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

CARLOS GONZALEZ FIGUEROA, et al.,

Plaintiff(s)

v.

J.C. PENNEY PUERTO RICO, INC.

Defendant

CIVIL NO. 07-1258(JAG)

OPINION AND ORDER

GARCIA-GREGORY, D.J.

Pending before the Court is J.C. Penny's Motion for Summary Judgment. (Docket No. 75). For the reasons set forth below, said motion is hereby **GRANTED** in part and **DENIED** in part.

PROCEDURAL BACKGROUND

On March 27, 2007, Carlos L. Gonzalez Figueroa ("Plaintiff") filed a complaint against his employer J.C. Penney, Inc. ("Defendant or J.C. Penney"). He alleged, in essence, that Defendant had discriminated against him because of his age in violation of the Age Discrimination in Employment Act, 29 U.S.C. §621 *et seq*., (ADEA) and the Puerto Rico anti-discrimination statute Law No. 100, P.R. Laws Ann. tit. 29 §146 ("Law 100"). He also alleged that Defendant retaliated against

him in violation of ADEA's retaliation provision, 29 U.S.C. §623(d), and local Law No. 115, P.R. Laws Ann. tit. 29 §194a ("Law 115"). He further claims damages under Puerto Rico's general tort provision, Article 1802 of the Civil Code, 31 P.R. Laws Ann. tit. 31 §5141. Plaintiff's wife, Elsa I. Bermúdez Méndez, and their three children also filed suit against J.C. Penny.

Plaintiff was born on April 2, 1955. (Docket No. 75-2, J.C. Penny's Statement of Uncontested Facts ["JPSUF"], ¶1). He began working for Defendant's as a Dock Pick-Up Associate at the Plaza las Americas Store ("Plaza Store") on May 6, 1970. (Id., ¶2). Throughout the years he climbed the corporate ladder and in 1998 he was promoted to Senior Support Manager, a position that was converted in 2002 to that of Assistant Store Manager. (Id., ¶6, ¶10).

Plaintiff's 2001-2002 evaluation indicates that he was evaluated in five areas: shrinkage, improvement of profit, styling salon operation, store operation/customer service and credit applications. (Exhibit 30, Docket No. 75-37). Another section of J.C. Penney's evaluation measures competencies such as teamwork, innovation, integrity, costumer focus and problem solving. Plaintiff failed to meet the goals set regarding

shrinkage and improvement of profit. Id. He met the goals for the styling salon and credit applications. The evaluation for store operation/customer service indicated that improvements had been made but that many opportunities exist. Id. That evaluation also stated that, "Mr. Gonzalez is very knowledgeable of our store and a dedicated Penney Associate. Opportunities for 2002 consist in controlling short cash and work hard at improving our store standards". Id.

Plaintiff's 2002-2003 evaluation indicates that he was evaluated in shrinkage, short cash, test and check and personal development. (Exhibit 32, Docket No. 75-40). He failed to meet the shrinkage and the personal development goals, but his overall evaluation was that he fully met expectations and had a competent performance. Id.

A main point of contention in this case pertains to the exact nature of his responsibilities. Defendants posit that his role was limited to Loss Prevention and some duties regarding upkeep and maintenance. (Id., ¶14). He supervised new hires to the Loss Prevention department and monitored the money room, where the cash registers' daily balances are gathered and entered in the computer system. (Id., ¶15; Docket No. 82, Plaintiff's Statement of Uncontested Facts ("PSUF"), ¶16). Plaintiff, however, argues that in addition to those duties he

was also in charge of receiving, part of the office, opening and closing the store, customer service and distributing work to associates. (PSUF, ¶14). As an Assistant Store Manager, he was under the supervision of the Store Manager and was evaluated by said manager and by the District Manager. (JPSUF, ¶17).

According to J.C. Penney, the Plaintiff only had Loss Prevention duties but was being paid the same as other Assistant Store Managers that had more than one department to oversee. (JPSUF, ¶29). Plaintiff, however, stated in his deposition that he had other duties such as receiving, opening and closing the store, customer service, money room, associate supervision, supervision of the maintenance crew, etc. (Plaintiff's deposition, Exhibit 31, Docket No. 75-38).

In 2004, J.C. Penney Puerto Rico was transferred from the company's International Division to the United States Division 2. (JPSUF, ¶30). As part of this transfer many changes took place as the programs from the United States began to be implemented. On February 2004, Mr. Daniel J. Ciccotelli arrived in Puerto Rico to be the new Store Manager for the Plaza Store and on May 2004, Mr. Richard Arenas arrived as the District Loss Prevention Manager. (JPSUF, ¶36). Mr. Arenas was in charge, among other things, of homogenizing the procedures in Puerto Rico to those followed in the United States, among other things.

(Arenas' Unsworn Statement, Exhibit 50, Docket No. 75-65). In February 2005, Ciccotelli became District Manager of the Puerto Rico division and Mr. Juan Leal became Plaza Store's manager. (JPSUF, ¶42).

During 2005, two of the three Assistant Store Manager positions were eliminated. (JPSUF, ¶44). J.C. Penney then offered Plaintiff two options. Either accept a separation package or accept a position as Senior Loss Prevention Manager. (Ciccotelli's deposition, Exhibit 42, Docket No. 75-54, p. 35). Another point of contention in this case has to do with the nature of the new position in relation to that of Assistant Store Manager. J.C. Penney avers that the new position corresponded to the correct classification for those members of management, like Plaintiff, whose main responsibilities were overseeing Loss Prevention matters. (JPSUF, ¶46). Plaintiff denies that a reclassification took place and posits that he was actually demoted because he performed several duties outside of Loss Prevention. (PSUF, ¶46).

Another Assistant Store Manager at the time, Mr. Burgos, was offered a severance package simultaneously with a promotion to Operations District Manager. (Ciccotelli's deposition, Exhibit 42, Docket No. 75-54, p. 32). The other Assistant Store

Manager, Mrs. De Jesus, remained as the only manager in said position.

Plaintiff started at the new position as Senior Loss Prevention Manager, which had fewer responsibilities, a lower pay band and less bonus eligibility than his previous position as Assistant Store Manager. (JPSUF, ¶46). Plaintiff's employment history shows that he earned up to $57,437 as Assistant Store Manager including a 15% incentive. (Exhibit 1, Docket 75-3). As a Senior Loss Prevention Manager he earned around $50,500 without incentive pay. Id.

Plaintiff's performance evaluation for 2005-2006 as Senior Loss Prevention Manager had the same goals as the 2002-2003 evaluation: shrinkage, test and check, reduce short cash and personal development. (JPSUF, ¶56). It shows that his internal evaluation was that he fully met expectations and that he had a competent performance. However, he did not meet the personal development goal and it was observed that there were opportunities for improvement regarding training of associates in the apprehension of shoplifters. (Exhibit 34, Docket No. 75-42, p. 2).

In May 11, 2006, Plaintiff filed an age discrimination charge with the Equal Employment Opportunity Commission ("EEOC"). (JPSUF, ¶68). In it, he stated that in June 2005, he

was forced to choose between retirement and a demotion. It further stated that on September 18, 2005 he was demoted to Loss Prevention Manager. (Exhibit 35, Docket No. 75-43). This EEOC charge was dismissed on December 28, 2006. (Exhibit 36, Docket No. 75-44).

His 2006-2007 evaluation assessed the shrinkage, test and check, review of LP data base and improvement of short cash and improvement of associate engagement. (Exhibit 45, Docket No. 75-59). His performance was below expectations in all areas except review of LP data and improvement of short cash where he fully met expectations. Id., p. 2. He also scored below average in the competencies section of the evaluation. After this evaluation, he was placed in a corrective action plan. Plaza Store's manager at the time, Juan A. Leal, stated in the evaluation that Plaintiff needed to work on building trust with managers and associates, provide factual information consistently and work on shrinkage. Id., p. 5. It also stated that previous Regional and District LP visitations have been below average in Fine Jewelry Procedures, receiving and special orders. He was given until mid-year 2007 to show improvement or face termination. Id.

However, before the 90 day period expired, on July 9, 2007, J.C. Penney began an investigation regarding certain allegations made against Plaintiff. According to the unsworn statement of

the Plaza Store's manager at the time, Mr. Juan Leal, a Loss Prevention Officer named Jesus Garcia told Michael Gonzalez, another Loss Prevention Officer, that Plaintiff had instructed him to falsify the entries to the log that recorded the number of times the anti-theft sensors at the entrance of the store were activated. (Exhibit 49, Docket No. 75-64, p. 4-5). The District Loss Prevention Manager was informed by the second officer about the allegations and he was instructed to tell Mr. Leal. Mr. Jesus Garcia then approached Mr. Leal directly and informed him of what had been allegedly asked of him. Id. Mr. Garcia also prepared a statement providing details of the situation. Id.

On July 11, 2007, Mr. Leal and the Human Resources District Manager, Ms. Rosa M. Benitez, met with Plaintiff. Id. He denied any wrongdoing and wrote a statement. That same day he was sent home without pay while J.C. Penney conducted an investigation. During the course of the investigation it was determined that he had engaged in a serious breach of the company's principles of integrity and the Company Statement of Business Ethics. Id., p. 7. According to Mr. Leal the decision to terminate Plaintiff came after also considering his prior correctives in file, issues regarding compliance with policy and prior instances of inaccurate compliance and that he was in a performance action

plan but did not show improvement. Id. Plaintiff was terminated on July 26, 2007. Id.

Before said termination took place, Defendants filed a Motion to Dismiss. (Docket No. 6). The motion was granted in part and denied in part and partial Judgment was entered dismissing all claims by Plaintiff's wife and children. (Docket No. 26). Plaintiffs appealed and the First Circuit affirmed the dismissals, except for that of Plaintiff's son, Carlos M. González Bermúdez, who was a minor at the time the Complaint was filed. See Gonzalez Figueroa v. J.C. Penny P.R., Inc, 568 F.3d 313 (1st Cir. 2009).

Defendants now posit in their Motion for Summary Judgment that Plaintiff has failed to establish a prima facie case for his claims of age discrimination and retaliation under ADEA and the local statutes and that, since his claim under Art. 1802 is derivative, it should also be dismissed. It also requests the dismissal of the demand for front pay.

STANDARD OF REVIEW

1. Summary Judgment Standard

"Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law based on the pleadings, depositions, answers to interrogatories, admissions on file, and

any affidavits." Thompson v. Coca-Cola Co., 522 F.3d 168, 175 (1st Cir. 2008) (citing Fed. R. Civ. P. 56(c)). The issue is "genuine" if it can be resolved in favor of either party. Calero-Cerezo v. U.S. Dep't of Justice, 355 F.3d 6, 19 (1st Cir. 2004). A fact is "material" if it has the potential to change the outcome of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The party moving for summary judgment bears the burden of showing the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "In prospecting for genuine issues of material fact, we resolve all conflicts and draw all reasonable inferences in the nonmovant's favor." Vineberg v. Bissonnette, 548 F.3d 50, 56 (1st Cir. 2008).

Although this perspective is favorable to the nonmovant, once a properly supported motion has been presented before a Court, the opposing party has the burden of demonstrating that a trial-worthy issue exists that would warrant this Court's denial of the motion for summary judgment. Anderson, 477 U.S. at 248. The opposing party must demonstrate "through submissions of evidentiary quality, that a trial worthy issue persists." Iverson v. City of Boston, 452 F.3d 94, 98 (1st Cir. 2006) (internal citations omitted). Moreover, on issues "where [the opposing] party bears the burden of proof, it 'must present

definite, competent evidence' from which a reasonable jury could find in its favor." United States v. Union Bank for Sav. & Inv.(Jordan), 487 F.3d 8, 17 (1st Cir. 2007) (citing United States v. One Parcel of Real Property, 960 F.2d 200, 204 (1st Cir. 1992)). Hence, summary judgment may be appropriate, if the non-moving party's case rests merely upon "conclusory allegations, improbable inferences, and unsupported speculation." Forestier Fradera v. Municipality of Mayaguez, 440 F.3d 17, 21 (1st Cir. 2006) (citing Benoit v. Technical Mfg. Corp., 331 F.3d 166, 173 (1st Cir. 2003)). It is important to note that throughout this process, this Court cannot make credibility determinations, weigh the evidence, and make legitimate inferences from the facts, as they are jury functions, not those of a judge. Anderson, 477 U.S. at 255.

ANALYSIS

1. Plaintiff's prima facie case under ADEA

In the absence of "smoking gun evidence", a party may nonetheless prove discrimination under ADEA through the burden shifting framework developed by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Velez v. Thermo King de P.R., Inc., 585 F.3d 441 (1st Cir. 2009). Plaintiff must show by a preponderance of the evidence that: (1) He or she is over 40 years of age; (2) that his or her job performance was

satisfactory and met the employer's legitimate expectations; (3) that he or she suffered an adverse employment action and, (4) that the defendant sought a replacement with roughly equivalent job qualifications. See Gonzalez v. El Dia, Inc., 304 F.3d 63 (1st Cir. 2002). In its Motion for Summary Judgment J.C. Penney concedes that Plaintiff meets the first prong, but denies that he met the second, third and fourth prongs. (Docket No. 75).

Regarding the second prong, J.C. Penney argues that even if it acknowledges that according to annual evaluations Plaintiff's performance was average, his "actual responsibilities were not [sic] stellarly performed". (Id., p. 10). It also states in its Reply to Plaintiff's Opposition that there is vast documentary evidence to contradict Plaintiff's assertion that he met legitimate job expectations. (J.C. Penney Reply, Docket No. 87, p. 2). Said documentary evidence consists of an incident report from 2007 (JPSUF, Exhibit 16), which was after the alleged demotion, loss prevention visitation reports written by Mr. Arenas (Id., Exhibits 17-29) and Plaintiff's yearly evaluations (Id., Exhibits 30, 32, 37, 45, 46). Regarding the visitation reports, it must be noted that they are internal memoranda where improvement opportunities were notified to the store's top management, not performance reviews of Plaintiff work, even if he was responsible of some areas reviewed in the visits.

Plaintiff correctly indicates that between 2001 and 2005, his performance was regarded in the evaluations as "Fully Met Expectations/Competent Performance". (POMSJ, p. 5). In other words, the evaluations show that he was reviewed positively until the 2006-2007 period. Furthermore, and contrary to what Defendants imply, only meeting job expectations is required under the McDonnell Douglas test, not stellar performance.

The third prong of the test is whether a plaintiff suffered an adverse employment action. Plaintiff avers that he was demoted because his pay was reduced and he had lower bonus eligibility. J.C. Penney does not deny that he had significantly less compensation but allege that they merely reclassified Plaintiff to the correct position according to the tasks he performed. Specifically, they argue that as an Assistant Store Manager, Plaintiff only performed loss prevention tasks and that classifying him as Loss Prevention Manager simply adjusted his job description to what he actually did. (JPSUF, ¶52-54). According to them, this action is consistent with the adaptation of operations in Puerto Rico to those in the continental United States. Id.

Plaintiff retorts that the arguments offered by J.C. Penney to justify their actions are pretexts. To support his assertion he points out that at that time he was allegedly demoted he

performed several tasks that were not Loss Prevention tasks such as receiving, the money room, part of the office, opening and closing the store, customer service and distributing work to associates. (POMSJ, P. 8). He also points out that there were two other Assistant Store Managers: Ms. De Jesus who is younger than Plaintiff and who was retained in the position and Mr. Burgos who had less experience than Plaintiff and who was offered a promotion. Plaintiff, instead, was given a Hobson's choice of either retiring or accepting a lower paying job.

The Court considers that even though Plaintiff has not been able to produce the "smoking gun" of discrimination in this case, he has succeeded in demonstrating that there are issues of material fact regarding the reasons proffered by J.C. Penney to remove him as Assistant Store Manager and force him to choose between retirement or a position with less pay and benefits. The Court finds that the reason proffered by J.C. Penney to classify him as Loss Prevention Manager (that he only performed loss prevention tasks) is inconsistent with Plaintiff's performance reviews. For example, his 2005-2006 Performance Review as Senior Store Manager indicate that he was evaluated in areas not related to Loss Prevention, such as total sales, associate development, store environment, EBIT (Earnings Before Interests & Taxes). (JPSUF, Exhibit 46). The Court would be hard pressed

to validate an argument that is clearly contradicted by the record.

Finally, the fourth prong of the burden shifting framework is whether the employer had continuing need for the services. Said prong is met here because J.C. Penney continued to need the services of an Assistant Store Manager. In this case, the only person retained in the position was Ms. De Jesus who is younger and had less experience than Plaintiff.

In sum, the Court finds that Plaintiff has successfully established a prima facie case of age discrimination and that he has adequately alleged that there are material issue of fact regarding the reasons proffered by J.C. Penney to classify him as Loss Prevention Manager.

2. Plaintiffs claim under P.R. Law 100

In its Motion for Summary Judgment, J.C. Penney merely reiterated the arguments it put forth regarding the ADEA discrimination claim when requesting dismissal of the claim under local Law 100. The Court has already determined said arguments are insufficient to warrant summary judgment. (Docket no. 75, p. 19).

3. Plaintiff’s ADEA retaliation claim

ADEA’s retaliation provision states that it is unlawful for an employer to discriminate against an employee because said

individual has engaged in a protected activity such as making a charge, testifying, assisting, or participating in an investigation, proceeding, or litigation. 29 U.S.C. §623(d).

For a plaintiff to establish a prima facie case of retaliation, where there is no direct evidence, he or she must show that: (1) He or she engaged in protected conduct; (2) that he or she suffered an adverse employment action, and (3) that there is a causal connection between the protected conduct and the adverse employment action. Bennett v. Saint-Cobain Corp., 507 F.3d 23, 32 (1st Cir. 2007).

In its Motion for Summary Judgment, J.C. Penney argues that even if Plaintiff engaged in protected activities when he filed the EEOC charges and the complaint in this case, his argument involves speculation because the real reason for his termination was a serious ethical violation. Secondly, it argues that even assuming that he suffered an adverse employment action as a result of a protected activity (which it denies), the amount of time which has transpired between the protected activity and the termination is too long. (JPMSJ, ¶23).

To support this statement, J.C. Penney points out that the first charge was filed on May 11, 2006 and that Plaintiff was terminated on July 26, 2007. (Id. ¶ 24). It also points out that Plaintiffs second charge filed on July 24, 2007, was a mere

attempt to claim retaliation because he was under investigation for the ethical violation that led to his termination. Id. Finally, J.C. Penny argues that throughout his career at the stores he received regular salary increases and favorable reviews which, according to First Circuit precedent break causal retaliation claims. (Id., ¶25).

Plaintiff stated during his deposition that J.C. Penney began retaliating against him at the end of 2006, and that said discrimination began because of his complaints to the EEOC and because he filed the instant case in March 2007. (Exhibit 31, Docket No. 75-39, p. 92). He further alleges that it took place when the company started holding him responsible for things that were out of his control and when he was told he would be placed under a corrective plan at the beginning of 2007. Id. He was formally placed under said plan in May 2007. Id., p. 97. According to his deposition he was to be under the corrective plan for 90 days and receive an evaluation every 30 days.

In his opposition to the Motion for Summary Judgment, Plaintiff argues that there is a causal connection between the filing of the first charge and the negative evaluation for the year 2006, and the filing of this lawsuit in March 2007 and his termination in July of that year. (POMSJ, p. 13). He posits that Mr. Garcia, who was the actual perpetrator of the alleged

falsification that led to his termination, used him as a scapegoat and was only suspended for a week. According to Plaintiff, said action indicates that J.C. Penney gave Plaintiff a disparate treatment, which under Velez v. Thermo King de P.R., Inc., 585 F.3d 441 (1st Cir. 2009), may indicate discriminatory animus. He sustains that the investigation conducted by J.C. Penney of the false accusations merely consisted of taking as true a handful of hearsay statements from employees. (Id., p. 14).

In Velez v. Thermo King de P.R., Inc., *supra*, the First Circuit reiterated that the test for disparate treatment in age discrimination cases is "whether a prudent person, looking objectively at the incidents, would think them roughly equivalent and the protagonist similarly situated. While an exact correlation is not necessary, the proponent must demonstrate that the cases are fair congeners." Id. citing Perkins v. Brigham &Women's Hosp., 78 F.3d 747, (1st Cir. 1996). The Court considers that a prudent person would not think that Plaintiff and the Loss Prevention Officer who falsified the documents were in a fairly congenial situation, apart from the obvious fact that they were involved in the same incident. Plaintiff, on one hand, was the Loss Prevention Manager, that is, the member of management in charge of preventing fraud and

theft and who is held at a higher standard than a first tier employee, such as Mr. Garcia.

The Court finds that even though there is significant temporal proximity between the filing of the complaint in this case and his termination, causation as required under the third prong has not been demonstrated. J.C. Penney has submitted strong documentary evidence supporting the reasons it had to terminate Plaintiff and the process followed to evaluate the incident. Plaintiff has not been able to show that there are issues of material fact regarding the reasons for his termination apart from alleging he was treated disparately and the conclusory allegation that he was used as a scapegoat and that hearsay was used against him.

Therefore, the Court finds no evidence of disparate treatment that could lead to the conclusion that retaliation took place and finds that Plaintiff was not able to establish a causal connection between the performance of protected activities and his termination aside from establishing temporal proximity. Therefore, follows that Plaintiff was not able to establish a prima facie case of retaliation under ADEA and that summary judgment dismissing said claim is proper.

4. Plaintiff's Law 115 retaliation claim

Local Law 115 forbids employers from discriminating against employees for offering written or verbal testimony before legislative, judicial or administrative fora. P.R. Laws Ann. tit 29 §194a. Employees must establish that a protected activity was carried out and that termination, threats or discrimination were suffered. Figueroa v. Alejandro, 597 F.3d 423, 433 (1st Cir. 2010)(citations omitted). Once a plaintiff establishes the above, an employer must provide a reason for the alleged adverse employment action and a plaintiff must show it is pretextual.

Since the parties have essentially reproduced their arguments regarding the ADEA retaliation claim while discussing the retaliation claim under the local statute, the Court again finds that Plaintiff has not been able to defeat J.C. Penney's request for summary judgment. Therefore, summary judgment dismissing the Law 115 claim is proper.

5. Article 1802 claims

The Court is puzzled as to why J.C. Penney requests the dismissal of the Article 1802 causes of action of Plaintiff's family members, since there is only one family member, Plaintiff's son, Carlos M. González Bermudez, whose claim is still pending before the Court. As the parties may recall, our decision to dismiss all Article 1802 claims filed by Plaintiff's family members was substantially confirmed by the First Circuit

in Gonzalez Figueroa v. J.C. Penny P.R., Inc, 568 F.3d 313 (1st Cir. 2009).

The extent of J.C. Penney's argument regarding these claims is that they are contingent upon the ADEA claims and that, since no employment discrimination took place, dismissal is proper. Plaintiff argues that, "as the discrimination claims should not be dismissed, as discussed above, the Article 1802 claims should also remain in the case". (POMSJ, p. 16).

Therefore, the Court finds that since the age discrimination claims will not be dismissed; neither will the Article 1802 claims.

6. Front pay

J.C. Penney posits that dismissal of the claim for front pay is proper because Plaintiff stated in his deposition that he was not seeking reinstatement. (JPMSJ, Exhibit 31, p. 18). Plaintiff argues that the Court cannot make a decision regarding this issue on the record as it stands and that the decision must await trial.

The First Circuit has held that front pay should not be awarded unless reinstatement is impracticable or impossible. Arrieta-Colon v. Wal-Mart P.R., Inc., 434 F.3d 75, 91 (1st Cir. 2006). A Court has the discretion to deny front pay if a plaintiff fails to request reinstatement, show impossibility or

impracticability of reinstatement, of inability to work or of work life expectancy. Id.

In this case, none of the above have even been alleged or argued by Plaintiff and, in light of the fact that he has manifested that he does not want to be reinstated, the Court dismisses his claim of front pay.

CONCLUSION

For the reasons stated above, the Court **GRANTS** in part and **DENIES** in part J.C. Penney's Motion for Summary Judgment. (Docket No. 75). Specifically, the Court grants summary judgment and dismisses Plaintiff's retaliation claims under ADEA and local Law 115, as well as his claim for front pay. However, J.C. Penney's requests for summary judgment regarding Plaintiff's age discrimination claim under ADEA and local Law 100 and the remaining claims under Article 1802 are denied.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 29th day of November, 2010.

S/ Jay A. Garcia-Gregory
JAY A. GARCIA-GREGORY
United States District Judge