

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE DISTRICT OF PUERTO RICO**

3  
4       **JUAN FRANCISCO CINTRON-**  
5       **ARBOLAY, et al.,**

6                   **Plaintiffs,**

7                   **v.**

8       **MIGUEL A. CORDERO-LOPEZ, et al.,**

9                   **Defendants.**

**Civil No. 10-1067 (GAG)**

10                                   **MEMORANDUM OPINION AND ORDER**

11           Plaintiff Juan Francisco Cintron-Arbolay (“Cintron” or “Plaintiff”) brought this action  
12 against the Puerto Rico Electrical Power Authority (“PREPA”), PREPA’s Executive Director, Eng.  
13 Miguel A. Cordero-Lopez (“Cordero”), and the Regional Administrator of Technical Operations for  
14 the Ponce Region of PREPA, Edgardo Rivera-Alvarado (“Rivera”) (collectively “Defendants”),  
15 seeking redress for the alleged violation of his First Amendment rights under the Constitution of the  
16 United States and Article II of the Constitution of the Commonwealth of Puerto Rico. Plaintiff  
17 claims that the defendants stripped him of his functions because of his political affiliation and  
18 retaliated against him for filing the instant suit. He brings this action pursuant to 42 U.S.C. § 1983  
19 (“Section 1983”), and also alleges supplemental causes of action under the laws of Puerto Rico.

20           Presently before the court is Defendants’ motion to dismiss (Docket No. 17), which was  
21 timely opposed by Plaintiffs (Docket No. 18). For the reasons stated herein, the court **GRANTS in**  
22 **part and DENIES in part** Defendants’ motion to dismiss (Docket No. 17).

23       **I.       Standard of Review**

24           Under Rule 12(b)(6), a defendant may move to dismiss an action against him for failure to  
25 state a claim upon which relief can be granted. See Fed.R.Civ.P. 12(b)(6). When considering a  
26 motion to dismiss, the court must decide whether the complaint alleges enough facts to “raise a right  
27 to relief above the speculative level.” See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct.  
28 1955, 1965 (2007). In so doing, the court accepts as true all well-pleaded facts and draws all

1 reasonable inferences in the plaintiff's favor. Parker v. Hurley, 514 F.3d 87, 90 (1st Cir. 2008).  
2 However, "the tenet that a court must accept as true all of the allegations contained in a complaint  
3 is inapplicable to legal conclusions." Ashcroft v. Iqbal, --- U.S. ---, 129 S.Ct. 1937, 1949 (2009).  
4 "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
5 do not suffice." Id. (citing Twombly, 550 U.S. at 555). "[W]here the well-pleaded facts do not  
6 permit the court to infer more than the mere possibility of misconduct, the complaint has alleged  
7 –but it has not ‘show[n]’– ‘that the pleader is entitled to relief.’" Iqbal, 129 S. Ct. at 1950 (quoting  
8 Fed.R.Civ.P. 8(a)(2)).

9 In sum, when passing on a motion to dismiss the court must follow two principles: (1) legal  
10 conclusions masquerading as factual allegations are not entitled to the presumption of truth; and (2)  
11 plausibility analysis is a context-specific task that requires courts to use their judicial experience and  
12 common sense. Id. at 1949-50 (citing Twombly, 550 U.S. at 555-56). In applying these principles,  
13 courts may first separate out merely conclusory pleadings, and then focus upon the remaining well-  
14 pleaded factual allegations to determine if they plausibly give rise to an entitlement to relief. Iqbal  
15 129 S. Ct. at 1950.

## 16 **II. Discussion**

### 17 ***A. Adverse Employment Action***

18 The First Amendment right to freedom of speech protects non-policymaking public  
19 employees from adverse employment decisions based on political affiliation. See Padilla-García v.  
20 Guillermo Rodríguez, 212 F.3d 69, 74 (1st Cir. 2000); see also Rutan v. Republican Party of Ill., 497  
21 U.S. 62, 75-76 (1990); Branti v. Finkel, 445 U.S. 507, 516 (1980); Elrod v. Burns, 427 U.S. 347,  
22 354 (1976). In order to establish a claim of political discrimination, a plaintiff initially bears the  
23 burden of showing that he or she engaged in constitutionally protected conduct and that political  
24 affiliation was a substantial or motivating factor behind the challenged employment action.  
25 Gonzalez-de-Blasini v. Family Dept., 377 F.3d 81, 85 (1st Cir. 2004) (citing Mount Healthy City  
26 Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977)); Cosme-Rosado v. Serrano-Rodriguez,  
27 360 F.3d 42, 47 (1st Cir. 2004)). To establish a *prima facie* case, the plaintiff must show, or (for the  
28 purposes of Rule 8(a)(2)) properly plead, that (1) the plaintiff and the defendant belong to opposing

1 political affiliations, (2) the defendant has knowledge of the plaintiff's affiliation, (3) a challenged  
2 employment action occurred, and (4) political affiliation was a substantial or motivating factor  
3 behind the challenged employment action. Martin-Velez v. Rey-Hernandez, 506 F.3d 32, 39 (1st  
4 Cir. 2007) (citing Peguero-Moronta v. Santiago, 464 F.3d 29, 48 (1st Cir. 2006) (quoting Gonzalez-  
5 Blasini, 377 F.3d at 85-86)).

6 Defendants argue in their motion to dismiss that Plaintiff's allegations fail to meet the third  
7 element of a *prima facie* case of political discrimination: that a challenged employment action  
8 occurred. In other words, that the actions allegedly taken against Plaintiff do not constitute adverse  
9 employment actions.

10 Under the standard set forth in Agosto-de-Feliciano v. Aponte-Roque, 889 F.2d 1209 (1st  
11 Cir. 1989), the court must "determine whether the new work conditions would place substantial  
12 pressure on even one of thick skin to conform to the prevailing political view. This level of burden  
13 is reached . . . when the employer's challenged actions result in a work situation 'unreasonably  
14 inferior' to the norm for the position." Id. at 1218. To determine whether such a reduction has  
15 occurred, "the factfinder should canvass the specific ways in which the plaintiff's job has changed."  
16 Id. "[T]he factfinder's responsibility, in brief, is to determine whether the employee has retained  
17 duties, perquisites and a working environment appropriate for his or her rank and title." Id. at 1220.

18 Here, Plaintiff alleges that before the general elections of 2008, some of his co-workers who  
19 were affiliated with the opposing political party (the New Progressive Party, or "NPP")<sup>1</sup> publicly  
20 expressed that if they won the elections the plaintiff would be relegated to what they called "la  
21 cobacha" (small shack or hovel). The allegations reflect that this threat was made on several  
22 occasions and that co-defendant Rivera, then Plaintiff's co-worker, participated in teasing and  
23 harassing the plaintiff in this respect. Upon the change in administration, co-defendant Rivera was  
24 promoted to Regional Administrator of Technical Operations and, thus, became the immediate

---

25  
26 <sup>1</sup> Plaintiff alleges in the amended complaint that he is an active member of the Popular  
27 Democratic Party ("PDP"), and that he has participated openly in "Energia Popular," a political  
28 organization of PREPA employees and polling station officers for said party. Plaintiff also alleges  
that he has discussed political matters extensively with co-defendant Rivera.

1 supervisor of Plaintiff. Subsequently, Rivera informed Plaintiff that “he had to tender the keys to  
2 his office, as he was going to be moved to the ‘cobacha,’” referring to the same as “the facilities  
3 adjacent to the security post.” (Docket No. 12, ¶ 3.14.) Plaintiff’s request that he be allowed to use  
4 one of three empty and vacant offices was denied. According to the allegations in the amended  
5 complaint, “the space known as *la cobacha* had a leaking roof, no telephone lines, a rat infestation  
6 problem, exposed and dangerous electrical connections, chemicals that gave out harmful fumes  
7 (such as herbicides), broken office furniture, poor illumination and a window air conditioning unit  
8 that was not working.” (*Id.* at ¶ 3.17.) Meanwhile, Plaintiff’s former office and equipment were  
9 assigned to Mr. José Blasini, an NPP loyalist who had previously participated in the taunting  
10 remarks made against the plaintiff. Moreover, immediately after Plaintiff was transferred to his new  
11 location, his NPP co-workers, including co-defendant Rivera, allegedly “started to laugh at his  
12 misfortune and pester him with political taunts” such as, *inter alia*, “PDP rat” and “this so you  
13 learn.” (*Id.* at ¶ 3.21.)

14 The court understands that these allegations are sufficient to meet the pleading requirements  
15 under *Iqbal*, as they reflect a change in Plaintiff’s work environment that “would place substantial  
16 pressure on even one of thick skin to conform to the prevailing political view.” *Agosto-de-Feliciano*,  
17 889 F.2d at 1218. In making its determination, the court keeps in mind the Supreme Court’s  
18 decision in *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 75 (1990), issued subsequent to the First  
19 Circuit’s decision in *Agosto-de-Feliciano*, that “promotions, transfers, and recalls after layoffs based  
20 on political affiliation” are examples of impermissible “deprivations less harsh than dismissal that  
21 nevertheless press state employees . . . to conform their beliefs and associations to some  
22 state-selected orthodoxy.” *Acevedo-Garcia v. Vera-Monroig*, 30 F. Supp. 2d 141, 156 (D.P.R. 1998),  
23 *aff’d* 204 F.3d 1 (1st Cir. 2000). Although the *Rutan* Court did not explicitly address the issue of  
24 changed work conditions and responsibilities as examples of deprivations less harsh than dismissal,  
25 it noted in *dicta* that “the First Amendment . . . already protects state employees not only from  
26 patronage dismissals but also from ‘even an act of retaliation as trivial as failing to hold a birthday  
27 party for a public employee . . . when intended to punish her for exercising her free speech rights.’  
28 ” *Id.* at 76 n.8 (citations omitted).

1 Moreover, the court notes the First Circuit’s affirmation that “[t]he standard for showing an  
2 adverse employment action is lower in the First Amendment retaliation context than it is in other  
3 contexts (such as Title VII).” Rivera-Jimenez v. Pierluisi, 362 F.3d 87, 94 (1st Cir. 2004) (citing  
4 Power v. Summers, 226 F.3d 815, 820-21 (7th Cir. 2000)). As previously stated, “[t]he Supreme  
5 Court has indicated that even relatively minor events might give rise to liability.” Id. at 94 (citing  
6 Rutan, 497 U.S. at 75-76). Here, Plaintiff alleged in the amended complaint that after co-defendant  
7 Rivera was served with the complaint in this case, he summoned Plaintiff to his office for a meeting.  
8 Rivera proceeded to interrogate Plaintiff, told him that he had breached unspecified PREPA rules  
9 of conduct, that he would be taking the matter up with the Puerto Rico Labor Department, and “made  
10 it clear that if [P]laintiff voluntarily dismissed the instant case, there would be no disciplinary  
11 proceedings against him.” (Docket No. 12, ¶ 3.50 - 3.56.) The court understands that these factual  
12 allegations are sufficient for Plaintiff’s retaliation claim to survive the motion to dismiss stage.

13 Regarding Plaintiff’s work responsibilities and perquisites,<sup>2</sup> the complaint alleges that co-  
14 defendant Rivera “systematically began removing many of the duties that [P]laintiff was performing,  
15 including the maintenance of many substations in the Ponce Region, restricting him to those within  
16 the Ponce District, despite the fact that [P]laintiff was in charge of the whole region, which entails  
17 four technical districts.” (Id. at ¶ 3.33.) This decision allegedly had an adverse effect on Plaintiff  
18 because he lost the ability to collect the *per diem* allowance that he used to receive when he had to  
19 travel to the furthest districts.

20 Defendants cite to Ortiz-Garcia v. Toledo-Fernandez, 405 F.3d 21 (1st Cir. 2005), for the  
21 proposition that the loss of “perquisites like having a personal phone on the desk or having the best  
22 office ordinarily do not support an ‘unreasonably inferior’ work environment.” (Docket No. 17 at  
23 14.) In Ortiz, the First Circuit found, after evaluating the plaintiff’s job description as well as the

---

24  
25 <sup>2</sup> The complaint alleges that “[his] duties as Ground Maintenance Supervisor for the Region  
26 of Ponce entailed, *inter alia*, the direct supervision of [three] employees in order to ensure that all  
27 substations, technical structures and transmission centers in the Ponce District free [sic] of  
28 vegetation (which included the dispensation of herbicides) and are otherwise working properly;  
minor repairs to the system; and the coordination of administrative affairs such as purchase orders,  
compliance with security audits and the like.” (Id. at ¶ 3.2.)

1 treatment of other employees in similar positions, that the loss of such benefits as a parking space  
2 and personal telephone did not support an inference that the plaintiff had been subjected to an  
3 “unreasonably inferior” work environment. Ortiz, 405 F.3d at 24 (citing Agosto-de-Feliciano, 889  
4 F.2d at 1219) (“An employee who has lost merely the ‘perks’ of his position—for example, the best  
5 office or secretary in the agency, unlimited telephone access or unusually minimal oversight—would  
6 not meet the ‘unreasonably inferior’ standard.”)).

7 Plaintiff’s allegations, however, reflect more than the deprivation of mere perks related to  
8 his position. Plaintiff includes an allegation that he was removed from the maintenance of many  
9 substations which used to fall under his purview. This, combined with the previously discussed  
10 allegations regarding harassment in the workplace and inferior work conditions, counsels the court  
11 against dismissal at this stage for lack of a properly pled adverse employment action. Defendants’  
12 motion to dismiss is, therefore, **DENIED** on this ground.

### 13 ***B. Supervisory Liability***

14 Under Section 1983, Plaintiffs must show that each individual defendant was involved  
15 personally in the deprivation of constitutional rights because no *respondeat superior* liability exists  
16 under Section 1983. Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994)  
17 (citing Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 691 (1978);  
18 Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553, 561 (1st Cir. 1989)). A supervisory official may  
19 be held liable for his subordinates’ behavior only if (1) his subordinates’ behavior results in a  
20 constitutional violation; and (2) the official’s action or inaction was affirmatively linked to that  
21 behavior such that “it could be characterized as supervisory encouragement, condonation or  
22 acquiescence or gross negligence amounting to deliberate indifference.” Pineda v. Toomey, 533  
23 F.3d 50, 54 (1st Cir. 2008) (internal quotation marks omitted) (quoting Lipsett v. Univ. of P.R., 864  
24 F.2d 881, 902 (1st Cir. 1988)). The First Circuit has stated that “isolated instances of  
25 unconstitutional activity ordinarily are insufficient to establish a supervisor’s policy or custom, or  
26 otherwise to show deliberate indifference.” Maldonado-Denis, 23 F.3d at 582 (citations omitted).  
27 Moreover, supervisory officials will be liable only “when their own action or inaction, including a  
28 failure to supervise that amounts to gross negligence or deliberate indifference, *is a proximate cause*

1 of the constitutional violation.” Guzman v. City of Cranston, 812 F.2d 24, 26 (1st Cir. 1987)  
2 (emphasis added) (citations omitted). “[T]he supervisor must demonstrate at least gross negligence  
3 amounting to deliberate indifference, and . . . his conduct must be causally linked to the  
4 subordinate’s violation of plaintiff’s civil rights.” Guzman, 812 F.2d at 26 (quoting Voutour v.  
5 Vitale, 761 F.2d 812, 820 (1st Cir. 1985)).

6 Plaintiff alleges in his amended complaint that several months after being sent to *la cobacha*,  
7 he was “relocated to an empty desk/cubicle adjacent to the blueprints section, which still did not  
8 have any of the necessary office equipment.” (Docket No. 12, ¶ 3.30.) Subsequently, he sought the  
9 services of PREPA’s Equal Employment Opportunity Office (“EEOO”). Plaintiff alleges that co-  
10 defendant Rivera drafted a letter plagued with falsities, misrepresenting the facts to the EEOO.  
11 Notwithstanding, the EEOO reached an agreement with co-defendant Rivera whereby Plaintiff  
12 would be given “computer access, telephone access, a key to his office, a cessation of the demand  
13 for remodeling *la cobacha*”<sup>3</sup> and which indicated that “politically-charged comments be stopped.”  
14 (Id. at ¶ 3.40.) Despite the wording of this agreement, the EEOO Manager, Marla del Carmen  
15 Rivera (“Ms. Rivera”) sent Plaintiff a letter indicating that there had been no finding of  
16 discrimination and that she understood the measures taken were sufficient. Plaintiff requested  
17 reconsideration to Ms. Rivera, clarifying what he understood to be irregularities in the EEOO’s  
18 consideration of his complaint, particularly how the Senior EEOO Officer refused to hear Plaintiff’s  
19 statements concerning discrimination. Ms. Rivera finally reaffirmed her decision not to consider  
20 Plaintiff’s political discrimination arguments. Plaintiff then sent a written request to co-defendant  
21 Cordero, as Executive Director of PREPA, appraising him of the politically motivated ordeal that  
22 he was allegedly enduring at the hands of co-defendant Rivera, and requesting that Cordero take

---

23  
24  
25 <sup>3</sup> The amended complaint alleges that Rivera initially responded to Plaintiff’s complaints  
26 about the poor conditions in *la cobacha* by suggesting that he get them fixed. Plaintiff requested the  
27 improvements in writing to the Cost Control Supervisor for PREPA, but was told that the  
28 corporation’s financial situation made it impossible to authorize any remodeling. Though Plaintiff  
was later transferred from *la cobacha* to his current desk/cubicle, the amended complaint alleges that  
Rivera continued to insist that Plaintiff remodel *la cobacha* after the official denial of funds for those  
purposes. (See Docket No. 12, ¶¶ 3.25-3.28.)

1 action in his role as the nominating authority. According to the allegations in the amended  
2 complaint, Cordero “did nothing to investigate the matter and simply looked the other way . . .  
3 limiting himself to rubber stamping the [EEOO’s] flawed/tailor-made decision.” (*Id.* at ¶ 3.45.)

4 This is Plaintiff’s sole allegation linking co-defendant Cordero to the alleged misconduct of  
5 his subordinates. Defendants argue that none of these allegations affirmatively link Cordero to any  
6 of the discriminatory decisions or actions taken by Rivera against Plaintiff. As no *respondeat*  
7 *superior* liability can be found under Section 1983, they argue, Plaintiff’s claim against Cordero  
8 should be dismissed. Plaintiffs counter by citing to Rodriguez-Garcia v. Municipality of Caguas,  
9 495 F.3d 1 (1st Cir. 2007), for the proposition that Cordero’s receipt of, and response to, Plaintiff’s  
10 letter is sufficient to create supervisory liability. The court understands, however, that Plaintiff  
11 misconstrues the First Circuit’s holding in that case.

12 In Rodriguez-Garcia, the First Circuit reversed the district court’s dismissal of a Section 1983  
13 claim based on supervisory liability against the mayor of Caguas, which the district court had argued  
14 was based on the “mere receipt of a letter.” *Id.* at 12-13. The letter referred to by the district court  
15 was a complaint letter sent by plaintiff to Human Resources requesting a written explanation for her  
16 allegedly discriminatory transfer. After the exclusion of other evidence under Fed.R.Civ.P. 408, the  
17 district court found that the remaining evidence, “ ‘[a] mere letter of protest and request [to Human  
18 Resources] for investigation which [was] ignored by a supervising authority,’ was insufficient as a  
19 matter of law to establish that the mayor knew of [the plaintiff’s] employment situation and thus he  
20 could not be found liable for any participation in her transfer and lack of reinstatement.” *Id.* at 7.<sup>4</sup>

21 The First Circuit found that the district court had erroneously excluded the other evidence  
22 under Fed.R.Civ.P. 408. Thus, the Court stated that though it appreciated “the reluctance to permit  
23 a jury to draw an inference about the personal involvement of the mayor on the basis of a letter sent  
24

---

25  
26 <sup>4</sup> This determination by the lower court was based on the reasoning in Johnson v. Wright,  
27 234 F. Supp. 2d 352 (S.D.N.Y. 2002), where the U.S. District Court for the Second Circuit explained  
28 that “[t]o allow a mere letter to an official to impose supervisory liability would permit an inmate  
to place liability on individuals who had no authority over the situation complained of merely by  
sending letters.” *Id.* at 363.



1 to a department head . . . if the [lower] court had correctly admitted [the other evidence] as [proof]  
2 of the mayor's knowledge of Rodriguez-Garcia's complaint *and his personal involvement in dealing*  
3 *with it*, the court could no longer maintain that Rodriguez-Garcia was attempting to establish the  
4 mayor's liability based simply on his role as the supervisor of a department head." Rodriguez-  
5 Garcia, 495 F.3d at 13 (emphasis added). Thus, contrary to Plaintiff's contention, the First Circuit  
6 did not hold in that case that the mayor could be held accountable under Section 1983 solely because  
7 he received a letter from the plaintiff appraising him of the situation and, subsequently, did not act  
8 to correct it. The court in Rodriguez-Garcia held, instead, that the mayor could have been held liable  
9 on a theory of supervisory liability based *on the totality of the evidence*, most of which had been  
10 erroneously excluded. This evidence included three additional letters, two that were sent to Human  
11 Resources by Rodriguez-Garcia's attorney on her behalf, and a response letter from Human  
12 Resources discussing the challenge to her discriminatory transfer and the fact that the mayor himself  
13 had referred Rodriguez-Garcia's complaint to Human Resources. There was also testimony  
14 regarding a personal encounter between the mayor and the plaintiff, as well as a subsequent letter  
15 sent directly to the mayor.

16 In the present case, Plaintiff's only factual allegation regarding Cordero's involvement  
17 reflects merely a notification by Plaintiff to Cordero and the latter's cursory response. The court  
18 understands that these allegations are too tenuous to establish the level of personal involvement  
19 needed to sustain a claim of supervisory liability. Furthermore, the mere conclusory allegation that  
20 Cordero acted in "reckless disregard of plaintiff's constitutional rights" and that, subsequent to the  
21 letter exchange with Cordero, "plaintiff continues to endure unreasonably inferior work conditions,  
22 as punishment for his adherence and support of the PDP," is insufficient to establish a causal  
23 connection, especially where the complaint makes it otherwise clear that the sole basis of Plaintiff's  
24 claim is "the politically-motivated ordeal that he was enduring at the hands of Mr. Rivera." (Docket  
25 No. 12, ¶ 3.44.). Without further factual allegations tying Cordero personally to his subordinate's  
26 unconstitutional behavior, the court must **GRANT** Defendants' motion on this ground and dismiss  
27 Plaintiff's Section 1983 claim against co-defendant Cordero.

1           **C.       Cordero's Liability Under Puerto Rico Law 115**

2           With regards to personal supervisor liability under Puerto Rico's statute prohibiting  
3 retaliation in the workplace, Puerto Rico Law No. 115 ("Law 115"), P.R. Laws Ann. tit. 29, § 194  
4 et seq., a recent decision of this court, Otero-Merced v. Preferred Health Inc., 680 F.Supp.2d 388,  
5 393 (D.P.R. 2010), notes that the question of individual liability under Law 115 has gone  
6 unanswered by the Puerto Rico Supreme Court. As a result, this court has reached conflicting results  
7 in its attempts to interpret the same. Compare Rivera Maldonado v. Hosp. Alejandro Otero Lopez,  
8 614 F.Supp.2d 181, 197 (D.P.R. 2009) (finding no individual liability under Law 115, relying on  
9 findings by the Puerto Rico Court of Appeals in Vargas Santiago v. Álvarez Moore, 2006 WL  
10 3694659 (P.R. Cir. Nov. 29, 2006)), with Hernández v. Raytheon Serv. Co. P.R., 2006 WL 1737167,  
11 at \*2 (D.P.R. 2006) (concluding the opposite, relying on the liberal construction employed by the  
12 Puerto Rico Supreme Court in Rosario Toledo v. Distribuidora Kikuet, Inc., 151 D.P.R. 634 (2000),  
13 in favor of employees in discrimination cases).

14           However, as stated by this court in Otero-Merced, "[i]n 2003 and in 2006, the Puerto Rico  
15 Court of Appeals issued cogent, instructive decisions wherein it discussed the implications of [the  
16 Puerto Rico Supreme Court's decision in] Kikuet, comparing the language and purpose of Law 100  
17 with that of Law 115." Id. at 393 (citing Vargas Santiago, 2006 WL 3694659 (P.R. Cir. Nov. 29,  
18 2006), *cited with approval in* Rivera Maldonado, 614 F.Supp.2d at 197; Sánchez Barreto, 2003 WL  
19 23336311 (P.R. Cir. Nov. 6, 2003)). "The court, in both [cases], determined that no individual  
20 liability exists under Law 115." Otero-Merced, 680 F. Supp. 2d at 393 (citing Vargas Santiago,  
21 2006 WL 3694659 at \*5; Sánchez Barreto, 2003 WL 23336311, at \*4). As interpreted by the Puerto  
22 Rico Court of Appeals, this means that any action commenced under the provisions of Law No. 115  
23 shall be filed only against the employer. See Vargas Santiago, 2006 WL 3694659 at \*5. In  
24 accordance with the foregoing, to the extent that any such claims are alleged as to co-defendants  
25 Cordero and/or Rivera, the same should be **DISMISSED**.<sup>5</sup>

26 \_\_\_\_\_  
27  
28           <sup>5</sup> An employee establishes a *prima facie* case under Law 115, or the Puerto Rico Whistle-  
blower Act, by proving that (1) he engaged in one of the protected activities set forth in the statute

1 **III. Conclusion**

2 For the reasons stated herein, the court **GRANTS in part and DENIES in part** Defendants'  
3 motion to dismiss (Docket No. 17). Accordingly, Plaintiff's Section 1983 claim against co-  
4 defendant Cordero is hereby **DISMISSED**. Plaintiff's supplemental claim under Law 115 against  
5 both co-defendants Cordero and Rivera is also **DISMISSED**. Pending before the court are  
6 Plaintiff's Section 1983 claims for discrimination and retaliation against co-defendants PREPA and  
7 Rivera, as well as the remainder of his supplemental state law claims, to wit: his damages claim  
8 under Article 1802 of the Puerto Rico Civil Code against Cordero and Rivera; his claim for vicarious  
9 liability under Article 1803 of the Puerto Rico Civil Code against PREPA; and his retaliation claim  
10 under Puerto Rico Law 115 against PREPA.

11 **SO ORDERED.**

12 In San Juan, Puerto Rico this 5th day of May, 2010.

13  
14 *S/ Gustavo A. Gelpí*  
15 GUSTAVO A. GELPÍ  
16 United States District Judge  
17  
18  
19  
20  
21  
22

23 \_\_\_\_\_  
24 and (2) that he was subsequently discharged, threatened or suffered discrimination at work. See P.R.  
25 Laws Ann. tit. 29 § 194a(a); Irizarry v. Johnson & Johnson, 2000 TSPR 15, 150 D.P.R. 155, 164,  
2000 Juris P.R. 27 (2000).

26 The court notes that there are no factual allegations as to co-defendant Cordero linking him  
27 to the retaliatory acts allegedly committed by co-defendant Rivera. Therefore, even if the court were  
28 to follow the reasoning in Hernández, 2006 WL 1737167, at \*2 (D.P.R. 2006), and determine that  
there can be personal supervisor liability under Law 115, it would have to dismiss Plaintiff's claim  
as to Cordero, regardless, for failure to state a claim under Iqbal.