

**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,**

Plaintiffs,

v.

**ANTONIO LÓPEZ FIGUEROA, in his
official capacity as Commissioner of the
Puerto Rico Police Bureau;
MICHELLE MOURE, 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)

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

MOTION FOR ATTORNEYS' FEES

Come now, Plaintiffs Vanessa E. Carbonell (“Carbonell”), Roberto A. Whatts Osorio (“Whatts”), Elba Y. Colón Nery (“Colón”), Billy Nieves Hernández (“Nieves Hernández”), Nélide Álvarez Febus (“Álvarez”), Linda Dumont Guzmán (“Dumont”), Sandra Quiñones Pinto (“Quiñones”), Yomarys Ortiz González (“Ortiz González”), Carmen Berlingeri Pabón (“Berlingeri”), Merab Ortiz Rivera (“Ortiz Rivera”), and Janet Cruz Berrios (“Cruz”) (collectively, “Plaintiffs”), on their own behalf, pursuant to Fed. R. Civ. P. 54(d) and Civil Local Rule 54(b), through the undersigned counsel, respectfully request, as follows:

Plaintiffs request that the court award them \$300,920 in reasonable attorneys' fees against Defendants Antonio López Figueroa ("López"), in his official capacity as Commissioner of the Puerto Rico Police Bureau ("PRPB") and Michelle Moure ("Moure"), in her official capacity as PRPB Human Resources Manager (collectively, "the Public Employer"), to pay those amounts to the National Right to Work Legal Defense Foundation, Inc. ("the Foundation"), which has underwritten all of Plaintiffs' attorneys' fees as part of its legal aid program.¹

I. Statement of the Case

On May 24, 2022, Plaintiffs and a putative class of employees initiated the instant litigation with the filing of the initial Complaint under 42 U.S.C. § 1983, invoking the First and Fourteenth Amendment protections of the United States Constitution against the Public Employer and the Union of Organized Civilian Employees ("the Union") (Dkt. 1). On July 28, 2022, the Public Employer moved to dismiss the initial Complaint for failure to state a claim (Dkt. 17).² Plaintiffs and putative class members filed their Amended Complaint on August 18, 2022 (Dkt. 22). The Amended Complaint denounced the Public Employer's practice of denying a healthcare benefit of \$25 per month to nonunion members while awarding it to union member employees solely on the basis of membership in the Union. Am. Compl. at 1-20 (Dkt. 22). On September 16, 2022, the Public Employer and the Union moved to dismiss the Amended Complaint (Dkts. 32 and 37). López and Moure³, appearing in their individual capacities, then moved to dismiss the Amended

¹ Supplement ("Supp." 2), Declaration of Ángel J. Valencia ("Valencia Declaration"), para. 8. Pursuant to Plaintiffs' Retainer Authorizations, the Foundation is entitled to any attorneys' fees, expenses, or costs that opposing parties are ordered to pay, *supra*.

² The court found moot the Public Employer's motion to dismiss the original Complaint given the filing of the subsequent Amended Complaint (Dkt. 40).

³ The officeholder serving as PRPB Human Resources Manager at the time was Jojanie Mulero Andino. Moure has since replaced her, automatically substituting Mulero under Fed. R. Civ. P. 25(d)

Complaint on October 18, 2022 (Dkt. 57). On December 15, 2022, the court denied all motions to dismiss while taking under advisement the matter of qualified immunity in López’s and Moure’s individual capacities (Dkt. 74). On March 23, 2023, the court dismissed the claims against López and Moure in their individual capacities only and granted them qualified immunity (Dkt. 87). The case then entered its discovery phase, in which the parties exchanged written discovery and conducted numerous in-person and virtual depositions. Once discovery concluded, Plaintiffs and putative class members moved for class certification and summary judgment against the Public Employer on December 18, 2023 and January 19, 2024, respectively (Dkts. 104 and 107).

On September 19, 2024, the court issued a Memorandum and Order (“Order”) granting Plaintiffs’ motion for summary judgment against the Public Employer.⁴ (Dkt. 147). The court declared the Public Employer’s practice of withholding the monthly \$25 supplemental health benefit from non-union members—solely based on their non-membership in the Union—as unconstitutional. *Order* at 52-54. The court also issued an order of permanent injunction: “The Public Employer, its officers, agents, servants, employees, attorneys, and all other persons who are in active concert or participation with them, are prospectively ENJOINED from withholding the \$25.00 supplemental health benefit paid to Union members from non-union members eligible to be part of the Union, based solely upon union membership.” *Order* at 53-54.

II. Applicable Law

a. Attorneys’ fees awards for Section 1983 plaintiffs.

In Section 1983 cases such as this one, 42 U.S.C. § 1988(b) governs an award of attorneys’ fees. Section 1988(b) states that “the court, in its discretion, may allow the prevailing party, other

⁴ The court denied Plaintiffs’ class certification motion as moot while granting summary judgment against the Public Employer. *Order* at 53 (Dkt. 147).

than the United States, a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988(b). Congress viewed Section 1988 fees as "an integral part of the remedies necessary to obtain" compliance with Section 1983. *Maine v. Thiboutot*, 448 U.S. 1, 11 (1980). Despite the discretionary language of Section 1988, "[i]n civil rights cases, fee-shifting in favor of a prevailing plaintiff is the rule, whereas fee-shifting in favor of a prevailing defendant is the exception." *Casa Marie Hogar Geriatrico, Inc. v. Rivera-Santos*, 38 F.3d 615, 618 (1st Cir. 1994). That is, fees should be awarded to successful plaintiffs absent unusual circumstances. *Williams v. Hanover Housing Auth.*, 113 F.3d 1294, 1300 (1st Cir. 1997) (citations omitted); *Rosario-Urdaz v. Rivera-Hernandez*, 451 F. Supp. 2d 305, 307-308 (D.P.R. 2006) (same).

In adjudicating a request for attorneys' fees, the court needs to determine whether: (1) a party is in fact a "prevailing party"; (2) the compensation sought is reasonable (i.e., calculation of the lodestar); and (3) there are any additional but exceptional considerations that may require to adjust upward or downward. *Hensley v. Eckerhart*, 461 U.S. 424, 433-34 (1983).

b. Determining prevailing party status.

A prevailing plaintiff is a party that succeeds in civil litigation and achieves a benefit sought by bringing the suit. *Boston's Children First v. City of Boston*, 395 F.3d at 14 (1st Cir. 2005) (citing *Hensley*, 461 U.S. at 433). A plaintiff is "considered a prevailing party if he succeeds on any significant issue in litigation that achieves **some of the benefit the party sought** by bringing his suit." *Marrero v. Puerto Rico*, 2021 U.S. Dist. LEXIS 92714, *4 (D.P.R. 2021) (emphasis in original) (citing *Rodriguez v. Puerto Rico*, 764 F. Supp. 2d 338, 342 (D.P.R. 2011)); *Farrar v. Hobby*, 506 U.S. 103, 113 (1992) (same). "[A] plaintiff need not prevail on every claim and obtain all relief sought to qualify as a prevailing party." *Colon-Marrero v. Conty-Perez*, 2017 U.S. Dist. LEXIS 43465, *6 (D.P.R. 2017) (citing *Richardson v. Miller*, 279 F.3d 1, 3 (1st Cir. 2002)).

Although the fee-shifting provision of Section 1988 is couched in discretionary terms, attorneys' fees for prevailing civil rights plaintiffs are "virtually obligatory." *Rivera-Martinez v. Mun. of Toa Alta*, 2007 U.S. Dist. LEXIS 53980, *3 (D.P.R. 2007) (citing *Gay Officers Action League v. Puerto Rico*, 247 F.3d 288, 293 (1st Cir. 2001)); *see also Stanton v. S. Berkshire Reg'l Sch. Dist.*, 197 F.3d 574, 576 (1st Cir. 1999) (explaining the Supreme Court has interpreted Section 1988 to require fees in favor of prevailing civil rights plaintiffs "save for rare cases"); *see also Casa Marie Hogar Geriatrico, Inc.*, 38 F.3d at 618 (noting that prevailing civil rights plaintiffs are presumptively entitled to fee awards).

c. Calculating a reasonable fee award.

Once a court determines that a party did indeed prevail, it must next determine the amount of fees to which the party is entitled. This amount is usually determined with the "lodestar" method, under which the number of hours reasonably expended on the case is multiplied by a reasonable hourly rate. *Hensley*, 461 U.S. at 433. In implementing the lodestar approach, the court must calculate the time counsel spent on the case, subtract duplicative, unproductive, or excessive hours, and then apply prevailing rates in the community considering the qualifications, experience, and specialized competence of the attorneys involved. *Gay Officers Action League*, 247 F.3d at 295 (citing *Lipsett v. Blanco*, 975 F.2d 934, 937 (1st Cir. 1992)); *United States v. Metro. Dist. Comm'n*, 847 F.2d 12, 15-17 (1st Cir. 1988); *Grendel's Den, Inc. v. Larkin*, 749 F.2d 945, 950-51 (1st Cir. 1984); *Rivera-Martinez*, 2007 U.S. Dist. LEXIS 53980, *7-8 (D.P.R. 2007) (same). Once calculated, "the lodestar represents a presumptively reasonable fee, although it is subject to upward or downward adjustment in certain circumstances." *Lipsett*, 975 F.2d at 937.

d. Exceptional considerations in calculating the award.

After calculating the lodestar, “[t]he court may . . . adjust the potential award based on factors not captured in the lodestar calculation.” *Matalon v. Hynnes*, 806 F.3d 627, 638 (1st Cir. 2015). “[A] prevailing plaintiff should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust.” *De Jesus Nazario v. Rodriguez*, 554 F.3d 196, 199 (1st Cir. 2009) (quoting *Hensley*, 461 U.S. at 429). “[T]he burden is on the defendant to show that unusual conditions would make an award unjust or inappropriate.” *United States v. Cofield*, 215 F.3d 164, 171 (1st Cir. 2000)). Examples of exceptional considerations include a fee enhancement for “stellar performance,” a fee reduction for overstaffing a case and a reduction for time spent on unrelated, failed claims. *Navarro-Ayala v. Governor of P.R.*, 186 F. Supp. 3d 128, 137 (D.P.R. 2016) (internal citations omitted).

III. An Award of Fees to Plaintiffs is Warranted

a. Plaintiffs are prevailing parties.

The court’s September 19, 2024 Order granting Plaintiffs’ Motion for Summary Judgment against the Public Employer makes them prevailing parties within the meaning of 42 U.S.C. § 1988. The court declared it unconstitutional for the Public Employer to withhold the monthly \$25 supplemental health benefit from union nonmembers solely based on their decision not to associate with the Union. The court went on to permanently enjoin “[t]he Public Employer, its officers, agents, servants, employees, attorneys, and all other persons who are in active concert or participation with them . . . from withholding the \$25.00 supplemental health benefit paid to Union members from non-union members eligible to be part of the Union, based solely upon union membership.” *Order* at 53-54.

The court's granting of declaratory and injunctive relief against the Public Employer represents the totality of the remedies Plaintiffs requested in their summary judgment motion. Mot. Summ. J. at 16-17 (Dkt. 107-1). The relief the court granted is among the remedies Plaintiffs originally requested in their Prayer for Relief. Am. Compl. at 23 (Dkt. 22). Plaintiffs successfully proved their case against the Public Employer and obtained the declaratory and injunctive relief they sought since the inception of the case. "A plaintiff is a prevailing party if he has succeeded on any significant issue in litigation which achieved some of the benefit the parties sought in bringing the suit." *Michel-Ramos v. Arroyo-Santiago*, 493 F. Supp. 2d 249, 252 (D.P.R. 2007) (citing *Texas State Teachers Assoc. v. Garland Indep. School District*, 489 U.S. 782, 791-92 (1989)). There is no question Plaintiffs are the prevailing parties here.

b. The reasonable hourly rate.

A review of attorneys' fees awarded in the District of Puerto Rico indicates hourly rates hovering around \$250 to \$300 for experienced attorneys and \$150 to \$200 for associates. *Skytec, Inc. v. Logistic Sys.*, 2019 U.S. Dist. LEXIS 42934, at *13 (D.P.R. 2019) (internal citations omitted); *See also García-Colón v. Corp. of the State Ins. Fund*, 2024 U.S. Dist. LEXIS 201549, at *15 (D.P.R. Nov. 4, 2024) (same). This court has found the rate of \$250 per hour to be comparable to rates paid to experienced civil rights attorneys practicing in the San Juan metropolitan area. *See Navarro-Ayala*, 186 F. Supp. at 137; *See also; See also Anywhere Inc. v. Romero*, 344 F. Supp. 2d 345, 348 (D.P.R. 2004) (finding \$250 to be a reasonable rate for an experienced attorney).

The court should award hourly rates of \$150 for attorneys Heidi E. Schneider and Ángel J. Valencia, and \$250 for attorney Milton L. Chappell. Because this action arose in Puerto Rico, the court must consider Puerto Rico to be the relevant community for determining fees. *Id.* For

Schneider and Valencia, the \$150 hourly rate sought for work they performed is on par with the customary rate charged by attorneys of their skill and experience in the Puerto Rico market. *See Skytec Inc.*, 2019 U.S. Dist. LEXIS 42934, at *13. For Chappell, the \$250 hourly rate sought for work he performed is roughly the customary rate charged by attorneys of his skill and experience in the Puerto Rico market. *Id.*

Schneider holds a law degree from the University of Connecticut School of Law and was first licensed in New York in 2018. Valencia holds law degrees from Fordham University School of Law and Inter-American University School of Law, and was first licensed in Puerto Rico in 2012. Valencia is also licensed in Maryland and the District of Columbia. Chappell holds a law degree from the Columbus School of Law at the Catholic University of America and was first licensed in Maryland in 1976. Chappell is also licensed in the District of Columbia. Schneider, Valencia, and Chappell have significant experience litigating labor and constitutional law cases such as this one. Plaintiffs encourage the court to rely on its own expertise and knowledge of the prevailing rates in Puerto Rico in making its determination. To determine the reasonable hourly rate, the court may rely on its own knowledge of the attorneys' fees in the community. *See Cofino-Hernandez v. Puerto Rico*, 230 F. Supp. 3d 69, 73 (D.P.R. 2017).

c. *The hours expended, reductions, and reasonableness.*

Plaintiffs attach the declarations of their counsel, Heidi E. Schneider (Supp. 1), Ángel J. Valencia (Supp. 2), and Milton L. Chappell (Supp. 3), attesting to their qualifications and amounts of hours, expenses, and costs incurred in this case. Plaintiffs have only included the hours Schneider, Valencia, and Chappell expended as counsel of record, and removed the hours other Foundation staff attorneys and support personnel expended on this matter in supportive roles.

These attachments are accurate and derived from routinely prepared compilations of the daily contemporaneous time sheets that counsel maintain in the normal course of business.

Plaintiffs calculated an initial “lodestar amount” of \$347,880.00 in attorneys’ fees based on the attorneys’ total hours incurred in this matter:

Attorney	Hourly Rate	Total Hours	Initial Lodestar	Hours Claimed After Downward Adjustment	Fee Claimed After Downward Adjustment
Heidi E. Schneider	\$150	579.2	\$86,880	550.3	\$82,545
Ángel J. Valencia	\$150	1,618.5	\$242,775	1,362	\$204,300
Milton L. Chappell	\$250	72.9	\$18,225	56.3	\$14,075
TOTALS	-	2,270.6	\$347,880	1,968.6	<u>\$300,920</u>

Plaintiffs excluded time expenditures that might be duplicative and eliminated time related to their efforts opposing López’s and Moure’s motion to dismiss in their individual capacities (Dkt. 57). *See Trainor v. HEI Hospitality, LLC*, 699 F. 3d 19, 35 (1st Cir. 2012) (internal citation omitted) (“[P]laintiffs generally may not recover attorneys’ fees on unsuccessful claims.”) Plaintiffs also discounted time expended on class action certification, including all hours of related research and preparation of the Motion to Certify Class. *Id.* Plaintiffs also eliminated time expenditures for media-related work. “Reported federal cases are unanimous in denying awards of attorneys’ fees for media-related time to individual civil rights plaintiffs.” *Guillemard Ginorio v. Contreras*, 575 F. Supp. 2d 346, 363 (D.P.R. 2008) (internal citations omitted). The total attorney hour expenditures excluded from Schneider’s, Valencia’s, and Chappell’s records are 28.9, 256.5, and 16.6, respectively. Plaintiffs’ requested fees are commensurate with the First Circuit’s

reasonableness requirements.⁵ *See Gay Officers Action League*, 247 F.3d at 295. The claimed fees do not include work on unrelated or failed claims. Nor do they include work other supporting attorneys or support performed at different stages of the litigation. Accordingly, there are no exceptional circumstances requiring a reduction in the amount of fees as calculated using the lodestar method. Plaintiffs request that the court order the Union to pay the Foundation the total amount of \$300,920 as reasonable attorneys’ fees.

d. *Neither the Eleventh Amendment nor PROMESA bar awarding attorneys’ fees.*

“[T]he substantive protections of the Eleventh Amendment do not prevent an award of attorney’s fees against the [state] officers in their official capacities.” *Hutto v. Finney*, 437 U.S. 678, 692 (1978). *See also Medical Malpractice Joint Underwriting Ass’n v. Paradis*, 756 F.Supp. 669, 678 (D.R.I. 1991) (attorneys’ fees may be awarded to Section 1983 plaintiffs seeking injunctive or declaratory relief from state officials sued in their official capacities). The fact that López and Moure were found to have violated Plaintiffs’ constitutional rights—while acting in their official capacities—does not shield the Public Employer from an attorneys’ fees award against it. The declaratory and injunctive relief the court issued permits Plaintiffs to request an award of attorneys’ fees. *See id.*

In the context of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), the automatic stay provisions do not preclude the awarding of attorneys’ fees for actions brought *after* the enactment of PROMESA. *See Lex Claims, LLC v. Garcia-Padilla*, 204 F.Supp. 3d 424, 425-426 (D.P.R. 2016) (denying a motion to stay the case and allowing a request for attorneys’ fees under section 1983). The instant litigation started on May 24, 2022—almost 8

⁵ The excluded time entries are blacked out on Schneider’s, Valencia’s and Chappell’s time records. *See* Supp. 4, 5, and 6.

years after the enactment of PROMESA.⁶ It sought to vindicate constitutional rights violations that began to take place on July 18, 2018—more than two years after PROMESA’s enactment—when the Public Employer first began taking away health benefits after several plaintiffs began withdrawing their Union memberships. *Order* at 18-19 (Dkt. 147). Plaintiffs’ attorneys’ fees petition, therefore, is not precluded by PROMESA. *See Lex Claims, LLC*, 204 F.Supp. 3d at 425-426.

IV. Conclusion

For the foregoing reasons, the court should award Plaintiffs the requested attorneys’ fees and order the Union to pay the Foundation a total of \$300,920 as reasonable attorneys’ fees, as set forth herein and in the documents contemporaneously filed herewith.

WHEREFORE, Plaintiffs respectfully request that their Motion for Attorneys’ Fees be granted.

⁶ PROMESA was enacted on June 30, 2016. *See* S.2328 - 114th Congress (2015-2016): Puerto Rico Oversight, Management, and Economic Stability Act, S.2328, 114th Cong. (2016), <https://www.congress.gov/bill/114th-congress/senate-bill/2328/text>.

CERTIFICATE OF SERVICE

It is hereby certified that the undersigned attorney electronically filed the foregoing Memorandum in Support of Motion for Summary Judgment with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties and attorneys of record. It is further certified that the undersigned attorney served Defendant Union of Organized Civilian Employees via regular mail at: 78 Calle Padial, Caguas, PR 00725.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 2nd day of December, 2024.

s/ Heidi E. Schneider

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