

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

United Automobile, Aerospace, Agricultural Implement Workers of America International Union (“UAW”); UAW, Department of Agriculture and Corporation for the Rural Development of Puerto Rico Employees’ Union Local 2368; UAW, Environmental Quality Board Employees’ Union Local 2337; UAW, Department of Transportation and Public Works Employees’ Union Local 2341; UAW, Department of Treasury Employees’ Union Local 2373; UAW, Association of School Cafeteria Workers Local 2396; UAW, Department of Family Employees’ Local 2555; UAW, Administration for Farming Services and Development Local 4004; Office and Professional Employees International Union (“OPEIU”); General Services Administration Employees Union, OPEIU; Council for Superior Education, OPEIU; Sindicato Puertorriqueño de Trabajadores Afiliado a Service Employees International Union, Local 1996 (“SPT”); Federación Central de Trabajadores, Local 481, United Food and Commercial Workers (“FCT”); Yolanda Martínez, as public employee of the Environmental Quality Board and UAW union member; Enrique Báez Román, as public employee of the Department of Transportation and Public Works and as UAW union member; Luisa Rivera as public employee of the Department of Agriculture and as UAW union member; Carmen Miranda as public employee of the Department of Treasury and as UAW union member; Gladys Rodríguez as public employee of the Department of Family and a non-union employee; Desiree López as public employee of the Administration for Farming Development and Services and as UAW union member; Abimael Estrada Quiñones, as public career employee in the DE and SPT union member; Nydia Figueroa

Civil No.

Re: Complaint,  
Preliminary Injunction  
Permanent Injunction  
Declaratory Judgment

Hernández, as public employee in the DE and a non-union employee; Yasmín Rivera Burgos as public employee in the DE and a non-union employee, Wilmarilia Vargas Irizarry as public employee in the Department of Housing (“DH”) and FCT union member; Ramón O. Benítez Rivera as public employee in the DH and FCT union member; Leslie S. Delgado Ortiz as public employee in the Authority of Solid Waste and FCT union member; Raúl Maysonet García as public employee in the Department of Recreation and Sports and FCT union member

Plaintiffs

v.

Luis A. Fortuño in his personal and official capacity as Chief Executive of the Commonwealth of Puerto Rico, Osvaldo Ortolaza in his personal and official capacity as Director of Administration of General Services; José Lema Moyá in his personal and official capacity as Director of Council for Superior Education; Javier Rivera Aquino in his personal and official capacity as Director of Director of the Administration for Farming Services and Development; Javier Rivera Aquino in his personal and official capacity as Secretary of Department of Agriculture; Juan Carlos Puig Morales in his personal and official capacity as Secretary of the Department of Treasury; Pedro Nieves Miranda in his personal and official capacity as Director of the Environmental Quality Board; Rubén A. Hernández Greforat in his personal and official capacity as Secretary of Department of Transportation and Public Works; Luis Bernal Jiménez in his personal and official capacity as Secretary of Authority of Solid Waste; Yesef Y. Cordero in his personal and official capacity as Secretary of

Department of Housing; Henry Newmann in his personal and official capacity as Secretary of Department of Recreation and Sports; Yanitsia Irizarry Méndez in her personal and official capacity as Secretary of Department of Family

Defendants

### **AMENDED COMPLAINT**

#### **TO THE HONORABLE COURT:**

**NOW COMES** United Automobile, Aerospace, Agricultural Implement Workers of America International Union (“UAW”); UAW, Department of Agriculture and Corporation for the Rural Development of Puerto Rico Employees’ Union Local 2368 (“Local 2368”); UAW, Environmental Quality Board Employees’ Union Local 2337 (“Local 2337”)<sup>1</sup>; UAW, Department of Transportation and Public Works Employees’ Union Local 2341 (“Local 2341”); UAW, Department of Treasury Employees’ Union Local 2373 (“Local 2373”); UAW, Association of School Cafeteria Workers Local 2396 (“Local 2396”)<sup>2</sup>; UAW, Department of Family Employees’ Local 2555 (“Local 2555”); UAW, Administration for Farming Services and Development Local 4004 (“Local 4004”); Office and Professional Employees International Union (“OPEIU”); General Services Administration Employees Union, OPEIU; Council for Superior Education, OPEIU; Sindicato Puertorriqueño de Trabajadores Afiliado a Service Employees International Union, Local 1996 (“SPT”); Federación Central de Trabajadores, Local 481, United Food and Commercial Workers (“FCT”); Yolanda Martínez (“Martínez”), as public

<sup>1</sup> Plaintiffs herein reserve the right to file declaratory judgment in the near future seeking relief because these or other group of employees should be excluded under Article 37.02 of Act No. 7.

<sup>2</sup> Refer to footnote No. 1

employee of the Environmental Quality Board and UAW union member; Enrique Báez Román (“Báez Román”), as public employee of the Department of Transportation and Public Works and as UAW union member; Luisa Rivera (“Rivera”) as public employee of the Department of Agriculture and as UAW union member; Carmen Miranda (“Miranda”) as public employee of the Department of Treasury and as UAW union member; Gladys Rodríguez (“Rodríguez”) as public employee of the Department of Family and a non-union employee; Desiree López (“López”) as public employee of the Administration for Farming Development and Services and as UAW union member; Amaury Erazo Alvarado (“Erazo Alvarado”), as public career employee in the Department of Education (“DE”) and PASO union member; Abimael Estrada Quiñones (“Estrada Quiñones”), as public career employee in the DE and SPT union member; Nydia Figueroa Hernández (“Figueroa Hernández”), as public employee in the DE and a non-union employee; Yasmín Rivera Burgos (“Rivera Burgos”) as public employee in the DE and a non-union employee, Wilmarilia Vargas Irizarry (“Vargas Irizarry”) as public employee in the Department of Housing (“DH”) and FCT union member; Ramón O. Benítez Rivera (“Benítez Rivera”) as public employee in the DH and FCT union member; Leslie S. Delgado Ortiz (“Delgado Ortiz”) as public employee in the Authority of Solid Waste and FCT union member; Raúl Maysonet García (“Maysonet García”) as public employee in the Department of Recreation and Sports and FCT union member; through their undersigned counsels and very respectfully STATE, ALLEGE and PRAY as follows:

#### **I. JURISDICTION AND VENUE**

1. This action arises under the Constitution of the United States, particularly under Article I, Section 10; Article III, Section 2; the Fifth, Ninth, Tenth and Fourteenth

Amendments to the Constitution; and the Declaratory Judgment Act, 28 U.S.C. § 2201 and § 2202.

2. This Court has jurisdiction under § 1343 and is invested with pendent and supplementary jurisdiction to deal with intimately related state claims, inasmuch as there is jurisdiction under title 28 U.S.C. § 1367 for pendant state claims. It is also a matter of judicial economy to deal with all closely related matters in one forum.

3. The remedies requested are specifically authorized pursuant to 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), and 28 U.S.C. § 2412 (costs and fees). There is a present and actual controversy between the parties.

4. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391, as this action is brought in the judicial district in which all the defendants are residents and the facts relating to the causes of action arouse in this District.

5. Fed. R. Civ. P. 57 authorizes Declaratory Judgment, Fed. R. Civ. P. 65(a) authorizes a Preliminary Injunction and Fed. R. Civ. P. 65(d) authorizes a Permanent Injunction.

6. If this Honorable Court were to refrain from exercising jurisdiction under any abstention doctrine, plaintiffs wish to exercise their right to return to the district court, after obtaining the Commonwealth's decision for a final determination of their claim from which the district court abstained. England v. Louisiana, 375 U.S. 411 (1964).

## II. INTRODUCTION

7. This is a civil rights action challenging Puerto Rico Public Law No. 7 of March 9<sup>th</sup>, 2009, known as “Law Declaring a Fiscal State of Emergency and Establishing a Comprehensive Fiscal Stabilization Plan to Save Puerto Rico Credit”

("Act No. 7"), on its face and as applied, that deprived plaintiffs and the Puerto Rico public career employees of their rights under the Constitution of the United States and the Commonwealth of Puerto Rico.

8. This action is premised under the United States Constitution and the Puerto Rico Constitution, concerning the permanent and temporary suspension of statutory and contractual rights of thousands of Puerto Rico public service career employees. Defendants' actions have deprived and will continue to deprive plaintiffs of their paramount rights and guarantees provided under the United States Constitution and the Puerto Rico Constitution.

### **III. THE PARTIES**

9. United Automobile, Aerospace, Agricultural Implement Workers of America International Union ("UAW")<sup>3</sup> is a certified labor organization within the meaning of Public Law No. 45 of February 25<sup>th</sup>, 1998, 3 L.P.R.A. 1451 et seq., ("Act No. 45") representing public service employees, with offices in: Edificio Torres CPA, Zona Industrial La Cerámica, Suite 201, Carolina, PR 00984; Tel.: 787-776-6060; Fax: 787-776-6091.

10. Office and Professional Employees International Union ("OPEIU"), is a certified labor organization within the meaning of Act No. 45, with offices in: PO Box 29146, San Juan, PR 00929; Tel.: 787-294-2064.<sup>4</sup>

11. Sindicato Puertorriqueño de Trabajadores Afiliado a Service Employees International Union, Local 1996 ("SPT") is a certified labor organization within the

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<sup>3</sup> This same address, telephone number and fax number applies to all Locals of UAW.

<sup>4</sup> This same address, telephone number and fax number applies to all Locals of OPEIU.

meaning of Act No. 45, with offices in: PO Box 25160, San Juan, PR 00925; Tel.: 787-775-0720.

12. Federación Central de Trabajadores, Local 481, United Food and Commercial Workers (“FCT”) is a certified labor organization within the meaning of Act No. 45, with offices in: Avenida Betances # 91, Urbanización Hermanos Dávila, Bayamón, PR 00961; Tel.: 787-268-0408; Fax: 787-268-0444.

13. Yolanda Martínez (“Martínez”) is public employee of the Environmental Quality Board and UAW union member; her address is: Jardines de Monte Alto, 325 Street No. 1, Apt. 116, Trujillo Alto, PR 00976; Tel. 787-293-6119.

14. Enrique Báez Román (“Báez Román”) is public employee of the Department of Transportation and Public Works and UAW union member; his address is: Street Charles E. Foote #72, Bo. Mineral, Mayagüez, PR 00683; Tel.: 787-883-7052.

15. Luisa Rivera (“Rivera”) is public employee of the Department of Agriculture and UAW union member; her address is: HC-01 Box 5368, Moca, Puerto Rico 00676; Tel.: 787-449-6713.

16. Carmen Miranda (“Miranda”) is public employee of the Department of Treasury and UAW union member; her address is: PO Box 9023733, San Juan, PR 00902-3733; Tel.: 787-776-6060.

17. Gladys Rodríguez (“Rodríguez”) is public employee of the Department of Family and a non-union employee; her address is: HC-80 Box 8104, Dorado, PR 00646; Tel. 787-883-7744.

18. Desiree López (“López”) is public employee of the Administration for Farming Development and Services and UAW union member; her address is: Box 2360, Mayaguez, PR 00681; Tel. 787-892-7125.

19. Abimael Estrada Quiñones (“Estrada Quiñones”) is public career employee in the DE and SPT union member; his address is: Urb. Bacó, Bo. Ensenada, Calle Orquídea 2da, Guánica, PR 00653.

20. Nydia Figueroa Hernández (“Figueroa Hernández”) is public employee in the DE and a non-union employee; her address is: Calle 5 # 301B, Bo. Santo Domingo, Trujillo Alto, PR 00976.

21. Yasmín Rivera Burgos (“Rivera Burgos”) is public employee in the DE and a non-union employee; her address is: Calle William 714, Barrio Obrero, Santurce, Puerto Rico 00915.

22. Wilmarilia Vargas Irizarry (“Vargas Irizarry”) is public employee in the Department of Housing (“DH”); and FCT union member; her address is: PO Box 143872, Arecibo, PR 00614.

23. Ramón O. Benítez Rivera (“Benítez Rivera”) is public employee in the Department of Housing and FCT union member; his address is: RR-4 Box 1280, Bayamón, PR 00956-9429.

24. Leslie S. Delgado Ortiz (“Delgado Ortiz”) is public employee in the Authority of Solid Waste (“ASD”) and FCT union member; her address is: PO Box 918, Bo. Camino Nuevo, Yabucoa, PR 00767.

25. Raúl Maysonet García (“Maysonet García”) is public employee in the Department of Recreation and Sports (“DRS”); and FCT union member; his address is: Calle Marte # 31, Barriada Sandi, Vega Baja, PR 00693.

26. Co-defendant, Luis A. Fortuño (“Governor Fortuño”), is the Governor of the Commonwealth of Puerto Rico since January 2009. Governor Fortuño is sued here in his personal and official capacity as Chief Executive of the Commonwealth of Puerto Rico. His address is: P.O. Box 9020082, San Juan, PR 00902-0802; Tel. 787-721-7000; Fax: 787-724-4640.

27. Osvaldo Ortolaza (“Ortolaza”) is the Director of the Administration of General Services (“AGS”). Ortolaza is sued here in his personal and official capacity as Director of AGS. His address is: Barbosa Avenue, Esq. Quisqueya, San Juan, PR 00918; Tel.: 787-759-7676; Fax: 787-753-6160.

28. José Lema Moyá (“Lema Moyá”) is the Director of the Council for Superior Education (“CSE”). Lema Moyá is sued here in his personal and official capacity as Director of CSE. His address is: 268 Ponce de León Avenue, Edificio Hato Rey Center, Suite 1500, San Juan PR 00918; Tel.: 787-641-7100; Fax: 787-641-2573.

29. Javier Rivera Aquino (“Rivera Aquino”) is designed as Director of the Administration for Farming Services and Development (“AFSD”) and Rivera Aquino is sued here in his personal and official capacity as Director of AFSD. His address is: Hipódromo Avenue 606, Plaza Building, San Juan, Puerto Rico 00936-0200; Tel.: 787-724-8494; Fax: 787-722-1969.

30. Javier Rivera Aquino (“Rivera Aquino”) is the Secretary of the Department of Agriculture (“DA”). Rivera Aquino is sued here in his personal and official capacity as

Secretary of DA. His address is: Fernández Juncos Ave. #1309, Parada 19 ½, Piso 2, San Juan, PR 00908-1163; Tel.: 787-721-2120; Fax: 787-723-8512.

31. Juan Carlos Puig Morales (“Puig Morales”) is the Secretary of the Department of Treasury (“DT”). Puig Morales is sued here in his personal and official capacity as Secretary of the DT. His address is: Edificio Intendente Ramírez, Parada 1, Paseo Covadonga # 10, San Juan, Puerto Rico 00902-4140; Tel.: 787-721-2020; Fax: 787-723-6213.

32. Pedro Nieves Miranda (“Nieves Miranda”) is the Director of the Environmental Quality Board (“EQB”). Nieves Miranda is sued here in his personal and official capacity as Director of the EQB. His address is: Edificio de Agencias Gubernamentales Cruz A. Matos, Urb. San José Industrial Park, 1375 Avenida Ponce de León, San Juan, PR 00926-2604; Tel.: 787-767-8181; Fax: 787-767-4861.

33. Rubén A. Hernández Greforat (“Hernández Greforat”) is the Secretary of the Department of Transportation and Public Works (“DTPW”). Hernández Greforat is sued here in his personal and official capacity as Secretary of DTPW. His address is: Centro Gubernamental Minillas, Edificio Sur, Piso 17, Santurce, PR 00940-1269; Tel.: 787-722-2929; Fax: 787-725-1620.

34. Luis Bernal Jiménez (“Bernal Jiménez”) is the Secretary of the Authority of Solid Waste (“ASD”). Bernal Jiménez is sued here in his personal and official capacity as Secretary of ASD. His address is: 268 Ponce de León Avenue, Home Mortgage Plaza, Suite 624, San Juan, PR 00940-0255; Tel.: 787-765-7575; Fax: 787-753-2220.

35. Yesef Y. Cordero (“Cordero”) is the Secretary of the Department of Housing (“DH”). Cordero is sued here in his personal and official capacity as Secretary

of DH. His address is: 606 Avenue Barbosa, Edif. Juan C. Cordero, San Juan, PR 00928-1365; Tel.: 787-274-2527; Fax: 787-758-9263.

36. Henry Newmann (“Newmann”) is the Secretary of the Department of Recreation and Sports (“DRS”). Newmann is sued here in his personal and official capacity as Secretary of DRS. His address is: Fernández Juncos Avenue, Esq. Calle Bolívar, Núm. 1611, San Juan, PR 00902-3207; Tel. 787-721-2800; Fax: 787-728-0313.

37. Yanitsia Irizarry Méndez (“Irizarry Méndez”) is the Secretary of the Department of Family (“DF”). Irizarry Méndez is sued here in his personal and official capacity as Secretary of DF. Her address is: P.O. Box 11398, San Juan, Puerto Rico 00910-1398; Tel.: 787-294-4900; Fax: 787-294-0687.

#### **IV. FACTS COMMON TO ALL CAUSES OF ACTIONS**

38. In February 25<sup>th</sup>, 1998, the Government of Puerto Rico enacted Public Law No. 45 (“Act No. 45”), 3 L.P.R.A. § 1451 et seq., authorizing public employees to organize for purpose of collective bargaining as to salary and other terms and conditions of employment.

39. Act No. 45 declared that it was the public policy of the Government of Puerto Rico to give public employees the right to organize into unions and to bargain collectively as to salaries and other terms and conditions of employment.

40. Although Act No. 45 was enacted on February 1998 and it was effective immediately, it only allowed unions and agencies to bargain and enter agreements on non-economic clauses after January 1<sup>st</sup> 2000. It allowed negotiating economic clauses after January 1<sup>st</sup>, 2001.

41. Act No. 45 required the parties to include in their collective bargaining agreements a procedure to settle disputes through a grievance and arbitration procedure.

42. Act No. 45 created the Public Service Labor Relations Commission (“PSLRC”) and empowered it to decide on the composition of the different appropriate units and to conduct the elections for representation in the different government agencies. Act No. 45 also gave exclusive jurisdiction to the PSLRC to adjudicate all unfair labor practices and labor disputes arising under the collective bargaining agreements.

43. Section 5.1 of Act No. 45, 3 L.P.R.A. sec. 1451(j), created a statutory obligation for the government agencies to negotiate with the exclusive bargaining representative as to salaries, marginal benefits, terms and conditions of employment and union shop for the public employees within the appropriate units.

44. Today, more than 50 government agencies have in place collective bargaining agreements pursuant to Act No. 45. These agreements are contractual obligations which include economic and non-economic clauses, covering over 50,000 government employees.

45. Act No. 45 also provided for a compulsory arbitration process in case of an impasse in the negotiations between the exclusive bargaining representative and the government agency. All compulsory arbitration involving economic issues are final and binding.

46. On March 9<sup>th</sup>, 2009, Defendant Fortuño, signed Act No. 7, known as “Law Declaring a Fiscal State of Emergency and Establishing a Comprehensive Fiscal Stabilization Plan to Save Puerto Rico Credit”.

47. Act No. 7, *inter alia*, declared that Puerto Rico is on a fiscal state of emergency and created a plan to deal with the purported crisis.

48. The Act’s declared intent established that said statute was enacted under the authority of Sections 18 and 19 of Article II of the Puerto Rico Constitution.

49. Chapter III, of Act. No. 7 provides for a three (3) phase plan, allegedly geared to reduce the government expenditure.

50. The first phase of Act No. 7 (Art. 36), which started the same day the law was signed, asks certain public employees to accept a permanent reduction of one day of work every two-week period and calls for public employees to voluntarily resign from their employment.

51. Phase 2 of Act No. 7 (Art. 37) is set to come into effect if Phase 1 fails to achieve its “objectives”. In this Phase 2 the Government of Puerto Rico will be laying-off an undetermined substantial number of public employees. It has been told by the Government of Puerto Rico that said number could be as high as 40,000.

52. Phase 3 of Act No. 7 (Art. 38), which also was effective the same day the law was enacted, holds in abeyance a number of constitutional, statutory and contractual rights and benefits. Also, as part of Phase 3, Act No. 7 temporarily repealed the government agencies obligation to extend or negotiate expired contract or contract which expires within the next 2 years.

53. By enacting Act No. 7, the government temporarily suspended any statute, policy, employee manual, circular letter, contract, regulations, rules, normative letter, classification plan and contractual obligations under valid and enforceable collective bargaining agreements, pertaining to promotions, demotions, transfers; retention and lay-offs; reduction in work force and any requirement prior to order a reduction in force; reinstatement and registry of illegibility; any cross utilization, prohibition to use employees from another appropriate units; any prohibition to consolidate job duties and job classifications; any limitation to management rights; any disposition that the agency has to comply with contract obligations in conflict with Act No. 7; seniority rights (if in conflict with Act No. 7); dispute resolution process, reviews and appeals (if in conflict with Act No. 7).

#### **FIRST CAUSE OF ACTION**

54. Paragraphs 1 through 54 are incorporated by reference and re-alleged as if separately pleaded herein.

55. Article I, §10, Clause 1 of the Constitution of the United States provides that:

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, **or Law impairing the Obligation of Contracts**, or grant any Title of Nobility. (Emphasis Supplied).

56. Article II, § 7 of the Puerto Rico Constitution provides that:

The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man. The death penalty shall not exist. No person shall be deprived of his liberty or

property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws. No laws impairing the obligation of contracts shall be enacted. A minimum amount of property and possessions shall be exempt from attachment as provided by law.

57. By enacting Act No. 7, Puerto Rico substantially impaired all statutory covenants and contractual obligations included in the extant collective bargaining agreements between the exclusive bargaining representatives and the government agencies related to, *inter alia*, promotions, demotions, transfers; retention and lay-offs; reduction in work force and any requirement prior to order a reduction in force; reinstatement and registry of illegibility; any cross utilization, prohibition to use employees from another appropriate units; any prohibition to consolidate job duties and job classifications; any limitation to management rights; any disposition that the agency has to comply with contract obligations in conflict with Act No. 7; seniority, if in conflict Act No. 7; dispute resolution process, reviews and appeals, if in conflict with Act No. 7.

58. When enacting Act No. 7 the government of Puerto Rico declared an alleged fiscal crisis and the potential degradation of government bonds classifications. However, the averred purpose is neither significant nor legitimate. Also, some or all the obligations of contracts impaired by Act No. 7 are not character appropriate to the declared purpose justifying said legislation. *Energy Reserves Group, Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 412, (1983)

59. Act No. 7, by prohibiting the government agencies to extend or re-negotiate expired contracts, also illegally impairs the government statutory covenants

established by Act No. 45<sup>5</sup> to bargain with the exclusive bargaining representatives as to terms and conditions of employment that are in no way related to the declared purpose of addressing the fiscal crisis. Home Building & Loan Association v. Blaisdell, 290 U.S. 398 (1934).

60. The suspension of rights and the impairment of contractual obligations for two (2) years is unreasonable, particularly considering the life of all collective bargaining agreements can only extend to three (3) years<sup>6</sup>. Also, there were other available alternatives with lesser impact to the paramount constitutional rights affected by this legislation.

## SECOND CAUSE OF ACTION

61. Paragraphs 1 through 54 are incorporated by reference and realleged as if separately pleaded herein.

62. Article 3 of the Puerto Rico Civil Code, 31 L.P.R.A., provides that:  
Laws shall not have a retroactive effect unless they expressly so decree.

In no case shall the retroactive effect of a law operate to the prejudice of rights acquired under previous legislative action.

63. Act No. 7 has the effect of illegally retroactively depriving numerous acquired rights, under law and under collective bargaining agreements. Charres v. Arroyo, 16 P.R.R. 777 (1910).

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<sup>5</sup> United States Trust Co. v. N.J., 431 U.S. 1, (1977)

<sup>6</sup> 3 L.P.R.A. § 1451x

### THIRD CAUSE OF ACTION

64. Paragraphs 1 through 54 are incorporated by reference and realleged as if separately pleaded herein.

65. The Fifth Amendment of the U.S.A. Constitution provides that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

66. The Fourteenth Amendment of the U.S.A. Constitution provides that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

67. Article II, § 7 of the P.R. Constitution provides that:

The right to life, liberty and the enjoyment of property is recognized as a fundamental right of man. The death penalty shall not exist. No person shall be deprived of his liberty or property without due process of law. No person in Puerto Rico shall be denied the equal protection of the laws. No laws impairing the obligation of contracts shall be enacted. A minimum amount of property and possessions shall be exempt from attachment as provided by law.

68. Act No. 7 has the effect of interfering with the public career employees' interests in proprietary rights without a just and equitable process. Board of Regents v. Roth, 408 U.S. 565 (1972) and Rodríguez Rodríguez v. E.L.A., 130 D.P.R. 562 (1992).

69. In this sense, public career employees have been recognized a property interest in their salaries, benefits and in their positions. Therefore, any deprivation of these rights cannot be done without a due process. Under Puerto Rico law, public employees have a property interest in their employment, Ruiz-Casillas v. Camacho-Morales, 415 F.3d 127, 134 (1st Cir. 2005).

#### **FOURTH CAUSE OF ACTION**

70. Paragraphs 1 through 54 are incorporated by reference and realleged as if separately pleaded herein.

71. Sections 18 and 19 of Article II of the P.R. Constitution provides that:

Section 18. In order to assure their right to organize and to bargain collectively, persons employed by private businesses, enterprises and individual employers and by agencies, enterprises and individual employers and by agencies or instrumentalities of the government operating as private businesses or enterprises, in their direct relations with their own employers shall have the right to strike, to picket and to engage in other legal concerted activities.

Nothing herein contained shall impair the authority of the Legislative Assembly to enact laws to deal with grave emergencies that clearly imperil the public health or safety or essential public services.

Section 19. The foregoing enumeration of rights shall not be construed restrictively nor does it contemplate the exclusion of other rights not specifically mentioned which belong to the people in a democracy. The power of the Legislative Assembly to enact laws for the protection of the life, health and general welfare of the people shall likewise not be construed restrictively.

72. The Legislative Purpose of Act No. 7 alleges that said law was enacted under the “ample power” to protect the life, health and security of Puerto Rico, given to the Legislature by Sections 18 and 19 of Article III of the P.R. Constitution.

73. Nevertheless, said sections do not contain that language, therefore the legislative intent intentionally tergiversates the clear language and intention of said constitutional provisions and is clearly taken out of context, with the sole purpose of depriving the public career employees of their rights.

74. Section 18 gives the Legislative Assembly authority to enact laws to deal with grave emergencies but in the context of labor strikes. Section 18 specifically refers to the right to strike and picket. And it is in this sense, that it gives the Legislative Assembly the authority to enact laws; if there were to be an emergency during the celebration of a strike or picket.

75. The same is applicable to Section 19, which begins with the following sentence “[t]he forgoing enumeration of rights shall not be construed”. This unequivocally refers to the rights numbered in Section 18, regarding the right to organize and bargain collectively, and the right to strike and picket.

76. Nowhere on these two provisions does the Puerto Rico Constitution confer authority to the Legislature, to deprive public career employees of their constitutional rights under the pretext of an “emergency”.

#### **FIFTH CAUSE OF ACTION**

77. Paragraphs 1 through 54 are incorporated by reference and realleged as if separately pleaded herein.

78. Article III, § 16 of the P.R. Constitution provides that:

“... Any project of Law will not be approved, with exception the ones regarding the general budget, if it contains more than one issue, which must be clearly expressed in its title, and any and all parts of the law whose issues have not been expressed in the title will be null [...] In amending any article or section of a law, said article or section shall be promulgated in its entirety as amended...”

79. Act No. 7 fails to inform citizens in general, that the purpose and object of the law is to amend a number of laws, rules, regulations, employee manuals, as established in Ugarte v. MacLeod, 56 D.P.R. 842 (1940).

80. Article 37.04 (a) of Act No. 7 establishes an immediate two-year abeyance of all statutes, regulations and rules pertaining to promotions, demotions, transfers; retention and lay-offs; reduction in work force and any requirement prior to order a reduction in force; reinstatement and registry of illegibility; any cross utilization, prohibition to use employees from another appropriate units; any prohibition to consolidate job duties and job classifications; any limitation to management rights; any disposition that the agency has to comply with contract obligations in conflict with Act No. 7; seniority rights (if in conflict Act No. 7); dispute resolution process, reviews and appeals (if in conflict with Act No. 7).

81. Nevertheless, Act No. 7 illegally amends said laws, rules and regulations without expressly saying so. Further, Act No. 7 does not specify which laws, rules and regulations it is amending.

82. It has been established that if the amending law is a complete change in the original law, in said instances **the title must say so**, or it is in violation of the Constitution. Dorante v. Wrangler, 145 D.P.R. 408 (1998).

83. In the instant case, there is no question as to the almost complete change and amendment of Act No. 184 of August 3<sup>rd</sup>, 2004, known as “Law for the Administration of Human Resources in Public Service”, 3 L.P.R.A. §1461 et seq., regarding the provisions enumerated in Article 37.04 and Article 38.02, all in violation of the P.R. Constitution, for said Section 6.6 of Act No. 184, 3 L.P.R.A. § 1462e, establishes the exclusive procedure the government should take, when determining layoffs due to the elimination of jobs for government lack of funds (“fiscal crisis”).

### **PRAYER FOR RELIEF**

**WHEREFORE**, based on the above and foregoing, plaintiffs pray that this Honorable Court:

A. Enters a declaratory judgment declaring that Puerto Rico Act No. 7 violates the United States and Puerto Rico constitutions.

B. Issues a preliminary injunction, and ultimately a permanent injunction, against the enforcement of Act No. 7, for it violates United States and Puerto Rico constitutions, and the laws of Puerto Rico.

C. Order Defendant to reimburse all costs related to those damages caused to all plaintiffs and the public career employees as a result of the enactment of Act. No. 7.

D. Grant an award of attorney’s fees and costs incurred in prosecuting this action in favor of all plaintiffs.

E. Grant any and all other relief that is just and proper in these circumstances.

**RESPECTFULLY SUBMITTED**, in San Juan, Puerto Rico, this 14<sup>th</sup> day of April  
2009.

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