

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

LUIS RIGAU

Plaintiff,

v.

MARIA T. QUINTANA, in her official capacity as President of the Puerto Rico Industrial Commission; PUERTO RICO INDUSTRIAL COMMISSION; FEDERACIÓN CENTRAL DE TRABAJADORES, UFCW LOCAL 481

Defendants.

CIVIL NO. 25-1630 (PAD-HRV)

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

SURREPLY TO GOVERNMENT EMPLOYER'S REPLY

TO THE HONORABLE COURT:

Plaintiff Luis Rigau ("Rigau"), through the undersigned counsel, respectfully states and prays as follows:

I. INTRODUCTION

Rigau submits this Surreply under Civil Local Rule 7(d) to respond to two new arguments raised in the Reply filed by Defendants Maria T. Quintana and the Puerto Rico Industrial Commission (collectively, "the Government Employer"): The Government Employer's Reply (1) recasts the Joint Informative Motion regarding settlement at Docket 66 as a merits admission, and (2) cites statutes from California, Washington, and New York as constitutional justification for its conduct. Each of

these new arguments fail as a matter of law and fact. This Surreply provides that response.

II. ARGUMENT

A. The Joint Informative Motion Regarding Settlement as to the Injunctive Phase at Docket 66 Does Not Support Dismissal.

The Government Employer now argues Rigau admitted continued union membership by participating in the settlement efforts outlined in the Joint Informative Motion at Docket 66. Reply at 4. That argument fails procedurally and substantively.

Procedurally, it is a new argument the Government Employer did not previously raise in its motion to dismiss (Dkt. 53)—and is therefore waived. *See Garcia-Fernandez v. Glob. Cap. Mkts., Inc.*, 2010 U.S. Dist. LEXIS 159449, at *7–8 (D.P.R. 2010) (arguments brought for the first time in a reply brief are “belated,” “deemed waived, and will not be considered.”); *see also Frazier v. Bailey*, 957 F.2d 920, 932 n.14 (1st Cir. 1992) (issues raised for the first time in a reply brief are deemed waived.) Fed. R. Evid. 408, moreover, bars the use of settlement communications to prove liability. The Government Employer cannot mistake compromise language in Docket 66 for conceding any argument. *See P.R. Dairy Farmers Ass’n v. Pagan*, 2017 U.S. Dist. LEXIS 21508, at *2 (citing *Ramada Development Company v. Martin W. Rauch, et al.*, 644 F.2d 1097 (1st Cir. 1980)).

The Government Employer’s reference to the settlement language at Docket 66 is also improper under Fed. R. Civ. P. 12(d). This is because the Joint Informative Motion at Docket 66 falls outside the Complaint and cannot be used to resolve a

motion to dismiss, which challenges the sufficiency of the Complaint, not disputed merits facts against Rigau. See *Adams-Erazo v. Hosp. San Gerardo*, 56 F. Supp. 3d 113, 119 (D.P.R. 2014) (a court may not ordinarily consider any documents that are outside the complaint or not expressly incorporated therein.) (citing *Alternative Energy, Inc. v. St. Paul Fire & Marine Ins. Co.*, 267 F.3d 30, 33 (1st Cir. 2001)).

Even if the Court considered the Joint Informative Motion at Docket 66, the Government Employer’s core premise is irrelevant. It conflates union membership with authorization to deduct money from wages in favor of Defendant Federación Central de Trabajadores, UFCW Local 481 (“the Union”). The constitutional question here is not a membership label—it is whether the government may seize money from Rigau’s wages and turn it over to the Union without his affirmative consent. *Janus v. AFSCME, Council 31*, 585 U.S. 878, 930 (2018) (“Neither an agency fee nor any other payment to the union may be deducted from a nonmember’s wages . . . unless the employee affirmatively consents to pay.”).

That is the violation pleaded here against the Government Employer: unauthorized deductions by an employer acting under color of state law. The constitutional duty falls on the state actor that executes payroll deductions because state action occurs when government payroll systems seize and transfer Rigau’s wages to the Union. Assertions about “membership” do not immunize the Government Employer from this constitutional duty. Whether Rigau was ever characterized as a “member” does not cure deductions made without a constitutionally valid consent. The Government Employer’s argument asks the Court

to decide a side question—union membership status—while avoiding the controlling constitutional question—authorization to deduct. That conflation is misleading and cannot support dismissal of the well-pleaded Complaint.

B. Foreign “*Janus*-Response” Statutes Are Irrelevant Here.

The Government Employer asks the Court to treat certain statutes from other jurisdictions as constitutional proof here that the Complaint fails to state a cause of action. Reply at 3–4. But this newfound argument is incorrect. Federal constitutional minima are set by federal law, not by counting state policy choices, especially those made to neuter federal law. U.S. Const. art. VI, cl. 2; *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). Here, *Janus* controls: deductions of dues or fees in favor of the Union require affirmative consent. *See Janus*, 585 U.S. at 930. The Government Employer identifies no Puerto Rico statute that authorizes—much less compels—the regime of automatic, non-consensual deductions they defend. Comparative legislation from Sacramento, Olympia, or Albany cannot be a substitute for absent Puerto Rico law or override federal constitutional requirements. That “no federal court has found [the comparative legislation] repugnant to the U.S. Constitution or incompatible with *Janus*” is not a standard requiring dismissal. Reply at 4. Constitutional claims are not barred by the absence of prior judgments elsewhere. This Court must decide Rigau’s claims on this record and the applicable law of Puerto Rico and the United States Constitution, not by imported and misplaced policy analogies.

III. CONCLUSION

The Government Employer's Reply deepens, rather than repairs, the deficiencies in its motion to dismiss. The Joint Informative Motion at Docket 66 cannot be considered at all, much less used as a merits admission, and foreign statutes cannot redefine First Amendment rights. Accordingly, Rigau respectfully requests that the Court deny the Government Employer's Motion to Dismiss and grant such further relief as it deems appropriate.

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notification of such filing to all appearing parties and counsel of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 27th day of April 2026.

s/ ÁNGEL J. VALENCIA

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