IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

DR. OLGA CHAPA ***Plaintiff,***	§	
v.	§	**CAUSE NO: 6:20-CV-00032**
THE UNIVERSITY OF HOUSTON AT VICTORIA and THE UNIVERSITY OF HOUSTON SYSTEM ***Defendants.***	§	

DEFENDANTS' MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(B)(1) AND 12(B)(6)

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TO THE HONORABLE JUDGE HOYT:

Defendants The University of Houston at Victoria ("UHV") and The University of Houston System ("UHS") (collectively, the "Defendants") file this Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and (b)(6) (the "Motion") respectfully requesting the Court dismiss Plaintiff Olga Chapa's (the "Plaintiff") First Amended Complaint [ECF No. 7] (the "Complaint"). As discussed in detail below, Plaintiff's Complaint must be dismissed for the following reasons: (1) Plaintiff's claims are barred because she failed to timely file her charge with the EEOC; Plaintiff's Title VII hostile work environment claim fails as a matter of law; (2) Plaintiff's Title VII hostile work environment, retaliation, gender discrimination, and race/national origin discrimination claims do not meet Federal Rule of Civil Procedure 8's Heightened Pleading Standard.

SUMMARY OF THE ARGUMENT

1. The crux of Plaintiff's claim is that Defendants violated her rights after she filed a formal complaint on February 10, 2017 in which she made sexual harassment allegations against Dr. Farhang Niroomand—a UHV faculty member and former UHV Dean of the School of Business Administrator—and immediately implemented measures to limit Plaintiff's interactions with Dr. Niroomand. Per Plaintiff's Complaint, Defendants violated her rights under Title VII. This Court should dismiss Plaintiff's claims because Plaintiff failed to timely file her EEOC charge within the time period required after the internal investigation into her allegations was completed. Moreover, Plaintiff fails to plead viable claims for hostile work environment because the Complaint negates the elements of such claim. In addition, Plaintiff fails to properly plead sufficient facts to establish her hostile work environment, retaliation, gender discrimination, and race/national origin

discrimination claims.

I. LEGAL STANDARDS

A. Federal Rule of Civil Procedure 12(b)(1)

2. Federal Rule of Civil Procedure 12(b)(1) authorizes a federal court to dismiss a claim for lack of subject matter jurisdiction. FED. R. CIV. P. 12(b)(1). "Federal courts are courts of limited jurisdiction, and absent jurisdiction conferred by statute, lack the power to adjudicate claims." *Stockman v. Fed. Election Comm'n*, 138 F.3d 144, 151 (5th Cir. 1998). Accordingly, "[a] case is properly dismissed for lack of subject matter jurisdiction when the court lacks statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss, Inc. v. Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (citation omitted).

3. The party seeking to invoke jurisdiction bears the burden of demonstrating its existence. *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001); *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). An action may be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) on any of three separate grounds: (1) the complaint standing alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint, the undisputed facts, and the court's resolution of disputed facts. *Voluntary Purchasing Groups, Inc. v. Reilly*, 889 F.2d 1380, 1384 (5th Cir. 1989). The court may consider affidavits and other evidence in resolving factual issues relating to jurisdictional questions. *Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 172 (5th Cir. 1994). When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) motion before addressing any motion as to the merits. *Ramming*, 281 F.3d at 161.

B. Federal Rule of Civil Procedure 12(b)(6)

4. "To survive a Rule 12(b)(6) motion, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007)). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations, quotations, and brackets omitted). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Katrina Canal*, 495 F.3d at 205 (quoting *Twombly*, 550 U.S. at 555). The Court is not required to conjure up unpled allegations in order to save a complaint, and conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice…." *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993).

II. ARGUMENTS & AUTHORITIES

A. Defendants are Entitled to Sovereign Immunity on Plaintiff's Request for Punitive Damages.

5. Plaintiff's request for punitive damages against the Defendants are barred. Plaintiff concedes that Defendants are Texas state entities that are entitled to sovereign immunity. *See* ECF No. 7 at ¶¶ 2-3. Title VII clearly precludes punitive damage awards against governments, government agencies, and political subdivisions. 42 U.S.C. § 1981a(b)(1) ("A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) ...."); *see also Oden v. Oktibbeha County, Miss.*, 246

F.3d 458, 465-66 (5th Cir. 2001) (holding that assessment of punitive damages in a Title VII claim against a sheriff constituted plain error and reversing the award even though the appellants failed to properly preserve their objection). Congress had not abrogated the State of Texas' or its agencies' sovereign immunity from claims for punitive damages. Because of the clear prohibition of punitive damage awards against state agencies, Plaintiff cannot recover punitive damages under Title VII against UHV. Accordingly, such claims must be dismissed with prejudice.

B. Plaintiff's Claims are Barred Because She Failed to Timely File Her Charge with the EEOC.

6. Title VII directs that a "charge...shall be filed" with the EEOC "by or on behalf of a person claiming to be aggrieved" within 180 days "after the alleged unlawful employment practice occur[s]." 42 U.S.C. § 2000e–5(b), (e)(1). For complaints concerning a practice occurring in a State or political subdivision that has a fair employment agency of its own empowered "to grant or seek relief," Title VII instructs the complainant to file his charge first with the state or local agency. 42 U.S.C. § 2000e–5(c). The complainant then has **300 days following the challenged practice, or 30 days after receiving notice that state or local proceedings have ended, "whichever is earlier," to file a charge with the EEOC**. 42 U.S.C. § 2000e–5(e)(1) (emphasis added).

7. Plaintiff filed her internal complaint with UHV on February 10, 2017—roughly two years and eleven months after the last alleged act of harassment occurred. *See* ECF No. 1-1 ("I also filed a sexual harassment complaint against Dean Farhang Niroomand in January 2017.")[1]; ECF No. 7 at ¶ 21 ("The complaint and supporting documentation was filed on February 10,

[1] Plaintiff mistakenly asserts in the charge that her internal complaint was filed on January 10, 2017, but it was actually filed on February 10, 2017.

2017); ¶¶ 11-12 (alleging last incident of sexual harassment occurred on March 21, 2014); **Ex. A**, Declaration of Rebecca Lake, at ¶ 3; **Ex. A-1**, Plaintiff's February 10, 2017 Formal Complaint.[2] Plaintiff was therefore obligated to file her EEOC charge within 300 days following her formal complaint—by December 7, 2017. 42 U.S.C. § 2000e–5(e)(1). Plaintiff filed her EEOC charge on June 26, 2018—nearly seven months after her deadline. Accordingly, Plaintiff's retaliation claim is untimely, barred, and therefore must be dismissed. 42 U.S.C. § 2000e–5(e)(1); (holding "**a Title VII plaintiff raising claims of discrete discriminatory or retaliatory acts must file his charge within the appropriate time period—180 or 300 days—set forth in 42 U.S.C. § 2000e–5(e)(1)**. A charge alleging a hostile work environment claim, however, will not be time barred **so long as all acts which constitute the claim are part of the same unlawful employment practice and at least one act falls within the time period.**") (emphasis added).

8. Plaintiff's EEOC charge contain no timely acts relating to her hostile work environment, race/national origin discrimination, gender discrimination, or retaliation claims. Acts alleged within 300 days of the charge-filing, or between August 30, 2017 and June 26, 2018 (the "Actionable Window"), are actionable. The basis of Plaintiff's EEOC charge is her February 10, 2017 formal complaint. *See* ECF No. 1-1; ECF No. 7 at ¶ 21; **Ex. A**; **Ex. A-1**. Plaintiff's EEOC charge contains less allegations and facts than her the February 10, 2017 formal complaint. *Compare* **Ex. A-1** *with* ECF No. 1-1. Moreover, the latest date of alleged improper action contained in the formal complaint is February 8, 2017—almost seven months prior to the Actionable

[2] Although a court generally "limits itself to the contents of the pleadings" at the motion to dismiss stage, the Fifth Circuit has recognized an exception to this limitation when the defendant attaches documents that were "referred to in the plaintiff's complaint and are central to the plaintiff's claim." *Muoneke v. Prairie View A & M Univ.*, 2016 WL 3017157, at *6 n.2 (S.D. Tex. May 26, 2016) (Rosenthal, J.) (quoting *Scanlan v. Tex. A & M Univ.*, 343 F.3d 533, 536 (5th Cir. 2003)).

Window. Therefore, each of the charge's hostile work environment, discrimination, and retaliation allegations pre-date August 30, 2017 and fall outside of the limitations period. *See* ECF No. 7 at ¶¶ 10-19. Accordingly, Plaintiff's Title VII claims are barred in their entirety and must be dismissed because Plaintiff failed to timely file her charge on that claim with the EEOC. *See Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 122 (2002).

C. Plaintiff's Title VII Hostile Work Environment Claim Fails as a Matter of Law.

9. To establish a hostile work environment claim, Plaintiff must show: (1) she belongs to a protected group; (2) she was subjected to unwelcome harassment; (3) the harassment was based on sex; (4) the harassment affected a term, condition, or privilege of employment; and (5) Defendants knew or should have known of the harassment and failed to take prompt remedial action. *See Abbood v. Texas Health and Human Servs. Comm'n*, 783 Fed. Appx. 459, 461 (5th Cir. 2019) (citing *Cain v. Blackwell*, 246 F.3d 759, 760 (5th Cir. 2001)).

1. The Complaint fails to show Dr. Niroomand was Plaintiff's supervisor.

10. As an initial matter, when analyzing the prima facie elements of a hostile work environment claim, "it matters whether a harasser is a 'supervisor' or simply a coworker." *Mathern v. Ruba Mgmt.*, 624 Fed. Appx. 835, 839 (5th Cir. 2015). A "supervisor" for Title VII purposes is "an employee 'empowered by the employer to take tangible employment actions against the victim.'" *Id.* The United States Supreme Court teaches that "tangible employment action" means a significant change in employment status, such as "hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Vance v. Ball State Univ.*, 570 U.S. 421, 431 (2013); *see also Pullen v. Caddo Parish Sch. Bd.*, 830 F.3d 205, 214 (5th Cir. 2016) (same) (quoting *Vance* for the

proposition that the test for supervisory status is the ability to take tangible employment action). The burden to establish "supervisory" status falls to the plaintiff. *Pullen*, 830 F.3d at 214.

11. The Fifth Circuit recently clarified the analysis in *Matherne v. Ruba Management*, writing that "mere 'leadership responsibilities' and 'the authority to assign [job responsibilities]' are insufficient to place an employee in the 'unitary category of supervisors' with authority to cause 'a significant change in employment status.'" *Matherne*, 624 Fed. Appx. 835, 840 (5th Cir. 2015). The Complaint does not allege facts showing Dr. Niroomand, even prior to his August 18, 2017 resignation of his position as Dean of the School of Business Administration, meets the definition of supervisor under *Vance*, nor does it contain facts showing Plaintiff suffered a tangible employment action. *See*, *generally*, ECF No. 7. In fact, the Complaint that Niroomand was not Plaintiff's supervisor and concedes Niroomand lacked the ability to deny Plaintiff of her tenure and promotion. *See id.* at ¶ 16 (admitting that despite Niroomand's alleged efforts to "[contact] at least one member of the committee to attempt to influence him to vote against Plaintiff's tenure and promotion…the Plaintiff received tenure and promotion to Associate Professor in August 2015."). For these reasons alone, Plaintiff fails to plead a viable hostile work environment claim.

2. The Complaint does not allege facts that show conduct severe or pervasive enough to alter the terms or conditions of Plaintiff's employment.

12. Harassment must be "severe or pervasive" enough to create an abusive working environment for Plaintiff to recover. *Aryain v. Wal-Mart Stores Tex. LP*, 534 F.3d 473, 479 (5th Cir. 2008). Title VII prohibits discrimination in employment on the basis of gender and is violated "[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult . . . that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (internal

quotations and citation omitted). "Harassment affects a term, condition, or privilege of employment" only if it is either "severe or pervasive." *Abbood*, 783 Fed. Appx. at 461 (quoting *Lauderdale v. Texas Dep't of Criminal Justice, Inst. Div.*, 512 F.3d 157, 163 (5th Cir. 2007)) (internal quotations omitted). "This high standard is meant to 'filter out complaints attacking the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing.'" *Abbood* at 461 (quoting *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998)). "The environment must be 'both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so.'" *Abbood* at 461 (quoting *Faragher* at 787). "Simple teasing, offhand comments, and isolated incidents (unless extremely serious) are not actionable—Title VII is not a general civility code." *Abbood* at 461 (quoting *Faragher* at 787-88) (internal quotations omitted). The Court employs a totality of circumstances test to determine whether an environment is objectively offensive and considers the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance. *Septimus v. Univ. of Houston*, 399 F.3d 601, 611 (5th Cir. 2005).

13. Plaintiff generally alleges that "beginning in **the Fall of 2009**" Niroomand "began discussing personnel and personal matters" with Plaintiff, including "his relationship with his wife," "confiding to the Plaintiff that they have a platonic relationship and that she was more like a little sister than a wife," and "[b]eginning in **2010**, [he] began making attempts to kiss the Plaintiff on the mouth." ECF No. 7 at ¶ 9 (emphasis added). Plaintiff further alleges that while attending a meeting at a hotel on **March 21, 2014**, Niroomand stated "that he would share an elevator with the Plaintiff," that when the elevator arrived at his floor first "he pressed the button

to close the doors, stating that he wanted to make sure the Plaintiff made it safely to her room," and that he "followed her to her room and, after she unlocked the door, pushed his way into her room and sat on the desk chair." *Id.* at ¶¶ 11-12 (emphasis added). Plaintiff claims that she "was forced to stand in the doorway, holding the door open, while she pleaded for him to leave" and that "[a]fter approximately one hour…Niroomand stated he would leave" if Plaintiff closed the door. *Id.* at ¶ 12. Plaintiff asserts that Niroomand "proceeded to exit the room, stating 'I can't believe you thought I'd be expecting something you're not ready for yet,'" and that she received texts from Niroomand expressing his respect for her and asking her if she could talk. *Id.* Plaintiff does not allege any additional acts of harassment by Niroomand after March 21, 2014. *See*, *generally*, *id.*

14. Plaintiff's hostile work environment claim fails as a matter of law. The Complaint shows Niroomand did not make any explicit comments, never used vulgar words, never used inappropriate language, never propositioned her for sexual favors, never used profanity, and never touched her. *See*, *generally*, ECF No. 7. In contrast, the Fifth Circuit found that multiple years of unwanted sexual grabbing and explicit comments could certainly be deemed severe and pervasive harassment. *Lauderdale v. Tex. Dep't of Criminal Justice*, 512 F.3d 157, 163 (5th Cir. 2007); *Cherry v. Shaw Coastal, Inc.*, 668 F.3d 182, 189 (5th Cir. 2012) (hostile work environment when plaintiff was subject to multiple months of unwanted sexual grabbing and explicit comments); *Harvill, v. Westward Commc'ns, L.L.C.*, 433 F.3d 428, 435 (5th Cir. 2005) (finding severe or pervasive harassment when, over seven months, a coworker grabbed a female employee, fondled her breasts and patted her buttocks "numerous times," and rubbed his body against the plaintiff). However, "offhand comments, and isolated incidents (unless extremely serious) will not amount to

discriminatory changes in the 'terms and conditions of employment.'" *Faragher v. City of Boca Raton*, 524 U.S. at 788 (1998).

15. It is undisputed that UHV was unaware of Niroomand's alleged harassment of Plaintiff until the summer of 2014. *See id.* at ¶ 13. However, Plaintiff also admits "that she was not prepared to go into great detail about either matter, or file a formal complaint….," *id.* at ¶ 15, and that she did not file a formal complaint until February 10, 2017—**nearly two years and eleven months** after she claims the last alleged act of harassment by Niroomand occurred, **approximately two and a half years** after she spoke with UHV Human Resources employee Karen Pantel and decided she was not prepared to file a formal complaint at that time, and **over two years** after she told Ms. Smith and the Director of Investigations for the System's Office of Equal Opportunity Services, Brian A. Schaffer, that she was not prepared to file a formal complaint. *See id.* at ¶¶ 11-12, 14-15, 21. It is also undisputed that Plaintiff was a good worker and that the alleged harassment by Niroomand did not interfere with her work performance. *See id.* at ¶¶ 10 ("In December 2014…a 'Continuous Improvement Report' prepared by the School of Business Administration for its accrediting body, the Association to Advance Collegiate Schools of Business…indicated that the Plaintiff was at the top of the list for 'Intellectual Contributions' and the number of students taught"); 16 (admitting Plaintiff received tenure and promotion to Associate Professor in August 2015).

16. Although, the allegations of harassment are subjectively offensive to Plaintiff, they do not meet the objectively offensive standard. There are no allegations of explicit language, touching of any kind, nor threatening or humiliating language. Moreover, it did not interfere with Plaintiff's work performance. Accordingly, there are no facts in the Complaint showing

Niroomand's behavior was severe or pervasive enough to create a hostile work environment. Accordingly, Plaintiff's hostile work environment claim must be dismissed.

3. The Complaint shows UHV took prompt remedial action to stop the alleged inappropriate conduct.

17. Moreover, a defendant is not liable under Title VII if it took "prompt remedial action" once it knew of the alleged harassment. *Abbood*, 783 Fed. Appx. at 462 (citing *Williams-Boldware v. Denton Cty.*, 741 F.3d 635, 640 (5th Cir. 2014)). The Supreme Court teaches that an employer can only be held liable for a hostile work environment created by the sexual harassment of a co-worker "when its negligence leads to the creation or continuation of a hostile work environment." *Vance*, 570 U.S. at 446. *See generally Burlington Ind., Inc. v. Ellerth*, 118 S.Ct. 2257 (1998) ; *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) (establishing, simultaneous to the ruling in *Ellerth*, different legal frameworks for employer liability through negligence and employer liability through strict liability in hostile work environment claims). The Supreme Court's language necessarily requires the negligence of the employer to cause the alleged harassment. Thus conceptually, a plaintiff can bring an action against an employer only where the employer's negligence caused sexual harassment by a co-worker. "A defendant may avoid Title VII liability when harassment occurred but the defendant took 'prompt remedial action' to protect the claimant." *Williams-Boldware*, 741 F.3d at 640. The remedial action must be "reasonably calculated" to put an end to the harassment. *See id.* It is not necessary for employers to utilize the severest sanction against the offending employee in order to demonstrate "prompt remedial action." *Id.*; *see also Landgraf v. USI Film Prods.*, 968 F.2d 427, 430 (5th Cir. 1992) ("Title VII does not require that an employer use the most serious sanction available to punish an offender . . . ."). Where the incidents of harassment do not involve "a protracted outpouring of . . . invidious

harassment that require[] large-scale institutional reform," the employer is only "required to implement prompt remedial measures to prevent [the harasser], and anyone else, from engaging in [the complained of] harassing conduct toward [the victim]." *Williams-Boldware* at 641.

18. Although Niroomand resigned his position as dean on August 18, 2017 and took Faculty Developmental Leave from UHV for the Fall (August – December) 2017 and Spring (January – May) 2018 semesters, and would not be returning to UHV to teach until Fall 2018, Plaintiff claims that in October 2017 she "became overwhelmed with anxiety at the thought of running into Dr. Niroomand and was forced to take sick leave again," and that on November 22, 2017, her doctor wrote a letter advising that Plaintiff be provided accommodations so that there is no contact with Niroomand. ECF No. 7 at ¶¶ 26, 29, 30, 34. The Complaint shows UHV took prompt remedial action by providing Plaintiff with accommodations necessary for her to avoid contact with Niroomand. *See id*. at ¶¶ 31-32 (allowing Plaintiff to teach online course for Spring 2018), 38 (reassigning Plaintiff to teach class at UHV's Katy campus to avoid Niroomand, who was teaching at Victoria campus), 39-40 (giving Plaintiff a four course online schedule for the Spring of 2019 to avoid working on campus and interacting with Niroomand), 41 (offering Plaintiff an online schedule for Spring 2019 semester). Again, Plaintiff does not allege that she was ever subjected to harassment by Niroomand after March 21, 2014. Nor is there any evidence that she was subjected to any harassment after UHV took prompt remedial action to protect Plaintiff. Accordingly, UHV cannot be held liable for a hostile work environment claim; such claim must be dismissed. *See Abbood*, 783 Fed. Appx. at 462; *Williams-Boldware*, 741 F.3d at 640.

D. Plaintiff's Hostile Work Environment, Retaliation, Gender, Race, and National Origin Discrimination Claims Must Be Dismissed Because They Do Not Meet Federal Rule of Civil Procedure 8's Pleading Standard.

19. The Complaint does not meet the pleading standard set forth in Federal Rule of Civil Procedure 8—it offers only speculative, conclusory allegations and fails to plead specific facts tying the Defendants to Plaintiff's alleged claims. *See* FED. R. CIV. P. 8; *see also*, *generally*, ECF No. 7; *Fernandez-Montes*, 987 F.2d at 284. Specifically, Plaintiff does not plead any specific facts relating to elements 2-5 of her *prima facie* hostile work environment claim.[3] As explained above, Plaintiff's allegations relating to Niroomand's conduct does not rise to the level of sexual harassment, nor does Plaintiff otherwise plead facts that constitute sexual harassment by Niroomand or anyone else at UHV or UHS. *See*, *generally*, ECF No. 7. Further, Plaintiff fails to plead facts showing the alleged harassment stemmed from a discriminatory animus. In fact, the Complaint does not contain any facts or even allegations that anyone relating to Defendants discriminated against Plaintiff. *See id*. At most, Plaintiff merely asserts that she "filed a Charge of Discrimination with the Equal Opportunity Commission, in which she described the aforementioned harassment, retaliation, hostile work environment, and gender and national origin discrimination." *See id.* at ¶ 35. Such conclusory assertion fails to detail the alleged actions by Defendants that constitute discrimination against Plaintiff, nor does it otherwise tie Defendants to her gender, race, or national discrimination claims and, accordingly, fails to meet Rule 8's pleading standard. *See* FED R. CIV. P. 8. Moreover, to the extent Plaintiff relies on her EEOC charge for

[3] A *prima facie* case hostile work environment claim related to sexual harassment has five elements: (1) belonging to a protected group; (2) subjected to harassment; (3) the harassment stemmed from a discriminatory animus (sex); (4) the harassment affected a term, condition, or privilege of employment; and, (5) the employer knew or should have known of the harassment and failed to take prompt remedial action. *See Matherne v. Ruba Mgmt.*, 624 Fed.Appx. 835, 838-39 (5th Cir. 2015).

those facts, the charge is equally deficient because it contains only conclusory, unsubstantiated assertions devoid of any facts. *See* ECF No. 1-1.

20. Likewise, Plaintiff does not plead facts showing the alleged harassment affected a term, condition, or privilege of her employment, or that Defendants failed to take prompt remedial action. Plaintiff only offers speculative, conclusory assertions that in no way link the alleged harassment with her employment, and do not otherwise show Defendants' actions relating to Plaintiff's employment were in motivated any way by her February 10, 2017 formal report or her EEOC charge. *See*, *e.g.*, ECF No. 7 at ¶¶ 10 (broadly asserting that "[d]espite her productivity, Plaintiff was among the lowest paid management professors at UHV"); 16 (conclusory assertion that "[Plaintiff's] salary increase was about half of that received by the anglo female and less than those received by the males who previously and subsequently received tenure and promotion in the Management Department); 18 (speculative assertion that Plaintiff was "led…to believe that all of the aforementioned events were the result of her rejection of Dean Niroomand's unwanted advances, the hotel incident, and being identified as a victim by Ms. Pantel."); 46 (conceding that Dr. Yang emailed Plaintiff informing her that her evaluation would be adjusted and that, on January 17, 2020, Dr. Yang sent the revised 2018 evaluation). Such unsubstantiated allegations are not factual and do not raise the right to relief above a speculative level. *See Katrina Canal*, 495 F.3d at 205 (quoting *Twombly*, 550 U.S. at 555); *see also Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993) ("The Court is not required to conjure up unpled allegations in order to save a complaint, and conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice . . . ."). As explained above, the Complaint demonstrates that Plaintiff's

employment was in no way impacted by the alleged harassment and shows Defendants did take prompt remedial action to stop the alleged harassment.

21. Accordingly, Plaintiff's claims must be dismissed in their entirety because the Complaint fails to meet the heightened pleading standard set forth in Federal Rule of Civil Procedure 8. *See* FED. R. CIV. P. 8; *Nunez v. Simms*, 341 F.3d 385, 388 (5th Cir. 2003).

PRAYER

Based on the foregoing, Defendants The University of Houston at Victoria and The University of Houston System respectfully requests that this Court grant its Motion to Dismiss, thereby dismissing Plaintiff's hostile work environment, gender discrimination, race/national origin discrimination and retaliation claims against them in their entirety, and all other further relief—at law or in equity—to which they may be justly entitled.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served electronically through the electronic-filing manager on this the 10th day of June, 2020, to:

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