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

RUBMARIE VALENTIN LUGO;
HERNAN OTERO AND THEIR LEGAL
CONJUGAL PARTNERSHIP,

Plaintiffs

v.

HOSPITAL MATILDE BRENES INC.,
D/B/A DOCTORS' CENTER HOSPITAL
BAYAMON; CONTINENTAL
INSURANCE COMPANY; DR. HECTOR
RIVERA RIVERA; MARY DOE AND
THEIR LEGAL CONJUGAL
PARTNERSHIP; EFG INSURANCE
COMPANY; EMERGENCIOLOGOS
PARA PUERTO RICO PSC; XYZ
INSURANCE CO.; DR. ANGEL
TORRES SANCHEZ; JANE DOE AND
THEIR LEGAL CONJUGAL
PARTNERSHIP; MNO INSURANCE
COMPANY,

Defendants

CIVIL 12-1757 (PAD)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On December 18, 2013, plaintiffs Rubmarie Valentín Lugo, Hernán Otero and their Legal Conjugal Partnership filed a third amended complaint alleging violations under the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. §§ 1395dd et seq. and articles 1802 and 1803 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31 §§ 5141 and 5142, against defendants Hospital Matilde Brenes, Inc. D/B/A Doctors' Center Hospital Bayamón, Dr. Hector

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3 Rivera Rivera, Dr. Ángel Torres Sánchez, Emergenciólogos para Puerto Rico PSC,
4 their respective insurance companies and any other party that might potentially
5 be responsible for the injuries suffered. (See Docket Nos. 1, 16, 20, 49).
6 Defendants answered the complaint and amended complaints, including the third
7 amended complaint, denying the existence of an EMTALA violation since the
8 transfer to another hospital at issue was conducted per patient's request (Docket
9 Nos. 10, p. 1, ¶2¹, 51 at 4, 61-1, p. 2², ¶2, Docket No. 80, p. 8³) after it was
10 determined by an examining doctor that she was stable. (Docket No. 10, p. 1,
11 ¶2). They also claimed that the treatment provided was the appropriate one
12 based on the physician's diagnostic impressions. (Docket No. 12, pp. 3-4, ¶13
13 and 26).
14

15
16 Defendants moved for Summary Judgment (Docket No. 61) based on a lack
17 of genuine issues of material fact as shown by the evidence presented and on the
18 absence of a genuine dispute under the substantive law relevant to the case.
19 (Docket No. 61, p. 4).
20

21 Plaintiffs responded in opposition to the Motion for Summary Judgment
22 (Docket No. 66) by claiming that there are sufficient genuine issues of material
23

24 ¹Docket No. 10 Answer to Complaint by Defendant Doctors' Center Hospital
25 Bayamón.

26 ²Docket No. 61-A Defendants' Statement of Uncontested Facts.

27 ³Docket No. 80 Reply to Response in Opposition to Motion for Summary
28 Judgment.

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2 fact that preclude summary disposition (Docket No. 66, p. 2, ¶2) regarding the
3 appropriate screening exam available within the hospital’s capabilities (Docket
4 No. 66, p. 2, ¶4), the patient’s stabilization prior to her transfer (Docket No. 66,
5 p. 3, ¶7) and the validity of the certifying document. (Docket No. 66, p. 3, ¶9).

7 In the reply to the plaintiffs’ response in opposition to the Motion for
8 Summary Judgment (Docket No. 80) defendants claimed that the test required by
9 EMTALA is for appropriate treatment based on what the physicians perceived the
10 condition to be and not what the adequate treatment should have been, which
11 would turn the claim under EMTALA into a malpractice federal claim. (Docket No.
12 80, p. 6).

14 Having considered the opposing statements of the parties and their
15 arguments, I recommend that the court enter the following

17 II. FINDINGS OF FACT

18
19 1. On December 27, 2011, plaintiff Rubmarie Valentín developed sudden
20 onset abdominal and pelvic pain during her lunch break at Doctors’ Center
21 Hospital Bayamón where she worked, and was transferred to the Doctors’ Center
22 Hospital Bayamón’s Emergency Room. (Docket No. 49, p.5, ¶12-13).

23
24 2. Defendants claim that plaintiff Rubmarie Valentín was first taken to the
25 Labor Room where she refused to be examined by the resident obstetrician Dr.
26 Hernández, preferring to be treated by her personal obstetrician in Manatí.
27
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2 (Docket No. 51, p. 2, ¶1; p. 6, ¶27). In the Emergency Room, a Non-Stress Test⁴
3 was performed that indicated a normal fetal heart rate⁵ and showed no evidence
4 of contractions⁶. (Docket no. 51, p. 3, ¶13).

5
6 3. Plaintiffs claim that the Non-Stress Test did show a wave that could have
7 been a uterine contraction, (Docket No. 67, p. 2, ¶ 3) but that the test performed
8 was not complete enough to provide for an appropriate screening. (Docket No.
9 67, p. 3, ¶11).

10
11 4. A pelvic examination⁷ further revealed that plaintiff Rubmarie Valentín
12 had not dilated⁸. (Docket no. 51, p. 4, ¶15). Both examinations were performed
13 by Dr. Ángel Torres Sánchez (Docket no. 51, p. 4, ¶16) in an attempt to identify
14

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16 _____
17 ⁴"The monitoring of the response of the fetal heart rate to fetal movements
18 by cardiotocography; a reactive (normal) test consists of two or more fetal
19 movements occurring within 20 minutes accompanied by acceleration of the fetal
20 heart rate by at least 15 beats per minute for at least 15 seconds with a long-term
21 variability of at least 10 beats per minute." *Dorland's Illustrated Medical
22 Dictionary* (32nd ed. 2012) ("Dorland's"), at 1895.

23 ⁵"The number of contractions of the ventricles of the heart per unit of time
(usually a minute)." *Dorland's* at 1595.

24 ⁶"A reduction in size or shrinkage of the uterus, as in menstruation or labor."
25 *Dorland's* at 409-10.

26 ⁷"Inspection, palpation, auscultation, percussion, or other means of
27 investigation, specially for diagnosing disease... of the interior portion of the trunk
28 of the body, bounded anteriorly and laterally by the two hip bones and posteriorly
by the sacrum and coccyx." *Dorland's* at 656 and 1403.

⁸"To stretch an opening or hollow structure beyond its normal dimensions."
Dorland's at 520.

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2 a critical medical condition, according to the symptoms plaintiff Rubmarie Valentín
3 presented and the level of screening applied to all patients with similar complaints.
4
5 (Docket no. 80, p. 5).

6 5. Plaintiff Rubmarie Valentín's vital signs⁹ and Dr. Hector Rivera Rivera's
7 diagnostic impression of back pain¹⁰, pelvic pain and renal colic¹¹ were obtained
8 and recorded after which a CBC¹², a U/A¹³, a PT¹⁴, a PTT¹⁵, a CMP¹⁶, and a renal

11 ⁹"The pulse, respiration and (body) temperature." *Dorland's* at 1716.

12
13 ¹⁰"A more or less localized sensation of discomfort, distress, or agony,
14 resulting from the stimulation of specialized nerve endings. It serves as a
15 protective mechanism insofar as it induces the sufferer to remove or withdraw
16 from the source." *Dorland's* at 1363.

17 ¹¹"Pain produced by thrombosis or dissection of the renal (kidney) artery,
18 renal infraction, intrarenal mass lesions, the passage of a stone within the
19 collecting system, or thrombosis of the renal vein." *Dorland's* at 383.

20 ¹²"Complete blood count." *Dorland's* at 310.

21 ¹³"Urinalysis; physical, chemical, or microscopic analysis or examination of
22 urine." *Dorland's* at 2009.

23 ¹⁴"Prothrombin time; the stage at which prothrombin is converted to
24 thrombin in citrated blood with added calcium; used to assess the extrinsic
25 pathway to coagulation. Results indicate the integrity of the prothrombin complex
26 [...] and the test is often used to monitor administration of coumarin-type
27 anticoagulants." *Dorland's* at 1550 and 1928.

28 ¹⁵"Partial thromboplastin; a measure of coagulation factors of the intrinsic
29 pathway of coagulation in plasm; now largely superseded by the test of activated
30 partial thromboplastin t." *Dorland's* at 1928.

¹⁶"Cytidine monophosphate; a nucleotide, the 5' -pyrophosphate of cytidine
that serves as a carrier for N-acetylneuraminic acid in glycoprotein synthesis."

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2 sonogram¹⁷ were ordered. (Docket no. 49, p. 5, ¶ 13; Docket no. 51, p. 1-2, ¶1;
3 Docket no. 52, p. 3, ¶13).

4
5 6. Since plaintiff had a prior history of renal stones¹⁸, she was tested to
6 determine whether they were the source of the pain (Docket no. 61, pp. 17-18),
7 without considering her pregnancy since there were no apparent contractions and
8 she appeared to be stable. (Docket no. 61, p. 19).

9
10 7. At plaintiff's own request, the hospital started an arrangement for her
11 transfer to Doctors' Center Hospital in Manatí, where her OB/GYN, Dr. Jorge Otero
12 Quintana, was available to treat her. (Docket no. 49, p. 5, ¶16; Docket no. 51,
13 p. 2, ¶1). Dr. Angel Torres Sánchez drafted a detailed certification of transfer,
14 which was supposedly signed by plaintiff Rubmarie Valentín. (Docket no. 51, p.
15 4, ¶16)¹⁹.

16
17
18 8. Defendants claim that at the time the ambulance left the hospital plaintiff
19 Rubmarie Valentín's vital signs were normal (Docket No. 51, p. 4, ¶16), while
20 plaintiffs claim that according to the paramedic record she was having premature
21

22 _____
23 *Dorland's at 376 and 464.*

24 ¹⁷"A record or display obtained by ultrasonic scanning (of the kidney)."
25 *Dorland's at 1735.*

26 ¹⁸"Kidney calculus; an abnormal concretion in the body, usually composed
27 of mineral salts." *Dorland's at 1777 and 271.*

28 ¹⁹Plaintiff claims that she does not recognize the signature found in the
document. (Docket No. 66, pp. 3, ¶ 8-9).

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2 contractions and that her pulse indicated the possibility of hypovolemic shock²⁰
3 and class II hemorrhage²¹. (Docket no. 66, p. 5, ¶ 14; Docket no. 66-1, p. 5).
4

5 9. Upon arriving at Doctors' Center Hospital in Manatí, the receiving nurse
6 recorded there was no fetal heart rate and that the patient was having
7 contractions; as well as being pale, diaphoretic²² and restless. (Docket no. 49, p.
8 6, ¶18).
9

10 10. The physical examination performed in the Emergency Room revealed
11 she had tachycardia²³ without respiratory distress²⁴, her abdomen as being
12 gravid²⁵ with tenderness²⁶ to palpation²⁵ and an inability to detect the fetal heart
13

14 ²⁰"A condition of profound hemodynamic and metabolic disturbance
15 characterized by failure of the circulatory system to maintain adequate perfusion
16 of vital organs[,] result[ing] from inadequate blood volume[...]" *Dorland's* at
17 1703.

18 ²¹"The escape of blood from the vessels; bleeding." *Dorland's* at 842.

19 ²²"Pertaining to, characterized by, or promoting sweating." *Dorland's* at 509.
20

21 ²³"Excessive rapidity in the action of the heart; the term is usually applied
22 to a heart rate above 100 beats per minute in an adult and is often qualified by
23 the locus of origin as well as by whether it is paroxysmal or nonparoxysmal."
Dorland's at 1867.

24 ²⁴"Fulminant pulmonary interstitial and alveolar adema, which usually
25 develops within a few days after an initiating trauma; it is thought to result from
26 alveolar injury that has led to increased capillary permeability." *Dorland's* at 1820.

27 ²⁵"Pregnant; the pregnant uterus." *Dorland's* at 805 and 2013.

28 ²⁶"Abnormal sensitiveness to touch or pressure." *Dorland's* at 1881.

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2 rate frequency. (Docket no. 49, p. 6, ¶19).

3 11. An emergency exploratory laparotomy²⁷ performed by her OB/GYN
4 revealed a ruptured uterus²⁸ caused by a previous cesarean section²⁹ scar³⁰, and
5 intra-uterus death fetus³¹. (Docket no. 49, p. 7, ¶ 20-21, Docket no. 51, p. 5,
6 ¶20).

7
8 12. Plaintiff had to be transferred to the intensive care unit and developed
9 further complications while hospitalized. (Docket No. 49, p. 7, ¶22). Upon being
10 released on January 3, 2012 she became aware of further neurologic³² deficits in
11 her senses of taste and smell. (Docket No. 49, p. 7, ¶23 and 25).

12
13 Based upon the above proposed findings of fact, I recommend that the court
14 enter the following

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16 _____
17
18 ²⁷"Surgery for diagnostic purposes, into the abdominal cavity." *Dorland's*
19 at 661 (for *exploratory*) and at 1005 (for *laparotomy*).

20 ²⁸"Forcible tearing or disruption of [the uterus]; the hollow muscular organ
21 in female mammals in which the blastocyst normally becomes embedded and in
22 which the developing embryo and fetus is nourished." *Dorland's* at 1659 (for
23 *rupture*) and at 2013 (for *uterus*).

24 ²⁹"Incision through the abdominal and uterine walls for delivery of a fetus."
25 *Dorland's* at 1685.

26 ³⁰"A mark remaining after the healing of a wound or other morbid process."
27 *Dorland's* at 1674.

28 ³¹"Death in utero; failure of the product of conception to show evidence of
respiration, heartbeat, or definite movement of a voluntary muscle after expulsion
from the uterus, with no possibility of resuscitation." *Dorland's* at 473.

³²"Deals with the nervous system." *Dorland's* at 1266.

2 III. CONCLUSIONS OF LAW

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4 1. Defendants moved for summary judgment under Rules 7.1(a), 7.1(d),

5 7.1(e) and 56(a) of the Local Rules of the United States District Court for the

6 District Court of Puerto Rico. "Under Federal Rule of Civil Procedure 56(a), '[t]he

7 court shall grant summary judgment if the movant shows that there is no genuine

8 dispute as to any material fact and the movant is entitled to judgment as a matter

9 of law.'" Nunes v. Massachusetts Dep't. of Correction, 766 F.3d 136, 142 (1st Cir.

10 2014); see Celotex Corp. V. Catrett, 477 U.S. 317, 323, 1056 S. Ct. 2548 (2000);

11 Cruz-Gascot v. HIMA-San Pablo Hosp. Bayamon, 728 F. Supp. 2d 14, 18 (D.P.R.

12 2010).

13

14

15 2. "A fact is material if it carries with it the potential to affect the outcome

16 of the suit under the applicable law. Newman v. Advanced Tech. Innovation

17 Corp., 749 F.3d 33, 36 (1st Cir. 2014) (quoting One Nat'l Bank v. Antonellis, 80

18 F.3d 606, 608 (1st Cir. 1996))." García-González v. Puig-Morales, 761 F.3d 81,

19 87 (1st Cir. 2014). "Summary judgment is inappropriate if the evidence 'is

20 sufficiently opened to permit a rational fact finder to resolve the issue in favor

21 of either side.'" Gerald v. Univ. of P.R., 707 F.3d 7, 16 (1st Cir. 2013)." Ahmed v.

22 Johnson, 752 F.3d 490, 495 (1st Cir. 2014).

23

24

25 3. The Emergency Medical Treatment and Active Labor Act, also known as

26 EMTALA, was enacted by Congress "to prevent the unsavory practice known as

27 patient 'dumping', whereby hospitals precipitously discharged or transferred to

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2 other hospitals patients who were unable to pay for their healthcare, in many
3 cases even before the hospital determined whether the patient had a critical
4 medical condition which was likely to deteriorate after discharge or during the
5 inter-hospital transfer. See Correa v. Hosp. San Francisco, 69 F.3d 1184, 1189-
6 90 (1st Cir. 1995).” Fratlicelli-Torres v. Hospital Hermanos, 300 Fed. Appx. 1, 3
7 (1st Cir. 2008); cf. Kenyon v. Hospital San Antonio, Inc., 951 F. Supp. 2d 255,
8 262 (D.P.R. 2013).
9

10
11 4. “To establish an EMTALA violation, a plaintiff must show (1) the hospital
12 is a participating hospital, covered by EMTALA, that operates an emergency
13 department; (2) the plaintiff arrived at the facility seeking treatment; and (3) the
14 hospital either (a) did not afford the patient an appropriate screening in order to
15 determine if she had an emergency condition, or (b) released the patient without
16 first stabilizing the emergency medical condition. Correa [v. Hosp. San Francisco,
17 69 F.3d 1184, 1190 (1st Cir. 1995)].” Cruz-Vázquez v. Mennonite Gen. Hosp.,
18 Inc., 717 F.3d 63, 68-69 (1st Cir. 2013); Maldonado-Rodriguez v. St. Luke’s
19 Memorial Hosp., Inc., 940 F. Supp. 2d 30, 35 (D.P.R. 2013); Matta-Rodriguez v.
20 Ashford Presbyterian Community Hosp., 2014 WL 3592087 at *4 (D.P.R. July 18,
21 2014).
22
23

24 5. The EMTALA statute itself does not define what an appropriate medical
25 screening or examination consists of but our Court of Appeals has
26

27 “. . .defined a participating hospital’s duty as providing an
28 examination ‘reasonably calculated to identify critical medical

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2 conditions that may be afflicting symptomatic patients and
3 provides that level of screening uniformly to all those who
4 present substantially similar complaints. The essence of this
5 requirement is that there be some screening procedure and that
6 it be administered even-handedly.’ [Correa v. Hosp. San
7 Francisco, 69 F.3d] at 1192. [...]. ‘[A] refusal to follow regular
8 screening procedures in a particular instance contravenes the
9 statute, but a faulty screening, in a particular case, as opposed
10 to disparate screening or refusing to screen at all, does not
11 contravene the statute.’ Id. at 1192-93. [...] ‘[W]hen a
12 hospital prescribes internal procedures for a screening
13 examination, those internal procedures ‘set the parameters for
14 an appropriate screening.’ Cruz-Queipo v. Hosp. Español Auxilio
15 Mutuo de P.R., 417 F. 3d 67, 70 (1st Cir. 2005) (quoting Correa
16 [v. Hosp. San Francisco], 69 F.3d at 1192”. Cruz-Vázquez v.
17 Mennonite Gen. Hosp., Inc., 717 F.3d at 69.

18 6. Therefore, the minimum standard required by EMTALA is that which falls
19 within the hospital’s capabilities, followed in the screening and treatment of
20 patients presenting similar symptoms. See Vázquez-Rivera v. Hosp. Episcopal
21 San Lucas, Inc., 620 F. Supp. 2d 264, 269 (D.P.R. 2009); Rivera v. Hospital
22 Episcopal Cristo Redentor, 613 F. Supp. 2d 192, 198-99 (D.P.R. 2009).

23 7. Since EMTALA does not take the place of a malpractice cause of action,
24 the question is not whether the hospital should have known about an emergency
25 medical condition, but whether it knew about it and refused to provide the
26 appropriate treatment or care. “Any time an unstabilized patient did not receive
27 the correct care prior to transfer, he could sue in federal court. This is entirely
28 inconsistent with our jurisprudence and Congressional intent, as we have
previously stated ‘EMTALA’ does not create a cause of action for medical

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2 malpractice.’ Correa, 69 F.3d at 1192.” Ramos-Cruz v. Centro Médico del Turabo,
3 642 F.3d 17, 19 (1st Cir. 2011); see Rosado-Gonzalez v. Alejandro Otero Lopez
4 Hosp., 836 F. Supp. 2d 48, 56 (D.P.R. 2011); Matta-Rodriguez v. Ashford
5 Presbyterian Community Hosp., 2014 WL 3592087 at *3.

7 8. Defendants claim that based on the location of patient’s pain, her
8 medical record and previous history of renal stones, they were under the
9 impression that her condition had nothing to do with the pregnancy and decided
10 to treat Mrs. Valentín as any other patient with the same symptoms. (Docket No.
11 80, p. 6). No protocol existed for a pregnant patient with the same complaint.
12 (Docket No. 80, p. 5). “EMTALA is implicated only when individuals who are
13 perceived to have the same medical condition receive disparate treatment; it is
14 not implicated whenever individuals who turn out in fact to have had the same
15 condition receive disparate treatment.’ [Vickers v. Nash Gen. Hosp., Inc., 78 F.3d
16 139, 144 (4th Cir. 1996)]”. Cruz-Vázquez v. Mennonite Gen. Hosp., Inc., 717 F.3d
17 at 71; see Colon-Ramos v. Clinica Santa Rosa, Inc., 938 F. Supp. 2d 222, 225
18 (D.P.R. 2013); cf. Matta-Rodriguez v. Ashford Presbyterian Community Hosp.,
19 2014 WL 3592087 at *7.

23 9. In compliance with EMTALA requirements, tests were ordered in an
24 attempt to identify the source of her pain. (Docket No. 49, p. 5, ¶ 13; Docket No.
25 51, p. 1-2, ¶1; Docket No. 52, p. 3, ¶13). Plaintiff was subsequently transferred
26 to a hospital in her hometown where her doctor was available to treat her, after
27
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2 being certified by a doctor that she was stable enough to make the journey.
3 (Docket No. 49, p. 5, ¶16; Docket No. 51, p. 2, ¶1; Docket No. 49, p. 7, ¶22).
4 Whether or not that impression was correct is not a question covered by EMTALA.
5 See Alvarez-Torres v. Ryder Memorial Hosp., Inc., 582 F.3d 47, 52 (1st Cir.
6 2009).

8
9 IV. RECOMMENDATION

10 For the reasons stated above, I recommend the court grant the motion for
11 summary judgment, and enter judgment in favor of defendants and against
12 plaintiffs for lack of subject matter jurisdiction under the Emergency Medical
13 Treatment and Active Labor Act (EMTALA), 42 U.S.C. §§ 1395dd et seq.³³

14
15 “As a general principle, the unfavorable disposition of a plaintiff's federal claims
16 at the early stages of a suit, well before the commencement of trial, will trigger
17 the dismissal without prejudice of any supplemental state-law claims.” López
18 Mulero v. Vélez Colón, 490 F. Supp. 2d 214, 227 (D.P.R. 2007) (quoting
19 Rodríguez v. Doral Mortgage Corp., 57 F.3d 1168, 1177 (1st Cir. 1995)); see
20 Ramos-Borges v. Puerto Rico, Puerto Rico Health Dept., 740 F. Supp. 2d 262,
21 279-80 (D.P.R. 2010); Rodríguez-Rivas v. Police Dep't of P.R., 483 F. Supp. 2d
22 137, 139-40 (D.P.R. 2007). Should the court adopt the report and
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26
27 ³³Marielia Isla Torres, a third-year student at University of Puerto Rico
28 School of Law, provided substantial assistance in researching and preparing this
report and recommendation.

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2 recommendation, I also recommend that plaintiffs' state-law claims be dismissed
3 without prejudice.
4

5 Under the provision of Rule 72(d), Local Rules, District of Puerto Rico, any
6 party who objects to this report and recommendation must file a written objection
7 thereto with the Clerk of this Court within fourteen (14) days of the party's receipt
8 of this report and recommendation. The written objections must specifically
9 identify the portion of the recommendation, or report to which objection is made
10 and the basis for such objections. Failure to comply with this rule precludes
11 further appellate review. Fed. R. Civ. P. 72 (b)(2); see Thomas v. Arn, 474 U.S.
12 140, 155, 106 S. Ct. 466 (1985); United States v. DeJesus-Viera, 655 F.3d 52,
13 57 n.1 (1st Cir. 2011); Davet v. Maccorone, 973 F.2d 22, 30-31 (1st Cir. 1992);
14 Velázquez v. Abbott Laboratories, 901 F. Supp. 2d 279, 288 (D.P.R. 2012).
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18 In San Juan, Puerto Rico this 7th day of November, 2014.
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21 S/JUSTO ARENAS
22 United States Magistrate Judge
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