



**By Order of the Court, Judge Joseph N. Camacho**

FOR PUBLICATION

**E-FILED**  
CNMI SUPERIOR COURT  
E-filed: May 22 2017 04:31PM  
Clerk Review: N/A  
Filing ID: 60626727  
Case Number: 16-0233-CV  
N/A



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

<b>LAWRENCE MENDIOLA CAMACHO,</b>	) <b>CIVIL ACTION NO. 16-0233</b>
	)
<b>Plaintiff,</b>	) <b>ORDER DENYING DEFENDANT</b>
	) <b>DEPARTMENT OF PUBLIC SAFETY’S</b>
<b>vs.</b>	) <b>RULE 12(b) MOTION TO DISMISS</b>
	) <b>BECAUSE PLAINTIFF CAMACHO</b>
<b>DEPARTMENT OF PUBLIC SAFETY,</b>	) <b>ALLEGED SUFFICIENT FACTS TO</b>
	) <b>ESTABLISH A LEGAL CLAIM FOR</b>
<b>Defendant.</b>	) <b>JUDICIAL REVIEW OF AN AGENCY</b>
	) <b>ACTION REGARDING IMPROPER</b>
	) <b>PROMOTION PROCEDURES AND TO</b>
	) <b>ESTABLISH THE COURT’S</b>
	) <b>JURISDICTION OVER THE MATTER</b>
	)

**I. INTRODUCTION**

This matter came before the Court for a motion hearing on February 14, 2017 in Courtroom 220A, on Defendant’s Rule 12(b) Motion to Dismiss. Plaintiff Lawrence Mendiola Camacho<sup>1</sup> (“Camacho”) was present and represented by Attorney Brian Flaherty. Defendant Department of Public Safety (“DPS”) was represented by Assistant Attorney General Tom Schwieger.

Based on a review of the filings, oral arguments, and applicable law, the Court makes the following order.

**II. BACKGROUND**

This matter stems from a dispute over the promotion process to fill the opening for Director of Police. Camacho claims DPS used an improper promotion process that violated the Personnel

<sup>1</sup> At the February 14, 2017 hearing, the undersigned judge disclosed to the parties that he knew Plaintiff Camacho from when the undersigned judge worked as a police officer at the Department of Public Safety and as a distant family relation. Counsel for both parties agreed this previous knowledge did not create a conflict of interest and the undersigned judge could properly hear the case.

1 Service System Rules and Regulations (“PSSRR”) to “specifically not promote [Camacho] or to  
2 specifically target someone for promotion at the expense of other applicants.” Pl.’s Opp. To Motion  
3 at 2.

4 Camacho alleges that on December 10, 2014, the Civil Service Commission (“CSC”) announced an opening for Director of Police with DPS. The announcement required, among other  
5 things, applicants have at minimum two years of experience as a Police Captain. Camacho was the  
6 only applicant. A second announcement was made and Camacho remained the only applicant. The  
7 announcement was made a third time with some changes to the announcement between the second  
8 and third posting.<sup>2</sup> The only other applicant, Pete Leon Guerrero (“Applicant Guerrero”), applied  
9 after the third announcement. While applying for the position, Applicant Guerrero was assisted by  
10 DPS Motor Vehicle Director Juana Guerrero. Applicant Guerrero had neither the necessary years of  
11 experience nor the requisite experience as a captain that were listed in the first announcement for  
12 the position.

13  
14 After the application period closed, CSC compiled a list of certified eligible candidates  
15 (“Certification of Eligibles”) and the list was given to DPS. The list included both Camacho and  
16 Applicant Guerrero, though Applicant Guerrero did not meet the minimum requirements for the  
17 position. Camacho was ranked as the top candidate for selection on the list. The two candidates  
18 listed then went through interviews with a DPS interview panel. The interview panel included  
19 interview panel member Juana Guerrero (“Interviewer Guerrero”) who earlier assisted Applicant  
20 Guerrero. Applicant Guerrero was then selected for the position, based upon the panel’s  
21 recommendation.

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23 <sup>2</sup> At this stage of the proceedings, prior to discovery, the exact changes to the announcement are not before the Court. While the Court finds the allegations sufficient for the motion to dismiss, a plaintiff in a civil case still has the burden to  
24 prove these factual allegations by the preponderance of the evidence at trial. *Isla Financial Services v. Sablan*, 2001 MP 21 ¶ 21 (citing *Weiner v. Fleischman*, 816 P.2d 892, 896 (Cal. 1991)).

1 On November 15, 2016, Camacho filed his Complaint. Camacho argues the promotion  
2 process for the Director of Police was improper because it was based upon selection from an  
3 improperly certified group of candidates; was improperly influenced by Interviewer Guerrero who  
4 assisted Applicant Guerrero; and improperly allowed “leap frogging” of unqualified candidates in  
5 violation of an earlier court decision.<sup>3</sup> Camacho requests the Court grant relief in the form of an  
6 injunction against further use of improper and unfair procedures and/or setting aside the promotion  
7 that resulted from the improper procedures.

8 DPS filed its motion to dismiss on December 12, 2016. DPS argues Camacho’s claims  
9 should be dismissed because the Court lack subject matter jurisdiction, Camacho failed to state a  
10 claim for which relief can be granted, and DPS is not liable for any alleged improprieties.

11 Camacho filed his opposition to DPS’s motion on January 4, 2017. On January 27, 2017,  
12 DPS filed its reply to Camacho’s opposition. Oral arguments were heard on February 14, 2017.

### 13 III. LEGAL STANDARD

14 Commonwealth administrative agency decisions are not reviewable by the judiciary as a  
15 matter of right, but the Commonwealth Administrative Procedure Act (“CAPA”) authorizes judicial  
16 review in specified circumstances. *N. Marianas College v. Civ. Serv. Comm’n*, 2006 MP 4 ¶ 12; *see*  
17 *also* 1 CMC § 9112. Thus, in a petition for judicial review of an agency action, CAPA must  
18 authorize a court to review the matter. Under CAPA, “[a] person suffering legal wrong because of  
19 agency action, or adversely affected or aggrieved by agency action, is entitled to judicial review of  
20 the action within 30 days thereafter in the Commonwealth Superior Court.” 1 CMC § 9112(b). A  
21 court may review an agency action where there is a relevant statutory authority, a final agency  
22 action, and there is no other adequate remedy in a court. 1 CMC § 9112(d). Further, “an agency’s

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23 <sup>3</sup> *See Deleon Guerrero v. Dept. of Public Safety*, Civ. No. 09-0186 (NMI Super. Ct. March 19, 2012) (Findings of Fact  
24 and Conclusions of Law) (where the court found DPS used improper and unfair promotion practices and ordered fair  
and competitive procedures be used in the future). Plaintiff James C. Deleon Guerrero, who previously sued DPS, was  
DPS Commissioner at the time the alleged PSSRR violations occurred in the present case.

1 failure to act constitutes agency action for the purpose of judicial review.” *Tano v. DPW*, 2009 MP  
2 18 ¶ 23; *see* 1 CMC § 9101(c). In a motion to dismiss judicial review of an agency action, the  
3 moving party has the burden to show that CAPA does not authorize the Court to perform a judicial  
4 review of the petition on its merits. *In Re: Decision of the Office of the Public Auditor*, Civ. No. 14-  
5 0202 (NMI Super. Ct. March 12, 2015) (Order Granting CUC’s Motion to Dismiss Without  
6 Prejudice at 3) [hereafter “*OPA Dismissal Order*”].

7 In petitions for judicial review of an agency action, Commonwealth Rule of Procedure for  
8 Administrative Appeals 2(g)(1) (“Rule 2(g)(1)”) governs a motion to dismiss for jurisdictional  
9 defects. *OPA Dismissal Order* at 2. Rule 2(g)(1) provides that the Rules of Civil Procedure shall  
10 govern in a Rule 2(g)(1) motion. *Id.* Therefore, the court applies the relevant legal standards of the  
11 Rules of Civil Procedure as set forth in NMI R. Civ. P. 12(b)(6) (“Rule 12(b)(6)”) and NMI R. Civ.  
12 P. 12(b)(1) (“Rule 12(b)(1)”). *See Id.*

13 Additionally, “there is a ‘strong presumption that the [Commonwealth Legislature] intends  
14 judicial review of agency actions.’” *N. Marianas College*, 2006 MP 4 ¶ 13 (quoting *Bowen v.*  
15 *Michigan Acad. of Family Physicians*, 476 U.S. 667, 670 (1986)). Thus, the moving party has an  
16 additional burden to show by “clear and convincing evidence” that the Commonwealth Legislature<sup>4</sup>  
17 did not intend judicial review of the subject agency action. *Id.* ¶ 14 (citing *Traynor v. Turnage*, 485  
18 U.S. 535, 542 (1988)). Any prohibitions against judicial review are construed narrowly against the  
19 moving party. *See Id.*

#### 20 IV. DISCUSSION

21 DPS argues that dismissal is proper because (1) the Court lacks subject matter jurisdiction  
22 since Camacho’s claim is impermissible under the PSSRR and procedurally defective; (2) Camacho  
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24 <sup>4</sup> The full official name of the Commonwealth Legislature is the Northern Marianas Commonwealth Legislature. NMI  
Const. art. II, § 1.

1 has failed to state a claim upon which relief can be granted; and (3) DPS is not the proper party in  
2 this action. Camacho contends, in turn, that the Court has subject matter jurisdiction under 1 CMC  
3 § 9112 and NMIAC § 10-20.2-294(f) and Camacho’s grievance is permissible pursuant to NMIAC  
4 § 10-20.2-287; Camacho has alleged a sufficient factual basis for his grievance and the Court can  
5 remedy the grievance by setting aside the improper Certification of Eligibles and, thus, invalidate  
6 the result of the improper promotion process; and DPS is the proper party to this action because  
7 DPS is liable for the improprieties that occurred.

8 **1. The Court has subject matter jurisdiction.**

9 DPS argues that the Court lacks subject matter jurisdiction because the PSSRR do not  
10 permit review of a grievance on the basis of non-selection for a position and/or for unfair selection  
11 and his grievance is procedurally defective. Camacho contends that all grievances are permitted  
12 unless specifically prohibited and that the PSSRR do not prohibit Camacho’s grievance against an  
13 improper and unfair promotion process and his grievances are procedurally correct.

14 Where a court lacks jurisdiction over the subject matter, NMI R. Civ. P. 12(b)(1) permits  
15 dismissal of a case. *Atalig v. Commonwealth Election Comm’n*, 2006 MP 1 ¶ 16. In determining  
16 subject matter jurisdiction, courts must “accept as true all the complaint’s undisputed factual  
17 allegations and construe the facts in the light most favorable to plaintiff.” *Id.*

18 The courts are granted jurisdiction to review administrative agency decisions in 1 CMC §  
19 9112. Moreover, the courts have authority to review grievances of the PSSRR after the claimant has  
20 exhausted administrative appeals pursuant to NMIAC § 10-20.2-294(f).<sup>5</sup> The grievance system of  
21 the PSSRR covers “all matters of concern or dissatisfaction to an eligible employee unless excepted

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22 <sup>5</sup> The Court previously held by stipulation between CSC and Camacho that Camacho exhausted administrative remedies  
23 and the inaction of CSC is a final agency action for the purposes of 1 CMC § 9112. *Camacho v. Dept. of Public Safety*  
24 *and Civ. Service Comm’n*, Civ. No. 16-0233 (NMI Super. Ct. Dec. 28, 2016) (Order Granting Stipulated Motion for  
Resolution of Def. Civ. Service Commission’s Motion to Dismiss and Determination of Final Agency Action at  
1)[hereafter *Camacho Agency Action Order*].

1 by § 10-20.2-288.” NMIAC § 10-20.2-287. Pursuant to NMIAC § 10-20.2-288, the only matters  
2 excluded from the grievance process are:

- 3 (a) An adverse action appealed under part 200, subpart D<sup>6</sup>;
- 4 (b) A fitness-for-duty examination;
- 5 (c) The content of published government policy;
- 6 (d) Non-selection for appointment, promotion, or transfer from a group of  
7 properly ranked and certified candidates;
- 8 (e) Non-adoption of a suggestion or disapproval of a merit increase, performance  
9 award, or other kind of honorary discretionary award; and
- 10 (f) An employee who is serving on probationary status.

11 Further, in the provisions that deal with promotion opportunities, the PSSRR provide:

12 If the employee is dissatisfied and the matter cannot be resolved on an informal  
13 basis, the employee may have recourse to part 200, subpart G, Grievance  
14 Procedure. Mere failure to be selected for promotion when proper promotion and  
15 selection procedures were used is not a basis for a formal complaint.

16 NMIAC § 10-20.2-252(b).<sup>7</sup>

17 Camacho claims a grievance against a selection and/or non-selection resulting from *unfair*  
18 *and improper* promotion procedures and an *improperly* certified group of candidates on the  
19 Certification of Eligibles. The restriction against grievances for non-selection from a group of  
20 *properly* ranked and certified candidates, therefore, does not encompass Camacho’s claims in this  
21 case.<sup>8</sup> Only those claims specifically listed in the NMIAC are barred from the grievance process  
22 and Camacho’s claims are not one of those listed, therefore Camacho has a valid grievance.

23 Moreover, Camacho has exhausted administrative appeals and now appeals the agency  
24 inaction that did not address or settle his grievance, which satisfies the procedural requirements for  
jurisdiction found in 1 CMC § 9112 and NMIAC § 10-20.2-294(f).<sup>9</sup> Further, DPS misconstrues the

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<sup>6</sup> Part 200, subpart D of the PSSRR concerns adverse actions such as suspensions, separations, and demotions. NMIAC § 10-20.2-255.

<sup>7</sup> Part 200, subpart G of the PSSRR consists of NMIAC §§ 10-20.2-285 through 10-20.2-294.

<sup>8</sup> See NMIAC §§ 10-20.2-252(b), 10-20.2-287, 10-20.2-288.

<sup>9</sup> The Court previously held by stipulation that Camacho exhausted administrative appeals and that the inaction of the CSC is a final agency action for the purposes of 1 CMC § 9112. *Camacho* Agency Action Order at 1; see *supra* note 5.

1 procedural requirements by claiming Camacho should have challenged the impropriety of the  
2 Certification of Eligibles under NMIAC § 10-20.2-215 before bringing his challenge before this  
3 Court.<sup>10</sup> However, under NMIAC § 10-20.2-215 a candidate may only challenge his *own* rating on  
4 the list, not the inclusion of other candidates. Being the top-ranked candidate on the list and having  
5 met all the requirements for the position, Camacho had no reason to or grounds for challenging his  
6 own rating. Moreover, at the crux of his lawsuit Camacho is challenging the improper inclusion of  
7 Applicant Guerrero on the list, which is not within the scope of NMIAC § 10-20.2-215. Thus,  
8 Camacho met all the procedural requirements for judicial review of the agency action.

9 As such, DPS has failed to show by clear and convincing evidence that the Camacho's  
10 grievance is one of the enumerated matters not subject to judicial review or that Camacho's  
11 grievance does not meet the procedural requirements for jurisdiction.<sup>11</sup> Thus, the Court has subject  
12 matter jurisdiction.

13 **2. Camacho stated a claim for which relief can be granted.**

14 DPS argues that dismissal is proper because Camacho has failed to state a claim for which  
15 relief can be granted. DPS contends that there is no adequate remedy for Camacho's claim available  
16 through the Court. Camacho argues he has alleged facts that constitute a cognizable legal theory for  
17 which the Court may grant relief in the form of injunctive relief from further use of improper  
18 procedures and/or set aside the resulting promotion pursuant to authority granted in 1 CMC §  
19 9112(f)(2).

20 Generally, a complaint must satisfy the notice pleading requirements of NMI R. Civ. P. 8(a)  
21 in order to avoid dismissal under Rule 12(b)(6). *Cepeda v. Hefner*, 3 NMI 121, 126 (1992). NMI R.

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22 <sup>10</sup> NMIAC § 10-20.2-215 provides: "Any applicant may request a review of his/her rating within ten calendar days  
23 following notification of examination results. Such request for review shall be addressed to the Personnel Officer, who  
shall comply with the request and make whatever changes, if any, the facts warrant."

24 <sup>11</sup> See *N. Marianas College v. Civ. Serv. Comm'n*, 2006 MP 4 ¶ 14 (citing *Traynor v. Turnage*, 485 U.S. 535, 542  
(1988) (stating that the moving party in a motion to dismiss an agency action has the burden to show by clear and  
convincing evidence that the Commonwealth Legislature did not intend judicial review of the subject agency action).

1 Civ. P. 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is  
2 entitled to relief,” so that “fair notice of the nature of the action is provided.” *Govendo v. Marianas*  
3 *Pub. Land Corp.*, 2 NMI 482, 506 (1992) (quoting *In re Adoption of Magofna*, 1 NMI 449, 454  
4 (1990)). A complaint fails to satisfy the pleading requirements of NMI R. Civ. P. 8(a) where it  
5 lacks a cognizable legal theory or fails to allege facts constituting a cognizable legal theory. *Sablan*  
6 *v. Elameto*, 2013 MP 9 ¶ 4.

7 In considering a motion to dismiss, a court must “review the contents of a complaint by  
8 construing it in the light most favorable to the plaintiff and accepting all well-pleaded facts as true.”  
9 *Zhang Gui Juan v. Commonwealth*, 2001 MP 18 ¶ 11 (citation omitted). However, a complaint  
10 requires “more than a blanket assertion of entitlement to relief.” *Syed v. Mobil Oil Mariana Islands,*  
11 *Inc.*, 2012 MP 20 ¶ 20. Factual accompaniment or a clear assertion of the claims must be evident,  
12 with “direct or indirect ‘allegations [made] on every material point necessary to sustain a  
13 recovery.’” *Id.* at ¶¶ 20-21 (citing *Magofna*, 1 NMI at 454).

14 The Civil Service Act (“CSA”) requires that persons selected for government service, such  
15 as police officers, be chosen according to an established personnel system of impartial selection “by  
16 means of competitive tests which are fair, objective, and practical.” 1 CMC § 8102.<sup>12</sup> The PSSRR,  
17 which implement the provisions of the CSA and have the force and effect of law, apply to  
18 promotions of civil service employees, including those employed by DPS. *See* NMIAC §§ 10-20.2-  
19 001, 10-20.2-010. The PSSRR require that “minimum qualification standards prescribed by the  
20 Personnel Officer are used for promotion purposes ... [which] must be applied fairly and  
21 consistently to all employees being considered.” NMIAC §§ 10-20.2-246(a),(b). These minimum  
22 qualifications must be established and made a matter of record prior to the start of the promotions

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24 <sup>12</sup> The PSSRR mirror the CSA’s requirement for impartial selection “by means of competitive tests which are fair,  
objective, and practical.” NMIAC § 10-20.2-005(a).



1 process for a position. NMIAC § 10-20.2-246(b). Further, applicants who meet these minimum  
2 qualifications are to be ranked on a Certification of Eligibles resulting from examinations. NMIAC  
3 § 10-20.2-218(a).

4 Camacho argues that DPS violated the PSSRR in the promotion procedures by use of unfair  
5 and improper procedures in the promotion process for the Director of Police position. Specifically,  
6 Camacho alleges that DPS improperly modified the announcement for the position and that only  
7 after this modification Applicant Guerrero, who did not meet minimum qualifications for the  
8 position as previously posted, applied. Viewing these facts in the light most favorable to Camacho,  
9 the Court may infer that the minimum qualifications were improperly altered to permit Applicant  
10 Guerrero's application.<sup>13</sup>

11 Further, Camacho alleges that DPS used the Certification of Eligibles that improperly  
12 included Applicant Guerrero and then permitted Interviewer Guerrero, who earlier assisted with  
13 Applicant Guerrero's application, to unfairly and improperly sit on the interview panel for  
14 selection. As noted above, Applicant Guerrero did not meet the minimum requirements that were  
15 set prior to the start of the promotion process, but after meeting with the interview panel Applicant  
16 Guerrero was selected over Camacho who did meet those requirements and who had been ranked  
17 first on the Certification of Eligibles. These facts, taken as true and construed in the light most  
18 favorable to Camacho,<sup>14</sup> establish that the promotion procedures used were improper and lacked the  
19 requisite fairness and objectivity. Relief could then be granted by means of an injunction against the  
20 further use of improper procedures and/or by setting aside the promotion made through proper

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23 <sup>13</sup> While this inference is sufficient for the motion to dismiss, the plaintiff in a civil case still has the burden to establish  
24 factual claims by the preponderance of the evidence at trial. *Isla Financial Services*, 2001 MP 21 ¶ 21 (citing *Weiner*,  
816 P.2d at 896); *see supra* note 2.

<sup>14</sup> *See Zhang Gui Juan*, 2001 MP 18 ¶ 11.

1 procedures.<sup>15</sup> Therefore, Camacho has alleged sufficient factual basis to establish a claim for which  
2 relief can be granted and satisfied the notice pleading standard.

3 **3. DPS is a proper party to the action.**

4 DPS also contends that even if there were improprieties within the hiring procedures, DPS  
5 fulfilled its obligation to follow the proper procedures and is not liable for any improper actions on  
6 the part of Interviewer Guerrero because she is not a sworn DPS officer nor for any improper  
7 changes to the job announcement nor for the improper certification list used because such matters  
8 are within the control of the Civil Services Commission. Camacho contends that DPS is the proper  
9 party to the judicial review requested because DPS is responsible for the promotion process to fill a  
10 position within DPS and because Camacho properly filed a grievance with DPS, but DPS failed to  
11 properly address or settle the grievance.

12 To avoid dismissal under Rule 12(b)(6) and satisfy the notice pleading requirement, the  
13 complaint must include “a short and plain statement of the claim showing that the pleader is entitled  
14 to relief,” so that “fair notice of the nature of the action is provided.” *Govendo*, 2 NMI at 506  
15 (quoting *Magofna*, 1 NMI at 454). Further, a complaint must contain a cognizable legal theory and  
16 allege facts constituting a cognizable legal theory. *Sablan*, 2013 MP 9 ¶ 4. In considering a motion  
17 to dismiss, a court must “review the contents of a complaint by construing it in the light most  
18 favorable to the plaintiff and accepting all well-pleaded facts as true.” *Zhang Gui Juan*, 2001 MP 18  
19 ¶ 11 (citation omitted).

20 The CSA requires that persons selected for government service, such as police officers, be  
21 chosen according to an established personnel system of impartial selection “by means of  
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24 <sup>15</sup> See *Deleon Guerrero v. Dept. of Public Safety*, Civ. No. 09-0186 (NMI Super. Ct. March 19, 2012) (Findings of Fact and Conclusions of Law at 9) (rescinding the promotion made via procedures that violated the Civil Service Act and ordering use of a competitive selection process to fill the vacancy).

1 competitive tests which are fair, objective, and practical.” 1 CMC § 8102.<sup>16</sup> The PSSRR implement  
2 the provisions of the CSA, have the force and effect of law, and apply to promotions of civil service  
3 employees, including DPS employees. *See* NMIAC §§ 10-20.2-001, 10-20.2-010.

4 The PSSRR require that “minimum qualification standards prescribed by the Personnel  
5 Officer are used for promotion purposes ... [which] must be applied fairly and consistently to all  
6 employees being considered.” NMIAC §§ 10-20.2-246(a),(b). These minimum qualifications must  
7 be established and made a matter of record prior to the start of the promotions process for a  
8 position. NMIAC § 10-20.2-246(b). Further, applicants who meet these minimum qualifications are  
9 to be ranked on a Certification of Eligibles resulting from examinations. NMIAC § 10-20.2-218(a).

10 The PSSRR authorize employees to protest unlawful personnel actions by bringing a  
11 grievance. NMIAC § 10-20.2-294. The PSSRR name the DPS Commissioner as the appointing  
12 authority for the receipt and consideration of employee grievances. *Deleon Guerrero v. Dept. of*  
13 *Public Safety*, Civ. No. 09-0186 (NMI Super. Ct. March 19, 2012) (Findings of Fact and  
14 Conclusions of Law at 9) (citing NMIAC § 10-20.2-285). Under NMIAC § 10-20.2-294, the  
15 appointing authority is charged with examining the grievance, discussing it with the grievant or his  
16 representative, and rendering a written decision within fourteen calendar days after receipt of the  
17 grievance. The employee may then appeal the appointing authority’s action with CSC within fifteen  
18 working days of the appointing authority’s decision. NMIAC § 10-20.2-276; 10-20.2-294(b).

19 Camacho alleges that DPS is liable for the claimed improprieties. Specifically, Camacho  
20 alleges that DPS is ultimately liable for improperly modifying the announcement and qualifications  
21 during the promotion process, permitting unfairness in the interview process by improperly  
22 impaneling Interviewer Guerrero who assisted with a candidate’s application, and using a

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24 <sup>16</sup> The PSSRR mirror the CSA’s requirement for impartial selection “by means of competitive tests which are fair,  
objective, and practical.” NMIAC § 10-20.2-005(a).

1 Certification of Eligibles that DPS knew or should have known was improper. Though disputed, at  
2 this stage of the proceedings these factual allegations are taken as true and construed in the light  
3 most favorable to Camacho.<sup>17</sup> Thus, Camacho alleged factual allegations that, taken as true, would  
4 establish DPS is liable, which is sufficient to overcome the motion to dismiss.<sup>18</sup>

5 Further, Camacho applies for judicial review of the final agency action in the grievance  
6 process to which DPS is a party.<sup>19</sup> Camacho properly filed a grievance about DPS's use of improper  
7 promotion procedures with DPS, as the DPS Commissioner is the appointing authority, but DPS  
8 failed to address or settle Camacho's grievance. Then Camacho made an appeal of this inaction to  
9 CSC according to the procedures set forth in the PSSRR and, eventually, filed a petition for judicial  
10 review in the CNMI Superior Court.<sup>20</sup> As the complaint concerns DPS's failure to address or settle  
11 the grievance and DPS's failure to use proper promotion procedures, DPS is an agency whose  
12 action is properly within the scope of judicial review and DPS is a proper party to this action.

13 In sum, Camacho properly alleged a grievance through the agency process that complied  
14 with the PSSRR and the CSA, which provides the Court with jurisdiction over the matter. Further,  
15 Camacho alleged facts sufficient to establish a claim for which relief can be granted. Finally,  
16 Camacho alleged sufficient facts to establish that DPS is the proper party to this action.

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21 <sup>17</sup> *Zhang Gui Juan*, 2001 MP 18 ¶ 11.

22 <sup>18</sup> The Court again notes the plaintiff in a civil case still has the burden to establish factual claims by the preponderance  
of the evidence at trial. *Isla Financial Services*, 2001 MP 21 ¶ 21 (citing *Weiner*, 816 P.2d at 896); *see supra* note 2.

23 <sup>19</sup> *See* 1 CMC § 9112; NMIAC §§ 10.20.2-285, 10-20.2-294.

24 <sup>20</sup> The Court previously held by stipulation that Camacho exhausted administrative appeals and that the inaction of the  
CSC is a final agency action for the purposes of 1 CMC § 9112. *Camacho Agency Action Order* at 1; *see supra* note 5.

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**IV. CONCLUSION**

Accordingly, for the reasons stated above, Defendant Department of Public Safety’s Rule 12(b) Motion to Dismiss is hereby **DENIED**. Camacho’s litigation shall proceed forward.

**IT IS SO ORDERED** this 22<sup>nd</sup> day of May, 2017.

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/s/  
**JOSEPH N. CAMACHO**  
Associate Judge