

Civil No. 14-1534 (GAG)

1 Presently before the Court is Defendants’ Motion for Summary Judgment and all
2 subsequent responses thereto. (Docket Nos. 122; 144; 161; 171.)

3 Plaintiff asserts ADEA age discrimination based on two events: (i) Plaintiff’s demotion to a
4 Policy Specialist in March 2013 (“2013 demotion”) and (ii) Plaintiff’s October 2013 termination
5 (“2013 termination”). (See Docket No. 21 ¶¶ 76-81.) Defendants argue the 2013 demotion was
6 not an adverse employment action and was not related to age. (Docket No. 122-1 at 2-3.) Second,
7 Defendants argue the 2013 termination claim fails because Plaintiff’s was not replaced. Id. at 3, 4.
8 Instead, her position was eliminated as part of an age-neutral Reduction-in-Force (“October 2013
9 RIF”). Id. Defendants also argue the 2013 demotion and 2013 termination were motivated by
10 legitimate business reasons unrelated to age. Id.

11 Plaintiff alleges a hostile work environment under Title VII based on various acts by her
12 employer. (See Docket No. 21 ¶¶ 82-86.) In support of summary judgment, Defendants respond
13 that any hostile work environment claim is non-cognizable because the alleged incidents were
14 unrelated to age and do not rise to the level protected by the ADEA and/or Title VII. (Docket No.
15 122-1 at 26-31.) Plaintiff also alleges a retaliation claim under Title VII. (Docket No. 21 ¶¶ 82-
16 86.) Defendants argue any retaliation claim fails because Plaintiff did not engage in a protected
17 activity prior to any retaliatory employment action. (Docket No. 122-1 at 31-32.)

18 After considering the submissions of the parties and the applicable law, the Court
19 **GRANTS** Defendants’ Motion for Summary Judgment at Docket No. 122.

20 **I. Preliminary Matters and Admissibility Objections**

21 A. Local Rule 56(c)

22 First, the Court addresses preliminary objections. In support of its motion, Defendants
23 filed a Statement of Uncontested Material Facts, listing 182 allegedly undisputed facts. (Docket
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1 No. 122-2.) In response, Plaintiff filed an Opposition to Defendants’ Statement of Uncontested
2 Material Facts admitting, denying, and qualifying Defendants’ version of the facts. (Docket No.
3 144-1.) However, many of Plaintiff’s objections failed to support the denial or qualification with a
4 record citation as required by Local Rule 56(c). Additionally, while certainly not mandatory,
5 Plaintiff elected not to provide a separate section of additional facts in her response to Defendants’
6 Statement of Uncontested Material Facts, as permitted by Local Rule 56(c). Instead, Plaintiff’s
7 Response in Opposition to Defendants’ Statement of Uncontested Material Facts relies primarily
8 on admissibility objections to Defendants’ evidence—and not on properly cited assertions of fact.²

9 **B. Sham Affidavit**

10 Defendants’ Statement of Uncontested Material Facts relies on a Quezada affidavit for
11 factual support. (See Docket No. 122-8.) Plaintiff objects. (See Docket No. 144-1 at 5-10.)
12 Plaintiff contends the affidavit is a self-serving post summary judgment affidavit because it was
13 given after the discovery period, executed the same day Defendants filed their motion, and
14 contains facts contradicting Quezada’s deposition testimony. Id. Plaintiff requests the Court strike
15 all facts supported by Quezada’s affidavit. Id. at 10.

16 The sham affidavit doctrine prohibits a party from contesting summary judgment on the
17 basis of an affidavit contradicting prior testimony solely for the purpose of creating an issue of
18 fact. See Escribano-Reyes v. Prof’l Hepa Certificate Corp., 817 F.3d 380, 387 (1st Cir. 2016)
19 (affirming the district court’s decision to strike a post summary judgment affidavit and impose
20 sanctions). However, the sham affidavit doctrine does not prohibit a party from elaborating,
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22 ² Plaintiff’s counsel employed the same tactics in another contemporaneous case against Defendants before
23 this Court. See Pérez-Maspons v. Stewart Title P.R., Inc., No 14-1636 (GAG), --- F. Supp. 3d ---, (D.P.R. Sept. 16,
2016) (Opinion and Order granting in part and denying in part Defendants’ Motion for Summary Judgment).

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1 clarifying, or explaining prior deposition testimony. Gillen v. Fallon Ambulance Serv., 283 F.3d
2 11, 26 (1st Cir. 2002) (“[a] subsequent affidavit that merely explains, or amplifies upon, opaque
3 testimony given in a previous deposition is entitled to consideration in opposition to a motion for
4 summary judgment.”). Courts must consider even a clearly self-serving affidavit in resolving
5 summary judgment motions. Malave-Torres v. Cusido, 919 F. Supp. 2d 198, 204 (D.P.R. 2013).

6 The Court finds Quezada’s affidavit explains and elaborates on inconclusive answers given
7 at the deposition. See Hernandez-Loring v. Universidad Metropolitana, 233 F.3d 49, 54 (1st Cir.
8 2000) (subsequent revised testimony due to lapse of memory and new sources of information did
9 not constitute a contradiction warranting striking an affidavit). Notably, Plaintiff has not identified
10 any factual basis to show Quezada’s affidavit contradicts her deposition testimony. Therefore, the
11 Court deems the following facts from Defendants’ Statement of Undisputed Material Fact as
12 properly supported by the record: ¶¶ 1-2, 8-9, 11, 13-15, 23, 29-31, 33-39, 41-42, 45-48, 52-53, 57,
13 63-71, 81-82, 87, 94-102, 104-111, 127, 140, 144, 154, 156-165, 167, 171-174. (See Docket No.
14 122-2).

15 C. Admissibility

16 Defendants’ also cite to financial statements in Defendants’ Statement of Uncontested
17 Material Facts to show STPR’s ailing financial condition. (Docket Nos. 122-11; 122-12; 122-31;
18 122-14; 122-15.) Plaintiff objects on authentication grounds. (See Docket No. 144-1 ¶¶ 38, 84-
19 87). Specifically, Plaintiff argues Quezada lacks sufficient personal knowledge of the information
20 contained in STPR’s financial statements. (See Docket No. 147 at 10-13.)

21 Under the federal rules, “[a] party may object that the material cited to support or dispute a
22 fact cannot be presented in a form that would be admissible.” FED. R. CIV. P. 56(c)(2). Rule
23 56(c)(2) requires “nothing more” than “an unsworn declaration under penalty of perjury” to

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1 authenticate certain business records. Francis v. Caribbean Transp. Ltd., 882 F. Supp. 2d 275,
2 278-79 (D.P.R. 2012). In her affidavit under penalty of perjury, Quezada states STPR’s financial
3 statements “are true and accurate copies of the originals that are kept under [her] custody as Vice
4 President and General Manager of STPR.” (Docket No. 122-8 ¶ 95.) Thus, Quezada’s affidavit is
5 sufficient to authenticate STPR’s financial statements at the summary judgment stage.

6 Finally, Plaintiff has either failed to deny or failed to controvert, with proper citation to the
7 record, many assertions in Defendants’ Statement of Uncontested Material Facts. (See Docket No.
8 144-1 ¶¶ 5, 6, 8, 9, 13-15, 23, 30-31, 34-42, 45-48, 52, 54, 57, 61, 63, 70-71, 79, 83, 88-96, 102,
9 108, 111, 118-119, 123, 127-128, 139-143, 145, 148-149.) To dispute a fact, a party must support
10 the assertion with a citation to specific material in the record. FED. R. CIV. P. 56(c)(1). “Facts
11 contained in a supporting or opposing statement of material facts, if supported by record citations
12 as required by this rule, shall be deemed admitted unless properly controverted.” L. CIV. R.
13 (56)(e). Therefore, Defendants’ Statement of Uncontested Facts ¶¶ 5, 6, 8, 9, 13-15, 23, 30-31, 34-
14 42, 45-48, 52, 54, 57, 61, 63, 70-71, 81-82, 87, 89, 94-111, 118, 124, 127, 134-135, 139-140, 144-
15 145, 157-165, 167, and 171-174 are deemed admitted.

16 **II. Relevant Facts and Procedural Background**

17 Plaintiff brings suit against her former employer, challenging both her 2013 demotion and
18 2013 termination. Plaintiff’s employment at STPR began in 1989. (Docket Nos. 122-2 ¶ 4; 144-1
19 ¶ 4.) From 1989 until 2010, Plaintiff’s job title was Executive Assistant. (Docket Nos. 122-2 ¶ 4,
20 16; 144-1 ¶ 4, 16.) At some point in 2009 or 2010, Plaintiff’s title was changed to Assistant
21 Underwriter.³ (Docket Nos. 122-2 ¶ 16; 144-1 ¶ 16.) In March 2013, Plaintiff’s title was changed

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23 ³ Plaintiff clarifies, without denying, Defendants’ version of this fact. Plaintiff performed the duties of an
Assistant Underwriter for some time before 2010, when her titled was changed. (Docket No. 144-1 ¶ 16.)

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1 to Policy Specialist.⁴ (Docket Nos. 122-2 ¶ 52; 144-1 ¶ 52.) On October 7, 2013, Plaintiff was
2 terminated from her position as a Policy Specialist at STPR. (Docket Nos. 122-2 ¶ 99; 144-1
3 ¶ 91.) She was fifty-six (56) years old at the time.

4 The origins of Plaintiff’s claim derive from a series of changes in corporate ownership,
5 management, and organizational structure at Plaintiff’s employer. In 2001, Stewart Title Company
6 (“STC”) purchased fifty-one percent of San Juan Abstract Co., Inc.’s shares. (Docket Nos. 122-2 ¶
7 7; 144-1 ¶ 7.) In 2010, STC purchased the remaining forty-nine percent of Plaintiff’s employer’s
8 stock, which by that time was operating under as STPR. (Docket Nos. 122-2 ¶ 7; 144-1 ¶ 7.)

9 Ownership changes also brought changes to management. Before the initial stock
10 purchase, Mr. Eusebio Dardet served as President of STPR until stepping down after 2001.
11 (Docket Nos. 122-2 ¶ 9; 144-1 ¶ 9.) Thereafter, Mr. Pablo Dardet became President and held this
12 role until November 2012. (Docket Nos. 122-2 ¶ 9; 144-1 ¶ 9.) In mid-2012, Mr. Steve Lessack
13 (“Lessack”) was appointed Chairman of STPR’s Board. (Docket Nos. 122-2 ¶ 34; 144-1 ¶ 34.)

14 Around the same time, Ms. Maritza Quezada (“Quezada”) gained an increasing degree of
15 control over STPR’s organizational structure and day-to-day operations. In 2005, Quezada was a
16 Technology Integrator for STGC. (Docket Nos. 122-2 ¶ 10; 144-1 ¶ 10.) In 2010, Quezada
17 became STPR’s Operations Manager; where she oversaw STPR’s daily operations. (Docket Nos.
18 122-2 ¶ 15; 144-1 ¶ 15.) Then, in 2013, Quezada was named Vice President and General Manager
19 for STPR. (Docket No. 122-2 ¶ 68; 144-1 ¶ 68.) This title brought the added responsibility of
20 overseeing all STPR personnel. (Docket No. 122-2 ¶ 69; 144-1 ¶ 69.)

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23 ⁴ Plaintiff denies the reason for the title change, while implicitly admitting the fact that her title changed.
(See Docket No. 144-1 ¶ 52.)

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1 STPR's new management implemented a number of changes relating to its operational
2 structure. These changes fall into two broad categories: (1) changes to corporate policy aimed at
3 streamlining procedures and increasing efficiency and (2) a reduction in force that took place on
4 October 7, 2013 ("October 2013 RIF").⁵

5 Many aspects of the changes to STPR's corporate policy are undisputed. From 2010 to
6 2013, insurance policyholder claims brought against STPR nearly doubled. (Docket Nos. 122-2 ¶
7 38; 144-1 ¶ 38.) In response, Quezada sought to standardize the process by which STPR generated
8 insurance policies. (Docket Nos. 122-2 ¶ 30; 144-1 ¶ 30.) Changes to the corporate organizational
9 structure at STPR included, among other things, (i) establishing a uniform protocol for issuing
10 insurance policies; (ii) eliminating "Assistant" positions, including the Assistant Underwriter
11 position; (iii) limiting underwriting duties to Puerto Rico licensed attorneys; and (iv) creating the
12 Policy Specialist position. (Docket Nos. 122-2 ¶ 36; 144-1 ¶ 36.) All four of these changes were
13 implemented to reduce policy errors, thereby reducing policy claims, and ultimately making STPR
14 more profitable. (Docket Nos. 122-2 ¶ 39; 144-1 ¶ 39.) For example, STPR limited underwriting
15 duties to attorneys in March 2013 as an attempt to reduce the risk of error in policy drafting.
16 (Docket Nos. 122-2 ¶ 39; 144-1 ¶ 39.) Plaintiff contests the effectiveness—but not the existence—
17 of these corporate policy changes. (See Docket No. 144-1 ¶ 36.)

18 As a result of the ownership, management, and organizational changes at STPR, Plaintiff's
19 role changed as well. As an Assistant Underwriter, Plaintiff's duties encompassed a variety of
20 tasks relating to receiving policy requests, document review and production, and closings. (Docket
21 Nos. 122-2 ¶ 18, 19; 144-1 ¶ 18, 19.) All of these tasks were performed with a view towards

22 ⁵ Plaintiff purports to dispute the existence of the October 2013 RIF. (Docket No. 144-1 ¶ 84.) However,
23 Plaintiff does not deny the fact that seventeen (17) STPR employees were laid off on October 7, 2013. (Docket No.
24 144-1 ¶ 91.) Therefore, the existence of the October 2013 RIF is deemed admitted.

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1 assisting STPR's Underwriters. Occasionally, Plaintiff's responsibilities as an Assistant
2 Underwriter included client contact. (Docket Nos. 122-2 ¶ 18; 144-1 ¶ 18.) Plaintiff reported
3 directly to STPR's President. (Docket Nos. 122-2 ¶ 17; 144-1 ¶ 17.)

4 In March 2013, Plaintiff was reassigned to one of STPR's newly-created Policy Specialist
5 positions. (Docket Nos. 122-2 ¶ 52; 144-1 ¶ 52.) Four Policy Specialist positions were created in
6 total. (Docket Nos. 122-2 ¶ 53; 144-1 ¶ 53.) As a Policy Specialist, Plaintiff's day-to-day
7 responsibilities largely remained the same: she received and reviewed commercial and residential
8 policy requests. (See Docket Nos. 122-2 ¶¶ 59-61; 144-1 ¶¶ 59-61.) Likewise, Plaintiff's salary as
9 a Policy Specialist remained the same. (Docket Nos. 122-2 ¶ 55; 144-1 ¶ 55.)

10 However, Plaintiff's role at STPR changed in three ways as a result of the March 2013
11 demotion: (i) Plaintiff no longer had direct client contact; (ii) Plaintiff did not attend closings; and
12 (iii) Plaintiff was reclassified as a non-exempt employee. (Docket Nos. 122-2 ¶¶ 61, 63; 144-1 ¶¶
13 61, 63.) As a non-exempt employee, Plaintiff was required to clock in and clock out of work every
14 day. (Docket Nos. 122-2 ¶ 64; 144-1 ¶ 64.) These three changes applied to all four Policy
15 Specialists. (Docket Nos. 122-2 ¶ 67; 144-1 ¶ 67.)

16 On October 7, 2013, Plaintiff was terminated from her position as a Policy Specialist at
17 STPR. (Docket Nos. 122-2 ¶ 99; 144-1 ¶ 91.) On that day, a total of seventeen (17) STPR
18 employees were terminated. (Docket Nos. 122-2 ¶ 99; 144-1 ¶ 91.) Age was not a factor
19 considered by STPR during the October 2013 RIF. (Docket Nos. 122-2 ¶ 100; 144-1 ¶ 91.)
20 Quezada determined that personnel reductions were a necessary cost-cutting measure in light of
21 STPR's financial status at the time. (See Docket Nos. 122-2 ¶ 81, 82, 89; 144-1 ¶¶ 79, 85.)
22 Quezada recommended specific workforce reductions to Lessack, which Lessack then accepted
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1 and implemented. (Docket Nos. 122-2 ¶¶ 87; 144-1 ¶¶ 83.) After October 7, 2013, only fourteen
2 (14) employees remained employed by STPR. (Docket Nos. 122-2 ¶ 99; 144-1 ¶ 91.)

3 As part of the October 2013 RIF, Quezada determined that the Policy Specialist position
4 could be eliminated, and those duties reassigned to other positions within STPR. (Docket Nos.
5 122-2 ¶ 97; 144-1 ¶ 90.) Quezada viewed the Policy Specialist position as expendable due to a
6 decrease in the volume of policy origination requests at STPR. (Docket Nos. 122-2 ¶ 95; 144-1
7 ¶ 88.) Accordingly, Policy Specialist duties were reassigned to other, existing positions at STPR.
8 (Docket Nos. 122-2 ¶ 96; 144-1 ¶ 89.) Of the four Policy Specialists, Plaintiff and Ms. Norma
9 Figueroa (“Ms. Figueroa”) were terminated, while the other two employees were reassigned to
10 other roles. (Docket Nos. 122-2 ¶¶ 104-08; 144-1 ¶¶ 93, 94.)

11 Plaintiff contests the validity of the October 2013 RIF. First, Plaintiff argues that the
12 October 2013 RIF was merely a rouse because it was not in writing. (Docket No. 144-1 ¶ 84.)
13 Second, Plaintiff demonstrates some factual evidence showing the October 2013 RIF was not
14 justified based on STPR’s financial condition. *Id.* For example, Plaintiff notes a March 2013
15 employee bonus, corporate dividends, a December 2013 Christmas bonus and party, and
16 attendance by STPR employees at a mortgage loan convention. (Docket Nos. 122-2 ¶¶ 154, 157,
17 160, 162; 144-1 ¶¶ 136, 139, 141, 142.)

18 Additionally, Plaintiff draws on specific actions, comments, and events to support her age
19 discrimination and hostile work environment claims. Plaintiff was never subjected to any ageist
20 remarks during the entire course of her twenty-four (24) year employment at STPR. (Docket Nos.
21 122-2 ¶ 117; 144-1 ¶ 101.) However, at some point in 2013, Lessack met with STPR employees
22 and made a comment about “cleaning house.” As Plaintiff described it, Lessack stated: “the office
23 was like a house and when you do a cleanup of that house, you take all the furniture out, you clean,

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1 you fix, you paint the house, and then you bring back into the house what works.” (Docket Nos.
2 122-2 ¶ 121; 144-1 ¶ 101; see also Docket No. 122-3 at 227.)

3 Following the October 2013 RIF, some employees were retained at STPR as Attorney
4 Underwriters. Plaintiff is not an attorney. (Docket Nos. 122-2 ¶ 142; 144-1 ¶ 125.) Both Ms.
5 Ileana Corral and Mr. Roberto Segarra were retained at STPR after the October 2013 RIF.
6 (Docket Nos. 122-2 ¶¶ 143, 144; 144-1 ¶¶ 126, 127.) Both Ms. Corral and Mr. Segarra are
7 attorneys licensed to practice in Puerto Rico. (Docket Nos. 122-2 ¶¶ 143, 144; 144-1 ¶¶ 126, 127.)
8 Ms. Corral is younger than Plaintiff; Mr. Segarra is six years older than Plaintiff. (Docket Nos.
9 122-2 ¶¶ 143, 144; 144-1 ¶¶ 126, 127.)

10 Additionally, Plaintiff alleges that two younger, less experienced employees were retained
11 at STPR after Plaintiff’s 2013 termination. (Docket Nos. 122-2 ¶ 135; 144-1 ¶ 119.) Ms. Griselle
12 Rodriguez (“Ms. Rodriguez”) and Mr. Orlando Rodriguez (“Mr. Rodriguez”), who were both
13 appointed as Policy Specialists at the same time as Plaintiff, were retained at STPR following the
14 October 2013 RIF. (Docket Nos. 122-2 ¶¶ 53, 135; 144-1 ¶¶ 53, 119.) Unlike Plaintiff, Ms.
15 Rodriguez had a license to sell insurance from the Puerto Rico Insurance Commissioner. (Docket
16 No. 122-2 ¶¶ 106, 107; 144-1 ¶ 93, 94.) Mr. Rodriguez was retained as well; he returned to his
17 previously held position. (Docket Nos. 122-2 ¶ 108; 144-1 ¶ 94.) Seniority was not a determining
18 factor in Quezada’s decision to terminate Plaintiff. (Docket Nos. 122-2 ¶ 84; 144-1 ¶ 119.)

19 Plaintiff also claims she was subject to harassment by Quezada based on a series of events
20 at work. Specifically, Quezada (i) emailed Plaintiff about work duties; (ii) changed the office
21 locks without providing Plaintiff a key; (iii) excluded Plaintiff from meetings; and (iv) once
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1 Plaintiff mistakenly thought Quezada had locked Plaintiff in the office.⁶ (Docket Nos. 122-2 ¶
2 165; 144-1 ¶ 143.) Quezada’s emails were sent to all four Policy Specialists, and generally
3 contained either work instructions or inquiries as to the duties the Policy Specialists performed.
4 (Docket Nos. 122-2 ¶ 166; 144-1 ¶ 144.) Quezada changed the office locks and provided the
5 office key to two employees, but did not provide Plaintiff a key. (Docket Nos. 122-2 ¶¶ 169, 171,
6 172; 144-2 ¶¶ 146, 148.) Quezada did not include Plaintiff in three (3) or four (4) meetings.
7 (Docket Nos. 122-2 ¶ 175; 144-1 ¶ 150.) Finally, on one occasion, Quezada closed the office for
8 the evening while Plaintiff was still at work. (Docket Nos. 122-2 ¶ 180; 144-1 ¶ 152.) Plaintiff
9 was not, in fact, locked in the office. (Docket Nos. 122-2 ¶ 181; 144-1 ¶ 152.)

10 Following her October 7, 2013 termination, Plaintiff filed an Equal Employment
11 Opportunity Commission (“EEOC”) claim alleging age discrimination. (Docket Nos. 122-2 ¶ 113;
12 144-1 ¶ 97.) This was Plaintiff’s first complaint relating to age discrimination or harassment
13 against her employer. (Docket Nos. 122-2 ¶ 112; 144-1 ¶ 97.)

14 On August 31, 2015, STPR permanently closed its operations and terminated its remaining
15 twelve employees. (Docket Nos. 122-2 ¶ 111; 144-1 ¶ 96.)

16 **III. Standard of Review**

17 Summary judgment is appropriate when “the pleadings, depositions, answers to
18 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
19 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter
20 of law.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see FED. R. CIV. P. 56(a). “An issue

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22 ⁶ Plaintiff responds that these four events are “the same as denied.” (Docket No. 144-1 ¶ 143.) Then,
23 Plaintiff essentially reiterates the same four events without citation to the record, adding “Quezada withdrew from
24 [Plaintiff] many of the duties of her position which she had had for more than twenty five years, among others.” Id.
The Court deems Defendants’ Statement of Uncontested Material Fact ¶ 165 as admitted. See L. CIV. R. 56(e) (“the
court may disregard any statement of fact not supported by a specific citation to record material.”).

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1 is genuine if ‘it may reasonably be resolved in favor of either party’ at trial, . . . and material if it
2 ‘possess[es] the capacity to sway the outcome of the litigation under the applicable law.’” Iverson
3 v. City of Boston, 452 F.3d 94, 98 (1st Cir. 2006) (alteration in original) (internal citations
4 omitted). The moving party bears the initial burden of demonstrating the lack of evidence to
5 support the non-moving party’s case. Celotex, 477 U.S. at 325. “The movant must aver an
6 absence of evidence to support the nonmoving party’s case. The burden then shifts to the
7 nonmovant to establish the existence of at least one fact issue which is both genuine and material.”
8 Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994).

9 The nonmovant may establish a fact is genuinely in dispute by citing particular evidence in
10 the record or showing that either the materials cited by the movant “do not establish the absence or
11 presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to
12 support the fact.” FED. R. CIV. P. 56(c)(1)(B). If the Court finds that some genuine factual issue
13 remains, the resolution of which could affect the outcome of the case, then the Court must deny
14 summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

15 When considering a motion for summary judgment, the Court must view the evidence in
16 the light most favorable to the nonmoving party and give that party the benefit of any and all
17 reasonable inferences. Id. at 255. The Court does not make credibility determinations or weigh
18 the evidence. Id. Summary judgment may be appropriate, however, if the nonmoving party’s case
19 rests merely upon “conclusory allegations, improbable inferences, and unsupported speculation.”
20 Forestier Fradera v. Municipality of Mayagüez, 440 F.3d 17, 21 (1st Cir. 2006) (quoting Benoit v.
21 Tech. Mfg. Corp., 331 F.3d 166, 173 (1st Cir. 2003)).

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1 In the final stage, plaintiff must show the reason given for the discharge is “merely a
2 pretext for impermissible age discrimination.” Cruz, 699 F.3d at 571. To make a showing of
3 pretext, plaintiff must “elucidate specific facts which would enable a jury to find that the reason
4 given is not only a sham, but a sham intended to cover up the employer’s real motive: age
5 discrimination.” Meléndez v. Autogermana, Inc., 622 F.3d 46, 52 (1st Cir. 2010) (quoting
6 Mesnick, 950 F.2d at 824). Plaintiff must do more than dispute the legitimacy of the employer’s
7 asserted justification; he must also offer evidence “of the employer’s discriminatory animus.”
8 Vega v. Kodak Caribbean, 3 F.3d 476, 479 (1st Cir. 1993) (citing Hazen Paper Co. v. Biggins, 507
9 U.S. 604, 610 (1993)) (“liability under the ADEA depends upon whether age ‘actually motivated
10 the employer’s decision’ and [the court] [hesitates] to infer age-based animus solely ‘from the
11 implausibility of the employer’s explanation.’”).

12 Plaintiff alleges two instances of age discrimination by Defendants: (i) her March 2013
13 demotion and (ii) her October 2013 termination. Each event is analyzed in turn.

14 1. March 2013 Demotion

15 Plaintiff first alleges that Defendants unlawfully discriminated against her in violation of
16 the ADEA when she was reassigned from an Assistant Underwriter to a Policy Specialist in March
17 2013. The parties agree Plaintiff satisfies the first two elements of the *prima facie* case: she was
18 fifty-five years old at the time of the March 2013 demotion and she met STPR’s legitimate job
19 expectations as an Assistant Underwriter. Defendant argues Plaintiff cannot establish either the
20 third or fourth prong of the *prima facie* case.

21 The third prong of the *prima facie* case requires that Plaintiff show she suffered an adverse
22 employment action. Cruz, 699 F.3d at 571. An adverse employment action may be either an
23 actual or constructive discharge. De La Vega v. San Juan Star, Inc., 377 F.3d 111, 117 (1st Cir.

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1 2004) (citing Gonzalez v. El Dia, Inc., 304 F.3d 63, 68 n.5 (1st Cir. 2002)). To show that her
2 March 2013 demotion was a constructive discharge, Plaintiff must show her working conditions
3 were so unpleasant that a reasonable person in her position would have felt compelled to resign.
4 De La Vega, 377 F.3d at 117.

5 Plaintiff cannot establish her March 2013 demotion was an adverse employment action.
6 When Plaintiff was reassigned, she maintained the same salary and performed largely the same
7 work. (Docket Nos. 122-2 ¶¶ 55, 59-61; 144-1 ¶¶ 55, 59-61.) Other than receiving a new job title,
8 Plaintiff's duties only changed in two meaningful ways: (i) direct client contact was eliminated and
9 (ii) she was reclassified from an exempt to non-exempt employee. (Docket Nos. 122-2 ¶¶ 61, 63;
10 144-1 ¶¶ 61, 63.) The loss of client contact is not enough to show constructive discharge. See
11 Velazquez Fernandez v. NCE Foods, Inc., 405 F. Supp. 2d 179, 192 (D.P.R. 2005) *aff'd sub nom.*
12 Velazquez-Fernandez v. NCE Foods, Inc., 476 F.3d 6 (1st Cir. 2007) (plaintiff could not establish
13 the *prima facie* element of adverse employment action under the ADEA when plaintiff's
14 reassignment eliminated all client contact). Moreover, her reclassification as a non-exempt
15 employee was not an adverse action. See Moreno-Rivera v. DHL Global Forwarding, 762 F.
16 Supp. 2d 397, 406-07 (D.P.R. 2011) (where reclassification from exempt to non-exempt employee
17 was not an adverse action for a retaliation claim). Therefore, the terms of Plaintiff's 2013
18 demotion to a Policy Specialist did not affect or alter her conditions of employment. Accordingly,
19 Plaintiff cannot show the 2013 demotion was an adverse employment action.

20 For the sake of completeness, the Court addresses the fourth prong of the *prima facie* case.
21 This final prong asks whether the employer later filled the employee's position, thereby
22 demonstrating a continuing need for those services. Bonefont-Igaravidez, 659 F.3d at 124.
23 Defendants argue STPR had no continuing need for the Assistant Underwriter position. However,
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1 Plaintiff's main responsibility, as both an Assistant Underwriter and a Policy Specialist, was to
2 assist STPR's underwriters in preparing policies. (Docket No. 122-2 ¶ 61.) Though Plaintiff's job
3 title changed, her responsibilities did not. Therefore, by transferring Plaintiff to the Policy
4 Specialist position, STPR demonstrated its continuing need for Plaintiff's services.

5 Stage two of the burden-shifting framework requires the employer "to articulate a
6 legitimate, nondiscriminatory basis for the termination." Cruz, 699 F.3d at 571. Defendants clear
7 this hurdle easily. STPR's legitimate business reason for reassigning Plaintiff as a Policy
8 Specialist was to increase efficiency by establishing a more streamlined process for receiving
9 policy requests and issuing policies. (Docket Nos. 122-2 ¶ 30, 36; 144-1 ¶ 30, 36.)

10 In the final stage of the burden-shifting framework, Plaintiff must put forth sufficient
11 evidence for a reasonable fact-finder to conclude the employer's justification was mere pretext and
12 the true motive was age discrimination. Meléndez, 622 F.3d at 52 (citing Feliciano de la Cruz v.
13 El Conquistador Resort & Country Club, 218 F.3d 1, 6 (1st Cir. 2000)). Even if Plaintiff had
14 established a *prima facie* case of age discrimination arising from her March 2013 demotion,
15 Plaintiff's claim nevertheless fails because she cannot show the Policy Specialist reassignment was
16 the result of STPR's age-based animus.

17 Plaintiff does not point to a single statement relating to age. (Docket Nos. 122-2 ¶ 117;
18 144-1 ¶ 101.) Instead, Plaintiff attempts to show pretext by Lessack's discussion of cleaning
19 house at STPR. As Plaintiff recalls, Lessack said: "the office was like a house and when you do a
20 cleanup of that house, you take all the furniture out, you clean, you fix, you paint the house, and
21 then you bring back into the house what works." (Docket Nos. 122-2 ¶ 121; 144-1 ¶ 101.) On its
22 face, Lessack's comment has everything to do with Defendants' legitimate business plan to
23 increase efficiency, and nothing to do with discrimination on the basis of age. At worst, Lessack's

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1 comment is ambiguous, which is insufficient to show discriminatory intent. See Gonzalez, 304
2 F.3d at 69-70 (where repeated ambiguous remarks by multiple parties did not show any
3 discriminatory intent); Speen v. Crown Clothing Corp., 102 F.3d 625, 636 (1st Cir. 1996) (finding
4 a statement regarding plaintiff's age ambiguous, and therefore insufficient to prove employer's
5 discriminatory intent). No reasonable fact finder could conclude that Lessack's comment about
6 cleaning house was actually a comment revealing Defendants' age-based discriminatory animus.

7 A reasonable fact-finder could not conclude Plaintiff established the *prima facie* case for
8 age discrimination arising from her 2013 demotion. And even if Plaintiff had established the *prima*
9 *facie* case, the record does not reflect sufficient evidence for a reasonable fact-finder to conclude
10 the true motivation for Plaintiff's 2013 demotion was discrimination on the basis of age.

11 2. October 2013 Termination

12 Plaintiff also claims ADEA age discrimination arising from her October 2013 termination.
13 Once again, we apply the McDonnell Douglas burden-shifting framework. Collazo v. Bristol-
14 Myers Squibb Mfg., Inc., 617 F.3d 39, 46 (1st Cir. 2010) (citing McDonnell Douglas Corp. v.
15 Green, 411 U.S. 792, 802-04 (1973)). The parties agree the first three *prima facie* prongs are
16 satisfied: (i) Plaintiff was over forty (40) years old; (ii) she met STPR's job expectations as a
17 Policy Specialist; and (iii) she suffered an adverse employment action when she was terminated on
18 October 7, 2013. The parties dispute whether Plaintiff has satisfied the fourth prong of the *prima*
19 *facie* case.

20 Generally, the fourth prong is met when the employer sought a younger replacement with
21 similar qualifications. Mesnick, 950 F.2d at 823. However, a reduction in force, by definition,
22 seeks to reduce the overall size of the employer's workforce and may not involve the hiring of
23 replacements. Accordingly, the fourth prong of the *prima facie* case is modified in the context of a

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1 reduction in force, where a plaintiff must show either (i) younger persons were retained in the
2 same position, or alternatively, (ii) the employer otherwise did not treat age neutrally. Currier v.
3 United Techs. Corp., 393 F.3d 246, 254 (1st Cir. 2004) (citations omitted); see also Hidalgo v.
4 Overseas Condado Ins. Agencies, Inc., 120 F.3d 328, 333 (1st Cir. 1997); Mercado v. Cooperativa
5 de Seguros de Vida de P.R., 726 F. Supp. 2d 96, 102 (D.P.R. 2010).

6 In this case, no younger person was retained in Plaintiff’s position. Rather, Plaintiff’s
7 employment position as a Policy Specialist was eliminated altogether. (Docket Nos. 122-2 ¶ 97;
8 144-1 ¶ 90.) Two former Policy Specialists—Ms. Rodriguez and Mr. Rodriguez—were retained at
9 STPR following the October 2013 RIF, albeit in new roles. Ms. Rodriguez was retained and
10 reassigned because, unlike Plaintiff, she had a license from the Puerto Rico Insurance
11 Commissioner allowing her to sell insurance. (Docket Nos. 122-2 ¶¶ 106, 107; 144-1 ¶ 93, 94.)
12 Ms. Rodriguez was fifty-six (56) at the time. (Docket Nos. 122-2 ¶ 109; 144-1 ¶ 95.) Mr.
13 Rodriguez was retained and reassigned to his previously held business development position.
14 (Docket Nos. 122-2 ¶ 108; 144-1 ¶ 94.) Mr. Rodriguez was fifty (50) at the time. (Docket Nos.
15 122-2 ¶ 109; 144-1 ¶ 95.) The undisputed facts show these two employees were retained in
16 different positions based on their additional qualifications. (Docket No. 122-2 ¶¶ 106, 108; 144-1
17 ¶¶ 93, 94.) Furthermore, Ms. Rodriguez and Mr. Rodriguez—ages fifty six (56) and fifty (50),
18 respectively—were not substantially younger than Plaintiff, who was fifty-six (56) at the time of
19 the October 2013 RIF. See O’Connor v. Consol. Coin Caterers Corp., 517 U.S. 308, 313 (1996)
20 (an inference of age discrimination “cannot be drawn from the replacement of one worker with
21 another worker insignificantly younger”); see also Williams v. Raytheon Co., 220 F.3d 16, 20 (1st
22 Cir. 2000) (a three-year difference between plaintiff and replacement was too insignificant to
23

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1 support *prima facie* age discrimination). Therefore, Plaintiff has not presented sufficient evidence
2 that younger persons were retained in the same position.

3 Accordingly, to satisfy the fourth prong of the *prima facie* case, Plaintiff must show some
4 evidence the October 2013 RIF was not age neutral. In the context of a reduction in force, lack of
5 age neutrality may be shown by either (i) a facially discriminatory policy or (ii) a policy that is
6 facially age-neutral but “has the effect of discriminating against older persons.” Phair v. New Page
7 Corp., 708 F. Supp. 2d 57, 65 (1st Cir. 2010) (quoting Brennan v. GTE Gov’t Sys. Corp., 150 F.3d
8 21, 27 (1st Cir. 1998)). Statistical evidence that a reduction in force disproportionately affected
9 older employees can show a lack of neutrality. Brennan, 150 F.3d at 28.

10 The undisputed factual record shows the October 2013 RIF was age neutral both facially
11 and as applied. Defendants did not use age as a factor in making termination decisions as part of
12 the October 2013 RIF. (Docket Nos. 122-2 ¶ 100; 144-1 ¶ 91.) Before the October 2013 RIF,
13 sixty-one percent of STPR’s employees were over the age of forty (40). (Docket Nos. 122-2 ¶
14 101; 144-1 ¶ 91.) After the implementation of the October 2013 RIF, sixty-four percent of STPR’s
15 remaining employees were over forty (40). (Docket Nos. 122-2 ¶ 102; 144-1 ¶ 92.) As applied to
16 Policy Specialists, Plaintiff (age fifty-six) and Ms. Figueroa (age forty-five) were terminated, while
17 Ms. Rodriguez (age fifty-six) and Mr. Rodriguez (age fifty) were assigned to new roles. (Docket
18 Nos. 122-2 ¶¶ 106-109; 144-1 ¶¶ 93-95.) Viewing the evidence in the light most favorable to
19 Plaintiff, the October 2013 RIF was both neutral on its face and as applied to Plaintiff.

20 In conclusion, the record demonstrates no evidence from which a reasonable jury could
21 find the fourth prong of the *prima facie* case satisfied as to Plaintiff’s 2013 termination.
22 Defendants did not retain a younger person in Plaintiff’s position. Additionally, the October 2013
23 RIF was age neutral both facially and as applied to Plaintiff.

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1 age, especially when Ms. Rodriguez (fifty-six years old) and Mr. Rodriguez (fifty years old) were
2 retained in other capacities, while Ms. Figueroa (forty-five years old) was terminated.

3 Plaintiff argues the October 2013 RIF was unjustified. In Plaintiff's view, Defendants
4 "alleged that [the October 2013 RIF] was for economic reorganization but that she did not believe
5 that." (Docket No. 144-1 ¶ 128.) Plaintiff draws on evidence of bonuses and other signs of
6 economic prosperity, none of which address the issue of pretext. (See Docket Nos. 122-2 ¶¶ 154,
7 157-164; 144-1 ¶¶ 136, 139-142.) Even if STPR's business were rock-solid, reorganization
8 remains a non-discriminatory basis for terminating employees. Plaintiff's evidence does not show
9 the reason for Plaintiff's termination was *her age*. See Hidalgo, 929 F. Supp. at 561 ("[f]inancial
10 evidence suggesting that a decision, in hindsight, may not have been prudent is not evidence of
11 improper motive; the ADEA is not violated by erroneous or even illogical business judgment.").

12 Plaintiff draws on Lessack's comment about "cleaning house" to show pretext. As Plaintiff
13 recalled, Lessack stated: "the office was like a house and when you do a cleanup of that house, you
14 take all the furniture out, you clean, you fix, you paint the house, and then you bring back into the
15 house what works." (Docket Nos. 122-2 ¶ 121; 144-1 ¶ 101; see also 122-3 at 227.) Lessack's
16 comment was not explicitly related to an age in any way. Even if it impliedly related to age, an
17 isolated comment like Lessack's does not show discriminatory intent. See Lehman v. Prudential
18 Ins. Co. of Am., 74 F.3d 323, 329 (1st. Cir. 1996) ("[i]solated, ambiguous remarks are insufficient,
19 by themselves, to prove discriminatory intent.")

20 Taken together and viewed in the light most favorable to Plaintiff, the record does not
21 reveal sufficient evidence for a reasonable fact-finder to conclude Plaintiff satisfied the *prima facie*
22 case for either her 2013 demotion claim or her 2013 termination claim. Even so, a reasonable fact-
23 finder could not conclude either the 2013 demotion or the 2013 termination were the result of

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1 Defendants' discriminatory age-based animus. See LeBlanc v. Great Am. Ins. Co., 6 F.3d 836,
2 842-43 (1st Cir. 1993) (compiling cases requiring evidence of discriminatory animus to constitute
3 a showing of pretext at summary judgment).

4 For the reasons set forth above, the Court **GRANTS** Defendant's Motion for Summary
5 Judgment as to Plaintiff's age discrimination claims under the ADEA.

6 B. ADEA: Hostile Work Environment Claim

7 The First Circuit has recognized hostile work environment claims as actionable under the
8 ADEA. Collazo v. Nicholson, 535 F.3d 41, 44 (1st Cir. 2008). To succeed in an ADEA hostile
9 work environment claim, a plaintiff must show: (1) she is a member of the class protected by the
10 ADEA; (2) she was subjected to unwelcome harassment; (3) the harassment was based on age; (4)
11 the harassment was sufficiently pervasive or severe so as to alter the conditions of the plaintiff's
12 employment and create an abusive work environment; (5) the behavior was both subjectively and
13 objectively offensive, such that a reasonable person would find it hostile or abusive; (6) that the
14 plaintiff found it hostile or abusive; and (7) some basis for employer liability has been established.
15 See Gutierrez-Lines v. P.R. Elec. & Power Auth., 751 F. Supp. 2d 327, 341-42 (D.P.R. 2010)
16 (citing O'Rourke v. City of Providence, 235 F.3d 713, 728 (1st Cir. 2001)).

17 Hostile work environment claims are highly fact specific and not apt to mathematical
18 precision. Harris v. Forklift Sys. Inc., 510 U.S. 17, 22 (1993). Courts examine the totality of the
19 circumstances, including "the frequency of the discriminatory conduct; its severity; whether it is
20 physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably
21 interferes with an employee's work performance. Id. at 23. "'Simple teasing,' offhand comments,
22 and isolated incidents (unless extremely serious)" do not create a hostile work environment.
23 Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998) (quoting Oncale v. Sundowner Offshore

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1 Servs., 523 U.S. 75, 82 (1998)). At the summary judgment stage, “[t]he Court’s function is one of
2 screening to determine whether, on particular facts, a reasonable jury could reach such a
3 conclusion.” Noviello v. City of Boston, 398 F.3d 76, 94 (1st Cir. 2005).

4 Plaintiff was not subjected to any explicitly ageist remarks during her twenty-four (24)
5 years at STPR. (Docket Nos. 122-2 ¶ 117; 144-1 ¶ 101.) Reasonable minds may differ about the
6 true intent behind Lessack’s statement about “cleaning house” at STPR. Regardless of the intent
7 attributed to Lessack’s comment, the comment—on its face—was not sufficiently severe and
8 pervasive so as to alter the conditions of Plaintiff’s work environment. See Gutierrez-Lines, 751
9 F. Supp. 2d at 342 (finding repeated comments relating to plaintiff’s age insufficient to meet the
10 required level of severity and pervasiveness). Lessack’s “cleaning house” comment is insufficient
11 to establish an ADEA hostile work environment claim.

12 Plaintiff also claims she was subject to harassment by Quezada based on a series of events
13 at work. Specifically, Quezada (i) emailed Plaintiff about work duties; (ii) changed the office
14 locks without providing Plaintiff a key; and (iii) excluded Plaintiff from meetings. (Docket Nos.
15 122-2 ¶ 165; 144-1 ¶ 143.) Additionally, Plaintiff recalls an instance in which she (erroneously)
16 thought she had been locked in the office. Id. However, Plaintiff fails to connect these events to
17 any harassing treatment relating to age. See Gutierrez-Lines, 751 F. Supp. 2d at 342 (where
18 evidence of restricted phone access, additional assignments, exclusion from work events, and
19 sarcastic remarks bore no connection to plaintiff’s age). Instead, Plaintiff relies on her own
20 inferences to bridge the gap between these events and a hostile work environment claim.

21 Quezada’s emails were sent to all four Policy Specialists, and generally contained either
22 work instructions or inquiries about Policy Specialist duties. (Docket Nos. 122-2 ¶ 166; 144-1
23 ¶ 144.) These emails derived from Quezada’s role as Plaintiff’s supervisor. (Docket No. 122-2

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1 ¶ 15; 144-1 ¶ 15.) Plaintiff may not have appreciated Quezada’s emails, but the record contains no
2 evidence these emails caused any impediment to Plaintiff’s performance of her work duties. See
3 Lee-Crespo v. Schering-Plough Del Caribe Inc., 354 F.3d 34, 46 (1st Cir. 2003) (“a supervisor’s
4 unprofessional managerial approach and accompanying efforts to assert her authority are not the
5 focus of the discrimination laws.”).

6 When Quezada changed the office locks, she provided the office key to two employees, but
7 did not provide Plaintiff with a key. (Docket Nos. 122-2 ¶¶ 169, 171, 172; 144-2 ¶¶ 146, 148.)
8 Plaintiff only speculates as to why she did not receive a key. This does not advance her hostile
9 work environment claim. See Cabán Hernández v. Philip Morris USA, Inc., 486 F.3d 1, 8 (1st Cir.
10 2007) (drawing all reasonable inferences in favor of plaintiff at summary judgment does not
11 include bald assertions or rank conjecture).

12 Quezada did not include Plaintiff in three (3) or four (4) meetings. (Docket Nos. 122-2 ¶
13 175; 144-1 ¶ 150.) This type of exclusion, while perhaps inconsiderate, does not show
14 discriminatory animus. Colón-Fontáñez v. Municipality of San Juan, 660 F.3d 17, 44 (1st Cir.
15 2011); see also Zayas-Oritz v. Becton Dickinson Caribe, Ltd., 968 F. Supp. 2d 463, 474 (D.P.R.
16 2013). Missed meetings are the type of “ordinary tribulations of the workplace” that do not
17 constitute a hostile work environment. Faragher, 524 U.S. at 788.

18 Finally, on one occasion, Quezada closed the office for the evening while Plaintiff was still
19 at work, giving Plaintiff the momentary, though mistaken, impression she had been locked in the
20 office. (Docket Nos. 122-2 ¶¶ 180, 181; 144-1 ¶ 152.) The record reflects no evidence Quezada
21 knew Plaintiff was in the office, that Quezada’s act was intentional, or that the reason for
22 Quezada’s act was Plaintiff’s age. Id. This type of “unsupported speculation” is inadmissible at
23 summary judgment. Forestier Fradera, 440 F.3d at 21.

1 Viewing the record as a whole in the light most favorable to Plaintiff, the events alleged do
2 not rise to the level necessary to sustain Plaintiff's ADEA hostile work environment claim.
3 Therefore, no reasonable fact-finder could find in Plaintiff's favor on this claim. The Court
4 **GRANTS** Defendants' Motion for Summary Judgment as to Plaintiff's ADEA hostile work
5 environment claim.

6 C. Title VII: Retaliation Claim

7 Title VII prohibits workplace discrimination on the basis of race, color, religion, sex, or
8 national origin. 42 U.S.C. § 2000e-2(a). Additionally, the statute prohibits retaliation by an
9 employer following an employee's opposition to discrimination on those bases. § 2000e-3(a).

10 A plaintiff may present direct or circumstantial evidence of an employer's retaliatory
11 conduct. Absent direct evidence, courts employ the McDonnell Douglas burden-shifting
12 framework to evaluate circumstantial evidence of retaliation. Collazo, 617 F.3d at 46 (citing
13 McDonnell Douglas, 411 U.S. at 802-04). Plaintiff must set forth a *prima facie* case by showing:
14 (i) she engaged in a protected activity; (ii) she suffered an adverse employment action; and (iii) the
15 adverse employment action was causally connected to the protected activity. Collazo, 617 F.3d at
16 46. If plaintiff satisfies the *prima facie* case, then the burden of production shifts to the defendant
17 to show a "legitimate, non-retaliatory reason" for the adverse employment action. Id. Then,
18 plaintiff must show defendant's reason is mere pretext, and that the true cause of the adverse action
19 was retaliatory animus. Id.

20 Plaintiff cannot establish either the first or the third prong of the *prima facie* case for Title
21 VII retaliation. Plaintiff undertook no protected activity while employed at STPR. Plaintiff filed
22 an EEOC complaint on October 15, 2013, over a week after her termination at STPR. (Docket
23 Nos. 122-2 ¶ 113; 144-1 ¶ 97.) This was Plaintiff's first complaint relating to age discrimination

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1 or harassment against her employer. (Docket Nos. 122-2 ¶ 112; 144-1 ¶ 97.) Furthermore, gender
2 was not a factor in either Plaintiff's 2013 demotion to Policy Specialist or Plaintiff's 2013
3 termination. (Docket Nos. 122-2 ¶ 144; 144-1 ¶ 98.)

4 Even if Plaintiff's 2013 demotion or her 2013 termination constituted an adverse
5 employment action, Plaintiff cannot show causation because she engaged in no protected activity
6 before either of those events. Plaintiff's EEOC complaint has no bearing on her Title VII claim
7 because it was filed after her termination. (Docket Nos. 122-2 ¶ 113; 144-1 ¶ 97.) As such,
8 establishing a causal connection proves temporally unworkable. See Trainor v. HEI Hosp. Inc.,
9 699 F.3d 19, 27 (1st Cir. 2012) (recognizing the "common-sense aspect" to retaliation causation
10 which necessitates that the adverse action to the employee must post-date the employee's protected
11 activity).

12 No reasonable factfinder could find that Plaintiff has established the *prima facie* case for
13 Title VII retaliation. Therefore, Defendants are entitled to judgment as a matter of law. The Court
14 **GRANTS** Defendants' Motion for Summary Judgment as to Plaintiff's Title VII retaliation claim.

15 D. Section 1983 Claim

16 Plaintiff asserts a claim under 42 U.S.C. § 1983. Section 1983 creates a cause of action for
17 plaintiffs alleging a governmental violation of federally protected rights. Albright v. Oliver, 510
18 U.S. 266, 271 (1994). The first step in analyzing any claim under § 1983 is whether the defendant
19 acted under color of state law. Parratt v. Taylor, 451 U.S. 527, 535 (1981).

20 Plaintiff admits STPR was not associated with the government in any way. (Docket Nos.
21 122-2 ¶ 116; 144-1 ¶ 100.) Therefore, Plaintiff's § 1983 claim fails. The Court **GRANTS**
22 Defendants' Motion for Summary Judgment as to Plaintiff's claims pursuant to 42 U.S.C. § 1983.

1 E. Puerto Rico State Law Claims

2 Plaintiff invokes this Court’s supplemental jurisdiction and asserts Puerto Rico state law
3 claims under Law 115, Law 100, Law 80, Law 379, Articles 1802 and 1803, and Article II of the
4 Puerto Rico Constitution. (Docket No. 21 ¶¶ 2, 7, 15.) Defendants argue Plaintiff’s Puerto Rico
5 state law claims should be dismissed with prejudice, or in the alternative, the Court should decline
6 jurisdiction over the supplemental claims. (Docket No. 122-1 at 33-34.)

7 Generally, dismissal of a plaintiff’s federal claims well before trial will trigger the
8 dismissal without prejudice of any supplemental state law claims. Rodriguez v. Doral Mortg.
9 Corp., 57 F.3d 1168, 1177 (1st Cir. 1995). However, in certain situations, a federal court may
10 retain jurisdiction over state law claims even after dismissal of all federal claims. Id. The exercise
11 of supplemental jurisdiction is “wholly discretionary” and determined on a case-by-case basis,
12 with due consideration to factors such as judicial economy, convenience, fairness, and comity. Id.

13 In this case, interests of judicial economy, convenience, and fairness pull the Court towards
14 retaining jurisdiction. The factual record has been fully developed, discovery has closed, the
15 federal and state claims arise from the same common nucleus of operative fact, and Plaintiff has
16 elected to litigate in the federal forum. See Roche v. John Hancock Mut. Life Ins. Co., 81 F.3d
17 249, 257 (1st Cir. 1996) (affirming the district court’s discretionary decision to retain jurisdiction
18 over supplemental state law claims for similar reasons). For the reasons set forth below, the Court
19 **GRANTS** Defendants’ Motion for Summary Judgment as all Puerto Rico state law claims.

20 1. Law 115

21 To allege retaliation under Law 115, plaintiff must have been retaliated against by her
22 employer. P.R. LAWS ANN. tit. 29, § 194(a). In this case, Plaintiff did not participate in any
23 protected conduct before her dismissal. (Docket Nos. 122-2 ¶ 112; 144-1 ¶ 97.) Plaintiff’s

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1 good cause includes “[r]eductions in employment made necessary by a reduction in the anticipated
2 or prevailing volume of production, sales or profits at the time of the discharge.” § 185b(f).

3 Defendants eliminated the Policy Specialist position due to the decreased volume of policy
4 requests at STPR. (Docket Nos. 122-2 ¶ 95; 144-1 ¶ 88.) As a result, two Policy Specialists were
5 terminated, and two others were reassigned to different positions at STPR. (Docket Nos. 122-2
6 ¶¶ 104-08; 144-1 ¶¶ 93, 94.) Plaintiff argues STPR’s financial condition did not justify her
7 termination. (Docket No. 144-1 ¶ 84.) Even so, the undisputed facts show STPR’s “anticipated
8 . . . volume of production . . . at the time of the discharge” led Defendants to believe Plaintiff’s
9 termination was necessary. § 185b(f). Accordingly, Defendants have satisfied the requirements of
10 good cause under Law 80. See id.; see also Franco-Santos v. Goldstar Transp., Inc., No. 09-1989
11 (GAG), 2011 WL 570280, at *6 (D.P.R. Feb. 17, 2011) (dismissing plaintiff’s Law 80 claim at
12 summary judgment following dismissal of plaintiff’s federal law claims). Therefore, the Court
13 **GRANTS** Defendants’ Motion for Summary Judgment as to Plaintiff’s Law 80 claim.

14 4. Law 379

15 Law 379 regulates working hours, days, overtime calculations, and compensation. P.R.
16 LAWS ANN. tit. 29, §§ 271-288 *et seq.* Plaintiff admits she is not entitled to any payments for time
17 worked at STPR under Law 379. (Docket Nos. 122-2 ¶ 115; 144-1 ¶ 99.) Therefore, the Court
18 **GRANTS** Defendants’ Motion for Summary Judgment as to Plaintiff’s Law 379 claim.

19 5. Articles 1802 and 1803

20 A plaintiff may bring an additional claim for tortious or negligent conduct under Articles
21 1802 and 1803 only if the conduct is distinct from the conduct covered by the specific labor law.
22 Santini Rivera v. Serv. Air Inc., 137 P.R. Dec. 1 (P.R. 1994).

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1 Here, Plaintiff has not set forth independent grounds for a tort claim. As such, Plaintiff is
2 barred from bringing a claim under Articles 1802 and 1803 because the conduct Plaintiff alleges is
3 based on the same facts that give rise to Plaintiff’s causes of action under Puerto Rico’s anti-
4 discrimination statute. Reyes-Ortiz v. McConnell Valdes, 714 F. Supp. 2d 234, 239 (D.P.R. 2010);
5 see also Blasco Figueroa v. P.R. Aqueducts & Sewer Auth., No. 14-1395 (GAG), 2016 WL
6 1122003, at *8 (D.P.R. Mar. 22, 2016) (finding plaintiff’s disability claims non-cognizable under
7 Articles 1802 and 1803 because those claims arose from the same facts as plaintiff’s ADA and
8 Law 44 claims). Therefore, the Court **GRANTS** Defendants’ Motion for Summary Judgment as to
9 Plaintiff’s claim under Articles 1802 and 1803.

10 6. Puerto Rico Constitution

11 In her complaint, Plaintiff makes reference to Article II, §§ 1, 4, 6, 7, 8, and 16 of the
12 Constitution of the Commonwealth of Puerto Rico. (See Docket No. 21 ¶¶ 7, 15.) Additionally,
13 Plaintiff’s fifth cause of action includes an allegation of age discrimination in violation of “the
14 Constitution of the Commonwealth of Puerto Rico as well as other state laws regarding damages.”
15 (Docket No. 21 ¶¶ 89-90.) Neither party has addressed the merits of Plaintiff’s claims arising
16 under the Puerto Rico Constitution.

17 “A party may not simply throw a statutory reference into a complaint hoping to later flesh
18 out its claim with facts in support.” Ruiz Rivera v. Pfizer Pharm., LLC, 521 F.3d 76, 88 (1st Cir.
19 2008). Yet, that is precisely what Plaintiff has done. Plaintiff has failed to meet even the most
20 basic pleading requirements for any claim under the Puerto Rico Constitution. See id. at 87-88
21 (affirming the district court’s decision not to address plaintiff’s passing statutory reference to
22 Puerto Rico state law claims when plaintiff did not assert the viability of those claims in opposition
23 to summary judgment); Colón-Fontáñez, 660 F.3d at 46 (finding no error in a district court’s

1 determination not to consider an “entirely unarticulated” claim). Therefore, the Court **GRANTS**
2 Defendants’ Motion for Summary Judgment as to Plaintiff’s claims arising under Article II of the
3 Constitution of the Commonwealth of Puerto Rico.

4 **V. Conclusion**

5 For the reasons stated above, Defendants’ Motion for Summary Judgment at Docket No.
6 122 is **GRANTED**. Plaintiff’s claims are hereby **DISMISSED with prejudice**.

7 **SO ORDERED.**

8 In San Juan, Puerto Rico, on this 19th day of September, 2016.

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