



*By Order of the Court, Judge Kenneth L. Govendo*

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**FOR PUBLICATION**



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Daisy Mendiola

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

IGNACIO DLG. DEMAPAN and  
FRIEDA R. DEMAPAN,

Plaintiffs,

v.

UNI-WORLD CONSTRUCTION CO.  
and PACIFIC BASIN INSURANCE  
COMPANY,

Defendants.

Case No. 19-0131-CV

**ORDER GRANTING IN PART AND  
DENYING IN PART PACIFIC BASIN'S  
MOTION TO DISMISS**

**INTRODUCTION**

On July 15, 2019, this Court conducted a hearing on Pacific Basin Insurance Company's ("Pacific Basin") Motion to Dismiss. Charles P. Reyes was present representing Pacific Basin, and Brien Sers Nicolas was present representing Ignacio and Frieda Demapan (collectively, "Plaintiffs").

After considering the parties' briefs, oral arguments, and applicable law, the Court finds that Plaintiffs asserted enough factual allegations in their Complaint to provide fair notice of the claims for breach of the performance bond, bad faith, compensatory damages, and attorney's fees. Plaintiffs' punitive damages claim, however, is not a cognizable cause of action in surety bond disputes. As a result, the Court grants Pacific Basin's Motion to Dismiss only as it pertains to Plaintiffs' claim for punitive damages.

1 **BACKGROUND**

2 On July 18, 2016, Plaintiffs and Uni-World Construction Co. ("Uni-World") entered  
3 into a construction contract whereby Uni-World agreed to renovate Plaintiffs' 12-unit  
4 apartment building. Pursuant to the construction contract, Uni-World would complete the  
5 project within 150 working days<sup>1</sup> after it obtained the required construction permits. Uni-  
6 World agreed to complete the project for \$88,100.27, and Plaintiffs agreed to pay  
7 installments in accordance with Uni-World's completing specific milestones.

8 To ensure the completion of this work, Uni-World obtained a performance bond  
9 from Pacific Basin, guaranteeing that Pacific Basin would complete the project if Uni-  
10 World defaulted on the construction contract. After construction began, Plaintiffs paid  
11 Uni-World \$23,620 on September 30, 2016 and \$12,000 on December 21, 2016. Plaintiffs  
12 allege that although they issued those payments, Uni-World had not completed the specific  
13 milestones outlined in the construction contract. They also claim they informed Uni-  
14 World about their concerns regarding the quality and pace of work.

15 On January 23, 2017, Uni-World issued a bill for \$15,808.54 and later issued  
16 another for \$12,272.95. Plaintiffs refused to pay those bills, however, because they argued  
17 Uni-World had failed to complete the specific milestones to warrant additional payments.  
18 After learning that Plaintiffs were unwilling to pay, Uni-World stopped working on the  
19 project.

20 On April 15, 2019, Plaintiffs filed this lawsuit against Pacific Basin to enforce the  
21 performance bond, and they filed a separate lawsuit against Uni-World to enforce the  
22 construction contract.<sup>2</sup> In response, Pacific Basin filed a motion to dismiss, arguing that  
23 Plaintiffs did not allege enough factual allegations in their Complaint to provide fair notice  
24 of the claims against it.

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27 <sup>1</sup> The construction contract does not define "working days." (*See* Compl., Ex. A.)

28 <sup>2</sup> On July 16, 2019, this Court consolidated Case No. 19-0133-CV (against Uni-World) with Case No. 19-0131-CV (against Pacific Basin), making Pacific Basin's the main case. (Order Consolidating Cases, July 16, 2019.)

1 **DISCUSSION**

2 In its motion, Pacific Basin seeks to dismiss Plaintiffs' claims against it for: 1) breach  
3 of the performance bond; 2) bad faith; 3) compensatory damages; 4) attorney's fees; and 5)  
4 punitive damages. The Court discusses each claim below.

5 A party may challenge a pleading by arguing that a claim fails to state a claim upon  
6 which relief can be granted. NMI R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion to  
7 dismiss, a plaintiff must include in his complaint "either direct allegations on every  
8 material point necessary to sustain a recovery on any legal theory, even though it may not  
9 be the theory suggested or intended by the pleader, or contain allegations from which an  
10 inference fairly may be drawn that evidence on the material points will be introduced at  
11 trial." *Syed v. Mobil Oil Marianas, Inc.*, 2012 MP 20 ¶ 19 (quoting *In re the Adoption of*  
12 *Magofna*, 1 NMI 449, 454 (1990)).

13 This pleading standard ensures that a plaintiff includes enough direct and indirect  
14 allegations to provide adverse parties fair notice of the nature of the action. *In re the*  
15 *Adoption of Magofna*, 1 NMI 449, 454 (1990). A plaintiff must offer more than a blanket  
16 assertion of entitlement to relief; he may not set the machinery of the judiciary into motion  
17 with merely a "short and plain statement" that lacks enough factual allegations or a clear  
18 assertion of the claims presented. *Syed*, 2012 MP 20 ¶ 20; NMI R. Civ. P. 8(a)(2).  
19 Although a court must accept the complaint's factual allegations as true and construe them  
20 in the light most favorable to the plaintiff, a court need not inspect the record to find  
21 inferences favorable to the plaintiff. *Syed*, 2012 MP 20 ¶ 22.

22 **A. Breach of the Performance Bond**

23 First, Pacific Basin argues that Plaintiffs' claim for breach of the performance bond<sup>3</sup>  
24 fails to state a claim because Plaintiffs: 1) did not allege that they issued a formal, written  
25

26  
27 <sup>3</sup> A performance bond is a type of surety bond or insurance, so the Court uses the terms interchangeably. *See*  
28 *Pulte Home Corp. v. TIG Ins. Co.*, 312 F. Supp. 3d 917, 929 n.6 (S.D. Cal. 2018) ("A 'performance bond' is 'a  
surety bond guaranteeing faithful performance of a contract.'" (citing Webster's Third New International  
Dictionary 1678 (1981))).

1 notice indicating that Uni-World defaulted on the construction contract; and 2) did not  
2 allege that they fully performed their obligations under the construction contract.

3 Generally, a court examines the rights and obligations under a performance bond  
4 using standard principles of contract interpretation. *United States Fid. & Guar. Co. v.*  
5 *Braspetro Oil Servs. Co.*, 369 F.3d 34, 51 (2d Cir. 2004); *Elm Haven Constr. Ltd. P'ship v. Neri*  
6 *Constr. LLC*, 376 F.3d 96, 100 (2d Cir. 2004). In a performance bond, an obligee must  
7 comply with any condition precedent before a surety's obligation under a bond matures. *Id.*  
8 "A condition precedent is an act or event, other than a lapse of time, which, unless the  
9 condition is excused, must occur before a duty to perform a promise in the agreement  
10 arises." *Braspetro*, 369 F.3d at 51 (quoting *Oppenheimer & Co. v. Oppenheim, Appel, Dixon &*  
11 *Co.*, 86 N.Y.2d 685, 690 (1995)).

12 In this case, Pacific Basin's performance bond provides:

13 Whenever Contractor [Uni-World] shall be, and declared by Owner  
14 [Plaintiffs] to be in default under the Contract, the Owner having performed  
15 Owner's obligations there under, the Surety [Pacific Basin] may promptly  
remedy the default, or shall promptly

- 16 1. Complete the Contract in accordance with its terms and conditions, or
- 17 2. Obtain a bid or bids for completing the Contract in accordance with its  
terms and conditions . . . .

18 (Compl., Ex. B.) This provision contains a few conditions precedent to Pacific Basin's  
19 obligation under the performance bond. Namely, Uni-World must have defaulted on the  
20 construction contract, Plaintiffs must have declared Uni-World's default, and Plaintiffs  
21 must have performed their obligations. Pacific Basin questions only the latter two  
22 conditions.

23 *i. Declaration of Default Requirement*

24 A default declaration requirement varies depending on the bond's terms. *See*  
25 *Braspetro*, 369 F.3d at 58 (finding that to declare a default, the bond required a formal  
26 termination of the principal's right to complete the contract); *Ronquillo v. Korea Auto., Fire, &*  
27 *Marine Ins. Co.*, 2001 Guam 25 ¶ 17 (finding the bond required the termination of the  
28 principal's obligations to declare a default); and *GE Capital Corp. v. MSI Modular Sys.*, No.

1 CV 14-09873-RGK (JEMx), 2015 U.S. Dist. LEXIS 185053, at \*8 (C.D. Cal. Aug. 17,  
2 2015) (finding that the agreement required the surety to perform upon the principal's  
3 default, with or without demand or notice). But regardless of the variations,  
4 "[p]erformance bond requirements for notice of default and demand that the surety step in  
5 and perform under the bond must be met before an obligee can recover damages under the  
6 performance bond." *Balfour Beatty Constr. v. Colonial Ornamental Iron Works*, 986 F. Supp.  
7 82, 86 (D. Conn. 1997) (citing *City of New Haven v. Eastern Paving Brick Co.*, 78 Conn. 689  
8 (1906)).

9 In *Balfour*, for example, the court granted a motion for summary judgment because  
10 it found that Balfour had not satisfied the notice requirement outlined in the performance  
11 bond. 986 F. Supp. at 86. There, the performance bond provided: "Obligee *after reasonable*  
12 *notice to Surety* may, or Surety upon demand of obligee may arrange for the performance of  
13 Principal's obligation . . . ." *Id.* at 84 (emphasis in original). The court first determined that  
14 notice was required based on the express terms of the performance bond. *Id.* at 85–86.  
15 Then it found that even though Balfour had delivered notices, Balfour's notices failed to  
16 clearly, adequately, and unequivocally declare the principal in default. *Id.* at 86.

17 On the other hand, the Second Circuit in *Braspetro* affirmed the district court's  
18 finding that Brasoil clearly, adequately, and unequivocally declared the principal in default  
19 and terminated its obligations under the contract. 369 F.3d at 57. Like the court in *Balfour*,  
20 the Second Circuit looked at the express terms of the performance bond to determine the  
21 obligee's duties. *Id.*; see *Balfour*, 986 F. Supp. at 86. In doing so, the court found that "while  
22 the Bonds required Brasoil, in declaring a default, to 'formally terminate[] the [principal's]  
23 right to complete the Contracts,' there was nothing in the Bonds or the Contracts to suggest  
24 any particular method for declaring a default." *Braspetro*, 369 F.3d at 58. Accordingly, the  
25 court found that Brasoil's letters adequately terminated the principal's right to complete the  
26 contract, even though the court had to interpret the language as a form of termination. *Id.*  
27 at 57.

28

1 Here, Pacific Basin's performance bond, like the performance bond in *Braspetro*,  
2 omits any method for Plaintiffs to declare a default. *See id.* at 58. It does not require any of  
3 the formalities Pacific Basin asserts Plaintiffs needed to satisfy—it does not even require  
4 that Plaintiffs notify Pacific Basin of the default. Moreover, Pacific Basin does not cite any  
5 case law or provision in the performance bond providing that only written notices satisfy  
6 the default declaration requirement.

7 Nevertheless, Plaintiffs alleged in their Complaint:

8 Plaintiff, upon receiving the purported 3<sup>rd</sup> and 4<sup>th</sup> billings . . . informed Uni-  
9 World of their intentions not to pay said billings as the same were not  
10 consistent with the terms of payment in Article 4 of the construction contract  
11 given the work thus far performed by Uni-World and further continued their  
demand to Uni-World for Uni-World to strictly follow the terms of payment  
and the work required for the same as per the construction contract.

12 (Compl. ¶ 20.) Plaintiffs also included a letter from Pacific Basin regarding their request to  
13 have Pacific Basin perform on Uni-World's behalf after Uni-World stopped working on the  
14 project. But even if Plaintiffs did not expressly allege in the Complaint that they declared  
15 Uni-World to be in default of the construction contract, the breach of the performance bond  
16 claim does not fail at this stage, because the Court fairly infers from the allegations that  
17 evidence on the material points will be introduced at trial. *See Syed*, 2012 MP 20 ¶ 19.

18 *ii. Plaintiffs' Performance Under the Construction Contract*

19 Pacific Basin also asserts that Plaintiffs' breach of the performance bond claim fails  
20 because they did not perform their obligations under the construction contract.  
21 Specifically, Pacific Basin argues that Plaintiffs issued unwarranted advance payments then  
22 refused to pay the third and fourth installments.

23 Pursuant to the construction contract, Plaintiffs needed to pay Uni-World a first  
24 installment of \$7,950 and a second installment of \$27,152.40 for a total of \$35,102.40.  
25 Instead, Plaintiffs first paid \$23,620 then paid \$12,000, a total of \$35,620. These payments,  
26 according to Pacific Basin, materially breached the terms of the construction contract.  
27 Pacific Basin, however, does not provide any authority indicating that an advance payment  
28 or an overpayment constitutes a breach of contract.

1           Furthermore, when Plaintiffs refused to pay the installments unless Uni-World  
2 completed the work outlined in the construction contract, Uni-World stopped working on  
3 the project. Plaintiffs predictably continued to refuse to pay the third and fourth  
4 installments. *See Del Rosario v. Camacho*, 2001 MP 3, 96–97 ("[I]f non-performance is  
5 justifiable, then there is no breach."). Based on these allegations, the Court fairly concludes  
6 that Plaintiffs will present evidence at trial on the material points for the breach of the  
7 performance bond claim. And so the Court denies Pacific Basin's request to dismiss the  
8 breach of the performance bond claim.

9           **B. Bad Faith Claim Against Pacific Basin**

10           Second, Pacific Basin argues that Plaintiffs' bad faith claim should be dismissed  
11 because: 1) a third-party bad faith claim against a surety is unavailable under CNMI law; 2)  
12 if a third-party bad faith claim were available under CNMI law, Plaintiffs did not properly  
13 allege it; and 3) a bad faith tort claim falls outside the CNMI's two-year statute of  
14 limitations under 7 CMC § 2503(d), as well as the limitations period provided in the  
15 performance bond.

16           *i. Third-Party Bad Faith Claims Against a Surety*

17           Pacific Basin cites the Commonwealth Insurance Act of 1983 ("Act") to argue that  
18 Plaintiffs cannot assert a third-party bad faith claim against a surety in the CNMI. In the  
19 Commonwealth, surety insurance is included as a separate class of insurance under the  
20 Act. 4 CMC § 7103(d)(7). The Act defines insurance as a contract whereby one undertakes  
21 to indemnify another or pay a specified amount upon determinable contingencies. *Id.* §  
22 7103(k). It also provides that in every insurance policy, the implied covenant of good faith  
23 and fair dealing exists between an insurer and an insured, but not between the insurer and a  
24 third-party. *Id.* § 7502(j); *see also id.* § 7103(l) (defining insurer as every person engaged in  
25 the business of making contracts of insurance).

26           In contrast, the Act defines surety insurance as "the execution of all bonds,  
27 undertakings and contracts of suretyship and guaranteeing of the performance of contracts  
28 other than insurance policies." 4 CMC § 7103(p). In *Commonwealth Dev. Auth. v. Guerrero*

1 *Bros.*, the CNMI Supreme Court applied the Restatement (Third) of Suretyship and  
2 Guaranty (1995), finding that a suretyship is created when:

- 3 (1) an obligee has recourse against the secondary obligor for the principal  
4 obligor's debt;
- 5 (2) to the extent that the principal obligor's debt is satisfied (by either the  
6 principal or secondary obligor), the obligee is not entitled to continued  
7 performance by either the principal or secondary obligor on the same debt,  
and
- 8 (3) the principal obligor, as opposed to the secondary obligor, ought to  
9 perform the underlying debt or bear the cost of performance.

10 2007 MP 32 ¶ 14 (citing Restatement (Third) of Suretyship & Guaranty, § 1). In  
11 another case, the CNMI Supreme Court found that the business of a surety "is not one of  
12 ordinary insurance, for the risk is not [] linked to premiums, nor is there a pooling of risk."  
13 *Century Ins. Co., Ltd. v. Guerrero Bros., Inc.*, 2010 MP 4 ¶ 8 (quoting *Nat'l Shawmut Bank of*  
14 *Boston v. New Amsterdam Cas. Co.*, 411 F.2d 843, 844–45 (1st Cir. 1969)). "A surety's  
15 security is not a 'fee but a compound of its confidence in the contractor and the opportunity  
16 to prevent or minimize loss by its right to salvage the debacle by its own performance." *Id.*  
17 "Thus, a surety's business is quite distinct from a lender and an insurer . . . ." *Century Ins.*,  
18 2010 MP 4 ¶ 8. And "[a]lthough suretyship is listed in the Insurance Code as a class of  
19 insurance, it does not follow that a surety bond equates to a policy of insurance . . . ." *Cates*  
20 *Constr., Inc. v. Talbot Partners*, 21 Cal. 4th 28, 52 (1999). Accordingly, the Court finds that  
the Act does not bar a third-party bad faith claim against a surety. *See Century Ins.*, 2010  
MP 4 ¶ 8.

21 *ii. Plaintiffs' Bad Faith Claim Against Pacific Basin*

22 Every contract imposes a duty of good faith and fair dealing, a duty a party breaches  
23 when it acts in bad faith. *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 13 (citing  
24 Restatement (Second) of Contracts § 205 cmt. a (1981)). To prove a claim of bad faith, the  
25 plaintiff must demonstrate that: 1) the benefits due under the policy were withheld; and 2)  
26 the reason for withholding benefits was unreasonable or without proper cause. *Ishimatsu*,  
27 2010 MP 8 ¶ 13 (quoting *Guebara v. Allstate Ins. Co.*, 237 F.3d 987, 992 (9th Cir. 2001)).  
28



1 Pacific Basin argues that Plaintiffs failed to show that it unreasonably or improperly  
2 withheld benefits because they failed to declare default, overpaid the first and second  
3 installments, and refused to pay the third and fourth installments. Pacific Basin also claims  
4 that Plaintiffs failed to allege or show that Pacific Basin acted in bad judgment.

5 But bad faith occurs when "'the refusal to pay policy benefits . . . was unreasonable,'  
6 and *not* as a result of mere negligence or *bad judgment*." *Ishimatsu*, 2010 MP 8 ¶ 13 (citing  
7 *Adams v. Allstate Ins. Co.*, 187 F. Supp. 2d 1207, 1214 (C.D. Cal. 2002)) (emphasis added).  
8 In other words, Plaintiffs need not show Pacific Basin acted in bad judgment. Plaintiffs  
9 allege they specifically notified Pacific Basin of Uni-World's default, and that they asked  
10 Pacific Basin to continue the work Uni-World left undone. Given these allegations, the  
11 Court fairly infers that Plaintiffs may present evidence at trial to prove that Pacific Basin  
12 acted in bad faith by unreasonably withholding benefits.

13 *iii. Timeliness of Plaintiffs' Complaint*

14 Pacific Basin also asserts that 7 CMC § 2053(d) and the performance bond bar  
15 Plaintiffs' bad faith claim because Plaintiffs did not file a timely complaint. Specifically,  
16 Pacific Basin argues that tort claims are barred by a two-year statute of limitations, and that  
17 the performance bond requires that claims be filed within 30 days of the final scheduled  
18 payment under the construction contract.

19 However, Pacific Basin's statute of limitations argument presupposes that Plaintiffs'  
20 bad faith claim is a tort rather than a contract claim. A court examines the rights and  
21 obligations under a performance bond using standard principles of contract interpretation.  
22 *Braspetro*, 369 F.3d at 51; *Elm Haven Constr*, 376 F.3d at 100. But Plaintiffs did not specify  
23 in their Complaint whether they based their bad faith claim on contract or tort law.  
24 Nevertheless, the Court finds enough factual allegations in the Complaint for a bad faith  
25 claim in contract law, even though it may not be the theory suggested or intended by  
26 Plaintiffs. *See Syed*, 2012 MP 20 ¶ 19.

27 As a final attempt to dismiss Plaintiffs' bad faith claim, Pacific Basin argues that the  
28 performance bond limits the time for filing a complaint. The performance bond provides:

1 "Any suit under this bond must be instituted before the expiration of Thirty Days (30) from  
2 the date on which final payment under the Contract falls due." (Compl., Ex. B.)

3 Because the construction contract required that Uni-World complete the work  
4 within 150 working days after obtaining the construction permits, Pacific Basin argues the  
5 time to file a complaint has lapsed. Yet the contract's payment terms do not provide for  
6 scheduled payments; rather, the payments are contingent upon the completion of specific  
7 phases in the project. Put differently, the construction contract does not provide a due date  
8 for a final payment. Therefore, the Court finds the performance bond's 30-day limitation  
9 inconsequential. Accordingly, the Court denies Pacific Basin's request to dismiss Plaintiffs'  
10 bad faith claim.

### 11 **C. Compensatory Damages**

12 Third, Pacific Basin asks the Court to dismiss Plaintiffs' claim for compensatory  
13 damages because it argues compensatory damages fall outside the scope of the performance  
14 bond. The measure of damages in a construction contract case "is the difference between  
15 the contract price and the cost of completing the work left undone." *Braspetro*, 369 F.3d at  
16 69.

17 In the performance bond, Pacific Basin bound itself, its heirs, executors,  
18 administrators, successors and assigns, jointly and severally to the construction contract  
19 between Uni-World and Plaintiffs. If Uni-World failed to perform its obligation under the  
20 construction contract, Pacific Basin agreed to perform on its behalf. Consequently,  
21 Plaintiffs' claim for compensatory damages does not fail at this stage.

### 22 **D. Attorney's Fees**

23 Fourth, Pacific Basin urges the Court to dismiss Plaintiffs' claim for attorney's fees  
24 because Plaintiffs did not allege enough facts in their Complaint showing an exception to  
25 the American Rule that litigants bear their own attorney's fees, unless otherwise provided  
26 for by contract, statute, or common law. However, "[a] court may award attorney's fees  
27 when a party's bad faith actions compel it to make an equitable exception to the American  
28 Rule." *Reyes v. Reyes*, 2004 MP 1 ¶ 83 (citing *Trope v. Katz*, 11 Cal. 4th 274, 279 (1995)).

1 Because Plaintiffs alleged enough factual allegations in their Complaint to support their  
2 breach of the performance bond and bad faith claims, the Court will not dismiss Plaintiffs'  
3 claim for attorney's fees.

#### 4 **E. Punitive Damages**

5 Lastly, Pacific Basin wants to dismiss Plaintiffs' claim for punitive damages because:  
6 1) CNMI law does not recognize a third-party bad faith claim; and 2) regardless of the  
7 claim's availability, Plaintiffs did not allege any improper conduct warranting punitive  
8 damages.

9 This Court explained above that the Commonwealth Insurance Act does not  
10 prevent a third-party from asserting a bad faith claim against a surety, because a policy of  
11 insurance and a surety bond are distinct. In adopting this view, the Court notes that most  
12 jurisdictions do not allow tort remedies in a bad faith claim against a surety; instead, courts  
13 limit the remedies to the terms of the contract. *See Cates Constr.*, 21 Cal. 4th at 43–44  
14 (finding that in insurance policies, an insured may recover damages not otherwise available  
15 in a contract action, such as punitive damages, when the insurer acts in bad faith).

16 In deciding whether tort remedies are available for bad faith claims in surety bonds,  
17 courts have compared surety bonds with insurance policies. *Id.* They have found that  
18 insurance policies are characterized by elements of adhesion, public interest, and fiduciary  
19 responsibility. *Id.* at 44; *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 684–85 (1988). These  
20 characteristics have led courts to conclude that "tort remedies are available for a breach of  
21 the covenant [of good faith and fair dealing] in cases involving *insurance policies.*" *Cates*  
22 *Constr.*, 21 Cal. 4th at 59 (emphasis added); *see also Kransco*, 23 Cal. 4th at 404. But in  
23 surety bonds, a "surety's breach of the implied covenant of good faith and fair dealing is  
24 properly limited to those damages within the contemplation of the parties at the time the  
25 performance bond is given." *Cates Constr.*, 21 Cal. 4th at 61.

26 Moreover, punitive damages are appropriate only when "a defendant's conduct was  
27 'outrageous because of [his] evil motive or his reckless indifference for the rights of others.'  
28 *Young Jo Cho v. Min Wa Cho*, 2002 MP 24 ¶ 9 (quoting Restatement (Second) of Torts §

1 908(2) (1979)). Here, Plaintiffs asserted a punitive damages claim widely unavailable in  
2 surety bond disputes, and they failed to allege any facts from which the Court could fairly  
3 infer that evidence on the material elements will be introduced at trial. As a result, the  
4 Court dismisses Plaintiffs' punitive damages claim against Pacific Basin.

5 **LEAVE TO AMEND**

6 Generally, a court should grant leave to amend, even if the plaintiff did not request  
7 to amend the pleading, unless it determines that the pleading could not possibly be cured by  
8 allegations to other facts. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Here, the  
9 Court determines that Plaintiffs' punitive damages claim lacks legal and factual sufficiency,  
10 which cannot be cured by amendment. *See Pratt v. Dep't of Pub. Safety*, 308 F. Supp. 3d  
11 1131, 1150 (D. Haw. 2018) ("Amendment is futile where the proposed claims are . . .  
12 legally insufficient."). Thus, the Court denies Plaintiffs leave to amend.

13 **CONCLUSION**

14 In the CNMI, a court may deny a motion to dismiss simply because the complaint  
15 contains allegations from which the court can fairly infer that evidence of the material facts  
16 will be presented at trial. *Syed*, 2012 MP 20 ¶ 19. Based on Plaintiffs' Complaint, the Court  
17 fairly infers that Plaintiffs will present substantiating evidence at trial to prove the material  
18 facts of their claims for breach of the performance bond, bad faith, compensatory damages,  
19 and attorney's fees. However, the Court concludes that Plaintiffs cannot do the same for  
20 their punitive damages claim. Accordingly, the Court grants Pacific Basin's Motion to  
21 Dismiss as it pertains to Plaintiffs' punitive damages claim, but it denies the motion as it  
22 pertains to Plaintiffs' claims for breach of the performance bond, bad faith, compensatory  
23 damages, and attorney's fees.

24  
25  
26 Ordered this 6th day of November 2019.

/s/

27 **KENNETH L. GOVENDO**  
28 Associate Judge