



By Order of the Court, Judge Joseph N. Camacho

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FOR PUBLICATION



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

LARS INDALECIO PALACIOS,	)	CIVIL ACTION NO. 15-0032
)	
Plaintiff,	)	ORDER DISMISSING WITHOUT
	)	PREJUDICE FOR LACK OF SUBJECT
v.	)	MATTER JURISDICTION PURSUANT
	)	TO THE GOVERNMENT LIABILITY
COMMONWEALTH OF THE	)	ACT 7 CMC § 2202(b) THAT REQUIRES
NORTHERN MARIANA ISLANDS,	)	A SUM CERTAIN FOR MONETARY
	)	DAMAGES ACCOMPANY THE NOTICE
Defendant.	)	OF CLAIM FILED WITH THE OFFICE
	)	OF THE ATTORNEY GENERAL FOR
	)	PURPOSES OF ALLOWING PROMPT
	)	INVESTIGATION AND POSSIBLE
	)	SETTLEMENT
)	

I. INTRODUCTION

This matter came before the Court on January 30, 2018 in Courtroom 220A on the Commonwealth’s Motion to Dismiss Pursuant to Comm. R. Civ. P. 12(b)(1) for Lack of Subject Matter Jurisdiction and Memorandum of Law in Support Thereof. Plaintiff Lars Indalecio Palacios was represented by Attorney Matthew J. Holley and Attorney Victorino DLG Torres. The Commonwealth was represented by Office of the Attorney General Civil Division Chief Christopher M. Timmons and Assistant Attorney General Hessel Yntema.

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

II. BACKGROUND

This case arises out of an alleged motor vehicle accident on Chalan Pale Arnold Road on or about May 27, 2014. On February 23, 2015, Plaintiff Lars Palacios filed the Complaint in this

1 action against John Duenas San Nicolas alleging bodily injuries and property damage stemming
2 from the May 27, 2014 accident.

3 On April 28, 2016, counsel for Plaintiff, Attorney Victorino DLG Torres, sent a letter to the
4 Attorney General. Exh. 1. This letter was sent “pursuant to 7 CMC § 2202 to submit [Plaintiff’s]
5 claims to” the Attorney General’s Office. Exh. 1. The Complaint, which was attached to the April
6 28, 2016 letter, alleged damages “in the amount to be proven at trial.” Complaint at 4. The Attorney
7 General’s Office did not respond to this claim within the ninety-day statutory period outlined in 7
8 CMC § 2202(b).¹

9 On September 18, 2017, the Commonwealth filed its Motion to Dismiss Pursuant to NMI R.
10 Civ. P. 12(B)(1) for Lack of Subject Matter Jurisdiction. On September 29, 2017, Plaintiff filed his
11 Opposition to Defendant’s Motion to Dismiss. The Commonwealth filed its reply on October 10,
12 2017.

13 On January 30, 2018, the Court granted the Commonwealth’s Motion for Substitution and
14 Dismissal of the underlying action against Mr. San Nicolas. *Palacios v. Commonwealth*, Civ. No.
15 15-0032 (NMI Super. Ct. Feb. 12, 2018) (Order Granting Substitution and Dismissal of John
16 Duenas San Nicolas at 1).² At the January 30, 2018 hearing, the Court also heard arguments on the
17 Commonwealth’s Motion to Dismiss, specifically whether this case should be dismissed with or
18 without prejudice. Plaintiff argued that this case should be dismissed *without prejudice* since the
19 Commonwealth Code allows him to submit a claim to the Attorney General’s Office within sixty
20 days after dismissal. The Commonwealth disagreed and argued that dismissal should be *with*

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23 ¹ “The failure of the Attorney General to make final disposition of a claim within 90 days after it is presented shall be
deemed a final denial of the claim for purposes of this section.” 7 CMC § 2202(d).

24 ² The Court ordered the substitution from the bench on January 30, 2018. The written order was issued on February 12,
2018.

1 *prejudice*, since the Court lacks subject matter jurisdiction to adjudicate Plaintiff’s claims as a result
2 of the Plaintiff’s failure to comply with the sum certain requirement in 7 CMC § 2202.

3 **III. LEGAL STANDARD**

4 Rule 12(b)(1) of the Northern Mariana Islands Rules of Civil Procedure provides for
5 dismissal for “lack of jurisdiction over the subject matter.” NMI R. Civ. P. 12(b)(1). Under Rule
6 12(h)(3), “[w]hensoever it appears by suggestion of the parties or otherwise that the court lacks
7 jurisdiction of the subject matter, the court *shall* dismiss the action.” NMI R. Civ. P. 12(h)(3)
8 (emphasis added); *see Govendo v. Micronesian Garment Mfg*, 2 NMI 270, 278 n.7 (1991). Courts
9 may raise jurisdictional issues *sua sponte*, even if the parties do not raise these issues. *Cody v. NMI*
10 *Ret. Fund.*, 2011 MP 16 ¶ 10 (quoting *D’lil v. Best W. Encina Lodge & Suites*, 538 F.3d 1031, 1035
11 (9th Cir. 2008)).

12 Trial courts have broad discretion in determining whether the prerequisites to jurisdiction
13 exist, and the trial court may consider affidavits, or “oral testimony and other evidence.” *Kantor v.*
14 *Comet Press Books Corp.*, 187 F. Supp. 321, 322 (S.D.N.Y 1960). However, “[t]he court must be
15 on guard against deciding the jurisdictional issue without at the same time having its determination
16 constitute a ruling on the merits.” *Id.* “Dismissal is appropriate if the plaintiff has no right to be in a
17 particular court. Regardless of whether a plaintiff has a valid claim, if the court lacks jurisdiction, it
18 has no power to enter judgment and may only dismiss.” *Castro v. CNMI Dep’t of Public Safety*,
19 Civ. No. 14-0051 (NMI Super. Ct. Dec. 11, 2014) (Order Granting Defendant’s Motion to Dismiss
20 at 2) (quoting *Atalig v. Commonwealth Election Comm’n*, 2006 MP 1 ¶ 16) (internal citations and
21 quotation marks omitted).

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1 **IV. DISCUSSION**

2 The Government Liability Act (“GLA”), 7 CMC § 2201 *et seq.*, governs claims against the
3 Commonwealth government. The Commonwealth argues that Plaintiff failed to comply with the
4 notice requirements in the Government Liability Act Section 2202 (b)-(c) by failing to provide a
5 sum certain for Plaintiff’s monetary damages. Mot. to Dismiss at 4-5. Plaintiff, conversely, argues
6 that he has 60 days from the date of the substitution and dismissal to submit a claim to the Attorney
7 General’s Office, pursuant to Section 2210(d). Thus, the Court must look to whether the Court has
8 jurisdiction over the present case, pursuant to the limitations provided in the GLA. Then, should the
9 Court lack jurisdiction over the present case, the Court shall determine whether dismissal must be
10 with or without prejudice, subject to the requirements of the GLA.

11 **A. Plaintiff Failed to Provide a Sum Certain in their April 28, 2016 Notice of Claim**

12 The Court will first determine whether the Court has jurisdiction over this matter. The
13 Commonwealth argues that compliance with the GLA’s “sum certain” requirement is a prerequisite
14 for this Court to obtain jurisdiction over the suit and Plaintiff’s failure to include a sum certain bars
15 future recovery. Mot. to Dismiss at 5.

16 “The Superior Court has original jurisdiction over all civil actions.” 1 CMC § 3202.
17 However, “[t]he principle of sovereign immunity ‘provides that a state is immune from suit absent
18 its permission to be sued.’” *Castro*, Civ. No. 14-0051 (Order Granting Motion to Dismiss at 4-5)
19 (quoting *Pangelinan v. NMI Retirement Fund*, Civ. No. 04-0578 (NMI Super. Ct. Mar. 6, 2006)
20 (Order Granting in Part and Den. in Part Pl.’s and Def.’s Cross-Motions for Summ. J. at 6)). “Thus,
21 as a general rule the government is immune from most lawsuits; however, the government may
22 waive immunity for certain claims, such as . . . claims that fall within the GLA.” *Id.* (citing *Marine*
23 *Revitalization Corp. & Anthony Pellegrino v. Dep’t of Land and Nat. Resources*, 2010 MP 18 ¶

1 40)).³

2 Pursuant to the GLA, the Commonwealth may waive sovereign immunity in limited
3 circumstances provided certain conditions were met. Section 2202(b) provides:

4 An action shall not be instituted upon a claim against the Commonwealth for money
5 damages for injury or loss of property or personal injury or death caused by the
6 negligent act or omission of any employee of the Commonwealth while acting within
7 the scope of his/her employment, *unless the claimant shall have first presented the*
8 *claim to the Attorney General and the claim shall have been finally denied by the*
9 *Attorney General, in writing, and the claimant so notified. The failure of the Attorney*
10 *General to make final disposition of a claim within 90 days after it is presented shall be*
11 *deemed a final denial of the claim for purposes of this section.* The provisions of this
12 section shall not apply to such claims as may be properly asserted as third party
13 complaints, counterclaims, or cross-claims under the Commonwealth Rules of Civil
14 Procedure in a civil action. Every claim shall be presented within the period of
15 limitations provided by statute for civil actions of a like nature.

16 7 CMC § 2202(b) (emphasis added).

17 Section 2202 of the GLA provides limitations on the Commonwealth Government’s tort
18 liability. Section 2202(b) also requires that denial by the Attorney General be provided “in writing,
19 and the claimant so notified.” *Id.* Additionally, “[t]he failure of the Attorney General to make final
20 disposition of a claim within 90 days after it is presented shall be deemed a final denial of the claim
21 for purposes of this section.” *Id.*

22 Section 2202(c) further provides: “*Action shall not be later instituted for any sum in excess*
23 *of the amount of the claim presented to the Attorney General, except where the increased amount is*
24 *based upon newly discovered evidence ... or upon allegation and proof of intervening facts.”* 7
CMC § 2202(c) (emphasis added). Section 2202(b) and Section 2202(c) read together impose a
requirement that a plaintiff claim a sum certain in his or her Notice of Claim, and that their
subsequent legal action cannot seek a sum higher than that provided to the Attorney General in the

³ Despite this, plaintiffs “may bring suit against a government officer even if the officer acts pursuant to their statutory power when either the powers themselves or how they are exercised are constitutionally void.” *Castro*, Civ. No. 14-0051 (Order Granting Motion to Dismiss at 4 n. 1) (citing *Malone v. Bowdoin*, 396 U.S. 643, 647 (1962)).

1 Notice of Claim. There is persuasive authority in Commonwealth courts requiring plaintiffs submit
2 a sum certain to the Attorney General in order to comply with the GLA. *Castro v. CNMI*
3 *Department of Public Safety*, Civ. No. 14-0051 (Dec. 11, 2014) (Order Granting Defendant’s
4 Motion to Dismiss); *Foster* Order Granting Motion to Dismiss.

5 Thus, as a prerequisite for instituting suit against the Commonwealth, Section 2202(b)
6 “require[s] that any person having a claim against the C[NMI] would have to file a notice of that
7 claim with the [Office of the Attorney General] prior to bringing suit.” *Castro*, Civ. No. 14-0051
8 (Order Granting Motion to Dismiss at 4) (citing 7 CMC § 2202(b)). Section 2202(b)’s requirement
9 that claims first be submitted to the Attorney General must be read together with Section 2202(c).⁴
10 In *Foster*, the Commonwealth Superior Court found that “stating that the amount of damages will
11 be proven at trial does not comport with Section 2202(b).” *Foster* Order Granting Motion to
12 Dismiss at 10 (citing *Nigh v. United States*, 534 F. Supp. 2d 1170, 1179 (D. Mont. 2008); *Melo v.*
13 *United States*, 505 F.2d 1026, 1029 (8th Cir. 1974)).

14 28 USC § 2675(a), which is the federal equivalent to 7 CMC § 2202(b), contains similar
15 prerequisites to a court action under the Federal Torts Claims Act (“FTCA”). *Caidin v. United*
16 *States*, 564 F.2d 284, 286 (9th Cir. 1977) (“The claim requirement of the [FTCA] is jurisdictional in
17 nature and may not be waived.”); *Blue v. United States*, 567 F. Supp. 394, 396 (D. Conn. 1983); *see*
18 *also Adams v. United States*, 615 F.2d 284, 286 (5th Cir. 1980) (holding that the FTCA “establishes
19 that as a prerequisite to maintain a suit against the United States [] a plaintiff must present notice of
20 his or her claim to the appropriate federal agency”); *Turner v. United States*, 514 F.3d 1194, 1200
21 (11th Cir. 2008) (holding that the court does not have jurisdiction over a suit under the FTCA

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23 ⁴ “Action shall not be later instituted for any sum in excess of the amount of the claim presented to the Attorney
24 General, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at
the time of presentation of the claim, or upon allegation and proof of intervening facts relating to the amount of the
claim.” 7 CMC § 2202(c) (emphasis added).

1 unless the claimant first files a claim with the appropriate agency); *Schaefer v. Hills*, 416 F. Supp.
2 428, 429 (S.D. Ohio 1976) (holding that the claim procedure in the FTCA is jurisdictional).

3 “The GLA is modeled after the Federal Torts Claims Act and ‘closely tracks provisions of
4 the Federal Tort Claims Act.’” *Castro v. CNMI Department of Public Safety*, Civ. No. 14-0051
5 (Dec. 11, 2014) (Order Granting Defendant’s Motion to Dismiss at 4) (citing PL § 15-22; *Kabir v.*
6 *CNMI Public School System*, 2009 MP 19 ¶ 40 n.24). Cases brought under the FTCA “must include
7 . . . a demand for a sum certain in damages. Notice that includes . . . a demand for a specific amount
8 of damages would inform the agency of the claim, give it sufficient information to investigate, and
9 enable it to ascertain whether the claim could or should be settled.” *Blue*, 567 F. Supp. at 398. *See*
10 *also Lopez v. United States*, 758 F.2d 806, 808 (1st Cir. 1985) (“If a ‘sum certain’ is lacking from a
11 purported claim, ‘the claim’ does not constitute a claim for purposes of complying with the
12 jurisdictional prerequisite of [Section 2675(a) of the FTCA].”); *Casey v. United States Postal*
13 *Service*, 613 F. Supp. 362, 364 (D. Mass. 1985) (“A claim which does not set out the amount of
14 damages sought is not a claim.”); *Gonzales v. United States Postal Service*, 543 F. Supp. 838, 840
15 (N.D. Cal. 1982) (“A claim is fatally defective where it is not made for a sum certain.”); *Schaefer*,
16 416 F. Supp. at 429 (“Claim as used in [Section 2675 of the FTCA] means a claim for a sum
17 certain, and when no sum certain is set forth before the agency, an action must be dismissed for
18 failure to exhaust administrative remedies.”).⁵ Based on the foregoing, the Court finds compliance

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⁵ *See also Wojciechowicz v. United States*, 474 F. Supp. 2d 283, 287 (D.P.R. 2007) (“The express jurisdictional prerequisites of [Section 2675(a) of the FTCA] are fully satisfied as long as the claimant states a claim of wrongdoing and defines its damages in a sum certain.”); *Suarez v. United States*, 22 F.3d 1064, 1066 (11th Cir. 1064) (“The [FTCA] requires, at a minimum, that a claimant expressly claim a sum certain or provide documentation which will allow the agency to calculate or estimate the damages to the claimant. The claim required must be something more than mere notice of a potential law suit.”); and *Nigh v. United States*, 534 F. Supp. 2d 1170, 1178 (D. Mont. 2008) (“The sum certain requirement under [Section 2675(a) of the FTCA] demands more than mere general notice to the government of the approximate amount of a claim.”).

1 with the requirements of the GLA is a jurisdictional prerequisite to instituting or maintaining a suit
2 against the Commonwealth.

3 In the present case, the Complaint attached to the April 28, 2016 Notice of Claim listed
4 damages “in the amount to be proven at trial.” Exh. 1. Since Plaintiff failed to provide a sum certain
5 in his Notice of Claim to the Attorney General, Plaintiff failed to comply with the jurisdictional
6 notice requirements of Section 2202(b) of the GLA. Thus, the Court lacks jurisdiction to hear this
7 case.

8 **B. Dismissal Without Prejudice**

9 The Court must now turn to whether dismissal must be with or without prejudice. The key
10 issue is whether, despite failing to properly submit a claim subject to Section 2202(b), the Plaintiff
11 may still submit a claim pursuant to 2210(d). The Commonwealth argues that Section 2202(b)
12 alone controls in the present case, and that Plaintiff’s failure to provide a sum certain in his Notice
13 of Claim means that the Court now lacks jurisdiction and that dismissal must be with prejudice.
14 Mot. to Dismiss at 2-7. Specifically, the Commonwealth argues that, since Plaintiff failed to submit
15 a sum certain in his claim, that he cannot then initiate proceedings in excess of the sum certain of
16 \$0.00.⁶ *Id.* Plaintiff, on the other hand, argues that Section 2210(d) controls, which provides
17 Plaintiff an additional 60 days to submit his claim to the Attorney General and exhaust all
18 administrative remedies following the dismissal of the civil action. Opp. at 3, 6-8.

19 **1. Section 2210**

20 Section 2210 of the GLA provides procedures for certification by the Attorney General that
21 an employee was acting within the scope of his or her employment when the tort occurred, and then
22 provides for substituting the Commonwealth for the defendant employee. 7 CMC § 2210 *et seq.*

24 ⁶ Zero dollars and Zero cents. Not even one penny.

1 Section 2210(d) outlines procedures for situations where a case is dismissed for failing to first
2 present a claim to the Attorney General:

3 (d) Whenever an action or proceeding in which the Commonwealth is substituted as the
4 party defendant is dismissed for *failure to first present a claim* pursuant to the
5 requirements of this title, such a claim shall be deemed to be timely presented under
6 this title if:

7 (1) The claim would have been timely had it been filed on the date the
8 underlying civil action was commenced, and

9 (2) *The claim is presented to the Attorney General within 60 days after
10 dismissal of the civil action.*

11 7 CMC § 2210(d) (emphasis added). Thus, if Section 2210(d) applies, then the Plaintiff would have
12 another chance to submit a claim.

13 The key question however, is whether Section 2210(d)'s language regarding "failure to first
14 present a claim" means that, since Plaintiff has already submitted a Notice of Claim on April 28,
15 2016, that Plaintiff is foreclosed from correcting the defects in their claim. In other words, whether
16 Section 2210(d) only applies to plaintiffs who have never submitted a Notice of Claim to the
17 Attorney General regarding the same case or controversy.

18 When a claimant files a claim with an agency but fails to state a sum certain, it is treated as
19 if no administrative claim had ever been filed. *Caton v. United States*, 495 F.2d 635, 637 (9th Cir.
20 1974). Where a claimant "failed to file its agency claim in a sum certain; the agency claim was held
21 a nullity; there was thus no jurisdiction in the federal court, for claimant technically failed to 'have
22 first presented the claim to the appropriate Federal agency'" as required by statute. *Id.* at 637
23 (quoting *Avril v. United States*, 461 F.2d 1090 (9 Cir. 1972)). "Where a claim was not filed within
24 the statutory limits, an action filed thereafter should be dismissed for lack of jurisdiction." *Id.*
(citing *Jordan v. United States*, 333 F. Supp. 987 (E.D. Pa. 1971)). Under federal law, where a
claim must be "first presented," then "[i]t is plain that the required 'claim' is something more than
mere notice of an accident and an injury. The term 'claim' contemplates, in general usage, a
demand for payment or relief, and, unless it is a claim *for* something, it is no claim at all." *Avril*,

1 461 F.2d at 1090 (emphasis in original). Thus, for a claim to have been “first presented,” it must
2 have included a sum certain, or else it is not actually a claim pursuant to the GLA.

3 Here, Plaintiff submitted a claim, but failed to state a sum certain, thus Plaintiff failed to
4 “first present a claim pursuant to” the GLA. 7 CMC § 2210(d). In *Montoya v. U.S.*, the district court
5 dismissed without prejudice Montoya’s FTCA complaint for failure to pursue administrative
6 remedies. 841 F.2d 102 (5th Cir. 1988). In *Montoya*, the letter sent as a Notice of Claim “fail[ed] to
7 suggest a dollar sum for any of the three minor passengers.” *Id.* at 105. In affirming the dismissal
8 *without* prejudice, the Fifth Circuit permitted Montoya to refile the claim, stating, “[t]he district
9 court ruled that Ms. Montoya was free to return to the agency and file a proper claim.” *Id.*

10 As in *Montoya*, Plaintiff here failed to state a sum certain. If a claimant fails to state a sum
11 certain, then he has failed to have “first presented” the claim under the statute. Plaintiff’s April 28,
12 2016 Notice of Claim to the Attorney General failed to state a sum certain, thus Plaintiff “fail[ed] to
13 first present a claim pursuant to the requirements of” the GLA. 7 CMC § 2210(d). By failing to
14 include a sum certain, Plaintiff’s Notice of Claim is deficient and thus not properly presented to the
15 Attorney General. The GLA however, does not state that a claimant has one *and only one*
16 opportunity to submit a claim to the appropriate agency or face dismissal with prejudice. Just like in
17 *Montoya*, Plaintiff is “free to return to the agency and file a proper claim.” *Montoya*, 841 F.2d at
18 105.

19 **2. Section 2202**

20 Under Section 2202(b), a claimant must “have first presented the claim to the Attorney
21 General.” 7 CMC § 2210(b). If no sum certain is submitted as part of the claim, then the claim has
22 not been properly presented to the Attorney General. The Commonwealth incorrectly relies upon
23 the language of Section 2202(b) to support its argument for dismissal with prejudice.

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1 In cases where the claim has not been properly “first presented” to the Attorney General, for
2 instance by omitting a sum certain, the Attorney General cannot simply lay in wait without
3 responding in writing and simply allow the 90 days provided in Section 2202(b) to expire. The 90-
4 day time limit in Section 2202(b) is not meant to be a trap set by the Attorney General so that the
5 Attorney General’s Office can wait idly and then spring forth exclaiming “Gotcha!” when the
6 claimant has lost his or her chance at being compensated for a valid claim, and the claimant can no
7 longer bring the lawsuit to the Superior Court for lack of subject matter jurisdiction.

8 The CNMI Legislature in its Findings and Purpose stated that:

9 This Act also would require that any person having a claim against the Commonwealth
10 would have to file notice of that claim with the Attorney General prior to bringing suit.
11 The Attorney General would then have 90 days in which to investigate the claim before
12 any legal action could be commenced. This mandatory time period would *allow the*
13 *Commonwealth to investigate claims and settle valid ones without the expense of*
14 *litigation, resulting in less expense to the Commonwealth and greater net recoveries for*
15 *deserving plaintiffs.* This is also in accord with current federal requirements under the
16 Federal Tort Claims Act.

13 PL 15-22 (emphasis added) (amending the GLA).

14 The GLA is meant to allow the Commonwealth to efficiently handle claims against it while
15 still allowing “greater net recoveries for deserving plaintiffs.” *Id.* The GLA is *not* meant to be a trap
16 for the unwary as the Commonwealth plays legalistic gamesmanship with claimants with valid
17 claims.

18 It bears repeating. The Legislature meant for the GLA presentment of claims to the Attorney
19 General to be a non-trial dispute resolution mechanism to resolve valid claims without the need to
20 resort to filing expensive lawsuits. Claims could then be resolved and in effect result in less expense
21 of government time, resources, not congesting the court dockets, as well as a greater net recovery
22 for deserving claimants, who do not have to pay for attorneys, the cost of litigation, hire experts,
23 call witnesses to testify, etc.

