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

JULIO F. DEL TORO-PACHECO,

Plaintiff

v.

MIGUEL A. PEREIRA-CASTILLO,
Secretary of Correction and
Rehabilitation Administration,
ROBERTO IZQUIERDO-OCASIO,
Director of Special Arrest Unit,

Defendants

CIVIL 08-1133 (FAB) (JA)

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OPINION AND ORDER

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This matter is before me on a motion for summary judgment filed by defendants Roberto Izquierdo-Ocasio (Izquierdo-Ocasio) and Miguel A. Pereira (Pereira) on June 30, 2009. (Docket No. 28.) Plaintiff Julio F. del Toro-Pacheco (del Toro) filed a motion in opposition on July 31, 2009 (Docket No. 33) to which defendants replied on August 14, 2009. (Docket No. 40.) For the reasons set forth below defendants' motion for summary judgment is GRANTED.

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I. FACTUAL BACKGROUND

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On December 20, 1993, plaintiff started to work for the Department of Corrections and Rehabilitation ("DCR"), and in 1996 plaintiff became part of the escort assigned to protect dignitaries within the DCR. In 2000, plaintiff became part of the Special Arrest Unit ("SAU") of the DCR. (Docket No. 31-2, Docket No. 36, at 5, ¶ 2 & Docket No. 41, at 3, ¶ 2.)

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4 Defendant Pereira was appointed by the Governor as Secretary of the DCR.
5 (Docket No. 1, at 6, ¶ 31 & Docket No. 13, at 4, ¶ 31.) Defendant Izquierdo-
6 Ocasio was plaintiff's immediate supervisor from 2000 to 2007 and was also the
7 Director of the SAU at the DCR. (Docket No. 1, at 6, ¶ 31, Docket No. 13, at 4,
8 ¶ 31, Docket No. 36, at 5, ¶ 3 & Docket No. 41, at 3, ¶ 3.)
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10 On March 27, 2006, the wife of one of plaintiff's friends was the victim of an
11 alleged sexual assault. Authorities suspected plaintiff was the assailant after the
12 victim filed a formal criminal complaint before the Puerto Rico Police Department
13 against him. (Docket Nos. 31-3 & 31-4.)
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15 On March 29, 2006, after finding out of the criminal complaint filed against
16 plaintiff, defendant Izquierdo-Ocasio notified defendant Pereira. (Docket No. 31-
17 7.) After defendant Pereira was informed of the criminal complaint that was filed
18 against plaintiff, an internal investigation ensued. (Docket No. 27, at 4, ¶ 15 &
19 Docket No. 36, at 2, ¶ 15.)
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21 On February 22, 2007, after the DCR conducted its investigation, defendant
22 Pereira notified plaintiff of the agency's intention to discharge him. (Docket No.
23 27, at 7, ¶ 27, Docket No. 31-12 & Docket No. 36, at 3, ¶ 27.) The notification
24 explained to plaintiff the charges that were filed against him. (Docket No. 27, at
25 7, ¶ 28, Docket No. 31-12 & Docket No. 36, at 3, ¶ 28), and the statutes that had
26 been allegedly breached. (Docket No. 27, at 8, ¶ 29, Docket No. 31-12 & Docket
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4 No. 36, at 3, ¶ 29.) Plaintiff was informed that if he did not agree with the
5 charges that were being notified against him, he had the right to request an
6 informal administrative hearing. (Docket No. 27, at 8, ¶ 30, Docket No. 31-12 &
7 Docket No. 36, at 3, ¶ 30.) Plaintiff was also explained that the purpose of the
8 hearing was to give him the chance to present the necessary evidence before a
9 hearing officer, who would then make recommendations. Id. Accordingly, plaintiff
10 requested an informal administrative hearing. (Docket No. 27, at 8, ¶ 31, Docket
11 No. 31-13 & Docket No. 36, at 3, ¶ 31.) The hearing was held on January 2007.
12 Plaintiff attended the hearing accompanied by his attorney. (Docket No. 27, at 8,
13 ¶ 32, Docket No. 31-13 & Docket No. 36, at 4, ¶ 32.) However, plaintiff decided
14 not to give his side of the story. (Docket No. 27, at 8, ¶ 33, Docket No. 31-14 &
15 Docket No. 36, at 4, ¶ 33.)
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18 On January 24, 2007, the agency informed plaintiff that they had decided
19 to discharge him from the DCR. (Docket No. 27, at 9, ¶ 35, Docket No. 31-16 &
20 Docket No. 36, at 4, ¶ 35.) Plaintiff then filed an appeal before the Investigative,
21 Procedure and Appellate Commission ("CIPA"), where he challenged the
22 discharge. (Docket No. 27, at 9, ¶ 36, Docket No. 31-17 & Docket No. 36, at 4,
23 ¶ 36.)
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26 On April 2008, an evidentiary hearing was held at CIPA. After listening to
27 the evidence submitted by the plaintiff and the agency, CIPA confirmed the
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3 administrative decision discharging plaintiff from the DCR. (Docket No. 27, at 9,
4 ¶ 37, Docket No. 31-18 & Docket No. 36, at 4, ¶ 37.)
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6 II. PROCEDURAL BACKGROUND

7 On January 30, 2008, plaintiff filed a complaint against defendants pursuant
8 to 28 U.S.C. §§ 1331, 1343(3)(4), 42 U.S.C. § 1983, and the First, Fifth and
9 Fourteenth Amendments to the Constitution of the United States. Plaintiff also
10 brought several claims under the laws of Puerto Rico alleging violations of his
11 rights under Personnel Law of Puerto Rico, P.R. Laws Ann. tit. 3, § 130 et seq.,
12 sections 1, 4, 6 and 7 of Article II of the Constitution of the Commonwealth of
13 Puerto Rico, Law No. 382 of 1950, P.R. Laws Ann. tit. 29, §§ 136-138 and Law
14 No. 100 of 1959, as amended, P.R. Laws Ann. tit. 29, § 146. (Docket No. 1, at
15 1-3, ¶¶ 1-14.)
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18 On August 22, 2008, and on June 29, 2009, defendants Izquierdo-Ocasio
19 and Pereira respectively filed their answer to plaintiff's complaint. (Docket Nos.
20 13 & 25.) On April 2, 2008, defendants filed a motion to dismiss pursuant to Rule
21 12(b)(6) of the Federal Rules of Civil Procedure. Defendants argue that plaintiff's
22 complaint should be dismissed for the following reasons: (1) it was time-barred;
23 (2) plaintiff failed to state a claim under section 1983, and (3) they were
24 protected from liability under the Eleventh Amendment and qualified immunity.
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26 (Docket No. 7.)
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4 On November 21, 2008, I entered an order granting and denying in part
5 defendants' motion to dismiss. I held that plaintiff's complaint was not time
6 barred; that plaintiff did not fail to state a claim under section 1983 and that
7 defendants were not entitled to either qualified or the Eleventh Amendment
8 immunity. Also, plaintiff's Equal Protection, Fifth Amendment, and Puerto Rico Law
9 No. 100 claims were dismissed with prejudice. (Docket No. 23.)
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11 On June 30, 2009, defendants filed a motion for summary judgment and
12 memorandum of law in support. Defendants argue that plaintiff (a) failed to state
13 a cause of action under 42 U.S.C. § 1983; (b) failed to establish a *prima facie*
14 case of political discrimination; and (c) that since he failed to allege any cause of
15 action under federal law, the claims brought forth under supplemental jurisdiction
16 should also be dismissed. Also, in the alternative, defendants claim that they
17 would be entitled to qualified immunity if the court were to find that plaintiff's
18 rights have been violated. (Docket No. 28.)
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21 On August 4, 2009, plaintiff filed his opposition to summary judgment.
22 Plaintiff claims that he has a valid cause of action since he has proffered sufficient
23 evidence that shows that defendants intentionally and under color of authority,
24 personally and/or by means of other officials acted to deprive him of his rights
25 under the First and Fourteenth Amendments, and under 42 U.S.C. § 1983. Plaintiff
26 also states that defendants are not entitled to qualified immunity since the facts
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3 presented in the complaint demonstrate that they acted maliciously and
4 intentionally. (Docket No. 35.)
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6 On August 14, 2009, defendants replied claiming that plaintiff did not meet
7 the burden of showing there were genuine issues in controversy that were trial
8 worthy. Defendants argue that plaintiff only objected to their statements of
9 uncontested facts for evidentiary reasons and/or on unsupported grounds.
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11 (Docket No. 40.)

12 III. STANDARD OF REVIEW

13 A. Summary Judgement

14 Summary judgment is appropriate when “the pleadings, the discovery and
15 disclosure materials on file, and any affidavits show that there is no genuine issue
16 as to any material fact and that the movant is entitled to judgment as a matter
17 of law.” Fed. R. Civ. P. 56(c). The intention of summary judgment is to “pierce
18 the pleadings and to assess the proof in order to see whether there is a genuine
19 need for trial.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
20 587 (1986) (quoting Fed. R. Civ. P. 56(e)). “Once the moving party has properly
21 supported [its] motion for summary judgment, the burden shifts to the nonmoving
22 party, with respect to each issue on which [it] has the burden of proof, to
23 demonstrate that a trier of fact reasonably could find in [its] favor.” Santiago-
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4 Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 52 (1st Cir. 2000) (quoting
5 DeNovellis v. Shalala, 124 F.3d 298, 306 (1st Cir. 1997)).

6 “[T]he mere existence of *some* alleged factual dispute between the parties
7 will not defeat an otherwise properly supported motion for summary judgment;
8 the requirement is that there be no *genuine* issue of *material* fact.” Anderson v.
9 Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986); see also Carrol v. Xerox Corp.,
10 294 F.3d 231, 236-37 (1st Cir. 2002) (quoting J. Geils Band Employee Benefit
11 Plan v. Smith Barney Shearson. Inc., 76 F.3d 1245, 1251 (1st Cir. 1996))
12 (“[N]either conclusory allegations [nor] improbable inferences’ are sufficient to
13 defeat summary judgment.”). The nonmoving party must produce “specific facts
14 showing that there is a genuine issue for trial.” Matsushita Elec. Indus. Co. v.
15 Zenith Radio Corp., 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)); see also
16 López Carrasquillo v. Rubianes, 230 F.3d 409, 413 (1st Cir. 2000).

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19 “A genuine issue exists when there is evidence sufficient to support rational
20 resolution of the point in favor of either party.” Nereida González v. Tirado
21 Delgado, 990 F.2d 701, 703 (1st Cir. 1993) (citing Anderson v. Liberty Lobby,
22 Inc., 477 U.S. at 248; United States v. One Parcel of Real Prop., 960 F.2d 200,
23 204 (1st Cir. 1992)). “In this context, ‘genuine’ means that the evidence about
24 the fact is such that a reasonable jury could resolve the point in favor of the
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3 nonmoving party. . . . ” Burke v. Town of Walpole, 405 F.3d 66, 75 (1st Cir.
4 2005) (quoting United States v. One Parcel of Real Prop., 960 F.2d at 204).

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6 Rule 56(e) “requires the nonmoving party to go beyond the pleadings and
7 by her own affidavits, or by ‘depositions, answers to interrogatories, and
8 admissions on file,’ designate ‘specific facts showing that there is a genuine issue
9 for trial.’” Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). However, a
10 moving party “may move for summary judgment ‘with or without supporting
11 affidavits.’” Id. at 323 (quoting Rules 56(a) and (b)). “The evidence of the non-
12 movant is to be believed, and all justifiable inferences are to be drawn in his
13 favor.” Anderson v. Liberty Lobby, Inc., 477 U.S. at 255 (citing Adickes v. S. H.
14 Kress & Co., 398 U.S. 144, 158-59 (1970)); see also Patterson v. Patterson, 306
15 F.3d 1156, 1157 (1st Cir. 2002) (quoting Griggs-Ryan v. Smith, 904 F.2d 112,
16 115 (1st Cir. 1990)) (“[the court] must view the entire record in the light most
17 hospitable to the party opposing summary judgment, indulging all reasonable
18 inferences in that party’s favor.”).

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22 B. Puerto Rico Local Rule 56

23 In the District of Puerto Rico, Local Rule 56(b), previously Local Rule 311
24 (12), imposes additional requirements on the party filing for summary judgment
25 as well as the party opposing the motion. A motion for summary judgment has
26 to be accompanied by “a separate, short, and concise statement of material facts,
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3 set forth in numbered paragraphs, as to which the moving party contends there
4 is no genuine issue of material fact to be tried. Each fact asserted in the
5 statement shall be supported by a record citation as required by subsection (e)
6 of this rule.” Local Rules of the United States District Court for the District of
7 Puerto Rico, Local Rule 56(b) (2004). When filing a motion in opposition, the
8 opposing party must include a separate, short, and concise statement admitting,
9 denying or qualifying each fact set out by the moving party. Local Rules 56(c);
10 see Morales v. A.C. Orsleff’s EFTF, 246 F.3d 32, 33 (1st Cir. 2001); Ruiz Rivera
11 v. Riley, 209 F.3d 24, 27-28 (1st Cir. 2000); Domínguez v. Eli Lilly & Co., 958 F.
12 Supp. 721, 727 (D.P.R. 1997); see also Corrada Betances v. Sea-Land Serv., Inc.,
13 248 F.3d 40, 43 (1st Cir. 2001).

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17 These facts must be supported by specific reference to the record, thereby
18 pointing out to the court any genuine issues of material fact and eliminating the
19 problem of the court having “to ferret through the Record.” Domínguez v. Eli Lilly
20 & Co., 958 F. Supp. at 727; see Carmona Ríos v. Aramark Corp., 139 F. Supp. 2d
21 210, 214-15 (D.P.R. 2001) (quoting Stepanischen v. Merch. Despatch Transp.
22 Corp., 722 F.2d 922, 930-31 (1st Cir. 1983)); Velázquez Casillas v. Forest Lab.,
23 Inc., 90 F. Supp. 2d 161, 163 (D.P.R. 2000). Any statement of fact provided by
24 any party which is not supported by citation to the record may be disregarded by
25 the court, and any supported statement which is not properly presented by the
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3 other party shall be deemed admitted. See Local Rule 56(e). Failure to comply
4 with this rule may result, where appropriate, in judgment in favor of the opposing
5 party. Morales v. A.C. Orsleff's EFTF, 246 F.3d at 33; Stepanischen v. Merch.
6 Despatch Transp. Corp., 722 F.2d at 932.
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8 Defendants submitted their statement of uncontested material facts on
9 June 30, 2009. (Docket No. 27), and on July 31, 2009, plaintiff submitted its own
10 statement of uncontested facts. (Docket No. 33-3.) Defendants filed a reply
11 statement on August 14, 2009. (Docket No. 41.) Thus, parties have complied
12 with the district court's local anti-ferret rule.
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14 IV. DISCUSSION

15 A. Evidentiary Issues

16 Plaintiff has countered several of defendants statements of uncontested
17 facts on the grounds that the documents supporting said statements: (1) have
18 not been authenticated as required by Rule 56(e) of the Federal Rules of Civil
19 Procedure and Rule 901(a) of the Federal Rules of Evidence; (2) the documents
20 contain hearsay statements pursuant to Federal Rule of Evidence 802; and (3)
21 that defendant Izquierdo-Ocasio's sworn statement is not properly authenticated
22 since he lacks competence to testify as required by Federal Rule of Civil Procedure
23 56 (e)(1). (Docket No. 35, at 1-2, ¶¶ 2-4.)
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3 Defendants on the other hand request that plaintiff's unsworn statement
4 submitted in support of the response to defendants' motion for summary
5 judgment be stricken from the record since it contains conclusory allegations.
6 (Docket No. 40, at 8-9, ¶¶ 20-21.) Defendants also argue that plaintiff has
7 waived any objection regarding defendants' statement of uncontested facts since
8 he has admitted them in the alternative. (Docket No. 40, at 9, ¶ 22.)
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11 1. Plaintiff requests that the following exhibits be stricken:

- 12 a. Plaintiff's deposition transcript (Docket No. 31,
13 Exhibits 1-2, 4-5, 7, 12-14, 16-17, and 19-23)

14 Recently this court reaffirmed the long standing principle which requires
15 "that '[d]ocuments supporting or opposing summary judgment must be properly
16 authenticated." Rivera Maldonado v. Hosp. Alejandro Otero López, 614 F. Supp.
17 2d 181, 185 n.1 (D.P.R. 2009) (quoting Carmona v. Toledo, 215 F.3d 124, 131
18 (1st Cir. 2000) (citing Fed. R. Civ. P. Rule 56(e))). The court emphasized that
19 "[t]he failure to authenticate a document properly precludes its consideration on
20 a motion for summary judgment." Id. (quoting Robinson v. Bodoff, 355 F. Supp.
21 2d 578, 582 (D. Mass. 2005)). In United States v. Ventura-Meléndez, 275 F.3d
22 9, 14 (1st Cir. 2001) the court stated that Rule 902 of the Federal Rules of
23 Evidence provides, in relevant part, for the self-authentication of:
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26 A document bearing a seal purporting to be that of the
27 United States, or of any State, district, Commonwealth,
28 territory, or insular possession thereof, or the Panama

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4 Canal Zone, or the Trust Territory of the Pacific Islands,
5 or of a political subdivision, department, officer, or
6 agency thereof, and a signature purporting to be an
7 attestation or execution.

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9 United States v. Ventura-Meléndez, 275 F.3d at 14.

10 On the other hand, Rule 56 of the Federal Rules of Civil Procedure does not
11 provide that an affidavit of authentication is required as to pleadings, depositions,
12 answer to interrogatories and admissions. Fed. R. Civ. P. 56. On the contrary,
13 the rule states that a party may “move, with or without supporting affidavits, for
14 a summary judgment on all or any part of the claim.” Fed. R. Civ. P. 56(a).
15 However, Rule 30(f)(1) deals with authentication of depositions by certification
16 of the officer taking the deposition. The rule states that “[t]he officer must certify
17 in writing that the witness was duly sworn and that the deposition accurately
18 records the witness testimony.” Fed. R. Civ. P. 30(f)(1).
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20 Defendants’ Exhibits 1-2, 4-5, 7, 12-14, 16-17, and 19-23, which contain
21 excerpts of plaintiff’s deposition transcript, were properly authenticated since the
22 officer taking the deposition certified that the plaintiff was duly sworn and that the
23 deposition accurately records his testimony. (Docket No. 40-2.) Besides, plaintiff
24 made use of the deposition in his opposition to defendants’ motion for summary
25 judgment in order to support the statement of uncontested facts. (Docket No. 33-
26 3.)
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3 b. Investigative Reports (Docket No. 31, Exhibits 6
4 and 8-10)

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6 Exhibits 6 and 8-10, regarding the investigative interviews conducted by
7 several agents, are not self-authenticated since (1) the documents do not bear the
8 proper seal of the Department of Corrections and Rehabilitation, and (2) because
9 their contents were not properly attested since they were not signed by officials
10 authorized to authenticate. I find that the aforementioned documents are
11 admissible pursuant to Federal Rule of Evidence 803(8). I explain.
12

13 “Generally, evidence that constitutes hearsay is not admissible at trial.”
14 Remington Inv., Inc. v. Quintero & Martínez Co., 961 F. Supp. 344, 351 (D.P.R.
15 1997). Rule 803(8) of the Federal Rules of Evidence provides a general exception
16 to the hearsay rule. The rule states that:
17

18 Public records and reports. Records, reports, statements,
19 or data compilations, in any form, of public offices or
20 agencies, setting forth (A) the activities of the office or
21 agency, or (B) matters observed pursuant to duty
22 imposed by law as to which matters there was a duty to
23 report . . . , or (C) in civil actions and proceedings . . . ,
24 factual findings resulting from an investigation made
pursuant to authority granted by law, unless the sources
of information or other circumstances indicate lack of
trustworthiness.

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26 Fed. R. Evid. 803(8).
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4 Nonetheless, public records such as investigatory reports, may be
5 admissible if they are based on a factual investigation and the report, and any
6 portion that is admitted, is sufficiently trustworthy. See Beech Aircraft Corp. v.
7 Rainey, 488 U.S. 153, 170 (1998). "Trustworthiness in this context refers to
8 matters such as whether the evidence is self-authenticating or contemporaneously
9 compiled by a person of adequate skill and experience." Blake v. Pellegrino, 329
10 F.3d 43, 48 (1st Cir. 2003). In determining whether an investigative report is
11 trustworthy, a court may consider, among other factors, "(1) the timeliness of the
12 investigation; (2) the investigator's skill or experience; (3) whether a hearing was
13 held; and (4) possible bias when reports are prepared with a view to possible
14 litigation." Beech Aircraft Corp. v. Rainey, 488 U.S. at 167 n.11.

17 Based on the foregoing, it is clear that the DCR's investigatory reports fall
18 under the exception of Rule 803(8) since they were prepared in a timely fashion
19 by public officials during the course of their duties. Thus, it can be reasonably
20 inferred that they are sufficiently trustworthy and comply with the standards
21 established by the Court in Beech Aircraft.

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23 c. Defendant Izquierdo-Ocasio's sworn statement
24 (Exhibit 24)

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26 Plaintiff objects to defendants' statement of uncontested fact number 49
27 since it is supported by defendant Izquierdo-Ocasio's sworn statement, which
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3 according to plaintiff is not properly authenticated since defendant Izquierdo-
4 Ocasio lacks competence to testify as required by Federal Rule of Civil Procedure
5 56(e)(1). (Docket No. 33-3, at 5, ¶ 49.)
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7 Federal Rule of Civil Procedure 56(e)(1) states: “[a] supporting or opposing
8 affidavit must be made on personal knowledge, set out facts that would be
9 admissible in evidence, and show that the affiant is competent to testify on the
10 matters stated.” Fed. R. Civ. P. 56(e)(1). “Additionally, the document ‘must
11 concern facts as opposed to conclusions, assumptions, or surmise,’ not conclusory
12 allegations.” Celta Agencies, Inc. v. Denizcilksanayi Ve Ticaaret, A.S., 396 F.
13 Supp. 2d 106, 111 (D.P.R. 2005) (quoting Pérez v. Volvo Car Corp., 247 F.3d 303,
14 316 (1st Cir. 2001), and citing López-Carrasquillo v. Rubianes, 230 F.3d at 414).
15 Furthermore, “in order to be admissible, the proffered statements must be specific
16 and adequately ‘supported with particularized factual information.’” Celta
17 Agencies, Inc. v. Denizcilksanayi Ve Ticaaret, A.S., 396 F. Supp. 2d at 112
18 (quoting Perez v. Volvo Car Corp., 247 F.3d at 316.)
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22 Plaintiff’s argument is unavailing since it fails to set forth facts that would
23 cast a shadow over the defendant Izquierdo-Ocasio’s personal knowledge of the
24 facts, or his competency to testify nor that the statements made would be
25 inadmissible. In other words, plaintiff does not point out the deficiencies in
26 defendant Izquierdo-Ocasio’s sworn statement if any. In essence, plaintiff claims
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3 that defendant's statement is not properly authenticated since he lacks
4 competence to testify as required by Federal Rule of Civil Procedure 56(e)(1).
5 Thus, defendant's statement fully complies with the requirements set out in Rule
6 56(e) since it was made under oath and sets out facts based on his personal
7 knowledge that would be admissible in evidence.
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9
10 2. Defendants request that the following exhibit be stricken:

- 11 a. Plaintiff's unsworn statement (Docket No. 35,
12 Exhibit 1)

13
14 Defendants' request that plaintiff's unsworn statement be stricken from the
15 record since it does not meet the requirements set out in Rule 56 of the Federal
16 Rules of Civil Procedure. (Docket No. 40, at 8, ¶ 20.)

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18 This court has held that "a party can rely on . . . self-serving affidavits
19 containing relevant information to oppose a motion for summary judgment."
20 Rivera-Santiago v. Abbott Pharm. P.R. Ltd., 609 F. Supp. 2d 167, 174 (D.P.R.
21 2009) (citing Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d at 53.
22 Nevertheless, "the affidavits must contain specific factual information based on the
23 party's personal knowledge." Id. Thus, "affidavits submitted in opposition to a
24 motion for summary judgment' that 'merely reiterate allegations made in the
25 complaint, without providing specific factual information made on the basis of
26 personal knowledge' are insufficient." Id.
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3 Although plaintiff's sworn statement is self serving, it provides sufficient
4 specific factual information based on his personal knowledge. As such, plaintiff's
5 statement shall not be stricken.
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7 3. Relevancy
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9 Plaintiff objects to defendants' statement of uncontested facts number 47
10 due to relevancy. (Docket No. 33-3, at 5, ¶ 47.) Defendants' statement reads
11 as follows:
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13 A cursory reading of the complaint number 02-2524 (HL)
14 establishes that Julio del Toro Pacheco did not sue Lt.
15 Roberto Izquierdo Ocasio. The only defendants in that
16 lawsuit were Víctor Rivera, Ana Batalla, Héctor Fontáñez,
17 José Fellicier and Ramón Díaz.

18 (Docket No. 27, at 10, ¶ 47.)
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20 Under Rule 401 "[r]elevant evidence' means evidence having any tendency
21 to make the existence of any fact that is of consequence to the determination of
22 the action more probable or less probable than it would be without the evidence."
23 Fed. R. Evid. 401. In determining if certain relevant evidence must be excluded,
24 the court has considerable discretion. See Santos v. Sunrise Med., Inc., 351 F.3d
25 587, 592 (1st Cir. 2003).

26 Plaintiff essentially claims that defendant knew he was a member of the New
27 Progressive Party (1) because defendant knew that he used to belong to the
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4 escort, a trust position, and (2) because in 2002 he had sued defendant for
5 political discrimination. (Docket Nos. 31-22 & 31-23.) Defendant on the other
6 hand claims he was not sued and that the only people sued were Víctor Rivera,
7 Ana Batalla, Héctor Fontáñez, José Fellicier and Ramón Díaz. (Docket No. 27, at
8 10, ¶ 47.) Defendant additionally states he did not know of plaintiff's political
9 affiliation until he was summoned and given a copy of the complaint in the present
10 case on February 12, 2008. (Docket No. 27, at 11, ¶ 49.) It is clear then that
11 defendant's statement relates to plaintiff's claim since in order to establish a *prima*
12 *facie* case for political discrimination plaintiff has to prove first that defendants
13 knew about his political affiliations, and second that his political views were the
14 reason for defendants' adverse employment action. It is unquestionable then that
15 defendants' statement number 47 is relevant pursuant to Rule 401 of the Federal
16 Rules of Evidence.
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19 20 B. Failure to State a Claim Under Section 1983

21 Plaintiff brings a claim under section 1983, which creates a private cause of
22 action for persons who have had their civil rights violated by state actors. 42
23 U.S.C. § 1983. "There is no heightened pleading standard in civil rights cases."
24 Rosario Rivera v. Aqueduct & Sewer Auth. of P.R., 472 F. Supp. 2d 165, 168
25 (D.P.R. 2007). Even so, plaintiffs "must plead enough for a necessary inference
26 to be reasonably drawn." Marrero-Gutiérrez v. Molina, 491 F.3d 1, 9 (1st Cir.
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3 2007) (quoting Torres-Viera v. Laboy-Alvarado, 311 F.3d 105, 108 (1st Cir.
4 2002)). To state a claim under section 1983, a plaintiff must satisfy two
5 requirements. "First, he must identify 'an act or omission undertaken under color
6 of state law.'" Calderón-Garnier v. Sánchez-Ramos, 439 F. Supp. 2d 229, 236
7 (D.P.R. 2006), aff'd, 506 F.3d 22 (1st Cir. 2007) (quoting Aponte-Torres v. Univ.
8 of P.R., 445 F.3d 50, 55 (1st Cir. 2006)). This prong is easily satisfied. "Puerto
9 Rico is considered a state for Section 1983 purposes" and the complaint alleges
10 actions attributed to Puerto Rican officials. Calderón-Garnier v. Sánchez-Ramos,
11 439 F. Supp. 2d at 236 (citing Redondo-Borges v. United States Dep't of Hous. &
12 Urban Dev., 421 F.3d 1, 7 (1st Cir. 2005); Aponte-Torres v. Univ. of P.R., 445
13 F.3d at 55). "Second, the plaintiff must allege he was deprived of a federally
14 secured right." Calderón-Garnier v. Sánchez-Ramos, 439 F. Supp. 2d at 236
15 (citing Aponte-Torres v. Univ. of P.R., 445 F.3d at 55).
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20 I previously held that under the standard for a Rule 12(b)(6) motion,
21 plaintiff stated a claim under section 1983. However, now I must determine if
22 plaintiff can state a claim under the summary judgment standard, which requires
23 the court to indulge in favor of the non-moving party all reasonable inferences
24 arising from such facts as may have been established by affidavit, deposition, or
25 other such reliable method. For the reasons set forth below, I find that plaintiff
26 fails to state a claim under section 1983.
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4 1. Fourteenth Amendment Due Process

5 To establish a procedural due process claim under section 1983, a plaintiff
6 "must allege first that it has a property interest as defined by state law and,
7 second, that the defendants, acting under color of state law, deprived it of that
8 property interest without constitutionally adequate process." Marrero-Gutiérrez
9 v. Molina, 491 F.3d at 8 (quoting PFZ Props., Inc. v. Rodríguez, 928 F.2d 28, 30
10 (1st Cir. 1991)). "In order to establish a constitutionally-protected property
11 interest, a plaintiff must demonstrate that [he] has a legally recognized
12 expectation that [he] will retain [his] position." Santana v. Calderón, 342 F.3d 18,
13 24 (1st Cir. 2003), cited in González-de-Blasini v. Family Dep't, 377 F.3d 81, 86
14 (1st Cir. 2004); Marrero-Gutiérrez v. Molina, 491 F.3d at 8.
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17 Although it has not been made explicit, I infer that plaintiff was a career
18 employee at DCR. Moreover, defendants do not dispute the point. (Docket No.
19 7, at 8-10.) Under Puerto Rico law, a tenured public employee has a property
20 interest in his continued employment. Kauffman v. P.R. Tel. Co., 841 F.2d 1169,
21 1173 (1st Cir. 1988); Soto González v. Rey Hernández, 310 F. Supp. 2d 418, 425
22 (D.P.R. 2004). As such, plaintiff had a property interest in his continued
23 employment and his termination required procedural due process. See Cleveland
24 Bd. of Educ. v. Loudermill, 470 U.S. 532, 538-40 (1985).
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4 "The Due Process Clause of the Fourteenth Amendment guarantees those
5 public employees who possess a property interest in continued employment the
6 right to notice and a hearing prior to the termination of their employment."
7 Febus-Cruz v. Sauri-Santiago, 2009 WL 2195779, at *6 (D.P.R. July 23, 2009)
8 (citing Cleveland Bd. of Educ. v. Loudermill, 470 U.S. at 542-44; González-de-
9 Blasini v. Family Dep't, 377 F.3d at 86; Kauffman v. P.R. Tel. Co., 841 F.2d at
10 1173). The notice may be oral and/or written and must inform the tenured public
11 employee of the charges against him. Also it must contain an explanation of the
12 employer's evidence, and the employee must have the opportunity to present his
13 side of the story. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. at 546.
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16 Defendants argue that plaintiff's claim must be dismissed since he was not
17 deprived of his procedural due process rights. (Docket No. 28, at 16, ¶ 2.) I
18 agree. First, plaintiff's procedural rights were not violated since plaintiff was
19 notified of the statutes that he had apparently violated as well of the charges that
20 were made against him. Second, plaintiff was informed that if he did not agree
21 with the charges he could request an informal administrative hearing where he
22 could present the necessary evidence before an officer who would then make
23 recommendations. Plaintiff requested the hearing and attended the same
24 accompanied by his attorney. However, plaintiff decided not to make a
25 statement. Plaintiff appealed to the CIPA in order to challenge his discharge.
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4 After the evidentiary hearing, CIPA confirmed the agency's decision to discharge
5 plaintiff from DCR. In sum, plaintiff was notified of the charges against him, he
6 was given an explanation of the charges as well as the evidence supporting them,
7 and he was given a hearing. Furthermore, defendants' request to dismiss the
8 present claim was unopposed by plaintiff. Plaintiff failed to provide any evidence
9 that would show that his procedural due process rights were violated. Thus,
10 plaintiff's claim is dismissed since it fails to state a procedural due process claim.
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12 2. First Amendment Political Discrimination

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14 Defendants claim that plaintiff's political discrimination claim should be
15 dismissed because plaintiff has failed to state a *prima facie* case. The First
16 Amendment protects non-policymaking public employees from adverse
17 employment actions based on their political opinions. See Rutan v. Republican
18 Party of Ill., 497 U.S. 62, 75-76 (1990); Padilla-García v. Guillermo Rodríguez,
19 212 F.3d 69, 74 (1st Cir. 2000).
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21 "To establish a *prima facie* case, the plaintiff must show that (1) the plaintiff
22 and the defendant belong to opposing political affiliations; (2) the defendant has
23 knowledge of the plaintiff's affiliation; (3) a challenged employment action
24 occurred; and (4) political affiliation was a substantial or motivating factor behind
25 the challenged employment action." Febus-Cruz v. Sauri-Santiago, 2009 WL
26 2195779, at *4 (citing Martínez-Vélez v. Rey-Hernández, 506 F.3d 32, 39 (1st Cir.
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3 2007); Peguero-Moronta v. Santiago, 464 F.3d 29, 48 (1st Cir. 2006)). Once
4 plaintiff has established a *prima facie* case, “[t]he burden then shifts to the
5 defendant, who must articulate a nondiscriminatory basis for the adverse
6 employment action and establish by a preponderance of the evidence that he
7 would have taken the same employment action regardless of the plaintiff's political
8 affiliation.” Febus-Cruz v. Sauri-Santiago, 2009 WL 2195779, at *4 (citing
9 Padilla-García v. Guillermo Rodríguez, 212 F.3d at 74); Rodríguez-Ríos v. Cordero,
10 138 F.3d 22, 24 (1st Cir. 1998)).
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13 “Evidence of a highly-charged political environment coupled with the parties’
14 competing political persuasions may be sufficient to show discriminatory animus,
15 especially where a plaintiff was a conspicuous target for political discrimination.”
16 Febus-Cruz v. Sauri-Santiago, 2009 WL 2195779, at *4 (citing Rodríguez-Ríos v.
17 Cordero, 138 F.3d at 24); see also Padilla-García v. Guillermo Rodríguez, 212 F.3d
18 at 75-76. However, “[e]vidence that a plaintiff held a trust position under a
19 previous administration of opposing political affiliation, and that plaintiff is a well-
20 known supporter of a different political party . . . may not suffice to show that a
21 challenged employment action was premised upon political affiliation.” Febus-Cruz
22 v. Sauri-Santiago, 2009 WL 2195779, at *4 (citing González-de-Blasini v. Family
23 Dep’t, 377 F.3d at 85-86).
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4 Plaintiff has alleged all four elements of a *prima facie* case: (1) that
5 defendants are members of the PDP while plaintiff is a member of the NPP; (2)
6 that defendants know of plaintiff's party membership; (3) that plaintiff was
7 terminated from his employment; and (4) that defendants terminated plaintiff
8 because of his political affiliation. Defendants argue that plaintiff's claims are
9 based on conclusory allegations and unfounded speculation. Specifically,
10 defendants state two things, first that plaintiff cannot establish a *prima facie* case
11 because they did not know of plaintiff's political affiliation, and second that
12 plaintiff's political affiliation was not a substantial or motivating factor in his
13 termination. (Docket No. 28, at 7-13.)
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16 Plaintiff relies on the following allegations to establish the second element
17 of his *prima facie* case, that defendants know he is a member of the NPP. Plaintiff
18 claims that he is an active member of the NPP, and actively participated in the
19 elections of November 2004. (Docket No. 1, at 7, ¶ 34.) Also, plaintiff states that
20 when defendants took office they initiated a purge of employees that were
21 politically identified with the NPP, removing them from their positions, harassing
22 them, taking away their responsibilities, duties and functions all under subterfuge
23 discharging or demoting them. (Docket No. 1, at 7, ¶ 34.) Furthermore, plaintiff
24 argues that before he was dismissed defendant Izquierdo-Ocasio began a
25 systematical persecution and harassment telling him that he was going to be
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3 dismissed and that his letter of dismissal was already signed by defendant Pereira,
4 and that the only way he could keep his job was if he switched to the PDP.
5 (Docket No. 1, at 9, ¶ 43.) Finally, plaintiff states that after being discharged
6 defendants have appointed, retained and contracted new employees identified
7 with the PDP either as career employees, transitory employees or employees
8 under contract and/or under federal state funded programs to perform the duties
9 and responsibilities that were previously performed by him. (Docket No. 1, at 10,
10 ¶ 44.)
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13 Plaintiff's assertion that defendants knew that he was affiliated with the NPP
14 and that he was fired because of his political views are conclusory. The evidence
15 on the record shows that plaintiff (1) did not know defendant Pereira; (2) had
16 never spoken to him; (3) had never spoken about politics with him; (4) had never
17 told him of his political preference; (5) was never told by defendant Pereira to vote
18 for the PDP; and (6) that the only reason he is suing defendant Pereira is because
19 he is the Administrator of the DCR. (Docket Nos. 31-20 & 31-21.) Also, the
20 evidence demonstrates that plaintiff was not sure if in fact defendant Izquierdo-
21 Ocasio knew of his political affiliation to the NPP. Plaintiff admitted that he
22 believed defendant Izquierdo-Ocasio knew he was affiliated to the NPP because
23 he had belonged to the escort, a trust position. (Docket No. 31-22.)
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4 Plaintiff's belief that defendant Izquierdo-Ocasio knew he was a member of
5 the NPP because he had held a trust position under a previous administration of
6 opposing political affiliation is insufficient to show that a challenged employment
7 action was premised upon political affiliation. Plaintiff's general allegations do not
8 suffice in order to carry his burden of establishing the element of knowledge.
9 Moreover, assuming that plaintiff was able to establish a *prima facie* case, there
10 is still no evidence in the record that would show plaintiff was terminated because
11 of his political affiliation to the NPP. On the contrary the evidence demonstrates
12 that plaintiff was discharged as a result of the administrative investigation that
13 ensued after a criminal complaint was presented against him. It is clear then that
14 plaintiff's discharge was nor discriminatory. Therefore, plaintiff's claim is
15 dismissed since it fails to state a *prima facie* case for political discrimination.
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18 C. Qualified Immunity

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20 Drawing on Supreme Court precedent and its own case law, the First Circuit
21 assesses claims of qualified immunity under a three-part test: "(1) whether
22 plaintiff's allegations, if true, establish a constitutional violation; (2) whether that
23 right was clearly established at the time of the alleged violation; and (3) whether
24 a similarly situated reasonable official would have understood that the challenged
25 action violated the constitutional right at issue." Mihos v. Swift, 358 F.3d 91, 102
26 (1st Cir. 2004) (citing Suboh v. Dist. Attorney's Office of Suffolk Dist., 298 F.3d
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3 81, 90 (1st Cir. 2002)); see also Harlow v. Fitzgerald, 457 U.S. 800, 818-19
4 (1982). In order to overcome a qualified immunity defense, plaintiff must lead
5 the court to answer all three prongs of this test in the affirmative. Mihos v. Swift,
6 358 F.3d at 98-99.
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9 Plaintiff failed to overcome the qualified immunity defense since his rights
10 under the First and Fourteenth Amendment have not been violated. As stated
11 earlier, plaintiff was not able to state a procedural due process claim nor a *prima*
12 *facie* case for political discrimination. Seeing that plaintiff's constitutional rights
13 have not been violated, I find there is no necessity for further consideration of the
14 defense of qualified immunity.
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16 D. Supplemental Jurisdiction Claims

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18 Pursuant to 28 U.S.C. § 1367, a "district court may decline to exercise
19 supplemental jurisdiction" if it "has dismissed all claims over which it has original
20 jurisdiction." 28 U.S.C. § 1367(c)(3); see Gonzalez-de-Blasini v. Family Dep't,
21 377 F.3d at 89; Claudio-Gotay v. Becton Dickinson Caribe, Ltd., 375 F.3d 99, 104
22 (1st Cir. 2004). Also, it is common for district courts not to exercise supplemental
23 jurisdiction over a plaintiff's state law claims when all of its federal claims have
24 been dismissed. See Educadores Puertorriqueños v. Rey Hernández, 508 F. Supp.
25 2d 164, 186 (D.P.R. 2007) (citing McBee v. Delica Co., 417 F.3d 107, [116] (1st
26 Cir. 2005); González-de-Blasini v. Family Dep't, 377 F.3d at 89); Camelio v. Am.
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4 Fed'n, 137 F.3d 666, 672 (1st Cir. 1998) (quoting United Mine Workers v. Gibbs,
5 383 U.S. 715, 726 (1966)) ("Certainly, if the federal claims are dismissed before
6 trial, . . . the state claims should be dismissed as well."); Rodríguez v. Doral
7 Mortgage Corp., 57 F.3d 1168, 1177 (1st Cir. 1995) ("As a general principle, the
8 unfavorable disposition of a plaintiff's federal claims at the early stages of a suit
9 . . . will trigger the dismissal without prejudice of any supplemental state-law
10 claims.").

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12 Furthermore, "if the federal claims are properly dismissed, the District Court
13 does not abuse its discretion in declining to exercise supplemental jurisdiction over
14 the state-law claims asserted in the case." Rodríguez Rivas v. Police Dep't of P.R.,
15 483 F. Supp. 2d 137, 140 (D.P.R. 2007) (citing Ramos-Piñero v. Puerto Rico, 453
16 F.3d 48, 55 (1st Cir. 2006)). Accordingly, plaintiff will be at the "liberty to bring
17 his unadjudicated claims before the Commonwealth courts." Gonzalez-de-Blasini
18 v. Family Dep't, 377 F.3d at 89. Having dismissed all of plaintiff's federal claims
19 against defendants, the court will not exercise supplemental jurisdiction.
20
21 Therefore, the court dismisses without prejudice plaintiffs' supplemental claims.
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24 V. CONCLUSION

25 Plaintiff has failed to establish that defendants had knowledge about his
26 political affiliation to the NPP. Plaintiff also failed to establish that his political
27 affiliation was a substantial or motivating factor in his termination. Thus, plaintiff
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3 has no First Amendment claim since he failed to state a *prima facie* case for
4 political discrimination. I also find that plaintiff does not have a Fourteenth
5 Amendment claim since he failed to establish a violation of his procedural due
6 process rights. Therefore, summary judgment is granted and all federal claims
7 are DISMISSED WITH PREJUDICE. The state law claims are DISMISSED WITHOUT
8 PREJUDICE. The Clerk is directed to enter judgment accordingly.
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11 At San Juan, Puerto Rico, this 7th day of October, 2009.

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14 S/ JUSTO ARENAS
15 Chief United States Magistrate Judge
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