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

RICKY GENE MENDIOLA LIZAMA, ET  
AL

CIVIL ACTION NO. 17-0056

Plaintiffs,

vs.

STAR MARIANAS AIR, INC.,

Defendant.

**ORDER DISMISSING THE FIRST  
AMENDED COMPLAINT PURSUANT TO  
NMI R. CIV. P 12(e) FOR FAILURE TO  
SPECIFY WHICH OF THE THIRTY-FOUR  
SUBSECTIONS OF THE CONSUMER  
PROTECTION ACT WAS ALLEGEDLY  
VIOLATED**

**I. INTRODUCTION**

**THIS MATTER** came before the Superior Court for the Commonwealth of the Northern Mariana Islands (“Commonwealth Superior Court”) on March 12, 2019, on Star Mariana’s Air, Inc.’s motions to dismiss and strike. Attorney Cong Nie appeared on behalf of Plaintiffs Ricky Gene Mendiola Lizama, et al (“Plaintiffs”). Attorney Timothy H. Bellas appeared on behalf of Defendant Star Marianas Air, Inc. (“Star Marianas” or “Defendant”).

Based on the filings, arguments made at the hearings, and applicable law, the Court makes the following Order.

**II. BACKGROUND**

Plaintiff Ricky Gene Mendiola Lizama (“Lizama”) is an individual and a citizen of the United States of America residing on Rota, CNMI.

By order of the Court, Associate Judge Joseph N. Camacho

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1 Plaintiff Gherald M. Castro (“Castro”) is a minor child and a citizen of the United States of  
2 America residing on Tinian, CNMI.

3 Defendant Star Marianas is a CNMI corporation that operates aircrafts. Its principal place of  
4 business is on Tinian, CNMI.

5 On July 17, 2016, Lizama and Castro, as customers of Star Marianas, boarded a Star Marianas  
6 aircraft from Saipan to Tinian. After the aircraft took off, Lizama noticed fuel spewing out of the  
7 aircraft (“the Incident”). Lizama alerted the pilots on the aircraft, who then turned the aircraft around  
8 and made a safe landing at the Saipan airport. No physical injuries were alleged as a result of the  
9 Incident.

10 When they disembarked from the aircraft, Lizama and Castro smelled fuel fumes. Plaintiffs  
11 alleged that Star Marianas staff failed to secure the fuel cap on a fuel tank of the aircraft before Lizama  
12 and Castro boarded the aircraft.

13 On February 22, 2017, Plaintiffs filed a complaint alleging three causes of action against  
14 Defendant: (1) negligence, (2) violation of the CNMI Consumer Protection Act (“CPA”), and (3)  
15 negligent infliction of emotional distress. Defendant then moved to dismiss and/or strike the cause of  
16 action of violation of the CPA, as well as certain paragraphs of the complaint and Plaintiffs’ prayer  
17 for punitive damages, attorneys’ fees, and costs, pursuant to NMI Rule of Civil Procedure 12(b)(6)  
18 and 12(f) (“First Motion to Dismiss”). On September 8, 2017, the Court granted Defendant’s First  
19 Motion to Dismiss. *See Lizama v. Star Marianas Air, Inc.*, Civ. No. 17-0056 (NMI Super. Ct. Sept.  
20 08, 2017) (Order Granting Defendant’s Motions to Dismiss because Plaintiffs’ Complaint Failed to  
21 Allege Facts Showing Deceit, Misleading, Confusion, or Use of Unfair Business Practices or that  
22 Defendant Knew or should have known it Introduced an Unsafe Service into Commerce as Required  
23 for a Violation of 4 CMC § 5105(r) of the NMI Consumer Protection Act; and Failed to Allege  
24

1 Sufficient Facts to show Outrageous Conduct as Required for Punitive Damages). However, the Court  
2 also granted Plaintiffs leave to amend their complaint.

3 On May 24, 2018, Plaintiffs filed their first amended complaint (the “FAC”) alleging two  
4 causes of action against Defendant: a CPA violation and negligent infliction of emotional distress.  
5 Plaintiffs also demanded punitive damages, attorneys’ fees, and costs.

6 In support of Plaintiffs’ arguments, Plaintiffs’ stated in their FAC:

7 Upon information and belief, safety standards in the commercial airline industry  
8 require pilots and aircrew to conduct a rigorous inspection of their aircrafts (the  
9 “pre-flight inspection”), including a thorough visual inspection, to ascertain the  
10 aircrafts are in an airworthy condition each day before the aircrafts’ first flight on  
11 that day.

12 Upon information and belief, for small aircrafts that are used multiple times during  
13 the same time such as those used by Star Marianas, safety standards in the  
14 commercial airline industry also require pilots and aircrew to conduct a pre-takeoff  
15 check (the “pre-takeoff inspection”), including a visual inspection of critical areas  
16 of the aircrafts, to ascertain the aircrafts are still in an airworthy condition before  
17 each subsequent takeoff.

18 For small aircrafts such as those used by Star Marianas, fuel tanks that are not  
19 closed properly present a serious danger to the safety of aircrew and passengers  
20 because (among other reasons) they will lead to fuel leaking, vented, or siphoned  
21 from the unclosed fuel tanks in mid-air, which may result in the aircrafts catching  
22 fire or even having an explosion, or engine failure due to lack of fuel.

23 Upon information and belief, the National Transportation Safety Board has  
24 published numerous accidents and/or mishaps involving small aircrafts in which  
the cause, as concluded by the Board, was unsecured or damaged fuel cap.

Therefore, safety standards in the commercial airline industry require fuel caps to  
be securely replaced after fueling.

Moreover, upon information and belief, the pre-flight inspection and the pre-takeoff  
inspection, if done pursuant to industry standards for small aircrafts such as those  
used by Star Marianas, will allow pilots to discover unsecured or damaged fuel caps  
before each flight.

[...]

Upon information and belief, Star Marianas staff either failed to conduct a pre-  
flight inspection or a pre-takeoff inspection, or conducted one carelessly, thus  
failing to discover the fuel cap was not secured.

Had Star Marianas staff conducted a pre-flight inspection or a pre-takeoff  
inspection according to the industry standard, they would have discovered the fuel  
cap was not secured.

It would be impossible to have an unsecured fuel cap in mid-air without having  
multiple lapses in carrying out the industry standards, which are designed for  
redundancy.

1 Upon information and belief, Star Marianas staff were routinely careless in  
2 performing non-flight operations such as refueling and in conducting pre-flight or  
pre-takeoff inspections.

3 Upon information and belief, Star Marianas knew that their staff were routinely  
4 careless in performing non-flight operations such as refueling and in conducting  
the necessary inspections to ensure the airworthiness of its aircrafts, and that as a  
result, its airline services were unsafe for its customers.

5 Upon information and belief, by still offering its airline services to the general  
6 public, Star Marianas acted a reckless and utter indifference to the safety of its  
customers and other persons who may be harmed by an accident involving its  
aircrafts.

7 [...]

8 Upon information and belief, the airline services introduced by Star Marianas into  
commerce were unsafe.

9 Upon information and belief, Star Marianas knew that their staff were often careless  
10 in performing non-flight operations such as refueling and in conducting the  
necessary inspections to ensure the airworthiness of its aircrafts, and that as a result,  
its airline services were unsafe for its customers.

11 Star Marianas had a duty to disclose and warn its customers that its services were  
unsafe and to correct the safety problem, but failed to do so, knowing that the  
problem persisted.

12 In essence, Star Marianas was providing unsafe airline services to the general  
public in “as is” condition, without informing its customers.

13 FAC ¶¶ 7-12, 17-22, and 33-36.

14 On October 19, 2018, Defendant Star Marianas filed its Memorandum of Points and  
15 Authorities in Support of Motion to Dismiss First Amended Complaint and Strike Punitive Damages  
16 (“Second Motion to Dismiss”). Defendant argued that the (1) CNMI Consumer Protection Act is  
17 preempted by the Airline Deregulation Act (“ADA”); (2) Plaintiffs failed to plead sufficient factual  
18 circumstances that this case warrants the protections or heightened penalties of the CPA; and (3)  
19 Plaintiffs failed to plead actions which are sufficiently outrageous or malevolent to entitle them to  
20 punitive damages.

21 On November 30, 2018, Plaintiffs filed Plaintiffs’ Opposition to Defendant’s Motion to  
22 Dismiss and Strike.

23 On January 04, 2019, Defendant filed its Reply in Support of Motion to Dismiss First  
24 Amended Complaint and Punitive Damages.

1 **III. LEGAL STANDARD**

2 **A. Rule 12(b)(6) of the Commonwealth Rules of Civil Procedure**

3 Rule 8(a)(2) of the Northern Mariana Islands Rules of Civil Procedure states that a pleading  
4 “shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to  
5 relief.”

6 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief can  
7 be granted.” NMI R. CIV. P. 12(b)(6). A Rule 12(b)(6) motion tests the legal sufficiency of the claims  
8 asserted in a complaint. *Camacho v. Micronesian Dev. Co.*, 2008 MP 8 ¶ 10. To survive a Rule  
9 12(b)(6) motion to dismiss, a “complaint must [1] contain either direct allegations on every material  
10 point necessary to sustain a recovery on any legal theory, even though it may not be the theory  
11 suggested or intended by the pleader, or [2] contain allegations from which an inference fairly may  
12 be drawn that evidence on these material points will be introduced at trial.” *In re Adoption of*  
13 *Magofna*, 1 NMI 449, 454 (1990) (citations omitted).

14 Though the Court must assume that all factual allegations in the challenged pleading are true  
15 and construe them in the light most favorable to the non-moving party, *Cepeda v. Hefner*, 3 NMI 121,  
16 127–28 (1992),<sup>1</sup> plaintiffs cannot base their complaints “solely on unsupported legal conclusions  
17 since such conclusions do not constitute direct or indirect allegations,” *Syed v. Mobil Oil Mariana*  
18 *Islands, Inc.*, 2012 MP 20 ¶ 21; *see also Fernandez-Montes v. Allied Pilots Ass’n*, 987 F.2d 278, 284  
19 (5th Cir. 1993) (stating that “conclusory allegations or legal conclusions masquerading as factual  
20 conclusions will not suffice to prevent a motion to dismiss”).

21 Additionally, though the Supreme Court of the Commonwealth of the Northern Mariana  
22 Islands (“Commonwealth Supreme Court”) has rejected the federal “plausibility” standard outlined  
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<sup>1</sup> *See also Govendo v. Marianas Pub. Land Corp.*, 2 NMI 482, 490 (1992).

1 in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007),  
2 see *Syed*, 2012 MP 20 ¶ 17, if the plaintiffs’ complaint “lacks *sufficient* factual accompaniment, a  
3 court must examine whether the allegations *reasonably* suggest that the claimant will produce  
4 substantiating evidence.” *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11 ¶ 23 (emphasis  
5 added) (citation omitted). “A statement of facts that merely creates a *suspicion* that the pleader might have  
6 a right of action’ is insufficient.” *Id.* (emphasis added) (quoting *Rios v. City of Del Rio*, 444 F.3d 417, 421 (5th  
7 Cir. 2006)). This is because “Rule 8(a)(2) does not permit a plaintiff to bring purely *speculative* claims.” *Id.*  
8 (emphasis added). Furthermore, the court “has no duty to strain to find inferences favorable to the  
9 plaintiff.” *Cepeda*, 3 NMI at 127-28.<sup>2,3</sup>

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11 <sup>2</sup> For example, in *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20, the plaintiffs alleged unlawful price fixing by  
12 Mobil and Shell of the petroleum prices on Saipan in violation of the CPA. To prevail on their claim, the plaintiffs in  
13 *Syed* had to sufficiently plead that (1) there was an agreement to fix prices, and (2) the prices bore no reasonable  
14 relationship to the costs of the product.

15 In arguing that there was an agreement between Mobil and Shell to fix prices, the plaintiffs argued that “Mobil  
16 and Shell gasoline stations possess precisely the same sale price, despite being apparent competitors.” *Syed v. Mobil Oil*  
17 *Mariana Islands, Inc.*, 2012 MP 20 ¶ 27. The Commonwealth Supreme Court acknowledged that there are three possible  
18 explanations for this unusual price stability: (1) prices change when a new fuel shipment arrives; (2) competing retailers  
19 follow each other’s pricing strategies; or (3) these retailers have a mutual understanding that prices should remain  
20 identical. See *id.* at ¶ 3. Though two of the three explanations are innocent, the Commonwealth Supreme Court held that  
21 the plaintiffs’ complaint provided enough direct allegations to suggest an agreement to fix prices. See *id.* at ¶ 31.

22 In arguing that the petroleum prices represent an unreasonable deviation from the cost of the gasoline, the  
23 plaintiffs argued that (1) “During the Class Period, prices for unleaded gasoline on Saipan at both Mobil Oil and Shell  
24 stations are artificially higher than the prices would be absent the artifice and scheme implemented by the Defendants[;]”  
and (2) because Mobil is the source of Shell’s fuel supply on Saipan, “if Mobil Oil charges Shell for freight as it would  
for other consumers, there is no competitive way for Mobil Oil and Shell to continue to mirror their prices for unleaded  
gasoline to the tenth of a penny accuracy[.]” *Syed*’s FAC ¶¶ 60-61. The *Syed* Court found that the plaintiffs’ first argument  
is a conclusory and speculative statement that failed to state a claim. However, the *Syed* Court found the plaintiff’s second  
assertion to be sufficient because it contained “an allegation from which an inference fairly may be drawn that evidence  
showing an unreasonable relationship between gas prices and gasoline costs will be introduced at trial.” *Syed*, 2012 MP  
20 ¶ 34 (citation omitted). For example, the *Syed* court found that “one inference that may fairly be drawn is that, by  
matching Shell’s price for gasoline despite the alleged existence of a freight cost charged Shell by Mobil, Mobil is  
charging consumers more than the market rate for gasoline.” *Id.*

25 <sup>3</sup> For example, in *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11, the plaintiffs brought multiple claims against  
26 Mobil, including a claim for gross negligence. The gross negligence claim stated that (1) the defendant negligently  
27 released harmful pollutants and (2) the defendant failed to eliminate or minimize the harmful impacts and risks posed by  
28 the release of the harmful pollutants. However, the plaintiffs offered only bare allegations regarding the defendants  
29 “pollutant emissions” and its attendant “failure . . . to install . . . efficient pollution controls.” *Atalig v. Mobil Oil Mariana*  
30 *Islands, Inc.*, 2013 MP 11 ¶ 36 (quoting the Pls.’ FAC ¶¶ 58-59). Additionally, the plaintiffs did not specify the type of  
31 harmful pollutant that injured the plaintiffs, nor did the plaintiffs “share any specific facts relating to the path, timing, or  
32 amount of [the defendant’s] hazardous discharges.” *Id.* Therefore, the Supreme Court in *Atalig* stated that even if it  
33 construed the plaintiffs’ allegations in the light most favorable to the plaintiffs, the allegations, at most, “create a  
34 suspicion” that the plaintiffs have a cause of action for gross negligence. *Id.* at ¶ 37 (citation omitted). Because

1 This pleading standard ensures that defendants are provided “fair notice of the nature of the  
2 action by requiring plaintiffs to include direct or indirect allegations on every material point necessary  
3 to sustain a recovery.” *Syed*, 2012 MP 20 ¶ 21 (internal citation omitted).

4 **B. Rule 12(e) of the Commonwealth Rules of Civil Procedure**

5 Rule 12(e) of the Northern Mariana Islands Rules of Civil Procedure states in pertinent part  
6 that “[i]f a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party  
7 cannot reasonably be required to frame a responsive pleading, the party may move for a more definite  
8 statement before interposing a responsive pleading.” NMI R. CIV. P. 12(e). For example, “even  
9 though a complaint is not defective for failure to designate the statute or other provision of law  
10 violated,<sup>[4]</sup> the judge may in his discretion [...] require such detail as may be appropriate in the  
11 particular case, and may dismiss the complaint if his order is violated.” *McHenry v. Renne*, 84 F.3d  
12 1172, 1179 (9th Cir. 1996). This is because “both the Court and the litigants are entitled to know, at  
13 the pleading stage, who is being sued, why, and for what.” Steven Baicker-McKee *et al.*, Federal  
14 Civil Rules Handbook at 397 (2008). The Ninth Circuit in *McHenry v. Renne*, 84 F.3d 1172 (9th Cir.  
15 1996), explained that complaints that fail to specify which statute the defendant allegedly violated  
16 may be dismissed under Rule 12(e) because such complaints:

17 impose unfair burdens on litigants and judges. As a practical matter, the judge and  
18 opposing counsel, in order to perform their responsibilities, [...] must prepare  
19 outlines to determine who is being sued for what. Defendants are then put at risk  
20 that their outline differs from the judge’s, that plaintiffs will surprise them with  
something new at trial which they reasonably did not understand to be in the case  
at all, and that res judicata effects of settlement or judgment will be different from

21 Commonwealth courts will not “strain to find inferences favorable to the non-moving party,” the Supreme Court affirmed  
the trial court’s dismissal of the plaintiffs’ gross negligence claim. *Id.* (citation omitted).

22 <sup>4</sup> To survive a Rule 12(b)(6) motion to dismiss, a “complaint must contain either direct allegations on every material point  
23 necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested or intended by the  
pleader.” *In re Adoption of Magofna*, 1 NMI 449, 454 (1990) (emphasis added). However, as stated above in the body,  
Rule 12(e) motions and Rule 12(b)(6) motions are not the same because Rule 12(e) has its own requirements independent  
of the Rule 12(b)(6) standards. *See Humpherys v. Nager*, 962 F. Supp. 347, 352-53 (E.D.N.Y. 1997) (“A 12(b)(6) motion  
24 is one made for a failure to state a claim, while a 12(e) motion is proper when a complaint pleads a viable legal theory,  
but is so unclear that the opposing party cannot respond to the complaint.”).

1 what they reasonably expected. The rights of the defendants to be free from costly  
2 and harassing litigation must be considered.

3 The judge wastes half a day in chambers preparing the ‘short and plain statement’  
4 which Rule 8 obligated plaintiffs to submit. He then must manage the litigation  
5 without knowing what claims are made against whom. This leads to discovery  
6 disputes and lengthy trials, prejudicing litigants in other case who follow the rules,  
7 as well as defendants in the case in which the prolix pleading is filed.

8 *McHenry*, 84 F.3d at 1179-80 (internal citation omitted).

9 When appropriate “a court has the option of converting, *sua sponte*, a motion made pursuant  
10 to [Rule 12(b)(6)] to a motion for a more definite statement under [Rule 12(e)].” *Carter v. Newland*,  
11 441 F. Supp. 2d 208, 214 (D. Mass. 2006) (citations omitted); *see also Cesnik v. Edgewood Baptist*  
12 *Church*, 88 F.3d 902, 907 n.13 (11th Cir. 1996) (“The court clearly had the discretion to strike, on its  
13 own initiative, the [...] complaint, and to require the [plaintiffs] to file a more definite statement.”).

### 14 **C. Rule 12(f) of the Commonwealth Rules of Civil Procedure**

15 Rule 12(f) of the Northern Mariana Islands Rules of Civil Procedure states in pertinent part  
16 that “[u]pon motion made by a party before responding to a pleading [...] the court may order  
17 stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or  
18 scandalous matter.” NMI R. Civ. P. 12(f). A matter is “immaterial” if it “has no essential or  
19 important relationship to the claim for relief or the defenses being pleaded.” *Whittlestone, Inc. v.*  
20 *Handi-Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2010) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d  
21 1524, 1527 (9th Cir. 1993)).<sup>5</sup>

22 A motion to strike is not the proper mechanism to oppose an irrelevant argument or an  
23 insufficient pleading. *PRC v. Chang Shen*, Civ. No. 12-0163 (NMI Super. Ct. Aug. 8, 2014) (Order  
24 Denying Pl. PRC’s Mot. for a Declaratory Judgment and Denying Def.’s Mot. to Strike at 3). Rather,

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<sup>5</sup> “[W]hen our rules are patterned after the federal rules it is appropriate to look to federal interpretation for guidance.” *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60. Compare NMI R. Civ. P. 12(f), with FED R. CIV. P. 12(f).

1 a party should attack a failure to state a valid legal claim by filing a motion to dismiss under Rule  
2 12(b)(6). NMI R. Civ. P. 12(b)(6).

#### 3 IV. DISCUSSION

##### 4 **A. The First Amended Complaint Is Stricken Pursuant to Rule 12(e) For Failure to Specify 5 the Subsections of The Consumer Protection Act Defendant Allegedly Violated**

6 To succeed in a CPA claim, a plaintiff must show that the defendant committed “(1) an  
7 unlawful act or practice, (2) in the conduct of trade or commerce.” *Salty Saipan Corp. v. Shakir*, 2018  
8 MP 18 ¶ 19 (citation omitted); *see also* 4 CMC § 5105. The Unlawful Acts or Practices section of the  
9 CPA, 4 CMC § 5105, lists thirty-four (34) unlawful acts and practices. 4 CMC § 5105(a)-(hh). Each  
10 of the thirty-four (34) unlawful acts and practices has their own unique requirements for claimants to  
11 prove. *Compare* 4 CMC § 5105(a) (“Passing off goods or services as those of another”), *with* 4 CMC  
12 § 5105(hh) (“Any violation of the Notaries Public Act, 4 CMC §§ 3311-3326”).

13 Here, Plaintiffs failed to specify or provide clear indications in their FAC which of the thirty-  
14 four (34) possible unlawful acts or practices Defendant allegedly committed. It is the responsibility  
15 of Plaintiffs to articulate which of the CPA’s thirty-four (34) unlawful acts and practices Plaintiffs  
16 accuse Defendant of allegedly violating.<sup>6</sup> Therefore, the Court strikes the CPA claim pursuant to Rule

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17 <sup>6</sup> After analyzing the FAC and taking judicial notice of the previous proceedings in this case, the Court surmises that  
18 Plaintiffs may have intended to bring their CPA claim under of 4 CMC §§ 5105(r), (p). Although this is not clear. One  
19 example of this lack of clarity is that Plaintiffs’ CPA claim states that “Star Marianas was providing unsafe airline *services*  
20 to the general public in ‘*as is*’ condition, without informing its customers.” FAC ¶ 36 (emphasis added). The only  
21 subsection of 4 CMC § 5105 that uses the phrase “as is” is subsection (p). However, subsection (p) only refers to “items,”  
22 not “services.” 4 CMC § 5105(p) (“Failing to reveal any known defect in or damage to any *item* entered in commerce,  
23 unless the item is stated to be so entered on an “as is” or similar basis.” (emphasis added)).

24 Furthermore, even if the Court were to assume that Plaintiffs filed their CPA claim pursuant to 4 CMC §§ 5105(r)  
and (p), the Court would dismiss the CPA claim pursuant to Rule 12(b)(6).

Both subsections (r) and (p) require for Plaintiffs to show that Defendant knew about their actions. 4 CMC §  
5105(r) (“Introducing into commerce any good or service which the merchant *knows or should know* is unsafe or which  
the merchant *knows or should know* may cause an unsafe condition in normal use, including performing a service which  
may cause an unsafe condition” (emphasis added)). To show that Defendant knew that their services were unsafe,  
Plaintiffs argue that (1) Star Marianas’ staff failed to conduct proper pre-flight and pre-takeoff inspections, and this failure  
resulted in Star Marianas’ staff not discovering that the fuel cap was not secured, FAC ¶¶ 17-19 (“Upon information and  
belief, Star Marianas staff either failed to conduct a pre-flight inspection or a pre-takeoff inspection, or conducted one  
carelessly, thus failing to discover the fuel cap was not secured. Had Star Marianas staff conducted a pre-flight inspection

1 12(e) on the grounds that the both Defendant and the Court are left guessing as to which of the thirty-  
2 four (34) subsections were allegedly violated.

### 3 **B. Airline Deregulation Act Preemption**

4 In 1978, the United States Congress passed the Airline Deregulation Act (“ADA”) to promote  
5 “efficiency, innovation, and low prices” in the airline industry through “maximum reliance on  
6 competitive market forces and on actual and potential competition.” 49 USC §§ 40101(a)(6), (12)(A).  
7 To prevent States and territories from interfering with the federal scheme, the ADA expressly states  
8 that States and territories “may not enact or enforce a law, regulation, or other provision having the  
9 force and effect of law *related to* a price, route, or *service* of an air carrier that may provide air

10 \_\_\_\_\_  
11 or a pre-takeoff inspection according to the industry standard, they would have discovered the fuel cap was not secured.  
12 It would be impossible to have an unsecured fuel cap in mid-air without having multiple lapses in carrying out the industry  
13 standards, which are designed for redundancy); and (2) Star Marianas’ staff members were routinely careless in  
14 performing non-flight operations and Star Marianas knew of this routine carelessness, FAC ¶ 20-21 (“Upon information  
and belief, Star Marianas staff were routinely careless in performing non-flight operations such as refueling and in  
conducting pre-flight or pre-takeoff inspections. Upon information and belief, Star Marianas knew that their staff were  
routinely careless in performing non-flight operations such as refueling and in conducting the necessary inspections to  
ensure the airworthiness of its aircrafts, and that as a result, its airline services were unsafe for its customers.”).

15 Without more information, Plaintiffs’ statements as to their first argument is indicative of a common law  
16 negligence claim because they provide allegations that Defendant breached its duty to discover the unsecured fuel cap  
17 before the flight. However, the CPA does not codify common law negligence or strict liability. *See Lizama v. Star*  
18 *Marianas Air, Inc.*, Civ. No. 17-0056 (NMI Super. Ct. Sept. 08, 2017) (Order Granting Defendant’s Motions To Dismiss  
Because Plaintiffs’ Complaint Failed To Allege Facts Showing Deceit, Misleading, Confusion, Or Use Of Unfair  
Business Practices Or That Defendant Knew Or Should Have Known It Introduced An Unsafe Service Into Commerce  
As Required For A Violation Of 4 CMC § 5105(r) Of The NMI Consumer Protection Act; And Failed To Allege Sufficient  
Facts To Show Outrageous Conduct As Required For Punitive Damages at 6). The requirement for plaintiffs to show that  
the defendant introduced goods or services that the defendant knew where unsafe goes well beyond the standard for  
simple negligence and strict liability. 4 CMC § 5105(r), (p). Therefore, because the first argument only alleges a failure  
to discover on behalf of Defendant, these statements do not state a CPA claim.

19 The statements that support Plaintiffs’ second argument also fail to state a claim. The allegations that Defendant  
20 Star Marianas’ staff members were routinely careless and also aware of this routine carelessness are conclusory  
21 statements that Plaintiffs failed to provide “sufficient factual accompaniment” to support. *Atalig*, 2013 MP 11 ¶ 23.  
22 Plaintiffs did not offer any specific examples showing the alleged routine carelessness and Defendant’s knowledge of this  
alleged carelessness. Instead, Plaintiffs used one lone incident to make an unsupported factual extrapolation about alleged  
routine conduct. Ultimately, these statements are “purely speculative” and, even when viewed in the light most favorable  
to the Plaintiffs, the non-moving party, only create a mere “suspicion” that Plaintiffs have a valid CPA claim, which is  
not enough to survive a Rule 12(b)(6) motion to dismiss. *Id.* Because the Court will not strain to find inferences favorable  
to the non-moving party, the Court finds that these statements do not “reasonably suggest that the claimant will produce  
substantiating evidence.” *Id.*

23 Therefore, without more information, because Plaintiffs’ allegations of their CPA claim failed to state a CPA  
24 claim under both subsections (r) and (p), Plaintiffs’ CPA claim would have been dismissed pursuant to Rule 12(b)(6)  
even if the Court were to assume that Plaintiffs brought their CPA claim under those subsections.

1 transportation under this subpart.” 49 USC § 41713(b)(1) (emphasis added). The “phrase ‘related to’  
2 expresses a ‘broad pre-emptive purpose’” on behalf of the United States Congress. *Northwest, Inc. v.*  
3 *Ginsberg*, 572 U.S. 273, 280 (2014) (quoting *Morales v. TWA*, 504 U.S. 374, 383 (1992)). As such,  
4 a plaintiff’s claim “relates to” an airline’s “services” if it has “a connection with, or reference to,  
5 airline” services. *Morales v. TWA*, 504 U.S. 374, 384 (1992).<sup>7</sup> However, the term “services” has not  
6 been interpreted by the Supreme Court of the United States. The Ninth Circuit has interpreted the  
7 term “services” to “refer to the prices, schedules, origins and destinations of the point-to-point  
8 transportation of passengers, cargo, or mail.” *Nat’l Fed’n of the Blind v. United Airlines, Inc.*, 813  
9 F.3d 718, 726 (9th Cir. 2016) (quoting *Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259 (9th Cir.  
10 1998)); *see also Taj Mahal Travel v. Delta Airlines*, 164 F.3d 186, 194 (3d Cir. 1998) (adopting the  
11 Ninth Circuit’s test because “the proper inquiry is whether a common law tort remedy frustrates  
12 deregulation by interfering with competition through public utility-style regulation”).<sup>8</sup>

13 Here, because the FAC is being dismissed pursuant to Rule 12(e) of the Northern Mariana  
14 Islands Rules of Civil Procedure, the Court need not reach the Airline Deregulation Act preemption  
15 issue at this time.

### 16 **C. Punitive Damages**

17 “Punitive damages are damages, other than compensatory or nominal damages, awarded  
18 against a person to punish him for his outrageous conduct and to deter him and others like him from  
19 similar conduct in the future.” Restatement (Second) of Torts § 908(1). “An affirmative judgment for  
20 liability must come before the question of remedies arises.” *Atalig*, 2013 MP 11 ¶ 56. Therefore, a  
21 motion to dismiss pursuant to Rule 12(b)(6) and a motion to strike pursuant to Rule 12(f) are  
22 inappropriate vehicles to challenge the sufficiency of a prayer for punitive damages. *See id.* (“Given

23 \_\_\_\_\_  
<sup>7</sup> *See also American Airlines v. Wolens*, 513 U.S. 219 (1995).

24 <sup>8</sup> “It is highly unlikely that Congress intended to deprive passengers of their common law rights to recover for death or personal injuries sustained in air crashes.” *Taj Mahal Travel v. Delta Airlines*, 164 F.3d 186, 194 (3d Cir. 1998).

1 a lack of recovery at the pleading stage, we need not address the issue of punitive damages [in  
2 reviewing the trial court’s dismissal of the complaint under Rule 12(b)(6) for failure to state a claim]  
3 other than to pronounce that a claim for punitive damages does not constitute a separate cause of  
4 action.”); *see also Sturm v. Rasmussen*, No. 18-CV-01689-W-BLM, 2019 U.S. Dist. LEXIS 24504,  
5 at \*7 (S.D. Cal. Feb. 14, 2019) (finding that there is a “growing number of district court cases finding  
6 Rule 12(b)(6) generally inapplicable” in challenging punitive damages requests); *Am. Transp. Grp.,*  
7 *LLC v. John Power & Direct Traffic Sols., Inc.*, No. 17 C 7962, 2018 U.S. Dist. LEXIS 71493, at \*19  
8 (N.D. Ill. Apr. 27, 2018) (refusing to strike the prayer for punitive damages under Rule 12(f) because  
9 “whether a defendant’s conduct was sufficiently willful or wanton to justify the imposition of punitive  
10 damages is a fact question for the [trier of fact] to decide”);<sup>9</sup> *Whittlestone, Inc. v. Handi-Craft Co.*,  
11 618 F.3d 970, 974-75 (9th Cir. 2010) (holding that “Rule 12(f) does not authorize district courts to  
12 strike claims for damages on the ground that such claims are precluded as a matter of law”).

13 Here, because the FAC is being dismissed pursuant to Rule 12(e) of the Northern Mariana  
14 Islands Rules of Civil Procedure, the Court need not reach the punitive damages issue at this time.

15 **V. CONCLUSION**

16 For the reasons stated above, the Plaintiffs’ First Amended Complaint and Demand for Jury  
17 Trial is **DISMISSED** without prejudice pursuant to Rule 12(e) of the Northern Mariana Islands Rules  
18 of Civil Procedure.

19  
20 **IT IS SO ORDERED** this 4<sup>th</sup> day of June 2020.

21  
22 /s/  
**JOSEPH N. CAMACHO**, Associate Judge

23  
24 <sup>9</sup> “Whether to award punitive damages and the determination of the amount are within the sound discretion of the trier of fact, whether judge or jury.” Restatement (Second) of Torts § 908 cmt. d.