

**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)

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

RESPONSE TO MOTION FOR RECONSIDERATION

TO THE HONORABLE COURT:

Come now, 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”), on their own behalf and that of the classes they seek to represent, through the undersigned counsel, and respectfully state and pray as follows:

I. Background

On August 18, 2022, Plaintiffs filed an Amended Complaint against Defendants Antonio López Figueroa (“López”), Jojanie Mulero Andino (“Mulero”), in their personal and official capacities, and against Defendant Union of Organized Civilian Employees (“the Union”) (collectively, “Defendants”) (Dkt. 22). On December 15, 2022, the court heard arguments on Defendants’ motions to dismiss (Dkts. 32, 37, 57). The court denied Defendants’ motions to dismiss while taking under advisement the arguments surrounding qualified immunity as to López and Mulero in their personal capacities (Dkt. 74). On January 17, 2023, Plaintiffs filed a Supplemental Brief addressing the issue of qualified immunity (Dkt. 81). López and Mulero now invoke Fed. R. Civ. P. 59(e) to seek reconsideration of the court’s dismissal of their motions to dismiss under (Dkt. 79).

II. Standard of Review

The Federal Rules of Civil Procedure “do not specifically provide for the filing of motions for reconsideration.” *Sanchez-Perez v. Sanchez-Gonzalez*, 717 F. Supp.2d 187, 193-94 (D.P.R. 2010). Pursuant to Rule 59(e), a district court will alter its original order only if it “evidenced a manifest error of law, if there is newly discovered evidence, or in certain other narrow situations.” *Biltcliffe v. CitiMortgage, Inc.*, 772 F.3d 925, 930 (1st Cir. 2014) (citation omitted). A motion for reconsideration cannot be used as a vehicle to relitigate and/or rehash matters already litigated and decided by the Court. *Standard Quimica De Venezuela v. Central Hispano International, Inc.*, 189 F.R.D. 202, n.4 (D.P.R. 1999); *Villanueva-Mendez v. Vazquez*, 360 F. Supp.2d 320, 322-23

(D.P.R. 2005). “Rule 59(e) does not exist to allow parties a second chance to prevail on the merits . . . [and] is not an avenue for litigants to reassert arguments and theories that were previously rejected by the Court.” *Johnson & Johnson Int’l v. P.R. Hosp. Supply, Inc.*, 322 F.R.D. 439, 441 (D.P.R. 2017) (citations omitted). “[A] motion for reconsideration is not properly grounded in a request for a district court to rethink a decision it has already made, rightly or wrongly.” *Moran Vega v. Rivera Hernandez*, 381 F. Supp.2d 31, 36 (D.P.R. 2005). As a general rule, motions for reconsideration should only be exceptionally granted. *Villanueva-Mendez*, 360 F. Supp. 2d at 323, *aff’d*, 440 F.3d 11 (1st Cir. 2006). “Rule 59(e) relief is granted sparingly.” *Biltcliffe*, 772 F.3d at 930. *See also Oquendo v. Costco Wholesale Corp.*, 2020 U.S. Dist. LEXIS 83802, at *2-3 (D.P.R. 2020).

III. Argument

A. The Motion for Reconsideration is Inapposite.

López and Mulero are charging the court with incurring in a “manifest error of law.” Mot. for Recons. at 2 (Dkt. 79). Specifically, they charge the court with “not making a specific finding that the Eleventh Amendment to the United States Constitution bars Plaintiffs’ monetary claims against” against them in their official capacities as Commissioner of the Puerto Rico Police Bureau and Human Resources Director, respectively. *Id.* But no “specific finding” is needed here because the question of monetary damages against López and Mulero in their official capacities has never been before the court’s consideration. Plaintiffs have never claimed monetary damages against them in their official capacities precisely because the Eleventh Amendment bars such remedy. *See Culebras Enterprises Corp. v. Rios*, 813 F. 2d 506, 516 (1st Cir. 1987) (internal citations omitted). Plaintiffs have made clear the monetary damages sought against López and Mulero are in their personal capacities only. *See Opp’n to Mot. to Dismiss* at 3 n. 2 (Dkt. 55).

Plaintiffs' Amended Complaint seeks monetary damages under Section 1983 only against the Union, and López and Mulero in their *personal capacities*—not in their *official capacities*. Am. Compl. at 23 para. D (Dkt. 22); Br. at 2-9 (Dkt. 81). The Eleventh Amendment, however, does not shield López and Mulero, in their official capacities, from injunctive or declaratory relief. *See Rodriguez-Vives v. Commonwealth of Puerto Rico*, 2006 WL 1716448, at *6 (D.P.R. 2006) (quoting *Nieves-Marquez v. Puerto Rico*, 353 F. 3d 108 (1st Cir. 2003), *Redondo-Borges v. U.S. Dept. HUD*, 421 F. 3d 1 (1st Cir. 2005), and *Chaulk Services, Inc., v. Massachusetts Com'n Against Discrimination*, 70 F. 3d 1361 (1st Cir. 1995)). López's and Mulero's request for the court to rule on a claim that is not in the Amended Complaint and has never been before its consideration is inapposite. Their motion for reconsideration should be denied.

WHEREFORE, Plaintiffs respectfully request that Defendants López's and Mulero's Motion for Reconsideration be denied.

CERTIFICATE OF SERVICE

I hereby certify that on this 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 appearing parties and counsels using the Court's electronic system.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 27th day of January, 2023.

s/ÁNGEL J. VALENCIA-GATELL

Ángel J. Valencia-Gatell

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