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8 **IN THE UNITED STATES DISTRICT COURT**

9 **DISTRICT OF GUAM**

10 CARL T.C. GUTIERREZ, FRANK AGUON,  
11 JR., and JOHN and JANE DOE CITIZEN  
12 PLAINTIFFS 1-1000,

13 Plaintiffs,

14 vs.

15 THE GUAM ELECTION COMMISSION, JOHN  
16 BLAS, JOSHUA TENORIO, JOSEPH MESA,  
17 ALICE TAIJERON, JOHN TERLAJE, ROBERT  
18 CRUZ, MARTHA RUTH, JOHN TAITANO,  
19 EDWARD B. CALVO, RAY TENORIO, and  
20 JOHN and JANE DOE DEFENDANTS 1-1000,

21 Defendants.

CIVIL CASE NO. 10-00031

SUPERIOR COURT CIVIL CASE NO.  
CV1891-10

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS AMENDED  
COMPLAINT**

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1 November 19, 2010, the losing candidates, Gutierrez and Aguon, filed not only their Complaint in  
2 this Court, but a similar complaint in Guam superior court, both seeking to overturn a fair,  
3 transparent election result on unsubstantiated grounds. Their Complaint here, as well as the one in  
4 Guam superior court, is flawed in every way: jurisdictionally, procedurally, and substantively.

5 As shown below, the first four Counts of the Complaint, based on 42 U.S.C. § 1983,  
6 should be dismissed because Section 1983 is not available to challenge election results based on  
7 garden-variety alleged irregularities, and in any event, contrary to Plaintiffs' allegations, neither  
8 the United States Constitution nor the Guam Bill of Rights nor the Guam Organic Act nor the Help  
9 America Vote Act afford Plaintiffs' any relief for their claims of irregularities or miscounting.

10 Plaintiffs' Fifth Count, based on the Guam Election Law, is likewise fatally defective.  
11 The Court lacks subject matter jurisdiction over this claim because by statute, the claim must be  
12 asserted in a verified complaint filed within 15 days of the declaration of the election result, yet  
13 plaintiffs' verifications were neither timely nor substantively in compliance with Guam law.  
14 Moreover, Plaintiffs lack standing because they failed timely to assert that they were "voters"  
15 within the meaning of the Guam Election Law, and they cannot assert claims on behalf of the  
16 1,000 unidentified "John Doe" voters whom they purport to represent in the Complaint.

17 Plaintiffs' claim under the Guam Election Law is not only jurisdictionally defective, it  
18 fails to state a claim on which relief can be granted. An election challenge will be dismissed unless  
19 the contestant shows, with specific and substantiated factual allegations, that the alleged errors or  
20 irregularities actually affected the election's outcome. Plaintiffs have failed to meet this burden.  
21 Their allegations are vague and unsubstantiated, and unsupported by the account of a single  
22 identifiable voter. Most of the allegations involve alleged errors or irregularities that had no  
23 cognizable effect on the vote count, relate only to "directory" provisions of the elections law, and  
24 are of the type that the Guam Supreme Court has previously held are insufficient to invalidate an  
25 election. Plaintiffs' remaining allegations, relating to "illegal" votes, are inadequately verified and  
26 unsubstantiated. Most importantly, even if the Court accepted all of Plaintiffs' inadequate and  
27 implausible allegations as true (which it need not and should not do), Plaintiffs would still not have  
28 met their burden of showing that the alleged errors or irregularities affected the outcome. *On the  
contrary, even if all of Plaintiffs' allegations were true, Calvo-Tenorio would still win the election  
and a majority of the votes.*

1 The Guam Supreme Court has held that “where the will of the voters has already been  
2 expressed, that will should be given effect wherever possible.” *Benavente v. Taitano*, 2006 Guam  
3 16 ¶ 31. Here, Plaintiffs are improperly trying to cast a cloud over a fair, legitimate election, in  
4 which the people of Guam have spoken. Because their claims are fatally defective on  
5 jurisdictional, substantive and procedural grounds, their entire Complaint should be dismissed  
6 with prejudice.

## 7 ARGUMENT

### 8 **I. PLAINTIFFS’ FIRST FOUR COUNTS, BASED ON SECTION 1983, MUST BE 9 DISMISSED BECAUSE THEY FAIL TO STATE A CLAIM UPON WHICH 10 RELIEF CAN BE GRANTED**

11 The Plaintiffs’ first four Counts are purportedly based on 42 U.S.C. § 1983. They are all  
12 frivolous, for at least two reasons. First, courts have universally held that Section 1983 is not the  
13 proper vehicle to challenge election results based on garden-variety ballot election issues, and  
14 Plaintiffs’ allegations do not rise above that threshold. Second, Plaintiffs’ attempts to concoct  
15 additional rights under the Organic Act and the Helping America Vote Act are unavailing, as those  
16 statutes do not confer any additional substantive or procedural rights upon Plaintiffs.

#### 17 **A. Section 1983 Cannot Be Used to Challenge Election Results Based on Garden- 18 Variety Election Errors or Irregularities**

19 Section 1983 “[does] not authorize federal courts to be state election monitors.” *Gamza v.*  
20 *Aguirre*, 619 F.2d 449, 454, *reh’g denied*, 625 F.2d 1016 (5th Cir. 1980). “It is hornbook law that  
21 section 1983 does not provide a right of action for “garden variety election irregularities.” *Soules*  
22 *v. Kauaians for Nukoli Campaign Committee*, 849 F.2d 1176, 1183 (9th Cir. 1988). Specifically,  
23 Section 1983 does not provide a basis for litigants to challenge the results of state elections where  
24 there are state laws in place to serve that purpose, as there are in Guam. *See id.*

25 Section 1983 applies in an election dispute only when there is “willful conduct” that  
26 “undermines the organic processes by which candidates are elected.” *Kozuszek v. Brewer*, 546 F.3d  
27 485, 488 (7th Cir. 2008). The standard is whether the alleged election irregularities “implicat[e]  
28 the very integrity of the electoral process,” “reach[ing] a point of patent and fundamental  
unfairness.” *Welch v. McKenzie*, 765 F.2d 1311, 1314 (5th Cir. 1985) (internal citations and  
quotations omitted). “Such a situation must go well beyond the ordinary dispute over the counting  
and marking of ballots,” *id.*, even if the “garden variety” errors “control the outcome of the vote or

1 election.” *Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998).

2 Plaintiffs’ allegations, even if believed, involve nothing more than “garden variety” errors  
3 or irregularities. (See Amend. Compl. ¶¶ 20, 32). The errors cited by Plaintiffs are typical “garden  
4 variety” errors or irregularities that courts have repeatedly held cannot support a Section 1983  
5 challenge to election results. These include: malfunctioning voting machines and the refusal to  
6 hold a recount, *Hennings v. Grafton*, 523 F.2d 861, 864-65 (7th Cir. 1975); error resulting in  
7 miscounted votes and a delay in the arrival of voting machines, *Gold v. Feinberg*, 101 F.3d 796,  
8 801-02 (2d Cir. 1996); mishandling procedurally deficient absentee ballots to the detriment of a  
9 minority candidate, *Welch*, 765 F.2d at 1317; an allegedly inadequate response to illegal cross-over  
10 voting, *Curry v. Baker*, 802 F.2d 1302, 1316 (11th Cir. 1986); mechanical and human error in  
11 counting votes, *Bodine v. Elkhart County Election Bd.*, 788 F.2d 1270, 1272 (7th Cir. 1986);  
12 mistakenly allowing nonparty members to vote in a primary, *Powell v. Power*, 436 F.2d 84, 85-86  
13 (2d Cir. 1970); counting votes that were illegally cast, *Pettengill v. Putnam County R-1 School*  
14 *Dist.*, 472 F.2d 121, 122 (8th Cir. 1973); and arbitrarily rejecting certain ballots, *Johnson v. Hood*,  
15 430 F.2d 610, 612-13 (5th Cir. 1970). Indeed every single alleged irregularity or impropriety  
16 alleged by Plaintiffs was also alleged in one or more of the above cases. In each instance the  
17 courts found that Section 1983 did not apply. (Cf. Amend. Compl. ¶¶ 20, 32.)

18 Examples of infringements of voting rights that *have* risen to the level of constitutional  
19 violations are a very different breed. They include the dilution of votes by reason of mal-  
20 apportioned voting districts or weighted voting systems, *Reynolds v. Sims*, 377 U.S. 533 (1964)  
21 and the purposeful or systematic discrimination against voters of a certain class, *Carrington v.*  
22 *Rash*, 380 U.S. 89 (1965), or of a certain political affiliation, *Shakman v. Democratic Org. of Cook*  
23 *County*, 435 F.2d 267 (7th Cir. 1970). What these cases have in common – and what is absent here  
24 – is that the infringement involved purposeful or systematic discrimination against a class of  
25 citizens, resulting in widespread disenfranchisement.

26 Here, by contrast, Plaintiffs allege only a hodgepodge of errors by election officials, none  
27 of which are alleged to have willfully denied any class of voters their rights or favor one candidate  
28 over the other. These allegations do not afford a basis for relief under Section 1983.

In sum, even taking Plaintiffs’ allegations as true—which they are not—Plaintiffs have failed to state a claim under Section 1983 upon which relief can be granted.



1           **B. Plaintiffs' Claims based on the Constitution or Guam Bill of Rights are Meritless**

2           Count One of the Complaint alleges that Plaintiffs' rights under the Fifth and Fourteenth  
3 Amendments of the United States Constitution have been violated. (Amend. Compl. ¶ 38.)  
4 Specifically, Plaintiffs allege that the Constitution guarantees that "a citizen's right to vote shall  
5 not be arbitrarily denied, and that each citizen's right to vote must be given equal value." (*Id.*)  
6 Count Two of the Complaint makes identical allegations under Guam's Bill of Rights, which is set  
7 forth in the Organic Act at 48 U.S.C. § 1421b. (*Id.* ¶ 40.) These two Counts are substantively  
8 indistinguishable, because the Guam Bill of Rights for Guam was enacted to parallel the Bill of  
9 Rights in the federal Constitution. *U.S. v. Drake*, 543 F.3d 1080, 1085 (9th Cir. 2008). Where the  
10 rights afforded by Guam's Bill of Rights mirror Constitutional provisions (namely the Due Process  
11 Clause and the Equal Protection Clause), the Ninth Circuit has interpreted each such right as  
12 "coterminous with its corresponding provision in the federal Constitution." *Id.* (citation omitted).

13           Counts One and Two are meritless under the federal Constitution and, by the same token,  
14 under the Organic Act. Contrary to Plaintiffs' allegations, the United States Supreme Court has  
15 stated that "the Constitution does not confer the right of suffrage on any one, and ... the right to  
16 vote, per se, is not a constitutionally protected right." *Rodriguez v. Popular Democratic Party*, 457  
17 U.S. 1, 9 (1982) (citations omitted). Constitutional challenges to election results have been  
18 permitted where the plaintiff presented an equal protection claim based on the fundamental right to  
19 vote equally with others in the jurisdiction. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). Here,  
20 however, the Plaintiffs do not assert any equal-protection claim: they do not allege that any  
21 particular group of Guam citizens was treated differently from any other group. Allowing non-  
22 residents or non-citizens to vote does not present an equal protection violation. *Cf. Angel v. City of*  
23 *Fairfield, Tex.*, 793 F.2d 737 (5th Cir.1986). Because Plaintiffs do not allege discrimination  
24 between citizens in the same jurisdiction, they fail to state a claim that they were denied equal  
25 protection (*id.*) and hence fail to state any claim under the United States Constitution or the Guam  
26 Bill of Rights.

26           **C. The Plaintiffs' Section 1983 Claims under the Organic Act Are Meritless**

27           In Count Three of their Complaint, the Plaintiffs allege that their rights under Section 1422  
28 of the Organic Act were violated because the "Defendants illegally certified the election results in  
favor of Calvo-Tenorio even though no legal and valid count and/or election showed that either

1 candidate received a majority of votes cast.” (Amend. Compl. ¶ 42.) However, while Section  
2 1422 of the Organic Act sets forth the requirement that the Governor and Lieutenant Governor be  
3 elected by a majority of voters, 48 U.S.C. § 1422, it does not regulate the manner in which those  
4 votes are counted. Indeed, Plaintiffs’ claims under Section 1422 are indistinguishable from their  
5 other claims, since the Plaintiffs *admit* that the GEC certified the election results in favor of Calvo-  
6 Tenorio on the basis of their receipt of a majority of the votes counted. (Amend. Compl. ¶ 33.)

7 Thus, the only potential legal basis for Plaintiffs’ allegation is that the GEC *miscounted*.  
8 This is not an alleged violation of Section 1422, but rather a challenge to the results, bringing  
9 Plaintiffs back to where they started. Because Section 1983 does not provide a remedy for alleged  
10 counting errors – even if they affected the outcome of the election – Plaintiffs have failed to state a  
11 claim under Section 1983 and Section 1422 of the Organic Act. *Cf. Bennett*, 140 F.3d at 1226.

#### 12 **D. The Help America Vote Act Applies Only to Federal Elections**

13 Count Four of the Complaint is yet another section 1983 claim, this one based on Section  
14 15482 of the Help America Vote Act (“HAVA”). (Amend. Compl. ¶¶ 44.) But Section 15482 of  
15 the HAVA pertains to “an election for Federal office,” and prescribes a procedure through which  
16 an eligible voter “may cast a provisional ballot in that election.” 42 U.S.C. § 15482(a). Section  
17 15482 was enacted as part of a larger subchapter of HAVA titled “Uniform and Nondiscriminatory  
18 Election Technology and Administration Requirements.” *Broyles v. Texas*, 618 F.Supp.2d 661  
19 (2009) at 692. “The first section in that subchapter prescribes uniform standards for ‘voting  
20 system[s] used in ... election[s] for Federal office.’” *Id.* (quoting 42 U.S.C. § 15481). “There is no  
21 basis to conclude that the provisions of Section 15482 apply to voting that does not involve  
22 ‘elections for Federal office.’” *Id.* at 692-93.

23 Because an election for federal office is not at issue here, Plaintiffs cannot state a claim  
24 under HAVA.

## 25 **II. PLAINTIFFS’ CLAIM UNDER THE GUAM ELECTION LAW IS FATALLY 26 DEFECTIVE BECAUSE PLAINTIFFS HAVE NOT AND CANNOT ALLEGE 27 THE JURISDICTIONAL PREREQUISITES**

28 Plaintiffs’ claim for violation of Guam Election Law, 3 GCA 12102 (Count Five) should  
be dismissed because it is jurisdictionally and substantively defective, and the defects cannot be  
remedied.

1           **A. Plaintiffs Failed to Verify their Complaint within the Statutory Period**

2           The Guam Election Law expressly provides that “[t]he contestant shall verify the statement  
3 of contest, and shall file it within fifteen (15) days after the declaration of the result of the election  
4 by the body canvassing the returns thereof.” 3 GCA § 12106. The GEC initially announced the  
5 election results on November 3, and, after a recount, unanimously certified the election results on  
6 November 6, 2010. Therefore, by statute, any statement of contest had to be verified and  
7 submitted to the Court by November 21, 2010.<sup>1</sup>

8           Although Plaintiffs filed suit on November 19, 2010, their original complaint was **not**  
9 verified. Plaintiffs also failed to correct this defect within the statutory period. This was a fatal,  
10 jurisdictional flaw that permanently deprived this Court of authority to hear the claim.

11           Verifications of election challenges are deemed absolutely essential to an orderly election  
12 process. Because the verification “renders [the contestant] liable for perjurious allegations,” it is  
13 intended to help prevent “frivolous election contests.” *Enterprise Residents v. Brennan*, 22 Cal.3d  
14 767, 774 (1978).

15           It is well-settled that “[t]he Election Law requirement of a verified petition is a  
16 jurisdictional condition precedent to commencing a proceeding.” *Callahan v. Russo*, 507 N.Y.S.2d  
17 89, 89 (1986). Accordingly, where the plaintiff challenging the election has failed to verify the  
18 complaint, courts will dismiss the challenge out of hand. *See id.*; *see also Dinwiddie v. Board of*  
19 *County Com'rs of Lea County*, 103 N.M. 442, 445 (1985) (“It has long been established in New  
20 Mexico that in election contests the statutory requirement of verification of the complaint must be  
21 met or the case is subject to dismissal or to a motion for judgment on the pleadings.”); *Doelling v.*  
22 *Bd. of Educ.*, 17 Ill.2d 145, 160 N.E.2d 801 (1959) (Illinois supreme court dismissing election  
23 contest initiated by an unverified petition for lack of jurisdiction).

24           On November 23, 2010—*after* the 15-day deadline set by 3 GCA § 12106 had expired—  
25 Plaintiffs submitted an amended complaint with purported verifications by Plaintiffs Carl Gutierrez  
26 and Frank Aguon. But this cured nothing. After the statutory deadline for submitting a verified  
27 election contest has expired, a plaintiff cannot correct the defect by submitting a belated

28 <sup>1</sup> Because November 21 falls on a Sunday, the presumption under 1 GCA § 709 is that Plaintiffs would have had until  
November 22, the next working day, to file their complaint. But § 709 only extends deadlines if they fall on a  
“Saturday” or a “legal holiday,” not on a Sunday. It is unnecessary for the Court to determine whether a Sunday  
deadline is extended by § 709 since Plaintiffs failed to file their complaint even by November 22.

1 verification. *See Willis v. King*, 352 Ark. 55, 98 S.W.3d 427 (2003) (no subject-matter jurisdiction  
2 where verification of election contest was filed four days late). This is because the court's  
3 jurisdiction to hear the case is created by statute, and once the statutory deadline for submitting the  
4 verification has expired, so has the court's authority to hear the case. *See Dinwiddie*, 103 N.M. at  
5 445, 708 P.2d at 1046 (holding that "plaintiffs do not have a right to amend, since the 30-day  
6 period in which to file a 'verified' complaint has expired" and therefore court had no jurisdiction  
7 over matter); *State ex rel. Hodges v. Kosciusko Circuit Court*, 273 Ind. 101, 402 N.E.2d 1231 (Ind.  
8 1980). As such, because Plaintiffs failed to submit a verified complaint by the deadline, November  
9 22, 2010, this Court permanently lost jurisdiction to hear a claim under the Guam Election Law.

10 Based on the foregoing, Plaintiffs' claim under the Guam Election Law (Count Five) must  
11 be dismissed with prejudice.

12 **B. The Verifications Filed after the Close of the Statutory Period Were Not Only  
13 Untimely, They Are Inadequate in Substance**

14 Not only were Plaintiffs' purported verifications filed November 23 untimely, they are  
15 also inadequate in substance.

16 The verification for an election contest should—at a minimum—include the basic  
17 elements set forth in 6 GCA § 4308, which provides:

18 Whenever, under any law of Guam or under any rule, regulation, order, or requirement  
19 made pursuant to law, any matter is required or permitted to be supported, evidenced,  
20 established, or proved by the sworn declaration, verification, certificate, statement, oath or  
21 affidavit, in writing of the person making the same ... such matter may, with like force  
22 and effect, be supported, evidenced, established or proved by the unsworn declaration,  
23 certificate, verification or statement, in writing of such person which is subscribed by him,  
24 as true under penalty of perjury, and dated, in substantially the following form:

25 ...  
26 (2) If executed within Guam, or within a state having a rule of law or procedure  
27 similar in effect to this Section: "I declare (or certify, verify or state) under penalty  
28 of perjury that the foregoing is true and correct. Executed on (date).  
(Signature)."

6 GCA § 4308 (emphasis added).<sup>2</sup>

By requiring verification, Guam's election contest statute ensures that an election

<sup>2</sup> Because of public policy reasons supporting the liberal construction of mechanic's lien statutes, the verification requirement in mechanic's lien statutes is not dictated by 6 GCA § 4308. *Castino v. G.C. Corp.*, 2010 Guam 3. While a liberal interpretation of the verification requirement makes sense in that context, it does not in the context of election contests, where a single voter could otherwise disrupt the entire territory's government on the basis of rumor and innuendo. Thus, the verification for an election contest must contain the elements set forth in 6 GCA § 4308(b).

1 challenge may only be brought by a voter who has reliable, independent knowledge of election  
2 errors or irregularities. 3 GCA § 12106. These criteria create a threshold standing requirement,  
3 and prevent anyone who lacks a genuine factual basis for challenging an election from disrupting  
4 the orderly transition of power unless he subjects himself to perjury charges should his allegations  
5 prove to be untrue. *Cf. Brennan*, 22 Cal.3d at 774 n. 6 (“It is absurd to suppose that a single  
6 elector, without any information on which to base his complaint, is entitled to impose on the  
7 superior court the burden of recounting the entire vote cast by the electors . . .”) (quoting *In re*  
8 *Cryer*, 77 Cal.App. 605, 609 (1926)). The verification requirements set forth in 6 GCA § 4308 –  
9 in which all facts must be alleged based on adequate knowledge under penalty of perjury – is  
10 critical to maintaining the balance between allowing voters to challenge genuinely problematic  
11 election practices on the one hand, and preserving “the will of the voters” and the smooth transition  
12 of power on the other.

13 Here, the so-called verifications state merely that the allegations are true “to the best of  
14 my knowledge and belief.” (Amend. Compl. at 15-16.) This is the equivalent of saying the  
15 allegations are true “as far as I know.” It is a far cry from asserting that the allegations “are true  
16 and correct” under penalty of perjury. As such, the so-called verifications fail to achieve their  
17 basic purpose: to substantiate the allegations with at least a minimum level of reliability.

18 Because the verifications are substantively deficient, Plaintiffs have failed to satisfy the  
19 statutory jurisdictional requirements for challenging the election result. For this reason too,  
20 therefore, the claim under the Guam Election Law must be dismissed.<sup>3</sup>

21 **C. Gutierrez and Aguon Do Not have Standing as “Voters” to Bring a Claim**  
22 **under the Guam Election Law**

23 A party has standing to challenge an election only if he or she is authorized by statute to do  
24 so, or is within the class of aggrieved persons protected by the statute in question. *See Escalante v.*  
25 *Hermosa Beach*, 195 Cal.App.3d 1009, 1013, n. 2 (1987).

26 Only a “voter” has standing to challenge election results under the Guam Election Law.  
27 *See* 3 GCA § 12102. In their original complaint, Plaintiffs failed to allege that they were “voters.”  
28 While Plaintiffs attempted to correct this defect in their amended complaint, the statutory deadline

<sup>3</sup> In light of Plaintiffs’ failure to verify the allegations under penalty of perjury, the Court should also refuse to take Plaintiffs’ allegations as true for purposes of this motion to dismiss. Further, Guam’s verification statute does not provide for allegations “on information and belief.” Yet, key allegations here are made “on information and belief.” (See Amend. Compl. ¶¶ 16, 19, 32(f).) These must be dismissed out of hand.

1 for submitting a verified complaint had already expired. Thus, the court does not have subject  
2 matter jurisdiction to hear the claim. *See Cox v. Perry*, 138 S.W.3d 515, 517 (2004).

3 **D. Gutierrez and Aguon Cannot Sue on Behalf of the Fictitious “John and Jane  
4 Doe Citizen Plaintiffs”**

5 Gutierrez and Aguon purport to join or sue on behalf of the fictitious “John and Jane Doe  
6 Citizen Plaintiffs 1-1000” (collectively, “John Does”). The John Does must be dismissed from the  
7 suit because Gutierrez and Aguon do not have standing to sue on behalf of anonymous plaintiffs.

8 The general rule is that “actions may not be brought on behalf of anonymous parties.”  
9 *Pathways Psychological Support Ctr. v. Leonardtown*, 1999 WL 1068488, 4 (D. Md. 1999). Rule  
10 17(a) of the Federal Rules of Civil Procedure states that “[e]very action shall be prosecuted in the  
11 name of the real party in interest.” *See also* Fed.R.Civ.P. 10(a) (“In the complaint the title of the  
12 action shall include the names of all the parties....”). Anonymous plaintiffs are not permitted  
13 because “[a] defendant cannot defend against a plaintiff that it cannot identify, which is exactly  
14 what Rule 17(a) seeks to prevent.” *Pathways Psychological Support Ctr.*, 1999 WL 1068488, 4.

15 Here, the John Does’ “true names and identities are unknown to Gutierrez and Aguon.”  
16 (Amend. Compl. ¶ 5.) This underscores the inadequacy of the so-called “verifications.” It also  
17 demonstrates exactly why anonymous plaintiffs are prohibited: if Gutierrez and Aguon cannot  
18 even identify the aggrieved plaintiffs, it would be unreasonable to allow them to bring a case on  
19 such persons’ behalf, and patently unfair to require a defendant to defend itself against such claims.

20 In sum, Plaintiffs’ Fifth Count under the Guam Election Law claim must be dismissed for  
21 lack of jurisdiction.

22 **III. THE CLAIM UNDER THE GUAM ELECTION LAW SHOULD BE DISMISSED  
23 FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED**

24 **A. The Requirements for Invalidating an Election on Guam**

25 The Guam Supreme Court has articulated clear pleading standards that must be met by a  
26 plaintiff who seeks to invalidate the certified results of a general election and to require the GEC to  
27 conduct a new election. If those standards are not met, the complaint is subject to immediate  
28 dismissal. Plaintiffs’ allegations here come nowhere near meeting those standards.

The Guam Election Law is designed to protect the will of the voters. An election may not  
be lightly set aside despite the alleged existence of irregularity, misconduct, illegal votes,  
tabulation errors, or other problems, unless “a person filing a contest under Chapter 12 [can]

1 establish that any claimed error or errors will affect the outcome of the election.” *Benavente v.*  
2 *Taitano*, 2006 Guam 16 ¶ 15.<sup>4</sup> This is referred to as the “outcome test.” *Id.*

3 A plaintiff cannot rely on vague, self-serving, conclusory statements that alleged errors  
4 affected the outcome of the election. Rather, the complaint must “set[] forth specifically ... [t]he  
5 particular grounds of the contest” and show that these alleged errors actually affected the election’s  
6 outcome. 3 GCA § 12105(d); *Benavente*, 2006 Guam 16 ¶ 15; *Adkins v. Guam Police Dept.*, 2010  
7 Guam 13 ¶ 52 (“Gone are the days of notice pleading where conclusory or ‘bare-bones’ allegations  
8 in a complaint could survive a motion to dismiss.”). The allegations must also be adequately  
9 substantiated. *Ada v. Gutierrez*, 2000 Guam 22 ¶ 27 (“positing a large, but unsubstantiated,  
10 number of questionable votes will not suffice to demand a recount”). In sum, any allegation that  
11 errors affected the election’s outcome must be factual, specific, and substantiated. *See id.*

12 In addition to the “outcome test,” in assessing whether statutory violations require the  
13 holding of a new election, Guam also distinguishes between “mandatory” and “directory” election  
14 laws. “[M]andatory provisions of election laws are those the violation of which invalidates the  
15 election, whereas directory provisions are those which, while they should be obeyed, may  
16 nevertheless be deviated from without necessarily invalidating the election.” *Benavente*, 2006  
17 Guam 16 ¶ 27 (quoting 29 C.J.S. Elections § 341 (2006)).

18 The characterization of election laws as “mandatory” or “directory” turns in part on the  
19 timing of the challenge. In general, election laws are “mandatory” if enforcement is sought *before*  
20 the election, but the same laws are only “directory” where enforcement is sought *after* the election.  
21 *Id.* at ¶ 30. “This important rule helps undergird the stability of elections [by] making it more  
22 difficult to set aside an election because of an inadvertent or technical violation of an election law  
23 provision.” *Id.* ¶ 31 (quoting *Spires v. Compton*, 837 S.W.2d 459, 461 (Ark.1992)). Following  
24 this principle, challenges brought *after* an election cannot invalidate it, unless the violation  
25 undermines the fundamental integrity and reliability of the election result.<sup>5</sup> Thus, the  
mandatory/directory distinction ends up paralleling the “outcome test.” *See id.*

26 <sup>4</sup> See also 3 GCA § 12103 (“[n]o irregularity or improper conduct in the proceedings of any precinct election board  
27 shall void an election result, unless such irregularity or misconduct resulted in a defendant being declared either  
elected or tied for election.”); see also 3 GCA § 12104.

28 <sup>5</sup> “This rule will apply unless the provisions are of such a character that their violation would effect an obstruction to  
the free and intelligent casting of the vote, or an obstruction to the ascertainment of the result, or unless they affect an  
essential element of the election, or it is expressly declared by Guam law that compliance with the provision is  
essential to the validity of the election.” *Benavente*, 2006 Guam 16 ¶ 35.

1 Plaintiffs' Fifth Count must be dismissed because it invokes Election Law provisions that  
2 are merely "directory" and fails to satisfy the outcome test.

3 **B. Plaintiffs' Allegations Involve Only "Directory" Provisions of the Elections**  
4 **Law and Fail to Satisfy the Outcome Test**

5 To survive a motion to dismiss, Plaintiffs' allegations must set forth specific and  
6 substantiated facts showing that the election would have turned out differently but for the alleged  
7 errors and irregularities. *See* 3 GCA § 12105(d); *Benavente v. Taitano*, 2006 Guam 16 ¶ 15; *Ada v.*  
8 *Gutierrez*, 2000 Guam 22 ¶ 27; *Adkins v. Guam Police Dept.*, 2010 Guam 13 ¶ 52 ("[t]he  
9 complaint must contain enough facts to state a claim to relief that is plausible on its face.")  
(citation and quotation marks omitted). Plaintiffs have not done so.

10 The certified results show that the Calvo-Tenorio team won 20,066 votes, approximately  
11 50.25% of the vote and 487 more votes than Gutierrez-Aguon. (*See* Request for Judicial Notice,  
12 filed concurrently herewith, ("RJN").) Plaintiffs allege in conclusory fashion that errors and  
13 irregularities affected the results of the election (*see* Amcnd. Compl. ¶ 47), but never offer a  
14 plausible theory or mathematical analysis to support this claim. Instead, they try to attack the  
15 election through two different, flawed approaches. First, they allege garden-variety irregularities  
16 and errors that had no cognizable effect on the vote totals. Second, they allege that specific  
17 numbers of votes were wrongly included in or excluded from the vote total, but fail to plausibly  
18 explain how this could have yielded a net benefit to Calvo-Tenorio or a net harm to Gutierrez-  
19 Aguon. All of Plaintiffs' allegations under both approaches are unsubstantiated and inadequately  
20 verified, and involve only "directory" provisions of law. And none of the allegations, even if true,  
21 actually show that the Calvo-Tenorio vote count would have declined at all, much less that it  
22 would have fallen below the Gutierrez-Aguon vote count or the 50% threshold. As such,  
23 Plaintiff's Fifth Count under the Guam Election Law fails the outcome test and must be dismissed.

24 **1. Plaintiffs' Allegations of Garden-Variety Errors Had No Cognizable**  
25 **Effect on the Vote Count and Cannot Invalidate the Election**

26 Vague allegations of errors or irregularities are insufficient to show that an election should  
27 be invalidated. *See* *Ada v. Gutierrez*, 2000 Guam 22 ¶ 8. Similarly, unsubstantiated allegations  
28 that an unspecified number of votes were wrongly included or excluded from the vote count are  
also, on their face, insufficient to invalidate an election. *Id.* ¶ 27. This is because such allegations  
only affect "directory" provisions of the Guam Election Law and do not enunciate any specific



1 facts showing how the alleged errors or irregularities altered the outcome of the election. *See id* at  
2 ¶ 26.

3 A review of Plaintiffs' specific allegations demonstrates their inadequacy. Plaintiffs  
4 proffer a number of allegations regarding irregularities that did not, on their face, have *any* actual  
5 effect on the vote count. For example, they contend that that GEC Executive Director John Blas  
6 "personally removed ballots from polling sites and transported these ballots to other polling sites,"  
7 allegedly while unaccompanied and "in violation of applicable law." (Amend. Compl. ¶ 19).<sup>6</sup>

8 In *Benavente*, the Guam Supreme Court addressed similar allegations that ballots had been  
9 improperly secured. The Court held that "the physical security of ballots is directory in nature"  
10 and that "[a] violation of such section does not affect the free and intelligent casting of the vote or  
11 the ascertainment of the result...." *Benavente*, 2006 Guam 16 ¶ 19. *See also Brennan*, 22 Cal.3d  
12 at 774 (allegations of "unauthorized persons were in the vote processing area ... although specific,  
13 would not make a recount necessary for the proper determination of the contest").

14 The same principles apply here: because this contest is being made post-election, the  
15 provisions at issue are merely "directory." *See Benavente*, 2006 Guam 16 ¶ 27. And because  
16 Plaintiffs have not shown that any of the alleged violations affected the vote count—much less  
17 altered the outcome—there is no basis for invalidating the certified result. *See id.* ¶ 35.

18 Plaintiffs also proffer a number of vague allegations regarding errors and irregularities that,  
19 if true, could theoretically have altered the vote count (it is never clear, however, in whose favor),  
20 but these allegations are inadequately substantiated and lack any description of the number of votes  
21 allegedly affected. For example, Plaintiffs contend, "Absentee ballots were tampered with,  
22 resulting in said ballots either being destroyed and/or removed." (Amend. Compl. ¶ 20(b)).<sup>7</sup> These

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23 <sup>6</sup> Similarly, Plaintiffs allege that "[l]ocked ballot boxes were opened at polling sites, secret ballots were illegally  
24 removed from ballot boxes and exposed to the public," (Amend. Compl. ¶ 20(a)); "The chain of custody of the cast  
25 ballots was compromised when ballots were secured and held by a private security company owned and/or controlled  
26 by Republican candidate Ray Tenorio from the time they left the tabulation center at the University of Guam (UOG)  
27 and for a minimum of two days thereafter including during a islandwide power outage on November 3, 2010, for  
28 approximately four to six hours with no officials of the GEC present" (*id.* ¶ 20(f)); and "Provisional ballots were  
accepted or rejected by clerks at the tabulation center rather than by the GEC" (*id.* ¶ 20(h)).

<sup>7</sup> Plaintiffs' other allegations in this category include: "Registered voters were turned away at numerous polling sites  
and not allowed to vote" (Amend. Compl. ¶ 20(e)); "Persons who were citizens of and residents of other United  
States jurisdictions were allowed to vote in the Guam election." (*id.* ¶ 20(i)); "Persons who were not United States  
citizens were allowed to vote in the Guam election" (*id.* ¶ 20(j)); "Persons who had not yet reached legal voting age  
were allowed to vote" (*id.* ¶ 20(k)); "Voters were offered financial incentives and/or other benefits to vote for Calvo-  
Tenorio (*id.* ¶ 20(l)); and "Voting tabulation machines malfunctioned," (*id.* ¶ 20(n)).

1 sorts of allegations are plainly inadequate.

2 In *Ada v. Gutierrez*, the plaintiffs claimed they were entitled to a recount based on their  
3 allegations that the election had been marred by vote tampering. But “the reasoning in and brevity  
4 of the allegations were insufficient to cause enough concern to mandate a recount.” *Ada v.*  
5 *Gutierrez*, 2000 Guam 22 ¶ 26. Indeed, unless a plaintiff alleges specific facts showing that the  
6 outcome was actually altered by the alleged irregularity, the pleading is inadequate. *See id.*, *see*  
7 *also* 3 GCA § 12105(d); *Benavente v. Taitano*, 2006 Guam 16 ¶ 15.

8 Plaintiffs’ allegations regarding vote tampering and other irregularities suffer from similar  
9 defects. The allegations are unsubstantiated by adequate verification or any other minimum  
10 guarantor of reliability. They tell the Court nothing about the number of votes allegedly affected  
11 and do not explain how any of the candidates could have plausibly been helped or harmed by the  
12 alleged irregularities. It is not the Court’s role to invent such numbers or to come up with a  
13 mathematical analysis that supports Plaintiffs’ case and thereby “nudge[s] their claims across the  
14 line from conceivable to plausible.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).  
15 Count Five of the complaint simply does not contain specific factual allegations that the alleged  
16 errors or irregularities altered the outcome of the election. That Count therefore fails to state a  
17 claim on which relief can be granted. *See* 3 GCA § 12105(d); *Twombly*, 550 U.S. at 570.

18 Plaintiffs allege further that ministerial record-keeping errors may have occurred. For  
19 example, Plaintiffs claim, “The number of ballots issued to voters did not match the number of  
20 ballots returned at various precincts.” (Amend. Compl. ¶ 20(g).) Again, this unsubstantiated,  
21 inadequately verified allegation involves a “directory” provision of the elections law, and does not  
22 show with the required – or any – factual specificity that the alleged error plausibly altered the  
23 outcome of the election.

24 Plaintiffs also proffer allegations that are nothing more than recitations of the Guam  
25 Election Code. For example, echoing the code at 3 GCA § 12102(d) (contest permitted on grounds  
26 that “That illegal votes were cast”), Plaintiffs nakedly allege, “Illegal ballots were counted.”  
27 (Amend. Comp. ¶ 20(m)). But “plaintiffs’ mere recitation of [election law provisions] are not  
28 sufficient to comply with the certainty requirement ... because they do not constitute allegations of  
fact.” *Brennan*, 22 Cal.3d at 774 n.6; *see also Core Tech Intern. Corp. v. Hanil Engineering &*  
*Const. Co., Ltd.*, 2010 Guam 13 ¶ 52 (“a formulaic recitation of the elements of a cause of action

1 will not do.”) (citations and quotation marks omitted).

2 Lastly, Plaintiffs allege errors that could have been detected *before* the election. For  
3 example, Plaintiffs allege, “Absentee ballots were not mailed to voters who had requested them.”  
4 (Amend. Compl. ¶ 20(c)).<sup>8</sup> This allegation suffers from the same flaws as the allegations  
5 discussed above: i.e., it is inadequately verified, involves only directory provisions, and did not  
6 affect the outcome. But this allegation is insufficient for an additional reason as well: *after* an  
7 election has taken place, the election cannot be invalidated based on errors that could have been  
8 corrected *before* the election. *See Benavente*, 2006 Guam 16 ¶ 9 (“the election having been held,  
9 should not be disturbed when there was full opportunity to correct any irregularities before the vote  
10 was cast....”) (citations and quotation marks omitted).

11 In sum, Plaintiffs’ vague and unsubstantiated allegations involve only directory provisions  
12 of law, and do not plausibly show, based on specific facts and numbers of votes, that the errors or  
13 irregularities cognizably affected the vote count, much less the outcome of the election. As such,  
14 none of these allegations support the claim under the Guam Election Law.

15 **2. Plaintiffs’ Allegations regarding Specific Numbers of Votes Affected by**  
16 **Error or Irregularity are Unsubstantiated, and Even if Taken as True,**  
17 **Would Not Alter the Outcome of the Election**

18 In addition to the vague allegations discussed above, which do not show any cognizable  
19 effect on the vote count, Plaintiffs have attempted to alleged that specific numbers of votes and  
20 voters were affected. In particular, Plaintiffs contend that certain numbers of votes were cast  
21 “illegally” or failed to be counted, and that “[t]hese irregularities and improper conduct resulted in  
22 Calvo-Tenorio being declared elected.” (Amend. Compl. ¶ 33.) As shown below, these  
23 allegations are unsubstantiated, inadequately verified, and fail to plausibly show that the alleged  
24 errors or irregularities altered the outcome of the election.

25 **The “Illegal” Votes.** The Guam Election Law addresses allegations of illegal votes in 3  
26 GCA § 12104 & 12107. To challenge an election under these provisions, a contestant must show  
27 (1) that “illegal votes [were] given to the person whose right to the office is contested” and (2) that  
28 if the “illegal” votes were taken from that candidate, it “would reduce the number of his legal votes

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<sup>8</sup> Similarly, Plaintiffs allege: “Absentee ballots were mailed too late for the voters to return their ballots by the November 2, 2010 deadline (Amend. Compl. ¶ 20(d)); and “Voters who through illness (homebound voters) who requested to vote early at home were ignored or not allowed to vote” (*id.* ¶ 20(o)).

1 below the number of votes given to some other person for the same office.”<sup>9</sup> Plaintiffs’ allegations  
2 do not make this showing.

3 According to the certified results, the Calvo-Tenorio team received 487 more votes than  
4 Gutierrez-Aguon. Thus, to “reduce the number of [Calvo-Tenorio’s] legal votes below the number  
5 of votes given to [Gutierrez-Aguon] for the same office,” Plaintiffs would have to demonstrate that  
6 487 illegal votes were cast for Calvo-Tenorio—while not a single one was cast for Gutierrez-  
7 Aguon.<sup>10</sup> For obvious reasons, Plaintiffs have not made such an absurd allegation.

8 Instead, Plaintiffs merely allege that 222 votes were “illegally” cast at the tabulation center  
9 after the close of the polls and 126 votes “illegally” cast by persons registered to vote in the CNMI.  
10 (Amend. Compl. ¶ 32(c) & (j)). Thus, what is at issue is a total of 348 alleged “illegal” votes. But  
11 these allegations by Plaintiffs are insufficient to salvage their Fifth Count, for multiple reasons.

12 In the first place, Plaintiffs’ allegations of “illegal” votes are completely unsubstantiated  
13 and inadequately verified. Moreover, it is not follow from Plaintiffs’ allegations that all of the  
14 challenged votes were really “illegal.” The homebound voters “cast” their votes at home and did  
15 nothing wrong. Even if their votes were delivered to the tabulation center and counted after the  
16 close of polls, it is not at all clear that they should be struck. In any case, the Guam Supreme Court  
17 has indicated that alleged violations of this nature are directory and do not invalidate the election.  
18 *See Benavente*, 2006 Guam 16 ¶ 109 (complaints about voting tabulation involved merely  
19 directory laws and “Petitioners fail to establish how the counting of the iVotronic votes after the  
20 unofficial results are issued, but before the official results are issued, would have changed the  
21 outcome of the election.”).

22 Even if all 348 votes were “illegally” cast, Plaintiffs have not alleged, nor provided any  
23 reason to plausibly conclude, that these votes were cast exclusively for Calvo-Tenorio. In  
24 assessing the allegation, the Court must use its common sense. *Ashcroft v. Iqbal*, 129 S.Ct. 1937,  
1950 (2009) (“Determining whether a complaint states a plausible claim for relief will ... be a

25 <sup>9</sup> 3 GCA § 12104 (“An election shall not be set aside on account of illegal votes, unless it appears that such number  
26 of illegal votes has been given to the person whose right to the office is contested or who has been certified as having  
27 tied for first place, which, if taken from him, would reduce the number of his legal votes below the number of votes  
28 given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to  
have been given to such other person.”); 3 G.C.A. § 12107 (contestant must show that taking “illegal” votes from  
winner “would reduce the number of his legal votes below the number of legal votes given to some other person for  
the same office.”).

<sup>10</sup> For each illegal vote for Gutierrez-Aguon, Plaintiffs would have to show an additional illegal vote for Calvo-  
Tenorio.

1 context-specific task that requires the reviewing court to draw on its judicial experience and  
2 common sense.”). Here, common sense dictates that the alleged “illegal” votes by the homebound  
3 voters would follow the same pattern of voting as the rest of the electorate: approximately 50.25%  
4 for Calvo-Tenorio, 49.03% for Gutierrez-Aguon. (See RJN.) Indeed, Plaintiffs have not alleged  
5 otherwise. Nor could they plausibly do so: when the Guam Supreme Court addressed similar  
6 allegations in 2000, it noted that in a pool of eight “illegal” voters, “three voted for Ada and five  
7 for Gutierrez.” *Ada v. Gutierrez*, 2000 Guam 22 ¶ 6. Thus, even if the Calvo-Tenorio vote count  
8 were reduced by striking certain “illegal” ballots, the Gutierrez-Aguon vote count would likewise  
9 be reduced proportionally. See also 3 GCA § 12104 (illegal votes must be deducted not only from  
10 prevailing party but also from “such other person” who ran for same office). Thus, Calvo-  
11 Tenorio’s margin of victory over Gutierrez-Aguon would effectively remain unchanged.<sup>11</sup>

12 Similarly, inasmuch as Plaintiffs are suggesting that “illegal” votes pushed Calvo-Tenorio  
13 over the 50% threshold, the complaint fails on its face. As a matter of law, the text of the Guam  
14 Election Law does not even authorize challenges on such grounds.<sup>12</sup> But even if such a challenge  
15 were permitted, Plaintiffs’ Fifth Count would fail.

16 The Calvo-Tenorio team received at least 101 votes above the 50% threshold. (See RJN.)  
17 As shown above, Plaintiffs have not even alleged that the illegal votes were cast for Calvo-Tenorio  
18 or that these votes had the effect of elevating the Calvo-Tenorio vote count above the 50%  
19 threshold. Indeed, Plaintiffs do not—and cannot—show how Calvo-Tenorio’s overall percentage  
20 of the vote would be affected by deducting any “illegal” votes, because common sense dictates that  
21 the Gutierrez-Aguon total would be reduced by at least the same number of votes. That is, there  
22 are simply no factual allegations showing that Calvo-Tenorio disproportionately benefitted from  
23 the “illegal” voting and therefore there is nothing to “nudge [Plaintiffs’] claims across the line from  
24 conceivable to plausible.” *Twombly*, 550 U.S. at 570.

25 Based on the foregoing, Plaintiffs do not show that “illegal” ballots affected the outcome.

26 ***Other Alleged Errors.*** Plaintiffs’ remaining allegations largely relate to voters who

27 <sup>11</sup> Notably, even if all 222 of the alleged “illegal” homebound votes and all 126 of the alleged “illegal” CNMI votes  
28 were for Calvo-Tenorio—a radically absurd prospect that not even Plaintiffs have alleged—the Calvo-Tenorio team  
would still be 139 votes ahead of Gutierrez-Aguon.

<sup>12</sup> Rather, the law provides that an election may be challenged based on the counting of illegal votes only if taking such  
votes away “would reduce the number of his legal votes below the number of votes given to some other person for the  
same office.” 3 GCA § 12104.

1 allegedly were, for one reason or another, prevented from voting or whose votes were excluded  
2 from the vote count. Many of these allegations relate to errors that could have been corrected  
3 before the election but were not. (See Amend. Compl. ¶ 32(b) “At least ninety-two (92) absentee  
4 ballots were mailed to voters and allegedly did not contain the gubernatorial election ballot,  
5 thereby disenfranchising those voters from the gubernatorial race.”); *id.* at ¶ 32(e) (“Seventy-three  
6 (73) homebound voters were not provided ballots per their request”). As shown above, even if  
7 true, these allegations involve directory laws, and courts do not invalidate elections because of  
8 garden-variety errors that could have been corrected by voter action before the election. See  
9 *Benavente*, 2006 Guam 16 ¶¶ 29-35.

10 Plaintiffs’ contentions regarding the handling of provisional ballots are equally unavailing.  
11 They claim that at least 22 provisional ballots should have been counted and that 18 others were  
12 wrongly excluded because the voters had voted in the wrong district. (Amend. Compl. ¶ 32(h).)  
13 Plaintiffs also argue that 12 votes were wrongly excluded from the recount. (*Id.* at ¶ 32(a)). None  
14 of these allegations have been substantiated or adequately verified. Yet, even if true, the  
15 allegations cannot save their Fifth Count from dismissal. No election is ever perfect. The  
16 inadvertent exclusion of a handful of votes happens in every election, and does not invalidate the  
17 result, unless the challenger can show that the exclusion of the ballots actually altered the outcome.  
18 See *Benavente*, 2006 Guam 16 ¶¶ 110-111. Plaintiffs have not done so here.

19 Plaintiffs also allege various discrepancies in the ballot records or errors by the vote  
20 counting machines. (Amend. Compl. ¶¶ 26-28, 32(g).) The Guam Supreme Court held in  
21 *Benavente* “that Petitioners have failed to show that the tabulation of votes and the alleged  
22 discrepancies found affected the outcome of the election.” 2006 Guam 16 ¶ 111. The same is true  
23 here: Plaintiffs have not made the required factual showing that these alleged errors had any impact  
24 on the outcome of the election. As such, the allegation cannot support the relief requested.

25 Similarly, Plaintiffs’ allegations regarding the GEC’s audit of ballots or the custody of  
26 printing plates involve, at most, directory violations that had no cognizable impact on the election  
27 outcome and certainly cannot invalidate its results. (Amend. Compl. ¶ 32(f), (i).) See  
28 *Benavente*, 2006 Guam 16 ¶¶ 88-90 (“the exclusion of poll watchers from the polling stations” was  
directory in nature and did not affect “the ascertainment of the result”).

Finally, Plaintiffs have alleged that “numerous” other individuals illegally voted and that an

1 "unknown number of ballots" were wrongly cast at the tabulation center. (Amend. Compl. ¶ 32(k),  
2 (d).) These vague, unsubstantiated allegations are completely devoid of the specific factual  
3 showing required to assert that the outcome of the election was altered and that the entire election  
4 should therefore be invalidated. See 3 GCA § 12105(d); *Ada*, 2000 Guam 22 ¶¶ 26 & 28.

5 In sum, Plaintiffs have the burden of showing that the outcome of the election was altered by  
6 errors and irregularities that have been adequately verified. They must carry this burden by  
7 alleging specific facts supported by common sense. Here, Plaintiffs have made no such showing.  
8 Accordingly, their Fifth Count, predicated on the Guam Election Law, should be dismissed.

### 9 CONCLUSION

10 For the foregoing reasons, Defendants GEC and John Blas respectfully request that all  
11 claims be dismissed with prejudice.

12 Dated this 14<sup>th</sup> day of December, 2010.

13  
14 **CABOT MANTANONA LLP**  
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By: 

**CESAR G. CABOT**