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DIPÅTTAMENTON MINANEHAN TÅNO'
(Department of Land Management)

KUMISION I TÅNO' SAINA-TA
(Guahan Ancestral Lands Commission)

Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuåttro Na Liheslaturan Guahån
Guam Congress Building
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Hagåtña, Guam 96910

GL#34-17-991
Speaker Benjamin J.F. Cruz

SEP 21 2017
Time 1010 [ ] AM [ ] PM File No. 34-9240
Received By:

Dear Mr. Speaker:

Transmitted herewith is Guam Ancestral Lands Commission Resolution No. 2017-02, **"Request for Guam Legislature to Define Extinguishment of Ancestral Lands Claims,"** which was approved at its regularly scheduled board meeting on August 23, 2017.

Senseramente,

ANTHONY J.P. ADA
Chairperson

2017 SEP 21 AM 10:34

GUAM ANCESTRAL LANDS COMMISSION
RESOLUTION NO. 2017-02

Request for Guam Legislature to Define Extinguishment of Ancestral Land Claims

WHEREAS, the Guam Ancestral Lands Commission, in accordance with Title 21, Guam Code Annotated, Chapter 80 and Public Law 25-45, has the responsibility for the return of excess government lands to its original land owners except in circumstances when land is clearly under existing public use or lands were Spanish Crown Land; and

WHEREAS, the Guam Ancestral Lands Commission is directed to promulgate rules and regulations for the distribution of Land Bank funds for the extinguishment of claims and awarding just compensation; and

WHEREAS, the Guam Ancestral Lands Commission drafted rules and regulations in accordance with the Administrative Adjudication Law, conducting the necessary public hearings and forwarding the approved rules and regulations with its public hearing digest to the Attorney General of Guam on June 23, 2016, for review and approval; and

WHEREAS, the Attorney General of Guam, in its April 26, 2017, response noted two discrepancies: 1) failure to include an economic impact statement; and, 2) draft rules contradict statutory mandate of the Land Bank; and,

WHEREAS, the Attorney General of Guam's April 26, 2017, letter to the Guam Ancestral Lands Commission is attached as EXHIBIT "A"; and,

WHEREAS, the Attorney General of Guam declared that rules and regulations cannot exceed the authority established by law to define extinguishment of claims and that the lack of statutory guidance is an excessive delegation of legislative power; and

WHEREAS, on August 23, 2017, the Guam Ancestral Lands Commission board of commissioners at their regularly scheduled meeting, Tamuning, Guam, unanimously passed a motion to forward a resolution to the Guam Legislature requesting statutory guidance to Title 21, Guam Code Annotated, Chapter 80, governing the distribution of Land Bank funds.

NOW THEREFORE BE IT RESOLVED,

In an effort to promulgate its rules and regulations, the Guam Ancestral Lands Commission Board of Commissioners transmits this Resolution to the Guam Legislature to enact legislation providing definitive clarity to Title 21, Guam Code Annotated, Chapter 80, in determining "just compensation for those dispossessed ancestral land owners" as described in the Attorney General of Guam April 26, 2017, letter.

DULY AND REGULARLY ADOPTED BY THE GUAM ANCESTRAL LANDS COMMISSION THIS 23 TH DAY OF AUGUST 2017.

Anthony J. P. Ada — Date: 20 SEP 2017

ANTHONY ADA, Chairperson

Maria G. Cruz — Date: 9/20/2017

MARIA CRUZ, Secretary

Office of the Attorney General of Guam

590 S. Marine Corps Dr., Ste. 901, Tamuning, Guam 96913

RECEIVED

April 26, 2017

APR 26 2017

Department of Land Management

Time Int

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AGENCY COMMUNICATION **Ref:** ~~DEM 14-0538~~

TO: Chairperson, Guam Ancestral Lands Commission

FROM: Attorney General

SUBJECT: **Proposed Rules and Regulations for the Land Bank Program**

The Guam Ancestral Lands Commission ("Commission") submitted a request for review and approval of draft rules and regulations relative to the Land Bank Program under 21 GCA § 80104(e) ("Rules"). The Commission requested our review and approval pursuant to 5 GCA § 9303. The development of rules and regulations for payments from the Land Bank trust fund is also a subject of litigation in the Federal District Court of Guam, *Crawford v. Guam Airport Authority, et. al.*, Case No. 15-000001.

We are unable to approve the Rules as submitted because they impermissibly contradict existing statutes. In addition, the Commission did not include an economic impact statement as required by 5 GCA § 9301(e).

Economic Impact Statement needed

Before transmitting a rule or regulation to the Guam Legislature, an economic impact statement is required. 5 GCA § 9301(e). The economic impact statement must at a minimum address:

1. The purpose and need for the rule, an assessment of the risk and cost, and the justification for the rule;
2. The financial impact of the proposed rule upon anyone directly affected and upon the people and economy of Guam;
3. Any potential increase or decrease in the cost of living on Guam or in the price or availability of any good or service attributable to the rule;
4. Any direct or indirect impact upon employment or any increase or decrease in the availability of a particular job or jobs attributable to the rule;
5. Any increase or decrease in the cost of doing business on Guam; and
6. Any adverse or beneficial economic impact which is attributable to the rule.

5 GCA § 9301(f).

The draft Rules did not include an economic impact statement as required. The Director of the Department of Land Management sent a letter to the Legislature stating that a request for an economic impact statement was made to the Bureau of Statistics and Plans ("BSP"). BSP responded with a recommendation that the Commission "ascertain the need to complete an economic impact statement" and noting that the proposed Rules do not appear to create new fees. There is no resolution or other indication that the Commission made this assessment as recommended.

Draft rules contradict statutory mandate of the Land Bank

Under its enabling legislation, codified at 21 GCA Chapter 80, the Commission is tasked with investigating and responding to requests by ancestral land claimants, defined as claimants whose land was taken by the United States Government or the government of Guam on or after January 1, 1930, and with awarding compensation in the form of land recovery or "any other form of compensation other than a specifically described available land."[1] To that end, the "Land Bank" is the means devised by the Guam Legislature for compensation to ancestral land claimants who cannot regain possession or title to their ancestral lands because the land is in "continued government or public benefit use" ("Dispossessed Ancestral Landowners"). 21 GCA § 80104(e).

The Land Bank consists of non-ancestral lands[2] returned from the Federal Government to the Government of Guam. The Commission holds title to these non-ancestral lands as trustees on behalf of the Dispossessed Ancestral Landowners. 21 GCA § 80104(e).

The Legislature directed the Commission to "promulgate rules and regulations to administer the Commission's functions in a fair, just, economical and expedient way, and … establish fees and specify materials reasonably required to accompany applications in order to extinguish a claim in favor of a just compensation award." 21 GCA § 80104(b). As part of its duties, the Commission is mandated to manage the lands in the Land Bank and to "establish rules and regulations pursuant to the Administration Adjudication Law for the Guam-based trust. The resulting income shall be used to provide just compensation for those dispossessed ancestral landowners." 21 GCA § 80104(e).

As written, however, the Rules do not provide for "just compensation" to the Dispossessed Ancestral Landowners. Instead, the Rules state that payments from the Land Bank trust fund "are considered an interim compensation and shall be perpetual until property is returned or for an agreed amount or period." Rules § 80103.30(b)(3). This section also explicitly provides, "Receipt of payments by an estate does not waive any rights of the estate," directly contradicting the stated purpose of the Rules "to establish a mechanism for compensation to the Beneficiaries of the Land Bank Trust *for the extinguishment of claim to their ancestral land*" (emphasis added).

---

[1] "Just compensation" is defined in the Chapter to mean "only land recovery or land exchange, and shall also mean any other form of compensation other than a specifically described available land." 21 GCA § 80101(k). Although the definition includes land exchange, no land has been made available for this purpose.

[2] Ancestral lands are defined in 21 GCA Chapter 80 as "those lands owned privately by residents of Guam on or after January 1, 1930." 21 GCA § 80101(a).

By facilitating payments from the Land Bank trust fund that are not intended to provide just compensation to the Dispossessed Ancestral Landowners, the Rules exceed the authority granted by the Legislature.

Statutory definition of Land Bank beneficiary is ambiguous

The Rules define a Beneficiary as "a Claimant who the Commission determines is entitled to just compensation as a dispossessed landowner as those whose lands have been declared excess by the Federal government, and those whose lands have not been declared excess and may or may not likely be declared excess by the United States in the future." Rules § 80103.30(a)(1). As a technical aside, the definition should read, "a Claimant who the Commission determines is entitled to just compensation as a dispossessed landowner whose lands have been declared excess by the Federal government, or whose lands have not been declared excess and may or may not likely be declared excess by the United States in the future." This definition is arguably consistent with 21 GCA § 80102 but not with 21 GCA § 80104(e).

The Commission is required to take title as trustees to certain non-ancestral lands "on behalf of ancestral landowners who, by virtue of continued government or public benefit use cannot regain possession or title to their ancestral lands." 21 GCA § 80104(e). The reference to "government" here, without any other qualifier, has to be interpreted to mean the government of Guam. 1 GCA § 713 ("Government means the government of Guam and all of its branches").

In 21 GCA § 80102, "it is recognized that a process does not now exist to recognize the ancestral land rights of landowners whose properties have not been declared surplus and may not ever be declared surplus by the military in the future." Section 80102 also provides that the exercise of these "'ancestral property right' claims shall be applicable to lands already declared excess by the Federal government and shall also be applicable to all future declaration of excess lands either by the United States Government or by the government of Guam."

This language in § 80102 could be interpreted to mean that the rules that apply to current claims will also be applicable in the future for claims that may arise if additional land is declared excess. Alternatively, read alone without regard to the rest of the Chapter, it could mean that an ancestral landowner is entitled to the statutory remedies through the Commission *now* even for land that has not yet been declared excess. The Commission adopted this second interpretation in defining who is to be included as a Beneficiary of the income from the Land Bank Trust Fund.

The distinction between these readings is significant, particularly when considering that the Rules provide for payments from the Land Bank Trust Fund to be based on the percentage of a claimant's land to the total of all the claimed lands. The total of all the claimed ancestral lands of course rises dramatically if land that has not been returned to the government of Guam is included.

The Commission is entitled to deference to its reasonable interpretation of an ambiguous statute. *Guam Memorial Hospital Authority v. Civil Service Commission*, 2015 Guam 18, ¶ 13. Since the Commission's definition of a Beneficiary is based on a logical construction of 21 GCA § 80102, the Commission would be within its authority to define a Beneficiary to include ancestral landowners whose land is still in use by the federal government, absent other contrary statutory provisions. As discussed above, however, Section 80104(e)

restricts a land bank beneficiary to those ancestral landowners whose land is used for a public benefit or by the government of Guam.

Because it is a "cardinal principle of statutory construction that courts must give effect, if possible, to every clause and word of a statute," *Williams v. Taylor*, 529 U.S. 362, 364, 120 S. Ct. 1495, 1498, 146 L. Ed. 2d 389 (2000), the provisions must be read so that they do not contradict each other, if possible. An ancestral landowner, therefore, cannot become a beneficiary of the Land Bank unless his land was returned to Guam by the federal government and is now being used for a public benefit or by the government of Guam. Any other reading would result in a contradiction between Section 80102 and Section 80104(e). This leaves the Commission, however, with no means of effectuating the administrative process with respect to the Ancestral Property Right of those whose ancestral land "may not ever be declared surplus by the military in the future" as described in Section 80102.

Statutory guidance is insufficient to govern distribution of Land Bank funds

The Commission faces a further challenge in that the governing statutes articulate no intelligible principle by which the Commission can determine how the Land Bank funds are to be distributed. This lack of legislative guidance violates the separation of powers doctrine as discussed more fully in the attached Memorandum in Opposition to Motion for Summary Judgment and Cross Motion for Summary Judgment filed by the Government of Guam defendants in the Guam Federal District Court Case *Crawford v. Antonio B. Won Pat International Airport Authority, Guam, et. al.*, Case Number 15-00001 ("Memorandum"). Because the statutes do not provide adequate guidance to the Commission, it is highly unlikely that the Commission would be able to remedy all of the defects in the draft Rules in a manner that would result in a legally sufficient set of rules to govern the distribution of Land Bank funds.

Conclusion

Because the draft Rules lack an economic impact statement, because they impermissibly contradict existing statutes, and because the lack of statutory guidance is an excessive delegation of legislative power, the Rules are being returned for further action by the Commission and are not approved as to form or legality.

KRISTAN K. FINNEY
Assistant Attorney General

GALC PROPOSAL

12/07/15

I MINA'TRENTAI TRES NA LIHESLATURAN GUÅHAN

2015 (FIRST) Regular Session

Bill No. _____

Introduced by: _____

AN ACT TO APPROVE RULES AND REGULATIONS OF THE GUAM ANCESTRAL LANDS COMMISSION PURSUANT TO SECTION 75107 OF CHAPTER 80, TITLE 21, GUAM CODE ANNOTATED RELATIVE TO THE LAND BANK PROGRAM FOR THE EXTINGUISHMENT OF CLAIMS AND AWARDING JUST COMPENSATION .

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Section 80104(b) of Chapter 80, Title 21, Guam Code Annotated authorizes the Guam Ancestral Lands Commission to make rules and regulations relative to the extinguishment of claims and awarding just compensation pursuant to the Administrative Adjudication Law.

Section 2. Notwithstanding any other provision of law, rule, regulation, and Executive Order, the rules and regulations, attached hereto as Appendix "A," are hereby approved by *I Liheslaturan Guahan.*

Section 3. The Rules and Regulations contained in the Appendix and adopted by this Act shall not affect the provisions of the Guam Ancestral Lands Commission, Chapter 80 of Title 21, Guam Code Annotated. The invalidity of a provision or application shall not affect other provisions or applications of the Rules and Regulations which can be given effect without the invalid provision or application, and to this end the provisions of the Rules and Regulations are severable.

APPENDIX "A"

"The Land Bank Program"

Title 21 of the Guam Administrative Rules, Chapter 80, Article 3, Section 80103.30 "Land Bank Program" of the Guam Ancestral Lands Commission is amended read:

Section 80103.30 Land Bank Program: Purpose.
The Guam Ancestral Land Commission is mandated by Title 21 GCA Chapter 80 to establish a mechanism for compensation to Beneficiaries of the Land Bank Trust for the extinguishment of claim to their ancestral land and to develop procedures to ensure the effective implementation of the Land Bank Program.

Section 80103.30 (a) Definitions.

1. **Beneficiary** means a Claimant who the Commission determines is entitled to just compensation as a dispossessed landowner as those whose lands have been declared excess by the Federal government, and those whose lands have not been declared excess and may or may not likely be declared excess by the United States in the future.
2. **Land Bank Trust Fund** means the Fund established by Title 21 GCA §80104(e).
3. **Severability.** If any of the provisions on this Act or its application thereof to any person or circumstances is held invalid, the invalidity shall not affect any other provisions or applications of this Act which can be given effect without the invalid provisions or application and to this end the provisions of this Act are severable.

Section 80103.30 (b) Compensation Methodology.

1. **Claim Procedure.** To determine eligibility as a Beneficiary, a Claimant must file a claim as provided in Title 21 GCA §80104(a) If the Commission

determines that a Claimant is not eligible as a Beneficiary, the Commission shall deny the claim.

2. Payments will be paid to the estate of the ancestral land owner.
3. Payments are considered an interim compensation and shall be perpetual until property is returned or for an agreed amount or period. Receipt of payments by an estate does not waive any rights of the estate.
4. Compensation payments to estates will be based on the percentage of the ancestral land to the total of all claimed ancestral lands. For example, if the size of an estate is 8.6% of the total of all ancestral lands, then 8.6% of the distribution will be paid to this estate.

Section 80103.30 (c) Method of Distribution. The Commission shall conduct an annual review of the Land Bank Trust account to determine its financial feasibility for disbursement of funds to qualified Claimants. This yearly review shall be conducted and completed within sixty (60) days prior to the ending of the fiscal year. The Commission's determination for the disbursement of funds shall be based on the following:

1. Amount to be retained in the Trust Fund. During the review, an amount to be retained shall be established by the Commission based on the Commission's financial investments for the viability of future disbursement of funds to Claimants.
2. The amount available for disbursement in the Trust Fund is no less than Two Million Dollars ($2,000,000). That amount does not include the amount to be retained in the Trust Fund as established by the Commission.
3. If the Commission approves the release of funds, the approval shall include the date for disbursement and the amount available for disbursement of funds.
4. Funds will be issued to the estate of qualified Claimants who meet the deadline established by the Commission in completing all of the following:
    a. Application has been completed and approved by the Commission
    b. A court appointed administrator of the Estate has executed a form provided by the Commission for payments of their ancestral land.

5. Estates that do not meet the deadline will be included on the next distribution of funds.
6. The Commission shall maintain a record of funds paid to each Beneficiary to ensure that the Beneficiary is compensated in accordance with the amount approved by the Commission.
7. *Land Claims Monetary Award.* Monetary compensation will be awarded to the Estate of the original landowner and are subject to administration in same manner as Title 15 GCA for Estates and Probates.

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UNITED STATES DISTRICT COURT
TERRITORY OF GUAM

VICENTE PALACIOS CRAWFORD, Plaintiff, vs. ANTONIO B. WONPAT INTERNATIONAL AIRPORT AUTHORITY, GUAM, et al., Defendant.	CIVIL CASE NO. 15-00001 **MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGEMENT**

Eduardo M. Calvo, Governor of Guam, and Anita Orlino, Chairperson of the Guam Ancestral Lands Commission, Defendants herein in their official capacities, hereby oppose the Plaintiff's Motion for Summary Judgment. Defendants also cross move for Summary Judgment on the grounds stated below.

I.

FACTS

Defendants Calvo and Orlino find it unnecessary to describe many of the facts here, which are well known to the court. The federal government condemned Crawford family land and later

returned it to the local government, which uses the land for runways at the Guam International Airport Authority (GIAA). Nevertheless, Mr. Crawford alleges that he has never been properly compensated for the condemnation despite having received payments from the federal government and numerous attempts at compensation made by I Liheslaturan Guahan.

The Tiyan landowners have always tried to attain compensation separate from other former Guam landowners and the legislature has frequently tried to accommodate them, which is part of the problem here. We will demonstrate why the various enactments by the Legislature vest nothing in Mr. Crawford or the purported class.

The federal government initiated return of 3,200 acres of condemned lands in 1994 through P.L. 103-339 and in 1999 I Liheslaturan Guahan established the Guam Ancestral Lands Commission. [Complaint, pp. 8-16]. All of the returned land was put under GALC jurisdiction. 21 G.C.A. §§ 80101(j); 80104(a)(2). If the returned land is not being used for a public purpose, the Commission awards title to the heirs of the original owner. 21 G.C.A. § 80104(a). If the returned land was retained by the Federal Government or the Government of Guam for a public purpose, the Commission compensates the heirs with money from the GALC Trust that is accumulating from rent from land held in the GALC Trust. 21 G.C.A. § 80104(b) and (e). The GALC Trust property was not all returned by the federal government. It is referred to at times as "Spanish Crown Lands", although this may be a term more of convenience than accuracy because the Crown may not have owned all of it. § 80104(e).

The GALC Trust exists in perpetuity. No money has yet been distributed, although the Trust contains about $5 million, and the GALC is enacting the rules and regulations needed for distribution. § 80104(e). Mr. Crawford has been a Trust beneficiary since 1999 since GIAA retains his land for a public purpose. The government's main contention herein is that Mr.

Crawford should receive only what other GALC Trust beneficiaries receive pursuant to § 80104(e), no more and no less. Mr. Crawford has been trying to "escape" from the class of beneficiaries created by § 80104(e) since it was created in 1999, but he cannot.

The legislature attempted to help Mr. Crawford by trying a different approach to former Tiyan landowners, even though they are also a group of dispossessed landowners. Guam P.L. 30-158 proposed a grant of GALC Trust land to the Tiyan landowners. [Dec. of Charfauros, Ex. D]. However, the Superior Court has declared that the proposed exchange was a taking of GALC Trust property without due process of law and enjoined the execution of P.L. 30-158, as we will discuss later in greater detail. [CV1461-10, Ex. A]. The Superior Court judgment in CV1461-10 bars enforcement of the land exchange and hence P.L. 30-158 in its entirety.

There are three reasons why the GALC has not enacted rules regarding the Trust in the seventeen years since the Trust was created. First, the GALC believed that the Tiyan problem was not its concern because the legislature was addressing it separately through the series of Public Laws Mr. Crawford is now trying to enforce. Second, the statute mandating rules for distribution of the Trust funds is silent as to apportionment between beneficiaries. Third, returning title to former landowners seemed to be the GALC's primary obligation.

The complaint herein alleges four separate causes of action, all based on the delay in distribution: (1) a violation of the Due Process Clause of the Fourteenth Amendment; (2) a violation of the Equal Protection Clause of the Fourteenth Amendment; (3) breach of a contract between the purported class and the Government of Guam; and (4) unjust enrichment. The unjust enrichment claim, however, does not apply to Defendants Calvo and Orlino. Plaintiffs have moved for summary judgment against Governor Calvo and Chairperson Orlino on the first three causes

of action, but Defendants will establish that each cause of action fails and that summary judgment should be granted to them instead.

II.

THE STANDARDS FOR GRANTING A CROSS-MOTION FOR SUMMARY JUDGMENT ARE THE SAME

The standard for granting a cross motion for summary judgment is the same as the customary standard for granting a motion for summary judgment. Latin American Music Co. v. The Archdiocese of San Juan of Roman Catholic & Apostolic Church, 499 F.3d 32, 38 (1st Cir. 2007); Bronx Household of Faith v. Board of Education of City of New York, 492 F.3d 89, 96-7 (2nd Cir. 2007); Spectrum Health Continuing Care Group v. Anna Marie Bowling Irrecoverable Trust Dated June 27, 2002, 410 F.3d 304, 309 (6th Cir. 2005).

The government's cross motion for summary judgment raises no factual disputes is based on three points: (1) the three causes of action against Defendants Calvo and Orlino all fail; (2) the decision in Superior Court CV1461-10 bars enforcement of P.L. 30-158; (3) the statute that compels distribution of GALC Trust funds is Inorganic because it is silent as to apportionment between Trust beneficiaries.

III.

THE STATUTES RELIED ON BY PLAINTIFF GRANT HIM NO ENFORCEABLE LEGAL RIGHTS

Plaintiff's causes of action all start with Guam statutory law. A chronological examination of these statutes will demonstrate their failure to vest any rights in Plaintiff.

Plaintiff improbably claims that three Guam statutes, P.L. 26-100, P.L. 30-06 and P.L. 30-158, somehow create a contract between Plaintiff and the Government of Guam that Defendants have failed to honor. [Complaint, p. 22, ¶¶ 92-97]. At most P.L. 26-100:4 and P.L. 30-06 created

a "task force" to propose a solution that never happened. P.L. 30-158 offers that solution to the Tiyan landowners, but they have never accepted. P.L. 30-158 is also Inorganic.

Prior to the enactment of P.L. 26-100, a "Tiyan Trust" had been created by 21 G.C.A. Div. 2, Chapter 68, Article 12, but apparently never implemented, to benefit the former Tiyan landowners. *See* P.L. 26-100:1. Tiyan landowners had asked that the Tiyan Trust be abolished. P.L. 26-100:1. The crucial section is P.L. 26-100:4 which, to replace the Trust, creates the Tiyan Task Force to identify the:

> ...real needs of GIAA for properties under their jurisdiction, and find alternative means of compensation for the original owners of property strictly needed for airport-related operations, either through leases with original landowners, outright purchases, or value for value land exchanges...
>
> Those Tiyan properties GIAA originally planned to lease for other purposes not specifically associated with GIAA operations shall be deemed excess to the needs of GIAA, and shall be conveyed to GALC for return to original landowners...
>
> As a portion of the taskforce report to the Speaker of I Liheslaturan Guahan, CLTC, DLM and GALC....shall identify suitable properties under the jurisdiction of the respective Commissions and outside of Tiyan that can be conveyed to original landowners in exchange for properties in Tiyan that cannot be otherwise returned to such landowners.
>
> The Tiyan properties under the control of GEDCA...DPR...and GHURA shall be immediately conveyed by deed to GALC...

P.L. 26-100:4.

P.L. 26-100:5 abolished the Tiyan Trust. P.L. 26-100:8 then created an "Original Landowners Fund to hire attorneys to represent the former Tiyan landowners. The legislative intent was twofold: (1) to identify Tiyan land that was no longer needed by GIAA so it could be awarded to its former owners by GALC; (2) identify land from the Chamorro Land Trust, the Department of Land Management, and the Guam Ancestral Lands Commission to be awarded by GALC to dispossessed landowners like Mr. Crawford.

As we shall see, P.L. 26-100 came too late in the day to be much help to Mr. Crawford because it was enacted after 1999 when the GALC and its Trust were first created. This is a very significant point.

P.L. 26-100 merely intended that the Tiyan Task Force would propose a solution to the legislature, which would then approve it or reject it. P.L. 26-100 created no contract and no vested rights.

Then came P.L. 30-06, which, in 2009, repealed and re-enacted P.L. 26-100:4 to read:

> ...the Taskforce shall identify the original owners of properties transferred to the A.B. Won Pat International Airport Authority, Guam, by the United States Government and shall identify property of the government of Guam to be transferred to these original landowners on a value for value and/or size for size/exchange...The proposed property to be exchanged shall not be owned by any autonomous agency...including...the A.B. Won Pat International Airport Authority, Guam.

P.L. 30-06:1.

Thus, the legislature specifically *excluded* the grant of airport land to the dispossessed former Tiyan owners. It had apparently learned that the federal government holds a reversionary interest in GIAA property that would be triggered by transferring land needed for airport operations. The Tiyan Task Force was still supposed to come up with a proposal, but a proposal as modified by P.L. 30-06:1. There were still no contract and no vested rights.

The Task Force eventually came up with an "MOU" executed by Mr. Crawford and the Executive Director of the GALC. The Task Force's proposal was made to the legislature, which accepted it, but only on numerous conditions, by enacting P.L. 30-158. This law, however, is not a contract, but only another proposal, which the dispossessed Tiyan landowners could accept or reject. Unfortunately, P.L. 30-158 required the removal of Trust property from the Trust and given to the Mr. Crawford's class.

The formation of contracts generally requires that there be an offer and an acceptance. 18 G.C.A. § 85320; 13 G.C.A. § 2206; Mack v. Davis, 2013 Guam 8. The complaint, furthermore, does not even allege that the class accepted the terms of P.L. 30-158. In fact, the class never has accepted anything.

P.L. 30-158 is unworkable on its face. As an offer to enter into a contract, it is an offer made on very specific terms and land, the following conditions must be met:

1. The GALC must determine and the Governor must approve the parcels to be granted and the class must accept their decision. [*See* P.L. 30-158:3].

2. The GALC must determine and the Governor must approve the division of the parcels awarded among the 137 class members who must accept that division. [*See* P.L. 30-158:3].

3. It appears that the said division of the parcels must be done by lottery. [See P.L. 30-158:5]. This contradicts P.L. 30-158:3 as described in No. 2.

4. The class must agree that the award and division constitute a final resolution of the class's claim against the government of Guam. [*See* P.L. 30-158: 3].

5. The class must agree that the land awarded will be zoned R-1. [*See* P.L. 30-158: 4].

6. The class must agree with the State Historical Preservation Office regarding the preservation of artifacts and resources on the land granted. [*See* P.L. 30-158:6].

7. The class must agree that the public will have access to any Pagat land that is granted. [*See* P.L. 30-158:9]. This probably ensures that residences cannot be built there even though the land is supposed to be zoned residential. [*See* P.L. 30-158: 4].

8. The class must agree that the government of Guam will have right of first refusal to any of their lots. In other words, that they cannot alienate their property without government consent. [*See* P.L. 30-158:7].

Many of the restrictions imposed by P.L. 30-158 might be unacceptable to the class. An agreement acceptable to the entire class of 137 people is probably impossible. Enforcement of P.L. 30-158 would diminish the rights and potential income of other GALC Trust beneficiaries

and was therefore blocked by the Superior Court. (*See* Section VII below). P.L. 30-158 was never feasible and is now a dead letter.

The GALC Trust was first created in 1999 by the enactment of the Guam Ancestral Lands Act (P.L. 25-45) and the rights it created in Trust beneficiaries vested immediately. This vesting occurred *before* enactment of the three laws the Plaintiff's hopes are based on. P.L. 25-45 placed all available land under the jurisdiction of the GALC. 21 G.C.A. § 80104, § 80105. Thus, the only available land is beyond government control because it is in the Trust.

The legislature has repeatedly, through P.L. 26-100, P.L. 30-06, and P.L. 30-158, tried to remove the Tiyan landowners from the scope of P.L. 25-45 and the GALC Trust it established, but it has not succeeded. P.L. 25-45 created the class of dispossessed landowners in 1999 and there the former Tiyan landowner remain. The only rights they have are those created by P.L. 25-45 as contained in 21 G.C.A. § 80104(e): the right to Trust income.

There is no contract between the former Tiyan landowners and the government of Guam.

IV.

NO VIOLATION OF THE DUE PROCESS CLAUSE HAS OCCURRED

The Plaintiff alleges that the Governor and the Chairperson Orlino have not complied with their statutory obligation to compensate Plaintiff and that this failure constitutes a violation of Due Process of Law. [Complaint, p. 19-20; ¶¶ 76-83]. The Complaint alleges that P.L. 23-23, P.L. 26-100, and P.L. 30-06 create an "affirmative obligation" on the part of Defendants to provide compensation to Plaintiff. [¶ 79]. Governmental action may be challenged as a violation of due process only when it may be shown that it deprives a litigant of a property or a liberty interest. Gen. Elec. Co. v. New York State Dep't of Labor, 936 F.2d 1448, 1453 (2d Cir. 1991); Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 569 (1972)

To assert a Due Process claim, a Plaintiff must allege that he had a legitimate claim of entitlement protected by the due process clause and such a claim of entitlement is generally created by state law. Town of Castle Rock, Colorado v. Gonzalez, 125 S.Ct. 2796, 2803 (2005). We have already refuted Plaintiff's notion that Guam statutes vest a property right in him save for his right to receive benefits from the GALC Trust pursuant to § 80104(e).

Plaintiff also alleges that the government's delay in disbursing money from the Trust constitutes a due process violation. P.L. 23-23, P.L. 26-100, and P.L. 30-06 purportedly create an "affirmative obligation" on the part of Defendants to compensate Plaintiff and that their inactivity violates due process of law. [para. 79]. Delay can constitute a deprivation of due process in only a very few cases. Delay is a factor but not the only factor in determining whether due process is no longer feasible because it is overdue. Wright v. Califano, 587 F.2d 345, 354 (7th Cir. 1978); Veterans for Common Sense v. Shinseki, 644 F.3d 845, 864 (9th Cir. 2011). The U.S. Supreme Court holds:

> "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Matthews v. Eldridge, 96 S.Ct. 893 (1976) as cited in David v. City of Los Angeles, 123 S.Ct. 1895, 1896 (2016).

The three statutes relied on by Plaintiff do not vest a property right in the purported class. Neither can the Defendants grant the class a property right because they are restrained not only by the decision in Superior Court CV1461-10 but by the invalidity of the statutory grant of authority to enact regulations. (See below).

IV.

NO VIOLATION OF EQUAL PROTECTION OF THE LAW HAS OCCURRED

Plaintiff alleges that he has been denied Equal Protection of the Law, but does not acknowledge that the very law he attempts to enforce, the Guam Ancestral Lands Act, P.L. 25-45, creates two classes of landowners, those who will receive their land and will not. Complaint, p.21, ¶¶ 89.

The Motion for Summary Judgment repeats this misconception: "All ancestral landowners are similarly situated in that Guam statutes recognize their ancestral property rights and entitle them to the same relief: just compensation. *See*, e.g. 21 G.C.A. § 80101…" The Guam Ancestral Lands Act (GALA) states that all landowners are entitled to "just compensation", but this does not create an enforceable legal standard. The closest we have to a definition of "just compensation" occurs in § 80101(k):

> *Just compensation*…shall mean only land recovery or land exchange, and shall also mean any other form of compensation other than a specifically described available land. (emphasis added).

In other words, "just compensation" means "land recovery"; i.e. a GALC award, or "any other form of compensation." There are, as stated above, two forms of compensation under the GALA *see* 21 G.C.A. § 80104(a), (b) and (e). Those will receive "land recovery" and those who will receive monetary compensation from the GALC Trust pursuant to § 80104(e), which is the "other form of compensation" referred to by § 80101(k) above. Subsection (e) specifically uses the phrase "just compensation" to describe Trust income. Therefore, the "just compensation" Mr. Crawford should receive is Trust income.

There are, perhaps, some contradictions in the GALA. The definitions section speaks of land exchanges in § 80101(k) and (n), but no language in the GALA authorizes the GALC to make

such an exchange. The GALC has always taken the position that it cannot authorize land exchanges. The Superior Court has, in CV1461-10, blocked a land exchange even though it was proposed by law, P.L. 30-158.

The same point about differential treatment applies to the statutory distinctions drawn between those Tiyan landowners who recovered their land and Mr. Crawford. Those landowners recovered their land because it was not needed for GIAA activity. Mr. Crawford has no just cause to complain of this distinction, which is scarcely unjustified.

Classifications that are not based on race, religion, ethnicity, sexual orientation or the like are not subject to strict scrutiny. Fisher v. University of Texas at Austin, 133 S.Ct. 2411, 2418 (2014). The distinctions drawn by the GALA can be upheld if "there is a plausible policy reason for the classification". Armour v. City of Indianapolis, 132 S.Ct. 2073, 2080 (2012). The reason is plausible "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Ibid., 2080. Because a statutory classification is presumed constitutional, the "'burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.'" Heller vs. Doe, 113 S.Ct. 2637 (1993).

The distinction between those who will and those who will not get their land back is obviously rational: some land can be returned because it is not in use and some land is so important to the community that the government must retain it. The fact that the fit between a provision and its goals is imperfect, that a classification "is not made with mathematical nicety or ... in practice it results in some inequality," does not require its invalidation. Dandridge v. Williams, 90 S.Ct. 1153, 1161 (1970). Overinclusiveness and underinclusiveness are not fatal to a classification for equal protection. *See* Vance v. Bradley, 99 S.Ct. 939, 948 (1979).

The Plaintiff has not suffered an Equal Protection violation.

VI.

THE BREACH OF CONTRACT CLAIM IS BARRED BY THE DOCTRINE OF SOVEREIGN IMMUNITY

The government moves for summary judgment regarding the claim for breach of contract because this court lacks subject matter jurisdiction under the doctrine of sovereign immunity. The contractual claim is based on Guam law and must be assessed according to Guam law, including the Government Claims Act. *See* Title 5 G.C.A. Chapter 6. *See* Complaint, p.22, ¶¶ 94-95. However, (1) Plaintiffs never filed a government claim; and (2) the government cannot be sued for specific performance.

Title 48 U.S.C. § 1421a authorizes the Guam Legislature to waive sovereign immunity only by "duly enacted legislation." There can be no "implied" waiver of sovereign immunity by the government. Wood v. Guam Power Authority, 2000 Guam 18. The Government enjoys broad sovereign immunity." Newby v. Gov't of Guam, 2010 Guam 4 ¶ 31. Ibid. None of the three statutes described by Plaintiff in his Breach of Contract count explicitly waive sovereign immunity so this suit is unauthorized. *See* P.L. 26-100; P.L. 30-06; and P.L. 30-158.

The Government Claims Act contains a legislative waiver, but Plaintiffs have not filed a claim as required by the Act. *See* Title 5 G.C.A. § 6105. Guam Police Department v. Superior Court of Guam, 2011 Guam 8, ¶¶ 7-8; Pacific Rock Corp. v. Department of Education, 2000 Guam 19; Pacific Rock Corp. v. Perez, 2005 Guam 15; Sumitomo Construction Co., Ltd. v. Government of Guam, 2001 Guam 23; Town House Department Stores v. Department of Education, 2012 Guam 25; Quan Xing He v. Government of Guam, 2009 Guam 20; Capulong v. Department of Educ. of Guam, 2011 WL 1134986 (D. Guam). There must be at least substantial compliance with the Government Claims Act before a private party can sue the Government of Guam. Quan Xing He v. Government of Guam, 2009 Guam 20.

"Plaintiff seeks injunctive and declaratory relief requiring the government of Guam and the GALC to render the performance they agreed to provide: the payment of compensation to class members." [Complaint, p. 22, ¶ 97]. Sovereign immunity bars an action against the government for specific performance of a contract, however, because the legislature only actions for damages "for all expenses incurred in reliance upon a contract to which the Government of Guam is a party". 5 G.C.A. § 6105(a). There is no legislation authorizing a suit for specific performance against GovGuam.

> Appellants also argue that the sovereign immunity doctrine does not prevent litigants from seeking equitable relief compelling government officials to perform their duties properly...It is clear that sovereign immunity applies to specific performance actions against the government; otherwise the government cannot operate effectively if its every act is subject to injunctive actions...

Alexander v. Bordallo, 1979 WL 24948 (D. Guam. App. Div. 1979).

Sovereign immunity bars specific performance of a contract with the government. Brown v. State, 602 N.W.2d 79 (Wis. 1999); Thompson Creek Townhomes, LLC v. Tabernash Meadows Water and Sanitation Dist., 240 P.3d 554 (Colo. 2010); President Lincoln Hotel Venture v. Bank One, Springfield, 649 N.E.2d 432 (Ill. 1994); Satterfield & Pontikes Construction, Inc. v. Texas Southern University, 472 S.W.3d 426 (Tx. 2015).

It is very dubious that the three relevant Public Laws constitute any sort of contract but, even if they did, the doctrine of sovereign immunity bars Plaintiff's action for breach of contract and also bars the remedy of specific performance.

VII.

THE DOCTRINES OF ISSUE AND CLAIM PRECLUSION BAR THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This court must give Full Faith and Credit to the judgments of state and territorial courts pursuant to Title 28 U.S.C. § 1738. This suit is barred, therefore, by the final judgment in Superior

Court CV1461-10 (the Gange case) and the doctrines of issue and claim preclusion. P.L. 30-158 was intended as the ultimate solution to the Tiyan problem, and the land exchange it proposed is its core. If the land exchange is barred, so is all other enforcement of P.L. 30-158 because the land exchange is the heart of that statute.

The Gange plaintiffs in CV1461-10 were dispossessed landowners and therefore GALC Trust beneficiaries under 21 G.C.A. § 80104(e). [*See* Ex. E, para. 8-10]. Their action alleged that enforcement of the P.L. 30-158 land exchange would remove valuable property from the GALC Trust and thereby diminish their property rights without due process of law. [Ex. E, para. 33-35]. Removing potential rental property from the Trust would have reduced Trust revenue and would have reduced cash distributions accordingly. The Superior Court's decision of August 16, 2013 agreed, holding that the enactment of P.L. 30-158 violated the Due Process Clause as it applies to Guam. [Ex. A, p. 7, l. 18-23].

The Superior Court also found that the "taking" proposed by P.L. 30-158 was not for a public purpose and that no compensation was being offered to the Gange beneficiaries. [Ex. A, pp. 3-6]. "...the Court concludes that Public Law 30-158 constitutes an attempted taking of the Plaintiffs' private property, that this taking would serve no legitimate public purpose, and that no compensation would be rendered to the Plaintiffs for the taking." [Ex. A, p. 7, l. 18-20]. The court restrained the Tiyan landowners from jumping ahead of the non-Tiyan dispossessed landowners, even with the legislature's approval.

Mr. Crawford attempted to intervene as a party in the Gange case, but was denied permission. He then appealed this denial to the Supreme Court of Guam, but withdrew his appeal. [Ex. C]. There is an appeal on the issue of attorney's fees, but the Gange judgment is a final judgment on the merits. GRCP 54.

Title 28 U.S.C. § 1738 requires federal courts to give the same preclusive effect to state and territorial court judgments that those judgments would be given in the courts of the jurisdiction that issued the judgment. Kremer v. Chemical Constr. Corp., 456 U.S. 461, 466 (1982); Los Altos El Granada Investors v. City of Capitola, 583 F.3d 674, 686-7 (2009). A federal court must apply the doctrine of res judicata as embodied by the laws of the state from which the judgment is taken, not federal rules. Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 373 (1996); Los Altos El Granada Investors v. City of Capitola, 583 F.3d 674, 686-7 (2009). Therefore, we must examine Guam law to determine the preclusive effect of the Gange judgment. Res judicata is defined on Guam by 6 G.C.A. § 4209:

> **Effect of Judgment or Final Order.** The effect of a judgment or a final order in an action or special proceedings before a court or judge of Guam, or of the United States, having jurisdiction to pronounce the judgment or order, is as follows: 1. In case of a judgment or order against a specific thing,...the judgment or order is conclusive upon the title to the thing,...2. In other cases, the judgment or order is...conclusive between the parties and their successors in interest by title...litigating for the same thing under the same title and in the same capacity, provided that they have notice, actual or constructive, of the pendency of the action or proceedings.

Title 6 GCA § 4209.

The Supreme Court of Guam has explicated Section 4209:

> Res judicata, or claim preclusion, as defined by this court is "the doctrine by which a 'judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.'... Claim preclusion prevents litigation of a claim that was not litigated in a previous suit, but could have been...To successfully invoke claim preclusion as a defense, one must show that the following elements are present: "'(1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits.'...

Zahnen v. Limtiaco, 2008 Guam 5, ¶ 10.

The Superior Court judgment in Gange bars enforcement of the statute Mr. Crawford relies on, P.L. 30-158. [Ex. B]. The parties and their privies are the same and Mr. Crawford not only

had notice of CV1461-10, he participated therein. The Gange suit was brought by dispossed landowners against the GALC and named the Tiyan beneficiaries as Doe defendants. [Ex. E, para. 3, 4, 9, 10]. It prayed that the GALC be enjoined from conveying two large lots to the Tiyan landowners. [Ex. E. para. 21, 26, 33, 34, 35, and p. 9]. Mr. Crawford was therefore a Doe defendant and was represented by the GALC as Trustee of the GALC Trust. He was privy to the parties and the issues in CV1461-10.

. . . "in order to successfully assert the doctrine of *res judicata,* a defendant must prove the following essential elements: (1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits." Trans Pacific Export Co., supra, ¶ 16. *See* also In the Matter of Aguon, 2013 Guam 4, ¶ 23. "Section 4209 was derived from California Code of Civil Procedure section 1908, which, in turn, simply reiterates common law res judicata." Presto v. Lizama, 2012 Guam 24, ¶ 20. "A judgment is "on the merits" for purposes of claim preclusion if the substance of the claim is tried and determined." Johnson v. City of Loma Linda, 5 P.3d 874, 884 (Cal.2000). For a judgment to bar any subsequent action for the same subject matter between the same parties, it must appear that the suit in which it was rendered was determined on its merits and not because the cause of action had not yet accrued nor on the ground of any technical defect." Presto v. Lizama, ibid., ¶ 26.

The determination of a question directly involved in one action is conclusive as to that question in a second suit. B & B Hardware, Inc. v. Hargis Industries, Inc., 135 S.Ct. 1293, 1302 (2015). Once a court has decided an issue, it is forever settled as between the parties. (Ibid.).

The land grant proposed by P.L. 30-158 was intended to resolve the Tiyan land problem, but is now unenforceable by Mr. Crawford or any other party. Summary judgment must be granted to Defendants.

VIII.

TITLE 21 G.C.A. § 80104(e) VIOLATES THE SEPARATION OF POWERS DOCTRINE

21 G.C.A. § 80104(c) does not indicate how the GALC should allocate Trust income and is therefore void.

The Government of Guam has, like the federal government, three branches: legislative, executive and judicial. *See* 48 U.S.C. § 1421a (1992). Guam has adopted the test used by the United States Supreme Court as to whether legislation creates a separation of powers violation.

> In determining whether the Act disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions. Only where the potential for disruption is present must we then determine whether the impact is justified by an overriding need to promote objectives within the constitutional authority of Congress.

People v. Perez, 1999 Guam 2, ¶ 17, cited in In re Request of Gutierrez, 2002 Guam 1, ¶ 34.

"...under the separation of powers doctrine, one branch of government is prohibited from either delegating its enumerated powers to another branch of the government or aggrandizing its powers by reserving for itself the powers given to another branch." In re Request of Gutierrez, 2002 Guam 1, ¶ 35. It is customary for Congress to delegate its lawmaking authority to the two other branches of government in order to accomplish its policy goals, but an excessive delegation of legislative power can violate the separation of powers doctrine.

> The nondelegation doctrine is rooted in the principle of separation of powers that underlies our tripartite system of Government. The Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States," ... Congress generally cannot delegate its legislative power to another

> Branch.... We also have recognized, however, that the separation-of-powers principle, and the nondelegation doctrine in particular, do not prevent Congress from obtaining the assistance of its coordinate Branches...So long as Congress "shall lay down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform, such legislative action is not a forbidden delegation of legislative power."...

Mistretta v. United States, 109 S.Ct. 647, 654 (1989). (emphasis added).

Section § 80104(e) is defective because it articulates no "intelligible principle" by which the GALC can fairly apportion its distributions of GALC Trust money among Trust beneficiaries. It does not specify whether distributions should be apportioned according to the size of each parcel taken, the value of the land at the time of the taking, the value of the land at the present, or by some other principle. Neither does it mention the time of the taking which, because of inflation and historical factors, could be very relevant. (The takings occurred roughly between 1930 and 1960). The legislature did not refer to the present use of the land by the government, a factor that underlies much of the Plaintiff's case. The pertinent statutory language compels distribution but is silent as to apportionment.

> (e)...The Commission shall establish a Guam-based trust to administer all assets and revenues of the land bank of the aforementioned lands...The Commission shall establish rules and regulations pursuant to the Administrative Adjudication Law for the Guam-based trust. The resulting income shall be used to provide just compensation for those dispossessed ancestral landowners.

Title 21 G.C.A. § 80104(e).

There is another perplexing factor here. Some of the land taken from former landowners is now used by the federal government, like Andersen Air Force Base, and some is used by the local government, like the GIAA land. The legislature did not distinguish between these two groups. It explained neither why Guam should compensate them equally nor why Guam should

compensate former owners of federal land at all. This dilemma dominated GALC discussion for years.

The GALC could easily be accused of another Equal Protection violation by merely enacting any method chosen by GALC to distribute the money will anger some beneficiaries, perhaps justifiably. Plaintiff has ironically accused the GALC of an Equal Protection violation when, in fact, any distribution it attempts may constitute a greater violation.

> ...the legislature in delegating to an administrative agency the performance of certain functions may not invest that agency with arbitrary powers...The legislature cannot vest an administrative agency with the power in its absolute and unguided discretion to apply or withhold the application of the law or to say to whom a law shall or shall not be applicable... 'Should a statute clothe an administrative officer with the discretion as to the administration of the statute and also clothe him with the right to determine what the law is, or give to him the opportunity to apply it to one and not apply it to another in like circumstances, either would constitute an unlawful delegation of legislative power.'...
>
> Also, due process of law requires that an act shall not be vague, indefinite or uncertain and must provide sufficient standards to guide the administrative body in the exercise of its functions...

People v. Tibbits, 305 N.E.2d 152, 155 (1973). (citations omitted).

See also South 51 Development Corp. v. Vega, 781 N.E.2d 528 (Ill. 2002); Tri-County Industries, Inc. v. Com., 818 A.2d 574 (Pa. 2003); Florida Dept. of Business and Professional Regulation, Div. of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach, 747 So.2d 374 (Fla. 1999); National Ass'n of Independent Insurers v. Texas Dept. of Ins., 888 S.W.2d 198 (Tx. 1994). Petition of Strandell, 562 A.2d 173, 178 (N.H. 1989).

The GALC did not commit a constitutional violation by not enacting the rules and distributing the money. Furthermore, this court cannot order the GALC to comply with an Inorganic statute. The GALC has complied with § 80104(e) in so far as it can by collecting revenue and investing the proceeds, but legislative ambiguity has prevented distribution.

The Inorganicity of § 80104(e) prohibits this court from granting the injunction Mr. Crawford has requested, namely, an order directing Defendants to comply therewith. Summary judgment should be granted to Defendants because no relief is available to Plaintiff.

CONCLUSION

The Plaintiff's Motion for Summary Judgment must be denied and Summary Judgment granted to Defendants.

Dated this 19th day of October, 2016.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By: David J. Highsmith
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Assistant Attorney General

DECLARATION OF SERVICE

I, DAVID J. HIGHSMITH, hereby certify that on this 19th day of October 2016, I caused to be served a true and correct copy of the **MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT,** to the following via electronic mail:

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