

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

JONATHAN HERNÁNDEZ-ZORRILLA,

Plaintiff,

V.

Ricardo Rossello-Nevarés, Governor of the Commonwealth of Puerto Rico in his official and personal capacity as the Commander-in-Chief of the Puerto Rico Police Bureau (PRPB); Hector M. Pesquera in his personal and official capacity as the Secretary of the Public Safety Department of the Commonwealth of Puerto Rico; Henry Escalera in his personal and official capacity as the Commissioner of the PRPB; Reinaldo Bermúdez, in his personal and official capacity as the Auxiliary Commissioner of the PRPB; Luis Colon, in his personal and official capacity as Incident Commander of the PRPB, Incident Commander #1; Lieutenant Colonel Juan Caceres-Mendez, in his personal and official capacity as the Chief Commander of San Juan of the PRPB and Incident Commander #2; Inspector Luis Hernandez, in his personal and official capacity as the Director of Tactical Operations Unit (Riot Squad) and/or SWAT Team at the PRPB; Officer John Doe (1), in his personal and official capacity as a police officer assigned to the PRPB's SWAT Team or Tactical Operations Unit in the San Juan area; Officer John Doe (2), in his personal and official capacity as a police officer assigned to the PRPD's SWAT Team or Tactical Operations in San Juan area; Officers John Doe (3) (4) (5) (6), in their personal and official capacity as police officers and/or officers or supervisors

Civil No. 19-1397 (CCC)

Civil Rights Violation, Declaratory
and Injunctive Relief, Compensatory
and Punitive Damages
42 USC §§1983; 1988

Plaintiff Demands Trial by Jury

assigned to the PRPB's SWAT Team or Tactical Operations; the Conjugal Partnerships comprised by each Defendant and their respective spouses A through M; and the Commonwealth of Puerto Rico through the Department of Justice represented by Secretary of Justice Wanda Vazquez-Garced.

Defendants.

FIRST AMENDED COMPLAINT

TO THE HONORABLE COURT:

Comes now Plaintiff Jonathan Hernandez-Zorrilla, through the undersigned attorneys, and very respectfully states, alleges and prays as follows:

PRELIMINARY STATEMENT

(Suit for injunctive relief for violation of constitutional rights)

1. This action for injunctive relief is based on the violation of Plaintiff's federal rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution. This action concerns the Puerto Rico Police Bureau's (A/K/A Puerto Rico Police Department) use of excessive force against Plaintiff and other demonstrators in violation of their First Amendment right to freedom of speech and expression, as well as their Fourth Amendment right to be free from unreasonable searches and seizures.

2. For decades, the Puerto Rico Police Bureau (PRPB) has routinely deployed Tactical Operations Units (colloquially known as the "*Fuerza de Choque*" or "Riot Squad") and other units that use tear gas, pepper spray, rubber bullets, painful pressure point techniques, batons, and other forms of intimidation to control organizations, groups, and other individuals while they exercise their constitutional rights pursuant to the First Amendment to the United

States Constitution.

3. Plaintiff seeks Declaratory Judgment and injunctive relief, pursuant to Section 1983 of the Civil Rights Act of 1964 (“Section 1983”).

4. Officers under the direction of, or with the knowledge and acquiescence of Defendants, Commissioner of the PRPB HENRY ESCALERA, Secretary of the Security Department HECTOR PESQUERA, and PRPB, in the instant case employed unnecessary and excessive force against Plaintiff, and other protestors that were engaged in entirely lawful demonstrations. PRPB’s unreasonable force was used in this case against Plaintiff and other demonstrators engaged in lawful speech involving matters of public interest, such as the social disruption created by the *Puerto Rico Oversight, Management and Economic Stability Act* (PROMESA) and the Control Fiscal Board it created.

5. Defendants HECTOR PESQUERA and HENRY ESCALERA, under the authority of the Governor of Puerto Rico RICARDO ROSSELLO, are responsible for implementing and overseeing the PRPB’s policies and practices for engaging demonstrators. To the extent that these practices are pursuant to informal policy of the PRPB, Defendants PESQUERA and ESCALERA are likewise responsible for their adoption and/or implementation. To the extent the practices are widespread practices, Defendants ROSSELLO, PESQUERA and ESCALERA have not only ignored the practices, but also, upon information and belief, encouraged them as the Commander-in-Chief of the PRPB, Secretary of the Security Department and the Commissioner of the PRPB, respectively.

6. Plaintiff seeks Declaratory Judgment as to the federal rights herein alleged, and preliminary and permanent injunctive relief requiring that Defendants ROSSELLO, PESQUERA and ESCALERA implement and comply with the Police Reform Agreement signed in June 17,

2013 by the Commonwealth of Puerto Rico and the United States Department of Justice. In order to comply, the PRPB should meet U.S. constitutional standards of use of force; train PRPB officers to follow the “Demonstration and Use of Force Policy” and the “Crowd Control Policies” created for an effective constitutional policing; and provide adequate supervision and enforcement to be sure that these policies are followed; finally, to take efficient disciplinary actions against those officers that violate federal rights, pursuant to the United States Constitution.

7. Likewise, Plaintiff seeks a declaratory judgment that the actions taken by the PRPB and its officers and supervisors are unconstitutional and in violation of the First, Fourth, and Fourteenth Amendments to the United States Constitution, and a preliminary and permanent injunction prohibiting Defendants from continuing to incur in this conduct, in violation of protestors’ federally guaranteed rights.

I. NATURE OF THE ACTION AND JURISDICTION

1.1 This is a civil action brought under the First, Fourth and Fourteenth Amendments to the U.S. Constitution, under 42 U.S.C. § 1983 and 1988 for declaratory and equitable relief, monetary damages and attorney’s fees, for unlawful, abusive and retaliatory actions taken against Plaintiff by PRPB, its officers and supervisors.

1.2 This action is also brought under Article II, Sections 1, 3, 4 and 10 of the Constitution of the Commonwealth of Puerto Rico, and Article 1802 and 1803 of the Puerto Rico Civil Code.

1.3 Specifically, as set forth in greater detail below, Plaintiff has suffered enormous physical and mental harm and distress as a direct consequence of Defendants’ abusive and unlawful behavior.

1.4 This Honorable Court has jurisdiction over the federal constitutional and statutory claims set forth in this complaint pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343 (a) (3) (civil rights).

1.5 This Honorable Court is also authorized to order declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure.

1.6 This Honorable Court may exercise supplemental jurisdiction over Plaintiff's Commonwealth of Puerto Rico statutory and constitutional claims pursuant to 28 U.S.C. § 1367 (a) because they arise from the same operative facts as Plaintiff's federal claims.

1.7 Venue properly lies before this Court under 28 U.S.C. § 1391(b). Plaintiff and Defendants are residents of the Commonwealth of Puerto Rico and the acts and/or omissions giving rise to Plaintiff's claims occurred in this district.

Plaintiff demands trial by jury as to all counts and requests for relief set forth in the instant complaint.

II. THE PARTIES

A. Plaintiff

2.1 Plaintiff, Jonathan Hernandez-Zorrilla is a 28 years old street vendor, a citizen of the United States and resident of Villa Palmeras, San Juan, Puerto Rico.

B. Defendants

2.2 Defendant RICARDO ROSSELLO-NEVARES is the Governor of the Commonwealth of Puerto Rico and the Commander-in-Chief of the PRPB. During all times relevant to this complaint, Defendant acted under color of law and with disregard for Plaintiff's federal rights, and is responsible for the actions and policies that led to the events described

in this complaint. Defendant is being sued in his official and individual capacity.

2.3 Defendant, HECTOR M. PESQUERA is the Secretary of the Public Safety Department (PSD) of the Commonwealth of Puerto Rico, (herein referred as Pesquera). During all times relevant to this complaint, Defendant acted under color of law, and was responsible for the actions and policies that led to the events described in this complaint. Defendant is being sued in his official and individual capacity, for the conduct, misconduct, lack of training and supervision, negligence and damages herein asserted and claimed.

2.4 Defendant HENRY ESCALERA, current Commissioner of the PRPB, was the Interim Commissioner of the Puerto Rico Police Bureau (PRPB) who at all times relevant to this complaint, acted under color of law and is responsible for the actions and policies that led to the events described in this complaint. Defendant is being sued in his official and individual capacity, for the conduct, misconduct, lack of training and supervision, negligence and damages herein asserted and claimed. ESCALERA accepted direct participation in the chain of events not specified in the “Operational Plan” of the PRPB that led to what has been described as an ambush of protesters, including Plaintiff, in violation of Plaintiff’s constitutional rights under the First and Fourth Amendments to the U.S. Constitution.

2.5 Defendant REINALDO BERMUDEZ, Auxiliary Commissioner of the PRPB, who at all times relevant to this complaint, acted under color of law and is responsible for the actions and policies that led to the events described in this complaint. Defendant is being sued in his official and individual capacity, for the conduct, misconduct, lack of training and supervision, negligence and damages herein asserted and claimed. Upon information and belief, BERMUDEZ had participation in the chain of events not specified in the “Operational Plan” of the PRPB that led to the described ambush of protesters, including Plaintiff, in violation of

Plaintiff's constitutional rights under the First and Fourth Amendments to the U.S. Constitution.

2.6 Defendant LUIS COLON, was by May 1, 2018, one of the Incident Commanders of the PRPB. Defendant acted under color of law, and is being sued in his individual and official capacity for the conduct, misconduct, lack of training and supervision, negligence and damages herein asserted and claimed. (Incident Commander # 1)

2.7 Defendant Lieutenant Colonel JUAN A. CACERES-MENDEZ (Incident Commander # 2) was by May 1, 2018, the Commander of the San Juan Area of the PRPB. Defendant acted under color of law, and is being sued in his individual and official capacity for the conduct, misconduct, lack of training and supervision, negligence and damages herein asserted and claimed.

2.8 Defendant Inspector LUIS HERNANDEZ, upon information and belief, was the Director of Tactical Operations and/or SWAT (Incident Commander # 3). Defendant acted under color of law to violate Plaintiff's federal rights; as such he held a supervisory position, and was responsible for the actions and policies that led to the events described in this complaint. He is being sued in his individual and official capacity for the unlawful actions taken against Plaintiff under his command by unknown officers who belong to the SWAT Team and/or Tactical Operation Units during the events of May 1, 2018.

2.9 As Secretary of the Public Safety Department of the Commonwealth of Puerto Rico (PSD), HECTOR PESQUERA, and Governor RICARDO ROSSELLO, are the ultimate authority in the elaboration and execution of PRPB's policies. As such, they execute the laws and regulations of the Commonwealth of Puerto Rico pertaining to law enforcement, and are responsible for the discipline, training and supervision of all the employees and officers of the PRPB. They are also responsible for, making and executing, by themselves, or

through the department's officers and employees, policy decisions regarding training, supervision, discipline and law enforcement practices to be employed by the PRPB.

2.10 As Commissioner of the Puerto Rico Police Bureau (PRPB), defendant ESCALERA is, jointly with PESQUERA, the ultimate authority in the elaboration and execution of PRPB's policies. As such, he executes the laws and regulations of the Commonwealth of Puerto Rico pertaining to law enforcement, and is responsible for the discipline, training and supervision of all the employees and officers of the PRPB. He is also responsible for, making and executing policy decisions regarding training, supervision, discipline and law enforcement practices to be employed by the PRPB.

2.11 As Auxiliary Commissioner of the Puerto Rico Police Bureau (PRPB), defendant BERMUDEZ is, jointly with PESQUERA and ESCALERA, the ultimate authority in the elaboration and execution of PRPB's policies. As such, he executes the laws and regulations of the Commonwealth of Puerto Rico pertaining to law enforcement, and is responsible for the discipline, training and supervision of all the employees and officers of the PRPB. He is also responsible for, making and executing policy decisions regarding training, supervision, discipline and law enforcement practices to be employed by the PRPB.

2.12 As Incident Commander Defendant LUIS COLON (or Incident Commander #1) executes the laws and regulations of the Commonwealth of Puerto Rico pertaining to law enforcement, and is responsible for the discipline, training and supervision of all the employees and officers under his command. Defendant acted under color of law and is also responsible for, making and executing, by himself, or through the department's officers and employees, policy decisions regarding training, supervision, discipline and law enforcement practices to be employed by the Bureau.

2.13 As Incident Commander Defendant CACERES (or Incident Commander #2) executes the laws and regulations of the Commonwealth of Puerto Rico pertaining to law enforcement, and is responsible for the discipline, training and supervision of all the employees and officers under his command. Defendant acted under color of law and is also responsible for, making and executing, by himself, or through the department's officers and employees, policy decisions regarding training, supervision, discipline and law enforcement practices to be employed by the Bureau.

2.14 Officers John Doe (1) (2) (3) (4) (5) and (6), are citizens of the United States, sued in their personal and official capacity as police agents and/or supervisors assigned to the PRPB's SWAT Team or Tactical Operations Unit in the San Juan area. These defendants unreasonably and abusively ordered and/or shot plaintiff multiple times with shotguns loaded with rubber bullets or similar ammunition more than 14 times, after throwing tear gases that affected Plaintiff's ability to breath and move.

2.15 All Defendants acted with gross disregard for human life, and caused Plaintiff grave physical injuries, as well as severe mental and emotional suffering. Acting under color of law, all Defendants violated Plaintiff's federally protected constitutional rights under the First, Fourth, and Fourteenth Amendments to the Constitution of the United States, the Civil Rights Act of 1871, 42 USC §1983; and the Constitution and Laws of the Commonwealth of Puerto Rico.

2.16 Upon information, and/or belief, UNKNOWN officers John Doe 1, 2, 3, 4, 5 and 6, are employees, agents and/or supervisory personnel of the PRPB, that were at all times relevant to this complaint, acting in the course and scope of their employment. Upon information and belief, each UNKNOWN officer John Doe 1, 2, 3, 4, 5 and 6, and all

Defendants participated in and/or directed the constitutionally unlawful violations alleged herein, or knew of the violations and failed to act or prevent them.

2.17 The true identities of these defendants are unknown to Plaintiff. In due course, Plaintiff will amend the Complaint to include defendants' names, once Plaintiff ascertains their identities, and will serve process.

2.18 At all times relevant to this complaint, Defendants all acted under color of law, violating Plaintiff's constitutional rights by covering up the identity of the unknown agents and police officers listed in this Complaint, and failing to comply with the disciplinary process against police officers for illegal acts against civilians.

2.19 All the above named, and unknown Defendants, are sued in their official and individual capacity, and on behalf of their respective Conjugal Partnerships comprised by them and their respective spouses A through K. All defendants are jointly and severally liable to Plaintiff for all claims and relief sought in this complaint, as they caused damages to Plaintiff while acting under color of law.

2.20 The Commonwealth of Puerto Rico, through the Department of Justice represented by Secretary of Justice WANDA VAZQUEZ-GARCED is liable to Plaintiff for the negligent and unlawful behavior of its officials and employees all acting under color of law.

III. FACTS

3.1 On May 1, 2018, Plaintiff arrived at Ponce de Leon Avenue, in the Hato Rey sector of San Juan, Puerto Rico, at around 11:00 a.m., in order to sell water and refreshments during the National March ("*Paro Nacional*" or May Day Mass Rally) that was to take place on that date; which is a yearly event. (Public Protests against PROMESA and the Puerto Rico Oversight, Management and Economic Stability Board "*La Junta*".)

3.2 After 1:00 p.m., Plaintiff witnessed a confrontation between protesters and Police officers; at which time, police officers started throwing chemical and tear gases.

3.3 Plaintiff was at that moment with his partner Katiria Fontanez, who had also arrived at Ponce de Leon Avenue together with him.

3.4 At the moment of the confrontation, Plaintiff told his partner to run away from the tear gases and chemicals used by police officers. Plaintiff, Jonathan Hernandez was afraid that she could get hurt by the gases and by the multitude that started running to escape the chaos created by the tear gases thrown by police.

3.5 Plaintiff used his shirt to cover his face from the gases while he was attempting to escape. However, he was reached by the chemical substances.

3.6 Plaintiff was having difficulty breathing, he suffered irritation of his skin, his eyes and respiratory system, and as a result stopped running; it was also impossible for him to see properly.

3.7 At that moment, someone came to Plaintiff and helped him by throwing some liquid substance on his head, eyes and face. The same person put \$20.00 dollars in his pocket and asked him to distribute water to any other persons affected by the chemical agents.

3.8 While Plaintiff was distributing water, he could see, with some difficulty, that other gas canisters dropped close to the place where he was situated.

3.9 At that moment, Plaintiff, a 28 years old street vendor, thought that he was going to die; he could not breathe. Suddenly, the same person that gave him the \$20.00 once again helped him, dropping some of the liquid again on his face and head.

3.10 This person, unknown to Plaintiff, helped him move to a corner in front of the building where the Liberty Cable of Puerto Rico building is located.

3.11 A masked police officer, dressed in a green uniform, ordered Plaintiff to move, but, it was impossible for Plaintiff to move due to the effects of the tear gases on his eyes and respiratory system.

3.12 Again the police officer that was dressed green shouted at Plaintiff that he had to move from that corner; to which, Plaintiff answered that he could not move due to the effects of the gases. Again, Plaintiff could not see or breathe.

3.13 At approximately 1:00 p.m., Plaintiff, who is a street vendor of bottled water and refreshments, was brutally attacked by several police officers also dressed in green uniforms, compatible to those worn by the “Tactical Operations Unit” or “Swat Team” of the Puerto Rico Police Bureau (PRPB).

3.14 Plaintiff reports that while the Police used chemical agents at Ponce de Leon Avenue, others were also moving forward in his direction, where they confronted him and shot him at close range on several occasions, with rubber bullets or pellets.

3.15 Plaintiff offered no resistance and was just trying to leave the area, pulling the coolers in which he kept the merchandise he was selling.

3.16 Plaintiff was left laying on the ground at that corner of Ponce de Leon Avenue with officers shooting at him.

3.17 Plaintiff received the first shot between his stomach and chest while, screaming that he had done nothing wrong and that he was just selling water and refreshments.

3.18 Plaintiff received a second shot on his head, by the left ear. In order to protect himself from the police officers, Plaintiff turned around and covered his face and head.

Immediately thereafter, shots were fired by the police officers that hit plaintiff on different parts of his body, including his back and buttocks.

3.19 Plaintiff was bleeding from some of the wounds and left in excruciating pain caused by the shots that he described as a horrible and terrifying experience.

3.20 At that moment, Plaintiff did not know that the ammunition used against him were rubber bullets or some similar ammunition. When he saw the blood, he thought that he had been shot with live ammunition and that he was going to die.

3.21 After several minutes, his partner Katiria found him and helped him move away from the location.

3.22 The police officers that shot him never put him under arrest.

3.23 Amongst the people who arrived to rescue Plaintiff, one put antibiotic cream on his wounds.

3.24 Two females and one male came to Plaintiff and asked him if they could photograph his wounds. He authorized them to do so. After that, Plaintiff took them to the location of the brutal aggression against him, near the Liberty Cable building.

3.25 One of the females picked up some cartridges left at the location that were compatible with ammunition commonly used during mass disturbances, known as “rubber bullets.”

3.26 Subsequently, local Channel 4 News (WAPA T.V.) interviewed Plaintiff; after the interview Plaintiff walked towards his car.

3.27 Plaintiff received medical care at Doctors’ Hospital in 1:00 p.m. the Santurce sector of San Juan, where he arrived due to the horrible pain he was suffering and because

he was concerned about the possibility that some of the projectiles could have penetrated his body.

3.28 At the Doctors' Hospital, Plaintiff received medical care, lab tests, and X Rays were conducted.

3.29 Plaintiff was found to have a high body temperature and low sugar levels.

3.30 A group of officers from the PRPB arrived at the hospital to interview Plaintiff. The police officers commented that the wounds were similar to those produced by "*perdigones*" (pellets) and that the police do not use that kind of ammunition. Photographs taken by the press rebut the PRPB's denial; and ACLU observers picked up artifacts at Ponce de Leon Avenue that also rebut the officer's statement.

3.31 The doctor stressed that he had seen those kind of wounds before. The Doctor also said that they were caused by the police. American Civil Liberties Union (ACLU) observers (volunteers) at the location, also picked up casings left behind by PRPB; some still containing pellets.

3.32 An agent of the "Cuerpo de Investigaciones Criminales – C.I.C." (Criminal Investigation Bureau, after consulting with the doctor, told Katiria (Plaintiff's partner) that the wounds could have been caused by some hot particles that are released by the tear gas at the moment they are fired.

3.33 That CIC police officer told Plaintiff that he would be back to plaintiff with the filing of a criminal complaint at the prosecutors' office ("*fiscalía*"). But, no one ever returned.

3.34 Upon Plaintiff's release from the Hospital and return home, Plaintiff and his partner Katiria found that he had approximately seven (7) more wounds that were covered

by his pants. At that moment, he discarded the theory that it could have been burns from the gases, because those parts of his body were covered at all times until that moment.

3.35 In addition, Plaintiff had seen one of the officers when he started shooting at him.

3.36 Before the Hospital's release, the doctor explained to Plaintiff, Jonathan Hernandez, that the results of the X-Rays were negative, explaining that none of the projectiles penetrated his body. He also gave a prescription for antibiotics in order to avoid an infection of the wounds and explained that the wounds will be more painful and swollen during the next days.

3.37 The action described is contrary to the mandates of Section 620 of General Order 600 (Rules and Procedures for the Use of Specialized Weapons by Members of the Specialized Tactical Units). Photograph of the victim, here Plaintiff, shows at least nine shots to his back. However, Plaintiff indicated that one ammunition hit him in one of his ears and that several other wounds were found on his skin under his pants.

3.38 At the time of the brutal attack, the police officers dressed in green uniforms, named Defendants in the instant case, ignored plaintiff's plea and continued the abusive assault; Jonathan Hernandez was by that time mostly blind and with difficulties breathing due to the tear gases and chemicals used by the PRPB.

3.39 All police officers and Defendants participating in the operation, including police officers 1 through 6, Incident Commanders 1 and 2, witnessed and observed the illegal actions and behavior perpetrated against Plaintiff. Rather than assuring Plaintiff's constitutional rights, Defendants participating in the operation supported, condoned, and/or endorsed the unlawful and criminal behavior perpetrated against Plaintiff.

3.40 Among other things, all PRPB officers present on the field, including Defendants, failed to prevent and/or intervene with the officers that were incurring in unlawful misconduct.

3.41 Upon information and/or belief, in order to cover up for the officers involved and shield them from liability, Defendants did not file proper reports regarding: use of force, weapons and equipment used during the May 1, 2018 events; ammunition assigned and used during that day; who gave authorization to use those weapons; and whether required warnings was given to the people exercising their first amendment rights, that such weapons and equipment were to be used at that moment. All in violation of a Federal Court Agreement filed between the Commonwealth of Puerto Rico, PRPD and the United States Department of Justice on June 17, 2013. (Case No. 3:12-cv-02039 (GAG).)

3.42 Plaintiff filed an administrative complaint within the PRPB (OS-2-OAL-RSS-038; Q-2018-01-03-175) denouncing the incident of police abuse narrated herein. However, the PRPB, through the Defendants, failed to conduct a proper investigation.

3.43 Plaintiff also requested all the information listed at paragraph 3.41, through letters dated January 24, 2019 and March 22, 2019. The answer received was the dismissal of the complaint, which was received on March 27, 2019.

3.44 As a consequence of Defendants' aggressions, Plaintiff suffered grave physical injuries and a mental breakdown that required medical attention.

3.45 Since June 17, 2013, more than four (4) years prior to the event narrated in this complaint, the United States Department of Justice (US-DOJ) and the government of Puerto Rico entered into a judicial settlement agreement in the U.S. District Court for the District of Puerto Rico, known as "Agreement for the Sustainable Reform of the Puerto

Rico Police Department” (The Agreement). The Agreement put an end to a civil suit initiated by the US-DOJ on December 2012, to remedy a pattern and practice of police misconduct by PRPD and to compel PRPD to adopt a far-reaching reform in order to promote constitutional policing, enhance public and officers’ safety, and increase community confidence. The Agreement mandates that the PRPD shall ensure that supervisors must provide close and effective supervision to each officer under their command; to provide direction and guidance necessary to improve and develop constitutional police practices; and to identify, correct and prevent police misconduct. PRPD shall develop policies that set out clear requirements for supervisors, consistent with generally accepted policing practices.

3.46 Under the terms of the Agreement, PRPB supervisory personnel are compelled to put into practice thorough and close supervision of actions by police officers under their command, including among other things: close review and reporting in the event of use of force; review and reporting of searches, seizures, stops and detentions; the filing of administrative complaints in the event of unlawful use of force; the facilitation and coordination of trainings on police constitutional practices to the officers under their command.

3.47 Although the Reform provides the tools and administrative framework for supervision of police practices, defendants RICARDO ROSSELLO, HECTOR PESQUERA, HENRY ESCALERA, REINALDO BERMUDEZ, LUIS COLON, JUAN CACERES, LUIS HERNANDEZ, among other Defendants (herein after the “Supervisory Defendants”), with willful blindness and callous disregard for Plaintiff’s constitutional rights, failed to exercise their duties and directly allowed, permitted, ignored and/or participated in, the incidents of police abuse narrated in this Complaint, and in the resulting unlawful conduct that followed.

3.48 Specifically, Supervisory Defendants, upon information and belief, with

deliberate indifference, allowed the officers under their command to execute the police operation that ultimately led to what was later regarded as an ambush of rally participants and violation of Plaintiff's constitutional rights. Upon information and belief, PRPB's officers at the May Day event had not received training in "Crowd Control Policies", and willfully acted contrary to their own protocols.

3.49 Supervisory Defendants were immediately notified of the incident narrated in this complaint. Moreover, upon information and belief, they were advised that an ambush was set in place to create chaos and justify the police action that resulted in violations of Plaintiff's constitutional rights, pursuant to the United States Constitution. Although it clearly constituted unlawful police misconduct, Supervisory Defendants failed to adopt effective measures to prevent the violation of Plaintiff's constitutional rights, following the reckless police action taken.

3.50 Upon information and belief, HECTOR PESQUERA and HENRY ESCALERA were personally located at the Command Centers near the "Golden Mile", a location from which they could direct the complete mobilization of PRPB officers under their command, giving them permission to use unrestricted force, including the wrongly-called "non-lethal force" against protestors, which resulted in violations of Plaintiff's constitutional rights under the United States Constitution.

3.51 From the Command Center Defendant HECTOR PESQUERA, pursuant to Governor ROSSELLO's instructions, gave unlawful orders to his subordinates, HENRY ESCALERA, and the other supervisors, including the Commander of the Tactical Unit and/or SWAT LUIS HERNANDEZ, and the Field Incident Commanders LUIS COLON and JUAN CACERES, to organize what is believed to have been an

ambush, provoking the violations of Plaintiff's constitutional and statutory rights.

3.52 Defendant HECTOR PESQUERA has consistently denied that the PRPB violates human rights in Puerto Rico. This refusal to recognize that PRPB has not been respectful of the people's first amendment protections is itself a problem that goes to the very root of the systemic malady within the PRPB, which was documented by the United States Department of Justice and which to a Reform Agreement. According to the last *TCA's Assessment Report*, filed on November 7, 2018, it is evident that the police scheme on May 1, 2018 was to ambush protesters. According to the TCA (also known as the "Police Monitor" for the U.S. District Court, the Police plan resulted "in a bottleneck type restriction of movement for several hundred protesters."

"[t]he videos depict action that reflects the Police had no intention to allow the protesters to arrive to the Banco Popular area. It defies common sense why they allow them to pass by the first blockade made at the Liberty building. From the strategic viewpoint of avoiding confrontation with the crowd, this action fails to make sense. While at the Liberty building blockade, the Police had better control of the situation and the protesters had ample space where, if dispersal orders were given, they could easily disband encountering less hazardous situations than they had at the second location where the limited dispersal opportunities and the use of chemical agents created a hectic and dangerous situation for hundreds of protesters of which, the majority was arguably not violent and did not represent an immediate danger." *Id.*, p. 5.

Plaintiff was among the non-violent protesters or persons present that day.

3.53 Supervisory Defendants failed to properly conduct an investigation of any wrongdoing by police officers under their command, they failed to take immediate corrective measures, as required by the Agreement, and PRPB's own internal regulations.

3.54 Supervisory Defendants knew, or should have known, of the incidents of police abuse and the abusive behavior of the officers under their command. Yet, Supervisory Defendants allowed, condoned and encouraged field officers to unlawfully use excessive force against Plaintiff, and other protesters. Supervisory Defendants are required to closely monitor

the actions of police officers under their command; including events involving use of force, arrests, detentions, searches and seizures.

3.55 The violence suffered by Plaintiff was a direct result of Supervisory Defendants failure to screen, train, supervise and discipline the Defendants under their command. Upon information and/or belief none of the officers involved in these events have been disciplined by PRPB. To the contrary, they were protected by the high command of the Department.

3.56 Upon information and belief “nobody in the PRPB had been trained on the General Order, Chapter 600, Section 625 (Crowd Management and Control”) when the May 1, 2018 events occurred.” TCA Assessment Report, Nov. 7, 2018, p. 18.

3.57 According to the TCA Report, Section 625 of the General Order, Part IIIC.2.d states that: “No supervisor shall interrupt a constitutional activity or demonstration before the demonstrators act illegally or demonstrate aggressive conduct.” The evidence studied for the TCA Report shows that “the blockade of the Ponce de Leon Avenue was in place before any illegal or aggressive conduct was demonstrated.” “The PRPB did not inform when they exactly decided to create the blockage of the Ponce de Leon Avenue, but it was previous to the event and it was not documented in any of the reports provided to the Monitor’s Office.”

3.58 Upon information and belief, it was Governor ROSSELLO who admittedly made the decision of removing the line of policemen at the Liberty Cable building, allowing protesters to go through. Commissioner ESCALERA subsequently admitted that he made the decision. A decision that, for the TCA Report, constitutes non sense.

3.59 All the injuries, damages, mental anguish and suffering experienced by Plaintiff were caused by Defendants’ deliberate indifference and reckless disregard for

Plaintiff's wellbeing and federal rights, including negligence, failure to act properly and failure to train, supervise and control police officers' procedures and operations. Defendants all acted under color of law in violation of plaintiff's civil, legal and constitutional rights and are therefore jointly and severally liable for said damages, injuries and constitutional violations.

3.60 At all times relevant to this action, defendants' policies and policy decisions resulted in the totally inadequate selection and training of police officers. The supervision and supervisory policies of police officers failed to detect or punish incidents of unwarranted physical violence against citizens. They further failed to properly train and teach police officers to exert the high degree of self-control that is required of them when intervening with citizens who exercise their rights under the First Amendment to the United States Constitution.

3.61 Supervisory Defendants have ignored the deficiencies in the selection, training and supervision needs of PRPB, and the dangers posed by such inefficiencies to the safety and wellbeing of law abiding citizens.

3.62 Additionally, Supervisory Defendants acted with full knowledge that they were violating Plaintiff's federal rights, protected by the Constitution and laws of the United States and the Commonwealth of Puerto Rico; and did so willfully and maliciously. Alternatively, defendants acted with fault and/or negligence.

3.63 The facts set out in this complaint, constitute violations of Plaintiff's life, liberty, speech, and privacy rights, protected by the First, Fourth and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 USC §1983.

3.64 The facts set out in this complaint constitute violations of Plaintiff's rights under the Constitution of the Commonwealth of Puerto Rico, Article II, Sections 1, 4, 7 and 10,

and the Civil Code of Puerto Rico of 1930, Article 1802 et seq., 31 LPRC §5141 et seq.

3.65 As a result of the incident narrated herein, Plaintiff suffered physical injuries, and emotional distress that required medical attention.

3.66 As a direct result of the incidents narrated herein, Plaintiff suffers from anxiety, depression, and emotional distress that required, and continues to require, psychological and psychiatric treatment.

3.67 The incidents described above are just a small sampling of the unconstitutional police abuse to which U.S. citizens in Puerto Rico, including the abuse to which Plaintiff and protesters have been subjected. PRPB's longstanding use of excessive force led to the United States Department of Justice ("DOJ") initiating an investigation in July 2008 into the practices of the PRPB. The result was a report ("DOJ Report"), issued on Sept., 5, 2011, which not only condemned the practices of the PRPB, but also found that the PRPB has regularly deprived citizens of Puerto Rico of their constitutional rights, and that the PRPB's policies and practices will continue to lead to constitutional violations, if not addressed.

3.68 The PRPB and its Superintendents (Commissioners) have been depriving citizens in Puerto Rico of their constitutional rights since long before the DOJ first began its investigation. The DOJ Report recounts that "for years individuals engaged in protests and other public demonstrations have been harmed and injured in the hands of PRPD officers." Id at 25.

3.69 Defendants PESQUERA, ESCALERA, BERMUDEZ, COLON, CACERES AND HERNANDEZ without taking any action to change the practices of the "Riot Squad" and/or SWAT Team, continue to routinely deploy this or other tactical units, like SWAT, to use excessive force against demonstrators and other individuals like Plaintiff. In doing so, Supervisory Defendants have knowingly endorsed and encouraged these units to continue

practices complained of in this Complaint, including the use violent and excessive force without justification.

3.70 None of the last five Superintendents have taken any significant steps to address the repeated findings of excessive use of force. There has not been use of force training for officers who are already in the field, for example. Indeed, the PRPB does not even have a comprehensive or effective use-of-force policy, as it does not address use of force against protesters or large crowds during mass rallies. *Id.* at 33. Nor has the PRPB implemented effective reporting and review requirements to ensure that officers use lawful and appropriate force during interaction with civilians. *Id.* at 36. To the contrary, the Superintendents encouraged the now well-settled and widespread use of excessive force against protesters, which constitutes clear evidence of this ongoing systemic malady in the PRPB.

3.71 As a result of Supervisory Defendants' continued support of the PRPB's use of excessive force against protesters, Plaintiff's First Amendment rights under the U.S. Constitution have been curtailed. Moreover, the use of excessive force against Plaintiff, and demonstrators, has also resulted in Fourth Amendment violations. In particular, Plaintiff, like demonstrators who participated in the mass rally, has the right to be free from unreasonable use of force. It is patently clear that only injunctive relief will prevent this longstanding and ongoing deprivation of Plaintiff's constitutional rights; a look at the events of May 1, 2017 events makes clear that this story is repeated year after year.

IV. First Cause of Action Under 42 U.S.C. §1983: Violation of Plaintiff's First Amendment Rights – Defendants Brutal Aggression Against Plaintiff

4.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

4.2 The First Amendment to the United States Constitution guarantees the right to

freedom of speech, freedom of expression, and the right to assemble and petition the Government for a redress of grievances. The Fourteenth Amendment incorporates the First Amendment against the states and the Commonwealth of Puerto Rico.

4.3 It is the well-settled, widespread, and ongoing pattern and practice of the PRPB, to use excessive force against protesters or people present during mass rallies while they engage in free speech and expression at demonstrations and protests.

4.4 Moreover, given the lack of legitimate reasons to use shotguns loaded with rubber bullets or similar ammunition, tear gases, pepper spray and other chemical substances against Plaintiff, and other bystanders, present at the May 1, 2018 rally, upon information and belief, the First Amendment protected activities taking place were the motivating factor in the PRPB's decision to unleash unnecessary, abusive and indiscriminate force against protesters and Plaintiff.

4.5 The unlawful police aggression suffered by Plaintiff in response to his mere presence at the May 1, 2018 mass rally, as a street vendor of water and refreshments, constitutes a violation of Plaintiff's First Amendment Rights under the Constitution of the United States. As all persons are entitled to, and have a right to, conduct lawful business and other activities at public forums, such as streets and sidewalks.

4.6 Defendants ROSSELLO, PESQUERA, ESCALERA, and BERMUDEZ are responsible together with the rest of defendants, officers and supervisors, for overseeing the policies and practices of the PRPB that day. By encouraging the use of unreasonable force against Plaintiff and other protesters, they have deprived Plaintiff of his rights to freedom of speech and expression for his mere presence at the rally, under the First Amendment of the United States Constitution.

V. **Second Cause of Action Under 42 U.S.C. §1983: Violation of Plaintiff's Fourth Amendment Rights – The Unlawful Attacks Against Plaintiff with Tear Gases, Chemicals Substances and “Rubber Bullets”**

5.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

5.2 The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures, and from other unlawful police misconduct.

5.3 The PRPB routinely uses techniques such as painful pressure points, batons, pepper spray, tear gases, other chemical substances, and rubber bullets or similar ammunition, on protesters and other people present at mass rallies or demonstrations, including Plaintiff in the instant case, who was participating in First Amendment protected activities. These actions, physical aggressions and corralling of protesters during alleged attempts to disperse crowds, form the basis of Plaintiff's reasonable belief that people there were not entitled to leave the areas in which they had been engaged in First Amendment protected activities. Moreover, these tactics are unnecessary and objectively unreasonable under the circumstances, as Plaintiff and other demonstrators attempting to disperse did not pose a threat to the police or the public; and in some cases, were not allowed to leave.

5.4 The physical aggression, threats and assault against Plaintiff, using tear gases, chemical substances and being repeatedly shot with “rubber bullets” (or similar ammunition), the reluctance to reveal information regarding the identity of his PRPB aggressors, and the dismissal of the administrative complaint Plaintiff filed with PRPB, constitute a violation of his physical and emotional integrity and his dignity, protected under the Fourth Amendment of the Constitution of the United States and the Settlement Agreement reached between the U.S. Department of Justice and the Commonwealth of Puerto Rico on June 17, 2013 for a sustainable

Reform of the PRPB.

VI. Third Cause of Action: Supervisory Liability

6.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

6.2 Supervisory Defendants knew or should have known of the aggressive behavior and propensity for violence of the police officers under their command and failed to properly supervise them and take remedial action.

6.3 Supervisory Defendants failed to properly provide and facilitate training on constitutionally acceptable police practices to the officers under their command.

6.4 As Plaintiff will show, Supervisory Defendants condoned, encouraged and allowed the indiscriminate and unlawful use of force against Plaintiff and other protesters in violation to the First and Fourth Amendments to the United States Constitution.

6.5 This conduct by supervisory defendants constitutes a reckless or callous indifference to plaintiff's constitutional rights, for which they are liable. All defendants are severally and jointly liable for their actions.

VII. Fourth Cause of Action: Failure to take Remedial Action

7.1 The allegations contained in all preceding paragraphs are realleged as if fully incorporated herein.

7.2 The facts set forth in this complaint constitute violations of plaintiff's First, Fourth, and Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 USC §1983.

7.3 Supervisory Defendants were reckless and callously indifferent to the constitutional rights of Plaintiff because they failed to take remedial action against John Doe

Agents 1 thru 6. The supervisory defendants knew the propensity for violence of Officers John Doe 1 thru 6 and failed to send them to psychological evaluations, failed to order them to retraining, failed to remove them from preventive and control operations in order to prevent the civil rights violations they perpetrated on Plaintiff; and failed to suspend or dismiss them from the Puerto Rico Police Bureau. All defendants are severally and jointly liable for their actions.

VIII. Fifth Cause of Action: Failure to Properly Train and Retrain

8.1 The allegations contained in all preceding paragraphs are realleged as if fully incorporated herein.

8.2 The facts set forth in this complaint constitute violations of plaintiff's First, Fourth, and Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 USC §1983.

8.3 The Supervisory Defendants were reckless or callous in the lack of training and retraining of police officers, defendants John Doe 1 thru 6; recklessness that brought about the violations of Plaintiff's civil rights complaint of in this action. All Defendants are severally and jointly liable for their actions.

IX. Sixth Cause of Action: Punitive and Compensatory Damages

9.1 The allegations contained in all preceding paragraphs are realleged as if fully incorporated herein.

9.2 The conduct displayed by all Defendants, and the willful, wanton and intentional disregard for the Plaintiff's life, dignity, physical integrity and constitutional right, and the impunity showed by the Supervisory Defendants, GOVERNOR ROSSELLO, PESQUERA, ESCALERA, BERMUDEZ, COLON, CACERES, HERNANDEZ, and the officers and/or supervisors named John Doe 1 thru 6, mandate the imposition of punitive damages against all

defendants in order to deter the conduct and procedures which caused severe injuries and damages to Plaintiff.

9.3 The negligence displayed by defendants renders them jointly and severally liable for compensatory and punitive damages to Plaintiff as determine by the Jury.

X. Seventh Course of Action: Supplemental Jurisdiction – Violations under the Laws and Constitution of the Commonwealth of Puerto Rico

10.1 The allegations contained in all preceding paragraphs are re-alleged as if fully incorporated herein.

10.2 The facts set forth in this complaint constitute violations of Plaintiff's rights by Defendants under the Constitution of Puerto Rico, Article II, Sections 1, 4, 7 and 10 and the Civil Code of Puerto Rico of 1930, Article 1802, et seq., 31 LPRA §5141, et seq. Supplemental jurisdiction over all claims arising under the Constitution and Laws of the Commonwealth of Puerto Rico arise from the same nucleus of operative facts. 28 U.S.C. §1367.

10.3 The facts alleged in this complaint state a claim under the Constitution of the Commonwealth of Puerto Rico, Article 1802 of Puerto Rico Civil Code, et seq., 31 LPRA §5141 for which defendants, including the Commonwealth of Puerto Rico, are liable.

10.4 Under the Puerto Rico statute that allows claims against the state, the Commonwealth of Puerto Rico is liable to Plaintiff for the unlawful and negligent conduct of its employees acting in their official capacity. Puerto Rico Civil Code, Art. 1802 and 1803 et als. Id.

10.5 Under Article 1802 and 1803 of the Puerto Rico Civil Code, Defendants are liable to Plaintiff, as a direct result of their unlawful and negligent actions.

XI. Eighth Cause of Action: Attorney's Fees and Pre-Post judgment Interest

11.1 The allegations contained in all preceding paragraphs are realleged as if fully incorporated herein.

11.2 All Defendants are jointly liable to Plaintiff for all sums herein requested as well as for all prejudgment and post judgment interest, costs and attorneys' fees as prescribed by law under 42 USC §1988.

11.3 Attorneys fees and interest are also due under the Commonwealth of Puerto Rico Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Honorable Court declare that Defendants' conduct was unlawful and in violation of the constitutional provisions and statutes herein pleaded, and that it grant Plaintiff the following remedies:

A. Issue a Declaratory Judgment declaring that Defendants' actions and/or omissions violate the First, Fourth and Fourteenth Amendments to the Constitution of the United States, the Bill of Rights of the Commonwealth of Puerto Rico Constitution, and Puerto Rico torts law; and runs afoul of the PRPB Reform Agreement between the United States Department of Justice and the Commonwealth of Puerto Rico.

B. Issue Preliminary and Permanent Injunctive Relief prohibiting Defendants and PRPB officers from incurring in this repeated illegal and unconstitutional conduct;

C. Issue Preliminary and Permanent Injunctive Relief requiring Defendants to develop and apply policies and procedures that will ensure the protection of Plaintiff's rights, as alleged herein, and prevent similar future events as those narrated in this complaint, and as agreed to in the PRPB Reform Agreement between the United States and the Commonwealth of

Puerto Rico.

D. Issue an advisory order that the Commonwealth of Puerto Rico negotiate an amendment to the Police Reform Agreement with the United States Justice Department to incorporate the establishment of a permanent independent civilian oversight mechanism, that would allow independent citizens' participation in overseeing police practices, as has been included in many police reform agreements in the United States after the signing of Puerto Rico's Police Reform Agreement.

E. Award compensatory and general damages against all Defendants sued in their individual capacities and the conjugal partnerships comprised by each defendant and their respective spouses, for Plaintiff, in an amount to be determined according to evidence presented to the Jury, as a remedy for the physical, mental and emotional distress and discomfort that Plaintiff suffered, as provided by the laws and statutes of the United States and the Commonwealth of Puerto Rico;

F. Award exemplary and punitive damages against all Defendants sued in their individual capacities in an amount to be determined at trial by the Jury, in light of Defendants' willful, wanton, callous and malicious acts, and reckless disregard and deliberate indifference f o r Plaintiff's civil rights;

G. Award Plaintiff costs, expenses, and attorneys' fees pursuant to 42 USC Sec 1988;

H. Pre-judgment interests; and

I. Any other relief this Court deems equitable and just.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 29th day of April of 2019.

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