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SUPERIOR COURT  
OF GUAM

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CLERK OF COURT

By: 

IN THE SUPERIOR COURT OF GUAM

CONRADO G. CABRERA JR., ) CIVIL CASE NO. CV1314-19

Plaintiff, )

vs. )

ROBERTO LABANZA and ) DECISION AND ORDER  
DOES I through X, ) RE. DEFENDANT'S MOTION TO  
Defendants. ) DISMISS

INTRODUCTION

This matter came before the Honorable Maria T. Cenzon upon submission of Defendant Roberto Labanza's ("Labanza" or "Defendant") Motion to Dismiss (the "Motion") submitted on August 7, 2025. Defendant is represented by Attorney William B. Pole. Plaintiff Conrado G. Cabrera Jr. ("Cabrera" or "Plaintiff") is represented by Attorney Mark E. Williams. Cabrera did not file an Opposition to Labanza's Motion. The Court took the Motion under advisement pursuant to CVR 7.1(e)(6)(E) of the LOCAL RULES OF THE SUPERIOR COURT OF GUAM on October 27, 2025.

After reviewing and considering the Defendant's Motion, the applicable law and the file herein, the Court issues its Decision and Order **GRANTING** Defendant's Motion to Dismiss.

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## **PROCEDURAL AND FACTUAL BACKGROUND**

This matter originally arose out of an incident that is alleged to have occurred on November 23, 2017, behind Fargo Pacific Compound in Harmon, Guam, as described in the Verified Complaint filed by Plaintiff. *See Verified Compl. For Assault and Battery; Demand for Jury Trial* (Nov. 19, 2019). While at a company Thanksgiving party, Labanza allegedly shoved Cabrera over a chair, causing Cabrera to fall to the ground and strike a gas stove. *Id.* Labanza then allegedly grabbed and struck the Plaintiff before being restrained by workers nearby. *Id.* Cabrera claims that, as a result of the injuries and harm sustained from the incident, he suffered damages in the amount of \$50,000.00, and demanded a trial before a jury of six (6) members. *Id.*

On January 21, 2020, Labanza filed a Motion to Dismiss on lack of subject-matter jurisdiction grounds and summary judgment grounds. *See Mot. to Dismiss* (Jan. 21, 202). The Court denied Labanza’s Motion to Dismiss on October 5, 2020. *See Decision and Order* (Oct. 5, 2020). Subsequently, Labanza filed his Answer and Demand for Jury of Six on October 13, 2020. *See Answer and Demand for Jury of Six* (Oct. 13, 2020). On December 15, 2020, Defendant filed a Motion for Reconsideration of the Court’s decision denying the Motion to Dismiss, which was opposed by the Plaintiff on November 9, 2020. *Motion for Reconsideration* (Oct. 15, 2020); *Opposition to Mot. for Reconsideration* (Nov. 9, 2020). The Court determined that oral argument on the Defendant’s motion was unnecessary and took the matter under advisement. On March 9, 2021, the Court issued its Decision and Order Denying Defendant’s Motion to Reconsider. *Decision and Order* (Mar. 9, 2021).

The matter was set for a Jury Trial on March 21, 2022, with a Pre-Trial Conference scheduled for November 9, 2021. *CVR 16.1 Form 2* (Sept. 27, 2021). By the Pre-Trial Conference on November 9, 2021, the parties' trial briefs, witness lists, and exhibit lists were

1 filed with the Court, and trial was scheduled commence on March 21, 2022.<sup>1</sup> However, trial was  
2 continued upon the filing of the parties' Stipulation and Order request to reschedule trial dates  
3 due to plaintiff counsel travel for a family emergency. *See Stip. And Order* (Feb. 24, 2022).

4  
5 On February 15, 2023, Cabrera requested for a status conference to set trial dates. *See*  
6 *Plaintiff's Request* (Feb. 15, 2023). The Court issued its Order to Submit Proposed Dates for  
7 Bench Trial or Request Transfer of Case on April 27, 2023, noting that the matter is postured for  
8 trial as all parties have submitted their witness lists, exhibit lists, and trial briefs and was  
9 continued at the parties' behest. *See Order* (Apr. 27, 2023). The Court ordered the parties to  
10 submit trial dates for the period between June 2023, and December 2023, for a 1–2-day bench  
11 trial. *Id.* Alternatively, the parties could request that the matter be transferred to Judge John C.  
12 Terlaje, who was installed as the newest judge and whose docket was primarily non-criminal. *Id.*  
13 Submission of trial dates or a request for case transfer was due on or before May 12, 2023. *Id.*  
14 No trial dates were submitted; however, on January 16, 2024, Cabrera filed another request for a  
15 status conference, ignoring the Court's Order. *See Plaintiff's Request* (Jan. 16, 2024). Despite  
16 the failure to comply with the Court's April 27, 2023, Order, the Court set a Status Hearing for  
17 February 28, 2024, which was subsequently cancelled due to asserted felony trials scheduled for  
18 the time period of the Status Hearing.<sup>2</sup>

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22 At no time did the Plaintiff respond to the Court's Order of April 27, 2023, providing  
23 dates for trial or requesting that the matter be transferred to Judge Terlaje. Through the date of  
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27 <sup>1</sup> Cabrera's witness list and trial brief were filed on November 3, 2021, and his exhibit list was filed on November  
28 8, 2021. Labanza's witness and exhibit lists were filed on November 8, 2021, and his trial brief was filed on  
November 9, 2021.

<sup>2</sup> CF0134-22 was an asserted matter scheduled to go to trial on the date of the Status Hearings. Another asserted  
trial, CF0029-24, was scheduled to go to trial on February 28, 2024. As such, the February 28, 2024, Status Hearing  
was cancelled.

the issuance of this Decision and Order, the Plaintiff has not advanced his claims against the Defendant, nor provided the Court with proposed dates for trial.

Labanza filed the instant Motion on August 7, 2025, requesting that the case be dismissed due to Cabrera's failure to prosecute and move the case forward. *See Mot.* at 3. Pursuant to CVR 7.1(b) and (d)(1)-(3) and the briefing schedule, Cabrera's opposition brief was due on September 4, 2025, but Cabrera failed to file any responsive brief within the time ordered in the briefing schedule. *See CVR 7.1 FORM 1 (Aug. 7, 2025)*. Labanza filed his Declaration of Service on September 3, 2025, indicating that the Motion was served onto plaintiff counsel via email. *See Decl. of Service via Email (Sep. 3, 2025)*. The Court took the matter under advisement without oral argument. No opposition or other responsive brief has ever been filed by the Plaintiff.

## DISCUSSION

Rule 41(b) of Guam Rules of Civil Procedure (“GRCP”) reads, in pertinent part, as follows:

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

GRCP 41(b). The Court analyzes a GRCP 41(b) motion to dismiss for failure to prosecute under the Ninth Circuit's five-factor test from *In re Eisen*, 31 F. 3d 1447 (9th Cir. 1995), as adopted by the Guam Supreme Court in *Santos v. Carney*, 1997 Guam 4, and *Lujan v. McCreadie*, 2014 Guam 19:

- (1) the public's interest in expeditious resolution of litigation;
- (2) the court's need to manage its docket;
- (3) the risk of prejudice to the defendants;
- (4) the public policy favoring the disposition of cases on their merits; and
- (5) the availability of less drastic sanctions

1 *Lujan*, 2014 Guam 19 ¶ 6. In passing on a motion for dismissal under these circumstances, the  
2 Supreme Court of Guam has ruled that “[d]ismissal is appropriate if at least four factors favor  
3 dismissal or three factors ‘strongly’ support dismissal.” *Park v. Kawashima*, 2010 Guam 10 ¶ 10  
4 (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). The Court shall analyze  
5 these factors under these particular circumstances.

7 **1. The public’s interest in expeditious resolution of litigation and the court’s needs  
8 to manage its docket warrants dismissal of the action.**

9 “The docket management factor is ordinarily considered in conjunction with the public’s  
10 interest in the expeditious resolution of litigation in determining whether there was an  
11 unreasonable delay.” *Santos*, 1997 Guam 4 ¶ 7 (citing *In re Eisen*, 31 F.3d at 1452). In  
12 determining whether the delay was unreasonable, the Court must “tak[e] into consideration the  
13 length of and reasons for the delay.” *Lujan*, 2014 Guam 19 ¶ 8. “The Plaintiff bears the burden  
14 of showing that the delay is reasonable and that the defendant is not prejudiced by the delay. If  
15 there is a reasonable excuse for the inaction, then the burden shifts to the defendant who must  
16 then demonstrate prejudice.” *Santos*, 1997 Guam 4 ¶ 5 (citing *Franklin v. Murphy*, 745 F.2d  
17 1221, 1232 (9th Cir.1984)). Ultimately, it is recognized that “[t]rial courts ‘have an inherent  
18 power to control their dockets. In the exercises of that power they may impose sanctions  
19 including, where appropriate, default or dismissal.’” *Gov’t of Guam v. O’Keefe on behalf of Heirs  
20 of Torres Est.*, 2018 Guam 4 (quoting *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460  
21 F.3d 1217, 1226 (9th Cir. 2006)).

22 By failing to comply with the Court’s April Order or submit to the Court any good cause  
23 for the delay in prosecution, Cabrera has not carried his burden of showing that the delay is  
24 reasonable. Neither does any evidence indicate an intent by Cabrera to resolve this matter in the  
25 near future. *In re Eisen*, 31 F.3d at 1452. Cabrera requested a status conference on February 15,

1 2023, nearly a year after the trial was continued. The Court had previously determined that the  
2 matter was postured for trial, and thus ordered the parties to submit trial dates or, alternatively,  
3 request transfer of the matter to a different judge. *See Order* (Apr. 27, 2023). The Plaintiff – who  
4 has the burden of moving forward with prosecuting his claims – failed to submit any trial dates  
5 by the May 12, 2023, deadline, or at any time, for that matter. Despite having been served with  
6 Defendant’s Notice of Motion and Motion to Dismiss,<sup>3</sup> Cabrera failed to file a responsive brief,  
7 even upon the Court’s issuance of CVR 7.1 Form 3 Notice of Hearing or Submission on Brief  
8 whereupon the Court placed the matter under advisement. *See CVR Form 3* (parties served via  
9 email on Oct. 27, 2025) (Oct. 27, 2025). Without more on the record, the Court finds the  
10 Plaintiff’s delay to be unreasonable. The continued stay of this idle claim two (2) years later since  
11 his last action of requesting a status conference, and his failure to submit proposed trial dates  
12 pursuant to this Court’s order, neither advances the public interest of the expeditious resolution  
13 of litigation nor allows the Court to effectively manage its docket. Thus, consideration of these  
14 factors weighs in favor of dismissal.

15 **2. Cabrera has failed to rebut the presumption of prejudice.**

16 “Our case law makes clear that ‘once a delay is determined to be unreasonable, prejudice  
17 ... is presumed.’” *Guam Dep’t of Educ. V. Guam Civil Serv. Comm’n*, 2017 Guam 8 (citing  
18 *Kawashima*, 2010 Guam 10 ¶ 21). This presumption is rebuttable upon a showing that the delay  
19 was excusable and that the opposing party is not prejudiced. *O’Keefe*, 2018 Guam 4 ¶ 34 (“This  
20 presumption, however, is rebuttable, if the Government can show the delay was excusable and  
21 that the Estate was not prejudiced by the delay”).

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28 <sup>3</sup> Decl. of Service Via Email (Sep. 3, 2025).

1       Because Cabrera's delay has been found to be unreasonable, prejudice toward Labanza  
2 is presumed. Cabrera has failed to appear or offer any rebuttal to this presumption of prejudice;  
3 therefore, this factor weighs in favor of dismissal.  
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5       **3. The public policy favoring the disposition of cases on their merits does not justify  
6 the delay and prejudice caused by Cabrera's conduct.**

7       “Generally, public policy favors the disposition of cases on their merits and disfavors the  
8 dismissal of cases prematurely.” *Lujan*, 2014 Guam 19 ¶ 21 (citing *Santos*, 1997 Guam 4 ¶ 9).  
9       “Although public policy always favors a resolution of cases on their merits, and this factor  
10 generally weighs in favor of the plaintiff, ‘it must be weighed against the first two factors, the  
11 expeditious resolution of litigation and the court’s need to manage its docket.’” *Park*, 2010 Guam  
12 10 ¶ 22 (quoting *In re Estate of Concepcion v. Siguenza*, 2003 Guam 12 ¶ 23). “The question is  
13 whether the policy of determining cases on their merits justifies the delay and prejudice caused .  
14       . . .” *Id.*

15       Cabrera’s substantive inaction in this matter has delayed proceedings from moving  
16 forward. As a result of the delay, Labanza is presumed to suffer prejudice. While public policy  
17 favors disposition of the case on its merits, “[i]t is sufficient to demonstrate the plaintiff has  
18 ‘ignored his responsibilities to the court in prosecuting the action and the defendant has suffered  
19 prejudice as a result thereof.’” *Santos*, 1997 Guam 4 ¶ 9 (quoting *Anderson v. Air West, Inc.*, 542  
20 F.2d 522, 526 (9th Cir. 1976)). Further, “[t]he public policy of determining cases on their merits  
21 should not be used defensively as a shield by a passive Plaintiff who has failed in his obligation  
22 to prosecute the defendants with the vigor expected of a plaintiff.” *Id.* By failing to respond to  
23 the Motion, Cabrera has failed to show how this factor outweighs the first factors of reaching an  
24 expeditious resolution to this litigation and the Court’s need to manage its docket. Accordingly,  
25 the factors also weigh in favor of dismissal.  
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1           **4. The availability of less drastic sanctions does not justify continuing to hold**  
2           **Labanza hostage.**

3           “[I]t is not a per se abuse of discretion for a trial judge to dismiss an action due to a party’s  
4           failure to prosecute without issuing advance warnings or less sanctions.” *Santos*, 1997 Guam 4 ¶  
5           10. The court is not “required to examine every single alternate remedy in deciding if sanction  
6           of dismissal is appropriate.” *Park*, 2010 Guam 10 ¶ 24. “[T]he reasonable exploration of possible  
7           and meaningful alternatives is all that is required.” *Id.* (quoting *Anderson*, 542, F.2d at 525). “The  
8           trial court is not required to impose lesser sanctions, when the rules do not so provide, and when  
9           to do so would encourage neglect and noncompliance with the Guam Rules of Civil Procedure.”  
10           *Santos*, 1997 Guam 4 ¶10.

11           As already discussed, this matter has been postured for trial but has been dormant due to  
12           Cabrera’s inaction in this matter, including wholesale disregard for this Court’s Order. While  
13           imposing warnings or monetary sanctions upon Cabrera in hopes of awakening their dormant  
14           claim could be a less drastic sanction available to the Court, the Court also deems those  
15           alternatives to be inadequate under these particular circumstances, where notice has already been  
16           given to Plaintiff of the risk of dismissal.

17           The filing of Labanza’s Motion to Dismiss for failure to prosecute should have alerted  
18           Cabrera and, at a minimum, given Cabrera adequate notice that his claim was in danger of being  
19           dismissed. Additionally, upon the Court’s filing of CVR 7.1 Form 3 notifying the parties of the  
20           Court taking the matter under advisement, this notice gave Cabrera adequate notice of the risk of  
21           dismissal in this matter. Yet, Cabrera has not filed his Opposition to the Motion. Thus, this factor  
22           weighs in favor of dismissal.

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## **CONCLUSION**

For the reasons set forth herein, the Court specifically finding that all the factors required under *Santos* weigh in favor of dismissing Cabrera's claim for failure to prosecute, the Court **GRANTS** Labanza's Motion to Dismiss. Pursuant to Rule 41(b) of the GRCP, this dismissal operates as an adjudication upon the merits; therefore, this case is **DISMISSED WITH PREJUDICE**.

SO ORDERED this 23<sup>rd</sup> day of January, 2026.

**HONORABLE MARIA T. CENZON**  
Judge, Superior Court of Guam