

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

VANESSA E. CARBONELL; et al.

Plaintiffs

v.

ANTONIO LÓPEZ FIGUEROA, in his  
personal capacity and in his official  
capacity as Commissioner of the Puerto  
Rico Police Bureau; et al.

Defendants

CASE NO. 22-cv-1236 (WGY)

CLASS ACTION COMPLAINT

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

**THE UNION’S ANSWER TO PLAINTIFFS’  
AMENDED CLASS ACTION COMPLAINT**

**TO THE HONORABLE COURT:**

**COMES NOW** Defendant Union of Organized Civilian Employees (the “Union”), through the undersigned counsel and very respectfully submits this Answer to Plaintiffs’ Amended Class Action Complaint (the “Complaint”). See ECF No. 22.

**INTRODUCTION<sup>1</sup>**

1. This allegation is a conclusion of law which does not require a response. If a response is required, the Union respectfully submits that the First Amendment and its interpretative case law speak for themselves.

2. The Union admits that Plaintiffs bring this action under 42 U.S.C. § 1983. It denies the remainder of this allegation and affirmatively alleges that it did not act in concert with the Commonwealth of Puerto or its officials to coerce Plaintiffs and the

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<sup>1</sup> To maintain uniformity and for the convenience of the Court, the Union’s Answer employs the same headings used in the Complaint. In that same vein, the paragraph numbers correspond to and are intended to refer to the corresponding allegation in the Complaint.

purported class to remain members of a labor organization. The Union also affirmatively alleges that it did not engage in any conduct that could be construed as a state action.

3. The Union admits that Plaintiffs are included within a bargaining unit which it exclusively represents. The Union denies the remainder of this allegation as it pertains to the purported class as speculative; no class has been certified.

4. This allegation is a conclusion of law which does not require a response. If a response is required, the Union respectfully submits that the Puerto Rico Public Employees Health Benefits Act speaks for itself.

5. This allegation is a conclusion of law which does not require a response. If a response is required, the Union respectfully submits that the Puerto Rico Public Employees Health Benefits Act speaks for itself.

6. This allegation is a conclusion of law which does not require a response. If a response is required, the Union respectfully submits that the Puerto Rico Public Employees Health Benefits Act speaks for itself.

7. This allegation is a conclusion of law which does not require a response. If a response is required, the Union respectfully submits that the Supreme Court's opinion in Janus v. AFSCME, Council 31, 138 S. Ct. 2448 (2018) speaks for itself.

8. The Union admits that Plaintiffs were all either dues paying members thereof or paid agency fees. The Union denies that Plaintiff Nieves paid "forced fees."

9. This allegation is denied as drafted. The Union affirmatively alleges that the additional employer contribution of \$25 per month stems from the Collective Bargaining Agreement (the "CBA") it had negotiated with the Puerto Rico Police Bureau (the

“Bureau”), which was extensive to the appropriate bargaining unit. The CBA defined the bargaining unit solely as union members and agency fees-paying non-members.

10. This allegation is a conclusion of law, which does not require a response. If a response is required, the Union respectfully submits that the statute referenced by Plaintiffs speaks for itself. See P.R. Laws Ann. tit. 3, § 729h.

11. This allegation is denied as drafted. The Union admits only that each Plaintiff voiced their desire to withdraw from the Union or pay services fees, as applicable.

12. This allegation is denied as drafted. The Union was never informed of any “objections” to memberships or deductions in its favor or of any ensuing “demands.”

13. This allegation is denied. The Union affirmatively alleges that it has only ever asked the Bureau to comply with the CBA. The Union affirmatively alleges that it has no control over the Bureau, including the manner in which the Bureau decides to allocate and distribute its funds.

14. The Union admits that the Bureau ceased checking off membership dues and service fees from Plaintiffs’ paychecks but denies the rest of this allegation. The Union affirmatively alleges that the Bureau did not acquiesce to any demand by the Union, but that it acted independently and of its own volition. The Union further affirmatively alleges that it has no control over the Bureau, including the manner in which it decides to allocate and distribute its funds.

15. The Union denies the portion of this allegation as to what prompted Plaintiffs’ actions for lack of information and belief. The Union denies the remainder of

this allegation as drafted. It affirmatively alleges that it cannot award or disburse any payments corresponding to the additional employer contribution, since those funds are the property of, and paid out by the Bureau. The Union also affirmatively alleges that it only ever has sought that the Bureau comply with the CBA.

16. The Union denies this allegation. It affirmatively alleges that Plaintiffs all received the additional employer contribution pursuant to the terms of the CBA.

17. The Union denies this allegation for the same reasons as paragraph 16.

18. The Union denies this allegation as drafted. The additional employer contribution is paid by the Bureau pursuant to and in accordance with the terms of the CBA. The Union affirmatively alleges that Plaintiffs lost all right to receive the additional employer contribution, upon their withdrawal from the Union or their refusal to pay agency fees, where appropriate.

19. The Union denies this allegation as drafted, for the same reasons as the preceding paragraph.

20. This allegation is a conclusion of law which does not require a response. If it does, the Union denies this allegation and affirmatively alleges that it incurred in no practice that violated Plaintiffs' constitutional rights.

21. This allegation is a conclusion of law which does not require a response. If it does, the Union denies this allegation and affirmatively alleges that it incurred in no discriminatory practice.

22. The Union denies this allegation, as it has not unlawfully coerced Plaintiffs to take any action whatsoever nor has it violated any of their rights under the First Amendment.

23. This allegation is a conclusion of law which does not require a response. If it does, the Union denies this allegation and affirmatively alleges that it did not act under color of law nor became a state actor during any relevant time.

### **JURISDICTION AND VENUE**

24. The Union admits only that this action is brought under 42 U.S.C. § 1983 and denies the remainder of this allegation. The Union did not deprive Plaintiffs or any purported class member of any constitutional right or any privilege or immunity, nor did it act under color of law.

25. This allegation is a conclusion of law which does not require a response.

26. This allegation is a conclusion of law which does not require a response.

27. This allegation is a conclusion of law which does not require a response.

### **PARTIES**

28. The Union admits this allegation solely as it pertains to Carbonell's employment information. The Union denies for lack of information Carbonell's allegation about her place of residence.

29. The Union admits this allegation solely as it pertains to Whatts' employment information. The Union denies for lack of information Whatts' allegation about his place of residence.

30. The Union admits this allegation solely as it pertains to Colón's employment information. The Union denies for lack of information Colón's allegation about her place of residence.

31. The Union admits this allegation solely as it pertains to Nieves' employment information. The Union denies for lack of information Nieves' allegation about his place of residence.

32. The Union admits this allegation solely as it pertains to Álvarez's employment information. The Union denies for lack of information Álvarez's allegation about her place of residence.

33. The Union admits this allegation solely as it pertains to Dumont's employment information. The Union denies for lack of information Dumont's allegation about her place of residence.

34. The Union admits this allegation solely as it pertains to Quiñones' employment information. The Union denies for lack of information Quiñones' allegation about her place of residence.

35. The Union admits this allegation solely as it pertains to Ortiz González's employment information. The Union denies for lack of information Ortiz González's allegation about her place of residence.

36. The Union admits this allegation solely as it pertains to Berlinger's employment information. The Union denies for lack of information Berlinger's allegation about her place of residence.

37. The Union admits this allegation solely as it pertains to Cruz's employment information. The Union denies for lack of information Cruz's allegation about her place of residence.

38. The Union admits this allegation solely as it pertains to Ortiz Rivera's employment information. The Union denies for lack of information Ortiz Rivera's allegation about her place of residence.

39. This allegation is not directed at the Union and thus requires no response. Further, most of this allegation also constitutes conclusions of law, as it is premised on Plaintiffs' interpretations and references to P.R. Laws Ann. tit. 25, §§ 3501 & 3534, which also does not require a response. If a response is required, the Union admits only that the Defendant Antonio López's office address is 601 Franklin Delano Roosevelt Avenue, San Juan, PR 00936. Notwithstanding, Sections 3501 and 3534 speak for themselves.

40. This allegation is not directed at the Union and thus requires no response. Further, most of this allegation also constitutes conclusions of law, which does not require a response. If a response is required, the Union denies most of this allegation and admits only that Defendant Jojanie Mulero's office address is 601 Franklin Delano Roosevelt Avenue, San Juan, PR 0093. Further, the Union affirmatively alleges that Defendant Jojanie Mulero did not act pursuant to any request by the Union's, but of her own volition.

41. The Union denies that it represents "thousands of public sector employees of" the Bureau but admits the remainder of this allegation.

### **FACTUAL ALLEGATIONS**

Plaintiff Vanessa E. Carbonell

42. The Union admits only that Carbonell has worked at the Bureau since 1992. Whether Ortiz is an “employee” as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

43. The Union admits this allegation.

44. The Union admits this allegation.

45. The Union denies this allegation for lack of information. Further, the Union could not comply with Carbonell’s request to have her union dues deducted from her paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

46. The Union denies this allegation for lack of information. The Union does allege that, if Carbonell is not receiving the additional employer contribution, it would be because she has no legal right thereto or due to other circumstances not attributable to the Union.

47. The Union denies this allegation for lack of information.

Plaintiff Roberto A. Whatts Osorio

48. The Union admits only that Whatts has worked at the Bureau since 1985. Whether Ortiz is an “employee” as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

49. The Union admits this allegation.

50. The Union admits this allegation.

51. The Union denies this allegation for lack of information. Further, the Union could not comply with Whatts’ request to cease from having his union dues deducted



from his paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

52. The Union denies this allegation for lack of information. The Union does allege that, if Whatts is not receiving the additional employer contribution, it would be because he has no legal right thereto or due to other circumstances not attributable to the Union.

Plaintiff Elba Y. Colón Nery

53. The Union admits only that Colón has worked at the Bureau since 1991. Whether Ortiz is an “employee” as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

54. The Union admits this allegation.

55. The Union admits this allegation.

56. The Union denies this allegation for lack of information. Further, the Union could not comply with Colón’s request to have her union dues deducted from her paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

57. The Union denies this allegation for lack of information. The Union does allege that, if Colón is not receiving the additional employer contribution, it would be because she has no legal right thereto or due to other circumstances not attributable to the Union.

Plaintiff Billy Nieves Hernández

58. The Union admits only that Nieves has worked at the Bureau since 1994. Whether Nieves is an “employee” as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

59. The Union denies this allegation as drafted. The only fees which had been deducted from his paycheck were services charges, which practice was permissible per the state of affairs before the Supreme Court abrogated its opinion in Abood v. Detroit Bd. of Ed., 431 U.S. 209 (1977).

60. The Union denies this allegation as drafted, for the same reasons as the preceding allegation.

61. The Union denies this allegation for lack of information. Further, the Union could not comply with Nieves’ request to have his service fees deducted from his paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

62. The Union denies this allegation for lack of information. The Union does allege that, if Nieves is not receiving the additional employer contribution, it would be because he has no legal right thereto or due to other circumstances not attributable to the Union.

Plaintiff Nélica Álvarez Febus

63. The Union admits only that Álvarez has worked at the Bureau since 1994. Whether Álvarez is an “employee” as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

64. The Union admits this allegation.

65. The Union admits this allegation.

66. The Union denies this allegation for lack of information. Further, the Union could not comply with Álvarez's request to have her union dues deducted from her paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

67. The Union denies this allegation for lack of information. The Union does allege that, if Álvarez is not receiving the additional employer contribution, it would be because he shas no legal right thereto or due to other circumstances not attributable to the Union.

Plaintiff Linda Dumont Guzmán

68. The Union admits only that Dumont has worked at the Bureau since 1992. Whether Dumont is an "employee" as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

69. The Union admits this allegation.

70. The Union admits this allegation.

71. The Union denies this allegation for lack of information. Further, the Union could not comply with Dumont's request to have her union dues deducted from her paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

72. The Union denies this allegation for lack of information. The Union does allege that, if Dumont is not receiving the additional employer contribution, it would be

because he shas no legal right thereto or due to other circumstances not attributable to the Union.

Plaintiff Sandra Quiñones Pinto

73. The Union admits only that Dumont has worked at the Bureau since 1991. Whether Quiñones is an “employee” as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

74. The Union admits this allegation.

75. The Union admits this allegation.

76. The Union denies this allegation for lack of information. Further, the Union could not comply with Quiñones’ request to have her union dues deducted from her paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

77. The Union denies this allegation for lack of information. The Union does allege that, if Quiñones is not receiving the additional employer contribution, it would be because he shas no legal right thereto or due to other circumstances not attributable to the Union.

Plaintiff Yomarys Ortiz González

78. The Union admits only that Ortiz González has worked at the Bureau since 1995. Whether Ortiz González is an “employee” as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

79. The Union admits this allegation.

80. The Union admits this allegation.

81. The Union denies this allegation for lack of information. Further, the Union could not comply with Ortiz González's request to have her union dues deducted from her paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

82. The Union denies this allegation for lack of information. The Union does allege that, if Ortiz González is not receiving the additional employer contribution, it would be because he shas no legal right thereto or due to other circumstances not attributable to the Union.

Plaintiff Carmen Berlingeri Pabón

83. The Union admits only that Berlingeri has worked at the Bureau since 1992. Whether Berlingeri is an "employee" as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

84. The Union admits this allegation.

85. The Union admits this allegation.

86. The Union denies this allegation for lack of information. Further, the Union could not comply with Berlingeri's request to have her union dues deducted from her paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

87. The Union denies this allegation for lack of information. The Union does stress that this allegation is in contradiction with the preceding allegation.

88. The Union denies this allegation for lack of information. The Union does allege that, if Berlingeri is not receiving the additional employer contribution, it would

be because he shas no legal right thereto or due to other circumstances not attributable to the Union.

Plaintiff Janet Cruz Berríos

89. The Union admits only that Cruz has worked at the Bureau since 1995. Whether Cruz is an “employee” as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

90. The Union admits this allegation.

91. The Union admits this allegation.

92. The Union denies this allegation for lack of information. Further, the Union could not comply with Cruz’s request to have her union dues deducted from her paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

93. The Union denies this allegation for lack of information. The Union does allege that, if Cruz is not receiving the additional employer contribution, it would be because he shas no legal right thereto or due to other circumstances not attributable to the Union.

Plaintiff Merab Ortiz Rivera

94. The Union admits only that Ortiz Rivera has worked at the Bureau since 1996. Whether Ortiz Rivera is an “employee” as defined by P.R. Laws Ann. tit. 3, § 702(a) is a conclusion of law that does not require a response.

95. The Union admits this allegation.

96. The Union admits this allegation.

97. The Union denies this allegation for lack of information. Further, the Union could not comply with Ortiz Rivera's request to have her union dues deducted from her paychecks, because it made no such deductions, nor could it case them to be made nor did it have any obligation to comply therewith.

98. The Union denies this allegation for lack of information. The Union does allege that, if Ortiz Rivera is not receiving the additional employer contribution, it would be because he shas no legal right thereto or due to other circumstances not attributable to the Union.

All Plaintiffs

99. This allegation is not directed at the Union and requires no response. If a response is required, the allegation is denied as drafted.

100. This allegation is not directed at the Union and requires no response. If a response is required, the allegation is denied as drafted.

101. This allegation is denied. The Union does not deny the additional employer contribution to any employee, as it does not pay it out, nor does it decide to whom to pay it.

102. This allegation is denied for lack of information.

103. This allegation is a conclusion of law which requires no response. If a response is required, the Union denies it, as it has not engaged in any act to unlawfully coerce or pressure Plaintiffs and the members of the purported class to become Union members.

104. This allegation is a conclusion of law which requires no response. If a response is required, the Union denies it, as it has not engaged in any act to unlawfully coerce or pressure Plaintiffs and the members of the purported class to become Union members.

105. The Union denies this allegation. The benefit is not provided solely to Union members.

106. The Union denies this allegation for the same reasons as the previous allegation and because it is speculative.

107. This allegation is not directed at the Union and requires no response. If a response is required, the Union denies it, as it did not unlawfully coerce any of the Plaintiffs to join the Union.

108. The Union admits that Plaintiffs are bringing this action pursuant to 42 U.S.C. § 1983 and that they are seeking the relief requested in the Complaint. The Union affirmatively alleges that Plaintiffs have no right to their requested relief, as it incurred in no conduct that would warrant such relief.

#### **CLASS ACTION ALLEGATIONS**

109. The Union admits that Plaintiffs bring this case as a class action, but affirmatively alleges that Plaintiffs have failed to and cannot comply with Fed. R. Civ. P. 23(a)'s prerequisites.

110. This allegation is not directed at the Union and, thus, does not require a response. If a response is required, the Union denies this allegation. The Union



affirmatively alleges that this proposed class consists of employees who are not similarly situated to Plaintiffs.

111. Plaintiffs' reference to the number of persons in the purported class is denied as speculative and without basis. The remainder of the allegation constitutes a conclusion of law which does not require a response. If a response is required, the Union denies the remainder of the allegation. The Union affirmatively alleges that the number of persons similarly situated to Plaintiffs is much lower than the amount they allege to constitute their purported class.

112. The Union admits that there are questions of law common to the Plaintiffs but denies the remainder of the allegation as drafted. The Union affirmatively alleges that it incurred in no acts to coerce non-union employees to join it or in any acts to breach their constitutional rights.

113. The Union admits this allegation.

114. This allegation is a conclusion of law which does not require a response. If a response is required, the Union denies it.

115. The Union denies this allegation. Plaintiff's claims are not typical of the members of the purported class, as Plaintiffs are not similarly situated. The Union also has not coerced Plaintiff or any members of the purported class in any way that would entitle them to the relief requested in the Complaint.

116. This allegation is denied for lack of information.

117. This allegation is denied for lack of information.

118. This allegation is a conclusion of law which does not require a response. If a response is required, the Union denies it.

119. The Union denies this allegation. It has incurred in no actions or made any threats to deprive any Bureau employees of their constitutional rights.

### **CAUSES OF ACTION**

120. The Union hereby restates and realleges all preceding paragraphs in opposition to Plaintiffs' Causes of Action.

121. The Union admits that Plaintiffs are suing all Defendants under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 on behalf of themselves and the requested class. However, the Union affirmatively alleges that it has incurred in no action which would entitle Plaintiffs to relief under either statute. The Union also affirmatively alleges that Plaintiffs cannot not comply with the prerequisites set forth by Fed. R. Civ. P. 23(a) for class certification.

### **COUNT I**

122. The Union denies this allegation. It has not enunciated nor executed any policy to violate Plaintiffs and other purported class members' constitutional rights.

123. The Union denies this allegation. Plaintiffs have not been prevented from exercising any right, been deprived of any rights, or suffered any damages, harm, or injury.

124. The Union denies this allegation. It has not engaged in any conduct to deprive or abridge Plaintiffs or any other employees within the appropriate bargaining unit of their rights, nor has it caused them harm, damage, or injury.

### **PRAYER FOR RELIEF**

The Union restates and realleges herein the preceding allegations. The Union denies the prayer for relief because Plaintiffs have no legal right to the requested relief.

**The Union denies every allegation that it did not expressly admit.**

**AFFIRMATIVE DEFENSES**

1. The Union incorporates herein by reference all denials and averments contained in the preceding answer to the Complaint and restates them as part of these affirmative defenses.

2. The Union has not engaged in any wanton or malicious conduct.

3. The Union at no point or time violated or abridged or engaged in any conduct to restrict, impair, or otherwise reduce Plaintiffs' rights or those of the members of the purported class.

4. Plaintiffs misconstrue the Supreme Court's ruling in Janus v. AFSCME, Council 31, 138 S. Ct. 2448 (2018), to attempt to grant themselves rights to which they are not entitled under law.

5. The additional employer contribution does not stem from any policy, other than the Collective Bargaining Agreement by and between the Union.

6. Plaintiffs failed to exhaust the exclusive remedies provided by the Collective Bargaining Agreement.

7. Per the letter of the Collective Bargaining Agreement, Plaintiffs are not entitled to the additional employer contribution.

8. The Complaint does not plead any facts that would compel a finding of liability against the Union under 42 U.S.C. § 1983.

9. Plaintiffs have failed to state a claim for abridgment of their First Amendment rights.

10. Plaintiffs engaged in no constitutionally protected conduct.

11. Even if Plaintiffs engaged in constitutionally protected conduct, they did not act on a matter of public concern.

12. At all relevant times, the Union did not act under color of law.

13. The Union has, at all relevant times, not incurred in any act or omission that could be construed as state action. Instead, always, the Union has acted as a private actor and its administration of the Collective Bargaining Agreement constitutes a private action.

14. The Union never induced the Bureau to act or entered into an agreement with it to take any action against Plaintiffs or any members of the purported class.

15. The Union has had no degree of control whatsoever over the Bureau or the manner in which it acts.

16. The Union has no say in how the Bureau spends or allocates its funds, including whether it chooses to provide the additional employer contribution to Plaintiffs or any members of the purported class.

17. If the Court determines that the Union's administration of the Collective Bargaining Agreement constitutes state action, it is entitled to qualified immunity, to the same extent as any public official.

18. Plaintiffs have failed to comply with Fed. R. Evid. 23(a)'s prerequisites for class certification, as they are not similarly situated to the members of the purported class,

their claims are not typical of the purported class, and the class is not so numerous as to support class certification.

19. Any action for which Plaintiffs seek redress is not attributable to the Union, but to other parties or third parties.

20. Any contact the Union may have had with the Bureau was for lawful purposes and not for any purposes to unlawfully inflict injury upon Plaintiffs or the members of the purported class.

21. Any request by the Union for the Bureau to act was made for lawful purposes and pursuant to it and its members right to petition the government to address their grievances.

22. The Union has not once engaged in any conduct to unlawfully coerce, induce, intimidate, or in any way require Plaintiffs or the members of the purported class to join the Union.

23. The Union has not breached any duty it owes the Plaintiffs or the members of the purported class.

24. The Union has not breached any duty of fair representation, nor does the Court have any jurisdiction to hear any claim premised on such a breach.

25. Plaintiff's claims under 42 U.S.C. § 1983 are in reality a claim for breach of contract, which they disguise due to their failure to exhaust contractual remedies.

26. Puerto Rico is not a "State" for purposes of the Fourteenth Amendment, nor does the due process clause in the Fifth Amendment apply to Puerto Rico.

27. The Complaint asks the Court to reinterpret the Collective Bargaining Agreement, whereas the parties thereto had agreed to have all matters relating to the agreement to be ruled on and adjudged by the Puerto Rico Commission of Labor Relations for the Public Service.

28. State law provides an exclusive procedure, upon which the Court should abstain from exercising its jurisdiction pursuant to the abstention doctrine.

29. Plaintiffs are not entitled to any relief under the common law.

30. The Union did not engage in unlawful conduct.

31. Plaintiffs are not entitled to any portion of their requested relief.

32. The Union has at all times acted in the best interest of its members and those employees which it represents.

33. The Union has at all times acted in accordance with applicable law.

34. The Union has at all times acted pursuant to and in defense of its Collective Bargaining Agreement with the Bureau.

35. The Complaint fails to state a claim upon which relief may be granted against the Union.

36. The Complaint fails to state a claim cognizable under any applicable federal or state statute.

37. Lack of subject-matter jurisdiction.

38. The Union at all times acted in good faith in the performance of its duties.

39. The Union at all times acted in accordance with applicable law and principles of common law and equity.

40. The Union is not liable for the damages alleged in the Complaint.

41. The Union was not negligent and did not willfully or intentionally breach any statute or principles of common law or equity.

42. The Complaint fails to state specific facts sufficient to show that the Union is liable for the damages alleged by Plaintiff.

43. The Complaint fails to state specific facts sufficient to show that Plaintiffs suffered damages. In the event that Plaintiffs did suffer damages, their claims for damages are clearly speculative and/or exaggerated.

44. There is no causal relation between the Union's actions or omissions alleged in the Complaint and the damages claimed therein.

45. Comparative negligence.

46. Contributory negligence.

47. Assumption of risk.

48. Plaintiffs' claims for breach of their constitutional rights are preempted by more specific statutory law.

49. All damages allegedly suffered by Plaintiffs were caused by their own negligence or conduct and, thus, are self-inflicted.

50. In the hypothesis that Plaintiffs is entitled to any relief, which the Union denies, Plaintiffs have failed to properly mitigate damages.

51. Estoppel, bad faith and/or unclean hands.

52. Plaintiffs lack standing to assert some or all of the claims set forth in the Complaint.

53. Plaintiffs have failed to include an indispensable party.

54. All or some of Plaintiffs' claims are time barred.

55. The Union reserves the right to amend its Answer to Complaint to include additional affirmative defenses that may result from the process of discovery or upon good cause shown.

56. The Union does not waive any other affirmative defenses that may arise during discovery proceedings.

**WHEREFORE**, the Union respectfully asks the Court to dismiss the Complaint with prejudice.

**RESPECTFULLY SUBMITTED**, in New York, New York, this 13<sup>th</sup> day of January 2023.

Miguel Simonet-Sierra  
USDC-PR No. 210,102  
Email: [msimonet@msglawpr.com](mailto:msimonet@msglawpr.com)

s/Richard J. Schell  
Richard J. Schell  
USDC-PR No. 305,811  
Email: [rschell@msglawpr.com](mailto:rschell@msglawpr.com)

**MONSERRATE SIMONET & GIERBOLINI**  
101 San Patricio Ave., Suite 1120  
Guaynabo, PR 00968  
Tel.: 787 620-5300 | Fax: 787-620-5305

*Counsel for Defendant Union of Organized Civilian Employees*