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 REPLY IN SUPPORT OF MOTION FOR LEAVE TO SUPPLEMENT MOTION TO DISMISS

TO THE HONORABLE COURT:

Plaintiff Luis Rigau ("Rigau"), through the undersigned counsel, respectfully files this Surreply to the Reply filed by codefendants Maria T. Quintana and the Puerto Rico Industrial Commission (together, "the Government Employer"), as follows:

ARGUMENT

I. The Government Employer's "Nullity" Theory Proves the Very Pattern of Reversal That Defeats Voluntary Cessation.

The Government Employer's Reply introduces—for the first time—a theory that the 2018 disaffiliation forms were declared "null in their entirety" by a local court and that, under Black's Law Dictionary, "nullity" means the forms had "no legal effect from the outset." Reply at 3–4 (Dkt. 85). The Government Employer offers this

argument to try to explain away the 2022 restart of deductions, contending that because the disaffiliation forms were void ab initio, the 2022 resumption of deductions was merely a correction of a prior administrative error. But this argument does not save the Government Employer's mootness theory. It destroys it.

Following the Government Employer's logic to its conclusion reveals the argument's fatal flaw. If the 2018 disaffiliation forms were "null and void from the very beginning" and had "no legal effect from the outset," then Rigau never validly disaffiliated from the Union in 2018. If Rigau never validly disaffiliated, then he remained—under the Government Employer's own theory—a dues-paying Union member continuously from 2018 through 2022. Yet deductions stopped during this entire four-year period. Under the Government Employer's newfound nullity theory, its own 2018 cessation of deductions was itself erroneous: the Government Employer ceased collecting dues from someone who, by the Government Employer's present account, was still lawfully obligated to pay them. The Government Employer quotes Black's Law Dictionary for the axiom that "an act that is null and void from the very beginning does not become valid by the passage of time." Reply at 4. Precisely. If the 2018 forms were null ab initio, then they were null when the Government Employer honored them in 2018, null when it continued to honor them in 2019, null in 2020, and null in 2021. The Government Employer honored legally void forms for four consecutive years before reversing course.

What the nullity theory actually demonstrates is that the Government Employer makes unilateral decisions about whether to deduct dues from employees'

wages—and then reverses those decisions years later based on shifting legal theories. In 2018, the Government Employer decided the disaffiliation forms were valid and stopped deductions. Compl. § 23 (Dkt. 1). In 2022, the Government Employer decided the forms were void and restarted deductions. Compl. § 24, 28. In 2025, the Government Employer continued deducting despite Rigau's express objections. Compl. § 30. In 2026, under the pressure of federal litigation, the Government Employer stopped again. This is not a trajectory toward permanent compliance. It is a pattern of oscillation—start, stop, start, stop—driven not by binding legal constraints but by the Government Employer's own evolving construal of its obligations. The voluntary cessation doctrine exists precisely because such unilateral, reversible decisions provide no assurance that the challenged conduct will not recur. *See United States v. W.T. Grant*, 345 U.S. 629, 633 (1953) (courts must assess "the bona fides of the expressed intent to comply" considering the defendant's history); *FBI v. Fikre*, 601 U.S. 234, 241 (2024) (defendant must prove "no reasonable expectation remains that it will return to its old ways").

The Government Employer insists that this pattern was "not a 'stop-and-restart pattern'" and that it "did not cease deductions as a 'temporary, reversible compliance.'" Reply at 4. But the factual record—including the Government Employer's own chronology—refutes this characterization. The Government Employer stopped deductions in 2018. It restarted deductions in 2022. It continued deducting in 2025 even after Rigau sent a letter to the Government Employer *and* filed suit demanding the cessation of dues. The Government Employer then stopped

deductions again in 2026. The label the Government Employer places on this sequence does not change what the sequence is. And the nullity theory, far from excusing the 2022 restart, confirms that the Government Employer is willing to upend years of prior practice based on after-the-fact legal rationalizations—which is the type of conduct rendering voluntary cessation an unreliable basis for mootness.

II. The Government Employer Conflates Attorneys' Fees Standards with Article III Mootness.

The Government Employer devotes a significant portion of its Reply to the question of whether the parties' settlement agreement carried sufficient "judicial imprimatur" to render Rigau a "prevailing party" under *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598 (2001). Reply at 5–6. The Government Employer applies the three-factor test from *Aronov v. Napolitano*, 562 F.3d 84, 90 (1st Cir. 2009), and invokes *Kokkonen v. Guardian Life Insurance Co.*, 511 U.S. 375 (1994), to argue that the settlement lacked the hallmarks of a consent decree. Reply at 5–6. But this analysis addresses the wrong legal question.

Buckhannon is a fee-shifting case. It establishes the standard for determining whether a litigant qualifies as a "prevailing party" entitled to attorney's fees under statutes such as the Fair Housing Amendments Act and the Individuals with Disabilities Education Act. *See Buckhannon*, 532 U.S. at 600. The question in *Buckhannon* was whether a party who achieved favorable results through a "catalyst" settlement—without a judgment or consent decree—could recover fees. *Id.* at 600–01. The "judicial imprimatur" requirement is a creature of that fee-shifting inquiry and serves the specific purpose of cabining the circumstances under which fee awards are

available. The voluntary cessation doctrine, by contrast, addresses Article III mootness—whether it is "absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc., v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000). This standard has nothing to do with judicial imprimatur, consent decrees, or the mechanisms through which a settlement was reached.

The Government Employer cites no authority—because none exists—linking *Buckhannon*'s "judicial imprimatur" test to the voluntary cessation doctrine or to any aspect of the Article III mootness analysis. The two doctrines serve fundamentally different constitutional and statutory purposes: one asks who pays the lawyers while the other asks if a federal court has jurisdiction. The Government Employer's attempt to import a fee-shifting standard into the mootness inquiry is a legal non sequitur that, if accepted, would introduce irrelevant considerations into the Court's jurisdictional analysis. The Court should disregard the Government Employer's *Buckhannon* discussion as inapplicable to the question before it.

III. The Government Employer Offers No Enforceable Commitment to Prevent Recurrence.

Past conduct remains the most reliable predictor of future conduct. The 2022 restart is not hypothetical or speculative—it happened. And the Government Employer's refusal to account for it concedes that no structural or legal barrier prevents it from happening again.

The Government Employer asserts, in a single sentence, that it "is, and will remain, neutral with respect to its employees' decisions regarding union

membership." Reply at 4. But the record suggests otherwise. A litigation assertion is not a statute, not a regulation, not a policy directive, not a memorandum of understanding, and not a binding assurance. In *Already, LLC v. Nike, Inc.*, the U.S. Supreme Court found mootness only after the defendant executed a "broad," "unconditional and irrevocable" covenant not to sue—a legally binding instrument enforceable in court. 568 U.S. 85, 93 (2013). The Government Employer offers nothing comparable. Its empty assertion of neutrality, unaccompanied by any enforceable commitment, cannot satisfy the "formidable burden" of proving that recurrence is "absolutely clear[ly]" foreclosed. *Friends of the Earth*, 528 U.S. at 190.

IV. Any Dismissal Must Be Without Prejudice.

The Government Employer's Reply, for the first time, cites seven cases from in which claims were dismissed with prejudice. Reply at 7–8. Every one of these cases—*Vera-López*, *Díaz-Morales*, *Cardona Román*, *Cruz*, *Rzadkowski-Chévere*, *Feliciano*, and *Padilla-Cintrón*—involves dismissal on Eleventh Amendment sovereign immunity grounds. Not one involves a mootness dismissal. Like with its importation of the attorneys' fees standard into mootness, the Government Employer is trying to import a dismissal standard from an entirely different doctrinal context.

The distinction matters. Eleventh Amendment immunity is a jurisdictional bar rooted in the sovereign status of the state. When a claim is dismissed on immunity grounds, it is dismissed because the defendant can never be sued on that claim in that forum—regardless of the facts. *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 67–68 (1996). A with-prejudice dismissal follows naturally, because the

jurisdictional defect is permanent. Mootness, by contrast, reflects a determination that a live controversy no longer exists at the time of the dismissal. A moot case may become live—as this matter's own history vividly demonstrates—if the defendant resumes the challenged conduct. *See City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 288–89 (1982). A with-prejudice dismissal on mootness grounds would create a res judicata bar that forecloses Rigau from returning to court even if the Government Employer resumes the very deductions that prompted this lawsuit. The Government Employer's attempt to get dismissal with prejudice is further proof that its violation of the First Amendment is capable—if not likely—of repetition.

The proper standard recognizes that dismissals with prejudice are inappropriate in moot cases because they could "presumably foreclose later, fully reasoned, resolution of these important issues on their legal merits if they ceased to be moot at some point in the future." *City of New Bedford v. Woods Hole*, 2003 U.S. Dist. LEXIS 9219, at *4 (D. Mass. 2003). The Government Employer tries to distinguish *City of New Bedford* by noting that the controversy in that case involved standing between political subdivisions. Reply at 6–7. But the principle announced in *City of New Bedford* is not limited to inter-governmental disputes—it reflects the general rule that mootness dismissals should not carry preclusive effect, precisely because the factual conditions giving rise to mootness may change. Given the Government Employer's documented history of restarting deductions, the case for a without-prejudice dismissal applies here. A with-prejudice dismissal would reward

the very pattern of cyclical compliance that the voluntary cessation doctrine condemns.

CONCLUSION

The Motion for Leave to Supplement the Motion to Dismiss should be denied. The Government Employer bears the formidable burden of proving it is absolutely clear that the challenged conduct will not recur. Its Reply does not carry that burden—it undermines it. The Government Employer's nullity theory proves that it makes unilateral, reversible decisions about dues deductions untethered to binding legal constraints. Its *Buckhannon* analysis addresses the wrong legal standard. Its silence on the 2022 restart concedes that no structural barrier prevents recurrence. And its bare assertion of "neutrality" is not the binding, irrevocable commitment that the voluntary cessation doctrine demands. In the alternative, if the Court finds mootness, dismissal should be without prejudice to preserve Rigau's ability to seek relief should the Government Employer—as its history strongly suggests—resume unconstitutional deductions once the Court's doors are closed.

WHEREFORE, Rigau respectfully requests that the Court deny the Government Employer's Motion for Leave to Supplement its Motion to Dismiss. In the alternative, any dismissal should be without prejudice.

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 using the Court's electronic filing system.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of June, 2026.

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