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

MADELINE MALDONADO, et al.,

Plaintiff(s)

v.

MUNICIPALITY OF BARCELONETA, et al.,

Defendant(s)

CIVIL NO. 07-1992 (JAG)

OPINION AND ORDER

GARCIA-GREGORY, D.J.

Pending before the Court is Defendants' Municipality of Barceloneta, Sol Luis Fontanes, Elsa Perez, conjugal partnership Fontanes-Perez, Amid Molina-Morales, Esther Ruiz, Silva Riquelme, Edgardo Santiago, and Leonides Gonzalez's (collectively known as "Defendants") Motions to Dismiss. (Docket Nos. 61, 64, 80). For the reasons set forth below, the Court **DENIES** in part, and **GRANTS** in part Defendants' Motions.

FACTUAL AND PROCEDURAL BACKGROUND

On October 1, 2007, the Municipality of Barceloneta ("the Municipality") acquired the right to operate and manage its public housing communities by transfer of such right from the Puerto Rico Housing Administration ("PRHA"). On October 2, 2007, officials of the Municipality established a policy whereby residents of the housing communities would have to surrender their pets or face

eviction from their properties. The Municipality informed all the residents of the public housing of the aforementioned policy by sending memoranda between October 3, 2007 and October 7, 2007. In these memoranda, the Municipality informed the residents that it would be enforcing the policy and that Animal Control Solutions, Inc. ("ACS") had been hired to pick up the animals.

On October 8, 2007, ACS together with personnel of the Municipality, and the Municipal Police of Barceloneta conducted raids in three different public housing communities. In these raids, the residents' pets were taken from their owners, injected with a chemical tranquilizer and thrown against the walls of the cars where they were transported. Those animals that survived being thrown against the van and the effects of the chemicals were then thrown from a bridge commonly known as "El Paseo del Indio." The distance from the bridge to the ground is approximately 60 to 80 feet. Few pets survived this ordeal. On October 10, 2007, raids in other residential communities in Barceloneta were conducted in which the residents' pets were also tranquilized, thrown against the walls of the cars where they were to be transported and then hurled from the "El Paseo del Indio" bridge.

Plaintiffs witnessed Defendants removing, mistreating and injecting their pets with unknown chemicals, and then slamming them against the vehicle panels of the cars in which they were transported. On October 19, 2007, Plaintiffs filed the present

cause of action under 42 U.S.C. § 1983, 1985, and 1986. Plaintiffs allege violations of the Fourth, Fifth, and Fourteenth Amendment of the United States Constitution. In addition, Plaintiffs allege violations to Section One, Four, Seven, Eight, and Ten of the Constitution of Puerto Rico, and Articles 1802 and 1803 of the Civil Code of Puerto Rico and several state laws. Plaintiffs are seeking compensatory and punitive damages, costs, attorney's fees, declaratory judgment, injunctive relief, pre-judgment and post-judgment interest, and the value of their pets.

Plaintiffs contend that Defendants conspired and acted together when they confiscated and killed their pets. Moreover, Plaintiffs aver that Defendants' actions and omissions were illegal, arbitrary and capricious. According to Plaintiffs, Defendants used threat, intimidation, harassment, and persecution to get them to turn over their pets. Additionally, Plaintiffs stress that Defendants violated their right to be free from warrantless searches and seizures.

Furthermore, Plaintiffs allege that Defendants acted intentionally with callous and reckless disregard for Plaintiffs' rights by allegedly refusing to provide them with pre-deprivation remedies prior to the confiscation of their pets and with post-deprivation remedies after the confiscation of their pets. Moreover, Plaintiffs contend that Defendants' actions constituted a taking. Plaintiffs allege that Defendants' conduct caused them to

suffer severe mental and emotional pain.

On April 29, 2008, the Municipality, Sol Luis Fontanes ("Fontanes"), Elsa Perez ("Perez")[1], and the conjugal partnership Fontanes-Perez (collectively known as "Defendants (I)") filed a Motion to Dismiss. Defendants (I) also submitted a Memorandum of Law in support of such motion.[2] In the Motion to Dismiss, Fontanes[3] argues that he has a right to a qualified immunity defense with regards to the § 1983 claims against him. Fontanes avers that the official capacity claims against him should be dismissed because his actions do not amount to a constitutional violation. Further, he asserts that since there is no federal issue before this Court, all supplemental law claims ought to be dismissed without prejudice.

The Motion to Dismiss goes on to state that the Municipality should be relieved of the claims against it because none of its policies violated any part of the Constitution. (Docket No. 61). Defendants (I) also contend that Plaintiffs' § 1985 claims are unsubstantiated and are merely a repetition of their § 1983

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[1] Since Perez filed a Motion to Dismiss on her own account, we will address her claims in Section III of this opinion.

[2] Prior to this, on February 2, 2008, Carlos Laboy, the Chief of the PRHA, filed a Motion to Dismiss. (Docket No. 20). This Court denied such Motion to Dismiss and converted it to a Motion for Summary Judgment. (Docket No. 40).

[3] The Qualified Immunity defense refers only to Fontanes and not to all of Defendants (I), therefore, we shall address it in such a way.

allegations. Finally, Defendants (I) aver that Plaintiffs' request for injunctive relief is moot and should be dismissed.

On May 7, 2008, Plaintiffs submitted an opposition to Defendants' (I) Motion to Dismiss. Plaintiffs argue that the Motion to Dismiss should be converted to a Motion for Summary Judgment because it used extraneous information not in the complaint. Further, they state that the Complaint does articulate a viable claim for a Fourth Amendment violation because there was a warrantless search and seizure of property inside their homes. Plaintiffs also aver that they have a valid Fifth and Fourteenth Amendment claim. They contend that the seizure of their pets violated both the substantive and procedural sections of the Due Process Clause. Furthermore, Plaintiffs assert that Fontanes is not shielded from liability based on the qualified immunity doctrine because he caused numerous constitutional violations. Plaintiffs contend that their § 1985 claims are valid since Defendants (I) conspired to deprive Plaintiffs of their civil rights as a result of a class based animus against them.[4] Finally, Plaintiffs argue

[4] Section 1985 protects citizens from those who conspire to deprive them of their civil rights based on the fact that they belong to a specific race or class. In order to state a § 1985(3) claim a plaintiff must allege the existence of (1) a conspiracy, (2) a conspiratorial purpose to deprive a person or class of persons, directly or indirectly, of the equal protection of the laws or of equal privileges and immunities under the laws, (3) an overt act in furtherance of the conspiracy, and (4) either (a) an injury to person or property, or (b) a deprivation of a constitutionally protected right or privilege.' Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996). Additionally, the

that their request for injunctive relief is not moot because Defendants (I) can still formulate and effectuate policies in the Municipality even after this case is resolved. (Docket No. 67).

On May 14, 2008, Defendants (I) filed a Reply to the Opposition to their Motion to Dismiss. They contend that the case law Plaintiffs used in their Opposition is inadequate and does not support their claims. Finally, the Reply states Plaintiffs failed to establish that Defendants (I) violated any right protected by the Constitution. (Docket No. 71).

On May 16, 2008, Plaintiffs submitted a Surreply, in which they clarified some of their case law regarding the standard for Motions to Dismiss. (Docket No. 75).

On May 1, 2008, Defendants Amid Molina-Morales ("Molina"), Esther Ruiz ("Ruiz"), Silva Riquelme ("Riquelme"), Edgardo Santiago ("Santiago"), and Leonides Gonzalez ("Gonzalez") (collectively known as "Defendants (II)") filed a Motion to Dismiss. They argue that at no point in the pleadings do Plaintiffs specifically identify the illegal actions committed by Defendants (II). Further, they contend that Plaintiffs have not presented a cognizable claim under § 1983. (Docket No. 64).

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statute requires evidence of "racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Griffin v. Breckenridge, 403 U.S. 88, 102 (1971). Furthermore, the plaintiff must show that the conspiracy was "aimed at interfering with protected rights." Donahue v. City of Boston, 304 F.3d 110, 122 (1st Cir.2002).

On May 12, 2008, Plaintiffs filed an Opposition to Defendants (II) Motion to Dismiss. Plaintiffs aver that Defendants' (II) claims are adequately pleaded in the Complaint. Plaintiffs contend that they specifically mention each of Defendants' (II) involvement in the events of October 8-10, 2007. (Docket No. 68).

On May 28, 2008, Perez filed a Motion to Dismiss. In her Motion to Dismiss, she avers that there is no allegation whatsoever against her in the complaint, and therefore she should be dismissed from the case. (Docket No. 80).

On May 30, 2008, Plaintiffs submitted an opposition to Perez' Motion to Dismiss. In its opposition, Plaintiffs argued that Perez waived her right to file a motion under Rule 12(b)(6) because she was included in more than one motion to dismiss in the same case.[5] Further, Plaintiffs aver that Puerto Rico's community property policy makes Perez a proper Defendant as co-administrator of the Fontanes-Perez conjugal partnership.[6] (Docket No. 82).

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[5] Elsa Perez is included as a petitioner in the Motion to Dismiss with her husband and the Municipality of Barceloneta (Docket No. 61).

[6] "In Puerto Rico, upon marriage, a new entity is created, which commences on the day of marriage, and will own 'property acquired for a valuable consideration during the marriage at the expense of the partnership property, whether the acquisition is made for the partnership or for one of the spouses only; that obtained by the industry, salaries, or work of the spouses or of either of them; the fruits, income, or interest collected or accrued during the marriage, coming from the partnership property, or from that which belongs to either one of the spouses' 31 P.R. LAWS ANN. § 3641. This conjugal partnership is liable for 'all the debts and obligations ... which affect the

On June 13, 2008, Perez filed a Reply to the Opposition to her Motion to Dismiss. Perez argues that there is no waiver in this case because a request to dismiss for failure to state a claim can be made in any pleading. (Docket No. 85).

STANDARD OF REVIEW

A. Motion to Dismiss Standard

In Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955 (2007), the Supreme Court recently held that to survive a motion to dismiss under Rule 12(b)(6), a complaint must allege "a plausible entitlement to relief." Rodriguez-Ortiz v. Margo Caribe Inc., 490 F.3d 92, 95-96 (1st Cir. 2007) (quoting Twombly 127 S. Ct. at 1967). While Twombly does not require heightened fact pleading of specifics, it does require enough facts to "nudge [Plaintiffs'] claims across the line from conceivable to plausible." Twombly, 127 S. Ct. at 1974. Accordingly, in order to avoid dismissal, the Plaintiff must provide the grounds upon which his claim rests through factual allegations sufficient "to raise a right to relief above the speculative level." Id. at 1965.

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private property of the spouses as well as the partnership property; the minor repairs or of mere preservation, made during the marriage, to the private property of the husband or the wife: extensive repairs [to private property] shall not be chargeable to the partnership; extensive or minor repairs to the property of the partnership; the support of the family and the education of the children in common, and of the legitimate children of one of the spouses only.'" 31 P.R. LAWS ANN. § 3661. Fernandez-Cerra v. Commercial Ins. Co. of Newark, 344 F.Supp. 314, 316 (D.P.R. 1972).

The Court accepts all well-pleaded factual allegations as true, and draws all reasonable inferences in Plaintiff's favor. See Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49, 51 (1st Cir. 1990). The Court need not credit, however, "bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like" when evaluating the Complaint's allegations. Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996). When opposing a Rule 12(b)(6) motion, "a Plaintiff cannot expect a trial court to do his homework for him." McCoy v. Massachusetts Institute of Tech., 950 F.2d 13, 22 (1st Cir. 1991). Plaintiffs are responsible for putting their best foot forward in an effort to present a legal theory that will support their claim. Id. at 23(quoting Correa Martinez, 903 F.2d at 52). Plaintiffs must set forth "factual allegations, either direct or inferential, regarding each material element necessary to sustain recovery under some actionable theory." Gooley v. Mobil Oil Corp., 851 F.2d 513, 514 (1st Cir. 1988).

DISCUSSION

I. Defendants' (I) Motion to Dismiss

A) Qualified Immunity

Fontanes argues that the doctrine of qualified immunity bars Plaintiffs' claims against him. "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a

reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Qualified immunity entitles a state official not to stand trial. See Saucier v. Katz, 533 U.S. 194, 202 (2001). When a state official seeks qualified immunity, the Court should rule on the issue early in the process so that the parties may avoid the expenses of trial where the defense is dispositive. Id. at 200.

There are three prongs to the qualified immunity standard: (1) if true, would the facts constitute a constitutional violation? Mihos v. Swift, 358 F.3d 91, 102 (1st Cir. 2004) (citing Suboh v. District Attorney's Office of Suffolk District, 298 F.3d 81, 90 (1st Cir. 2002)); (2) was the constitutional right at issue clearly established at the time of the adverse action?[7] Id. at 102; (3) would a reasonable individual understand that the adverse action violated a constitutional right? Swain v. Spinney, 117 F.3d 1, 9 (1st Cir. 1997).

To determine if the qualified immunity defense is applicable to the case at bar, we must first determine whether, taking as true Plaintiffs' allegations there is a constitutional violation here. Further, Fontanes argues that his actions did not amount to constitutional violations. We disagree with Fontanes' aforementioned contention. Plaintiffs claim that Defendants' acts

[7] Whether a right is clearly established is a question of law that the Courts must resolve. Elder v. Holloway, 510 U.S. 510, 516 (1994).

constituted a Fourth Amendment violation.

1. Fourth Amendment

The Fourth Amendment to the United States Constitution is one of the provisions included in the Bill of Rights. The Fourth Amendment guards against unreasonable searches and seizures by the federal government, and is applicable to the state governments through the Due Process Clause of the Fourteenth Amendment. The Fourth Amendment states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing ... the persons or things to be seized." U.S. Const. Amend. IV. Pets, clearly, do not fall under the categories of either "persons," "houses," or "papers." Altman v. City of High Point, North Carolina, 330 F.3d 194, 200 (4th Cir. 2003).

The first issue in determining whether Plaintiffs suffered a constitutional violation is whether pets fall under the purview of the Fourth Amendment. Therefore, in order for a pet to have Constitutional protection, it must fall under the category of "effects." Id.

Since neither the Supreme Court nor the First Circuit has ruled on the issue of whether a pet can be categorized as an "effect" for purposes of the Fourth Amendment, we must look to

other circuits for guidance. The Third, Fourth, Eighth, and Ninth Circuits have concluded that dogs are considered "effects" and, therefore, protected by the Fourth Amendment. See Brown v. Muhlenberg Township, 269 F.3d 205, 209 (3rd Cir. 2001), Altman, 330 F.3d at 194, Fuller v. Vines, 36 F.3d 65, 68 (9th Cir. 1994), Lesher v. Reed, 12 F.3d 148, 150-51 (8th Cir. 1994). Consequently, this Court shall consider pets under the category of "effects" for purposes of Fourth Amendment violation analysis.

The next step in assessing whether a Fourth Amendment violation occurred is to determine if the Defendants' actions constitute "seizures" of Plaintiffs' pets. A "seizure" of property occurs when there is some meaningful interference with a person's possessory interests in that property. Lesher, 12 F.3d at 150, (citing United States v. Jacobsen, 466 U.S. 109, 113 (1984)). The Altman court stated that "destroying property meaningfully interferes with an individual's possessory interest in that property by changing a temporary deprivation into a permanent deprivation." Altman, 330 F.3d at 205. In the case at bar, the fact that Defendants killed or seriously injured the majority of Plaintiffs' pets constitutes a permanent deprivation and consequently a seizure of their property.

After making a determination that pets have protection under the Fourth Amendment, and that such pets were "seized," we must examine whether these seizures were "reasonable." The Fourth

Amendment protects citizens against "unreasonable" searches and seizures from the government. U.S. Const. Amend. IV. To determine whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interest against countervailing governmental interests at stake. Graham v. Connor, 490 U.S. 386 (1989). Further, in determining the "reasonable" standard, the question is whether the government's actions are "objectively reasonable" in light of facts and circumstances confronting them, without regard to their underlying intent or motivation. Id. at 396.

In the case at bar, the fact that Defendants entered into Plaintiffs' homes without warrants, and "seized" their pets or "effects." Together with the fact that Defendants dragged the pets out of their homes, proceeded to inject them with chemicals, slammed them against cars and threw them off a 60 foot bridge leads this Court to the conclusion that Defendants' actions were "unreasonable" for purposes of the Fourth Amendment. As stated in Andrews, "an officer commits an unreasonable, warrantless seizure of property, in violation of the Constitution, when he shoots and kills an individual's family pet, when that pet presented no danger and when non-lethal methods of capture would have been successful." Andrews v. The City of West Branch, Iowa, 454 F.3d 914, 918 (8th Cir. 2006)(citing Brown, 269 F.3d at 210-11; Fuller, 36 F.3d 65,

68). Therefore, taking Plaintiffs' facts as true, this Court finds that Plaintiffs' actions constitute a Fourth Amendment violation.

Since this Court has found that for purposes of this analysis there has been a Fourth Amendment violation of Plaintiffs' protected right, we proceed to the second part of the qualified immunity analysis. This Court must now determine whether said right was clearly established at the time Defendants' unconstitutional acts took place. "Whether an asserted federal right was clearly established at a particular time, so that a public official who allegedly violated the right has no qualified immunity from suit, presents a question of law, not one of 'legal facts.'" Elder, 510 U.S. at 516. The First Circuit has stated that "[o]ne tried and true way of determining whether this right was clearly established at the time the Defendants acted, is to ask whether existing case law gave the defendants fair warning that their conduct violated the plaintiff's constitutional rights." Suboh, 298 F.3d at 93. "[T]he salient question ... is whether the state of the law in [2007] gave [Defendants] fair warning that [their] alleged treatment of [Plaintiffs' property] was unconstitutional." Hope v. Pelzer, 536 U.S. 730, 741 (2002).

As established above, pets are considered "effects" under the Fourth Amendment. This Court does not find it difficult to ascertain that the Fourth Amendment clearly establishes the right to be free from warrantless seizures of a person's property. It is

a 'clearly established' right that the "seizure of personal property is per se unreasonable within the meaning of the Fourth Amendment, unless it is accomplished pursuant to a judicial warrant which is issued upon probable cause and which particularly describe the items to be seized." U.S. v. Place, 462 U.S. 696 (1983). Here, Plaintiffs have specifically alleged that Defendants seized their property without the pertinent warrants. Since it is clearly established that such acts violated the Fourth Amendment, the Court finds that the second prong of the qualified immunity analysis has been met.

Even when as here, the first two requirements are established "qualified immunity remains available to defendants who demonstrate that they acted objectively [and] reasonably in applying clearly established law to the specific facts they faced." Burke v. Town of Walpole, 405 F.3d 66, 86 (1st Cir. 2005). The determination of "whether the officer's conduct was objectively reasonable under a given set of facts is a question of law for the court." Wilson, 421 F3. at 53 n. 10 (citation omitted). "[T]he [qualified immunity] doctrine eschews a line that separates the constitutional from the unconstitutional and instead draws a line that separates unconstitutional but objectively reasonable acts from obviously unconstitutional acts." Cox v. Hainey, 391 F.3d 25, 31. Therefore, "this suit may go forward only if the unlawfulness ... would have been apparent to an objectively reasonable officer standing in

[Defendants'] shoes." Id. at 31.

This Court finds that Defendants' actions were so egregious that a reasonable person would have understood they were violative of a clearly established right under the Constitution. Therefore, the qualified immunity doctrine does not shield Fontanes from liability. However, since Defendants (I) challenge all of Plaintiffs' Constitutional violations we will examine them below.

2. Fifth Amendment

Plaintiffs also claim that their rights under the Fifth Amendment were violated. The Due Process clause of the Fifth Amendment states in pertinent part that: "No person shall ... be deprived of life, liberty, or property, without due process of law..." U.S. Const. Amend. V. The Fifth Amendment applies only to actions of the federal government not those of private individuals, nor of state governments. Public Utilities Commission v. Pollak, 343 U.S. 451, 461 (1952); see also Gerena v. Puerto Rico Legal Services, Inc., 697 F.2d 447, 448 (1st Cir. 1983).

In the case at bar, only state officials are named Defendants. Thus, there is no federal government action. As such, the Fifth Amendment is inapplicable to the case at bar, and Plaintiffs' Fifth Amendment claims against Defendants (I) shall be dismissed.

3. Fourteenth Amendment

Plaintiffs also claimed that their rights under the Fourteenth Amendment were violated. Therefore, to continue the analysis of the

qualified immunity defense, we must first examine if there is a constitutional violation of the Due Process Clause of the Fourteenth Amendment. The Due Process Clause provides that no State shall "deprive any person of life, liberty, or property, without due process of law ..." U.S. Const. amend. XIV § 1. The Due Process guarantee has both substantive and procedural components.

In order to determine if there was a Due Process violation under the Fourteenth Amendment, we must first examine if Plaintiffs have a property interest as defined by state law. PFZ Properties, Inc. v. Rodriguez, 928 F.2d 28, 30 (1st Cir. 1991). According to Puerto Rico case law, the word property is "defined in general terms and includes inmovable and movable[8] goods, such as livestock." Pueblo v. Bauza, 42 D.P.R. 383 (1931)(translation ours); 31 P.R. LAWS ANN. § 1063 (2005). Therefore, we can analogize that pets are considered movable property under Puerto Rico law.

Next, we examine whether there is a Procedural Due Process violation. The test for a Procedural Due Process violation "requires the plaintiffs to show first, a deprivation of a protected property interest, and second, a denial of due process." Consequently, we evaluate whether Defendants, acting under color of state law, deprived Plaintiffs' of that property interest without

[8] Things movable by their nature are such as they may be carried from one place to another, whether they move by themselves, if animate, or by means of an extraneous power, if inanimate. 31 P.R. LAWS ANN. § 1063 (1993 Suppl. 2005).

a constitutionally adequate process. See Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982); PFZ Properties, Inc. v. Rodriguez, 928 F.2d 28, 30 (1st Cir. 1991). Fontanes, as Mayor of Barceloneta, was acting under color of state law, since he was enforcing a municipal policy adopted by his administration. A mere notice, such as the one sent to Plaintiffs, informing them of a potential seizure of property is not enough to meet the burden under the Fourteenth Amendment, since a hearing must also be held.

Further, "it is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' Fuentes v. Shevin, 407 U.S. 67, 80 (1972), citing Armstrong v. Manzo, 380 U.S. 545, 552 (1965). "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented." Id. at 81. Defendants sent Plaintiffs the memoranda on October 3-7, 2007 and went into the housing projects to enforce the policy on October 8-10, 2007. This is clearly not enough to meet the "meaningful time" requirement. We find that no meaningful time, or a hearing was provided prior to the deprivation of Plaintiffs' property. Therefore, this Court finds that there is a constitutional violation of the procedural component of the Due Process Clause of the Fourteenth Amendment.

Additionally, the Due Process Clause of the Fourteenth Amendment also has a substantive content. In order to assert a

valid Substantive Due Process claim, "plaintiffs have to prove that they suffered the deprivation of an established life, liberty, or property interest, and that such deprivation occurred through governmental action that shocks the conscience." Clark v. Boscher, 514 F.3d 107 (1st Cir. 2008)(citing Pagán v. Calderón, 448 F.3d 16, 32 (1st Cir. 2006); Rivera v. Rhode Island, 402 F.3d 27, 33-34 (1st Cir. 2005)). The Substantive Due Process protects individuals from "particularly offensive actions on the part of government officials." Pagan, 448 F.3d at 32(internal citations omitted).

In the present case, we have already found that there has been a constitutional deprivation of a property interest. Therefore, to determine whether a Substantive Due Process violation exists we must ask whether Defendants' (I) actions "shock the conscience." According to Pagan, "there is no scientifically precise formula for determining whether executive action is, or is not, sufficiently shocking to trigger the protections of the substantive due process branch of the Fourteenth Amendment." Id.(citing Nestor Colon Medina & Sucesores, Inc. v. Custodio, 964 F.2d 32, 45 (1st Cir. 1992)). Thus, the Substantive Due Process analysis will depend on the specific subject matter and the attending circumstances. Id. However, the government's conduct must be "truly outrageous, uncivilized and intolerable." Hasenfus v. LaJeunesse, 175 F.3d 68, 72 (1st Cir. 1999). "When a government official himself inflicts harm upon an individual or his property, that action can constitute

a deprivation of a protected interest in violation of due process if the official's conduct shocks the conscience." Velez-Diaz v. Vega-Irizarry, 421 F.3d 71 (1st Cir. 2005).

In the instant case, the act of government officials of injecting Plaintiffs' pets with chemicals, slamming them against the walls of cars, and ultimately throwing them off a bridge would seem shocking and outrageous even to individuals with extremely hardened sensibilities. Therefore, this Court finds that there is a violation of the Substantive Due Process Clause of the Fourteenth Amendment.

Defendants (I) argue that there is no Substantive Due Process violation because Plaintiffs fail to state with particularity the exact activity carried out by Defendants (I) that "shocks the conscience." Further, they go on to state that Plaintiffs' only argument is that there is a violation as to the treatment of the animals and not an actual liberty interest to people. Consequently, they aver that there cannot be a Substantive Due Process violation because Plaintiffs do not demonstrate that there is a deprivation of a protected liberty interest, and much less that it "shocks the conscience." However, Defendants (I) missed the fact that the deprivation that amounts to a Substantive Due Process violation in this case relates to a property interest, as we have stated above, and not to a liberty interest. Furthermore, Plaintiffs do state with particularity that Defendants' (I) violated their rights by

depriving their property interest in a cruel and shocking manner.

At this point in the analysis, we must ask ourselves whether "existing case law gave the defendants fair warning that their conduct violated the plaintiff's constitutional rights." Suboh, 298 F.3d 81, 93. Consequently, this Court must determine whether providing Due Process protections before the deprivation of a pet/property is a clearly established right.

In the case before us, we can easily overcome the establishment hurdle. The First Circuit stated that "where persons are deprived of property interests, it has long been 'clearly established' that due process safeguards must be afforded." Amsden v. Moran, 904 F.2d 748 (1st Cir. 1990)(citing, Paul v. Davis, 424 U.S. 693, 711 (1976)); Board of Regents v. Roth, 408 U.S. 564, 569-70 (1972). As can be ascertained from the case law cited above, which includes First Circuit and Supreme Court cases, the deprivation of property without adequate procedural and substantive due process safeguards is a clearly established right under the law.

After the complainants' clearly established rights have been ascertained, we must ascertain whether it would have been apparent to an objectively reasonable person standing in Defendants' shoes, that his actions were unconstitutional. This Court finds that a person in Fontanes' shoes would clearly understand that the act of depriving Plaintiffs' of their pets/property would be

unconstitutional without due process under the law. Therefore, this Court finds that Fontanes cannot use the doctrine of qualified immunity to shield himself from liability in his personal capacity.

B) Section 1983

In order to establish liability under § 1983, a plaintiff must first show that the conduct complained of was committed by a person acting under color of state law. See Destek Group, Inc. v. State of New Hampshire Public Utilities Commision, 318 F.3d 32, 39 (1st Cir. 2003); DiMarco-Zappa v. Cabanillas, 238 F.3d 25, 33 (1st Cir. 2001). Secondly, a plaintiff must show the defendant's conduct deprived a "person of rights, privileges or immunities secured by the Constitution or laws of the United States." Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553, 559 (1st Cir. 1989). "There are two aspects to the second inquiry: '1) there must have been a deprivation of federally protected rights, privileges or immunities, and 2) the conduct complained of must have been causally connected to the deprivation.'" Id. at 559(citing Woodley v. Town of Nantucket, 645 F.Supp. 1365, 1369 n. 4 (D. Mass. 1986)). "[S]ection 1983 'is not itself a source of substantive rights,' but merely provides 'a method of vindicating a federal right elsewhere conferred." Graham v. Connor, 490 U.S. 386, 393-394 (1989)(citing Baker v. McCollan, 443 U.S. 137, 144, n. 3 (1979)). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of Section 1983, if he does an affirmative act,

participates in another's affirmative acts, or omits to perform an affirmative act which he is legally required to do, that causes the deprivation of which complaint [sic] is made." Gutierrez-Rodriguez, 882 F.2d at 560. Hence, to succeed in a Section 1983 action, plaintiffs must prove that defendants' actions were a cause in fact or a proximate cause of their injury. See Collins v. City Harker Heights, 503 U.S. 115 (1992); Vives v. Fajardo, 399 F.Supp.2d 50, 55 (D.P.R. 2005).

Defendants (I) move the Court to dismiss the § 1983 claim because they aver that none of the facts complained of constitute a deprivation of a constitutionally protected right. However, as established above, there is a constitutional deprivation of Plaintiffs' rights under the Fourth and Fourteenth Amendments. Furthermore, Fontanes and the Municipality were clearly acting under the color of state law, as they were present in the scene, specifically representing the municipal government to enforce the municipal policies.

The Municipality also moves for the dismissal of the claims against it because Plaintiffs failed to assert the existence of a municipal "policy" or "custom" which results in the deprivation of the protected right. See Monell v. Department of Social Services of City of New York, 436 U.S. 658, 694 (1978).

In Monell, the Supreme Court stated that "local governing bodies, can be sued directly under § 1983 ... if the action that is

alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." Monell, 436 U.S. at 690.[9] As stated in Defendants' (I) Memorandum of Law, they took the reigns as managers of Barceloneta's public housing facilities from the Puerto Rico Housing Authority ("PRHA"). When the Municipality took over as manager of the facilities they adopted and promulgated the PRHA policies, as seen by the fact that Defendants (I) immediately sent Plaintiffs' copies of the old PRHA pet policy. Furthermore, the fact that they proceeded to show up to enforce such policy means that they were executing it and are therefore liable for any adverse effect that the implementation of such policy has on the tenants.

Next, we evaluate whether Defendants' (I) conduct is causally connected to Plaintiffs' deprivation. A causal connection exists if a person "does an affirmative act, participates in another's

[9] Further, "[i]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under section 1983." Id. at 698. The Supreme Court held that "municipal liability under section 1983 attaches where-and only where-a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Pembaur v. City of Cincinnati, 475 U.S. 469, 483 (1986). It also stated that "[t]he 'official policy' requirement was intended to distinguish acts of the municipality from acts of employees of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible." Id. at 479.

affirmative acts, or omits to perform an affirmative act which he is legally required to do, that causes the deprivation of which complaint is made." Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553, 561 (1st Cir. 1989). Since Fontanes and the Municipality created, and ultimately enforced, the policies which caused Plaintiffs' deprivation, there is a clear connection between the Plaintiffs' deprivation and Fontanes and the Municipality's conduct. Therefore, this Court has no difficulty concluding, upon proper development of the record, that there could be an evidentiary basis for the proposition that the actions of Fontanes and the Municipality caused Plaintiffs' injuries.

C) Section 1985

Plaintiffs argue that Defendants conspired to deprive them of their pets because they lived in low income housing, and consequently were from a low economic class. 42 U.S.C. § 1985(3) protects persons from conspiracies that would deprive that person or any class of persons, of their Constitutional rights.

> To state a claim under § 1985(3) a plaintiff must allege the existence of (1) a conspiracy, (2) a conspiratorial purpose to deprive a person or class of persons, directly or indirectly, of the equal protection of the laws or of equal privileges and immunities under the laws, (3) an overt act in furtherance of the conspiracy, and (4) either (a) an injury to person or property, or (b) a deprivation of a constitutionally protected right or privilege. Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996).

Additionally, the statute requires evidence of "racial, or perhaps

otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Griffin v. Breckenridge, 403 U.S. 88, 102 (1971). Furthermore, the plaintiff must show that the conspiracy was "aimed at interfering with protected rights." Donahue, 304 F.3d at 122 (1st Cir. 2002). Recently, the First Circuit narrowly construed § 1985 claims to those based on racial animus, and not those dealing with either a political, economic or commercial basis. Perez-Sanchez v. Public Building Authority, No. 07-1869, slip op. at 3 (1st Cir. Jun 30, 2008). Accordingly, in order for Plaintiffs to have a viable claim, they must belong to a constitutionally protected class under § 1985(3). Plaintiffs have failed to proffer sufficient evidence that they belong to a protected class under § 1985.

In the instant case, Plaintiffs assert a § 1985(3) claim because Defendants allegedly conspired to deprive them of their Constitutional rights. Here, Plaintiffs allege they were conspired against because of their social origin and condition as people residing in public housing communities. However, Defendants (I) aver in their Motion to Dismiss that Plaintiffs do not allege any valid racial or class-based animus and, therefore, cannot have a valid claim under § 1985(3). Lacking sufficient pleaded facts of a conspiracy, Plaintiffs' §1985 claims must be dismissed as to Defendants (I).

D) Injunctive relief

Plaintiffs claim that they should be awarded injunctive relief to prevent Defendants from continuing to violate their rights after these matters are disposed of. Plaintiffs contend that since Defendants have positions with the Municipality of Barceloneta which allows them to influence policymaking, they could potentially continue to make/influence policy that violates their rights.

Defendants (I) contend that Plaintiffs' should not be awarded injunctive relief. They assert that Plaintiffs' claims for injunctive relief are moot and fail because they have not violated Plaintiffs' Constitutional rights. However, this Court finds that injunctive relief is contingent upon a finding on the merits. Since most of Plaintiffs' claims against Defendants (I) will not be dismissed, Defendants' (I) request to deny injunctive relief shall be denied.

Therefore, Defendants' (I) Motion to Dismiss is **GRANTED** as to the Fifth Amendment, and as to the § 1985 claims, but **DENIED** as to everything else.

II. Defendants' (II) Motion to Dismiss

A) Section 1983

The analysis of a § 1983 claim against Defendants (II) is very similar to that done above with Defendants (I). All of Defendants (II) work for the Municipality of Barceloneta. Molina is the Chief of the Civil Defense Division of the Municipality of Barceloneta.

Ruiz is the Chief of the housing division of the Municipality of Barceloneta. Riquelme is the Administrator of the public housing community "Residencial Plazuela" in Barceloneta. Gonzalez is the Administrator of public housing communities Residencial Quintas de Barceloneta and Hector Ruiz in Barceloneta. Edgardo Santiago is an employee of the Municipality of Barceloneta. Therefore, it is clear that all of Defendants (II) were acting under the color of state law at the time of the events of October 2007. Next, as established above there is a clear constitutional violation of the Fourth and Fourteenth Amendments. Finally, we must evaluate whether Defendants' (II) conduct is causally connected to Plaintiffs' deprivation. Plaintiff contends that all of Defendants (II) planned or participated in the events of October 8-10, 2007. Taking said allegations as true, this Court finds that Defendants' (II) actions related to the enforcement of the pet policy are clearly connected to Plaintiffs' property deprivation. Thus, taking into consideration that there is no requirement of a heightened pleading standard in civil rights proceedings,[10] and taking Plaintiffs' allegations[11] as true this Court finds that there are enough factual allegations to sustain Plaintiffs' 1983 claims against Defendants

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[10] Educadores Puertorriquenos en Accion v. Hernandez, 367 F.3d 61, 63 (1st Cir. 2004), Swierkiewicz v. Sorema N. A., 534 U.S. 506 (2002).

[11] See LaChapelle v. Berkshire Life Ins. Co., 142 F.3d 507, 508 (1st Cir. 1998).

(II).

Finally, Defendants (II) argue that Plaintiffs make no specific mention as to them in the pleadings related to the alleged unconstitutional actions. First, Plaintiffs do mention several of Defendants (II), such as Sylvia Riquelme, in the factual scenario placing them in the scene of the events.[12] Furthermore, as stated above there is no required heightened pleading standard for civil rights cases, therefore Plaintiffs' do not have to state Defendants' (II) specific unconstitutional acts. Consequently, Defendants' (II) Motion to Dismiss is **DENIED.**

III. Perez' Motion to Dismiss

Perez filed a Motion to Dismiss where she argues that there is no mention of her involvement in the events of October 8-10, and therefore the claims against her should be dismissed. However, Perez is not sued in her personal capacity in this suit; she is strictly included in the proceedings as co-administrator of the Fontanes-Perez conjugal partnership. Consequently, Perez' Motion to Dismiss is **DENIED.**

CONCLUSION

For the reasons stated above, the Court hereby **GRANTS** in part and **DENIES** in part, Defendants' (I) Motion to Dismiss, (Docket No. 61); **DENIES** Defendants' (II) Motion to Dismiss, (Docket No. 64);

[12] Docket No. 4, p. 18.

and **DENIES** Perez' Motion to Dismiss. (Docket No. 80). Plaintiffs' Fifth Amendment claim against Defendants (I) shall be dismissed with prejudice. Additionally, Plaintiffs' § 1985 claims against Defendants (I) shall be dismissed with prejudice. Partial judgment shall be entered accordingly.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this July 29, 2008.

s/ Jay A. Garcia-Gregory
JAY A. GARCIA-GREGORY
United States District Judge