

1 Property are within the coverage and classification of the Saipan Zoning Law of 2013
2 (“SZL”) as amended. *See* FAC ¶6.

- 3 2. Sometime in 2000, Tae leased the Tae property for fifty-five years. Id. ¶7.
- 4 3. Sometime around 2000, Defendant Cataluna’s residential house on the Cataluna
5 property was built. Id. ¶8.
- 6 4. Sometime in 2015, Defendant Cataluna built a dog kennel over the existing boundary
7 line between the parties’ properties. Three to ten dogs are kept at a time in the dog
8 kennel. Id. ¶10.
- 9 5. Sometime in 2017, Defendant Cataluna built a warehouse on the Cataluna Property
10 near and within the adjoining boundary lines of the parties’ properties. That
11 warehouse is used for Defendant Five-Star Builder’s business operations. Id. ¶9.
- 12 6. Sometime in 2017, Five-Star built an extension of the residential house over a
13 mandatory setback area between the parties’ properties. Id. ¶11.
- 14 7. Sometime in 2019, Tae made additions to his two-story residential house on the Tae
15 property. Id.
- 16 8. Sometime in 2021, Tae suspected Defendant Five-Star constructed the improvements
17 over the existing boundary line.
- 18 9. Tae obtained a preliminary As-built survey on the Tae Property to determine the
19 boundary line between the Tae Property and the Cataluna Property. Id. ¶12.
- 20 10. Tae’s As-built survey showed the encroachment of the warehouse, dog kennel, and the
21 house extension built by Defendants over the existing boundary line and onto the Tae
22 Property. Id. ¶13.
- 23 11. Sometime in 2021, Defendant Cataluna reviewed and confirmed the encroachment of
24 the buildings over the boundary as shown in the As-built survey. Defendant Cataluna
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1 promised to remove the encroaching portions of the encroaching structures, i.e., his
2 warehouse, the house extension, and the dog kennel. Id. ¶14.

3 12. Defendants have not removed the encroaching structures. Id. ¶15.

4 **III. PROCEDURAL HISTORY**

5 1. On November 3, 2023, Tae filed a First Amended Complaint asserting that the Tae
6 property and the Cataluna property are required by the Zoning Districts map of the
7 SZL to adhere to the zoning setbacks concerning the existing boundary line shown on
8 the as-built survey. Defendant Five-Star built the extension building, dog kennel, and
9 warehouse that encroach over the boundary line across Tae’s property. Defendants did
10 not adhere to the zoning setbacks and encroached on Tae’s property for a total area of
11 155.62 square meters. Tae further asserts that the encroaching structures invade Tae’s
12 right to exclude Defendant Cataluna from his property and constitute an unlawful
13 trespass. The trespass is willful, wrongful, and without Tae’s consent. Lastly, Tae
14 asserts that he has continually suffered and endured the dogs’ noise and smell. The
15 smell, the unsanitary conditions of the kennel, and the barking have affected Tae’s
16 health and well-being. Tae has suffered substantial harm physically and, in his use,
17 and enjoyment of his property.

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20 2. On November 30, 2023, Defendants filed a Motion to Dismiss the First Amended
21 Complaint For Failure to State a Claim noting that there is no actual survey of the
22 respective lots recorded with the Commonwealth Recorder. The As-built survey that
23 Tae relies on is an unofficial survey and the “Existing Boundary Line” that Tae refers
24 to is the actual boundary line. Specifically, Defendants assert that the six-year statute
25 of limitations prevents Tae’s claims. Tae knew of the dog kennel since 2015 and the
26 alleged encroaching structures since 2017. Tae filed this lawsuit on May 15, 2023,
eight years since 2015, and six years since 2017. Defendants assert there is no private

1 right of action in the SZL or the regulations to enforce setback rules. Since there is no
2 private right of action, Tae cannot rely on the setback rules, which means there is no
3 possible encroachment or trespass. Defendants argue Tae has failed to show a
4 cognizable boundary dispute because the existing boundary line is the actual boundary
5 line. Based on an official survey recorded in the Commonwealth Recorder's office,
6 there is no actual encroachment of the structures. Tae claims there is an encroachment
7 on the land, not above the land, so Tae cannot state a nuisance claim. Additionally,
8 Defendants state that the nuisance claim is too vague. The facts in the FAC do not fit
9 into either a public or private nuisance, nor do the facts specify a substantial or
10 unreasonable effect on the use and enjoyment of Tae's land. Lastly, Tae did not allege
11 anything about Five-Star in connection to the dogs other than Five-Star built the dog
12 kennel.
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- 14 3. On January 4, 2024, Tae filed an Opposition to Defendants' Motion to Dismiss arguing
15 that he clearly stated a claim for encroachment over the actual boundary line, trespass
16 due to the encroaching structures, and nuisance due to the dogs. Tae again asserts that
17 various case laws have shown zoning restrictions do create a private cause of action
18 "when the restrictions have been violated to the detriment of neighboring landowners."
19 Tae argues the CNMI statute of limitations does not preclude his claims and causes of
20 action because the encroachment and trespass claims are "subject to the twenty-year
21 statute of limitations under 7 CMC§ 2502." Lastly, Tae argues the nuisance has been
22 continuous and ongoing since 2017 and did not cease six years ago.
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- 24 4. On February 2, 2024, Defendants filed a Reply to Plaintiff's Opposition arguing that
25 Tae has failed to allege a cognizable legal theory of liability against Defendant Five-
26 Star. Defendants disagree with Tae's statute of limitations assertion because Tae is
not bringing an action for recovery of land or interest but suing in tort. Tae fails to

1 state a claim for encroachment or trespass because the CNMI does not “recognize a
2 private cause of action against an adjoining landowner for violation of setback
3 regulations.” There is no actual survey recorded with the Commonwealth Recorder’s
4 office to rely on.

5 5. On June 26, 2024, the Court Ordered the parties to submit a supplemental brief
6 discussing the relevancy of Article 14 §§ 1410, 1412 of SZL, and 2 CMC § 7254(d)
7 of the Zoning Code.

8 6. Article 14 §1410 titled Court Actions explains the procedure for when there is a
9 violation:

10 (a) In the case of a violation, the Board, the Administrator, or **any person who**
11 **would be damaged by such violation may institute appropriate court action**
12 for damages or for injunctive relief, including an order that would cause a
structure or use to be suspended, permanently stopped, vacated or removed.

13 Article 14 §1410 of Saipan Zoning Law of 2013 (emphasis added).

14 7. Section 1412 titled Private Right of Action refers to Zoning Code 2 CMC § 7201 in
15 which §7254(d):

16 (1) Notwithstanding any other remedies available, any person damaged or
17 aggrieved as a result of a violation of this chapter **has a cause of action against**
18 **the landowner or lessee who committed the violation.** An award shall include
damages and the costs of litigation including reasonable attorney’s fees.

19 (2) Any person who is aware of a violation of this chapter may bring an action
20 in an appropriate court of the Commonwealth to secure compliance with this
21 chapter. However, **such action shall not be brought until the complaining**
22 **person has first given written notice of the violation to the Zoning Board,**
and the Zoning Board has refused to take action on the written notice of
violation.

23 Title 2 CMC §7254(d)(1)(2) (emphasis added).

24 8. Tae’s Opening Supplemental Brief was due on or before August 2, 2024. Defendants’
25 Opposition to the Opening Supplemental Brief was due on or before August 30, 2024.
26 Tae’s Reply to Defendant’s Opposition to the Supplemental Brief was due on or before

1 September 13, 2024. Defendants' Sur-Reply to the Supplemental Brief was due on or
2 before September 27, 2024.

3 9. Tae did not file his Opening Supplemental Brief.

4 10. On August 30, 2024, Defendants filed their Opposition Supplemental Brief of Saipan
5 Zoning Law and Zoning Code arguing that by Tae failing to file his opening
6 supplemental brief, Tae waived entitlement to rely on sections of the SZL and the
7 Zoning Code. Defendants argue there are two conditions precedent in 2 CMC
8 §7254(d)(2) before Tae could resort to court action, and Tae failed to meet those
9 conditions.
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11 11. Furthermore, Tae did not file his Reply to Defendants' Opposition to the Supplemental
12 Brief.

13 12. There are no filings by Tae that he has given a written notice of a violation to the
14 Zoning Board.

15 **IV. LEGAL STANDARD**

16 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
17 relief can be granted." NMI R. CIV. P. 12(b)(6). A Rule 12(b)(6) motion assesses the legal
18 sufficiency of the claims presented in a complaint. *See Camacho v. Micronesian Dev. Co.*,
19 2008 MP 8 ¶ 10.
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21 **V. DISCUSSION**

22 Tae has brought forward allegations of encroachment, trespass, and nuisance as
23 violations of the SZL, specifically, the setback requirements stated in Section 604. Table one
24 of the Residential Lot Requirements requires the Side Yard of a Mixed Commercial residential
25 lot to observe a five-foot clearance from the side boundary line, and the Rear Yard of a Mixed
26 Commercial Residential lot to observe a fifteen-foot clearance from the rear boundary line.
See Amended FAC ¶18; See also Article 6 §604 of the SZL.

1 Tae argues that the dog kennel, warehouse, and extension building constructed by
2 Defendant Five-Star encroach upon and trespass over the existing boundary line and the
3 setback area by 155.62 square meters. *See* FAC ¶26. Tae also argues that the dog kennel,
4 which encroaches past the setback allowance, creates a nuisance due to the barking and odor
5 of excrement. *See* Amended FAC ¶¶43-47. Defendants had previously argued that Tae did not
6 have a private right of action. *See* Mot. to Dismiss at 8. However, a private right of action is
7 mentioned in Article 14 §1412 of the SZL titled Remedies by Private Action. Section 1412
8 does not elaborate, but instead cites the Zoning Code in Title 2, Division 7 of the
9 Commonwealth Code. Section 1411 titled Criminal and Civil Penalties specifically cites 2
10 CMC § 7254¹:

12 Any person who is aware of a violation of this chapter may bring an action in
13 an appropriate court of the Commonwealth to secure compliance with this
14 chapter. However, **such action shall not be brought until the complaining
15 person has first given written notice of the violation to the Zoning Board,**
and the Zoning Board has refused to take action on the written notice of
violation.

16 Title 2 CMC §7254(d)(2) (emphasis added). This requirement is analogous to the presentment
17 requirement in 7 CMC § 2202, which states that claims against the Commonwealth must be
18 presented to the Attorney General in writing. “If the Attorney General does not render a final
19 disposition within the 90-day period, the claim is effectively denied.” *Foster v.*
20 *Commonwealth*, 2019 MP 3 ¶ 17. “Once a final disposition is made, whether by action or
21 inaction, the statute clearly contemplates the trial court as the next stage for any dissatisfied
22 claimant.” *See Id.*

24 The SZL states that anyone damaged by a violation “may institute appropriate court
25 action.” *See* Article 14 §1410 of SZL. However, to pursue a private right of action an
26 individual must first notify the Zoning Board in writing regarding the violation. The SZL

¹ Title 2 CMC § 7254(d) is titled Private Action.

1 referenced the Zoning Code for this purpose, as the two operate in tandem. “The Zoning Code
2 provided the framework upon, which to build a suitable zoning framework, taking into
3 account the unique political and legislative framework of the islands.” *Eagle-Oden v. Qian*,
4 Civil Case No. 16-0106 (NMI Super. Ct. Feb. 23, 2018) (Order Denying Defendants’ Motion
5 to Dismiss at 8). SZL was developed as a local law to cover Saipan. *See Id.* “[A] violation of
6 the SZL is actually a violation of the Zoning Code because they are part of the same legislative
7 scheme.” *See Id.* at 9.

8
9 It is necessary to review section 1410 of SZL in conjunction with the subsequent
10 sections that contain citations to the Zoning Code². Section 1410 of SZL states that legal action
11 may be pursued in cases of violations; however, compliance with 2 CMC §7254(d)(2) is
12 required as the initial step. “Exhaustion of administrative remedies is a judicially-created
13 doctrine requiring that challengers of agency actions and decisions exhaust all administrative
14 remedies before seeking judicial review.” *Marianas Ins. Co. v. Commonwealth Ports Auth.*,
15 2007 MP 24 ¶ 12 (citing *Myers v. Bethlehem Shipbuilding*, 303 U.S. 41, 50-51 (1939)). All
16 three claims brought by Tae are based on the purported violation of the SZL. Defendants now
17 argue that Tae cannot avail of the private right of action in 2 CMC §7254(d) because Tae did
18 not provide written notice to the Zoning Board. *See Defendants’ Supplemental Brief* at 3. Tae
19 has not submitted any documentation indicating he sent a written notice of a violation to the
20 Zoning Board and the Zoning Board refused to take action. In cases where an administrative
21 agency provides relief, claimants are generally required to exhaust that option before initiating
22 litigation. *See Marianas Ins. Co. v. Commonwealth Ports Auth.*, ¶ 12 (citing *Reiter v. Cooper*,
23 507 U.S. 258, 269 (1993)). “Until that recourse is exhausted, a lawsuit is premature and must
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² The public can find Saipan Zoning Law of 2013 on cnmilaw.org by scrolling to the bottom and clicking on local laws under the Legislature tab. On the new page, you will find three drop-down options. Please select “Saipan” and then choose the 18th Legislature. Once on that page, scroll down to locate SLL 18-04 and access the PDF version. The information can be accessed as of September 27, 2024.

1 be dismissed.” *See Id.* Tae did not comply with 2 CMC §7254(d)(2) and failed to take the
2 required initial step of filing a notice of violation to the Zoning Board, instead Tae proceeded
3 to directly filing a complaint in the Superior Court.

4 The Court finds that this lawsuit is premature as Tae has not exhausted the available
5 administrative remedy in 2 CMC §7254(d)(2), before filing this lawsuit for encroachment,
6 trespass, and nuisance.

7 VI. CONCLUSION

8 While Article 14 §1412 of the Saipan Zoning Law titled Remedies by Private Action
9 provides a right of private action for someone reporting a violation of the Saipan Zoning Law,
10 Title 2 CMC §7254(d)(2) of the CNMI Code requires that person to give the Zoning Board
11 written notice of the violation and await the Zoning Board’s response. Plaintiff Su Ung Tae
12 filed a lawsuit in the CNMI Superior Court for encroachment, trespass, and nuisance in
13 violation of the Saipan Zoning Law. However, Plaintiff Su Ung Tae failed to exhaust the
14 administrative remedy as required by Article 14 §1412 of the Saipan Zoning Law and Title 2
15 CMC §7254(d)(2) of the CNMI Code. **THEREFORE**, the Defendants Freddy Cataluna and
16 Five-Star Builders’ Motion to Dismiss is **GRANTED**.
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19 **SO ORDERED** this 27th day of September, 2024.
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22 /s/
JOSEPH N. CAMACHO, Associate Judge
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