



Office of the Attorney General
Leonardo M. Rapadas
 Attorney General of Guam
Civil Division
 287 West O'Brien Drive
 Hagåtña, Guam 96910 • USA
 (671) 475-3324 • (671) 472-2493 (Fax)
 www.guamattorneygeneral.com

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Attorneys for the Government of Guam

**SUPERIOR COURT OF GUAM
 HAGATNA, GUAM**

CV 0521-12

GOVERNMENT OF GUAM, and the GUAM)
 ENVIRONMENTAL PROTECTION)
 AGENCY, and ERIC M. PALACIOS,)
 ADMINISTRATOR, GUAM)
 ENVIRONMENTAL PROTECTION)
 AGENCY,)

CIVIL CASE NO. CV _____

Plaintiffs,

COMPLAINT

vs.

JOSEPH S. TAITANO, and ROSALIND)
 CARMEN DUENAS CASTRO nka)
 ROSALIND CARMEN C. TAITANO,)

Defendants.

COMES NOW, the Government of Guam, Guam Environmental Protection Agency, an agency of the Government of Guam, and Eric M. Palacios, Administrator of Guam Environmental Protection Agency, by and through the Office of the Attorney General of Guam, by Leonardo M. Rapadas, Attorney General, R. Happy Rons, Assistant Attorney

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General, and Kathy A. Fokas, Assistant Attorney General, and for its complaint against Joseph S. Taitano and Rosalind Carmen Duenas Castro nka Rosalind Carmen C. Taitano alleges as follows.

PRELIMINARY STATEMENT

1. This is an action of a civil nature brought for violation of and clean-up costs, damages and civil penalties under 10 G.C.A. Ch. 51 (“Guam’s Solid Waste Management and Litter Control Act”) and abatement of and damages resulting from a public nuisance, negligence, negligence *per se*, strict liability, unjust enrichment/restitution, and punitive damages.

2. The Court has jurisdiction over this matter pursuant to 7 GCA §3105 and 10 GCA Ch. 51, §51115(b), and §51116(a).

The Plaintiffs

3. Plaintiffs are the Government of Guam (“Guam”), Guam Environmental Protection Agency (“Guam EPA”), and Eric M. Palacios, as Administrator of Guam EPA (“Administrator”), (Guam, Guam EPA, and the Administrator may collectively be referred to hereinafter as “Government of Guam” or “plaintiffs”).

4. Guam is an unincorporated territory of the United States created by statute and has the power to sue and be sued. 48 U.S.C. §1421a; 33 U.S.C. §§1311(a) and 1365(3), (5).

5. Guam EPA is an agency of the Government of Guam created by 10 G.C.A. § 45103 and is responsible for protecting the public interest harmed by environmental law violations and for enforcing environmental protection through implementation of Guam’s environmental laws. Pursuant to 10 G.C.A. §45104(a), the Administrator is responsible for the administration of Guam EPA.

The Defendants

6. Upon information and belief, defendant Joseph S. Taitano (“Taitano”) is a resident of Guam.

7. Upon information and belief, Rosalind Carmen Duenas Castro (“Castro”) is a resident of Guam.

The Lots

8. Upon information and belief, Taitano and Castro (collectively, the “defendants”) now or formerly are the owner(s) and/or occupier(s) of Lot Numbers 7077-1-4 (“Lot 7077-1-4”) and 7077-1-5 (“Lot 7077-1-5”), in the Municipality of Yigo, Guam (Lot 7077-1-4 and Lot 7077-1-5 may be referred to hereinafter, collectively, as the “Lots”).

Defendants’ Conduct

9. Upon information and belief, the defendants, jointly and severally, have owned and/or operated and/or maintained the Lots in a manner that is injurious to public health and the environment, and offensive to the senses through unlawful storage, burning, disposal and /or receipt of waste, and resulting receipt of invasive species, odors, fires, smoke, and noxious fumes therefrom, potentially damaging Guam’s sole source aquifer through toxic leachate, and obstructing the free use of property, interfering with the comfortable enjoyment of life or property of others.

10. Upon information and belief, defendants operated this unlawful dump and hardfill facility for profit, by charging haulers and /or individuals money to dump the solid and potentially hazardous waste on the Lots.

11. Defendants’ unlawful conduct resulted in a number of fires occurring on the Lots resulting in reports of fires to the Guam Fire Department including but not limited to fires

on June 6, 2009, June 29, 2009, July 17, 2009, July 21, 2009, August 15, 2009, September 21, 2009, January 4, 2010, January 8, 2010, and May 11, 2010. At a follow up investigation by Guam EPA on July 11, 2011 smoke was observed coming from a fissure on the left hand side of the pit looking north adjacent to the house on the Lots.

12. The fire which occurred at the dump and unlawful hardfill facility on the Lots on or about May 11, 2010, was a big deep-seated trash fire. The Guam Fire Department was required to respond. Heavy smoke from the fire affected residences and the public in a manner injurious to health, to the point of necessity of people being evacuated by plaintiffs from the area and lodged at public expense elsewhere.

13. Guam EPA received a number of complaints about the condition of the Lots, including a complaint from the United States Department of Agriculture ("USDA") that the green wastes being taken to the unlawful dump on the Lots from the Hotel Nikko were in violation of a quarantine order to prevent migration of rhinoceros beetles, injuring the public health.

14. Other complaints were received by Guam EPA regarding the illegal dumping into the sink hole on the Lots, including that the facility continued to receive dump trucks full of solid waste containing household products daily, injuring the public health.

15. One complaint stated plastic and tires were being burned on the Lots after working hours and on weekends, further injuring the public health.

16. The fire and smoke was so bad at the May 11, 2010 fire that it necessitated the Governor of Guam issuing Executive Order No. 2010-16, declaring a state of emergency and authorizing an appropriation of up to \$250,000.00 from the Guam General Fund to pay for significant emergency expenses relate to the fire. Plaintiffs spent approximately \$250,000.00

in responding to the May 11, 2010 fire on defendants' Lots as a result of defendants' acts or omissions.

17. The expenses included, but were not limited to, on-site and off-site technical consultation with a certified industrial hygienist, certified safety professional, certified marine chemist, overtime, heavy equipment rental with operators for dump trucks, payloaders, bulldozers, water tanker with truck/tractor trailer, excavator, pumper truck and ready mix cement, supplies and materials such as filters, masks, respirators, testing kits, portable toilets with service and maintenance, and for the costly lodging of displaced residents in hotels.

18. Solid waste is still situated on the Lots. The danger is a continuing one, including potential toxic leachate poisoning of the island's sole source aquifer.

19. Upon information and belief, as of the date of the filing of this complaint the deep seated trash fire continues to smolder and emit noxious fumes into the air.

COUNT I

DEFENDANTS' VIOLATIONS OF GUAM'S SOLID WASTE MANAGEMENT AND LITTER ACT

20. Plaintiffs re-assert and incorporate by reference paragraphs 1 through 19 above.

21. Upon information and belief, Taitano and Castro own and/or operate an illegal dump on the Lots upon which solid waste was improperly managed, placed, allowed to be placed, stored, burned, and/or disposed of without a valid permit in violation of 10 G.C.A. § 51110(a)(2), 10 G.C.A. §51110(a)(3), 10 G.C.A. §51110(a)(4), 10 G.C.A. 51110(a)(8), 10 G.C.A. §51110(a)(9), and 10 G.C.A. §51110(a)(10).

22. The unlawful dump and hardfill facility contains, amongst other things, household wastes, tires, miscellaneous metallic wastes, junk vehicles and vehicle parts,

construction and demolition debris, plastics, rubber, wooden pallets, white goods, and green wastes containing the invasive species rhinoceros beetle; all in violation of Guam Environmental Protection Agency regulations and 10 G.C.A. §51110 et seq., and 20 G.C.A., §10102.

23. Defendants owned and /or operated and allowed the use of the Lots as an illegal dump for household wastes, tires, miscellaneous metallic wastes, junk vehicles and vehicle parts, construction and demolition debris, plastics, rubber, wooden pallets, white goods, and green wastes containing the invasive species rhinoceros beetle, in violation of Guam's Solid Waste Management and Litter Control Act, 10 G.C.A. §51110(a)(2).

24. 10 G.C.A. §51110(a)(2) states that it shall be unlawful for any person to own, operate or use a dump for the disposal of solid waste.

25. "Dump" means a land site where solid waste is disposed without a valid permit or a landfill that has historically been in regulatory noncompliance. 10 G.C.A. §51102(14).

26. "Solid Waste" means any garbage, refuse or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded and/or spilled materials, including solid, liquid, semisolid or contained gaseous material resulting from industrial, mining, commercial, and agriculture operations, and from community activities. 10 G.C.A. §51102(43).

27. Defendants placed or allowed to be placed, and/or stored solid waste upon the highways and/or public or private property, in violation of 10 G.C.A. §51110(a)(3).

28. Defendants managed a landfill facility on the Lots without a valid permit in violation of 10 G.C.A. §51110(a)(4).

29. Defendants allowed the unlawful disposal of solid wastes, specifically household wastes, tires, miscellaneous metallic wastes, junk vehicles and vehicle parts, construction and demolition debris, plastics, rubber, wooden pallets, white goods, and green wastes containing the invasive species rhinoceros beetle on the above described Lots, degrading the environment and creating a health and safety hazard, in violation of 10 G.C.A. §51110(a)(5).

30. Defendants destroyed or attempted to destroy by burning, garbage including plastics and tires and/or other offensive substances, the burning of which could and did give off foul and noisome odors, fumes, and smoke, in violation of 10 G.C.A. §51110(a)(8).

31. Through the above and foregoing acts, defendants violated provisions of Guam's Solid Waste Management and Litter Control Act, 10 G.C.A. §51110(a)(1).

32. Under Guam's Solid Waste Management and Litter Control Act, 10 G.C.A. §51110(b) each day of continued violation of Guam's solid waste law is deemed a separate offense or violation.

33. Plaintiffs seek clean-up costs from defendants for (a) the cost of either removing all of the solid and/or hazardous waste from the Lots, or permanently capping the landfill and solid and/or hazardous waste, the remedy to be at the discretion of Guam EPA; (b) the cost of complying with Resource Conservation and Recovery Act, Subtitle D ("RCRA D") landfill closure and post closure requirements; (c) the cost of preparing a groundwater monitoring plan; (d) the cost of drilling no less than five well boring holes (i.e., one in the middle of the site, and four triangulated outside the footprint of the dump, or more, depending on the groundwater monitoring plan) for purposes of testing the aquifer for presence of toxic leachate; (e) the cost of conducting quarterly monitoring of the well boring sites for the next two years

or longer, depending on the groundwater monitoring plan) through testing of water samples from those well boring sites; and (f) the cost of remediating any pollution of the aquifer.

34. Plaintiffs spent \$250,000 in responding to the May 11, 2010 fire on defendants' Lots as a result of defendants' violation of Guam's Solid Waste Management and Litter Control Act. Plaintiffs seek reimbursement for those damages in the sum of no less than \$250,000.

35. Plaintiffs seek civil penalties separately against each of the defendants, in the sum of \$1,000 per day for each of the five solid waste violations above, at the consequent sum of \$5,000 per day for 726 days per defendant from 5/11/2010 to 5/8/2012 for a total of \$3,630,000 per defendant.

WHEREFORE, on Count I, plaintiffs pray for joint and several judgment against each of the defendants ordering that:

- (i) Defendants' unlawful activities on Lot Numbers 7077-1-4 and 7077-1-5, or both, in the Municipality of Yigo, Guam, be permanently enjoined and abated as an unlawful dump and unlawful hardfill facility, as described herein;
- (ii) for monetary damages of no less than \$250,000.00;
- (iii) for clean-up costs for either removing all of the solid and hazardous waste from the Lots, or permanently capping the waste, the abatement method to be determined by Guam EPA;
- (iv) for costs of RCRA D landfill closure and post closure requirements;
- (v) for the cost of a groundwater monitoring plan;

- (vi) for costs of drilling well boring holes and conducting quarterly water testing of the aquifer for two years (or longer, depending on the groundwater monitoring plan);
- (vii) for costs of remediating any pollution of the aquifer;
- (viii) for civil penalties in the sum of \$3,630,000 per defendant; and
- (ix) for such other and further relief as the court may deem just and proper.

COUNT II

NEGLIGENCE PER SE

36. Plaintiffs re-assert and incorporate by reference paragraphs 1 through 35 above.

37. Defendants' acts and acts of omission have and continue to be acts of negligence because they entail law violations. Defendants' violations of Guam's Solid Waste Management and Litter Control Act are negligence *per se*.

38. As the direct and proximate results of defendants' violations of Guam Solid Waste Management and Litter Control Act, plaintiffs and the general public have been damaged in the same manner as alleged herein.

WHEREFORE, on Count II, plaintiffs pray for joint and several judgment against each of the defendants in the same way as claimed in Count I hereof.

COUNT III

PUBLIC NUISANCE

39. Plaintiffs re-assert and incorporate by reference paragraphs 1 through 38 above.

40. Pursuant to 21 G.C.A. §23101 et seq., the Attorney General may bring a civil action in the same of the Government of Guam to abate a public nuisance. Remedies for a public nuisance include a complaint, a civil action, abatement, and damages. 20 G.C.A.

§10106, 20 G.C.A. §11102, 21 G.C.A. §23101. Through this complaint and civil action, plaintiffs are seeking abatement and damages.

41. A nuisance is defined as:

Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any river, bay, stream, canal, or basin, or any public park, square, street, or highway.

20 G.C.A. §10101.

42. A public nuisance is defined as:

A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

20 G.C.A. §10102.

43. The public nuisance is temporary, continuing in nature and subject to abatement.

44. The defendants have owned and/or operated and/or maintained the Lots in such a manner as to cause a public nuisance and to cause damages to the public.

45. The defendants have owned and/or operated and/or maintained the Lots in a manner that is injurious to public health and the environment, and offensive to the senses through unlawful storage, burning, disposal and/or receipt of waste, and resulting receipt of invasive species, odors, fires, smoke, and noxious fumes therefrom, potentially damaging Guam's sole source aquifer through toxic leachate, and obstructing the free use of property, interfering with the comfortable enjoyment of life or property of others; and as such causing a public nuisance.

46. The defendants have created a public nuisance and caused damage to the public by creating, allowing, and maintaining conditions of an unlawful dump and an unlawful

hardfill facility on the Lots. The condition of the May 11, 2010 fire affected the entire surrounding community and neighborhood, and a considerable number of persons, although the extent of the annoyance and/or damage inflicted upon those individuals may have been unequal.

47. An ordinary person would be reasonably annoyed or disturbed by the condition.

48. The significant sum of \$250,000.00 authorized by Executive Order 2010-18 was so spent, resulting in damages to the Government of Guam and the general public is no less than that amount for which demand for reimbursement is made.

49. But for defendants' conduct, none of the above described harm would have occurred and continued to occur.

50. The use of the land for a dump and unpermitted hardfill facility is unreasonable and unlawful.

51. The defendants' interference with the public rights of clean air, clean water, and the right to not have to suffer an invasive species and an illegal dump and unpermitted hardfill facility, along with suffering from the consequent fires resulting therefrom, was substantial.

52. The conditions and conduct complained of, i.e., contamination of the property, potential contamination of the island's sole source aquifer, and spreading of an invasive species under quarantine, have a natural tendency to create danger and inflict injury upon persons or property; and affect common rights of all members of the public such as the right to clean air, clean water and a rhinoceros beetle-free island.

53. Defendants' conduct and the conditions complained of interfere with rights common to the general public, being the right to breath air unpolluted by smoke, noxious fumes from plastics, tires, chemicals, and odors; the right to not have the public's sole source

aquifer exposed to potential toxic leachate, resulting from the unlawful disposal of solid and potentially hazardous waste; and the right to not have an invasive species (rhinoceros beetle) further spread about the island in violation of a quarantine order.

54. Defendants' actions and omissions constituted the failure to use ordinary and reasonable care in the ownership and/or operation and maintenance of their property. Defendants' actions were negligent, causing and resulting in damages and injury common to the general public.

55. Plaintiffs spent approximately \$250,000 in responding to the May 11, 2010 fire on defendants' Lots as a result of defendants' negligence and public nuisance actions.

WHEREFORE, on Count III plaintiffs pray for joint and several judgment against each of the defendants in the same way as claimed in Counts I and II, and plaintiffs seek reimbursement for those damages from defendants, jointly and severally, in the sum of no less than \$250,000 and abatement of the public nuisance by defendants jointly and severally, by way of requiring defendants to (a) immediately cease and desist from receiving any solid or hazardous waste whatsoever at either or both Lot 7077-1-4 or Lot 7077-1-5; (b) at the direction of Guam EPA and its choice, either remove the solid and hazardous waste or permanently cap the landfill and solid waste; (c) at the direction of Guam EPA comply with RCRA D landfill closure and post closure requirements; (d) at the direction of Guam EPA prepare a groundwater monitoring plan; (e) at the direction of Guam EPA drill no less than five well boring holes (i.e., one in the middle of the site, and four triangulated outside the footprint of the dump (or more, depending on the groundwater monitoring plan) for purposes of testing the aquifer for presence of toxic leachate; (f) at the direction of Guam EPA conduct quarterly monitoring of the well boring sites for the next two years, (or longer, depending on

the groundwater monitoring plan) through testing of water samples from those well boring sites; and (g) at the direction of Guam EPA remediate any pollution of the aquifer.

The Court should issue a mandatory injunction compelling defendants, jointly and severally, to do each of the above acts.

COUNT IV

GENERAL NEGLIGENCE

56. Plaintiffs re-assert and incorporate by reference paragraphs 1 through 55 above.

57. Each act and omission to act by defendants, alleged above, is realleged in this Fourth Count as a general act of negligence.

58. Defendants, and each of them, had a duty to use ordinary care in the disposal of solid waste and potentially hazardous waste which they handled on the Lots.

59. Defendants, and each of them, breached their duty by unlawfully disposing of waste on the Lots. The risk of injury to public health and the environment was reasonably foreseeable.

60. As a proximate result of defendant's breach of duty, plaintiffs and the general public have been injured as herein described.

WHEREFORE, on Count IV, plaintiffs pray for joint and several judgment against each of the defendants in the same way as claimed in Counts I, II and III hereof.

COUNT V

STRICT LIABILITY

61. Plaintiffs re-assert and incorporate by reference paragraphs 1 through 60 above.

62. Defendants' conduct, and each of them through their unlawful disposal of solid waste and hazardous substances on the Lots constitutes abnormally dangerous and hazardous activity.

63. Plaintiffs and the general public have been damaged by the defendants and each of their abnormally dangerous and hazardous activity.

64. Defendants are jointly and severally strictly liable for the damages caused to plaintiffs and the general public as hereinbefore alleged.

WHEREFORE, on Count V, plaintiffs pray for joint and several judgment against each of the defendants in the same way as claimed in Counts I, II, III, and IV hereof.

COUNT VI

UNJUST ENRICHMENT RESTITUTION

65. Plaintiffs re-assert and incorporate by reference paragraphs 1 through 64 above.

66. Defendants have realized profits and benefited from the unlawful dumping of waste on the Lots. The defendants' acts and omissions during their unlawful dumping operations have resulted in harm to the public welfare, health and environment. The harm arises from the presence of solid waste, and the migration, and threat or further migration of hazardous wastes and other substances from the illegal dumping on the Lots.

67. Plaintiffs have expended substantial sums of money in responding to the May 11, 2010 fire on defendants' Lots as a result of defendants' acts or omissions. Plaintiffs' costs were necessary and defendants should reimburse plaintiffs for the harm to the public welfare, health and environment as previously alleged. Defendants, without justification, have not contributed to the expenditure of said costs.

68. As a result of defendants' wrongful activities, plaintiffs have borne a duty that in law, equity and fairness, ought to have been borne by the defendants.

69. Defendants have wrongfully appropriated to themselves the profits of their illegal operations when those profits should have been used to prevent the harm suffered by the people of Guam and/or should be used to offset the harm suffered by and incurred by the Government of Guam and the people of Guam.

70. Defendants' wrongful appropriation of profits from their illegal activities that caused the harm previously alleged, has unjustly enriched the defendants to the extent of harm suffered and costs incurred by the Government of Guam and the people of Guam.

WHEREFORE, on Count VI, plaintiffs pray for joint and several judgment against each of the defendants in the same way as claimed in Counts I, II, III, IV, and V hereof.

COUNT VII

PUNITIVE DAMAGES

71. Plaintiffs re-assert and incorporate by reference paragraphs 1 through 70 above.

72. Defendants' acts as alleged in this Complaint were willful, malicious, intentional, fraudulent, oppressive, reckless, and undertaken with wanton disregard and utter indifference for the health and safety of the public.

73. Plaintiffs are entitled to recover punitive damages from defendants, and each of them, for the purpose of punishing them and preventing them and others from engaging in similar conduct.

WHEREFORE, on Count VII, plaintiffs pray for joint and several judgment against each of the defendants in the same way as claimed in Counts I, II, III, IV, V and VI hereof for

punitive damages against defendants in amounts to be determined at trial, and for such other relief as the Court deems proper.

COUNT VIII

ATTORNEYS' FEES

74. Plaintiffs re-assert and incorporate by reference paragraphs 1 through 73 above.

75. The actions of the defendants are such as to warrant the imposition of attorneys' fees and costs of suit pursuant to 10 G.C.A. §41104(b).

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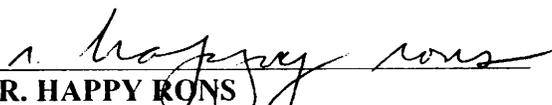
CONCLUSION

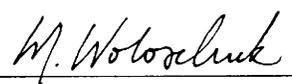
WHEREFORE, plaintiffs seek judgment against defendants, jointly and severally, under all theories alleged above, separately and/or alternatively, and seek injunctive relief as requested above and such other relief as the Court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY.

Dated this 8th day of May, 2012.

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

By: 
R. HAPPY RONS
Assistant Attorney General
Attorney for the Government of Guam,
Guam Environmental Protection Agency, and
Eric M. Palacios, Administrator
Guam Environmental Protection Agency

By: 
for **KATHY A. FOKAS**
Assistant Attorney General
Attorney for the Government of Guam,
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Guam Environmental Protection Agency