

**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 Manager 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 CONTEMPT AND FOR SANCTIONS AND
MEMORANDUM OF LAW IN SUPPORT**

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, through the undersigned counsel, and respectfully submit their Motion for Contempt and for Sanctions and Memorandum of Law in Support, as follows:

1. On September 19, 2024, the court issued its Memorandum and Order (“Order”), allowing Plaintiffs’ Motion for Summary Judgment against Defendant Antonio López Figueroa, in his official capacity as Commissioner of the Puerto Rico Police Bureau (“PRPB” or “The Public Employer”). The court declared the Public Employer’s practice of withholding the \$25 supplemental health benefit from non-union members based solely upon their union membership unconstitutional (Dkt. 147). 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.

2. The Public Employer has not complied with the court’s Permanent Injunction. Plaintiffs and non-union members eligible for the \$25 supplemental health benefit have not received the benefit because the Public Employer refuses to award it, notwithstanding the court’s Permanent Injunction.

3. On October 8, 2024, Plaintiff Carbonell emailed Mayda L. Albarrán Rodríguez (“Albarrán”), Administrative Director at the Public Employer’s Payroll Division, notifying her of the court’s Order and asking what measures would be undertaken to comply with the Order. *See* Exhibit 1, pg. 2.¹ Albarrán’s response was as baffling as it was defiant: “So far, we are unable to take any action because the order has not been signed. We are waiting for it.” *See* Exhibit 1, pg. 1. On October 18, 2024, Nancy E. Torres Osorio (“Torres”), Administrative Officer at PRPB, emailed Plaintiff Ortiz González telling her that “. . . the contributions cannot be touched in relation to the

¹ Plaintiffs are attaching a certified English translation of the email exchange between Carbonell and Albarrán as Exhibit 1. The original Spanish version is attached as Exhibit 1-1.

complaint until the instructions for this are received.” *See* Exhibit 2, pg. 2.² On October 21, 2024, Torres reiterated to Ortiz González that she “. . . cannot touch anything that is in the system right now. Once I receive authorization, the pertinent changes will be made.” *See* Exhibit 2, pg. 1.

4. On November 8, 2024, Plaintiffs’ counsel sent a letter to the Public Employer’s counsel, asking for the restoration of the supplemental health benefit to Plaintiffs and class members (i.e., all other eligible employees from whom the Public Employer has been withholding this benefit based on their union non-membership), as ordered by the court. *See* Exhibit 3. Plaintiffs’ counsel did so in hopes of resolving this matter without involving the court.

5. On November 15, 2024, Public Employer’s counsel sent Plaintiffs’ counsel a letter which stated in relevant part: “While Plaintiffs’ motion for summary judgement was granted, no judgment has been entered in this case. As a matter of fact there are still outstanding claims against Codefendant UOCE. Once judgement is entered, my client may decide to seek a stay pending appeal, or not to appeal and comply with the judgment. As to your claim on behalf of class members, class certification was denied by the Court.” *See* Exhibit 4.

6. Five pay periods have elapsed since the court’s September 19, 2024 Order.³ The Public Employer continues to withhold the \$25 supplemental health benefit from eligible employees, despite the court’s Permanent Injunction.

7. The court may impose civil contempt “to compel compliance with a court order or to compensate a party harmed by non-compliance.” *U.S. v. Saccoccia*, 433 F.3d 19, 27 (1st Cir. 2005). Here, the court should impose civil contempt *both* to compel the Public Employer’s compliance with its Permanent Injunction and to compensate the employees at issue, who have been harmed

² Plaintiffs are attaching a certified English translation of the email exchange between Ortiz González and Torres as Exhibit 2. The original Spanish version is attached as Exhibit 2-1.

³ Plaintiffs are paid bi-monthly on the 15th and 30th of each month.

by the Public Employer's noncompliance to date in the amount of \$62.50, each, which will increase by \$12.50 each bi-monthly pay period thereafter.

8. This court has broad power to hold parties in contempt, a power which exists because it is "essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts." *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 798 (1987) (internal quotation marks and citation omitted). One of the "underlying concern[s] that gave rise to the contempt power," and the most salient reason for invoking it, is the "disobedience to the orders of the Judiciary." *Id.*

9. A court should make a finding of contempt for the violation of a court order only when there is clear and convincing proof of a violation of a court order. *Rodriguez-Vazquez v. Solivan*, 844 F.3d 351, 355 (1st Cir. 2016). In order to make a finding of civil contempt, the court must determine the moving party has proved by clear and convincing evidence that: "(1) the alleged contemnor had notice of the order, (2) the order was clear and unambiguous, (3) the alleged contemnor had the ability to comply with the order, and (4) the alleged contemnor violated the order." *Rodríguez-Miranda v. Benin*, 829 F.3d 29, 46 (1st Cir. 2016) (internal quotations and citations omitted).

10. Plaintiffs can prove that the Public Employer is engaged in civil contempt of the court's Permanent Injunction. First, the Public Employer had notice of the court's September 19, 2024 Order when the Public Employer's counsel was served with the Order via the ECF system. Further, Plaintiffs Carbonell and Ortiz González notified two of the Public Employer's officials in charge of overseeing payroll matters (Torres and Albarrán) of the court's Order requiring the Public Employer to award the additional monetary health benefit. Carbonell and Ortiz González

demanded the restoration of the health benefit because they did not see it reflected in their paystubs despite the court's Order. *See* Exhibits 1 & 2.

11. Second, in evaluating whether the court's order was clear and unambiguous, the Court must find that "the words of the court's order have clearly and unambiguously forbidden the precise conduct on which the contempt allegation is based." *U.S. v. Saccoccia*, 433 F.3d at 28. To do so, "the Court evaluates whether [defendant] [was] able to ascertain from the four corners of the order precisely what acts are forbidden." *Id.* (citing *Goya Foods, Inc. v. Wallack Mgmt. Co.*, 290 F.3d 63, 76 (1st Cir. 2002)).

12. Here, the court's Order was clear and unambiguous in its language enjoining the Public Employer from withholding the \$25 supplemental health benefit from eligible employees. The Public Employer and its agents know that "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" means the \$25.00 supplemental benefit must be paid to and reflected in Plaintiffs' and other union nonmembers' paychecks. Furthermore, nowhere in any of the responses to Plaintiffs and Plaintiffs' counsel do PRPB agents even suggest the Permanent Injunction was either unclear or ambiguous. Instead, PRPB officers and counsel made apparent they knew what they were ordered to do but they were not doing it for nonsensical and irrelevant reasons. The Public Employer and its agents should have no trouble understanding precisely, and from the four corners of the Order, what they need to do and cease doing to comply with the court's Permanent Injunction.

13. Third, the Public Employer, which provides all eligible employees who are also union members with this supplemental benefit, can comply with the Order by granting and including the benefit to Plaintiffs and other eligible union non-member employees in their paychecks. It is clear

the Public Employer knows how to comply because it granted most of Plaintiffs this supplemental benefit before they disaffiliated from the Union. *Order* at 18-31. It was the Public Employer that stripped Plaintiffs of this benefit for refusing union membership, and it is the Public Employer that is the only entity that can reinstate it. The Public Employer and its agents have made no contention that it somehow cannot comply. *See* Exhibits 1, 2, 4.

14. Fourth, and finally, the Public Employer is violating the Order by continuing to withhold the benefit from Plaintiffs and eligible employees by not including the supplemental \$25.00 in their paychecks. The Public Employer's counsel, after all, communicated his client's intention to keep violating the court's Order. *See* Exhibit 4.

15. "Upon a finding of civil contempt, the Court has broad discretion in fashioning the appropriate coercive remedy." *Asociacion de Suscripcion Conjunta del Seguro de Responsabilidad Obligatorio v. Secretary of the Treasury of Puerto Rico*, 2013 WL 132684, at *6 (D.P.R. 2023)(citing *Goya Foods, Inc. v. Wallack Mgmt. Co.*, 344 F.3d 16, 21 (1st Cir. 2003)). "Civil contempt is remedial in nature and generally designed either to coerce compliance with a court order or to compensate the plaintiff for any losses sustained." *Id.* at 5. "A monetary sanction assessed for the purpose of compensating the complainant for losses sustained by reason of the contemnor's acts, as well as the imposition of attorneys' fees and costs, are within the universe of permissible sanctions for civil contempt." *Latin American Music Co., Inc. v. Archdioceses of San Juan*, 2007 WL 9677029, at *4 (D.P.R. 2007) (citing *Goya Foods*, 290 F.3d at 78).

16. The Public Employer is openly defying the court and has no intention of complying with the Permanent Injunction Order entered against it. *See* Exhibit 4. A finding of contempt is necessary to preserve the effectiveness of judicial proceedings, to enforce the court's Order and compensate Plaintiffs and other eligible union non-member employees for the losses of their

supplemental \$25.00 payments sustained by the Public Employer's defiance. *See Young*, 481 U.S. at 798.

WHEREFORE, Plaintiffs respectfully request 1) that the Public Employer be held in civil contempt for violating the court's September 19, 2024 Order and Permanent Injunction; 2) that the Public Employer be ordered to award Plaintiffs, and all eligible nonunion member employees, the health contribution denied to them for declining union membership, as ordered by the court in its September 19, 2023 Order; 3) that the court impose on the Public Employer a \$1,000 fine for each pay period in which it violates the court's Permanent Injunction; 4) that the Public Employer be ordered to compensate Plaintiffs and all eligible nonunion member employees for the monetary amount, equivalent to the health contribution denied, between the court's September 19, 2024 Order and the date the Public Employer complies with the court's Order and Permanent Injunction.

CERTIFICATE OF SERVICE

It is hereby certified that the undersigned attorney electronically filed the foregoing 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 8th day of December, 2024.

s/ Heidi E. Schneider

Heidi E. Schneider (pro hac vice)
New York Attorney Registration No. 5638382
hes@nrtw.org
c/o National Right to Work
Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160
Telephone: (703) 321-8510
Fax: (703) 321-9319

s/Ángel J. Valencia-Gatell

Ángel J. Valencia-Gatell
USDC- PR 300009
ajv@nrtw.org

s/Milton L. Chappell

Milton L. Chappell (pro hac vice)
District of Columbia Bar No. 936153
mlc@nrtw.org

Counsel for Plaintiffs