

- 1 Marianas College's Employee Appeals Committee;
- 2 2. Petitioner's claims under the 14th Amendment of the United States Constitution;
- 3 3. Petitioner's claims under the CNMI Post-Secondary Education Act
- 4 4. Miscellaneous claims

5 *See* Respondents' Motion to Dismiss Petitioner's Petition For Judicial Review and Declaratory
6 Relief.

7 Respondents' Motion to Dismiss is governed by Com. R. Civ. 12(b)(6), which allows for the
8 dismissal of claims for which the recognized law provides no relief. A motion to dismiss is
9 therefore solely aimed at attacking the pleadings.

10 Since Com. R. Civ. P. 8 requires only a "short and plain statement of the claim showing that
11 the pleader is entitled to relief," there is "a powerful presumption against rejecting pleadings for
12 failure to state a claim." *Auster Oil & Gas, Inc. v. Stream*, 764 F.2d 381, 386 (5th Cir. 1985).
13 Consequently, a motion to dismiss for failure to state a claim upon which relief can be granted will
14 succeed only if from the complaint it appears beyond doubt that plaintiffs can prove *no* set of facts
15 in support of their claim that would entitle them to relief. *Morley v. Walker*, 175 F.3d 756, 759 (9th
16 Cir. 1999) (*emphasis added*). All allegations of material fact are taken as true and construed in the
17 light most favorable to the non-moving party. *Enesco Corp. v. Price/Costco, Inc.*, 146 F.3d 1083,
18 1085 (9th Cir. 1998). In reviewing the sufficiency of the complaint, the "issue is not whether a
19 plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the
20 claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686 (1974). "[I]t may appear on
21 the face of the pleadings that recovery is very remote and unlikely but that is not the test." *Id.*

22 **A. Respondents Vincent J. Seman and Kenneth E. Wright do not Qualify as Agencies**
23 **Whose Actions Are Subject to Review Under the CAPA.**

24 This case is founded on a Petition for Judicial Review and Declaratory Relief from Agency
25 Action under the CAPA, 1 CMC § 9112. Petitioner is essentially appealing the decision of NMC
26 Employee No. 02-004 which upheld Angelo's termination without cause. *See* Petition For Judicial
27 Review and Declaratory Relief. In his complaint for Judicial Review, Petitioner names Vincent J.
28 Seman and Kenneth E. Wright in their official capacities. However, the statutory framework of the

1 CAPA limits judicial review to “persons suffering legal wrong because of agency action, or
2 adversely affected or aggrieved by agency action.” 1 CMC § 9112(b). Stated differently, only
3 agency actions may be appealed under the APA. Consequently, since only “agency actions” are
4 reviewable under the APA, Respondent’s motion to dismiss parties Seman and Wright poses this
5 ostensibly simple legal question: “whether an individual’s actions are subject to judicial review
6 under the APA to the same extent as an Agency if that individual is named in his/her official
7 capacity?”

8 A cursory examination of the statutory language reveals that the legislature assigned
9 mutually exclusive definitions to “agencies” and “persons” under the APA.¹ “‘Agency’ means each
10 authority of the Commonwealth government, whether or not it is within or subject to review by
11 another agency.” 1 CMC § 9101(b). By contrast, “‘Person’ means an individual, partnership,
12 corporation, association, clan, lineage, governmental subdivision, or public or private organization
13 of any character *other than an agency*.” 1 CMC § 9101(j) (*emphasis added*). Therefore, if
14 “persons” simply refers to an individual regardless of their capacity, Seman and Wright are both
15 persons in the plainest meaning, and they are not a proper party to a case seeking judicial review.

16 Statutes should be construed so as to derive and enforce their plain meaning. *See Estate of*
17 *Faisao v. Tenorio*, 4 N.M.I. 260 (1995); *Nansay Micronesia Corp. v. Govendo*, N.M.I. 12 (1992).
18 Here, the definition of “person” includes “individual” but makes no distinction between individuals
19 acting in official or individual capacity. Consequently, without further embellishment by the courts
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22 Caveat: The Commonwealth Supreme Court has found that “persons” and “agencies” are not
23 always mutually exclusive, particularly in circumstances when an agency seeks judicial review of an
24 action taken by another agency. *See Northern Marianas College v. Civil Service Comm’n*, 2006 MP
25 4. However, the decision in this case should not run afoul of the Supreme Court’s holding because
26 the cases are distinct to the extent that the one before this Court involves a person seeking judicial
27 review from an agency action and *not* an agency seeking judicial review of an agency action from
28 another agency.

1 or legislature, a simple analysis of the definition would render that “persons” applies to all
2 individuals regardless of their capacity. Furthermore, because “persons” and “agencies” cannot be
3 one and the same under the CAPA, individuals, and hence, Seman and Wright are not proper parties
4 to an action seeking judicial review of an agency action.

5 Petitioner’s claim that naming an individual in his/her official capacity is likewise
6 unpersuasive. The cases Petitioner uses to support this contention are sharply distinguishable from
7 this case because it interprets an entirely different statutory framework of 42 U.S.C. 1983, a civil
8 rights statute which has few similarities to the CNMI’s APA. Instead, the Court agrees with
9 Respondents’ contention that the cases dealing with 42 U.S.C. § 1983 “merely allow for liability for
10 civil rights violations where none previously existed”—not that this line of cases supports the broad
11 proposition that any suit against an individual in his/her official capacity is the equivalent of a suit
12 against a government agency. *See* Reply to Petitioner’s Opposition at pg. 3.

13 Moreover, the nature of judicial review, or administrative appeals as they are sometimes
14 called, is distinctive from that of a typical civil complaint. Here, the Court’s jurisdiction is more
15 akin to an appellate function which is limited to reviewing an agency’s action within the constraints
16 of 1 CMC § 9112. Thus the elimination of Seman and Wright from the caption of this case will
17 have negligible dispositive impact, as any disposition from this case will be directed towards the
18 Agency rather than its employees or officials. Vincent Seman and Kenneth Wright are DISMISSED
19 with prejudice from this action.

20
21 **B. The NMC Employee Appeals Committee Qualifies as an Agency Under the APA.**

22 The statutory language is clear. “‘Agency’ means each authority of the Commonwealth
23 government, whether or not it is within or subject to review by another agency.” 1 CMC § 9101(b).
24 Because the NMC Employee Appeals Committee exercised its authority to uphold Petitioner’s
25 termination from employment by NMC, its actions are subject to review as an extension of NMC.
26 To find different would laud semantics over merits—an improper motivation for dismissing a case
27 considering the high burden imposed on the moving party.

28 Despite its subordinate function to the overall structure of NMC, the Appeals Committee

1 precisely fits into the APA’s definition of “agency”. The Court is perplexed at how Respondents
2 could interpret 9101(b) to mean that an authority’s actions are not subject to review merely because
3 that authority is within another agency. Here, the Appeals Committee exists within NMC.
4 Therefore the Appeals Committee qualifies as an agency and Petitioner could have named *either* the
5 Appeals Committee *or* NMC as Respondent. Respondent’s Motion to Dismiss with regard to the
6 NMC Employee Appeals Committee is DENIED.

7
8 **C. Petitioner’s Claim for Relief Under the 14th Amendment of the United States**
9 **Constitution Subject to the Limitations of 1 CMC § 9112 Meets the Minimum Criteria to**
10 **Avoid Dismissal.**

11 Respondents additionally attack Petitioner’s reference to the 14th Amendment of the
12 Constitution in his pleadings by citing to authority which dismissed a direct cause of action under
13 the 14th amendment, for money damages, because the 14th amendment can only be enforced by civil
14 action if authorized under a separate statute. *See Magana v. Northern Mariana Islands*, 107 F.3d
15 1436, 1442 (9th Cir. 1997). Although Respondent’s citation is correct, it is inapplicable here
16 because Petitioner is not attempting to sustain a direct claim for money damages. Instead, Petitioner
17 requests a judicial review of an agency action per 1 CMC § 9112, which is significant because a
18 person seeking review under section § 9112 can base it’s claim for review on allegations that the
19 agency’s conduct was in violation of the Constitution. .

20 According to 1 CMC § 9112(f)(ii), the reviewing tribunal shall “hold unlawful and set aside
21 agency action, findings, and conclusions found to be: (ii) [c]ontrary to constitutional right, power,
22 privilege, or immunity.” Here, Petitioner has merely cited the 14th amendment as part of his
23 explanation as to why this Court should set aside NMC’s decision to terminate Petitioner’s
24 employment. The extent of Petitioner’s reference to the 14th Amendment consisted of the
25 following phrase: “Respondents have clearly violated Angello’s 14th Amendment rights and his
26 rights under CNMI constitution in a most egregious display of denying his due process rights and,
27 furthermore, depriving him of his constitutionally protected property interest to take care of his
28 family, i.e., his job.” Petitioner has not—as Respondents contend—sought to sustain a direct action

1 for damages based on the 14th amendment. Rather, Petitioner has specified how NMC has
2 purportedly acted unlawfully.

3 According to the “notice pleading” standard upheld by federal courts, Petitioner’s claim
4 pleaded the minimal facts sufficient to place NMC on notice of the claims against it. Respondent’s
5 motion to dismiss Petitioner’s claim for judicial review as it relates to the 14th amendment is
6 DENIED.

7
8 **D. Petitioner’s Claim of a Violation of the Post-Secondary Education Act (PSEA), 3**
9 **CMC § 1323 and CAPA, 1 CMC § 9102(d) Are Dismissed.**

10 Although difficult to interpret from the face of Petitioner’s pleading, it appears that
11 Petitioner partially hinges his claims of improper termination on his contention that the President of
12 NMC did not have the “broad discretion” to fire Petitioner as provided in Board Policy 1009, which
13 operates as the “position description for the President of [NMC].” According to Petitioner, because
14 Board Policy 1009 was not officially promulgated, the President’s duties would only continue as
15 they had under prior law. *See* 1 CMC § 1323. Contrary to Petitioner’s position, Respondents argue
16 that notwithstanding the fact that the agency policy was not officially promulgated or published, the
17 President’s exercise of “broad discretion” in terminating Petitioner was lawful in light of 1 CMC §
18 9102(d).

19 1CMC § 9102(d) specifically states that “[n]o agency rule or regulation is valid or effective
20 against any person or party nor may it be invoked by the agency until the rule, order, or decision has
21 been published....” However, section 9102(d) cannot be used in favor of any person that has actual
22 knowledge of the policy. *See* 1 CMC § 9102(d). Here, Petitioner signed an employment contract
23 which specifically acknowledged that “the president may terminate a faculty without cause upon
24 written notice of 60 days in advance of termination of employment.” *See* NMC 12-month
25 Employment Contract.

26 Because Petitioner is presumed to have read and understood the contents of the contract, his
27 signature thereon demonstrates his assent and actual knowledge of the provisions contained therein.
28 Furthermore, because Petitioner is deemed to have actual knowledge of the President’s power to

1 terminate his contract without cause, he cannot make use of 1 CMC § 9102(d) to void the
2 President’s “broad discretion” with regard to appointing and terminating staff under Board Policy
3 1009, and particularly terminating Petitioner.

4 Further, Petitioner’s claim that notwithstanding the validity of Board Policy 1009, section IV
5 (P) of Policy 1009 requires the President to seek prior review approval from the NMC Board of
6 Regents (“the Board”) before making employment changes. The Court finds Petitioner’s
7 interpretation of section IV(P) unpersuasive. Section IV (P) simply requires the NMC President to
8 seek Board approval before establishing entire departments, including faculty and staff or
9 disestablishing the same. Here, Petitioner was simply fired without cause, not as a result of the
10 President taking action to disestablish Petitioner’s department. Accordingly, the Court finds that
11 Petitioner cannot make out a claim for relief based on either 3 CMC § 1323 or 1 CMC § 9102(d).
12 Petitioner’s claims in relation to these sections are DISMISSED with prejudice.

13
14 **E. Petitioner’s Claim Under PSEA, 3 CMC § 1315 Meets the Minimum Criteria to**
15 **Avoid Dismissal.**

16 Although not expressly clear from the pleadings, it appears that Petitioner seeks to attack his
17 termination on the basis that NMC violated 3 CMC § 1315 by failing to hold an open meeting
18 regarding his termination. Respondent’s seek to dismiss this claim based on the exception from the
19 open meeting requirement that allows the Board to meet in closed session to address “personal
20 matters.” *See* 3 CMC § 1315(d). The Court, however, is not convinced that a board meeting
21 regarding terminations of employees—if such a board meeting is required to terminate an
22 employee— would be exempted from the open session requirements of section 1315(d). Rather, the
23 Court is inclined to agree that making “personnel” decisions does not neatly fit in the “personal
24 matters” exception. Respondent’s motion to dismiss is therefore DENIED.

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26 **F. Petitioner’s Miscellaneous Claims Under BOR and WASC Policies Fail to Make Out**
27 **a Claim Upon Which Relief Can be Granted**

28 As a preliminary matter, the Court must stress that this case is a judicial review of an agency

1 action and not a typical civil action according to its common usage. The Court derives its
2 jurisdiction from the CAPA and is restricted in its role to review an agency's actions or omissions to
3 determine whether to hold unlawful and set aside an agency action, finding, or conclusion based on
4 a specific set of criteria listed in 1 CMC § 9112. Consequently, the Court, notwithstanding its
5 dismissal of several of Petitioner's specific claims which cannot be sustained under the judicial
6 review process, will ultimately determine whether NMC's termination of Petitioner was unlawful
7 within the scope of section 9112.

8 With regard to Petitioner's claims based on BOR and WASC policies, the Court cannot
9 discern any possible actionable claim by Petitioner's recitation of these policies and claims of
10 violation. Although the Commonwealth Rules of Civil Procedure permit an extremely lenient
11 pleading standard, Petitioner's mantra of constitutional claims and apparent violations of BOR and
12 WASC policies cannot serve as touchstones to meet that minimum pleading standard.
13 Consequently, Petitioner's constitutional claims, excepting his due process claims are **DISMISSED**
14 with prejudice. Further, Petitioner's claims regarding BOR policies and WASC policies are
15 **DISMISSED** with prejudice.

16
17 **III. CONCLUSION**

18 For the foregoing reasons, Respondents' Motion to Dismiss Petitioner's Petitioner for
19 Judicial Review is **GRANTED in part** and is **DENIED in part** consistent with the Court's above
20 opinion.

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22 **SO ORDERED this 13TH day of December, 2006.**

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24 /S/ _____
25 David A. Wiseman, Associate Judge
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