



2 Benitez’s false testimony regarding alleged illegal acts committed by Reyes-Reyes in his  
3 residence and through the use of his vehicle.

4 On August 30, 2010, Co-Defendants moved for dismissal pursuant to FED. R. CIV. P.  
5 12(b)(6), arguing that they are entitled to Eleventh Amendment Immunity. Docket # 4. Plaintiffs  
6 opposed (Docket # 8), Co-Defendants replied (Docket # 11), and Plaintiffs sur-replied (Docket  
7 # 16).

### 8 **Standard of Review**

9 Under Rule 12(b)(6), a defendant may move to dismiss an action against him for failure  
10 to state a claim upon which relief can be granted. First Med. Health Plan, Inc. v. CaremarkPCS  
11 Caribbean, Inc., 681 F. Supp. 2d 111, 113-114 (D.P.R. 2010). When deciding a motion to  
12 dismiss under this rule, the court will construe the complaint in the light most favorable to the  
13 plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the  
14 plaintiff. Medina-Claudio v. Rodriguez-Mateo, 292 F.3d 31, 34 (1st Cir. 2002); Correa Martinez  
15 v. Arrillaga-Belendez, 903 F.2d 49, 51 (1st Cir. 1990). The court must then decide whether the  
16 complaint alleges enough facts to “raise a right to relief above the speculative level.” Id. at 114  
17 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)). In so doing, the court accepts as true  
18 all well pleaded facts and draws all reasonable inferences in the plaintiff’s favor. Id. (citing  
19 Parker v. Hurley, 514 F.3d 87, 90 (1st Cir. 2008)). However, “the tenet that a court must accept  
20 as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” Id.  
21 (citing Ashcroft v. Iqbal, 556 U.S. \_\_\_, 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009)).

22 The First Circuit has noted that “[t]hreadbare recitals of the elements of a cause of action,  
23 supported by mere conclusory statements, do not suffice.” Id. “[W]here the well pleaded facts  
24 do not permit the court to infer more than the mere possibility of misconduct, the complaint has  
25 alleged but it has not ‘show[n]’-‘that the pleader is entitled to relief.’” Id. (citing Iqbal, 129  
26 S. Ct. at 1950 (quoting FED. R. CIV. P. 8(a)(2)). In sum, when passing on a motion to dismiss

2 the court must follow two principles: (1) legal conclusions masquerading as factual allegations  
3 are not entitled to the presumption of truth; and (2) plausibility analysis is a context specific task  
4 that requires courts to use their judicial experience and common sense. Id. (citing Iqbal, 129 S.  
5 Ct. at 1950). In applying these principles, courts may first separate out merely conclusory  
6 pleadings, and then focus upon the remaining well pleaded factual allegations to determine if  
7 they plausibly give rise to an entitlement to relief. Id. (citing Iqbal, 129 S. Ct. at 1950).

8 The First Circuit has held that “dismissal for failure to state a claim is appropriate if the  
9 complaint fails to set forth factual allegations, either direct or inferential, respecting each  
10 material element necessary to sustain recovery under some actionable legal theory.” Gagliardi  
11 v. Sullivan, 513 F. 3d 301, 305 (1st Cir. 2008). Courts “may augment the facts in the complaint  
12 by reference to documents annexed to the complaint or fairly incorporated into it, and matters  
13 susceptible to judicial notice.” Id. at 305-306. However, in judging the sufficiency of a  
14 complaint, courts must “differentiate between well pleaded facts, on the one hand, and ‘bald  
15 assertions, unsupportable conclusions, periphrastic circumlocution, and the like,’ on the other  
16 hand; the former must be credited, but the latter can safely be ignored.” LaChapelle v. Berkshire  
17 Life Ins., 142 F.3d 507, 508 (citing Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir.1996)); Buck v.  
18 American Airlines, Inc., 476 F. 3d 29, 33 (1st Cir. 2007); see also Rogan v. Menino, 175 F.3d  
19 75, 77 (1st Cir. 1999). Thus Plaintiffs must rely in more than unsupported conclusions or  
20 interpretations of law, as these will be rejected. Berner v. Delahanty, 129 F.3d 20, 25 (1st Cir.  
21 1997) (citing Gooley v. Mobil Oil Corp., 851 F.2d 513, 515 (1st Cir. 1988)).

22 Therefore, “even under the liberal pleading standards of Federal Rule of Civil Procedure  
23 8, the Supreme Court has recently held that to survive a motion to dismiss, a complaint must  
24 allege ‘a plausible entitlement to relief.’” Rodríguez-Ortíz v. Margo Caribe, Inc., 490 F.3d 92  
25 (1st Cir. 2007) (citing Twombly, 127 S. Ct. at 1965). Although complaints do not need detailed  
26 factual allegations, the “plausibility standard is not akin to a ‘probability requirement,’ but it

2 asks for more than a sheer possibility that a defendant has acted unlawfully.” Twombly, 127  
3 S. Ct. At 1965; see also Ashcroft, 129 S. Ct. at 1949. A plaintiff’s obligation to “provide the  
4 ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a  
5 formulaic recitation of the elements of a cause of action will not do.” Twombly, 127 S. Ct. At  
6 1965. That is, “factual allegations must be enough to raise a right to relief above the speculative  
7 level, on the assumption that all allegations in the complaint are true.” Parker, 514 F. 3d at 95.

### 8 **Applicable Law and Analysis**

#### 9 *Eleventh Amendment Immunity*

10 In their motion, Co-Defendants aver that the Eleventh Amendment, which prohibits suits  
11 against the State without its consent, shields them from the present action. Docket # 4, p. 2. The  
12 Eleventh Amendment precludes suits in Federal Court for money damages against states unless  
13 one of the following four exceptions applies: (1) where a state consents to suit in the federal  
14 forum, (2) where a state waives its own immunity by statute or the like, (3) where Congress  
15 abrogates state immunity (so long as Congress speaks clearly and acts in furtherance of  
16 particular powers), or (4) under certain circumstances other constitutional imperatives may take  
17 precedence over the Eleventh Amendment's federal-court bar. Metcalf & Eddy v. P.R.  
18 Aqueduct & Sewer Authority, 991 F.2d. 935, 938 (1st Cir.1993); Fernandez v. Chardon, 682  
19 F.2d 42, 59 (1st Cir. 1982). The First Circuit has affirmed that the Commonwealth of Puerto  
20 Rico enjoys the “full benefits” provided by the Eleventh Amendment. Metcalf, 991 F.2d at 938.  
21 That is, for Eleventh Amendment purposes, the Commonwealth of Puerto Rico is considered  
22 a State. Negron Gaztambide v. Hernandez Torres, 145 F.3d 410 (1st Cir. 1998).

23 In opposition, Plaintiffs contend that Co-Defendants have waived their immunity by way  
24 of the Lawsuits Against the Commonwealth of Puerto Rico Act (“LACPRA”), P.R. Laws Ann.  
25 tit. 31, § 3077 et seq. Co-Defendants argue LACPRA establishes limits on monetary  
26 compensation for actions brought forth against the Commonwealth of Puerto Rico but does not

2 authorize nor constitute a consent from the Commonwealth to be sued in federal court. Docket  
3 # 11, p. 2.

4       Upon reviewing the above cited law, this Court noted that the LACPRA clearly applies  
5 to suits filed in the Courts of the Commonwealth of Puerto Rico. Moreover, the First Circuit has  
6 stated that “[a]lthough the Commonwealth has consented to be sued for damages in actions  
7 brought under the Commonwealth general negligence statute, such consent does not extend to  
8 actions filed in any courts but the Commonwealth’s own. Neither Section 1802 or 1803 contains  
9 an explicit waiver of the Commonwealth’s sovereign immunity.” Diaz-Fonseca v. Puerto Rico,  
10 451 F.3d 13, 33 (1<sup>st</sup> Cir. P.R. 2006). Thus we are not persuaded by Plaintiffs’ argument that the  
11 Commonwealth has consented to be sued in federal court under LACPRA, as there is no  
12 provision whatsoever in said statute to support such assertion and our case law provides  
13 otherwise. Accordingly, Plaintiffs’ claims against the Commonwealth of Puerto Rico are  
14 **DISMISSED with prejudice.**

15       The Eleventh Amendment’s protection also extends to the state’s instrumentalities or  
16 “alter egos.” Ainsworth Aristocrat Int’l Pty. Ltd. v. Tourism Co. of Puerto Rico, 818 F.2d 1034,  
17 1036 (1<sup>st</sup> Cir.1987). Insofar as the the PRPD is an alter ego of the Commonwealth of Puerto  
18 Rico. McLeod-Lopez, 603 F. Supp.2d at 343 (citing Nieves Cruz v. Comm. of P.R., 425 F.  
19 Supp.2d 188, 192 (D.P.R.2006); Lopez Rosario v. Police Dept., 126 F.Supp.2d 167, 170-171  
20 (D.P.R.2000)), it is entitled to Eleventh Amendment immunity. As such, Plaintiffs’ claims  
21 against the PRPD are also **DISMISSED with prejudice.**

22       *Supplemental state law claims*

23       Having dismissed Plaintiffs’ federal law claims against Co-Defendants, their state law  
24 claims against said parties are **DISMISSED without prejudice.** See Rodriguez v. Doral  
25 Mortgage Corp., 57 F.3d 1168, 1175-117 (1st Cir.1995) (finding that “the power of a federal  
26 court to hear and to determine state-law claims in non-diversity cases depends upon the presence

2 of at least one ‘substantial’ federal claim in the lawsuit.”); Newman v. Burgin, 930 F.2d 955, 963  
3 (1st Cir.1991).

4 This Court reminds the parties that all representations to the court, submitted to the court  
5 through pleadings, motions, and any other document, are bound by FED. R. CIV. P. 11(b)’s  
6 mandate. Therefore, all claims, defenses, and other legal arguments that are unwarranted by  
7 existing law, are, in fact, frivolous, and can be sanctioned by the courts. In the instant case,  
8 Plaintiffs have set forth unwarranted legal arguments, insofar as the current case law is extremely  
9 clear as to the applicable statutes in cases such as this one. This methodic inclusion of allegations  
10 and defenses is unjustified, and unnecessarily onerous for the courts. Therefore, parties shall take  
11 the foregoing into consideration when appearing before this Court, or face the imposition of  
12 sanctions.

13 **Conclusion**

14 Based on the foregoing, Plaintiffs’ federal claims against Co-Defendants are  
15 **DISMISSED with prejudice**, and their supplemental state law claims against said parties are  
16 **DISMISSED without prejudice**.

17 **IT IS SO ORDERED.**

18 In San Juan, Puerto Rico, this 10<sup>th</sup> day of December, 2010.

19 *s/Salvador E. Casellas*  
20 Salvador E. Casellas  
21 U.S. Senior District Judge  
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