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SUPERIOR COURT
OF GUAM

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CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM

By: _____

OFFICE OF THE ATTORNEY GENERAL,

Petitioner,

.v.

THE GUAM CIVIL SERVICE
COMMISSION,

Respondent,

VIVIAN NISPEROS,

Real Party In
Interest.

SPECIAL PROCEEDINGS NO. SP0101-24

DECISION AND ORDER

INTRODUCTION

This case turns on a narrow question: Does Real Party in Interest Vivian Nisperos's ("Nisperos") Counterclaim—seeking enforcement of a final Civil Service Commission reinstatement order—withstand the Office of the Attorney General's ("OAG") latest attempt to dismiss it? The OAG argues no. It contends that the Counterclaim fails as a matter of law under Rule 12(b)(6), that the dispute is moot because Nisperos allegedly did not return to work, that the exhaustion-of-remedies doctrine bars judicial review entirely, and there is no genuine issue of material fact. But the statutes, structure, and posture of this case say otherwise. The Counterclaim does not ask the Court to resolve a new employment dispute—it seeks to enforce a binding, final CSC judgment that remains unimplemented. And when a party alleges ongoing

1 noncompliance with an agency order that carries continuing legal consequences, the claim is
2 neither moot nor jurisdictionally barred.

3 So the question before the Court is focused: Does Nisperos allege a continuing,
4 enforceable controversy arising from the OAG's failure to implement the CSC's reinstatement
5 order? For the reasons explained below, she does. The Court therefore denies the OAG's Motion
6 to Dismiss.
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8 **BACKGROUND**

9 Nisperos worked as a classified employee with the OAG for over thirty years. On
10 September 11, 2023, she submitted a Notice of Intent to retire and requested to exhaust her
11 accrued leave before retirement. *See*, Mot. to Dismiss, (Nov. 14, 2024). Two days later, the OAG
12 issued a Letter of Resignation, treating her notice as an immediate resignation effective
13 September 15, 2023. *Id.*
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15 Nisperos disputed that classification and filed a Notice of Appeal of Termination with the
16 Guam Civil Service Commission ("Commission") on September 27, 2023. *Id.* After hearings on
17 April 30, May 8, and May 21, 2024, the Commission voted 3–1 in her favor, finding that her
18 separation was an adverse action taken without due process. *See*, Decision & Judgment, Adverse
19 Action Appeal Case No. 23-AA08T, (June 25, 2024). The Commission ordered Nisperos
20 immediate reinstatement with full back pay, benefits, seniority, and reasonable attorney's fees
21 and costs. *Id.*
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23 The OAG filed a Verified Petition for Writ of Judicial Review and Declaratory Judgment
24 on July 24, 2024, contesting the Commission's ruling. Nisperos filed her Answer and
25 Counterclaim for Declaratory Judgment on September 16, 2024, alleging that the OAG failed to
26 comply with Title 4 GCA § 4406 by refusing to reinstate her and by neglecting to impose the
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1 mandatory ten-percent salary reduction on responsible officials. *See*, Real Party in Interest's
2 Verified Answer & Counterclaim, (Sept. 16, 2024).

3 The OAG moved to dismiss the Counterclaim in November 2024 for lack of case or
4 controversy. The Court denied that motion on May 9, 2025, holding that a substantial and
5 immediate controversy existed over the OAG's compliance with § 4406. *See*, Decision & Order,
6 (May 9, 2025). On August 6, 2025, the OAG filed this second motion to dismiss, again arguing
7 that the Counterclaim is moot and jurisdictionally barred. Nisperos opposed on September 2,
8 2025, and the OAG replied on September 17, 2025. *See*, Petitioner's Reply to Opp'n to Mot. to
9 Dismiss Counterclaim, (Sept. 17, 2025).

11 DISCUSSION

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13 To resolve the OAG's Second Motion to Dismiss, the Court addresses four issues. First,
14 it considers whether Nisperos's Counterclaim states a claim for relief. Second, it examines
15 whether the controversy has become moot based on the OAG's assertion that Nisperos's alleged
16 failure to return to work extinguished any live dispute. Third, it determines whether the
17 Counterclaim is barred by the exhaustion-of-remedies doctrine. Fourth, the Court considers
18 whether genuine issues of material fact remain that preclude dismissal or summary resolution at
19 this stage. For the reasons explained below, the Court concludes that the Counterclaim states a
20 viable claim, presents a live controversy, is properly before the Court, and cannot be resolved as
21 a matter of law. The motion is therefore denied.
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23 24 I. The Counterclaim States a Claim for Relief.

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26 Dismissal under GRCP Rule 12(b)(6) is warranted only when it is clear that the plaintiff
27 can prove no set of facts in support of the claim. *Taitano v. Calvo Finance Corp.*, 2009 Guam 9 ¶
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1 6; *Ukau v. Wang*, 2016 Guam 26 ¶ 33. Courts must construe the pleadings liberally, draw all
2 inferences in the plaintiff's favor, and accept the factual allegations as true. *Core Tech Int'l*
3 *Corp. v. Hanil Eng. & Constr. Co.*, 2010 Guam 13 ¶ 29.

4 The OAG contends that the Counterclaim fails to state any claim for relief because
5 Nisperos did not return to work after the Commission's reinstatement order, rendering the
6 dispute moot. *See*, Mot. to Dis. Counterclaim (Aug. 6, 2025). But at this stage, the Court's task is
7 not to weigh evidence; it is to determine whether the Counterclaim alleges a live controversy.
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9 It does. The pleading asserts that the OAG refused to comply with a binding Commission
10 decision ordering Nisperos's reinstatement and back pay. Those allegations, taken as true, create
11 a claim for declaratory relief. Because factual disputes remain over the OAG's compliance with
12 the CSC's order, dismissal is unwarranted.
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14 **II. The Controversy Remains Live and Is Not Moot.**

15 A claim becomes moot only when the issues are no longer live or the court cannot grant
16 effective relief. *Linsangan v. Gov't of Guam*, 2020 Guam 27 ¶ 30. The OAG argues that the
17 matter is moot because Nisperos's failure to report to work after reinstatement demonstrates
18 voluntary resignation. *Id.* at 4–5.
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20 That argument stretches mootness beyond its limits. The live dispute here is whether the
21 OAG complied with the Civil Service Commission's reinstatement order—a question that has
22 ongoing legal consequences. Even if Nisperos ultimately elected not to resume work, that does
23 not automatically extinguish her right to reinstatement benefits or the statutory duties imposed by
24 § 4406. The OAG's claim that her "inaction" amounted to resignation raises a factual issue, not a
25 jurisdictional bar. Because the Court can still grant meaningful relief—clarifying the parties'
26 respective rights and enforcing the CSC's judgment—the controversy is not moot.
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1 **III. Nisperos's Counterclaim Seeks Enforcement of the CSC's Decision and**
2 **Judgment.**

3 Generally, there is a universal principle that one must exhaust administrative remedies
4 before pursuing it. *Limtiaco v. Guam Fire Dept.*, 2007 Guam 10 ¶ 27. Review will not be granted
5 where the petitioner has failed to pursue the administrative remedies available to him. *Id.* When
6 an administrative remedy has been provided by statute, this remedy must be exhausted before the
7 courts will act. *Id.*

8 The OAG argues that the CSC and this Court lack jurisdiction because Nisperos failed to
9 exhaust her administrative remedies and her separation from employment was a voluntary
10 resignation, not an adverse action. *Id.* at 6. The OAG contends that Nisperos's "Notice of Intent"
11 letter, dated September 11, 2023, constituted a voluntary resignation under Rule 13.002 of the
12 Department of Administration Personnel Rules and Regulations, which permits classified
13 employees to resign by giving written notice to the appointing authority. *Id.* at 7. According to
14 the OAG, because Nisperos was not subjected to any disciplinary or adverse action as defined
15 under Rule 11.302, she could not properly invoke CSC jurisdiction, which extends only to cases
16 involving dismissals, suspensions, or demotions. *Id.* The OAG maintains that by erroneously
17 treating Nisperos's resignation as a termination, the CSC exceeded its statutory authority in
18 ordering her reinstatement. *Id.* Furthermore, the OAG asserts that Nisperos's failure to complete
19 the five-step grievance process under Chapter 12 of the Personnel Rules bars her from seeking
20 judicial or administrative relief. *Id.* Thus, the OAG contends that both the CSC and this Court
21 lack subject matter jurisdiction, and the Counterclaim should be dismissed. *Id.*

22 The Court finds that dismissal on exhaustion grounds is unwarranted. Nisperos's
23 Counterclaim does not seek to initiate a new administrative action but rather to enforce the Civil
24 Service Commission's Decision and Judgment ordering her reinstatement. The exhaustion
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1 doctrine applies only where a party has an available administrative remedy that must be pursued
2 before seeking judicial intervention. Here, no such remedy existed. Once the CSC issued its final
3 decision reinstating Nisperos, the administrative process was complete, and the appropriate
4 forum for enforcing that decision was the Superior Court of Guam. The OAG's assertion that
5 Nisperos voluntarily resigned is a factual dispute—not a procedural deficiency that divests
6 jurisdiction. Because Nisperos is seeking enforcement of an existing final agency judgment, not
7 a review of an unexhausted claim, the doctrine of exhaustion does not bar the Court from
8 exercising jurisdiction over her Counterclaim.
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10 **IV. Genuine Issues of Material Fact Preclude Dismissal.**

11 Summary judgment is appropriate only when there is no genuine dispute as to any
12 material fact and the moving party is entitled to judgment as a matter of law. *Bank of Guam v.*
13 *Flores*, 2004 Guam 25 ¶ 8. A dispute is “genuine” when the evidence would permit a reasonable
14 factfinder to resolve the issue in favor of either party. *Gayle v. Hemlani*, 2000 Guam 25 ¶ 20.
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16 The OAG's position depends on accepting its version of disputed facts—namely, that
17 Nisperos voluntarily refused to return to work, that the CSC misunderstood her intent, and that
18 her post-decision conduct extinguished any obligation to reinstate her. But Nisperos alleges the
19 opposite: that the OAG failed to implement the CSC's reinstatement order and failed to comply
20 with the statutory consequences mandated by Title 4 GCA § 4406. Those competing accounts go
21 to the heart of whether the OAG complied with a final agency judgment.
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23 That dispute is material. If the CSC's order was not implemented as required, then the
24 Counterclaim presents a live enforcement controversy. If it was fully implemented, the OAG
25 may ultimately prevail. But resolving that question requires factual development—not dismissal.
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1 Nor does the OAG's reliance on Nisperos's alleged intent to retire eliminate the factual
2 dispute. Whether her notice constituted a voluntary resignation and whether the OAG's post-
3 decision conduct complied with statutory and administrative mandates are all contested issues
4 that cannot be resolved on the pleadings. Disagreement over these facts is not peripheral—it is
5 dispositive.

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7 Because genuine issues of material fact remain as to the OAG's compliance with the
8 CSC's Decision and Judgment, dismissal or summary resolution is inappropriate. The
9 Counterclaim survives.

10 **CONCLUSION**

11 Based on the foregoing reasons the Court DENIES Petitioner's Motion to Dismiss
12 Counterclaim.

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15 **SO ORDERED** JAN 12 2026

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HONORABLE ARTHUR R. BARCINAS
Judge, Superior Court of Guam

SERVICE VIA EMAIL

I acknowledge that an electronic
copy of the original was e-mailed to:

AG's, JACQUELINE
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Edna M. Neaga
Deputy Clerk, Superior Court of Guam