

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

**UNIÓN DE EMPLEADOS DE LA
CORPORACIÓN DEL FONDO DEL
SEGURO DEL ESTADO
(UNION-CFSE)**

Plaintiff,

v.

**CORPORACIÓN DEL FONDO DEL
SEGURO DEL ESTADO
(CFSE)**

Defendants.

CIVIL NO. 19-___ (___)

**CIVIL RIGHTS VIOLATIONS (42
U.S.C. 1983 & 1988) AND U.S.
AND P.R. CONSTITUTION
VIOLATIONS; VIOLATIONS TO
THE FIRST AND FOURTEENTH
AMENDMENT, THE U.S. CONST.
ART. I, § 8, CL. 3, “COMMERCE
CLAUSE”; DAMAGES;
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF; TORTS
(31 L.P.R.A. 5142 & 5143)**

VERIFIED COMPLAINT

COME NOW the Plaintiffs, Unión de la Corporación del Fondo del Seguro del Estado (“Union-CFSE” or “Plaintiffs”), through the undersigned attorney, and respectfully state, allege and pray as follows:

I. JURISDICTIONAL STATEMENT

I.1. Plaintiffs allege unfair labor practices by violations to the First Amendment and Due Process clause of the Constitution of the United States, specifically violations to the “Commerce Clause” of the U.S. Constitution, U.S. CONST. ART. I, § 8, CL. 3, as well as violations under the laws and Constitution of the Commonwealth of Puerto Rico, and prays for equitable relief –preliminary and permanent- in the form of providing all financial information, full reinstatement of all the functions, emoluments and

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prerogatives of their career positions as employees of the Corporación del Fondo Del Seguro Del Estado or “State Insurance Fund Corporation” (hereinafter “CFSE” for its Spanish initials), and legal relief in the form of preliminary and permanent injunctive relief, economic, emotional pain, anguish and suffering, and damages in the amount of no less than \$10,000,000.00, pursuant to the Civil Rights Act of 1866, 42 U.S.C. § 1983, and attorneys’ fees pursuant to 42 U.S.C. § 1988.

I.2. The CFSE has asserted an inability to pay as its reason for refusing Union-CFSE formal demands. As such, the Union-CFSE is entitled to receive financial information in order to substantiate the CFSE claims of “emergency” regarding the pharmacies service here in question. Quite simple, the CFSE has no “good faith”, since they have never explained its positions on the pharmacies’ issues, while they have an obligation to provide relevant back-up materials, such as financial information.

I.3. As this is a civil action brought pursuant to the laws and Constitution of the United States, this Court has jurisdiction pursuant to 28 U.S.C. § 1331. This Court also has supplemental jurisdiction over all claims arising under the laws and Constitution of Puerto Rico pursuant to 28 U.S.C. § 1367. Venue is proper under 28 U.S.C. § 1391(b).

I.4. Its supplemental jurisdiction is also invoked pursuant to 28 U.S.C. §1367 to hear the Commonwealth law claims under Article 1802 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31 §5141, because these are so

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related to claims in the action within such original jurisdiction that they form part of the same case and controversy under Article III of the United States Constitution.

II. PARTIES

II.1 At all times herein relevant, **Plaintiffs, Unión de la Corporación del Fondo del Seguro del Estado (“Union-CFSE”)**, is a bona fide labor organization, organized and existing pursuant to the Laws of the Commonwealth of Puerto Rico, with current address at 1550 Calle Encina Caparra Heights, San Juan, Puerto Rico 00920; Telephone: (787) 792-8686.

II.2. At all times herein relevant, **Defendant, the State Insurance Fund, formally known as “Corporación del Fondo del Seguro del Estado” (or “CFSE” for its Spanish acronym)**, is a public corporation of the Commonwealth, which, inter alia, provides compensation and medical services to workers injured in accidents arising in the course of their employment, with legal capacity to sue and to be sued pursuant to its enabling law, and not subject to Eleventh Amendment Immunity, for it does not receive funds from the Commonwealth’s General Fund. The CFSE’s known postal and physical addresses are the following: PO Box 365028, San Juan, P.R. 00936-5028 Esq. Ave De Diego, Bo. Monacillos, Urb., La Riviera Carr. 21, Rio Piedras, P .R. Telephone: (787) 793-5959.

II.3. **Defendant Jesús M. Rodríguez Rosa, Administrator of the CFSE**, is sued in his personal and official capacity. His wife, Jane Doe,

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whose real name is unknown at this time, and their Conjugal Partnership are included in this action to respond for the damages caused to the Plaintiffs by Jesús M. Rodríguez Rosa. The Defendants' known postal and physical addresses are the following: PO Box 365028, San Juan, P.R. 00936-5028 Esq. Ave De Diego, Bo. Monacillos, Urb., La Riviera Carr. 21, Rio Piedras, P .R. Telephone: (787) 793-5959.

II.4. **Mr. Javier Rivera Ríos, President of the CFSE- Board**, is sued in his personal and official capacity, who is also the Insurance Commissioner of the Commonwealth of P.R., with address at: Edif. GAM Tower, B-5 Cll Tabonuco, 5to Piso, Guaynabo, 00968; Telephone: (787) 304-8686.

II.5. **Dr. Rafael Rodríguez Mercado, VicePresident of the CFSE-Board**, is sued in his personal and official capacity, who is also the Secretary of the Department of Health of the Commowealth of P.R., with address 1111 Calle Teniente César Luis González, San Juan, 00927; Telephone (787) 765-2929

II.6. **Briseida Torres, Esq.**, is sued in her personal and official capacity, who at this time Plaintiffs knows is part of the CFSE-Board, is also the Secretary of the Department of Labor and Employment of the Commowealth of P.R., with address on 505 Edificio Prudencio Rivera Martinez, Ave. Muñoz Rivera, Hato Rey, San Juan, PR 00918; Telephone (787) 754-5353.

II.7. **Roberto Delgado Cortés, M.D., CFSE-Board Secretary**, is sued in his personal and official capacity, with address: PO Box 365028, San

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Juan, P.R. 00936-5028; and physical address at Esq. Ave De Diego, Bo. Monacillos, Urb., La Riviera Carr. 21, Rio Piedras, P .R. Telephone: (787) 793-5959.

II.8. **Noema Giralt Armada, Esq. CFSE-Board Member representing the CFSE-Employees**, is sued in her personal and official capacity. with address: PO Box 365028, San Juan, P.R. 00936-5028; and physical address at Esq. Ave De Diego, Bo. Monacillos, Urb., La Riviera Carr. 21, Rio Piedras, P .R. Telephone: (787) 793-5959.

II.9. **Marta R. Ramos Santiago, Esq., CFSE-Board Member** is sued in her personal and official capacity. with address: PO Box 365028, San Juan, P.R. 00936-5028; and physical address at Esq. Ave De Diego, Bo. Monacillos, Urb., La Riviera Carr. 21, Rio Piedras, P .R. Telephone: (787) 793-5959.

II.10. **Manuel González del Toro, Esq. Director of the Corporate Reform, Member of the Counseling Authority**, is sued in his personal and official capacity. with address: PO Box 365028, San Juan, P.R. 00936-5028; and physical address at Esq. Ave De Diego, Bo. Monacillos, Urb., La Riviera Carr. 21, Rio Piedras, P .R. Telephone: (787) 793-5959.

II.11. **A, B & C Insurance Companies** are the fictitious names of the insurance companies whose places of business are in a state or territory other than the Commonwealth of Puerto Rico. They had at all relevant times an insurance policy to cover the damages alleged in the Complaint. They are

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designated with these names because their true identities are not known at the present time.

II.12. John Doe & Jane Doe are citizens of the United States with residence in Puerto Rico, who at all relevant times are liable for the acts alleged in the Verified Complaint. They are designated with this name because the true identity is not known at the present time.

III. FACTS COMMON TO ALL CAUSES OF ACTION

III.1. Plaintiffs Union-CFSE reincorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

III.2. Originally, on November 6, 2012, the Federal Trade Commission concluded via Order, Docket No. C-4374, that CooPharma is impeded to, among other issues, negotiate on behalf of the name of any payer pharmacy. Specifically, said Order reads as follows:

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of Pharmacy services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, Participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any Pharmacies with respect to the provision of Pharmacy services:
1. To negotiate on behalf of any Pharmacy with any Payer;
 2. To refuse to deal or threaten to refuse to deal with any Payer, in furtherance of any conduct or agreement that is prohibited by any other provision of Paragraph II of this Order;

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3. Regarding any term, condition, or requirement upon which any Pharmacy deals, or is willing to deal, with any Payer, including, but not limited to, price terms; or
 4. Not to deal individually with any Payer, or not to deal with any Payer other than through Respondent;
- B. Exchanging or facilitating in any manner the exchange or transfer of information among Pharmacies concerning any Pharmacy's willingness to deal with a Payer, or the terms or conditions, including price terms, on which the Pharmacy is willing to deal with a Payer;
- C. Attempting to engage in any action prohibited by Paragraphs II.A through II.B above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any Person to engage in any action that would be prohibited by Paragraphs II.A through II.C above.

III.3 Despite of the above quoted decision of the Federal Trade Commission, Elliot E. Díaz Rivera, CFSE Purchasing Director, filed a Petition for Authorization to Acquire Assets and Non-Professional Services on the 23rd of March 2018 for the "Delivery of Medications of the Injured through the CooPharma Pharmacy Network with an approximate cost of \$5 millions annually as of 2018 up to 2028.

III.4. This petition was approved by the Administrator, co-Defendant Jesús M. Rodríguez Rosa the very 23rd of March 2018.

III.5. On the 26th of March 2018, a **Bid by Invitation** Notice RFP 2018-03 was issued for the "CooPharma Contract for the Dispatch of Medications Through the Authorized Community Pharmacies Network".

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III.6. Instead of opening the bid process for other firms or community pharmacies groups to submit their bids, the Bid Notice published in the Sole Registry of Bids (RUS) from its beginnings describes the intention of the CFSE to contract CooPharma to offer the pharmacy services to agency patients.

III.7. As reported in said notice, the “Documents Pickup” is from the 26th to the 28th of March 2018 during the hours from 8:00 a.m. to 4:00 p.m., the Information Meeting will be held on the 4th of April at 10:00 a.m. and the Proposal Delivery on the 11th of April 2018.¹

III.8. On the 3rd of April 2018, the Information Meeting was held to which only CooPharma attended. The attendance of the bidders was an obligatory requirement to participate in the Bid Request.

III.9. Pursuant to the Special Conditions of the RFP 2018-03, co-Defendant CFSE determined to use the formal direct financial proposal requirement and “Cooperativa de Farmacias de Puerto Rico” (or “CooPharma”) exclusively, as allegedly authorized by Law 239 of September 1, 2004 and Law 247 of August 10, 2008 known as the “General Act of Cooperative Partnerships and Laws 247 of August 10, 2008”. Those laws promote the Cooperative movement when directing the social and economic development of Puerto Rico

¹ The Date of the Informative Meeting was changed through Amendment No. 1, for 2:00 p.m. and the Proposal Delivery date was changed as known as a Public Opening for the 25th of April, 2018 at 10:00 p.m. Plaintiffs requested this information, but it was denied by CFSE, and as such, it is included in this Verified Complaint together with the petition for preliminary and permanent injunctive relief.

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under the principles of social justice, self-endeavor and democratic control of cooperatives.

III.10. In its Art. 23.3 regarding “Services or Asset Transactions with the Government,” Law 239, as amended, supra, provides; “[t]he Commonwealth Government and the municipal governments may purchase, lease, barter or otherwise obtain goods and services offered or produced by the cooperatives without being subject to the bid requirement in cases in which it is required by law.

III.11. Based on a scam, not in compliance with the Law, on the 25th of April 2018 the opening of the “Bid” was held with the only participation of CooPharma.

III.12. On the 30th of April 2018, the President of the Bids Board petitioned the CSFS Administrator to appoint a Committee to evaluate the RFP 2018-03 Proposal Petition.

III.13. The Evaluating Committee has been composed by Mr. Juan C. Benítez Chacón, Medical Area Director; Mr. Martín Segarra from Technical Area; Dr. Darwin Marrero from the Industrial Hospital Medical Area; la Ms. Angie Hernández, Human Resources Director; Counsel Olimpia Yatur; Mr. Oscar Misla de Ciracet, consultants; and Mr. Johnny Román, member of Finances and the Bids Board.

III.14. On the 7th May 2018, the President of the Bids Board referred the proposal presented by CooPharma to the President of the

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Evaluating Committee, Mr. Juan C. Benítez Chacón for evaluation and recommendations.

III.15. Subsequently, on the 20th of November 2018, the Bids Board obtained the Evaluating Committee Report RFO2018-03, regarding the proposal presented by CooPharma, which has ten (10) pages, that was formally requested by the Union-CFSE and it was never provided as to this date.

III.16. On the 10th of December 2018, a meeting of the Bids Board in which the Board evaluated the report presented by the Evaluating Committee in which they conclude that the proposal presented by CooPharma “[. . .] [i]s viable and represents savings in the operation of the service. Also, it provides opportunities to improve service to the injured and the alternatives to facilitate the operation of the pharmacy services offered by the CFSE in full compliance with the applicable laws and regulations. (See, EXHIBIT 1, Resolution, issued by the Bids Board, Proposal Petition RFP2018-03, on the 10th of December 2018).

III.17. That very same day, December 10, 2018, the Bids Board decided to; “[. . .] [r]ecommend granting Proposal Petition RFP2018-13 to contract CooPharma services to provide medications through the community pharmacies network authorized as a whole to Coop. Farmacias Puertorriqueñas” (Id.). “The budgeted total for the proposal was \$7,500,000.00 the 2018-19, \$7,500,000.00 for 2019-20, \$7,500,000.00 for 2020-21, \$7,500,000.00 for 2021-22 and \$7,500,000.00 for 2022-23, for a total of

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\$37,500,000.00 for a five (5) years term.” *Id.* [Emphasis in the original].

III.18. The CFSE issued an Adjudication Notice dated December 12, 2018 in which it announced the adjudication of RFP2018-03 to CooPharma.

III.19. On the 23rd of January 2019 the CFSE Board of Directors authorizes the “declaration of emergency” and granting of the emergency contract done afterward.

III.20. It wasn’t until the 23rd of April 2019, one year after the publishing of the Bid Notice, that the “Emergency Contract for Rendering Pharmacy through the *Cooperativa de Farmacias Farmacias Puertorriqueñas,*” CBCE 2019-10 (Comptroller’s Office No. 002019000121) was formalized.

III.21. As it very well arises from that contract, it was formalized through an alleged state of “emergency”. CFSE intends to make us believe that said “emergency” is due to alleged recent resignations on the part of pharmacists, in addition to the positions that were vacant (already vacant). The CFSE adds that said “emergency” is due to the lack of availability of licensed pharmacists, with having a need to suspend services in various localities, thus affecting the dispatch of medications and patient treatment.

III.22. It also arises from the Contract formalized that prior to its formalization, a financial and operational analysis of the same was done, but the files were never provided to the Union-CFSE, although it was requested formally. **Nor does it arise from the file that the CFSE had justified the emergency pursuant Section 9.5 of the CFSE Purchase Regulations the**

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CFSE justified the alleged emergency and that the Memorandum to the Administrator that justifies such an “emergency” was done.

III.23. As it arose from a publication by Noticel.com, “[the] “Governor” Ricardo Rosselló-Nevarés, announced an agreement in April through which the CFSE would close its twelve (12) pharmacies and transfer to CooPharma the dispatch of medications to the injured who receive services at the agency. The new model will start to operate next September.” (See, <https://www.noticel.com/ahora/negocio-de-la-salud/levanta-dudas-contratacion-de-30-millones-en-el-fondo/1087378955>).

III.24. Everything shows that the CFSE designed this strategy to privatize the pharmacy services offered by the agency in clear violation to U.S. Const. art. I, § 8, cl. 3, “Commerce Clause”; and acting with unfair labor practices (inability to pay claim), among other State Law violations.

III.25. Once the contract is signed and filed at the Office of the Comptroller, the transition and closing process of the CFSE internal pharmacies would be finished in ninety (90) days.

III.26. Nevertheless, on the 29th of April de 2019 the Financial Oversight and Management Board of Puerto Rico (the “Board” or “FOMB”) known by its English acronym “FOMB”, issued an opinion in which after evaluating the Contract in question, as well as the information provided by the CFSE, approved it but imposed some additional requirements for the transition process for closing all the pharmacies, except the one operating at the

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Industrial Hospital of the CFSE, whose operation has to be maintained pursuant to the provision of the law.

III.27. FOMB also clarified that the evaluation was done solely to confirm that the contract met the specifications of the fiscal plan approved by the Board **and that it did not proceed to evaluate the legality of the procedures carried out for the contracting.**

III.28. As it arises from that opinion, the CFSE reported a decrease of twelve (12) of its pharmacists and that maintaining the pharmacies of its centers costs approximately \$15.5 millions annually, because of which, contracting the CooPharma services would result in savings of approximately \$4.04 millions annually. Although this information was formally requested, CFSE has not provided the same and is part of the petition of preliminary and permanent injunction.

III.29. On the 28th of May 2019 CooPharma sent a communiqué to its members informing them about the new contract formalized with the CFSE. In that communiqué it states that CooPharma centralized its operations integrating the Pharmacy Benefits Administration (known by its acronym in English PBM) and that the operation would be done from its site under the “Coop Health”-“Doing Business As” (“DBA”).

III.30. The PBM’s are intermediaries that negotiate services and medication costs between pharmaceuticals and payers such as the government and insurance companies.

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III.31. As mentioned above, on the 20th of May 2019, former Governor and the CFSE; announced that they would privatize the pharmacy services, but according to the people from the CFSE, **the bid file was confidential, contrary to all state laws and regulations, and most of all, contrary to the “dormant clause” of the U.S. Constitution, Art. I, § 8, Cl. 3, “Commerce Clause”.**

III.32. Although normally in the bid proposals the firms are given from three (3) to four (4) weeks to present their proposals, here they were given three (3) days only.

III.33. **The bid was by invitation**, in other words, only the people invited at the CFSE to participate appeared. Contrary to the “dormant clause” of the U.S. Constitution, art. I, § 8, cl. 3, “Commerce Clause”.

III.34. **The people from CooPharma were the only ones invited to participate.** Contrary to the “dormant clause” of the U.S. Constitution, art. I, § 8, cl. 3, “Commerce Clause”.

III.35. In other words, others were not given an opportunity to see if there were better proposals. This included the community pharmacies, outside pharmacies and other PBM that could very well give the same service for less money but only CooPharma was invited. Contrary to the “dormant clause” of the U.S. Constitution, art. I, § 8, cl. 3, “Commerce Clause”.

III.36. The CFSE’s Union has warned about irregularities in the process, but nothing happened.

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III.37. Also, the Union-CFSE had warned that since the new boss of the Fund (ex New. Progressive Party “PNP” public employees Director of “Servidores Públicos Estadistas”) arrived key appoints had ceased and personnel was not substituted putting the CFSE’s pharmacies in a problematic situation.

III.38. The Government does not save anything in that business deal, because it spends in medications the same it spent before.

III.39. Contrary to what they told the Fiscal Oversight Board (FOMB), that with this move, there would be allegedly savings, the document itself admits that is no true.

III.40. CooPharma admitted that it was going to act as PBM, in other words, as medications administrator and as a pharmacy at the same time. Succinctly, it was going to control via “pitcher and catcher” procedures of prices for the medications, contrary to the Federal Trade Commission Order of 2012 quoted above.

III.41. Thus, the Federal Government prohibited CooPharma from fixing prices when they united. By acting as the PBM and being “pitcher and catcher”, **they inevitable will end up fixing prices, being a MONOPOLY.**

III.42. Plaintiffs (Union-CFSE) timely denounced several irregularities regarding the process followed by the State Insurance Fund Corporation (CFSE) and co-Defendant officers in the subcontracting of CooPharma to supplant all pharmacists and pharmacy assistants,

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members of the Union-CFSE and of the bargaining unit exclusively represented by plaintiff under Puerto Rico Labor Management Relations Act, 29 L.P.R.A. sec 60, et seq.

III.43. Said denouncement was made and public in several news media and news platforms by press releases, public appearances of its officers and others written electronic or communications to its members, the public and work related injured workers that were being and going to be affected by the subcontracting of Coopharma that substituted (supplanted) pharmacists and pharmacy assistants.

III.44. In clear retaliation, all of them lost their posts (and others are going to lose their posts) since they are not working pursuant to their legal duties, and were (and are going to be) transferred to other clerical and administrative positions unrelated in any conceivable way to their professional qualifications and experience and in most cases probably of an inferior status in the Classification Plan Applicable to all members of the bargaining unit, including pharmacists and pharmacy assistants. CFSE did this in clear retaliation to Union-CFSE federally protected rights.

III.45. It should be noted that said Classification Plan is part of the Collective Bargaining Agreement (C.B.A.) contract. (Art. 29).

III.46. Plaintiffs Union-CFSE were forced to make these public denouncements precisely because Union-CFSE officers, and its President, Mr. Francisco Reyes Márquez, had previously engaged co-Defendant Jesús

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Rodriguez Rosa to address the matter of the vacant positions in the area of pharmacy. Indeed, as part of the C.B.A., said matter is a mandatory subject of bargaining according to Puerto Rico Labor Relations Act, supra, and the co-Defendant's refusal to even discuss and bargain over it constitutes also an unfair labor practice under the same statute.

III.47. If the co-Defendants were to meet and bargain regarding this matter, the Union-CFSE was prepared to prove that in its due diligence regarding compliance with its duty of fair representation, fiduciary in nature, it had confirmed that: (1) State Insurance Fund Corporation (CFSE) would not attain any economies by sub-contracting Coopharma; (2) They falsely represented said fact to the Fiscal Oversight Management (FOMB); (3) Coopharma was acting both as a Pharmacy Benefits Management entity (PBM) and at the same time as a pharmacy or retailer of prescription drugs, in a manner that at least, appears to constitute a clear conflict of interest.

III.48. The enabling act of the then State Insurance Fund Corporation (CFSE), 11 L.P.R.A. 1, was approved in June 22, 1962 and has been amended many times. But since then, its Article 6 II-B recognizes the constitutional nature and origin of the jurisdiction conferred to the Puerto Rico Labor Relations Board under the Puerto Rico Labor Relations Act when it states:

"Jurisdiction is conferred to the Commonwealth of Puerto Rico Labor Board over the State Insurance Fund so that workers and employees of said Agency can exercise their right to organize and

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bargain collectively with its employer by way of mediation by representatives of their own selection".

[Our translation]. [Emphasis added].

III.49. The right to organize and bargain collectively of the members of Plaintiffs Union-CFSE; was established by the Bill of Rights of the Commonwealth of Puerto Rico's Constitution in 1952, enacted with the approval of the Congress and adopted by Referendum under the Federal Relations Act, a federal statute, in its Article II sections 17 and 18. As it can be ascertained then, the rights of workers included in the Plaintiffs Union-CFSE's bargaining unit are Constitutional in the origin and nature via collective bargaining. All herein affected workers, pharmacists and pharmacy assistants are not constructively but directly and unequivocally being replaced and transferred to other positions in violation of Article 8 of the C.B.A., which statutes:

"During the duration of this contract the Corporation **cannot subcontract work, duties or tasks comprehended in the appropriate bargaining unit** as defined in this contract."

[Emphasis added].

III.50. Also, Puerto Rico Labor Relations Act defines as a mandatory subject of bargaining said subcontracting as it specifically states: "[f]or the purpose of collective bargaining, subcontracting will be considered a mandatory subject of bargaining." The failure of Defendant to even reply to Plaintiff's invitation to discuss said mandatory subject of

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bargaining constitutes both a violation of Puerto Rico Labor Relations Act as it entails an unfair labor practice under 29 L.P.R.A. 63 (d) and also violates Article 8 of the C.B.A. This last a violation of the C.B.A. also constitutes an unfair labor practice under 29 L.P.R.A. 69 (f).

III.51. Regarding the Constitutional nature of the rights to organize and bargain over terms and conditions of employment, the Puerto Rico Supreme Court has been extremely protective. See for example: "UPR v Asociación Puertorriqueña de Profesores Universitarios, 136 D.P.R. 335 (1994); C.O.P.R. v S.P.U., 181 D.P.R. 299 (2011); JRT v Asoc. Condominio Playa Azul I, 117 D.P.R. 20 (1986). Morales Morales v E.L.A., 126 D.P.R. 92 (1990)".

III.52. Here, there is no doubt that there is a clear and intentional violation to C.B.A. and to the U.S. Constitution, specifically to the "Commerce Clause", U.S. CONST. ART. I, § 8, CL. 3, since the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism, and against the Union-CFSE rights by Defendants unfair labor practices.

**IV. FIRST CAUSE OF ACTION:
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

IV.1. Plaintiff reincorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

IV.2. Originally, on November 6, 2012, the Federal Trade Commission concluded via Order, Docket No. C-4374, that CooPharma is

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impeded to, among other issues, negotiate on behalf of the name of any payer pharmacy. Despite of this Order, Defendants entered in one-and-only competitor via a "Bid by Invitation", and granted the same exclusively to CooPharma.

IV.3. The Constitution grants Congress the power to regulate interstate commerce. See, U.S. Const. art. I, § 8, cl. 3. While the Commerce Clause's text provides only an affirmative grant of power, for over 150 years, the Clause has been interpreted to contain a negative aspect known as the dormant Commerce Clause. Walgreen Co. v. Rullan, 405 F.3d 50, 55 (1st Cir. 2005); citing, See, Laurence H. Tribe, 1 American Constitutional Law 1030 (3d ed. 2000) (citing Cooley v. Bd. of Wardens, 53 U.S. 299, 317-20, 13 L. Ed. 996 (1852)). The dormant Commerce Clause doctrine, which applies to Puerto Rico on the same terms as it applies to the states, Walgreen Co. v. Rullan, supra, at 55, citing, United Egg Producers v. Dep't of Agric. of P.R., 77 F.3d 567, 569 (1st Cir. 1996), limits the power of states "to erect barriers against interstate trade," Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 35, 64 L. Ed. 2d 702, 100 S. Ct. 2009 (1980); see also, Doran v. Mass. Turnpike Auth., 348 F.3d 315, 318 (1st Cir. 2003).

IV.4. Under the dormant Commerce Clause, if a state law has either the purpose or effect of significantly favoring in-state commercial interests over out-of-state interests, the law will "routinely" be invalidated "unless the discrimination is demonstrably justified by a valid factor unrelated

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to economic protectionism." Walgreen Co. v. Rullan, supra, at 55, citing, Houlton Citizens' Coalition v. Town of Houlton, 175 F.3d 178, 184 (1st Cir. 1999) (quoting West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 192-93, 129 L. Ed. 2d 157, 114 S. Ct. 2205 (1994)). If the state law regulates in-state and out-of-state interests evenhandedly, the statute will be upheld "unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits." Walgreen Co. v. Rullan, supra, at 55, citing, Pike v. Bruce Church, Inc., 397 U.S. 137, 142, 25 L. Ed. 2d 174, 90 S. Ct. 844 (1970).

IV.5. While these rules are easy to recite, their application to a particular factual setting is often difficult. Recognizing this difficulty, the Supreme Court has cautioned that the dormant Commerce Clause inquiry should be undertaken by "eschewing formalism for a sensitive, case-by-case analysis of purposes and effects." Walgreen Co. v. Rullan, supra, at 55, citing, West Lynn Creamery, 512 U.S. at 201. With these principles in mind, we consider whether the CFSE decision, as applied to Plaintiffs and other retail pharmacies, discriminates against interstate commerce.

IV.6. The Supreme Court has invalidated, on dormant Commerce Clause grounds, regulatory schemes -just like this one- that permit a state to deny an operating license on the basis that the opening of a new facility in a particular location will cause undue competition for existing facilities. Walgreen Co. v. Rullan, supra, at 56, citing, H.P. Hood & Sons,

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Inc. v. DuMond, 336 U.S. 525, 545, 93 L. Ed. 865, 69 S. Ct. 657 (1948) (invalidating state agency's refusal to grant a license for a milk producer to operate in a desired locality because the relevant market was "already adequately served"); Buck v. Kuykendall, 267 U.S. 307, 314-16, 69 L. Ed. 623, 45 S. Ct. 324 (1925) (invalidating a rule that a state could deny an interstate transporter a certificate of necessity and convenience to use state roads because the "area is already being adequately served"); George W. Bush & Sons Co.v. Maloy, 267 U.S. 317, 318, 69 L. Ed. 627, 45 S. Ct. 326 (1925) (similar); see also, Medigen of Ky., Inc. v. Pub. Serv. Comm'n, 787 F. Supp. 590, 598 (S.D. W. Va. 1991) (collecting cases invalidating various certificate of convenience and necessity schemes because they discriminate against interstate commerce), aff'd 985 F.2d 164 (4th Cir. 1993).

IV.7. A court has also struck down, on dormant Commerce Clause grounds, a law which gave in-state interests the ability to manipulate a facially neutral regulatory scheme to establish advantages over out-of-state interests. See, Walgreen Co. v. Rullan, supra, at 56, citing, McNeilus Truck & Mfg. v. Ohio, 226 F.3d 429, 442-43 (6th Cir. 2000) (holding that facially neutral scheme which gave established local interests the ability to block licensing of out-of-state entities by refusing to contract with them had the effect of discriminating against interstate commerce). Walgreen Co. v. Rullan, supra, at 56.

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IV.8. Here, Plaintiffs have been providing the required pharmacies services long time ago, and as a provider of services, the Union-CFSE has been now excluded from competing with other providers, in this case, the only bidder-CooPharma, contrary to the Commerce Clause.

IV.9. Likewise, the CFSE has engaged in unfair labor practices, since the CFSE has asserted an inability to pay as its reason for refusing Union formal demands. As such, the Union-CFSE is entitled to receive financial information in order to substantiate the CFSE claims of “emergency” regarding the pharmacies service here in question. Quite simple, the CFSE has no “good faith”, since they have never explained its positions on the pharmacies issues, while they have an obligation to provide relevant back-up materials, such as financial information.

IV.10. The enabling act of the then State Insurance Fund Corporation (CFSE), 11 L.P.R.A. 1, was approved in June 22, 1962 and has been amended many times. But since then, its Article 6 II-B recognizes the constitutional nature and origin of the jurisdiction conferred to the Puerto Rico Labor Relations Board under the Puerto Rico Labor Relations Act.

IV.11. Pursuant to the above explanation, Plaintiffs request a preliminary and permanent injunctive relief. The standard for permanent injunctive relief is identical to that for preliminary injunctive relief, except that the moving party must show actual, as opposed to probable, success, on the merits. Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 546 n. 12,

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94 L. Ed. 2d 542, 107 S. Ct. 1396 (1987). Here, Plaintiffs achieved actual success on the merits. If enforcement of the ordinance were not enjoined, Plaintiffs' right to "engage in interstate trade free from restrictive state regulation..." Dennis v. Higgins, 498 U.S. 439, 448, 112 L. Ed. 2d 969, 111 S. Ct. 865 (1991), would continue to be violated. Deprivation of a constitutional right under the Commerce Clause constitutes irreparable injury. See, e.g., C & A Carbone, Inc. v. Town of Clarkstown, N.Y., 770 F. Supp. 848, 854 (S.D.N.Y. 1991), (threatened or actual deprivation of rights). The only means by which Plaintiffs may enjoy their continued right to engage in interstate commerce free from the provisions of the ordinance is to have its enforcement enjoined.

IV.12. Suffice is to say that as to permanent injunctions, Federal Courts routinely enjoin the operation of statutes found to restrict competition in unconstitutional fashion. As explained above, there is nothing unusual about this case that would warrant denial of permanent injunction.

IV.13. Plaintiffs Union-CFSE pray for preliminary and permanent injunctive relief by providing all information related to Coopharma, by reinstating the Plaintiffs to their position at the CFSE or to a similar position within the CFSE, with all the duties inherent to their career positions, including their salary, emoluments and other benefits, including back pay, calculated from the date of their constructive termination up to the date and time that they are effectively reinstated in said positions.

V. SECOND CAUSE OF ACTION: DAMAGES

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V.1. Plaintiff reincorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

V.2. As a result of his employer's discriminatory actions, Plaintiffs are entitled to compensatory damages, emotional damages, prejudgment interest, reasonable attorney fees and court costs, in an amount no less *in toto* than \$10,000,000.00.

**VI. THIRD CAUSE OF ACTION:
SUPPLEMENTAL JURISDICTION
VIOLATIONS OF PUERTO RICO LABOR RELATIONS ACT, 29 L.P.R.A.
63 (D) AND VIOLATION TO ARTICLE 8 OF THE C.B.A.**

VI.1. Plaintiffs, reincorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

VI.2. As a result of his employer's discriminatory actions, Plaintiffs request to this Honorable Court to find Defendants in violation of Puerto Rico Labor Relations Act as it entails an unfair labor practice under 29 L.P.R.A. 63 (d) and in violation to Article 8 of the C.B.A. This last a violation of the C.B.A. also constitutes an unfair labor practice under 29 L.P.R.A. 69 (f).

**VII. FOURTH CAUSE OF ACTION
SUPPLEMENTAL JURISDICTION:
ARTICLE 1802 OF THE PUERTO RICO CIVIL CODE**

VII.1. Plaintiffs, reincorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein

VII.2. Defendants through their negligent and willful acts caused

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Plaintiffs damages and as so, they are jointly and severally liable for the damages suffered by him.

VII.3. Defendants engaged in discriminatory practices with malice and reckless indifference to Plaintiffs' federally protected rights.

VII.4. As consequence of co-defendants acts and omissions, Plaintiffs, still suffering damages including but not limited to, emotional pain and suffering, among other intangible injuries and pecuniary losses, for all of which he should be compensated and familiar disruption.

VII.5. Furthermore, in the event Defendants deny responsibility for the actions and damages claimed herein, pursuant to the provisions of Rule 44 of the Rules of Civil Procedure of the Commonwealth of Puerto Rico, the Plaintiff would also be entitled to an award of prejudgment and post-judgment interest, to be computed from the amount finally adjudged to Plaintiff, plus a reasonable amount of attorney's fees, due to such obstinate and reckless denial.

VII.6. Plaintiffs reserve their right to amend the complaint and to include further applicable federal state statutes, pursuant to the Federal Rules of Civil Procedure.

VIII. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiffs Union-CFSE demand Judgment against Defendants for the following:

VIII.1. Preliminary and permanent injunctive relief, enjoining

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Defendants from engaging in such unlawful conduct specifically unfair labor practices by inability to pay claim and in violation to the Union First Amendment rights, since the CFSE refuses to provide public information-data (electronic and in hard copy) of documents related to Coopharma.²

VIII.2 Preliminary and permanent injunctive relief, enjoining Defendants from engaging in such unlawful conduct, specifically unfair labor practices by inability to pay claim, for violations to the Collective Bargaining Agreement (C.B.A.) contract.

VIII.3. Preliminary and permanent injunctive relief, enjoining Defendants from engaging in such unlawful conduct, for violations to interstate commerce. See, U.S. Const. art. I, § 8, cl. 3.

VIII.4. Enter Judgment against defendants in an amount of no less than \$10,000,000.00.

VIII.5. Award Plaintiffs costs, interests, expenses and attorney's fees, as provided by law;

VIII.6. Plaintiffs request any and all other remedies appropriate under the law or in equity, injunctive relief and any other remedy available;

VIII.7. Compensatory damages pursuant to State Law Claims for Plaintiffs in an amount no less than \$1,000,000.00;

² For example, there is no information related to the Date of the Informative Meeting. This was changed through Amendment No. 1, for 2:00 p.m. and the Proposal Delivery date was changed as known as a Public Opening for the 25th of April, 2018 at 10:00 p.m. Plaintiffs requested this information, but it was denied by CFSE, and as such, it is included in this Verified Complaint together with the petition for preliminary and permanent injunctive relief.

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VIII.8. Punitive damages against Defendants in their personal capacities;

VIII.9. Plaintiffs further demand trial by jury on all issues.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED 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 attorneys of record.

RESPECTFULLY SUBMITTED.

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