

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

Grendaliz Velez Acevedo,
Hector Aponte Benejan and the
Aponte-Vélez Conjugal partnership,

Plaintiffs

V.

Centro De Cáncer De La
Universidad De Puerto Rico, Dr. Luis
A. Clavell- Rodríguez, Mary Pou De
Clavell and the Clavell-Pou Conjugal
Partnership; Jose E. Dávila-Pérez,
Mayra Seguinot and the Dávila-
Seguinot Conjugal Partnership;
Insurance Companies X, Y, And Z

Defendants

CIVIL NO. 19-cv-01560 (JGG)

Title Vii Sex Discrimination; Title Vii Retaliation;
§1983 Civil Rights Violation Procedural Due
Process; Law 100 Discrimination Based On
Sex; Law 69 Discrimination Based On Sex And
Retaliation; Puerto Rico Whistleblower
Protection Acts Laws 115, 426 And 14 Against
Retaliation; §1802 Pr Cc Damages; Breach Of
Employment Contract.

PLAINTIFFS DEMAND TRIAL BY JURY

AMENDED COMPLAINT

TO THE HONORABLE COURT:

COME NOW plaintiffs, GRENDA LIZ VÉLEZ ACEVEDO, HECTOR APONTE BENEJAN
AND THEIR CONJUGAL PARTNERSHIP, through undersigning counsel and respectfully
Allege and Pray:

I. NATURE OF THE CASE

Grendaliz Vélez-Acevedo, Hector Aponte Benejan and the Aponte-Vélez Conjugal
Partnership, bring this action against Grendaliz Vélez-Acevedo's former employer,

Centro De Cáncer De La Universidad De Puerto Rico (also known as Centro Comprensivo de Cáncer de la Universidad de Puerto Rico), and seeks redress for the injuries due to the illegal, discriminatory and retaliatory termination she was subjected to in breach of her employment contract and in violation of Title VII of the Civil Rights Act as amended, the Puerto Rico Whistleblower Protection Acts and antiretaliation statutes, Law 115 of December 20, 1991 (29 L.P.R.A. §§ 194 et seq.), Law 426 of November 7, 2000 (1 L.P.R.A §§ 1 et seq.) and Law 14 of April 11, 2001 (1 L.P.R.A. §§ 611 et seq.) and §1983 of the Civil Rights Act. She also brings this suit under Puerto Rico anti-discrimination statute, Law 100 of June 30, 1959 (29 L.P.R.A. . §§146 et seq.), Law 69 of July 6, 1985 (29 L.P.A. §§ 1321 et seq.). Mrs. Vélez-Acevedo was terminated without cause from her employment because of her sex and in retaliation for denouncing and participating in the investigation of public funds mismanagement; actions incurred by defendant CCC directly and through its employees and agents Dr. Luis A. Clavell-Rodríguez and Mr. José E. Dávila-Pérez. As a result of the discriminatory and illegal actions taken by the defendants against Mrs. Vélez-Acevedo, her spouse, Hector Aponte Benejan, and their Conjugal Partnership, plaintiffs have suffered loss of wages, benefits and other economic losses and damages for which they seek compensation, compensatory and punitive damages.

Plaintiff Mrs. Vélez-Acevedo also seeks prospective injunctive relief in the manner of reinstatement and cease and desist order of discriminatory and retaliatory actions against her.

II. JURISDICTION

1. This Court has jurisdiction under 28 U.S.C. sec. 1331. The claims arise under the

Fourteenth Amendment of the Constitution and laws of the United States.

2. This Court also has supplemental jurisdiction over all claims arising under the laws and Art. II, §§ 1 and 7 of the Constitution of Puerto Rico pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this court as the acts complained of occurred in this judicial district.

III. THE PARTIES

4. The Plaintiffs, Grendaliz Vélez-Acevedo, Hector Aponte Benejan and the Aponte-Vélez Conjugal Partnership, (hereinafter "Plaintiffs" or "Mrs. Vélez-Acevedo") are of legal age and residents of Canóvanas, Puerto Rico. Their physical and postal address is

5. Defendant Centro De Cáncer De La Universidad De Puerto Rico, also known as Centro Comprensivo de Cáncer de la Universidad de Puerto Rico, (hereinafter Defendant or "CCC ") is a domestic public corporation organized pursuant to Law No. 230 of August 26, 2004, as amended by Law 141 of July 13, 2011 and Law 106 of July 2, 2015, of the Commonwealth of Puerto Rico and is authorized to sue and be sued and do business in Puerto Rico (Art. 5 (n) Law 230-2004). CCC is a not for profit entity.

5. Dr. Luis A. Clavell-Rodríguez was the interim Executive Director of the Centro de Cancer de la Universidad de Puerto Rico, at all times relevant to this complaint. He is sued in his individual and official capacities. Mary Pou de Clavell and the Clavell-Pou conjugal partnership, may be jointly responsible for the damages he may have caused in his individual capacity. Dr. Clavell-Rodríguez was the nominating authority and chief supervisor of Mrs. Vélez-Acevedo.

6. Mr. José E. Dávila-Pérez, at different times, was either the CFO or the Sub-Director of the Centro de Cáncer de la Universidad de Puerto Rico, at all times relevant to this

complaint. He is sued in his individual and official capacities. Mayra Seguinot and the Dávila-Seguinot Conjugal Partnership may be jointly responsible for the damages he may have caused in his individual capacity. Mr. Dávila-Pérez was Mrs. Vélez-Acevedo immediate supervisor.

7. Défendants Insurance Companies X, Y, and Z is/are all such insurance companies that have issued insurance policies in the name of the defendant Centro de Cancer de la Universidad de Puerto Rico, to cover claims of labor-employment practices and the damages that are asserted in this complaint. Once the identity of any insurance company liable for the damages presented in the complaint is learned, the corresponding amendment to this complaint shall be made to include the correct name in the caption.

IV. PLEADINGS
FACTS COMMON TO ALL CAUSES OF ACTION

A. A NECESSARY HISTORICAL BACKGROUND:

8. Grendaliz Vélez-Acevedo (Mrs. Vélez-Acevedo), began working at the CCC on September 21, 2009. Mrs. Vélez-Acevedo had been recruited by Mr. José E. Dávila-Pérez, Chief Financial Officer (CFO) of CCC. The position she was formally offered in a letter of August 31, 2008, signed by Dr. Jorge Sánchez, then Executive Director of CCC, was that of Director of Finances and Accounting. Acting on the position as offered, Mrs. Vélez-Acevedo resigned from her permanent position as corporate Financial Analyst at Metro Pavía Health Services (hereinafter "MPHS").

9. On her first day at the job Mrs. Vélez-Acevedo met with Mr. Dávila-Pérez. At that moment Mr. Dávila-Pérez informed her that there had been a change in the title of her position and she could not be named to the position of Director of Finances and

Accounting because the UPR School of Medicine had informed him that there could not be two Director of Finances and he was already occupying the position as CFO. For that reason, Mr. Dávila-Pérez informed her that the position would be that of Director of Accounting, while maintaining the salaries and benefits initially offered.

10. At the time of Mrs. Vélez-Acevedo arrival at the CCC, the CCC was still functioning under the University of Puerto Rico School of Medicine, since the necessary Human Resources, Finance, Accounting and other necessary departments had not been created. In fact, Mrs. Vélez-Acevedo's recruitment responded to the necessity of the creation of all the administrative components of the CCC. Her experience with the hospital industry in Puerto Rico made her the ideal choice for the position of Director of Finances and Accounting.

11. Mr. Dávila-Pérez promised Mrs. Vélez-Acevedo that as soon the CCC had administrative control of the CCC she would be named in the position originally offered to her as the Director of Finances and Accounting.

12. Thus, Mrs. Vélez-Acevedo was named in the position of Director of Accounting, with a one-year duration to be renewed in a yearly basis. It was understood by all parties that this appointment was a transitory one while the CCC established and took control of all administrative and financial operations.

13. Despite Mrs. Vélez-Acevedo being appointed to the position of Director of Accounting, she was informed by Mr. Dávila-Pérez that she was still expected to execute all the duties and responsibilities of the position she had been originally recruited for which was Director of Finance and Accounting. That included putting in place all necessary aspects of

administration and personnel as to make it possible to appoint all CCC's employees then working under one-year special appointment contracts with the UPR School of Medicine.

14. At the moment of her appointment Mrs. Vélez-Acevedo also learned that her appointment had been classified as a position of trust ("confianza"). Mrs. Vélez-Acevedo informed Mr. Dávila-Pérez that she was never informed that the position was one of trust and she would never have resigned from her permanent position at MPHS, had she been aware that would be the position's classification. Mr. Dávila-Pérez responded that she did not need to be worried, because he had been working as a trust employee and the job was assured. But in fact, Mr. Dávila-Pérez had always represented to Mrs. Vélez-Acevedo that it would be a career position. On April 13, 2009, the then Executive Director Dr. Jorge Sánchez, had requested the creation of the position of Director of Finance and Accounting as a career position, and had been approved by the Office of Management and Budget (hereinafter "OGP" by its Spanish acronym).

15. Mrs. Vélez-Acevedo's appointment as Director of Accounting was rejected by the UPR School of Medicine. Instead, she was requested to sign a professional service contract with CPA Julio Galíndez so she could keep working while the situation was resolved.

16. On January 1st, 2010, CCC officially started administrative operations. At that moment, Mrs. Vélez-Acevedo was appointed to a career permanent position as Director of Accounting. The months Mrs. Vélez-Acevedo previously worked under professional services contract were credited, so as not to have to go through a probationary period.

17. Mrs. Vélez-Acevedo oversaw the administrative set up of the CCC, which included:

- a. Organize the building paperwork;

- b. Put in place policies and regulations;
 - c. Create necessary forms;
 - d. Bring over the 11 employees that were working with the UPR School of Medicine under a collaboration agreement;
 - e. Put in place necessary programs for the accounting system;
 - f. Create necessary forms for purchases and requisitions;
 - g. Put in place purchase orders protocols;
 - h. Put in place policies for control of expenses;
 - i. Together with Dr. Reynold López, then Executive Director, after a thorough analysis of the use of credit cards by the faculty, adopted policies eliminating the use of credit cards by employees in accordance with the government's public policy;
 - j. Put in place a system of inventories control of the research laboratory supplies;
 - k. Put in place policies regarding property of the CCC;
 - l. Reconciled the debt owed to the UPR School of Medicine (which was in the millions of dollars and the details of which was scarce or nonexistent);
 - m. In relation to the Human Resources Department, create all necessary forms such as employment applications and all other personnel forms.
18. On March 16, 2010, Dr. Reynold López asked Mrs. Vélez-Acevedo to identify her position as the Interim Director of Finances in official documents.
19. On May 1st., 2010, Dr. Reynold López tendered each employee a certification which contained the date of commencement in the position and their seniority status and exempting them from a probationary period. Mrs. Vélez-Acevedo's certification identified her position as that of Director of Finances in a career position. Dr. López stated that she

had been occupying the same position since September 23^{rd.}, 2009. (In fact, the correct date is September 21^{st.}, 2009).

20. On August 9, 2010, Mrs. Carmen Ana Culpeper was retained by the CCC Board of Directors as an adviser of the Board`s Finance Committee. Mrs. Culpeper told Mr. Dávila-Pérez that he was mistakenly running the CCC`s accounting as a private entity when in fact it was a public corporation. As a result of Mrs. Culpeper`s evaluation, Deloitte & Touch were hired at the end of 2010 to conduct an audit of fiscal years 2004-2010, because Mr. José Dávila-Pérez had failed to comply with his obligation of identifying and recommend to the Board of Director companies to realize the annual audits.

21. Due to administrative and financial deficiencies, on July 13, 2011, the Board of Directors held an extraordinary meeting and suspended with salary Mr. Dávila-Pérez from his trust positions as both Deputy Executive Director and Chief Financial Officer.

22. Mr. Dávila-Pérez was finally removed from his trust positions on December 15, 2011.

23. On September, 2011, Jorge De Jesús, was named in the trust position as deputy Executive Director and Administrator. The CCC entered into a positive administrative phase: audits were completed, a corrective action plan was in place and nonexistent policies were put in place. Together with Dr. Reynold López, then Executive Director, personnel transactions were completed, and permanent appointments were made, needed personnel was recruited and necessary internal procedures and protocols were adopted.

24. Between 2011 and 2012, Mrs. Vélez-Acevedo performed all the duties and responsibilities that were assigned to Mr. Dávila-Pérez, without being appointed to that position.

25. At the beginning of 2012, Mr. De Jesús offered the position of CFO to Mrs. Vélez-Acevedo. She was not interested in a trust position, so she turned the offer down. Mr. De Jesús maintained Mrs. Vélez-Acevedo's appointment as Director of Finances in a career position and completed all necessary personnel transactions.

26. In November 2012, general elections were held and as a result the government administration changed from one controlled by the Popular Democratic Party (PPD) to one controlled by the New Progressive Party (PNP).

27. Despite having been fired in 2011 because of administrative and financial deficiencies, on September 17, 2013, Mr. José E. Dávila-Pérez was once more hired by the Board of Directors which was then presided by CPA Vilá del Corral.

28. As soon as he was appointed, Mr. Dávila-Pérez called Mrs. Vélez-Acevedo to question her on how the personnel appointments were made and who brought those employees. The employees were now career employees and he wanted to fire them all and start all over. He asked the law firm of Jiménez Graffam and Laussel, LLC (hereinafter "JGL"), for a legal opinion as to how to remove all employees in career positions and change those retained into trust positions.

29. Under Mr. Dávila-Pérez's administration, irregularities started flourishing. He would start handing out contracts, without identifying or complying with sound legal limitations. For example, PG Engineering was the company hired as Project Manager and was also hired as the construction's inspectors and as examiner for the issuing of the construction's certifications of compliance to be submitted for final approval to the Government Development Bank (hereinafter "GDB"). PG Engineering was also the inspector for the issuing of the construction's certifications necessary for the disbursement of the funds to

be paid to PG Engineering. When confronted with the conflict of interests this entailed, Mr. Dávila-Pérez's reaction was that even if it was the same company, it was not the same person.

30. On February 10, 2016, Dr. Luis A. Clavell-Rodríguez was named CCC Interim Executive Director. The salary approved by the CCC Board of Director was of \$650,000.00, a full-time annual compensation, amount which was apportioned between three components: administrative (\$300,000.00), clinical (\$250,000.00) and research (\$100,000.00). He was initially assigned a salary by the Board of \$400,000.00. Once the hospital started functioning he would have an additional salary of \$250,000.00.

31. On April 20, 2016, Mr. Dávila-Pérez informed the CCC Board of Directors, that an estimated one million dollars (\$1,000,000.00) were needed to implement important change orders, which were necessary to finish the first six levels of the hospital.

B. FACTS RELEVANT TO CAUSES OF ACTION UNDER PUERTO RICO'S WHISTLEBLOWERS LAW 115-1991 AND LAW 14-2001:

32. On July 13, 2016, Mrs. Vélez-Acevedo returns from medical leave and finds a new organizational chart poster which eliminates her position as Financial Director. The organizational charter did include the positions of CFO and Accounting Director. She brought it up to Mr. Dávila-Pérez's attention and he responded that Governor García Padilla was going to lose the elections and there was going to be a change of government. Mr. Dávila-Pérez asked Mrs. Vélez-Acevedo to meet with attorney Jorge Pizarro from JGL and the attorney would explain the plan they desired to execute.

33. Two days after, on July 15, 2016, Mrs. Vélez-Acevedo had a meeting with JGL attorney Jorge Pizarro, and the attorney asked Mrs. Vélez-Acevedo to leave her career position as Director of Finance so Mr. Dávila-Pérez could occupy her position and that

she then would move to a position as Director of Accounting, which had been eliminated in 2013..

34. On September 1st., 2016, Dr. Luis Clavell-Rodríguez and Mr. Dávila-Pérez issued a memorandum ordering the transfer of one million dollars (\$1,000,000.00) to an escrow account, to be deposited in an escrow account controlled by the firm of legal counsels of the CCC, Jiménez, Graffam and Lausell, LLC, (JGL), pertaining the ongoing construction of the CCC. According to Mr. Dávila-Pérez, since the government was bankrupt, the construction company demanded that the monies be deposited in an escrow account. Mrs. Vélez-Acevedo understood that it was not in the best interest of the CCC to deposit the monies in a JGL escrow account and proceeded to open an escrow account under the CCC control at Banco Popular de Puerto Rico (hereinafter "BPPR").

35. On October 4, 2016, without going through auction and bidding processes, the CCC gave Carefusion a contract for the acquisition of medical equipment worth millions of dollars. In fact, the equipment arrived at the port terminals, before the contract had been signed. Upon Mrs. Vélez-Acevedo's questioning of the lack of compliance with established procedures and regulations, Mr. Dávila-Pérez responded by telling her: "Don't start again. I will issue a letter justifying the contract." The contract was actually signed on October 4, 2016 and registered with the Comptroller's Office on October 5, 2016. The packing lists contains a delivery date of October 5, 2016.

36. In October, 2016, an auction took place and Puerto Rico Sales Medical won the bid. Mr. Dávila-Pérez started to exert pressure on the members of the Auctions Committee requesting that the auction be nullified to be able to give the contract to Medical Biotronics. Medical Biotronics sued contesting the auction and lost.

C. FACTS IN SUPPORT OF ALL CAUSES OF ACTION

37. On March 15, 2017, an issue came up regarding the reimbursement of one hundred and thirty one thousand dollars (\$131,000.00) to the construction company, FR & Bird, for the construction fees to be paid to the College of Engineers (“Colegio de Ingenieros”) which in fact the CCC had already paid for. A change of order submitted by FR & Bird for payment included the reimbursement of the fees which had not been paid by the construction company. In fact, the auction contract specified that the construction company was responsible for these fees and had to reimburse the CCC.

38. On or around March 22 or 23, 2017, Engineers Paco Suárez and Antonio Fullana of FR & Bird Construction, visited Mrs. Vélez-Acevedo’s office at the CCC to demand to be paid the retention fees and the one hundred and thirty-one thousand dollars (\$131,000.00) College of Engineers’ construction fees. The construction had yet to be finished. The Puerto Rico Financial Advisory and Fiscal Authority (by its Spanish acronym “AAFAF”) had approved the payment of the change of order submitted by FR & Bird Construction, excluding the one hundred thirty-one thousand dollars (\$131,000.00) reimbursement of the construction’s fees.

39. On March 23, 2017, Dr. Clavell-Rodríguez summoned Mrs. Vélez-Acevedo to his office to question her why she disapproves the one hundred and thirty-one thousand dollars (\$131,000.00) fees reimbursement. Dr. Clavell-Rodríguez remarked: “What are \$131,000.00 in a \$196 million dollars project?”. The monies were reimbursed by CCC to FR & Bird, after a legal opinion from counsel Steve Lausell in which he advised that Mr. Dávila-Pérez was authorized to negotiate with the construction company.

40. On April 10, 2017, Dr. Clavell-Rodríguez called a meeting of the Audit Committee of the CCC's Board of Directors and, at the behest of Mrs. Vélez-Acevedo, requested an audit of the construction finances, due to possible irregularities. Mrs. Vélez-Acevedo also requested the Board of Directors to conduct an audit of the construction finances.

41. On March 31, 2017, PG Engineers is dissolved and the contracts with CCC are terminated. Mr. Dávila-Pérez issued a professional services contracts on behalf of Eng. Carlos Gonzalez, PG Engineering Project Manager, which included 5 positions, amongst them, for an administrative assistant, an engineer and a foreman with a high school diploma, who was being paid at an engineer's rate.

42. Dr. Clavell-Rodríguez ordered Mrs. Vélez-Acevedo to sign the contracts and she refused because the contract was in violation of several dispositions of the Puerto Rico Office of the Comptroller Regulations and the Engineers Code of Ethic, as informed by Mrs. Vélez-Acevedo in a memorandum issued on April 19, 2017 and personally discussed with Dr. Clavell-Rodríguez on that same date.

43. On April, 24, 2017, a meeting regarding the construction's "Change of Order" was held with Dr. Clavell-Rodríguez, Mr. Dávila-Pérez, Dr. Robert Hunter, Medical Director, and Lisandra Vélez. Dr. Clavell-Rodríguez bangs both fists on the table and shouted, addressing Mrs. Vélez-Acevedo: "In here Finance is going to do whatever I say. What we have here is mental deficit." "All you have to do is sign, approve and pay, and I do not want to hear anything else about this matter."

44. On May 17, 2017, in a meeting of the Executive Committee with Dr. Robert Hunter, Dr. Elba Caraballo, Mr. Dávila-Pérez and others, on information provided by Mrs. Vélez-Acevedo regarding the purchase of equipment, Dr. Hunter in a very loud voice directed

at Mrs. Vélez-Acevedo, said that she did not know anything about hospitals or finance. After the meeting, Dr. Hunter went to Mrs. Vélez-Acevedo's office to apologize for using the unappropriated tone of voice with her. "I am bipolar." Dr. Hunter said.

45. The next day, on May 18, 2017, Dr. Elba Caraballo went to Mrs. Vélez-Acevedo's office and told her that she was astonished by the situation that took place in the meeting, asked her if it had happened before, and expressed that she was surprised with Dr. Hunter's attitude. That same day, May 18, 2017, Dr. Clavell-Rodríguez's secretary informed Mrs. Vélez-Acevedo that she no longer was part of the Executive Committee and should not attend future meetings anymore.

46. PG Engineers filed for bankruptcy and Banco Popular de Puerto Rico garnished PG Engineers' bank account. On July 14, 2017, Dr. Luis A. Clavell-Rodríguez asked Mrs. Vélez-Acevedo to ignore the bankruptcy, to act as if she was unaware of the same, and to issue checks in the name of Eng. Carlos Pesquera. She refused to collaborate in the scheme.

47. On September 12, 2017, the Fiscal Oversight and Supervisory Board (FOSB) requested from AAFAF to supervise certain agencies, amongst them the CCC. Mrs. Vélez-Acevedo had been designated by Mr. Dávila-Pérez as compliance officer before AAFAF.

48. In September 2017, Hurricanes Irma and María hit Puerto Rico. Mr. Dávila-Pérez gives an order to allow Víctor Vázquez, the son of the owner of Medical Biotronic, to take over the administration of the CCC's cafeteria, since according to Mr. Dávila-Pérez, due to the emergency, compliance with CCC's contract protocols and regulations were not necessary.

49. On September 27, 2017, Mrs. Vélez-Acevedo had circulated a communication to all CCC's components in relation to financial procedures and informing that all accounting systems were functional. She requested that all financial policies be complied with.

50. The hurricane emergency was used as an excuse to take away some of Mrs. Vélez-Acevedo's responsibilities as Finance Director. On October 10, 2017 Dr. Clavell-Rodríguez issued a special communication informing procedures for contracts and purchases that were necessary to begin the operation of the hospital after the hurricanes. Dr. Clavell-Rodríguez informs in the communication that the persons authorized to order purchases under an emergency procedure are Dr. Clavell-Rodríguez, Dr. Robert Hunter and Lisandra Vélez. All purchases over one hundred thousand dollars (\$100,000.00) were to be directly approved by Dr. Clavell-Rodríguez. Protocols and regulations in place at the CCC for all purchase transactions need not be complied with. Mrs. Vélez-Acevedo was in fact stripped of her responsibilities over purchases of the CCC.

51. At the beginning of October, 2017, Mrs. Vélez-Acevedo called AAFAF, coordinated a meeting with Jorge García and Kristal Marrero, and informed them of the irregularities occurring at the CCC. Jorge García and Kristal Marrero decided to intervene with the CCC after a meeting with Mrs. Vélez-Acevedo, where she informed them of the administrative irregularities taking place at the CCC under Mr. Dávila-Pérez's management.

52. Mrs. Vélez-Acevedo was summoned to meet with CPA Javier Teruel, AAFAF Director, on October 27, 2017. When she returned to the office after the meeting, she gave a copy of the citation to Dr. Luis Clavell-Rodríguez. He proceeded to question her over why she had not notified him of the citation, which in fact had been copied to him by AAFAF.

53. On November 2, 2017, while Mrs. Vélez-Acevedo was on medical leave, Dr. Clavell-Rodríguez called regarding an e-mail to AAFAF in which she did not copy him. Dr. Clavell-Rodríguez admonished Mrs. Vélez-Acevedo that “for your own sake, stop the e-mails now.”

54. On November 8, 2017, all employees that had visited the AAFAF offices to denounce the ongoing administrative and financial irregularities were summoned to a meeting with Dr. Clavell-Rodríguez and Mr. Dávila-Pérez to inform them that they had instructed legal counsels of JGL to prepare a document titled “Standard Operating Procedures”, instructing employees that they were not allowed to communicate directly with federal or state agencies and that all communications had to go through the Executive Director, Dr. Clavell-Rodríguez. That same afternoon Dr. Clavell-Rodríguez was seen agitated and exclaimed in a loud tone of voice: “This is our turf and in here things are going to be done like we say; neither the government nor AAFAF are going to tell us what we have to do.”

55. On November 16, 2017, Dr. Clavell-Rodríguez issued a memorandum informing that Mrs. Vélez-Acevedo was no longer in charge of the Radiotherapy billing department and it was now going to be under Dr. Hunter’s direction.

56. On November 17, 2017, while Mrs. Vélez-Acevedo was on medical leave, Dr. Luis Clavell-Rodríguez circulates in the CCC, via e-mail, two communications pertaining to Restructuration and Reorganization of the CCC and announcing that Mrs. Vélez-Acevedo was no longer the Finance Director. Mr. Dávila-Pérez was named CFO and Mrs. Vélez-Acevedo was demoted to a trust position as Director of Accounting, with a 180 days probationary period. These personnel changes were never discussed with, nor notified in any manner to, Mrs. Vélez-Acevedo, before being announced. Nor were they authorized

by the “Oficina de Gerencia y Presupuesto” (“OGP”) as mandated by Act 3 of January 23, 2017 and Circular Letter #144-17 of March, 2017, Section -C.

57. Mrs. Vélez-Acevedo’s demotion was to be effective on November 27, 2017. In the unsigned, undated and with a wrong Social Security number personnel transaction form, her position as Director of Finance is recognized as a regular career position and the Director of Accounting position is identified as a trust position.

58. Mrs. Vélez-Acevedo was due back to work on November 27, 2017. Mr. Dávila-Pérez summoned her for a meeting that same day. Mrs. Vélez-Acevedo informed Mr. Dávila-Pérez that she did not agree with the changes made regarding her position at the CCC.

59. The next day, on November 28, 2017, Dr. Clavell-Rodríguez summoned Mrs. Vélez-Acevedo for a meeting, to discuss the November 17, 2017, e-mails. Dr. Clavell-Rodríguez informed Mrs. Vélez-Acevedo that he had been planning these personnel changes for the last six months. Dr. Clavell-Rodríguez addressed Mrs. Vélez-Acevedo with sarcasm while wishing her “the best of lucks.” Mrs. Vélez-Acevedo informed Dr. Clavell-Rodríguez that the position of Director of Accounting had been eliminated in 2013 and in fact, in the CCC budget there was no money assigned for such a position. Dr. Clavell-Rodríguez answered that he consulted with the counsels at JGL. Mrs. Vélez-Acevedo had been the Director of Finance in a permanent career position for the last seven (7) years.

60. On November 29, 2018, Mr. Dávila-Pérez, now CCC’s CFO, began issuing checks. Mr. Dávila-Pérez gives an order to Mr. Gabriel Pomales, official of accounts payable, to void the change of order checks that had been issued in favor of FR & Bird that did not include the construction fees, (as AAFAF had approved), and to issue new checks

including the one hundred and thirty-one thousand dollars (\$131,000.00) construction fees, plus retainer, in favor of FR & Bird.

61. In a letter dated December 1st, 2017, addressed to the CCC's Board of Directors, Mrs. Vélez-Acevedo complained about the hostile environment the discriminatory and retaliatory actions taken against her by Dr. Luis Clavell-Rodríguez, Mr. José E. Dávila-Pérez and Dr. Robert Hunter in their presence because of her sex; the administrative and financial irregularities incurred by Dr. Luis Clavell-Rodríguez and Mr. José E. Dávila-Pérez; and the null personnel transaction by which she was demoted from the career position of Director of Finance to the trust position of Director of Accounting ,.

62. The Board of Director hired attorney Miriam B. Toledo David as an examiner to investigate Mrs. Vélez-Acevedo's allegations. They met on February 18, 2018, when Mrs. Vélez-Acevedo requested time to retain legal counsel. On February 23, 2018, Mrs. Vélez-Acevedo wrote a letter to the CCC's Board of Directors informing them of her dissatisfaction with the investigative process. On March 13, 2018, they met a second time, when Mrs. Vélez-Acevedo informed attorney Miriam B. Toledo David that she had retained Alejandro Torres-Rivera as her legal counsel and all communications would be through her counsel . They never met again.

63. On February 26, 2018 Mrs. Vélez-Acevedo went to an interview before the Equal Employment Opportunity Commission (hereinafter EEOC) with Mr. Luis Calzada regarding the labor discrimination and retaliation suffered by her at the CCC.

64. On March 2, 2018 Mrs. Vélez-Acevedo filed her complaint before the EEOC.

65. On April 5, 2018 Mrs. Vélez-Acevedo was interviewed at the Senate of Puerto Rico regarding the financial and administrative irregularities occurring at the CCC.

66. On June 15, 2018, Mrs. Vélez-Acevedo and other CCC employees testified in public hearings to the Senate of Puerto Rico regarding the financial and administrative irregularities occurring at the CCC

67. On July 2, 2018, Mrs. Vélez-Acevedo delivered a report to the EEOC.

68. On July 3, 2018, the IT, Luis Wilkes, resigned from his position. The property protocols were not complied with, but notwithstanding, Mr. Davila gave Mr. Wilkes a check in liquidation of vacations. Later on, irregularities regarding the property under Mr. Wilkes' custody were identified by Mr. Jesús Severino in a report issued to the Government Office of Ethics and the Office of the Comptroller. Mr. Dávila-Pérez is observed harassing Jesús Severino, the then Custodian of Property and fired him.

69. On October 30, 2018, Mrs. Vélez-Acevedo was summoned before the Office of Ethics who was conducting an investigation, to interview her regarding the allegations of administrative and financial irregularities at the CCC, as aired in the press and in the Senate's public hearings, as testified by Mrs. Vélez-Acevedo and other CCC employees.

70. On April 6, 2019, Mrs. Vélez-Acevedo received a phone call from FBI Agent David Torres asking whether she had e-mails regarding the College of Engineers' construction fees. The FBI summoned her.

71. On April 10, 2019 Mrs. Vélez-Acevedo meets with FBI Agent David Torres. That same day the FBI interviewed Dr. Clavell-Rodríguez and Mr. Dávila-Pérez at the CCC.

72. On April 10, 2019 the EEOC issued the Right to Sue Letter to Mrs. Vélez-Acevedo.

73. On May 13, 2019, Mrs. Vélez-Acevedo was fired from the CCC.

74. Mrs. Vélez-Acevedo was not informed of a just cause, nor given notice, nor an informal hearing. Mrs. Vélez-Acevedo was fired alleging she was in a trust position and

no longer enjoyed the trust of the employer, despite having occupied a career position from which she had not been legally discharged.

. V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Title VII (because of Sex and Retaliation)

EQUAL PROTECTION UNDER THE FOURTEEN AMENDMENT

75. The plaintiff reproduces and reaffirms all the prior pleadings, incorporates them and makes them part of the subsequent pleadings.

76. Title VII of the Civil Rights Act, 42 U.S.C. sec. 2000 (e) prohibits workplace discrimination because of sex (female).

77 Sex-based discrimination is a violation of equal protection if it does not 'serve important governmental objectives' and is not substantially related to achievement of those objectives.

78. Mrs. Vélez Acevedo's allegations show that she was treated at CCC in a different manner as to other male employees, characterized by hostility and demeaning conduct addressed against her.

79. Plaintiff Mrs. Vélez Acevedo's allegations establish a prima facie case of retaliation under Title VII, inasmuch she can show that:

(1) she engaged in protected conduct:

a. She collaborated with the investigations being conducted by AAFAF regarding administrative and financial irregularities at the CCC (See ¶¶ 51-54);

b. She brought before the CCC's Board of Directors an internal complaint (See ¶¶ 61, 62);

- c. She filed a complaint before the Equal Employment Opportunity Commission (EEOC) (See ¶¶ 61, 62, 67 and 72);
- d. She testified before the Senate of Puerto Rico' public hearings on administrative and financial irregularities at the CCC (See ¶¶ 65, 66);
- e. She was interviewed by the Ethics Office of the Government of Puerto Rico regarding administrative and financial irregularities at the CCC (See ¶ 69);
- f. She collaborated and was interviewed by the Federal Bureau of Investigation (FBI) regarding administrative and financial irregularities at the CCC (See ¶¶ 70, 71);

(2) she suffered adverse employment actions:

- a. She was subjected to a hostile and demeaning environment that a reasonable person would find abusive, by being screamed at, threatened, questioned her professional skills and her mental capacity (See ¶¶ 39, 43, 44, 45, 50 and 51);
- b. She was stripped of job duties and responsibilities by taking away her responsibilities over the Radio Therapy Laboratory, excluding her from the CCC Board of Directors' Audit Committee, restricting her from exercising her duties as CCC's compliance officer before AAFAF (See ¶¶ 42, 45, 47, 49, 50, 52, 53, 55-59);
- c. She was demoted from her career position as Director of Finance to a trust position as Director of Accounting (See ¶¶ 54-59);
- d. She was fired on May 13, 2019 (See ¶¶ 73, 74);

(3) a causal connection existed between the protected conduct and the adverse action. (See ¶¶ 39 - 74); . Defendant employer CCC took adverse employment actions in the

manner of the creation of a hostile and abusive environment, demoting her and finally firing Mrs. Vélez Acevedo soon after obtaining information that she was participating in the investigation of AAFAF, the Senate of Puerto Rico, the Ethics Office of the Government of Puerto Rico, the FBI and after having filed an internal complaint on December 1st., 2017 with the CCC Board of Directors and after filing a complaint with the Equal Employment Opportunity Commission (EEOC) (See ¶ 79 (1) and (2)) .

80. The aforesaid actions of CCC's employees Dr, Luis A. Clavell-Rodríguez and Mr. José E. Pérez-Dávila interfered with plaintiff's work performance and affected her day-to-day ability to do her job.

81 Defendant employer CCC's actions in creating a hostile environment, demoting and firing Mrs. Vélez-Acevedo as described herein constitutes discrimination because of sex, in violation of Title VII of the Civil Rights Act of 1964 as amended and the Fourteenth Amendment's Equal Protection Clause of the United States Constitution. Mrs. Vélez-Acevedo has demonstrated that she belongs to a protected group (female) and was discriminated against because of her sex and in retaliation for engaging in protected conduct.

82. Mrs. Vélez-Acevedo's duties and responsibilities as Director of Finance were reassigned to a male employee, Mr. José Dávila-Pérez, as Chief Financial Officer.

83. The defendant employer CCC's asserted reasons for terminating Mrs. Vélez-Acevedo, that she was in a trust position, is but a pretext to disguise the discriminatory and illegal conduct.

SECOND CAUSE OF ACTION
§1983 CIVIL RIGHTS ACT
FOURTEENTH AMENDMENT DUE PROCESS CLAUSE

84. The plaintiff reproduces and reaffirms all the prior pleadings, incorporates them and makes them part of the subsequent pleadings.

85. The Due Process clause of the Fourteenth Amendment to the United States Constitution prohibit states from "depriving any person of life, liberty, or property without due process of law."

86. The actions and omissions of defendants constitute violation of section 1983 of the Civil Rights Act of 1991 as amended, in that it violated plaintiff's right to due process of law.

87. Plaintiff Mrs. Vélez-Acevedo was first summarily demoted and later summarily discharged from her career position as CCC's Director of Finance without notice of just cause, and without giving her the opportunity to be heard, in violation of her right to due process. (See ¶¶ 54-59, 73, 74);

88. Defendants CCC, Dr. Luis Clavell-Rodríguez and Mr. José E. Dávila-Pérez are "persons" and as such, state actors for purposes of §1983.

89. At all times defendants CCC, Dr. Luis Clavell-Rodríguez, and Mr. José E. Dávila-Pérez acted under color of law.

90. The actions and omissions of defendants CCC, Dr. Luis Clavell-Rodríguez and Mr. José E. Dávila-Pérez, constitute violations of the Fourteenth Amendment of the Constitution of the United States and Art. II, §§ 1 and 7 of Constitution of the Commonwealth of Puerto Rico. Each defendant, in his individual capacity and through

his own actions, has violated Mrs. Vélez Acevedo's constitutional right to equal protection of the law.

91. Each defendant, CCC, Dr. Luis Clavell-Rodríguez and Mr. José E. Dávila-Pérez, in their individual capacities, had actual or constructive notice of the constitutional violations being inflicted upon Mrs. Vélez-Acevedo.

92. Mrs. Vélez-Acevedo had a property interest in her position as CCC's Director of Finance and her demotion and termination occurred without due process of law.

93. Mrs. Vélez-Acevedo was a career employee, and she thus has a property interest in her continued employment with the CCC. (See ¶¶ 16, 18, 19 and 57);

94. Demotions and termination of employment constitute deprivation of a public employee's property interest in continued employment.

95. Mrs. Vélez-Acevedo was not provided with a constitutionally adequate process. Adequate process requires notice and an opportunity to be heard prior to the termination of employment. Mrs. Vélez-Acevedo was not given written notice or the opportunity to request a hearing; she did not receive the process that she was due.

96. Mrs. Vélez-Acevedo's demotion was in violation of CCC's Regulations for the Administration of Human Resources, Article 24.3 which provides for prior notice at least thirty (30) calendar days before the effective date, and the right to be informed the reasons for the same and all conditions pertaining the new position, and the right to appeal to the CCC's Board of Directors.

97. Mrs. Vélez-Acevedo's termination was in violation of CCC's Regulations for the Administration of Human Resources, Article 25.5 which provides for notice in writing,

the right to be informed the reasons for the termination, and the right to appeal the decision.

THIRD CAUSE OF ACTION
LAW. 115, LAW. 426 and LAW 14
PUERTO RICO WHISTLEBLOWER PROTECTION ACTS

98. The plaintiff reproduces and reaffirms all the previous paragraphs, incorporates them and makes them part of the subsequent pleadings.

99. Puerto Rico Law 115 of December 20th 1991, as amended, 29 L.P.R.A. section 194 et seq., Law 426 and Law 14 provisions prohibit an employer from terminating, threatening to terminate or to discriminate in the terms and conditions of employment of an employee because he/she has offered any testimony or information against the employer before an administrative, legislative or judicial forum, has opposed acts in violation of laws and regulations or has collaborated with the investigation of actions or omission that can be considered acts of corruption, undue influence or malfeasance of public funds.

100. Mrs. Vélez-Acevedo was harassed, demoted and finally terminated for engaging in protected activities as described herein. (See ¶ 79)

101. As a result of defendant's retaliation Mrs. Vélez-Acevedo has suffered severe distress and emotional anguish for which Defendant employer CCC, (under Law 115, Law 426 and Law 14) and Dr. Luis Clavell-Rodríguez and Mr. José E. Dávila-Pérez, *under Law 426 and Law 14) are liable. (See ¶ 79)

102. Because Law 115 requires the same adverse employment action showing as a Title VII retaliation claim, courts have treated the two claims as the same. (See ¶ 79)

103. Defendants employer CCC, Dr. Luis Clavell-Rodríguez and Mr. José E. Dávila-Pérez's adverse employment actions taken against Mrs. Vélez-Acevedo were ones that would "dissuade a reasonable worker from making or supporting a charge of discrimination." (See ¶ 79)

104. Puerto Rico's Whistleblower Protection Act, Law 426, was enacted to "protect whistleblowers who report acts of public corruption." Its purpose is to "protect the rights of public employees and officials who disclose information or testify on alleged improper or illegal acts regarding the use of public property or funds that due to their nature constitute acts of government corruption, or that fall within the ethical conduct regulated by our legal system." *Id.* (quoting 1 L.P.R.A. § 601).

105. Law 115 provides that: "No public official or employee may dismiss, threaten, discriminate against or otherwise retaliate against another public official or employee, with regard to the terms, conditions, compensation, location, or employment benefits or privileges, because the latter has disclosed or has attempted, orally or in writing to disclose any testimony, statement, or information on alleged improper or illegal acts in the use of public property or funds or acts that constitute corruption, before any official or employee with investigative functions. (1 L.P.R.A. § 603(a))

106. Law 14 provides that: "No person may harass, discriminate, dismiss, threaten or suspend benefits, rights or protections to another person due to the fact that the latter provides information, cooperates or serves as a witness in any investigation that leads to any accusation, conviction, civil or administrative action, for conduct related to the illegal use of public property or funds or for violations of the laws and regulations that govern the ethical conduct of the public service." (1 L.P.R.A. § 612)

107. Mrs. Vélez-Acevedo's allegation show that the demotion and discharge took place soon after she engaged in activities specifically protected and is indirect proof of a causal connection between the demotion and firing and the activities, because it is strongly suggestive of retaliation.

108. As a direct consequence of Defendants retaliatory conduct, Mrs. Vélez-Acevedo has suffered past and future loss of wages and benefits for which all the Defendants are liable..

FOURTH CAUSE OF ACTION
BREACH OF EMPLOYMEN CONTRACT

109. The plaintiff reproduces and reaffirms all the prior pleadings, incorporates them and makes them part of the subsequent pleadings.

110. Defendant CCC's actions in summarily demoting and terminating Mrs. Vélez-Acevedo's employment contract and in affecting the terms of the same was in violation of Articles 1208 et seq. of the Puerto Rico Civil Code (31 L.P.R.A. §§ 3373 et seq.). (See ¶¶ 54-59, 73, 74);

FIFTH CAUSE OF ACTION
P.R. Law 100, LAW 69 Sex Discrimination and Retaliation

111. The plaintiff reproduces and reaffirms all the prior pleadings, incorporates them and makes them part of the subsequent pleadings.

112. Puerto Rico Law 100 of June 30, 1959, as amended , (29 L.P.R.A. §§146 et seq.) and Law 69 of July 6, 1985 (29 L.P.A. §§ 1321 et seq.), makes it illegal for an employer to terminate, suspend, or otherwise discriminate in the terms and conditions of employment including salary, based on sex, among other protected groups. Defendant

employers conduct complained of herein is in violation of Puerto Rico Law 100 and Law 69, as amended.

113. Law 100 and Law 69 also prohibit retaliation against an employee that engages in protected conduct.

114. Mrs. Vélez-Acevedo was discriminated against because of her sex (female) through:

(a) the creation of a hostile, abusive environment;

(b) taking adverse employment actions against her by stripping her of responsibilities, demoting and firing her. (See ¶ 79)

115. The plaintiff demands an equal amount to double the sum of the damages caused by the defendant's discriminatory conduct pursuant to the provisions of Law 100 and Law 69. (See ¶ 79)

SEVENTH CAUSE OF ACTION
ART. 1802 CIVIL CODE OF PUERTO RICO

116. The plaintiff reproduces and reaffirms all the prior pleadings, incorporates them and makes them part of the subsequent pleadings.

117. Defendants CCC, Dr. Luis Clavell-Rodríguez and Mr. José E. Dávila-Pérez's, through their discriminatory and retaliatory actions against Mrs. Vélez-Acevedo, caused emotional and economic damages to plaintiffs Hector Aponte Benejan and the Aponte-Vélez Conjugal Partnership.

EIGHTH CAUSE OF ACTION
PRAYER FOR INJUNCTIVE RELIEF

118. Mrs. Vélez-Acevedo request that defendants CCC, Dr. Luis Clavell-Rodríguez and Mr. José E. Dávila-Pérez's be enjoined from a continued violation of federal law and

requests that prospective injunctive relief be granted against CCC, Dr. Luis Clavell-Rodríguez and Mr. José E. Dávila-Pérez's in their official capacities under the case of Ex Parte Young to deter ongoing violation of Mrs. Vélez Acevedo's constitutional rights, and request that she be reinstated in the position of Director of Finance of the Centro de Cáncer de la Universidad de Puerto Rico.

VI. TRIAL BY JURY DEMAND

119. Plaintiffs demand that the instant action be tried before a jury.

VII. PRAYER

Plaintiff prays that, considering the above and after the corresponding legal processes the following relief be granted to her:

- a) Declare that Defendants discriminated against Mrs. Vélez-Acevedo based on her sex, and in violation to Title VII of the Civil Rights Act, and Puerto Rico Law 100, of June 1959 as amended; and that Defendants incurred in retaliation against Mrs. Vélez-Acevedo in violation of Puerto Rico Law. 115 of December 20, 1991; and;
- b) Award Plaintiff backpay per a \$100,000.00 base salary and;
- c) Award plaintiff a sum equivalent to double the damages caused by the discriminatory acts and retaliation as permitted by Puerto Rico Laws 100, 69 and 115; in an amount no less than \$10,000,000.00, and;
- d) Award triple damages as provided for under Law 426,
- e) Reinstatement the plaintiff in her employment with the corresponding salary increments and benefits, and/or award plaintiff front pay in an amount of no less than \$100,000.00 for each year;

- f) Award Plaintiffs Vélez-Acevedo and Aponte Benejan and the conjugal partnership an amount in liquidated damages of \$1,000,000.00;
- g) Award punitive damages against Defendants for their illegal and discriminatory conduct in the amount of \$1,000,000.00;
- h) Award plaintiff reasonable attorney's fees, and
- i) Grant costs, and interests of this action as well as all necessary expenses incurred in this action, and
- j) Grant any other remedy this Court deems proper under law or equity in light of the circumstances.

RESPECTFULLY SUBMITTED.

We Hereby certify that this Complaint is being filed electronically through the ECF system.

In San Juan, Puerto Rico, on June 10 , 2019.

S/WILMA E. REVERÓN COLLAZO
USDC NO. 204802
P. O. BOX 9023317
SAN JUAN, PUERTO RICO
00902-3317
TEL – (787) 613-4038
wilmarc@prtc.net; wilma.reveron@capr.net.