

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

<p>EQUAL EMPLOYMENT OPPORTUNITY) COMMISSION) <p style="text-align: center;">Plaintiff,) <p style="text-align: center;">and) <p>VIERGELA JEAN-FRANCOIS, CHANGOLIA) JULIEN, SOLANGE MARCELIN, CARMELIA) PIERRE, AND LOUNDY SAINT-HILAIRE) <p style="text-align: center;">Plaintiff) Intervenors,) <p style="text-align: center;">v.) <p>GARGIULO, INC.,) <p style="text-align: center;">Defendant.) /</p> </p></p></p></p></p></p></p>	<p>CIVIL ACTION NO. 2:05-cv-460-Ft.M-29-SPC</p>
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**AMENDED COMPLAINT IN INTERVENTION FOR DAMAGES AND INJUNCTIVE
RELIEF**

NATURE OF THE CASE

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 and the Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes, to correct unlawful employment practices on the basis of sex and retaliation, and to provide appropriate relief to Viergela Jean-Francois (“Ms. Jean-Francois”), Carmelia Pierre (“Ms. Pierre”), Changolia Julien (“Ms. Julien”), Solange Marcelin (“Ms. Marcelin”) and Loundy Saint-Hilaire. As stated with greater particularity in paragraphs 11, 12, and 17 below, the Plaintiffs/Intervenors allege that they were sexually harassed and retaliated against at the Defendant’s place of business in Immokalee, Florida. The Plaintiffs/Intervenors were forced to

endure unwelcome sexual comments and/or physical contact because of their sex, which created a hostile work environment. Furthermore, the Plaintiff/Intervenors were retaliated against for rejecting the sexual harassment and/or complaining to management about the sexual harassment.

PARTIES

1. Plaintiff, the Equal Employment Opportunity Commission (“the Commission”), is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII.

2. Plaintiffs/Intervenors Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Saint-Hilaire, Ms. Julien, at all relevant times, were employees of Defendant at their Immokalee, Florida within the meaning of 42 U.S.C. §2000e(f) and aggrieved persons within the meaning of F.S.A. §760.02.

3. At all relevant times, Defendant, Gargiulo, Inc. (the “Employer”) has continuously been a Delaware corporation doing business in the State of Florida and the City of Immokalee, and has continuously had a least 15 employees.

4. At all relevant times, Defendant employer has continuously been an employer engaged in an industry affecting commerce within the meaning of the Sections 701(b)(g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g), and (h).

JURISDICTION AND VENUE

5. The jurisdiction of this is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(f)(1) and (3) (“Title VII”) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a. This Court also has

supplemental jurisdiction over Plaintiff's state law claims brought pursuant to the Florida Civil Rights Act, Chapter 760, Florida Statutes.

6. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States Court for the Middle District of Florida, Ft. Myers Division.

CONDITIONS PRECEDENT

7. All conditions precedent to bringing this action have been performed or occurred.

STATEMENT OF CLAIMS

COUNT I

(SEXUAL HARASSMENT IN VIOLATION OF TITLE VII)

8. This is a claim against the company, Gargiulo, Inc. for sexual harassment in violation of Title VII of the Civil Rights Act, as amended.

9. Since at least November 2003, Defendant Employer has engaged in unlawful employment practices at its Immokalee facility, in violation of Section 703(a)(1) and 704(a) of Title VII, 42 U.S.C. §§2000e-2(a) and 2000e-3(a).

10. Sony Constant (hereafter "Constant") was employed by Defendant Gargiulo, Inc. since at least 2003 and, on information and belief, he held the position of manager/supervisor of the tomato packing house from at least 2003 to present.

11. In this position as supervisor, Constant subjected Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Saint-Hilaire, Ms. Julien, and any other similarly situated individuals, to unwelcome physical and verbal conduct of a sexual nature. This conduct was sufficiently severe and pervasive to constitute an intimidating hostile and offensive work environment.

12. Among other activities, Constant subjected Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Saint-Hilaire, and Ms. Julien to unwelcome and offensive remarks of a sexual and personal nature. In addition, his conduct extended to physical conduct of a sexual nature.

13. The effect of the conduct complained of in paragraphs 11 and 12 above have been to deprive the Plaintiffs of equal employment opportunities and otherwise adversely effect their status as an employee because of their sex. This unlawful conduct resulted in emotional pain and suffering, embarrassment, and humiliation to the Plaintiffs/Intervenors.

14. The unlawful employment practices complained of in paragraphs 11 and 12 above were intentional.

15. The unlawful employment practices complained of in paragraphs 11 and 12 above were done with malice or with reckless indifference to the federally protected rights of the Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against the Defendant for lost wages and benefits, compensatory damages, punitive damages, attorney's fees and costs, injunctive relief and any other such relief that the Court deems proper.

COUNT II

(UNLAWFUL RETALIATION IN VIOLATION OF TITLE VII)

16. This claim against Defendant Gargiulo, Inc. is for unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-3(a).

17. The Plaintiffs and any other similarly situated individuals were retaliated against for rejecting and/or complaining about the sexual harassment. The retaliation was in the form of suspensions without pay, failure to rehire, firing and/or subjecting Ms. Marcelin, Ms. Jean-

Francois, Ms. Pierre, Ms. Julien, Ms. Saint-Hilaire and any other similarly situated individuals to adverse work conditions.

18. The effect of the conduct complained in paragraph 17 has been to deprive the Plaintiffs of equal employment opportunities and otherwise adversely effect their status as an employee in retaliation for their opposition to unlawful employment practices. This unlawful conduct resulted in economic harm, emotional pain and suffering, embarrassment, and humiliation to the Plaintiffs/Intervenors.

19. The unlawful employment practices complained of in paragraph 17 were intentional.

20. The unlawful employment practices complained of in paragraph 17 were done with malice or with reckless indifference to the federally protected rights of the Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against the Defendant for lost wages and benefits, compensatory damages, punitive damages, attorney's fees and costs, injunctive relief and any other such relief that the Court deems proper.

COUNT III

(SEXUAL HARASSMENT IN VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT, CHAPTER 760, FLORIDA STATUTES)

21. Plaintiffs hereby incorporate by reference Paragraphs 10 through 12 of this complaint as if fully set forth herein.

22. This claim is a claim against the Defendant Gargiulo, Inc. for sexual harassment in violation of The Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes.

23. At all relevant times, Defendant Gargiulo, Inc. was an "employer" and the Plaintiffs were "employees" within the meaning of the Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes. At all relevant times, Defendant employed fifteen (15) or more employees.

24. Plaintiffs reallege Paragraphs 11 and 12 above.

25. The effect of the conduct complained of in Paragraphs 11 and 12 has been to deprive the Plaintiffs of equal employment opportunities and otherwise adversely effect their status as an employee because of their sex. In addition, the Plaintiffs have suffered emotional pain and suffering, humiliation and embarrassment because of this unlawful conduct.

26. The unlawful employment practices complained of in Paragraphs 11 and 12 above were intentional.

27. The unlawful employment practices complained of in Paragraphs 11 and 12 above were done with malice or with reckless indifference to the federally protected rights of the Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against the Defendant for lost wages and benefits, compensatory damages, punitive damages, attorney's fees and costs, injunctive relief and any other such relief that the Court deems proper.

COUNT IV

(UNLAWFUL RETALIATION IN VIOLATION OF THE FLORIDA CIVIL RIGHTS ACT, CHAPTER 760, FLORIDA STATUTES)

28. Plaintiffs hereby incorporate by reference Paragraph 17 of this complaint as if fully set forth herein.

29. This claim is a claim against the Defendant Gargiulo, Inc. for unlawful retaliation in violation of The Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes.

30. At all relevant times, Defendant Gargiulo, Inc. was an "employer" and the Plaintiffs were "employees" within the meaning of the Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes. At all relevant times, Defendant employed fifteen (15) or more employees.

31. Plaintiffs reallege Paragraph 17 above.

32. The effect of the conduct complained of in Paragraph 17 has been to deprive the Plaintiffs of equal employment opportunities and otherwise adversely effect their status as an employee in retaliation for their opposition to unlawful employment practices. In addition, the Plaintiffs have suffered emotional pain and suffering, humiliation and embarrassment because of this unlawful conduct.

33. The unlawful employment practices complained of in Paragraph 17 above were intentional.

34. The unlawful employment practices complained of in Paragraph 17 above were done with malice or with reckless indifference to the federally protected rights of the Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against the Defendant for lost wages and benefits, compensatory damages, punitive damages, attorney's fees and costs, injunctive relief and any other such relief that the Court deems proper.

PRAYER FOR RELIEF FOR COUNTS I THROUGH IV

WHEREFORE, with respect to Counts I, II, III, and IV set forth above, Ms. Marcelin, Ms. Jean-Francois, Ms. Saint-Hilaire, Ms. Pierre and Ms. Julien respectfully request that this Court:

- A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in sexual harassment or retaliation and any other employment practice which discriminates ion the basis of sex and retaliation.
- B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for victims of sexual

harassment and retaliation, and which eradicate the effects of its past and present unlawful employment practices.

- C. Order Defendant Employer to make whole Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Julien, and Ms. Saint-Hilaire and any other similarly situated individuals, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices.
- D. Order Defendant Employer to make whole Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Julien, and Ms. Saint-Hilaire and any other similarly situated individuals, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph seven above, in amounts to be determined at trial.
- E. Order Defendant Employer to make whole Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Julien, Ms. Saint-Hilaire and any other similarly situated individuals punitive damages for its malicious and reckless conduct described above, in amounts to be determined at trial.
- F. Grant such further relief as the Court deems necessary and proper in the public interest.
- G. Award Ms. Marcelin, Ms. Jean-Francois, Ms. Pierre, Ms. Julien, Ms. Saint-Hilaire all attorney's fees and costs incurred in this matter.

JURY TRIAL DEMANDED

The Intervenors/Plaintiffs request a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

By: /s/ Mónica Ramírez
Mónica Ramírez
Florida Bar No. 0711861

Florida Legal Services, Inc.
Migrant Farmworker Justice Project
508 Lucerne Ave.
Lake Worth, FL 33460
Telephone: 561-582-3921
Facsimile: 561-582-4884
Email: monica@floridalegal.org

Attorney for Intervenors/Plaintiffs Solange Marcelin,
Changolia Julien, Loundy Saint-Hilaire, and Carmelia
Pierre

and

Jason L. Gunter
Florida Bar No. 0134694
Webb, Scarmozzino, Gunter, P.A.
1617 Hendry Street, 3rd Floor
Ft. Myers, FL 33901
Phone: 239-334-1600
Fax: 239-334-7979
Email: jason@wsglawyers.com

Attorney for Intervenor/Plaintiff Viergela Jean-Francois

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following: John M. Hament, Esq., and Lorraine Maass Hultman, Esq., Kunkel Miller & Hament, 235 N. Orange Avenue, Suite 200, Sarasota, FL 34236, Attorneys for Defendant, James L. Lee, Esq., Gwendolyn Young Reams, Esq., Delner Franklin-Thomaas, Esq., and Muslima Lewis, Esq., U.S. Equal Employment Opportunity Commission, Miami District Office, One Biscayne Tower, Suite 2700, Two Biscayne Boulevard, Miami, FL 33131, Attorney for EEOC, and Jason L. Gunter, Esq., Webb, Scarmozzino, Gunter, P.A., 1617 Hendry St., 3rd Fl., Ft. Myers, FL 33901, Attorney for Plaintiff Jean-Francois.

Respectfully submitted,

By: /s/ Mónica Ramírez
Mónica Ramírez
Florida Bar No. 0711861