

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

ZULAY RODRIGUEZ-VÉLEZ, ET AL.,

Plaintiffs,

v.

PEDRO R. PIERLUISI-URRUTIA,

Defendant.

CIVIL NO. 21-1366 (PAD)

JOINT MOTION IN COMPLIANCE WITH ORDER

The parties respectfully comply with the Minutes at Docket No. 19, item 2, the Minutes at Docket No. 44 and the Order at Docket No. 18.

I. FACTUAL STIPULATIONS

1. On July 27, 2021, CDC released updated guidance on the need for urgently increasing COVID-19 vaccination coverage and a recommendation for everyone in areas of substantial or high transmission to wear a mask in public indoor places, even if they are fully vaccinated. CDC issued this new guidance due to several concerning developments and newly emerging data indicators. (See Docket No. 30-3).
2. On August 30, 2021, Puerto Rico was placed by the CDC in Level 4: Very High Level of COVID-19 (<https://wwwnc.cdc.gov/travel/notices/covid-4/coronavirus-puerto-rico>).
3. The Delta variant is highly contagious, more than 2x as contagious as previous variants. (See Docket No. 30-3).
4. Delta is currently the predominant variant of the virus in the United States and Puerto Rico. (See Docket No. 30-3) and (https://www.elvocero.com/gobierno/agencias/el-departamento-de-salud-ha-detectado-m-s-de-150-casos-de-la-variante-delta/article_e08d2cee-f8ae-11eb-9b7c-6b502bf1ef8a.html)
5. Some data suggest the Delta variant might cause more severe illness than previous variants in unvaccinated people. (See Docket No. 30-3).
6. The vast majority of hospitalizations and deaths caused by COVID-19 are in unvaccinated people. (See Docket No. 30-3).
7. For people infected with the Delta variant, similar amounts of viral genetic material have been found among both unvaccinated and fully vaccinated people. (See Docket No. 30-3).
8. CDC recommends that everyone aged 12 years and older get vaccinated as soon as possible. (See Docket No. 30-3).
9. As of August 8, 2021, at least 520 children have died in the United States. (<https://covid.cdc.gov/covid->

[data-tracker/#demographics](#))

10. Over 55,000 children have been hospitalized with Covid-19 since August 2020 in the United States. (<https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions>)
11. At the time of the enactment of OE 2021-058, Puerto Rico was in an increasing trend with 2 deaths per day and a 7-day moving average of 1.6 deaths. (Docket No. 30-1)
12. On August 23, 2021, The Food and Drug Administration (“FDA”) fully approved the Pfizer vaccine for the prevention of COVID-19 disease in individuals 16 years of age and older. (Docket No. 22-1)
13. Comirnaty has the same formulation as the FDA-authorized Pfizer-BioNTech COVID-19 vaccine and can be used interchangeably to provide the COVID-19 vaccination series without presenting any safety or effectiveness concerns. The products are legally distinct with certain differences that do not impact safety or effectiveness. <https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna>
14. Providers can use doses distributed under EUA to administer the vaccination series as if the doses were the licensed vaccine. For purposes of administration, doses distributed under the EUA are interchangeable with the licensed doses. (<https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna>)
15. Over 369 million doses of COVID-19 vaccine have been given in the United States from December 14, 2020, through August 30, 2021. (Docket No. 30-4)
16. Millions of people in the United States have received COVID-19 vaccines since they were authorized for emergency use by FDA. These vaccines have undergone and will continue to undergo the most intensive safety monitoring in U.S. history. This monitoring includes using both established and new safety monitoring systems [PDF – 83 KB] to make sure that COVID-19 vaccines are safe. (Docket No. 30-4)
17. The systems in place to monitor the safety of these vaccines have found only two serious types of health problems after vaccination, both of which are rare. These are anaphylaxis and thrombosis with thrombocytopenia syndrome (TTS) after vaccination with J&J/Janssen COVID-19 Vaccine. (Docket No. 30-4)
18. At the time of the enactment of OE 2021-058, Puerto Rico was in an increasing trend with 113 hospitalizations and 28 people in ICU. (Docket No. 30-1)
19. As of September 14, 2021, the Puerto Rico Department of Health (Health Department) reported that 74% of eligible recipients have been fully vaccinated and 84.6% of eligible recipients have received at least one dose. See <https://covid19datos.salud.gov.pr/#vacunacion>.
20. According to the data provided by the Health Department, as of September 14, 2021, of the 60 years and older population, 76.3% have been fully vaccinated and 85.1% have received at least one dose. See <https://covid19datos.salud.gov.pr/#vacunacion>.
21. On July 28, 2021, Governor Pedro R. Pierluisi Urrutia, in his official capacity and under color of state law, issued Executive Order No. 2021-058 (EO 58) requiring all employees of the Commonwealth government to receive a COVID-19 vaccine.
22. The EO 58 took effect on August 16, 2021
23. According to section 2 of EO 58, people who object to being vaccinated for religious or medical exceptions must submit an affidavit signed by their spiritual leader or physician certifying that the

employee cannot be vaccinated for medical or religious reasons, in which case they must submit to weekly COVID tests to be performed within 72 hours before the beginning of the week, when the appointing authority of the public agencies must ensure compliance.

24. Section 3 of EO 58 states that “any public employee” can also decide not to vaccinate and work in person, even if none of the exemptions is applicable, if he or she submits to weekly COVID tests to be performed within 72 hours before the beginning of the week, when the appointing authority of public agencies must ensure compliance.

25. The EO 58 does not provide paid leave for employees to obtain medical referrals.

26. EO 058 makes no reference to the Government of Puerto Rico Remote Work Act, Act No. 36-2020.

27. “If there is no accumulated balance,” the EO 58 further provides, “the employee must take a leave without pay until the end of the emergency.”

28. According to a press release by Representative Jennifer González Colón’s office, the federal government gave Puerto Rico at least \$183,823,862 to support efforts to administer COVID tests. <https://tinyurl.com/3ht4kshj>.

29. On June 8, 2021, Puerto Rico reached 60% of full vaccination in the vaccine-eligible population. See <https://covid19datos.salud.gov.pr/#vacunacion>

30. The Delta variant’s first case in Puerto Rico was reported on June 15, 2021.

31. In early 2021, the Food and Drug Administration authorized three vaccines (Pfizer-BioNtech, Moderna, J&J/Janssen) for use in the United States (including Puerto Rico). See https://www.who.int/publications-detail-redirect/WHO-2019-nCoV-vaccine_effectiveness-measurement-2021.1.

32. According to the Health Department’s data, two of the deaths among the ages of 10 and 19 happened after vaccine availability (June and August 2021). <https://covid19datos.salud.gov.pr/#defunciones>

II. STIPULATIONS SUGGESTED BY PLAINTIFFS AND REJECTED BY DEFENDANT

	A. Plaintiffs’ Suggested Stipulation	B. Defendant’s Reason to Reject Suggestion
1.		
2.		
3.	According to the data provided by the Health Department, as of September 14, 2021, only 4.8% of the population had a confirmed case of COVID.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
4.	That is, in the past 19 months, 95.8% of the population has not had a confirmed case of COVID, according to the data provided by the Health Department. See	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own

	https://covid19datos.salud.gov.pr/#casos .	interpretation of scientific statistical data.
5.	As of September 14, 2021, the Health Department reported that 4.5% of the Puerto Rico population had a confirmed case of COVID where 4.3% have recuperated, 0.1% are active cases and 0.09% have died. Data sources https://covid19datos.salud.gov.pr/#casos , https://covid19datos.salud.gov.pr/#defunciones .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
6.	According to the data provided by the Health Department, as of September 14, 2021, approximately 80% of the deaths related to COVID were among people 60 years or older, which represents 20% of the total confirmed cases since March 2020. The age group 59 years and younger represents 80% of all total confirmed cases since March 2020, and approximately 20% of all COVID related deaths.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
7.	According to the data provided by Health Department, as of September 14, 2021, in Puerto Rico, the case survival rate (case fatality rate) for those 60 years old or more is 92.3% (7.7%) and for those 59 years old and younger is 99.5% (0.5%). Data source https://covid19datos.salud.gov.pr/#casos ; https://covid19datos.salud.gov.pr/#defunciones .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
8.	According to the data provided by the Health Department, as of September 14, 2021, in Puerto Rico, the case survival rate (and case fatality rate) per age group were: 98.2% (1.8%) for 50-59 years old, 99.3% (0.7%) for 40-49 years old, 99.76% (0.24%) for 30-39 years old, 99.92% (0.08%) for 30-39 years old, 99.97% (0.03%) for 10-19 years old, and 99.992% (0.008%) for 0-9 years	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.

	old. Data source https://covid19datos.salud.gov.pr/#casos ; https://covid19datos.salud.gov.pr/#defunciones .	
9.	Plaintiff Zulay Rodriguez Velez is an office assistant who has been employed by the Puerto Rico Family Department for nine years. Her duties consist of processing purchases and obtaining quotations for purchases, all of which can be performed remotely.	Lack of personal knowledge to corroborate proposed stipulation.
10.	However, Plaintiff Rodríguez requested to work remotely because of her pregnancy, and she was granted temporary and limited permission to work remotely.	Lack of personal knowledge to corroborate proposed stipulation.
11.	Plaintiff Yohama González Milan is a supervisor of inspectors at the Gaming Commission of the Government of Puerto Rico.	Lack of personal knowledge to corroborate proposed stipulation.
12.	Ms. González has worked at the Gaming Commission since its creation and was formerly a career employee for the Puerto Rico Department of Tourism, Games of Chance division.	Lack of personal knowledge to corroborate proposed stipulation.
13.	Ms. González's position requires her to supervise inspectors at casinos.	Lack of personal knowledge to corroborate proposed stipulation.
14.	Ms. González goes to the office only to submit paperwork but could perform this task by leaving the paperwork in a mailbox.	Lack of personal knowledge to corroborate proposed stipulation.
15.	Plaintiff Leila G. Ginorio has been working for the Puerto Rico Department of Labor since 1996, and currently works as a claims officer for unemployment benefits.	Lack of personal knowledge to corroborate proposed stipulation.
16.	Plaintiff Ginorio's duties consist of making telephone calls to interview claimants to determine whether they are eligible to receive unemployment benefits. As a result, she could work remotely if the Department of Labor allowed it.	Lack of personal knowledge to corroborate proposed stipulation.

17.	Plaintiff Ginorio worked remotely from March 2020 until April 2021, and there was never any issue reported regarding the quality of her work.	Lack of personal knowledge to corroborate proposed stipulation.
18.	Plaintiff Julissa Piñero has been working for the Department of Public Security, assigned to the Bureau of Emergency Medical Corps, for 20 years. Her duties consist of monitoring the assistance of employees and preparing reports to the Treasury Department regarding the employees' accumulated sick and vacation leave.	Lack of personal knowledge to corroborate proposed stipulation.
19.	If allowed, Ms. Piñero could perform all her duties remotely.	Lack of personal knowledge to corroborate proposed stipulation.
20.	From March 16, 2020, until April 2021, Plaintiff Piñero worked remotely using the internet and there was never any issue reported regarding the quality of her work.	Lack of personal knowledge to corroborate proposed stipulation.
21.	All plaintiffs are career employees in agencies of the central government.	Lack of personal knowledge to corroborate proposed stipulation.
22.	None of the plaintiffs work in the health sector.	Lack of personal knowledge to corroborate proposed stipulation.
23.	None of the plaintiffs are teachers.	Lack of personal knowledge to corroborate proposed stipulation.
24.	The plaintiffs do not want to get vaccinated.	Lack of personal knowledge to corroborate proposed stipulation.
25.	All plaintiffs, except for Plaintiff González, who works in the field, have been required by their respective agencies to work in-person.	Lack of personal knowledge to corroborate proposed stipulation.
26.	On August 8, 2021, Plaintiff Ginorio made a request in writing to work remotely, but, as of this date, her request has not been answered.	Lack of personal knowledge to corroborate proposed stipulation.
27.	None of the plaintiffs, except for Plaintiff González, who works in the field, has been given the option to continue working remotely.	Lack of personal knowledge to corroborate proposed stipulation.
28.	All plaintiffs genuinely and strongly believe that vaccination must be voluntary and based on their personal assessment in good	Lack of personal knowledge to corroborate proposed stipulation.

	conscience of the medical risks/benefits and morality of a particular vaccine.	
29.		
30.		
31.	The EO 58 has no specific expiration date.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
32.	The EO 58 does not define what "works in person" means.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
33.		
34.		
35.	The Puerto Rico Department of Justice compels all its employees, regardless of whether they "work in person" or remotely, to get vaccinated or submit to weekly COVID-19 tests at their own cost. See Amended Complaint, Exhibit No. 4, Letter re: Implementation of the OE2021-058 in the Department of Justice and Notification of Special Normative Letter No. 2-2021 from the OATRH, p. 3 § IV.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
36.	Approximately less than 7% of public employees to which EO 58 applies are not vaccinated, including the plaintiffs.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
37.	The government can implement less intrusive requirements for the nonvaccinated, such as the ones used before there was a vaccine: distancing, masking, and working remotely, or providing easier access to COVID tests free of charge to attain its objective of preventing the spread of COVID-19.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
38.	Indeed, the option of working	The Proposed stipulation is

	remotely was one of the pre-vaccine measures for public employees implemented by the previous governor.	speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
39.	The EO 58 requires that all unvaccinated employees submit the tests at the beginning of each week, and that they be less than 72 hours old at that time.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
40.	For employees who must report to work on Mondays, they must take the test on Fridays, Saturdays, or Sundays.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
41.	The free tests offered by the public government facilities are open to the public, not just government employees like Plaintiffs.	Lack of personal knowledge to corroborate proposed stipulation.
42.	The Commonwealth's Health Secretary admitted that the lines to obtain a free COVID test provided by the government have been "kilometric" at times.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
43.	Most people engage in more social interactions, and thus are at greater risk of exposure, during the weekend.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
44.	Government agencies are not allowing unvaccinated public employees to use FDA approved home-kit tests or testing by mail, to comply with EO 058.	Lack of personal knowledge to corroborate proposed stipulation.
45.	For a test be covered by their medical insurance plan, public employees like the plaintiffs need a medical referral prior to taking the test.	Lack of personal knowledge to corroborate proposed stipulation.
46.		
47.	The EO 58 does not give employees a paid leave to take	The Proposed stipulation is speculative, flawed, and contains legal

	the test during working hours.	conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
48.	Even employees who submit affidavits to obtain exemptions must nonetheless submit, every week, a negative COVID test, which they must pay for themselves.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
49.	Each test may cost the employee between \$50 and \$100, if not covered by their health insurance plan.	Lack of personal knowledge to corroborate proposed stipulation.
50.	It is uncertain whether all the health insurance plans for government employees will continue to cover COVID tests each week for asymptomatic people.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
51.	Since most employees would have to get tested on Fridays, the availability of appointments for tests on Fridays decreases.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
52.	There is no logical reason to require all public employees who refuse the vaccine to get tested within the same 72 hours' timespan and show the results on Mondays.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
53.	The only reason for the executive to require all employees to submit the tests at the beginning of the week, instead of allowing all tests to be valid for a 7-day period regardless of the date when the test is submitted is to increase the burden on public employees and force them to succumb to vaccination.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
54.	If plaintiffs fail to submit their weekly test on Mondays, they will be barred from attending in-person work—which is significant, because they're not allowed to work remotely (even	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical

	though they could).	data.
55.	The EO 58 does not provide any criteria for determining which employees may work remotely.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
56.		
57.	Public employees who do not get vaccinated and do not submit to weekly testing will be forced to "exhaust the corresponding compensatory time or benefit from any of the applicable regular licenses."	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
58.		
59.	The government could easily provide a hearing to determine whether Plaintiffs can perform all their functions remotely.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
60.	There are fourteen (14) states (New Mexico, Hawaii, Minnesota, California, Massachusetts, North Carolina, Connecticut, Kentucky, Delaware, Colorado, Oregon, Vermont, Virginia, Washington), plus the District of Columbia with similar vaccine mandates applicable to state employees. See Mandatory Employee Vaccines – Coming to A State Near You? Littler Mendelson P.C., https://www.littler.com/publication-on-press/publication/mandatory-employee-vaccines-coming-state-near-you , and the state sources cited therein	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
61.	All the above-mentioned jurisdictions offer testing for free at multiple locations, including free rapid-test on premises or at-home self-administering testing provided by mail.	Lack of personal knowledge to corroborate proposed stipulation.
62.	Eleven of the states with similar mandates offer their unvaccinated and eligible public employees the ability to work	Lack of personal knowledge to corroborate proposed stipulation.

	remotely.	
63.	The government, through the Office of the Insurance Commissioner or by executive order, could easily require insurance companies to cover COVID 19 tests without the need for patients to obtain medical referrals.	Lack of personal knowledge to corroborate proposed stipulation.
64.	The healthcare system capacity to attend to COVID patients includes the availability of medical equipment, hospital beds, hospital ICU beds, and ventilators.	Lack of personal knowledge to corroborate proposed stipulation.
65.	From the start of the pandemic in January-February 2020, public health experts used both leading (e.g., infection rates) and lagging (e.g., hospitalization rates) factors.	Lack of personal knowledge to corroborate proposed stipulation.
66.	They implemented measures aimed at the leading indicators that did not affect the lagging indicators. See https://bit.ly/3z13RgI .	Lack of personal knowledge to corroborate proposed stipulation.
67.	Puerto Rico, with 46,148 total tests performed per 100,000 people, as of September 14, 2021, is second to last (ahead only of the U.S. Virgin Islands) among U.S. jurisdictions (average per state is 168,759). See https://covid.cdc.gov/covid-data-tracker/#cases_testsper100k .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
68.	Puerto Rico performs approximately 75% less COVID testing per 100,000 people than the average total of tests in the mainland. See https://covid.cdc.gov/covid-data-tracker/#cases_testsper100k .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
69.	Puerto Rico, with 6,404 total tests performed per 100,000 people in the last 30 days (as September 14, 2021), is #46 among 51 U.S. jurisdictions (ahead only of U.S. Virgin Islands, Nebraska, Washington, Mississippi and South Dakota) (average per state in last 30 days is 12,428 per 100,000 people).	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.

	See https://covid.cdc.gov/covid-data-tracker/#cases_testsper100k30day .	
70.	Puerto Rico, in the last 30 days (as of September 14, 2021), has performed approximately half (50% less) the COVID testing per 100,000 people than the average total of tests in the mainland. See https://covid.cdc.gov/covid-data-tracker/#cases_testsper100k30day .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
71.	On the U.S. mainland, the Department of Health and Human Services (HHS) created the system of "Community-Based Testing Sites," which provides free COVID testing throughout the country, offered daily, at fixed public locations set up by state governments, at no cost and without any prerequisite. See https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
72.	The Family First Coronavirus Response Act ensures that COVID testing is free to anyone in the United States, including those without health insurance. See FFCRA, Division F- Health Provisions, Sec. 6001 Coverage of Testing for COVID-19, https://www.congress.gov/116/plaws/publ127/PLAW-116publ127.pdf .	Lack of personal knowledge to corroborate proposed stipulation.
73.	Puerto Rico failed to implement the Family First Coronavirus Response Act program.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
74.	In Puerto Rico, the offering of free PCR testing through public locations is extremely limited (less than 2% of the total tests performed). Such free testing is the exception, not the rule.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.

75.		
76.	The amount of free test offered by the government in Health Department tent at Centro Medico as well as by municipalities is limited.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
77.	When they have offered it, it's almost consumed entirely prior to the closing hour of the location leaving many people without the ability to be tested.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
78.	The Puerto Rico government have had a scarcity of tests in recent weeks and government has run out of tests at public facilities. https://tinyurl.com/5vv6mcy4 .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
79.	In Puerto Rico, the main source of PCR tests is through private laboratories, which require a medical referral and an insurance plan.	Lack of personal knowledge to corroborate proposed stipulation.
80.	Otherwise, test-seekers need to pay between \$50 and \$100 per test. See https://www.giscorps.org/covid-19-testing-site-locator/ .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
81.	Early in the pandemic medical doctors complained that the requirement for medical referrals is a logistic problem. See https://medicinaysaludpublica.com/noticias/administracion-y-gerencia-medicina/abogan-para-que-se-elimine-requisito-de-referido-en-servicio-de-telemedicina-y-la-prueba-de-covid-19/7244 .	Lack of personal knowledge to corroborate proposed stipulation.
82.	COVID tests are not as readily available in Puerto Rico as they are on the mainland.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.

83.	The “positivity rate” does not reflect a proper sample representing the population	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
84.	As presented by the Defendant ECF No. 30-1, p. 1, Puerto Rico’s positivity rate started an upward trend on June 25, 2021 reaching a maximum value of 11.61% on August 11, 2021. However, Puerto Rico’s Effective Retransmission Rate (Rt) shows a downward trend on July 15, 2021 with 1.74, in August 8 it was below 1 (0.99) and by August 11 it was at 0.93. See https://covidestim.org/ .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
85.	When OE 2021-058 went in effect (August 16, 2021), Puerto Rico positivity rate was in an upward trend and at an estimated 7.95%, ECF No 30-1, p. 1. At that same time, Puerto Rico’s Rt was 0.82 and it had been below 1 for 8 consecutive days. See https://covidestim.org/ . In addition, the 7-day running average of confirmed cases was only trending downwards, having reached its peak at 619 on August 14, 2021. See https://covid19datos.salud.gov.pr/#casos .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
86.	In Puerto Rico, the people that get tested have an underlying need to do so—those who believe that they have been exposed, people who have symptoms, people who have traveled, or people whose employers require them to do so—and thus go through the strenuous process required to get tested.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
87.	The cost and hassle of getting tested creates a natural deterrent for the general population to get tested, which skews Puerto Rico’s positivity rate.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.

88.	The reason for our low amount of testing is the fact that there are too many obstacles and burdens (e.g., medical referral, health insurance plan, \$50-100 cost) and extremely limited to non-existent public testing facilities.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
89.	The positivity rate is an accurate indicator of spread in a community only if tests are taken by a group of people that is representative of an entire community.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
90.	For the percentage of positivity to properly represent the population, it is imperative that the total number of tests carried out (denominator) be the most representative and constant sample of the population. Otherwise, the testing data can skew towards one side or the other, providing erroneous and misleading conclusions. This is the case in Puerto Rico. See https://www.publichealthmdc.com/blog/understanding-percent-positivity	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
91.	If tests are predominantly taken by people who feel sick, people who have a reason to be worried about being infected, or people who are already sick in the hospital, there will be more positives from all those people than you would in the general community, so it can be misleading to assume that these inflated positivity rates indicate the level of an infection's spread.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
92.	The Government of Puerto Rico does not perform random testing of people and therefore the test positivity statistic is almost meaningless.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
93.	John Hopkins University Coronavirus Resource Center stopped using Puerto Rico's positivity rate statistics in April 2021. See	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own

	https://coronavirus.jhu.edu/region/us/puerto-rico .	interpretation of scientific statistical data.
94.	The COVID Tracking Project, one of the nation's trusted aggregators and reporters of coronavirus data and trends, does not publish the positivity rate due to its inaccuracy. See https://nymag.com/intelligencer/2020/12/the-problem-with-the-covid-19-positivity-rate.html .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
95.	Malaty Rivera, leader of the COVID Tracking Project and an Emerging Infectious Diseases Epidemiology Research Fellow at Boston Children's Hospital, called positivity rate figures in the U.S. "a mess" and stated that she and her team "emphatically recommend against over-reliance" on it to justify changes in policy. See https://nymag.com/intelligencer/2020/12/the-problem-with-the-covid-19-positivity-rate.html .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
96.	The "positivity rate," meaning that a high percentage of COVID tests are coming back positive is a classic denominator problem in Puerto Rico. As John Hopkins states, "the positivity rate is high if the number of total tests is too low." https://publichealth.jhu.edu/2020/covid-19-testing-understanding-the-percent-positive .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
97.		
98.		
99.	On August 8, 2021, the Effective Retransmission Rate (Rt) was below 1 (0.99), eight days prior to the EO 058 becoming effective, and it has continued to go down since then, reaching the lowest Rt during the whole pandemic on August 22, 2021 (0.72). Today, September 14, 2021, it's at a record low of 0.49. https://covidestim.org/	
100.	In Puerto Rico, as of September 14, 2021, the Predicted Active Cases (PAC) were 3,952 (0.12% of population). In the two prior	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and

	<p>waves, between November 1 and January 4, 2021, daily average of PAC was 6,813 and the peak was 8,499 (0.26% of population) on December 23, 2020. From April 4 to May 5, 2021, the daily average of PAC was 6,922 and the peak was 9,621 (0.29% of population) on April 21, 2021. Currently, from August 1, 2021, until now (September 14, 2021), the daily average of PAC is 5,582 and the peak was 7,716 (0.23% of population) on August 21, 2021,</p> <p>https://covid19datos.salud.gov.pr/#casos</p>	<p>legal theories with their own interpretation of scientific statistical data.</p>
101.	<p>Our daily average of predicted active cases and its peak, in this third wave (August 1, 2021 to September 14, 2021), with the Delta variant included and no restrictions, are over 40% lower and 20% lowers, respectively, than the previous waves without the Delta variant and with restrictions.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
102.	<p>From July 1, 2020 to May 31, 2021, prior to 60% fully vaccinated, the daily average of the 7-day moving average for confirmed cases is 340. See https://covid19datos.salud.gov.pr/#casos.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
103.	<p>From June 1, 2021 to September 11, 2021, there has been a daily average of the 7-day moving average of 233 confirmed cases. That is over 30% fewer daily average confirmed cases. See https://covid19datos.salud.gov.pr/#casos.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
104.	<p>With the Delta variant, from June 15 to September 11, 2021, there has been an average of the 7-day moving average of 264 confirmed cases per day. See https://covid19datos.salud.gov.pr/#casos.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
105	<p>Put differently, the daily average of the 7-day moving average of confirmed cases has decreased by</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative</p>

	25% since the advent of the Delta Variant. See https://covid19datos.salud.gov.pr/#casos	and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
106.	Regarding accumulated confirmed cases, from July 1, 2020 to when the first case of Delta variant was confirmed in Puerto Rico, June 15, 2021, the daily average was 345 cases. From June 16 to September 12, 2021, the daily average is 272 cases. That is, with the Delta variant and no restrictions, the daily average of cases is over 20% lower, https://covid19datos.salud.gov.pr/#casos .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
107.	When one compares Puerto Rico's cumulative confirmed cases reported as of September 14, 2021 with the confirmed cases reported within the five states with the closest population (Arkansas, Connecticut, Iowa, Nevada, and Utah), some of them with considerably lower population density, on a per 100,000 population, the Commonwealth is approximately 60% lower (5,535 vs 13,546 (avg.)). See https://covid.cdc.gov/covid-data-tracker/#compare-trends_newcases .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
108.	On July 6, 2021, there was a case rate of 10.52 per 100,000 people and by August 14, 2021, there was a case rate of 138 cases per 100,000 people. EFC DN 30-1, Pg. 2. Prior to the Delta variant, we had 17 days in April 2021 and 25 days between November and December 2020 above 138 cases per 100,000 people. In August 2021, we only had one (1). By September 14, 2021, the case rate is down to 69.2 per 100,000 people.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
109.	When the OE 2021-057 became effective, August 16, 2021, there was an upward trend in the case rate with 50.98 cases per 100,000	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and

	<p>people. EFC DN 30-1, Pg. 2. However, since August 14, 2021, the 7-day running average of cases started to go down after reaching its peak at 619. Moreover, the case rate follows three days later to commence its downward trend.</p>	<p>legal theories with their own interpretation of scientific statistical data.</p>
110.	<p>According to the Health Department's data, on July 19, 2021, there were 127 confirmed cases (7-day running average). It took 28 days, August 14, 2021, to reach 619 confirmed cases (7-day running average). Back on March 15, 2021, confirmed cases were at 124 (7-day running average), it took 30 days to reach 589 confirmed cases (7-day running average). https://covid19datos.salud.gov.pr/#casos. So, even with no restrictions and the Delta variant, the virus is not spreading, currently, any faster than it did before.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
111.	<p>The current wave is not only the smallest one, but also the shortest one, lasting only 14 days before reaching its "peak" in cases (the previous one peaked after 53 and 16 days, respectively).</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
112.	<p>The 7-day running average of confirmed cases has been dropping significantly, over 60%, in the last 28 days, when it reached its peak at 619 on August 14, 2021, currently at 232 (September 14, 2021). See id.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
113.	<p>Since the EO-058 became effective, August 16, 2021, and up to September 14, 2021, 3.4% of eligible recipients have been fully vaccinated and 3.5% of eligible recipients have received at least one dose. See https://covid19datos.salud.gov.pr/#vacunacion.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
114.	<p>Puerto Rico, as of September 14, 2021, ranks 5th, among U.S. states and territories, in percentage of total population</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and</p>

	<p>fully vaccinated. It ranks 8th in percent of 12+ population fully vaccinated and it ranks 3rd in doses administered per 100k by state. See https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-fully-percent-total; https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-fully-percent-pop12; https://covid.cdc.gov/covid-data-tracker/#vaccinations.</p>	<p>legal theories with their own interpretation of scientific statistical data.</p>
115.	<p>The total rate of cases, hospitalizations, and deaths goes down the higher the vaccination rate goes.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data. .</p>
116.	<p>New admissions in hospitals for confirmed COVID cases have gone down in the past 22 days, having reached their peak, with 33 new admissions (7-day running average), on August 22, 2021. See https://covid.cdc.gov/covid-data-tracker/#new-hospitaladmissions.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
117.	<p>As of today, September 11, 2021, new admissions in hospitals were 19 (0.0006% of the population). See https://covid.cdc.gov/covid-data-tracker/#new-hospitaladmissions.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
118.	<p>The new admissions during our first wave of COVID surge started, November 1, 2020 to January 4, 2021, had a daily average of 83 and peaked at 189 on November 10, 2020. For the month of November, it had a daily average of 138 and for December a daily average of 33. The second wave, April 5 to May 4, 2021, had a daily average of 37 and peaked at 47 on April 27, 2021. The third wave, August 1 to September 11, 2021, has a daily average of 26 and peaked at 33 on August 22, 2020. See https://covid.cdc.gov/c</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>

	ovid-data-tracker/#new-hospitaladmissions.	
119.	New admissions of patients with confirmed COVID-19 in this third wave, with the Delta variant included and no restrictions, are up to 80% lower and its peak six-times lower than in the previous waves without the Delta variant and with restrictions. See https://covid.cdc.gov/covid-data-tracker/#new-hospitaladmissions.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
120.	Prior to the Delta variant, August 1, 2020 to June 14, 2021, there were 11,720 new admissions of patients (0.3% of the population) and a 37 daily average of new admissions. After the Delta variant, June 15 to September 11, 2021, the total of new admissions was 1,312 (0.04% of the population) and a 15 daily average of new admissions. That is, with the Delta variant and no restrictions, there has been two and a half times (2.5x) less new admissions per day. See https://covid.cdc.gov/covid-data-tracker/#new-hospitaladmissions.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
121.	There were 55 hospitalizations with a 7-day running average of 44 on July 8 and by August 25, 2021 there was 556 hospitalizations with a 7-day running average of 524. ECF 30-1, p. 3. The average daily new admissions during that period were 16.6, the adult hospitalizations average 3% and the adult unused beds average 38%. On August 27, 2021, 11 days after EO 2021-058 became effective, hospitalizations started to go down and have been going down for 19 days. Currently, September 14, 2021, at 335 (4.7%). See <i>id.</i>	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
122.	As of September 14, 2021, Puerto Rico's maximum	The Proposed stipulation is speculative, flawed, and contains legal

	utilization of public health assets ("health care system capacity") due to COVID was 657 adult hospital beds (9.3%) on December 10, 2020, 120 adult ICU hospital beds (19.5%) on August 23, 2021 and 118 adult ventilators (10.3%) on December 12, 2020. See https://covid19datos.salud.gov.pr/#sistemas_salud .	conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
123.	When vaccination was still at 0% in Puerto Rico, up to December 13, 2020, our healthcare system usage rate did not exceed 9.3% in adult hospital beds (December 10, 2020), 16.5% in adult ICU beds (November 24, 2020), and 10.3% in adult ventilators (December 12, 2020). See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
124.	The highest levels of adult hospital beds, ICU beds and ventilators during the pandemic in Puerto Rico and prior to vaccine availability (December 13, 2020), fewer than 113 (17%) of adult ICU beds were occupied, adult hospital beds were at 657 (9.3%) and ventilators at 118 (10.3%), all one-day highs and all occurred at different points in time (December 10, 2020, November 24, 2020 and December 12, 2020 respectively). See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
125.	The daily average since August 1, 2020 to September 14, 2021, has been 325 adult hospital beds (4.7%), 60 adult ICU hospital beds (9.1%), and 47 adult ventilators (3.9%). See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
126.	Before reaching 60% full vaccination, August 1, 2020 to May 31, 2021, the maximum adult's hospital utilization due to COVID was 9.3% (649 beds) for one day, with the daily average	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical

	utilization at 5.4% (366 beds) and for adult ICU beds the maximum was 16.5% (110) for one day, with daily average utilization at 9.6% (64 beds). See https://covid19datos.salud.gov.pr/#sistemas_salud .	data.
127.	From June 1 to September 14, 2021, our daily average adult hospital utilization is at 2.9% (201 beds) and for adult ICU beds, the daily average utilization was 7.5% (49 beds). See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
128.	After 60% vaccine implementation, June 1 to September 14, 2021, there has been an almost 50% fewer adult hospital beds (25% fewer for ICU beds) used daily due to COVID, as compared to the entire previous pandemic period. See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
129.	With the Delta variant present, June 15 to September 14, 2021, our daily average adult hospital utilization is 3.2% (224 beds) which is 40% lower than during the period of the pandemic without it. Regarding adult ICU beds, it is 8.2% (54 beds) which is 15% lower. (August 1, 2021 to May 31, 2021). See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
130.	Puerto Rico's hospitalizations have gone down in the past 19 days, having reached their peak on August 26, 2021, with 515 (7.3%). https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
131.	As of September 14, 2021, the adult hospitalization total is 337 (4.8%). See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.

132.	On our first wave of COVID surge, November 1, 2020 to January 4, 2021, our adult bed and hospital utilization average was 7.8% (550) with the peak at 9.3% (657) on December 10, 2021. The second wave, from April 5 to May 4, 2021, the adult bed and hospital-utilization average was 6.2% (440) with the peak at 7.4% (520) on April 27, 2021. The third wave, the current one, August 1 to September 14, 2021, the adult bed and hospital utilization average 4.7% (325) with the peak at 7.3% (515) on August 26, 2021. See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
133.	Adult bed hospitalizations and hospital utilization in this third wave, with the Delta variant included and fewer restrictions, are up to 40% lower and its peak over 20% lower than in the previous waves without the Delta variant and with more restrictions.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
134.	Puerto Rico hospitals have always had extra adult beds throughout the pandemic, averaging, from August 1, 2020 to September 14, 2021 a 40.3% availability with only 59.7% utilization. See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
135.	The average of adult empty beds within Puerto Rico hospitals from August 1, 2020, to September 14, 2021, is 2,873 empty beds (40.3%) and for ICU beds it was 203 (30%). Data Source https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
136.	From August 1, 2020 to May 31, 2021, prior to 60% full vaccination, our unused beds daily average was at 41.7% (2,940 beds) and for adult ICU beds, the unused ICU beds daily average was at 31% (210 beds).	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.

	See https://covid19datos.salud.gov.pr/#sistemas_salud .	
137.	From June 1 to September 14, 2021, our unused beds daily average is at 38% (2,672) and for adult ICU beds, the unused ICU beds daily average is at 28% (184 beds). See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
138.	Currently, as of September 14, 2021, PR's adult bed availability is 41.3% and adult ICU is 28%. See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
139.	Many of the hospitals, if not most of them, have laid off personnel due to the low utilization of the healthcare system within Puerto Rico. See https://www.elnuevodia.com/noticias/locales/notas/hospitales-locales-aplican-cesantias-temporeras-a-mas-de-400-trabajadores/ .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
140.	Attorney Jaime Pla, president of the Puerto Rico Hospitals' Association (AHPR), stated on August 18, 2021 that "The reality is that hospitals have not been able to recover and return to the censuses they had prior to the pandemic. Before, hospitals could be 100% and others had less. The normal average was between 77% and 82% occupancy. Now they are still at 60%, about 20% less." See https://www.elvocero.com/economia/otros/en-estado-de-alerta-los-hospitales/article_3363670c-fe00-11eb-97f1-fb8badc7ec5d.html .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
141.	COVID-19 affected certain groups much more significantly, namely, the elderly (typically defined as people over 65 years old) and people with predefined autoimmune diseases and other chronic health issues. See	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.

	https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm .	
142.		
143.	Since January 21, 2020 to September 14, 2021, Puerto Rico has had 5,545 cases of COVID per 100,000 people, which rate is the 53rd of 58 U.S. states and territories (including New York City and the District of Columbia). See https://covid.cdc.gov/covid-data-tracker/#cases_casesper100k	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
144.	Puerto Rico has the highest elderly population of any state or territory (20.8%). See https://www.prb.org/resources/which-us-states-are-the-oldest/ , https://www.census.gov/quickfacts/PR .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
145.	From January 21, 2020 to September 14, 2021, Puerto Rico was 47th of 58 in death rate (94 deaths per 100,000 people) among states and territories (including New York City and the District of Columbia). See https://covid.cdc.gov/covid-data-tracker/#cases_deathsper100k .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
146.	Puerto Rico's death rate "related to" COVID per 100,000 (94) is almost 50% lower than the average within the States (172). See https://covid.cdc.gov/covid-data-tracker/#cases_deathsper100k .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
147.	Puerto Rico has had a total of 3,028 deaths related to COVID since March 17, 2020 (as of September 14, 2021). See https://covid19datos.salud.gov.pr/#defunciones	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
148.	As of September 14, 2021, 77% of the COVID-related deaths in Puerto Rico are from the population of those 60 years and older. See https://covid19datos.salud.gov.pr/#defunciones .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
149.	When one compares Puerto Rico's cumulative deaths per 100K related to COVID reported	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative

	<p>as of September 14, 2021 with the five states with the closest population (AR, CT, IA, NV, UT), some of them with considerably lower population density, we are more than 100% lower (less than half) the deaths (94 vs 224 (avg.)), except Utah, which is similar to Puerto Rico, and has a population density of 14.12 people/km² and Puerto Rico's is has a population density over 20x bigger than Utah at 319 people/km². See https://covid.cdc.gov/covid-data-tracker/#compare-trends_comptrends-deaths-cum-raw-lin, https://worldpopulationreview.com/states/utah-population.</p>	<p>and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
150.	<p>For our first wave of COVID surge, November 1, 2020 to January 4, 2021, our daily deaths average was 13. For the second wave, April 5 to May 4, 2021, the average daily deaths were eight (8). For the third wave, August 1 to September 14, 2021, the average daily deaths are nine (10). See https://covid19datos.salud.gov.pr/#defunciones.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
151.	<p>In August 2021, with 312 deaths related to COVID in the month of August 2021, Puerto Rico has fewer such deaths than in the pre-vaccine, non-Delta variant, months of November (346) and December (445). See https://covid19datos.salud.gov.pr/#defunciones.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
152.	<p>On July 24, 2021, the number of deaths related to COVID was 3 per day and the 7-day running average was 1.1. Since then and up to August 26, 2021, deaths reached 19 per day and the 7-day running average was 12.2. See ECF No 30-1, p. 4. That is an average of 7.7 deaths per day. Less than the average deaths per day on the two previous, pre-Delta variant and no vaccine,</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>

	periods of November and December 2020 (13) and April 5 to May 4, 2021 (8).	
153.	Currently, there are 0.1% active cases and we have had 0.09% deaths related to COVID in nearly 18 months. Data sources https://covid19datos.salud.gov.pr/#casos , https://covid19datos.salud.gov.pr/#defunciones .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
154.	The pandemic has subsided—even considering the Delta variant—and the Commonwealth's hospitals do not face a threat of being overwhelmed by COVID-19 cases.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
155.	With the Delta variant and with fewer restrictions, there have been fewer active cases, fewer people have been infected, fewer people have been hospitalized, and fewer people have died than before the Delta variant within a similar timeframe.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
156.	Since the onset of the COVID pandemic in Puerto Rico, there has been three episodes of an increase in adult cases which correlated to an increase in adult hospitalizations and then an increase in adult deaths.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
157.	Our first wave COVID surge started on November 1, 2020 and lasted until January 4, 2021, with a daily 7-day running average of 549 cases, an average of new admissions of 138 in November, an adult bed and hospital utilization average of 7.8% (550), and an average of 13 daily deaths. See https://covid19datos.salud.gov.pr/#casos ; https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions ; https://covid19datos.salud.gov.pr/#sistemas_salud ; https://covid19datos.salud.gov.pr/#defunciones .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
158.	The second wave was from April	The Proposed stipulation is

	5 to May 4, 2021, with a daily 7-day running average of 593 cases, an average of new admissions of 37, adult bed and hospital utilization average of 6.2% (440), and an average of 8 daily deaths. See id.	speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
159.	The third wave, from August 1 to September 14, 2021, has a 7-day running average of 457 cases, an average of new admissions of 26, an adult bed and hospital utilization average of 5.4% (379), and an average of 10 daily deaths. See id.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
160.	The current number of cases, and adult hospitalizations are lower than during the past two COVID-19 spikes that we have experienced. Our current number of deaths are lower than in the first spike and like the second spike. Moreover, by having a large percentage of the eligible population vaccinated—again, 74% full and 84.6% with one dose as of September 14, 2021, there are fewer hospitalizations. See id. and https://covid19datos.salud.gov.pr/#vacunacion .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
161.	Through all these waves, our hospital availability has remained extremely high, 40%, compared to non-pandemic times when it used to be 18% to 23%. https://tinyurl.com/2twmhpse .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
162.	As of September 14, 2021, Puerto Rico's total vaccinated population has only increased by 3.5% (full) and 3.5% (one dose) since the first EO (OE-2021-058) became effective on August 16, 2020. https://covid19datos.salud.gov.pr/#sistemas_salud ; https://covid19datos.salud.gov.pr/#vacunacion .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
163.	As of September 14, 2021, Puerto Rico's total vaccinated population has only increased by 3.5% (full) and 3.5% (one dose) since the first EO (OE-2021-058)	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own

	became effective on August 16, 2020. https://covid19datos.salud.gov.pr/#sistemas_salud ; https://covid19datos.salud.gov.pr/#vacunacion .	interpretation of scientific statistical data.
164.	The vaccinated are not affected by the unvaccinated. <i>See</i> https://tinyurl.com/4k2u37kz	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
165.	Viral load is the most significant factor in the ability to infect and there are no significant differences in the chances of infecting others between vaccinated and unvaccinated. <i>See id.</i>	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
166.	Vaccinated persons can be super-spreaders who infect many other people, among them other vaccinated persons. <i>See id.</i>	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
167.	Unvaccinated individuals are not fundamentally different when it comes to the direct risk to transmit the virus compared to vaccinated individuals. <i>See id.</i>	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
168.	Countries with the highest vaccination rates, up to 80-90% of the population, still experience significant epidemic. Iceland, for example, where 81% of the total population have been vaccinated (compared to 67% in Israel), is currently experiencing the highest wave of morbidity it has experienced since the onset of the pandemic. <i>See id.</i>	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
169.	Unvaccinated persons are not what causes the pandemic to continue, nor do they endanger the vaccinated in that aspect. <i>See id.</i>	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
170.	Eradicating COVID19 by achieving "herd	The Proposed stipulation is speculative, flawed, and contains legal

	immunity” through vaccination of a high-enough percentage of the population has proven to be unrealistic. <i>See id.</i>	conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
171.	The majority of those who have not been vaccinated are young persons, whose likelihood of creating excessive burdens on the system are extremely low. <i>See</i> https://covid19datos.salud.gov.pr/#casos , https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
172.	There is no scientific evidence whatsoever supporting the claim that non-vaccinated individuals are risking the public's health in any way more than vaccinated people or that their lack of being vaccinated is a factor that facilitates the continuation of the pandemic or that causes a threat of collapse to the healthcare system. <i>See</i> https://tinyurl.com/4k2u37kz	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
173.	The implicit message that emerges from the existing discourse, suggesting that unvaccinated people, unlike vaccinated people, pose a risk to others, is most dangerous to the vaccinated persons themselves, as it fosters the illusion that vaccination protects against contagion, and thus encourages careless behaviors of vaccinated persons in public spaces shared with high-risk populations.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
174.	The highest risk of resistant strain establishment occurs when a large fraction of the population has already been vaccinated but the transmission is not controlled, especially when the high-risk fraction of the population (aged individuals and those with specific underlying conditions) fosters the return to behaviors conducive to a high rate of virus transmission. <i>See</i> https://www.nature.com/articles/s41598-021-	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.

	95025-3.	
175.	It is unnecessary to vaccine absolutely every citizen when, as here, vaccines are effective and widely available for those who choose to take them.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
176.	A pandemic does not flourish in an environment where vaccines are widely available and most of the population, especially those 60 years and older, the most vulnerable to the virus, are vaccinated in such volume (74% fully and 82% one dose).	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
177.	The Delta variant might be spread as easily by vaccinated people who become infected as by the unvaccinated and the amount of viral load between vaccinated and unvaccinated patients is similar—and that it is less deadly. See https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
178.	According to a CDC study, breakthrough cases are always expected, but now represent just 0.098% of those fully vaccinated. Of the 102,000 not vaccinated, 1.5% (1,603) were hospitalized and 0.4% (417) died. Among 102,000 vaccinated, only 100 (0.098%) presented symptoms, and there was only one death (0.00098%), the deceased having had previous. See https://abcnews.com/US/symptomatic-breakthrough-covid-19-infections-rare-cdc-data/story?id=79048589 .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
179.	As of September 14, 2021, death rate is 94 per 100,000, the case fatality rate 2% and the average daily deaths is 5.5 (Jan. 21, 2020 to September 14, 2021). The case fatality rate has been 2% and the average daily deaths 5.7% prior to a 60% full vaccination (March 17, 2020 to	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.

	<p>May 31, 2021). From June 1 until September 14, 2021, after 60% of people fully vaccinated, the case fatality rate is 2% and the average daily deaths are 4.8. The case fatality rate is 2% and the average daily deaths are 5.3 after the advent of the Delta variant (June 15, 2021 until September 14, 2021). That is, Puerto Rico has the same average daily deaths and case fatality rate after 60% of the population got vaccinated and, even when Delta variant arrived, the case fatality rate and daily average of deaths remain the same. See https://covid.cdc.gov/covid-data-tracker/#cases_deathsper100k; https://covid19datos.salud.gov.pr/#casos; https://covid19datos.salud.gov.pr/#defunciones</p>	
180.	<p>As of September 14, 2021, the percentage of fully vaccinated people in Puerto Rico is almost 20% higher than in Indiana (74% versus 54.1%). See https://covid19datos.salud.gov.pr/#vacunacion, https://www.coronavirus.in.gov/vaccine/2680.htm.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
181.	<p>According to the Health Department's data, between August 1 and 23, 2021, there have been 178 deaths related to COVID in Puerto Rico. Of these, 45 have been vaccinated, meaning a 25% of the deaths related to COVID are vaccinated people and 75% non-vaccinated people.</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>
182.	<p>Due to the effectiveness of the EUA and FDA approved vaccines, vaccinated people are rarely affected by unvaccinated people, even with the advent of the Delta variant. See https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html</p>	<p>The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.</p>

183.	Among 24 states and NYC reporting, “children ranged from 1.6%-3.6% of their total cumulated hospitalizations, and 0.1%-1.9% of all their child COVID-19 cases resulted in hospitalization.” As to mortality, children were 0.00%-0.24% of all COVID-19 deaths, and 7 states reported zero child deaths, including PR. In states reporting, 0.00%-0.03% of all child COVID-19 cases resulted in death. American Academy of Pediatrics, Children and COVID-19: State-Level Data Report, https://tinyurl.com/376j6xyd .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
184.	According to the Health Department’s data, from December 1, 2020 to September 14, 2021, PR has averaged 24.4 pediatric hospitalizations related to COVID and no more than 20 children have been in pediatric ICU since November 18, 2020 when the first child was admitted to ICU. See https://covid19datos.salud.gov.pr/#sistemas_salud .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
185.	In Puerto Rico, according to the Health Department’s data, the recovery rate for children 0 to 9 years is 99.992% and between 10 and 19 years is 99.98%. https://covid19datos.salud.gov.pr/#defunciones .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
186.	In the age group of 12 years old or younger, one child has died in Puerto Rico related to COVID.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.
187.	A five-year-old child died in January 2021, with a history of chronic asthma, but the minor died prior to any doctor being able to realize a diagnostic test. See https://www.primerahora.com/noticias/gobierno-politica/notas/icf-entrega-a-	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs’ view and legal theories with their own interpretation of scientific statistical data.

	salud-informe-que-confirma-que-nina-de-cinco-anos-murio-por-covid-19/ .	
188.	According to the Health Department's data, within the age group of 10 to 19 years old, there has been five (5) deaths and all of them have been older than 12 years old, meaning ages that the vaccine is available. The ages of the five are 13 (June 2020), 19 (August 2020), 15 (October 2020), 13 (June 2021), and 19 (August 2021). https://covid19datos.salud.gov.pr/#defunciones .	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
189.		
190.	As more people get vaccinated, the share of cases, hospitalizations, and deaths represented by unvaccinated people will tend to fall, because there will be fewer unvaccinated people in the population.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
191.	Puerto Rico's health care system has never been in jeopardy of being overwhelmed even during the worst part of the pandemic in pre-vaccine times.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
192.	Hospitalizations and deaths will not flourish in an environment like Puerto Rico, where vaccines are widely available, and a very high percentage of the population is vaccinated.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
193.	People with higher risks of serious COVID complications, such as individuals over 60 and people with underlying health conditions, can choose to take the vaccine to protect themselves.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.
194.	The cycle thresholds (Ct) at which reverse transcriptase polymerase chain reaction (rtPCR) tests for covid-19 become positive are intimately associated with both viral load, and covid-19 infectiousness.	The Proposed stipulation is speculative, flawed, and contains legal conclusions that follow the narrative and compilation of Plaintiffs' view and legal theories with their own interpretation of scientific statistical data.

195.	Dr. Anthony Fauci said in an interview that, “in general, Ct values over 36 do not represent infectious virus, only pieces of viral RNA.” Video available at https://justthenews.com/politics-policy/coronavirus/newly-surfaced-video-july-fauci-tests-dead-virus .	Lack of personal knowledge to corroborate proposed stipulation.
196.	Dr. Fauci also said that “What is now sort of evolving into a bit of a standard,” Fauci said, is that “if you get a cycle threshold of 35 or more, that the chances of it being replication-confident are minuscule.” <i>Id.</i>	Lack of personal knowledge to corroborate proposed stipulation.
197.	Dr. Fauci continued, when “somebody comes in, and they repeat their PCR, and it’s like [a] 37 cycle threshold, but you almost never can culture virus from a 37 threshold cycle.” <i>Id.</i>	Lack of personal knowledge to corroborate proposed stipulation.
198.	The Puerto Rico Health Department does not require private laboratories to report the Ct values of the rtPCR tests performed when reporting positive Covid tests results.	Lack of personal knowledge to corroborate proposed stipulation.
199.	The Health Department doesn’t know how many positive Covid test results have been reported which used Ct values over 35.	Lack of personal knowledge to corroborate proposed stipulation.
200.	The Nuremberg Code expressly states that “[t]he voluntary consent of the human subject is absolutely “essential” and prohibits experimental treatments on anyone using “force, fraud, deceit, duress, overreaching, or other ulterior forms of constraint or coercion.” <i>United States Holocaust Museum, Nuremberg Code</i> , https://www.ushmm.org/information/exhibitions/online-exhibitions/specialfocus/doctors-trial/nuremberg-code	Lack of personal knowledge to corroborate proposed stipulation.
201.	Title 45 of the Code of Federal Regulations part 46 is to similar effect. As is the Helsinki Declaration and the International Covenant on Civil and Political	Lack of personal knowledge to corroborate proposed stipulation.

	<p>Rights adopted by the United Nations, to which the United States is a party. See International Covenant on Civil and Political Rights, pt III, art. 7, available at https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; World Medical Association, WMA Declaration of Helsinki – Ethical Principles for Medical Research Involving Human Subjects, available at https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethicalprinciples-for-medical-research-involving-human-subjects/</p>	
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III. STIPULATIONS SUGGESTED BY DEFENDANT AND REJECTED BY PLAINTIFFS

	A. Defendant’s Suggested Stipulation	B. Plaintiffs’ Reason to Reject Suggestion
1.		
2.		
3.		
4.		
5.		
6.		
7.	<p>The greatest risk of transmission is among unvaccinated people who are much more likely to get infected, and therefore transmit the virus. (<i>See</i> Docket No. 30-3).</p>	<p>The CDC referred is from August 26, 2021. Since then, with the advent of the Delta variant, it has been shown by multiple studies and empirical data that the likeliness of the vaccinated “to get infected, and there for transmit the virus” may be much higher than expected.</p> <p>CDC updated on September 15 stating that “Infections with the Delta variant in vaccinated persons potentially have reduced transmissibility than infections in unvaccinated persons, although additional studies are needed.”...”Investigations are ongoing to further assess the risk of transmission from fully vaccinated persons with SARS-CoV-2 infections to other vaccinated and unvaccinated</p>

people. Early evidence suggests infections in fully vaccinated persons caused by the Delta variant of SARS-CoV-2 may be transmissible to others.” See <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html>.

Moreover, “When early field data showed that vaccinating people cuts transmission of the SARS-CoV-2 virus, researchers were cautiously optimistic. But they warned that many of those studies, although promising, took place before the fast-spreading Delta variant proliferated worldwide. Now, reports from various countries seem to confirm what scientists feared after the variant tore through India with alarming speed in April and May: Delta is more likely than other variants to spread through vaccinated people.

Data from COVID-19 tests in the United States, the United Kingdom and Singapore are showing that vaccinated people who become infected with Delta SARS-CoV-2 can carry as much virus in their nose as do unvaccinated people. This means that despite the protection offered by vaccines, a proportion of vaccinated people can pass on Delta, possibly aiding its rise.

“People who have a Delta virus and happen to have ‘breakthrough’ infections can carry these really high levels of virus, and can unwittingly spread the virus to others,” says David O’Connor, a virologist at the University of Wisconsin–Madison.” “(See <https://www.nature.com/articles/d41586-021-02187-1>)

In India, “The Indian state of Kerala has 3% of India's population, and 67% of its inhabitants have at least one vaccination. One would expect Kerala's COVID cases to be so low as to be invisible in a chart of India's very low overall cases. Yet this state of just 33 million people accounted for 65% of all of India’s cases on Thursday, and even more in recent weeks. It has essentially been the only state experiencing a surge in recent months.

Uttar Pradesh:

- largest state of 240 million people
- roughly 20 cases a day
- 193 active cases — 33% with one dose of vaccine (and near zero when cases were going down in the spring)

		<p>Kerala:</p> <ul style="list-style-type: none"> - 33 million people - 65% of all current cases in India - 186,000 active cases - 67% with at least one vaccine” <p>See https://www.theblaze.com/op-ed/horowitz-heavily-vaccinated-state-accounts-for-65-of-indias-covid-cases-after-rejecting-ivermectin.</p> <p>In Israel, with 63% of the population fully vaccinated, the “Health Ministry Director-General Nachman Ash said Tuesday that the current wave of coronavirus infections is surpassing anything seen in previous outbreaks. Pointing out that there is an average of 8,000 new infections each day, with occasional peaks over 10,000, he said, “That is a record that did not exist in the previous waves,” including the massive third wave at the end of last year.” See https://www.timesofisrael.com/health-ministry-chief-says-coronavirus-spread-reaching-record-heights/.</p> <p>In a recent study realized in the UK, and one of the largest, it is shown that “The vaccines reduce but don’t prevent transmission. Protection from infection appears to wane over time, more noticeably after three to four months, based on a large study of more than 300,000 people in the United Kingdom. As clinical studies from the U.S., Israel, and Qatar show—and many Americans can now personally attest—there is substantial evidence that people who are vaccinated can both contract and contribute to the spread of Covid-19.</p> <p>This trend has been exacerbated by the Delta variant. The data show that vaccine effectiveness for infection protection fell from roughly 91% to 66% after emergence of the Delta variant, according to a recent CDC report. Data from Israel show rates of protection have declined to less than 40% for some patients. The data still show that people who are vaccinated against Covid-19 are less likely to become infected than people who aren’t vaccinated. People who have recovered from Covid-19 appear to have the most protection of all.” See https://www.wsj.com/articles/vaccine-mandate-covid-19-unvaccinated-breakthrough-delta-boosters-fluvoxamine-antibodies-11631820572.</p>
8.	Fully vaccinated people get COVID-19 less often than unvaccinated people. (See Docket No. 30-3).	CDC released an update, on September 15, 2021, stating that “Data were added from studies published since the last update that suggest decreased vaccine effectiveness against SARS-CoV-2 infection. Early data suggest infections in

		<p>fully vaccinated persons are more commonly observed with the Delta variant than with other SARS-CoV-2 variants.” Moreover, “data suggest lower effectiveness against confirmed infection and symptomatic disease caused by the Beta, Gamma, and Delta variants compared with the ancestral strain and Alpha variant. Ongoing monitoring of vaccine effectiveness against variants is needed.” See https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html.</p>
<p>9.</p>	<p>Fully vaccinated people with Delta variant breakthrough infections can spread the virus to others. However, vaccinated people appear to spread the virus for a shorter period. (See Docket No. 30-3).</p>	<p>The study that concluded this a Singapore study title “Virological and serological kinetics of SARS-CoV-2 Delta variant vaccine-breakthrough infections: a multi-center cohort study”, https://www.medrxiv.org/content/10.1101/2021.07.28.21261295v1.</p> <p>The “shorter period” Defendant refers to is seven days. “Delta viral loads were similar for both groups for the first week of infection but dropped quickly after day 7 in vaccinated people. “Given the high virus levels seen in the first week of illness with Delta, measures such as masks and hand hygiene which can reduce transmission are important for everyone, regardless of vaccination status,” says co-author Barnaby Young, an infectious-disease clinician at the National Centre for Infectious Diseases in Singapore.” https://www.nature.com/articles/d41586-021-02187-1</p> <p>However, “According to the CDC, on average, symptoms show up in the newly infected person about 5 days after contact. Researchers estimate that people who get infected with the coronavirus can spread it to others 2 to 3 days before symptoms start and are most contagious 1 to 2 days before they feel sick.” See https://www.webmd.com/lung/coronavirus-incubation-period#1</p> <p>This means that people that are infected with COVID are, on average, most contagious between day 3 and 4 after getting infected. Meaning that the vaccinated, with similar viral load the first 7 days as unvaccinated, is as contagious as the non-vaccinated for the period both are contagious. So the “shorter period” happens to be the only period both groups are contagious.</p> <p>See Response to Suggested Stipulation No. 7.</p>
<p>11.</p>	<p>The amount of viral genetic material may</p>	<p>See Response to Suggested Stipulation No. 7.</p>

	go down faster in fully vaccinated people when compared to unvaccinated people. This means fully vaccinated people will likely spread the virus for less time than unvaccinated people. (<i>See</i> Docket No. 30-3).	
12.	The COVID-19 vaccines approved or authorized in the United States are highly effective at preventing severe disease and death, including against the Delta variant. (<i>See</i> Docket No. 30-3).	<i>See</i> Response to Suggested Stipulation No. 7.
13.	The COVID-19 vaccines approved or authorized in the United States are playing a crucial role in limiting the spread of the virus and minimizing severe symptoms of the disease. (<i>See</i> Docket No. 30-3).	<i>See</i> Response to Suggested Stipulation No. 7.
14.	High vaccination coverage will reduce spread of the virus and help prevent new variants from emerging. (<i>See</i> Docket No. 30-3).	<p>Puerto Rico has high vaccination rates already with over 74% of the eligible fully vaccinated. Rank 3rd in doses administered per 100K and 6th on percent of fully vaccinated per 100K among US jurisdictions.</p> <p>New variants are prevented if transmission is prevented; however, since vaccine does not prevent transmissions, new variants can still be occurring through vaccinated people. Moreover, “the highest risk of resistant strain establishment occurs when a large fraction of the population has already been vaccinated but the transmission is not controlled, especially when the high-risk fraction of the population (aged individuals and those with specific underlying conditions) fosters the return to behaviors conducive to a high rate of virus transmission</p> <p>.https://www.nature.com/articles/s41598-021-95025-3</p> <p><i>See also</i> Response to Suggested Stipulation No. 7.</p>
15.		
16.	Since the advent of the virus more than 3,000 people have died of COVID-19 in Puerto Rico. (<i>See</i> Department of Health of Puerto Rico dashboard).	<p>It is admitted only that these deaths may be <i>related</i> to COVID. It bears noting that these numbers represent deaths “related to” COVID, so it includes “(a) confirmed COVID-19 deaths, which are deaths of people with one or more positive molecular tests, (b) likely COVID-19 deaths, which include deaths of: (1) people who meet clinical criteria and evidence epidemiological as defined by the CSTE, without confirmatory tests for COVID-19; (2) people who test positive for antigens and meet the clinical criteria or epidemiological evidence as defined by the CSTE; (3) deaths that meet the criteria for vital statistics in which no evidence of confirmation for COVID-19; and (4) suspicious</p>

		deaths from COVID-19, which include deaths of people in whom a specific antibody in serum, plasma, or blood, or a specific antigen is detected by immunocytochemistry in an autopsy specimen, which were not reported as confirmed or probable COVID-19 cases.” <i>See</i> Puerto Health Department, Report of Cases COVID-19.
17.	As of September 15, 2021, there are more than 300 hospitalized adults. (<i>See</i> Department of Health of Puerto Rico dashboard).	The “more than” may be misleading. As of September 15, 2021, there were 314 hospitalized adults due to COVID-19. Moreover, on September 17, 2021, there are 287 adults hospitalized due to COVID-19. Hospitalizations have been going down for 22 days now. <i>See</i> Department of Health of Puerto Rico dashboard.
18.	As of September 15, 2021, there are more than 23 pediatric hospitalizations. (<i>See</i> Department of Health of Puerto Rico dashboard).	The “more than” may be misleading. As of September 15, 2021, there were 28 hospitalized adults due to COVID-19. Moreover, on September 17, 2021, there are 24 adults hospitalized due to COVID-19. Hospitalizations have been going down for 27 days now. <i>See</i> Department of Health of Puerto Rico dashboard.
19.	Since the end of June 2021 there has been a dramatic increase of positive cases in Puerto Rico. (<i>See</i> Department of Health of Puerto Rico dashboard).	Cases have been going down for 31 days consecutively. With a current 7-day moving average of 236 confirmed cases. <i>See</i> Department of Health of Puerto Rico Dashboard.
20.	Testing in Puerto Rico has increased since the month of June. (https://www.salud.gov.pr/estadisticas_v2#pruebas)	The month of June has been the lowest number of cases (7-day moving average) since the pandemic started with 33 cases daily. The month of August average 433 daily cases (7-day moving average) with 211,290 PCR tests conducted. The month of April average 570 daily cases (7-day moving average) with 227,627 PCR tests conducted. The month of December average 581 daily cases (7-day moving average) with 235,531 PCR tests conducted. The month of November average 529 daily cases (7-day moving average) with 234,885 PCR tests conducted. That is, in the month of August 2021, a total of 16,337 less PCR tests were conducted than in April, a total of 24,241 less PCR tests were conducted than in December 2020 and a total of 23,595 less PCR test were conducted that in November. See https://www.salud.gov.pr/estadisticas_v2#pruebas . Moreover, the testing performed in Puerto Rico, in the last 30 days (September 17, 2021), is 6,176 per 100,000 people which ranks Puerto Rico second to last (only Virgin Island does less) in testing throughout all US jurisdictions. In the last 30 days, Puerto Rico has performed less than half (50% less) the COVID testing per 100,000 people than the average total of tests in the mainland. <i>See</i>

		https://covid.cdc.gov/covid-data-tracker/#cases_testsper100k30day .
21.	At the time of the enactment of OE 2021-058, the accumulated count of administered doses showed that vaccination had decreased. (See Department of Health of Puerto Rico dashboard)	At the time of enactment of OE 2021-058, 71.2% of the population had been fully vaccinated and 81.6% had one dose. As so many people had been vaccinated, the growth rate of vaccination is expected to decrease. See Department of Health of Puerto Rico dashboard.
22.	As of September 15, 2021, there has been 5 deaths due to COVID-19 in the age group of 10-19 years old. (See Department of Health of Puerto Rico dashboard)	The five deaths were <i>related to</i> COVID-19. See Response to Suggested Stipulation No. 16.
23.		
24.		
25.	In 19 months since advent of the virus, 1 in 500 Americans have died of COVID-19. (See Johns Hopkins University data https://coronavirus.jhu.edu/)	The reported deaths were <i>related to</i> COVID-19. See Response to Suggested Stipulation No. 16.
26.		
27.		
28.		
29.		
30.	Pope Francis said that "Being vaccinated with vaccines authorized by the competent authorities is an act of love. And contributing to ensure the majority of most people are vaccinated is an act of love."(https://www.vaticannews.va/en/pope/news/2021-08/pope-francis-appeal-covid-19-vaccines-act-of-love.html)	This is misleading. Pope Francis might have said that, but that is not the Catholic Church's official position. In pertinent part, the Vatican's official position is that "practical reason makes evident that vaccination is not, as a rule, a moral obligation and that, therefore, it must be voluntary. . . . Those who, however, for reasons of conscience, refuse vaccines produced with cell lines from aborted fetuses, must do their utmost to avoid, by other prophylactic means and appropriate behavior, becoming vehicles for the transmission of the infectious agent. In particular, they must avoid any risk to the health of those who cannot be vaccinated for medical or other reasons, and who are the most vulnerable." Congregation for the Doctrine of the Faith, <i>Note on the morality of using some anti-Covid-19 vaccines</i> (Dec. 21, 2020), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20201221_notavaccini-anticovid_en.html
31.	The Pfizer and Moderna vaccines were found to be ethically uncontroversial by the pro-life policy organization the Charlotte Lozier Institute. (https://s27589.pcdn.co/wp-content/uploads/2020/06/An-Ethics-Assessment-of-COVID-19-Vaccine-Programs_On-Point-46.pdf)	The phrase "ethically uncontroversial" is not mentioned in the provided source. Moreover, the data is outdated, as it's from May 2020. And some tests conducted by Pfizer and Moderna used abortion-derived cells. See https://lozierinstitute.org/what-you-need-to-know-about-the-covid-19-vaccine/ .
32.	The Secretariat of Pro-Life Activities, a committee within the United States	This is misleading The Secretariat of Pro-Life Activities, a committee within the United States

	<p>Conference of Catholic Bishops, has stated: “neither Pfizer nor Moderna used an abortion-derived cell line in the development or production of the vaccine. However, such a cell line was used to test the efficacy of both vaccines. Thus, while neither vaccine is completely free from any use of abortion-derived cell lines, in these two cases the use is very remote from the initial evil of the abortion...one may receive any of the clinically recommended vaccines in good conscience with the assurance that reception of such vaccines does not involve immoral cooperation in abortion.</p> <p>(https://www.usccb.org/resources/Answers%20to%20Key%20Ethical%20Questions%20About%20COVID-19%20Vaccines.pdf)</p>	<p>Conference of Catholic Bishops, might have said that, but that is not the Catholic Church’s official position. In pertinent part, the Vatican’s official position is that “practical reason makes evident that vaccination is not, as a rule, a moral obligation and that, therefore, it must be voluntary. . . . Those who, however, for reasons of conscience, refuse vaccines produced with cell lines from aborted fetuses, must do their utmost to avoid, by other prophylactic means and appropriate behavior, becoming vehicles for the transmission of the infectious agent. In particular, they must avoid any risk to the health of those who cannot be vaccinated for medical or other reasons, and who are the most vulnerable.” Congregation for the Doctrine of the Faith, <i>Note on the morality of using some anti-Covid-19 vaccines</i> (Dec. 21, 2020), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20201221_nota-vaccini-anticovid_en.html.</p>
33.	<p>The Government of Puerto Rico Remote Work Act, Act No. 36-2020, provides that all public agencies and public corporations must provide the alternative of remote work for its employees if they meet several parameters. The remote work option is examined by each covered agency or public corporation. Upon request, each covered entity determines the employee’s eligibility based on their positions and essential duties. Each agency has the discretion of granting said request, and the employees is not necessarily entitled to the concession of working at home the entire week. (<i>See</i> Act No. 36-2020).</p>	<p>This is a legal not a factual suggested stipulation.</p>
34.		
35.	<p>COVID-19 vaccines are safe and effective. COVID-19 vaccines were evaluated in tens of thousands of participants in clinical trials. The vaccines met the Food and Drug Administration’s (FDA) rigorous scientific standards for safety, effectiveness, and manufacturing quality needed to support approval or authorization of a vaccine. (Docket No. 30-4)</p>	<p>COVID-19 vaccines are safe for most, but not all people. They may actually be harmful for some people with allergies, pregnant women and women who are breast feeding, children and adolescents, people with allergies, and people with other underlying conditions. <i>See</i> https://www.gavi.org/vaccineswork/who-cant-have-covid-19-vaccine. COVID-19 vaccines are effective in reducing the risk of severe illnesses, hospitalizations, and deaths. But recent studies have shown that the vaccines are not very effective at preventing infections and transmission.</p>
36.		
37.		
38.	<p>Serious side effects that could cause a long-term health problem are extremely unlikely following any vaccination, including</p>	<p>There is not sufficient data to support this statement, not least because this is the first vaccine developed mRNA technology.</p>

	COVID-19 vaccination. (Docket No. 30-4)	
39.	From June 6, 2021, to September 3, 2021, Puerto Rico's positivity rate in molecular tests increased and 7.95% positivity rate was estimated. (Docket No. 30-1)	<p>The positivity rate increased from June 6, 2021 to August 11, 2021, when it reached its peak at 11.28%, then it started decreasing and by September 3, it was 8.38%. It has continued to decrease and September 16, the positivity rate is 6.36%. <i>See</i> https://covid19datos.salud.gov.pr/#resumen_ejec.</p> <p>Positivity rate is a completely meaningless metric because individuals who choose to receive testing are not a random sample of the Puerto Rico's population. In any event, the positivity rate is not a reflection of the true positivity rate in the population because only a higher at-risk population is seeking testing, the true positivity rate is much lower than what is being reported. The limited amount of testing being done (2nd to last among US jurisdictions) is a significant contribution to this. For the percentage of positivity to properly represent the population, it is imperative that the total number of tests carried out (denominator) be the most representative and constant sample of the population. Otherwise, the testing data can skew towards one side or the other, providing erroneous and misleading conclusions. This is the case in Puerto Rico. <i>See</i> https://www.publichealthmdc.com/blog/understanding-percent-positivity.</p>
40.	At the time of the enactment of OE 2021-058, Puerto Rico was in an increasing trend and a case rate of 50.98 per 100.00 person, being at the substantial level. (Docket No. 30-1)	<p>At the time of the enactment of OE 2021-058, Puerto Rico was in an increasing trend and a <i>confirmed</i> case rate of 43.90 per 100,000 people. To put some perspective, the average case rate per 100,000 in the U.S. since the pandemic started was 11,672 and in Puerto Rico 5,585. Puerto Rico is ranked 53rd of 58 states and territories including NYC and the District of Columbia. <i>See</i> https://covid.cdc.gov/covid-data-tracker/#cases_casesper100k/</p> <p>During the last 7 days, the seven-day case rate per 100,000 people for Puerto Rico is 77.8 while the national average is 3,248. During the last seven days, Puerto Rico ranks 56th of 58 states and territories including NYC and the District of Columbia. Only Palau and Northern Mariana Islands rank better than Puerto Rico during the last 7 days. <i>See</i> https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days.</p> <p>However, when OE 2021-058 became effective, Puerto Rico was in a downward trend in confirmed cases with two days already below the highest number of confirmed cases (7-day running average),</p>

		<p>August 14, 2021, and cases have continued to go down since then for 32 consecutive days. <i>See</i> https://covid19datos.salud.gov.pr/#casos.</p> <p>In addition, the Effective Retransmission Rate (Rt) is the average number of people that an individual infected on day t is expected to go on to infect. When Rt is above 1, we expect cases to increase in the near future. When Rt is below one, we expect cases to decrease in the near future. Puerto Rico's Rt shows a downward trend on July 15, 2021 with 1.74, in August 8 it was below 1 (0.99) and by August 11 it was at 0.93. Puerto Rico's Rt has been below 1 since then, reached a record low in August 30 at 0.72 and currently is at a new record low of 0.51. <i>See</i> https://covidestim.org/.</p>
41.	At the time of the enactment of OE 2021-058, Puerto Rico was in an increasing trend with 113 hospitalizations and 28 people in ICU. (Docket No. 30-1)	<p>At the time of the enactment of OE 2021-058, Puerto Rico was in an increasing trend with 116 hospitalizations and 27 people in ICU.</p> <p>Ten days after the OE 2021-058 became effective, adult hospitalizations started a decreasing trend which is now in its 22nd day with 277 hospitalizations. Fifteen days after the OE 2021-058 became effective, people in ICU started a decreasing trend which is now in its 17th day with 82 people in ICU. <i>See</i> https://covid19datos.salud.gov.pr/#sistemas_salud.</p>

**LIST OF FACT WITNESSES, EXPERT WITNESSES AND DOCUMENTS PLAINTIFFS INTEND TO INTRODUCE
AT A PRELIMINARY INJUNCTION HEARING**

Witnesses

1. Plaintiff Zulay Rodríguez Vélez: She will testify about the damages she has suffered—and continues to suffer—because of the EO No. 058. She will also testify about the inconsistent and arbitrary ways in which the government is implementing and enforcing the EO No. 58. She also will relate her struggle to find medical referrals and free testing sites every Friday. Finally, she will testify about the allegations of the amended complaint, the preliminary injunction motion, and related filings of which she has personal knowledge.
 - Her testimony is expected to last 30 minutes.
2. Plaintiff Yohama González Milan: She will testify about the damages she has suffered—and continues to suffer—because of the EO No. 058. She will also testify about the inconsistent and arbitrary ways in which the government is implementing and enforcing the EO No. 058. Finally, she also will relate her struggle to find medical referrals and free testing sites every Friday. Finally, she will testify about the allegations of the amended complaint, the preliminary injunction motion, and related filings of which she has personal knowledge.

- Her testimony is expected to last 30 minutes.
3. Plaintiff Ginorio Carrasquillo: She will testify about the damages she has suffered—and continues to suffer—because of the EO No. 058. Moreover, she will also testify about the inconsistent and arbitrary ways in which the government is implementing and enforcing the EO No. 058. She also will relate her struggle to find medical referrals and free testing sites every Monday morning. Finally, she will testify about the allegations of the amended complaint, the preliminary injunction motion, and related filings of which she has personal knowledge.
 - Her testimony is expected to last 30 minutes.
 4. Plaintiff Julissa Piñero: She will testify about the damages she has suffered—and continues to suffer—because of the EO No. 058. She will also testify about the inconsistent and arbitrary ways in which the government is implementing and enforcing the EO No. 058. She also will relate her struggle to find medical referrals and free testing sites every Friday. Finally, she will testify about the allegations of the amended complaint, the preliminary injunction motion, and related filings of which she has personal knowledge.
 - Her testimony is expected to last 30 minutes.
 5. Alexis Anibal Torres Rivera: He will testify that he is a public employee subject to EO No. 058 who, last week was told by his superior that he would no longer be allowed to work unless he submitted a medical certificate or religious affidavit, and that he was not allowed to work thereafter until he submitted the same.
 - His testimony should not last more than 20 minutes.
 6. Ivan Cruz Maldonado: He will testify that he is a public employee subject to EO 058 who, last week was told by his superior that he would no longer be allowed to work unless he submitted a medical certificate or religious affidavit, and that he was not allowed to work thereafter until he submitted the same. His testimony should not last more than 30 min.
 - His testimony should not last more than 20 minutes.
 7. Juan Carlos Fenollal: He will testify about the burdens he has faced to obtain a COVID test.
 - He will testify via Zoom and his testimony should not last more than 15 minutes.
 8. Viviana Santos Perez: She will testify about the burdens he has faced to obtain a COVID test

- She will testify via Zoom and her testimony should not last more than 15 minutes.
9. Cynthia Avellanet: She will testify about the burdens she has faced to obtain a COVID test.
- She will testify via Zoom and her testimony should not last more than 15 minutes.
10. Eliza Llenza: She will testify about the burdens she has faced to obtain a COVID test.
- She will testify via Zoom and her testimony should not last more than 15 minutes.
11. Vivian Martínez: She is the human resources official in Plaintiff's Zulay Rodríguez's regional office. She will testify about the HR policy regarding remote work, and how that policy was applied to Plaintiff Rodríguez.
- Her testimony should not last more than 15 minutes,

Plaintiffs would appreciate if Defendant would make her available as a witness instead of Plaintiff having to subpoena her.

12. Carlos Mellado, Puerto Rico Secretary of Health, and any other officer of the Health Department who has knowledge about the following information:
- a. Availability of COVID-19 tests in Puerto Rico free of charge.
 - b. The total number of COVID tests that can be performed in Puerto Rico in a day.
 - c. The total capacity of COVID testing in Puerto Rico and how the capacity is defined.
 - d. How federal funds received by the Department of Health for managing COVID-19 have been spent during the pandemic.
 - e. Reasons why a medical referral is necessary for insurance companies to cover the costs of COVID tests.
 - f. The existence *vel non* of Health Department policies regarding reporting of Ct values in COVID rtPCR tests for private and public COVID tests.
 - g. The reasons why the Health Department uses the positivity rate as a statistical measure despite minimal public testing.
 - h. The reasons why the Health Department experienced a supply shortage of COVID-19 tests.
 - i. Statistics of people who have had COVID-19 but have not been vaccinated.
 - j. Patient profiles of hospitals admissions, hospitalizations, and deaths due to COVID.
 - k. How the Department of Health has censored physicians who argue against the measures taken by the Government regarding COVID.
 - l. Any other information within the Health Secretary or Official's expertise that may be pertinent to the case.
 - m. Information requested via email

13. An official from the Central Office of the Human Resources Department of the Government of Puerto Rico, who will testify about the following information:
 - a. How many requests to work remotely have been requested, granted, and denied related to the vaccine mandate in EO 058.
 - b. Any policy written or verbal being implemented regarding employee requests to work remotely as a result of the vaccine mandate in EO 058.
 - c. The way the Office is managing the EO's medical and religious exemptions to the vaccine mandate.
 - d. The number of religious and medical exemptions that have been submitted, approved, and denied, and the reasons for denials or approvals thereof.
 - e. Any implementing guideline of EO 058.
 - f. Any policy for providing unvaccinated employees paid leave to get COVID tests during working hours.
14. The plaintiffs may also call each of the plaintiffs' supervisors and heads of agencies to testify about the implementation of EO 2021-058 and any implementing guideline.
15. The plaintiffs may also call as a witness any person needed to authenticate documents.

Experts

1. Dr. Joel Hay: He will generally testify about COVID-related statistics. In essence, Dr. Hay will compare the Puerto Rico COVID situation with the COVID situation in other jurisdictions. He will also testify that, based on previous patterns, the so-called Delta Spike is already decreasing and stabilizing. Finally, Dr. Hay will testify about all the statistics and data mentioned in Plaintiffs' filings, including the amended complaint and the preliminary injunction motion.
16. Dr. Hay's testimony should not last more than two-and-a-half hours.
2. Dr. Andrew Bostom: He will testify about potential adverse effects of COVID-19 vaccines; about the spread of COVID between vaccinated and unvaccinated people; about natural immunity from having had COVID; about why randomized tests need to be performed to properly measure the efficacy of a vaccine within a population; and about the proper threshold cycle (Ct) for performing COVID tests. Finally, Dr. Hay will testify about all the COVID scientific studies and data mentioned in Plaintiffs' filings, including the amended complaint and the preliminary injunction motion.
17. Dr. Bostom's testimony should not last more than two-and-a-half hours.

Documentary Evidence

1. Documents included and referenced in the amended complaint, the preliminary-injunction motion, and related filings.
2. Photographs showing the burdens that people endure to obtain free Covid tests.
3. A document from the Firemen's Department forcing selected employees to submit medical certificates or religious exemptions to continue working without being vaccinated.
4. Plaintiff's Leila Ginorio's request to work remotely which has not been answered.
5. Answers by the Puerto Rico Health Department dated February 18, 2021 in *Rodríguez García v. Departamento de Salud*, SJ2021CV00446
6. The plaintiffs reserve the right to supplement these disclosures in consideration of new developments and of the evidence that the defendants disclose and otherwise present at the hearing.

LIST OF DEFENDANT'S EXPERT WITNESSES

Dr. Melissa Marzán, Chief Epidemiology Officer of the Department of Health of Puerto Rico, will testify as an expert in epidemiology for the purpose of expressing her opinions about some of the allegations in the complaint regarding covid-19 health statistics in Puerto Rico and the fallacies in the conclusions and inferences plaintiffs draw from such statistics in support of their pleadings. she will also testify about the process of compiling information for official covid-19 statistics, and the reliability of the information, and the measures adopted by the government to stop or slow the spread of the virus.

Dr. Iris Cardona, Chief Medical Officer of The Department of Health of Puerto Rico, will testify as a representative of the department and as a member of the scientific coalition advising the governor of Puerto Rico on covid-19 policy. she will testify about the nature and characteristics of covid, its history, the vaccine developed to attack the virus, and the measures adopted by the government to stop or slow the spread of the virus.

Defendant reserves the right to amend or supplement these disclosures during or after formal discovery proceedings are conducted.

Dated: September 17, 2021

Respectfully Submitted

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