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By order of the Court, Judge Pro Tempore Alberto E. Tolentino

**IN THE SUPERIOR COURT  
 FOR THE  
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**EDWARD MANIBUSAN, in his official  
 capacity as Attorney General of the  
 Commonwealth of the Northern Mariana  
 Islands,**

Plaintiff,

v.

**ROBERT A. GUERRERO,**

Defendant.

**CIVIL CASE NO. 22-0010**

**ORDER DENYING  
 MOTION TO DISMISS**

**I. INTRODUCTION**

**BEFORE THIS COURT** is Defendant Robert A. Guerrero’s (“Defendant”) Motion to Dismiss Plaintiff Edward Manibusan’s (“Plaintiff”) Complaint. On April 26, 2022, the Court notified the parties that it would rule on the Motion to Dismiss without a hearing pursuant to NMI R. Civ. P. 7(b)(7) and NMI R. Civ. P. 78(b). Neither party objected. Based upon a review of the filings and relevant law, the Motion to Dismiss is **DENIED.**

**II. BACKGROUND**

The Complaint alleges that Defendant Robert A. Guerrero, who has served as Commissioner of the Department of Public Safety (“DPS”) since January 2016, received excessive compensation in the form of “typhoon emergency premium compensation, overtime, or extra pay” for work performed during Super Typhoon Yutu and its aftermath. Compl. ¶¶ 8, 16-19, 76-78, 81-83.

1 Specifically, the Complaint alleges that Defendant received \$46,892.96 in excess of  
2 his base annual salary of \$54,000.00 due to receiving typhoon emergency premium pay at a  
3 rate of 2.5 times his base salary in Fiscal Years 2019 and 2020.<sup>1</sup> *Id.* ¶¶ 18-19, 71-73, 81-  
4 82. It is alleged that Defendant, as a gubernatorial appointee exempted from the civil  
5 service system and not subject to the excepted service personnel regulations, was not  
6 entitled to any typhoon emergency premium pay, overtime, or extra payment. *Id.* ¶¶ 36-38,  
7 73.

8 Plaintiff thus asks the Court to declare that no Commonwealth law provides for  
9 typhoon emergency premium pay, overtime, or extra payment to gubernatorial appointees  
10 such as Defendant; that the Director of Personnel and Governor lack the authority to  
11 authorize additional compensation except as provided by law; and that compensation in  
12 excess of the salary ceiling cannot be authorized except as provided by law. *Id.* ¶ 85.  
13 Plaintiff also seeks to recover the \$46,892.96 paid to Defendant in excess of his base salary  
14 in Fiscal Years 2019 and 2020. *Id.*

15 Defendant filed a Motion to Dismiss Plaintiff's Complaint on April 4, 2022.  
16 Plaintiff filed an Opposition on May 6, 2022. Defendant filed a Reply on May 16, 2022.

### 17 III. LEGAL STANDARD

18 The failure to file a complaint within the statute of limitations period is sufficient to  
19 support a Rule 12(b)(6) dismissal. *Zhang Gui Juan v. Commonwealth of the N. Mariana*  
20 *Islands*, 2001 MP 18 ¶ 11 (abrogated in part on other grounds by *Artis v. District of*  
21 *Columbia*, 138 S. Ct. 594 (2018)). The statute of limitations defense must be apparent  
22 from the face of the complaint, but a court may take judicial notice of matters of public  
23 record. *Id.*

### 24 IV. DISCUSSION

#### 25 A. Summary of the Parties' Positions

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<sup>1</sup> November 26, 2018, is alleged to be the date of the first payment made to Defendant in excess of his base annual salary. Compl. ¶ 17. November 11, 2019, is alleged to be the date of the last payment made to Defendant in excess of his base annual salary. *Id.*

1 Defendant, in his Motion to Dismiss, argues that 7 CMC § 2503(b) bars this action.  
2 Mot. at 4. 7 CMC § 2503(b) provides a two-year statute of limitations for “[a]ctions  
3 against the Director of Public Safety, a police officer or other person duly authorized to  
4 serve process, for any act or omission in connection with the performance of official  
5 duties.” 7 CMC § 2503(b). Defendant argues that his receipt of the alleged “emergency  
6 pay” overpayments was “in connection with the performance of [his] official duties”  
7 because the emergency pay was derived from his work as Commissioner of Public Safety  
8 (a position identical to that of Director of Public Safety), and therefore the two-year statute  
9 of limitations in 7 CMC § 2503(b) applies. Mot. at 5-6. Defendant essentially asks this  
10 Court to interpret the phrase “in connection with” broadly.

11 Plaintiff, in his opposition, argues that Defendant’s receipt of his statutorily-  
12 authorized compensation is merely incidental to his position as Commissioner and too  
13 tenuously related to “the performance of [his] official duties.” Opp. at 2-3. In support,  
14 Plaintiff enumerates the various duties and responsibilities of the Department of Public  
15 Safety, noting that receiving compensation is not one of these enumerated duties. *Id.* at 3  
16 n.2 (duties of DPS include “provid[ing] effective police protection,” “enforc[ing] traffic  
17 laws and regulations,” “safeguard[ing] public property and buildings,” etc.). Plaintiff  
18 argues that the six-year statute of limitations provided in 7 CMC § 2505 should apply. *See*  
19 7 CMC § 2505 (“All actions other than those covered in 7 CMC §§ 2502, 2503, and 2504  
20 shall be commenced within six years after the cause of action accrues . . .”).

### 21 **B. Tenets of Statutory Construction**

22 When engaging in statutory construction, the court’s “principal responsibility . . . is  
23 to discern and give effect to the intent of the legislature.” *In re Commonwealth of the N.*  
24 *Mariana Islands*, 2018 MP 8 ¶ 25 (citing *In re Commonwealth*, 2015 MP 7 ¶ 11). “To  
25 ascertain the legislature’s intent, we first look to the plain language of the statute.” *Id.* “If  
26 the statute contains an undefined term, the term is given its ordinary meaning.” *Id.*; *see*  
27 *also Commonwealth of the N. Mariana Islands v. Saburo*, 2002 MP 3 ¶ 12.

1 Further, “one statutory provision should not be construed to make another provision  
2 [either] inconsistent or meaningless,” *Faisao v. Tenorio*, 4 N. Mar. I. 260, 265 (1995), and  
3 “[a] court should avoid interpretations of a statutory provision which would defy common  
4 sense [or] lead to absurd results . . . .” *Commonwealth Ports Auth. v. Hakubotan Saipan*  
5 *Enterprises*, 2 N. Mar. I. 212, 224 (1991).

6 **C. Analysis of 7 CMC § 2503(b)**

7 7 CMC § 2503(b) provides a 2-year statute of limitations for: “Actions against the  
8 Director of Public Safety, a police officer or other person duly authorized to serve process,  
9 for any act or omission in connection with the performance of official duties.” 7 CMC  
10 § 2503(b). Although the parties appear to focus on whether the Court should read the  
11 phrase “in connection with” broadly or narrowly to determine whether the Commissioner’s  
12 salary may be considered “in connection with” the performance of his official duties, the  
13 Court instead looks to the phrase “act or omission.”

14 Black’s Law Dictionary defines “act” as “[t]he process of doing or performing; an  
15 occurrence that results from a person’s will being exerted on the external world.” Black’s  
16 Law Dictionary (11th ed. 2019). Black’s Law Dictionary defines “omission” as “[a] failure  
17 to do something” or “[t]he act of leaving something out.” Black’s Law Dictionary (9th ed.  
18 2009). Applying the ordinary meaning of these terms to the statute, the plain language of 7  
19 CMC § 2503(b) evinces the intent of the legislature to time-bar lawsuits brought against the  
20 Commissioner for his performance of, or failure to perform, his official duties. Receiving a  
21 salary or overpay is neither an “act” nor an “omission” of the Commissioner’s duties; it is  
22 merely incidental to his job.

23 This interpretation is supported when looking at 7 CMC § 2503 as a whole. *See*  
24 *Faisao*, 4 N. Mar. I. 260, 265 (“one statutory provision should not be construed to make  
25 another provision [either] inconsistent or meaningless”). 7 CMC § 2503 provides a two-  
26 year statute of limitations for actions for:

- 27 • 2503(a) – assault and battery, false imprisonment, slander

- 1 • 2503(b) – actions against the Director of Public Safety and police officers “for any
- 2 act or omission in connection with the performance of official duties”
- 3 • 2503(c) – actions for medical malpractice
- 4 • 2503(d) – actions for injury or death caused by the wrongful act or neglect or
- 5 another, or against a bank for a forged check

6 The common thread among the above-enumerated provisions is that they serve to  
7 time-bar lawsuits brought by a victim against his tortfeasor. Notably, the Complaint does  
8 not allege any wrongdoing on the Commissioner’s part other than being a passive recipient  
9 of compensation beyond what he was allegedly entitled to; there are no allegations that he  
10 committed any tort, such as fraud, to unlawfully pay himself more money than he was  
11 entitled to. The action is merely one for declaratory relief and to recoup payments that had  
12 been made in excess of the Commissioner’s salary. The language in the Complaint is  
13 strikingly passive and alleges no wrongful action on the Commissioner’s part:

- 14 • “*Defendant received* typhoon emergency premium pay on the following occasions .  
15 . . .” Compl. ¶ 17.
- 16 • “In total, *Defendant received* typhoon premium pay in the total gross amount of  
17 \$46,892.96.” *Id.* ¶ 19.
- 18 • “\$46,892.96 *received by Defendant* in addition to his annual salary was not lawfully  
19 paid as typhoon emergency premium pay, overtime, or extra payment.” *Id.* ¶ 73.
- 20 • “The compensation *paid to Defendant* in excess of the salary established by 1 CMC  
21 § 8245(a) is contrary to law and exceeded the authority of the Director and  
22 Governor.” *Id.* ¶ 83.

23 Indeed, in reviewing NMI caselaw, this lawsuit more closely resembles those in  
24 which the NMI Supreme Court applied 7 CMC § 2505’s six-year statute of limitations.  
25 *See, e.g., Bd. of Trs. of the N. Mariana Islands Ret. Fund v. Ada*, 2012 MP 10 (six-year  
26 statute of limitations governs claim for permissible double-dipping in suit to enforce rights  
27 under pension plan); *New Shintani Corp. v. Quitugua*, 2011 MP 9 (six-year statute of

1 limitations governs suit to recoup unpaid debt); *Villanueva v. Tinian Shipping & Transp.,*  
2 *Inc.*, 2005 MP 12 (six-year statute of limitations governs tax collection action).

3 By contrast, the facts of this case bear little resemblance to those in which the NMI  
4 Supreme Court applied a two-year statute of limitations pursuant to 7 CMC § 2503. *See,*  
5 *e.g., Oden v. N. Marianas College*, 2003 MP 13 (two-year statute of limitations pursuant to  
6 7 CMC § 2503(d) governs case in which plaintiff alleged she was sexually harassed and  
7 molested as result of defendant’s negligent supervision); *United Micr. Dev. Ass’n v.*  
8 *Wickline*, 2014 U.S. Dist. LEXIS 199275 (two-year statute of limitations pursuant to 7  
9 CMC § 2503(d) governs fraud case).

10 The Court therefore finds that 7 CMC § 2503(b) is inapplicable to this action.  
11 7 CMC § 2502 applies only to actions upon a judgment and actions for recovery of land  
12 and is therefore also inapplicable. 7 CMC § 2504 applies only to actions against an  
13 executor, administrator, or other representative of a deceased person and is therefore also  
14 inapplicable. That leaves only 7 CMC § 2505, which applies a six-year statute of  
15 limitations to “[a]ll actions other than those covered in 7 CMC §§ 2502, 2503, and 2504 . .  
16 .” Assuming *arguendo* that Plaintiff’s cause of action accrued on the date of the first  
17 alleged overpayment made to Defendant, Plaintiff would have six years from November  
18 26, 2018, to bring this action, or until November 26, 2024. Accordingly, Plaintiff’s  
19 Complaint was timely filed, and Defendant’s Motion to Dismiss is **DENIED**.

## 20 V. CONCLUSION

21 **THEREFORE**, for the reasons stated above, the Motion to Dismiss is **DENIED**.  
22 Defendant is ordered to serve his answer to Plaintiff’s Complaint no later than fourteen  
23 (14) days from the date of this Order, by June 22, 2022.

24  
25 **IT IS SO ORDERED** this 8th day of June, 2022.

26  
27 /s/

28 **ALBERTO E. TOLENTINO**  
Judge *Pro Tempore*