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CLERK OF COURT

BY: **fmv**

IN THE SUPERIOR COURT OF GUAM

THOMAS J. FISHER, as Taxpayer and in his
Official Capacity as a Senator of the 37th
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. CV0392-23

DECISION AND ORDER

*Re: Third-Party Defendant Jon Fernandez's
Motion to Dismiss Complaint and Third-Party
Complaint*

IGNACIO C. SANTOS, in his official
capacity as a Government of Guam Federal
Programs Administrator and in his private
capacity,

Third-Party Plaintiff,

v.

JON FERNANDEZ, FRANK COOPER-
NURSE, in his individual capacity Chief
Auditor of GDOE; K. ERIK SWANSON,
Ph.D., in his official capacity as the
Superintendent of the Guam Department of
Education, and the GOVERNMENT OF
GUAM,

Third-Party Defendants.

1 This matter came before the Honorable Arthur R. Barcinas on November 19, 2024, for a
2 hearing on, *inter alia*, Third-Party Defendant Jon Fernandez's ("Fernandez") Motion to Dismiss
3 Complaint and Third-Party Complaint. ("Motion") filed on July 29, 2024. The Motion was filed
4 to request dismissal of the Complaint filed by Thomas Fisher ("Fisher"), as a taxpayer and in
5 his official capacity as a Senator of the 37th Guam Legislature, on July 5, 2023, and the Third-
6 Party Complaint filed by Defendant/Third-Party Plaintiff Ignacio C. Santos ("Santos"), in his
7 personal capacity and his official capacity as a Government of Guam Federal Programs
8 Administrator, on May 2, 2024. At the hearing, Attorney Vanessa L. Williams appeared on
9 behalf of Fernandez, and Santos was present, represented by Attorney Edwin J. Torres.
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11 BACKGROUND

12 On July 5, 2023, Plaintiff Thomas J. Fisher ("Fisher"), filed a Complaint against Santos
13 as a taxpayer and in his official capacity as a Senator of the 37th Guam Legislature. In the
14 Complaint, Fisher alleged that Santos, as the Federal Programs Administrator for the Guam
15 Department of Education ("GDOE"), had failed to properly discharge his duties in regard to the
16 management of public monies after overtime payments were issued to GDOE employees.
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18 On May 2, 2024, Santos filed his Verified Answer, as well as a Third-Party Complaint
19 against Third-Party Defendants Jon Fernandez; Kenneth Swanson, in his official capacity as
20 Superintendent of GDOE; Franklin Cooper-Nurse, in his individual capacity as Chief Auditor of
21 GDOE; and the Government of Guam. In the Third-Party Complaint, Santos alleged that he was
22 not at fault because he only had authority to certify the availability of funds, not authority over
23 the actual expenditure of GDOE funds; Santos alleged instead that expenditure authority lay
24 with Fernandez and Cooper-Nurse, adding that "if any party is responsible for the expenditure
25 of funds, Guam law states that it is the superintendent of GDOE." Third-Party Compl., ¶¶ 19,
26 23. In the Third-Party Complaint, Santos further alleged that Swanson and GDOE had declined
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1 to request the Office of the Attorney General ("OAG") to represent Santos in his official
2 capacity, in alleged violation of 5 GCA §§ 7111 and 30108; Santos then requested the Court to
3 enter a declaration as to whether Swanson and the Government of Guam must pay his attorneys'
4 fees if he is exonerated.

5 On July 29, 2024, Attorney Williams filed the instant Motion on behalf of Fernandez. In
6 the Motion, Fernandez requests dismissal of Fisher's Complaint under Guam Rules of Civil
7 Procedure ("GRCP") 12(b)(6) for failure to state a claim upon which relief may be granted,
8 arguing that claims based on violations of Title 4, Chapter 4 of the Guam Code Annotated
9 ("GCA") should be dismissed because the statute is allegedly unconstitutionally vague.
10 Fernandez then argues for dismissal of the Third-Party Complaint under GRCP 12(b)(1),
11 arguing that Santos may not avail himself of 7 GCA § 7103 (the "Taxpayer Statute") because
12 Santos allegedly lacks both statutory and prudential standing. Finally, Fernandez argues for
13 dismissal of the Third-Party Complaint under GRCP 12(b)(6), on the grounds that there is
14 allegedly no statutory or common law right of contribution for the enforcement of proper
15 government spending.
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18 On August 23, 2024, Santos filed his opposition, arguing that Fernandez may not invoke
19 the protections of sovereign immunity because Santos is allegedly suing Fernandez in his
20 individual capacity for contribution for a judgment pursuant to 5 GCA § 7103. Santos further
21 argues that he only needs to provide the Court with sufficient allegations to support that he has
22 standing to sue for contribution, and he does not need to provide support for claims under 5
23 GCA § 7103 because he is not seeking contribution from Fernandez under § 7103. Santos
24 asserts that he has sufficiently alleged enough facts to support his standing for contribution, and
25 that by seeking contribution, he is enforcing his individual right of recovery from the third
26 parties he alleges are rightfully at fault, which Santos asserts meets the requirements of
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1 prudential standing. Santos further asserts that he has alleged enough facts to support a claim for
2 contribution from Fernandez under GRCP 14(a). On the dismissal of the original Complaint for
3 unconstitutional vagueness, Santos takes no position, as he asserts that his claims are
4 contribution claims not brought under the Taxpayer Statute.

5 On September 6, 2024, Fernandez filed his Reply. Fernandez first argues that Santos
6 should not be allowed to bring a claim for contribution for his "intentional and willful conduct."
7 Reply, at 2. Fernandez then re-asserts that Santos has no standing to enforce 5 GCA § 7103.
8 Finally, Fernandez asserts that his argument to dismiss the Complaint was opposed by neither
9 Fisher nor Santos, and reasserts that Title 4, Chapter 14 of the GCA is too vague to provide
10 adequate notice of Fisher's claim.
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12 The Court took the matter under advisement on November 19, 2024.

13 DISCUSSION

14 **I. Legal Standard**

15 Under Guam law, "[a]t any time after the commencement of the action a defending
16 party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person
17 not a party to the action, who is or may be liable to the third-party plaintiff for all or part of the
18 plaintiff's claim against the third-party plaintiff." GRCP 14(a). "The person served with the
19 summons and third-party complaint ... shall make any defenses to the third-party plaintiff's
20 claim as provided in Rule 12.... The third-party defendant may assert against the plaintiff any
21 defenses which the third-party plaintiff has to the plaintiff's claim." *Id.*
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24 Guam law allows that certain defenses to a claim for relief may be made by motion,
25 including: "(1) lack of jurisdiction over the subject matter, ... [and] (6) failure to state a claim
26 upon which relief can be granted." GRCP 12(b).
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2 a. GRCP 12(b)(1) - Subject Matter Jurisdiction

3 Fernandez asserts that the Court lacks subject matter jurisdiction over the Third-Party
4 Complaint based on a lack of standing. "If a party does not have standing to bring a claim, a
5 court has no subject matter jurisdiction to hear the claim." *United Pac. Islanders' Corp. v.*
6 *Cyfred, Ltd.*, 2017 Guam 6 ¶ 15. "Although we are not bound by the standing requirements
7 applicable to federal courts of limited jurisdiction under Article III of the United States
8 Constitution, we have repeatedly found that the traditional standing requirements expressed in
9 Article III nevertheless apply to claims asserted in Guam's courts." *In re A.B. Won Pat Int'l*
10 *Airport Auth., Guam*, 2019 Guam 6 ¶ 16 (internal quotations omitted). This constitutional
11 standing is a threshold jurisdictional matter. *Id.* "To establish constitutional standing, a party
12 must show: (1) it has suffered an injury in fact; (2) that the injury can be fairly traced to the
13 challenged action taken by the defendant; and (3) that it is likely and beyond mere speculation
14 that a favorable decision will remedy the injury sustained." *Id.* ¶ 17. However, even without
15 constitutional standing, the Guam Supreme Court has held that standing may be statutorily
16 conferred by the Legislature. *See Benavente v. Taitano*, 2006 Guam 15 ¶ 20. "Sovereign
17 immunity is a component of subject matter jurisdiction." *Story-Bernardo v. Gov't of Guam*,
18 2023 Guam 27 ¶¶ 12-13. "Because sovereign immunity implicates a court's subject matter
19 jurisdiction, it can be raised at any time, either by a party or by the court." *Id.*

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23 "Sovereign immunity means that a sovereign cannot be sued in its own courts without its
24 consent." *Id.* "Suits against government officers may [also] properly be considered suits against
25 the sovereign ... if the judgment sought would expend itself on the public treasury or domain, or
26 interfere with the public administration, or if the effect would be to restrain the Government
27 from acting, or to compel it to act." *Guam Fed'n of Teachers ex rel. Rector v. Perez*, 2005
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1 Guam 25 ¶ 19. However, “[t]hrough the Organic Act of Guam, ‘Congress has provided a
2 specific mechanism by which sovereign immunity may be waived.’” *Bautista v. Agustin*, 2015
3 Guam 23 ¶ 18. “‘The government of Guam ... shall have power to sue by such name, and, with
4 the consent of the legislature evidenced by enacted law, may be sued upon any contract entered
5 into with respect to, or any tort committed incident to, the exercise by the government of Guam
6 of any of its lawful powers.’” *Id.* (quoting 48 U.S.C.A. § 1421a). “Thus, in order for a suit to be
7 maintained against the Government of Guam and any of its instrumentalities or agencies,
8 sovereign immunity must be expressly waived by duly enacted legislation.” *Id.* “[A]bsent such
9 legislation, the Government of Guam cannot be sued.” *Id.* ¶ 22. However, in addition to express
10 statutory waiver, the Legislature has also waived sovereign immunity through, *inter alia*, the
11 Government Claims Act and enabling legislation that grants an agency the right to sue and be
12 sued. *See Bautista v. Agustin*, 2015 Guam 23 ¶¶ 22-24, 28. The enabling legislation of the
13 Department of Education grants the right to sue and be sued only to the governing Board of
14 Education. “The Board, among other duties, shall perform the following in accordance with
15 applicable law: ... (g) sue and/or defend itself in suits at law.” 17 GCA § 3102.1(g).
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18 b. GRCP 12(b)(6) - Failure to State a Claim for Which Relief May Be Granted

19 In ruling on a motion to dismiss under GRCP 12(b)(6), the Court must accept all the
20 well-pleaded facts as true, construe the pleading in the light most favorable to the non-moving
21 party, and resolve all doubts in the non-moving party's favor. *Cruz v. Cruz*, 2023 Guam 20 ¶ 10.
22 Dismissal for failure to state a claim is appropriate only if it appears beyond doubt that the non-
23 moving party can prove no set of facts in support of his claim which would entitle him to relief.
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25 *Id.*
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2 **II. Whether the Third-Party Complaint claims against Fernandez are barred by**
3 **sovereign immunity**

4 Fernandez first argues that Santos's claims against him are improperly brought because
5 5 GCA § 7103 does not expressly waive sovereign immunity for contribution. 5 GCA § 7103
6 dictates:

7 Any taxpayer who is a resident of Guam shall have standing to sue
8 the government of Guam and any officer, agent, contractor, or
9 employee of the Executive Branch of the government of Guam for
10 the purpose of enjoining any officer, agent, contractor, or
11 employee of the Executive Branch of the government of Guam
12 from expending money without proper appropriation, without
13 proper authority, illegally, or contrary to law, and to obtain a
14 personal judgment in the courts of Guam against such officers,
15 agents, contractors, or employees of the government of Guam and
16 in favor of the Government of Guam for the return to the
17 Government of Guam of any money which has been expended
18 without proper appropriation, without proper authority, illegally, or
19 contrary to law. For purposes of this Chapter, the Governor and Lt.
20 Governor of Guam are officers of the government of Guam, and
21 are included within the scope of this Chapter.

22 Fernandez asserts that he is entitled to sovereign immunity based on the fact that
23 Santos's claims against him are based on actions Fernandez allegedly took in his capacity as the
24 former GDOE Superintendent. The Court does not find this argument compelling for two
25 reasons.

26 First, Santos is suing Fernandez in his personal capacity, and "an award of damages
27 against an official in his personal capacity can be executed only against the official's personal
28 assets." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). "A victory in a personal-capacity
action is a victory against the individual defendant, rather than against the entity that employs
him." *Id.* at 167-68.

1 Second, because Santos's Third-Party Complaint does not cite 5 GCA § 7103 as a basis
2 for relief, the Court does not find it material to evaluate it in deciding the Motion to Dismiss.
3 Thus, all arguments pertaining to § 7103 will be disregarded by the Court at this time.

4 Accordingly, the Court will **DENY** the Motion to Dismiss in regard to this argument.

5 **III. Whether Fisher fails to state a claim for which relief may be granted**

6 Fernandez then asserts that Fisher's second cause of action in the Complaint and
7 Santos's claim against Fernandez both allege violations of Title 4, Chapter 14 of the GCA,
8 which prohibits the disbursement of public funds except as provided in Chapter 14 "and by the
9 persons designated or delegated by the authority of the law and in accordance with applicable
10 Federal and Guam laws." Mot., at 4 (quoting 4 GCA § 14105). Fernandez argues that all of
11 Chapter 4 "is vague in violation of due process of law" for not "clearly delineat[ing] the conduct
12 it proscribes." Fernandez further argues that Chapter 4 "utterly fails to provide clear guidelines
13 or standards for determining accountability and liability for improper payments made by
14 government officers" and that the lack of "clearly defined standards of conduct does not provide
15 fair notice to allow a person to know what they must do to avoid liability." Mot., at 12.
16 Fernandez asserts that government employees who handle financial matters within the
17 government of Guam allegedly fall within the umbrella term of "Accountable Officers," a term
18 which Fernandez asserts has multiple definitions and includes, *inter alia*, Certifying Officers,
19 Disbursing Officers, and Collecting Officers. *Id.* at 10 (citing 4 GCA §§ 14104, 14106.
20 Fernandez further asserts that, pursuant to 4 GCA § 14109, all such Accountable Officers may
21 be held liable for losses of the government of Guam even if they may not be at fault. As of the
22 hearing date, Fisher had not filed an opposition to the argument, nor did his counsel argue
23 against the argument at the hearing.
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1 Pursuant to Local Rule 5B of the Rules of the Superior Court ("Rules") states, in the
2 event of failure to file an opposition, "[a]bsent good cause shown, failure to file [a timely
3 opposition] has the same effect as filing a notice of non-opposition." *Pet. of Quitigua v. Flores*,
4 2004 Guam 19 ¶ 24. Further, Local Rule 3A of the Rules provides that "[a]bsent good cause
5 shown, papers not timely filed shall be disregarded by the court." However, "nothing in Rule 3
6 or Rule 5 mandates that the failure to file an opposition to a motion automatically results in that
7 motion being granted," and those Rules "do not relieve the lower court of its duty to consider
8 the merits of the motion before it." *Id.* ¶ 27.

10 "It is a basic principle of due process that an enactment is void for vagueness if its
11 prohibitions are not clearly defined." *People v. Manglona*, 2024 Guam 8 ¶ 15. "A fundamental
12 principle in our legal system is that laws which regulate persons or entities must give fair notice
13 of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239,
14 253 (2012). This principle is violated where a law either "fails to provide a person of ordinary
15 intelligence fair notice of what is prohibited, or is so standardless that it authorizes or
16 encourages seriously discriminatory enforcement." *U.S. v. Williams*, 553 U.S. 285, 304 (2008)
17 "In the context of civil statutes regulating economic activity, the standard is sufficiently low that
18 statutes are unconstitutionally vague only when they are 'so vague and indefinite as really to be
19 no rule or standard at all." *Boutilier v. INS*, 387 U.S. 118, 123 (1967).

22 Upon review of Title 4, Chapter 14, the Court does not find the statutes in question to be
23 unconstitutionally vague. Pursuant to 4 GCA § 14104, an accountable officer is "[a]ny
24 government of Guam officer or employee who, by reason of the person's employment, is
25 **responsible for or has custody of government funds or who physically handles government**
26 **funds, even if only once or occasionally, and is accountable for those funds while in the**
27 **individual's possession.**" (emphasis added). Such officers are divided into four categories
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1 according to their work responsibilities: (1) Certifying officers, who are responsible for
2 determining and certifying the legality of the disbursement of public funds, but who do not have
3 physical possession of the funds; (2) Disbursing officers, who disburse funds and render
4 accounts in accordance with laws and regulations governing disbursement of public funds, and
5 have physical possession or control of said funds; (3) Cashiers, who are appointed to perform
6 limited cash disbursing functions or other cash-handling operations to assist a finance officer;
7 and (4) Collecting officers, who are authorized to receive or collect money for the government.
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9 *Id.*

10 4 GCA § 14109 provides that “[s]trict liability denotes that the accountable officer is an
11 insurer of the funds,” and “[a]n accountable officer is automatically liable when the loss
12 occurs.” § 14109(a), (b). Fernandez seems to argue that § 14109(b) is at odds with 14109(b)(1),
13 which Fernandez claims provides that “the accountable officer is not liable unless the improper
14 payment was the result of a ‘certified voucher.’” Mot., at 11. However, the Court believes
15 Fernandez misconstrues the statute. 14109(b)(1) does not provide that “an **accountable** officer
16 is not liable” in the above circumstances; it provides that “[a] **certifying** officer is not liable” in
17 those circumstances. This is relevant because, as stated above, certifying officers are a specific
18 category of accountable officers “who certif[y] that payment vouchers are correct and ready for
19 payment,” but “do ... not have physical possession of the funds.” § 14106(a). It stands to reason
20 that a certifying officer would not be liable for the loss of funds if they do not physically
21 possess said funds, and it further stands to reason that they would be liable for an improper
22 payment based off an incorrectly certified voucher, as such vouchers are their responsibility. *But*
23 *see* 4 GCA § 14109(c) (regarding liability for other categories of accountable officers “who
24 [have] physical possession or control of government funds is automatically liable when the
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1 physical loss or erroneous payment is made"). Thus, the Court is not compelled by Fernandez's
2 first argument.

3 Next, Fernandez argues that the strict liability standard stated in § 14109(a) "cannot be
4 reconciled with the standard of negligence then enunciated in section § 14109(c)." 14109(c)
5 provides that "[t]here may be more than one liable accountable officer: (1) because more than
6 one person was negligent," e.g., "the employee whose error caused the loss and the supervisor
7 who entrusted funds to an unqualified employee"; and "(2) because their positions make both of
8 them accountable," e.g., "the employee who makes the actual payment and the officer in whose
9 name the account is held." § 14109(c)(1)-(2). Upon review of the statute, the Court again finds
10 that Fernandez misconstrues the statute. Under the theory of strict liability, § 14109(b) states
11 that "[a]n accountable officer is automatically liable when the loss occurs," and then in
12 14109(b)(1) and (3), states under what circumstances that automatic liability occurs. A
13 certifying officer becomes automatically liable "**at the moment of the improper payment**"
14 that they certified the voucher for, and "[a] disbursing officer, cashier or other officer who has
15 physical possession or control of government funds is automatically liable **when the physical**
16 **loss occurs or erroneous payment is made.**" However, contrary to Fernandez' assertions, the
17 Court does not find that the statute imposes a strict liability standard for a singular liable officer
18 and a separate negligence standard for multiple officers, but rather imposes both for the sake of
19 comparative fault. "[F]ault can be apportioned between individuals or companies that are
20 negligent as well as strictly liable." *Romine v. Johnson Controls, Inc.*, 224 Cal.App.4th 990,
21 1009 (2014). California law holds that, even where the defendants' responsibility for an injury
22 rests on a strict liability theory of responsibility, a trial court is allowed to apply comparative
23 fault principles. *Phipps v. Copeland Corp., LLC*, 64 Cal.App.5th 319, 332 (2021); *David v.*
24 *Hernandez*, 226 Cal.App.4th 578, 591 (2014). "Under the principles of comparative fault, a
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1 person's negligent conduct [is] assigned a share of fault greater than zero percent ... when the
2 conduct was a substantial factor in the causation of the pertinent injuries." *Id.* Guam's statutory
3 scheme acknowledges the use of the comparative fault doctrine in our jurisdiction. *See* 7 GCA §
4 24606(c) (holding that a settlement made in good faith shall bar joint tortfeasors from bringing
5 claims, *inter alia*, based on "comparative fault"). Thus, the Court finds that the strict liability
6 standard suggested in § 14190(a) could be reconciled with the use of negligence in 14109(c) to
7 determine comparative fault between multiple liable parties.
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9 Regarding Fernandez's argument that 4 GCA § 14113 does not clearly state the manner
10 of relief, the Court believes that Fernandez may again be misconstruing the statute. The title of
11 § 14113 states fairly clearly that it is intended to "[o]btain ... relief from liability," meaning that
12 those accountable officers found liable under this Chapter would be relieved from said liability.
13 As to the conditions for obtaining relief, the Court finds them to be fairly straightforward. The
14 Court reads the statute to mean that a potentially liable accountable officer may receive relief if
15 either: (1) there was an improper certification based on official records, and the officer did not
16 know or could not reasonably have discovered that the information was incorrect; or (2) "the
17 [officer's] obligation [to repay the amount of the loss or erroneous payment] was incurred in
18 good faith," "payment was not prohibited by law," "the government of Guam received some
19 benefit," and "the agency made diligent efforts to collect the debt." 4 GCA § 14113(a)(b); 4
20 GCA § 14111(a)(3).
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23 Regarding the bases for relief in 4 GCA § 14115, the Court finds that the imposition of
24 strict liability on accountable officers while also creating a rebuttable presumption of negligence
25 may be found constitutional in certain instances, and thus does not necessarily create a set of
26 facts under which no claim for relief may be sought. The bases for relief provide clear notice to
27 accountable officers, stating that the rebuttable presumption of negligence is raised by "loss or
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1 deficiency.” The accountable officers are aware of what conduct would trigger such a
2 presumption, that being a financial loss or deficiency. 5 GCA § 14111(b)(2), regarding due care,
3 also states that “[r]egulations dictate the accountable officer’s actions in most instances,” and
4 that “[f]ailure to follow the regulations will result in a finding of negligence and a denial of
5 relief if the negligence caused the loss.” “If there are no regulations governing the specific
6 actions of the accountable officer, the Comptroller will apply a reasonable person standard,”
7 i.e., whether the accountable officer did what a reasonably prudent and careful person would
8 have done to take of their own funds or property under similar circumstances. *Id.* (b)(3). The
9 Court further finds that 7 GCA § 14115 does not encourage arbitrary enforcement, because the
10 statute effectively limits liability to cases where an accountable officer fails to rebut the
11 presumption, and the Court can apply a clear standard for rebutting negligence.
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13 Therefore, because the Court does not find any instances that fair notice or fair
14 enforcement are prevented by Chapter 14 of Title 4, the Court finds that the statutes within that
15 chapter are not so unconstitutionally vague that it would render Fisher’s notice of his claim
16 insufficient.
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18 Accordingly, the Court will **DENY** the Motion to Dismiss the original Complaint for
19 unconstitutional vagueness.
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21 **IV. Whether Santos has standing to sue under 5 GCA § 7103**

22 Fernandez argues that Santos lacks standing to sue under 5 GCA § 7103 because he is
23 suing for “all costs of any injunctive or equitable relief imposed on Third-Party Plaintiff and for
24 all damages, costs or other monetary liability assessed against Third-Party Plaintiff,” and
25 because he is “plainly not seeking to enjoin Mr. Fernandez as an officer or employee of the
26 Executive Branch of Guam from expenditures of public funds.” *Mot.*, at 7.
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1 First, the Court again does not find this argument material to Santos's contribution
2 claim, as Santos is not bringing any claim in his Third-Party Complaint pursuant to 5 GCA §
3 7103, but instead seeks contribution from Fernandez and Cooper-Nurse based on a separate
4 claim. Santos makes no reference to 5 GCA § 7103 or even the word "taxpayer," save for when
5 he refers to the Complaint filed by Fisher, which Santos stated was brought pursuant to 5 GCA
6 § 7103.

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8 Second, even if the Court did find this argument material, Fernandez's argument here
9 contradicts his earlier argument that he is entitled to sovereign immunity under § 7103.
10 Fernandez asserts that "[Santos's] claims against Mr Fernandez are based solely on actions Mr.
11 Fernandez took in his capacity as GDOE Superintendent" and that "the plain language of 5
12 GCA § 7103 shows that the Legislature did not unequivocally and expressly waive sovereign
13 immunity under this statute for contribution." Mot., at 9. Fernandez further states that he
14 "adopts GDOE's arguments as being applicable to the third-party claims against him and
15 emphasizes that strictly construing the plain language of 5 GCA § 7103 shows that the
16 Legislature only unequivocally expressed a waiver of sovereign immunity for the purpose of
17 enjoining an Executive Branch employee from expending money improperly, illegally, or
18 unlawfully." *Id.* If Fernandez invokes the protections of sovereign immunity, he asserts that he
19 is being sued as a government employee and that bringing suit against him would be bringing
20 suit against the government. However, Fernandez now submits that he cannot be sued under the
21 taxpayer statute because Santos is "plainly not seeking to enjoin Mr. Fernandez as an officer or
22 employee of the Executive Branch of Guam from expenditures of public funds." If Santos is not
23 seeking to enjoin Fernandez in his official capacity, then sovereign immunity should not apply.
24 Because Fernandez is making two contradictory arguments for dismissal, the Court will deny
25 both.
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1 The Court also notes that Fernandez's adoption of GDOE's arguments would essentially
2 render this entire Motion moot, as one of GDOE's arguments is that Santos's claim against
3 Fernandez should **not** be dismissed. GDOE Mot. to Dismiss, at 3, 10.

4 Therefore, the Court will also **DENY** the Motion to Dismiss regarding this argument.

5 **V. Whether the Third-Party Complaint claim against Fernandez is barred by the**
6 **doctrine of prudential standing**

7 Fernandez argues that Santos's claim for contribution is barred by the doctrine of
8 prudential standing because Santos is allegedly not "within the class of plaintiffs whom the
9 Guam Legislature authorized to sue to enforce proper government spending under 5 GCA §
10 7103," and that, even if he was, the claim would fail because Fernandez is no longer part of the
11 government of Guam. The Court does not find this compelling. First, Fernandez's argument for
12 prudential standing regarding Santos's ability to bring a claim under 5 GCA § 7103 is
13 immaterial for the reasons stated above. Second, Fernandez's departure from the government of
14 Guam does not render him immune to any actions alleged during his tenure as part of the
15 government. *See Hafer v. Melo*, 502 U.S. 21 (1991) (finding that former government officials
16 are not immune from lawsuits when sued for actions taken while in office).
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19 Accordingly, the Court will also **DENY** the Motion to Dismiss regarding this argument.

20 **VI. Whether Santos fails to state a claim upon which relief can be granted.**

21 Finally, Fernandez argues that Santos fails to state a claim upon which relief can be
22 granted because the Third-Party Complaint allegedly does not plead sufficient facts to support a
23 legally cognizable right to relief. However, the Third-Party Complaint alleges that Fernandez
24 had expenditure authority and that any liability assessed against Santos would be based on
25 Fernandez's independent decision-making. Pursuant to GRCP 12(b)(6), the Court must accept
26 these allegations as true at the pleading stage. Fernandez further argues that the type of
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1 contribution sought by Santos is not contained within 5 GCA § 32118 or 7 GCA § 24604, but
2 the Court does not find this argument compelling. No Guam statute expressly states that
3 contribution may be sought only under those statutes, or that contribution must be sought under
4 statute in all cases. Further, Fernandez asserts that Santos has no common law right of
5 contribution for the enforcement of proper government spending, but does not provide any
6 citation stating the limits of the common law right of contribution, or explain why Santos's
7 claim for contribution must necessarily be construed as one for enforcement of proper
8 government spending. To the contrary, the Court finds that has sufficiently pled notice of his
9 contribution claim, and will therefore **DENY** Fernandez's Motion to Dismiss in regards to the
10 contribution claim, and will therefore **DENY** Fernandez's Motion to Dismiss in regards to the
11 contribution claim.

12 **CONCLUSION**

13 Based on the foregoing, the Court hereby **DENIES** Fernandez's Motion to Dismiss.

14 **IT IS SO ORDERED** FEB 19 2025.

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18 **HONORABLE ARTHUR R. BARCINAS**
19 **Judge, Superior Court of Guam**