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UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICODELIA PABON-RAMIREZ, MARCIAL
SANTIAGO-RUIZ, CONJUGAL
PARTNERSHIP SANTIAGO-PABON,

Civil No. 12-1743 (JAF)

Plaintiffs,

v.

MMM HEALTHCARE, INC., MMM
MULTI HEALTH, INC., MMM
HOLDINGS, INC., AVETA INC.,
ROSAEL JIMENEZ-ROSADO, JOHN
DOE, CONJUGAL PARTNERSHIP DOE-
JIMENEZ, MARIBELIZ MERCADO-
LORENZO, MIKE DOE, CONJUGAL
PARTNERSHIP DOE-MERCADO, ABC
INSURANCE COMPANY, DEF
INSURANCE COMPANY,

Defendants.

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OPINION AND ORDER7 Delia Pabón-Ramírez (“Pabón”), Marcial Santiago-Ruiz, and the Conjugal
8 Partnership Santiago- Pabón (collectively “Plaintiffs”) are suing MMM Healthcare, Inc.;
9 MMM Multi Health, Inc.; MMM Holdings, Inc.; Aveta Inc.; Rosael Jiménez-Rosado
10 (“Jiménez”); John Doe; Conjugal partnership Doe-Jiménez; Maribeliz Mercado-Lorenzo;
11 Mike Doe; Conjugal Partnership Doe-Mercado; ABC Insurance Company; and DEF
12 Insurance Company (collectively “Defendants”) for many causes of action centered upon
13 workplace discrimination. (Docket No. 1.) We have already entered partial judgment in
14 the case, and Defendants now ask for another partial summary judgment. (Docket
15 No. 62.) For the reasons stated below, we grant Defendants’ motion for partial summary
16 judgment in full.

I.**Procedural History**

On July 3, 2012, Plaintiffs filed an action against Defendants in the Superior Court of Puerto Rico alleging wrongful termination and/or constructive discharge under Puerto Rico Act No. 80, 29 LPRA § 185a et seq.; for age discrimination under Puerto Rico Act Number 100, 29 LPRA § 146 et seq. and the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §141 et. seq.; for violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et. seq.; for violations of the Americans with Disabilities Act (“ADA”), 42 U.S.C. 12101 et. seq.; for unspecified damages under Article 1802 of Puerto Rico’s Civil Code and Article II §1 of the Constitution of Puerto Rico; and for retaliation under Puerto Rico’s Act 115, 29 LPRA § 194, et. seq. Plaintiffs also asserted federal claims under the Fourth Amendment of the United States Constitution and its Bill of Rights; the Equal Pay Act of 1963, 29 U.S.C. § 206d; the Health Insurance Portability and Accountability Act (“HIPAA”), 42 USC 261 et als.; and under the Genetic Information Nondiscrimination Act (“GINA”). On September 7, 2012, Defendants removed this case from the Puerto Rico Superior Court to federal court. (Docket No. 1.)

On April 29, 2013 and June 26, 2013, we entered partial judgments dismissing many of Plaintiffs’ claims. Plaintiffs’ discrimination and retaliation claims under the ADA and ADEA remained pending against MMM only. Plaintiffs’ claims under Law 100 survived against both MMM and the individual co-defendants. We dismissed all other claims. (Docket Nos. 29, 30, 43, 45.)

1 On January 10, 2014, Defendants filed the instant motion for partial summary
2 judgment with an accompanying statement of facts. (Docket Nos. 62, 63, 79.) They
3 argued that Plaintiffs' claims under the ADA must be dismissed because Pabón failed to
4 exhaust her required administrative remedies. (Docket No. 62.) They also argued that
5 MMM Holdings, MMM Multi Health and Mercado were not included in the
6 Antidiscrimination Unit ("ADU") charge, and that therefore Plaintiff failed to exhaust
7 administrative remedies as to them and failed to toll the one year statute of limitations
8 applicable to any and all claims against them under Act 100. Finally, they argued that
9 MMM Multi Health was never Pabón's employer, and that therefore all claims against
10 that entity should be dismissed. (Docket No. 62.)

11 On February 5, 2014, Plaintiffs filed a response as well as their own statement of
12 facts. (Docket No. 80, 81, 83.) Defendants replied on February 24, 2014. (Docket
13 Nos. 102, 103.) Defendants opposed Plaintiffs' statement of facts on February 25, 2014.
14 (Docket No. 104.)

15 **II.**

16 **Facts**

17 When considering a summary judgment motion, we must view all facts in the light
18 most favorable to the non-moving party. Therefore, to the extent that any facts are
19 disputed, the facts set forth below represent Plaintiffs' version of the events at issue.
20 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). However,
21 where Plaintiffs' asserted facts do not properly comply with Local Rules 56(c) and (e),
22 we deem Defendants' properly-supported statements as admitted. See Cosme-Rosado v.

1 Serrano-Rodriguez, 360 F.3d 42, 45 (1st Cir. 2004) (affirming district court's decision to
2 deem moving party's statements of facts admitted if opposing party fails to controvert
3 properly). Local Rule 56(c) states that:

4 A party opposing a motion for summary judgment shall
5 submit with its opposition a separate, short, and concise
6 statement of material facts. The opposing statement shall
7 admit, deny or qualify the facts supporting the motion for
8 summary judgment by reference to each numbered paragraph
9 of the moving party's statement of material facts. Unless a
10 fact is admitted, the opposing statement shall support each
11 denial or qualification by a record citation as required by this
12 rule. The opposing statement may contain in a separate
13 section additional facts, set forth in separate numbered
14 paragraphs and supported by a record citation as required by
15 subsection (e) of this rule.

16
17 Local Rule 56(c). And Local Rule 56(e) states that:

18 Facts contained in a supporting or opposing statement of
19 material facts, if supported by record citations as required by
20 this rule, shall be deemed admitted unless properly
21 controverted. An assertion of fact set forth in a statement of
22 material facts shall be followed by a citation to the specific
23 page or paragraph of identified record material supporting the
24 assertion. The court may disregard any statement of fact not
25 supported by a specific citation to record material properly
26 considered on summary judgment. The court shall have no
27 independent duty to search or consider any part of the record
28 not specifically referenced in the parties' separate statement
29 of facts.

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31 Local Rule 56(e). In their opposition to Defendants' statement of material facts,
32 Plaintiffs completely fail to comply with these rules. Their opposition does not contain a
33 single record citation. (Docket No. 81.) In their statement of facts, Plaintiffs again fail to
34 comply with these rules, and do not once cite a specific page or paragraph in the
35 identified record material. Instead, for most of the asserted facts, they cite generally to

1 Pabón's affidavit for broad statements, such as that "Plaintiff was exposed to
2 humiliations" or that "Plaintiff was discriminated by the Defendant." (Docket No. 83.)
3 This is insufficient.

4 Although the court has no independent duty to search the record, we find it easiest
5 to simply look at the exhibits which were referenced in Defendant's motion, as they
6 provide the clearest picture of what occurred and what allegations were made during the
7 course of Pabón's employment and complaint process.

8 Pabón began working for MMM Healthcare on August 1, 2005, as a sales
9 representative, earning a salary of twenty-thousand (20,000) dollars annually. (Docket
10 Nos. 63 at 2; 63-1.) We take her allegations of workplace discrimination from the
11 complaint that she filed with the Antidiscrimination Unit of the Puerto Rico Department
12 of Labor and Human Resources ("ADU"). In that complaint, Pabón made the following
13 allegations: She had an on-the-job accident in which she hurt the ligaments of her ankle,
14 and for which she received treatment from the State Insurance Fund. Because of this
15 accident, she was transferred to a position as a customer service representative so that she
16 could work sitting down. In her new position, the average age was twenty-seven years,
17 but she was the eldest employee at fifty-six. She alleges that her supervisor, Jiménez,
18 was "very hostile, impatient and negative" towards her when she had problems, and that
19 Jiménez would not allow her to ask questions of her coworkers. She alleged that the
20 supervisor "constantly humiliated me telling me how bad I was doing my work." Pabón
21 also said in her ADU complaint that breaks had been cancelled due to increased call
22 volume, and she also complained that she felt uncomfortable because she needed to ask

1 permission to use the bathroom, and because she could not use the bathroom if one of her
2 other coworkers was already in there. (Docket No. 88-2.) She alleges that she
3 complained on April 19, 2006, May 17, 2006, and September 13, 2006, to the Operations
4 Manager, Julio Gracia, and to Michelle Ramírez (“Ramírez”) in Human Resources about
5 Jiménez’s behavior. (Docket Nos. 88-2; 112-3.) Pabón alleged that Jiménez was
6 pressuring her to leave her job. (Docket No. 88-2.) In her September letter to Ramírez,
7 Pabón wrote that,

8 I’ve been keeping record of the times [Jiménez] corrects me,
9 coaches me, and scolds me and it is already overwhelming
10 and overburdening me....The last thing she has done, besides
11 constantly overwhelming me, is that she changed me from the
12 location where I was and moved me to be in front of her desk.
13

14 (Docket No. 112-3.) The desk Pabón referenced was next to Jiménez and had a glass
15 wall, through which Jiménez would call her attention when she made a mistake. In
16 November 2006, Pabón received a negative job evaluation. She also received one
17 warning for not presenting the card of the State Insurance Fund to Jiménez in order to
18 verify her medical appointments, and a second warning for being disrespectful by calling
19 Jiménez “obstinate.” Pabón felt that these warnings were in reprisal for her earlier
20 complaints to operations and human resources. The day after this negative work
21 evaluation, Pabón reported to the State Insurance Fund that she was suffering work-
22 related emotional problems. The Fund’s physician allegedly told her that she was
23 suffering from “mobbing.” After this, Pabón decided that she was being harassed by
24 Jiménez because of her age. At this point, Pabón met with a lawyer who wrote to MMM
25 to cease and desist the harassment by Jiménez. Pabón alleges that this helped at first, but

1 that Jiménez's behavior worsened again two months later. On March 13, 2007, Pabón
2 alleged that one of the State Insurance Fund doctors placed her on rest due to her physical
3 and emotional exhaustion. (Docket No. 88-2.)

4 On April 2, 2007, Pabón resigned as an employee of MMM Healthcare, alleging
5 that this was necessary for her health. (Docket Nos. 63 at 2; 88-1; 88-2.) On April 9,
6 2007, Pabón filed a charge of discrimination with the ADU under case number
7 uadau70382cm/16H200700748c. (Docket No. 62 at 2.) She checked the causes of
8 discrimination as "edad/age" and "otra/other: acoso moral/psyc" ("other:
9 moral/psychological harassment"). (Docket No. 88-2 at 2.) Her claim was made against
10 MMM Health Care and against her supervisor, Jiménez. (Docket No. 88-2.) On June 7,
11 2007, the ADU notified MMM Health Care that Pabón had filed a discrimination charge
12 based on both Law 100 and the ADEA, and also notified Jiménez that Pabón had filed a
13 discrimination charge against her individually under both Law 100 and the ADEA. On
14 June 11, 2007, Pabón requested that Law 115, or the "Retaliation Law" be included in the
15 investigation. (Docket No. 112-2.)

16 Pabón began psychiatric treatment on October 19, 2007 for depressive disorder.
17 (Docket No. 117-2.) The Social Security Administration later found that Pabón had
18 become entitled to monthly disability benefits beginning October 2007, because she had
19 become disabled on April 2, 2007. (Docket No. 80-10.)

20 On June 15, 2010, the ADU notified Pabón that it had investigated her case under
21 Law No. 100 and the ADEA, and that "NO PROBABLE CAUSE of discrimination in
22 employment under the cause of age has been determined." (Docket No. 88-6.) Pabón

1 requested reconsideration, which was granted. (Docket Nos. 88-7, 8, 9.) On August 10,
2 2010, Pabón filed a document in support of her request for reconsideration before the
3 ADU. (Docket No. 63; Docket No. 88-10.) On February 23, 2012, Lourdes V.
4 Gandarilla (“Gandarilla”), an attorney from the Bureau of Legal Affairs of the Puerto
5 Rico Department of Labor, wrote Pabón that “the facts constituting discrimination due to
6 age do not exist.” She stated that “At the most perhaps there are allegations of ‘labor
7 harassment’ or ‘mobbing,’” and that Pabón could consult an attorney about those
8 allegations. (Docket Nos. 62 at 5; 88-11.) On April 3, 2012, the Equal Employment
9 Opportunity Commission (“EEOC”) issued a Dismissal and Notice of Rights, adopting
10 the findings of the ADU and closing its file on Pabón’s charges. (Docket No. 63-13.)

11 III.

12 Analysis

13 Defendants argue that many of Plaintiffs’ claims must be dismissed for failure to
14 exhaust required remedies, for failure to toll the statute of limitations, or because
15 Plaintiffs named the wrong entity. For the reasons below, we agree.

16 A. Pabón failed to exhaust her required administrative remedies under the ADA

17 A plaintiff who wants to recover for an asserted violation of the ADA, “first must
18 exhaust administrative remedies by filing a charge with the EEOC, or alternatively, with
19 an appropriate state or local agency, within the prescribed time limits....This omission, if
20 unexcused, bars the courthouse door.” Bonilla v. Muebles J.J. Alvarez, Inc., 194 F.3d
21 275, 278 (1st Cir. 1999); see also Thornton v. United Parcel Service, Inc., 587 F.3d 27, 31
22 (1st Cir. 2009). The scope of a subsequent civil action is limited by the administrative

1 charge filed “and the investigation which can reasonably be expected to grow out of that
2 charge.” Thornton, 587 F.3d at 31 (internal citation omitted). By this ‘scope of the
3 investigation rule,’ the court means that plaintiffs can press a claim “where the factual
4 statement in [the] written charge should have alerted an agency to an alternative basis of
5 discrimination, and should have been investigated.” Davis v. Lucent Technologies, Inc.,
6 251 F.3d 227, 233 (1st Cir. 2001) (internal citations omitted).

7 Pabón filed a charge of discrimination with the ADU on April 9, 2007, alleging
8 violations of both Law 100 and the ADEA. (Docket No. 62 at 2; Docket No. 112-2.) She
9 later added a violation of Law 115, or the “Retaliation Law” on June 11, 2007. (Docket
10 No. 111-2.) She checked the causes of discrimination as “edad/age” and “otra/other:
11 acoso moral/ psyc” (“other: moral/psychological harassment”). (Docket No. 88-2 at 2.)
12 In her attached statement of facts, she alleged that, after a workplace accident in which
13 she hurt the ligaments in her ankle, she was placed in a group where the average age was
14 twenty-seven years, and where she was the eldest at fifty-six years old. She alleges that
15 her supervisor was “very hostile, impatient, and negative” towards her and “constantly
16 humiliated me telling me how bad I was doing my work.” (Docket No. 88-2 at 4-5.) She
17 received a negative evaluation of her work, as well as two warnings – one for failure to
18 show a card of her Insurance Fund appointments and another for calling her supervisor
19 “obstinate”—and she alleges that these were done in retaliation for her internal
20 complaints. (Docket No. 88-2 at 6.) Pabón wrote in her statement of facts to the ADU
21 that “I arrived at the conclusion that the sup. had been humiliating, harassing me and
22 making me feel inefficient so that I would leave the job because I am the oldest of the

1 group and apparently she does not feel comfortable with me in the group.” (Docket
2 No. 88-2 at 7.) She also complained in the statement of facts that she was moved to a
3 desk next to her supervisor’s desk with only glass between them. (Docket No. 88-2 at 7.)
4 Finally, Pabón complained that breaks were cancelled due to the “increase of calls that
5 were entering,” and complained because she “felt uncomfortable because I had to ask
6 permission if I needed to go to the bathroom” and needed to wait if her coworkers were
7 already in the bathroom. (Docket No. 88-2 at 7.)

8 The scope of an investigation that could reasonably be expected to grow out of this
9 charge does not include an investigation of ADA violations. The written charges would
10 not have reasonably alerted the agency to a basis of discrimination based upon disability.
11 See Thornton, 587 F.3d at 31; Lucent Technologies, Inc., 251 F.3d at 233. Therefore, we
12 dismiss Plaintiffs’ claims under the ADA.

13 **B. Plaintiff failed to exhaust administrative remedies as to MMM Holdings,**
14 **MMM Multi Health, and Mercado, and also failed to toll the one-year statute**
15 **of limitations applicable to claims under Act 100**
16

17 We have already discussed the need to exhaust administrative remedies before
18 bringing a claim under the ADA. Likewise, under the ADEA, “no civil action may be
19 commenced by an individual under this section until 60 days after a charge alleging
20 unlawful discrimination has been filed with the Equal Employment Opportunity
21 Commission.” 29 U.S.C. § 626(d)(1). Pabón never mentioned Mercado in her complaint
22 to the ADU, either on the cover sheet or in her extensive statement of facts. (Docket
23 No. 88-2.) Mercado is not mentioned until Pabón’s local complaint, filed on July 3,
24 2012. (Docket No. 1-1.) Therefore, Pabón failed to exhaust administrative remedies as

1 to Mercado. Pabón also filed to toll the one year statute of limitations against Mercado
2 under Law 100, since the Supreme Court of Puerto Rico has held that the one year statute
3 of limitations found in Article 1868 of the Puerto Rico Civil Code also applies to Law
4 100 claims. Olmo v. Young & Rubicam of P.R., Inc., 110 P.R. Dec. 740 (P.R. 1981).

5 Pabón filed her ADU complaint against MMM Health Care and Jiménez. She does
6 not specifically list MMM Holdings or MMM Multi Health. (Docket No. 88-2 at 2.) For
7 the reasons in Section C supra, we dismiss MMM Multi Health as a party. We also
8 dismiss MMM Holdings as a party. The submission of an administrative claim “gives
9 notice to both the employer and the agency of an alleged violation and affords an
10 opportunity to swiftly and informally take any corrective action necessary to reconcile the
11 violation.” Thornton, 587 F.3d at 31. Pabón’s complaint did nothing to alert MMM
12 Holdings to a potential case of workplace discrimination. If Pabón can show that MMM
13 Holdings is an alter ego of MMM Health Care or that MMM Holdings has assumed legal
14 liability for any monetary damages against MMM Health Care, then Pabón should bring
15 any such documentation to the attention of the court. Without any such showing, Pabón
16 failed to exhaust administrative remedies against MMM Holdings. Pabón also filed to
17 toll the one year statute of limitations against MMM Holdings under Law 100. See Olmo
18 v. Young & Rubicam of P.R., Inc., 110 P.R. Dec. 740 (P.R. 1981).

19 Therefore, we dismiss MMM Holdings from the case.

20 **C. MMM Multi Health was never Pabón’s employer**

21 MMM Multi Health registered with the Commonwealth of Puerto Rico on
22 November 7, 2013. The incorporation document makes no mention of taking on the

1 liabilities of MMM Healthcare. (Docket No. 88-12.) Because the alleged discrimination
2 occurred before April 2007 (Docket Nos. 62 at 2; 88-1; 88-2), we dismiss MMM Multi
3 Health as a party.

4 **IV.**

5 **Conclusion**

6 For the foregoing reasons, the Defendants' motion for partial summary judgment
7 (Docket No. 62) is **GRANTED**. Plaintiffs' claims under the ADA are **DISMISSED**.
8 Plaintiffs' claims against Mercado, MMM Holdings, and MMM Multi Health are also
9 **DISMISSED**.

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 29th day of April, 2014.

12 S/José Antonio Fusté
13 JOSE ANTONIO FUSTE
14 U. S. DISTRICT JUDGE