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

IN THE MATTER OF) CIVIL ACTION NO. 21-0082
HONORIO RICKY ENCABO II,)

A Missing Individual.) ORDER OF PRESUMPTIVE DEATH OF
) PERSON LOST AT SEA PURSUANT TO 8
) CMC SECTION 2106(c) AS PERSON WAS
) EXPOSED TO A SPECIFIC PERIL OF
) DEATH AND AFTER A DILIGENT
) SEARCH COULD NOT BE FOUND

I. INTRODUCTION

THIS MATTER came before the Court on May 5, 2021 at 10:00 a.m. for a hearing on a Petition for Presumption of Death of a Missing Individual Believed to Be Dead. Honorio Ricky Encabo II was swept into the ocean while visiting the Infinity Pool at As Teo on July 5, 2020. His body was never found. The Petitioner seeks an order directing the Registrar of Vital Statistics to issue a death certificate for Honorio Ricky Encabo II including findings of fact required to complete the death certificate.

Petitioner Marithel A. Johnson was represented by Attorney Zane Mowery. There is no responding party. Three witnesses testified: (1) Marithel A. Johnson, (2) Annalyn Pabliona and (3) Department of Public Safety Officer Juanna Tedtaotao. Five exhibits were admitted into evidence.

The Court, having considered the evidence presented at the hearing, the admitted evidence, and the arguments raised by the Petitioner, hereby enters the following ORDER.

II. FINDINGS OF FACT

The Court FINDS the following facts were established by a preponderance of the evidence.

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

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- 1 1. On July 5, 2020, Honorio Ricky Encabo II (“Encabo”) ventured to the area of As Teo on
2 the eastern side of Saipan on a hiking trip with Annalyn Pabliona (“Pabliona”) (then known
3 as Annalyn Taitano) and Petitioner Marithel Johnson (“Johnson”), Encabo’s significant
4 other and the mother of Encabo’s only child.
- 5 2. Encabo, Pabliona, and Johnson arrived in As Teo and hiked to a natural formation known
6 locally as the “Infinity Pool,” where the Pacific Ocean ebbs and flows into a space in the
7 rock formation, filling it with ocean water.
- 8 3. The trail to the Infinity Pool leads down from the edge of a steep cliff overlooking the
9 Infinity Pool, namely a channel or space in the rock formation into which the Pacific Ocean
10 flows. One end of the Infinity Pool is open to the Pacific Ocean, where the water is rough.
11 The other sides of the Infinity Pool are surrounded by large, sharp rock formations that
12 extend far into the ocean. There is an underwater cave at the Infinity Pool.
- 13 4. At around 3:30 p.m., Encabo, Johnson and Pabliona walked out closer towards the open
14 ocean to take photos. Encabo walked out towards the end of the Infinity Pool, where the
15 pool opens out to the open ocean. Johnson and Pabliona trailed behind.
- 16 5. Encabo told Johnson he was going to venture out a little farther, to the right side of the end
17 of the pool, where it opens out to the Pacific Ocean, in order to take a look around. Johnson
18 cautioned Encabo to not go too far out, as it appeared dangerous. Johnson saw that Encabo
19 sat on the edge of the rocks closest to the ocean.
- 20 6. Johnson and Pabliona were taking photos on their own, but suddenly noticed that Encabo
21 had disappeared.
- 22 7. Johnson and Pabliona ran over and saw Encabo in the water and realized that Encabo had
23 fallen into the ocean. Johnson and Pabliona could see that Encabo had been hurt badly due
24 to striking the rocks while being swept into the water. He had suffered a long, deep cut on

1 his jaw, visible head wounds, and several other cuts and lacerations on his upper body and
2 legs.

3 8. Encabo was eventually able to make his way to some sharp rocks jutting out of the water
4 approximately 30 feet from shore, but Johnson and Pabliona could see Encabo bleeding
5 even from a distance; it appeared as though he was covered in blood. Encabo's only route
6 back to land was through the open end of the Infinity Pool that he had just fallen from; he
7 was unable to walk back to shore from the rock he was sitting on.

8 9. After Encabo reached the rocks, Pabliona began to look around the area to see if there was
9 anyone around who could help them; she noticed a group of individuals nearby and rushed
10 over to ask for their assistance. In turn, they hurried over to try to help. The group called
11 the police and requested for assistance.

12 10. With Encabor temporarily safe on the rocks, Encabo and Johnson were able to see and talk
13 to each other. Johnson encouraged Encabo to stay on the rock, but Encabo told Johnson
14 that he just wanted to go home to their son. Unwilling to wait for the police or other rescue
15 personnel to arrive, Encabo jumped back into the water and tried to swim back to Johnson's
16 location.

17 11. The group attempted to make a rope by tying towels together with the intent of pulling
18 Encabo to safety. However, despite the attempted assistance of Johnson, Pabliona, and
19 others on the shore, Encabo was unable to reach land. The Court makes the specific finding
20 that any attempt by Johnson and the others to jump into the rough water and assist Encabo
21 without proper floatation devices, ropes and other equipment to properly climb back to
22 safety would very likely have resulted in additional loss of life.¹

23 ¹ The Court recalls the emotional testimony of Johnson as she tearfully testified how she, with one hand holding on to
24 a makeshift rope made of towels, leaned over the edge of the cliff, desperately trying to reach out to Encabo. At the
height of the most desperate moments Johnson considered jumping into the rough waters to help pull Encabo to safety.

- 1 12. After he jumped back into the water, Encabo could not catch his breath and struggled to
2 stay afloat. Encabo was pushed by the waves and ocean current towards an underwater
3 cave filled with ocean water, the opening of which reached slightly above the ocean's
4 surface. The current and the waves pushed Encabo against the sharp rocks along the way,
5 causing further injury.
- 6 13. At a little past 5:00 p.m., a large wave swept up Encabo and Encabo disappeared under the
7 water after forcefully hitting his head on a sharp rock hanging down from the cave's
8 entrance, getting pulled by the current down into the underwater cave. The others
9 immediately lost sight of him.
- 10 14. Encabo was never seen again after disappearing underwater.
- 11 15. Police arrived on the scene at around 6:00 p.m., but they were unable to enter the water
12 because the surf and currents had become too strong. Four officers came down to the
13 Infinity Pool to look for signs of Encabo but were unable to find any. Three other police
14 officers were able to pilot a boat into the ocean near the Infinity Pool at around 6:20 p.m.
15 to search the area, but the officers were unable to find any signs of Encabo.
- 16 16. The police, Johnson and Pabliona, joined by Encabo's family who had arrived on the scene
17 continued to search the area until approximately 10:00 p.m. for any signs of Encabo, but
18 found none.
- 19 17. The search for Encabo resumed the next day. Over the course of four subsequent days, the
20 U.S. Coast Guard, the Department of Public Safety Search and Rescue Unit, the
21 Department of Fire and Emergency Medical Services, the Coastal Resource Management,
22 the Commonwealth Ports Authority, boats from the Division of Fish and Wildlife, and
23 various private actors all joined in the search for Encabo.
- 24 18. Conditions were extremely rough inside the underwater cave into which Encabo had
disappeared, causing difficulty for searchers. Johnson's friend and local divemaster Harry

1 Blalock was ultimately able to dive into the cave on the second day following Encabo's
2 disappearance.

3 19. The search for Encabo extended along the coastline from Forbidden Island to near
4 Kingfisher Golf Course and covered sea, land and air searches. The search lasted for four
5 days a typical number of search days for a drowning incident, from approximately 7:00
6 a.m. to 5:00 p.m. on each day, with most individuals taking a one-hour break for lunch.
7 With approval by the Hon. Governor Ralph DLG. Torres, the search was extended an extra
8 day. Approximately 40-50 individuals from various government departments and agencies
9 participated in sea, land and air searches.

10 20. On the day after Encabo's disappearance, Encabo's torn and ragged shirt was discovered
11 near the underwater cave into which Encabo had disappeared, along with one of his shoes.
12 Searchers were able to identify the shirt and shoe as clothing Encabo had been wearing on
13 the hike to the Infinity Pool from photos taken on July 5, 2020 that Johnson had provided
14 to the Department of Public Safety.

15 21. Two days after Encabo's disappearance the tattered remains of Encabo's shorts, his
16 underwear, and one of his shoes were found.

17 22. When Encabo's clothing was discovered, each article of clothing had been torn with the
18 shorts and underwear having signs of a large bite mark. In her testimony, Department of
19 Public Safety Officer Juanna Tedtaotao stated that such tearing could have been caused by
20 the sharp rocks or by wildlife. The Court makes this specific finding that Encabo died by
21 drowning on July 5, 2021. Encabo did not suffer any pain related to the bite marks and
22 other indicia of animal predation as those things happen afterwards.

23 23. Johnson positively identified each article of clothing as the same apparel that Encabo had
24 been wearing when he succumbed to the ocean.

1 24. Encabo was never found, and no other evidence suggesting the whereabouts of his remains
2 has yet arisen.

3 25. Encabo left behind a mother, a father, several siblings, his significant other of
4 approximately three years Johnson, and their infant son. None of these family members
5 have seen or heard from Encabo since July 5, 2020.

6 26. Since July 5, 2020, there has been no activity on Encabo's bank account other than activity
7 conducted by Johnson, and Encabo's family members.

8 27. The following information is required in order to complete a death certificate:

9 a. Honorio Ricky Encabo II was a male born on March 28, 1999 in the
10 Commonwealth of the Northern Mariana Islands.

11 b. Encabo's social security number was XXX-XX-6367.

12 c. At the time of Encabo's disappearance, he was attending Northern Marianas
13 College and had been working as a restaurant server for Saipan World Resort.

14 d. Encabo was posthumously awarded a Bachelor's degree from Northern Marianas
15 College, thereby attaining his highest level of education.

16 e. Encabo's usual residence was in the village of Susupe, Saipan, Commonwealth of
17 the Northern Mariana Islands, where he had lived for one year and four months
18 prior to his disappearance.

19 f. Encabo was unmarried and has no surviving spouse. He is survived by his
20 significant other, Johnson, and their child.

21 g. The name of Encabo's mother is Yunis Ricky Encabo; she survived her son.

22 h. The name of Encabo's father is Freddie Calicdan Encabo; he survived his son.
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1 **III. CONCLUSIONS OF LAW**

2 This action is brought under the Commonwealth’s Vital Statistics Act of 2006, which is based
3 on a Model Act, and is codified in 1 CMC Section 26001, *et seq.* Section 26013(h) provides:

4 When a death is presumed to have occurred within the CNMI but the body cannot be located,
5 a death certificate may be prepared by the Registrar only upon receipt of an order of the CNMI
6 Superior Court which shall include the finding of facts required to complete the death
7 certificate. Such a death certificate shall be marked “Presumptive” and shall show on its face
8 the date of death as determined by the court and the date of registration, and shall identify the
9 court and the date of the decree.

10 The task before this Court is therefore to determine whether Encabo is presumed to have died
11 and the date on which Encabo died. Once these findings have been made, the Court may order the
12 Registrar to prepare a death certificate. See *In Matter of John Joseph Jones, A Missing Individual*, Case
13 No. 19-0028-CV (NMI Super. Ct. Mar. 22, 2019) (Order of Presumptive Death of Person Lost-At Sea
14 Pursuant to 8 CMC § 2106(c) as Decedent Was Exposed to a Specific Peril of Death and After a
15 Diligent Search Could Not Be Found at 9).²

16 Probate law in the Northern Mariana Islands provides two types of presumptions that aid in the
17 finding of whether a person is dead. The first type of presumption is based on the passage of time.
18 Section 2106(d) of Title 8 of the Commonwealth Code provides that “[a] person who is absent for a
19 continuous period of five years, during which the person has not been heard from, whose absence is
20 not satisfactorily explained after diligent search or inquiry, is presumed to be dead.” 8 CMC § 2106(d);
21 *In the Matter of the Estate of Deleon Guerrero*, 3 NMI 253, 261 n. 6 (1992) (the usual common law
22 presumption is seven years but it was reduced to five years by Section 2106(d)).

23 The second type of presumption is when a person is exposed to a specific peril of death. As
24 explained by Justice Harlan of the United States Supreme Court in *Davie v. Briggs*, in relation to the
common law presumption of seven years, “if it appears in evidence that the absent person, within the

² The typo “Lost-At Sea” is a typo in the original title of the Order.

1 seven years, encountered some specific peril, or within that period came within the range of some
2 impending or immediate danger, which might reasonably be expected to destroy life, the court or jury
3 may infer that life ceased before the expiration of the seven years.” *Davie v. Briggs*, (1878) 97 U.S.
4 628, 634.

5 Section 2106 of Title 8 of the Commonwealth Code, entitled “Evidence as to Death or Status,”
6 provides at paragraph (c) that this second type of presumption applies when: (i) a person is absent for
7 a continuous period during which the person has not been heard from; (ii) the person’s absence is not
8 satisfactorily explained after diligent search or inquiry; and (iii) the person has been exposed to a
9 specific peril of death. 8 CMC § 2106(c). Each of the three prongs of this test, including specific peril
10 of death, must be satisfied before an individual may properly be presumed dead. *In the Matter of John*
11 *Joseph Jones*, 19-0028-CV at 10-11.

12 In the present case, Encabo has been missing since July 5, 2020, and therefore he has not yet
13 been absent for a continuous period of five years. Thus, the applicable test is the second type of
14 presumption of death relating to specific peril of death, as provided for in 8 CMC Section 2106(c).

15 The first element required by Section 2106(c) is that a person is absent for a continuous period
16 during which that person has not been heard from. 8 CMC § 2106(c). At the time of the hearing on
17 May 5, 2020, Encabo had been absent for a continuous period of ten months since the time he was last
18 seen on July 5, 2020. In the case *In the Matter of John Joseph Jones*, the Court noted that Jones was
19 absent for a continuous period of 116 days, which was sufficient – combined with the lack of any
20 communication with his wife during this period – to satisfy the first element of the test for the
21 presumption of death. *In the Matter of John Joseph Jones*, 19-0028-CV at 10-11. Encabo, having been
22 absent for a continuous period of ten months, has been absent for approximately 300 days, which is
23 well over 116 days. Moreover, during this time, Encabo has not contacted his family, Johnson, or his
24 child. Encabo left behind his personal effects. There has been no activity on Encabo’s bank account
other than by Johnson. Given this continuous period of absence and the fact that Encabo has not been

1 heard from, the Court finds that the first element of the test for the presumption of death under 8 CMC
2 Section 2106(c) has been met.

3 The second element required by Section 2106(c) is that the person's absence is not
4 satisfactorily explained after diligent search or inquiry. 8 CMC § 2106(c). Despite diligent search
5 efforts immediately after he went missing and over the course of five days, by government personnel
6 as well as private actors, Encabo's absence remains unexplained by anything other than his demise.
7 The fact that the search recovered items of Encabo's clothing from both the underwater cave as well
8 as from the surrounding ocean highlights the diligence and thoroughness of the search efforts. The
9 Court finds that the second element of the presumption of death under 8 CMC Section 2106(c) has
10 been satisfied.

11 The third element required for a presumption of death under 8 CMC Section 2016(c) is that the
12 person has been exposed to a specific peril of death. 8 CMC § 2106(c). It is clear that the sea "poses a
13 specific peril of death." *In the Matter of John Joseph Jones*, 19-0028-CV at 10; *see also Skele v. Mutual*
14 *Benefit Life Ins. Co.*, 485 N.E. 2d 770 (Ohio Ct. App. 1984) (After a backpacker went missing and
15 only his backpack was recovered, the Ohio Court of Appeal held that his death was presumed from the
16 specific peril of a freezing cold river in Katmai National Park Preserve in Alaska). Being exposed to
17 the peril of the sea is sufficient to invoke the presumption of death. *In re Benedek*, 2005 N.Y. Misc.
18 LEXIS 5916 (N.Y. Sur. Ct.) (finding a scuba diver's death was presumed when he vanished while
19 exposed to the period of the sea on a drift dive tour near the Cayman Islands).

20 Here, Encabo was last seen wounded and struggling in the rough waters of the open ocean,
21 surrounded by and being thrown against sharp rocks, before being swept away and under the water by
22 a large wave and disappearing from view. The facts of the present case, in this way, are similar to those
23 of *In the Matter of John Joseph Jones*, in which Jones was seen under the water in the Grotto, while
24 scuba diving in the open ocean, before disappearing from view. The fact that Encabo, like Jones, was
last seen in the open ocean, exposed to the peril of the sea, indicates that he faced a specific peril of

1 death and thus strongly supports a presumption of death. In addition, the element of specific peril of
2 death is further supported by the fact that Encabo was last seen disoriented, wounded and bleeding,
3 struggling to swim in rough ocean waters and being thrown against the sharp rocks, before disappearing
4 under the water.

5 Furthermore, there is additional physical evidence in the present case which was not available
6 in *In the Matter of John Joseph Jones*: searchers in the present case were able to recover items of
7 Encabo’s clothing from the underwater cave and surrounding ocean. The condition of these items of
8 clothing upon recovery further indicates that Encabo faced a specific peril of death because the items
9 were torn and ragged. The location of the clothing and its ragged condition indicate that Encabo is now
10 deceased and that his body will never be found. Such convincing physical evidence establishes
11 Encabo’s untimely demise and helps to explain why his body was not discovered during the search.

12 In conclusion, each element of the test for the presumption of death under 8 CMC Section
13 2106(c) has been satisfied. As noted above, Encabo has been absent for about ten months; his family
14 and other individuals close to him have not heard from him; he was last seen in the open ocean
15 disoriented, bloodied, and struggling against the current before hitting his head against a rock and
16 disappearing underwater; and despite widespread and diligent search efforts in the days following his
17 disappearance, Encabo’s absence remains unexplained. In accordance with 8 CMC Section 2106(c),
18 the Court finds that Encabo’s disappearance after being exposed to the specific peril of the sea can
19 only be explained by his death. Accordingly, the Court finds, as a matter of fact, that Honorio Ricky
20 Encabo II died on July 5, 2020.

21 **IV. ORDER**

22 **IT IS HEREBY ORDERED:**

- 23 1. The Registrar of Vital Statistics shall prepare a death certificate marked
24 “presumptive” for Honorio Ricky Encabo II that shows that he died on July 5, 2020;

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- 2. The other facts required to complete the death certificate shall be based on the Findings of Fact in this Order; and
- 3. The identity of this Court – The Superior Court of the Commonwealth of the Northern Mariana Islands – and the date of this decree shall be shown on the death certificate.

SO ORDERED this 7th day of July, 2021.

/s/
JOSEPH N. CAMACHO, Associate Judge