

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
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JOSE L. MARRERO-RAMOS, et al.,

Plaintiffs,

v.

UNIVERSITY OF PUERTO RICO, et al.,

Defendants.

Civil No. 13-1076 (JAF)

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6 **OPINION AND ORDER**

7 Plaintiff José L. Marrero-Ramos (“Marrero-Ramos” or “Plaintiff”)¹ sued Defendants,
8 the University of Puerto Rico, Mayagüez Campus (“UPR Mayagüez”); Miguel A. Muñoz
9 (“Muñoz”); Jorge Rivera-Santos (“Rivera-Santos”); Lourdes Rosario (“Rosario”); and
10 Insurance Company XYZ (collectively “Defendants”) in diversity jurisdiction following a
11 workplace laboratory accident that caused Marrero-Ramos severe injuries. (Docket No. 1.)
12 On September 23, 2014, we granted Defendants’ motion for summary judgment, finding that
13 the suit was barred both by Eleventh Amendment immunity and by the workers’
14 compensation scheme. (Docket No. 59.) The same day, Plaintiff filed a motion for
15 reconsideration. (Docket No. 60.)

16 First, Plaintiff argues that “Plaintiff, due to an oversight, omitted to include” any
17 admissions, denials, or qualifications to Defendants’ statements of facts in their papers
18 opposing summary judgment. (Docket No. 60.) Failure on such a fundamental duty cannot
19 be waived away as “an oversight.” Plaintiff also respectfully requests that this court clarify

¹ This case originally included two other plaintiffs, but they were dismissed with prejudice on September 4, 2014. (Docket No. 46.)

1 whether it acknowledged the existence of [‘Plaintiffs Statement of Uncontested facts’] and
2 whether it took them into account to support its conclusion that the exception to the employer
3 immunity was not applicable in this case. (Docket No. 60 at 2.) The court read and took into
4 account all the materials that were submitted in the summary judgment papers, including the
5 Plaintiff’s Statement of Facts.

6 Second, Plaintiff addresses the issue of diversity. (Docket No. 60 at 2.) This is
7 irrelevant, given that our opinion found the issue to be mooted by the voluntary dismissal of
8 two non-diverse plaintiffs. (Docket No. 59 at 4.)

9 Third, Plaintiff alleges that sovereign immunity does not extend to Muñoz, Rivera-
10 Santos, and Rosario. (Docket No. 60 at 2.) He alleges that:

11 Even if the court does not admit the omitted denial attached to
12 this Motion – both the complaint – which does not refer to these
13 co-defendants as sued in their official capacity and several
14 Plaintiffs’ uncontested facts show the involvement of co-
15 defendants in their personal capacity.

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17 (Docket No. 60 at 2.) The denial attached to this motion simply denies that these parties are
18 sued in their official capacities. (Docket No. 60-1.) The complaint made no mention of
19 whether they are sued in their official or personal capacities. The complaint simply
20 mentioned the job title of each, and that they were “of legal age, married, and resident of
21 [Puerto Rico].” (Docket No. 1 at 2.) The complaint also mentioned that Rosario was
22 Marrero’s supervisor. (Docket No. 1 at 3.) Plaintiff does not explain how any of the
23 “uncontested facts” show Defendants were sued in their personal capacity. (See Docket No.
24 60 at 2.) “Personal-capacity suits seek to impose personal liability upon a government
25 official for actions he takes under color of state law [...] Official-capacity suits, in contrast
26 ‘generally represent only another way of pleading an action against an entity of which an

1 officer is an agent.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). In general,
2 “defendants sued only in their official capacities in the original complaint cannot be expected
3 to be on notice of the very different issues raised by claims against them in their personal
4 capacities.” *Rodriguez-Garcia v. Municipality of Caguas*, 354 F.3d 91, 100 (1st Cir. 2004).
5 We find analogous issues of inadequate notice for plaintiffs who are sued along with their
6 employer and who are not notified that they are sued in anything other than their official
7 capacities. Regardless, we already held in our opinion that the suit must be dismissed under
8 the workmen’s compensation scheme. (Docket No. 59.) Therefore, the issue is moot.

9 Fourth, Plaintiff alleges, without further explanation, that “the facts contained in
10 Plaintiff’s SUF – **which are uncontested**, support a conclusion that the exception to the
11 employer immunity as construed by the PR Supreme Court is applicable to the present case.”
12 (Docket No. 60 at 2) (emphasis in original). We clearly explained in our original opinion
13 why this is not the case. (*See* Docket No. 59.)

14 III.

15 Conclusion

16 For the foregoing reasons, Defendants’ motion for reconsideration (Docket No. 60) is
17 **DENIED.**

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 29th day of September, 2014.

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S/José Antonio Fusté
JOSE ANTONIO FUSTE
U. S. DISTRICT JUDGE