

**12-Person Jury**

**IN THE CIRCUIT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

FILED  
1/11/2022 4:05 PM  
IRIS Y. MARTINEZ  
CIRCUIT CLERK  
COOK COUNTY, IL  
2022CH00257  
Calendar, 16  
16252236

ALMA SANCHEZ, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

EL-MILAGRO, INC. d/b/a EL MILAGRO,

Defendant.

2022CH00257

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiff Alma Sanchez brings this Class Action Complaint individually and on behalf of all others similarly situated (“Plaintiff Class”) against Defendant El-Milagro, Inc. d/b/a El Milagro (“El Milagro” or “Defendant”), alleging as follows:

**NATURE OF THE ACTION**

1. This is an action for damages and injunctive relief against Defendant for unlawful sexual harassment in violation of the Illinois Human Rights Act, 775 Ill. Comp. Stat. § 5/2-101, *et seq.* (“IHRA”).

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over Defendant pursuant to 735 Ill. Comp. Stat. § 5/2-209 because Defendant is a corporation registered to conduct business in Illinois, does conduct business transactions in Illinois, is headquartered in Illinois, and has committed its IHRA violations in Illinois. Additionally, this Court has jurisdiction over Plaintiff because she is a resident and citizen of the state of Illinois.

3. Venue is proper in Cook County pursuant to 775 Ill. Comp. Stat. § 5/7A-102(F)(2) because Defendant is alleged to have committed its IHRA violations in Cook County.

4. On November 2, 2021, Plaintiff filed a Charge of Discrimination with the Illinois Department of Human Rights (“IDHR”) and the United States Equal Employment Opportunity Commission (“EEOC”) against Defendant, alleging sexual harassment in violation of the IHRA. See Exhibit A.

5. On December 6, 2021, the IDHR issued a Notice of Opt Out of the Investigative and Administrative Process, Right to Commence an Action in Circuit Court or Other Appropriate Court of Competent Jurisdiction, and Order of Administrative Closure, a copy of which is attached as Exhibit B. Plaintiff files this Complaint within 90 days of her receipt of the Notice and Order pursuant to 775 ILCS 5/7A-102(C-1).

6. Plaintiff has satisfied all conditions precedent to pursuing her claims under the IHRA in state court.

**PARTIES**

7. Defendant employs or employed Plaintiff and the Plaintiff Class at its multiple Illinois locations.

8. Defendant is an Illinois corporation engaged in tortilla manufacturing business with multiple locations in Illinois. Defendant’s corporate headquarters are in Illinois.

9. Defendant employs more than 100 employees, is engaged in an industry affecting commerce, and is an employer within the meaning of the IHRA.

**FACTUAL ALLEGATIONS**

10. Plaintiff began working for Defendant on July 29, 2019.

11. Throughout Plaintiff’s employment, she has always performed her job satisfactorily and met Defendant’s work performance expectations.

12. In May or June of 2020, Plaintiff's coworker, Francisco Gutierrez (male), inappropriately and intentionally rubbed his genitals against her.

13. Plaintiff complained to her supervisor, Arturo Brito (male), about the incident. Mr. Brito referred to the incident as an "accident," suggested that Plaintiff avoid putting herself in places where she would be touched by others, and took no further action.

14. In July of 2020, Mr. Gutierrez grabbed Plaintiff's buttocks while passing her work station.

15. Plaintiff complained to Mr. Brito of this new incident. Mr. Brito suggested that Plaintiff simply avoid Gutierrez.

16. To Plaintiff's knowledge, Mr. Brito took no action to investigate or reprimand Mr. Gutierrez, and he did not escalate Plaintiff's complaint.

17. In August of 2020, Mr. Gutierrez grabbed Plaintiff's buttocks while she carried boxes. Because of the load she was carrying, she was unable to maneuver away.

18. Plaintiff was visibly upset by Gutierrez's conduct, and a line lead who witnessed her reaction subsequently reported what happened to Mr. Brito.

19. The following day, Mr. Brito called Plaintiff into his office and expressed frustration that he yet again had to deal with complaints about Plaintiff being sexually harassed. Plaintiff asked that Mr. Brito escalate the matter to the Company's Human Resources department. Mr. Brito did not agree to do so, and instead warned that if Plaintiff contacted the Human Resources department, she would "probably get in trouble."

20. Despite Mr. Brito's warning, Plaintiff delivered a written complaint letter to the Human Resources department.

21. To Plaintiff's knowledge, Human Resources did not conduct an investigation in response to her letter. Mr. Brito has not taken any action to prevent or rectify harassing

behavior, and Mr. Gutierrez – who remains employed by Respondent and continues to create a sexually hostile work environment – has not been disciplined.

22. Upon information and belief, many other women have been subjected to the same groping behavior and sexual harassment at the hands of the Mr. Gutierrez and other male employees of Defendant.

23. Upon information and belief, prior to the day Plaintiff filed her Charge of Discrimination with the Illinois Department of Human Rights, Defendant failed to take any materially remedial action in response to the many complaints of sexual harassment by its female employees, failed to conduct anti-sexual harassment or other training in the workplace, and has fostered a sexually hostile work environment that continues to this day.

24. As a result of these incidents and Defendant's failure to address her complaint and employee complaints generally, Plaintiff has experienced extreme stress and anxiety, and she fears for her safety and well-being. Plaintiff attends counseling and has lost a significant amount of weight as a result of related stress over the past year.

25. Defendant's failure to take appropriate remedial action with regard to Plaintiff and other women who suffered from sexual harassment fostered a sexually hostile work environment in violation of the IHRA. As a result of the above, Plaintiff and the Plaintiff Class have been subjected to sexual harassment in violation of the IHRA.

#### **CLASS ALLEGATIONS**

26. Upon information and belief, Plaintiff's experiences as described herein are typical and representative of the experiences of the Plaintiff Class.

27. Upon information and belief, at least 100 individuals in Illinois who are similarly situated persons and potential Plaintiff Class members perform(ed) work for Defendant.

28. **Class Definition:** Plaintiff brings this action pursuant to 735 Ill. Comp. Stat. § 5/2-

801 on behalf of herself and a class of similarly situated individuals, defined as follows:

**All female employees of Defendant who have been and/or currently are subjected to a sexually hostile work environment at any of Defendant's locations in the State of Illinois from February 16, 2021 to the present day.**

29. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time, but upon observation, information and belief, it is at least 100 individuals, making individual joinder impracticable.

30. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Plaintiff Class, and those questions predominate over any questions that may affect individual members of the Plaintiff Class. Common questions for the Plaintiff Class include, but are not necessarily limited to the following:

- 1) Whether the Plaintiff and Plaintiff Class were subjected to actionable sexual harassment under the IHRA;
- 2) Whether Defendant has formal policies prohibiting sexual harassment in the workplace;
- 3) Whether Defendant has formal and informal complaint structures in place for an employee to use in case of sexual harassment;
- 4) Whether Defendant mandates sexual harassment training for its supervisors and managers and makes it available for all other employees;
- 5) Whether Defendant has made an unequivocal commitment from the highest levels of the organization that sexual harassment is not tolerated and can demonstrate that they are committed to this policy by consistent practice;
- 6) Whether Defendant exercised reasonable care to prevent and correct promptly any sexual harassment; and
- 7) Whether Plaintiff and the Plaintiff Class members unreasonably failed to take advantage of any preventative or corrective opportunities provided by Defendant or to avoid harm otherwise.

31. **Adequate Representation:** Plaintiff will fairly and adequately represent and

protect the interests of the Plaintiff Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Plaintiff Class, and Defendant has no defenses unique to Plaintiff. Plaintiff is an adequate representative of the Plaintiff Class because all potential plaintiffs were subject to Defendant's uniform policies and practices. Plaintiff and her counsel are committed to vigorously prosecuting their action on behalf of the members of the Plaintiff Class, and have the financial resources to do so. Neither Plaintiff nor her counsel have any interest adverse to those of the other members of the Plaintiff Class.

32. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Plaintiff Class is impracticable. The damages suffered by the individual members of the Plaintiff Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Plaintiff Class to obtain effective relief from Defendant's misconduct. Even if members of the Plaintiff Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

#### **COUNT I – ILLINOIS HUMAN RIGHTS ACT**

33. Plaintiff restates and incorporates the foregoing allegations as though fully set forth herein.

34. Defendant is an “employer” under the IHRA. *See* 775 ILCS 5/2-101(B).

35. At all relevant times, Plaintiff and the Plaintiff Class have been “employees” under the IHRA. *See* 775 ILCS 5/2-101(A).

36. The IHRA makes it a civil rights violation for any employer, employee, or agent of any employer to engage in sexual harassment of its employees. 775 ILCS 5/2-102(D).

37. “Sexual harassment” is defined as any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment. 775 ILCS 5/2-101(E).

38. Plaintiff and the Plaintiff Class members were sexually harassed under the IHRA. *See* 775 ILCS 5/2-101(E).

39. An employer is responsible for sexual harassment of its employees by nonmanagerial and nonsupervisory employees if it becomes aware of the conduct and fails to take reasonable corrective measures. 775 ILCS 5/2-102(D).

40. Defendant was aware of sexual harassment conduct by its employees and failed to take reasonable corrective measures, thus violating the IHRA with respect to Plaintiff and each Plaintiff Class member. *See* 775 ILCS 5/2-102(D).

41. For the violations identified herein, Plaintiff and the Plaintiff Class members are entitled to recover actual damages and attorneys’ fees and costs.

WHEREFORE, Plaintiff Alma Sanchez, individually and on behalf of all others similarly situated, respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against Defendant El Milagro, and grant her the following relief:

- a) Certifying this case as a class action on behalf of the class defined above, appointing Plaintiff as representative of the Plaintiff Class, and appointing her counsel as Class Counsel;
- b) Awarding injunctive and other equitable relief as is necessary to protect the interests of the Plaintiff Class;
- c) Awarding compensatory and all other damages allowed under the IHRA, to each person whose IHRA rights were violated;
- d) Awarding Plaintiff and the Plaintiff Class members their reasonable litigation expenses and attorneys' fees and costs;
- e) Awarding Plaintiff and the Plaintiff Class members pre- and post-judgment interest, to the extent allowable by law; and
- f) Any further relief that is deemed just and equitable.

Dated: January 11, 2022

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Respectfully submitted,

ALMA SANCHEZ, on behalf of herself and all others similarly situated,

By: /s/ Alejandro Caffarelli  
Attorney for the Plaintiff  
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