IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

AGUEDO RIVERA SANCHEZ, ET AL. Plaintiffs, v. LAUSELL DEL CARIBE, INC. ET. AL., Defendants.

Civil No. 15-2173 (DRD)

OPINION AND ORDER Eighty-five (85) s are seeking relief against their former employer Lausell del Caribe, Inc., La-Re Group 2 LLC, and Lausell, Inc. s alleging violations to the Worker , 29 U.S. Code § 2101, and July 27, 1998, 29 L.P.R.A. § 250(d). Motion for Summary Judgement

(Docket No. 36). For the reasons provided below, the Court hereby DENIES Motion for Summary Judgement.

I. FACTUAL AND PROCEDURAL BACKGROUND On December 2, 2016, Plaintiffs filed a Second Amended Complaint (Docket No. 24) alleging that Defendants violated the WARN Act by not notifying Plaintiffs, their employees, of the reduction-in-force plan. Plaintiffs claim that the Act requires 60 (sixty) day written notice prior to any layoffs caused by plants. Plaintiffs aver that Defendants owe them back pay with the corresponding accrued fringe benefits as a result of their non-compliance with the Act.

On April 4, 2016, Plaintiffs filed a Motion for Summary Judgement (Docket No. 36). Plaintiffs claim that Defendants are liable under the Act for failing to notify them 60 (sixty) days before of their intent to

separate them from their employment. Plaintiffs assert that Defendants should be held accountable under the Act because they employ more than one-hundred (100) full-time employees. Plaintiffs attached President, Unsworn Statement under Penalty of Perjury (Docket No. 36, Exhibit 1), where he allegedly admits to employing more than one-hundred (100) full-time employees. See Docket No. 38, Exhibit 1, ¶ 2.

On July 15, 2016, Defendants filed a Memorandum in Opposition to Motion for Summary Judgement (Docket No. 53). Defendants assert that Plaintiff s motion should be denied due to the existence of a

genuine issue of material fact. Defendants claim that Unsworn Statement under Penalty of Perjury (Docket No. 36, Exhibit 1) does not state that Defendants employ more than one-hundred (100) full time employees and, thus, Lausell does not fall under the purview of the WARN Act. See Docket No. 53, Exhibit 1, ¶ 2.

On August 9, 2016, Plaintiffs filed a Supplemental Motion for Summary Judgement (Docket No. 57) where they included a Declaration Under Penalty of Perjury (Exhibit #1) avowing they met the requirements qualifying them as full-time employees under the Act. On August 17, 2016, Defendants filed a Motion to Strike (Docket No. 62) alleging that the deadline to file dispositive motions had already passed and, thus, the affidavit was not part of the record.

On August 31, 2016, the Court granted the Motion to Strike (Docket No. 63) via the following order:

Plaintiffs never moved for an extension of time. Thus, their Summary Judgment Motion was fully briefed and ripe for ruling on July 26, 2016. Nevertheless, on August 9, 2016--nearly two weeks after their time to reply had elapsed--Plaintiffs filed a Supplemental Motion for Summary Judgment. However, the timing and content of Plaintiffs' Supplemental Motion suggest it is nothing more than a "sham affidavit" introduced to obviate a genuine issue of material fact raised by Defendants. Notwithstanding, the fact that Plaintiff's filing is so grossly untimely under the Local Rules and Federal Rules of Civil Procedure was sufficient grounds to grant Defendant's Motion to Strike. (internal citations omitted)

II. SUMMARY JUDGMENT STANDARD Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment should be the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 324-325 (1986). Pursuant to the clear language of the rule, the moving party bears a two-fold burden: it judgment Veda-Rodriguez v. Puerto Rico, 110 F.3d 174, 179 (1st Cir. 1997). where it has the potential to change the outcome of the suit under governing law. See Anderson v. Liberty

Lobby, Inc. the nonmoving party based on the evidence. Id. erly supported motion for summary judgment. Id.

After the moving party meets this burden, the onus shifts to the non-moving party to show that Cortes-Irizarry v. Corporacion Insular, 11 F.3d 184, 187 (1st Cir. 1997).

the non- this manner and without regard to credibility determinations, reveals no genuine issue as to any material

Cadle Co. v. Hayes, 116 F.3d 957, 959-60 (1st Cir. 1997). he drawing of legitimate inferences from the

Reeves v. Sanderson Plumbing Prod., 530 U.S. 133, 150 (2000)(quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51, 106 S.Ct. 2505 (1986)). Summary judgment is inappropriate where there are issues of motive and intent as related to material facts. See Poller v. Columbia Broad. Sys., 369 U.S. 470, 473, 82 S.Ct. 486 (1962)(summary judgment is to be issued

see also Pullman-Standard v. Swint, see also Dominguez-Cruz v. Suttle Caribe, Inc., 202 F.3d

Rodríguez v. Municipality of San Juan, 659 F.3d 168, 178-179 (1st Cir. 2011)(internal

quotations and citations omitted). Conversely, summary judgment is appropriate where the nonmoving Ayala-Gerena v. Bristol Myers-Squibb Co., 85 F.3d 86, 95 (1st Cir. 1996). However, while the Court

-moving party] . . . we will not draw unreasonable Vera v. McHugh, evidentiary weight to conclusory allegations, empty rhetoric, unsupported speculation, or evidence which, in

London, 637 F.3d 53, 56 (1st Cir. 2011)(internal citations omitted).

Further, the Court will not consider hearsay statements or allegations presented by parties that do not properly provide specific reference to the record. See any statement of fact not supported by a specific citation to the record material properly considered on

summary judgment. The [C]ourt shall have no independent duty to search or consider any part of the record n see also , 246 F.3d 32, 33 (1st Cir. 2001)(finding that, where a party fails to buttress factual issues with proper record citations, judgment against that party may be appropriate); Garside v. Osco Drug, Inc., 895 F.2d 46, 50 (1st Cir.

mmary 1 If a defendant fails to file an opposition to the motion for summary judgment, the district court may consider the motion as unopposed and disregard any subsequently filed opposition. Velez v. Awning Windows, Inc., 375 F.3d 35, 41 (1st Cir. 2004). Furthermore, the district court must take as true any uncontested statements of fact. Id. at 41-42; see D.P.R.R. 311.12; See Morales, 246 F.3d at 33 (This case to present a statement of disputed facts, embroidered with specific citations to the record, justifies deeming

and quotations omitted); see also Euromodas, Inc. v. Zanella , Ltd., 368 F.3d 11, 14-15 (1st Cir. 2004). However, this does not mean that summary judgment will be automatically entered on behalf of the moving

order to ascertain whether judgment See Velez, 375 F.3d at 42.

III. LEGAL ANALYSIS 1970s and 1980s when employees lost their jobs, often without notice, as

companies were merged,

acquired or closed. The purpose of the Act is to protect workers by obligating employers to give their In re APA Transp. Corp. Consol. Litig., 541 F.3d 233, 239 (3rd Cir. 2008) (internal citations omitted). Under the Act, an employer any business enterprise that employs- (A) 100 or more employees, excluding part-time employees; or (B) 100 or more employees who in the aggregate work at least 4,000 hours per week 29 U.S.C. §

1 D.P.R. CIV. R. 56(b), often referred to as the anti-ferret rule, requires the party moving for summary judgment to submit a contends there is no ge -moving party is required to submit a counter-statement material facts and unless a fact is admitted, D.P.R. CIV. R. 56(c).

2101(a)(1) (emphasis ours). See Docket No. 36, Pg. 3. A

is not the result of a plant closing; and (B) results in an employment loss at the single site of employment during any 30 day period for- (i)(I) at least 33 percent of the employees (excluding any part-time employees); and (II) at least 50 employees (excluding any part-time employees)

For the Court to able to grant summary judgment, it must be able to clearly determine whether the Plaintiffs were full-time or part-time employees. A part- an employee who is employed for an average of fewer than 20 hours per week or who has been employed for fewer than 6 of U.S.C. § 2101(a)(8). The distinction of Plaintiffs qualification as full-time or part-time employees is dispositive to decide whether or not Lausell falls under the purview of the Act. In fact, it is so essential that upon Defendants argument that there was a genuine issue of material fact regarding Plaintiffs employment qualification, the latter filed a Supplemental Motion to Motion for Summary Judgment (Docket No. 57) containing an Exhibit where they swore that they met the requirements of full-time employees.

2 , the record reflects that the parties remain at odds regarding Plaintiffs qualification as full-time or part-time employees.

Plaintiffs refer Unsworn Statement under Penalty of Perjury as proof that the employees in question were not part-time employees. Mr. Recio indicated in his statement around 137 employees. Only thirteen of those employees worked 40 hours a week during those pay

2 The Court reiterates that Plaintiff more than a s xistence of a genuine issue of material fact. See, e.g., Escribano-Reyes v. Prof l Hepa Certificate Corp., 817 F.3d 380, 387 (1st Cir. 2016) (discussing the sham affidavit doctrine in relation to Motions for Summary Judgment).

periods. All of the 137 employees in the aggregate worked an average of 3,375 hours per week See Docket No. 36, Exhibit 1, ¶ 14 (emphasis ours). Mr. Recio refers to those two specific dates as they

would have been, depending on when it is decided that the plant closed, the date were the written notice would have had to been served. Defendants argue that Mr. Recio never specified that the Plaintiffs were full-time employees. The Court agrees.

IV. CONCLUSION Veda-Rodriguez where it has the potential to change the outcome of the suit under governing law. See Anderson v. Liberty

Lobby, Inc. the nonmoving party based on the evidence. Id. The qualification of these employees is essential in determining whether or not the Defendant is liable under the WARN Act and based on the record in this case, the Court finds that there is a genuine issue of material fact as to whether the Plaintiffs were full-time or part-time employees. Thus, after evaluating the facts in the light most flattering to the non-movant and indulg[ing] in all reasonable r asis for granting Cadle Co, 116 F.3d 957. Accordingly, the Court DENIES Motion for Summary Judgement. IT IS SO ORDERED. In San Juan, Puerto Rico, this 14th day of February, 2017.

S/ DANIEL R.DOMÍNGUEZ DANIEL R. DOMÍNGUEZ U.S. District Judge