



1 (2) Breach of Fiduciary Duty of Care and Loyalty Against Defendant DOF, and (3) Declaratory  
2 Relief Against Defendants DPL and DOF. In their SAC, Plaintiffs state that damages are inadequate  
3 remedies for Counts 1 and 2 and that both declaratory and injunctive relief are required. Compl. ¶¶  
4 170-71. 180-81.

5 The SAC alleges that DPL entered into a renewed contract for public land with Suwaso  
6 Corporation (“Suwaso”) despite Suwaso’s history of non-payment of both rent and taxes. DPL  
7 failed to present other offers on the property to the Legislature. One such offer came from Plaintiffs,  
8 PIDC. DPL made amendments to both the original and renewed lease without legislative approval.  
9 DOF significantly reduced Suwaso’s tax obligations to the Commonwealth. According to the SAC,  
10 all these acts constitute breaches to the fiduciary duties owed to people of Northern Marianas  
11 Descent by DPL and DOF.

12 On October 11, 2013, Defendants filed a motion to dismiss the SAC on two separate  
13 grounds. First, Defendants state that, pursuant to NMI Rs. Civ. P 12(b)(7) and 19, Plaintiffs failed  
14 to join a necessary and indispensable party: Suwaso. Further, Suwaso cannot be joined to this  
15 lawsuit because Plaintiffs lack standing to sue Suwaso, and taxpayer lawsuits cannot be extended to  
16 private parties. Finally, since Plaintiffs seek injunctive relief that would effectively terminate the  
17 land lease, this lawsuit cannot proceed without joining Suwaso. Thus, the SAC should be dismissed  
18 because Suwaso is both indispensable and unable to be joined.

19 Second, Defendants seek dismissal under NMI R. Civ. P 12(b)(6) for failure to state a claim  
20 upon which relief may be granted in that Plaintiffs have (1) failed to state a cognizable legal theory  
21 and (2) provided insufficient facts to support a cognizable legal theory. Specifically, Defendants  
22 argue that this case must be dismissed because the Court cannot issue the requested injunctive relief  
23 against a private party as part of a taxpayer lawsuit. Secondly, Plaintiffs have failed to state a claim  
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1 against the DOF. Finally, Plaintiffs' request for declaratory relief must also be dismissed because  
2 there is no actual controversy concerning the relief sought.

3 In response to the Rules 12(b)(7) and 19 claim, Plaintiffs state that (1) injunctive relief is  
4 sought against the Defendants only; (2) Suwaso is not a necessary party; (3) the feasibility of  
5 joining Suwaso is inapplicable; and (4) Suwaso is not a party to any valid and existing lease  
6 agreement or lease extension approved by the legislature. In relation to the 12(b)(6) claim, Plaintiffs  
7 state that (1) injunctive relief is sought against Defendants only; (2) Plaintiffs have adequately  
8 stated a claim against DOF; and (3) Plaintiffs are entitled to both declaratory and injunctive relief if  
9 they prevail on their taxpayer's lawsuit.

### 10 **III. DISCUSSION**

#### 11 **A. MOTION TO DISMISS PURSUANT TO NMI R. CIV. P. 12(B)(7) AND 19**

12 A complaint may be dismissed for failure to join a party. NMI R. Civ. P. 12(b)(7) and 19.  
13 Whether a complaint should be dismissed pursuant to Rule 19 requires a three-step analysis.  
14 *Paiute-Shoshone Indians v. Los Angeles*, 637 F.3d 993, 997 (9th Cir. 2011). First, under Rule 19(a),  
15 the Court must determine whether a party should be joined in "the interests of just adjudication". *Id.*  
16 A party should be joined if (1) complete relief cannot be provided in its absence, (2) the party has  
17 an interest that would go unprotected in its absence, or (3) the party has an interest that would  
18 subject the current litigants to substantial risk of incurring double, multiple, or inconsistent  
19 obligations. NMI R. Civ. P. 19(a).

20 Second, if the Court finds that a non-party is necessary, it must determine whether joinder is  
21 feasible. *Paiute-Shoshone Indians v. Los Angeles*, 637 F.3d at 997. Joinder is not feasible when (1)  
22 venue is improper, (2) the absentee party is not subject to personal jurisdiction, and (3) joinder  
23 would destroy subject matter jurisdiction. *EEOC v. Peabody W. Coal Co.*, 400 F.3d 774, 779 (9th  
24 Cir. 2005).

1 Finally, if joinder is not feasible, the Court must decide whether the non-party is an  
2 indispensable party or whether the case can proceed in its absence. *Id.* NMI R. Civ. P. 19(b). When  
3 determining whether a party is indispensable to the suit, the Court must consider

4 “first, to what extent a judgment rendered in the person's absence might be  
5 prejudicial to the person or those already parties; second, the extent to which,  
6 by protective provisions in the judgment, by the shaping of relief, or other  
7 measures, the prejudice can be lessened or avoided; third, whether a judgment  
8 rendered in the person's absence will be adequate; [and] fourth, whether the  
9 plaintiff will have an adequate remedy if the action is dismissed for  
10 nonjoinder.”

11 NMI R. Civ. P. 19(b).

### 12 **1. THE INTERESTS OF JUST ADJUDICATION REQUIRE JOINDER**

13 The SAC seeks a permanent injunction terminating the lease between DPL and Suwaso, a  
14 declaratory judgment stating that the lease between DPL and Suwaso is invalid (amongst others),  
15 and a Court order for a new Request for Proposal so that Plaintiffs, PIDC, may bid on the property.

16 In determining whether a party should be joined, the Court must consider whether (1)  
17 complete relief can be provided in its absence, (2) the party has an interest that would go  
18 unprotected in its absence, or (3) the party has an interest that would subject the current litigants to  
19 substantial risk of incurring double, multiple, or inconsistent obligations. NMI R. Civ. P. 19(a).

#### 20 **a. Complete relief cannot be granted without joining Suwaso**

21 This taxpayer lawsuit revolves around a lease on public land entered into by DPL and  
22 Suwaso. Plaintiffs challenge the validity of that lease and seek its termination. However, the Court  
23 cannot issue a judgment that would be binding on Suwaso because Suwaso has not been joined to  
24 this lawsuit. *See, e.g., Confederated Tribes of Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496  
(1991).

Without joining Suwaso, the injunctive relief requested by Plaintiffs could bind only DPL  
and DOF. Thus, Suwaso would have to decide whether to continue honoring its rights and

1 obligations under the lease agreement or obey an injunction issued by the Court to which it is not a  
2 party and thus not bound. The Court cannot issue judgments that would produce such inconsistent  
3 results.

4 **b. Suwaso has an interest in the outcome of this litigation**

5 Suwaso has a legally protected property interest in its lease agreement with DPL that will go  
6 unprotected if it is not joined to this case. NMI R. Civ. P. 19(a). As stated above, Plaintiffs seek the  
7 invalidation and termination of a lease agreement, to which Suwaso is a party. In reliance on the  
8 leasehold in question, Suwaso has invested substantial amounts of money renovating the property,  
9 anticipating that it will recoup its expenditures during the lifetime of the lease. Without Suwaso's  
10 joinder, it would be unable to defend its interests.

11 **c. Inconsistent obligations could result if Suwaso is not joined**

12 DPL could be subject to conflicting obligations if Suwaso is not joined. NMI R. Civ. P.  
13 19(a)(ii). Any judgment issued by the Court could bind only the current litigants. Thus, if the Court  
14 granted Plaintiffs' request and terminated the lease, DPL would be subject to conflicting  
15 obligations. DPL would be legally required to follow the Court's order and terminate the lease. At  
16 the same time, however, Suwaso would maintain its rights under the lease because the Court's order  
17 would not bind Suwaso. Thus, DPL would have to decide which legal requirement to follow. If it  
18 honored the Court's order, Suwaso could sue for breach of contract. If it honored its lease  
19 agreement, Plaintiffs could file contempt charges against it.

20 Accordingly, the interests of just adjudication require joinder of Suwaso.

21 **2. JOINDER IS NOT FEASIBLE**

22 Joinder is not feasible if joining a party would destroy subject matter jurisdiction. *See, e.g.,*  
23 *EEOC v. Peabody W. Coal Co.*, 400 F.3d 774, 779 (9th Cir. 2005). The Court has no subject matter  
24 jurisdiction to hear a case where the plaintiff lacks standing. *Pacific Investment & Dev. Corp. v.*

1 *CNMI Dept. of Public Lands*, Civ. No. 120262 (NMI Super. Ct. Aug. 30, 2013) (Memorandum  
2 Opinion and Order at 2) (citing *Mafnas v. Commonwealth*, 2 N.M.I. 248, 256, n.6 (1991); *Rivera v.*  
3 *Guerrero*, 4 N.M.I. 79, 81 (1993); *see also Wasson v. Brown*, 316 Fed. Appx. 663 (9th Cir. 2009).  
4 “If the court lacks jurisdiction, it has no power to enter judgment and may only dismiss.” *Atalig v.*  
5 *Commonwealth Election Comm’n*, 2006 MP 1 ¶ 16.

6 **a. Private parties cannot be joined to taxpayer lawsuits**

7 Plaintiffs have brought this case as a taxpayer lawsuit. The Commonwealth’s Constitution  
8 allows a taxpayer to “bring an action against the government or one of its instrumentalities in order  
9 to enjoin the expenditure of public funds for other than public purposes or for a breach of fiduciary  
10 duty.” NMI Const. Art. X, § 9 (emphasis added). However, this right has not been extended to  
11 authorize taxpayer lawsuits against private parties. Suwaso is a private corporation and not a  
12 government entity. Plaintiffs lack standing to bring this taxpayer lawsuit against Suwaso. Thus,  
13 joining Suwaso would deprive the Court of subject matter jurisdiction.

14 **3. THIS CASE CANNOT PROCEED WITHOUT SUWASO**

15 Finally, the Court must determine “whether in equity and good conscience the action should  
16 proceed among the parties before it, or should be dismissed, the absent [party] thus regarded as  
17 indispensable.” NMI R. Civ. P. 19. When making this determination, the Court should consider the  
18 following factors: (1) the extent to which a judgment rendered in the non-party’s absence might be  
19 prejudicial to the non-party or those already parties; (2) the extent to which, by protective  
20 provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be  
21 lessened or avoided; (3) whether a judgment rendered in the non-party’s absence will be adequate;  
22 and (4) whether Plaintiffs will have an adequate remedy if the action is dismissed for nonjoinder.

23 *Id.*



1 this case cannot proceed without Suwaso's joinder. Thus, the complaint is fatally flawed. No  
2 additional facts or allegations can cure these defects. Therefore, leave to amend must be denied.

3 **V. CONCLUSION**

4 Defendants' motion to dismiss pursuant to NMI Rs. Civ. P. 12(b)(7) and 19 is **GRANTED**.

5 Leave to amend is **DENIED**.

6 **IT IS SO ORDERED** this 16th day of December 2013.

7 /s/  
8 KENNETH L. GOVENDO  
9 ASSOCIATE JUDGE  
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