

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

RITA RODRIGUEZ-FALCIANI,

PLAINTIFF,

v.

CIVIL No. 18-1065 (DRD)

TRIPLE S-SALUD, INC., ET AL.,

DEFENDANTS.

TRIPLE-S SALUD, INC.'S ANSWER AND COUNTERCLAIM

To the Honorable Daniel R. Dominguez, U.S. District Court Judge:

Triple-S Salud, Inc. (TSS) respectfully answers Rita Rodriguez-Falciani's (Plaintiff)

the complaint as follows:

1.1 This is an action brought on behalf of Rita Rodriguez-Falciani, a long-term employee of the defendant Triple-S Salud, Inc. (hereinafter referred to as "Triple-S" or "the company"), who was discharged in March of 2017.

Response: The plaintiff's self-characterization as a "long-term employee" is denied because, before 2011, she had been a TSS independent contractor or legal consultant. The rest of Paragraph 1.1 is admitted.

1.2 Plaintiff presents this claim to vindicate rights under the laws of Puerto Rico and the United States which prohibit retaliation for protected activity. Her claim against Triple-S is based on the federal False Claims Act and on the anti-retaliation provisions of Law 115. In the alternative, plaintiff seeks the statutory separation payment owed to her pursuant to Law 80, Puerto Rico's Statutory Separation statute. She also seeks the payment of bonuses owed to her, as well as attorneys' fees and litigation costs pursuant to the False Claims Act and Puerto Rico Law 402.

Response: Paragraph 1.2 contains legal conclusions that require no answer. If an answer were required, it is denied that Plaintiff has any valid claims against TSS.

1.3 Plaintiff also claims damages pursuant to the tort law of Puerto Rico, against both Triple-S and defendant Hato Rey Pathology Associates, Inc, due to tortious interference with her employment relationship and against Hato Rey Pathology for its dissemination of false imputations against her.

Response: Paragraph 1.3 contains legal conclusions that require no answer. If an answer were required, it is denied.

1.4 For a period of close to two decades, plaintiff Rita Rodriguez-Falciani (hereinafter referred to as "Ms. Rodriguez-Falciani") held management positions at this healthcare insurance company, including Compliance and Privacy Officer, Director of the Audit and Special Investigations Unit and the Director of Fraud Committee.

Response: It is admitted that, from 1998 to 2011, Plaintiff worked as an independent contractor for TSS, and that, from 2011 until March 17, 2017, she was a TSS employee. It is also admitted that, from July 11, 2016 to March 17, 2017, she was the director of TSS's Audit and Investigation. Presiding the Fraud Committee was part of her responsibility as director of TSS's Audit and Investigation Unit; it was not an independent position, as Paragraph 1.4 misleadingly implies. The rest of the paragraph—including that she held management positions "[f]or a period of close to two decades"—is denied.

1.5 In these positions, plaintiff, who is a licensed attorney and has a master's in public administration, had significant investigative and oversight functions to assure that Triple S was in compliance with federal law and local law.

Response: Plaintiff's characterization of her "functions" as "significant" and her allegation that she had "to assure" that TSS complied with *all* federal and local laws are denied as drafted. The rest of the paragraph is admitted.

1.6 As part of her functions, she audited the services provided to the insured by providers such as physicians, dentists and laboratories.

Response: Paragraph 1.6 is admitted, but TSS clarifies that Plaintiff did not always have these “functions.”

1.7 Plaintiff alleges that she was dismissed in March of 2017, after nineteen (19) years of excellent service, as a result of her participation in an investigation of suspicious practices by certain laboratories and physicians in Puerto Rico, in which they charged for genetic testing services which were not medically indicated, for people insured by Triple S, including those for whom federal funds were disbursed.

Response: Except for the month of her employment’s termination, Paragraph 1.7 is denied. It is affirmatively alleged that Plaintiff was terminated because of the cumulative weight of (1) insubordination; (2) bypassing her supervisor, Jenny Cárdenas; (3) failure to follow or accept instructions and company protocols, particularly those concerning the cancellation of providers; and (4) continuously disseminating confidential information in violation of express orders, company norms, and previous warnings. She was also fired because she had an intransigent, recalcitrant, and conflictive personality, so the operational areas avoided working with her. Plaintiff, in short, was almost impossible to get along and communicate with.

1.8 In the months leading up to her dismissal, plaintiff took part in the investigation into four laboratories in Puerto Rico which had engaged in a scheme related to such genetic-testing. These efforts resulted in the filing of three lawsuits, and in the case of defendant Hato Rey Pathology Associates, Inc., in an agreement to return of millions of dollars for claims improperly billed.

Response: It is admitted that Plaintiff may have participated in the investigations of several laboratories for their improper billing to TSS in connection with genetic tests, and

that TSS sued three of these laboratories for breach of contract. It is also admitted that TSS and Hato Rey Pathology, Inc. (HRP) settled their claims extrajudicially, the amount of which is not public, and, by unnecessarily disclosing these amounts, Plaintiff violated several confidentiality agreements that she signed during her time at TSS.

1.9 Ms. Rodriguez-Falciani referred the matter of the aforementioned scheme to both the Office of Inspector General of the federal Department of Human and Health Care Services (hereinafter "OIG-HHS") and the Office of the United States Attorney for the District of Puerto Rico and met with personnel from these two federal offices to follow up on the progress of the federal investigation.

Response: Paragraph 1.9 is not directed at TSS, so it requires no responsive answer. If an answer were required, it is admitted that, as a representative of TSS, in compliance with her duties at TSS, and with TSS's knowledge and authorization, she signed the TSS letter referring to the OIG several matters that arose after TSS conducted an audit. The rest of the allegations are denied as drafted for lack of sufficient information to form an opinion regarding its veracity.

1.10 Defendant Hato Rey Pathology, Inc., aka HRP (hereinafter "Hato Rey Pathology" or "HRP"), one of the laboratories implicated in the scheme, used considerable pressure to remove Ms. Rodriguez from the investigation and follow-up and monitoring relating to compliance.

Response: Paragraph 1.10 is not directed at TSS and therefore does not require a responsive answer. If one were required, TSS denies that it was—or felt— "pressured" by anyone to do anything about Plaintiff.

1.11 On or about February 15, 2017, Hato Rey Pathology delivered a letter to Triple-S demanding that Ms. Rodriguez be removed from all participation in the aforementioned investigations and questioning her ethics as an attorney. The letter was signed by a local politician and attorney, Zaida (Cucusa) Hernandez.

Response: It is denied that the letter was delivered on February 15, 2017, and that it requested Plaintiff's "removal" from "all participation in the aforementioned investigations"; it requested only that Plaintiff abstain from any involvement with HRP.

1.12 Less than a month after Triple-S received the letter by attorney Hernandez, written on behalf of HRP, Ms. Rodriguez was summarily terminated from her job.

Response: It is admitted that Plaintiff's employment was terminated on March 17, 2017, but it is denied that this was "less than a month after Triple-S received the letter"

The rest of the allegation is argumentative, and it is thus denied as drafted.

2.1. The jurisdiction of this court is based on federal question jurisdiction. *28 USC Sec. 1331*, since plaintiff's principal claim is based on the False Claims Acts, *31 USC § 3729-33*.

Response: Paragraph 2.1 contains a legal conclusion for which no answer is required. If an answer were required, it is denied that the plaintiff has a claim under the FCA.

2.2 There is also jurisdiction over the Puerto Rico law claims based upon 28 U.S.C. §1367, since these claims arise under the same nucleus of operative facts.

Response: Paragraph 2.2 contains a legal conclusion for which no answer is required. If an answer were required, TSS admits that this Court would have supplemental jurisdiction only to the extent that it has federal-question jurisdiction. But because Plaintiff's purported claim under the FCA lacks merit, the Court should either dismiss the supplemental claims with prejudice or decline to exercise supplemental jurisdiction.

2.3 This court also has jurisdiction over the pendent party, Hato Rey Pathology Associates, Inc., pursuant to the same federal jurisdictional statute.

Response: Paragraph 2.3 is not directed at TSS and in any event contains a legal conclusion for which no answer is required.

2.4 Venue is proper in the District of Puerto Rico under 28 U.S.C. §1391, where the acts and omissions giving rise to Plaintiffs' claims occurred and all parties reside in Puerto Rico.

Response: Paragraph 2.4 contains a legal conclusion for which no answer is required.

TSS, however, candidly concedes that the facts underlying this action occurred in Puerto Rico.

3.1 Plaintiff **Rita Rodriguez-Falciani**, an adult citizen and resident of Trujillo Alto, began working at Triple-S in February of 1998 and worked there continuously for a period of over nineteen (19) years, until she was discharged from her employment, without explanation, on March 10, 2017.

Response: Upon information and belief, Plaintiff's citizenship and residence are admitted. It is also admitted that she had a professional relationship with TSS for 19 years, but it is denied "that she worked there continuously" It is also denied that she was fired on March 10, 2017; her employment was terminated on March 17, 2017.

3.2 Ms. Rodriguez-Falciani is a licensed attorney. She graduated from the University of Puerto Rico School of Law in 1989 and obtained her license shortly thereafter.

Response: Paragraph 3.2 is not directed at TSS and thus no answer is required. If one were required, it is admitted, upon information and belief, that Plaintiff is (or was at the time) a licensed attorney and 1989 graduate of the University of Puerto Rico School of Law.

3.3 She also has a Masters Degree in Public Administration from the University of Puerto Rico.

Response: Paragraph 3.3 is not directed at TSS and thus no answer is required. If one were required, it is admitted upon information and belief.

3.4. Over the years, she has had extensive experience in the field of health care, including but not limited to more than a decade working in the office of the Special Deputy Monitor David Helfeld, in the class action litigation, *Navarro Ayala v. ELA*, 74-1301.

Response: Paragraph 3.4 is not directed at TSS and thus no answer is required. If one were required, it is denied for lack of sufficient information to form an opinion regarding the veracity of the allegations contained therein.

3.5 Defendant **Triple-S Salud, Inc.** is the largest health care insurance company in Puerto Rico. It is often referred to in the community as "Triple-S."

Response: Admitted. It is clarified that TSS is the largest *locally owned* healthcare insurance company in Puerto Rico.

3.6 The holding company for Triple-S Salud, Inc. is Triple-S Management, a publicly held corporation traded on the New York Stock Exchange (GTS) and monitored by the Securities and Exchange Commission.

Response: Admitted. The correct name is Triple-S Management Corporation.

3.7 According to Triple-S Management's Annual Report for 2016, Triple-S is "one of the most significant players in the managed care industry in Puerto Rico [with] over 50 years of experience in this industry." The company offers "a broad portfolio of managed care and related products in the Commercial, Medicaid and Medicare Advantage markets."

Response: Admitted.

3.8 "In the Commercial market, [the company offers] products to corporate accounts, U.S. federal government employees, local government employees, individual accounts and Medicare Supplement."

Response: Admitted.

3.9 Triple-S also administers a number of health care plans for major employers in Puerto Rico which are self-insured and whose plans are governed by the federal Employee Retirement Income Security Act ("ERISA") and monitored by the United States Department of Labor.

Response: Admitted.

3.10. Defendant **Hato Rey Pathology Associates, Inc.** operates a number of self-standing laboratories in San Juan and elsewhere on the island, as well as laboratories in a number of Hospitals, including Ashford Presbyterian Community Hospital, Hospital HIMA San Pablo in Caguas and Humacao, and Hospital Damas in Ponce. This defendant may be referred to herein as "Hato Rey Pathology" or "HRP."

Response: Paragraph 3.10 is not directed at TSS and thus no responsive answer is required.

3.11. According to its website, Hato Rey Pathology Associates, Inc., performs some 120,000 diagnoses of biopsies a year and is thus one of the largest laboratories in Puerto Rico.

Response: The allegations at paragraph 3.11 are not directed at TSS and therefore no responsive answer is required.

3.12 The President of Hato Rey Pathology Associates, Inc. is pathologist Dr. Guillermo Villamarzo.

Response: The allegations at paragraph 3.12 are not directed at TSS and therefore no responsive answer is required.

3.13 One of the health care insurance companies for which Hato Rey Pathology Associates performs services pursuant to contract is the defendant Triple-S Salud.

Response: The allegations in paragraph 3.13 are denied as drafted. It is admitted, however, that HRP performs services for TSS's insureds.

4.1 Plaintiff began working at Triple-S as a regular employee on February 3, 1998, in the position of attorney in the Division of Medical Affairs

Response: Denied. TSS denies that Plaintiff began working for TSS as a “regular employee,” because she started, in 1998, as an independent contractor (legal consultant) and worked, as such, for much of her professional relationship with TSS.

4.2 After approximately one month, Ms. Rodriguez became a part-time employee, working three days per week at Triple-S and two days per week at the Puerto Rico Administration of Mental Health and Anti-addiction Services (ASSMCA).

Response: The allegations at paragraph 4.2 are not directed at TSS and therefore no responsive answer is required. If one were required, TSS admits that, from 1998 to 2011, Plaintiff worked for TSS as a part-time independent contractor.

4.3 Ms. Rodriguez is recognized as one of the primary authors of Law No. 408 of October 2, 2000 (the Mental Health Law of Puerto Rico) and of the first regulation promulgated pursuant to that law.

Response: Paragraph 4.3 is not directed at TSS and thus no answer is required. If one were required, Paragraph 4.3 is denied for lack of sufficient information to form an opinion regarding the veracity of the allegations contained therein.

4.4 She has been a instructor (adjunct professor) at the Medical Science Campus of the University of Puerto Rico for the last fifteen years and worked for more than a decade as a professor at the Puerto Rico Institute of Psychiatry.

Response: Paragraph 4.4 is not directed at TSS and thus no answer is required. If one were required, it is admitted upon information and belief.

4.5. In early February, 2011, Ms. Rodriguez became a full-time employee, holding a managerial position as Compliance and Privacy Officer.

Response: It is denied that, before 2011, the plaintiff had been an employee (but, rather, an independent contractor). The rest of Paragraph 4.5 is admitted.

4.6 In that position, Ms. Rodriguez supervised several employees and was responsible for compliance in the Commercial Business of Triple-S, as well as all matters related to privacy.

Response: Admitted.

4.7. In approximately September of 2012, Ms. Rodriguez was assigned oversight responsibility for the Puerto Rico Government Health Plan ("PSG" or "Reforma") as well as for health plans for federal employees.

Response: Denied. It is affirmatively alleged that her responsibility was over the Compliance and Privacy Program.

4.8 Both the Reforma and the federal employees' health plans involve the expenditure of federal monies.

Response: The allegations in paragraph 4.8 are denied as drafted: They are too vague and ambiguous to require a responsive pleading.

4.9 In March of 2016, the President of Triple S-Salud, Madeline Hernandez gave Ms. Rodriguez a performance bonus of \$5,000.00,

Response: TSS denies that it was a "performance bonus"; it was a discretionary bonus.

The rest of Paragraph 4.9 is admitted.

4.10 In late April of 2016, the plaintiff received a significant salary increase, in light of her "individual performance and contribution to the achievement of the Company's objectives during the last year." (Translation provided).

Response: Paragraph 4.10 is denied as drafted: The *only* reason that she received a 15.27% salary increase was because her position was reclassified as "Audit and Investigation Director." It is affirmatively alleged that, because of a restructuring, Jenny Cárdenas was selected over Plaintiff as the Compliance VP of both TSS and Triple-S Advantage Inc. (TSA), a position whose salary was higher than Plaintiff's.

4.11 In early July, 2016, Triple S promoted Ms. Rodriguez from a Manager's position to a Director's position, naming her the "Director of the Office of Clinical Auditing and Special Investigations." In writing, Triple-S informed plaintiff that her job title thereafter would be the "Director of the Office of Fraud and Abuse."

Response: Paragraph 4.11 is denied as drafted. She never received such a promotion; her previous position was *reclassified* as "Audit and Investigation Director," not as "Director of the Office of Fraud and Abuse." It is affirmatively alleged that, because of a restructuring, Jenny Cárdenas was selected over Plaintiff as the Compliance VP of both TSS and TSA, a position whose salary was higher than Plaintiff's.

4.12 For this new position, plaintiff received a salary increase of approximately fifteen percent (15%), to a total of \$86,000.00.

Response: Admitted, but TSS clarifies that the salary increase was inherent to the reclassification of her position. Thus, the salary increase would not have occurred but-for the reclassification of her previous position. It is affirmatively alleged that, because of a restructuring, Jenny Cárdenas was selected over Plaintiff as the Compliance VP of both TSS and TSA, a position whose salary was higher than Plaintiff's.

4.13 She was also entitled to a performance bonus which could reach \$20,000.00.

Response: Paragraph 4.13 is denied; she was entitled to nothing, as the bonus was both discretionary and subject to her achievements and TSS's results.

4.14 As established by Triple-S, the duties to be performed by Ms. Rodriguez included the following:

- a. Review of the policies related to fraud and abuse;
- b. Organization of the Office of Audits and Investigations;
- c. Providing trainings to external providers and employees regarding Fraud, Waste and Abuse ("FWA");
- d. Oversight of Triple-S entities on Fraud, Waste and Abuse (FWA);

- e. Creation of a Fraud Committee
- f. Attending to Fraud referrals, and
- g. Responsible for Fraud Waste & Abuse investigations into all lines of business operated by Triple-S, including Medicare Advantage, for which Ms. Rodriguez previously did not have this responsibility.

Response: Denied as drafted. The Job Description of the "Audit and Investigation Director," including its "Job Nature" and "Essential Duties and Responsibilities," speaks for itself.

4.15 Some eight months after being given this new assignment, Ms. Rodríguez was summarily dismissed from Triple-S.

Response: It is admitted that Plaintiff's employment was terminated approximately eight months after the reclassification of her position. The rest of Paragraph 4.15 is denied as drafted, particularly her allegation of being given a "new assignment."

4.16. Starting in December of 2015, Ms. Rodriguez played a critical role in alerting Triple-S to schemes regarding genetic testing and claims submitted therefore, without medical need.

Response: Denied as drafted. It is admitted that, as part of her duties and with TSS's full knowledge and authorization, Plaintiff was involved in the investigation of TSS's contractual disputes concerning the billing of genetic tests. Her characterization of her role in "alerting" Triple-S, and for that matter, a "critical" role is denied, and her characterization of a "scheme" is also denied for lack of information to form an opinion regarding its veracity.

4.17 Pursuant to schemes of this nature, runners and sales representatives from at least two laboratories based in the United States would approach patients at physicians' offices, including those insured by Triple-S, offering them a "free" test, which would not involve the payment of a deductible, since the cost would be assumed by Triple-S.

Response: The allegations in paragraph 4.17 are not directed at Triple-S and thus no response is required. If a response were required, they are denied as drafted for lack of sufficient information to form an opinion regarding their veracity.

4.18. These individuals would deliver the saliva samples from patients in the offices of the physicians to four laboratories in Puerto Rico which were Triple-S contracted providers.

Response: The allegations in paragraph 4.18 are not directed at Triple-S and thus no response is required. If a response were required, they are denied as drafted for lack of sufficient information to form an opinion regarding their veracity.

4.19 The four laboratories would send the samples to laboratories based in the continental United States.

Response: Admitted.

4.20 The laboratories in Puerto Rico would then bill Triple-S for the procedure, although their only role was to send the samples to the State-side laboratories.

Response: The allegations in paragraph 4.20 are not directed at Triple-S and thus no response is required. If a response were required, they are denied as drafted for lack of sufficient information to form an opinion regarding their veracity.

4.21 The tests were entirely devoid of any medical necessity.

Response: The allegations in paragraph 4.21 are not directed at TSS and thus no response is required. If a response were required, TSS affirmatively alleges that its audit findings showed that some or all genetic tests lacked medical necessity.

4.22 The genetic testing scheme led to a proliferation of unnecessary genetic testing in Puerto Rico.

Response: The allegations in paragraph 4.22 are not directed at Triple-S and thus no response is required. If a response were required, they are denied as drafted for lack of sufficient information to form an opinion regarding their veracity.

4.23 An investigation was conducted at Triple-S regarding this practice, to determine whether it was fraudulent and illegal, and/or in violation of the contract between the aforementioned providers and Triple-S, which prohibits soliciting.

Response: Denied as drafted. It is admitted that TSS investigated several laboratories about contractual disputes on the billing of genetic tests. Plaintiff's characterization of the investigation and its "purpose" is denied as drafted.

4.24 Upon investigation, Triple-S determined that between November of 2014 and May of 2016, Triple-S had paid the total amount of \$8,705,660 for these procedures.

Response: TSS admits that it has alleged that, as a result of the contractual disputes concerning the billing of genetic tests, it paid approximately \$8,705,660 for such genetic tests. It is affirmatively alleged that this information is confidential, and that Plaintiff's unnecessary disclosure violate her contractual obligations to abstain from disclosing confidential business information.

4.25 Further investigation put the loss to Triple-S as a result of the performance of these tests without medical necessity at a total of some \$13,700,00.00.

Response: Denied as drafted. TSS admits that it has alleged that, as a result of the contractual disputes concerning the billing of genetic tests, it lost an undisclosed amount of money. It is affirmatively alleged that this information is confidential, and that

Plaintiff's unnecessary disclosure violate her contractual obligations to abstain from disclosing confidential business information.

4.26 The amount paid by Triple-S for these unnecessary tests averaged between \$11,000.00 and \$16,000.00 per patient.

Response: Denied as drafted. TSS admits that it has alleged that, as a result of the contractual disputes concerning the billing of genetic tests, it paid undisclosed amounts of money. It is affirmatively alleged that this information is confidential, and that Plaintiff's unnecessary disclosure violate her contractual obligations to abstain from disclosing confidential business information.

4.27 The testing included federal employees and participants in the "Reforma," both of which implied the expenditure of federal funds, as well as self-insured private employers whose health plans are subject to auditing by the U.S. Department of Labor.

Response: Denied as drafted. It is admitted only that the Federal Employee Health Plan was federally funded.

4.28 One of the laboratories in Puerto Rico which had multi-million dollar billings for these genetic laboratory tests was defendant **Hato Rey Pathology**.

Response: Admitted.

4.29 The amount which Hato Rey Pathology billed for such services was approximately \$2.4 million dollars.

Response: Paragraph 4.29 is denied as drafted. It is affirmatively alleged that HRP billed TSS approximately \$2.4 million for genetic tests.

4.30 On or about July 8, 2016, Triple-S sent a letter to HRP Lab, Inc, attention Dr. Villamarzo, indicating that Triple-S had conducted an audit of the services HRP had provided and had determined that payment for certain services would be denied *inter alia* for the following reasons:

- a. The samples were not taken at an authorized laboratory;
- b. HRP had charged for services which had not been performed by HRP;
- c. HRP had accepted and processed medical orders which did not include the description of the specific tests required by the referring physician or the diagnosis related thereto; and
- d. The Triple-S provider agreement prohibits payment for services which arise as a consequence of solicitation by a third party.

Response: Paragraph 4.30 is denied as drafted: The July 8, 2016 letter speaks for itself.

TSS clarifies that, shortly thereafter, it withdrew its imputation regarding the alleged soliciting.

4.31 The letter, which was signed by Oscar Figueroa Armaiz, a Manager under Ms. Rodriguez's supervision, invited HRP to a meeting to be held on July 21, 2016, to discuss this matter.

Response: Admitted.

4.32 Thereafter, HRP requested that the meeting be rescheduled, and it was eventually held on August 19, 2016.

Response: Admitted.

4.33 Four attorneys represented Hato Rey Pathology in the August 19, 2016 meeting.

Response: TSS lacks sufficient information to form an opinion regarding their veracity.

It is affirmatively alleged that several attorneys represented HRP during the August 19, 2016 meeting.

4.34 During the meeting, Ms. Rodriguez read the letter which had been sent to Hato Rey Pathology, point by point, for discussion by those present.

Response: The allegations in paragraph 4.34 are not directed at Triple-S and thus require no response. If one were required, the allegations are denied for lack of sufficient information to form an opinion regarding their veracity.

4.35 During the meeting, an attorney for Hato Rey Pathology mentioned the fact that the Dr. Villamarzo's son, a member of the Board of HRP, had been an Assistant U.S. Attorney and that the imputations being made were quite serious and could implicate federal criminal charges.

Response: Paragraph 4.35 is not directed at Triple-S and thus requires no response. If one were required, the allegations are denied for lack of sufficient information to form an opinion regarding their veracity.

4.36 As part of her work as Director of the Office of Clinical Auditing and Special Investigations, Ms. Rodriguez would have contact with federal authorities, including regular bimonthly meetings and other contacts for case discussion and updates.

Response: TSS admits that, as part of her duties, Plaintiff had contact with federal authorities. The rest of the allegations are denied as drafted for being overly broad and ambiguous, and for lack of sufficient information to form an opinion regarding their veracity.

4.37 Approximately ten days after the meeting between Triple-S and Hato Rey Pathology described above, Ms. Rodriguez referred the matter of genetic testing without medical necessity to the Office of the Inspector General of the United States Department of Health and Human Services ("OIG/HHS" or "the Office of Inspector General") for further investigation.

Response: Denied as drafted. It is affirmatively alleged that, pursuant to her job duties, on August 29, 2016, TSS, through Plaintiff, sent a letter to the OIG with the following subject: "Referral: Genetic Tests Performed without Medical Necessity."

4.38 In an August 29th, 2016 letter to the Office of Inspector General, Ms. Rodriguez informed this federal watchdog entity of the results of the investigation conducting by the Triple-S Compliance Department.

Response: Denied as drafted. It is affirmatively alleged that, pursuant to her job duties and with TSS's full authorization, on August 29, 2016, TSS, through Plaintiff, sent a letter

to the OIG with the following subject: "Referral: Genetic Tests Performed without Medical Necessity."

4.39 Shortly thereafter, Ms. Rodriguez presented the same matter to the Civil Division of the Office of the U.S. Attorney in Puerto Rico.

Response: Denied as drafted. The PowerPoint presentation in question, which speaks for itself, was "provided" by Plaintiff and Oscar Figueroa, both as TSS's representatives and as part of their job functions.

4.40 The presentations which plaintiff provided to OIG/HHS and to the Office of the U.S. Attorney in Puerto Rico described the payment of some \$304,000.00 for tests billed by Hato Rey Pathology for federal employees pursuant to the aforementioned scheme.

Response: Denied as drafted. The PowerPoint presentation in question, which speaks for itself, was "provided" by Plaintiff and Oscar Figueroa, both as TSS's representatives and as part of their job functions.

4.41 Since considerable amounts paid pursuant to the aforementioned scheme covered federal employees, Triple-S also referred the matter to the Office of Personnel Management (OPM) of the federal government.

Response: TSS denies the plaintiff's characterization of "considerable amounts" and of the "scheme," but admits that, on August 3, 2016, TSS, through Elena M. Diaz Molina, informed OPM that TSS was "investigating a potential abuse related to the referral and processing of genetic tests."

4.42 On September 13, 2016, Triple-S Vice President Martiza Vazquez Garay, sent a letter to Dr. Guillermo Villamarzo of HRP, reaffirming the conclusion that HRP had engaged in the improper practices, and that the matter was being referred to the federal authorities.

Response: Denied as drafted: The September 13, 2016 letter speaks for itself. It is affirmatively alleged that TSS—not Plaintiff—determined to refer the findings of its audit to the appropriate “federal and state agencies.”

4.43 In the September 13, 2016 letter, Triple-S informed Dr. Villamarzo that HRP would have to pay back close to \$2.4 million dollars and that it had decided to cancel the contract between HRP and Triple-S.

Response: Admitted.

4.45 Eventually, HRP reached an agreement with Triple-S which involved the return of some \$2 million dollars.

Response: It is admitted that TSS and HRP reached a settlement to settle their claims extrajudicially, the amount of which is not public, and, by disclosing these amounts, the plaintiff violated the various confidentiality agreements that she signed with TSS.

4.46 As part of the settlement, Hato Rey Pathology would submit a corrective action plan to Triple-S, pursuant to which there would be ongoing monitoring and auditing of Hato Rey Pathology's compliance with certain requirements, including but not the employment of a Compliance Officer and training of employees on Fraud Waste and Abuse.

Response: It is admitted that TSS and HRP reached a settlement to settle their claims extrajudicially, the terms of which are not public, but which included the monitoring of HRP, and, by disclosing them, the plaintiff violated the various confidentiality agreements that she signed with TSS.

4.47 The monitoring was to be conducted by Triple-S's Office of Clinical Auditing and Special Investigations directed by the plaintiff, Rita Rodriguez Falciani.

Response: Denied as drafted. It is affirmatively alleged that the settlement agreement provides that the monitoring would be conducted by TSS's Compliance Department.

4.48 Prior to her discharge in early March of 2017, Ms. Rodriguez was never shown the corrective action plan, despite the fact that she was charged with continuing monitoring of the plan and made several requests therefore.

Response: Denied.

4.49 Shortly after the events described above, Dr. Guillermo Villamarzo of HRP, commented to an official of another Triple-S subsidiary that "one Rita Rodriguez" ("una tal Rita Rodriguez") had cancelled the Triple-S contract with Hato Rey Pathologies.

Response: TSS lacks knowledge or information to form a belief about the truth of Paragraph 4.49's allegations.

4.50 The above allegation was not true, since the cancellation had been proposed by another department within Triple-S.

Response: Denied as drafted. It is affirmatively alleged that it was the Audit and Investigation Unit that "proposed" the termination of HRP's contract with TSS.

4.51 On or about February 15, 2017, Hato Rey Pathology delivered a letter to attorney Carlos Rodriguez, Vice President of Legal Affairs, Chief Legal Counsel of Triple-S Management, and Secretary of the Board of Triple-S Management.

Response: It is admitted that Attorney Carlos L. Rodriguez received HRP's letter, but it is denied that it was "on or about February 15, 2017"

4.52 The letter was signed by Zaida "Cucusa" Hernandez and under her letterhead.

Response: Admitted.

4.53 Zaida "Cucusa" Hernandez is a former Speaker of the House of Representatives of Puerto Rico and a former Judge of the Puerto Rico Court of Appeals.

Response: Admitted.

4.54 On information and belief, Atty. Hernandez, who had not participated in the meeting of August 19, 2016, indicated that she was assuming the representation of Hato Rey Pathology, and was writing on behalf of her client.

Response: It is admitted only that Attorney Hernandez had been writing on behalf of her client, HRP. The rest of Paragraph 4.54's allegations are denied.

4.55 On information and belief, the letter affirmed that it been had the plaintiff, Rita Rodriguez-Falciani, who had written the July 8, 2016 letter including the imputations of possible "soliciting" on the part of HRP.

Response: Denied.

4.56 Ms. Rodriguez had not, in fact, written that letter, although she had read it aloud during the meeting of August 19, 2017.

Response: TSS lacks knowledge or information to form a belief about the truth of Paragraph 4.56's allegations. It is affirmatively alleged that Oscar Figueroa, a TSS employee, signed the referenced letter.

4.57 In the letter provided by HRP to Triple-S, atty. Hernandez also questioned Ms. Rodriguez's ethics as a licensed attorney and, on information and belief, stated that her client, Hato Rey Pathologies, was considering filing ethics charges against her.

Response: Admitted.

4.58 On information and belief, in the letter, HRP demanded that Ms. Rodriguez be removed from the monitoring of the settlement entered into by HRP and the ongoing investigation into the practices.

Response: TSS denies as drafted Paragraph 4.58, but admits that HRP, through Attorney Hernandez, requested that Rodriguez abstain from any involvement with HRP. To be sure, TSS was neither influenced nor pressured by HRP's or Attorney Hernandez's demand.

4.59 The letter was copied to the President of Triple-S Salud, Madeline Hernandez, and to Triple-S Salud Vice President, Dorelisse Juarbe.

Response: TSS lacks knowledge or information to form a belief about the truth of Paragraph 4.59's allegations, since it does not appear from the letter that the referenced TSS officers were copied, and it was delivered only to Attorney Carlos L. Rodriguez.

4.60 On information and belief, atty. Hernandez personally visited the offices of Triple-S to complain about Ms. Rodriguez.

Response: Denied as drafted. It is admitted that Attorney Hernandez visited TSS's offices to discuss HRP's and TSS's commercial relationship. It is denied, however, that the objective of the meeting was to complain about Plaintiff.

4.61 Ms. Rodriguez learned of the letter on February 15, 2017, when her supervisor at Triple-S, Ms. Jenny Cardenas, called plaintiff into her office and showed her the Cucusa Hernandez letter in her laptop.

Response: Admitted.

4.62 Ms. Cardenas indicated that she could not provide the plaintiff with a copy of the letter.

Response: Denied.

4.63 To this day, despite plaintiffs' requests for a copy of the letter delivered by atty. Hernandez to Triple-S, both Triple-S and atty. Hernandez have refused to provide her with a copy.

Response: It is admitted that Plaintiff, through counsel, requested that TSS provide her with this letter, but because she has no right over that letter and because that letter constitutes confidential and protected company information,

TSS declined her invitation. The rest of Paragraph 4.63 is denied for lack of knowledge or information to form a belief about the truth of its allegations.

4.64 After the letter was delivered to Triple-S, the plaintiff was, in effect, excluded from all work related to Hato Rey Pathology.

Response: Denied. It is affirmatively alleged that TSS complied—and continues to comply—with its obligations to refer any potential fraud to the pertinent federal authorities.

4.65 Although the time frame for evaluations in Triple-S usually culminates in February of each year, plaintiff was not evaluated in 2017 related to her performance in 2016.

Response: TSS denies Paragraph 4.65's allegations about the "time frame for evaluation," but admits the rest of it, adding that her employment was terminated in early 2017.

4.66 Despite the fact that plaintiff had met her goals, in the absence of an evaluation, she never received the bonus of up to \$20,000.00 to which she was entitled.

Response: TSS denies that Plaintiff met her goals, and that she was "entitled" to a "bonus," which was discretionary in any event. It admits, however, that she never received a "bonus" in 2017.

4.67 At all times, higher management at Triple-S, including General Counsel Carlos Rodriguez, to whom the February 15', 2017 letter by Zaida "Cucusa" Hernandez was addressed, knew that Ms. Rodriguez was in communication with the federal authorities regarding the situation of the unnecessary genetic testing in general, and HRP in particular.

Response: Denied as drafted. Although it is admitted that some TSS employees knew that Plaintiff, as TSS's representative, with TSS's approval, and as part of her duties, had communicated with federal authorities about the audit's finding, Plaintiff's

characterization of “at all times” is denied. And although TSS does not know the specific dates on which Plaintiff—as TSS’s representative, with TSS’s approval, and as part of her duties—began communicating with the federal authorities, TSS backed, encouraged, and supported Plaintiff’s efforts in clarifying its disputes, including her communications with the federal authorities.

4.68 On several occasions during the early months of 2017, plaintiff addressed with Triple-S General Counsel, Carlos Rodriguez, the need to report to the Office of Civil Rights (OCR) of the federal Department of Health and Human Services, the fact that the physicians involved in the genetic testing scheme had possibly violated protections for patient privacy (“PHI” or “Protected Health Information.”)

Response: Denied. It is affirmatively alleged that any issues concerning private health information have nothing to do with this action: Investigating mere regulatory compliance is not a protected activity under the FCA.

4.69 On information and belief, atty. Rodriguez took no action with respect to the matter addressed in the previous paragraph.

Response: Denied. It is affirmatively alleged that this matter is not only confidential, but also wholly irrelevant to this action, thus denoting bad faith.

4.70 On or about March 9, 2017, the plaintiff received a draft of a protocol prepared by the Triple-S Legal Office directed by attorney Carlos Rodriguez, pursuant to which Ms. Rodriguez would be prohibited from referring matters to the federal authorities without the Legal Department's specific authorization.

Response: Denied. It is affirmatively alleged that the draft of this protocol had nothing to do with any referral to any local or federal authority, but, rather, with the proper procedure for cancelling a provider’s contract with TSS. Indeed, an

important reason that compelled TSS to enact this protocol was that Plaintiff's investigations were neither well documented nor well supported.

4.71 On the following day, Friday, March 10, 2017, less than a month after Triple-S received the letter by Zaida "Cucusa" Hernandez, and attorney Hernandez visited Ms. Rodriguez-Falciani's employer, the plaintiff was summarily dismissed from her job.

Response: TSS denies that, on March 10, 2017, it terminated Plaintiff's employment, and that her termination occurred "less than a month" after Attorney Hernandez's visit and letter.

4.72 The pressure exercised by Hato Rey Pathologies and its attorney, the former Speaker of the House of Representatives, caused Triple-S to dismiss the plaintiff.

Response: Denied.

4.73 As a result of the events described herein, Ms. Rodriguez remained without income for a period of time and suffered other income-related losses.

Response: Paragraph 4.73 is not directed at TSS, which in any event lacks knowledge or information to form a belief about the truth of its allegations, but denies that any of the alleged damages were caused "as a result of the events described herein . . ." Upon information or belief, it is affirmatively alleged that Plaintiff is currently employed by a TSS competitor.

4.74 As a result of the events described herein, Ms. Rodriguez has suffered emotional and physical effects, including anxiety, depressiveness, sleeplessness, stimulus avoidance, weight gain, loss of interest in daily activities, worsening of her asthma condition, pains, and other manifestations of stress.

Response: Paragraph 4.74 is not directed at TSS, which in any event lacks knowledge or information to form a belief about the truth of its allegations, but denies that any of the alleged damages were caused “as a result of the events described herein”

4.75 These emotional conditions and the physical effects correlated thereto have been exacerbated by her ongoing concern about the potential effect of the unfounded allegations made by HPR that she had engaged in unethical conduct, imputations which are grave for a licensed attorney, These damages have been exacerbated by the refusal of both Triple-S and HRP to provide her with a copy of the February 15, 2017 letter, which she needs in order to defend herself against such allegations and imputations.

Response: Denied.

4.76 As a specific result of the letter submitted to Triple-S by Hato Rey Pathology, signed by the former Speaker of the House of Representatives, as described herein, as well as the refusal by Triple-S to provide her with a copy of the same, the plaintiff has suffered all of the aforementioned effects and fear and anxiety related to the possibility that she might be subjected to an ethics complaint, regardless of its being entirely unjustified.

Response: Denied.

(First Cause of Action- False Claims Act – Whistleblower Protection)

5.1 This cause of action is against defendant Triple-S.

Response: TSS denies that it violated the FCA’s whistleblower provision.

5.2 Plaintiff repeats and realleges each and every allegation contained in the previous paragraphs of this complaint as if fully alleged herein.

Response: TSS repeats and realleges each response or defense contained in the previous paragraphs of this answer as if fully alleged herein.

5.3 Plaintiff is a protected "whistleblower" under 31 U.S.C. § 3730(h), who came forward upon becoming aware of the genetic testing scheme described herein and took her concerns about the potential violation of federal law to the attention of the federal authorities.

Response: Paragraph 5.3 is not directed at TSS, which in any event denies that Plaintiff is a “protected ‘whistleblower.’”

5.4 At all times relevant hereto, plaintiff had a good faith belief that the defendant Hato Rey Pathology Associates, Inc. and three other laboratories in Puerto Rico engaged in practices involving the presentation of false claims for payment to the United States, in violation of the False Claims Act, 31 USC §3729 et seq.

Response: Paragraph 5.4 is not directed at TSS, which in any event lacks knowledge or information to form a belief about the truth of its allegations.

5.5 Plaintiff's good faith belief that these laboratories had violated the False Claims Act was based *inter alia* on the fact that the four laboratories had caused the submission of claims which these Triple-S providers knew to be false, for the coverage of genetic testing which was not medically indicated or performed by the providers.

Response: Paragraph 5.5 is not directed at TSS, which in any event lacks knowledge or information to form a belief about the truth of its allegations.

5.6 It was plaintiff's good faith belief that the four laboratories knowingly submitted these false claims to Triple-S, with knowledge that the claims would eventually be submitted for payment or reimbursement by the federal government.

Response: Paragraph 5.6 is not directed at TSS, which in any event lacks knowledge or information to form a belief about the truth of its allegations.

5.7 As set forth above, Ms. Rodriguez called the scheme related to the ordering and performing of unnecessary genetic testing by several laboratories in Puerto Rico, including Hato Rey Pathology, to the attention of Triple-S.

Response: Denied as Drafted. It is affirmatively alleged that, in her capacity as a TSS employee and on TSS's behalf, Plaintiff participated in the investigation or audit of potential violations of TSS's contracts with several laboratories concerning the billing of genetic testing.

5.8 As set forth above, plaintiff referred this matter to the federal authorities and provided them with lawful assistance in their investigations into these matters.

Response: Paragraph 5.8 is not directed at TSS, which in any event lacks knowledge or information to form a belief about the truth of its allegations. It is affirmatively alleged that it was TSS—not Plaintiff, who merely represented TSS—who referred the audit’s findings to the authorities, and that any involvement by Plaintiff was done in her capacity as a TSS employee, on TSS’s behalf, and at its behest.

5.9 Hato Rey Pathology knew that plaintiff Rita Rodriguez would be monitoring its ongoing compliance with the law and with the settlement it had reached with Triple-S, for the payment of some \$2 million dollars corresponding to these services that were not medically indicated and were not performed by HRP.

Response: Paragraph 5.9 is not directed at TSS, which in any event lacks knowledge or information to form a belief about the truth of its allegations.

5.10 Defendant HRP unduly pressured Triple-S to retaliate against the plaintiff for her having engaged in these lawful acts, and to remove her from any further involvement of the monitoring of this defendant's compliance with the Settlement Agreement reached with Triple-S as a result of the genetic testing scheme.

Response: Denied.

5.11 On or about February 15, 2017, I-IRP delivered a letter signed by Zaida "Cucusa" Hernandez, a well-known politician, to Triple-S's General Counsel, Carlos Rodriguez for the purpose of pressuring plaintiff's employer to take retaliatory action against her.

Response: Denied.

5.12 Shortly before Ms. Rodriguez was terminated, atty Hernandez visited the Triple-S offices, to complain about plaintiff and for the purpose of having Triple-S retaliate against her.

Response: TSS admits that, at some point before Plaintiff’s employment ended, Attorney Hernandez did visit its offices. The rest of the paragraph is denied.

5.13 Less than three weeks after Triple-S received the letter signed by atty. Hernandez, it dismissed Ms. Rodriguez from her employment, with no explanation.

Response: TSS admits that, chronologically speaking, the termination of plaintiff's employment postdated Attorney Hernandez's letter, and that her termination letter contained no explanation. It denies, however, that this was "less than three weeks after Triple-S received the letter"

5.14 The dismissal came several months after the plaintiff received a performance bonus, a salary increase and a promotion.

Response: Denied.

5.15 The dismissal was in retaliation for plaintiff's work in bringing to light the false claims submitted on behalf of Hato Rey Pathologies and other laboratories, and taking these concerns to the aforementioned regulatory, investigatory and prosecutorial federal entities, as set forth in more detail above.

Response: Denied.

5.16 Plaintiff was discharged from her position as a result of the pressure Hato Rey Pathology placed on her employer, Triple-S Salud, and HRP's demand that she be removed from any further monitoring activity with respect to these violations.

Response: Denied.

5.17 Plaintiff was discharged as a result of this pressure exerted by this Triple-S Salud provider, HRP, to demean her credibility and to prevent her from taking further action to bring these violations to the attention of the federal authorities.

Response: Denied.

5.18 The action by Triple-S Salud in terminating Ms. Rodriguez reasonably would dissuade other persons from bringing such violations to the attention of their employer.

Response: Denied.

5.19 The False Claims Act, 31 USC §3730(h) provides that "(1) Any employee shall be entitled to all relief necessary to make that employee whole, if that employee is ... discharged,... threatened, harassed, or in any other manner discriminated against in to terms and conditions of employment because of lawful acts done by the employee ... in furtherance of ... efforts to stop one or more violations of this subchapter."

Response: Because Paragraph 5.19 contains neither a claim nor an allegation against TSS, it requires no responsive pleading.

5.20 As a result of her abrupt and unjustified discharge, plaintiff suffered a loss of income which is estimated at this time at \$50,000.00 and is expected to increase in the future.

Response: TSS denies that her discharge was abrupt or unjustified, and it lacks knowledge or information to form a belief about the truth of Paragraph 5.20.

5.21 As a result of the discharge, plaintiff lost her entitlement to a bonus which would have reached \$20,000.00 on the basis of her excellent performance during the entire year of 2016 and should have been paid in approximately March of 2017.

Response: Paragraph 5.21 is denied. Plaintiff was not "entitled" to a bonus, and her performance during 2016 was not "excellent."

5.22 As a result of the discharge, plaintiff has suffered emotional and physical damages, which are currently calculated at \$250,000.00, and which are expected to increase in the future.

Response: TSS lacks knowledge or information to form a belief about the truth of the allegations contained in Paragraph 5.22.

5.23 Pursuant to 31 U.S.C. §3730(h)(2), plaintiff is entitled to the following relief: double back pay; interest on back pay; compensation for her emotional and physical damages; litigation costs and reasonable attorneys fees.

Response: Denied.

5.24 Pursuant to this statute, plaintiff is currently entitled to monetary compensation of at least the following amounts, with the amounts expected to increase in the future:

- a. \$50,000.00 for back pay;
- b. \$50,000.00 for a doubling of back pay;
- c. \$ 20,000.00 for the bonus;
- d. \$ 20,000.00 for the doubling of the bonus;
- e. \$ 3,500.00 for interest on back pay;
- f. \$ 250,000.00 for compensatory damages

Response: Denied.

5.25 Plaintiff is also entitled to reinstatement to her position with the same seniority status that she would have had were it not for the retaliatory discharge.

Response: Denied.

5.26 In the event that reinstatement is not feasible, plaintiff would be entitled to a front pay equivalent.

Response: Denied.

5.27 Plaintiff is also entitled to reasonable attorneys' fees and litigation expenses.

Response: Denied.

(Second Cause of Action Law 115)

6.1 This cause of action is against defendant Triple-S.

Response: TSS denies that it violated Law 115.

6.2 Plaintiff repeats and realleges each and every allegation contained in the previous paragraphs of this complaint as if fully alleged herein.

Response: TSS repeats and realleges each response or defense contained in the previous paragraphs of this answer as if fully alleged herein.

6.3 Plaintiff was discharged in violation of Puerto Rico Law 115, 29 L.P.R.A, 194 *et seq.* which prevents employers from discharging employees in retaliation for having provided or attempting to provide information before administrative forums (U.S. Attorney's Office, OW-HHS and OPM) and in internal forums established in Triple-S regarding possible violations of the False Claims Act.

Response: Denied. It is affirmatively alleged that Plaintiff was terminated because of the cumulative weight of (1) insubordination; (2) bypassing her supervisor, Jenny Cárdenas; (3) failure to follow or accept instructions and company protocols, particularly those concerning the cancellation of providers; and (4) continuously disseminating confidential information in violation of express orders, company norms, and previous warnings. She was also fired because she had an intransigent, recalcitrant, and conflictive personality, so the operational areas avoided working with her. Plaintiff, in short, was almost impossible to get along and communicate with.

6.4 As a result of her abrupt and unjustified discharge, plaintiff suffered a loss of income which is estimated at this time at \$50,000.00 and is expected to increase in the future.

Response: TSS denies that her discharge was abrupt or unjustified, and it lacks knowledge or information to form a belief about the truth of the rest of Paragraph 6.4

6.5 As a result of the discharge, plaintiff lost her entitlement to a bonus which would have reached \$20,000.00 on the basis of her excellent performance during the entire year of 2016 and should have been paid in approximately March of 2017.

Response: Denied.

6.6 As a result of the discharge, plaintiff has suffered emotional and physical damages, which are currently calculated at \$250,000.00, and which are expected to increase in the future.

Response: TSS denies that the plaintiff suffered any damages.

6.7 Pursuant to Law 115, plaintiff is entitled to a doubling of all of the above amounts.

Response: Denied—the plaintiff is entitled to nothing. TSS affirmatively alleges that Puerto Rico law no longer mandates such doubling of damages.

6.8 On this cause of action, plaintiff is currently entitled to monetary compensation in least the following amounts, with the amounts expected to increase in the future:

- a. \$50,000.00 for back pay;
- b. \$50,000.00 for a doubling of back pay;
- c. \$ 20,000 for the bonus;
- d. \$ 20,000 for the doubling of the bonus;
- e. \$ 250,000 for compensatory damages;
- f. \$250,000 for the doubling of the compensatory damages.

Response: Denied

6.9 Plaintiff is also entitled to reinstatement to her position with the same seniority status that she would have had were it not for the retaliatory discharge.

Response: Denied

6.10 In the event that reinstatement is not feasible, plaintiff would be entitled to a front pay equivalent.

Response: Denied

6.11 Plaintiff is also entitled to reasonable attorneys' fees and litigation expenses.

Response: Denied

6.12 Pursuant to 31 U.S.C. §3730(h)(2), plaintiff is entitled to the following relief: double back pay; interest on back pay; compensation for her emotional and physical damages; litigation costs and reasonable attorneys fees.

Response: Denied.

(Third Cause of Action – Unjust Dismissal (Mesada))

7.1 *This cause of action is against defendant Triple-S Salud.*

Response: TSS denies that it wrongfully discharged the plaintiff, or that she is otherwise entitled to a *mesada*.

7.2 This cause of action is in the alternative with respect to the First and Second Causes of Action set forth above.

Response: Because this allegation is not asserted against TSS, no response is required.

7.3 Plaintiff repeats and realleges each and every allegation contained in the previous paragraphs of this complaint as if fully alleged herein.

Response: TSS repeats and realleges each response or defense contained in the previous paragraphs of this answer as if fully alleged herein.

7.4 Plaintiff's dismissal from Triple-S was unjust and unwarranted.

Response: Denied. It is affirmatively alleged that Plaintiff was terminated because of the cumulative weight of (1) insubordination; (2) bypassing her supervisor, Jenny Cárdenas; (3) failure to follow or accept instructions and company protocols, particularly those concerning the cancellation of providers; and (4) continuously disseminating confidential information in violation of express orders, company norms, and previous warnings. She was also fired because she had an intransigent, recalcitrant, and conflictive personality, so the operational areas avoided working with her. Plaintiff, in short, was almost impossible to get along and communicate with.

7.5 Puerto Rico Law 80, 29 LPRA §185a *et seq.*, provides for payment of statutory separation pay ("mesada") for unjust termination, pursuant to a statutory formula, based on compensation and years of service.

Response: Because this paragraph contains neither a claim nor an allegation against TSS, it need not respond to it.

7.6 Under Puerto Rico Law, the employer has the burden of proof to demonstrate "good cause" for the dismissal of an employee.

Response: Because this paragraph contains neither a claim nor an allegation against TSS, it need not respond to it. TSS affirmatively alleges that Puerto Rico law no longer imposes such burden of proof on an employer.

7.7 Triple-S cannot meet its burden of demonstrating that there was "just cause" for the termination of plaintiff Rita Rodriguez-Falciani.

Response: Denied.

7.8 For an employee with more than nineteen (19) years of service, the statutory formula is six months of compensation in addition to three weeks for every year of service.

Response: Because this paragraph contains neither a claim nor an allegation against TSS, it need not respond to it.

7.9 Plaintiff Rita Rodriguez Falciani had a salary of \$86,000.00 and was promised a bonus of up to \$20,000.00.

Response: TSS admits that the plaintiff's most recent salary was \$86,000 but denies that it "promised" her "a bonus of up to \$20,000.00."

7.10 It is estimated that her total compensation package was in the order of \$100,000.00 per annum.

Response: Denied.

7.11 Pursuant to the statutory formula set forth above, the "mesada" to which Ms. Rodriguez is entitled amounts to \$159,615.38 (\$50,000.00 corresponding to six months of compensation, plus 57 weeks at the rate of \$1,923.08, totaling \$109,615.38).

Response: Denied.

(Fourth Cause of Action- Tortious Interference with Contract)

8.1 This cause of action is against both defendants, Triple S-Salud and Hato Rey Pathology Associates, Inc.

Response: TSS denies that the plaintiff's purported employment contract was interfered with.

8.2 Plaintiff repeats and realleges each and every allegation contained in the previous paragraphs of this complaint as if fully alleged herein.

Response: TSS repeats and realleges each response or defense contained in the previous paragraphs of this answer as if fully alleged herein.

8.3 Article 1802 of the Civil Code of Puerto Rico provides for liability for those who, through fault or negligence, cause damage to another. *31 LPRA §5141*.

Response: Because this paragraph contains neither a claim nor an allegation against TSS, it need not respond to it.

8.4 Hato Rey Pathology acted with fault by pressuring Triple-S Salud to take retaliatory action against Ms. Rodriguez.

Response: Because this allegation is not directed at TSS, it does not require a response.

If one were required, TSS denies that HRP pressured it "to take retaliatory action against Ms. Rodriguez."

8.5 Ms. Rodriguez had a contractual relationship with Triple-S Salud.

Response: Admitted.

8.6 Hato Rey Pathology knew of the contractual relationship.

Response: Because this allegation is not directed at TSS, it does not require a response.

8.7 By taking the actions described herein, including the use of a well-known local politician to secure retaliatory action against Ms. Rodriguez, Hato Rey Pathology interfered in a tortious manner with the aforementioned contractual relationship.

Response: Denied.

8.8 Hato Rey Pathology acted with the precise intention to interfere with the aforementioned contractual relationship.

Response: Because this allegation is not directed at TSS, it does not require a response.

If one were required, TSS denies that HRP interfered with the plaintiff's employment contract.

8.9 Through its actions, Hato Rey Pathology provoked or contributed to the decision by Triple-S to terminate its contractual relationship with the plaintiff.

Response: Denied.

8.10 Triple-S Salud and Hato Rey Pathology are joint and severally liable for the damage caused by the actions described in this cause of action.

Response: Denied.

(Fifth Cause of Action- General Tort Law of Puerto Rico and Libel)

9.1 This cause of action is against defendant Hato Rey Pathology Associates, Inc.

Response: Because this allegation is not directed at TSS, it does not require a response.

9.2 Plaintiff repeats and realleges each and every allegation contained in the previous paragraphs of this complaint as if fully alleged herein.

Response: TSS repeats and realleges each response or defense contained in the previous paragraphs of this answer as if fully alleged herein.

9.3 Article 1802 of the Civil Code of Puerto Rico provides for liability for those who, through fault or negligence, cause damage to another. 31 LPRA §5141.

Response: Because Paragraph 9.3 contains neither a claim nor an allegation against TSS, it need not respond to it.

9.4 Pursuant to the law of Puerto Rico, a person or entity which publishes false information about another is liable for the payment of damages. 32 LPRA §3141.

Response: Because Paragraph 9.4 contains neither a claim nor an allegation against TSS, it need not respond to it.

9.5 FIRP's letter signed by Zaida ("Cucusa") Hernandez included false assertions about Ms. Rodriguez and false imputations of ethical violations on her part.

Response: Because this allegation is not directed at TSS, it does not require a response.

If one were required, TSS lacks knowledge or information to form a belief about the truth of the allegation contained in Paragraph 9.5

9.6 These assertions were made negligently, recklessly, with deliberate indifference to the truth, with the intent to do harm and/or with malice.

Response: Because this allegation is not directed at TSS, it does not require a response.

If one were required, TSS lacks knowledge or information to form a belief about the truth of the allegation contained in Paragraph 9.6.

9.7 The actions described in this cause of action caused emotional damages to the plaintiff which are estimated to be in excess of \$ 100,000.00.

Response: Because neither this claim nor this allegation is directed at TSS, Paragraph 9.7 does not require a response.

(Sixth Cause of Action - Attorneys Fees (Law 402))

10.1 This cause of action is against Triple S-Salud.

Response: TSS denies that the plaintiff is entitled to any attorney's fees.

10.2 Plaintiff repeats and realleges each and every allegation contained in the previous paragraphs of this complaint as if fully alleged herein.

Response: TSS repeats and realleges each response or defense contained in the previous paragraphs of this answer as if fully alleged herein.

10.3 Independently of the specific statutes affording the plaintiff the right to attorneys' fees against this defendant, this remedy is mandated by Puerto Rico Law 402 of May 12, 1950, 32 *LPRA* 3114 *et seq.*

Response: Denied.

10.4 Pursuant to Law 402 and the applicable case law, plaintiff's attorneys are prohibited from charging any fees to Ms. Rodriguez with respect to the claims against her former employer, Triple-S Salud.

Response: Because this allegation is not directed at TSS, it does not require a response.

10.5 Law 402 mandates that if plaintiff prevails on her claims against Triple-S, all such fees for plaintiff's counsel must be paid for by her former employer.

Response: Denied.

10.6 Plaintiff is entitled to payment of fees of no less than 25%, independent of and in addition to the amounts to be recovered by the plaintiffs, an amount which can be increased pursuant to the lodestar method.

Response: Denied.

AFFIRMATIVE DEFENSES

1. The complaint fails to state a claim upon which relief can be granted.

2. TSS had legitimate, non-retaliatory reasons for terminating Plaintiff's employment.
3. Plaintiff lacks any evidence to show pretext.
4. None of the complaint's claims state a prima-facie case.
5. Plaintiff has maliciously and unnecessarily breached her confidentiality obligations and other provisions of her employment contracts with TSS.
6. Although Plaintiff had to "maintain composure in highly stressful or adverse situations," she violated this company requirement.
7. Plaintiff did not "show commitment with compliance of [TSS's] policies and procedures."
8. Plaintiff failed to mitigate her alleged damages.
9. TSS acted in good faith and in strict conformity with all its obligations, contractual or otherwise.
10. TSS's actions did not cause the damages alleged in the complaint.
11. Plaintiff's alleged damages are speculative, exaggerated, unforeseeable, nonexistent, and in duplicative.
12. Plaintiff's alleged damages were caused by her own conduct.
13. At all relevant times, TSS diligently complied with all its duties under state and federal laws.

14. Because TSS's contractual relationship with Plaintiff was indefinite, it could be ended at any time.
15. Plaintiff's employment with TSS was not for a fixed period.
16. Plaintiff did not engage in conduct from which a factfinder could reasonably conclude that TSS could have feared that Plaintiff was contemplating filing a qui-tam action against TSS or reporting TSS to the government for fraud.
17. The termination of Plaintiff's employment would have occurred even if Plaintiff had not engaged in FCA-protected activity (assuming for argument's sake that she did engage in protected activity).
18. No temporal proximity exists between the alleged protected conduct and the alleged adverse employment action.
19. Plaintiff engaged in malicious and reckless acts in suing TSS here.
20. The Puerto Rico Labor Transformation and Flexibility Act of 2017 applies here.
21. Assuming for argument's sake that her employment was wrongfully terminated, Law 80 is the exclusive remedy that would be available to Plaintiff.
22. Assumption of risk,
23. Contributory negligence.
24. Estoppel.
25. Insubordination.
26. Illegality.

27. Laches.

28. Res judicata.

29. Statute of limitations.

30. Waiver.

31. TSS reserves the right to add or strike affirmative defenses, depending on the results of the discovery that will take place in the case.

WHEREFORE, TSS respectfully requests that this Court:

1. Enter judgment on TSS's behalf on each of the counts in Plaintiff's complaint;
2. Dismiss Plaintiff's complaint with prejudice;
3. Award TSS costs and attorney's fees, and;
4. Grant TSS such other and further relief as this Court deems fair and equitable.

COUNTERCLAIM

Defendant-Counterclaimant TSS hereby asserts the following counterclaim against Plaintiff-Counterdefendant Rita Rodriguez Falciani:

1. TSS seeks damages, costs, and attorney's fees for Rita Rodriguez Falciani's unlawful disclosure and misappropriation of confidential or proprietary information, which breached multiple employment agreements, company policies and manuals, and confidentiality agreements—all of which were valid and enforceable, and which were a *sine qua non* condition of Plaintiff's professional relationship with TSS.

2. TSS also seeks declaratory judgment and injunctive relief to prevent Rodriguez Falciani from the further unlawful dissemination of TSS's private and confidential business information.
3. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction to entertain this compulsory counterclaim, as it arises out of the same nucleus of operative facts as Rodriguez Falciani's FCA claim, which in turn gives this Court original jurisdiction over this federal action.
4. During her professional relationship with TSS, including the 1998–2011 period (her time as an independent contractor), Rodriguez Falciani signed several employment agreements, employment manuals, and confidentiality agreements that define confidential or private business information—including TSS's intellectual property—and prohibit its use or dissemination.
5. In July 2011, she signed an "Agreement of Intellectual Property" and a "Manual of Corporate Policies," "certifying" that a violation of these agreements "would entail the application of disciplinary measures that could include termination of the employment and even legal actions against me [Rita Rodriguez]."
6. That same day, July 15, 2016, Rodriguez Falciani signed a "Confidentiality and Security Agreement," which, among other things, she acknowledged that, once she "departs TSS, any use or dissemination of confidential information is

deauthorized, and TSS may take legal and administrative actions to protect its rights over this [protected, private, and confidential] information.”

7. Rodriguez Falciani’s job description, which she signed on January 16, 2017, makes clear that she had to comply with the following company requirements: (1) “Maintain confidential the protected information [to] which [she] might have access as part of the job.”
8. If that were not enough, on March 17, 2017, the date of her employment’s termination, Rodriguez Falciani signed a document where she agreed not to disclose trade secrets, programming information, internal and external work, internal procedures or manuals to which she had access during her employment with TSS.
9. In that same March 17, 2017 document, Rodriguez Falciani agreed that, following her separation from TSS, she would not disclose—for any reason—confidential information whose knowledge she obtained during her employment with TSS.
10. Upon information and belief, however, the plaintiff forwarded—at different times—several confidential emails from her TSS email account to her personal email account.
11. All these emails in turn contained documents that were protected by the attorney-client privilege or contained trade secrets, the public disclosure of which could cause irreparable business harm.

12. One of those emails included TSS's settlement agreement with HRP, and other that contain confidential business information.
13. The plaintiff breached the terms of her employment agreements when she unlawfully and without authorization forwarded documents to her personal email.
14. By forwarding these emails with confidential business information, the plaintiff misappropriated confidential business information.
15. Rodriguez Falciani breached the terms of her employment agreements when she disclosed in her complaint the terms of HRP's and TSS's settlement agreement.
16. Rodriguez Falciani breached the terms of her employment agreements when she disclosed in her complaint confidential information, and when she impermissibly forwarded TSS's intellectual property to her email.
17. She also breached all the above employment agreements and signed documents when she publicly and unnecessarily disclosed confidential and private communications.
18. To make matters worse, these unlawful disclosures sought to harm TSS, as they had nothing to do with the FCA, but, rather, potential privacy and security matters that were being dealt with internally.
19. Rodriguez Falciani has a history of disregarding the importance of private and confidential information: On November 14, 2014, for example, she was

reprimanded for violating the company's confidentiality policy by sending non-relevant, private health information to a regulatory agency.

20. Upon information or belief, she was also warned or reprimanded for sharing TSS confidential information as part of her teaching or extracurricular activities.
21. Rodriguez Falciani's misappropriation and unlawful disclosures of confidential and business information have harmed and damaged—and continue to harm and damage—TSS.
22. Less than a week after she filed her complaint, on February 12, 2018, noticel.com, an online newspaper, published an article on this federal action, thereby republishing the same confidential and secret information contained in her complaint.
23. Upon information or good-faith belief, Rodriguez Falciani directly or indirectly alerted the press about this case.
24. That same date, February 12, 2018, TSS received a request by the Puerto Rico Health Insurance Administration (ASES, for its Spanish acronym) demanding that it immediately produce a plethora of the information and documents that Rodriguez Falciani referenced in her complaint.
25. The complaint's unnecessary, negligent, and willful disclosures of confidential or private business information, including the disclosure of TSS's intellectual

property, as amplified by the subsequent newspaper article has damaged TSS's relationship with several commercial clients.

26. Indeed, one of TSS's largest clients voiced serious concern to TSS about this matter.

27. Rodriguez Falciani's misappropriation and dissemination of private and confidential information has damaged TSS's reputation.

28. Because of Rodriguez Falciani's unlawful disclosures and subsequent Notice publication, TSS has had to contract external legal resources, as well as incurring additional costs on an external public relations contractor.

29. Because TSS has been damaged as a direct and proximate result of the plaintiff's breach, it respectfully requests that this Court:

- a. Enter injunctive relief enjoining Rodriguez Falciani from using or disseminating any private and confidential agreement, as described in the documents that she signed;
- b. Enter a declaration that Rodriguez Falciani unlawfully disclosed and misappropriated TSS's confidential and secret business information and documents;
- c. Enter judgment for TSS and against Rodriguez Falciani for breach of contract;
- d. Award TSS its damages, attorney's fees and costs arising out of this matter; and
- e. Award TSS such other relief as this Court deems just and appropriate.

Dated: April 20, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on this day, the foregoing was electronically filed with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

By: /s/ **Arturo V. Bauermeister**