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

**JANNETTE HERNANDEZ-MENDEZ,**

**Plaintiffs**

**v.**

**BENJAMIN RIVERA, et al.,**

**Defendants.**

**CIVIL NO. 15-1147 (GAG)**

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**OPINION AND ORDER**

Jannette Hernández-Méndez (“Plaintiff”) filed this action against the Commonwealth of Puerto Rico and the Family Department of the Commonwealth of Puerto Rico (collectively “Commonwealth Defendants”), Benjamin Rivera (“Rivera”) and Marisel Rodríguez (“Rodríguez”) in their personal and official capacities, as supervisor-employees of the Family Department of the Commonwealth of Puerto Rico (hereinafter “Individual Defendants”) (collectively “Defendants”), seeking redress for alleged violations of anti-discrimination and anti-retaliation statutes during her employment with the Family Department of the Commonwealth of Puerto Rico, specifically, Plaintiff brings claims of sexual discrimination, hostile work environment, sexual harassment and retaliation. (Docket No. 1). This action was brought pursuant to Title VII of the Civil Rights Act of 1994, 42 U.S.C. § 2000e *et. seq.* (“Title VII”) and the Civil Rights Act of 1991, 42 U.S.C. §§ 1981a, 1983 and 1988. *Id.* Plaintiff also invokes this court’s supplemental jurisdiction to adjudicate parallel claims pursuant to laws of Puerto Rico: Law 17 of April 1988, P.R. LAWS ANN. tit. 29, §§ 155-155m (sexual harassment) (“Law 17”); Law 69 of July 6, 1985, P.R. LAWS ANN. tit. 29, §§ 1321-1341 (gender discrimination) (“Law 69”); Law No. 115 of December 20, 1991, 29

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1 P.R. LAWS ANN. tit. 29, § 194a, *et seq.* (retaliation) (“Law 115”). (Docket No. 1). Pending before  
2 the court is Defendants’ Motion to Dismiss at Docket No. 11.

3 For the following reasons, after reviewing the pleadings and pertinent law, the court  
4 hereby **GRANTS in part and DENIES in part** Defendant’s motion to dismiss at Docket No. 11.

5 **I. Standard of Review**

6 When considering a motion to dismiss for failure to state a claim upon which relief can be  
7 granted, see FED. R. CIV. P. 12(b)(6), the court analyzes the complaint in a two-step process under  
8 the current context-based “plausibility” standard established by the Supreme Court. See Schatz v.  
9 Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir. 2012) (citing Ocasio-Hernández v.  
10 Fortuño-Burset, 640 F.3d 1, 12 (1st Cir. 2011) which discusses Ashcroft v. Iqbal, 556 U.S. 662  
11 (2009) and Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)). First, the court must “isolate and  
12 ignore statements in the complaint that simply offer legal labels and conclusions or merely rehash  
13 cause-of-action elements.” Id. A complaint does not need detailed factual allegations, but  
14 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
15 statements, do not suffice.” Iqbal, 556 U.S. at 678-79. Second, the court must then “take the  
16 complaint’s well-[pleaded] (i.e., non-conclusory, non-speculative) facts as true, drawing all  
17 reasonable inferences in the pleader’s favor, and see if they plausibly narrate a claim for relief.”  
18 Schatz, 669 F.3d at 55. Plausible, means something more than merely possible, and gauging a  
19 pleaded situation’s plausibility is a context-specific job that compels the court to draw on its  
20 judicial experience and common sense. Id. (citing Iqbal, 556 U.S. at 678-79). This “simply calls  
21 for enough facts to raise a reasonable expectation that discovery will reveal evidence of” the  
22 necessary element. Twombly, 550 U.S. at 556.

1 “[W]here the well-pleaded facts do not permit the court to infer more than the mere  
2 possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is  
3 entitled to relief.” Iqbal, 556 U.S. at 679 (quoting FED. R. CIV. P. 8(a)(2)). If, however, the  
4 “factual content, so taken, ‘allows the court to draw the reasonable inference that the defendant is  
5 liable for the misconduct alleged,’ the claim has facial plausibility.” Ocasio-Hernández, 640 F.3d  
6 at 12 (quoting Iqbal, 556 U.S. at 678).

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

8 Janette Hernández-Méndez, of legal age and resident of Moca, began working for the  
9 Family Department of the Commonwealth of Puerto Rico on February 1, 1994. (Docket No. 1 at  
10 ¶¶ 7, 13). On April 1, 2013, she was transferred to the Family Department’s Aguadilla I Office  
11 where she was designated secretary and auxiliary collector. Id. ¶ 13. Her immediate supervisor  
12 was Rivera, director of the Aguadilla I Office where Plaintiff worked at the time of the incidents  
13 alleged in her complaint. Id. ¶ 15. In turn, Rivera’s immediate supervisor was Rodríguez, regional  
14 director overseeing the Aguadilla I Office. Id. ¶¶ 16; 21. According to Plaintiff, she always  
15 performed her work and duties in a satisfactory manner. Id. ¶ 14.

16 Sometime on or around March/April 2013, Rivera allegedly began to sexually harass  
17 Plaintiff. Id. ¶ 17. The first incident occurred when Rivera asked Plaintiff about her marital  
18 status, to which she responded that she was, at the time, separated from her husband. Id. ¶ 18.  
19 Rivera then asked if she had a boyfriend, and the Plaintiff answered in a “firm and upset” manner  
20 that she did not and left the area of Rivera’s office. Id. ¶ 18.

21 A few days later, Rivera approached the Plaintiff while she was at her desk and asked her  
22 about her age. Id. ¶ 19. Plaintiff responded that she was forty years old and Rivera got closer to  
23 her and whispered in her ear “you look hot for your age.” Id. ¶ 19. This prompted the Plaintiff to  
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1 feel uncomfortable and move to another desk, abandon her post as Rivera’s secretary and focus on  
2 her other job as auxiliary collector. (Docket No. 1 at ¶ 20). In addition, when Plaintiff was  
3 fetching documents Rivera had requested, Rivera intentionally approached the Plaintiff from  
4 behind and she felt him rub against her back and gluteus. Id. ¶ 21. This latter incident caused  
5 Plaintiff to feel sufficiently shocked and humiliated that she began to cry. Id. ¶ 21. Upon the  
6 suggestion of a co-worker, and after conferring with a local union representative, she decided to  
7 discuss Rivera’s harassment with Rodríguez, the Family Department’s Regional Director and  
8 Rivera’s immediate supervisor. Id. ¶¶ 21-22. Rodríguez asked the Plaintiff if she wished to file a  
9 complaint against Rivera and Plaintiff answered in the affirmative. Id. ¶ 23.

10 After her meeting with Rodríguez, Plaintiff alleges returned to her desk and discovered that  
11 everyone in her office had already been told by Rivera that she had filed a complaint against him  
12 and that Rodríguez was the one who told him. Id. ¶ 24. Plaintiff avers that was also informed by a  
13 co-worker that she was going to be transferred, which appeared to be a clear indication that  
14 Rodríguez had not believed her and was siding with Rivera. Id. ¶ 25. According to Plaintiff, no  
15 action was taken against Rivera and Plaintiff was not called in for an interview after filing her  
16 complaint, her complaint was not investigated in violation on proper procedural guidelines and this  
17 amounted to Rodríguez’s “condo[ning]” Rivera’s behavior and forcing Plaintiff to work under a  
18 hostile work environment. Id. ¶ 25-27. Plaintiff’s complaint to Rodríguez was, allegedly, not  
19 confidently kept and, instead, Rivera was immediately informed about it and, in turn, he told  
20 Plaintiff’s co-workers. Id. ¶ 27. Defendants allegedly retaliated against Plaintiff’s actions and  
21 complaint to the regional supervisor by transferring her to another office location, instead of letting  
22 her remain in her current office. Id. ¶ 29. Because of the incidents just described, Plaintiff  
23 sustains that she suffered emotional harm and had to seek psychological treatment. Id. ¶ 30.

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1 Prior to this action, Plaintiff filed an administrative proceeding before the Equal  
2 Employment Opportunity Commission (“EEOC”) on November 11, 2013 where she alleged she  
3 suffered sexual harassment and retaliation. (Docket No. 1 at ¶ 4). The EEOC mailed the Plaintiff  
4 a Notice of her Right to Sue on November 24, 2014, received by the Plaintiff on November 28,  
5 2014. Id. ¶ 5. Plaintiff filed this action within 90 days of receiving said Notice on February 19,  
6 2015. Id. ¶ 6. A certified translation of the Plaintiff’s complaint to the EEOC, submitted to the  
7 record by Defendants as Exhibit 1, was filed with this court. (See Docket No. 16-1).

8 To be sure, the substance and structure of the Plaintiff’s complaint leaves this court with  
9 want of a better structure and clearer arguments on her part. Nevertheless, this court was able to  
10 identify five substantive causes of action after carefully parsing through the complaint. First,  
11 Plaintiff alleges she was sexually harassed by Rivera, and Rodríguez’s and the Commonwealth  
12 Defendant’s failure to subsequently act on her complaints was tantamount to forcing Plaintiff to  
13 endure a hostile work environment in violation of Title VII. (Docket No. 1 at ¶¶ 32-34). Second,  
14 Plaintiff alleges that the Defendants are strictly liable the alleged sexual harassment she endured  
15 from Rivera and the subsequent acts and omissions of Rodríguez, his supervisor, in violation to  
16 Puerto Rico Law 17. Id. at ¶¶ 35-39. Third, the Plaintiff alleges that Defendants are liable for  
17 gender discrimination and retaliatory acts in violation of Puerto Rico Law 69. Id. at ¶¶ 40-42.  
18 Fourth, Plaintiff alleges that on account of her seeking administrative redress regarding the alleged  
19 sexual harassment from Rodríguez, Rivera’s regional supervisor, Defendants retaliated by  
20 transferring Plaintiff to another office in violation of Title VII. Id. at ¶¶ 43-45. Fifth, as with the  
21 fourth substantive cause of action, Plaintiff alleges that Defendants are liable for retaliatory acts in  
22 violation of Puerto Rico Law 17, Law 69 and Law 115. Id. at ¶¶ 46-48. Plaintiff’s complaint also  
23 includes an alleged sixth cause of action. (See Docket No. 1 at ¶¶ 49-51). This appears to be an

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1 attempt to plead a cause of action under 42 U.S.C. § 1983, or so this court presumes. However, as  
2 this court will explain in further detail below, Plaintiff failed to adequately plead the elements of a  
3 § 1983 cause of action and the Defendant’s motion to dismiss this count is granted. For each of  
4 the claims outlined above, the Plaintiff cast a broad net of alleged liability encompassing both the  
5 Individual and Commonwealth Defendants.

6 Defendants timely moved to dismiss some of the Plaintiff’s claims pursuant to FED. R.  
7 Civ. P. 12(B)(6). (Docket No. 11). Defendants move to dismiss Plaintiff’s gender discrimination  
8 (sexual harassment) claim under Title VII arguing that the alleged incidents of sexual harassment  
9 do not amount to the required level of severity or pervasiveness for a colorable claim under Title  
10 VII. Id. at 6-12. Moreover, with regards to the Title VII count, the Individual Defendants also  
11 moved to dismiss both the retaliation and sexual harassment claims on the ground that Title VII  
12 does not recognize individual liability. Id. at 7-8. In addition, Defendants moved to dismiss  
13 Plaintiff’s claims under 42 U.S.C. § 1983 (“Section 1983”) on two grounds: (i) Plaintiff failed to  
14 state in her complaint any cognizable claim under Section 1983 and (ii) Plaintiff failed to toll the  
15 statute of limitations for Section 1983 claims. Id. at 15-18.

16 With respect to the supplemental claims under Puerto Rico law, the Commonwealth  
17 Defendants moved to dismiss all claims under Law 17, Law 69 and Law 115 against the  
18 Commonwealth Defendants and the Individual Defendants, acting in their official capacity, on  
19 Eleventh Amendment sovereign immunity grounds. Id. at 18-21. The Individual Defendants also  
20 moved to dismiss local law claims under Law 17 and Law 69, arguing that they were not put on  
21 adequate notice of the pending claims and the statute of limitations of these claims therefore  
22 expired, and claims under Law 115 on account that it only addresses the liability of employers,  
23 not employees or supervisors. (Docket No. 11 at 12-15).

1 Plaintiff timely filed a Response in Opposition to Defendant’s Motion to dismiss  
2 countering the majority of the Defendant’s arguments on various grounds. (See Docket No. 17).  
3 In particular, Plaintiff argues that she successfully pleaded the Title VII claims, Id. at 3-8, that  
4 Law 115 provides liability for employees and supervisors, Id. at 9, that her filing of an EEOC  
5 complaint put the Individual Defendants on notice of her claims and tolled the applicable statute  
6 of limitations, Id. at 10-11, and that her Section 1983 claims are not time-barred. Id. at 11-13. In  
7 turn, Defendants replied, specifically seeking to clarify their arguments Plaintiff’s Section 1983  
8 claims and emphasizing that their argument rests on both inadequate pleadings and tolling  
9 grounds. (See Docket No. 20).

10 **III. Discussion**

11 **A. Plaintiff’s Hostile Work Environment Claim Under Title VII**

12 Defendants move to dismiss the hostile work environment claim (sexual harassment) on  
13 the ground that the factual allegations within Plaintiff’s complaint do not rise up to the level of  
14 conduct that is sufficiently severe or pervasive to be actionable under Title VII. (See Docket No.  
15 11 at 6). Title VII prohibits employers from discriminating “against any individual with respect  
16 to compensation, terms, conditions, or privileges of employment, because of such individual’s  
17 race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e–2(a)(1). There are various types  
18 of actionable sexual harassment claims recognized under Title VII: *quid pro quo* harassment  
19 claims, hostile work environment claims, and retaliation claims. See Acevedo Torres v. Arcibo,  
20 857 F. Supp. 2d 231, 234 (D.P.R. 2012); Valentin-Almeyda v. Municipality of Aguadilla, 447  
21 F.3d 85, 94 (1st Cir. 2006). Plaintiff’s complaint basically alleges that as a result of the sexual  
22 harassment she suffered from Rivera, Rodríguez’s failure to investigate the matter after she  
23 complained and her being transferred to another office due to her having complained to

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1 Rodríguez, she had to endure working in a hostile work environment. (See Docket No. 1 at 6-12).  
2 As a matter of law, “[w]hen harassment follows hard on the heels of protected activity,” a  
3 universe of activities that includes Plaintiff’s alleged conduct that consisted of complaining to her  
4 regional supervisor about sexual harassment and seeking internal administrative redress, “the  
5 timing often is strongly suggestive of retaliation.” See Noviello v. City of Boston, 398 F.3d 76,  
6 86 (1st Cir. 2005). Furthermore, the First Circuit held “that, under Title VII, the creation and  
7 perpetuation of a hostile work environment can comprise a retaliatory adverse employment action  
8 under [Title VII].” Id.

9 The Supreme Court has held that discrimination “because of ... sex” also includes  
10 “requiring people to work in a discriminatorily hostile or abusive environment.” Harris v. Forklift  
11 Sys., Inc., 510 U.S. 17, 21 (1993). For a complaint to sufficiently state a viable Title VII hostile  
12 work environment claim, a plaintiff must sufficiently allege: (1) that she (or he) is a member of a  
13 protected class; (2) that she was subjected to unwelcome sexual harassment; (3) that the  
14 harassment was based upon sex; (4) that the harassment was sufficiently severe or pervasive so as  
15 to alter the conditions of plaintiff’s employment and create an abusive work environment; (5) that  
16 sexually objectionable conduct was both objectively and subjectively offensive, such that a  
17 reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so;  
18 and (6) that some basis for employer liability has been established. See Acevedo Torres, 857 F.  
19 Supp. 2d at 234-5 (quoting Forrest v. Brinker Intern. Payroll Co., LP, 511 F.3d 225, 228 (1st Cir.  
20 2007) (internal quotations omitted)).

21 Defendants essentially argue that Plaintiff’s complaint does not establish conduct  
22 constituting sexual harassment that is sufficiently severe or pervasive for Title VII liability to  
23 attach. (See Docket No. 11 at 10). In other words, Defendant’s focus their attacks on Plaintiff’s



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1 allegations by arguing that prong four (4) of the hostile work environment framework has not  
2 been met. Even after recognizing that the First Circuit has been clear in stating that there is “no  
3 mathematically precise test” to evaluate evidence of an alleged hostile work environment,  
4 Defendants nevertheless argue that the three incidents described within Plaintiff’s complaint do  
5 not rise to the required level of severity and pervasiveness and that, in any case, the First Circuit  
6 has heard before it cases where the alleged behavior was “more gruesome” and yet insufficient to  
7 justify Title VII liability. (See Docket No. 11 at 11, discussing Kosereis v. Rhode Island, 331  
8 F.3d 207, 216 (1st Cir. 2003) and Chamberlin v. 101 Realty, Inc., 915 F.2d 777, 783 (1st Cir.  
9 1990)).

10 To wit, Plaintiff alleges that Rivera’s sexual harassment began when Rivera asked her  
11 about her marital status and whether she was in a relationship. (Docket No. 1 at 3, ¶ 3). A couple  
12 of days later, Rivera asked Plaintiff her age and subsequently whispered in her ear “you look hot  
13 for your age,” prompting Plaintiff to feel uncomfortable, leave her desk and concentrate on her  
14 other work responsibilities. Id. at 4, ¶ 19-20. Finally, Plaintiff alleges that Rivera pressed his  
15 body against her and rubbed her “gluts” (sic), prompting her to feel humiliated and cry. Id. at ¶  
16 21. Defendants counter each of these allegations by characterizing each alleged event as  
17 “harmless and totally innocuous”, “expressing admiration at her good looks”, and merely a  
18 “single occasion” of groping not sufficiently severe or pervasive. (See Docket No. 11 at 11).

19 As a threshold matter, the severe or pervasive inquiry is highly fact specific. Marrero v.  
20 Goya of P.R., Inc., 304 F.3d 7, 19 (1st Cir. 2002). To assess whether conduct is sufficiently  
21 severe or pervasive to create a hostile environment, the court must consider the totality of the  
22 circumstances. See Figueroa García v. Lilly del Caribe, Inc., 490 F. Supp. 2d 193, 204 (D.P.R.  
23 2007). When characterizing a hostile or abusive workplace, courts have “drawn a continuum  
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1 between commonplace indignities and actionable harassment.” Id. A court has some latitude in  
2 evaluating the conduct in question, and should consider factors such as “the frequency of the  
3 discriminatory conduct; its severity; whether it is threatening or humiliating, or merely an  
4 offensive utterance; and whether it unreasonably interferes with the employee’s work  
5 performance.” Harris, 510 U.S. at 21. “Subject to some policing at the outer bounds, it is for the  
6 jury to weigh [the] factors and decide whether the harassment was of a kind or to a degree that a  
7 reasonable person would have felt that if affected the conditions of her employment.” Id.  
8 (internal quotations omitted). Nevertheless, “[t]he existence of a hostile environment is  
9 determined by the finder of fact, though . . . that does not prevent a court from ruling that a  
10 particular set of facts cannot establish a hostile environment as a matter of law in an appropriate  
11 case.” Billings v. Town of Grafton, 515 F.3d 39, 47 (1st Cir. 2008) (internal citations omitted);  
12 Gorski v. N.H. Dep’t of Corr., 290 F.3d 466, 474 (1st Cir. 2002).

13         The Defendants may be ultimately correct in that the alleged conduct is neither severe nor  
14 pervasive enough to warrant hostile work environment (sexual harassment) liability under Title  
15 VII, but this court disagrees with the notion that, at this point of the proceeding, more is required  
16 from the Plaintiff and her initial pleadings. A cursory read of Plaintiff’s complaint and factual  
17 allegations, see Docket No. 1, describe a pattern of conduct that could well reveal that sexual  
18 harassment occurred and Plaintiff’s conduct before pertinent authorities subsequently led to her  
19 being subjected to a hostile work environment. Holding otherwise would be akin to requiring that  
20 a potential plaintiff embellish their facts and ignore the pragmatic underpinning of pleading  
21 standards. The pleadings stage should avoid becoming Kabuki theatres more than they already  
22 are. What is ultimately important is that Plaintiff’s complaint gives Defendants notice of the set  
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1 grounds on which her claim for relief rest. Thus, this court believes that Plaintiff has successfully  
2 pleaded a set of facts that satisfy the pleading requirements under Rule 12(b)(6).

3 Viewing the complaint's allegations in the light most favorable to Plaintiff, the court  
4 concludes that they are sufficient to withstand a Rule 12(b)(6) motion to dismiss. It remains to be  
5 seen whether Plaintiff can demonstrate conduct sufficiently severe or pervasive to support her  
6 sexual harassment claim and it may ultimately be a question of fact for a jury to decide. Her  
7 allegations, however, are sufficient to state a claim upon which relief can be granted and survive  
8 the motion to dismiss stage. Accordingly, the court **DENIES** Defendants' motion to dismiss  
9 Plaintiff's sexual harassment, hostile work environment claim under Title VII.

10 **B. Individual Liability under Title VII**

11 Defendants next moves to dismiss Plaintiff's Title VII gender discrimination and  
12 retaliation claims against the Individual Defendants, in their personal capacity, on the ground that  
13 Title VII does not provide a legal remedy against individuals. (Docket No. 11 at 7-8). Plaintiff  
14 conceded this point. (Docket No. 17 at 8). This court separately notes that the First Circuit has  
15 held that there is no individual liability under Title VII. See Reyes-Ortiz v. McConnell Valdes,  
16 714 F. Supp. 2d 234, 238 (D.P.R. 2010) (discussing Fantini v. Salem St. Coll., 557 F.3d 22, 31  
17 (1st Cir. 2009)). Accordingly, the court **GRANTS** Defendants' motion to dismiss with prejudice  
18 Plaintiff's gender discrimination and retaliation claims under Title VII against the Individual  
19 Defendants in their personal capacity.

20 **C. Section 1983**

21 Defendants move to dismiss Plaintiff's monetary and injunctive claims under Section  
22 1983 on two substantive grounds. First, they argue that Plaintiff failed to state any claim that  
23 Defendants violated her constitutional rights pursuant to Section 1983. (Docket No. 11 at 15-18.)

1 Second, Defendants argue that notwithstanding the Plaintiff's inadequate pleading, Plaintiff's  
2 Section 1983 is time-barred because she failed to toll the applicable statute of limitations. Id. at  
3 18. This court agrees with both arguments and explains the analytical basis for each in turn.

4 **i. Plaintiff Failed to State a Cognizable Section 1983 Claim**

5 Section 1983 "affords redress against a person who, [acting] under color of state law,  
6 deprives another person of any federal constitutional or statutory right." Medina-Medina v. P.R.,  
7 769 F. Supp. 2d 77, 82 (D.P.R. 2011); see also Omni Behavioral Health v. Miller, 285 F.3d 646,  
8 650–651 (8th Cir. 2002) (citing City of Okla. City v. Tuttle, 471 U.S. 808, 816 (1985)). Section  
9 1983 does not confer substantive rights, but provides a venue for vindicating federal rights  
10 elsewhere conferred. See Graham v. M.S. Connor, 490 U.S. 386, 393–394 (1989). Put another  
11 way, it creates "no independent substantive right, but rather, provides a cause of action by which  
12 individuals may seek money damages for governmental violations of rights protected by federal  
13 law." Cruz-Erazo v. Rivera-Montanez, 212 F.3d 617, 621 (1st Cir. 2000).

14 In both their Motion to Dismiss and Reply to Response in Opposition to Motion to  
15 Dismiss, Defendants argue that Plaintiff's Section 1983 claims should be dismissed because she  
16 failed to include any claim that her rights had been violated per 42 U.S.C. § 1983. In assessing  
17 whether or not the Plaintiff included a Section 1983 claim in the face of her complaint, the First  
18 Circuit looks at the "substance and structure" of the complaint. See Cortes-Rivera v. Dept. of  
19 Corr., 626 F.3d 21, 28 (1st Cir. 2010). With this approach in mind, Courts should proceed to  
20 follow the "more prudent course." Morales-Vallellanes v. Potter, 339 F.3d 9, 15 (1st Cir. 2003).  
21 To be sure, a Plaintiff may validly plead a cognizable claim that she suffered discrimination and  
22 retaliation pursuant to Title VII under Rule 8's liberal notice pleading requirement even if she  
23 "fail[ed] to cite any statutory basis for relief." Id. Nevertheless, the structure and substance of

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1 Plaintiff's complaint and, for that matter, subsequent Response (Docket No. 17), lead this court to  
2 conclude that Plaintiff did not assert a cognizable claim under Section 1983.

3 Plaintiff divides the counts of her complaint into six causes of action. See Docket No. 1 at  
4 6-8. Counts One through Five clearly identify the particular statutory basis for relief that the  
5 Plaintiff is invoking. Id. The sixth proffered cause of action does not invoke any statutory or  
6 constitutional basis for relief and merely includes the conclusory statement that "Defendant's  
7 conduct constitutes a wanton and callous disregard for Hernandez-Mendez' [sic] federally  
8 protected rights" and are therefore liable for punitive damages. (Docket No. 1 at 8, ¶ 50).  
9 Elsewhere within the four corners of Plaintiff's complaint, Section 1983 is mentioned only in  
10 passing twice. Both times, fleeting references to Section 1983 are included as part of a list of  
11 statutes in the introductory parts of the complaint with no further effort to, at the very least, flush  
12 out the substantive elements of a Section 1983 cause of action. (See Docket No. 1 at 1, ¶ 1; 2, ¶  
13 2).

14 "It is well settled that in order for a claim to be cognizable under section 1983, a plaintiff  
15 must plead and prove three elements: (1) that the defendant acted under color of state law; (2) that  
16 the plaintiff was deprived of federally protected rights, privileges, or immunities; and (3) that the  
17 defendant's alleged conduct was causally connected to the plaintiff's deprivation." See  
18 Vizcarrondo v. Bd. of Tr. Univ. of P.R., 139 F. Supp. 2d 198, 206 (D.P.R. 2001) (internal  
19 citations omitted). Based on the pleadings submitted to this court, no amount of arid speculating  
20 sheds light on exactly which federal constitutional or statutory right Plaintiff claims was violated.  
21 "A fundamental purpose of pleadings under the Federal Rules of Civil Procedure is to afford the  
22 opposing party fair notice of the claims asserted against him and the grounds on which those  
23 claims rest." Rodríguez v. Doral Mortg. Corp., 57 F.3d 1168, 1171 (1st Cir. 1995). Plaintiff

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1 makes no attempt to identify the grounds on which a Section 1983 claim would stand and neither  
2 courts, nor Defendants, for that matter, should not be expected to flip through the pages of a  
3 complaint as if reading Section 1983 tea leaves. Therefore, this court agrees with Defendants and  
4 holds that Plaintiff did not assert a legal basis for a Section 1983 claim.

5 **ii. Plaintiff's Section 1983 Claims Are Time-Barred**

6 Even if this court were to hold that Plaintiff stated a cognizable claim under Section 1983,  
7 Defendants argue that these claims are now time-barred. (Docket No. 11 at 15-18). Plaintiff  
8 counters that the applicable statute of limitations for a Section 1983 claim should be tolled by the  
9 filing of Title VII administrative proceeding before the EEOC. (Docket No. 17 at 12-13). To  
10 date, the First Circuit and the Puerto Rico Supreme Court have not ruled definitively on this  
11 matter and this remains an open question of law.

12 Section 1983 does not supply a statute of limitations for itself. See Rodríguez Torres v.  
13 Muniz Gonzalez, 898 F. Supp. 2d 433, 436 (D.P.R. 2012). However, the Supreme Court held that  
14 courts must generally borrow the forum state's limitations period governing personal injury  
15 actions. (See Wilson v. García, 471 U.S. 261, 266 (1985)). Therefore, Puerto Rico's very own  
16 statute of limitations governs suits in federal courts arising under Section 1983. Benitez-Pons v.  
17 Com. of Puerto Rico, 136 F. 3d 54, 59 (1st Cir. 1998). In Puerto Rico, the applicable limitation  
18 period for intentional tort actions is one year. P.R. LAWS ANN. tit. 31 § 5141; see also Carreras-  
19 Rosa v. Alves-Cruz, 127 F.3d 172, 174 (1st Cir. 1997); Torres v. Superintendent of Police, 893  
20 F.2d 404, 406 (1st Cir. 1990). Accordingly, federal courts sitting in Puerto Rico must apply the  
21 one-year personal injury statute of limitations for tort actions when adjudicating Section 1983  
22 claims. See Rodríguez-García v. Municipality of Caguas, 354 F.3d 91, 96 (1st Cir. 2004);  
23 Guzman-Rivera v. Rivera-Cruz, 29 F.3d 3, 4-5 (1st Cir. 1994).

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1 Federal law, however, determines the date on which the claim *accrued*. Rivera-Muriente  
2 v. Agosto-Alicea, 959 F.2d 349, 353 (1st Cir. 1992); United States v. Kubrick, 444 U.S. 111  
3 (1979). The limitations period begins to run “one day after accrual” which is the date when the  
4 plaintiff “knows or has reason to know of the injury which is the basis for his claim.” Benitez-  
5 Pons, 136 F.3d at 59; Rodríguez-García, 354 F.3d at 96-97 (citing Rodríguez Narvaez v. Nazario,  
6 895 F.2d 38, 41 n. 5 (1st Cir. 1990). See also Ramos v. Roman, 83 F. Supp. 2d 233, 238 (D.P.R.  
7 2000). In an employment setting, the statute of limitations applicable is one year from the date  
8 that the employee is notified in writing of his/her discharge or on the date of the alleged Section  
9 1983 violation. Rodríguez Torres, 898 F. Supp. at 437; see also Chardon v. Fernandez, 454 U.S.  
10 6, 7 (1982).

11 Here, Plaintiff was never discharged nor did she voluntarily quit. Plaintiff claims the  
12 alleged acts of sexual harassment began in March/April 2013 and hostile work environment  
13 continued until, presumably, although not entirely clear from the complaint, she was transferred  
14 out of the Aguadilla I office in May 2013. (See Docket No. 17 at 12). Even if not dispositive for  
15 the purposes of this immediate tolling analysis, this court considers that the limitations period for  
16 Plaintiff’s Section 1983 claims began to run no later than May 2013, when Plaintiff was  
17 transferred out of the Aguadilla I Office and was presumably no longer exposed to a hostile work  
18 environment. All things being equal, Plaintiff would be time-barred from asserting a Section  
19 1983 claim absent tolling of the claim per Puerto Rico law. More than a year has passed between  
20 May 2013 and the filing of this action on February 19, 2015. To save her claim, Plaintiff argues  
21 that the filing of an extrajudicial claim, in the form of a Title VII proceeding before the EEOC,  
22 tolled the Section 1983 statute of limitations. This strategy is unavailing.

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1 It is well settled that tolling of the Section 1983 statute of limitations is a matter of state  
2 law. See, e.g., Benitez-Pons, 136 F.3d at 59; Torres, 893 F.2d at 407. Under the Puerto Rico  
3 Civil Code, the filing of an extrajudicial claim toll the statute of limitations. P.R. LAWS ANN. tit.  
4 31, § 5303 (1991); Benitez-Pons, 136 F.3d at 59. However, for an extrajudicial claim to toll a  
5 statute of limitations on a judicial claim, both causes of action and the relief requested must be the  
6 same. Tit. 31, § 5303; see Id. at 54. Put in other words, the extrajudicial claim must be  
7 “identical” to the claim actually filed in court. Id at 59.

8 The First Circuit held that to be “identical” the claims asserted in the subsequent action:  
9 (1) “must seek the same form of relief” as the first action; (2) “must be based on the same  
10 substantive claims”; and (3) “provided that other Puerto Rico tolling statutes do not rescue the  
11 claims on other grounds . . . must be asserted against the same defendants in the same capacities;  
12 new defendants should not be added.” Rodríguez v. Suzuki Motor Corp., 570 F.3d 402, 409 (1st  
13 Cir. 2009). See Rodríguez-Garcia, 354 F.3d at 98.<sup>1</sup> “[T]he tolling is effective with regard only to  
14 identical causes of action. The statute of limitations is not tolled for all claims arising out of the  
15 same facts. . . .” Fernandez v. Chardon, 681 F.2d 42, 49 (1st Cir. 1982). In other words, “to toll  
16 the statute the action must be the case at bar, and not merely a somewhat related action arising  
17 from the same facts,” Ramirez de Arellano v. Alvarez de Choudens, 575 F.2d 315, 320 (1st Cir.  
18 1978). If these requirements are met, the filing of a complaint results in the statute of limitations  
19 running anew from the time that action comes to a definite end. Rodríguez-Garcia, 354 F.3d at  
20 97.

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21  
22 <sup>1</sup> The Supreme Court of Puerto Rico has approved this identity requirement. Rodríguez-Garcia,  
23 354 F.3d at 97. See Cintron v. Estado Libre Asociado de P.R., 27 P.R. Offic. Trans. 582, 127 P.R. Dec. 582  
(1990) (holding that a timely filed extrajudicial claim did not toll the statute of limitations for a suit in the  
Puerto Rico courts because it did not “pursue identical claims”).



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1 A pause is warranted to discuss the underlying policy behind this rule. This identity  
2 requirement serves to prevent plaintiffs from circumventing the notice function of the statutes of  
3 limitations by asserting different claims in belated federal court complaints. See Suzuki Motor  
4 Corp., 570 F.3d at 409; Rodríguez Narvaez, 895 F.2d at 43 (holding that statutes of limitations  
5 exist to prevent defendants from being surprised by long-dormant causes of action). An  
6 extrajudicial letter must give fair notice of the claims that are subsequently raised. Santana-Castro  
7 v. Toledo-Davila, 579 F.3d 109, 115 (1st Cir. 2009). Plaintiff may not sidestep the statute of  
8 limitations' inherent role as a provider of notice by asserting different claims in belated federal  
9 court complaints. See Torres-Santiago v. Diaz-Casiano, 708 F. Supp. 2d 178, 185 (D.P.R. 2009).  
10 “[T]olling provisions [are] interpreted restrictively against the person invoking their protection,”  
11 the requirements for making an extrajudicial claim are strict. Nieves-Vega v. Ortiz-Quiñones, 443  
12 F.3d 134, 137 (1st Cir. 2006); see also Rodríguez Narváez, 895 F.2d at 43.

13 Plaintiff argues that her Title VII claim before the EEOC is sufficiently identical to her  
14 Section 1983 claims before this court. She reasons that because courts employ similar analytical  
15 framework for adjudicating Title VII and Section 1983 claims, and both claims arise out of the  
16 same “nucleus of operative fact”, this court should hold that the applicable statute of limitations  
17 was tolled. (See Docket No. 17 at 13). This court disagrees. The Supreme Court of Puerto Rico  
18 already zeroed in on the element of jurisdiction as a pivotal issue to answering this question and  
19 held that the statute of limitation for tort actions is not tolled by the filing of administrative  
20 actions in so far as the administrative agency has no jurisdiction over tort claims. Iravedra v. Pub.  
21 Bldgs. Auth., 283 F. Supp. 2d 570, 577 (quoting Cintron v. E.L.A., 127 P.R. Dec. 582, 595-96  
22 (1990). It is therefore of no consequence that the Section 1983 claims arose, or may have arisen,  
23 from the same sequence of events that gave rise to the administrative complaint before the EEOC.

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1 See Iravedra at 577. Plaintiff’s argument is defeated by the fact that the EEOC has “no  
2 jurisdiction over claims brought pursuant to § 1983.” Sifre v. Department of Health, 38 F. Supp.  
3 2d 91, 96 (D.P.R. 1999) (citing Leon–Nogueras v. Univ. of P.R., 964 F. Supp. 585, 587 (D.P.R.  
4 1997)).

5 Accordingly, this court **GRANTS** Defendants’ motion to dismiss Plaintiff’s Section 1983  
6 claims.

7 **D. Supplemental State Law Claims**

8 Based on the same factual allegations supporting her Title VII claims, Plaintiff asserts a  
9 cause of action against Defendants under Puerto Rican law. (See Docket No. 1). Specifically,  
10 she alleges claims: Law 17 (sexual harassment); Law 69 (gender discrimination); Law 115  
11 (retaliation). Defendants argue that these supplemental sexual harassment (hostile work  
12 environment) and retaliation claims should be dismissed on the following grounds: (1) Plaintiff  
13 failed to notify the Individual Defendants in their personal capacity of her claims under Law 17  
14 and Law 69 and, as a result, these claims are now time-barred, (2) the Individual Defendants are  
15 not subject to the provisions of Law 115 because it only applies to employers, and (3) the  
16 Commonwealth Defendants and Individual Defendants in their official capacities are immune  
17 from lawsuits seeking damages due to Eleventh Amendment Sovereign Immunity. (See Docket  
18 No. 11). This court addresses each of these arguments as set forth in turn.

19 **i. Individual Defendants and Law 17 and Law 69**

20 Defendants posit that Plaintiff’s claims against the Individual Defendants in their personal  
21 capacity pursuant to Law 17 and Law 69 are time-barred because the EEOC claims were  
22 addressed to the Individual Defendants in their *official* capacity, not their *personal* capacity, and  
23

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1 therefore failed to toll the applicable statute of limitations for lack of notice.<sup>2</sup> (See Docket No. 11  
2 at 14-15, 22). Plaintiff counters that a “simple reading” the EEOC administrative complaint (See  
3 Docket No. 16-1) reveals that it was sufficiently detailed to put Rivera and Rodríguez on notice  
4 about the pending claims and that it’s unreasonable to argue that the Individual Defendants were  
5 not aware of these claims that could be lodged against them in their personal capacity. (See  
6 Docket No. 17 at 11). Notwithstanding thin arguments on both sides, this court is not persuaded  
7 by Defendants’ argument.

8 Under Puerto Rico’s tolling provision, found in Article 1873 of the Civil Code, P.R. LAWS  
9 ANN. tit. 31, § 5303, “[p]rescription of actions is interrupted by their institution before the courts,  
10 by extrajudicial claim of the creditor, and by any act of acknowledgement of the debt by the  
11 debtor.” It is comfortably settled that an EEOC administrative proceeding is an “extrajudicial  
12 claim” for the purposes of Puerto Rico’s tolling provision. E.g. Matos-Molero, 132 P.R. Dec. 470  
13 (P.R. 1993). In grappling with the amorphous jungle of Civil Code terminology, the Supreme  
14 Court of Puerto Rico’s was able to give teeth to the term “extrajudicial claim” with their  
15 endorsement of a Spanish commentator’s explanation. “In principle, claim stands for demand or  
16 notice. That is: it is an act for which the holder of a substantive right, addresses the passive  
17 subject of said right, demanding that he adopt the required conduct. The claim, then, is a  
18 pretension in a technical sense.” Rodríguez-Narváez, 895 F.2d 38, 44 (1st Cir. 1990) (internal  
19

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20 <sup>2</sup> Plaintiff correctly asserts that Defendants failed to argue that their supplemental claims under Law  
21 17 and Law 69 should be dismissed along with Plaintiff’s Title VII sexual harassment claims. (See Docket  
22 No. 17, 10 n.1). A subsequent response filed *after* the Plaintiff raised this point did not address these claims  
23 either. (See Docket No. 20). The First Circuit has held that Title VII precedent is used in construing the  
24 analogous Puerto Rican laws. Hernandez-Loring v. Universidad Metropolitana, 233 F.3d 49, 56 (1st Cir.  
2000). Regardless, this court denied Defendants’ motion to dismiss Plaintiff’s Title VII and, as such, would  
have held the same had this point been adequately argued.

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1 citations omitted). Ensuring that adequate notice to a potential defendant was provided should,  
2 therefore, be one of the most important goals of the foregoing analysis.

3 The filing of an EEOC complaint alleging sex discrimination in violation of Title VII  
4 normally tolls the statute of limitations on equivalent Puerto Rico law claims. Huertas-Gonzalez  
5 v. Univ. of P.R., 520 F. Supp. 2d 304, 316–17 (D.P.R. 2007). The First Circuit has applied this  
6 principle to both Law 17 and Law 69 claims. Valentín-Almeyda, 447 F.3d 85 at 101 (citing Tit.  
7 31, § 5303) (tolling a Law 17 claim); see also Gerald v. Univ. of P.R., 707 F.3d 7, 27 (1st Cir.  
8 2013). In prior cases, this court has taken a strict, somewhat structural approach in construing this  
9 notice requirement and required that the extrajudicial claim be “personally notified to the  
10 defendant if it is to have a tolling effect.” Leon-Nogueras, 964 F. Supp. at 588. In practice, prior  
11 courts have looked to the record and made a judgment call on the extent a particular defendant  
12 was adequately put on notice of the pending legal claims by the filing of an EEOC complaint. An  
13 emphasis has been placed on whether the defendant is an individual or an institution, the  
14 defendant is being sued in their personal or official capacity and whether the defendant was  
15 personally notified of the pending EEOC claims, or not. Huertas-Gonzalez, 520 F. Supp. 2d at  
16 317-18; Leon-Nogueras, 964 F. Supp. at 589.

17 In Huertas-Gonzalez, the court looked to the record and searched for something indicative  
18 of the party being hailed to court having received, via the EEOC proceeding, notice of potential  
19 claims that could be lodged against them in their personal capacities. It ruled against the Plaintiff  
20 and found that the defendants had not been “personally notified”: “nowhere in the record does it  
21 show that [co-defendant being sued in his official and personal capacities] was personally notified  
22 of the filing of the EEOC claim nor of the EEOC’s final decision.” Huertas-Gonzalez, 520 F.  
23 Supp. 2d at 318. In Leon-Nogueras, the plaintiff similarly did not “not provide[] any evidence

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1 that [defendant] was ever personally notified of the administrative charge.” Leon-Nogueras, 964  
2 F. Supp. 589-90 (D.P.R. 1997) (emphasis added). This court believes this emphasis on evidence  
3 of defendants being “personally notified” is the proper approach that comports with the purpose  
4 of Puerto Rico’s tolling statute. It is not bitterly formulaic, but rather, grounded in common  
5 sense, practicality and justice to the parties being hailed to a court on a case by case basis.

6 With this in mind, this court takes a step back and approaches this delicate question with  
7 respect and a keen eye on the interest of justice. Plaintiff is correct to argue that the Individual  
8 Defendants, as both the alleged active wrongdoers and supervisor-employees of the  
9 Commonwealth Defendants, should be assumed as having, at the very least, some knowledge of  
10 the salient grievances of the complaint lodged with the EEOC. (See Docket No. 17 at 11). But  
11 this court also recognizes that the EEOC complaint, dated November 11, 2013, is only addressed  
12 to the Individual Defendants in their official capacities as employees of the Commonwealth  
13 Defendants, not as individuals in their personal capacity. (See Docket No. 16-1). At this stage of  
14 the litigation, with no more information before this court to decide whether the Individual  
15 Defendants in their personal capacities were “personally notified,” the balance of equities favors  
16 denial of the Defendant’s motion to dismiss Law 17 and Law 69 claims as time-barred. To be  
17 sure, an administrative charge before the EEOC is the functional equivalent of a claim brought  
18 before a court, but the Individual Defendants deserved to be personally notified of pending claims  
19 against them the moment they accrued and further evidence may shed light on the matter.  
20 Nevertheless, this court cannot say for certain what would constitute proper notice to the  
21 Individual Defendants in their personal capacity and persuasive precedent suggests that such an  
22 inquiry is context-dependent and fact-specific.

1 As such, this court **DENIES without prejudice** Defendants' motion to dismiss Plaintiff's  
2 supplemental claims under Puerto Rico Law 17 and Law 69 claims as time-barred.

3 **ii. Individual Defendants and Law 115**

4 Next, Defendants argue that Plaintiff's claims against the Individual Defendants in their  
5 personal capacity should be dismissed because Law 115 only applies to employers, not  
6 supervisors. (See Docket No. 11 at 12-13). Plaintiff counters that there is no binding precedent  
7 interpreting the wording of Law 115 to *not* apply to supervisor employees in their personal  
8 capacity and that this court should adopt the reasoning of those courts that have deemed Law 115  
9 to apply to supervisor employees. (See Docket 17 at 9). While this issue remains to be decided  
10 by the Puerto Rico Supreme Court, and this court recognizes a conflict between decisions on the  
11 matter, this court has held before that Law 115 is not actionable against supervisors in their  
12 personal capacity and remains unpersuaded that its reach extends to supervisors. This court  
13 therefore declines Plaintiff's invitation to hold otherwise.

14 Law 115 "protects employees that collaborate in investigations or offer testimony before an  
15 administrative, judicial or legislative forum, from adverse actions by their employers." Salgado-  
16 Candelario v. Ericsson Caribbean, Inc., 614 F. Supp. 2d 151, 177 (D.P.R. 2008) (citing Tit. 29 §  
17 194a). In Otero-Merced v. Preferred Health Inc., 680 F. Supp. 2d 388, 393 (D.P.R. 2010), this  
18 court noted, as it does today, that the question of individual liability under Law 115 has gone  
19 unanswered by the Puerto Rico Supreme Court. As a result, there is no definitive agreement on the  
20 exact contours of Law 115's web of liability. See Rivera Maldonado v. Hosp. Alejandro Otero  
21 Lopez, 614 F. Supp. 2d 181, 197 (D.P.R. 2009) (finding no individual liability under Law 115,  
22 relying on findings by the Puerto Rico Court of Appeals in Vargas Santiago v. Álvarez Moore,  
23 2006 WL 3694659 (P.R. Cir. 2006)), cf. Hernández v. Raytheon Serv. Co. P.R., 2006 WL

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1 1737167, at \*2 (D.P.R. 2006) (concluding the opposite, relying on the liberal construction  
2 employed by the Puerto Rico Supreme Court in Rosario Toledo v. Distribuidora Kikuet, 151  
3 P.R.Dec. 634 (2000), in favor of employees in discrimination cases).

4 Nevertheless, this court recognized in Otero-Merced that “[i]n 2003 and in 2006, the Puerto  
5 Rico Court of Appeals issued cogent, instructive decisions wherein it discussed the implications of  
6 [the Puerto Rico Supreme Court’s decision in] Kikuet, comparing the language and purpose of  
7 Law 100 with that of Law 115.” Id. at 393 (citing Vargas Santiago, 2006 WL 3694659 (P.R. Cir.  
8 2006), Rivera Maldonado, 614 F. Supp. 2d at 197; Sánchez Barreto, 2003 WL 23336311 (P.R. Cir.  
9 Nov. 6, 2003)). “The court, in both [cases], determined that no individual liability exists under  
10 Law 115.” Otero-Merced, 680 F. Supp. 2d at 393 (citing Vargas Santiago, 2006 WL 3694659 at  
11 \*5; Sánchez Barreto, 2003 WL 23336311, at \*4). As interpreted by the Puerto Rico Court of  
12 Appeals, this means that any action commenced under the provisions of Law No. 115 shall be filed  
13 only against the employer. See Vargas Santiago, 2006 WL 3694659 at \*5. In accordance with the  
14 foregoing, to the extent that Law 115 retaliation claims are alleged as to the Individual Defendants  
15 in the personal capacity, this court **GRANTS** Defendant’s motion to dismiss at Docket 11 as to the  
16 Individual Defendants.

17 **iii. The Eleventh Amendment**

18 Defendants argue that Plaintiff’s Puerto Rico law gender discrimination and retaliation  
19 claims under Law 17, Law 69 and Law 115 against the Commonwealth Defendants are barred by  
20 the Eleventh Amendment to the Constitution of the United States and should be dismissed with  
21 prejudice. (See Docket No. 11 at 18-22). As mentioned before, all of the Plaintiff’s Section 1983  
22 claims have been dismissed on other grounds. Plaintiff acknowledges, but does not dispute,  
23 Defendant’s sovereign Eleventh Amendment immunity argument. (See Docket 17 at 3).

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1           The Eleventh Amendment bars suits in federal courts for damages against any state without  
2 its consent. Díaz Morales v. P.R., No. 2015 WL 474251, at \*3 (D.P.R. Aug. 11, 2015); Fresenius  
3 Med. Care Cardiovascular Res., Inc. v. P.R. and Caribbean Cardiovascular Ctr. Corp., 322 F.3d 56,  
4 61 (1st Cir. 2003); Futura Dev. v. Estado Libre Asociado, 144 F.3d 7, 12-13 (1st Cir. 1998)).  
5 “The Commonwealth of Puerto Rico is considered a state for purposes of the Eleventh  
6 Amendment.” Cruz v. P.R., 558 F. Supp. 2d 165, 173 (D.P.R. 2007) (citing Metcalf & Eddy, Inc.  
7 v. P.R. Aqueduct & Sewer Auth., 991 F.2d 935, 939 n.3 (1st Cir. 1993); De Leon Lopez v. Corp.  
8 Insular de Seguros, 931 F.2d 116, 121 (1st Cir. 1991); P.R. Ports Auth. v. M/V Manhattan Prince,  
9 897 F.2d 1, 9 (1st Cir. 1990)). Eleventh Amendment immunity protects the state and the arms or  
10 alter egos of the state. Ainsworth Aristocrat Int’l Pty. Ltd. v. Tourism Co. of the Commonwealth  
11 of P.R., 818 F.2d 1034, 1036 (1st Cir. 1987); see also Vaqueria Tres Monjitas, Inc. v. Irizarry, 587  
12 F.3d 464, 477 (1st Cir. 2009) (citations omitted) (“An administrative arm of the state is treated as  
13 the state itself for the purposes of the Eleventh Amendment, and it thus shares the same  
14 immunity.”). Additionally, the Eleventh Amendment protects a state official from suits against  
15 him or her in his or her official capacity. Will v. Mich. Dep’t of State Police, 491 U.S. 58, 71  
16 (1989) (citations omitted) (“[A] suit against a state official in his or her official capacity is not a  
17 suit against the official but rather is a suit against the official’s office[,]” which “is no different  
18 from a suit against the State itself.”).

19           Although not in dispute in the instant action, this court notes that the Family Department  
20 of the Commonwealth of Puerto Rico is an arm or “alter ego” of the Commonwealth of Puerto  
21 Rico and is therefore cloaked with the mantle of Eleventh Amendment sovereign immunity.  
22 González De Blasini v. Family Dep’t, 278 F. Supp. 2d 206, 210 (D.P.R. 2003) (“Thus, the  
23 relevant factors lead the Court to conclude that the Department is an arm or ‘alter ego’ of the  
24



1 State, and is entitled to immunity under the Eleventh Amendment.”), *cited with approval* Torres-  
2 Alamo v. P.R., 502 F.3d 20, 24 (1st Cir. 2007). Accordingly, this court holds that Plaintiff cannot  
3 sue the Commonwealth Defendants and Individual Defendants in their official capacities for  
4 monetary damages and these claims are dismissed with prejudice.

5 However, the Eleventh Amendment does not prevent suits against state officers for  
6 money damages to be paid out of their own pockets, such as an officer being sued in her or her  
7 personal capacity. Kentucky v. Graham, 473 U.S. 159, 166 (1985) (discussing distinction  
8 between suits against an officer in an individual as opposed to an official capacity). The  
9 Eleventh Amendment also does not bar official capacity suits against state officers for injunctive  
10 or declaratory relief brought pursuant to federal law. Maloy v. McClintock, 2011 WL 2911800  
11 at \*4 (citing Ex parte Young, 209 U.S. 123, 159-60 (1908)). As a result, Plaintiff’s claims  
12 against the Individual Defendants in their personal capacity and any injunctive or declaratory  
13 relief sought against the Commonwealth Defendants and Individual Defendants in their official  
14 capacity are not affected by the Eleventh Amendment and remain pending before this court.

15 Thus, pursuant to the Eleventh Amendment, Plaintiff cannot maintain claims for  
16 monetary damages against the Commonwealth Defendants and Individual Defendants in their  
17 official capacities. This court **GRANTS in part and DENIES in part** Defendants’ motion to  
18 dismiss Plaintiff’s supplemental state law claims against the Commonwealth Defendants and  
19 Individual Defendants in their official capacities. Plaintiff’s claims for monetary damages  
20 against the Commonwealth Defendants and the Individual Defendants in their official capacities  
21 are **DISMISSED with prejudice**.

1 **IV. Conclusion**

2 Accordingly, for the reasons articulated in this opinion, this court **GRANTS in part and**  
3 **DENIES in part** Defendants' motion to dismiss at Docket No. 11. Pending before this court are  
4 the Plaintiff's sexual harassment and retaliation claims under Title VII against the Commonwealth  
5 Defendants and the Individual Defendants in their official capacity and Plaintiff's Law 17 and Law  
6 69 claims against the Individual Defendants in their personal capacities. The court hereby  
7 **DISMISSES** Plaintiff's Title VII claims against the Individual Defendants in their individual  
8 capacity, Section 1983 claims; and Law 115 against Individual Defendants. To the extent that  
9 Plaintiff's claims against the Commonwealth Defendants and Individual Defendants in their  
10 official capacity request monetary damages, those claims are likewise **DISMISSED with**  
11 **prejudice.**

12 **SO ORDERED.**

13 In San Juan, Puerto Rico this 30th day of September, 2015.

14 *s/ Gustavo A. Gelpí*

15 GUSTAVO A. GELPI

16 United States District Judge