

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

VANESSA E. CARBONELL et als

Plaintiffs

v.

ANTONIO LÓPEZ FIGUEROA et als

Defendants

CIVIL NO. 22-1236 (WGY)

ANSWER TO THE AMENDED COMPLAINT

TO THE HONORABLE COURT:

COME NOW Defendants ANTONIO LÓPEZ FIGUEROA in his **official** capacity as Commissioner of the Puerto Rico Police Bureau, and JOJANIE MULERO ANDINO, in her **official** capacity as Human Resources Director of the Puerto Rico Police Bureau, without submitting to the jurisdiction of the Court and without waiving any right or defense arising from Title III of PROMESA and the Commonwealth's Petition under said Title or under this case, represented by the undersigned counsel, and in answer to the Amended Complaint, respectfully state and pray as follows:

GENERAL ALLEGATIONS

1. All conclusions of law and jurisdiction contained in the Complaint are disputed insofar as applicable to the factual allegations herein.
2. All factual allegations contained in the Complaint, except those specifically admitted below, and only as qualified herein, are hereby denied.

3. Appearing defendants reserve the right to amend the answers and affirmative defenses set forth as deemed necessary.

SPECIFIC ALLEGATIONS

1. Paragraph 1 of the Amended Complaint is admitted as a general legal proposition which does not entitle Plaintiffs to any relief in this case.

2. Paragraph 2 of the Amended Complaint is a general description of the statutory grounds for Plaintiff's claim, which requires no responsive pleading, and in the event it does, it is denied.

3. Paragraph 3, 4, 5, 6 & 7 of the Amended Complaint are admitted.

4. From Paragraph 8 of the Amended Complaint, the allegation that Plaintiff Nieves was "forced" to pay fees to the Union is denied. The rest of the paragraph is admitted.

5. From Paragraph 9 of the Amended Complaint, all allegations regarding "forced fees" are denied. The rest of the allegations are admitted.

6. Paragraphs 10 and 11 of the Amended Complaint are admitted.

7. Paragraph 12 of the Amended Complaint is denied. No such notification took place.

8. Paragraph 13 of the Amended Complaint is denied. No such request took place.

9. From Paragraph 14 of the Amended Complaint, the cessation of the deductions from Plaintiffs' wages is admitted, as well as the discontinuing of the \$25 monthly additional employer contribution towards the payment of health insurance. All other allegations are denied.

10. From Paragraph 15 of the Amended Complaint, it is admitted that the \$25 additional employer contribution for health insurance costs is limited to union members, since it is a benefit established in the collective bargaining agreement between the Puerto Rico Police

Bureau and Codefendant Union of Organized Civilian Employees. It is affirmatively alleged that *Janus* does not require the elimination of this benefit.

11. Paragraph 16 of the Amended Complaint is admitted as to all Plaintiffs except Sandra Quiñones Pinto, who had not signed up for a health insurance plan and therefore was not entitled to the benefit.

12. From Paragraph 17 of the Amended Complaint, all allegations regarding “forced fees” are denied. The rest of the allegations are admitted.

13. Paragraphs 18 & 19 of the Amended Complaint are admitted.

14. Paragraphs 20, 21 and 22 of the Amended Complaint are denied. The Supreme Court’s ruling in *Janus* is limited to the constitutionality of agency-fees and has not been extended to terms and conditions of employment other than that specific one.

15. Paragraph 23 of the Amended Complaint is admitted.

16. Paragraph 24 of the Amended Complaint is a general description of the statutory grounds for Plaintiff’s claims, which requires no responsive pleading, and in the event it does, it is denied. Defendants deny that Plaintiffs are entitled to relief on these claims.

17. Paragraph 25 of the Amended Complaint is denied. The Confirmation Order and entered on January 18, 2022 in the Commonwealth’s Title III Restructuring proceeding under PROMESA contains a discharge injunction barring the continuation of legal actions and collection claims for monetary damages against the Commonwealth for those debts discharged in its Title III case. This injunction bars Plaintiffs from continuing litigating this claim against the Commonwealth and the Official Capacity Defendants, and this Court therefore lacks jurisdiction to grant them any relief in this regard.

18. Paragraph 26 of the Amended Complaint is a general description of the statutory

grounds for Plaintiff's claims, which requires no responsive pleading, and in the event it does, it is denied. Defendants deny that Plaintiffs are entitled to relief on these claims.

19. Paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 & 38 of the Amended Complaint are admitted.

20. From Paragraph 39 of the Amended Complaint, the first sentence is a general description of the statutory grounds for Plaintiff's claims, which requires no responsive pleading, and in the event it does, it is denied. The second sentence is admitted. The third sentence is admitted as a general description of the Commissioner's duties, without admitting any liability based on the allegations of the Amended Complaint. The fourth and fifth sentences are admitted.

21. From Paragraph 40 of the Amended Complaint, the first sentence is a general description of the statutory grounds for Plaintiff's claims, which requires no responsive pleading, and in the event it does, it is denied. The rest of the allegations in the Paragraph are denied.

22. Paragraphs 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97 & 98 of the Amended Complaint are admitted.

23. Paragraphs 99 & 100 of the Amended Complaint are denied.

24. From Paragraph 101 of the Amended Complaint, it is admitted that Plaintiffs have received no \$25 additional employer contribution since they stopped being members of the union. Any allegation to the effect that there is a link between the interruption of such benefit and their exercise of their constitutional rights is denied. As non-members of the Union, Plaintiff have no constitutional right to such benefit, nor are they entitled to it under the Collective Bargaining Agreement.

25. Paragraph 102 of the Amended Complaint is not a statement of fact nor a legal statement, but a statement of purpose or intention, and as such it requires no responsive pleading from Defendants. In the alternative, it is denied for lack of knowledge or information sufficient to formulate a responsive pleading at this point in time.

26. Paragraph 103 of the Amended Complaint is denied. Such benefit differential does not amount to coercion.

27. Paragraph 104 of the Amended Complaint is denied. Such benefit differential does not amount to coercion.

28. Paragraph 105 of the Amended Complaint is denied for lack of knowledge or information sufficient to formulate a responsive pleading at this point in time.

29. Paragraph 106 of the Amended Complaint is not a statement of fact nor a legal statement, but a statement of purpose or intention, and as such it requires no responsive pleading from Defendants. In the alternative, it is denied for lack of knowledge or information sufficient to formulate a responsive pleading at this point in time.

30. Paragraph 107 of the Amended Complaint is denied. Defendant has no record of such incidents.

31. Paragraph 108 of the Amended Complaint is a general description of the statutory grounds for Plaintiff's claims and the relief they seek, which requires no responsive pleading, and in the event it does, it is denied. Defendants deny that Plaintiffs are entitled to relief on these claims, because no violation of federally protected rights has been alleged.

32. Paragraph 109 of the Amended Complaint is a general description of the statutory grounds for Plaintiff's Class Action claims, which requires no responsive pleading, and in the event it does, it is denied.

33. From Paragraph 110 of the Amended Complaint, it is denied that Plaintiffs meet the legal requisites for class certification.

34. Paragraph 111 of the Amended Complaint is denied for lack of knowledge or information sufficient to formulate a responsive pleading at this point in time, since Defendants do not know the basis for Plaintiffs' "information and belief".

35. Paragraph 112 of the Amended Complaint is denied since no constitutional violations took place.

36. Paragraph 113 of the Amended Complaint is denied for lack of knowledge or information sufficient to formulate a responsive pleading at this point in time, since Defendants do not have any information about specific "proposed class members".

37. From Paragraph 114 of the Amended Complaint, it is denied that Plaintiffs meet the legal requisites for class certification.

38. Paragraph 115 of the Amended Complaint is denied because no unconstitutional coercion took place.

39. Paragraph 116 of the Amended Complaint is denied for lack of knowledge or information sufficient to formulate a responsive pleading at this point in time, since Defendants do not have any information about specific "class members".

40. Paragraph 117 of the Amended Complaint is denied for lack of knowledge or information sufficient to formulate a responsive pleading at this point in time.

41. Paragraph 118 of the Amended Complaint is denied as speculative. If proposed class members share common questions of law and fact, as alleged in Paragraphs 112 and 113 of the Amended Complaint, no risk of inconsistent adjudications should exist.

42. Paragraph 119 of the Amended Complaint is denied as to the PRPB. No threats

nor rights deprivation has taken place.

43. Paragraph 120 of the Amended Complaint calls for no responsive pleading since it refers to other paragraphs for which an answer has been provided.

44. Paragraph 121 of the Amended Complaint is a general description of the statutory grounds for Plaintiff's claims and the relief they seek, which requires no responsive pleading, and in the event it does, it is denied. Defendants deny that Plaintiffs are entitled to relief on these claims, because no violation of federally protected rights has been properly alleged.

45. Paragraph 122 of the Amended Complaint is denied. The Supreme Court's ruling in *Janus* is limited to the constitutionality of agency-fees and has not been extended to terms and conditions of employment other than that specific one.

46. Paragraph 123 of the Amended Complaint is denied. Plaintiffs have not been restricted in their constitutional rights and privileges. Any allegations as to damages are denied for lack of knowledge or information sufficient to formulate a responsive pleading at this point in time. Any and all links between those damages, should they be eventually proven, and Defendants' actions and omissions are denied.

47. From Paragraph 124 of the Amended Complaint, it is denied that Plaintiffs are entitled to any relief, since they have not been restricted in their constitutional rights and privileges.

AFFIRMATIVE DEFENSES

1. This Honorable Court lacks jurisdiction over the subject matter in the instant action. The Confirmation Order and entered on January 18, 2022 in the Commonwealth's Title III Restructuring proceeding under PROMESA contains a discharge injunction barring the continuation of legal actions and collection claims for monetary damages against the

Commonwealth for those debts discharged in its Title III case. This injunction bars Plaintiffs from continuing litigating this claim against the Commonwealth and the Official Capacity Defendants, and this Court therefore lacks jurisdiction to grant them any relief in this regard.

2. The Amended Class Action Complaint fails to state a claim upon which relief may be granted against the Defendants. The Supreme Court's ruling in *Janus v. AFSCME*, 138 S.Ct. 2448 (2018) is limited to the constitutionality of agency-fees and has not been extended to terms and conditions of employment other than that specific one.

3. The Amended Class Action Complaint fails to state a claim cognizable under any applicable federal or state statute.

4. The Amended Class Action Complaint fails to state specific acts of Defendants which amount to a deprivation of any of Plaintiffs' constitutional rights.

5. The Amended Class Action Complaint fails to state the necessary elements under 42 U.S.C. § 1983, and First and Fourteenth Amendments of the Constitution of the United States.

6. Defendants are not liable under 42 U.S.C. § 1983, and First and Fourteenth Amendments of the Constitution of the United States, because their conduct did not reflect a reckless disregard to Plaintiffs' constitutional rights.

7. Plaintiffs have not been deprived of any federally protected right or privilege by Defendants.

8. The Amended Class Action Complaint fails to allege any specific acts or omissions as required by 42 U.S.C. § 1983, and First and Fourteenth Amendments of the Constitution of the United States.

9. The Amended Class Action Complaint fails to state the type of ill motive or intent actionable under 42 U.S.C. § 1983, and First and Fourteenth Amendments of the Constitution of

the United States.

10. The Amended Class Action Complaint fails to state specific facts adequate to show that Plaintiff suffered damages.

11. Monetary claims in the instant action are barred by the Eleventh Amendment.

12. Plaintiffs' causes of action are time barred.

13. In the event that Plaintiffs are entitled to any relief, which the appearing Defendants deny, Plaintiffs are not entitled to recover under 42 U.S.C. § 1983, and First and Fourteenth Amendments of the Constitution of the United States.

14. Should Plaintiffs be entitled to any relief, which Defendants deny, they have failed to mitigate damages.

15. The Amended Class Action Complaint fails to state specific facts adequate to show that Plaintiff suffered any damages from the alleged official acts of Defendants. Therefore, Plaintiff is not entitled to any damages or any other relief.

16. Plaintiff's claims are precluded by the doctrines of abstention, *res judicata*, *Rooker-Feldman* abstention, laches, claim preclusion, issue preclusion and/or collateral estoppel.

17. There is no causal link between the alleged conduct and the alleged deprivation of Plaintiffs' federal and/or state protected rights.

18. Plaintiff has failed to join indispensable parties.

19. Plaintiffs are not entitled to recover attorney fees, expert witness fees, costs and other litigation expenses.

20. Plaintiffs' claims amount to a grievance against Codefendant UOCE for having bargained and obtained from the employer greater health insurance contribution benefits for its dues-paying members than for its non-paying members. This may or may not be a breach of the

union's duty of fair representation, which requires it to represent them adequately as well as honestly, in good faith, and in a non-discriminatory manner. But no plausible claim can be set forth against the state government as Plaintiffs' employer, and therefore all claims against the official capacity Defendants should be dismissed.

21. This Court should decline to exercise jurisdiction over Plaintiffs claims until such time as they have exhausted the grievance procedure as required in Section 8 of PR Law 45-1998 (3 P.R.L.A. §1452). This procedure is laid out in detail in Section 9.3 of the law (3 P.R.L.A. §1452c), and even provides for appellate review in the Courts of Puerto Rico (Section 10.1, 3 P.R.L.A. §1452d). Any employee is legally entitled to invoke remedies under this procedure even if the union which exclusively represents his/her bargaining unit refuses to do so (Section 16.7, 3 P.R.L.A. §1453j).

22. Plaintiffs do not meet the requisites set forth in Rule 23 of the Federal Rules of Civil Procedure for Class Certification.

23. The benefit differential referred to in the Amended Class Action Complaint does not constitute an unconstitutional abridgment of Plaintiffs' First Amendment rights, nor discrimination on the basis of the exercise of those rights.

24. Plaintiffs are not entitled to injunctive relief.

25. Defendants hereby reserve the right to amend their pleadings, to bring any other party, and/or to raise any other affirmative defense, according to the established procedure, that may arise from discovery.

26. Defendants do not waive any other affirmative defense that may arise during discovery proceedings.

WHEREFORE, Defendants respectfully request and pray this Honorable Court that the

Amended Class Action Complaint be dismissed, Plaintiffs be charged with costs and attorney's fees and grant any other relief that may be deemed proper.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record to their addresses of record.

In San Juan, Puerto Rico, this 1st day of March 2023.

DOMINGO EMANUELLI HERNÁNDEZ
Secretary of Justice

SUSANA PEÑAGARÍCANO-BROWN
Deputy Secretary in Charge of Litigation

MARCIA PÉREZ-LLAVONA
Director of Legal Affairs
Federal Litigation and Bankruptcy Division

s/ José R. Cintrón-Rodríguez

José R. Cintrón-Rodríguez
USDC No. 204905
Department of Justice of Puerto Rico
Federal Litigation Division
P.O. Box 9020192
San Juan, Puerto Rico 00902-0192
Email: jose.cintron@justicia.pr.gov
Phone: 787-721-2900 Ext. 1480