

**DISTRICT COURT OF GUAM**

**Kristoffer Castro v. Government of Guam**

Castro · No. 25-00024 · Decided June 16, 2026

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**OPINION**

Castro

PER CURIAM.

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7 THE DISTRICT COURT OF GUAM

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KRISTOFFER CASTRO, CIVIL CASE NO. 25-00024

9 Plaintiff, 10

vs. DECISION & ORDER

11 GRANTING IN PART & DENYING IN

GOVERNMENT OF GUAM, PART MOTION TO DISMISS

12 Defendant. 13

14 Before the court is Defendant Government of Guam’s Motion to Dismiss and 15 Memorandum  
of Points and Authorities in Support of Motion to Dismiss. ECF Nos. 17 & 18. 16 The court has  
reviewed the record and the relevant case law, and deems this matter suitable for 17 submission  
without oral argument. For the reasons stated below, the court hereby GRANTS in 18 part and  
DENIES in part Defendant’s Motion to Dismiss. 19

**I. BACKGROUND**

20 Plaintiff Kristoffer Castro, a man of Filipino descent, was employed at all relevant times 21 for  
the purposes of this Complaint by the Guam Department of Agriculture, a line agency for 22  
Defendant Government of Guam. ECF No. 2, at 2. Mr. Castro first started working for the Guam  
23 24 1 The court refers to CM/ECF pagination throughout this Decision and Order. 1 Department  
of Agriculture as a Game Warden in June 2006.<sup>2</sup> Id. at 3. Since 2017, Mr. Castro has 2 applied for  
the Conservation Sergeant, Conservation Lieutenant, Conservation Officer II, 3 Conservation  
Officer III, Commodity Inspector I, and Commodity Inspector II positions. See id. 4 at 3-5.  
Although he was deemed an “outstanding” employee and eligible for some of the 5 positions he  
applied to, he was never chosen for any of these positions. Id. at 4-5. Mr. Castro 6 alleges he was  
denied these positions based on his race as an Asian and national origin as a 7 Filipino, and in  
retaliation for raising discrimination concerns. Id. at 5. As a result, he alleges that 8 this  
discrimination meant that less qualified individuals, like Gerald Aflague, were selected for 9  
positions like Commodity Inspector II, instead of him. Id. 10 In May of 2017, Mr. Castro first  
started to raise his concerns through a charge with the 11 Equal Employment Opportunity

Commission (“EEOC”). Id. at 3. Mr. Castro alleges that the Defendant retaliated against him as a result of the EEOC charge by assigning him to “demeaning and harassing” postings that he felt were not a part of his job description. Id. He also stated that other employees for Defendant began to bully, harass, and threaten him. Id. at 3-4. Due to the harassment, on February 28, 2018, Mr. Castro filed an adverse action appeal with the Guam Civil Service Commission. Id. at 4. The Complaint does not indicate the final disposition of this adverse action appeal. On August 5, 2024, Mr. Castro filed a second EEOC charge, alleging discrimination based on his race as an Asian and his national origin as a Filipino.<sup>3</sup> Id. at 5. On August 20, 2024, Mr. Castro filed a Step 1 grievance based on his non-selection for a role with the Department of Agriculture, and on September 27, 2024, he asked the Grievance Review Board to review his grievance. Id. at 6. Mr. Castro alleges he continued to experience harassment and retaliation at 2 Mr. Castro’s Complaint does not indicate whether he changed positions within the Department of Agriculture. 24 3 Mr. Castro amended this EEOC charge on August 6, 2024, noting that he “observed a Conservation Officer vehicle at his work site” which “raised concern about possible intimidation” and he noted that he “did not receive his paycheck and was told his timesheet hadn’t been certified” on one occasion. Id. On February 24, 2025, the EEOC closed its investigation into Mr. Castro’s second charge “without a determination and issued [him] a Notice of Right to Sue.” Id. 6 On May 23, 2025, he filed a Complaint in this court alleging violations of Title VII of the Civil Rights Act of 1964 based on the discrimination he experienced while working for the Defendant. Id. at 1. Specifically, the Complaint contains three claims: 1. Retaliation Against Employee for Accessing EEOC Procedures, 2. Discrimination based on Race, and 3. Intentional Infliction of Emotional Distress. Id. at 7-10. On January 23, 2026, Defendant filed a Motion to Dismiss Mr. Castro’s three claims for a lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). ECF Nos. 17 13 & 18. On February 13, 2026, Mr. Castro filed his Opposition to Motion to Dismiss. See ECF No. 14 19, at 4. Defendant did not file a Reply to the Opposition.

## 15 II. LEGAL STANDARD

16 A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2). “A party may move under Rule 12(b)(1) of the Federal Rules of Civil Procedure to dismiss claims in which the court lacks subject-matter jurisdiction.” *J.P. v. United States*, 679 F.Supp.3d 911, 920 (D. Ariz. 2023) (citing FED. R. CIV. P. 12(b)(1)). The party bringing the claim “bears the burden of establishing that the court has the requisite subject matter jurisdiction to grant the relief requested.” *Gabrielli v. HALEON US Inc.*, 2025 F.Supp.3d 852, 862 (N.D. Cal. 2025). 23 A challenge related to subject matter jurisdiction can be either facial or factual. See *Friends of the River v. U.S. Army Corps of Engineers*, 870 F.Supp.2d 966, 972 (E.D. Cal. 2012) 1 (citing *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003)). A facial attack to subject matter jurisdiction “argues that the allegations of a complaint are insufficient to establish federal jurisdiction.” *Ellis v. J.P. Morgan*

Chase & Co., 950 F.Supp.2d 1062, 1072 4 (N.D. Cal. 2013) (citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)). 5 Here, Defendant brings a facial attack. When analyzing a facial attack to subject matter 6 jurisdiction, the court must take “the plaintiff’s allegations as true” and weigh “all reasonable 7 inferences in the plaintiff’s favor.” *Lauria v. United States*, 542 F.Supp.3d 926, 931 (D. Alaska 8 2021).

### 9 III. DISCUSSION

10 Defendant filed the Motion to Dismiss arguing that it was protected from suit because of 11 its “inherent sovereign authority.” See ECF No. 18, at 1-2. Under *San Agustin v. Mansapit-Shimizu*, 2020 Guam 25 (2020), Defendant contends that the Guam Legislature has the authority 13 to waive Guam’s sovereign immunity, and it has not done so here. See *id.* at 2. This means Mr. 14 Castro’s three claims should be dismissed because the Guam Legislature has not waived its 15 sovereign immunity. *Id.* at 2-3. Moreover, the “Guam Legislature has only waived immunity for 16 negligent torts; thus, intentional torts do not state a claim for which relief can be granted.” *Id.* 17 Accordingly, the Defendant asserts that Mr. Castro’s three claims should be dismissed for lack of 18 subject matter jurisdiction. 19 Mr. Castro argued in his Opposition that Guam’s sovereign immunity was abrogated by 20 the federal government when it enacted Title VII. See ECF No. 19, at 4. He then asks the court 21 for permission to amend his Complaint to change his third claim from Intentional Infliction of 22 Emotional Distress to Negligent Infliction of Emotional Distress as Defendant “has waived 23 sovereign immunity for negligent torts.” *Id.* at 6. 24 The central question before the court is whether it has subject matter jurisdiction over Mr. 1 Castro’s three claims. If yes, then the court must resolve the secondary issue of whether it should 2 grant Mr. Castro’s leave to file an amended complaint.

#### 3 A. FIRST CLAIM FOR RELIEF – RETALIATION AGAINST EMPLOYEE FOR ACCESSING EEOC PROCEDURES

4 The court has subject matter jurisdiction to hear Mr. Castro’s first claim for Retaliation 5 Against Employee for Accessing EEOC Procedures. This is because Congress abrogated state 6 sovereign immunity for employment discrimination claims when it enacted the 1972 7 Amendments to Title VII of the Civil Rights Act.<sup>4</sup> 8 States have sovereign immunity “which they have retained from before the Constitution.” 9 *San Agustin v. Mansapit-Shimizu*, 2020 Guam 25, ¶ 14; see also *Micomonaco v. State of Wash.*, 10 45 F.3d 316, 319 (9th Cir. 1995) (citing *Hans v. Louisiana*, 134 U.S. 1 (1890)) (“[T]he 11 Eleventh Amendment bars a citizen from bringing a suit against his own state in federal court.”). 12 The territory of Guam, similar to the states, has inherent sovereign immunity. See *id.* at ¶¶ 14-20; 13 see also *Marx v. Gov’t of Guam*, 866 F.2d 294, 298 (9th Cir. 1989) (“Thus, controlling authority 14 and the legislative history of the Organic Act compel our holding that the government of Guam 15 has inherent sovereign immunity.”). State sovereign immunity “extends to state agencies and 16 their employees acting in their official capacities.” *Clark v. Wash. State Dep’t of Health*, 735 17 F.Supp.3d 1334, 1345 (W.D. Wash. 2024). However, state sovereign immunity does not 18 preclude a claim when “the state has

consented to waive its immunity” or “Congress has 19 abrogated the state’s immunity.” *Id.* Title VII of the Civil Rights Act “abrogates states’ sovereign 20 immunity.” *Bolden-Hardge v. Office of California State Controller*, 63 F.4th 1215, 1221 (9th 21 Cir. 2023) (citing *Fitzpatrick v. Bitzer*, 427 U.S. 445, 453 n.9 (1976)). 22 Defendant argues that the Guam Legislature has not “enacted legislation which waives 23 24 4 See *Fitzpatrick v. Bitzer*, 427 U.S. 445, 449 n.2 (1976) (for a discussion on the 1972 Amendments). 1 sovereign immunity for actions” like this one. ECF No. 18, at 2. That is irrelevant here. Guam 2 does not have to waive its immunity because Congress abrogated state sovereign immunity for 3 Title VII claims. See *Clark*, 735 F.Supp.3d at 1345; See *Bitzer*, 427 U.S. at 451-57. Therefore, 4 Mr. Castro’s first claim stands because he is alleging a violation of Title VII of the Civil Rights 5 Act. See ECF No. 2, at 7-8; 42 U.S. Code § 2000e-3(a).

#### 6 B. SECOND CLAIM FOR RELIEF – DISCRIMINATION BASED ON RACE

7 Likewise, the court has subject matter jurisdiction to hear Mr. Castro’s second claim for 8 discrimination based on race because it was brought pursuant to Title VII of the Civil Rights Act. 9 Defendant repeated its argument that the Guam Legislature has not “enacted legislation which 10 waives sovereign immunity for actions” like this one. ECF No. 18, at 2. While it is unclear under 11 which specific provision of Title VII Mr. Castro brings his second claim, it is clear that he 12 brought this claim pursuant to the conduct alleging discrimination based on his race that he 13 discussed throughout the Complaint. See, e.g., ECF No. 2, at 5, 8-9. For example, Mr. Castro 14 alleges in his second claim that “the position of Commodity Inspector II was awarded to a less 15 qualified Chamorro employee despite [Mr. Castro] receiving a higher examination score or 16 having superior relevant experience.” *Id.* at 9. He also alleged in his general allegations that “he 17 was discriminated against because of his race (Asian) and national origin (Filipino).” *Id.* at 5. 18 Considering the content of his second claim and the overall nature of the Complaint, it is evident 19 that Mr. Castro intended to bring this claim of employment discrimination based on his race 20 under Title VII – a statute where Congress abrogated state sovereign immunity. Thus, Mr. 21 Castro’s second claim stands and will not be dismissed for lack of subject matter jurisdiction.

#### 22 C. THIRD CLAIM FOR RELIEF – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

23 The court does not have subject matter jurisdiction over Mr. Castro’s third claim for 24 1 intentional infliction of emotional distress. As stated above, states, including the territory of 2 Guam, have inherent sovereign authority which can only be waived by the state or abrogated by 3 Congress. See *Clark*, 735 F.Supp.3d at 1345. There is no federal law that abrogates state 4 sovereign immunity for claims of intentional infliction of emotional distress and Mr. Castro does 5 not cite to one. Further, there is no state law that waives state sovereign immunity for claims of 6 intentional infliction of emotional distress and Mr. Castro does not cite to one.<sup>5</sup> In fact, 7 Defendant cites to the Guam code which states “the Government of Guam hereby waives 8 immunity from suit, but only as hereinafter provided: ... (b) for claims in tort, arising from 9 negligent acts of its employees acting for and at the direction of the government of Guam[.]” 5 10

Guam Code Ann. § 6105(b) (emphasis added). 11 Mr. Castro's sole statement in his third claim is that the "Defendant subjected Plaintiff to 12 intentional infliction of emotional distress and outrageous conduct resulting in mental anguish." 13 ECF No. 2, at 10. The Guam Legislature has waived state sovereign immunity in negligent tort 14 and not intentional tort actions. See 5 Guam Code Ann. § 6105(b). As Mr. Castro alleged an 15 intentional tort and the Guam legislature has not waived its inherent authority for intentional 16 torts, the court grants Defendant's Motion to Dismiss this last claim for lack of subject matter 17 jurisdiction.

#### 18 D. LEAVE TO FILE AN AMENDED COMPLAINT

19 The court grants Mr. Castro leave to file an amended complaint which clarifies his 20 second claim and replaces his third claim with a claim for negligent infliction of emotional 21 distress.<sup>6</sup> Under Federal Rule of Civil Procedure 15(a), a party may amend its pleadings "by 22 5 Mr. Castro did not contest that his claim was precluded by state sovereign immunity in his Opposition. See ECF

23 No. 19, at 4-6. Instead, he argued that he should be allowed to amend his Complaint to argue Negligent Infliction of

Emotional Distress. See *id.* 24 6 Mr. Castro requested in his Opposition the opportunity "to replead any other causes of action that the Court 1 leave of court without written consent from the adverse party." *Wennihan v. AHCCCS*, 515 2 F.Supp.2d 1040, 1044 (D. Ariz. 2005). Courts "should freely give leave when justice so 3 requires." FED. R. CIV. P. 15(a)(2); see also *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 4 1048, 1051 (9th Cir. 2003) (citing *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 5 (9th Cir. 2001)). 6 When considering whether to grant leave to amend, a court must weigh the following 7 factors: (1) "undue delay," (2) "bad faith or dilatory motive on the part of the movant," (3) 8 "repeated failure to cure deficiencies by amendments previously allowed," (4) "undue prejudice 9 to the opposing party by virtue of allowance of the amendment," and (5) "futility of the 10 amendment[.]" See *Eminence*, 316 F.3d at 1051-52 (quoting *Forman v. Davis*, 371 U.S. 178, 182 11 (1962)). "[I]t is the consideration of prejudice to the opposing party that carries the greatest 12 weight." *Hutchins v. HP Inc.*, 767 F.Supp.3d 912, 920 (N.D. Cal. 2025) (citing *Eminence*, 316 13 F.3d at. 1052). Furthermore, "[a]bsent a showing of prejudice, or a strong showing of any of the 14 remaining Foman factors, there exists a presumption under Rule 15(a) in favor of granting leave 15 to amend." *Chang v. Cashman*, 723 F.Supp.3d 772, 779 (N.D. Cal. 2024) (citing *Eminence*, 316 16 F.3d at. 1052) (emphasis in original). 17 The Forman factors do not weigh against amendment here. Mr. Casto initially failed to 18 properly serve the summons and a copy of the Complaint on Defendant, but has since resolved 19 this deficiency. See ECF Nos. 14, 15, & 16. Although there has been some delay, Mr. Castro has 20 not caused undue delay or evidenced a dilatory motive. He also has not filed any amended 21 pleadings thus far. Additionally, there would be no prejudice to the Defendant if the court 22 permitted Mr. Castro to file an amended complaint because the court has vacated its scheduling 23 24 determines may not be properly before it now." ECF No. 19, at 6.

The court notes for the record that the Defendant did not file a reply objecting to this request. Page 9 of 9 1 || conference pending the resolution of this motion and the case is still in its early stages. ECF No. 2 13. 3 Lastly, granting leave to amend the complaint would not be futile. As to the second 4 || claim, the court has subject matter jurisdiction, but the claim has been insufficiently pleaded. 5 || Mr. Castro failed to identify the specific Title VII provision for this claim. Mr. Castro's second 6 || claim broadly alleges that the Defendant violated his "federally and locally protected rights." 7 || ECF No. 2, at 9. This fails to provide Defendant with fair notice under Rule 8(a) of the Federal 8 || Rules of Civil Procedure. As to the third claim, because Guam has waived its sovereign 9 || immunity for negligent torts it would not be futile to grant leave to amend the complaint.' 10 Based on this analysis, the court concludes that it is in the interest of the parties and of 11 || the court to grant Mr. Castro leave to amend his complaint. Mr. Castro has thirty (30) days to file 12 || an amended complaint that provides a plain statement of his second claim showing that he is 13 || entitled to relief and to change his third claim from intentional infliction of emotional distress to 14 || negligent infliction of emotional distress.

#### 15 CONCLUSION

16 For the foregoing considerations, the court hereby GRANTS in part and DENIES in part 17 || Defendant's motion to dismiss for lack of subject matter jurisdiction. The court grants Plaintiff 18 || Kristoffer Castro thirty (30) days to file an amended complaint. 19 SO ORDERED. 20 /s/ Frances M. Tydingco-Gatewood ne. Chief Judge Dated: Jun 16, 2026 23 4 ||7 The court would then have subject matter jurisdiction to hear this claim under its supplemental jurisdiction. 28 U.S.C. § 1367(a).