



**Civil No. 13-1692 (GAG)**

1           Thereafter, Defendants moved the court for summary judgment. (Docket No. 39.) Plaintiff  
2 opposed the motion. (Docket No. 48.) Defendants filed a reply, in which they also moved to  
3 strike a self-serving affidavit that Plaintiff heavily relied upon to support her counterstatement of  
4 uncontested facts and separate statement of material facts. (See Docket No. 57.) Defendants  
5 argued that the affidavit was a sham, as its sole purpose was to create genuine issues of material  
6 fact that defeat Defendants’ motion for summary judgment, by emphasizing the date that Plaintiff  
7 signed the affidavit and pointing to numerous contradictions between Plaintiff’s deposition  
8 testimony and the affidavit. (See Docket No. 57 at 1-5.) Plaintiff opposed Defendants’ motion to  
9 strike and also moved this court for sanctions against counsel for Defendants, arguing that he has  
10 committed “fraud on the court.” (Docket No. 62.)

11           The court examined the parties’ arguments, the affidavit in question, and the pertinent law  
12 regarding sham affidavits, and subsequently granted Defendants’ motion to strike at Docket No.  
13 57. (See Docket No. 67 at 7.) The court then ordered Plaintiff to resubmit a response to  
14 Defendants’ motion for summary judgment and statement of uncontested facts that does not  
15 include citations to said affidavit. (Id.) Furthermore, the court reminded Plaintiff of the local rules  
16 of civil procedure that govern her submission of summary judgment materials, see Local Rule 56,  
17 which state that the nonmovant may not include numerous additional facts within its opposition to  
18 the moving party’s statements of uncontested facts like Plaintiff did in her counterstatement at  
19 Docket No. 49. See Acevedo-Parrilla v. Novartis Ex-Lax, Inc., 696 F.3d 128, 137 (1st Cir. 2012).  
20 It is within the district court’s discretion to decide whether to consider additional facts that are not  
21 included in the separate section. See id.

22           Thereafter, Plaintiff resubmitted her memorandum in opposition and the accompanying  
23 response to Defendants’ statement of material facts. (See Docket No. 69 and 70.) However, in  
24

**Civil No. 13-1692 (GAG)**

1 submitting said documents, Plaintiff failed to edit her memorandum to remove arguments  
2 supported by the stricken sham affidavit. (See Docket No. 69.) Further, despite the court’s  
3 instructions, Plaintiff still included numerous additional facts within her opposition to Defendants’  
4 statement of material facts. (See Docket No. 70.) More so, in many of her denials to Defendants’  
5 statement of facts, Plaintiff either fails to include a citation to the record or includes a citation that  
6 does not support the statement of fact, in direct contravention of Local Rule 56(e). See Local Rule  
7 56(e) (“An assertion of fact set forth in a statement of material facts shall be followed by a citation  
8 to the specific page or paragraph of identified record material supporting the assertion. The court  
9 may disregard any statement of fact not supported by a specific citation to record material properly  
10 considered on summary judgment. The court shall have no independent duty to search or consider  
11 any part of the record not specifically referenced in the parties’ separate statement of facts.”).

12 As such, the court must waste valuable judicial resources to decipher the proper arguments  
13 and supporting evidence, but will not sift through Plaintiff’s responses to locate additional facts if  
14 they are not located in her separate section. Additionally, the court will disregard the many  
15 statements of fact not supported by a specific citation to record and any arguments in the  
16 memorandum and statements of fact that reference the stricken affidavit. See Caban Hernandez v.  
17 Philip Morris USA, Inc., 486 F.3d 1, 7 (1st Cir. 2007) (emphasizing the importance of rules within  
18 Local Rule 56 and noting that “litigants ignore them at their peril”).

19 Accordingly, after reviewing the parties’ submissions and pertinent law, the court hereby  
20 **GRANTS** Defendants’ motion for summary judgment at Docket No. 39.

21 **I. Standard of Review**

22 Summary judgment is appropriate when “the pleadings, depositions, answers to  
23 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
24

**Civil No. 13-1692 (GAG)**

1 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter  
2 of law.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see Fed. R. Civ. P. 56(a). “An issue  
3 is genuine if ‘it may reasonably be resolved in favor of either party’ at trial, . . . and material if it  
4 ‘possess[es] the capacity to sway the outcome of the litigation under the applicable law.’” Iverson  
5 v. City of Boston, 452 F.3d 94, 98 (1st Cir. 2006) (alteration in original) (internal citations  
6 omitted). The moving party bears the initial burden of demonstrating the lack of evidence to  
7 support the non-moving party’s case. Celotex, 477 U.S. at 325. “The movant must aver an  
8 absence of evidence to support the nonmoving party’s case. The burden then shifts to the  
9 nonmovant to establish the existence of at least one fact issue which is both genuine and material.”  
10 Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994). The nonmovant may  
11 establish a fact is genuinely in dispute by citing particular evidence in the record or showing that  
12 either the materials cited by the movant “do not establish the absence or presence of a genuine  
13 dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed.  
14 R.Civ. P. 56(c)(1)(B). If the court finds that some genuine factual issue remains, the resolution of  
15 which could affect the outcome of the case, then the court must deny summary judgment. See  
16 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

17           When considering a motion for summary judgment, the court must view the evidence in the  
18 light most favorable to the nonmoving party and give that party the benefit of any and all  
19 reasonable inferences. Id. at 255. Moreover, at the summary judgment stage, the court does not  
20 make credibility determinations or weigh the evidence. Id. Summary judgment may be  
21 appropriate, however, if the nonmoving party’s case rests merely upon “conclusory allegations,  
22 improbable inferences, and unsupported speculation.” Forestier Fradera v. Mun. of Mayaguez,

1 440 F.3d 17, 21 (1st Cir. 2006) (quoting Benoit v. Technical Mfg. Corp., 331 F.3d 166, 173 (1st  
2 Cir. 2003)).

3 **II. Relevant Factual and Procedural Background**

4 Plaintiff began working for Multiservicar as a receptionist in June, 2011. (Docket Nos. 39-  
5 2 ¶¶ 3-4; 70 at 1-2, ¶¶ 3-4.) Multiservicar, which is a wholly owned subsidiary of MAPFRE, owns  
6 and operates the shop in which Plaintiff began working. (Docket Nos. 39-2 ¶ 1; 70 at 1, ¶ 1.) In  
7 January, 2012, Plaintiff was promoted to the position of Service Advisor, (Docket Nos. 39-2 ¶ 5;  
8 70 at 2, ¶ 5), and in February or March, 2012, Multiservicar hired a new receptionist. (Docket  
9 Nos. 39-2 ¶ 6; 70 at 2, ¶ 6.) When she became a Service Advisor, Plaintiff was directly supervised  
10 by José Oyola (“Oyola”), and starting in September, 2012, the shop’s manager, Luis Crespo  
11 (“Crespo”) started to indirectly supervise her. (Docket Nos. 39-2 ¶ 7-8; 70 at 2-3, ¶ 7-8; 73-1 ¶ 8.)  
12 At the request of Crespo, Plaintiff performed repair estimates when appraisers were busy, checked  
13 the status of the orders of car parts, called clients on a daily basis, and relayed part orders to the  
14 parts department of the shop. (Docket Nos. 39-2 ¶¶ 38-44; 70 at, 8-9 ¶¶ 38-44.) Her position also  
15 required her, along with other employees, to sometimes stay past the end of her shift to meet with  
16 clients who were picking up their cars. (Docket Nos. 39-2 ¶¶ 47-50; 70 at 10, ¶¶ 47-50.) During  
17 the year of 2011, Oyola did not have any complaints about the work performance of Plaintiff as an  
18 employee. (Docket Nos. 70 at 10, ¶ 2; 70-1 at 29; 73-1 at 21, ¶ 2.)<sup>1</sup>

19 On September 25, 2012, Plaintiff informed Multiservicar that she was pregnant. (Docket  
20 Nos. 39-2 ¶ 9; 70 at 3, ¶ 9.) Prior to that date, the Multiservicar had given its employees new

---

21  
22 <sup>1</sup> As noted above, there are numerous instances in which Plaintiff sets forth a statement of fact and either does  
23 not support it by the record or cites to the record, but the evidence does not support her assertion. For example, for  
24 this fact, Plaintiff asserts in her separate statement that she did not have any complaints against her during 2011  
regarding her work performance and attendance. (See Docket No. 70 at 18, ¶ 2.) A review of the evidence reveals,  
however, that Oyola testified as to her performance, and never mentioned attendance. (Docket No. 70-1 at 29.) For  
the sake of brevity, the court will not point out each time this occurs, but will discuss the more significant errors.

**Civil No. 13-1692 (GAG)**

1 uniforms in August or early September, 2012. (Docket Nos. 39-2 ¶ 12; 70 at 3, ¶ 12.) Thereafter,  
2 on October 23, 2012, Plaintiff requested new maternity uniforms from Crespo. (Docket Nos. 39-2  
3 ¶ 13; 70 at 3-4, ¶ 13.) Crespo responded that he spoke with the human resources director, Wanda  
4 Rosario (“Rosario”), and stated that they decided that Plaintiff could stop wearing her uniform and  
5 wear her regular clothing to work instead. (Docket Nos. 39-2 ¶¶ 13, 17; 70 at 3-4, ¶ 13.) Plaintiff  
6 did not receive instructions on what specific clothing to wear. (Docket Nos. 39-2 ¶ 17; 70 at 4, ¶  
7 17.) That same day, Plaintiff emailed Rosario, inquiring about additional uniforms, and Rosario  
8 told her that the budget for new uniforms was exhausted. (Docket Nos. 39-2 ¶ 14; 70 at 4, ¶ 14.)  
9 Indeed, the 2012 budget for uniforms had been used completely by October, 2012, as the company  
10 had sustained substantial financial losses that year. (Docket Nos. 39-2 ¶¶ 15-16.)<sup>2</sup>

11 MAPFRE has an Attendance and Punctuality Policy that is part of the employee handbook.  
12 (Docket Nos. 39-2 ¶ 66; 70 at 12, ¶ 66.) Plaintiff was notified on July 22, 2011 how to access the  
13 handbook and was informed that it was her responsibility to do so. (Docket Nos. 39-2 ¶ 68; 70 at  
14 12, ¶ 68.) The Attendance and Punctuality Policy sets forth many rules regarding tardiness and  
15 absences from work, including that “[e]very employee that misses work because of a medical  
16 appointment must present a certificate of attendance stating the place, date, entrance, and exit  
17 times.” (Docket Nos. 39-2 ¶ 71; 70 at 13, ¶ 71.) Further, the policy states: “[In] cases of  
18 maternity, if the employee needs to miss work to receive medical treatment, the employee must  
19 present written evidence of her attendance to the medical appointment in order for the absence not  
20 to be computed.” (Docket Nos. 39-2 ¶ 71; 70 at 13, ¶ 71.) Under the policy, “[a]bsences from  
21 work due to sickness not covered by authorized leaves such [as] maternity and disabilities under  
22

---

23 <sup>2</sup> Initially in her complaint, Plaintiff alleged that she was required to wear safety shoes when at work while  
24 other employees were not subject to this requirement. (See Docket No. 1 ¶ 16-19.) It appears that she has dropped  
these allegations, as she does not discuss them at this stage.

**Civil No. 13-1692 (GAG)**

1 the ADA, will be considered for the accumulation of absences in the following way: (i) single day  
2 absences will be considered individually; and (ii) absences of more than two (2) days when a  
3 medical certificate s provided will be considered as [a] one day absence.” (Docket Nos. 39-2 ¶ 71;  
4 70 at 13, ¶ 71.) Employees accumulate points, which expire yearly, based upon the following  
5 rules: tardiness of no more than fifteen minutes amounts to 0.5 points; tardiness of more than  
6 fifteen minutes amounts to 1 point; absences of no more than 3.75 hours amounts to 1 point;  
7 absences of more than 3.75 hours but less than 7.50 hours amounts to 1.50 points; full day  
8 absences amount to 2 points; and unregistered days after the close of the bi-week amount to 2  
9 points. (Docket Nos. 39-2 ¶ 71; 70 at 13, ¶ 71.) Accordingly, the following disciplinary actions  
10 are taken when an employee reaches the following point accumulation levels: verbal warning for  
11 10 points; written warning for 15 points; three day suspension for 20 points; and termination from  
12 employment for 25 points. (Docket Nos. 39-2 ¶ 71; 70 at 13, ¶ 71.)

13 As noted above, on September 25, 2012, Plaintiff informed Multiservicar that she was  
14 pregnant. (Docket Nos. 39-2 ¶ 9; 70 at 3, ¶ 9.) As of that date, Plaintiff had accumulated 13.50  
15 points under the Attendance and Punctuality Policy and none of the absences up until that point  
16 had anything to do with her pregnancy. (Docket Nos. 39-2 ¶¶ 73-76; 70 at 13-14, ¶¶ 73-76.)<sup>3</sup>  
17 When Plaintiff became pregnant, she began to experience some pregnancy related complications,  
18 including severe, sporadic back spasms, which caused her to miss work some days starting in  
19 October, 2012. (Docket Nos. 70 at 19, ¶ 7; 73-1 at 22, ¶ 7.) On October 25, 2012, Plaintiff fainted  
20 while at work due to low blood pressure and her co-workers, including Oyola, assisted her and

---

21  
22 <sup>3</sup> The court highlights that in responding to Defendants’ statements of material fact, Plaintiff initially denies  
23 the fact that none of her absences prior to September 25, 2012 were related to her pregnancy. (See Docket No. 70 at  
24 13, ¶ 73.) Plaintiff points to a medical certificate regarding three absences from September 18-20, 2012, but an  
examination of said certificate reveals that the same does not indicate that the absences were pregnancy related. (See  
Docket No. 70-2 at 35.) Furthermore, and most notably, three paragraphs down in her counterstatement of facts,  
Plaintiff readily admits that none of her absences prior to September 25, 2012 were pregnancy related. (Docket No. 70  
at 14, ¶ 76.)

**Civil No. 13-1692 (GAG)**

1 called “911” for paramedics. (Docket Nos. 39-2 ¶ 64-65; 46 at 11; 70 at 12, 64-65; 70 at 20, ¶ 10;  
2 73-1 at 22-23, ¶ 10.) After being treated at the hospital, Plaintiff’s treating physician instructed her  
3 to rest until October 27, 2012 and that she could return to work the following day, on October 28,  
4 2012. (Docket No. 70-3 at 14.) When Plaintiff returned to work on Monday, October 29, 2012,  
5 she gave Oyola a medical certificate that allowed her to return to work. (Docket Nos. 70 at 20, ¶  
6 12; 71-3 at 23, ¶ 12.) During her lunch break, however, Oyola called Plaintiff, telling her that  
7 Crespo instructed that she could not return to work until she provided a medical certificate  
8 indicating that she could do so. (Docket Nos. 70 at 20, ¶ 12; 71-3 at 23, ¶ 12.) Plaintiff responded  
9 that she had already handed in such a certificate and was cleared to return to work that day.  
10 (Docket Nos. 70 at 20, ¶ 12; 71-3 at 23, ¶ 12.)

11           Thereafter, in November, 2012, Plaintiff suffered from medical complications that required  
12 her to be hospitalized once again. (Docket Nos. 70 at 21-22, ¶ 16; 71-3 at 24, ¶ 16.) Plaintiff was  
13 hospitalized for back spasms from November 7-12, 2012, and was instructed by her physician to  
14 return to remain on bed rest until November 14, 2012. (Docket No. 70-3 at 3.) Plaintiff and Oyola  
15 spoke on the phone the day that Plaintiff was released from the hospital and she confirmed that she  
16 would return to work on November 15, 2012. (Docket Nos. 39-2 ¶¶ 20-22; 70 at 5, ¶¶ 20-22.)  
17 When Plaintiff returned to work on November 15, 2012, she received a written reprimand dated  
18 November 8, 2012 for her absenteeism, although the report did not indicate for which period she  
19 was being admonished. (Docket Nos. 49 ¶ 17; 71-3 at 24-25, ¶ 17.)

20           On November 26, 2012, Plaintiff, along with the rest of Multiservicar employees, received  
21 her annual performance evaluation for the 2012 year, in which she was penalized for her  
22 attendance record. (Docket Nos. 39 ¶ 31; 70 at 22, ¶ 18; 73-1 at 25, ¶ 18.) The evaluation, which  
23 was initially drafted by Oyola, gave Plaintiff a total score of 2.87, which means that she met the  
24

**Civil No. 13-1692 (GAG)**

1 job requirements. (Docket Nos. 39-2 ¶ 34; 70 at 8, ¶ 34.) Specifically, her evaluation concluded  
2 that she met the job requirements as to quality, quantity, job knowledge, continuous learning,  
3 planning and organization, initiative, adaptability, and dependability. (Docket Nos. 39-2 ¶ 35; 70  
4 at 8, ¶ 35.) It also concluded that Plaintiff needed improvement with respect to her attendance and  
5 punctuality, cooperation, and teamwork. (Docket Nos. 39-2 ¶ 35; 70 at 8, ¶ 35.) Before said  
6 evaluation was finalized, Crespo reviewed it with Oyola and Crespo recommended that certain  
7 changes be made, some of which negatively impacted the evaluation. (Docket Nos. 70 at 22, ¶ 19;  
8 73-1 at 25-26, ¶ 19.) Defendants claim, however, that the final evaluations of other employees  
9 supervised by Oyola were also lowered after discussing them with Crespo. (Docket No. 73-1 at  
10 25-26, ¶ 19.) Lastly, Plaintiff has not seen the performance evaluations of other employees.  
11 (Docket Nos. 39-2 ¶ 37; 70 at 8, ¶ 37.)

12         Thereafter, on December 4, 2012, Plaintiff received a written memorandum, dated  
13 November 28, 2012, informing her that she was suspended without pay until December 10, 2012  
14 because she had accumulated more than 20 points on her attendance record. (Docket Nos. 70 at  
15 23, ¶ 20; 73-1 at 26, ¶ 20.) Plaintiff had received two written warnings before she was suspended.  
16 (Docket Nos. 39-2 ¶ 81; 70 at 16, ¶ 81.) The next day, on December 5, 2012, Plaintiff filed a  
17 charge of discrimination against Defendants before the Antidiscrimination Unit (“ADU”) for  
18 pregnancy discrimination. (Docket Nos. 70 at 23-24, ¶ 22; 73-1 at 27, ¶ 22.) Up until this point,  
19 Plaintiff had received 22.50 points from multiple occasions of tardiness and absenteeism.<sup>4</sup> (Docket  
20

---

21  
22         <sup>4</sup> Although Plaintiff disputes some of the specific dates in which she was purportedly absent, and Defendants  
23 concede that Plaintiff is correct for two of those dates, the difference in cumulated points amount only to less 1 point:  
24 21.50 cumulative points. (See Docket Nos. 39-2 at ¶¶ 78-79; 70 at 14-16, ¶¶ 78-79; 70-2 at 36-43.) Notwithstanding  
the fact that this has no bearing on Plaintiff’s discrimination claims, the court highlights that the difference in disputed  
points would have not made a difference for her suspension. As to the remaining dates that Plaintiff claims should not  
have been counted toward her points, Plaintiff either still uses the stricken sham affidavit as support or cites medical  
certificates that do not indicate that the visit was pregnancy related. (See Docket No. 70 at 14-16, ¶ 79.)

**Civil No. 13-1692 (GAG)**

1 Nos. 39-2 ¶¶ 78-80; 70 at 14-16, ¶¶ 78-80.) For some, but not all, Plaintiff submitted medical  
2 certificates or other evidence that indicated that her absences were related to her pregnancy, and  
3 those absences were not considered for the accumulation of her points. (Docket Nos. 39-2 ¶¶ 84-  
4 85; 70 at 16, ¶ 84-85.) For example, Plaintiff provided medical certificates evidencing that the  
5 following visits were pregnancy related: October 25-26, 2012, December 4, 2012, and January 9,  
6 2013. (Docket Nos. 39-2 ¶¶ 83-85; 70 at 16, ¶¶ 83-85.) None of these absences were considered  
7 for the accumulation of her points. (Docket Nos. 39-2 ¶¶ 83-85; 70 at 16, ¶¶ 83-85.)

8 Further, Plaintiff visited her obstetrician three times, on October 16, November 13, and  
9 December 4, 2012. (Docket Nos. 39-2 ¶ 86; 70 at 16, ¶ 86.) With the exception of December 4,  
10 2012, however, Plaintiff neither requested nor submitted to Defendants a medical certification  
11 indicating that she met with her obstetrician. (Docket Nos. 39-2 ¶ 87; 46-10 at 29; 70 at 17, ¶ 87.)<sup>5</sup>  
12 Moreover, on December 13, 2012, Plaintiff left work early due to her back spasms. (Docket Nos.  
13 39-2 ¶ 89; 46-22 at 2; 70 at 17, ¶ 89.) Thereafter, Plaintiff was notified by Rosario that she had not  
14 submitted a medical certificate indicating that her absence was pregnancy related and was given  
15 until January 4, 2013 to submit said certificate. (Docket Nos. 39-2 ¶ 89; 46-22 at 2; 70 at 17, ¶  
16 89.) Plaintiff did not make an attempt to obtain the medical certificate. (Docket Nos. 39-2 ¶ 90;  
17 46-10 at 33; 70 at 17, ¶ 90.)<sup>6</sup>

---

19 Furthermore, Plaintiff also goes so far as to argue that, although the record reflects that she was absent from  
20 work on November 7-9, 2012, said record was forged by someone because she did not sign that particular attendance  
21 sheet. (Docket No. 70 at 15-16, ¶ 79.) However, the only evidence that Plaintiff uses to support her forgery claim is  
the sham affidavit that the court has already removed from the record. Notably, Plaintiff admitted during her  
deposition that she was absent from work from November 7-14, 2012, which includes the disputed dates. (See Docket  
No. 73-4 at 7.) Accordingly, the court disregards this argument.

22 <sup>5</sup> Although Plaintiff argues that she visited her obstetrician on October 23, 2012, and accordingly provided a  
certificate for said visit, the evidence to which she points is merely a certificate indicating that she is under the care of  
the particular doctor and informs of her due date. (See Docket No. 70-3 at 4.) As such, the evidence is not a medical  
23 certificate justifying an absence as Plaintiff claims. Indeed, the obstetrician testified that she only saw Plaintiff on  
those dates listed above. (Docket No. 46-13 at 3.)

24 <sup>6</sup> Once again, Plaintiff makes a counterstatement of fact contrary to that asserted by Defendants and points to  
evidence in the record that does not support her assertion. Plaintiff points to the concession of leave form in which

**Civil No. 13-1692 (GAG)**

1 On December 10, 2012, when Plaintiff returned to work after her suspension, Rosario  
2 reminded her and Oyola that for any pregnancy-related appointments to be excused for purposes of  
3 the points system, Plaintiff must submit medical certificates indicating that she visited her  
4 gynecologist. (Docket Nos. 70 at 24, ¶ 23; 70-3 at 26; 73-1 at 27, ¶ 23.) The next week, on  
5 December 17, 2012, Jose Barreiro, MAPFRE’s Vice President, wrote an email to Oyola and  
6 Crespo to inform them that he noticed through the shop’s security cameras that Plaintiff “always  
7 has her personal phone with her at the table texting too frequently.”<sup>7</sup> (Docket Nos. 70 at 24-25, ¶  
8 24; 70-3 at 27; 73-1 at 27-28, ¶ 24.) Plaintiff claims that Crespo later spoke with her about this  
9 email, but does not cite to support in the record for this assertion. (See Docket No. 70 at 24-25, ¶  
10 24.) Thereafter, on December 27, 2012, Crespo gave Plaintiff a written admonishment for  
11 subordination, complaining that she did failed to act with urgency when he requested that she fix  
12 an estimate of a rental car quickly and asked her to take some photos of a car. (Docket Nos. 46-10  
13 at 22; 46-12 at 2; 70 at 25, ¶ 25; 73-1 at 28, ¶ 25.) At that time, Plaintiff was approximately twenty  
14 weeks pregnant. (Docket No. 70 at 25, ¶ 25.)

15 On January 9, 2013, Plaintiff’s obstetrician recommended that she seek a license for non-  
16 occupational disability through a program known “Seguro por Incapacidad No Ocupacional  
17 Temporal,” or “SINOT” in its Spanish acronym, because of her pregnancy complications. (Docket

---

18 Defendants granted her SINOT leave in January for the proposition that she did obtain a medical certificate for her  
19 December 13, 2012 absence. (See Docket No. 70-3 at 6.) Nowhere in that exhibit does it have a medical certificate  
20 for her December 13, 2012 absence. Indeed, Plaintiff admitted in her deposition that she did not obtain said certificate.  
(See Docket No. 46-10 at 33.)

21 <sup>7</sup> Defendants object to Plaintiff’s citation to the email between Barreiro and Oyola and Crespo, arguing that  
22 the content is inadmissible hearsay and said people are not parties to this case. (See Docket No. 73-1 at 27, ¶ 24.) See  
23 also Gomez-Gonzalez v. Rural Opportunities, Inc., 626 F.3d 654, 662 (1st Cir. 2010) (“[i]n opposing a motion for  
24 summary judgment, a plaintiff must proffer admissible evidence that could be accepted by a rational trier of fact as  
sufficient to establish the necessary proposition”) (internal quotation marks omitted). While the burden is on Plaintiff  
to rebut this objection, the court notes that a statement made by an agent within the scope of his employment is  
imputable to the employer as a party admission under Federal Rules of Evidence 801(d)(2)(D). See Fed. R. Evid. R.  
801(d)(2)(D); Bacou Dalloz USA, Inc. v. Cont’l Polymers, Inc., 344 F.3d 22, 29 n.4 (1st Cir. 2003). Therefore, the  
email is indeed admissible because it is clear that Barreiro made the comments in the email within the scope of his  
employment as Vice President of MAPFRE.

**Civil No. 13-1692 (GAG)**

1 Nos. 70 at 25, ¶ 26; 73-1 at 28-29, ¶ 26.) Accordingly, due to her back spasms caused by her  
2 pregnancy, Plaintiff received disability leave from January 9, 2013 to May 13, 2013. (Docket No.  
3 46-6 at 4.) Plaintiff claims that that she began receiving maternity leave benefits on April 15,  
4 2013, and on April 29, 2013, her daughter was born, but does not cite to the record and the record  
5 is unclear. Upon exhausting her pregnancy leave benefits, on June 10, 2013, Plaintiff resigned  
6 from Multiservicar. (Docket Nos. 70 at 25, ¶ 28; 73-1 at 29, ¶ 28.)

7         Accordingly to Oyola, Plaintiff was always a good employee, whose performance and  
8 productivity decreased as a result of her pregnancy. (Docket Nos. 70 at 28, ¶ 37; 73-1 at 14, ¶ 70.)  
9 After Crespo became Oyola's supervisor in September, 2012, Crespo complained to Oyola on  
10 multiple occasions that Plaintiff was sick often. (Docket Nos. 70 at 28, ¶ 39; 73-1 at 32, ¶ 39.)  
11 Furthermore, Oyola suffered from a health complication that required him to be absent from work  
12 for almost thirty days and he was not reprimanded or suspended from work as a result. (Docket  
13 Nos. 70 at 29, ¶ 42; 73-1 at 32-33, ¶ 42.) Defendants claim that Oyola was not admonished  
14 because he had not reached the required points accumulation. (Docket No. 73-1 at 32-33, ¶ 42.)

15         On September 10, 2013, Plaintiff filed suit against Defendants in this court, alleging that  
16 Defendants discriminated against her on the basis of her gender, pregnancy, and pregnancy related  
17 disabilities. (See Docket No. 1.) Defendants then moved to dismiss and the court granted said  
18 motion in part, dismissing Plaintiff's claim for gender discrimination not based upon Plaintiff's  
19 pregnancy and her Puerto Rico Article 1802 tort claim. (See Docket No. 16 at 7.) As such,  
20 Plaintiff's remaining claims allege that Defendants discriminated against her by (1) creating a  
21 hostile work environment because of her pregnancy and (2) taking adverse employment actions by  
22 giving her a negative employment evaluation, and reprimanding and suspending her for missing  
23 work because of her pregnancy and pregnancy related disabilities. (Docket No. 1.)

1 **III. Discussion**

2 As noted above, Plaintiff asserts three claims at this juncture: disparate treatment under  
3 Title VII because of her pregnancy; hostile work environment under Title VII because of her  
4 pregnancy; and disparate treatment under the ADA because of her pregnancy-related disabilities.

5 In moving for summary judgment, Defendants make the following contentions: (1)  
6 Defendants' suspension of Plaintiff was a valid business decision and Plaintiff fails to prove not  
7 only that Defendants treated her differently from other employees but also that their actions were  
8 mere pretext; (2) Plaintiff's hostile work environment claim does not show severe and pervasive  
9 harassment, as her allegations amount to nothing more than isolated work-related incidents; (3)  
10 Plaintiff's disabilities did not amount to major life impairments under the ADA; and (4) because  
11 Plaintiff fails to prove her federal claims, her Puerto Rico law claims fail as well. (Docket No. 39-  
12 1 at 5-20.) Plaintiff responds by arguing that: (1) Defendants' admissions as to the quality of  
13 Plaintiff's work taken together with the "selective" accumulation of points for her pregnancy-  
14 related absences amounts to pregnancy discrimination; (2) despite the employee manual's rules  
15 that pregnancy-related medical visits do not count toward the points accumulation, Defendants  
16 discriminatorily counted said visits for Plaintiff; (3) the written admonishments, negative  
17 evaluation, suspension, and failure to provide Plaintiff with maternity work uniforms all amount to  
18 severe and pervasive harassment; and (4) her pregnancy-related disabilities did indeed amount to  
19 disabilities under the ADA. (Docket No. 69 at 5-21.) The court will address each claim in turn.

20 A. Pregnancy Discrimination

21 Title VII makes it unlawful "to discriminate against any individual with respect to his  
22 compensation, terms, conditions, or privileges of employment, because of such individual's . . .  
23 sex." 42 U.S.C. § 2000e-2(a)(1). The Pregnancy Discrimination Act of 1978 extended Title VII's

**Civil No. 13-1692 (GAG)**

1 protection against discrimination to specifically include discrimination “on the basis of  
2 pregnancy.” See 42 U.S.C. § 2000e(k). As such, it is now well-settled law that that an employer  
3 may not discharge or otherwise discriminate against an employee based on the categorical fact of  
4 her pregnancy. See Young v. United Parcel Serv., Inc., 135 S. Ct. 1338, 1344-45, 191 L. Ed. 2d  
5 279 (2015); Martinez-Burgos v. Guayama Corp., 656 F.3d 7, 12 (1st Cir. 2011); Smith v. F.W.  
6 Morse & Co., 76 F.3d 413, 424 (1st Cir. 1996).

7 *i. Disparate Treatment because of Plaintiff’s Pregnancy*

8 The Supreme Court has held that “[l]iability in a disparate-treatment case depends on  
9 whether the protected trait actually motivated the employer’s decision.” Young, 135 S. Ct. at 1345  
10 (quoting Raytheon Co. v. Hernandez, 540 U.S. 44, 52, 124 S. Ct. 513, 157 L. Ed. 2d 357 (2003)).  
11 “[A] plaintiff can prove disparate treatment either (1) by direct evidence that a workplace policy,  
12 practice, or decision relies expressly on a protected characteristic, or (2) by using the burden-  
13 shifting framework set forth in McDonnell Douglas.” Young, 135 S. Ct. at 1345; McDonnell  
14 Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); Martinez-  
15 Burgos, 656 F.3d at 12. Although Plaintiff in the present case claims that there is direct evidence  
16 of Defendants’ discrimination against her because of her pregnancy, the court disagrees, and thus  
17 must apply the familiar McDonnell Douglas burden-shifting framework. See Febres v. Challenger  
18 Caribbean Corp., 214 F.3d 57, 60 (1st Cir. 2000) (“evidence is ‘direct’ . . . when it consists of  
19 statements by a decisionmaker that directly reflect the alleged animus and bear squarely on the  
20 contested employment decision”); Smith, 76 F.3d at 413 (noting that only on rare occasions is  
21 direct evidence discernible, which would constitute “say, an admission by the employer that it  
22 explicitly took actual or anticipated pregnancy into account in reaching an employment decision”).  
23  
24

**Civil No. 13-1692 (GAG)**

1           The initial burden is on Plaintiff to establish a *prima facie* case of pregnancy  
2 discrimination. Martinez-Burgos, 656 F.3d at 14. To prove that a particular adverse employment  
3 action taken with respect to Plaintiff amounted to discrimination because of her pregnancy, she  
4 would have to show that “(1) she was pregnant at the relevant time, (2) her job performance was  
5 satisfactory, but (3) her employer took some adverse employment action against her while (4)  
6 treating non-pregnant employees differently.” Gorski v. New Hampshire Dep’t of Corr., 290 F.3d  
7 466, 474-75 (1st Cir. 2002); Martinez-Burgos, 656 F.3d at 12. “Meeting the initial *prima facie*  
8 requirement is ‘not especially burdensome.’ . . . Satisfaction of the *prima facie* burden creates a  
9 rebuttable presumption that discrimination prompted the challenged adverse employment action.”  
10 Martinez-Burgos, 656 F.3d at 12. Defendants may then “rebut this presumption by articulating a  
11 non-discriminatory reason for the adverse employment action, Smith, 76 F.3d at 421, which  
12 eliminates the presumption and shifts the burden back to [Plaintiff] to point to sufficient evidence  
13 to demonstrate that [Defendants’] proffered reason is mere pretext and that the true reason is  
14 discriminatory.” Martinez-Burgos, 656 F.3d at 12; see also Kosereis v. Rhode Island, 331 F.3d  
15 207, 213 (1st Cir. 2003) (noting that rebutting a proffered legitimate reason for the adverse action  
16 is more demanding than the *prima facie* stage).

17           Turning to the present case, the court finds that the first three element of the *prima facie*  
18 case are easily met. First, it is undisputed that Plaintiff was pregnant during the relevant period of  
19 time in which she claims Defendants discriminated against her. (Docket Nos. 39-2 ¶ 9; 70 at 3, ¶  
20 9.) Second, Defendants readily admit that her job performance, other than attendance, was  
21 satisfactory. (Docket Nos. 39-2 ¶ 34; 70 at 8, ¶ 34.) Third, the adverse employment actions that  
22 occurred are: the November 26, 2012 negative evaluation with respect to her attendance and  
23 punctuality, cooperation, and teamwork (Docket Nos. 39-2 ¶ 35; 70 at 8, ¶ 35); her suspension  
24

**Civil No. 13-1692 (GAG)**

1 without pay on December 4, 2012 (Docket Nos. 70 at 23, ¶ 20; 73-1 at 26, ¶ 20); and not providing  
2 her with maternity fit uniforms. (Docket Nos. 39-2 ¶¶ 13, 17; 70 at 3-4, ¶ 13.)

3 The fourth element, that Defendants treated non-pregnant employees differently, requires  
4 more discussion. With respect to the November 26, 2012 evaluation, it is undisputed that Plaintiff  
5 does not know how other employees were evaluated during that time period. (Docket Nos. 39-2 ¶  
6 37; 70 at 8, ¶ 37.) Further, Oyola testified that after Crespo reviewed the evaluations of other  
7 employees, some of their scores also went down. (Docket No. 70-2 at 10.) As such, Plaintiff fails  
8 to show that Defendants were treating non-pregnant employees differently for this employment  
9 action. With respect to Plaintiff's suspension, Plaintiff claims that Defendants selectively chose to  
10 not count some of her absences as pregnancy-related and thus said absences counted toward the  
11 accumulation of her points under the Attendance and Punctuality Policy. However, as indicated in  
12 the court's articulation of the facts, it is clear that Plaintiff did not obtain a medical certificate for  
13 some of the appointments, despite being reminded of her duty to do so, and for the certificates that  
14 she did obtain, many of them do not indicate that the appointment was pregnancy-related. (Docket  
15 Nos. 39-2 ¶¶ 84-85, 89-90; 70 at 16-17, ¶ 84-85, 89-90.) More so, while Plaintiff claims that  
16 Oyola missed almost thirty days of work and was not admonished, Defendants submitted evidence  
17 that Oyola's absences did not exceed the twenty point threshold for suspension. (Docket No. 73-1  
18 at 32-33, ¶ 42.) Accordingly, it does not appear that Defendants deviated from their Attendance  
19 and Punctuality Policy within their handbook, thus treating Plaintiff differently.

20 Lastly, with respect to Defendants' decision to not supply Plaintiff with maternity fit  
21 uniforms once she became pregnant, Plaintiff has shown that she was treated differently than non-  
22 pregnant employees because she was forced to wear her regular clothing to work while the rest of  
23 the employees wore uniforms. (Docket Nos. 39-2 ¶ 17; 70 at 4, ¶ 17.) Although it appears that  
24

**Civil No. 13-1692 (GAG)**

1 Plaintiff has only satisfied the *prima facie* case for one of the three claimed adverse employment  
2 actions, the court will assume for purposes of this motion that she established her case for all three.

3 Relying on the assumption that Plaintiff satisfies the *prima facie* case for all three adverse  
4 employment actions, the burden of production then shifts to Defendants to provide a legitimate  
5 non-discriminatory reason for their actions. To begin, the court will consider both the November,  
6 2012 evaluation and December, 2012 suspension together because they both rely upon the  
7 accumulation of points that Plaintiff claims was discriminatory. Upon examining the evidence, the  
8 court finds that Defendants undoubtedly satisfies their burden of showing legitimate non-  
9 discriminatory reasons for the accumulation of Plaintiff's points. The evidence shows that  
10 Plaintiff accumulated more than twenty points under the Attendance and Punctuality Policy due to  
11 multiple occasions of being late to work and numerous absences. (Docket Nos. 39-2 ¶¶ 78-80; 70  
12 at 14-16, ¶¶ 78-80.) As noted above, for the absences that Plaintiff submitted a medical certificate  
13 indicating that the visit was pregnancy-related, no points were accumulated on Plaintiff's account.  
14 (Docket Nos. 39-2 ¶¶ 83-85; 70 at 16, ¶¶ 83-85.) With respect to the remaining absences, although  
15 many of them may have been pregnancy related, Plaintiff failed to submit forms indicating as such.  
16 (Docket Nos. 39-2 ¶¶ 84-85; 70 at 16, ¶ 84-85.) Accordingly, those absences were counted as sick  
17 time and thus accumulated towards her points.

18 With respect to Defendants' reason as to why Plaintiff was not provided with maternity fit  
19 clothing, Defendants provide undisputed evidence that the 2012 budget for uniforms had been  
20 completely exhausted by October, 2012, as the company had sustained substantial financial losses  
21 that year. (Docket Nos. 39-2 ¶¶ 15-16.) Although the Supreme Court has stated that the legitimate  
22 non-discriminatory reason "normally cannot consist simply of a claim that it is more expensive or  
23 less convenient to add pregnant women to the category of those ('similar in their ability or inability  
24

**Civil No. 13-1692 (GAG)**

1 to work’) whom the employer accommodates,” Young, 135 S. Ct. at 1354, here, Defendants were  
2 simply out of money and they allowed Plaintiff to wear her regular clothing to work. Thus, the  
3 court finds that this was not a situation where Defendants chose to not provide maternity fit  
4 clothing because did not want to spend the extra money to accommodate Plaintiff. Further,  
5 Plaintiff has not provided any evidence of situations where other similarly situated employees  
6 sought accommodation and Defendants accommodated them in a way that was different than how  
7 they treated Plaintiff.

8 Because Defendants have met their burden, the *prima facie* case vanishes, and Plaintiff’s  
9 claim now hinges on the final step of the analysis: whether she has presented evidence sufficient to  
10 raise a genuine issue of material fact that Defendants’ proffered reasons were mere pretext for  
11 discrimination. This step is where Plaintiff’s claims ultimately and definitively fail. With respect  
12 to her November evaluation and December suspension, Plaintiff fails to show any “weaknesses,  
13 implausibilities, inconsistencies, incoherencies, or contradictions in [Defendants’] proffered  
14 legitimate reasons such that a factfinder could infer that [Defendants] did not act for the asserted  
15 non-discriminatory reasons.” Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 56  
16 (1st Cir. 2000) (internal quotation marks omitted). The evidence shows that for many of her  
17 appointments, Plaintiff failed to inform her employer that said appointments were pregnancy-  
18 related so that those absences would not be counted toward her point balance. Even if a reasonable  
19 jury was to find that all of her post-September 25, 2012 absences were pregnancy-related, the  
20 ultimate question is not whether those absences were actually related to her pregnancy, but  
21 whether at the time Defendants knew they were prenatal and whether Plaintiff informed  
22 Defendants as such through the proper procedures of which she was aware. See Ronda-Perez v.  
23 Banco Bilbao Vizcaya Argentaria-Puerto Rico, 404 F.3d 42, 45 (1st Cir. 2005) (noting that the

**Civil No. 13-1692 (GAG)**

1 question is not whether the proffered reason is false, but whether the employer actually believed it  
2 to be real). Indeed, Plaintiff was reminded by Defendants that she must provide proof that her  
3 absences were pregnancy-related and nonetheless did not. (Docket Nos. 39-2 ¶ 89; 46-22 at 2; 70  
4 at 17, ¶ 89.)

5 “The ‘ultimate touchstone’ of the McDonnell Douglas analysis is whether the employer’s  
6 actions were improperly motivated by discrimination.” Kosereis, 331 F.3d at 213-14; see also  
7 Ronda-Perez, 404 F.3d at 45 (“[a] ‘pretext for discrimination’ means more than an unusual act; it  
8 means something worse than a business error; ‘pretext’ means deceit used to cover one’s tracks”).  
9 In this case, Plaintiff has simply failed to show that Defendants’ evaluation of her and the  
10 subsequent suspension were motivated by her pregnancy. Although it is undisputed that after  
11 Crespo became Oyola’s supervisor in September, 2012, Crespo complained to Oyola on multiple  
12 occasions that Plaintiff was sick often, (Docket Nos. 70 at 28, ¶ 39; 73-1 at 32, ¶ 39), this is not  
13 sufficient to show that Defendants selectively counted some of her absences as sick leave in an  
14 improper manner because of Plaintiff’s pregnancy. The evidence shows that she simply failed to  
15 follow the requirements set forth in the employee handbook. Notably, for the days that Plaintiff  
16 informed Defendants that her absences were pregnancy-related, no points were added to her  
17 account. (Docket Nos. 39-2 ¶¶ 83-85; 70 at 16, ¶¶ 83-85.) Lastly, with respect to Defendants’  
18 decision to not provide Plaintiff with maternity fit work uniforms, Plaintiff fails to provide any  
19 reasons why this decision was pretext for pregnancy discrimination.

20 Accordingly, for the aforementioned reasons, the court hereby **GRANTS** Defendants’  
21 motion for summary judgment as to Plaintiff’s pregnancy disparate treatment claim and thus  
22 **DISMISSES** said claim.

1           ii.    *Hostile Work Environment because of Plaintiff's Pregnancy*

2           The Supreme Court has held that discrimination “because of . . . sex” also includes  
3 “requiring people to work in a discriminatorily hostile or abusive environment.” Harris v. Forklift  
4 Sys., Inc., 510 U.S. 17, 21, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993). To succeed on a hostile  
5 work environment claim against Defendants, Plaintiff must establish six elements: (1) that she is a  
6 member of a protected class; (2) that she was subjected to unwelcome sexual harassment; (3) that  
7 the harassment was based upon sex; (4) that the harassment was sufficiently severe or pervasive so  
8 as to alter the conditions of her employment and create an abusive work environment; (5) that  
9 sexually objectionable conduct was both objectively and subjectively offensive, meaning that a  
10 reasonable person would find it hostile or abusive and that she in fact did perceive it to be so; and  
11 (6) that some basis for employer liability has been demonstrated. Perez-Cordero v. Wal-Mart  
12 Puerto Rico, Inc., 656 F.3d 19, 27 (1st Cir. 2011).

13           The First Circuit has recognized that evidence of “sexually-charged or salacious behavior”  
14 is not necessary to prove the existence of a hostile work environment, as “incidents of nonsexual  
15 conduct—such as work sabotage, exclusion, denial of support, and humiliation—can in context  
16 contribute to a hostile work environment.” O’Rourke v. City of Providence, 235 F.3d 713, 730  
17 (1st Cir. 2001); Gorski, 290 F.3d at 474-75. Further, the thrust of the court’s inquiry at summary  
18 judgment is typically the determination of whether a reasonable person would find the particular  
19 conduct hostile or abusive, which requires it to consider “the totality of the circumstances,  
20 including factors such as the frequency of the discriminatory conduct; its severity; whether it is  
21 physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably  
22 interferes with an employee’s work performance. . . to distinguish between the ordinary, if  
23  
24

**Civil No. 13-1692 (GAG)**

1 occasionally unpleasant, vicissitudes of the workplace and actual harassment.” Noviello v. City of  
2 Boston, 398 F.3d 76, 92 (1st Cir. 2005) (referencing Harris, 510 U.S. at 23).

3 Turning to the present case, taking all of the evidence together in the light most favorable  
4 to Plaintiff, the court holds the evidence would not permit a jury, as a matter of law, to find that a  
5 hostile work environment existed. As noted exhaustively above, the evidence shows that Plaintiff  
6 simply failed to comply with the requirements under the Attendance and Punctuality Policy when  
7 she missed work on multiple occasions. While the court does not doubt that these absences were  
8 likely pregnancy-related, the law does not fault Defendants for punishing Plaintiff when she failed  
9 to comply with the attendance requirements. Moreover, for each of the other incidents that  
10 Plaintiff alleges were discriminatory, including the phone calls by Oyola in which he checked on  
11 Plaintiff’s medical certificates, Barreiro’s email regarding her cellphone use, and Oyola’s  
12 admonishment of her for failing to act with urgency, Defendants have provided legitimate non-  
13 discriminatory reasons for their actions. Most notably, even if they did not provide legitimate  
14 reasons, there is no evidence that allows for any inference that those actions were motivated by  
15 discriminatory animus toward Plaintiff’s pregnancy. Further, while the alleged severity and  
16 pervasiveness of the alleged harassment is undoubtedly a question for the jury, the First Circuit has  
17 consistently acknowledged that summary judgment remains “an appropriate vehicle for policing  
18 the baseline for hostile environment claims.” Billings v. Town of Grafton, 515 F.3d 39, 50 (1st  
19 Cir. 2008); Pomales v. Celulares Telefonica, Inc., 447 F.3d 79, 83 (1st Cir. 2006); Noviello, 398  
20 F.3d at 94 (noting that the court’s “function is one of screening, that is, to determine whether, on  
21 particular facts, a reasonable jury could reach such a conclusion”).

22 Accordingly, the court finds that Defendants did not create a “workplace [that was]  
23 permeated with discriminatory intimidation, ridicule, and insult . . . that is sufficient severe or  
24

1 pervasive to alter the conditions of [Plaintiff's] employment and create an abusive working  
2 environment.” Harris, 510 U.S. at 21. Therefore, the court **GRANTS** Defendants’ motion for  
3 summary judgment with respect to Plaintiff’s hostile work environment claim and thus  
4 **DISMISSES** said claim.

5 *iii. Safety Shoes Allegations*

6 Before moving onto Plaintiff’s claim under the ADA, the court briefly notes in her  
7 complaint, Plaintiff initial alleged that Defendants discriminated against her because they required  
8 her to wear “esthetically” unattractive and uncomfortable safety shoes when at work while other  
9 similarly situated employees were not subject to this requirement. (See Docket No. 1 ¶ 16-19.)  
10 However, at this stage, it appears that Plaintiff has dropped these allegations, as she does not  
11 discuss them in her memorandum or her statement of uncontested facts.

12 Accordingly, insofar as Plaintiff may have alleged discrimination in under this theory, the  
13 court **DISMISSES** said claim.

14 **B. Disability Discrimination Under the ADA**

15 Turning to Plaintiff’s ADA claim, to state a claim of disability discrimination under Title I  
16 of the ADA, Plaintiff must allege facts showing that: (1) she was disabled within the meaning of  
17 the Act; (2) she could perform the essential functions of her job, with or without reasonable  
18 accommodation; and (3) the employer took adverse action against her, in whole or in part, because  
19 of her disability. Roman-Oliveras v. Puerto Rico Elec. Power Auth., 655 F.3d 43, 48 (1st Cir.  
20 2011); Ruiz Rivera v. Pfizer Pharm., LLC, 521 F.3d 76, 82 (1st Cir. 2008). An individual is  
21 considered disabled for purposes of the ADA if she “(1) has a physical or mental impairment that  
22 substantially limits one or more major life activities; (2) has a record of such an impairment; or (3)  
23  
24

**Civil No. 13-1692 (GAG)**

1 is regarded as having such an impairment.” Roman-Oliveras, 655 F.3d at 48 (citing 42 U.S.C. §  
2 12102(2)); Ruiz Rivera, 521 F.3d at 82.

3 The resolution of this claim is simple. Although the parties spend a great deal of effort  
4 arguing over whether Plaintiff’s pregnancy-related complications qualify as disabilities for under  
5 the ADA, the court finds that Plaintiff fails to state a *prima facie* case for the reasons stated above  
6 in part III.A.i of this opinion. Plaintiff has the burden of proving that Defendants took adverse  
7 action against her, in whole or in part, because of her disability. As articulated above, the evidence  
8 shows that Defendants’ actions in failing to provide her with maternity uniforms, evaluating,  
9 reprimanding, and suspending her were all for legitimate non-discriminatory reasons absent of any  
10 discriminatory animus. As such, just like with her Title VII claim, Plaintiff’s ADA claim fails as a  
11 matter of law before it gets to a jury.

12 Accordingly, for these reasons the court **GRANTS** Defendants’ motion for summary  
13 judgment as to Plaintiff’s claim under the ADA and thus **DISMISSES** said claim.

14 C. State Law Claims

15 Lastly, because all of Plaintiff’s federal claims have been dismissed, the court hereby  
16 dismisses Plaintiff’s Puerto Rico claims as well. Law 44 “is Puerto Rico’s counterpart to the  
17 ADA.” Salgado-Candelario v. Ericsson Caribbean, Inc., 614 F. Supp. 2d 151, 175 (D.P.R. 2008);  
18 Vazquez v. Municipality of Juncos, 756 F. Supp. 2d 154, 166 (D.P.R. 2010). It prohibits  
19 discrimination against “persons with any kind of physical, mental or sensory disability” by any  
20 public or private institution in Puerto Rico, P.R. LAWS ANN., tit. 1, § 504, and “was intended to  
21 harmonize Puerto Rico law with the federal statutory provisions of the ADA.” Torres-Alman v.  
22 Verizon Wireless Puerto Rico, Inc., 522 F. Supp. 2d 367, 401 (D.P.R. 2007). The elements of  
23 proof for a claim under Law 44 are essentially the same as those for establishing a claim under the  
24

**Civil No. 13-1692 (GAG)**

1 ADA. Salgado-Candelario, 614 F. Supp. 2d at 175. Moreover, the doubling of damages that is  
2 part of the remedy set forth in Law 100 was adopted as a remedy available for claims related to  
3 violations of Law 44. See P.R. LAWS ANN. tit 1 § 511; Rivera Flores v. Cia ABC, 138 P.R. Dec. 1,  
4 P.R. Offic. Trans. (1995). Furthermore, courts have consistently analyzed discrimination claims  
5 under Law 3 like a Title VII discrimination cause of action. See Pagan-Alejandro v. PR ACDelco  
6 Serv. Ctr., Inc., 468 F. Supp. 2d 316, 328 (D.P.R. 2006) (finding where genuine issue of facts  
7 exists as to plaintiff’s Title VII claim for pregnancy discrimination, a genuine issue of material fact  
8 exists as to the alleged violations of Puerto Rico Law Nos. 3 and 69); Mejias Miranda v. BBII  
9 Acquisition Corp., 120 F. Supp. 2d 157, 174 (D.P.R. 2000) (“Laws No. 3 and 69 causes of action  
10 are almost identical to EEOC’s guidelines for Title VII discrimination causes of action, that is  
11 gender/pregnancy discrimination causes of action.”). As such, finding that no genuine issues of  
12 fact exists under the federal scheme necessarily requires the court to find the same with respect to  
13 Plaintiff’s Puerto Rico claims.

14 Therefore Plaintiff’s Puerto Rico law claims brought under Law 44 of July 2, 1985, P.R.  
15 LAWS ANN. tit. 1, § 501, *et seq.*; Law 100 of June 30, 1959, as amended P.R. LAWS ANN. tit. 29, §  
16 146 *et seq.*; and Law 3 of March 13, 1942, P.R. LAWS ANN. tit. 29, § 469 *et seq.* are hereby  
17 **DISMISSED.**

18 **IV. Conclusion**

19 Accordingly, the reasons articulated in this opinion, the court hereby **GRANTS**  
20 Defendants’ motion for summary judgment at Docket No. 39 and thus **DISMISSES** Plaintiff’s  
21 case in its entirety. Judgment shall be entered accordingly.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**SO ORDERED.**

In San Juan, Puerto Rico this 2nd day of September, 2015.

*s/ Gustavo A. Gelpí*  
GUSTAVO A. GELPI  
United States District Judge