

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

**VINCENT MIRANDA, DORIS A.  
GORDIAN REYES AND THE LEGAL  
CONJUGAL PARTNERSHIP  
COMPOSED BETWEEN THEM**

Plaintiffs,

vs.

**UNION TRABAJADORES INDUSTRIA  
ELECTRICA Y RIEGO (UTIER);  
DEFENDANTS A, B, C, INSURANCE  
COMPANIES.**

Defendants.

**CIVIL NO.**

RE: TITLE VII, EMPLOYMENT  
DISCRIMINATION AND RETALIATION;

**REQUEST FOR SUMMARY PROCEEDING  
UNDER 42 U.S.C. § 2000e-5(f)(5)**

PLAINTIFFS DEMAND TRIAL BY JURY

**COMPLAINT**

**TO THE HONORABLE COURT:**

**COME NOW**, Plaintiffs Vincent Miranda Cepeda and his wife Doris A. Gordian Reyes, through his undersigned attorneys and respectfully **STATE, ALLEGE** and **PRAY**:

**I. NATURE OF THE ACTION AND JURISDICTION**

1. Plaintiffs Vincent Miranda Cepeda ("Miranda") and his wife, Doris A. Gordian Reyes hereby invoke this Honorable Court's federal question jurisdiction under 28 U.S.C. § 1331 for this action seeking compensatory damages, equitable and injunctive relief, costs and attorneys fees brought pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. §§ 2000e *et seq.* as a result of being Miranda the victim of discrimination and retaliation due to Miranda's religious beliefs perpetrated by his labor organization or union, Defendant Unión Trabajadores Industria Eléctrica y Riego (hereinafter referred to as "UTIER" by its Spanish acronym) while he was an employee of the Puerto Rico Electrical Power Authority ("PREPA").

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2. Plaintiffs further summon this Honorable Court's pendent/supplemental jurisdiction under 28 U.S.C. § 1367 seeking redress for violations of various Puerto Rico laws, including but not limited to, Law No. 100 of June 30, 1959, 29 L.P.R.A. §§ 146 *et seq.*; Law No. 115 of December 20, 1991, 29 L.P.R.A. §§194 *et seq.*, Puerto Rico's Constitution, Article II, Sections 1, 3, 8, 16, 20 and Article 1802 of Puerto Rico's Civil Code, 31 L.P.R.A. § 5141.

3. On **January 23 2013**, Miranda timely filed with the United States Equal Employment Opportunity Commission ("EEOC") an administrative charge against the UTIER claiming continuous discrimination due to his religious beliefs in violation to his rights under Title VII.

4. The administrative charge filed by Miranda on **January 23, 2013** with the EEOC was assigned case Number 515-2013-00186.

5. On **April 23, 2013**, Miranda filed an Amended Charge with the EEOC against UTIER because such labor organization, after having received notice of the original administrative charge claiming religious discrimination filed on **January 23, 2013**, engaged in a pattern of continuous retaliatory practices against Miranda because he had filed the stated administrative charge.

6. On **October 22, 2014**, Miranda, through his undersigned legal representation, sent an email communication letter to Mr. Luis Calzada, the EEOC's Investigator who had been assigned Miranda's original and amended administrative charges of religious discrimination in this case. (**See Email dated October 22, 2014 from**

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**Attorney José G. Fagot Díaz, Esq. to Mr. Luis Calzada, attached hereto as Exhibit “A”).**

7. Through the **October 22, 2014** email communication, Miranda requested the EEOC to issue a Right-To-Sue Notice as more than one hundred (180) days had elapsed since the filing of his original administrative charge and the EEOC had not made a determination involving the discrimination and retaliation charge. **(See Exhibit A, attached hereto)**

8. Having heard no response from the EEOC for its issuance of a Right-To-Sue Notice, on **January 2, 2015**, Miranda again requested the EEOC that it issue a Right-To-Sue-Letter in Case No. 515-2013-00186 by **January 7, 2015**, as the statutory time limit for the EEOC to conduct its investigation on Miranda’s religious discrimination and retaliation charge had elapsed and no action had been taken by the agency. **(See Letter Dated and Stamped as Received by the EEOC on January 2, 2015, attached hereto as Exhibit “B”).** The EEOC has not responded to Miranda’s multiple requests for the issuance of a Right-To Sue Letter under 42 U.S.C. § 2000e-5(f) (1).

9. As of today’s date, the EEOC has failed to comply with its statutory duties under Title VII in Miranda’s case and has likewise failed to timely issue a Right-To-Sue Notice.

10. Although the general rule is that receipt of a right-to-sue letter is a statutory prerequisite to filing suit under Title VII, *Gooding v. Warner-Lambert Co.*, 744 F.2d 354, 358 (3d Cir. 1984), in circumstances where the EEOC has failed to issue such a letter

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despite the expiration of the 180-day deadline, courts have allowed a plaintiff to proceed so long as a plaintiff can show he/she is entitled to the right-to-sue letter and has requested it. *See, e.g., Anjelino v. New York Times Co.*, 200 F.3d 73, 96 (3d Cir. 2000); *Gooding*, 744 F.2d at 357-59; *Fouche v. Jekyll Island-State Park Auth.*, 713 F.2d 1518, 1526 (11th Cir. 1983); *Johnson-Medland v. Bethanna*, Civ. A. No. 96-4258, 1996 WL 612467, at p. 6 (E.D. Pa. Oct. 17, 1996); *Dougherty v. Lower Merion*, No.Civ. A. 96-1589, 1996 WL 273675, at p. 2 (E.D. Pa. May 15, 1996). To hold otherwise would be to require the plaintiff to compel the EEOC to issue the letter through a writ of mandamus, a cumbersome process. *See Johnson-Medland*, 1996 WL 612467, at p. 6; *Dougherty*, 1996 WL273675, at \*2.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

## II. THE PARTIES

12. Plaintiff Miranda is a male citizen of the United States of America. He is married to Doris A. Gordian Reyes and is a resident of Cataño, Puerto Rico.

13. Plaintiff Gordian Reyes is a female citizen of the United States of America. She is married to Miranda and is a resident of Cataño, Puerto Rico.

14. At all relevant times to this Complaint, Miranda was an “employee” within the definition of such term as provided by Title VII and the laws of the Commonwealth of Puerto Rico which have been invoked herein. Miranda was an employee of PREPA.

15. At all relevant times to this Complaint, Miranda was a unionized employee of PREPA.

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16. At all relevant times to this Complaint, Miranda was a bona fide member of the Jehovah's Witness Church.

17. At all relevant times to this Complaint, Defendant UTIER was a "labor organization" engaged in interstate commerce within the definition of this term as provided by Section 701(d), (h) of Title VII, 42 U.S.C. § 2000e(d).

18. At all relevant times to this Complaint, Defendant UTIER was a "labor organization" under Title VII because it maintained a hiring hall or hiring office which procures employees for PREPA or procured for employees opportunities to work for PREPA and has over fifteen members.

19. At all relevant times to this Complaint, Defendant UTIER was a "labor organization" under Title VII because it is considered a local labor organization that is recognized and acts as the representative of the employees of PREPA, an employer who is engaged in an industry affecting commerce.

20. At all times relevant to this Complaint, Defendant UTIER was the exclusive bargaining representative to those PREPA employees determined to be the "appropriate bargaining unit" for collective bargaining purposes.

21. At all relevant times to this Complaint, Defendant UTIER was the labor organization that represented Plaintiff Miranda along with other PREPA employees for collective bargaining purposes.

**22.** Defendants ABC Insurance Companies are the insurers of UTIER herein. Defendants ABC Insurance Companies have insurance policies which at all times relevant hereto, were in full effect and cover the liabilities and/or unlawful acts which were

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committed by UTIER, as these have been averred in this Complaint. Plaintiff Miranda is using the fictitious names of ABC because at this time he doesn't know the real names of such insurance companies. Once the real names become known, Miranda will substitute those fictitious names with the real names of such party defendants.

### **III. FACTUAL NARRATIVE COMMON TO ALL CLAIMS**

23. During 1986, Miranda commenced working at PREPA and as a condition of employment, he had to become a member of UTIER.

24. From 1986 until 1994, Miranda worked as a painter at San Juan Central.

25. Throughout his employment tenure with PREPA, Miranda has clearly and unmistakably made known to the UTIER, its upper management, officials, agents and other union members that he was a bona fide member of the Jehovah's Witness Church and that due to his religious beliefs he was unable to participate in the UTIER's picketing, work stoppages, strikes, work slowdowns and any other type of employee protests or demonstrations. On multiple occasions throughout his work tenure, Miranda requested reasonable accommodation from UTIER on account of his religious beliefs.

26. Throughout Miranda's employment tenure with PREPA, UTIER has had ample knowledge of Miranda's religious beliefs and postulates of his faith that forbid him from participating in UTIER's picketing, work stoppages, strikes, work slowdowns and any other type of employee protests or demonstrations.

27. On or about February 2012, UTIER charged and labelled Miranda as a "strike buster" and fellow employee and UTIER's member and agent Yolanda Vázquez Muñoz filed an internal grievance, SJ-12-11 with the UTIER because Miranda failed to

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appear at a UTIER assembly and remained working at his post with PREPA thorough out a strike or work stoppage, despite Miranda having previously made known to the UTIER that he could not participate in these types of demonstrations due to his religious beliefs.

28. Through Grievance SJ-12-11 filed on April 18, 2012, the UTIER labelled Miranda as a “strike buster” claiming that Miranda did not assist or go to a union assembly held on February 16, 2012 because he had worked from 3.5 hours throughout the entire period of time that the strike lasted.

29. As a result of such grievance, UTIER imposed an unlawful monetary penalty of \$140.00 because he had not participated in the strike due to his religious beliefs. UTIER further admonished Miranda in writing with a grave offense thereby taking the first steps in the disaffiliation of Miranda as a member of UTIER due to Miranda’s religious beliefs.

30. The monetary fine imposed by UTIER on Miranda was levied in violation to his due process rights secured under the Constitutions of the United States of America and the Commonwealth of Puerto Rico, as Miranda was never notified of a hearing before a disciplinary committee of his union and without the opportunity of Miranda being able to defend himself.

31. UTIER again violated Miranda’s Title VII rights and his freedom of religion rights secured under both the Constitutions of the United States of America and the Commonwealth of Puerto Rico when, on or about October 24, 2012, UTIER’s member and agent Eddie Cruz Alicea, filed a second grievance (SJ-12-23) against Miranda when he did not participate at another 12 hour work stoppage decreed by the UTIER so its membership

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could attend another General Assembly at the Roberto Clemente Coliseum in San Juan, Puerto Rico. UTIER claims that Miranda remained at work and did not attend to such assembly.

32. As a result of this second grievance, Miranda was fined with a \$50.00 penalty. True to its prior past practice, UTIER fined Miranda without affording him due process by scheduling a hearing without having him received proper notice. Such hearing was held while Miranda was under a partial hospitalization as a result of his emotional conditions resulting from UTIER's prior discriminatory practices previously stated in this Complaint.

33. On February 8, 2013, Miranda engaged in statutorily protected activity under Title VII by notifying a letter to the UTIER whereby he grieved/opposed UTIER's discrimination against him due to his religious beliefs. Such grievance fell upon deaf ears.

34. Notwithstanding Miranda's February 8, 2013 grievance and after having filed his administrative charge before the EEOC on January 23, 2013, the UTIER continued its efforts to discriminate and retaliate against Miranda in violation of this Title VII, and his rights under both the Constitution of the United States of America and the Constitution of the Commonwealth of Puerto Rico by, among other things filing other illegal and unjustified grievances against him.



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35. Once again on May 8, 2013, Miranda grieved to the UTIER and further engaged in statutorily protected activity under Title VII because of its violation to his religious beliefs. On such date, Miranda further opposed UTIER's discriminatory practices and requested UTIER to stop engaging in its unlawful collection efforts of the monetary fines that had been previously imposed upon Miranda because he had failed to participate in work stoppages or strikes due to his religious principles and believes as a Jehovah's Witness.

36. Notwithstanding Miranda's requests to UTIER to refrain from continuing to violate his Title VII and Puerto Rico law statutory rights, on June 6, 2013, the UTIER through counsel Ruth E. Arroyo, sent a collection letter to Miranda requesting the payment of the above stated fines imposed by the UTIER upon Miranda.

37. On July 9, 2013, Miranda responded to UTIER's collection of monies request and once again reiterated his prior requests to the UTIER to stop engaging in unlawful employment discrimination practices. On July 9, 2013, Miranda participated in statutorily protected activity as he opposed the UTIER's religious discrimination against him. However, UTIER refused and on July 11, 2014 proceeded to file before the Superior Court of Puerto Rico, Bayamón Part a civil action for the collection of union fees or penalties dues. UTIER v. Vincent Miranda Cepeda, Civ. No.CM 2014-365. This civil action for the collection of monies constitutes yet another link in the long retaliatory actions chain forged by the UTIER and its agents against Miranda.

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38. On all occasions that the UTIER has performed work stoppages, strikes, slow downs, picketing and employee protests and demonstrations, Miranda has requested reasonable accommodations from the UTIER in light of his religious beliefs as a Jehovah's Witness in order to be exempted from participating in those concerted union activities that run against his religious postulates.

39. However, the UTIER has failed to engage in any type of talks with Miranda so as to establish or discuss his reasonable accommodation requests of not participating in practices that run afoul to his Jehovah's Witness religious principles.

**IV. FIRST CAUSE OF ACTION**  
**(Title VII: Religious Discrimination, Retaliation, Failure to Provide Reasonable Accommodations)**

40. Plaintiffs re-allege each and every preceding allegation as if fully set forth herein and incorporate them by reference hereto.

41. Defendant UTIER has willfully violated Title VII's provisions by discriminating against Miranda due to his religion and by engaging in retaliation against him on account that he engaged in statutorily protected activity for having grieved with UTIER and opposed discriminatory conduct and by having complained to EEOC of Title VII discrimination against Defendant UTIER. Defendant UTIER has further failed to engage in reasonable accommodation talks with Miranda so as to accommodate his religious believes.

42. Defendant UTIER has also retaliated against Miranda because he requested reasonable accommodation based on his religious beliefs and by UTIER's members filing of internal grievances with UTIER's Disciplinary Committee claiming that he had unlawfully refused to participate in union concerted activities.

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43. Defendant UTIER has further retaliated against Miranda on account of his statutorily protected activities of requesting reasonable accommodation due to his religious beliefs and because he opposed unlawful employment practices based on his religion by having filed civil action for collection of unlawful fees on account that Miranda refused to engage in union concerted activities and practices that ran afoul of his religious beliefs.

44. As such, Defendant UTIER is liable in compensatory and punitive damages against Plaintiff Miranda for its unlawful conduct. Plaintiff Miranda demands compensation due to the moral and mental anguish he has suffered on account of the UTIER's unlawful conduct.

**V. SECOND CAUSE OF ACTION  
(Violation to Article II of Puerto Rico's Constitution)**

45. Plaintiffs re-allege each and every preceding allegation as if fully set forth herein and incorporate them by reference hereto.

46. Defendant UTIER has violated Plaintiff Miranda's rights secured under Article II, Sections 1, 8, 16 of Puerto Rico's Constitution by violating the dignity, privacy, health at the work place and discriminating against him on the basis of his religion.

47. Plaintiff Miranda is entitled to compensatory damages. Plaintiff has suffered considerable economic and personal damages as a result of Defendant UTIER's conduct. Defendant UTIER has discriminated against Miranda in violation of his constitutional rights previously mentioned.

**VI. THIRD CAUSE OF ACTION  
(Violation to Puerto Rico Act No. 100, 115)**

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48. Plaintiff re-alleges each and every preceding allegation as if fully set forth herein and incorporates them by reference hereto.

49. Defendant UTIER has violated Plaintiff Miranda's rights secured under Puerto Rico Act No. 100. Defendant UTIER has discriminated against Plaintiff Miranda on account of his religion and in retaliation for having engaged in statutorily protected conduct.

50. Plaintiff Miranda is entitled to compensatory and economic damages. Plaintiff Miranda has suffered considerable economic and personal damages as a result of Defendant UTIER's conduct.

**VII. FOURTH CAUSE OF ACTION  
(Violation to Puerto Rico's Civil Code, Art. 1802)**

51. Plaintiffs re-allege each and every preceding allegation as if fully set forth herein and incorporate them by reference hereto.

52. Defendant UTIER through its agents has violated Plaintiff Miranda's rights under Puerto Rico's Civil Code, Article 1802, 31 L.P.R.A. § 5141.

53. Plaintiff Gordian has also suffered emotional damages arising from UTIER's discrimination and retaliatory actions against her husband, Plaintiff Miranda.

54. Both Plaintiffs are entitled to compensatory and economic damages they have suffered by UTIER's discriminatory employment practices.

**WHEREFORE**, all premises being considered, Plaintiffs pray that this Honorable Court enter Judgment against Defendant UTIER and grant Plaintiffs the following relief:

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- (a) An award of compensatory damages of not less than ONE MILLION DOLLARS (\$1,000,000.00);
- (b) An award of double compensatory damages under Puerto Rico Law Nos. 115, and 100;
- (c) An award of costs and reasonable attorney's fees;
- (d) Injunctive relief ordering Defendant UTIER and its agents to stop retaliating against Plaintiff Miranda
- (e) An award of punitive damages under applicable federal laws invoked herein;
- (f) Any other and further relief, which this Honorable Court may deem just, and proper, and
- (g) A trial by jury.

In San Juan, Puerto Rico, this 6<sup>th</sup> day of February, 2015.

**RESPECTFULLY SUBMITTED.**

**WE HEREBY CERTIFY** that on this same date, February 6, 2015, we electronically filed the foregoing certificate of service with the Clerk of this Honorable Court using the CM/ECF system which will send notification to all counsel in this case.

In San Juan, Puerto Rico this 6<sup>th</sup> day of February 2015.

/s/ **JOSÉ G. FAGOT DÍAZ**  
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