

# United States Court of Appeals

## For the First Circuit

Nos. 11-1089  
11-1091

JUAN C. PAGÁN-COLÓN; ADA I. RENTA-BONILLA;  
CONJUGAL PARTNERSHIP PAGÁN-RENTA,

Plaintiffs-Appellees/Cross-Appellants,

v.

WALGREENS OF SAN PATRICIO, INC.,

Defendant-Appellant/Cross-Appellee.

---

Before  
Lynch, Chief Judge,  
Torruella and Lipez, Circuit Judges.

---

**JUDGMENT**  
**Entered: October 8, 2014**

---

On September 4, 2012, we issued an opinion in this case affirming the district court's judgment in all respects, save its decision to grant summary judgment for defendant Walgreens of San Patricio, Inc. on plaintiff Ada I. Renta-Bonilla's Article 1802 claim. We certified the following questions to the Puerto Rico Supreme Court with respect to that claim:

1) When an employee's Article 1802 claim is barred because there is a specific federal statutory employment claim, here the FMLA, does the spouse of the employee nevertheless have a cause of action for emotional distress damages under Article 1802 when such relief is not available to the employee under federal law? 2) Does the answer to this question vary depending upon the nature of the underlying federal employment claim? If so, what are the factors to be considered?

Pagán-Colón v. Walgreens of San Patricio, Inc., 697 F.3d 1, 19 (1st Cir. 2012). On February 14,

2014, the Puerto Rico Supreme Court responded with the following answer to the first question:<sup>1</sup>

When a claim made by an employee under Puerto Rico Civil Code sec. 1802 (31 L.P.R.A. § 5141) is not actionable because it is barred by a federal statute (specifically the FMLA), neither does the employee's spouse have a cause of action for emotional distress damages under sec. 1802.

SLG Pagán-Renta v. Walgreens, CT-2012-16, slip op. at 9 (P.R. Feb. 14, 2014) (official translation).

The district court held that Renta is unable to recover for emotional distress damages under Article 1802 because her husband Juan C. Pagán-Colón cannot recover damages for emotional distress under the FMLA. See Pagán-Colón, 697 F.3d at 16. Following the guidance of the Puerto Rico Supreme Court, we **affirm**.

By the Court:  
/s/ Margaret Carter, Clerk

cc: Mr. Acevedo-Cruz, Mr. Martinez-Luciano, Mr. Usera & Mr. Villavicenio-Camacho.

---

<sup>1</sup> The Puerto Rico Supreme Court held that the second question was not certifiable because it was "speculative." Walgreens, CT-2012-16, slip op. at 1 n.1 (official translation).