

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

<b>VANESSA E. CARBONELL, et. al.</b>  <i>Plaintiffs,</i>  <b>v.</b>  <b>ANTONIO LÓPEZ FIGUEROA, et al.</b>  <i>Defendants.</i>	<b>CIVIL NO. 22-1236 (WGY)</b>  <b>Class Action Complaint/ Constitutional Violation</b>
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**MOTION FOR RECONSIDERATION OF ORDER AT DOCKET NO. 74**

**TO THE HONORABLE COURT:**

**COME NOW**, Co-Defendants Antonio López Figueroa and Jojanie Mulero Andino, in their personal and official capacities and without submitting to the jurisdiction of the Court, represented by the undersigned counsel and very respectfully **STATE** and **PRAY** as follows:

**I. INTRODUCTION**

On September 16, 2022, appearing Co-Defendants in their official capacities filed a Motion to Dismiss Amended Complaint (Docket No. 32). In sum, they argued that all claims for monetary relief against them in their official capacity were barred by the Eleventh Amendment to the United States Constitution; that Plaintiffs’ claims were time-barred; and that they failed to state a First Amendment claim against official capacity Co-Defendants under 42 U.S.C. 1983 because the challenged conduct stemmed from a failure by the UOCE to adequately represent its non-paying members, an omission for which official capacity Co-Defendants cannot be held liable. Id. On October 14, 2022, Plaintiffs filed their response in opposition (Docket No. 55). On November 3, 2022, appearing Co-Defendants replied and argued that Plaintiffs’ arguments were *de facto* amendments to their Amended Complaint for which there was no legal support in *Janus*; that they had failed to plausibly allege continuous violations; and their claims were untimely filed pursuant to the applicable statute of limitations in actions brought pursuant to 42 U.S.C. §1983 (Docket No. 67). On November 18, 2022 the Court scheduled a hearing on the pending motions to dismiss (Docket No. 73).

On December 15, 2022, this Court held a hearing on the motions to dismiss and on December 20, 2022, a Minute Order was entered taking only under advisement the matter of qualified immunity regarding appearing Co-Defendants in their personal capacities, which

the Plaintiffs were ordered to further brief (Docket No. 74). In all other respects, Co-Defendants' Motion to Dismiss was denied. Id.

Appearing Co-Defendants respectfully request that this ruling be reconsidered as to their Eleventh Amendment immunity, and that all causes of action against the Commonwealth and the official capacity Co-Defendants be dismissed on these grounds, because not doing so will cause a manifest injustice in this case and will constitute an error of law.

## II. DISCUSSION

### A. Motion for Reconsideration Standard.

The Federal Rules of Civil Procedure do not specifically provide for the filing of motions for reconsideration. *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991). Notwithstanding, "any motion seeking the reconsideration of a judgment or order is considered as a motion to alter or amend a judgment under Fed.R.Civ.P. 59(e), if it seeks to change the order or judgment issued." *Id* at 1243. A district court may grant a party's motion for reconsideration in any of three situations: (1) the availability of new evidence not previously available; (2) an intervening change in controlling law; or (3) the need to correct a clear error of law or to prevent manifest injustice. *Dodge v. Susquehanna University*, 796 F.Supp. 829, 830 (M.D. Pa. 1992); *see also F.D.I.C v. World Univ. Inc.*, 978 F.2d 10, 16 (1st Cir. 1992).

As a result, the Court should reconsider an opinion, "if the court 'has patently misunderstood a party ... or has made an error not of reasoning but apprehension.'" *Ruiz Rivera v. Pfizer Pharmaceuticals, LLC*, 521 F.3d 76, 82 (1st Cir. 2008) (*quoting Sandoval Díaz v. Sandoval Orozco*, 2005 WL 1501672 at \*2 (D.P.R. June 24, 2005) (*quoting Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir.1990))); *see also Mulero-Abreu, et al. v. Puerto Rico Police Department, et al.*, 675 F.3d 88, 94-95 (1st Cir. 2012).

The appearing Co-Defendants respectfully request this Honorable Court to reconsider its Order at Docket No. 74 due to a manifest error of law, namely, not making a specific finding that the Eleventh Amendment to the United States Constitution bars Plaintiffs' monetary claims against the Commonwealth and the official capacity Co-Defendants.

## B. Eleventh Amendment Immunity.

Although Section 1983 provides an avenue to remedy many deprivations of civil liberties in federal court, it “does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties.” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 66 (1989). The Eleventh Amendment bars lawsuits for monetary damages against a State in federal court, unless said State has waived its immunity or unless Congress has expressly overridden that immunity. *See*, CONST. Amend. XI; *Will*, 491 U.S. at 66 (citing *Welch v. Texas Dept. of Highways and Public Transportation*, 483 U.S. 468, 472-473 (1987)(plurality opinion)); *O’Neill v. Baker*, 210 F.3d 41 (1st Cir. 2000). Furthermore, “neither a state agency **nor a state official acting in his official capacity** may be sued for damages in a *section 1983* action.” *Johnson v. Rodriguez*, 943 F.2d 104, 108 (1st Cir. 1991) (emphasis added). The reasoning follows that a suit against an official actor is a suit against his office, and by default a suit against the state. *See*, *Will*, 491 U.S. at 71; *Brandon v. Holt*, 469 U.S. 464, 471 (1985); *Kentucky v. Graham*, 473 U.S. 159, 165-166 (1985).

Puerto Rico has long been considered a state for Eleventh Amendment purposes. *See*, *Irizarry–Mora v. Univ. of Puerto Rico*, 647 F.3d 9 (1st Cir. 2011); *Metcalf & Eddy, Inc. v. P.R. Aqueduct & Sewer Auth.*, 991 F.2d 935 (1st Cir. 1993). “The Eleventh Amendment bars the recovery of damages in a federal court against the Commonwealth of Puerto Rico, and, by the same token, it bars the recovery of damages in *official capacity* suits brought against Puerto Rico officials where recovery will come from the public fisc.” *Culebra Enterprises Corp. v. Rivera Rios*, 813 F.2d 506, 516 (1st Cir. 1987)(citing *Ramirez v. P.R. Fire Service*, 715 F.2d 694, 697 (1st Cir. 1983) and *Kentucky v. Graham*, 473 U.S. 159 (1985))(emphasis in the original); *Maysonet–Robles v. Cabrero*, 323 F.3d 43 (1st Cir. 2003).

The Puerto Rico Police Bureau is an arm of the state, and therefore, protected against individual suits for money damages by Eleventh Amendment immunity. *López Rosario v. Police Department*, 126 F. Supp. 2d 167, 170-171 (D.P.R. 2000); *Reyes v. Supervisor of DEA*, 834 F.2d 1093, 1097-1098 (1st Cir. 1987). Plaintiffs are therefore constitutionally barred from seeking monetary relief against the Commonwealth and Co-Defendants in their official capacity. While Plaintiffs set forth personal capacity claims against these Co-Defendants in their Amended Class Action Complaint, their pleadings do not clarify that their

monetary claims are directed to them strictly in their personal capacity. In fact, they seek to hold all Defendants equally liable for their monetary claims. *See* Docket No. 22 at 19, ¶108, & at 23, ¶D.

Plaintiffs sought to limit their monetary claims to the personal capacity Co-Defendants in a footnote of their Opposition to Motion to Dismiss, not in their pleadings. (*See*, Docket No. 55 at 3, note 2). Nevertheless, these monetary claims are still part of their amended pleadings and their prayer for relief. Parties are normally bound by statements and assertions of facts in their pleadings. *See Pruco Life Ins. Co. v. Wilmington Trust Co.*, 721 F.3d 1, 11 (1st Cir. 2013) (“A party’s assertion of fact in a pleading is a judicial admission by which it normally is bound throughout the course of the proceeding”).

Sovereign immunity issues are threshold issues which should be ruled upon at an early stage of the case. *Kiman v. New Hampshire Dept. of Corrections*, 2007 WL 2247843 (D. N.H. 2007).

Denials of States' and state entities' claims to Eleventh Amendment immunity purport to be conclusive determinations that they have no right not to be sued in federal court. Moreover, a motion by a State or its agents to dismiss on Eleventh Amendment grounds involves a claim to a fundamental constitutional protection, cf. *Lauro Lines s.r.l. v. Chasser*, 490 U.S. 495, 502–503, 109 S.Ct. 1976, 1980, 104 L.Ed.2d 548 (1989) (SCALIA, J., concurring), whose resolution generally will have no bearing on the merits of the underlying action. Finally, the value to the States of their Eleventh Amendment immunity, like the benefit conferred by qualified immunity to individual officials, is for the most part lost as litigation proceeds past motion practice. *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 145 (1993).

This Court erred in the December 20, 2022, Minute Order in not entering a ruling on the issue of Eleventh Amendment immunity and in not dismissing with prejudice Plaintiffs’ monetary claims against the Commonwealth and official capacity Co-Defendants. Such omission keeps those claims procedurally alive, which will be a manifest error of law that fully justifies reconsidering the December 20, 2022 Order. Therefore, appearing Co-Defendants respectfully request that this Honorable Court reconsider its Minute Order at Docket No. 74 and consequently dismiss all monetary claims set forth by Plaintiffs against the Commonwealth and official capacity defendants on Eleventh Amendment grounds.

**WHEREFORE**, official capacity Co-Defendants respectfully request that this motion be granted, that the December 20, 2022 Minute Order be set aside or modified to

include a specific ruling that all monetary claims against these Co-Defendants are dismissed on Eleventh Amendment grounds.

**I HEREBY CERTIFY** that I electronically filed the foregoing with the Clerk of the Court, who will send notification of such filing to the parties subscribing to the CM/ECF System.

In San Juan, Puerto Rico, this 17th day of January 2023.

**DOMINGO EMANUELLI-HERNÁNDEZ**  
Secretary of Justice

**SUSANA I. PEÑAGARÍCANO-BROWN**  
Deputy Secretary in Charge of Litigation

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