

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF PUERTO RICO

3 CELINÉS QUILES-MARCUCCI, et al.,

4  
5 Plaintiffs,

6 v.

7 COOPERATIVA DE AHORRO Y CRÉDITO  
8 DE JUANA DÍAZ, INC.,

9 Defendant.  
10  
11

Civil No. 08-1913 (JAF)

12 O R D E R

13 On June 30, 2009, we issued an Opinion and Order granting  
14 partial summary judgment to Defendant Cooperativa de Ahorro y Crédito  
15 de Juana Díaz. (Docket No. 38.) We ordered Plaintiffs Celinés Quiles-  
16 Marcucci ("Quiles"), Oscar Guillermo Rosselló-Rodríguez, and the  
17 conjugal partnership between them to show cause why we should not  
18 also grant summary judgment for Defendant on their disparate impact  
19 claim under the Age Discrimination in Employment Act ("ADEA"), 29  
20 U.S.C. §§ 621-34. (Id.) On July 17, 2009, Plaintiffs submitted a  
21 motion in compliance with our order. (Docket No. 43.) On July 27,  
22 2009, Defendant moved for summary judgment on the remaining ADEA  
23 claim. (Docket No. 46.) We find that both motions are moot as we  
24 partly reconsider our prior order to correct an oversight.

25 Under Rule 60(a), "[t]he court may correct a mistake arising  
26 from oversight or omission whenever one is found in a judgment."  
27 Fed. R. Civ. P. 60(a). Relief is proper if "the intentions of the

1 parties are clearly defined . . . [and no] cerebation or research  
2 into the law . . . is required.'" Bowen Inv., Inc. v. Carneiro  
3 Donuts, Inc., 490 F.3d 27, 29 (1st Cir. 2007) (quoting United States  
4 v. Kellogg, 12 F.3d 497, 504-05 (5th Cir. 1994)).

5 Our prior order misconstrued Plaintiffs' complaint to have  
6 pleaded a claim for disparate impact. (See Docket No. 38.) Claims for  
7 "disparate impact . . . involve employment practices that are  
8 facially neutral in their treatment of different groups but that in  
9 fact fall more harshly on one group than another and cannot be  
10 justified by business necessity. Proof of discriminatory motive . . .  
11 is not required under a disparate-impact theory." Hazen Paper Co. v.  
12 Biggins, 507 U.S. 604, 609 (1993) (quoting Int'l Bhd. of Teamsters v.  
13 United States, 431 U.S. 324, 335 n.15 (1977)). To establish disparate  
14 impact under the ADEA, a plaintiff must "'isolat[e] and identif[y]  
15 the specific employment practices that are allegedly responsible for  
16 any observed statistical disparities.'" Meacham v. Knolls Atomic  
17 Power Lab., \_\_\_ U.S. \_\_\_, 128 S. Ct. 2395, 2405 (2008) (quoting Smith  
18 v. City of Jackson, 544 U.S. 228, 241 (2005)). To prove the existence  
19 of disparities, a plaintiff must adduce statistical evidence  
20 comparing the defendant's workforce with the general "population in  
21 the relevant labor market." Wards Cove Packing Co. v. Atonio, 490  
22 U.S. 642, 650 (1989); see Meacham, 128 S. Ct. at 2405-06 (holding

1 that elements for prima-facie case in Wards Cove apply to disparate  
2 impact claims under ADEA).

3 In their complaint, Plaintiffs allege that Defendant  
4 "discriminated against all the employees who were over the protected  
5 age, replacing them with young employees." (Docket No. 1.) This brief  
6 averment relates to a claim for disparate treatment under the ADEA,  
7 see Arroyo-Audifred v. Verizon Wireless, Inc., 527 F.3d 215, 218-19  
8 (1st Cir. 2008), and not to a claim for a "facially neutral" policy  
9 that in effect favors younger employees, see Hazen Paper, 507 U.S. at  
10 609. Therefore, Plaintiffs never intended to plead a claim for  
11 disparate impact under the ADEA in their complaint.

12 As Plaintiffs' intention is plain from the face of their  
13 complaint, we reform our prior judgment under Rule 60(a) to reflect  
14 the claims they meant to present. See Bowen Inv., Inc., 490 F.3d at  
15 29. Accordingly, we strike the discussion on disparate impact under  
16 the ADEA from our prior Opinion and Order (Docket No. 38, part III-C-  
17 4). This correction renders moot the parties' latest motions (Docket  
18 Nos. 43, 46). As no federal claims remain at issue, we decline to  
19 exercise supplemental jurisdiction over Plaintiffs' associated claims  
20 under Puerto Rico law. See 28 U.S.C. § 1367(c)(3); Rivera v. Murphy,  
21 979 F.2d 259, 264 (1st Cir. 1992).

22 In view of the foregoing, we hereby **AMEND** our Opinion and Order  
23 dated June 30, 2009, to strike part III-C-4 and to **DISMISS** all

1 federal claims **WITH PREJUDICE** (Docket No. 38). We **DENY as MOOT**  
2 Plaintiffs' motion in compliance (Docket No. 43) and Defendant's  
3 motion for summary judgment (Docket No. 46). We **DISMISS** Plaintiffs'  
4 claims under Puerto Rico law **WITHOUT PREJUDICE** (Docket No. 1).

5 **IT IS SO ORDERED.**

6 San Juan, Puerto Rico, this 5<sup>th</sup> day of August, 2009.

7 S/José Antonio Fusté  
8 JOSE ANTONIO FUSTE  
9 Chief U.S. District Judge