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

MARITZA ZAYAS-ORTIZ, et al.,

Plaintiffs,

v.

Civil No. 11-1507 (GAG)

**BECTON DICKINSON CARIBE, LTD.,
et al.,**

Defendants.

OPINION AND ORDER

Maritza Zayas-Ortiz, (“Zayas”), her husband Jose Santiago-Sierra (“Santiago”) and the conjugal partnership composed by them (collectively “Plaintiffs”) bring this action against Becton Dickinson Caribe, Ltd., Becton Dickinson Puerto Rico, Inc. and Becton, Dickinson & Co. (“Defendants”), alleging discrimination based on age and national origin, in violation of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 621 *et seq.*; and Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e *et seq.* Plaintiffs also bring supplemental state law claims alleging violations of Puerto Rico Law 80 of May 30, 1976 (“Law 80”), P.R. Laws Ann. tit. 29, §§ 185a *et seq.*; Puerto Rico Law 100 of June 30, 1959 (“Law 100”), P.R. Laws Ann. tit. 29, §§ 146 *et seq.*; and Articles 1802 and 1803 of the Civil Code of Puerto Rico (“Articles 1802 & 1803”), P.R. Laws Ann. tit. 31, §§ 5141-5142.

Presently before the court is Defendants’ motion to dismiss (Docket No. 38). Defendants move to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiffs opposed the motion (Docket No. 43). By leave of the court, Defendants filed a reply to Plaintiffs’ opposition motion (Docket No. 45). After reviewing these submissions and the pertinent law, the court **GRANTS in part** and **DENIES in part** Defendants’ motion to dismiss at Docket No. 38.

I. Legal Standard

“The general rules of pleading require a short and plain statement of the claim showing that the pleader is entitled to relief.” Gargano v. Liberty Intern. Underwriters, Inc., 572 F.3d 45, 48 (1st Cir. 2009) (citations omitted) (internal quotation marks omitted). “This short and plain statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Id. (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

Under Rule 12(b)(6), defendants may move to dismiss an action for failure to state a claim upon which relief can be granted. See FED.R.CIV.P. 12(b)(6). To survive a Rule 12(b)(6) motion, a complaint must contain sufficient factual matter “to state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. The court must decide whether the complaint alleges sufficient facts to “raise a right to relief above the speculative level.” Id. at 555. In so doing, the court accepts as true all well-pleaded facts and draws all reasonable inferences in the plaintiff’s favor. Parker v. Hurley, 514 F.3d 87, 90 (1st Cir. 2008). However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id. (citing Twombly, 550 U.S. at 555). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint alleged—but it has not show[n]—that the pleader is entitled to relief.” Iqbal, 556 U.S. at 679 (quoting FED.R.CIV.P. 8(a)(2)) (internal quotation marks omitted).

II. Factual and Procedural Background

On February 12, 2007, Zayas was recruited by Dickinson Caribe Ltd., as an engineer and quality supervisor at its plant in San Lorenzo, Puerto Rico (“San Lorenzo Plant”). As engineer and quality supervisor, she conducted investigations of the products manufactured at the plant to determine whether the products were ready to be released to the market. (See Docket No. 37 at 3.)

Plaintiffs allege that during her employment, Zayas’ performance was excellent and that her performance evaluations reflected this. According to the complaint, Zayas’ professional relationship with her associates and her supervisor Leroy Williams (“Williams”) was excellent. Zayas was eventually promoted to manufacturing supervisor. Willaims was replaced by Ricardo Burgos

1 (“Burgos”) as Zayas’ supervisor. In November 2008, Burgos was fired and replaced by an
2 Englishwoman named Elena Sharp (“Sharp”).

3 Plaintiffs allege that during the period when Sharp was general manager, as well as Zayas’
4 immediate supervisor, she would constantly use the word “shit” when things did not come out as
5 she expected. The word was allegedly used during the manager’s morning meetings, during lunch,
6 in Sharp’s office and throughout the San Lorenzo Plant halls.

7 Plaintiffs also contend that Sharp mocked and unjustly criticized Puerto Ricans by using
8 denigrating expressions to refer to their habits and ways. Plaintiffs claim these denigrating comments
9 were directed at Zayas and at other Puerto Rican co-workers. Plaintiffs allege that Sharp constantly
10 criticized and corrected Zayas’ pronunciation and use of the English language in front of other co-
11 workers, thereby embarrassing her. According to the complaint, Sharp entered Zayas’ office one day
12 and asked her, “What do you think if you saw a chicken running in the middle of the road?” (See
13 Docket No. 37 at 5.) Plaintiffs allege that due to the nature of the question and Sharp’s previous
14 discriminatory behavior, Zayas’ did not know what to say and responded that, if the chicken was on
15 Road No. 30, she would not stop in the middle of the road to save it because she would be risking
16 her life, as well as the life of other drivers. Plaintiffs assert that although Zayas explained the
17 dangerous nature of Road No. 30, Sharp took her response out of proportion and spent the day
18 criticizing Puerto Ricans’ uncivilized behavior. It is alleged that during another staff meeting at the
19 San Lorenzo Plant, Sharp entered and proceeded to mock a man she had just seen on the street riding
20 a horse without a saddle, commenting on how she had never seen this in Plymouth, England.

21 According to the complaint, on October 8, 2009, Sharp gave Zayas a two out of five in her
22 performance evaluation. Sharp attributed the low score to Zayas’ disrespectful behavior towards her
23 colleagues and associates. Plaintiffs also allege that Sharp did not authorize Zayas’ participation in
24 a leadership development training and that Sharp spent most of her time with two other San Lorenzo
25 Plant executives, who at the time were in their early thirties. Plaintiffs allege that Sharp required
26 Zayas to construct a development plan to be finished within the period of two weeks. However, the
27 day before the project was due, Zayas was called into the office of Becton Dickinson Human
28 Resources Manager Viviana Mayo (“Mayo”) and was fired without any explanation. Zayas was

1 allegedly escorted while she gathered her personal belongings in front of other San Lorenzo Plant
2 co-workers and was subsequently escorted out of the San Lorenzo Plant. Plaintiffs assert that when
3 Zayas asked Mayo the reason for her discharge, Mayo responded it “is because you don’t fit,” which
4 allegedly happened in front of her husband Santiago.

5 The complaint states that Zayas was forty-six at the time of her discharge. Her immediate
6 supervisor was thirty-two years old. Zayas was replaced with a thirty-five year old Englishman
7 named Matt Eggleston. Plaintiffs aver that her replacement does not possess Zayas’ level of
8 experience and qualifications. On August 18, 2010, Plaintiffs filed charges at the Anti-
9 Discrimination Unit of the Puerto Rico Department of Labor and Human Resources and the Equal
10 Employment Opportunity Commission (“EEOC”) and assert that co-defendant Becton Dickinson
11 was notified of the filing charges. On April 8, 2011, Plaintiffs received the notice of right to sue by
12 the EEOC. On June 3, 2011, Plaintiffs filed the instant complaint (Docket No.1), alleging that Zayas
13 was discriminated against on account of her age and nationality. Zayas’ husband seeks damages for
14 allegedly having suffered mental anguish and monetary loss. On January 1, 2011, Defendants filed
15 a motion to dismiss (Docket No. 23) alleging that the complaint failed to state a claim upon which
16 relief could be granted. On January 27, 2012, Plaintiffs filed a memorandum in opposition to the
17 motion to dismiss (Docket No. 31). On February 6, 2012, Plaintiffs filed their amended complaint
18 (Docket No. 37). On February 8, 2012, Defendants filed their motion to dismiss the amended
19 complaint (Docket No. 38). On February 24, 2012, Plaintiffs filed their response in opposition to
20 the motion to dismiss the amended complaint (Docket No. 43). Lastly, on March 11, 2012,
21 Defendants filed their reply to Plaintiffs’ opposition to the motion to dismiss the amended complaint
22 (Docket No. 45).

23 **III. Discussion**

24 **A. Title VII**

25 Title VII prohibits employers from discriminating “against any individual with respect to
26 compensation, terms, conditions, or privileges of employment, because of such individual’s race,
27 color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). A plaintiff can establish a
28 discrimination claim in one of two ways: (1) through direct evidence of discrimination; or (2)

1 through the cumulative effect of indirect evidence of the employer's motivation. Lipsett v. Univ.
2 of Puerto Rico, 864 F.2d 881, 909 (1st Cir. 1988). Absent direct evidence of intentional
3 discrimination, a plaintiff must satisfy the burden-shifting-framework established by the Supreme
4 Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

5 Under McDonnell Douglas, a plaintiff has the initial burden of establishing a *prima facie* case
6 of Title VII discrimination. Id. A plaintiff alleging discrimination on the basis of national origin
7 must prove the following elements in order to establish a *prima facie* case through circumstantial
8 evidence: "(1) he or she was a member of protected class; (2) he or she suffered an adverse
9 employment action; (3) he or she was qualified for the position; and (4) he or she was replaced by
10 someone outside the protected class or was treated differently than similarly-situated non-protected
11 employees." DiCarlo v. Potter, 358 F.3d 408, 415 (6th Cir. 2004) (citing Talley v. Bravo Pitino
12 Rest., Ltd., 61 F.3d 1241, 1246 (6th Cir. 1995)).

13 In the instant matter, the court finds Plaintiffs have pled sufficient facts as to set forth a *prima*
14 *facie* case of national origin discrimination. Plaintiffs allege that, as a Puerto Rican, Zayas was a
15 member of a protected class. See Aguayo v. Napolitano, 810 F. Supp. 2d 406 (D.P.R. 2011) (finding
16 Puerto Ricans members of protected class meeting first prong of *prima facie* Title VII national origin
17 discrimination). Zayas suffered an adverse employment action as she was terminated from her
18 employment. See Valle-Arce v. Puerto Rico Ports Auth., 651 F.3d 190, 198 (1st Cir. 2011)
19 ("[T]ermination of employment obviously is an adverse employment action . . ."). As to the third
20 prong, Plaintiffs contend that Zayas was qualified for her job and that she had a record of good
21 evaluations and promotions during her time at the San Lorenzo Plant. See Zukowski v. St. Luke
22 Home Care Program, 206 F. Supp. 2d 236, 241 (D.P.R. 2002). Furthermore, Plaintiffs claim Zayas
23 was replaced with an Englishman. Accordingly, Defendants' motion to dismiss Plaintiffs' Title VII
24 national origin discrimination claim is **DENIED**.

25 B. ADEA

26 The ADEA makes it unlawful for an employer "to fail or refuse to hire or to discharge any
27 individual or otherwise discriminate against any individual with respect to his compensation, terms,
28 conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1).

1 plaintiffs who do not have direct evidence regarding age discrimination may prove their case by
2 using the burden shifting framework in McDonnell Douglas. See Velez v. Thermo King de Puerto
3 Rico, Inc., 585 F.3d 441, 447 n.2 (1st Cir. 2009). In an ADEA claim for discriminatory firing, this
4 framework requires a plaintiff to show: (1) he or she was at least forty years old; (2) he or she was
5 qualified for the position he or she had held; (3) his or her employer took adverse action against him
6 or her; and (4) the employer subsequently filled the position, demonstrating a continuing need for
7 the plaintiff's services. Id. at 447 (citations omitted).

8 In the instant matter, Plaintiffs have set forth sufficient factual allegations to surpass the
9 motion to dismiss stage. As discussed previously under Title VII, Plaintiffs have alleged that Zayas
10 was qualified for the position she held and was discharged by her employer. Additionally, Plaintiffs
11 contend that Zayas was forty-six years old at the time of her discharge and that her position was
12 filled after her dismissal. Accordingly, Defendants' motion to dismiss Plaintiffs' ADEA claim is
13 **DENIED.**

14 C. Law 100

15 Law 100 is the Puerto Rico anti-discrimination statute. P.R. Laws Ann. tit. 29, §§ 146 *et seq.*
16 “[It] is the equivalent of the federal ADEA, providing for civil liability in age discrimination
17 actions.” Cardona Jimenez v. Bancomercico de Puerto Rico, 174 F.3d 36, 42 (1st Cir. 1999)
18 (citations omitted). Law 100 “prohibits an employer from discriminating against an employee in the
19 workplace by reason of age, race, color, religion, sex, social, or national origin or social condition.”
20 Id. As applied to age discrimination, Law 100 differs from the ADEA only with respect to how the
21 burden-shifting framework operates. Id. at 42-43 (citations omitted).

22 Under Law 100, a plaintiff must satisfy two requirements to establish a *prima facie* case of
23 discrimination: (1) he or she must demonstrate that he or she was actually or constructively
24 discharged; and (2) he or she must allege that the decision was discriminatory. Baralt v. Nationwide
25 Mut. Ins. Co., 251 F.3d 10, 16 (1st Cir. 2001).

26 As discussed above, Plaintiff was terminated from her employment and has alleged that her
27 termination was for discriminatory reasons. Accordingly, the Court **DENIES** Defendants' motion
28 to dismiss Plaintiffs' Law 100 claim.

D. Law 80

1 Law 80 is Puerto Rico's wrongful dismissal statute. See P.R. Laws Ann. tit. 29, § 185a. The
2 statute provides relief to employees who are terminated without good cause. Medina v. Adecco, 561
3 F. Supp. 2d 162, 174 (D.P.R. 2008) (citing P.R. Laws Ann. tit. 29, § 185a). According to Law 80,
4 a dismissal without just cause is "[one] made by mere whim or fancy of the employer or without
5 cause relative to the normal operation of the establishment." P.R. Laws Ann. tit. 29, § 185b.
6 Plaintiffs allege that Zayas was fired without explanation, and that after inquiring as to the reasons
7 behind her termination, she was told it was because she did not fit. Such allegations satisfy the
8 pleading requirements for a Law 80 claim. Therefore, the court **DENIES** Defendants' motion to
9 dismiss Plaintiffs' Law 80 claim.

E. Articles 1802 and 1803

11 The legal framework under Articles 1802 and 1803, "is that the provisions of the Civil Code
12 are supplementary to special legislation." Rivera-Melendez v. Pfizer Pharm Inc., 747 F. Supp. 2d
13 336, 339 (D.P.R. 2010). The Supreme Court of Puerto Rico has held that as a general rule, "in the
14 face of conduct by an employer that has been typified and penalized by special labor legislation, the
15 employee only has recourse to the relief of said Act, and is barred from seeking additional
16 compensation under Article 1802" Reyes-Ortiz v. McConnell Valdes, 714 F. Supp. 2d 234, 239
17 (D.P.R. 2010) (citations omitted) (internal quotation marks omitted). A plaintiff may only bring an
18 additional Article 1802 claim if it is based on tortious or negligent conduct that is distinct from the
19 conduct covered by the specific labor law. Id. (citations omitted). When a plaintiff's claims under
20 Articles 1802 and 1803 claims are based on the same facts that give rise to the asserted causes of
21 action under Law 100 and Law 80, the former are superceded by the latter. Id. (citations omitted).
22 Here, Plaintiffs have set forth claims under Articles 1802 and 1803, based on the same set of facts
23 as their Law 100 and Law 80 claims. Accordingly, the court **GRANTS** Defendants' motion to
24 dismiss Plaintiffs' claims under Articles 1802 and 1803, and **DISMISSES** the same.

IV. Conclusion

26 For the reasons stated herein, the court **GRANTS in part** and **DENIES in part** Defendants'
27 motion to dismiss (Docket No. 38). Plaintiffs' claims under Articles 1802 and 1803 claims are
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1 **DISMISSED.** Remaining before the court are Plaintiffs' Title VII and ADEA claims, as well as their
2 claims under Law 100 and Law 80.

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SO ORDERED.

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In San Juan, Puerto Rico this 23rd day of July, 2012.

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S/Gustavo A. Gelpí

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GUSTAVO A. GELPÍ

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United States District Judge

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