



**FOR PUBLICATION**



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**CNMI SUPERIOR COURT**  
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Case Number: 19-0318-CV  
Teresa Kim-Tenorio

**IN THE SUPERIOR COURT  
FOR THE**

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**AMERICAN HERBAL ESSENCE GROUP, )  
AMERICAN CREATE BEAUTY CORP., )  
AND DONGSHENG CORPORATION, )**

**CIVIL CASE NO. 19-0318-CV**

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS**

**Plaintiffs,**

**v.**

**IMPERIAL PACIFIC INTERNATIONAL )  
(CNMI), LLC, )**

**Defendant.**

**I. INTRODUCTION**

This matter came before the Court on February 25 2020 at 9:00 a.m. in the Supreme Court Room at Guma Hustisia, on Defendant's Motion to Dismiss ("Motion"). Defendant Imperial Pacific International (CNMI), LLC ("Defendant") was represented by Michael W. Dotts, Esq. Plaintiffs American Herbal Essence Group, American Create Beauty Corp., and Dongsheng Corporation ("Plaintiffs") were represented by Robert T. Torres, Esq.

Based on a review of the parties' filings, oral arguments and applicable law, the Court hereby **DENIES** in whole Defendant's Motion.

**By Order of the Court, Judge TERESA KIM-TENORIO**

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## II. BACKGROUND

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2 Plaintiffs filed their complaint and demand for a jury trial (“Complaint”) on October 14, 2019.  
3 In their Complaint, Plaintiffs allege two causes of action; Private Nuisance Per Accidens, and  
4 Tortious Interference with Prospective Business Advantage. In praying for relief, Plaintiffs seek: 1)  
5 for actual and consequential damages, including present and future economic loss, in an amount to  
6 be determined at trial; 2) for pre-judgment and post judgement interest as by law; 3) for punitive  
7 damages for Defendant’s continuous tortious behavior in creating and continuing tortious nuisance;  
8 4) for costs of suit herein to the extent allowed by law, and; 5) for such other equitable relief as this  
9 court deems justice and proper. Plaintiffs additionally seek a jury trial Pursuant to 7 CMC §3101(b).

10  
11 In July 2015, Defendant was granted a major siting permit from the Department of Commerce,  
12 Department of Lands and Natural Resources, the Division of Environmental Quality, and the  
13 Commonwealth Utilities Corporation, to perform construction of the Grand Mariana Casino and  
14 Hotel Resort. Plaintiffs allege that Defendant’s construction efforts, which include: digging a two  
15 feet deep trench which runs approximately sixteen meters across the south-facing entrance of  
16 Plaintiffs’ leased premises, and six meters across a portion of the east-facing area of Plaintiffs’  
17 leased premises; abandonment of any and all attempts by Defendant to correct and mitigate its  
18 roadside construction, including filling in the two feet deep trench affecting Plaintiffs’ leased  
19 premises; and prevention of foot and vehicular traffic across Plaintiffs’ business establishments by  
20 maintaining Defendant’s detour signs, prevent access to Plaintiffs’ establishments.

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22 Plaintiffs further allege that Defendant’s continued obstruction in the area has exponentially  
23 affected Plaintiffs’ use of its leased premises, including the operation of its restaurant and retail  
24 business, resulting in economic loss, and has further frustrated and impacted Plaintiffs’ contractual  
25 relationship with Plaintiffs’ landlord.

1 Defendant filed its Motion on December 16, 2019. In arguing for a dismissal of Plaintiffs'  
2 claims, Defendant asserts various reasons to dismiss this matter. First, Defendant argues that because  
3 Plaintiffs failed to exhaust available administrative remedies, this Court lacks subject matter  
4 jurisdiction. Second, Defendant argues that Plaintiffs have failed to plead all of the necessary  
5 elements of a nuisance claim, and a claim of tortious interference with prospective business  
6 advantage. Defendant further argues that Plaintiffs have failed to establish all elements necessary to  
7 a prayer for punitive damages. Lastly, Defendant allege a defense of Plaintiffs failing to join the  
8 Division of Coastal Resources Management ("DCRM") as a necessary defendant to this matter.

9  
10 Plaintiffs filed their Opposition to Defendant's Motion to Dismiss on December 30, 2019. In  
11 opposing Defendant's motion to dismiss due to a lack of subject matter jurisdiction, Plaintiffs argue  
12 that DCRM lacks jurisdiction to resolve Plaintiffs' claims for nuisance and tortious interference  
13 against Defendant, and to provide remedies or recovery for such common law tort claims.  
14 Additionally, Plaintiffs argue that this matter fits the CNMI Supreme Court's second recognized  
15 exception to the exhaustion doctrine, which recognizes that an agency's lack of authority or inability  
16 to provide adequate relief may prompt an exception to the exhaustion doctrine. Further, Plaintiffs  
17 assert that sufficient facts have been alleged to show that Defendant's actions when taken as true,  
18 constitute a nuisance in fact, and that Defendant's construction activity, with awareness of Plaintiffs'  
19 issues with such, indicate that Defendant intentionally engaged in tortious interference with  
20 Plaintiffs' business opportunities.

21  
22 Having established the necessary background to this matter, the Court now addresses the  
23 merits of Defendant's Motion.

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### III. LEGAL STANDARD

#### A. Motion to Dismiss, Pursuant to NMI R. Civ. P. 12(b)(1)

A motion to dismiss a complaint pursuant to NMI R. Civ. P. 12(b)(1) permits dismissal of a case when a court lacks jurisdiction over the subject matter. *See* NMI R. Civ. P. 12(b)(1). In deciding a motion to dismiss brought pursuant to a claim of lack of jurisdiction, a court must accept as true the complaint's undisputed factual allegations and construe the facts in the light most favorable to the plaintiff. *See Atalig v. Commonwealth Election Comm'n*, 2006 MP 1 ¶16.

#### B. Motion to Dismiss Pursuant to NMI R. Civ. P. 12(b)(6)

A motion to dismiss a complaint pursuant to NMI R. Civ. P. 12(b)(6) tests the legal sufficiency of the claims within the complaint. Generally, a complaint must satisfy the notice pleading requirements of NMI R. Civ. P. 8(a) in order to avoid dismissal under Rule 12(b)(6). *Cepeda v. Hefner*, 3 NMI 121, 126 (1992). Commonwealth Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," so that "fair notice of the nature of the action is provided." *Govendo v. Marianas Pub. Land Corp.*, 2 NMI 482, 506 (1992) (quoting *In re Adoption of Magofna*, 1 NMI 449 (1990)). A complaint fails to satisfy the pleading requirements of Rule 8(a) where it lacks a cognizable legal theory or fails to allege facts constituting a cognizable legal theory. *Bolalin v. Guam Publications, Inc.*, 4 NMI 176 (1994).

In considering a motion to dismiss, a court must "review the contents of a complaint by construing it in the light most favorable to the plaintiff and accepting all well-pleaded facts as true". *Zhang Gui Juan v. Commonwealth of the N. Mariana Islands*, 2001 MP 18 ¶ 11 (citation omitted). However, a complaint requires "more than a blanket assertion of entitlement to relief". *Syed v. Mobil Oil Marianas, Inc.*, 2012 MP 20 ¶ 20. Factual accompaniment or a clear assertion of the claims must be evident, with "direct or indirect 'allegations [made] on every material point necessary to sustain a recovery'". *Id.* at ¶ ¶ 20-21, citing *Magofna*, 1 NMI at 454. Furthermore, the Court is not required to

1 accept conclusions that are contradicted by the complaint's own exhibits or other documents of which  
2 the court properly takes notice. *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 558 (9th Cir. 2008).

3 **C. Motion to Dismiss Pursuant to NMI R. Civ. P. 12(b)(7)**

4 "A person who is subject to service of process and whose joinder will not deprive the court  
5 of subject-matter jurisdiction must be joined as a party if (A) in that person's absence, the court cannot  
6 accord complete relief among existing parties; or (B) that person claims an interest relating to the  
7 subject of the action and is so situated that disposing of the action in the person's absence may (i) as  
8 a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing  
9 party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations  
10 because of the interest." NMI R. Civ. Proc. Rule 19(a)(1).

11 **IV. DISCUSSION**

12 **A. This Court has subject matter jurisdiction over this matter because the DCRM lacks**  
13 **the means to address Plaintiffs' claims, and Plaintiffs' claims meet the second**  
14 **exception to the exhaustion doctrine as recognized by the CNMI Supreme Court.**

15 In arguing that this Court lacks subject matter jurisdiction Defendant argues that: 1) Plaintiffs  
16 could have sought a permit amendment to Defendant's Coastal Resource Management Program  
17 ("CRM") permit, and; 2) Plaintiffs could have appealed to the CRM Appeals Board. As such,  
18 Defendant contends that Plaintiffs have failed to exhaust available administrative remedies. Plaintiffs,  
19 on the other hand, argue that CRM lacks jurisdiction to address Plaintiffs' common law tort claims  
20 against Defendant, and that "even if it did, Plaintiff no longer could pursue its remedies against  
21 Defendant from CRM when the time for proposing an amendment to the permit has passed and an  
22 appeal to the CRM Appeals Board is no longer available, making an exhaustion of administrative  
23 remedies futile to Plaintiffs' complaint for remedies for its common law tort claims." *See Plaintiffs'*  
24 *Opposition to Defendant's Motion.*  
25

1                   **1. CRM’s permit amendment process is unable to provide Plaintiffs with the relief**  
2                   **sought.**

3                   Defendant argues that Plaintiffs could have sought a permit amendment pursuant to Section  
4 IV of Defendant’s permit as well as Section 15-10-701(b) of CRM’s Regulations.

5                   Section IV of Defendant’s permit states that amendments to Defendant’s “permit or to the  
6 application may be initiated by contacting the DCRM.” *See* Ex. 5. The record reflects that Plaintiffs  
7 contacted CRM on January 4, 2019 to convey Plaintiffs’ complaint. *See* Exhibit 7. On January 9,  
8 2019, CRM, through its Director, responded to Plaintiffs’ letter stating that Defendant’s construction  
9 was permitted under Defendant’s major siting permit and that “upon inspection of the site and work,  
10 no permit violations were found.” *See* Ex. 8.

11  
12                   Section 15-10-701 of CRM’s Regulations focuses on amending a Permit and not providing  
13 recourse for tortious claims. Defendant specifically cites to subsections 15-10-701(b) and (c) of the  
14 CRM Regulations. A reading of subsection (b) shows that this subsection governs findings by the  
15 DCRM Director or a CRM Agency Board member, that “other project amendments may require an  
16 application for an amendment.” Subsection (c) on the other hand, notes that “a CRM Agency Official  
17 may request the inclusion of a condition to a permit, after the decision to award the permit but prior  
18 to actual issuance of permit to permittee, or at any time after the issuance of the permit.” Neither  
19 subsection, either separately or combined, indicate that CRM regulations provide for remedies to  
20 aggrieved private parties seeking recourse from their aggravator(s). Additionally, a further reading of  
21 the entirety of Section 15-10-701 reveals that the CRM’s permit amendment process, in no way,  
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1 allows for the types of remedies sought by Plaintiffs.<sup>1</sup> Therefore, it would be futile for Plaintiffs to  
2 seek recourse via CRM Regulations for its common law claims against Defendant.<sup>2</sup>

3 **2. The time in which Plaintiffs could have appealed the decision to grant Defendant a**  
4 **CRM permit has elapsed.**

5 Defendant argues that assuming Plaintiffs had actual constructive knowledge at the time of  
6 the CRM permit decision, that Plaintiffs would be adversely affected by the decision, Plaintiffs could  
7 have appealed the decision to the CRM Appeals Board on the grounds of a permit amendment<sup>3</sup> within  
8 the thirty (30) calendar days allowed by law. *See* 2 CMC §1541(b); *see also* §15-10-235 of CRM  
9 Regulations.<sup>4</sup>

10 The record reflects that Plaintiffs did not seek to appeal the decision to grant Defendant a  
11 CRM permit within the necessary thirty (30) days<sup>5</sup>, however, the Court notes that not doing so does  
12 not preclude Plaintiffs from now seeking recourse through the courts for Plaintiffs common law tort  
13 claims. And although Defendant attempts to place an additional burden on Plaintiffs in seeking  
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17 <sup>1</sup> The remaining subsection (a) of Section 15-10-701 focuses on the “amendment of permit for change in scope or nature  
18 of [a] project,” while subsection (d) focuses on new environmental impacts.  
19 Additionally, a review of Section 15-10-830-Remedies, of CRM Regulations affirm Plaintiffs’ assertion that private tort  
20 claims are not included in the types of remedies possible under CRM Regulations. Pursuant to the section, upon  
21 determining that a violation has occurred, the DCRM Director may order the following remedies: (a) revocation of the  
22 CRM permit in its entirety, (b) temporary suspension of a CRM permit or until “the occurrence of a given event or  
23 satisfaction of a specific condition,” (c) corrective measures required to be taken by the permit holder in order for a project  
24 to conform to the CRM permit terms and conditions, (d) civil fines, and (e) supplemental environmental projects to  
25 address “environmental impacts of a violation in lieu of penalties or portions of penalties assessed.” *See* CRM Regulations  
§15-10-830.

<sup>2</sup> As previously noted, Plaintiffs contacted CRM on January 4, 2019 requesting an enforcement action against  
Defendant for its “road construction fronting the business of Plaintiffs. *See* Ex. 7. CRM, through its Director, responded  
to Plaintiffs’ letter stating that Defendant’s construction was permitted under Defendant’s major siting permit and that  
“upon inspection of the site and work, no permit violations were found.” *See* Ex. 8. Thus, any further attempts at  
seeking enforcement would also be futile.

<sup>3</sup> Defendant directs the Court to its full argument regarding amending the CRM Permit found in §III(A)(1) of Defendant’s  
Motion.

<sup>4</sup> This section states in part that “ any aggrieved person as defined at §15-10-020 may appeal the decision of CRM Agency  
Officials or in the case of a APC development, the DCRM Director decision to grant, deny, or condition a new CRM  
permit to the CRM Appeals Board by filing a notice of the appeal with the DCRM Office within thirty days of the issuance  
of the CRM permit decision.”

<sup>5</sup> The Permit Decision was issued in July 2015 while Plaintiffs filed suit in this matter in October 2019.

1 recourse from the Court by arguing that Plaintiffs' failure to assert a lack of knowledge regarding the  
2 CRM appeals process precludes this Court from exercising subject matter jurisdiction over this  
3 matter, no such knowledge requirement is necessary to a claim for relief.<sup>6</sup>

4 **3. Plaintiffs need not exhaust administrative remedies because DCRM lacks the**  
5 **authority or is unable to provide Plaintiffs with the relief sought.**

6 Defendant argues that this Court lacks subject matter jurisdiction because Plaintiffs have  
7 failed to exhaust administrative remedies. Exhaustion of administrative remedies is a judicially-  
8 created doctrine requiring that challengers of agency actions and decisions exhaust all administrative  
9 remedies before seeking judicial review. *Marianas Ins. v. CPA*, 2007-MP-24 ¶ 12 (citing *Myers v.*  
10 *Bethlehem Shipbuilding*, 303 U.S. 41, 50-51 (1939)). Where relief is available from an administrative  
11 agency, a claimant must typically pursue that avenue of redress before proceeding to litigation. *Id.*  
12 (citing to *Reiter v. Cooper*, 507 U.S. 258, 269 (1993)). Until that recourse is exhausted, a lawsuit is  
13 premature and must be dismissed. *Id.*

14  
15 And while there are a number of narrow exceptions to the exhaustion doctrine, most  
16 exceptions fit into one of three categories: 1) a claimant may circumvent the administrative process  
17 and go directly to court when the exhaustion requirement would cause undue prejudice to a  
18 subsequent assertion of a court action; 2) an agency's lack of authority or inability to provide adequate  
19 relief may prompt an exception; 3) an exception may arise when the adequacy of the administrative  
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21  
22 <sup>6</sup> Defendant implies that Rule 8(a)(1) of CNMI Rules of Civil Procedure requires parties seeking to establish this Court's  
jurisdiction over matters to expressly allege a lack of knowledge of prior venues through which the parties could have  
sought relief for their claims. *See* Defendant's Motion, 7 n.3. This is simply not true.

23 Defendant further argues that their Permit does not require it to ensure business access nor signage that is economically  
24 compatible with the area and parking next to Coral Tree Avenue. Additionally, Defendant asserts that Plaintiffs had access  
25 to Defendant's Permit at all times, and that Plaintiffs could have sought to enforce their request for permit amendment  
under 2 CMC §1542. It should be noted however, that while this provision allows for interested parties to bring an action  
against the CRM in the Commonwealth Superior Court to compel the agency's performance of its duties, in this case,  
this route would not provide Plaintiffs with the relief sought for the specific claims asserted against Defendant.



1 procedure itself is challenged, as opposed to the merits of a particular decision. *Marianas Ins. v. CPA*,  
2 2007-MP-24 ¶ 21 (citing to *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992)).

3 Here Plaintiffs allege a nuisance claim as well as a tortious interference claim against  
4 Defendant, and are seeking relief for such. And as discussed above, CRM Regulations do not provide  
5 for common law tort remedies as Plaintiffs have asserted in this matter. While Defendant argues that  
6 various provisions of CRM Regulations serve as avenues Plaintiffs could have pursued prior to  
7 seeking recourse from the Court, as discussed above, the provisions which Defendant bases such an  
8 argument on do not provide relief for the type of claims Plaintiffs assert.

9 Based on the discussion above, the Court finds that DCRM via CRM Regulations, lacks the  
10 authority or ability to address Plaintiffs' common law tort claims, or provide Plaintiffs with the relief  
11 Plaintiffs seek. Therefore, Plaintiffs' claims meet the second exception to the exhaustion doctrine as  
12 recognized by the CNMI Supreme Court and in so doing, this Court has proper jurisdiction over this  
13 matter.

14 Having established this Court's jurisdiction over this matter, the Court next addresses  
15 Defendant's Motion to dismiss.  
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17 **B. Defendant's motion to dismiss Plaintiffs' claims Pursuant to NMI R. Civ. P. 12(b)(6)**

18 **1. Plaintiffs' private nuisance per accidens or nuisance in fact claim**

19 Plaintiffs assert that Defendant's actions arise to a level of nuisance per accidens. A nuisance  
20 per accidens or nuisance in fact is one which becomes a nuisance by virtue of circumstances and  
21 surroundings. *Martin v. Artis*, 2012 MT 249, P14. A nuisance in fact is not a nuisance of itself, but  
22 becomes a nuisance in the manner in which it is operated. An otherwise lawful use of land may  
23 become a nuisance per accidens by virtue of the circumstances surrounding the use. *Hutchens v. MP*  
24 *Realty Group*, 654 N.E.2d 35, 38. In order to establish nuisance per accidens, a plaintiff must prove  
25 (1) that the Defendant's use of its property, under the circumstances, unreasonably invaded or

1 interfered with the plaintiff's use and enjoyment of the plaintiff's property; and (2) because of the  
2 unreasonable invasion or interference, the plaintiff suffered substantial injury. *Elliott v. Muehlbach*,  
3 620 S.E.2d 266, 269.

4 Here the facts establish that Defendant's use of land is lawful pursuant to its Permit. *See Ex.*  
5 5. Plaintiffs have also established facts within Plaintiffs' Complaint that when construed in a light  
6 most favorable to Plaintiffs indicate that Defendant's lawful use of its property has caused Plaintiffs  
7 to suffer injury. Although Plaintiffs claim to have suffered injury, Plaintiffs did not quantify  
8 Plaintiffs' injury within Plaintiffs' Complaint. Without a quantifiable injury caused by Defendant's  
9 use of its property, Plaintiffs' claim of nuisance per accidens straddles the edge of exceeding what  
10 this Courts sees as a cognizable legal theory. However, the Court notes that Plaintiffs allege that they  
11 have suffered financial harm via lost business opportunities. Assuming that such can be expounded  
12 upon through discovery, Plaintiffs have asserted enough facts, when viewed in a light favorable to  
13 Plaintiffs, establish a cognizable legal theory of nuisance per accidens sufficient to defeat Defendant's  
14 12(b)(6) Motion.

15  
16 And while Defendant asserts that Plaintiffs failed to assert a private nuisance claim pursuant to  
17 the *Restatement (Second) Torts* § 822, the elements of a normal private nuisance do not necessarily  
18 address the scope of a private nuisance per accidens. Specifically, a private nuisance claim under the  
19 Restatement does not take into consideration a nuisance caused by a lawful use of one's property in  
20 specific circumstances.

21  
22 **2. Plaintiffs' tortious interference with prospective business advantage claim**

23 Plaintiffs assert that Defendant's actions interfered with Plaintiffs' prospective business  
24 advantage. Specifically, Plaintiffs claim that Defendant's construction led to significant loss of foot  
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1 traffic to Plaintiffs' establishments, loss of current and prospective economic opportunities, and a  
2 souring of Plaintiffs' contractual relationship with Plaintiffs' landlord.<sup>7</sup>

3 "In all proceedings, the rules of the common law, as expressed in the restatements of the law.  
4 . . shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or  
5 local customary law to the contrary." *See* 7 CMC § 3401.

6 Plaintiffs assert tortious interference with prospective business pursuant to the *Restatement*  
7 (*Second*) *Torts* § 766A. 766A is concerned with conduct targeted at a plaintiff which hinders the  
8 plaintiff's own performance or renders the plaintiff's performance more burdensome or costly.<sup>8</sup>  
9 *McGregor v. Kormondy*, 2012 U.S. Dist. LEXIS 102383, \*10. Additionally, 766A requires that such  
10 conduct be intentional. *See Restatement (Second) Torts* § 766A. A defendant's interference with a  
11 plaintiff's performance of the plaintiff's contractual obligations is intentional if the defendant desired  
12 to interfere with the plaintiff's contractual obligations or if the defendant knows that the interference  
13 is certain or substantially certain to occur as a result of the defendant's action. *See Restatement*  
14 (*Second*) *Torts* § 766A cmt. e.

15  
16 The interference, however must also be improper. *Id.* In considering whether interference is  
17 improper, the actor's motive, and the interest sought to be advanced by the actor must be considered.<sup>9</sup>  
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19  
20 <sup>7</sup> Plaintiffs' landlord filed a breach of contract suit against Plaintiffs for the recovery of unpaid rent in the CNMI Superior  
Court. Civil Action No. 19-0013.

21 <sup>8</sup> "One who intentionally and improperly interferes with the performance of a contract (except a contract to marry)  
22 between another and a third person, by preventing the other from performing the contract or causing his performance to  
be more expensive or burdensome, is subject to liability to the other for the pecuniary loss resulting to him." *Restatement*  
(*Second*) *Torts* § 766A.

23 <sup>9</sup>"In determining whether an actor's conduct in intentionally interfering with a contract or a prospective contractual  
24 relation of another is improper or not, consideration is given to the following factors: (a) the nature of the actor's conduct,  
25 (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be  
advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests  
of the other, (f) the proximity or remoteness of the actor's conduct to the interference and (g) the relations between the  
parties". *Restatement (Second) Torts* § 767.

1 If an actor has “no desire to effectuate the interference by his action but knew that it would be a mere  
2 incidental result of conduct he was engaging in for another purpose, the interference may be found to  
3 be not improper.” *Id.*

4 Here Plaintiffs allege that Defendant’s actions have not only cost Plaintiffs economic  
5 opportunity, but in doing so have interfered with Plaintiffs’ ability to perform Plaintiffs’ contractual  
6 obligations to Plaintiffs’ landlord. When taken in a light most favorable to Plaintiffs, Plaintiffs  
7 provide support for a finding that that Defendant deliberately sought to deprive Plaintiffs of economic  
8 opportunity.<sup>10</sup> On the other hand, while Plaintiffs provide specific acts by Defendant which taken  
9 together could be construed as a hinderance of Plaintiffs’ ability to perform Plaintiffs’ contractual  
10 obligations to Plaintiffs’ landlord, i.e., being able to pay rent, Plaintiffs have not necessarily asserted  
11 facts necessary to show that Defendant desired to effectuate such interference. Even if Defendant  
12 knew that interference with Plaintiffs’ contractual obligations would be an incidental result of  
13 Defendant’s conduct, the facts indicate that Defendant engaged in Defendant’s actions for a purpose  
14 other than interfering with Plaintiffs’ obligations.  
15

16 However, as Plaintiffs have necessarily asserted facts which when viewed in a light most  
17 favorable to Plaintiffs indicate that Defendant deliberately interfered with Plaintiffs’ business  
18 opportunities which in turn could impact Plaintiffs’ contractual performance to Plaintiffs’ landlord,  
19 Plaintiffs’ tortious interference with prospective business claim survives Defendant’s motion to  
20 dismiss.  
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<sup>10</sup> In Exhibit 7, Plaintiffs allege that Defendant “is instructing construction workers not to eat there at the location.”

1                   **3. Punitive Damages sought by Plaintiffs**

2                   A claim for punitive damages does not constitute a separate cause of action. *Atalig v. Mobil*  
3 *Oil Marianas, Inc.*, 2013-MP-11 ¶ 56. Additionally, a claimant can request punitive damages in a  
4 torts case. *See generally Restatement (Second) Torts* § 908(2). And while rule 12(b)(6) is the avenue  
5 to seek dismissal of an insufficiently stated claim, a prayer for punitive damages is not a claim but  
6 instead only a type of remedy available when a plaintiff is successful on a claim. *McInerney v.*  
7 *Careerbuilder, LLC*, 2019 U.S. Dist. LEXIS 207720, \*11. Furthermore, it is generally up to the trier  
8 of fact to determine whether the facts support an award of punitive damages. *See Tang v. Peji*, Civ.  
9 No. 14-0238 (NMI Super. Ct. Mar. 15, 2016) (Order Denying D. Royal Crown’s Mot. to Dismiss at  
10 7).

11                   Here Defendant argues that Plaintiffs failed to allege facts supporting punitive damages which  
12 require conduct which is outrageous, either due to evil motive or reckless indifference. *See*  
13 *Pangelinan v. Itaman*, 1994 WL 111281 \*4 (N.M.I. 1994). In citing to *Pangelinan v. Itaman*,  
14 however, Defendant ignores that such language regarding punitive damages was considered in  
15 conjunction with a consideration as to whether the defendant’s action in that specific case constituted  
16 the tort of fraudulent misrepresentation. Therefore, the facts present in *Pangelinan v. Itaman*, are  
17 inapplicable to this matter. Thus, a reading of the requirements for punitive damages as established  
18 in that case is inapplicable to this particular matter.

19  
20                   Furthermore, as this court has determined that Plaintiffs have asserted a cognizable private  
21 nuisance per accidens claim for which damages may be derived, such determination of damages  
22 should be left to the trier of fact of this matter. Therefore, Plaintiffs’ request for punitive damages  
23 survives Defendant’s motion to dismiss.  
24  
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1                   **C. Defendant’s motion to dismiss this matter for Plaintiffs’ failure to join a required**  
2                   **party under Rule 19 and pursuant to NMI R. Civ. Proc. Rule 12(b)(7).**

3                   “A person who is subject to service of process and whose joinder will not deprive the court  
4 of subject-matter jurisdiction must be joined as a party if (A) in that person’s absence, the court cannot  
5 accord complete relief among existing parties; or (B) that person claims an interest relating to the  
6 subject of the action and is so situated that disposing of the action in the person’s absence may (i) as a  
7 practical matter impair or impede the person’s ability to protect the interest; or (ii) leave an existing  
8 party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations  
9 because of the interest.” NMI R. Civ. Proc. Rule 19(a)(1).

10                   Defendant argues that a disposal of this case in DCRM’s absence leaves Plaintiffs subject to  
11 substantial risk of having to make its argument multiple times. This argument requires an assumption  
12 that DCRM is required party to this matter—an assumption which Defendant has failed to properly  
13 support with factual evidence or with cogent arguments. Furthermore, as Plaintiffs seek recourse from  
14 Defendant, due to Defendant’s actions alone, there exist no bases upon which to justify joining  
15 DCRM as a required party to this matter.  
16

17                   Therefore, because Defendant has not properly asserted why DCRM is a necessary defendant  
18 to this case, Defendant’s motion to dismiss this matter for Plaintiffs’ failure to join DCRM as a  
19 required party under Rule 19 and pursuant to NMI R. Civ. Proc. Rule 12(b)(7) is denied.

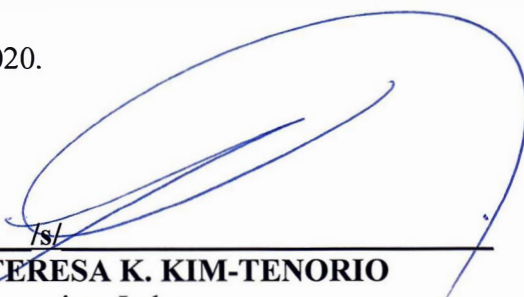
20                   **V. CONCLUSION**

21                   Based on the foregoing, the Court finds the following:

- 22                   1. Because the DCRM lacks authority or the ability to provide Plaintiffs with the relief  
23 Plaintiffs seek, this Court has jurisdiction over this matter and Defendant’s motion to  
24 dismiss this matter pursuant to NMI R. Civ. Proc. Rule 12(b)(1) for the lack of this Court’s  
25 subject matter jurisdiction is **DENIED.**

- 1 2. Because Plaintiffs have presented a cognizable legal theory in its nuisance per accidens  
2 claim, Defendant's motion to dismiss this claim pursuant to NMI R. Civ. Proc. Rule  
3 12(b)(6) is **DENIED**.
- 4 3. Because Plaintiffs have alleged facts which when viewed in a light most favorable to  
5 Plaintiffs establish that Defendant tortuously interfered with Plaintiffs' business  
6 prospects, Defendant's motion to dismiss this claim pursuant to NMI R. Civ. Proc. Rule  
7 12(b)(6) is **DENIED**.
- 8 4. Defendant's motion to dismiss Plaintiffs' demand for punitive damages pursuant to NMI  
9 R. Civ. Proc. Rule 12(b)(6) is **DENIED**.
- 10 5. Because Defendant failed to provide facts establishing DCRM as a necessary party to this  
11 matter, Defendant's motion to dismiss this matter pursuant to NMI R. Civ. Proc. Rule  
12 12(b)(7) is **DENIED**.

13  
14  
15 **SO ORDERED** this  day of March, 2020.

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19 **TERESA K. KIM-TENORIO**  
Associate Judge