

Judgment, acknowledge their responsibilities pursuant to its agreement to this Consent Judgment, and agree to be subject to sanctions in contempt and the sanctions as set out herein and any additional sanctions that may be imposed by the Court if they fail to fully comply with its terms. By executing this Consent Judgment, Defendants waive formal service of process of the summons and complaint.

It is, therefore, upon motion of the attorneys for Plaintiff and for cause shown,

ORDERED, ADJUDGED and DECREED:

I. JURISDICTION

A. Jurisdiction of this action is conferred upon the Court by Section 17 of the FLSA, 29 U.S.C. § 217, and 28 U.S.C. §§ 1331 and 1345.

II. INJUNCTION AGAINST FUTURE VIOLATIONS OF THE FLSA

A. Defendants, their officials, employees, representatives, agents and all persons acting or claiming to act on their behalf either directly or indirectly are permanently enjoined and restrained from violating the provisions of Section 7, 11(c), 15(a)(2), 15(a)(3) and 15(a)(5) of the FLSA, as amended, including the following:

1. Defendants shall not, contrary to Section 7 of the Act, employ any employees of the PRPD in any workweek for longer than the hours now, or which in the future become applicable under Sections 7 and 15(a)(2) of the Act, unless the employees receive compensation for their employment in excess of the prescribed hours at rates not less than one and one-half times the employees' regular rates.
2. Defendants shall not fail to make, keep, and preserve adequate records of their employees and of the wages, hours, and other conditions and practices of employment maintained by

the PRPD as prescribed by the Regulations issued pursuant to Section 11(c) of the Act and found at 29 CFR Part 516.

3. Defendants shall not discharge or take any retaliatory action against any employee because the employee engages in any of the following activities:
 - a. Discloses, or threatens to disclose, to a supervisor or to a public agency, any activity, policy or practice of PRPD or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act;
 - b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the Act, or a rule or regulation promulgated pursuant to the Act, by the PRPD or another employer with whom there is a business relationship;
 - c. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act;
 - d. Requests or receives relief in accordance with this Consent Judgment;
 - e. Participated in any manner in this action or in the investigation(s) giving rise to this action; or
 - f. Asserts any rights under this Consent Judgment.

III. INJUNCTION AGAINST WITHHOLDING OVERTIME AND INTEREST OWED

- A. Defendants are enjoined and restrained from withholding \$8,732,386.52 in overtime compensation due to PRPD employees for the period from June 13, 2010 through August 31, 2014, as well as \$301,883.61 in post-judgment interest, as set forth in Exhibits A-E.

These amounts do not include compensation for any hours worked over forty that have been designated as compensatory time under 29 U.S.C. §207(o) as of August 31, 2014.

1. Post-judgment interest has been calculated at Current Value of Funds (CVF) rate (available at www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm) determined by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) for the period of October 31, 2017 through October 31, 2023.

IV. PAYMENT SCHEDULE / INSTALLMENT PLAN

A. Defendants are hereby ordered to pay \$8,732,386.52 in overtime compensation and \$301,883.61 in post-judgment interest as follows:

1. On November 30, 2016, Defendants will make a first installment payment of \$1,094,546.92 in principal and \$0.00 in interest.
2. On October 31, 2017, Defendants will make a second installment payment of \$1,094,546.92 in principal and \$10,945.47 in interest.
3. On October 31, 2018, Defendants will make a third installment payment of \$1,094,546.92 in principal and \$21,890.94 in interest.
4. On October 31, 2019, Defendants will make a fourth installment payment of \$1,094,546.92 in principal and \$32,836.40 in interest.
5. On October 31, 2020, Defendants will make a fifth installment payment of \$1,094,546.92 in principal and \$43,811.86 in interest.
6. On October 31, 2021, Defendants will make a sixth installment payment of \$1,094,546.92 in principal and \$54,757.33 in interest.
7. On October 31, 2022, Defendants will make a seventh installment payment of \$1,094,546.92 in principal and \$65,702.80 in interest.

8. On October 31, 2023, Defendants will make an eighth and final installment payment of \$1,070,558.08 in principal and \$71,938.81 in interest.
- B. For the first payment, paid on November 30, 2016, Defendants are ordered to first pay any employee listed in Exhibit B (the PRPD K-9 employees) the full amount each employee is owed, as specified by Exhibit B. Defendants are then ordered to pay the amount remaining from the November 2016 installment on a pro rata basis to all other employees entitled to back wages under this agreement, as specified in Exhibits C, D, and E (the PRPD Federal Task Force employees, the PRPD Police employees, and the PRPD Police Academy employees).
 - C. For the remaining payments set forth above, Defendants are ordered to pay employees listed in Exhibits C, D, and E on a pro rata basis the remainder of the back wages and interest owed to each employee.

V. DISTRIBUTION AND PROOF OF PAYMENTS

- A. PRPD shall distribute the amounts owed by paying to each of the employees listed on Exhibits B through E the amount of back wages due the employee as indicated next to his or her name, less lawful deductions, per the schedule set forth in Section IV. PRPD shall also distribute interest due each employee listed opposite the employee's name on Exhibits C through E, per the schedule set forth in Section VI.
- B. PRPD shall pay the amounts due under Exhibits B through E for each installment via check. Those payments shall be made to each of its current employees enumerated in those exhibits in person, payable to the order of each employee in accordance with the schedules of payments in Exhibits B through E, and each employee shall sign to indicate

he or she has received the check. With respect to former employees, PRPD shall pay such employees by check sent by certified mail to the employee's last known address.

- C. For each payment, PRPD shall furnish proof of payment by providing Plaintiff a list of the names, gross amount of the checks, net amount of the checks and check numbers for each employee paid by check, along with employee signatures acknowledging receipt of the check or proof of mailing for former employees who received a check by certified mail. For final proof of payment, PRPD shall provide Plaintiff with copies of the cancelled checks.
- D. PRPD shall engage in due diligence to locate and make payments to all current and former employees of the PRPD including, but not limited to, verifying the addresses of former employees using any and all means available to it, including, but not limited to, the Internal Revenue Service.
- E. Within 120 days of each Installment due date, PRPD shall deliver to Plaintiff a check representing the net total amount of overtime compensation plus interest, if any, which the PRPD is unable to distribute to employees, together with a list of the unpaid employees, their last known addresses, their social security numbers, the gross amount due each employee, the amount of post-judgment interest due each employee, and deductions for each employee. Each check shall be made payable to "Wage and Hour Division - Labor" with "Case No. 1585586" written on the face of the check. Each check shall be sent to:

U.S. Department of Labor/Wage & Hour Division
The Curtis Center, Suite 850, West
170 S. Independence Mall West
Philadelphia, PA 19106-3317

- F. Any back wages and interest which cannot be distributed to employees named in Exhibits A through E attached to this Consent Judgment, or to their personal representatives, because of inability of either PRPD or Plaintiff to locate the proper persons, or because of such persons' refusal to accept such sums, shall be deposited by the Secretary of Labor in a special deposit account to be paid to the rightful employee. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the United States Treasury as miscellaneous receipts.
- G. In the event that PRPD discovers that an employee listed in Exhibits A through E has already received complete or partial payment for overtime hours included in Exhibits A through E, the PRPD shall present proof of payment to the Caribbean District Office of the Wage and Hour Division of the Department of Labor. If the Wage and Hour Division is satisfied by the proof of payment offered by the PRPD, the back wages listed in Exhibits A through E will be reduced accordingly. If the Wage and Hour Division is not satisfied by the proof of payment for overtime hours included in Exhibits A through E, then the parties shall engage in good faith efforts to resolve the matter within 60 days. If the parties are unable to resolve the issue, the PRPD may move the Court for resolution, provided that written notice is sent to Plaintiff at least 14 days in advance of any intended filing with the Court. If the PRPD does not move the Court for resolution, it shall pay such employee listed in Exhibits A through E the back wages owed at the time payment is due as set forth in this Judgment and Exhibits A through E, or within 30 days of the end of the parties' good faith efforts, if such date has passed.

VI. ANTI-KICKBACK PROVISION

Neither Defendants nor anyone on their behalf shall directly or indirectly solicit, demand or otherwise coerce the return or refusal of any payment or part of payment made to any employee pursuant to this Consent Judgment, nor shall Defendants or anyone on their behalf agree to receive any payment or part of payment from employees containing funds distributed pursuant to this Consent Judgment.

VII. PAYMENT OF OVERTIME WITHIN 30 DAYS

Defendants shall pay employees engaged in work in a public safety, emergency response or seasonal activity at the PRPD, who have accrued 480 hours of compensatory time in accordance with Section 7 of the Act, 29 U.S.C. § 207(o), time and one-half their regular rates for all additional overtime hours of work. Defendants shall pay for these additional overtime hours as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary to compute and arrange for payment of the amounts due, and in no event may payment be delayed beyond 30 days from the regular payday of each pay period in which the overtime compensation was earned, in compliance with 29 CFR § 778.106.

VIII. PAYMENT OF BANKED OVERTIME HOURS UPON TERMINATION

Upon an employee's termination or resignation from employment with the PRPD, Defendants shall pay that employee for any compensatory time accrued in accordance with Section 7 of the Act, 29 U.S.C. § 207(o). Defendants shall pay for these accrued compensatory time hours as soon after the employee's final date of employment as is practicable. Payment may not be delayed for a period longer than is reasonably necessary to compute and arrange for payment of the amounts due, and in no event may payment be delayed beyond 30 days from the employee's final date of employment with the PRPD.

IX. PAYMENT OF CANINE CARE TIME

All K-9 employees of the PRPD shall be ensured payment for two hours per day of canine care on their work days in addition to their regular working hours in the field, and two hours per day of canine care on each of their days off. If any K-9 employee's actual hours of canine care exceed two hours on any day, that employee shall be entitled to payment for the additional time worked.

X. SERGEANTS ENTITLED TO OVERTIME

Defendants acknowledge that PRPD sergeants are non-exempt employees entitled to overtime under the FLSA and agree to compensate sergeants for all hours worked over 40 in a workweek in accordance with the Act.

XI. TIMEKEEPING SYSTEM

- A. Within 60 days of entry of this Consent Judgment, the PRPD shall implement an electronic timekeeping system for all locations where PRPD employees are employed and for all employees of the PRPD to ensure prompt and accurate recording of all hours worked, including, but not limited to, straight time and overtime hours worked, in accordance with the requirements of 29 CFR Part 516.
- B. Within 90 days of the entry of this Consent Judgment, the PRPD shall implement an electronic payroll system to ensure timely payment of all straight time and overtime wages due for hours worked in excess of the accrued 240 or 480 hours of compensatory time, whichever is applicable, pursuant to Section 7 of the Act, 29 U.S.C. § 207(o).
- C. All hours spent by employees working for the PRPD, including time for testing, physical training, and classroom time, must be accounted for in the timekeeping system.

- D. The PRPD shall designate one or more human resources supervisors who will be responsible for:
1. Monitoring the integrity of the electronic timekeeping and payroll system;
 2. Resolving any payroll errors;
 3. Ensuring overtime hours are appropriately accounted for, either in the employee's overtime bank or by prompt payment when overtime is accrued over 240 or 480 hours in accordance with Section 7 of the Act, 29 U.S.C. § 207(o);
 4. Ensuring that employees and supervisors are using the electronic timekeeping and payroll system correctly; and
 5. Ensuring that supervisors are approving the use of employees' banked overtime hours as appropriate.
- E. The PRPD shall provide to the Wage and Hour Division the name and contact information of the human resources supervisor(s) responsible for overseeing the electronic timekeeping and payroll system.
- F. Within 14 days of the installation of the electronic timekeeping and payroll systems, all Human Resources personnel, supervisors and employees shall receive job-appropriate training on the use of the system. Training shall include instruction on the protocol for correcting errors in attendance and/or hours worked by employees recorded by the system.

XII. WAGE STATEMENT

- A. The PRPD shall provide a wage statement with each employee's paycheck. The wage statement shall include the following:
1. date of payment;

2. employee's name;
3. employee's work location or site;
4. employee's job title;
5. check number;
6. payroll period: the days of the week on which the employee's workweek begins and ends for each workweek in the pay period;
7. rate of pay: the employee's regular hourly rate including any pay differentials for workweeks in which overtime compensation is due;
8. hours worked: total hours worked each work day or workweek in the pay period;
9. total overtime pay in the work day or workweek, separately stated from any straight-time pay;
10. basis and amount of each addition to or deduction from the employee's pay;
11. amount of overtime compensation paid in the pay period; and
12. total wages paid for the pay period and the pay date.

XIII. FLSA TRAINING

- A. Within 90 days of entry of this Consent Judgment, the PRPD shall provide training approved by the Plaintiff to all of its employees and supervisors on the applicable requirements of the FLSA and their rights under the FLSA, including the prohibition against unlawful retaliation, as well as the payment of back wages as required by this Consent Judgment. Trainings will be provided by or with the assistance of the Caribbean District Office of the Wage and Hour Division of the Department of Labor. Training shall continue to be provided to all new employees and to all managers every six months.
- B. The PRPD further agrees to provide its employees with notice and information regarding how to access and use hours in their compensatory time leave banks, along with information on how to appeal when they are denied use of such leave. PRPD will provide this notice and information within 60 days of entry of this Consent Judgment. This notice and information shall be delivered to all personnel through the agency's e-mail system.
- C. PRPD shall provide job-appropriate training for all managers and non-managerial employees upon hire or promotion and annually thereafter on legally required recordkeeping related to hours worked, payment of overtime compensation under federal law, and prohibitions against retaliation for making complaints related to recordkeeping of hours worked and payment of wages and overtime compensation. Provided training shall also include instruction on use of the electronic timekeeping and payroll system, protocol for resolving errors related to the recording of attendance and hours worked, protocol for notification and resolution of untimely payment of overtime due and inaccurate calculation of overtime compensation earned, and manual attendance and

timekeeping system for when the electronic timekeeping and payroll system is temporarily not operational.

- D. A copy of a sign-in sheet or other proof that employees have completed the training shall be kept by PRPD for a period of not less than three years and shall be made available to the Plaintiff upon request.

XIV. ANNUAL REPORTS

- A. Within 15 days of a request from the Wage and Hour Division, PRPD shall provide Plaintiff with annual reports detailing the following activities at the PRPD:

1. proof of all FLSA-related training provided;
2. new implementation of the electronic timekeeping and payroll system;
3. totals per employee of overtime hours worked, balances of hours banked up to 480, and overtime payments made; and
4. late payments of overtime compensation and the actions taken to correct them.

- B. Copies of any changes in the methods or procedures for compensation shall be attached to the report.

- C. These reports shall be sent to the District Director, Wage and Hour Division, U.S. Department of Labor, Santander Tower at San Patricio, B-7 Tabonuco Street, Suite 1104, Guaynabo, Puerto Rico 00968.

XV. NOTICE AND POSTING REQUIREMENTS

- A. Within 30 days of the entry of this Consent Judgment, PRPD shall provide written notice to all its employees through the PRPD's website that this Consent Judgment has been entered, and it shall post a copy of this Consent Judgment (excluding exhibits) in English and Spanish on its website. PRPD will provide a copy of the Consent Judgment to the

employees' labor representative as well within 30 days of entry of this Consent Judgment.

- B. Within 60 days of the entry of this Consent Judgment, PRPD shall develop a fact sheet, which it will provide to all current employees and new employees upon hire, setting out federal overtime compensation protections, the PRPD's policy and procedure for payment of overtime compensation, the process for notifying and resolving untimely payment or inaccurate recordkeeping of hours worked or calculation of overtime compensation; and the PRPD's policy for accrual and use of compensatory time.

XVI. REMEDIES FOR NONCOMPLIANCE

- A. Within 60 days of written notice of noncompliance and opportunity to cure from Plaintiff, if the Defendants fails to comply fully with the terms of this Consent Judgment, the Plaintiff at his discretion may:
1. Demand the immediate payment of all or any portion of the back wages specified in Section IV remaining due, in addition to back wages, liquidated damages and civil money penalties for all violations that occur after the date of entry of this Consent Judgment;
 2. Demand the payment of liquidated damages covering the period of June 13, 2010 through August 31, 2014, totaling \$8,732,386.52; provided that Plaintiff will not seek the payment of liquidated damages for the period of June 13, 2010 through August 31, 2014 if such noncompliance with any payment provision of this Judgment is due to documented financial inability to comply.

3. Demand the payment of \$584,540.00 in civil money penalties due pursuant to section 16(e) of the Act covering the period of June 13, 2010 through August 31, 2014; and
 4. Seek an entry of contempt against Defendants including compensatory fines and costs.
 5. The parties agree to engage in good faith efforts to resolve any dispute over noncompliance. Plaintiff will provide Defendants with fourteen (14) days written notice in advance of any intended filing with the Court under this section.
- B. The Court may order the remedies specified in subsections A.1-4 of this section upon finding that the Defendants have failed to comply fully with one or more terms of this Consent Judgment.
- C. In addition to seeking the remedies set forth in subsections A.1-4 of this section, if the Defendants fail to fully comply with the terms of this Consent Judgment, the Plaintiff may petition the Court for additional appropriate relief.
- D. Unintentional and *de minimis* errors, such as errors in recording hours worked, in calculating overtime compensation earned, or in the timely payment of overtime compensation due to an individual employee, which are not systemic, do not constitute the failure to fully comply with the terms of this Consent Judgment if the unintentional and *de minimis* errors are corrected within 60 days of the Defendants detecting the error or receiving notice of the error. If such unintentional and *de minimis* errors are caused as a result of actions or omissions of any vendor of any timekeeping or payroll system, Defendants shall have 120 days from the detection or receipt of notice of the error to

correct them. The failure to timely pay an installment as specified in Section V will not be deemed an unintentional or *de minimis* error.

- E. A violation of the anti-retaliation and anti-kickback provisions of Sections II.A.3 and VI of this Consent Judgment will not be deemed an unintentional or *de minimis* error.
- F. No paragraph within this section shall be construed as placing any limit on the remedies available to the Court in the event that the Defendants are found to be in contempt for violation of this Consent Judgment.
- G. No paragraph within this section shall be construed as a waiver of Defendants' rights to raise any objection or defense provided by law or in equity to an allegation of contempt by Plaintiff and as to any of the requested remedies for non-compliance.

XVII. TOLLING OF STATUTE OF LIMITATIONS

- A. Defendants shall not raise the statute of limitations (including laches) that otherwise might be available to Defendants concerning the timeliness of any legal proceedings seeking the liquidated damages or civil money penalties contained in Section XVI.A.
 - 1. Any applicable statute of limitations shall be tolled on the liquidated damages claim until Defendants make full payment of the overtime compensation and interest required by Sections III and IV, and so long as Defendants remain in compliance with the requirements of this Consent Judgment or until October 31, 2023, whichever is later.
 - 2. Any applicable statute of limitations shall be tolled on the civil money penalties claim until Defendants make full payment of the overtime compensation and interest required by Sections III and IV, and so long as Defendants remain in

compliance with the requirements of this Consent Judgment or until October 31, 2023, whichever is later.

XVIII. MISCELLANEOUS PROVISIONS

- A. This Court shall retain jurisdiction of this action.
- B. The terms of this Consent Judgment are and shall be binding on the Puerto Rico Police Department, the Commonwealth of Puerto Rico, their officials, agents, employees and all others in active concert with them.
- C. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.
- D. The undersigned representative(s) of the Puerto Rico Police Department certify that they are fully authorized to enter into this Consent Judgment and to execute and legally bind the Puerto Rico Police Department to this Consent Judgment.

- E. The term “day” or “days” as used herein shall mean a calendar day or days. In computing any period of time under this Consent Judgment, if the last day would fall on a Saturday, Sunday, Federal holiday, or Commonwealth of Puerto Rico holiday, the period shall continue until the next day other than a Saturday, Sunday, or holiday.

Dated: _____, 2016

So ordered:

UNITED STATES DISTRICT JUDGE

Defendants appeared by counsel and the entry of this Judgment is hereby consented to.

PUERTO RICO POLICE DEPARTMENT

U.S. DEPARTMENT OF LABOR

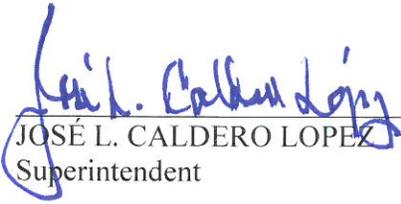
SEAL

M. PATRICIA SMITH
Solicitor of Labor

JEFFREY S. ROGOFF
Regional Solicitor

BY:

SUMMER SILVERSMITH
Trial Attorney



JOSÉ L. CALDERO LOPEZ
Superintendent



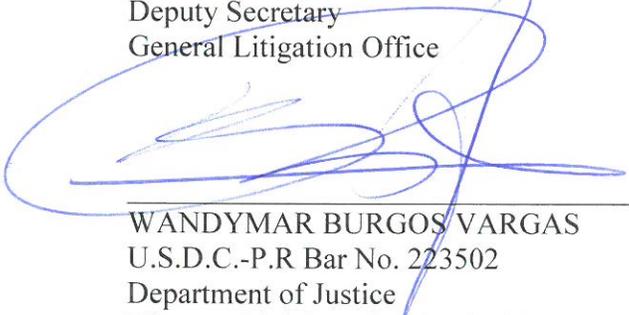
MOLLY K. BIKLEN
Supervisory Trial Attorney
U.S.D.C.-P.R. Bar No. G01602
U.S. Department of Labor
Office of the Regional Solicitor
201 Varick Street, Room 983
New York, NY 10014
(646) 264-3676
(646) 264-3660 (fax)
Biklen.Molly@dol.gov
NY-SOL-ECF@dol.gov

COMMONWEALTH OF PUERTO RICO

CÉSAR R. MIRANDA RODRÍGUEZ
Secretary of Justice

MARTA ELISA GONZÁLEZ Y.
Deputy Secretary
General Litigation Office

Attorneys for U.S. Department of Labor



WANDYMAR BURGOS VARGAS
U.S.D.C.-P.R Bar No. 223502
Department of Justice
Director Division of Federal Litigation and
Bankruptcy
P.O. Box 9020192
San Juan, Puerto Rico 00902-0192
Phone: 787-721-2900 Ext. 2647, 2650, 2606,
2624
Fax: 787-723-9188
Email:wburgos@justicia.pr.gov