

Civil No. 12-1141 (GAG)

1 resident of Puerto Rico, is of American nationality, of Caucasian race, and suffers from Asperger’s
2 Syndrome” (Docket No. 1 at 3.) The complaint alleges nothing to do with raced-based
3 discrimination, race-based animus, pretextual actions to disguise race-based discrimination, or
4 anything remotely proximate to satisfying Iqbal and Twombly.¹ Therefore, Plaintiffs’ Title VI claim
5 against all defendants is **DISMISSED**.

6 **II. Titles II and III of the ADA**

7 Defendants ask the court to dismiss the ADA claim against themselves and the Colegio
8 because Title III of the ADA does not entitle a prevailing party to monetary damages against
9 individuals. (See Docket No. 57 at 4-7.) Plaintiffs’ opposition to the motion confuses the court.
10 Plaintiffs seemingly allege both a Title II and Title III ADA claim, but they are very unclear. (See
11 Docket No. 86 at 16-19.) The court thus addresses Plaintiffs’ ADA claim pursuant to both Title II
12 and Title III.

13 A. Title II

14 “[U]nder Title II, non-economic damages are only available when there is evidence of
15 ‘economic harm or animus toward the disabled.’” Carmona-Rivera v. Puerto Rico, 464 F.3d 14, 17
16 (1st Cir. 2006) (citing Nieves-Marquez v. Puerto Rico, 353 F.3d 108, 126-27 (1st Cir. 2003)).
17 Plaintiffs’ complaint sought reimbursement for private schooling, including admissions fees and
18 expenses incurred at the new school. (See Docket No. 1 ¶ 85.) The court, however, granted
19 Plaintiffs’ request to remove this paragraph from their complaint. (See Docket Nos. 75-76.) No
20 other evidence of economic harm exists in the complaint.

21 However, the complaint is rife with allegations of discriminatory animus. (See Docket No.
22 1 at 21-27.) Although Plaintiffs initially describe Defendants’ discrimination as negligent, not
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25 ¹ Defendants move to dismiss pursuant to Federal Rule of Civil Procedure 12(c) instead of
26 12(b)(6). “When, as now, a motion for judgment on the pleadings . . . is employed as a vehicle to
27 test the plausibility of a complaint, it must be evaluated” like a 12(b)(6) motion. Grajales v. P.R.
Ports Auth., 682 F.3d 40, 44 (1st Cir. 2012).

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1 the ADA.” 436 F.3d 44, 50 (1st Cir. 2006) (citing cases). Plaintiffs’ Title III claim is thus

2 **DISMISSED.**²

3 **III. Conclusion**

4 For the reasons stated above, Defendants’ motion to dismiss at Docket No. 57 is

5 **GRANTED.**

6 **SO ORDERED.**

7 In San Juan, Puerto Rico this 14th day of May, 2013.

8 *S/Gustavo A. Gelpí*
9 GUSTAVO A. GELPI
United States District Judge

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24 ² The court notes that it granted Plaintiffs’ motion to alter judgment after it originally
25 dismissed the ADA claim, recognizing that “the law is not as well settled for Title III claims”
26 concerning individual liability. (See Docket No. 49 (citing Emerson v. Thiel Coll., 296 F.3d 184
27 (3d Cir. 2002).) However, Goodwin, a First Circuit case, states that “money damages are not an
option for private parties suing under Title III of the ADA;” thus, Goodwin controls and the Title
III claim must be dismissed. 436 F.3d at 50.