 982 (9th Cir. 1997) (explaining that “the mere
reference of a federal statute in a pleading will not convert a state law claim into a
federal cause of action if the federal statute is not a necessary element of the state
law claim and no preemption exists.”)).

27 2003 WL 5075374, at *9.

28 “[F]ederal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily

1 raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without
2 disrupting the federal-state balance approved by Congress.” *Gunn v. Minton*, 568 U.S. 251, 258
3 (2013). Jurisdiction is proper “[w]here all four of these requirements are met” because in such a
4 case, “there is a ‘serious federal interest in claiming the advantages thought to be inherent in a
5 federal forum,’ which can be vindicated without disrupting Congress’s intended division of labor
6 between state and federal courts.” *Id.* (quoting *Grable & Sons Metal Prods., Inc. v. Darue Eng’g*
7 *& Mfg.*, 545 U.S. 308, 313 (2005).

8 In essence, in Counts V through VIII, the Attorney General argues that the violations of
9 Guam’s laws also constitute a violation of the 2022 Final Rule, which requires compliance with
10 local laws and regulations. However, resolution of these claims does not necessarily implicate a
11 federal issue nor is the federal issue “substantial.” The application and interpretation of local law
12 substantially predominates the claims in the Complaint. These challenges to Guam law are more
13 appropriately addressed in the Superior Court of Guam because these causes of action address
14 matters of purely local concern. The court finds that Counts V through VIII do not arise under
15 federal law so as to provide this court with federal question jurisdiction.

16 5. Count IX - Alleged Violation of Guam Law

17 Finally, Count IX of the Complaint simply incorporates the previous allegations in the
18 Complaint and asserts the “variety of violations of Guam law . . . invalidate the actions of the
19 Governor and GHURA.” Compl. at ¶¶ 103-104, ECF No. 1. This cause of action is clearly brought
20 under Guam law.

21 Based on the analysis above, the Attorney General has failed to sustain his burden of
22 showing this court has federal question jurisdiction over Counts I through VIII. Without original
23 jurisdiction under Section 1331, this court cannot exercise supplemental jurisdiction over Count IX
24 or any of the other related counts that arise under Guam law. *Herman Family Revocable Tr.*, 254
25 F.3d at 805 (“The statute’s plain language makes clear that supplemental jurisdiction may only be
26 invoked when the district court has a hook of original jurisdiction on which to hang it.”).

27 To the extent that any claims in the Complaint arise under federal law so as to bestow this
28 court with original jurisdiction, the court would nonetheless recommend that the Chief Judge not

1 exercise supplemental jurisdiction over any of the causes of action that allege violations of Guam
2 law. Pursuant to Section 1367(c),

3 district courts may decline to exercise supplemental jurisdiction over a claim under
4 subsection (a) if –

- 5 (1) the claim raises a novel or complex issue of State law,
6 (2) the claim substantially predominates over the claim or claims over which
7 the district court has original jurisdiction,
8 (3) the district court has dismissed all claims over which it has original
9 jurisdiction, or
10 (4) in exceptional circumstances, there are other compelling reasons for
11 declining jurisdiction.

12 28 U.S.C. § 1367(c)(1) and (3).

13 Here, the court has recommended dismissal of Counts I through IV – the only causes of
14 action that could possibly confer this court with subject matter jurisdiction – so the court should
15 decline to exercise supplemental jurisdiction over the remaining claims. 28 U.S.C. §1367(c)(3).
16 Additionally, the challenges to Guam law, particularly with regard to Guam’s land condemnation
17 procedures and GHURA’s authority to condemn private property for the MMC Project raise novel
18 issues of local law, and the local courts of Guam are best-placed to address these statutory issues
19 dealing with matters of purely local concern. 28 U.S.C. §1367(c)(1). Finally, as discussed above,
20 the application and interpretation of local law substantially predominate the claims in the
21 Complaint, 28 U.S.C. § 1367(c)(2), such that this court should decline to exercise supplemental
22 jurisdiction over Count IX or any of the other related counts that arise under Guam law.

23 In conclusion, because this court lacks subject matter jurisdiction either because the causes
24 of action do not arise under federal law or because the Attorney General lacks standing to bring said
25 claims, the below-signed judge recommends that Motion to Dismiss be granted pursuant to
26 Rule 12(b)(1).¹⁸

27 **C. Motion for Leave to Amend Complaint**

28 Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, the Attorney General
seeks leave to file the PAC, adding GPA, GWA, GEDA and the CCU as defendants in the instant

¹⁸ Because the below signed judge recommends dismissal under Rule 12(b)(1), there is no
need to address the merits of the Defendants’ remaining arguments for dismissal under
Rule 12(b)(6).

1 action and purportedly bolstering the basis for federal question jurisdiction. Under Rule 15(a)(2)'s
2 liberal standard, a district court "should freely give leave [to amend] when justice so requires." Fed.
3 R. Civ. P. 15(a)(2). A court, however, need not grant such leave where the amendment: (1) unduly
4 prejudices the opposing party; (2) is sought in bad faith; (3) produces undue delay in litigation; or
5 (4) is futile. *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir.
6 2011) (citing *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir.1989)).

7 Here, Defendants object to the PAC and assert that amendment should be denied for futility.
8 An amendment is futile "only if no set of facts can be proved under the amendment to the pleadings
9 that would constitute a valid and sufficient claim or defense." *Barahona v. Union Pac. R.R. Co.*,
10 881 F.3d 1122, 1134 (9th Cir. 2018) (quoting *Sweeney v. Ada Cty*, 119 F.3d 1385, 1393 (9th Cir.
11 1997)). The standard for assessing whether a proposed amendment is futile is the same as the
12 standard imposed under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See Miller v.*
13 *Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988),¹⁹ *overruled on other grounds by Ashcroft*
14 *v. Iqbal*, 556 U.S. 662 (2009) (explaining that a motion for leave is futile where the proposed facts
15 to be included in a pleading would not constitute a valid and sufficient claim or defense).

16 Thus, the court must examine each cause of action in the PAC to determine whether the
17 alleged claim is futile.

18 1. PAC Count I - Alleged Violation of Organic Act

19 Count I of the PAC is similar to Count I of the original Complaint and essentially realleges
20 that the Governor (and those acting in concert with her) violated the Organic Act by encumbering
21 or committing ARPA funds for the MMC Project without an appropriation from the Guam
22 Legislature. Paragraph 56 in the PAC is new and asserts that the approximate \$100 million in
23 ARPA funds "is not sufficient to build the MMC" project and that the Governor "is not legally
24 allowed to bind any future Governor or the People of Guam to a potential billion-dollar expenditure
25

26 ¹⁹ The *Miller* case cites to 3 J. Moore, Moore's Federal Practice ¶ 15.08[4] (2d ed. 1974)
27 (proper test to be applied when determining the legal sufficiency of a proposed amendment is
28 identical to the one used when considering the sufficiency of a pleading challenged under Rule
12(b)(6)). *Miller*, 845 F.2d at 214.

1 without express and explicit legislative approval and appropriation.” PAC at ¶ 56, ECF No. 20-1.
2 The paragraph further cites a Supreme Court of Guam case, *Pangelinan v. Gutierrez*, 2003
3 Guam 13,²⁰ to support the assertion that the Governor must obtain legislative approval and
4 appropriation. *Id.*

5 The addition of this new paragraph does not cure the infirmities discussed *supra*. As pled,
6 Count II of the PAC still only involves a matter of local concern or policy and does not allege a
7 cause of action that arises under federal law. Thus, Count I of the PAC does not confer this court
8 with federal question jurisdiction.

9 2. PAC Count II- Alleged Violation of ARPA/SLFRF

10 Count II of the PAC is basically identical to the original Count II but with the addition of
11 three new paragraphs. *See* PAC at ¶¶ 71-73, ECF No. 20-1. Most notably, paragraph 71 refers to
12 and quotes from a notice published by the U.S. Department of Treasury on March 25, 2025,
13 informing recipients of SLFRF awards that the agency “is committed to recouping funds that
14 recipient obligated or expended impermissibly, as well as to recapturing funds that they did not
15 obligate by the deadline.” PAC at ¶ 71, ECF No. 20-1. The notice further asserts that the U.S.
16 Department of Treasury will “follow standard debt collection policy and procedures” if the recipient
17 does not repay the amount owed by a specified date, with interest and penalties to accrue. *Id.*
18 Count II of the PAC further alleges that the IGA between DOA and GEDA requires compliance
19 with federal and local laws and that “GHURA violated several local laws, which in turn are
20 violations of ARPA and SLFRF.” *Id.* at ¶¶ 72-73.

21 These three additional paragraphs will not cure the defects discussed above with regard to
22 Count II of the original Complaint. The Attorney General still has not cited to any authority that
23 provides him with a private right of action under ARPA. Proposed Count II still fails to state a
24 claim under federal law and does not seek any relief. More importantly, Count II of the PAC fails
25

26 ²⁰ In this case, the Supreme Court of Guam found that a contract entered into by the then
27 governor violated the Organic Act, 48 U.S.C. § 1423j, and Guam law (5 GCA § 22401).
28 *Pangelinan v. Gutierrez*, 2003 Guam 13, ¶ 1 (Guam June 27, 2003), *opinion vacated in part on*
reh’g, 2004 Guam 16 (Guam Sept. 9, 2004).

1 to establish the necessary elements for Article III standing. Thus, amended Count II would still be
2 subject to dismissal as discussed *supra*.

3 3. PAC Count III - Alleged Violation of ARPA/SLFRF

4 Proposed Count III is identical to Count III in the Complaint. Proposed Count III still only
5 makes passing and vague references to records compliance provisions of ARPA as “required by
6 Title 2 of the Code of Federal Regulations.” PAC at ¶ 75, ECF No. 20-1. For the same reasons
7 discussed above, the Attorney General lacks statutory and Article III standing to assert a cause of
8 action under ARPA, and Count III, as pled, is subject to dismissal.

9 4. PAC Count IV- Alleged Violation of ARPA/SLFRF

10 Count IV in the PAC mirrors the original Count IV but adds a new paragraph alleging that
11 “the Governor and the conspirator defendants knew or should have known of the environmental
12 requirements to proceed with the MMC” as evidenced by the inclusion of almost \$5.5 million in
13 “civil engineering” costs for environmental studies and review contained in the IGA. PAC at ¶ 84,
14 ECF No. 20-1.

15 But as already discussed, proposed Count IV fails for the same reasons set forth *supra* with
16 regard to the original Count IV. Despite the proposed amendment, the Attorney General still lacks
17 statutory and Article III standing to assert a cause of action under ARPA, and Count III is subject
18 to dismissal for lack of subject matter jurisdiction.

19 5. PAC Count V- Alleged Violation of ARPA/SLFRF and HCDA

20 Count V of the PAC is a new cause of action. Therein, the Attorney General asserts that
21 GHURA has failed to provide him with any records to ensure that it is compliant with ARPA and
22 the Housing and Community Development Act of 1974 (the “HCDA”). PAC at ¶ 86, ECF No. 20-
23 1. Proposed Count V further alleges that “Title I projects are required to supplement and not
24 support other . . . government funds,” and because the Governor has not sought “an appropriation
25 from the Guam Legislature” to fund the MMC Project, said project is one that is “wholly funded
26 by the U.S. Government thereby violating the supplement and not supplant requirements for Title
27 I projects.” *Id.* at ¶¶ 87-90.

28 ///

1 Even if the court accepted these assertions as true,²¹ the Attorney General still has not shown
2 that he has standing to enforce any alleged violation of ARPA, as discussed previously by the court,
3 or the HCDA. Federal law provides that in the event the Secretary of the Department of Housing
4 and Urban Development (“HUD”) “finds . . . that a recipient of assistance . . . has failed to comply
5 substantially with any provision [of the community development program],” the Secretary has the
6 option of terminating, reducing or limiting payments to the recipient. 42 U.S.C. § 5311(a). The law
7 further provides that the Secretary of HUD may “refer the matter to the Attorney General *of the*
8 *United States* with a recommendation that an appropriate civil action be instituted.” 42 U.S.C.
9 § 5311(b)(1) (emphasis added). Based on a plain reading of the statute, the Attorney General is not
10 authorized to bring an enforcement action on behalf of HUD against the Defendants. The Attorney
11 General failed to address the issue of lack of standing under the HCDA in his Reply to the
12 Defendants’ opposition, and thus the issue is waived.²²

13 Because the Attorney General lacks standing, this court lacks subject matter jurisdiction
14 over the claim and proposed Count V would be subject to dismissal.

15 6. PAC Count VI- Alleged Violation of ARPA and Guam Law

16 Proposed Count VI is similar to Count V of the Complaint, but Proposed Count VI includes
17 additional paragraphs alleging among other things that (1) the MMC Project “does not qualify as
18 a ‘housing project’” under Guam law, (2) Guam law requires GHURA to submit a report of suitable
19 housing projects to the Guam Legislature, (3) while the Guam Legislature passed a law for the

21 ²¹ The Defendants contest these allegations and further argue that the claim is not ripe for
22 review. There is no need to address these arguments since the court finds that the Attorney General
lacks standing to bring this claim.

23 ²² The Attorney General complains that he “did not have an adequate opportunity to
24 respond” to the arguments raised in the Defendants’ opposition to his Motion for Leave to File an
25 Amended Complaint because the court denied his request for a two-week extension to file his
26 reply. *See Att’y General’s Reply to Defs.’ Opp’n to Mot. Leave to File Am. Compl. at 4, ECF*
27 *No. 32 (the “Attorney General’s Reply”).* The court finds no merit to this argument. Many of the
28 arguments raised in the Defendants’ opposition to the Motion for Leave to File an Amended
Complaint simply incorporated by reference their prior arguments raised in the Motion to Dismiss.
Thus, the Attorney General was well aware of the bases for the Defendants’ objections to his
asserted claims. Despite this, the Attorney General’s Reply failed to address the issue of standing.

1 building of a new hospital, said law “[did] not plan or provide for any condemnation or
2 development by GHURA” but instead provided “for the leasing of land and development of land
3 for the public hospital,” and (4) GHURA exceed its statutory authority under Guam law to condemn
4 property for the MMC Project. PAC at ¶¶ 101-110, ECF No. 20-1.

5 Based on a plain reading of proposed Count VI, the Attorney General asserts that GHURA’s
6 alleged violations of various Guam laws also form the basis for an ARPA violation because ARPA
7 requires that recipients comply with local laws. But as was already discussed above, ARPA does
8 not create a private right of action, and the Attorney General has no standing to enforce any alleged
9 violation of ARPA. Even if the Attorney General were to overcome the standing issue, proposed
10 Count VI still does not arise under federal law, and the scant reference to ARPA in proposed Count
11 VI does not convert it to a federal cause of action. At the core of this claim are various alleged
12 violations of Guam law, not federal law. The resolution of this claim primarily requires application
13 and interpretation of local law, which should be resolved in the Superior Court of Guam.
14 Accordingly, the court finds that proposed Count VI fails to provide this court with subject matter
15 jurisdiction.

16 7. PAC Count VII - Alleged Violation of ARPA and Open Government Law

17 Proposed Count VII is identical to the original Count VI alleged in the Complaint. The
18 PAC’s Count VII generally asserts that GHURA failed to comply with Guam’s Open Government
19 Law when its board met to consider a resolution authorizing GHURA to accept a loan from the
20 Governor for up to \$10 million for community development projects. As discussed above, ARPA
21 does not vest the Attorney General with a private right of action. Additionally, this cause of action,
22 as pled, does not implicate a federal issue. Rather, the crux of the claim predominately involves
23 application and interpretation of Guam laws, which are more appropriately addressed in the
24 Superior Court of Guam, not this court, which is a court of limited jurisdiction. Consistent with the
25 discussion above, the court finds that proposed Count VII does not arise under federal law, and the
26 court lacks subject matter jurisdiction over the claim.

27 8. PAC Count VIII - Alleged Violation of ARPA and Guam Contract Laws

28 The allegations in proposed Count VIII are substantially identical to Count VII in that both

1 allege that the loan contracts between the Governor and GHURA violate Guam law because they
2 were not submitted to the Attorney General for his approval, as required by Section 22601 of
3 Title 5, Guam Code Annotated. Proposed Count VIII also includes a conclusory assertion²³ that
4 the loan contracts also violate Section 22602 of Title 5, Guam Code Annotated.²⁴

5 Consistent with its earlier ruling, to the extent that proposed Count VIII asserts a claim
6 under ARPA, the Attorney General has failed to establish that he has a private right of action to
7 assert such claim and also lacks Article III standing. Additionally, resolution of proposed
8 Count VIII does not necessarily implicate a federal issue. The essence of proposed Count VIII are
9 alleged violations of Guam law, and the Guam local courts are best suited for addressing matters
10 arising under Guam law. The court finds that proposed Count VIII does not arise under federal law.

11 9. PAC Count IX - Alleged Violation of ARPA and Guam Law

12 Count IX of the PAC is identical to Count VIII of the original Complaint. Proposed
13 Count IX essentially alleges that GEDA, not GHURA, was vested by the Legislature with authority
14 to “acquire, construct, and provide for hospital facilities to serve the general public,” that GEDA
15 cannot transfer such power to GHURA or an autonomous agency, that GHURA has no authority
16

17 ²³ While Paragraph 142 quotes to Section 22602, proposed Count VIII does not contain any
18 other factual allegation to show how Section 22602 was violated. There is no factual allegation
19 in the PAC that the Defendants did not submit a copy of the loan contracts to DOA for filing,
20 recording and registration, nor is there any allegation that DOA failed to enroll said loan contracts
21 on the public register.

22 ²⁴ In its entirety, Section 22602 provides:

23 A copy of any contract under which a payment may be made shall be submitted to
24 the Department of Administration for filing, recording and registration. The
25 Director of Administration shall cause a register to be kept of all such contracts
26 with subsequent amendments, which register shall be open and available for public
27 inspection during normal working hours. Certified copies of such contract with
28 subsequent amendments may be obtained after paying the fee therefor set out in of
this Chapter. No such contracts or amendments thereto shall be deemed valid or
enforceable until it shall have been so submitted to the Department of
Administration and enrolled on the public register.

5 GCA § 22602.

1 to “acquire, construct, and provide for hospital facilities,” and that GHURA’s actions are therefore
2 void. PAG at ¶¶ 96, 98-99 and 101-102. As noted above with regard to original Count VIII,
3 resolution of proposed Count IX does not implicate a federal issue. Instead, application and
4 interpretation of local laws substantially predominate the allegation in proposed Count IX, which
5 are more appropriately addressed in the local courts of Guam, not the federal court. Consistent with
6 its ruling above, the court finds that proposed Count IX does not arise under federal law so as to
7 confer this court with federal question jurisdiction.

8 10. PAC Count X - Alleged Violation of Guam Law

9 The PAC’s Count X is similar to the original Count IX of the Complaint but includes the
10 addition of six new paragraphs. See PAC at ¶¶ 156-61, ECF No. 20-1. In essence, proposed
11 Count X asserts that the Governor and the conspirator defendants were aware that the land for the
12 MMC Project was acquired in violation of Guam law, *id.* at ¶¶ 156-57, that in taking actions under
13 the IGA and subgrant agreements, the conspirator defendants have violated federal and Guam law
14 with regard to the need for environmental reviews and record keeping, *id.* at ¶ 158, and that such
15 action have exposed the Government of Guam to federal clawback proceedings. *Id.* at ¶¶ 159-160.

16 The addition of the six new paragraphs do not cure the defects discussed above with regard
17 to Count IX of the original Complaint. By its very terms, proposed Count X does not arise under
18 federal law but instead is brought under the laws of Guam. Based on the discussion above, this
19 court has found that supplemental jurisdiction is lacking because none of the Complaint’s asserted
20 causes of action arise under federal law, and the same is true with regard to the PAC. To the extent
21 that the PAC asserts a claim that arises under federal law, the court recommends that the Chief
22 Judge decline to exercise supplemental jurisdiction for the reasons set forth above.

23 11. PAC Counts XI and XII -Alleged Violations of Organic Act

24 Counts XI and XII of the PAC are new. Count XI asserts that GPA has sought the
25 appointment of Special Attorneys General, and the PAC asserts that such appointment would
26 violate the Organic Act. PAC at ¶¶ 164-65, ECF No. 20-1. In Count XII, the PAC asserts that the
27 CCU is “an illegal, inorganic and unconstitutional body,” and as such, the CCU “deprives the
28 Governor of Guam” of her “Organic Act authority to supervise the government and to appoint the

1 heads of executive branch agencies as part of the Governor’s cabinet.” *Id.* at ¶¶ 169-70. Proposed
2 Count XII further asserts that “the actions taken by the CCU, or by the GPA or the GWA at the
3 direction or authorization of the CCU, are also illegal, inorganic and void ab initio[,]” including the
4 obligation and expenditure of ARPA/SLFRF funds as set forth in the subgrant agreements with
5 GEDA. *id.* at ¶¶ 171-72.

6 Proposed Counts XI and XII suffer from the same deficiency discussed *supra* with regard
7 to Count I. As pled, these causes of action do not arise under federal law so as to confer this court
8 with federal question jurisdiction. While the Organic Act is referenced, the claims allege matters
9 of purely local concern. Construing all facts in favor of the Attorney General, he is using proposed
10 Count XI to challenge the Supreme Court of Guam’s decision in *In re Leon Guerrero*, 2024 Guam
11 18 (Guam Dec. 31, 2024), where that court stated that it was “well settled that the Attorney General
12 must conform his conduct to that prescribed by the rules of professional ethics,” and that “in the
13 event of a conflict of interest or disagreement over the public interest with a [client] line agency,
14 the Attorney General is required to appoint a special assistant attorney general to represent the
15 agency through his common law power.” *Id.* at ¶¶ 13 and 29. This appears to be an improper
16 appeal of the *In re Leon Guerrero* decision. Whether a conflict of interest exists so as to warrant
17 the appointment of a Special Attorney General is a matter concerning local issues and policies and
18 is best left to the local courts to handle.

19 Count XII, which asks the court to determine whether the Guam law that created the CCU
20 violates the Governor’s Organic Act powers, also does not arise under federal law because it
21 involves matters of local concern. The court also has serious concerns about whether the Attorney
22 General has standing to raise such a challenge on behalf of the Governor, whose authority is
23 allegedly being usurped.

24 Because proposed Counts XI and XII do not confer this court with federal question
25 jurisdiction since they assert only local law claims and would not survive in this court absent the
26 court’s exercise of supplemental jurisdiction (which the below-signed judge has recommended the
27 Chief Judge not exercise, *see supra*), the court finds that addition of these causes of action would
28 be futile.

1 Having reviewed the PAC in its entirety, the court concludes that amendment would be
2 futile because the PAC still fails to establish that this court has original jurisdiction over any of the
3 asserted claims or that the Attorney General has standing, both statutory and under Article III, to
4 assert claims under ARPA or the HCDA. Without original jurisdiction, this court cannot exercise
5 supplemental jurisdiction over the claims arising under Guam law. Moreover, even if the Chief
6 Judge found that this court has federal question jurisdiction over one or more claims in the PAC,
7 the below-signed judge recommends that the court decline to exercise supplemental jurisdiction
8 over the local law causes of action. Most, if not all, of the revised causes of action in the PAC
9 primarily involve matters of local concern that require application and interpretation of Guam law,
10 and where issues of Guam law predominate over any purported federal claim. Accordingly, said
11 matters should be resolved in the Superior Court of Guam.

12 **D. Motions to Consolidate**

13 The last motions before the court are the Attorney General's two Motions to Consolidate.
14 *See* ECF Nos. 21 and 35. The Attorney General requests that 25-CV-00029 and 25-CV-00041 be
15 consolidated with the instant action, asserting that the three cases involve common questions of law
16 and fact with regard to the planning and development of the MMC Project.

17 Because the Attorney General has failed to meet his burden of establishing that the claims
18 in the Complaint and the PAC arise under federal law, the court finds that it lacks subject matter
19 jurisdiction over this action and this case should be dismissed. Accordingly, the court recommends
20 that the Motions to Consolidate this case with 25-CV-00029 and 25-CV-00041 be denied.

21 **III. CONCLUSION**

22 Based on the above analysis, the court finds that it lacks subject matter jurisdiction because
23 federal law does not create the causes of action asserted in the Complaint and the PAC, nor is the
24 Attorney General's right to relief necessarily dependent on the resolution of a substantial question
25 of federal law. Additionally, because this court lacks original jurisdiction, it may not exercise
26 supplemental jurisdiction over the cause of action that arise under purely local law. Accordingly,

27 ///

28 ///

1 the court recommends that the Chief Judge (1) grant the Defendants' Motion to Dismiss, (2) deny
2 the Attorney General's Motion for Leave to File an Amended Complaint, (3) deny the Attorney
3 General's Motions to Consolidate and (4) deny the Defendants' Motion to Strike as moot.

4 IT IS SO RECOMMENDED.



5
6 /s/ Michael J. Bordallo
7 U.S. Magistrate Judge
8 Dated: Apr 07, 2026

9
10 NOTICE

11 **Failure to file written objections to this Report and Recommendation within**
12 **fourteen (14) days from the date of its service shall bar an aggrieved party**
13 **from attacking such Report and Recommendation before the assigned**
14 **United States District Judge. 28 U.S.C. § 636(b)(1)(B).**