

1 **II. BACKGROUND**

2 On February 22, 2017, Plaintiffs filed a complaint alleging the following causes of action:
3 negligence, violation of the NMI Consumer Protection Act (“CPA”)¹ under 4 CMC § 5105(r), and
4 negligent infliction of emotional distress. Plaintiffs allege that on or about July 17, 2016 they were
5 passengers on Defendant’s aircraft for a flight from Saipan to Tinian. After take-off Plaintiffs
6 noticed gasoline leaking from behind the wing of the aircraft and notified the pilots of the leak. The
7 pilots then returned to Saipan where Plaintiffs smelled gasoline fumes as they exited the aircraft.
8 Plaintiffs allege that the leaking gasoline was due to Defendant’s failure to properly secure a gas
9 cap on the aircraft prior to take-off. Plaintiffs’ prayer for damages includes claims for punitive
10 damages.

11 On June 19, 2017, the Defendant filed a motion to dismiss pursuant to NMI Rule of Civil
12 Procedure 12(b)(6) (“Rule 12(b)(6)”) and motion to strike pursuant to NMI Rule of Civil Procedure
13 12(f) (“Rule 12(f)”). Defendant argues that Plaintiffs’ second cause of action, violation of the CPA,
14 should be dismissed and/or stricken. Relatedly, Defendant contends that paragraphs 9 and 21 of
15 Plaintiffs’ complaint and Plaintiffs’ prayers for punitive damages, attorneys’ fees, and costs should
16 be dismissed and/or stricken.

17 On July 21, 2017, Plaintiffs filed their opposition to Defendant’s motion to dismiss and
18 motion to strike. Defendant filed its reply to Plaintiffs’ opposition on July 28, 2017. On August 1,
19 2017, the Court heard oral arguments by the parties.

20 **III. RULE 12(b)(6) MOTION TO DISMISS**

21 **A. LEGAL STANDARD**

22 Under NMI Rule of Civil Procedure 8(a), a pleading “shall contain . . . a short and plain
23 statement of the claim showing that the pleader is entitled to relief.” To comply with Rule 8(a), the

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¹ See 4 CMC §§ 5101-5123.

1 complaint must either “contain . . . direct allegations on every material point or contain allegations
2 from which an inference fairly may be drawn that evidence regarding these necessary points will be
3 introduced at trial.” *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11 ¶ 23 (quoting *In re*
4 *Adoption of Magofna*, 1 NMI 449, 454 (1990)) (internal quotation omitted). If a claim lacks
5 sufficient factual allegations, the court “must examine whether the allegations reasonably suggest
6 that the [pleader] will produce substantiating evidence.” *Id.* Factual statements that “merely create a
7 suspicion that the pleader might have a right of action” are insufficient. *Id.* (citations omitted).
8 “[S]ome types of complex claims, such as those where a mental state is at issue, will require more
9 factual accompaniment than others because of the additional nuance built into the claims
10 themselves. For instance, suggesting a mental state exists generally takes more facts than
11 suggesting the presence of an easement.” *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶
12 23. Under Rule 12(b)(6), if a pleading fails to “state a claim upon which relieve can be granted,” the
13 Court may dismiss those portions of the claim.

14 The plaintiff must plead “enough direct and indirect allegations to provide adverse parties
15 with ‘fair notice of the nature of the action.’” *Syed*, 2012 MP 20 ¶ 19. A pleading may not include
16 claims that are purely speculative. *Atalig*, 2013 MP 11 ¶ 23. In examining the sufficiency of the
17 pleading, the Court will construe the factual allegations “in the light most favorable to the [non-
18 moving party].” *Id.* (quoting *Syed*, 2012 MP 20 ¶ 22). However, the Court will not “strain to find
19 inferences favorable to the non-moving party.” *Id.* (quoting *Cepeda v. Hefner*, 3 NMI 121, 127
20 (1992)).

21 **B. DISCUSSION**

22 The Court will first consider Defendant’s motion to dismiss Plaintiffs’ claims for violations
23 of the CPA before turning to Defendant’s motion to dismiss claims for punitive damages.

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1 *1. Plaintiffs' CPA Claim Lacks Sufficient Factual Allegations to Survive the Motion to Dismiss.*

2 Defendant argues Plaintiffs have failed to allege sufficient factual allegations to establish a
3 CPA violation under 4 CMC § 5105(r). Specifically, Defendant argues Plaintiffs failed to show
4 deceit or unfairness and failed to show that Defendant knew or should have known that it was
5 introducing an unsafe good or service into commerce. Plaintiffs respond that the CPA does not
6 require deceit or unfairness and that the Complaint provides enough factual allegations to show that
7 Defendant should have known it was introducing an unsafe service into the market. Essentially,
8 Plaintiffs maintain that the CPA claim is sufficiently supported by factual allegations. The Court
9 will first determine the requisite elements for a violation of 4 CMC § 5105(r), i.e. whether an
10 element of deception or unfairness is required. The Court then will determine whether Plaintiffs
11 have pled sufficient factual allegations for each element.

12 *i. 4 CMC § 5105(r) Requires Showing Deception, Confusion, Misleading, or Use of*
13 *Unfair Business Practices by the Defendant.*

14 When interpreting a statute, courts must read the statutory language “in the context of the
15 entire statute” and “construe the statutory language according to the plain-meaning, where its
16 meaning is clear and unambiguous.” *Town House, Inc. v. Saburo*, 2003 MP 2 ¶ 11 (citations
17 omitted). Viewing the statute in context ensures that the statutory language maintains the purpose
18 envisioned by the drafters. *See Id.*; *see also United States v. Am. Trucking Ass’n, Inc.*, 310 U.S. 534,
19 542 (1940) (“To take a few words from their context and with them thus isolated to attempt to
20 determine their meaning, certainly would not contribute greatly to the discovery of the purpose of
21 the draftsmen of a statute.”).

22 While courts interpret the CPA liberally in favor of its remedial purpose, they may not apply
23 conjectural or hyper-extended definitions of ordinary terms to augment the scope of the CPA.
24 *Besong v. Mobil Oil Mariana Islands, Inc.*, Civ. No. 07-0095 (NMI Super. Ct. Jan. 15, 2008) (Order

1 Granting Defendant’s Motion to Dismiss Plaintiff’s Second Cause of Action at 4) [hereinafter
2 *Besong* Order] (citing *Commonwealth v. Saburo*, 2002 MP 3 ¶ 12 (Castro, A.J., dissenting) (“It is a
3 clear principal of statutory construction that the intention of the legislature is to be sought for
4 primarily in the language used and when the language expresses an intention reasonably intelligible
5 and plain, it must be accepted without modification by resort to construction or conjecture.”)); *see*
6 *also* 4 CMC § 5123. With this in mind, the Court turns to the CPA’s statutory language.

7 The Northern Marianas Commonwealth Legislature (“Legislature”) drafted the CPA. *See*
8 *generally* 33 TTC § 351; PL 4-46. The findings of the Legislature include multiple references to
9 “abuses in commerce”, concern over “unethical business practices”, and considerations of the effect
10 such abuses and unethical practices have on consumers, other merchants, and the economy of the
11 Commonwealth. *See* 4 CMC § 5102(a). The stated purpose of the CPA is to:

- 12 (1) Prohibit practices by merchants which deceive, mislead, or confuse the
13 consumer.
- 14 (2) Clarify the relationship between consumers and merchants and their respective
15 rights and obligations.
- 16 (3) Require or restrict commercial practices in order to further an orderly market
17 environment.
- 18 (4) Provide a mechanism for resolving disputes between merchants and
19 consumers.
- 20 (5) Provide civil and criminal remedies and penalties for violations of this article.

21 4 CMC § 5102(b). 4 CMC § 5105 contains thirty-two subsections that enumerate prohibited
22 actions, including:

- 23 The following unfair methods of competition and unfair or deceptive acts or
24 practices in the conduct of any trade or commerce are hereby declared to be
unlawful:
....
(1) Engaging in any other conduct which similarly creates a likelihood of
confusion or of misunderstanding; and

- 1 (m) Engaging in any act or practice which is unfair or deceptive to the consumer;
- 2
- 3 (r) Introducing into commerce any good or service which the merchant knows or
- 4 should know is unsafe or which the merchant knows or should know may cause
- 5 an unsafe condition in normal use, including performing a service which may
- 6 cause an unsafe condition

7 Under a plain reading of 4 CMC § 5105(r) of the CPA, Plaintiffs must allege that Defendant
8 introduced a good or service into commerce, which was unsafe, and which Defendant knew or
9 should have known was unsafe. Plaintiffs argue that the words confined within 4 CMC § 5105(r) do
10 not include the words deceit or unfairness, so no element of deceit or unfairness is necessary.
11 Rather, Plaintiffs argue that any acts enumerated within 4 CMC § 5105 are inherently deceitful or
12 unfair. In other words, Plaintiffs’ argument, if true, would mean any claims of negligence or strict
13 liability involving a merchant would be a violation of the CPA. Plaintiffs fail to account for the fact,
14 as Defendant points out, that 4 CMC § 5105(r) must be read in context and in line with the purpose
15 of the CPA.

16 The findings and purpose of the CPA, stated in 4 CMC § 5102, show that abusive business
17 practices – those which deceive, confuse, or mislead a consumer or are unfair business practices –
18 are meant to be punished by the CPA; the CPA was not meant to wholly subsume any and all
19 negligence or strict liability claims involving businesses. This is further evidenced by the repeated
20 use of the words “deceive,” “confuse,” “mislead,” and “unfair” in 4 CMC § 5105, which
21 enumerates prohibited acts. Particularly, the “catch-all” provisions found in 4 CMC § 5105(l) and 4
22 CMC § 5105(m) highlight the type of consumer protection intended by the Legislature. Concerned
23 that some abusive business practices against consumers may not fall squarely into the other
24 subsections, the Legislature prohibited acts or practices which “create a likelihood of confusion or
of misunderstanding” in 4 CMC § 5105(l) or which are “unfair or deceptive to the consumer” in 4
CMC § 5105(m). Clearly, the intent of the CPA is not to punish any and all torts a consumer could

1 bring against a merchant, but to protect consumers against certain abusive business practices –
2 namely those which deceive, mislead, or confuse consumers or which are unfair business practices.

3 Accordingly, a claim under 4 CMC § 5105(r) requires Plaintiffs to allege Defendant
4 introduced an unsafe good or service into commerce, that Defendant knew or should have known
5 the good or service was unsafe, and that in introducing this unsafe good or service into commerce a
6 consumer could have been deceived, confused, or misled by Defendant’s practices or Defendant
7 used unfair business practices.

8 *ii. Plaintiffs Fail to Allege Facts Showing Defendant Knew or Should Have Known It*
9 *was Introducing an Unsafe Service into Commerce and Used Unfair Business*
10 *Practices or Practices That Could Have Confused a Consumer.*

11 The sufficiency of a cause of action under the CPA is analyzed by comparing a reasonable
12 interpretation of the statutory provisions to the plaintiff’s factual allegations taken as true; “it is
13 insufficient to simply append a CPA claim to any civil action in which the defendant happens to be
14 in business.” *Besong Order*, Civ. No. 07-0095 at 4 (finding a concrete ramp at the defendant’s store
15 was not a “service” that the defendant introduced into commerce) (citing *NMHC v. SSFM Int’l, Inc.*,
16 Civ. No. 06-0123 (NMI Sup. Ct. Dec. 20, 2006) (Order at 10) (amended Apr. 9, 2007)). When
17 pleading a CPA violation, the plaintiffs need not show they were actually deceived, but only that
18 the defendant “acted in a way that was unfair or would likely cause confusion to a hypothetical
19 person.” *Isla Fin. Servs. v. Sablan*, 2001 MP 21 ¶ 24 (citing generally *Terran v. Kaplan*, 190 F.3d
20 1428 (9th Cir. 1997)). In sum, to survive Defendant’s motion to dismiss Plaintiffs’ CPA claims
21 against Defendant’s services, Plaintiffs must allege sufficient facts to show: Defendant introduced a
22 service into commerce that was unsafe; Defendant knew or should have known the service was
23 unsafe; and in the introduction of this unsafe service into commerce a hypothetical consumer could
24 have been deceived, confused, or misled by Defendant’s practices or Defendant used unfair
business practices. *See* 4 CMC § 5105(r). This claim involves nuances of mental state or

1 knowledge, which require greater factual allegations than less complex claims. *See Syed*, 2012 MP
2 20 ¶ 23.

3 Here, Plaintiffs allege in the Complaint that Defendant offers air flight services from Saipan
4 to Tinian. Plaintiffs also allege Defendant failed to secure a gas cap on the aircraft Plaintiffs
5 boarded for a flight from Saipan to Tinian, which caused fuel to leak during flight. Plaintiffs allege
6 they made Defendant’s pilots aware of the leak. Plaintiffs also contend that the failure to secure the
7 gas cap was a mistake and allege that because of this mistake the pilots of Defendant’s aircraft
8 returned to Saipan instead of completing the flight service to Tinian. Plaintiffs further allege there
9 are standards for the maintenance of aircraft. However, Plaintiffs fail to allege that these unpled and
10 unestablished standards have any relation to securing gas caps or that gas caps affect the safety of
11 Defendant’s services. Even construed in the light most favorable to Plaintiffs, these facts do not
12 show that Defendant knew or should have known that the gas cap was not secured or that this
13 failure to secure the gas cap created an unsafe service as required by 4 CMC § 5105(r). Plaintiffs
14 fail to allege facts to show that Plaintiffs or some hypothetical consumer could have been deceived,
15 confused, or misled by Defendant’s practices or Defendant used unfair business practices. The
16 Court, therefore, grants Defendant’s motion to dismiss Plaintiffs’ CPA claims.²

17 *2. Plaintiffs’ Claims for Punitive Damages Lack Sufficient Factual Allegations to Survive the*
18 *Motion to Dismiss.*

19 Punitive damages may be awarded for conduct that is outrageous because of the
20 “defendant's evil motive or his reckless indifference to the rights of others.” *Ishimatsu v. Royal*
21 *Crown Ins. Corp.*, 2010 MP 8 ¶ 34 (citing *Santos v. STS Enters.*, 2005 MP 4 ¶ 22 (quoting

22
23 ² The Court notes it has concerns regarding CNMI jurisdiction for CPA claims involving aviation in light of the
24 expansive federal regulations. *See e.g., Am. Airlines v. Wolens*, 513 U.S. 219, 222-224 (1995) (discussing federal
preemption in matters relating to airline rates, routes, and services); *Booth v. Santa Barbara Biplane Tours, LLC*, 158
Cal. App. 4th 1173, 1180-1181 (2008) (discussing the extent of federal preemption in the area of aviation). However, as
Plaintiffs’ CPA claim is dismissed the issue is moot.

1 RESTATEMENT (SECOND) OF TORTS § 908 (AM. LAW INST. 1979)).³ “The purpose of punitive
2 damages is to deter similar conduct in the future.” *Id.* To survive Defendant’s motion to dismiss
3 Plaintiffs must show that Defendant’s conduct was somehow outrageous, such as showing some
4 evil motive or a reckless indifference to the rights of others.

5 Defendant argues Plaintiffs fail to allege facts showing evil motive or reckless indifference.
6 Plaintiffs argue the Defendant’s conduct was reckless, citing *Santos v. STS Enters.*, 2005 MP 4. In
7 *Santos*, the plaintiff was a passenger of a tour bus who was injured during a collision while riding
8 the tour bus. *Id.* ¶ 3. The defendant owned and operated the tour bus. *Id.* The collision was due to
9 the fact that the defendant’s driver, Rasa, was under the influence of marijuana while driving. *Id.*
10 The *Santos* court found that reckless conduct was evidenced by the defendant’s:

- 11 (1) failure to follow its own employee handbook regarding the training, testing,
- 12 and treatment of its employees and supervisors concerning substance abuse, (2)
- 13 failure to properly train Rasa in the safe operation of a 32,500 pound commercial
- 14 tour bus, (3) failure to properly investigate Rasa's driving history prior to
- 15 employing him as a commercial tour bus operator or to prevent him from
- 16 operating a commercial tour bus or drug testing him after two previous work
- 17 related accidents and a speeding citation, (4) failure to prevent Rasa from
- 18 operating a commercial tour bus after his direct supervisors were made aware of
- 19 his continuing abuse of marijuana, and (5) providing Rasa with another tour bus
- 20 and instructing him to continue his daily route immediately following an accident
- 21 involving bodily injury.

17 *Id.* ¶ 24.

18 Here, Plaintiffs allege in the Complaint that Defendant failed to secure the aircraft’s gas cap,
19 that there are standards for maintenance and care of an aircraft, and that the failure to secure the gas
20 cap was a mistake. However, Plaintiffs fail to connect the unpled and unestablished standards for

21 ³ The Restatement (Second) of Torts § 908 (1979) provides:

- 22 (1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a
- 23 person to punish him for his outrageous conduct and to deter him and others like him from similar
- 24 conduct in the future.
- (2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil
- motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of
- fact can properly consider the character of the defendant's act, the nature and extent of the harm to the
- plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

1 maintenance to the gas cap or the alleged mistake. Complaint ¶¶ 7, 9. Plaintiffs’ additional
2 language, that the standards for maintenance are “strict and heightened”, such a mistake was
3 “egregious” and “should never happen under any circumstances”, and “the fragility of a small
4 aircraft, the preciousness of its cargo, and the heightened and strict standards” should be
5 considered, are merely conclusory opinion statements or unsubstantiated arguments by the
6 Plaintiffs. *See* Complaint ¶ 9. In a motion to dismiss the Court considers factual allegations, not
7 Plaintiffs’ opinions or unsupported arguments about those facts.

8 Punitive damages claims include nuances of mental state or knowledge that require greater
9 factual allegations. *See Syed*, 2012 MP 20 ¶ 23. While failing to secure the gas cap is alleged to be a
10 mistake, not every mistake is outrageous. Even construing the Complaint’s factual allegations in the
11 light most favor to Plaintiffs, the facts are dissimilar from those in *Santos* and are insufficient to
12 show a reckless indifference, evil motive, or any other indication of outrageousness in Defendant’s
13 conduct.⁴ Plaintiffs failed to establish the existence of aircraft safety standards or allege any other
14 facts that would make Defendant’s conduct outrageous. The Court need not strain to infer
15 outrageousness. *See Atalig*, 2013 MP 11 ¶ 23. Therefore, the Court grants Defendants’ motion to
16 dismiss Plaintiffs’ claims for punitive damages.

17 IV. RULE 12(f) MOTION TO STRIKE

18 A. LEGAL STANDARD

19 Under Rule 12(f), the court may strike “any insufficient defense or any redundant,
20 immaterial, impertinent, or scandalous matter” from a pleading. Motions to strike are disfavored,
21 but may be granted when one of the four grounds enumerated in Rule 12(f) is present and there is a
22 showing of prejudice to the moving party. *Maratita v. Fitial*, Civ. No. 12-0194 (NMI Super. Ct.

23 ⁴ Unlike *Santos*, 2005 MP 4 ¶ 24, there are no alleged facts to indicate that the standards for aircraft maintenance touch
24 upon gas caps; that Defendant violated these standards or any other handbook or safety procedures; that Defendant had
any knowledge of the allegedly unsecured gas cap before take-off; or that Defendant failed to act upon knowledge of
unsafe conditions or upon a duty that would have prevented the alleged harm.

1 Dec. 28, 2012) (Order Partially Granting and Denying Defs.’ Mot. to Dismiss and Strike at 7)
2 (citing 5A C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1382); accord *Rees v.*
3 *PNC Bank, N.A.*, 308 F.R.D. 266, 271 (N.D. Cal. 2015). However, motions to strike are not the
4 proper way to oppose inappropriate or irrelevant argument or insufficient pleadings. *PRC v. Chang*
5 *Shen*, Civ. No. 12-0163 (NMI Super. Ct. Aug. 8, 2014) (Order Denying Pl. PRC’s Mot. for a
6 Declaratory Judgment and Denying Def.’s Mot. to Strike at 3) (citations omitted); *Whittlestone Inc.*
7 *v. Handi-Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2010) (finding a motion to strike based upon the
8 insufficiency of factual allegations and failure to state a valid legal claim should be properly
9 brought as a motion to dismiss to avoid creating redundancies in the rules of procedure).

10 **B. DISCUSSION**

11 The Court will first consider the motion as to paragraph 21 and then consider paragraph 9.

12 *1. Defendant’s Opposition to Paragraph 21 is Moot.*

13 Defendant moves to strike paragraph 21 of the Complaint arguing a lack of factual basis for
14 punitive damages and the paragraph is redundant of the request for punitive damages in the prayer
15 for relief. Paragraph 21 of the Complaint states: “Because of the outrageous, reckless, and
16 unconscionable conduct of Star Marianas, Plaintiffs are entitled to punitive damages.”

17 Defendant’s arguments against paragraph 21 center on insufficient factual basis, which was
18 properly dealt with in the motion to dismiss. As the motion to dismiss punitive damages was
19 granted, the motion to strike Plaintiffs’ claims for punitive damages in paragraph 21 is moot.

20 *2. Defendant’s Opposition to Paragraph 9 is Moot.*

21 Additionally, Defendant argues that paragraph 9 of the Complaint should be struck because
22 it contains Plaintiffs’ irrelevant, baseless conclusory opinions and legal conclusions meant to
23 inflame the passions of the fact finder. Paragraph 9 of the Complaint states:

