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THE DISTRICT COURT OF GUAM

PEDRO M. TERLAJE,

Plaintiff,

vs.

PAN SA KIM, CIARA L.S. FINONA, A.B.
WON PAT INTERNATIONAL AIRPORT,
DOES I through X,

Defendants.

CIVIL CASE NO. 18-00042

ORDER

Before the court is a Motion to Dismiss brought by Defendants Pan Sa Kim, Ciara L.S. Finona, and the A.B. Won Pat International Airport. Mot. Dismiss, ECF Nos. 15 & 16. For the reasons stated herein, that motion is **GRANTED**.

I. BACKGROUND

A. Factual History¹

On April 30, 2017, Plaintiff Pedro Terlaje, a 79-year-old male, was involved in a traffic accident while driving on Guam Highway 30 in Tamuning. FAC at ¶¶ 9, 13, ECF No. 10. The Guam Police Department (GPD) was called to report the traffic accident. *Id.* at ¶ 14. No GPD officers were available, so GPD requested assistance from the Guam International Airport Authority (GIAA) police. *Id.* at ¶ 15.

Defendant Pan Sa Kim, a GIAA police officer, arrived at the scene. *Id.* at ¶¶ 19, 21. Kim asked Terlaje whether he had been drinking. *Id.* at ¶ 22. Terlaje answered in the affirmative. *Id.*

¹ When ruling on a motion to dismiss, this court accepts the alleged facts within the First Amended Complaint to be true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 698 (2009).

1 Kim presented Terlaje with a form requesting Terlaje to waive his rights under the Implied
2 Consent Law. *Id.* at ¶ 23. Terlaje refused to sign the form, and he refused to consent to a
3 breathalyzer test. *Id.* at ¶¶ 23, 25. Kim informed Terlaje that his refusal to take a breathalyzer test
4 would result in his arrest. *Id.* at ¶ 26. Terlaje continued to refuse, so Kim arrested him. *Id.* at ¶¶
5 26-27.

6 Kim then transported Terlaje to the GIAA offices. *Id.* at ¶ 29. Defendant Ciara Finona
7 signed an accident report as Kim's supervising authority. *Id.* at ¶ 30. Kim then transferred Terlaje
8 to the GPD Hagatna precinct, where Terlaje was processed and confined. *Id.* at ¶ 35. He was then
9 transferred again to the Department of Corrections facility in Mangilao. *Id.* at ¶ 36. He was
10 released at 6:00 p.m. on May 1, 2017. *Id.* at ¶ 39. In total, he had been detained approximately 27
11 hours. *Id.*

12 The Guam Attorney General declined to prosecute Terlaje for any crime. *Id.* at ¶ 41.
13 Terlaje subsequently lodged a claim under the Government Claims Act, which was rejected by
14 the Government of Guam and the GIAA. *Id.* at ¶¶ 42 & 43.

15 **B. Procedural History**

16 On November 14, 2018, Terlaje opened this case. Compl., ECF No. 1. On January 11,
17 2019, he filed his First Amended Complaint (FAC). FAC, ECF No. 10. The FAC alleges four
18 counts: **(1)** Violation of Civil Rights under 42 U.S.C. § 1983 (against all Defendants), **(2)** False
19 Arrest and False Imprisonment (against all Defendants), **(3)** Assault and Unlawful Restraint
20 (against GIAA and Kim), and **(4)** Violation of 10 GCA § 77117 (against Defendant Does). *Id.*

21 On January 18, 2019, Defendants Pan Sa Kim, Ciara L.S. Finona, and the A.B. Won Pat
22 International Airport moved to dismiss the FAC. Mot. to Dismiss & Mem., ECF Nos. 15 & 16.
23 Terlaje opposed dismissal, Opp'n, ECF No. 22, and Defendants replied in support. Reply, ECF
24 No. 26.

1 **II. LEGAL STANDARDS**

2 A pleading that states a claim for relief must contain, among other things, “a short and
3 plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2).
4 Rule 12(b)(6) permits a defendant to raise by motion the defense that the complaint “fail[s] to
5 state a claim upon which relief can be granted.”

6 Although a complaint “does not need detailed factual allegations, a plaintiff’s obligation
7 to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions,
8 and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v.*
9 *Twombly*, 550 U.S. 544, 555 (2007) (internal citation omitted). “Threadbare recitals of the
10 elements of a cause of action, supported by mere conclusory statements, do not suffice.”
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

12 **III. DISCUSSION**

13 The only federal claim within Terlaje’s FAC is based on § 1983. “To state a Section 1983
14 claim, a plaintiff must allege facts which show a deprivation of a right, privilege, or immunity
15 secured by the Constitution or federal law by a person acting under color of the laws of any state
16 or territory.” *Bermudez v. Duenas*, 936 F.2d 1064, 1066 (9th Cir. 1991).

17 **A. GIAA Enjoys Sovereign Immunity**

18 Defendants first argue that the GIAA is immune from § 1983 suits. Mot. Dismiss at 3,
19 ECF No. 16. They cite *Ngiraingas v. Sanchez*, 495 U.S. 182, 192 (1990), for the proposition that
20 “neither the Territory of Guam nor its officers acting in their official capacities are ‘persons’
21 under § 1983.” Therefore, Defendants conclude, they cannot be liable under § 1983. *Id. See also*
22 *Bermudez*, 936 F.2d at 1066 (holding that the Guam Parole Board is an instrumentality of the
23 Government of Guam and therefore immune from suit).

24 Terlaje attempts to distinguish this case from *Ngiraingas* by noting that *Ngiraingas* was a

1 suit against the Guam Police Department, a body within the executive branch of the Government
2 of Guam, whereas the GIAA is a “separate corporate body.” Opp’n at 4, ECF No. 22. This is a
3 distinction without a difference, because the Guam statutes clearly establish the GIAA as an
4 “instrumentality” of the Government of Guam. Section 1102(a) of Title 12, Guam Code
5 Annotated, creates “a public corporation and an **autonomous instrumentality of Guam** called
6 the Antonio B. Won Pat International Airport Authority.” (Emphasis added.) *See also* 5 GCA §
7 6103(a) (“Government of Guam shall include all agencies, departments, instrumentalities, public
8 corporations, and all other entities of the government, no matter how designated, and whether or
9 not such agencies may sue or be sued in their own name.”); 12 GCA § 1109 (describing the
10 GIAA as “an instrumentality of the government of Guam”). Thus, despite being labeled as a
11 “corporate body,” the Guam statutes are clear that the GIAA is an “instrumentality” of the
12 Government of Guam. As such, the GIAA is covered by the Government of Guam’s sovereign
13 immunity. *See McCauley v. University of the Virgin Islands*, 618 F.3d 232, 240 (3rd Cir. 2010).

14 **B. GIAA Has Not Waived Sovereign Immunity for Intentional Torts**

15 Terlaje argues that, even if GIAA enjoys sovereign immunity, GIAA has waived that
16 immunity with respect to torts sounding in false arrest. Opp’n at 5, ECF No. 22. In particular,
17 Terlaje cites to 5 GCA § 1113, which waives the Government’s limitation of liability found in 5
18 GCA § 6301 in certain instances, and 5 GCA § 6301, which requires the Governor of Guam to
19 obtain false arrest and false imprisonment insurance for Government of Guam employees. *Id.*
20 Terlaje further points to 12 GCA § 1105(h), which grants the GIAA the power to “sue or be sued
21 in its own corporate name,” and 12 GCA § 1203(a), which allows the GIAA to “[s]ue and be
22 sued in all actions and proceedings in all court and tribunals of competent jurisdiction.”

23 Defendants respond with 5 GCA § 6105, “Waiver of Immunity,” which provide as
24 follows:

1 Pursuant to Section 3 of the Organic Act of Guam, the Government of Guam
2 hereby waives immunity from suit, but only as hereinafter provided:

3 (a) for all expenses incurred in reliance upon a contract to which the Government
4 of Guam is a party, but if the contract has been substantially completed,
5 expectation damages may be awarded;

6 (b) for claims in tort, arising from the negligent acts of its employees acting for
7 and at the direction of the government of Guam, even though occurring in an
8 activity to which private persons do not engage. [Irrelevant language omitted.]

9 (c) The Government of Guam shall not be liable for claims arising from an
10 exercise of discretion in making policy.

11 As the Supreme Court of Guam has held, “a plaintiff may only sue the Government of Guam
12 under these specific exceptions to sovereign immunity contained in Section 6105.” *Wood v.*
13 *Guam Power Authority*, 2000 Guam 18. Intentional torts—such as false imprisonment and false
14 arrest—“are not encompassed by section 6105.” *Id.* Therefore, GIAA’s “sovereign immunity has
15 not been waived with respect to international torts” such as those alleged in Terlaje’s FAC. *Id.*
16 Accordingly, Terlaje cannot maintain a § 1983 suit against the GIAA or its officers acting in
17 their official capacities. *Hardman v. Government of Guam*, 2011 U.S. Dist. LEXIS 118919, at
18 *15.

19 **C. Officers Kim and Finona Are Entitled to Qualified Immunity**

20 To the extent that Terlaje is suing Officers Kim and Finona in their personal capacities,
21 Defendants argue that they enjoy qualified immunity. “Qualified immunity shields government
22 officials from civil damages liability unless the official violated a statutory or constitutional right
23 that was clearly established at the time of the challenged conduct.” *Reichle v. Howards*, 566 U.S.
24 658, 664 (2012). “[C]ourts may grant qualified immunity on the ground that a purported right
was not ‘clearly established’ by prior case law, without resolving the often more difficult
question whether the purported right exists at all.” *Id.* “To be clearly established, a right must be
sufficiently clear ‘that every reasonable official would [have understood] that what he is doing

1 violates that right.” *Id.* (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)). In short, qualified
2 immunity protects “all but the plainly incompetent or those who knowingly violate the law.”
3 *Mullenix v. Luna*, 136 U.S. 305 (2015).

4 Terlaje argues that a reasonable officer in Kim’s position should have known she was
5 violating the law because “Guam law clearly restricts the arrest powers of GIAA airport police.”
6 Opp’n at 8, ECF No. 22 (citing 12 GCA § 1112.1(b) (“Notwithstanding any law, rules or
7 regulations to the contrary, members of the Airport Police while on the premises and acting
8 within their official capacity, shall have powers of peace officers, including, but not limited to,
9 the power to arrest.”)). This court disagrees with Terlaje’s interpretation of § 1112.1(b), which
10 addresses only the GIAA police’s authority while on the airport premises. It is silent as to
11 whether, under the circumstances presented in this case, GIAA police officers may arrest
12 individuals outside of Airport premises.

13 However, other statutes appear to grant the airport police the authority to arrest. GIAA
14 Police Officers are considered to be “peace officer[s].” 8 GCA § 5.55(n). Peace officers are
15 immune from suit for “false arrest or false imprisonment for an arrest which is lawful under [8
16 GCA § 20.15(a)].” 8 GCA § 20.15(b). Peace officers may arrest a person without warrant when
17 the officer has “reasonable cause to believe that the person to be arrested has committed a felony
18 or misdemeanor.” 8 GCA § 20.15(3).

19 Viewing these statutes as a whole, it is unclear whether GIAA Police Officers have the
20 authority to arrest outside of Airport premises. But it is certainly not “clearly established” that
21 such an arrest is beyond the GIAA officer’s authority. *Reichle*, 566 U.S. at 664.

22 Terlaje’s remaining argument is that Kim’s arrest of Terlaje was not supported by
23 probable cause. Opp’n at 8, ECF No. 22. The facts within Terlaje’s FAC belie this assertion.
24 Terlaje admitted to having consumed alcohol prior to being involved in a traffic accident. FAC at

1 ¶¶ 9, 13, ECF No. 10. Terlaje refused to waive his rights under the Implied Consent Law, and he
2 refused to take a breathalyzer test, despite being warned that his refusal would result in his arrest.
3 *Id.* at ¶¶ 23-27. These facts are sufficient to support an arrest for driving under the influence of
4 alcohol, a misdemeanor or felony, depending on whether bodily injury results. 16 GCA §§
5 18104, 188110. Thus, because Terlaje has failed to show that Officers Kim or Finona violated a
6 “clearly established” right, those Officers are shielded by qualified immunity. *Reichle*, 566 U.S.
7 664. Therefore, Terlaje’s § 1983 suit against them cannot be maintained.

8 **IV. CONCLUSION**

9 For the reasons stated herein, the § 1983 claims within Terlaje’s FAC are **DISMISSED**
10 **WITH PREJUDICE** as to all defendants. Given that the § 1983 claims are the basis of Terlaje’s
11 invocation of federal jurisdiction, the remaining Guam-based claims within Terlaje’s FAC are
12 **DISMISSED WITHOUT PREJUDICE**, so that Terlaje may pursue those claims within Guam
13 courts, should he so choose. *See Jones v. Community Redevelopment Authority*, 733 F.2d 646,
14 651 (9th Cir. 1984) (“When federal claims are dismissed before trial, . . . pendant state claims
15 also should be dismissed.”).

16 **SO ORDERED.**



17 /s/ Frances M. Tydingco-Gatewood
18 Chief Judge
19 Dated: Sep 30, 2019
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