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CH. 36 FALSE CLAIMS AND WHISTLEBLOWER ACT

CHAPTER 37
FALSE CLAIMS AND WHISTLEBLOWER ACT

SOURCE: Entire Chapter added by P.L. 34-116:XII:20 (Aug. 24, 2018).

COMMENT: Various provisions of this chapter refer to the “Unified Judiciary of Guam” in relation to jurisdiction over cases brought under this chapter. However, for clarification purposes, 7 GCA § 2101(a) states that “The Courts of justice of Guam shall consist of the Supreme Court of Guam and the Superior Court of Guam.” Further, 7 GCA § 4101(a) specifically states:

(a) The Superior Court of Guam is a court of general jurisdiction in Guam, having original jurisdiction as prescribed by this Title and in other laws of Guam which are not within the exclusive jurisdiction of the Supreme Court of Guam or the District Court of Guam.

As a practical matter, it is not explicitly clear whether “jurisdiction over such matters cited in this Chapter” lies with the Superior Court or the Supreme Court.

- Article 1. False Claims and Whistleblowing.
- Article 2. Civil Actions for False Claims and Whistleblowing.
- Article 3. False Claims and Whistleblowing Procedure.
- Article 4. Civil Investigative Demands.

ARTICLE 1
FALSE CLAIMS AND WHISTLEBLOWING

- § 37101. Definitions.
- § 37102. Liability for Certain Acts.
- § 37103. Whistleblower Awards to Individuals Who Report Underpayments of Taxes Levied Under the Laws of Guam.
- § 37104. Exemption from Disclosure.
- § 37105. Severability.

§ 37101. Definitions.

As used in this Chapter, unless the context in which they are used requires a different meaning, or unless a different definition is prescribed for a particular provision:

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(a) the term ‘claim’

(1) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the government of Guam has title to the money or property, that:

(A) is presented to an officer, employee, or agent of the government of Guam; or

(B) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the government of Guam’s behalf or to advance a government of Guam program or interest, and if the government of Guam:

(i) provides or has provided any portion of the money or property requested or demanded; or

(ii) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(2) does not include requests or demands for money or property that the government of Guam has paid to an individual as compensation for employment or as an income subsidy with no restrictions on that individual’s use of the money or property;

(b) the terms ‘knowing’ and ‘knowingly’

(1) mean that a person, with respect to information:

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information; and

(2) require no proof of specific intent to defraud;

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(c) the term ‘material’ means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property; and

(d) the term ‘obligation’ means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

§ 37102. Liability for Certain Acts.

(a) Subject to Subsection (b) of this Section, any person who:

(1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(3) conspires to commit a violation of items (1), (2), (4), (5), (6), or (7);

(4) has possession, custody, or control of property or money used, or to be used, by the government of Guam and knowingly delivers, or causes to be delivered, less than all of that money or property;

(5) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the government of Guam and, intending to defraud the government of Guam, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the government of Guam, who lawfully may not sell or pledge property; or

(7) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to

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pay or transmit money or property to the government of Guam, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government of Guam, is liable to the government of Guam for a civil penalty of not less than Five Thousand Dollars (\$5,000) and not more than Ten Thousand Dollars (\$10,000), plus three (3) times the amount of damages which the government of Guam sustains because of the act of that person.

(b) Reduced Damages. If the court finds that:

(1) the person committing the violation of this Section furnished officials of Guam responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;

(2) such person fully cooperated with any government of Guam investigation of such violation; and

(3) at the time such person furnished the government of Guam with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than two (2) times the amount of damages which the government sustains because of the act of that person.

(c) Costs of Civil Actions. A person violating this Chapter shall also be liable to the government of Guam for the costs of a civil action brought to recover any such penalty or damages.

(d) Jurisdiction. The Unified Judiciary of Guam shall have jurisdiction over such matters cited in this Chapter.

§ 37103. Whistleblower Awards to Individuals Who Report Underpayments of Taxes Levied Under the Laws of Guam.

(a) The Director of Revenue and Taxation, under regulations prescribed by the Director, is authorized to pay, from the monies appropriated to the Department of Revenue and

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Taxation in any fiscal year, such sums as he deems necessary for:

(1) detecting underpayments of tax levied under the laws enacted in Guam, or

(2) detecting and bringing to trial and punishment persons guilty of violating the tax laws enacted in Guam or conniving at the same, in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts collected by reason of the information provided, and any amount so collected shall be available for such payments.

(b) Awards to Whistleblowers.

(1) If the Director proceeds with any administrative or judicial action described in Subsection (a) based on information brought to the Director's attention by an individual, such individual shall, subject to Paragraph (2), receive as an award at least fifteen percent (15%), but not more than thirty percent (30%), of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Tax Enforcement Division of the Department of Revenue and Taxation shall depend upon the extent to which the individual substantially contributed to such action within the ranges as prescribed in this Section.

(2) Award in Case of Less Substantial Contribution.

(A) In the event the action described in Paragraph (1) is one which the Tax Enforcement Division determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in Paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Tax Enforcement Division may award such sums as it considers appropriate, but

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in no case more than ten percent (10%) of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual's information and the role of such individual and any legal representative of such individual in contributing to such action.

(B) Nonapplication of Paragraph Where Individual is Original Source of Information. Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in Paragraph (1) was originally provided by the individual described in Paragraph (1).

(3) Reduction in or Denial of Award. If the Tax Enforcement Division determines that the claim for an award under Paragraph (1) or (2) is brought by an individual who planned and initiated the actions that led to the underpayment of tax or actions described in Subsection (a)(2), then the Tax Enforcement Division may appropriately reduce such award. If such individual is convicted of criminal conduct arising from the role described in the preceding sentence, the Tax Enforcement Division shall deny any award.

(4) Appeal of Award Determination. Any determination regarding an award under Paragraph (1), (2), or (3) may, within thirty (30) days of such determination, be appealed to the Unified Judiciary of Guam (and the Unified Judiciary of Guam shall have jurisdiction with respect to such matter).

(5) Application of this Subsection. This Subsection shall apply with respect to any action:

(A) against any taxpayer, but in the case of any individual, only if such individual's gross income exceeds Two Hundred Thousand Dollars (\$200,000) for any taxable year subject to such action, and

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(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed Two Million Dollars (\$2,000,000).

(6) Additional rules.

(A) No Contract Necessary. No contract with the Department of Revenue and Taxation is necessary for any individual to receive an award under this Subsection.

(B) Representation. Any individual described in Paragraph (1) or (2) may be represented by counsel.

(C) Submission of Information. No award may be made under this Subsection based on information submitted to the Director unless such information is submitted under penalty of perjury.

(7) If the government of Guam elects not to proceed with the action pursuant to § 37203(c) of this Chapter, the Tax Enforcement Division shall award not less than thirty percent (30%) of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

§ 37104. Exemption from Disclosure.

Any information furnished pursuant to §§ 37102(b) and 37103 shall be exempt from disclosure under Chapter 10 of Title 5, Guam Code Annotated.

§ 37105. Severability.

If any provision of this Chapter or its application to any person or circumstance is found to be invalid, or contrary to law, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without such invalid

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provision or application, and to this end the provisions of this Chapter are severable.

ARTICLE 2
CIVIL ACTIONS FOR FALSE CLAIMS
AND WHISTLEBLOWING

- § 37201. Responsibilities of the Attorney General.
- § 37202. Actions by Private Persons.
- § 37203. Right of the Parties to Qui Tam Actions.
- § 37204. Award to Qui Tam Plaintiff.
- § 37205. Certain Actions Barred.
- § 37206. Government of Guam Not Liable for Certain Expenses.
- § 37207. Fees and Expenses to Prevailing Defendant.
- § 37208. Relief from Retaliatory Actions

§ 37201. Responsibilities of the Attorney General.

The Attorney General shall diligently investigate a violation under §§ 37102 and 37103. If the Attorney General finds that a person has violated or is violating §§ 37102 or 37103, the Attorney General may bring a civil action under this Section against the person.

§ 37202. Actions by Private Persons.

(a) A person may bring a civil action for a violation of §§ 37102 and 37103 for the person and for the government of Guam.

(1) The action shall be brought in the name of the government.

(2) The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the government of Guam, to include

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the Attorney General's Office and the Tax Commissioner, for violations of § 37103.

(1) The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders.

(2) The government of Guam may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(c) (1) The government of Guam may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under Subsection (b). Any such motions may be supported by affidavits or other submissions in camera.

(2) The defendant shall not be required to respond to any complaint filed under this Section until twenty (20) days after the complaint is unsealed and served upon the defendant.

(d) Before the expiration of the sixty (60)-day period or any extensions obtained under Subsection (b), the government of Guam shall:

(1) proceed with the action, in which case the action shall be conducted by the government of Guam; or

(2) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(e) When a person brings an action under this Subsection, no person other than the government of Guam may intervene or bring a related action based on the facts underlying the pending action.

§ 37203. Right of the Parties to Qui Tam Actions.

(a) If the government of Guam proceeds with the action, it shall have the primary responsibility for prosecuting the action, shall not be bound by an act of the person who had brought the action, and any such private party shall withdraw from such

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action, while receiving compensation as provided under this Chapter for any contributions made prior to withdrawal from such action.

(b) (1) The government of Guam may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the government of Guam of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(2) The government of Guam may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera. If any such settlement is achieved, the person initiating the action shall have the same rights in such proceedings as such person would have had pursuant to § 37103 if the action had continued.

(c) If the government of Guam elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action.

(1) If the government of Guam so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the government of Guam's expense).

(2) When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, shall not permit the government of Guam to intervene at a later date.

(d) Whether or not the government of Guam proceeds with the action, upon a showing by the government of Guam that certain actions of discovery by the person initiating the action would interfere with the government of Guam's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty (60)-day period upon a

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further showing in camera that the government of Guam has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(e) Notwithstanding § 37202, the government of Guam may elect to pursue its claim through any alternate remedy available to the government of Guam, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this Section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this Section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of Guam, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

§ 37204. Award to Qui Tam Plaintiff.

(a) Except as otherwise provided under § 37103, if the government of Guam proceeds with an action brought by a person under § 37202, such person shall, subject to the second sentence of this Subsection, receive at least fifteen percent (15%), but not more than twenty-five percent (25%), of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or government of Guam report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person

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bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this Subsection shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(b) If the government of Guam does not proceed with an action under this Section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages.

(1) The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of such proceeds.

(2) Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(c) Whether or not the government of Guam proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 37102 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under Subsection (a) or (b), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of § 37102, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the government of Guam to continue the action, represented by the Attorney General.

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(d) If the government of Guam does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Whether or not the government of Guam proceeds with an action under § 37203(a), all civil penalties and fines awarded by the court, in excess of the amount awarded by the court as provided in this Chapter to any private individual(s) who bring a private enforcement action under this law, shall be remitted to the Department of Revenue and Taxation for remittance to the respective general fund or special fund to which such proceeds would be credited less any actual expenses incurred by the Office of the Attorney General pursuant to the investigation or arising from such action, which shall be transferred to the Office of the Attorney General.

§ 37205. Certain Actions Barred.

(a) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under § 37202 against a member of the armed forces arising out of such person's service in the armed forces.

(b) In no event may a person bring an action under § 37202 which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the government of Guam is already a party.

§ 37206. Government of Guam Not Liable for Certain Expenses.

The government of Guam is not liable for expenses which a person incurs in bringing an action under this Article.

§ 37207. Fees and Expenses to Prevailing Defendant.

Only in civil actions brought under this Article by the government of Guam, the following shall apply:

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(a) (1) A court shall award to a prevailing party other than the government of Guam fees and other expenses, in addition to any costs awarded, incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the government of Guam in the Unified Judiciary of Guam, unless the court finds that the position of the government of Guam was substantially justified or that special circumstances make an award unjust.

(2) A party seeking an award of fees and other expenses shall, within thirty (30) days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this Section, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the government of Guam was not substantially justified. Whether or not the position of the government of Guam was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(3) The court, in its discretion, may reduce the amount to be awarded pursuant to this Subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(4) If, in a civil action brought by the government of Guam under this Article, the demand by the government of Guam is substantially in excess of the judgment finally obtained by the government of Guam and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party

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the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this Subparagraph shall be paid only as a consequence of appropriations provided in advance.

(b) For the purposes of this Section:

(1) ‘fees and other expenses’ includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case, and reasonable attorney fees (the amount of fees awarded under this Subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the Government of Guam);

(2) ‘government of Guam’ includes any agency and any official of the government of Guam acting in his or her official capacity;

(3) ‘position of the government of Guam’ means, in addition to the position taken by the government of Guam in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings; and

(4) ‘final judgment’ means a judgment that is final and not appealable, and includes an order of settlement.

(c) Fees and other expenses awarded under this Subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

§ 37208. Relief from Retaliatory Actions.

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(a) In General. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop one (1) or more violations of this Chapter.

(b) Relief. Relief under Subsection (a) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this Subsection may be brought in the Unified Judiciary of Guam for the relief provided in this Subsection.

(c) Limitation on Bringing Civil Action. A civil action under this Subsection may not be brought more than three (3) years after the date when the retaliation occurred.

ARTICLE 3
FALSE CLAIMS AND WHISTLEBLOWING PROCEDURE

- § 37301. Statute of Limitations for Civil Actions.
- § 37302. Clarification or Addition of Detail to Claims in Which the Government of Guam Intervenes.
- § 37303. Government to Prove Elements of the Cause of Action.

§ 37301. Statute of Limitations for Civil Actions.

A civil action under Article 2 may not be brought more than ten (10) years after the date on which the violation is committed.

§ 37302. Clarification or Addition of Detail to Claims in Which the Government of Guam Intervenes.

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If the government of Guam elects to intervene and proceed with an action brought under § 37202, the government of Guam may file its own complaint or amend the complaint of a person who has brought an action under § 37202 to clarify or add detail to the claims in which the government of Guam is intervening and to add any additional claims with respect to which the government contends it is entitled to relief. For statute of limitations purposes, any such government of Guam pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the government of Guam arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

§ 37303. Government to Prove Elements of the Cause of Action.

(a) In any action brought under Article 2, the government of Guam shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(b) Notwithstanding any other provision of law, a final judgment rendered in favor of the government of Guam in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under §§ 37201 or 37202.

ARTICLE 4
CIVIL INVESTIGATIVE DEMANDS

- § 37401. In General.
- § 37402. Protected Material of Information.
- § 37403. Service; Jurisdiction.
- § 37404. Service Upon Legal Entities and Natural Persons.
- § 37405. Proof of Service.

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- § 37406. Documentary Material.
- § 37407. Interrogatories.
- § 37408. Oral Examinations.
- § 37409. Custodians of Documents, Answers, and Transcripts.
- § 37410. Judicial Proceedings.
- § 37411. Disclosure Exemption.
- § 37412. Definitions.

§ 37401. In General.

(a) Issuance and Service.

(1) Whenever the Attorney General, or a designee (for purposes of this Section), has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under § 37201 or other false claims law, or making an election under § 37202, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person:

(A) to produce such documentary material for inspection and copying;

(B) to answer in writing written interrogatories with respect to such documentary material or information;

(C) to give oral testimony concerning such documentary material or information; or

(D) to furnish any combination of such material, answers, or testimony.

(2) The Attorney General may delegate the authority to issue civil investigative demands under this Subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this Section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the

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person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this Section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.

(b) Contents and Deadlines.

(1) Each civil investigative demand issued under Subsection (a) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

(2) If such demand is for the production of documentary material, the demand shall:

(A) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(C) identify the false claims law investigator to whom such material shall be made available.

(3) If such demand is for answers to written interrogatories, the demand shall:

(A) set forth with specificity the written interrogatories to be answered;

(B) prescribe dates at which time answers to written interrogatories shall be submitted; and

(C) identify the false claims law investigator to whom such answers shall be submitted.

(4) If such demand is for the giving of oral testimony, the demand shall:

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(A) prescribe a date, time, and place at which oral testimony shall be commenced;

(B) identify a false claims law investigator who shall conduct the examination, and the custodian to whom the transcript of such examination shall be submitted;

(C) specify that such attendance and testimony are necessary to the conduct of the investigation;

(D) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(E) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(5) Any civil investigative demand issued under this Section which is an express demand for any product of discovery shall not be returned or returnable until twenty (20) days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(6) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this Section shall be a date which is not less than seven (7) days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(7) The Attorney General shall not authorize the issuance under this Section of more than one (1) civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

§ 37402. Protected Material of Information.

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(a) In General. A civil investigative demand issued under § 37401 may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(1) the standards applicable to subpoenas or subpoenas *duces tecum* issued by a court of the Unified Judiciary of Guam to aid in a grand jury investigation; or

(2) the standards applicable to discovery requests under Guam law, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this Article.

(b) Effect on Other Orders, Rules, and Laws. Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this Section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

§ 37403. Service; Jurisdiction.

Any civil investigative demand issued under § 37401 may be served by a false claims law investigator, or by a law enforcement officer of the government of Guam, at any place within the territorial jurisdiction of the Unified Judiciary of Guam.

§ 37404. Service Upon Legal Entities and Natural Persons.

(a) Legal Entities. Service of any civil investigative demand issued under § 37401 or of any petition filed under § 37410 may be made upon a partnership, corporation, association, or other legal entity by:

(1) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association,

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or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(2) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(3) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(b) Natural Persons. Service of any such demand or petition may be made upon any natural person by:

(1) delivering an executed copy of such demand or petition to the person; or

(2) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

§ 37405. Proof of Service.

A verified return by the individual serving any civil investigative demand issued under § 37401 or any petition filed under § 37410 setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

§ 37406. Documentary Material.

(a) Sworn Certificates.

(1) The production of documentary material in response to a civil investigative demand served under this Section shall be made under a sworn certificate, in such form as the demand designates, by:

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(A) in the case of a natural person, the person to whom the demand is directed; or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

(2) The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(b) Production of Materials. Any person upon whom any civil investigative demand for the production of documentary material has been served under this Section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under § 37410(a). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

§ 37407. Interrogatories.

(a) Each interrogatory in a civil investigative demand served under this Section shall be answered separately and fully in writing under oath, and shall be submitted under a sworn certificate, in such form as the demand designates, by:

(1) in the case of a natural person, the person to whom the demand is directed; or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

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(b) If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

§ 37408. Oral Examinations.

(a) Procedures. The examination of any person pursuant to a civil investigative demand for oral testimony served under this Section shall be taken before an officer authorized to administer oaths and affirmations by the laws of Guam.

(1) The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness.

(2) The testimony shall be taken stenographically and shall be transcribed.

(3) When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

This Subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the laws of Guam.

(b) Persons Present. The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the government, any person who may be agreed upon by the attorney for the government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

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(c) Transcript of Testimony. When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty (30) days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(d) Certification and Delivery to Custodian. The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(e) Furnishing or Inspection of Transcript by Witness. Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(f) Conduct of Oral Testimony.

(1) Any person compelled to appear for oral testimony under a civil investigative demand issued under § 37401 may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in

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whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the Unified Judiciary of Guam under § 37410(a) for an order compelling such person to answer such question.

(2) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled, in a manner consistent with Guam law.

(g) Witness Fees and Allowances. Any person appearing for oral testimony under a civil investigative demand issued under § 37401 shall be entitled to the same fees and allowances which are paid to witnesses in the Unified Judiciary of Guam.

§ 37409. Custodians of Documents, Answers, and Transcripts.

(a) Designation. The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this Section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

(b) Responsibility for Materials; Disclosure.

(1) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this Section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under Subsection (d).

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(2) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Office of the Attorney General. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this Section.

(3) Except as otherwise provided in this Subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Office of the Attorney General authorized under Item (2). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this Subparagraph is intended to prevent disclosure to *I Liheslaturan Guåhan*, including any committee or subcommittee of *I Liheslaturan Guåhan*, or to any other agency of the government of Guam for use by such agency in furtherance of its statutory responsibilities.

(4) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe:

(A) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(B) transcripts of oral testimony shall be available for examination by the person who produced such

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testimony, or by a representative of that person authorized by that person to examine such transcripts.

(c) Use of Material, Answers, or Transcripts in Other Proceedings. Whenever any attorney of the Office of the Attorney General has been designated to appear before any court, grand jury, or agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this Section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

(d) Conditions for Return of Material. If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this Section, and

(1) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any federal agency involving such material, has been completed, or

(2) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under § 37408(b) or made for the Office of the Attorney General under Subsection (b)(2) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(e) Appointment of Successor Custodians.

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(1) In the event of the death, disability, or separation from service in the Office of the Attorney General of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this Section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly:

(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts; and

(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

(2) Any person who is designated to be a successor under this Paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this Section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

§ 37410. Judicial Proceedings.

(a) Petition for Enforcement. Whenever any person fails to comply with any civil investigative demand issued under § 37401, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the Unified Judiciary of Guam, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(b) Petition to Modify or Set Aside Demand.

(1) Any person who has received a civil investigative demand issued under § 37401 may file, in the Unified Judiciary of Guam, is found, or transacts business, and serve

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upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the Unified Judiciary of Guam. Any petition under this item must be filed:

(A) within twenty (20) days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(B) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(2) The petition shall specify each ground upon which the petitioner relies in seeking relief under Item (1), and may be based upon any failure of the demand to comply with the provisions of this Section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(c) Petition to Modify or Set Aside Demand for Product of Discovery.

(1) In the case of any civil investigative demand issued under § 37401, which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the Unified Judiciary of Guam, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this Subparagraph must be filed:

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(A) within twenty (20) days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(B) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(2) The petition shall specify each ground upon which the petitioner relies in seeking relief under Item (1), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this Section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(d) Petition to Require Performance by Custodian of Duties. At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under § 37401, such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the Unified Judiciary of Guam, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this Section.

(e) Jurisdiction. Whenever any petition is filed in the Unified Judiciary of Guam under this Section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this Section. Any final order so entered shall be subject to appeal to the Supreme Court of Guam. Any disobedience of any final order entered under this Section by any court shall be punished as a contempt of the court.

(f) Applicability of Federal Rules of Civil Procedure. The Guam Rules of Civil Procedure shall apply to any petition under

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this Subsection, to the extent that such rules are not inconsistent with the provisions of this Section.

§ 37411. Disclosure Exemption.

Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under § 37401 shall be exempt from disclosure under Chapter 10 of Title 5, Guam Code Annotated.

§ 37412. Definitions.

For purposes of this Article:

(a) the term ‘false claims law’ means this Chapter;

(b) the term ‘false claims law investigation’ means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of the false claims law;

(c) the term ‘false claims law investigator’ means any attorney or investigator employed by the Office of the Attorney General who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the government of Guam acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(d) the term ‘person’ means any natural person, partnership, corporation, association, or other legal entity, including any state or political subdivision of a state;

(e) the term ‘documentary material’ includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

(f) the term ‘custodian’ means the custodian, or any deputy custodian, designated by the Attorney General under § 37409(a);

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(g) the term ‘product of discovery’ includes:

(1) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(2) any digest, analysis, selection, compilation, or derivation of any item listed in Item (1); and

(3) any index or other manner of access to any item listed in Item (1); and

(h) the term ‘official use’ means

(1) any use that is consistent with the law, and the regulations and policies of the Office of the Attorney General, including use in connection with internal Office of the Attorney General memoranda and reports;

(2) communications between the Office of the Attorney General and a government of Guam agency, or a contractor of a government of Guam agency, undertaken in furtherance of an Office of the Attorney General investigation or prosecution of a case;

(3) interviews of any qui tam relator or other witness;

(4) oral examinations;

(5) depositions;

(6) preparation for and response to civil discovery requests;

(7) introduction into the record of a case or proceeding;

(8) applications, motions, memoranda and briefs submitted to a court or other tribunal; and

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(9) communications with government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.

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