

APR 19 2002

For The Northern Mariana Islands  
By       
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

JUYEL AHMED, *et al.*, )

Plaintiffs )

v. )

UNITED STATES OF AMERICA, )  
COMMONWEALTH OF THE )  
NORTHERN MARIANA, )

Defendants )

Civil Action No. 00-0005

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANT COMMON-  
WEALTH'S MOTION TO DIS-  
MISS FOURTH AMENDED  
COMPLAINT

RUI LIANG, *et al.*, )

Plaintiffs )

v. )

UNITED STATES OF AMERICA, )  
COMMONWEALTH OF THE )  
NORTHERN MARIANA, )

Defendants )

Civil Action No. 99-0046

1           THIS MATTER came before the court on Thursday, April 18, 2002, for  
2 hearing of defendant Commonwealth of the Northern Mariana Islands' motion  
3 to dismiss the fourth amended complaint. Plaintiffs appeared by and through  
4 their attorney, Bruce L. Jorgensen; defendant Commonwealth of the Northern  
5 Mariana Islands ("CNMI") appeared by and through Assistant Attorneys  
6 General Andrew Clayton, who argued, and Karen M. Klaver; defendant United  
7 States appeared by and through Assistant U.S. Attorney Gregory Baka.

8           THE COURT, having considered the written and oral arguments of the  
9 parties, rules as follows:  
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11           The court declined to hear argument on defendant CNMI's motion to  
12 strike because the motion had never been properly calendared.  
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14           Plaintiffs moved to dismiss with prejudice defendant Mark Zachares, who  
15 has never been served with a copy of the summons and complaint. The court  
16 granted the motion from the bench and ordered that the names of both Mr.  
17 Goldberg and Mr. Zachares be removed from the captions of all future pleadings  
18 and that no mention of them shall be made except as may be necessary to make  
19 out a claim for relief against a remaining defendant.  
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1 In the instant motion, defendant CNMI seeks dismissal with prejudice of  
2 counts 3, 4, 5, and 7.<sup>1</sup>  
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4 Defendant CNMI's motion to dismiss count 3, alleging violation of  
5 plaintiffs' right to due process, is denied. Plaintiffs have clarified the relief  
6 sought, and from whom, at paragraphs 125 - 128 of their fourth amended  
7 complaint.  
8

9  
10 Count 4, alleging conspiracy against defendant Zachares, has been  
11 dismissed with prejudice and this portion of the motion is now moot.  
12

13 Defendant CNMI's motion to dismiss count 5, alleging a common law  
14 claim for concealment of knowledge or information, is granted in part and  
15 denied in part. The court has previously ruled that it lacks jurisdiction to  
16 consider a claim based upon the Commonwealth's Open Government Act, 1  
17 N.Mar.I. Code § 9917. A careful reading of *Restatement (Second) of Torts* §§ 536,  
18 551, and 557A shows that the first two sections are facially inapplicable.  
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22 Given the court's recent order dismissing with prejudice all claims against  
23 defendant Goldberg, and the order in open court dismissing with prejudice  
24 defendant Zachares, counts 1, 2, and 6, which the court has previously held were  
25 sufficiently pleaded, will need to be re-pleaded to omit any claims for relief  
26 against former defendants Goldberg and Zachares in either their official or  
personal capacities. They may still be mentioned if and as necessary to make  
out claims against the remaining defendants.

1 However, plaintiffs have sufficiently alleged the tort of concealment under  
2 *Restatement (Second) of Torts* § 557A.<sup>2</sup> Plaintiffs have alleged physical harm to  
3 themselves by being allegedly wrongfully incarcerated. *See e.g.* Fourth Amended  
4 Complaint, ¶ 85 (Jan. 29, 2002).<sup>3</sup> Count 5 is dismissed with prejudice except as to  
5 the common law claim based upon *Restatement* § 557A.  
6

7  
8 Defendant CNMI's motion to dismiss count 7, based on Article X, § 9 of  
9 the Commonwealth Constitution is granted. The court concludes on the facts of  
10 this case that payment of salaries to Commonwealth government employees or  
11 payments made or expenses incurred for operating and maintaining a  
12 Commonwealth detention facility are not the sort of "wrongful government  
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17 The *Restatements* are made generally applicable in the Commonwealth in  
18 the absence of written law or local customary law to the contrary. Title 7,  
19 N.Mar.I. Code § 3401.

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21 Count 5 survives as a common law claim over which the court may  
22 exercise supplemental jurisdiction. 28 U.S.C. § 1367. No claim has been made  
23 out in count 5 under the Alien Tort Claims Act, 28 U.S.C. § 1350 (which is the  
24 vehicle through which a torture victim claim may be pursued, *infra*), because  
25 there is no sufficient allegation that the concealment was "committed in  
26 violation of the law of nations or a treaty of the United States." 28 U.S.C. §  
1350. The Torture Victim Protection Act of 1991 ("TVPA"), P.L. 102-256, 106  
Stat. 73 (Mar. 12, 1992), imposes liability on an individual of a foreign nation  
who tortures or kills another. No remaining defendant falls within the scope of  
the TVPA.

1 expenditures” upon which a taxpayer’s cause of action can be founded.

2 Accordingly, count 7 is dismissed with prejudice.

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4 FOR THE FOREGOING REASONS, defendant Commonwealth’s  
5 motion to dismiss is granted in part and denied in part, as set out above.

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7 Plaintiffs shall have until 3:30 p.m., Friday, May 10, 2002,<sup>4</sup> to file a fifth  
8 amended complaint that complies in all respects with the court’s order of April  
9 11, 2002, and this order. Defendant Commonwealth shall have until 3:30 p.m.,  
10 Friday, May 31, 2002, to file a responsive pleading.

11  
12 Plaintiff’s counsel is instructed and admonished to carefully and  
13 scrupulously review all of this court’s orders when drafting the fifth amended  
14 complaint. In particular, he should insure that only the remaining claims for  
15 relief and defendants are included and that the complaint is internally consistent.<sup>5</sup>  
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23 Specification of a date and time in an order overrides the “drop box”  
24 provisions of Local Rule 5.1.h.

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26 For example, paragraph 129 in the fourth amended complaint repeats and  
realleges paragraphs 1 - 178 “above.”

1           Given the representations made to the court by plaintiffs' counsel as an  
2 officer of the court, and the court's familiarity with the long-standing difficulty  
3 in obtaining local counsel that has been experienced by plaintiffs' counsel, the  
4 court finds that there is good cause to waive the local rule requirement that local  
5 counsel be associated. However, the court admonished plaintiffs' counsel in  
6 open court, and does so again here, that it is his responsibility to constantly  
7 monitor the facsimile numbers and physical addresses provided to the court and  
8 opposing counsel.  
9

10           After the hearing, the court realized that the address for service provided  
11 by plaintiffs' counsel is the physical address of a building located in the Capitol  
12 Hill area of Saipan and that no post office address had been give at which the  
13 court can serve its orders. Unless and until notified by plaintiffs' counsel of a  
14 mailing address, the court's orders will be, and filings by the remaining  
15 defendants may be, served upon plaintiffs' counsel at the facsimile number  
16 appearing on his most recent pleading: (670) 233-5503. Defendant's may also  
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1 serve plaintiffs' counsel at the physical address on Capitol Hill.

2 IT IS SO ORDERED.

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4 DATED this 19th day of April, 2002.

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ALEX R. MUNSON  
Judge