

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO

3 ANGELICA DEL VALLE PÉREZ,  
4 et al.,

5  
6 Plaintiffs,

7 v.

8 POLICE DEPARTMENT OF PUERTO  
9 RICO, et al.,

10  
11 Defendants.

Civil No. 06-2184 (JAF)

12 **OPINION AND ORDER**

13 Plaintiffs Angélica Del Valle Pérez ("Del Valle") and her  
14 common-law partner José Padín bring this action against Defendants  
15 Police Department of Puerto Rico ("PDPR"), Carlos Merced, Richard  
16 Robles, José Vélez Cuba ("Vélez"), Ismael Martínez, Melvin Soberal  
17 Morales ("Soberal"), and unnamed PDPR supervisors, alleging  
18 violations of Title VII of the Civil Rights Act of 1964 ("Title  
19 VII"), 42 U.S.C. §§ 2000e to 2000e-17, the Constitution of Puerto  
20 Rico, and Puerto Rico laws, 29 L.P.R.A. §§ 146-51 (2001 & Supp.  
21 2006), 29 L.P.R.A. §§ 467-74 (2001), 29 L.P.R.A. §§ 1321-41 (2001),  
22 29 L.P.R.A. §§ 155-155m (2001), and 31 L.P.R.A. § 5141 (1990).  
23 Docket No. 1. Plaintiffs seek injunctive and declaratory relief and  
24 damages for sexual harassment, pregnancy discrimination, and  
25 retaliation. Id. Defendants move for summary judgment, Docket No. 43,  
26 and Plaintiffs oppose, Docket No. 54. Defendants have also filed a  
27 supplemental motion for summary judgment, Docket No. 63, which

1 Plaintiffs move to strike, Docket No. 65. Also before us is  
2 Plaintiffs' response to our Show Cause Order of January 26, 2009,  
3 Docket No. 75. Docket No. 76.

4 I.

5 **Factual and Procedural Synopsis**

6 \_\_\_\_\_We derive the following factual summary from the parties'  
7 motions, statements of material facts, and exhibits. Docket Nos. 43,  
8 44, 54, 55, 63, 64, 65, 67, 76, 79.

9 Plaintiff Del Valle, a resident of Manatí, Puerto Rico, has been  
10 employed as a police officer with PDPR since November 2004.  
11 Defendants Merced, Robles, Vélez, and Martínez are members of the  
12 PDPR with supervisory authority over Del Valle. Defendant Soberal is  
13 a police officer who worked with Del Valle.

14 Plaintiffs allege that, shortly after beginning work at the  
15 PDPR, Del Valle began to experience harassment from her co-worker  
16 Soberal and later from her supervisors. Plaintiffs submit evidence of  
17 the following facts; it is not clear to what extent these facts are  
18 contested by Defendants: In January 2005, on Del Valle's first  
19 investigative assignment, while she was alone in a police vehicle  
20 with Soberal, Soberal began discussing his sexual activities with his  
21 wife. He informed Del Valle that he was very sexually open, and  
22 stated that he liked using a vibrator on his wife so that he could  
23 please her first. Del Valle reported this incident to Martínez, who  
24 told her that he would discuss the incident with Soberal. A few days

1 later, Vélez called Del Valle at night to admonish her for "refusing  
2 to work with" Soberal. On another instance, in February 2005, Soberal  
3 approached Del Valle in a hallway at PRPD and asked her, in front of  
4 Martínez, to wear a short skirt sometimes so that he could throw a  
5 quarter down and look at her. Following this incident, Del Valle was  
6 so offended she had to run to the restroom to compose herself.

7 Shortly thereafter, Del Valle met with Vélez to explain her  
8 unwillingness to work with Soberal, but Vélez stated that he was not  
9 interested in hearing her complaint and that Martínez was responsible  
10 for preparing a report on the issue. Del Valle met with Soberal and  
11 Martínez later the same day to discuss the situation. At that  
12 meeting, Soberal stated that he "kn[ew] a lot of attorneys and  
13 Assistant District Attorneys." Del Valle requested that she and  
14 Soberal not be required to interact with each other at work. After  
15 the meeting, Del Valle was no longer assigned to work with Soberal;  
16 however, they remained on the same shifts at PRPD.

17 Del Valle states that prior to these incidents she had a good  
18 working relationship with Merced, another supervisor. Merced was on  
19 vacation during the incidents, but was informed of the situation upon  
20 his return. Del Valle states that following this, Merced's conduct  
21 toward Del Valle became hostile.

22 In March 2005, Del Valle learned that she was pregnant. Later  
23 that month, Del Valle sought an accommodation from Merced for her  
24 pregnancy, but Merced refused. Over the next two months, Del Valle

1 experienced complications with the pregnancy and submitted a total of  
2 five medical certificates to Merced requesting accommodations.  
3 Merced repeatedly insisted he had no work for pregnant women and  
4 offered no accommodation. In late May 2005, Merced informed Del Valle  
5 that he would have to transfer her to Arecibo, although Del Valle  
6 alleges that other pregnant women had been accommodated with work in  
7 the Bayamón office. Around the same time, Merced brought up Del  
8 Valle's complaints of sexual harassment, and told her that there was  
9 no harassment, that he didn't know what to do with her, and that her  
10 transfer might not be accepted due to the allegations she had made.

11 Merced then arranged a meeting with Robles, a high-ranking PDPR  
12 inspector. At the meeting, Del Valle presented Robles with a  
13 memorandum detailing the harassment she had experienced to that  
14 point, but Robles chastised her for doing so.

15 Del Valle was transferred to Arecibo on June 1, 2005. She  
16 alleges that the harassment nevertheless continued, as Merced filed  
17 false administrative complaints against her.

18 During this time period Del Valle experienced high blood  
19 pressure and other medical complications with her pregnancy. She gave  
20 birth to her daughter one month early on November 16, 2005.  
21 Plaintiffs filed a charge of discrimination with the EEOC on  
22 December 14, 2005. Docket No. 76-2.

23 Del Valle returned to work from maternity leave around January  
24 or February 2006. At this time, she inquired and discovered that no

1 action had been taken on her internal harassment complaint. Del Valle  
2 also states that Merced continued to harass her by treating her in a  
3 hostile manner and filing false charges against her. For example, in  
4 May 2006, Merced issued an "absent employee report" against Del Valle  
5 after she had sought vacation leave to take her daughter to the  
6 pediatrician. As a result, Del Valle states she continued to  
7 experience emotional anguish, as well as physical symptoms, such as  
8 high blood pressure.

9 During this time period, Merced attempted to influence América  
10 Ortiz García ("Ortiz"), the officer assigned to investigate Del  
11 Valle's harassment complaints. He also filed a grievance against  
12 Ortiz, falsely alleging that she was biased against him, which  
13 resulted in her removal from the case. Del Valle states that to date,  
14 no action has been taken on her internal harassment complaints.

15 On June 5, 2006, and August 30, 2006, Del Valle filed additional  
16 charges of discrimination with the EEOC. Docket Nos. 76-3, 76-4. The  
17 EEOC issued right-to-sue letters on August 31 and September 1, 2006.  
18 Docket No. 18-2.

19 On November 27, 2006, Plaintiffs filed the present action.  
20 Docket No. 1. Defendants moved for summary judgment on September 15,  
21 2008, Docket No. 43, and Plaintiffs opposed on October 8, 2008,  
22 Docket No. 54. Defendants filed a supplemental motion for summary  
23 judgment on October 23, 2008. Docket No. 63. On October 24, 2008,  
24 Plaintiffs moved to strike the supplemental motion, Docket No. 65,

1 and on October 29, 2008, Defendants opposed, Docket No. 66. On  
2 January 26, 2009, we ordered Plaintiffs to show cause as to why we  
3 should not dismiss their Title VII claims for failure to exhaust  
4 remedies. Docket No. 75. Plaintiffs responded to our order on  
5 February 12, 2009. Docket No. 76.

## 6 II.

### 7 Summary Judgment Standard under Rule 56(c)

8 \_\_\_\_\_We grant a motion for summary judgment "if the pleadings, the  
9 discovery and disclosure materials on file, and any affidavits show  
10 that there is no genuine issue as to any material fact and the movant  
11 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).  
12 A factual dispute is "genuine" if it could be resolved in favor of  
13 either party, and "material" if it potentially affects the outcome of  
14 the case. Calero-Cerezo v. U.S. Dep't of Justice, 355 F.3d 6, 19 (1st  
15 Cir. 2004).

16 The moving party carries the burden of establishing that there  
17 is no genuine issue as to any material fact; however, the burden "may  
18 be discharged by showing that there is an absence of evidence to  
19 support the nonmoving party's case." Celotex Corp. v. Catrett, 477  
20 U.S. 317, 325, 331 (1986). The burden has two components: (1) an  
21 initial burden of production, which shifts to the nonmoving party if  
22 satisfied by the moving party; and (2) an ultimate burden of  
23 persuasion, which always remains on the moving party. Id. at 331.



1           We also ordered Plaintiffs to show cause as to why we should not  
2 dismiss their Title VII retaliation claim for failure to file a  
3 charge within 180 days. Docket No. 75 (citing 42 U.S.C. § 2000e-  
4 5(e)(1) and 29 C.F.R. § 1601 & n.5). The English portions of the  
5 then-untranslated Spanish EEOC charge Plaintiffs had filed indicated  
6 that the retaliation ended more than 180 days before the filing date.  
7 See Docket No. 55-12. Plaintiffs have now submitted an official  
8 English translation of that charge, as well as the two additional  
9 charges. Docket Nos. 76-2, 76-3, 76-4. The allegations in the  
10 charging documents, along with the evidence in the summary judgment  
11 record, suggest that Plaintiff may have been subject to a continuing  
12 pattern of discriminatory acts beginning in January 2005 and  
13 continuing up to or beyond the filing of her last EEOC charge on  
14 August 30, 2006. See Docket Nos. 55, 76. Because at least some of  
15 these acts fall within 180 days of the filing of the charges, they  
16 would, if proven at trial, serve to anchor the remaining acts of  
17 discrimination. See, e.g., DeNovellis v. Shalala, 124 F.3d 298, 307-  
18 08 (1st Cir. 1997) (explaining that where a series of discriminatory  
19 acts occurs, each constituting a separate Title VII violation, at  
20 least one actionable violation must occur within the relevant time  
21 period). We, therefore, find that Plaintiffs' EEOC charges were  
22 timely filed.



1       **B.    Motion for Summary Judgment**

2       \_\_\_\_\_Defendants move for summary judgment on the grounds that  
3       (1) there is insufficient evidence to support a claim for sexual  
4       harassment under Title VII, (2) there is insufficient evidence to  
5       establish a claim for retaliation under Title VII, and  
6       (3) Plaintiffs' tort claims are time-barred.   Docket No. 43.

7               **1.    Sexual Harassment**

8       Del Valle alleges she was the victim of sexual harassment in the  
9       form of a hostile work environment at PRPD.   Docket No. 1. Defendants  
10       argue that (1) the evidence in the record does not contain facts  
11       severe or pervasive enough to constitute sexual harassment, and  
12       (2) there is no basis for employer liability.   Docket No. 43.

13       Title VII provides that "[i]t shall be an unlawful employment  
14       practice for an employer . . . to discriminate against any individual  
15       with respect to [her] compensation, terms, conditions, or privileges  
16       of employment because of such individual's race, color, religion, sex  
17       or national origin." 42 U.S.C. § 2000e-2. "[S]exual harassment is a  
18       'form of [sex] discrimination prohibited by Title VII.'" O'Rourke v.  
19       City of Providence, 235 F.3d 713, 728 (1st Cir. 2001) (quoting  
20       Provencher v. CVS Pharmacy, 145 F.3d 5, 13 (1st Cir. 1998)).

21       To establish a sexual harassment hostile work environment claim  
22       under Title VII, a plaintiff must demonstrate that (1) she is a  
23       member of a protected class; (2) she experienced unwelcome sexual  
24       harassment; (3) the harassment was based on sex; (4) the harassment

1 was sufficiently severe or pervasive so as to alter the conditions  
2 of her employment and create an abusive work environment; (5) the  
3 conduct was both objectively and subjectively offensive, such that  
4 a reasonable person would find it hostile or abusive and the victim  
5 in fact perceived it to be so; and (6) some basis for employer  
6 liability exists. O'Rourke, 235 F.3d at 728 (citing Faragher v. City  
7 of Boca Raton, 524 U.S. 774, 787-88 (1998)).

8 In our analysis, we look to the totality of the circumstances,  
9 including but not limited to: the frequency and severity of the  
10 discriminatory conduct; "whether it is physically threatening or  
11 humiliating, or a mere offensive utterance; and whether it  
12 unreasonably interferes with an employee's work performance."  
13 Billings v. Town of Grafton, 515 F.3d 39, 48 (1st Cir. 2008) (quoting  
14 Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993)) (internal  
15 quotation marks omitted). The summary judgment standard "polic[es]  
16 the baseline for hostile environment claims." Id. at 50 (quoting  
17 Pomales v. Celulares Telefonica, Inc., 447 F.3d 79, 83 (1st Cir.  
18 2006)) (internal quotation marks omitted). However, whether a hostile  
19 work environment exists is generally to be determined by the finder  
20 of fact. Id. at 47 n.7, 50.

21 In the present case, Plaintiffs submit evidence that on Del  
22 Valle's first investigative assignment, while she was alone in a  
23 police vehicle with Soberal, Soberal began explicitly discussing his  
24 sexual activities with his wife. Docket No. 55. Del Valle reported

1 this incident to Martínez, who told her that he would discuss the  
2 incident with Soberal. Id. On another occasion, Soberal approached  
3 Del Valle in a hallway at PRPD and asked her, in front of Martínez,  
4 to wear a short skirt sometimes so that he could throw a quarter down  
5 and look at her, suggesting that he wanted to look at her genitals  
6 or underwear. Id. Shortly thereafter, also in front of Martínez,  
7 Soberal threatened Del Valle by stating that he “kn[ew] a lot of  
8 attorneys and Assistant District Attorneys.” Id. After the meeting,  
9 Del Valle was no longer assigned to work with Soberal; however, they  
10 remained on the same shifts at PRPD despite Del Valle’s request that  
11 they not be required to interact with each other. Id.

12 It is unclear from their filings whether Defendants contest  
13 these facts. Nonetheless, drawing all reasonable inferences in  
14 Plaintiffs’ favor, we find that there remains a triable issue for the  
15 jury as to whether this conduct was severe or pervasive to constitute  
16 a hostile work environment. Soberal subjected Del Valle to harassing  
17 comments on at least three occasions. Two of these were explicit and  
18 offensive sexual remarks, and the third was a threat. The remarks  
19 made in front of her supervisor could be considered humiliating. Del  
20 Valle indicates, further, that these remarks and her supervisors’  
21 failure to correct the situation interfered with her ability to do  
22 her job as a police officer by causing her emotional anguish with  
23 physical manifestations. Finally, we note that such remarks in the  
24 context of a police force, a historically male-dominated field, could

1 be considered by a factfinder to be especially threatening or  
2 offensive as compared with the same remarks made in other  
3 circumstances. Cf. O'Rourke, 235 F.3d at 735 ("We do not believe that  
4 a woman who chooses to work in the male-dominated trades relinquishes  
5 her right to be free from sexual harassment . . . ." (quoting  
6 Williams v. Gen. Motors Corp., 187 F.3d 553, 563-64 (6th Cir. 1999)  
7 (internal quotation marks omitted)). Although we recognize that these  
8 facts may constitute a borderline case of sexual harassment, we do  
9 not find that they fall below the summary judgment baseline set by  
10 this circuit's hostile work environment case law. See Billings, 515  
11 F.3d at 48-52 (limning the boundaries of what conduct "a reasonable  
12 jury could have found . . . sufficiently severe or pervasive to  
13 constitute a hostile environment as a matter of law" and citing  
14 cases).

15 Defendants argue, however, that even if Del Valle suffered  
16 sexual harassment, Plaintiffs cannot demonstrate that PRPD should be  
17 held liable for Soberal's actions.<sup>2</sup> Docket No. 43. An employer can  
18 only be held liable for an employee's harassment by a co-worker where

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<sup>2</sup>Specifically, Defendants argue that PRPD is entitled to an affirmative defense to its liability based on Burlington Indus., Inc. v. Ellerth, 524 U.S. 742 (1998) and Faragher, 524 U.S. 775. Docket No. 43. Defendants' reliance on the Faragher/ Ellerth defense is misplaced, however, as the doctrine provides only a defense to an employer's vicarious liability "for hostile work environments created by supervisors." Noviello v. City of Boston, 398 F.3d 76, 95 (1st Cir. 2005). It is uncontested that Soberal is a co-worker, and not a supervisor, of Del Valle.

1 there exists "some negligence on the employer's part." Noviello, 398  
2 F.3d at 95. "Typically, this involves a showing that the employer  
3 knew or should have known about the harassment, yet failed to take  
4 prompt action to stop it." Id. (citing Crowley v. L.L. Bean, Inc.,  
5 303 F.3d 387, 401 (1st Cir. 2002)).

6 Plaintiffs allege that Del Valle complained of Soberal's conduct  
7 to her supervisors Martínez, Merced, Vélez, and Robles at various  
8 times. Docket No. 55. On one occasion, Del Valle says Vélez called  
9 her at night to admonish her for "refusing to work with" Soberal.  
10 Id. Plaintiffs further state that Martínez witnessed some of the  
11 harassment. Although Martínez stated he would speak to Soberal, the  
12 harassment continued. While Soberal was no longer assigned to work  
13 directly with Del Valle, they continued to work on the same shifts  
14 and encounter each other at the station, despite Del Valle's request  
15 that this not occur. Finally, Del Valle proffers evidence that  
16 although she sought assistance through the established channels for  
17 complaints of sexual harassment at the PRPD, no action was taken on  
18 her complaint. Plaintiffs have, thus, introduced sufficient evidence  
19 to generate a genuine issue of material fact as to whether PRPD was  
20 on notice of the harassment and failed to take appropriate corrective  
21 action. See Noviello, 398 F.3d at 96-97. Summary judgment is,  
22 therefore, inappropriate on the sexual harassment claim.

1           **2. Retaliation**

2           Plaintiffs allege that Del Valle's supervisors subjected her to  
3 continued retaliatory acts and a hostile work environment for her  
4 complaints of the alleged sexual harassment. Docket No. 1. Defendants  
5 assert that we should dismiss Plaintiffs' retaliation claim. Docket  
6 No. 43. Defendants, however, fail to state any legal basis on which  
7 they are entitled to summary judgment on this claim, arguing only  
8 that (1) although Plaintiffs assert that Merced refused Del Valle an  
9 accommodation for her pregnancy, she in fact received an appropriate  
10 accommodation, and (2) contrary to Plaintiffs' assertion, Soberal and  
11 Merced are not friends; therefore, this cannot be a reason why Merced  
12 would retaliate against Del Valle. Id. As Plaintiffs note, these  
13 facts are, by definition, contested. See Docket Nos. 54, 55.  
14 Furthermore, Plaintiffs have proffered evidence on significantly more  
15 than these two facts in support of their claim for retaliation. See  
16 id. Defendants have wholly failed to demonstrate that no genuine  
17 issues exist as to the material facts of this claim.

18           **3. Statute of Limitations for Tort Claims**

19           Finally, Defendants argue that Plaintiffs' tort claims are  
20 barred by a one-year statute of limitations. Docket No. 43.  
21 Defendants assert that the claims accrued when Del Valle's harassment  
22 began, between January and March 2005. Id. Plaintiffs do not contest  
23 this formulation of the accrual date, but argue instead that their

1 tort claims were tolled by the filing of the charges before the EEOC.  
2 Docket No. 54.

3 The Puerto Rico statute of limitations for tort actions is one  
4 year. 31 L.P.R.A. § 5298(2) (1990); Tokyo Marine & Fire Ins. Co. v.  
5 Pérez & Cía. de P.R., Inc., 142 F.3d 1, 3-4 (1st Cir. 1998). The  
6 statute of limitations begins to run when the aggrieved party has  
7 knowledge of the injury sufficient to institute an action. Sánchez  
8 v. Autoridad de Energía Eléctrica, 142 D.P.R. 880, 1997 P.R. Eng.  
9 878520 (1997). The filing of a charge with an administrative agency,  
10 such as the EEOC, does not toll the running of the statute of  
11 limitations for a tort action. Leon-Nogueras v. Univ. of P.R., 964  
12 F.Supp. 585, 588 (D.P.R. 1997) (citing Cintrón v. E.L.A., 127 D.P.R.  
13 582, 595-96 (1990)).

14 Plaintiffs filed the present suit on November 27, 2006. Docket  
15 No. 1. Therefore, any cause of action that accrued prior to  
16 November 27, 2005 is barred by the statute of limitations. See 31  
17 L.P.R.A. § 5298(2). Plaintiffs have introduced evidence of a series  
18 of harassing acts committed by Defendants which began in January 2005  
19 and continued through at least May 2006 or later. See Docket No. 55.  
20 Plaintiffs had knowledge of their injury at the time of the  
21 harassment; therefore, their cause of action accrued at the time the  
22 harassing acts occurred. Thus, Plaintiffs may pursue damages only for  
23 conduct by Defendants that took place on or after November 27, 2005.

1 Any claim for damages arising from events that took place prior to  
2 that date is time-barred.

3 **IV.**

4 **Conclusion**

5 For the reasons stated herein, we **GRANT** Defendants' motion for  
6 summary judgment **IN PART** and **DENY** it **IN PART**, Docket No. 43. We **GRANT**  
7 summary judgment for Defendants on Plaintiffs' tort claims arising  
8 from conduct before November 27, 2005, and **DENY** the remainder of  
9 Defendants' motion. Remaining are Plaintiffs' Title VII claims for  
10 sexual harassment, pregnancy discrimination,<sup>3</sup> and retaliation; their  
11 31 L.P.R.A. § 5141 tort claims arising on or after November 27, 2005;  
12 and those under 29 L.P.R.A. §§ 467-74, 29 L.P.R.A. §§ 1321-41, 29  
13 L.P.R.A. §§ 155-155m. We also **DENY** Defendants' supplemental motion  
14 for summary judgment, Docket No. 63, and Plaintiffs' motion to  
15 strike, Docket No. 65, as **MOOT**.

16 The parties are encouraged to exhaust all settlement  
17 possibilities before the trial commences next Monday, February 23,  
18 2009.

19 **IT IS SO ORDERED.**

20 San Juan, Puerto Rico, this 20<sup>th</sup> day of February, 2009.

21 s/José Antonio Fusté  
22 JOSE ANTONIO FUSTE  
23 Chief U.S. District Judge

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<sup>3</sup>Defendants have not challenged Plaintiffs' pregnancy discrimination claim.