

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

VANESSA E. CARBONELL;
ROBERTO A. WHATTS OSORIO;
ELBA Y. COLÓN NERY;
BILLY NIEVES HERNÁNDEZ;
NÉLIDA ÁLVAREZ FEBUS;
LINDA DUMONT GUZMÁN;
SANDRA QUIÑONES PINTO;
YOMARYS ORTIZ GONZÁLEZ;
CARMEN BERLINGERI PABÓN;
MERAB ORTIZ RIVERA;
JANET CRUZ BERRIOS,
individually and as representatives of the
requested class,

Plaintiffs,

v.

ANTONIO LÓPEZ FIGUEROA, in his
personal capacity and in his official capacity as
Commissioner of the Puerto Rico Police
Bureau;
JOJANIE MULERO ANDINO, in her
personal capacity and in in her official capacity
as Human Resources Director of the Puerto
Rico Police Bureau;
**UNION OF ORGANIZED CIVILIAN
EMPLOYEES,**

Defendants.

CIVIL NO. 22-1236 (WGY)

**AMENDED CLASS ACTION
COMPLAINT**

**Constitutional Violation Action (42 U.S.C.
§ 1983), Declaratory Judgment, Injunctive
Relief, Compensatory, Nominal, and
Punitive Damages. Jury Trial Demanded.**

AMENDED CLASS ACTION COMPLAINT

TO THE HONORABLE COURT:

Plaintiffs Vanessa E. Carbonell (“Carbonell”), Roberto A. Whatts Osorio (“Whatts”), Elba Y. Colón Nery (“Colón”), Billy Nieves Hernández (“Nieves”), Nélide Álvarez Febus (“Álvarez”), Linda Dumont Guzmán (“Dumont”), Sandra Quiñones Pinto (“Quiñones”), Yomarys Ortiz González (“Ortiz”), Carmen Berlingeri Pabón (“Berlingeri”), Merab Ortiz Rivera (“Ortiz Rivera”),

and Janet Cruz Berrios (“Cruz”) (collectively, “Plaintiffs”) hereby file this Amended Class Action Complaint for compensatory, nominal, punitive damages, and declaratory and injunctive relief against Antonio López Figueroa (“López”), in his personal capacity and in his official capacity as Commissioner of the Puerto Rico Police Bureau (“PRPB”), Jojanie Mulero Andino (“Mulero”), in her personal capacity and in her official capacity as Human Resources Director of PRPB, and the Union of Organized Civilian Employees (“the Union”) (collectively, “Defendants”).

INTRODUCTION

1. The First Amendment to the United States Constitution includes individuals’ freedom of non-association, which protects workers from being coerced by the government to join a labor union or discriminated against for not joining a labor union.

2. Plaintiffs bring this civil rights action pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983 (“Section 1983”) for declaratory, injunctive, and monetary relief to redress and prevent deprivation under color of state law of Plaintiffs’ rights, privileges, and immunities against compelled speech and association under the First and Fourteenth Amendments to the United States Constitution. Specifically, PRPB¹ and the Union, acting in concert as state actors and under color of state law, are and have been unlawfully coercing Plaintiffs and class members to become and remain members of a labor organization.

3. Plaintiffs and class members are employed in a bargaining unit exclusively represented by the Union.

4. Puerto Rico’s “Public Employees Health Benefits Act”, 3 L.P.R.A. § 729, permits state government employees to choose a health insurance plan of their preference. The Act

¹ As PRPB is not being sued as a separate entity, Defendants López and Mulero are being sued in their official capacities as PRPB Commissioner and PRPB Human Resources Director, respectively, with the purpose of seeking injunctive relief against PRPB through these officers for the unconstitutional practices described herein.

authorizes a government employer contribution for employees to help pay for the cost of the selected health insurance plan.

5. The “Public Employees Health Benefits Act” provides that the “Government employer contribution for health benefits for employees” like Plaintiffs and class members “shall not be less than . . . one hundred dollars (\$100) monthly...” 3 L.P.R.A. § 729h.

6. Pursuant to the “Public Employees Health Benefits Act”, 3 L.P.R.A. § 729h, PRPB provides each civilian employee with a contribution of \$100 per month to spend on a health insurance plan of their choosing.

7. On June 27, 2018, the U.S. Supreme Court held it unconstitutional for public-sector unions and employers to collect/deduct union dues or fees from public employees without their affirmative consent and knowing waiver of their First Amendment rights. *Janus v. AFSCME Council 31*, 138 S. Ct. 2448, 2486 (2018).

8. Plaintiffs Carbonell, Whatts, Colón, Álvarez, Dumont, Quiñones, Ortiz, Berlingeri, Cruz, and Ortiz Rivera, were full dues-paying members of the Union at the time of the U.S. Supreme Court’s ruling in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448, 2486 (2018) on June 27, 2018. At the time of the U.S. Supreme Court’s ruling, Plaintiff Nieves was a Union nonmember who paid forced fees to the Union.

9. Prior to the U.S. Supreme Court’s ruling in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448, 2486 (2018), it had been the written policy of the Union and PRPB to award an additional employer contribution of \$25 per month to help pay for health insurance costs, totaling \$125 per month, to all bargaining unit members, including dues-paying Union members and nonmembers who paid forced fees to the Union.

10. The base employer contribution of \$100 and the additional employer contribution

of \$25 are funded by the public fisc. Specifically, the funding source for these two amounts is the Commonwealth of Puerto Rico's "General Budget of Expenses." 3 L.P.R.A. § 729h.

11. Plaintiffs, on different dates after the U.S. Supreme Court's ruling in *Janus v. AFSCME Council 31*, conveyed to PRPB's Human Resources Office their objection to membership in the Union and to any deductions from their wages in favor of the Union.

12. After receiving Plaintiffs' objections to membership in the Union and to any deductions in favor of the Union, PRPB, on information and belief, informed the Union of Plaintiffs' demands.

13. On information and belief, the Union, through its president, Jorge Méndez Cotto, then asked PRPB's Human Resources Office to stop awarding the \$25 monthly additional employer contribution to any bargaining unit member who objected to membership in the Union and/or to payroll deductions in favor of the Union, including Plaintiffs and class members.

14. While PRPB honored Plaintiffs' objections and stopped extracting deductions from Plaintiffs' wages in favor of the Union, PRPB's Human Resources Office complied with the Union's request and ceased providing Plaintiffs with the \$25 per month additional employer contribution.

15. Since the U.S. Supreme Court's ruling in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018), prompting Plaintiffs' and class members' withdrawal of Union membership and demand for a cessation of union deductions, it has been the written policy of the Union and PRPB to award the additional employer contribution of \$25 per month exclusively to members of the Union as an inducement and perk of union membership.

16. At all relevant times, prior to their objections to union payroll deductions and to membership in the Union, Plaintiffs had received \$125 per month from PRPB to help them afford

their chosen health insurance.

17. To date, Plaintiffs only receive the base employer contribution of \$100 per month required by law instead of the \$125 per month they received when they were either union members paying union dues or nonmembers paying forced fees.

18. On information and belief, bargaining unit members who remain members of the Union continue receiving the \$25 monthly additional employer contribution while bargaining unit members like Plaintiffs, who have objected to membership in the Union and to payroll deductions in favor of the Union, are denied that additional employer contribution.

19. PRPB and the Union continue to withhold the \$25 monthly additional employer contribution from Plaintiffs and class members solely on the basis of their non-membership in the Union.

20. The practice of denying the additional employer contribution of \$25 per month to nonunion employees based on their non-membership in the Union violates the nonunion employee's constitutional right of non-association by coercing them to join a labor union and discriminating against those employees who do not join the union for that purpose.

21. The discriminatory practice of awarding the additional employer contribution of \$25 per month only to union members is inherently conducive to increased union membership by increasing the number of workers who would like to join in order to obtain an additional employer benefit.

22. By awarding an additional employer contribution of \$25 per month exclusively to members of the Union, PRPB and the Union have been unlawfully coercing Plaintiffs and class members to become and remain members of the Union in violation of their First Amendment right not to be associated with a labor union.

23. PRPB and the Union have acted under color of state law, 3 L.P.R.A. § 729h.

JURISDICTION AND VENUE

24. This is an action that arises under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of rights, privileges and immunities secured to Plaintiffs and all class members by the Constitution of the United States, particularly the First and Fourteenth Amendments.

25. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

26. This action is an actual controversy in which Plaintiffs seek a declaration of their rights under the Constitution of the United States. Pursuant to 28 U.S.C. §§ 2201-2202, this Court may declare Plaintiffs' rights and grant further necessary and proper relief based thereon, including injunctive relief pursuant to Federal Rule of Civil Procedure 65.

27. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the claims arise in this judicial district and Defendants operate and do business in this judicial district.

PARTIES

28. Plaintiff Vanessa E. Carbonell ("Carbonell") resides in Carolina, Puerto Rico and works at PRPB's main headquarters in San Juan, Puerto Rico. Carbonell's current job title at PRPB is Office Worker II.

29. Plaintiff Roberto A. Whatts Osorio ("Whatts") resides in Carolina, Puerto Rico and works at PRPB's main headquarters in San Juan, Puerto Rico. Whatts's current job title at PRPB is Office Worker II.

30. Plaintiff Elba Y. Colón Nery ("Colón") resides in Carolina, Puerto Rico and works at PRPB's main headquarters in San Juan, Puerto Rico. Colón's current job title at PRPB is Office

Worker II.

31. Plaintiff Billy Nieves Hernández (“Nieves”) resides and works at PRPB’s main headquarters in San Juan, Puerto Rico. Nieves’s current job title at PRPB is Office Worker II.

32. Plaintiff Nélica Álvarez Febus (“Álvarez”) resides in Bayamón, Puerto Rico and works at PRPB’s main headquarters in San Juan, Puerto Rico. Álvarez’s current job title at PRPB is Electronic Information Equipment Operator II.

33. Plaintiff Linda Dumont Guzmán (“Dumont”) resides in Bayamón, Puerto Rico and works at PRPB’s main headquarters in San Juan, Puerto Rico. Dumont’s current job title at PRPB is Licensing Officer.

34. Plaintiff Sandra Quiñones Pinto (“Quiñones”) resides in Río Grande, Puerto Rico and works at PRPB’s main headquarters in San Juan, Puerto Rico. Quiñones’s current job title at PRPB is Payroll Officer I.

35. Plaintiff Yomarys Ortiz González (“Ortiz”) resides in Trujillo Alto, Puerto Rico and works at PRPB’s main headquarters in San Juan, Puerto Rico. Ortiz’s current job title at PRPB is Office Systems Assistant II.

36. Plaintiff Carmen Berlingeri Pabón (“Berlingeri”) resides in Patillas, Puerto Rico and works at PRPB’s district office in Patillas, Puerto Rico. Berlingeri’s current job title at PRPB is Office Systems Assistant II.

37. Plaintiff Janet Cruz Berrios (“Cruz”) resides in Guayama, Puerto Rico and works at PRPB’s command center in Guayama, Puerto Rico. Cruz’s current job title at PRPB is Office Systems Assistant II.

38. Plaintiff Merab Ortiz Rivera (“Ortiz Rivera”) resides in Arroyo, Puerto Rico and works at PRPB’s command center in Guayama, Puerto Rico. Ortiz Rivera’s current job title at

PRPB is Office Systems Assistant II.

39. Defendant Antonio López Figueroa (“López”) is sued in his personal capacity and in his official capacity as PRPB Commissioner. PRPB is the successor of the Puerto Rico Police, originally created by the “Puerto Rico Police Act”, 25 L.P.R.A. § 3101. Pursuant to the duties of the PRPB Commissioner laid out in the Puerto Rico Department of Public Safety Act, 25 L.P.R.A. § 3534(c) & (d), López is responsible for the policies and practices of PRPB, and for determining the job assignments and duties of PRPB employees. The Puerto Rico Department of Public Safety was created by virtue of the Puerto Rico Department of Public Safety Act, 25 L.P.R.A. § 3501 to integrate seven government bureaus under one umbrella: PRPB, the Firefighter Corps, the Forensic Sciences Bureau, the Emergency Management and Disaster Administration Bureau, the Emergency Medical Services Corps, the 9-1-1 Emergency Systems Bureau, and the Special Investigations Bureau. López’s office address is 601 Franklin Delano Roosevelt Avenue, San Juan, PR 00936.

40. Defendant Jojanie Mulero Andino (“Mulero”) is sued in her personal capacity and in her official capacity as Human Resources Director of PRPB. Mulero and her office are directly responsible for carrying out employee payroll deductions and awarding employer benefits, such as the additional employer contribution of \$25 per month toward employees’ healthcare costs. Since López’s appointment of Mulero as Human Resources Director on March 8, 2021, she has had direct or constructive knowledge of the practice of withholding the additional employer contribution of \$25 per month from those employees who have objected to membership in the Union and to payroll deductions in favor of the Union. As Director of PRPB’s Human Resources Office, Defendant Mulero continues fulfilling the Union’s request of discontinuing the additional employer contribution of \$25 to every employee who objects to union payroll deductions and

resigns from the Union. As the official controlling payroll deductions and contributions to and from employees' paychecks, Mulero bears direct responsibility for awarding the additional employer contribution to members of the Union while denying it to Plaintiffs and class members. Mulero's office address is 601 Franklin Delano Roosevelt Avenue, San Juan, PR 00936.

41. Defendant Union of Organized Civilian Employees ("the Union") ("Unión de Empleados Civiles Organizados" in Spanish), whose office is located at First Federal Building, Suite 611-612, 1056 Muñoz Rivera Avenue, San Juan, PR 00927, is a public sector labor union accredited by the Puerto Rico Secretary of Labor and Human Resources within the meaning of 3 L.P.R.A. § 702(a). The Union is affiliated with the International Union of Police Associations, AFL-CIO and is the exclusive representative for collective bargaining purposes of thousands of public sector employees of PRPB, including Plaintiffs and class members.

FACTUAL ALLEGATIONS

Plaintiff Vanessa E. Carbonell

42. Since 1992, Plaintiff Carbonell has been employed as a civilian worker by PRPB. Carbonell is an "employee" within the meaning of the "Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico", 3 L.P.R.A. § 702(a).

43. Carbonell was a member of the Union on June 27, 2018, when the U.S. Supreme Court issued its ruling in *Janus v. AFSCME Council 31*, 138. S. Ct. 2448 (2018).

44. As a member of the Union and of the bargaining unit exclusively represented by the Union, Carbonell received the additional \$25 monthly employer contribution to help pay for health insurance costs.

45. In July 2018, after learning about the U.S. Supreme Court's ruling in *Janus v.*

AFSCME Council 31, 138 S. Ct. 2448 (2018), Carbonell communicated to PRPB's Human Resources Office, which Mulero oversees, her resignation as a member of the Union and requested the cessation of union dues deductions from her wages. PRPB and the Union complied with the request, resulting in the cessation of dues deductions from Carbonell's wages.

46. As soon as Carbonell's dues deductions ceased, PRPB stopped providing her with the additional \$25 monthly employer contribution. To date, Carbonell receives the base employer contribution of \$100 per month instead of the \$125 per month.

47. On March 31, 2022, Carbonell wrote to Mulero, demanding that the additional employer contribution of \$25 per month be restored as a benefit of employment with PRPB. Mulero, however, never responded.

Plaintiff Roberto A. Whatts Osorio

48. Since 1985, Plaintiff Whatts has been employed as a civilian worker by PRPB. Whatts is an "employee" within the meaning of the "Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico", 3 L.P.R.A. § 702(a).

49. Whatts was a member of the Union on June 27, 2018, when the U.S. Supreme Court issued its ruling in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018).

50. As a member of the Union and of the bargaining unit exclusively represented by the Union, Whatts received the additional \$25 monthly employer contribution to help pay for health insurance costs.

51. In July 2018, after learning about the Supreme Court's ruling in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018), Whatts communicated to PRPB's Human Resources Office his resignation as a member of the Union and requested the cessation of union dues deductions

from his wages. PRPB and the Union complied with the request, resulting in the cessation of dues deductions from Whatts's wages.

52. As soon as Whatts's dues deductions ceased, PRPB stopped providing him with the additional \$25 monthly employer contribution. To date, Whatts receives the base employer contribution of \$100 per month instead of the \$125 per month.

Plaintiff Elba Y. Colón Nery

53. Since 1991, Plaintiff Colón has been employed as a civilian worker by PRPB. Colón is an "employee" within the meaning of the "Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico", 3 L.P.R.A. § 702(a).

54. Colón was a member of the Union on June 27, 2018, when the U.S. Supreme Court issued its ruling in *Janus v. AFSCME Council 31*, 138. S. Ct. 2448 (2018).

55. As a member of the Union and of the bargaining unit exclusively represented by the Union, Colón received the additional \$25 monthly employer contribution to help pay for health insurance costs.

56. On or around November and December 2020, Colón communicated to PRPB's Human Resources Office her resignation as a member of the Union and requested the cessation of union dues deductions from her wages. PRPB and the Union complied with the request, resulting in the cessation of dues deductions from Colón's wages.

57. As soon as Colón's dues deductions ceased, PRPB stopped providing her with the additional \$25 monthly employer contribution. To date, Colón receives the base employer contribution of \$100 per month instead of the \$125 per month.

Plaintiff Billy Nieves Hernández

58. Since 1994, Plaintiff Nieves has been employed as a civilian worker by PRPB. Nieves is an “employee” within the meaning of the “Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico”, 3 L.P.R.A. § 702(a).

59. Although Nieves was never a member of the Union, PRPB extracted nonmember forced fees from his wages and remitted them to the Union until the U.S. Supreme Court issued its ruling in *Janus v. AFSCME Council 31*, 138. S. Ct. 2448 (2018).

60. As a forced fee payer and member of the bargaining unit exclusively represented by the Union, Nieves received the additional \$25 monthly employer contribution to help pay for health insurance costs.

61. At some point after June 27, 2018, Nieves communicated to PRPB’s Human Resources Office his desire to end union dues deductions from his wages, and declined membership in the Union. PRPB and the Union complied with the request, resulting in the cessation of nonmember forced fees deductions from Nieves’s wages.

62. As soon as Nieves’s forced fees deductions ceased, PRPB stopped providing him with the additional \$25 monthly employer contribution. To date, Nieves receives the base employer contribution of \$100 per month instead of the \$125 per month.

Plaintiff Nélica Álvarez Febus

63. Since 1994, Plaintiff Álvarez has been employed as a civilian worker by PRPB. Álvarez is an “employee” within the meaning of the “Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico”, 3 L.P.R.A. § 702(a).

64. Álvarez was a member of the Union on June 27, 2018, when the U.S. Supreme Court issued its ruling in *Janus v. AFSCME Council 31*, 138. S. Ct. 2448 (2018).

65. As a member of the Union and of the bargaining unit exclusively represented by the Union, Álvarez received the additional \$25 monthly employer contribution to help pay for health insurance costs.

66. In October 2020, Álvarez communicated to PRPB's Human Resources Office her resignation as a member of the Union and requested the cessation of union dues deductions from her wages. PRPB and the Union complied with the request, resulting in the cessation of dues deductions from Álvarez's wages.

67. As soon as Álvarez's dues deductions ceased, PRPB stopped providing her with the additional \$25 monthly employer contribution. To date, Álvarez receives the base employer contribution of \$100 per month instead of the \$125 per month.

Plaintiff Linda Dumont Guzmán

68. Since 1992, Plaintiff Dumont has been employed as a civilian worker by PRPB. Dumont is an "employee" within the meaning of the "Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico", 3 L.P.R.A. § 702(a).

69. Dumont was a member of the Union on June 27, 2018, when the U.S. Supreme Court issued its ruling in *Janus v. AFSCME Council 31*, 138. S. Ct. 2448 (2018).

70. As a member of the Union and of the bargaining unit exclusively represented by the Union, Dumont received the additional \$25 monthly employer contribution to help pay for health insurance costs.

71. In July 2018, Dumont communicated to PRPB's Human Resources Office her

resignation as a member of the Union and requested the cessation of union dues deductions from her wages. PRPB and the Union complied with the request, resulting in the cessation of dues deductions from Dumont's wages.

72. As soon as Dumont's dues deductions ceased, PRPB stopped providing her with the additional \$25 monthly employer contribution. To date, Dumont receives the base employer contribution of \$100 per month instead of the \$125 per month.

Plaintiff Sandra Quiñones Pinto

73. Since 1991, Plaintiff Quiñones has been employed as a civilian worker by PRPB. Quiñones is an "employee" within the meaning of the "Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico", 3 L.P.R.A. § 702(a).

74. Quiñones was a member of the Union on June 27, 2018, when the U.S. Supreme Court issued its ruling in *Janus v. AFSCME Council 31*, 138. S. Ct. 2448 (2018).

75. As a member of the Union and of the bargaining unit exclusively represented by the Union, Quiñones received the additional \$25 monthly employer contribution to help pay for health insurance costs.

76. In July 2019, Quiñones communicated to PRPB's Human Resources Office her resignation as a member of the Union and requested the cessation of union dues deductions from her wages. PRPB and the Union complied with the request, resulting in the cessation of dues deductions from Quiñones's wages.

77. As soon as Quiñones's dues deductions ceased, PRPB stopped providing her with the additional \$25 monthly employer contribution. To date, Quiñones receives the base employer contribution of \$100 per month instead of the \$125 per month.

Plaintiff Yomarys Ortiz González

78. Since 1995, Plaintiff Ortiz has been employed as a civilian worker by PRPB. Ortiz is an “employee” within the meaning of the “Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico”, 3 L.P.R.A. § 702(a).

79. Ortiz was a member of the Union on June 27, 2018, when the U.S. Supreme Court issued its ruling in *Janus v. AFSCME Council 31*, 138. S. Ct. 2448 (2018).

80. As a member of the Union and of the bargaining unit exclusively represented by the Union, Ortiz received the additional \$25 monthly employer contribution to help pay for health insurance costs.

81. In July 2018, Ortiz communicated to PRPB’s Human Resources Office her resignation as a member of the Union and requested the cessation of union dues deductions from her wages. PRPB and the Union complied with the request, resulting in the cessation of dues deductions from Ortiz’s wages.

82. As soon as Ortiz’s dues deductions ceased, PRPB stopped providing her with the additional \$25 monthly employer contribution. To date, Ortiz receives the base employer contribution of \$100 per month instead of the \$125 per month.

Plaintiff Carmen Berlingeri Pabón

83. Since 1992, Plaintiff Berlingeri has been employed as a civilian worker by PRPB. Berlingeri is an “employee” within the meaning of the “Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico”, 3 L.P.R.A. § 702(a).

84. Berlingeri was a member of the Union on June 27, 2018, when the U.S. Supreme

Court issued its ruling in *Janus v. AFSCME Council 31*, 138. S. Ct. 2448 (2018).

85. As a member of the Union and of the bargaining unit exclusively represented by the Union, Berlingeri received the additional \$25 monthly employer contribution to help pay for health insurance costs.

86. On October 6, 2021, Berlingeri communicated to PRPB's Human Resources Office her resignation as a member of the Union and requested the cessation of union dues deductions from her wages. PRPB and the Union complied with the request, resulting in the cessation of dues deductions from Berlingeri's wages.

87. Also on October 6, 2021, Berlingeri sent a written communication to Defendant López, conveying her dissatisfaction with the slow speed with which PRPB's Human Resources Office had processed her resignation as a member of the Union. Berlingeri explained that she had been attempting to withdraw her membership in the Union since July 2021 to no avail.

88. As soon as Berlingeri's dues deductions ceased, PRPB stopped providing her with the additional \$25 monthly employer contribution. To date, Berlingeri receives the base employer contribution of \$100 per month instead of the \$125 per month.

Plaintiff Janet Cruz Berrios

89. Since 1995, Plaintiff Cruz has been employed as a civilian worker by PRPB. Cruz is an "employee" within the meaning of the "Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico", 3 L.P.R.A. § 702(a).

90. Cruz was a member of the Union on June 27, 2018, when the U.S. Supreme Court issued its ruling in *Janus v. AFSCME Council 31*, 138. S. Ct. 2448 (2018).

91. As a member of the Union and of the bargaining unit exclusively represented by

the Union, Cruz received the additional \$25 monthly employer contribution to help pay for health insurance costs.

92. In October 2021, Cruz communicated to PRPB's Human Resources Office her resignation as a member of the Union and requested the cessation of union dues deductions from her wages. PRPB and the Union complied with the request, resulting in the cessation of dues deductions from Cruz's wages.

93. As soon as Cruz's dues deductions ceased, PRPB stopped providing her with the additional \$25 monthly employer contribution. To date, Cruz receives the base employer contribution of \$100 per month instead of the \$125 per month.

Plaintiff Merab Ortiz Rivera

94. Since 1996, Plaintiff Ortiz Rivera has been employed as a civilian worker by PRPB. Ortiz Rivera is an "employee" within the meaning of the "Law Authorizing the Deduction of Dues of Associations, Federations, or Unions of Employees of the Government of Puerto Rico", 3 L.P.R.A. § 702(a).

95. Ortiz Rivera was a member of the Union on June 27, 2018, when the U.S. Supreme Court issued its ruling in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018).

96. As a member of the Union and of the bargaining unit exclusively represented by the Union, Ortiz Rivera received the additional \$25 monthly employer contribution to help pay for health insurance costs.

97. In October 2021, Ortiz Rivera communicated to PRPB's Human Resources Office her resignation as a member of the Union and requested the cessation of union dues deductions from her wages. PRPB and the Union complied with the request, resulting in the cessation of dues deductions from Ortiz Rivera's wages.

98. As soon as Ortiz Rivera's dues deductions ceased, PRPB stopped providing her with the additional \$25 monthly employer contribution. To date, Ortiz Rivera receives the base employer contribution of \$100 per month instead of the \$125 per month.

All Plaintiffs

99. As Human Resources Director, Mulero is the PRPB official directly responsible for making the decision to discontinue the additional employer contribution to Plaintiffs and class members once they objected to union membership and payroll deductions in favor of the Union.

100. As Mulero's supervisor and appointing authority, López has allowed the denial of the additional employer contribution to continue unabated. López's inaction in remedying this unconstitutional practice constitutes supervisory encouragement, condonation, acquiescence, or gross negligence amounting to deliberate indifference.

101. PRPB and the Union continue denying the monthly \$25 additional employer contribution to Plaintiffs and class members because Plaintiffs and class members exercised their First Amendment rights of free speech and non-association.

102. Plaintiffs are ready, willing, and able to purchase additional and higher quality health insurance benefits with the additional employer contribution that is being denied to them. But for the above-described discriminatory policy, they would purchase better quality health insurance.

103. Awarding the additional employer contribution of \$25 per month exclusively to members of the Union coerces Plaintiffs and class members into becoming and remaining members of the Union.

104. Awarding the additional employer contribution of \$25 per month exclusively to members of the Union has the effect of unlawfully coercing and pressuring Plaintiffs and class

members to become and remain members of the Union by presenting them with the prospect of better healthcare in exchange for renouncing their First Amendment right not to join a labor union.

105. Through social media posts encouraging employees to join its ranks, the Union has explicitly touted the additional employer contribution of \$25 per month as a benefit reserved solely for its members.

106. Based on the Union's own public statements promoting the additional employer contribution of \$25 per month as a benefit of Union membership, such benefit would resume should Plaintiffs and class members choose to join the Union as full-fledged members.

107. The unlawful coercion to join the Union has manifested itself in other forms. In March 2022, the air conditioning unit at Plaintiffs Carbonell's, Whatts's, and Nieves's work area went out of service for approximately one month. Despite Plaintiffs' repeated complaints, their immediate supervisor at PRPB, José Santiago, allowed Union members to leave work early at noon due to the unbearable work conditions the lack of air conditioning created. But Union nonmembers, like Plaintiffs, were forced to remain in their offices for the full workday and endure the sweltering heat in retribution for not being members of the Union.

108. Plaintiffs and class members bring this civil rights action, pursuant to 42 U.S.C. § 1983, on behalf of themselves and all other similarly situated employees, seeking: (a) a judgment declaring that the Union's and PRPB's policy and practice of granting to Union members and denying to non-Union members the additional employer contribution toward their purchase of healthcare is unconstitutional and unenforceable under the First Amendment because it constitutes an unlawful coercion to join the Union; (b) injunctive relief against the aforementioned policy and practice; (c) nominal damages for the violation of Plaintiffs' and class members' First and Fourteenth Amendment rights; (d) compensatory damages and/or restitution for the full

amount of the additional employer contribution withheld from Plaintiff and class members, plus applicable interest; (e) punitive damages for Defendants' wanton, willful, and knowing misconduct in violation of Plaintiffs' and class members' First and Fourteenth Amendment rights; and (f) reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 1920, and Federal Rule of Civil Procedure 54(d).

CLASS ACTION ALLEGATIONS

109. Plaintiffs bring this case as a class action pursuant to Federal Rules of Civil Procedure 23(b)(1)(A) and (b)(2), and, alternatively, 23(b)(3), for themselves and for all others similarly situated.

110. The proposed class consists of all individuals who, at any time on or after May 24, 2021, (a) were employed by PRPB and exclusively represented by the Union, (b) were not Union members, and (c) were not granted the \$25 monthly additional employer contribution.

111. On information and belief, the number of persons in this class is at least forty (40) but likely in the hundreds. Those persons in the class are therefore so numerous that joinder of the entire class is impractical.

112. There are questions of law and fact common to all members of the class, to wit, whether the PRPB and the Union are coercing nonunion employees to join the Union in violation of the employees' rights under the First and Fourteenth Amendments to the United States Constitution by withholding the \$25 monthly contribution for health insurance from nonmembers.

113. The questions of law and fact common to the proposed class members predominate over any questions affecting only individual members.

114. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

115. Plaintiffs' claims are typical of the members of the class because Defendants have coerced them by withholding the \$25 monthly additional employer health insurance contribution from Plaintiffs in violation of the Constitution.

116. Plaintiffs can fairly and adequately represent the interests of the class and have no conflict with other, similarly situated class members. Plaintiffs have no interests antagonistic to others who have been subjected by Defendants to the aforementioned deprivation of rights.

117. Plaintiffs' attorneys are providing pro bono legal services through a national charitable legal aid organization. Plaintiffs' counsel have considerable experience handling class actions and the types of claims asserted in the instant amended complaint. Moreover, Plaintiffs' counsel is knowledgeable in the applicable law and possesses the necessary resources for committing to representing the class.

118. Because PRPB's and the Union's duty to respect the constitutional rights of nonunion employees applies equally to all in the class, the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for PRPB and the Union.

119. PRPB and the Union have acted and threaten to continue to deprive the nonunion employees of their constitutional rights on grounds generally applicable to all, thereby making appropriate declaratory, injunctive, and other equitable relief regarding the class as a whole.

CAUSES OF ACTION

120. Plaintiffs re-allege and incorporate by reference the paragraphs set forth above in this Amended Complaint.

121. Plaintiffs are suing Defendants under 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201 on behalf of themselves and the requested class.

COUNT I

(Violation of 42 U.S.C. § 1983 and the First and Fourteenth Amendments by illegal coercion of nonunion employees)

122. The policy and practice of PRPB and the Union, of the government and governmental officials withholding the additional employer contribution from nonunion bargaining unit members, violates the nonunion employees' constitutional rights by having the government and governmental officials coercing them to join the Union.

123. As a direct result of the PRPB's and the Union's unlawful actions described in this Amended Complaint, the nonmembers:

- a. Have been prevented from exercising their rights and privileges as citizens of the United States not to join an employee organization;
- b. Have been deprived of their rights guaranteed to them under the Constitution and statutes of the United States;
- c. Have suffered monetary, equitable, and other damages; and
- d. Have suffered the irreparable harm, damage and injury for which there is no adequate remedy at law that is inherent in the violation of First Amendment rights.

124. Unless enjoined by this Court, PRPB, the Union, and their agents, will continue the aforesaid deprivation and abridgement of the First Amendment rights of nonunion employees, thereby causing further irreparable harm, damage and injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court:

A. Class Action: Enter an order, as soon as practicable, certifying this case as a class action, certifying the class as defined in the amended complaint, certifying Plaintiffs as class

representatives, and appointing Plaintiffs' counsel as class counsel for the class.

B. Declaratory Judgment: Enter a declaratory judgment that Defendants are violating Plaintiffs' and class members' First Amendment rights as secured against State infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, by unlawfully coercing nonunion employees to join the Union by withholding from nonunion employees the additional twenty-five dollar (\$25) monthly contribution for procuring health insurance.

C. Injunctive Relief: Permanently enjoin Defendants from withholding from nonunion employees the additional \$25 monthly contribution for procuring health insurance.

D. Damages: (i) Enter a judgment awarding Plaintiffs and class members damages for or reimbursement of the amount of money equal to the unlawfully and improperly withheld amounts within the appropriate 1-year statute of limitations period pursuant to 42 U.S.C. § 1983, plus applicable interest; (ii) Enter a judgment awarding Plaintiffs and class members nominal damages for PRPB's and the Union's coercion of nonunion employees to join the Union; (iii) Enter a judgment awarding Plaintiffs punitive damages for Defendants' wanton, willful, and knowing misconduct in violation of Plaintiffs' and class members' First and Fourteenth Amendment rights.

E. Costs and Attorneys' Fees: Award Plaintiffs and all class members their costs and reasonable attorneys' fees pursuant to the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988, and grant such other additional relief as the Court may deem just and proper.

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing *Amended Class Action Complaint*, with the Clerk of the Court, using the CM/ECF System, which will send notification of such filing to all appearing parties and counsels using the Court's electronic system.

RESPECTFULLY SUBMITTED.

Dated: August 18, 2022

s/ÁNGEL J. VALENCIA-GATELL

Ángel J. Valencia-Gatell

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