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IN THE COUNTY COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

ELEANOR GARDNER

Plaintiff,

vs.

VALDEZ VENITA BUTLER DEMINGS,
a/k/a VAL DEMINGS,

Defendant.
_____/

CASE NO.: 2016-SC-4061-O
DIVISION:

AMENDED MOTION TO DISMISS WITH PREJUDICE THE DEFENDANT, VALDEZ VENITA BUTLER DEMINGS, INDIVIDUALLY AND MOTION TO DISMISS THE PLAINTIFF'S STATEMENT OF CLAIM WITH PREJUDICE

COMES NOW the Defendant, **VALDEZ VENITA BUTLER DEMINGS, a/k/a VAL DEMINGS,** (hereinafter referred to as the "Defendant") by and through her undersigned attorney, and pursuant to Florida Rules 1.140, Fla. R. Civ. P., files her Motion to Dismiss with prejudice the Defendant individually and states:

1. On March 7, 2016, the Plaintiff filed this action against **VALDEZ VENITA BUTLER DEMINGS, a/k/a VAL DEMINGS** (hereinafter referred to as "Chief Demings") seeking compensation for volunteering for the "Chief Val Demings for Congress" campaign, (hereinafter referred to as the "campaign").

2. On May 2, 2016, this Honorable Court entered an Order allowing the Plaintiff to amend her statement of claim to include the "Chief Val Demings for Congress" campaign as a Defendant.

3. Based on the foregoing, the Defendant should be dismissed, with prejudice from the instant action as a matter of law.

THE CLAIMS AS TO DEFENDANT DEMINGS SHOULD BE DISMISSED WITH PREJUDICE BECAUSE THERE IS NO BASIS THAT HAS BEEN OR COULD BE ALLEGED TO WARRANT PERSONAL LIABILITY

4. Plaintiff's attempts to assert claims against the Defendant individually should be rejected out of hand. The Plaintiff's Statement of Claim shows that the Plaintiff volunteered for the Defendant's campaign for Congress, which is a separate and distinct entity from the Defendant. Specifically, as previously stated, the "Chief Val Demings for Congress" campaign is a 527 committee.

5. As this Court is aware, A 527 organization or 527 group is a type of U.S. tax-exempt organization organized under Section 527 of the U.S. Internal Revenue Code (26 U.S.C. § 527). A 527 group is created primarily to influence the selection, nomination, election, appointment or defeat of candidates to federal, state or local public office. As a result, the Defendant is separate and distinct from the committee.

6. For the Defendant to be liable personally for any of Plaintiff's claims, The Plaintiff must plead and meet Florida's high standard for piercing the corporate veil, which was concisely stated in *Government of Aruba v. Sanchez*, 216 F. Supp. 2d 1320 (S.D. Fla. 2002):

> Under Florida law, as exemplified in *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So.2d 1114 (Fla. 1984), courts are reluctant to pierce the corporate veil and will do so only in exceptional cases where there has been extreme abuse of the corporate form. A plaintiff seeking to pierce the corporate veil bears a very heavy burden. "[E]ven if a corporation is merely an alter ego of its dominant shareholder or shareholders, the corporate veil cannot be pierced so long as the corporation's separate identity was lawfully maintained." *Lipsig v. Ramlawi*, 760 So. 2d 170, 187 (Fla. 3d DCA 2000). It is insufficient that a shareholder operated a wholly owned corporation in a "loose and haphazard manner;" the corporation did not observe

> corporate formalities, had no capitalization, and the sole shareholder exercised complete control. Under Florida law, to pierce the corporate veil a plaintiff must show that the corporation was organized or employed as a mere device or sham to work a fraud on creditors. Domination and control and undercapitalization are insufficient to meet the improper conduct requirement.

Id. at 1362 (emphasis added; other citations omitted). Thus, in order to pierce the corporate veil under Florida law, a plaintiff must plead and prove that the corporate entity was organized or used to perpetrate a fraud. "A critical issue in the determination of whether the corporate veil will be pierced for the imposition of personal liability is whether the corporate entity was organized or operated for an improper or fraudulent purpose." *Lipsig*, 760 So. 2d at 187 (internal citations and quotation marks omitted).

The Plaintiff has failed to meet this high standard because her bare allegation that she worked for the Val Demings for Congress campaign, are insufficient for creating individual liability for a committee's acts under Florida law. *See, e.g.*, *Lipsig,* 760 So. 2d at 187.

In the instant matter, the "Val Demings for Congress" campaign is a separate and distinct entity from the Defendant. As a result, the Plaintiff's Statement of Claim against the Defendant individually should be dismissed with prejudice as a matter of law.

WHEREFORE, the Defendant, hereby respectfully requests this Court to enter its Order dismissing the Defendant, individually with prejudice and any other relief the Court deems just and proper.

THE DEFENDANT HAS FAILED TO STATE A CLAIM PURSUANT TO THE FAIR LABOR STANDARDS ACT

The Plaintiff's Statement of Claim is an attempt to assert a cause of action under the Fair

Labor Standards' Act (hereinafter referred to as the "FLSA"), and it must be dismissed as a matter of law.

The Eleventh Circuit has unambiguously held that the FLSA does not apply to an individual in the absence of an employer-employee relationship under 29 U.S.C. §§ 206-07. *See* *Villarreal v. Woodham*, 113 F.3d 202, 205 (11th Cir.Fla.1997). *See also* *Walling v. Portland Terminal Co.*, 330 U.S. 148, 67 S.Ct. 639, 91 L.Ed. 809 (1947) (holding subsection (g) defining "employ," was not intended to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another).

Under the FLSA, an "employee" is defined as "any individual employed by an employer." 29 U.S.C. § 203(e)(1). An "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency ..." 29 U.S.C. § 203(d). To "employ" is defined as to "suffer or permit to work." 29 U.S.C. § 203(g). The determination of whether Plaintiff is an employee or a volunteer under FLSA is a question of law, *Patel v. Wargo*, 803 F.2d 632, 634 n. 1 (11th Cir. 1986) (citing *Weisel v. Singapore Joint Venture, Inc.*, 602 F.2d 1185, 1189 n. 11 (5th Cir.1979)), and individuals seeking compensation pursuant to the FLSA "bear the initial burden of proving that an employer-employee relationship exists and that the activities in question constitute employment for purposes of the Act." *Purdham v. Fairfax County Sch. Bd.*, 637 F.3d 421, 427 (4th Cir.2011).

When analyzing whether an individual is an employee under the FLSA, the Supreme Court has held that courts should consider the FLSA's terms in light of the "economic reality" of the relationship between the parties. *Goldberg v. Whitaker House Co-op., Inc.*, 366 U.S. 28, 33,

81 S.Ct. 933, 936-37, 6 L.Ed.2d 100 (1961). The economic reality test inquiries into whether the alleged employer: (1) had the power to hire and fire the employees;(2) supervised and controlled employee work schedules or conditions of employment;(3) determined the rate and method of payment; and(4) maintained employment records. *Villarreal*, 113 F.3d at 205.

In the instant matter the Plaintiff fails to plead facts showing an employment relationship under any of these prongs. Specifically, the Defendants assert that neither Defendant had the authority to hire and fire the Plaintiff because it was the Plaintiff who reached out to the Defendants and offered to volunteer for the campaign. It was not until the Plaintiff began demanding compensation that the Defendants felt it would be in their best interest to end the Plaintiff's campaign activities. Moreover, the Defendants did not supervise nor control Plaintiff's schedule. Instead, the days the Plaintiff volunteered were solely at the discretion of the Plaintiff. Defendants also argue that they did not determine the Plaintiff's rate and method of payment because it was understood that working for the campaign was voluntary and that none of the volunteers would be paid. Finally, neither Plaintiff nor the Defendants can provide any employment records for the Plaintiff.

It is fundamental to alleging a FLSA claim that the Plaintiff establish she was an employee of the Defendants at times material to this action. Conclusory allegations of employment are insufficient to withstand dismissal. For this reason alone, the Defendants' Motion should be granted. Although this action is before the Court at the motion to dismiss stage, it is clear that Plaintiff's claims cannot surpass the hurdle posed by the clear lack of an employment relationship between Plaintiff and Defendants. Allowing this case to proceed further would be a waste of the parties' time and resources, particularly given the well-known expenses

of discovery and litigation.

WHEREFORE, the Defendant, hereby respectfully requests this Court to enter its Order dismissing the Plaintiff's Statement of Claim with prejudice and provide any other relief the Court deems just and proper.

Dated this 27th day of May 2016.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 27, 2016 that I electronically filed a true and exact copy of the foregoing using the Clerk of Court's CM/ECF system and that a copy was forwarded by regular U.S. Mail to the Plaintiff, Eleanor Gardner at 7962 Hawk Crest Lane, Orlando, Florida 32818.

/s/ Michael L. Moore
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