

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF PUERTO RICO

BLANCA ESTRELLA MARTÍNEZ  
VALLÉS; ERATSI EMMANUEL ALONSO  
ALVARADO

**Plaintiffs**

v.

PEARSON EDUCATION, INC.;  
CHRISTOPHER MANNIX; CHRISTINA  
WINTER

**Defendants**

Case No.:

(Judge: \_\_\_\_\_)

COMPLAINT FOR RETALIATION;  
BREACH OF CONTRACT; VIOLATION  
OF CONSTITUTIONAL RIGHTS;  
DAMAGES

(JURY DEMAND ENDORSED HEREON)

**COMPLAINT**

**COMES NOW** Blanca Estrella Martínez-Vallés and Eratsi Emmanuel Alonso Alvarado, through the undersigned counsel, and respectfully state, allege and pray as follows:

**I. INTRODUCTION**

1. Plaintiffs, Ms. Blanca Estrella Martínez Vallés ("Ms. Martínez") and Mr. Eratsi Alonso Alvarado ("Mr. Alonso"), bring this action pursuant to Puerto Rico Law No. 115 of December 20, 1991, as amended, P.R. Laws Ann. tit. 29, sec. 194 et seq.; Article II section 1, 8 and 16 of the Constitution of the Commonwealth of Puerto Rico, 1 L.P.R.A. Const. Art. II, secs. 1, 8 and 16; and Articles 1802 and 1803 of the Puerto Rico Civil

Code, 31 L.P.R.A. secs. 5141 and 5152, to remedy acts of retaliation perpetrated against Ms. Martínez by the Defendants.

2. Ms. Martínez contends that she suffered a hostile working environment when Defendants retaliated against her and ultimately terminated her employment contract because she informed what she believed to be a fraud scheme to the Federal Government by Pearson Education, Inc.

## **II. JURISDICTION AND VENUE**

3. This Court has original jurisdiction pursuant to 28 U.S.C. sec. 1332, since this action is between citizens of different States and the amount in controversy exceeds the sum of \$75,000., exclusive of interest and costs.

4. Venue is proper in this Court pursuant to 28 U.S.C. sec. 1391(a)(2).

## **III. THE PARTIES**

5. Ms. Martínez is a resident of Puerto Rico. Ms. Martínez' principal residence, and thus citizenship for purposes of diversity of citizenship, is Puerto Rico. Ms. Martínez' postal address is: AT-34, 42 St., Urb. La Hacienda, Guayama, P.R. 00784.

6. Mr. Alonso is a resident of Puerto Rico. Mr. Alonso's principal residence, and thus citizenship for purposes of diversity of citizenship, is in Puerto Rico. Mr. Alonso 's

postal address is: AT-34, 42 St., Urb. La Hacienda, Guayama, P.R. 00784.

7. Defendant, Pearson Education, Inc. ("Pearson"), is a Delaware corporation whose principal place of business is in Saddle River, New Jersey; and is licensed to do business in Puerto Rico. Upon information and belief, its postal address is: 5601 Green Valley Drive, Bloomington, MN 55437.

8. Mr. Christopher Mannix ("Mr. Mannix") is a resident of Boston, Massachusetts. Mr. Mannix' principal residence, and thus citizenship for purposes of diversity, is Massachusetts.

9. Ms. Christina Winter ("Ms. Winter") is a resident of North Carolina. Ms. Winter's principal residence, and thus citizenship for purposes of diversity is North Carolina. Upon information and belief, her principal place of business is: 80 Iron Point Circle #115, Folsom, CA 95620.

**IV. ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

10. **Description of claim.** By Spring, 2015, Ms. Martínez was working as the "Math Academic Facilitator" in Guayama's District Office of the Department of Education of the Commonwealth of Puerto Rico (the "DOE"). She had been working in the DOE since 2001.

11. In July, 2015, Ms. Martínez met with Defendant, Mr. Mannix, Pearson's Regional Services Director, and with Mr. José

Colón ("Mr. Colón"), Pearson's Quality Control Manager, for a job interview for the position of Project Manager with Pearson.

12. On August 6, 2015, Ms. Martínez was offered a one year contract for the aforesaid position.

13. For this reason, Ms. Martínez received and unpaid license from the DOE to work in the private sector for the duration of her employment contract with Pearson. If her contract with Pearson was to be renewed for another term, she had to give a timely notice to the DOE in order to receive a longer unpaid license.

14. As a full time employee of Pearson, Ms. Martínez would receive a bi-weekly salary of \$2,346.00, based on an annualized salary of \$61,000.00, among other benefits, which included: medical, dental supplemental life insurance, voluntary long-term disability benefits; company-paid life insurance and business travel insurance benefits; 401(K) retirement plan, with an automatic enrollment at a 3% contribution rate; paid holidays and vacation (10 days of vacation); paid sick leave and personal days; and education assistance.

15. Ms. Martínez accepted the aforesaid offer, and she began working at Pearson on August 17, 2015.

16. **Defendant's government contract.** Defendant Pearson had entered into a contract with the DOE to provide educational services in order to accomplish an increase in the students'

academic achievement, including special education students in schools belonging to the Differentiated Network Support (Red de Apoyo Diferenciado or "RAD 17"), Educational Region of San Juan.

17. The RAD 17 Project was divided in five phases during the school calendar year. In order for Pearson to bill the DOE for their services, it had to prove the services were in fact provided.

18. As the Project Manager, Ms. Martínez' key responsibilities were to: (a) manage the successful delivery of services, solutions and products with high customer satisfaction; (b) timely identify, asses and continually manage risk throughout the project; (c) sign the certifications of the services that were provided at schools by Pearson personnel; and (d) be in charge of the project's academic area.

19. Complying with those functions, in her first days working for Pearson, Ms. Martínez began to assess the project's status. Ms. Martínez immediately realized that the project was behind schedule and that there were many services that were not being provided.

20. For this reason, on August 29, 2015, Ms. Martínez sent an email to Defendant Mr. Mannix, reporting that Pearson would not be able to bill Phase I of the RAD 17 Project if the services were not provided according to the contract.

21. Mr. Mannix replied to the aforesaid email stating that she should not be worried about the delay in those services because, even though she was the Project Manager, Mr. Colón was working on that matter.

22. In the following months, Ms. Martínez performance was evaluated quite highly by the Defendants.

23. On September 20, 2015, Ms. Martínez received an email from Defendant Mr. Mannix, who copied Defendant Ms. Winter, writing the following: "Dear Estrella, I am so pleased that you are engaging the facilitators from the District. As I have told you, their participation last year varied. I am glad to see them engaged."

24. On October 30, 2015, Ms. Martínez received another email from Defendant Mr. Mannix, where Defendant Ms. Winter was copied, stating the following: "Dear Estrella, Today I am writing to recognize the high quality of the work you are doing. Since you joined Pearson team, our services have improved quality, structure, and timeliness. That is what [Ms. Winter] and I wanted ... an academic compass for the alignment of Pearson Services."

25. That same day, Defendant Ms. Winter, Delivery Fulfillment Director, replied to the aforesaid email, stating: "Estrella - It is a delight to hear the good news of your high quality contributions to the Pearson team. Keep up the good

work! I know this is a demanding time in the project cycle!  
Chris and Estrella - Thanks for all both of you are doing.”

26. Mr. David Taylor, Vice President Delivery Fulfillment, also recognized Ms. Martínez excellent work, stating:

Blanca, Thank you for your continuing leadership and going over and beyond to support the goals of the PR RAD project. You often use your imagination to enhance the curriculum goals and basic requirements of our day to day work. You recently brought Miss Universe to visit in the PR schools. You leveraged community contacts and planned to bring joy and smiles to the teachers and students in the PR schools. Thank you for all you did to create a day of high interest and energy.”

27. On December 15, 2015, Ms. Martínez met with Defendants Mr. Mannix and Ms. Winter for the annual evaluation of Pearson’s personnel. This process pursued the enhancement of every employee’s functions.

28. On December 16, 2015, they continued with the evaluation process, and they discussed Ms. Martínez’ performance. Mr. Mannix and Ms. Winter asked Ms. Martínez to rate her functions from a one to five scale, stating that for them, no one would merit a five. After she did so, they proceeded to rate her functions, and they discussed some aspects they considered she needed to improve.

29. According to this, a Performance Improvement Plan (“PIP”) began. According to it, there would be at least one additional meeting between Ms. Martínez and the Defendants.

30. This PIP basically was intended for Ms. Martínez to work on the way she spoke to clients and colleagues; and to strengthen her leadership.

31. Nevertheless, there were no meetings thereafter concerning the PIP and it was never mentioned again to Ms. Martínez.

32. **Federal Affairs Monitoring Office**. The RAD 17 Project received federal funds and Pearson was subjected to various government monitoring process to assess its services and contract compliance.

33. On November 30, 2015, Defendant Mr. Mannix received the findings of the program of services monitoring from the Federal Affairs Office (the "FAO"). The assessment confirmed what Ms. Martínez reported to Defendant Mr. Mannix on August 29, 2015, that "Pearson was not providing the services according to the RAD 17 contract."

34. In spite of the importance of this monitoring, Defendant Mr. Mannix did not respond to its findings.

35. On January 14, 2016, Mr. Eligio Hernández, the federal monitor from the FAO, sent another communication requesting evidence to justify or support Pearson's failure to comply with the RAD 17 contract.



36. Mr. Hernández also requested a corrective plan, according to his assessment, in relation to the deficiency of the services provided by Pearson.

37. **Ms. Martínez' findings.** That same day, Ms. María Rosario, RAD Coordinator ("Ms. Rosario"), found several certifications fraudulently showing that Defendant Mr. Mannix and Mr. Colón had provided some services at a school she was in charge of supervising, even though none of them were assigned to that school; and they had not provided the services described in the certifications.

38. On January 25, 2016, Ms. Rosario contacted Ms. Martínez, since she, as Project Manager, was responsible for signing those certifications as truthful and correct, in order for Pearson to bill for those services to the DOE.

39. While evaluating the aforesaid certifications, Ms. Martínez found that Defendant Mr. Mannix appeared as having provided services at the Fray Bartolomé de las Casas School, since August 10, 2015. However, Defendant Mr. Mannix and Mr. Colón had never visited that school, and they had calendared to meet the school director for the first time on January 15, 2016.

40. After Ms. Martínez' findings, Defendant Mr. Mannix met with Ms. Annette Rivera, Office Support Assistant, and inquired about the billing status in order to see if he was on time to

remove his name from the platform and fraudulently add the names of other employees.

41. On January 26, 2016, Ms. Martínez had a conversation with Defendant Mr. Mannix. She informed him that billing for services that were not provided was fraud, that she did not intend to go to prison and that she would not sign any certification that was untruthful and incorrect.

42. After that conversation, Ms. Martínez reviewed again the certifications that were unsigned. She found the same scheme: Defendant Mr. Mannix and Mr. Colón, the one who according to Mr. Mannix was going to handle the problem of the delay in services, appeared therein giving services Pearson had not provided in the Albert Einstein School.

43. **The investigation.** Because of this crucial finding, Mr. Leonardo Lizarazo, Finance and Operations Supervisor, talked to Mr. David Taylor and explained to him the situation about a possible fraud scheme to the Federal Government. He even compared the situation to the Rocket Learning case, in which a company presented false information in order to bill for services that were not actually provided. He also instructed Defendant Mr. Mannix not to bill for those services, since that was the correct solution to the problem. For this reason, an internal investigation began.

44. Afterwards, even though Ms. Martínez was the Project Manager, she received an email, on February 2, 2016, from both Mr. Mannix and Ms. Winter informing Pearson personnel that any activity that would involve the documentation of Pearson services, that is, the ones Ms. Martínez had to certify as correct, would be monitored and coordinated from thereafter by Ms. Arllene Vázquez, Office Manager.

45. On February 5, 2016, Ms. Elizabeth Almeida, Vice President of Human Resources from Old Tappan, NJ, contacted Ms. Martínez by telephone.

46. In the conference call held, Ms. Almeida questioned every detail of the services provided by Pearson under the RAD 17 contract; the certifications Ms. Martínez had to sign regarding those services; and the billing process.

47. Ms. Martínez was very clear and expressed to her that there were names of Pearson employees in the certifications who had never been at certain schools, and yet appeared in those certifications as having provided services. Ms. Martínez clearly told Ms. Almeida that this kind of scheme was not only unethical, but it was a fraud to bill for services that had not been provided.

48. **From thereon, Ms. Martínez' relations with her supervisors crumbled.** On February 9, 2016, at 10:00 a.m., an administrative support meeting was held. In that meeting, Ms.

Martínez' functions and duties were discussed. However, Ms. Martínez was excluded from it.

49. Right after the meeting, Ms. Vázquez sent an email to Ms. Martínez, copying both Mr. Mannix and Ms. Winter, stating that the documents received weekly, that required Ms. Martínez' signature, continued to delay the billing process.

50. That assertion was immediately rebutted by Ms. Martínez, by email, since she did not have any documents awaiting for her signature and, therefore, she was not delaying the billing process. Moreover, she requested not to be excluded from any status meeting again, especially if her presence was required and where her work was discussed, since she was always available and more than willing to collaborate.

51. Those episodes were just the beginning of all the retaliations practices, persecution and harassment Ms. Martínez was subjected to by her supervisors.

52. Ms. Martínez had previously received instructions to post all her appointments on her Google calendar, which she always did. Nevertheless, later that day, Ms. Martínez received an email from Ms. Winter demanding her to begin posting in her calendar, not only her appointments, but she also had to include therein: when she planned to be out of office; working from home; her school appointments, and in office time and meetings. All this would have to be posted by Ms. Martínez with at least a

week ahead of time, giving access to the information not only to Ms. Winter, but for the first time, to Mr. Mannix and Ms. Vázquez as well.

53. On February 19, 2016, a status meeting was held to discuss the fulfillment of the academic services documentation. Those documents were supplied by the school directors to Pearson's coordinators, and it summarized the services provided at their school by Pearson personnel. Afterwards, the coordinators presented the documents to Mr. Colón, who forwarded them to Ms. Martínez for her assessment and approval. Nevertheless, in that meeting, to her surprise, Ms. Martínez learned that Ms. Dagmar Alicea, RAD Coordinator, was going to be receiving and evaluating thereafter the academic services documentation, even though Ms. Martínez had been in charge of the project's academic area.

54. It was in that moment when Ms. Martínez realized she was not only excluded from important meetings and processes, but she was also being displaced of her functions as Project Manager.

55. **Mr. David Taylor recognized Ms. Martínez' finding.** On February 23, 2016, Ms. Martínez received a letter from Mr. David Taylor, Vice President of US Learning Services from Pearson's Head Office in New York, stating:

Dear Blanca Estrella: I want to thank you for your important contribution when you notified your team members about a clerical error in a billing document. Accuracy in billing is crucial, and your willingness to speak up saved our customers from overpayment, which could have had serious impact on our reputation. Our mantra is, 'If you see something, say something.' I applaud your action in making this report (emphasis added).

56. **The pattern of retaliation continued.** In spite of the aforesaid letter, Ms. Martínez continued receiving hostile emails from Defendant Ms. Winter. On February 25, 2016, Defendant Ms. Winter accused Ms. Martínez of not complying with her instructions about the controlling and newly implemented calendar entries.

57. According to Ms. Winter, Ms. Martínez' calendar was not detailed enough to coordinate meetings with her. To the contrary, Ms. Martínez had always followed all recommendations and instructions given to her, and had her calendar up to date.

58. By this point, every email Ms. Martínez received made her feel extremely nervous and anxious because she expected more unfounded accusations and attacks.

59. On February 26, 2016, Ms. Martínez was summoned to a meeting with Defendants Mr. Mannix and Ms. Winter.

60. In that meeting, and as part of the harassment and persecution she was being subjected to by both of them, Ms.

Martínez was intensely questioned about every detail on her calendar.

61. After having her work hours questioned without any motive, in an annoyed and irritated tone, Ms. Winter insisted that it had to be clear that Ms. Martínez had to always report her inputs and outputs of each school she visited.

62. On February 29, 2016, Ms. Winter sent Ms. Martínez an email indicating her that "Pearson office hours at the Carolina office are from 8:00 a.m. until 5:00 p.m."

63. This was something completely new to Ms. Martínez, since those working hours were not part of her contract. Moreover, prior to signing her contract with Pearson, Ms. Martínez had reached an agreement with Defendant Mr. Mannix, to have flexible working hours, since she lived in Guayama, Puerto Rico, an hour and a half away from the office.

64. When Ms. Martínez received that email, she was working with Ms. Miriam Báez, the Antonia Sáez' School Director. That email made Ms. Martínez extremely anxious and she could not continue to explain Ms. Báez the work they were doing.

65. Ms. Martínez was becoming very worried about all those hostile and negative treatment towards her. She started to feel that both Defendants Ms. Winter and Mr. Mannix were trying to unreasonably admonish her in order to either fire her or pressure her into quitting.

66. The persecution, the hostile work environment and the retaliation pattern reached a point where, on March 3, 2016, Ms. Martínez reported directly to Ms. Winter that she felt hunted by her and that she did not allow her to do her job properly because of the extreme anxiety and nervousness she was causing her. However, Ms. Winter ignored her claims and her treatment towards Ms. Martínez did not improve.

67. That day, a meeting between Mr. Eligio Hernández, the federal monitor from the FAO, Ms. Martínez, Mr. Mannix, Mr. Colón and Ms. Vázquez was held.

68. Mr. Eligio Hernández specifically requested by email the attendance of Ms. Martínez. In the meeting, he confirmed what Ms. Martínez had been informing Pearson from the beginning: there was a breach of the RAD 17 contract, especially because the school directors could not corroborate the services that were supposedly provided to their schools, but that were billed by Pearson.

69. Moreover, Mr. Eligio Hernández indicated that the services provided were of an academic nature and that they were unjustifiably excluding Ms. Martínez, Pearson's academic resource, of this process.

70. By that point, Ms. Martínez was always worried that her job performance was going to be criticized; her work hours were going to be questioned; that the hostile work environment would



only worsen; that she would continue to be displaced of her functions as Project Manager; and that she was going to be pressured into signing documents that constituted a fraud to de Federal Government.

71. In another attempt to find justifications to further reprimand and censure Ms. Martínez, that very same day Mr. Colón began an evaluation process in which the school directors were asked for a feedback as of to Ms. Martínez services and their comment thereto.

72. Ms. Martínez was not consulted about this evaluation, and she felt that its only purpose was to try to find negative reactions about her performance as Project Manager.

73. This hostile environment started to affect Ms. Martínez on her personal and emotional life.

74. Ms. Martínez began having nightmares, having difficulty sleeping, loss of appetite, and feeling extremely anxious and nervous, even when she was at home and surrounded by her children and Mr. Alonso, for which her family relationships suffered. Mr. Alonso Alvarado was also emotionally affected by all the situations Ms. Martínez was passing through.

75. For this reason, on March 7, 2016, Ms. Martínez had to visit a psychologist for the first time in her life. That day, she was diagnosed with chronic anxiety and was referred to a follow up visit.

76. That day, Ms. Martínez presented a formal claim to Ms. Almeida, from Human Resources.

77. Ms. Martínez informed her that she was being harassed and that the hostile work environment and retaliations had reached a point where every time she received an email or she knew that Defendant Ms. Winter was coming to Puerto Rico, she suffered panic and anxiety attacks, knowing that she would receive more unjustified disciplinary admonitions.

78. She also informed Ms. Almeida that she did not feel comfortable meeting with Defendant Ms. Winter, since her presence caused her nervousness and fear.

79. Ms. Martínez was prohibited from discussing the anomalies she had found in the billing process. On March 9, 2016, Ms. Martínez received a memorandum from Defendant Mr. Mannix stating that any perceived anomaly of lack of full compliance to the RAD 17 contract in Pearson's performance should be presented directly to him or his delegates, therefore, implementing a gag order.

80. Incredibly, she was even instructed by Defendant Ms. Winter not to have any private conversations with the federal monitor, and that Mr. Mannix had to be on any call in which she talked with the monitor.

81. That day, as a result, Ms. Martínez had to visit a psychologist for a second time.

82. Having found that her emotional condition had worsened and that its direct cause was the hostile work environment and the retaliation pattern she was being subjected to, she received a sick leave for the rest of the week in order for her to recover.

83. This, nonetheless, did not stop Defendant Ms. Winter from continuing to harass Ms. Martínez.

84. Despite having knowledge of the ordered sick leave by her psychologist, Defendant Ms. Winter demanded Ms. Martínez to stay in the office and continued to set further deadlines and sending emails, harassing her about violating the gag order Defendant Mr. Mannix had implemented; and falsely accusing her of leaving confidential documents on her desk without closing the office.

85. However, Ms. Martínez was not working on any confidential documents and she had no keys to her office. Because of this, Ms. Martínez left the office that day feeling that no matter what happened, no matter who she talked to, and no matter her emotional state, Defendant Ms. Winter would not stop harassing her.

86. **The scheme of inconsistencies in the certifications continued.** The scheme of inconsistencies in the certifications Ms. Martínez found continued: alternative support personnel appeared giving services at schools they were not assigned to

and, therefore, could not provide; employees providing services at schools they had never actually visited; and even employees appeared providing services at schools on dates prior to being hired by Pearson or after being laid off.

87. For example, on March 10, 2016, Mr. Mannix sent an email indicating that, as discovered in a meeting that day, Ms. Vivian Pérez appeared providing services in the Fray Bartolomé de las Casas School, even though she had not; and Ms. Marielvy Sulbarán continued to appear in the certifications, even though she was no longer working for Pearson.

88. Furthermore, Ms. Shakira Cruz appeared in the certifications as having provided services at the Luis Muñoz Rivera School, since August 14, 2015, even though she began working at that school on August 25, 2015.

89. The scheme of false and fraudulent information contained in the certifications had become a problem to Ms. Martínez in her personal capacity.

90. On March 16, 2016, Ms. Martínez had a conference call with Mr. John Bergstrom, Vice President of Human Resources.

91. On that call, Ms. Martínez expressed to him that the continued inconsistencies not only meant that this issue was not just a "clerical error", as Mr. David Taylor had called it, but what she believed to be a fraud scheme to bill the Federal Government for services that had not been provided by Pearson.

92. Moreover, Ms. Martínez reported to Mr. Bergstrom that since she discovered the irregularities, she was subjected to a hostile work environment and a retaliation pattern by Defendants Ms. Winter and Mr. Mannix.

93. She reported that she was being marginalized and excluded from important meetings and processes; constantly and unjustifiably pressured and harassed; and that some of her responsibilities were being assigned to other people, making her feel that she was no longer the Project Manager.

94. Mr. Bergstrom assured her that he would take care of the problem, to no avail.

95. On April 1, 2016, Ms. Martínez discovered the certifications were still appearing with false and fraudulent information.

96. Moreover, there are emails in which Pearson's employees were instructed to provide Alternative Support services in order to cover the ones that were not given in the previous phases, even though the Alternative Support services could not be covered retrospectively.

97. On April 6, 2016, Ms. Martínez received an email from Defendant Mr. Mannix stating that, from thereon, every communication related to any profile modification had to be in writing, copying, among others, Mr. Leonardo Lizarazo and Ms.

Vázquez. He specifically prohibited Ms. Martínez from making any profile modification verbally.

98. Ms. Martínez felt helpless. She didn't know what else to do, or who else to contact.

99. Ms. Martínez reported to Pearson's legal division the scheme of manufacturing certifications with false information and the retaliations she was subjected to. On April 11, 2016, Ms. Martínez received a call from Pearson's Senior Attorney from the Ethics, Compliance and Corporate Investigations in New York City.

100. The attorney expressed to her that the nature of the report sounded like a matter that he would like to investigate.

101. During that conversation, Ms. Martínez informed to him that by that time, she had expected the problem to be solved. Nonetheless, to her dismay, the scheme of manufacturing certifications containing false and fraudulent information continued, which for her was not only unethical, but also a fraud to the Federal Government.

102. She reported to the aforesaid attorney every detail of the people who appeared providing services Pearson had not provided; and made a recount of the retaliations tactics she was being subjected to for having risen the red flag and reported the fraud scheme.

103. **Ms. Martínez was fired in retaliation for having reported the fraudulent scheme.** Far from solving the problem or from taking the corrective measures that were in order, on April 21, 2016, ten days after she reported to Pearson's attorneys the situation, Ms. Martínez' employment contract was terminated.

104. Ms. Martínez did not receive explanation as of why her contract was being terminated.

105. Even though the quality of her work was never rightfully questioned, she was retaliated against for trying to stop a fraud that would damage, not only Pearson's reputation, but hers as well.

106. Ms. Martínez was put in the position of choosing between signing untruthful certifications that constituted fraud, or complying with the law, Pearson's Code of Conduct, and her integrity. Choosing the latter got her employment contract to be terminated.

107. **The Separation Agreement.** That day, Ms. Martínez received a *Separation and General Release Agreement* in which Pearson agreed to pay a separation payment of \$12,356.00, calculated according to the Act. No. 80 of May 30, 1976, as amended, 29 L.P.R.A. sec. 185a. et seq.

108. Pearson agreed to pay Vacation (56 hours): \$1,729.84; Sick (19 hours): \$586.91; Personal Time (28 hours): \$864.92; and Personal Holiday (8 hours): \$247.12.

109. By signing that agreement, Ms. Martínez would have to represent that she had not been a victim of discrimination or retaliation in connection with her termination of employment; that there was just cause for the termination of her employment; and she would have released Pearson from any claim, demand, obligation, loses, causes of action and liability of any kind.

110. The release further stated that Ms. Martínez agreed not to apply for employment at any time thereafter with Pearson, its subsidiaries or any entity affiliated with Pearson; and that the agreement would constitute an adjudication, and would have the effect of *res judicata* for both Ms. Martínez and Pearson.

111. Even though Ms. Martínez did not sign the agreement, she received a check from NCS Pearson Inc., incorrectly covering a gross pay of \$15,784.79, comprising sick, vacations, personal holidays and personal days' earnings; and in lieu of pay. That amount, after deductions, represented a net pay of \$9,888.08. There were four additional days that Ms. Martínez worked at Pearson that were not included in the aforesaid gross pay.

112. Ms. Martínez did not deposit nor changed that check, which is still in her possession until further notice.

113. As a direct result of this and the nervous breakdown and anxiety attacks she suffered, Ms. Martínez had to be partially hospitalized for a week at a mental institution and continues under medical treatment to this date.



114. Ms. Martínez is suffering from emotional distress, embarrassment and humiliation, and has suffered damage to her professional reputation and standing.

**COUNT ONE**

**(Retaliation in violation of Puerto Rico Law No. 115 of December 20, 1991, P.R. Laws Ann. tit. 29, § 194 et seq. ("Law 115"))**

115. Plaintiff incorporates by reference the allegations in paragraphs 1 through 114 above as if fully rewritten herein.

116. Puerto Rico's Anti-Retaliation Act No. 115 of 1991, 29 L.P.R.A. sec. 194 et seq., as amended, is a restorative statute prohibiting discrimination against an employee who provided or tried to provide information or testimony before a legislative administrative or judicial office in Puerto Rico.

117. An employee establishes a prima facie case under Law 115 by proving that (1) he engaged in one of the protected activities set forth in the Whistle-blower Act and (2) he was subsequently discharged, threatened or suffered discrimination at work. MVM Inc. v. Rodriguez, 568 F. Supp. 2d 158, 176-177, (D.P.R. 2008).

118. On September 29, 2014, the Legislature approved Act No. 169 of 2014, 29 L.P.R.A. sec. 194(a) in order to expand the protected activity covered by Act 115, including the testimony, expression or information that provides or intends to provide the employee, in the internal procedures established by the

company, or against any employee or representative in a position of authority.

119. The Act provides that any person discharged, threatened or who is subjected to discrimination in his or her employment, motivated by retaliatory means, can file a civil action against the employer within three years to the date it such violation happened. Rivera Prudencio v. Mun. de San Juan, 170 D.P.R. 149 (2007).

120. The claim under Law 115 can also be filed against the agents or supervisors who retaliated against the employee. Santos v. Rodriguez, 867 F. Supp. 2d 235, 261 (D.P.R. 2012). (“[C]laims for violations of Laws 115 and 426 may be brought against individual employees. This court has held that Law 115 allows for individual liability against a supervisor who retaliates against an employee.”); Arroyo-Pérez v. Demir Group Int’l, 733 F. Supp. 2d 322, 324 (D.P.R. 2010) (“Given the more liberal nature of Puerto Rico employment laws, in terms of their expansive and generous nature, clear statutory language, and because the complaint contains sufficient factual matter.. the motion to dismiss the third cause of cation based in individual liability under Law 115 is denied.”); Pastrana-Lopez v. Ocasio-Morales, 2010 U.S. Dist. LEXIS 112386, page 27, (2010) (Law 115 does permit for individual liability of a supervisor who retaliates against an employee); Reyes Guadalupe v. Casas

Criollas, 597 F.Supp. 2d 255, 260 (D.P.R. 2008) ("Puerto Rico Law 115 also provides for personal liability of a supervisor who retaliates against an employee of the company."); Hernández v. Raytheon Serv. Co. P.R., 2006 U.S. Dist. LEXIS 28450 ("Law 115 also includes personal liability of a supervisor who retaliates against an employee of the company.")

121. The employee can also request to be compensated for the actual damages, mental anguish, restitution of employment, unpaid wages, benefits and attorney's fees.

122. The employer's liability regarding the damages and the unearned salaries shall be double the amount determined as having caused the violation of the provisions of the Anti-Retaliation Act. 29 L.P.R.A. sec. 194a (b).

123. The attorney's fees are calculated at twenty-five percent of Plaintiff's damages. Rivera Menéndez v. Action Service, 185 D.P.R. 431, 437 (2012); Rentas Santiago v. Autogermana, Inc., 182 D.P.R. 759, 763 (2011).

124. Defendants engaged in the conduct alleged herein with malice, oppression, and reckless disregard of Ms. Martínez' right to be free of retaliation for engaging in a protected conduct. Accordingly, Ms. Martínez is entitled to be compensated for the damages caused by Defendants Mr. Mannix, Ms. Winter and Pearson.

**COUNT TWO**

**(Breach of employment contract and Pearson's Code of Conduct)**

125. Plaintiff incorporates by reference the allegations in paragraphs 1 through 124 above as if fully rewritten herein.

126. When it comes to a contractual action based on the dismissal of an employee before the term agreed in the contract of employment, compensation constitutes, prima facie, the salary ceased to accrue during the time that the contract had been in effect (throughout the period of the contract). Soc. de Gananciales v. Vélez & Asoc., 145 D.P.R. 508, 523 (1998); Schneider v. Tropical Gas Company, Inc., 95 D.P.R. 626, 630 (1967); see also Cassasús v. Escambrón Beach Hotel, 86 D.P.R. 375, 379 (1962).

127. It is necessary to note that an award of back pay should include the fringe benefits the employee would have received had he remained employed by the defendant. Odrizola v. S. Cosmetic Dist. Corp., 116 D.P.R. 485, 504-505 (1985).

128. It has been established that the company's manual containing the rules and regulations and establishing employees benefits and privileges, is considered part of the employment contract. Santiago v. Kodak Caribbean, 129 D.P.R. 763, 775-76 (1992).

**COUNT THREE**

**(Violation of Ms. Martínez' constitutional rights under Art. II section 1, 8 and 16 from the Constitution of the Commonwealth of Puerto Rico)**

129. Plaintiff incorporates by reference the allegations in paragraphs 1 through 128 above as if fully rewritten herein.

130. Article II, Sections 1 and 8 of the Constitution of the Commonwealth of Puerto Rico establishes the right of every person to protection against violations to its dignity and privacy; and Section 16 establishes the right of every employee to protection against risks to his health or person in his work or employment. 1 L.P.R.A. Const. Art. II, secs. 1, 8 and 16.

131. If on the occasion of a worker dismissal, the employer incurs in tort actions that are independent of the dismissal itself, a cause of action arises in favor of the workers for such illegal behavior. Garcia v. Aljoma Lumber, Inc., 162 D.P.R. 572 (2004).

132. This rule reflects the fact that the remedies provided by labor laws do not exclude the liability of an employer for negligent conduct incurred by him for other reasons apart from the violation of such laws.

133. In Arroyo v. Rattan Specialties, Inc., 117 D.P.R. 35 (1986), the Supreme Court of Puerto Rico held that the character and primacy of the right of privacy operates ex proprio vigore, and may be enforced even between private individuals.

134. The same conclusion is reached with regard to the constitutional right which protects the inviolability of the dignity of the human being, and with regard to the right which

protects every worker against risks to his personal integrity in his work. The Supreme Court of Puerto Rico has also recognized the right to be compensated for damages caused when a private citizen encroaches upon one of these rights. Id.

135. Hence, the Constitution of Puerto Rico contemplates private rights of action against private parties for violations of an individual's rights to dignity, privacy, and personal integrity, as secured under Article II, Sections 1, 8 and 16. When a dismissal is made for the purpose of, or has the effect of subverting a clear public policy --as in the case of violation of certain employee's constitutional rights-- a claim for damages against the employer arises. Garcia v. Aljoma Lumber, Inc., 162 D.P.R. at 586-87.

#### **COUNT FOUR**

##### **(A violation of Article 1802 of the Puerto Rico Civil Code)**

136. Plaintiff incorporates by reference the allegations in paragraphs 1 through 135 above as if fully rewritten herein.

137. A person who by an act or omission causes damage to another through fault or negligence shall be obliged to repair the damage so done.

138. Relatives of an employee who has been the victim of discriminatory treatment by his or her employer, have a cause of action under Article 1802 of the Civil Code, 31 L.P.R.A. Sec. 5141, for compensation for damages suffered as a result of that

discrimination. See S.L.G. Baez Serrano v. Foot Locker Retail, Inc., 182 D.P.R. 824 (2011).

**COUNT FIVE**

**(Violation of Article 1803 of the Puerto Rico Civil Code)**

139. Plaintiff incorporates by reference the allegations in paragraphs 1 through 138 above as if fully rewritten herein.

140. Owners or directors of an establishment or enterprise are likewise liable for any damages caused by their employees in the service of the branches in which the latter are employed or on account of their duties. 31 L.P.R.A. Sec. 5142. An employer is vicariously liable when a supervisor creates a hostile work environment that results in a tangible employment action against the employee. Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 764 (1998).

**Prayer for Relief**

**WHEREFORE**, Plaintiffs respectfully request that this Court grant judgment against the Defendants providing the following reliefs:

(a) Compensatory damages in whatever amount in excess of TWO MILLION DOLLARS (\$2,000,000.00), exclusive of costs and interest, that Plaintiffs are found to be entitled for damages

recoverable under the state law including but not limited to damages as a result of Defendant's retaliations, harassment and breach of contract; Ms. Martinez' emotional pain and suffering, mental anguish, which have been incurred or suffered in the past and which will be incurred or suffered in the future; and unearned salaries and benefits Ms. Martínez would have received had she remained employed by the Defendant;

(b) The amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for damages recoverable under state law including but not limited to damages as a result of Mr. Alonso's mental anguish, the loss of his Ms. Martínez' company, comfort, care and attention in the past and which will be incurred or suffered in the future;

(c) The amount of TEN THOUSAND DOLLARS (\$10,000.00) for damages recoverable under state law including but not limited to damages as a result of Plaintiff's expenses for partial hospitalization, medical care and treatment which have been incurred in the past and which will be incurred in the future.

(d) The costs and reasonable attorneys' fees incurred with this lawsuit with interest thereon; and any and all other damages which the Court deems just or appropriate.

**JURY DEMAND**

Plaintiffs demand a trial by jury as to all issues so triable.



**RESPECTFULLY SUBMITTED.**

On this 28 day of October of 2016.

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