

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

ANA J. SANTIAGO
Plaintiff

v.

FARMACIA LUGO, INC.
Defendant

CIVIL NO.:

COMPLAINT

Plaintiff Ana J. Santiago (“Santiago”), by and through her attorney, Rosa Emilia Rodríguez-Vélez, United States Attorney for the District of Puerto Rico, alleges the following:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 *et seq.* (“USERRA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this judicial district under 38 U.S.C. § 4323(c)(2) because Farmacia Lugo, Inc. maintains a place of business in this judicial district and is considered a “private employer” as defined in 38 U.S.C. § 4323(i). Additionally, venue is proper under 28 U.S.C. § 1391(b) because the events or omissions giving rise to this action occurred in this judicial district.

PARTIES

4. Plaintiff is Ana Santiago, a citizen of the State of Florida.

5. Defendant Farmacia Lugo, Inc. (“Farmacia Lugo”) is deemed to be an employer within the meaning of USERRA, 38 U.S.C. § 4303(4)(c).

FACTUAL ALLEGATIONS

6. Santiago has been a member of the U.S. Army Reserve from March 28, 2012, to present. She currently holds the rank of Private (1st Class) and serves as a culinary specialist.

7. Santiago began her employment as pharmacy technician with Farmacia Lugo, a privately owned pharmacy located in the southwest part of Puerto Rico, on or about May 3, 2013.

8. Angela Teresa Irizarry, who died in or around March 2014, hired Santiago. Thereafter, Irizarry’s husband and the owner of Farmacia Lugo, Ramon A. Lugo-Castillo (“Lugo”), assumed responsibility for the business.

9. From May 3, 2013, through her termination in November 2015, Santiago was required to perform several short-term military duty assignments, including monthly weekend drills and two week annual training.

10. Lugo confronted Santiago on multiple occasions about her military-related absences and disparaged her military service.

11. On or about September 10, 2014, Santiago informed Lugo that she would be absent from work the upcoming weekend because she had to attend military drills. In response, Lugo told Santiago “the Army is not for women, I don’t know how they even accepted you.”

12. On or about December 3, 2014, Lugo reacted to Santiago’s notice of impending military drill obligations by stating that he did not understand why the Army needed her so much since she was “not a soldier but just a mere cook”.

13. On another occasion on or about January 27, 2015, and again in response to receiving notice of Santiago's military obligations, Lugo angrily stated to Santiago, "you have to take off again for the military? This cannot go on," and slammed his office door.

14. On or about February 18, 2015, Lugo complained to Santiago, who was leaving for six days of Army Reserve service, that her absences were affecting his business and that it was "all for nothing because [she] is only a cook."

15. On October 5, 2015, Santiago returned to work following a military-related absence of approximately two weeks. Lugo greeted Santiago by telling her that he had hoped she would not return so that it would be unnecessary to fire her. He stated that if she had not returned to her position at Farmacia Lugo it would allow Santiago to "continue playing soldier without affecting [his] business"; and that he "did not know how the Army accepted [her], because [she is] fat,[that] one needs to run in the Army, and the Army is not for women."

16. Lugo also told Santiago that he "was a soldier in the real Army." Lugo insinuated that the underlying cause of Santiago's repeated military obligations was that she was having a sexual relationship with a military officer by telling her that "it appears that there is a little sergeant fondling you."

17. On October 21, 2015, after Santiago notified Lugo of an upcoming military training, Lugo angrily stated, "what, the Army again? I wish you would stay gone."

18. On November 11, 2015, Lugo terminated Santiago in front of other employees and customers at the Farmacia Lugo store. As Lugo terminated Santiago's employment, Lugo raised his voice, mentioned that it was appropriate that the day was Veterans Day and noted that it was because of Santiago's military service that he was terminating her employment.

19. On December 10, 2015, Santiago filed a USERRA Complaint with the Department of Labor ("DOL"), pursuant to 38 U.S.C. § 4322(a)(1), alleging that her rights under USERRA were violated.

20. DOL's Veterans Employment and Training Service ("VETS") investigated Santiago's termination complaint, found that it had merit, and attempted to resolve the complaint informally.

21. After informal resolution failed, VETS referred Santiago's complaint to the Solicitor's Office of the Department of Labor, which concurred that Santiago's complaint had merit and referred the matter to the U.S. Department of Justice.

COUNT I
Terminating Santiago Because of Her Military Service in Violation of
38 U.S.C. § 4311

22. Santiago repeats the allegations contained in paragraphs 1 through 21.

23. Farmacia Lugo violated Section 4311 of USERRA by terminating her from her position as a pharmacy technician based on her membership in the U.S. Army Reserve, her absence to perform military service, and/or her military service obligations.

24. Lugo's statements about Santiago's military service and the timing of her termination within two months of her past and scheduled military service obligations demonstrate that Santiago's termination was based on her service in the U.S. Army Reserve.

25. Lugo's statements that Santiago was being fired on Veterans Day and because of the Army demonstrate that Farmacia Lugo's violation of USERRA Section 4311 was willful under 38 U.S.C. § 4323(d)(1)(C), in that Farmacia Lugo showed reckless disregard for whether its conduct was prohibited by the provisions of USERRA.

26. Because of Farmacia Lugo's actions in violation of USERRA, Santiago has suffered a substantial loss of earnings and other benefits in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Santiago prays that the Court enter judgment against Farmacia Lugo and, grant her the following relief:

- A. declare that Farmacia Lugo's termination of Santiago was unlawful and in violation of USERRA;
- B. order that Farmacia Lugo comply fully with the provisions of USERRA by immediately paying Santiago for her lost wages and other benefits suffered by reason of Farmacia Lugo's violations of USERRA;
- C. declare that Farmacia Lugo's violations of USERRA were willful;
- D. award Santiago liquidated damages in an amount equal to the amount of her lost wages and other benefits suffered by reason of Farmacia Lugo's willful violations of USERRA, as authorized under 38 U.S.C. § 4323(d)(1)(C);
- E. award Santiago pre judgment interest on the amount of lost wages and benefits due; and,
- F. grant such other relief as justice may require, together with the costs and disbursements of this action.

JURY DEMAND

Santiago hereby demands a jury trial under Federal Rule of Civil Procedure 38.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 25th day of July, 2017.

THE UNITED STATES OF AMERICA

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s/ David O. Martorani-Dale

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