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

JOSÉ HERNÁNDEZ-VÁZQUEZ

Plaintiff

v.

CIVIL 09-01743 (JA)

GLORIA E. ORTIZ-MARTÍNEZ, et al.,

Defendants

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OPINION AND ORDER

Plaintiff, José Hernández Vázquez, filed a pro-se complaint pursuant to 42 U.S.C. 1983, against the defendants, the “Junta de Libertad Bajo Palabra” (“Parole Board”); Gloria E. Ortiz Martínez, Parole Board Chairwoman; Connie Caban-Tristany, Socio Penal Technician for the Department of Corrections (“DOC”); and Carlos Molina Rodríguez, Secretary of the DOC. (Docket No. 3.) The defendants move to dismiss under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (Docket No. 15.) For the reasons set forth below, the defendants’ motion is hereby GRANTED.

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I. FACTUAL AND PROCEDURAL BACKGROUND

The following facts are derived from plaintiff’s complaint filed on August 3, 2009. (Docket No. 3.) The court as it must, will assume that all material allegations set forth in the complaint by plaintiff are true and shall also draw all

3 reasonable inferences in his favor. New Jersey Carpenters Pension & Annuity
4 Funds v. Biogen IDEC Inc., 537 F.3d 35, 44 (1st Cir. 2008).
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6 Plaintiff is an inmate in the penal custody of the Commonwealth of Puerto
7 Rico at the Southern Regional Institution in Ponce. Plaintiff claims that since he
8 served his minimum sentence, the Parole Board was supposed to hold a hearing
9 on August 28, 2008 to determine whether or not he could be granted parole.
10 However, the hearing did not take place because the DOC failed to submit certain
11 documents and information to the Parole Board.
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13 On December 18, 2008, the Parole Board issued an interlocutory order
14 which provided that the DOC had to submit the information and the documents
15 that were not produced within 45 days so that the hearing could be conducted.
16 Plaintiff however claims that the DOC failed to comply with the order issued by the
17 Parole Board.
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19 According to plaintiff the delays of the parole proceedings resulted in a
20 violation of the agreements or stipulations of the case of Efraín Montero-Torres v.
21 Hernández-Colón, Civil No. 75-0828 (PG). The Parole Board, plaintiff argues, was
22 supposed to conduct the hearing within 50 days but failed to do so. Plaintiff states
23 that as a result of the defendants' negligent conduct his family and himself
24 suffered emotional damages in the amount of \$150,000.
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4 On October 1, 2009, the defendants filed a motion to dismiss plaintiff's
5 complaint. (Docket No. 15.) The defendants contend in their motion that
6 plaintiff's complaint must be dismissed because he failed to exhaust available
7 administrative procedures. The defendants also argue that plaintiff's complaint
8 must be dismissed because the Eleventh Amendment bars claims for the payment
9 of monetary damages against the Commonwealth of Puerto Rico. Id. at 2, ¶ 2.
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11 On December 2, 2009, the defendants filed a motion requesting the court
12 to deem as unopposed their motion to dismiss and that plaintiff's complaint be
13 dismissed with prejudice. (Docket No. 17, at 2, ¶ 4.) On that same day, the court
14 issued an order dismissing the defendants' motion for miscellaneous relief.
15 (Docket No. 18.) However, the court stated that the defendants' motion to
16 dismiss would be considered as unopposed. Id.
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18 II. STANDARD OF REVIEW

19 A. Rule 12 (b) (1)

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21 "Under Rule 12(b)(1), a defendant may move to dismiss an action against
22 him for lack of federal subject matter jurisdiction." Rivera v. State Ins. Fund
23 Corp., 410 F. Supp. 2d 57, 59 (D.P.R.2006) (citing Fed. R. Civ. P. 12(b)(1)). "The
24 party asserting jurisdiction has the burden of demonstrating its existence." Id.
25 (citing Skwira v. United States, 344 F.3d 64, 71 (1st Cir.2003) (citing Murphy v.
26 United States, 45 F.3d 520, 522 (1st Cir.1995)). Moreover, "[i]t is black-letter
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3 law that a federal court has an obligation to inquire *sua sponte* into its own
4 subject matter jurisdiction." McCulloch v. Velez, 364 F.3d 1, 5 (1st Cir.2004),
5 quoted in Rosario v. United States, 538 F. Supp. 2d 480, 486 (D.P.R.2008).
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7 "Rule 12(b)(1) is a 'large umbrella, overspreading a variety of different
8 types of challenges to subject-matter jurisdiction,' including ripeness, mootness,
9 the existence of a federal question, diversity, and sovereign immunity." Ivyport
10 Logistical Services, Inc. v Caribbean Airport Facilities, Inc., 502 F. Supp. 2d 227,
11 230 (D.P.R.2007) (quoting Valentín v. Hosp. Bella Vista, 254 F.3d 358, 362-63
12 (1st Cir.2001). "A moving party may mount a 'sufficiency challenge,' taking the
13 plaintiff's 'jurisdictionally-significant facts as true' and requiring the court to
14 'assess whether the plaintiff has propounded an adequate basis for subject-matter
15 jurisdiction.'" Rivera v. State Ins. Fund Corp., 410 F. Supp. 2d at 59 (D.P.R.2006)
16 (quoting Valentín v. Hosp. Bella Vista, 254 F.3d at 363).
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20 "Alternatively, when the jurisdictional facts are distinct from the case's
21 merits, a moving party can bring a 'factual challenge,' in which case the court
22 addresses 'the merits of the jurisdictional claim by resolving the factual disputes
23 between the parties.'" Ivyport Logistical Services, Inc. v Caribbean Airport
24 Facilities, Inc., 502 F. Supp. 2d at 230 (D.P.R.2007) (quoting Valentín v. Hosp.
25 Bella Vista, 254 F.3d at 363).
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3 B. Rule 12 (b) (6)

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5 "Pursuant to Rule 12(b)(6) [of the Federal Rules of Civil Procedure], a
6 complaint should be dismissed when a plaintiff does not 'state a claim to relief that
7 is plausible on its face.'" Colón-Andino v. Toledo-Davila, 634 F. Supp. 2d 220, 229
8 (D.P.R.2009) (quoting Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (citing Bell
9 Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007))). A claim is plausible on its face
10 when "the complaint alleges enough facts to raise[] a right to relief above the
11 speculative level." Ocasio-Hernández v. Fortuno-Burset, 639 F. Supp. 2d 217, 221
12 (D.P.R.2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. at 555 (citing 5
13 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-236 (3d ed.
14 2004)).

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17 "The [c]ourt will accept all well-pleaded factual allegations in the complaint
18 as true and draw all reasonable inferences in plaintiffs favor." Colón-Andino v.
19 Toledo-Davila, 634 F. Supp. 2d at 229 (quoting Ashcroft v. Iqbal, 129 S.Ct. at
20 1949). However, "where the well-pleaded facts do not permit the court to infer
21 more than the mere possibility of misconduct, the complaint has alleged-but it has
22 not 'show[n]'-'that the pleader is entitled to relief.'" Ocasio-Hernández v. Fortuno-
23 Burset, 639 F. Supp. 2d at 221 (quoting Ashcroft v. Iqbal, 129 S.Ct. at 1950
24 (quoting Fed.R.Civ.P. 8(a)(2)). Thus, a "[c]ourt need not credit . . . 'bald
25 assertions [and] unsupportable conclusions' when evaluating the complaint's
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3 allegations . . . nor 'accept as true a legal conclusion couched as a factual
4 allegation.'" Colón-Andino v. Toledo-Davila, 634 F. Supp. 2d at 229 (quoting
5 Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir.1996); Bell Atlantic Corp. v. Twombly,
6 550 U.S. at 570 (quoting Papasan v. Allain, 478 U.S. 265, 286 (1986)).

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8 "In sum, when [reviewing] a motion to dismiss the court must follow two
9 [basic] principles: (1) legal conclusions masquerading as factual allegations are
10 not entitled to the presumption of truth; and (2) plausibility analysis is a context-
11 specific task that requires courts to use their judicial experience and common
12 sense." Ocasio-Hernández v. Fortuno-Burset, 639 F. Supp. 2d at 221(citing
13 Ashcroft v. Iqbal, 129 S.Ct. at 1949-50) (citing Bell Atl. Corp. v. Twombly, 550
14 U.S. at 555-556). When "applying these principles, courts may first separate out
15 merely conclusory pleadings, and then focus upon the remaining well-pleaded
16 factual allegations to determine if they plausibly give rise to an entitlement to
17 relief." Ocasio-Hernández v. Fortuno-Burset, 639 F. Supp. 2d at 221 (citing
18 Ashcroft v. Iqbal, 129 S.Ct. at 1950).
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22 III. ANALYSIS

23 Given that plaintiff is proceeding pro-se, I construe his pleadings, however
24 inartful, liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (following
25 Estelle v. Gamble, 429 U.S. 97, 106 (1976) and Haines v. Kerner, 404 U.S. 519,
26 520-21 (1972)). "The policy behind affording pro se plaintiffs liberal
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3 interpretation is that if they present sufficient facts, the court may intuit the
4 correct cause of action, even if it was imperfectly pled.” Ahmed v. Rosenblatt, 118
5 F.3d 886, 890 (1st Cir. 1997); see Castro v. United States, 540 U.S. 375, 381
6 (2003) (noting that courts may construe pro-se pleadings so as to avoid
7 inappropriately stringent rules and unnecessary dismissals of claims). However,
8 plaintiff’s pro-se status does not excuse him from complying with procedural and
9 substantive law. Ahmed v. Rosenblatt, 118 F.3d at 890.
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12 A. Failure to Exhaust

13 The defendants move to dismiss under Rules 12(b)(1) and 12(b)(6) for
14 failure to exhaust administrative remedies through the prison’s grievance
15 procedures as required by the Prison Litigation Reform Act (“PLRA”), 42 U.S.C. §
16 1997e(a).
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18 The PLRA proscribes that “[n]o action shall be brought with respect to prison
19 conditions under [42 U.S.C. § 1983] . . . by a prisoner confined in jail, prison, or
20 any other correctional facility until such administrative remedies are exhausted.”
21 Torres Ríos v. Pereira Castillo, 545 F. Supp. 2d 204, 205 (D.P.R.2007) (citing 42
22 U.S.C. § 1997e(a); see Booth v. Churner, 532 U.S. 731, 739 (2001) (“The
23 ‘available ‘reme[dy]’ must be ‘exhausted’ before a complaint under § 1983 may
24 be entertained.”) Exhaustion of remedies is not discretionary but rather
25 mandatory. Woodford v. Ngo, 548 U.S. 81, 85 (2006) (citing Booth v. Churner,
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3 532 U.S. at 739 (2001)). “[A] prisoner must . . . exhaust administrative remedies
4 even where the relief sought-monetary damages-cannot be granted by the
5 administrative process.” Woodford v. Ngo, 548 U.S. at 85.

7 “[T]here is no ‘futility exception’ to the PLRA exhaustion requirement.”
8 Knowles v. New Hampshire Dept. of Corrections Commissioner, 538 F. Supp. 2d
9 453, 457 (D.N.H.,2008)(quoting Medina-Claudio v. Rodríguez-Mateo, 292 F.3d 31,
10 35 (1st Cir.2002)). “In other words, even if the prison's administrative process
11 does not provide for the type of relief the inmate desires, the prisoner must
12 complete any prison administrative process capable of addressing the inmate's
13 complaint and providing some form of relief.” Knowles v. New Hampshire Dept.
14 of Corrections Commissioner, 538 F. Supp. 2d at 457 (citing Booth v. Churner,
15 532 U.S. at 739). Therefore “a prisoner must now exhaust administrative
16 remedies even where the relief sought-monetary damages-cannot be granted by
17 the administrative process.” Knowles v. New Hampshire Dept. of Corrections
18 Commissioner, 538 F. Supp. 2d at 457 (quoting Woodford v. Ngo, 548 U.S. at 85)
19 (citing Booth v. Churner, 532 U.S. at 734). Failure to exhaust administrative
20 remedies prior to bringing suit, requires dismissal of plaintiff’s claim without
21 prejudice. See Medina-Claudio v. Rodríguez-Mateo, 292 F.3d at 36, cited in Rand
22 v. Simonds, 422 F. Supp. 2d 318, 325 (D.N.H.2006); Feliciano v. Servicios
23 Correccionales, 79 F. Supp. 2d 31, 34 (D.P.R.2000). However, it is important to
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3 point out that "failure to exhaust is an affirmative defense [for the defendant to
4 raise and prove] under the PLRA, and [that] inmates are not required to specially
5 plead or demonstrate exhaustion in their complaints." Jones v. Bock, 549 U.S.
6 199, 216 (2007). This means that exhaustion of administrative remedies is a
7 mandatory requirement and not jurisdictional. Casanova v. Dubois, 289 F.3d 142,
8 147 (1st Cir. 2002). Therefore, plaintiff's claim cannot be dismissed under Rule
9 12(b)(1) when the defendant claims failure to exhaust administrative remedies.
10 Dismissal therefore is only warranted under Rule 12 (b)(6) when the complaint on
11 its face conclusively shows that the plaintiff could not have exhausted his
12 remedies. Jones v. Bock, 549 U.S. at 215; see Trans-Spec Truck Service, Inc. v
13 Caterpillar, Inc., 524 F.3d 315, 320 (1st Cir. 2008).

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17 Plaintiff in this case alleges that the defendants violated his constitutional
18 rights by delaying the parole proceedings. Plaintiff seeks monetary damages as
19 a result of the defendants conduct in handling the parole proceedings. Plaintiff's
20 request for monetary damages does not stem from an allegation of being subject
21 to unconstitutional prison conditions. Therefore, the defendants may not rely on
22 plaintiff's alleged failure to exhaust administrative remedies as an affirmative
23 defense. The exhaustion requirement under PLRA pertains only to against "prison
24 conditions," 42 U.S.C. § 1997e(a), not to challenges to state parole procedures.
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26 See Wilkinson v. Dotson, 544 U.S. 74, 84 (2005)(citing cases relating to prison
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3 conditions as a separate category of suits challenging administrative procedures
4 under § 1983, distinct from suits regarding state parole procedures). Therefore,
5 plaintiff's complaint cannot be dismissed based on the defendants' contention.
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7 B. Sovereign Immunity

8 The defendants contend that the court must dismiss plaintiff's claim against
9 them in their official capacity because the Eleventh Amendment bars payment of
10 monetary damages against the Commonwealth of Puerto Rico. "The Eleventh
11 Amendment bars suits from being brought in federal courts for monetary damages
12 against states, unless the state being sued waives its immunity or consents to
13 being sued." Cruz v. Puerto Rico, 558 F. Supp. 2d 165, 173-175 (D.P.R.2007).
14 "The Eleventh Amendment has . . . been interpreted to bar suits for monetary
15 relief against the agencies or instrumentalities of a state and against its officers
16 in their official capacities." Id. (citing Kentucky v. Graham, 473 U.S. 159, 169
17 (1985), quoted in Culebras Enterprises Corp. v. Rivera Ríos, 813 F.2d 506, 516
18 (1st Cir.1987)). In other words, "Eleventh Amendment immunity does not solely
19 protect the State. Since a State only exists through its instrumentalities, Eleventh
20 Amendment immunity also extends to arms or alter egos of the State" as well as
21 to state employees exercising their official duties. Cruz v. Puerto Rico, 558 F.
22 Supp. 2d at 173-175. (citing Ainsworth Aristocrat Int'l Pty. Ltd. v. Tourism Co. of
23 Puerto Rico, 818 F.2d 1034, 1036 (1st Cir. 1987) (citations omitted)). "[A] suit
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3 against a state official in his or her official capacity is not a suit against the official
4 rather is a suit against the official's office. As such, it is no different from a suit
5 against the State itself." Will v. Mich. Dep't of State Police, 491 U.S. 58, 71
6 (1989); Cosme-Pérez v. Mun. of Juana Diaz, 585 F. Supp. 2d 229, 236
7 (D.P.R.2008).
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10 "[T]he First Circuit consistently has held that Puerto Rico is considered a
11 'State' for Eleventh Amendment purposes, and therefore Eleventh Amendment
12 applies with full force to the Commonwealth of Puerto Rico." Cruz v. Puerto Rico,
13 558 F. Supp. 2d at 173 -175. (citations omitted). Therefore, since Puerto Rico is
14 afforded the same rights as a state and has not waived its claim to Eleventh
15 Amendment Immunity, any private suit against the Commonwealth of Puerto Rico
16 is barred. See e.g., Jusino-Mercado v. Commonwealth of P.R., 214 F.3d 34, 37
17 (1st Cir. 2000); Ezratty v. Commonwealth of P.R., 648 F.2d 770, 776 n.7 (1st Cir.
18 1981) (explicitly stating that Eleventh Amendment immunity applies to Puerto
19 Rico); Orria-Medina v. Metropolitan Bus Authority, 565 F. Supp. 2d 285, 310
20 (D.P.R.2007). Consequently, "[t]he eleventh amendment bars the recovery of
21 damages in a federal court against the Commonwealth of Puerto Rico, see e.g.
22 Ramírez v. Puerto Rico Fire Service, 715 F.2d 694, 697 (1st Cir. 1983), and by the
23 same token, it bars the recovery of damages in official capacity suits brought
24 against Puerto Rico officials where recovery will come from public fisc." Culebras
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3 Enter. Corp. v. Rivera Ríos, 813 F.2d at 516 (citing Kentucky v. Graham, 473 U.S.
4 at 165-166 (1985)). The Parole Board as well as the Department of Corrections
5 function as arms of the Commonwealth of Puerto Rico and any judgment against
6 the defendants in their official capacity would effectively be a judgment against
7 the Commonwealth of Puerto Rico. See Martínez-Machicote v. Ramos-Rodríguez,
8 553 F. Supp. 2d 45, 51 (D.P.R.2007); Padilla Cintrón v. Rossello González, 247
9 F. Supp. 2d 48, 57 (D.P.R.2003); Jusino Mercado v. Com. of Puerto Rico, 101 F.
10 Supp. 2d at 59 (D.P.R.1999). The court therefore finds that the defendants are
11 protected by the Eleventh Amendment. As such, plaintiff's claim against the
12 defendants in their official capacity is dismissed with prejudice.
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15 IV. CONCLUSION

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17 In view of the above, I find that plaintiff has failed to state a claim upon
18 which relief can be granted. Thus, the defendants' motion to dismiss is hereby
19 GRANTED. (Docket No. 15.) Accordingly, plaintiff's claim for monetary damages
20 against the defendants in their official capacities is DISMISSED WITH PREJUDICE.
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22 In view of the above, the Clerk is directed to enter judgment accordingly.
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24 At San Juan, Puerto Rico, this 8th day of January, 2010.

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26 S/ JUSTO ARENAS
27 Chief United States Magistrate Judge
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