FOR PUBLICATION

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

MARIANO S. SABLAN, **Plaintiff,** **v.** **BENJAMIN T. MANGLONA and VICENTE M. ATALIG,** **Defendants.**	**CIVIL ACTION NO. 04-0166** **ORDER GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION**

THIS MATTER was last before the Court on April 18, 2006 on Plaintiff's motion for reconsideration of the Court's February 27, 2006 order (the "Order") granting Defendants' Motion for Judgment on the Pleadings on the issue of wrongful termination in the First Amended Complaint ("FAC"). Appearing on the briefs and/or oral arguments were: Joseph E. Horey for Plaintiff Mariano S. Sablan and Assistant Attorney General Jeanne H. Rayphand for Defendants Benjamin T. Manglona and Vicente M. Atalig (collectively, "Defendants").

I. STANDARD GOVERNING MOTIONS FOR RECONSIDERATION

"Motions for reconsideration are governed by Commonwealth Rule of Civil Procedure 59(e) and are considered an extraordinary measure to be taken at the Court's discretion." *Camacho v. CNMI Department of Public Works*, No. 4-0238E (Supr. Ct. Oct. 3, 2005). Extraordinary measures include (1) a need to correct a clear error or prevent manifest injustice; (2) the availability of new

evidence not previously obtainable; or (3) an intervening change of controlling law. *Id.* The instant motion is apparently based on a need to correct a clear error or prevent manifest injustice. In such a case, the Court considers only the facts and evidence before it at the time of the ruling. *Id.*

In reconsidering its Order, the Court only considers those arguments that address the specific error or injustice asserted by the movant. The Court does not consider peripheral arguments raised by either party.[1]

II. ANALYSIS

A. Timeliness of Motion

Defendant argues that a motion for reconsideration is required to be filed and served "not later than 10 days after the entry of the judgment." Com. Civ. Pro. R. 59(e). Plaintiff filed his motion March 16, 2006, more than ten days after the issuance of the February 27, 2006 Order.

Plaintiff argues that he is not limited to the ten-day rule, as the Order adjudicated fewer than all of the claims in the case. Plaintiff cites Com. R. Civ. P 54(b): "any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

Since the Order only addresses the issue of wrongful termination, Com. R. Civ. P 54(b) governs reconsideration. Thus, Plaintiff's motion is timely.

B. Specificity of Allegations

Plaintiff argues that he has met the causation element, because the complaint directly states that his termination was based upon his ethnicity, political affiliation and/or lack of certain familial

[1] For instance, the Court will not consider Defendants' argument that this Court has no power to hear Plaintiff's claims. The Order already rejected this argument, and Defendants have not properly raised it in conjunction with a Motion for Reconsideration.

connections. Plaintiff's Memorandum at 3, citing FAC at ¶19. Plaintiff asserts that the tort of wrongful discharge encompasses not only discharge in violation of public policy for ***doing*** something, but also for ***being*** something. Plaintiff's Reply to Opposition at 5.

The FAC only broadly states the characteristics of Plaintiff for which he may have been fired. It fails to allege the particular class to which Plaintiff belonged and against which Defendants discriminated. Paragraph 20, to which Plaintiff refers as the "justification" element, is similarly speculative. It simply states that "[n]o overriding justification for Plaintiff's termination exists."[2]

While the FAC lacks specificity, the Court acknowledges that a complaint need only contain "a short and plain statement of the claim." Com. R. Civ. Pro. 8(a)(2). Further, the pleadings are adequate if there are allegations "from which an inference could fairly be drawn that evidence of these material points will be introduced at trial." *In re Adoption of Magofna*, 1 N.M.I. 449, 454 (1990). Upon further reflection, the Court finds that the allegations can be construed to meet these pleading requirements.

C. Proper Party

As stated in the Order, an additional reason for granting Defendant's motion was that Plaintiff did not name the Commonwealth, his actual employer, as the defendant. Plaintiff argues that the Court should presume that the suit is against Defendants in their ***official*** capacities, and that a suit against government agents in the official capacities is effectively a suit against the

[2] In the alternative, Plaintiff argues that he need not allege a justification element. He refers the Court to the test cited in the Court's February 27, 2006 order, which sets forth four elements of a cause of action for wrongful discharge. Plaintiff notes that in the case cited by the Court, *Hubbard v. Spokane County*, 50 P.3d 602 (Wash. 2002), "justification" is described more in terms of an affirmative defense than as an element of a cause of action.

In describing the test for a cause of action, the *Hubbard* court cited *Gardner v. Loomis Armored Inc*., 913 P.2d 377 (Wash. 1996). The *Gardener* court, in turn, derived its test from a legal treatise by Henry Perritt Jr., a scholar on labor and employment law. In his test, Perritt describes "justification" as one of four elements that a plaintiff must prove (as opposed to an affirmative defense for the defendant). Henry H. Perritt Jr., WORKPLACE TORTS: RIGHTS AND LIABILITIES § 3.21 (1991). *See also Collins v. Rizkana*, 652 N.E.2d 653 (1995) (adopting Perritt's four element test). Thus, Plaintiff is still required to allege a justification element.

Commonwealth.[3] Memorandum at 4. The briefing Plaintiff provided on this issue suggests that Plaintiff is correct.

In *Frank v. Relin*, 1 F.3d 1317, 1326 (2nd Cir. 1993), the Second Circuit held that a plaintiff who has not clearly identified in her complaint the capacity in which the defendant is sued should not have the complaint automatically construed as focusing on one capacity to the exclusion of the other. In *American Policyholders Ins. Co. v. Nyacol Products, Inc*., 989 F.2d 1256, 1260 (1st Cir. 1993), the First Circuit held that an official-capacity suit against a government officer is fully equivalent to a suit against the government agency.

In *Brandon v. Holt*, 469 U.S. 464, 471 (1985), the Supreme Court held that where the record suggested that petitioners' claim for damages was against a director of a police department in his official capacity rather than in his individual capacity (as the complaint suggested), petitioners would be permitted to amend their pleadings to sue the director in his official capacity. Since certiorari had already been granted, the Supreme Court proceeded without insisting that a formal amendment be filed. *Id.*

Based on this briefing, the Court draws an inference that Plaintiff intended the suit to be brought against Defendant in his official capacity, and that the suit is effectively one against the CNMI. The Court will deem it as such. However, this is clearly not the best procedure for filing a complaint. Straightforward allegations against the CNMI in the first instance would have saved the Court and the parties a great deal of time and effort.

III. CONCLUSION

The Court has considered Plaintiff's briefing and construed the pleadings in an extremely liberal manner. Had Defendants' motion been based on Rule 12(b)(6), it is likely that the Court would have dismissed the complaint and granted Plaintiff leave to amend with more specific

[3] The Court considers this argument as it does not require review of additional facts or evidence.

allegations. However, the instant motion is for judgment as a matter of law. The Court recognizes that ruling in favor of Defendants would not provide Plaintiff with the opportunity to amend. Accepting Plaintiff's arguments that he has sued the proper party, such denial would cause manifest injustice.

The Court cautions Plaintiff that the allegations are serious and should not be made lightly. Plaintiff will have to present stronger allegations in order to meet his burden at trial.

The Court hereby GRANTS Plaintiff's Motion for Reconsideration and DENIES Defendant's Motion for Judgment on the Pleadings.

So ordered this 18th day of May, 2006.

/s/_____

JUAN T. LIZAMA, Associate Judge