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SUPERIOR COURT
OF GUAM

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CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM By: 

BRYAN J. CRUZ,

Plaintiff,

Civil Case No. CV0262-25

vs.

DOUGLAS B. MOYLAN, in his official
capacity as the ATTORNEY GENERAL OF
THE OFFICE OF THE ATTORNEY
GENERAL OF GUAM,

Defendant.

**DECISION AND ORDER DENYING
DEFENDANT'S MOTION TO DISMISS**

INTRODUCTION

This matter came before the Honorable John C. Terlaje on December 16, 2025, for a Motion Hearing regarding Defendant's Motion to Dismiss. Attorney Jacqueline Terlaje appeared on behalf of Plaintiff Bryan J. Cruz. Attorney William Pole appeared on behalf of Defendant Douglas B. Moylan, in his official capacity as the Attorney General of Guam ("AG"). After reviewing the record, relevant law, and arguments from the parties, the Court **DENIES** the Motion to Dismiss.

BACKGROUND

Cruz filed his Complaint on April 17, 2025. The AG filed his Motion to Dismiss on June 11, 2025. Cruz filed his Opposition to the Motion to Dismiss on July 9, 2025. The AG filed his

1 reply on July 23, 2025. The Court heard oral arguments for the Motion to Dismiss on December
2 16, 2025.

3 STATEMENT OF FACTS

- 4 1. In his Complaint, Cruz alleges that on July 12, 2024, the AG distributed an office-wide
5 email to all employees of the Office of the Attorney General (“OAG”) disparaging
6 Assistant Alternate Public Defender Peter J. Santos, an opponent to the AG in the 2022
7 election. Compl. at 2 (Apr. 17, 2025).
- 8 2. Cruz alleges that multiple OAG accounts forwarded the same email to accounts outside
9 of the OAG system and that the AG is aware of this. *Id.*
- 10 3. Cruz alleges that he sought emergency leave on July 19, 2024, because his daughter was
11 admitted into a hospital in Germany. *Id.* The OAG allegedly denied this leave. *Id.*
12 Instead, Cruz was allegedly placed on “immediate suspension” on July 18, 2024, pending
13 a formal investigation by the AG. *Id.* at 3. Cruz was then allegedly placed on
14 “administrative leave” pending investigation on August 19, 2024. *Id.*
- 15 4. The AG issued a Notice of Proposed Adverse Action (“NPAA”) dated September 6,
16 2024, which was signed by Cruz on September 9, 2024. *Id.* Cruz submitted a written
17 response to the NPAA on September 16, 2024.
- 18 5. On September 17, 2024, Cruz was placed on “excused leave” pending investigation. *Id.*
19 The AG issued a Final Notice of Adverse Action (“FNAA”) on September 25, 2024. *Id.*
20 The FNAA terminated Cruz from the OAG. *Id.*
- 21 6. Cruz appealed the FNAA to the Guam Civil Service Commission (“CSC”) on October
22 15, 2025. *Id.* On March 25, 2025, the CSC ordered that Cruz “shall be immediately
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1 reinstated to his former position with accrued seniority, back pay and benefits.” *Id.* at 4,
2 Ex. 2.

- 3 7. The CSC ordered Cruz back to work at the OAG on or about April 1, 2025. Compl. at 4.
4 Cruz reported to duty at the Human Resources of the OAG on April 1, 2025. *Id.* at 5. On
5 April 1, 2025, the OAG did not reinstate Cruz to his former position and instead moved
6 Cruz from his former position in the Civil Division and General Crimes Division to the
7 Child Support Enforcement Division (“CSED”). *Id.* at 5. Cruz was also not reinstated to
8 his former position and title as an Investigator III, nor to his former supervisor. *Id.*
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10 8. Cruz carried a firearm in his former position as an Investigator III, but was not given
11 authorization to carry a firearm at his position in CSED. *Id.* Cruz alleges that all non-law
12 enforcement personnel at the OAG are authorized by the AG to carry concealed
13 department-issued firearms. *Id.* at 6. Cruz alleges that the AG directly refused to allow
14 Cruz to carry a firearm. *Id.*
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16 9. On April 12, 2025, the OAG failed and refused to pay Cruz his wages from April 1, 2025
17 through April 5, 2025. *Id.* On the same day, Cruz alleges he inquired about his backpay
18 and was informed that the OAG failed and refused to process his personnel action for his
19 reinstatement, so the OAG’s Department of Administration was unable to process payroll
20 for Cruz. *Id.*
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22 10. On April 16, 2025, the OAG appealed the CSC decision by a Petition for Writ of Judicial
23 Review and Declaratory Judgment. *See Off. of the Att’y Gen. v. Guam Civ. Serv.*
24 *Comm’n, et al*, SP0055-25 (Verified Pet. for Writ of Judicial Review and Declaratory J.
25 (Apr. 16, 2025)).
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1 11. At some point since this case was filed, Cruz has resigned. Cite to oral argument. Cruz
2 alleges that he is unsure if he has been fully compensated in accordance with the CLC
3 order. *Id.*

4 DISCUSSION

5 In his motion, the AG argues that Cruz's complaint is a Strategic Lawsuit Against Public
6 Participation ("SLAPP") filed to chill the AG's freedom of speech and should therefore be
7 dismissed as a frivolous lawsuit under the Guam Citizens Participation Act ("CPGA"). Mot. to
8 Dismiss at 7–13 (Jun. 11, 2025). The AG requested attorneys' fees and sanctions and contends
9 that these are not discretionary but mandated by the CPGA. *Id.* at 13. In his reply, the AG alleges,
10 in addition to the arguments made above, that Guam's Whistleblower Act does not apply to this
11 action. Reply to Opp. to CPGA Mot. to Dismiss at 5–8. The AG also alleges in the reply that Cruz
12 failed to allege missing wages or employee benefits. *Id.* at 6.

15 Cruz argues that the CPGA does not apply in this case. Cruz argues that the AG cannot
16 claim anti-SLAPP protections in his official capacity because the purpose of the CPGA is to protect
17 citizens participating in government. Opp. to Mot. to Dismiss at 3 (Jul. 9, 2025). Additionally,
18 Cruz argues that he did not base his complaint on the AG's petition. *Id.* Therefore, Cruz asserts
19 that attorneys' fees should not be awarded to the government because there is no legal basis for
20 awarding such fees. *Id.* During the oral argument, Cruz alleged that he is entitled to the wages he
21 had not yet been paid and five times that amount in damages. Mot. Hearing (Dec. 16, 2025).

24 The Court agrees with Cruz. The Court finds that Guam's Whistleblower Act does apply
25 to this lawsuit. The Court finds that Cruz sufficiently pled lost wages. The Court finds that the AG

1 did not sufficiently establish that Cruz's Complaint falls under the CPGA. And, thus, the Court
2 **DENIES** the AG's Motion to Dismiss.

3 **I. Guam's Whistleblower Act applies.**

4 In his reply, the AG asserts that the Guam Whistleblower Act does not apply to this case
5 because 5 G.C.A. §§ 37102–03 of the Act states that the Act only applies to “a person making a
6 false or fraudulent claim for payment, or for a whistleblower's reporting of underpayments of
7 taxes levied. . .” This is a fundamental misunderstanding of the statute and Cruz's complaint.
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9 Cruz's complaint is based on 5 G.C.A. § 37208, Relief from Retaliatory Actions. This
10 statute entitles

11 Any employee, contractor or agent . . . to all relief necessary to
12 make that employee, contractor, or agent whole, if that employee,
13 contractor, or agent is discharged, demoted, suspended, threatened,
14 harassed, or in any other manner discriminated against in the terms
15 and conditions of employment because of lawful acts done by the
16 employee, contractor, agent or associated others in furtherance of
an action under this section or other efforts to stop one (1) or more
violations of this Chapter.

17 In relevant part, liability under this chapter is given to

18 any person who knowingly makes, uses, or causes to be made or
19 used, a false record or statement material to a false or fraudulent
20 claim. . .

21 *Id.* at § 37102(a)(2).

22 Additionally, “[a] Rule 12(b)(6) motion tests the sufficiency of a claim.” *Navarro v. Block*,
23 250 F.3d 729, 732 (9th Cir. 2001). When reviewing a Rule 12(b)(6) motion, the Court must
24 “construe the pleading in the light most favorable to the non-moving party and resolve all doubts
25 in the non-moving party's favor.” *First Hawaiian Bank v. Manley*, 2007 Guam 2 ¶ 9 (citation
26 omitted). Dismissal is appropriate only when the non-moving party “can prove no set of facts in
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1 support of his claim which would entitle him to relief.” *Taitano v. Calvo Fin. Corp.*, 2008 Guam
2 12 ¶ 9 (quoting *Vasquez v. Los Angeles*, 487 F.3d 1246, 1249 (9th Cir. 2007)).

3 The Guam Whistleblower Act applies to this case. Here, Cruz alleges that he was
4 retaliated against for forwarding an email to Attorney Peter Santos containing the AG’s allegedly
5 false statement about Santos. The AG correctly identifies that Cruz cannot make a claim that the
6 AG made a false or fraudulent claim for payment or underpaid on his taxes. However, the
7 examples given by the AG are not the only violations of the Guam Whistleblower Act. *See* 5
8 G.C.A. §§ 37102–03. As stated above, a person can violate the Act by knowingly making a false
9 record or statement material to a false claim. *Id.* at § 37102(a)(2). Cruz’s allegations are that the
10 AG made a materially false statement about Santos and that when Cruz lawfully alerted Santos,
11 his employment was affected negatively. Whether these allegations are sufficient to make the
12 AG liable is yet to be determined, but they do not need to be to defeat a Motion to Dismiss.

15 Construing the pleadings in light most favorable to Cruz, the Court finds that Cruz has
16 proven a set of facts that would entitle him to relief under the Guam Whistleblower Act. *See*
17 *Taitano*, 2008 Guam 12 ¶ 9. Cruz has shown that AG could have knowingly made a false
18 statement that could be material to a false claim. Cruz has shown that the AG may have refused
19 to comply with the CSC’s order in retaliation for Cruz’s potentially lawful action of forwarding
20 an email to Santos. These facts fulfill the requirements necessary to receive relief under the
21 Guam Whistleblower Act. Therefore, the Court cannot dismiss the claim based on the alleged
22 inapplicability of the Guam Whistleblower Act.
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1 **II. Cruz sufficiently pled lost wages.**

2 The AG argues that Cruz has no remaining claims because Cruz has willingly resigned
3 from his position at the OAG. Cruz alleges both in his complaint and in oral argument that he has
4 not received all the wages owed to him for his employment. Additionally, Cruz asserted that he
5 is entitled to punitive damages in addition to lost wages.
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7 As stated earlier, dismissal under a Rule 12(b)(6) motion is appropriate only when the
8 non-moving party “can prove no set of facts in support of his claim which would entitle him to
9 relief.” *Taitano*, 2008 Guam 12 ¶ 9.

10 Cruz has sufficiently pled his claim for relief. In both the Complaint and in oral
11 argument, Cruz alleged that he lost wages and was never fully compensated for those lost wages
12 as a direct result of his email to Santos. The AG alleges that Cruz’s complaint is now insufficient
13 because he has resigned from his position. The fact that Cruz has resigned from his position at
14 the AG’s office does make his request for reinstatement moot, but it does not moot Cruz’s claims
15 for lost wages. Therefore, Cruz has shown that there is a set of facts that would entitle him to
16 relief. The Court cannot dismiss this claim on the basis that Cruz insufficiently pled lost wages.
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19 **III. The AG failed to establish a *prima facie* case that Cruz’s Complaint is barred by the**
20 **CPGA.**

21 In his motion, the AG asserts that the CPGA grants the AG anti-SLAPP protections. The
22 AG argues that to dismiss this lawsuit under the CPGA, Cruz must show that the complaint was
23 not “based on, relates to or is in response to” an act by the AG in furtherance of the AG’s rights
24 to petition by clear and convincing evidence. 7 GCA §§ 17105–06. The AG argues that the
25 OAG’s petition for judicial review qualifies as the AG’s right to petition under the CPGA. The
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1 AG further argues that government entities can invoke anti-SLAPP protections under California
2 law, which should be adopted in Guam. And the AG argues that Cruz's complaint is based on the
3 OAG's petition for judicial review in the CSC case because it was filed in response to the
4 petition for judicial review. The AG contends that Cruz cannot show by clear and convincing
5 evidence that this complaint is not based on the OAG's petition.
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7 Cruz responds that CPGA does not apply to this case because the AG acting in his
8 official capacity is not an entity protected by the CPGA, and Cruz's complaint is not based on
9 the Petition for Review. Cruz claims that the government is not a person as defined by the
10 CPGA. Cruz claims that the Petition for Review was not the basis for the Complaint because it
11 was not cited within the Complaint. Rather, Cruz points to the actions of the AG unrelated to the
12 OAG's Petition for Review.
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14 The Court agrees with Cruz that the Complaint is not based on the OAG's and AG's
15 protected activities. Thus, in this instance, whether the AG can be protected by the CPGA is
16 irrelevant because even if the AG's actions are protected by the CPGA, the AG failed to meet his
17 burden of proof.
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19 Under the First Amendment and the Organic Act, citizens are protected from government
20 intervention into their right to petition. U.S. Const. amend. I; 48 U.S.C. § 1421b(a). The CPGA
21 is designed to protect citizens against SLAPP lawsuits, which seek to limit a citizen's First
22 Amendment right to petition the court. *See* 7 G.C.A. § 17102. "SLAPPs are an abuse of the
23 judicial process; they are used to censor, chill, intimidate, or punish citizens ... for involving
24 themselves in public affairs" *Id.* § 17102(a)(6). "The CPGA 'applies to any motion to dispose
25 of a claim in a judicial proceeding on the grounds that the claim is based on, relates to or is in
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1 response to any act of the moving party in furtherance of the moving party's rights [to
2 petition].” *Joe & Flo’s, Inc. v. Gutierrez*, 2020 Guam 21 ¶ 9 (quoting 7 G.C.A. § 17105). The
3 right to petition includes “seeking relief, influencing action, informing, communicating and
4 otherwise participating in the processes of government.” 7 G.C.A. § 17104.

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6 Initially, the anti-SLAPP movant has the burden “[t]o establish a *prima facie* case
7 consistent with the petitioning provision, the movant must show that the petitioning or protected
8 activity ‘itself is the wrong complained of.’” *Cho v. Alupang Ceach Club, Inc.*, 2020 Guam 10 ¶
9 8 (quoting *Mission Beverage Co. v. Pabst Brewing Co.*, 223 Cal. Rptr. 3d 547, 557 (Ct. App.
10 2017)). “The pleadings and affidavits must have ‘no substantial basis other than or in addition to
11 the petitioning activities.’” *Id.* (quoting *Duracraft Corp. v. Holmes Prods. Corp.*, 691 N.E.2d
12 935, 943 (Mass. 1998)). After the movant establishes the *prima facie* case, the burden shifts to
13 “the opposing party [to] demonstrate by clear and convincing evidence that the movant’s acts are
14 not immunized by the CPGA.” *Enriquez v. Smith*, 2015 Guam 29 ¶ 12.

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16 Here, the AG has failed to make a *prima facie* case because the Complaint is not based on
17 the OAG’s decision to petition for judicial review. The AG alleges that Cruz’s Complaint is
18 based on the OAG’s decision to petition for judicial review of the CSC’s decision because Cruz
19 filed this Complaint the day after the OAG filed for petition for judicial review. However, the
20 Complaint does not reference the OAG’s decision to petition for judicial review. And if the OAG
21 had not decided to petition for judicial review, the facts of the Complaint would still be sufficient
22 to withstand a motion to dismiss. Cruz relies on the fact that he was not paid the wages he was
23 due and was not reinstated to his former position once he returned to work per the CSC’s order.
24 The Court, as stated earlier, finds these facts sufficient to overcome a motion to dismiss. Thus,
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1 the AG has not established a *prima facie* case that the Complaint has a “no substantial basis other
2 than or in addition to the petitioning activities.” *Cho*, 2020 Guam 10 ¶ 8.

3 **CONCLUSION**

4 Therefore, the Court **DENIES** Douglas B. Moylan’s Motion to Dismiss.

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6 **SO ORDERED**, this 3/12/26.

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10 **HONORABLE JOHN C. TERLAJE**
11 **Judge, Superior Court of Guam**
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