

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ZULAY RODRÍGUEZ VÉLEZ, et al.

Plaintiffs,

v.

HON. PEDRO R. PIERLUISI URRUTIA,

Defendant.

CIVIL NO. 21-1366 (PAD)

**INFORMATIVE MOTION IN COMPLIANCE WITH ORDER AT DOCKET NO. 27
REGARDING SPECIFIC PARAGRAPHS OF THE AMENDED COMPLAINT THAT, IN
DEFENDANT'S VIEW, SHOULD BE CONSIDERED "WELL PLEADED" FOR
PURPOSES OF Fed.R.Civ.P. 12(b)(6)**

TO THE HONORABLE COURT:

COMES NOW Pedro R. Pierluisi Urrutia, in his official capacity as Governor of the Commonwealth of Puerto Rico, through the undersigned counsel, without waiving any right, objection or defense arising from the Title III of Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA"), 48 U.S.C. §§2101 et seq., the Commonwealth's Petition under said Title or under this case, and respectfully states and prays as follows:

1. On September 1, 2021, this Honorable Court ordered Defendant to file "an Informative Motion listing the specific paragraphs of the Amended Complaint that, in [Defendant's] view, should be considered 'well pleaded' for purposes of Fed.R.Civ.P. 12(b)(6)", no later than September 7, 2021. *See* Docket No. 27.

2. Before proceeding to comply with the Court's mandate, it is worth noting that the determination as to which allegations in the Amended Complaint should be considered as well-pleaded pursuant to Fed.R.Civ.P. 12(b)(6) corresponds ultimately to the Court. "A court

considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *see also Cebollero-Bertrán v. Puerto Rico Aqueduct & Sewer Auth.*, 4 F.4th 63, 70 (1st Cir. 2021) (describing the “plausibility standard” evaluation as “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense”) (quoting *Iqbal*, 556 U.S. at 678-679 and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007)).

3. Additionally, it is equally important to clarify that Defendant’s compliance with the Order in Docket No. 27 does not constitute, at this stage of the proceedings or prospectively, a stipulation of facts by the Defendant to any of the allegations in Plaintiffs’ Amended Complaint or an admission by Defendant that the allegation is factually correct and not required to be established by admissible evidence.

4. Lastly, it is imperative to mention that any allegation not listed in this Motion as “well-pleaded” is due to its speculative and conclusory nature, or because it contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories, or are Plaintiffs’ own interpretation and conclusions of scientific statistical data.¹ In *Twombly*, the Supreme Court laid out two working principles, “first, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*, at 555, and

¹ While Defendant does not challenge, as not well pleaded, the statistical data that was retrieved from the Commonwealth Department of Health’s website, CDC, or any other state or federal governmental agencies, Defendant takes issue with the interpretation and/or conclusions reached by Plaintiffs as to that data.

“second, only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.*, at 556.

5. In view of the above, and in compliance with the Court’s Order at Docket No. 27, Defendant proceeds to inform the following paragraphs in the Amended Complaint that, in his view, should be consider as well-pleaded:

- a. 5, 9, 21, 42-54, 58, 60, 62, 63, 66, 68, 71, 73,76, 81, 89, 90, 91, 97, 100, 101, 104, 107, 115, 125, 126, 147, 148, 153, 159, 160, 175.

WHEREFORE, defendant respectfully requests that this Honorable Court take notice of the above and, deem Defendant in compliance with Order at Docket No. 27.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to all attorneys of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on September 7, 2021.

DOMINGO EMANUELLI-HERNÁNDEZ
Secretary of Justice

SUSANA I. PEÑAGARÍCANO-BROWN
Deputy Secretary in Charge of Litigation

ES/ Idza Díaz Rivera
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