



2 Under Law 100, once a plaintiff establishes a prima facie case  
3 of discrimination by showing that she was subjected to some adverse  
4 employment action for discriminatory reasons "the burden shifts to  
5 the employer to prove by a preponderance of the evidence that it had  
6 'just cause' for its actions. If the employer establishes just cause,  
7 the burden of proof returns to the plaintiff. If the employer fails  
8 to prove just cause, however, it bears the burden of proving by a  
9 preponderance of the evidence that the decision was not motivated by  
10 [sex] discrimination." Baralt v. Nationwide Mut. Ins. Co., 251 F.3d  
11 10, 16 (1<sup>st</sup> Cir. 2001) (internal citations omitted). "[I]n order to  
12 rebut the Law 100 presumption, the employer must prove, by a  
13 preponderance of the evidence, that the challenged action was not  
14 motivated by discriminatory... animus." Ramos v. Davis & Geck, Inc.,  
15 167 F.3d 727, 734 (1<sup>st</sup> Cir. 1999) (citation and internal quotation  
16 marks omitted). If the employer proves that its decision was  
17 justified the presumption disappears and "the burden of proof on the  
18 ultimate issue of discrimination remains with the plaintiff".  
19 Alvarez-Fonseca v. Pepsi Cola de Puerto Rico Bottling Co., 152 F.3d  
20 17, 28 (1<sup>st</sup> Cir. 1998).

21 Upon review of our previous Order we find that regardless of the  
22 evidentiary standard applicable to the retaliatory claim asserted  
23 under Law 69 we can safely conclude that summary judgment is also  
24 warranted regarding plaintiff's local retaliation cause of action. In  
25 making this finding it is important to note that defendants'  
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1  
2 proffered explanations for the underlying challenged events regarding  
3 the alleged retaliatory hostile environment were uncontested by  
4 plaintiff during the summary judgment process.<sup>2</sup> Hence, based on the  
5 evidence submitted, we find that defendants carried their burden of  
6 dissipating the presumption of discrimination even under the more  
7 stringent local evidentiary standard.

8 Based on the foregoing, defendants' Urgent Motion in Limine  
9 (docket No. **149**), taken as a motion for reconsideration,<sup>3</sup> is **GRANTED**.<sup>4</sup>  
10 Accordingly, plaintiff's Law 69 retaliation claim is **DISMISSED** based  
11 on the reasoning set forth in our previous Order in the Matter of  
12 Defendants' Motion for Summary Judgment (docket No. 137).

13 Judgment shall be entered accordingly.

14 IT IS SO ORDERED.

15 In San Juan, Puerto Rico, this 24<sup>th</sup> day of February, 2009.

16 S/Raymond L. Acosta  
17 RAYMOND L. ACOSTA  
United States District Judge

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19 <sup>2</sup> See Order in the Matter of Defendants' Motion for Summary  
20 Judgment (docket No. 137) p. 59. See also, Order in the Matter of  
21 Motion to Deem as Uncontested Defendant's Statement of Uncontested  
22 Facts (docket No. 139) and Order Enjoining Plaintiff from Introducing  
23 Evidence Regarding Alleged Retaliatory Incidents after November 20,  
24 2006 (docket No. 123).

25 <sup>3</sup> Plaintiff's timeliness argument is likewise rejected.  
26 "Interlocutory orders [including summary judgment denials]... remain  
open to trial court reconsideration until the entry of [final]  
judgment." Nieves-Luciano v. Hernandez-Torres, 397 F.3d 1, 4 (1<sup>st</sup> Cir.  
2005).

<sup>4</sup> See Plaintiff's Opposition (docket No. **160**) and Defendants'  
Motion in Compliance with Court Order Regarding Burden of Proof for  
Retaliation Claims under Law 69 (docket No. **159**).