

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

WILLIAM E. MELÉNDEZ,	*	Civil No. _____
	*	
Plaintiff,	*	Employment Discrimination
v.	*	(Age and National Origin)
	*	
SAP ANDINA Y DEL CARIBE, C.A.,	*	Plaintiff Demands
ÍÑAQUI DOMAICA AND HIS SPOUSE	*	
“JANE DOE” AND THEIR CONJUGAL	*	Trial and Jury
PARTNERSHIP; GONZALO NUÑEZ AND	*	
HIS SPOUSE “ROSE ROE” AND THEIR	*	
CONJUGAL PARTNERSHIP; CESAR	*	
OVIEDO AND HIS SPOUSE “GINA	*	
TOW” AND THEIR CONJUGAL	*	
PARTNERSHIP; AND PEDRO MUÑOZ	*	
AND HIS SPOUSE “LINA LOW” AND	*	
THEIR CONJUGAL PARTNERSHIP; ABC	*	
INSURANCE COMPANY	*	
CORPORATION,	*	
	*	
Defendants.	*	
	*	

COMPLAINT

TO THE HONORABLE COURT:

NOW COMES plaintiff, William E. Meléndez (“Meléndez”), for himself through the undersigned attorney and respectfully states, alleges and prays as follows:

I. JURISDICTION

1. The Court has jurisdiction in this case pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 § 2000 et seq. and the Age Discrimination in Employment Act of 1967, as amended, 29 USC ____ as it involves a matter arising under the Constitution, and laws of the United States, and has pendent jurisdiction over the other related state law

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claims set forth herein.

2. This is a discrimination case in which Meléndez claims that Sap Andina Y Del Caribe, C.a. (“SAP ANDINA”), a prospective employer, failed to hire Melendez because of his age.

3. This is a discrimination case in which Meléndez claims that his prospective employer, SAP ANDINA, failed to hire him because of his national origin and age.

4. Neither foreign national origin nor age under 40 are bonafide occupational requirements to fill any position or to perform any function for Defendants in Puerto Rico.

5. Plaintiff has mitigated and continues to mitigate damages by pursuing such work opportunities as have been identified by him and by actively seeking new employment.

6. Plaintiff’s age discrimination claim against Defendants is made pursuant to the Age Discrimination in Employment Act (hereafter “ADEA”), Title 29 U.S.C. Section §§ 621, et seq., as amended.

7. Plaintiff’s claims for discrimination against Defendants are made also pursuant to Puerto Rico Law 100 of June 23, 1977, as amended, 29 L.P.R.A., § 146 (Law 100), and Puerto Rico Law 48 of May 29, 1973 and Puerto Rico Law 106 of June 30, 1975.

8. Defendants are liable to plaintiff both joint and severally for all claims herein.

9. On April 8, 2005, Plaintiff filed a claim for discrimination on the basis of age and national origin by SAP ANDINA with the Puerto Rico Office of the Equal Opportunity Commission, Charge Numbers 162-2005-00249. (See **Exhibit 1.**)

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10. The Anti-Discrimination Unit of the above-mentioned federal agency issued right to sue letters on April 18, 2005. (See **Exhibit 2.**)

11. Plaintiff has complied with threshold requirements.

II. PARTIES

12. Plaintiff is resident of the Commonwealth of Puerto Rico, a male, born on March 18, 1961 in San Juan, Puerto Rico.

13. Reputedly, SAP ANDINA is a foreign corporation doing business in Puerto Rico with offices in Guaynabo.

14. At all relevant times, SAP ANDINA is an “employer” as defined in § 701 (b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (b).

15. Mr. Iñáqui Domaica, Mr. Gonzalo Núñez, Mr. Cesar Oviedo and Mr. Pedro Muñoz their spouses and their respective conjugal partnerships are officers and/or stockholders in their personal capacities or as conjugal partnerships.

16. Plaintiff has satisfied all of the procedural and administrative requirements and conditions precedent, to wit:

- a. Plaintiff filed timely written charges of discrimination with the EEOC;
- b. Plaintiff received corresponding Notices of Right to Sue from the EEOC; and,
- c. The complaint in this action was filed in this Court within 90 days from the receipt of the Notice of Right to Sue.

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17. This Court has jurisdiction to hear and resolve this complaint.

18. The proper venue of this action is in this Court, as plaintiff is a resident of Puerto Rico and Defendants' illegal and discriminatory actions took place in the Commonwealth of Puerto Rico.

III. FACTS MATERIAL TO ALL CLAIMS

19. Melendez has both the academic background and the professional experience and credentials to perform Practice, Program and Project Management duties in any ERP software technology stack. More specifically in the ERP software implementation space, he has the necessary experience, exposure, training, knowledge and related competencies to install, implement, configure and train personnel with regards to SAP technologies in the R/3 and SAP/Business One application suites, in any of their current equivalent marketing names. Meléndez credentials include SAP issued consulting certifications.

20. In turn, within Puerto Rico, SAP ANDINA runs a consultation practice dedicated, among other things, to implementing, installing and tailoring SAP R/3 ERP application suites to any given business, including the public sector.

21. This SAP ANDINA consultation practice within Puerto Rico is headed by certain Mr. Iñáqui Domaica, Mr. Gonzalo Núñez, Mr. Cesar Oviedo, Mr. José Otero and Mr. Pedro Muñoz.

22. Ever since and during, July, 2004, Plaintiff attempted to get work from

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non-American foreign nationals Mr. Gonzalo Núñez, Mr. Iñáqui Domaica, Mr. Cesar Oviedo and Mr. Pedro Muñoz. All Plaintiff's efforts to get work from SAP ANDINA failed.

23. Instead, SAP ANDINA only uses for its SAP R/3 ERP software implementation engagements within Puerto Rico younger illegal foreign nationals from Venezuela or other economically depressed countries of Latin America, with lesser academic background and professional experience.

24. Typically, SAP ANDINA makes the above staffing decisions based solely on economic advantage, due to the low cost of the third-world foreign resources, and their pervasive aversion to hiring US Citizens generally, and Puerto Rico nationals specifically, for all positions within the company, both for client delivery services as well as internal support and administrative staff and sub-contracted resources.

25. Typically, resources hired or contracted by SAP ANDINA lack basic competencies such as a working-knowledge of the English language, US based Generally Accepted Accounting Principles, and have in several instances been unable to pass SAP certification exams successfully.

26. Commencing on or about July, 2004, plaintiff was subjected to the following discriminatory actions by Defendants:

- a. Plaintiff was discriminated against by potential employer on the basis of age.
- b. Plaintiff was discriminated against by potential employer on the basis of national origin.

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27. Defendants employed in excess of 30 persons prior to and at the time of the discriminatory acts against Melendez.

IV. FIRST CLAIM FOR RELIEF (AGE DISCRIMINATION)

28. Plaintiff realleges paragraphs 1 through 26 hereof which are incorporated hereto and adopted in this first cause of action, as if fully set forth herein.

29. Defendants are “employers” as defined by the Age Discrimination in Employment Act (ADEA) of 1967, as amended, 29 USC ____.

30. Defendants are required to take affirmative action to ensure that all employment decisions are made in a non-discriminatory manner.

31. Defendants’ failure to hire Melendez placed him under undue duress and constitutes unlawful and discriminatory deprivation of plaintiff’s employment rights because of his age.

32. Defendants discriminated against plaintiff because of his age. Discriminatory treatment received by plaintiff were expressed and willful and part of a concerted plan to deprive plaintiff of employment.

33. At all times material, Defendants owed Plaintiff a duty not to discriminate against him.

34. Defendants decision not to hire Plaintiff on the basis of his age, was wanton, willful and intentional, with malicious and reckless disregard for plaintiff’s rights and sensibilities.

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35. Defendants have limited the employment opportunities of plaintiff through its discriminatory and illegal actions.

36. Plaintiff is entitled to receive compensation consisting of pay and allowances commencing the date of his filing of an EEOC claim.

37. Defendants' conduct by and through its agents and servants, Mr. Iñáqui Domaica, Mr. Gonzalo Núñez, Mr. Cesar Oviedo, Mr. José Otero and Mr. Pedro Muñoz constitutes a willful violation of law, inasmuch as the employment decisions concerning plaintiff were based in whole or in part upon plaintiff's age.

V. SECOND CLAIM FOR RELIEF (DISCRIMINATION ON THE BASIS OF NATIONAL ORIGIN)

38. Plaintiff realleges paragraphs 1 through 28 hereof which are incorporated hereto and adopted in this first cause of action, as if fully set forth herein.

39. SAP ANDINA is an "employer" as defined by Title VII of the Civil Rights Act of 1964, as amended, 42 § 2000 et seq..

40. Defendants are required to take affirmative action to ensure that all employment decisions are made in a non-discriminatory manner.

41. Defendants' failure to hire Melendez placed him under undue duress and constitutes unlawful and discriminatory deprivation of plaintiff's employment rights because of his national origin. (See Exhibit ??, Copy of U.S. Passport).

42. Defendants discriminated against plaintiff because of his national origin. Discriminatory treatment received by plaintiff was willful and part of a concerted plan to

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deprive plaintiff of employment.

43. At all times material, Defendants owed plaintiff a duty not to discriminate against him.

44. Defendants' failure to hire plaintiff on the basis of his national origin, was wanton, willful and intentional, with malicious and reckless disregard for plaintiff's rights and the sensibility.

45. Defendants' failure to hire plaintiff on the basis of his national origin had an economic motive since undocumented foreign workers received a lower scale of compensation than workers of U.S./Puerto Rico origin.

46. Defendants illegal scheme of hiring and contracting foreign national is done on occasion by disregarding Federal Immigration and Labor statutes and in violation of alien status.

47. Aliens hired and contracted by Defendants are inserted into the US work force with Tourist Visas, or by illegally petitioning H-1B work visas.

48. Defendants' conduct by and through its agents and servants, Mr. Iñiqui Domaica, Mr. Gonzalo Núñez, Mr. Cesar Oviedo, Mr. José Otero and Mr. Pedro Muñoz constitutes a willful violation of law, inasmuch as the employment decisions concerning plaintiff were based in whole or in part upon plaintiff's national origin.

VI. THIRD CLAIM FOR RELIEF (PUERTO RICO LAW 100)

49. Plaintiff realleges paragraphs 1 through 49 hereof which are incorporated

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hereto and adopted in this first cause of action, as if fully set forth herein.

50. Defendants are "employers" as defined by law. 51. Defendants are required to take affirmative action to ensure that all employment decisions are made on a non-discriminatory manner.

52. Defendants' illegal refusal to hire or contract with plaintiff places him under undue duress and constitutes unlawful and discriminatory deprivation of plaintiff's employment rights because of his age and national origin.

53. Defendants overtly discriminated against plaintiff because of his age and national origin and whistle blowing activities. Discriminatory comments and treatment received by plaintiff were expressed and willful and part of a concerted plan to deprive plaintiff of his employment.

54. At all times material, Defendants owed plaintiff a duty not to discriminate against him.

55. Defendants' failure to hire or contract Plaintiff on the basis of his age and national origin was wanton, willful and intentional, with malicious and reckless disregard for Plaintiff's rights and the sensibility.

56. Defendants have limited the employment opportunities of Plaintiff through its discriminatory and illegal actions.

57. Plaintiff is entitled to receive compensation consisting of pay and allowances commencing the date Plaintiff filed his EEOC claim.

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58. Defendants' conduct by and through its agents and servants, Mr. Iñiqui Domaica, Mr. Gonzalo Núñez, Mr. Cesar Oviedo, Mr. José Otero and Mr. Pedro Muñoz constitutes a willful violation of law, inasmuch as the employment decisions concerning plaintiff were based in whole or in part upon plaintiff's age and national origin.

59. Defendants' actions violate the federal and local legislation invoked here.

60. Plaintiff hereby demands trial by jury in all causes of action. Wherefore, it is respectfully requested from this Honorable Court:

- A.** To enter declaratory judgment stating that the acts complained herein are in violation the federal and local legislation invoked in this action;
- B.** That plaintiff Meléndez be compensated for all his economic and mental suffering and anguishes, and other damages mentioned in this Complaint, in a sum not less than \$450,000.00;
- C.** That compensatory, punitives, liquidated, and any other type of damages applicable be imposed;
- D.** That the damages be doubles as mandated by local law;
- E.** That attorney's and expert's fees be awarded;
- F.** That pre-judgment and post judgment interests be imposed;
- G.** That cost and all litigation expenses be taxed;
- H.** That back and front pay be awarded;
- I.** That all benefits lost be compensated;

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- J. That injunctive relief be ordered; and
- K. That plaintiff be granted such other further relief as this Honorable Court may be deem appropriate and proper.

61. All exhibits attached are incorporated herein and made integral part of this complaint.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12 day of July of 2005.

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By: _____
USDC-PR 214909

STATEMENT UNDER PENALTY OF PERJURY

I, William E. Melendez, on oath state as set forth below:

1. That I am of legal age, unmarried, CPA, self-employed, and a resident of Guaynabo, Puerto Rico.

2. That I have read the foregoing "Complaint" have reviewed all information alleged therein and believe the same as true as evidenced by the records of the case and personal knowledge.

Pursuant to 28 U.S.C. § 1746, I declare under penalty perjury the foregoing as true and correct.

Executed this July 13th of 2005 at San Juan, Puerto Rico

WILLIAM E. MELENDEZ

by: _____
William E. Melendez