

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

ICELA LIMA AND ICELA GALLARDO,

*Plaintiffs,*

v.

EASTERN APPLICATORS, INC. AND  
MUNGUIA CONSTRUCTION, LLC,

*Defendants.*

Case No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiffs Icela Lima and Icela Gallardo (collectively, “Plaintiffs”), through counsel, hereby bring this Complaint against their former employers Eastern Applicators, Inc. (“Eastern Applicators”) and Munguia Construction, LLC (“Munguia Construction”, and together with Eastern Applicators, the “Defendants”), alleging severe and pervasive sexual harassment under Title VII and other laws, and in support thereof respectfully allege as follows:.

**NATURE OF ACTION**

1. Icela Lima and her daughter, Icela Gallardo, work in a male-dominated industry. Like many Latina women, they started working construction in pursuit of stable jobs with good pay. Previously employed as a cleaner, Ms. Lima looked forward to making more money and working her way up to a good role. Her daughter, Ms. Gallardo, hoped to earn a good salary to provide for her infant son.

2. Plaintiffs are part of a national trend. The number of women working in the construction industry has risen significantly in the past decade, with more than 1.2 million women currently working in construction. Latina women account for the bulk of this growth, with their

numbers increasing 117% from 2016 to 2022.<sup>1</sup> Washington, D.C. has a greater share of women in construction than any state. Many times, through their mere existence on the job, they challenge a male-dominated work culture.

3. Despite this, Latinx workers disproportionately make up the majority of the lowest-paying jobs in construction, and women still make up only 14% of construction workers.<sup>2</sup> Latina women joining this workforce enter an industry in which misclassification and wage theft are rampant, and the work is often unsafe; in addition, they face discrimination based on their sex from coworkers and supervisors.

4. Gender-based harassment in the construction industry is a pernicious trend. A 2021 report by the Institute for Women's Policy and Research found that one in four women surveyed stated that they experience near constant sexual harassment on the job.<sup>3</sup> Women who complain about sexually hostile work environments are often branded as troublemakers, demoted, and, ultimately, terminated.

5. While Ms. Lima and Ms. Gallardo were working on Eastern Applicators' construction of a senior residence center, an Eastern Applicators foreman, Luis Diaz, subjected Ms. Lima and Ms. Gallardo to sexual harassment, including repeated unwanted touching and comments of a sexual nature, that was so severe and pervasive that it gave rise to a hostile work environment.

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<sup>1</sup>Andrew Van Dam, *Why are way more women suddenly working in construction?*, The Washington Post (Nov. 11, 2022), <https://www.washingtonpost.com/business/2022/11/11/hispanic-women-construction-trades/>.

<sup>2</sup> *Id.*

<sup>3</sup> Ariane Hegewisch and Eve Mefferd, *A Future Worth Building: What Tradeswomen Say about the Change They Need in the Construction Industry*, Institute for Women's Policy and Research (2021), [https://iwpr.org/wp-content/uploads/2022/02/A-Future-Worth-Building\\_What-Tradeswomen-Say\\_FINAL.pdf](https://iwpr.org/wp-content/uploads/2022/02/A-Future-Worth-Building_What-Tradeswomen-Say_FINAL.pdf); *see also* Stefanos Chen and Ana Levy, *Why Migrant Women Are Turning Toward Construction Jobs*, NY Times (June 27, 2023), <https://www.nytimes.com/2023/06/27/nyregion/migrant-women-construction-jobs.html>

6. Defendants were wholly dismissive of Ms. Lima and Ms. Gallardo's complaints and, in fact, retaliated against Plaintiffs by terminating them for complaining about the sexual harassment they had endured.

7. Following Ms. Lima and Ms. Gallardo's termination, Mr. Diaz, who was responsible for creating the hostile work environment, pled guilty at the Fairfax County General District Court to the very same facts about which Plaintiffs complained to Defendants.

8. Plaintiffs seek declaratory relief, and awards of compensatory damages, punitive damages, attorneys' fees, and costs.

### **PARTIES**

9. Icela Lima is a resident of Hyattsville, Maryland.

10. Icela Gallardo is a resident of Hyattsville, Maryland.

11. Defendant Eastern Applicators is incorporated in the State of Virginia. Its principal place of business is located within 11995 Livingston Road, Manassas, Virginia 20109. Upon information and belief, at all times relevant to this Complaint, Eastern Applicators employed over 100 employees.<sup>4</sup> Defendant Eastern Applicators subcontracted Defendant Munguia Construction the finishing work for the project.

12. Defendant Munguia Construction is a limited liability company organized under the laws of the State of Maryland. Its principal place of business is located within 6516 Princess Garden Parkway, Lanham, Maryland 20706. Upon information and belief, at all times relevant to this Complaint, Munguia Construction employed over five employees.

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<sup>4</sup> Eastern Applicators represents on its website that it has "over 100 employees." *About Us*, Eastern Applicators, Inc., <http://www.easternapplicators.com/about-us-2/> (last visited April 8, 2024).

**JURISDICTION AND VENUE**

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 2000e-5(f)(3) because this civil action arises under Title VII of the Civil Rights Act of 1964.

14. This Court has supplemental jurisdiction over Plaintiffs' Virginia Human Rights Act claims pursuant to 28 U.S.C. § 1367(a) and Article III, Section 2 of the United States Constitution because Plaintiffs' Virginia Human Rights Act claims are so closely related to their Title VII claims that they form part of the same case or controversy under Article III of the United States Constitution.

15. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Virginia.

**STATEMENT OF FACTS**

16. Ms. Lima is a 38-year-old Latina woman who works in the construction industry alongside her 19-year-old daughter, Ms. Gallardo.

17. In September 2022, Munguia Construction hired Ms. Lima to work as a construction finisher on a project in Alexandria, Virginia. As a finisher, Ms. Lima smoothed and finished surfaces on the jobsite. The project, the construction of a new senior residence home at 5815 S. Van Dorn Street, was overseen by Eastern Applicators.

18. Munguia Construction hired Ms. Gallardo in October 2022 to work as a construction cleaner on the same project. At the time, Ms. Gallardo was 18 years old.

19. Eastern Applicators employees Francisco, whose surname is unknown, and Luis Diaz supervised Ms. Lima and Ms. Gallardo's day-to-day work throughout the relevant period. Ms. Lima and Ms. Gallardo were required to clock in and out on a timesheet that Francisco, and

later Mr. Diaz, provided.

20. At the beginning of each shift, Francisco, and later Mr. Diaz, provided Ms. Lima and Ms. Gallardo with their work assignments (*i.e.*, which units to work on and which floors to focus on) and checked-in with them frequently. From time to time, Mr. Munguia also assigned Ms. Lima and Ms. Gallardo tasks. However, Ms. Lima and Ms. Gallardo were not permitted to complete these assignments without first receiving permission from Francisco, and later Mr. Diaz. If a task was done incorrectly, Francisco, and later Mr. Diaz, were responsible for disciplining Ms. Lima and Ms. Gallardo. For example, Francisco and Mr. Diaz would scold the women if their work cart was in the hallway, or if they stored tools in the wrong place at the end of the day.

21. Eastern Applicators also supplied tools and equipment to Ms. Lima and Ms. Gallardo. Such items included brooms, dust pans, trash carts, trash bags, ladders, caulking guns, caulks, easy sand, and other materials. If Ms. Lima and Ms. Gallardo needed more supplies, they had to ask Eastern Applicators employees. The equipment used by Ms. Lima and Ms. Gallardo, such as ladders, had “Eastern Applicators” written in marker on them. Mr. Munguia and Mr. Diaz told Ms. Lima and Ms. Gallardo that the equipment belonged to Eastern Applicators, who also had a warehouse where workers could store the equipment.

22. Ms. Lima and Ms. Gallardo worked at the Alexandria jobsite to which they were assigned without incident until Mr. Diaz, an Eastern Applicators employee, became the supervisor at the site in December 2022.

23. When Mr. Diaz started as the supervisor, two other female workers who had previously been under his supervision warned Ms. Lima and Ms. Gallardo to “watch out” for him. These co-workers indicated that Mr. Diaz was generally quick to anger. In addition, one co-worker called Ms. Lima and confided in her that Mr. Diaz had requested nude photos of the co-worker and

had tried to kiss her. This attention had been unwelcomed.

24. Throughout the month of December, Mr. Diaz transferred female workers who had worked with Ms. Lima and Ms. Gallardo to other jobsites, away from Plaintiffs. In addition to isolating Ms. Lima and Ms. Gallardo from other female workers, Mr. Diaz progressively isolated mother and daughter from each other by assigning them each tasks on separate floors. If either woman stopped to talk or drop something off, Mr. Diaz would question them.

25. Mr. Diaz increased his presence around Ms. Lima and Ms. Gallardo as the project progressed. He began to show up at the job site more often. He would check-up on Ms. Lima and Ms. Gallardo as much as 7-8 times a day during work hours.

26. Mr. Diaz would ask what unit Ms. Lima was working on, or he would try to find her in the hallways. On one occasion, when he did locate her, Mr. Diaz put his hands on Ms. Lima's neck and pulled open the collar of her shirt. He then proceeded to kiss her neck. When she told him that she felt uncomfortable and asked him to stop trying to kiss her, he bit her shoulder and stated he wanted her romantic partner to get jealous. Mr. Diaz also tried to convince Ms. Lima to work with him on a weekend as a way of trying to be alone with her.

27. Another time, Mr. Diaz approached her from behind to whisper in her ear "What do you feel when I talk to you this close?"

28. On another occasion, when Ms. Gallardo was unloading a truck, Mr. Diaz forcibly grabbed her in an attempt to kiss her on her mouth, but because she had quickly moved, he ended up kissing her between her cheek and neck.

29. On a separate day, when Ms. Lima and Ms. Gallardo were waiting for an Uber to leave the worksite after their shift, Mr. Diaz approached Ms. Gallardo. He put his hand in the back gap of her pants to touch her near her buttocks area. After placing his hand there, he moved his

hand upward to touch her entire back. The Uber driver that had arrived to pick up Ms. Lima and Ms. Gallardo witnessed the incident and observed that Ms. Gallardo was “visibly upset” as a result of Mr. Diaz’s unwanted touching. When Ms. Gallardo was in the Uber, she told the Uber driver that “[Mr. Diaz] had touched her body without her permission.”

30. At least three times a day over a two-day period, Mr. Diaz caressed Ms. Gallardo’s cheek and told her to lighten up or she would never find a husband. This only occurred when Mr. Diaz was alone with Ms. Gallardo. Each time, Ms. Gallardo would pull away and tell him that she didn’t like him touching her.

31. If Ms. Gallardo got upset with him, Mr. Diaz would ask Ms. Gallardo and her mother, Ms. Lima, if they wanted him to be “nice or an ogre.” Ms. Lima and Ms. Gallardo understood this question to be an implied threat that if they rejected his advances, they would suffer work-related consequences.

32. Ms. Lima and Ms. Gallardo repeatedly attempted to stop Mr. Diaz’s unwanted advances by telling Mr. Diaz that they simply needed him to give them work-related instructions instead of being “nice.” Mr. Diaz responded by assigning Ms. Lima and Ms. Gallardo more difficult tasks that were normally assigned to a co-worker named Salvador.

33. These tasks consisted of heavy lifting. For example, Mr. Diaz tasked Ms. Gallardo, a petite 5-foot one-inch young woman, with carrying a cart that weighed about sixty-five pounds up the stairs — a job that normally requires two people. At the time, it had been nine months since Ms. Gallardo had undergone surgery for a Caesarean section. She told Mr. Diaz that she was not supposed to lift heavy objects, but he just laughed in response. When Ms. Gallardo protested that multiple workers typically carry these wheelbarrows because of the heavy weight, Mr. Diaz responded, “todo cae por su propio peso” – *i.e.*, “everything falls under its own weight.”

34. On January 23, 2023, Ms. Lima and Ms. Gallardo told Jesus Munguia, the owner of Munguia Construction, about Mr. Diaz's actions. During this conversation, Mr. Munguia offered to call Javier Cubas (field superintendent), Alejandro Bailon (general superintendent), and Oliver Osorio (building safety director), all of whom were employed by Eastern Applicators at the time, to address their complaint.

35. On January 27, 2023, Ms. Lima and Ms. Gallardo met with Mr. Munguia, Mr. Cubas, Mr. Osorio, and Mr. Diaz. This meeting lasted for approximately 22 minutes. In this meeting, Ms. Lima and Ms. Gallardo made it clear that Mr. Diaz had been repeatedly sexually harassing them.

36. Ms. Lima proffered detailed examples of how Mr. Diaz harassed and created a hostile working environment for both Ms. Lima and Ms. Gallardo. For example, Ms. Lima told them about the time that Mr. Diaz had put his hand in the back of Ms. Gallardo's pants, touched near her buttocks area, and moved his hands upward to touch her entire back. She told them about the times that Mr. Diaz caressed Ms. Gallardo's cheeks. She also relayed that this behavior deeply upset her. Ms. Gallardo confirmed this account was true.

37. Ms. Lima provided specific examples of Mr. Diaz's harassment. She mentioned that Mr. Diaz would approach her from behind to whisper in her ear "What do you feel when I talk to you this close?" She also informed them that she had asked Mr. Diaz to stop trying to kiss her.

38. Ms. Lima showed them pictures of the over sixty-pound wheelbarrows that Ms. Gallardo, a five-foot one-inch woman still recovering from a Caesarean section, was ordered to carry on her own after Ms. Gallardo and Ms. Lima had rejected Mr. Diaz's advances.

39. During this meeting, Ms. Lima also offered multiple times to provide the supervisors with the contact information of the Uber driver witness who could corroborate their



accounts.

40. Mr. Diaz responded that he had not done anything to Ms. Lima and Ms. Gallardo. Mr. Diaz tried to justify his behavior by explaining that, as a Colombian, he is very “amable” – *i.e.*, “friendly.”

41. In response, another Eastern Applicators supervisor supported Mr. Diaz’s argument that being Colombian justified his inappropriate verbal advances. A different Eastern Applicators supervisor further noted that “people can make things up,” questioning the veracity of Mr. Lima and Gallardo’s claims, but not Mr. Diaz’s.

42. During this meeting, Mr. Cubas suggested that Ms. Lima and Ms. Gallardo should be moved to another worksite and stated that other workers had been “removed” in the past. The meeting ended without any resolution.

43. However, a few hours after the January 27, 2023, meeting, Mr. Cubas, Mr. Osorio, and Mr. Munguia told Ms. Lima and Ms. Gallardo that they could not remove Mr. Diaz from the jobsite. Instead, the supervisors had reached a decision that Mr. Munguia would have to send Ms. Lima and Ms. Gallardo to another worksite.

44. Mr. Munguia called Ms. Lima on January 30, 2023. Instead of transferring Ms. Gallardo, Mr. Munguia informed Ms. Lima that Ms. Gallardo “would not be working for him anymore—meaning that [she] was fired.” Mr. Munguia assigned Ms. Lima to work at a jobsite that was 2.5 hours and 75 miles away from her prior work location. Due to the distance, Ms. Lima did not go to the new worksite as working so far away would have been unprofitable for her.

45. Ms. Lima texted Mr. Munguia to express her concern that the new location was too far to commute. Mr. Munguia did not offer alternatives, nor did he suggest that Ms. Lima could continue to work on the senior residence project in Alexandria. He simply responded, via text, “it’s

ok, if you can't make it, it's ok." Mr. Munguia later sent Ms. Lima an address for another worksite. However, Ms. Lima's last paycheck had bounced. She did not go to the worksite because she had not yet received her outstanding payment. Mr. Munguia stopped sending Ms. Lima worksite addresses after this.

46. On February 4, 2023, Ms. Lima and Ms. Gallardo submitted criminal complaints in Fairfax County against Mr. Diaz based on the conduct described above. In their criminal complaints, Ms. Lima, and Ms. Gallardo's accounts of the assault they suffered by Mr. Diaz were entirely consistent with their accounts given to Eastern Applicators supervisors during the January 27, 2023, meeting.

47. Ms. Lima and Ms. Gallardo once again described the unwanted kisses and touches. Ms. Lima described Mr. Diaz "biting" her on the shoulder, which she also recounted to Eastern Applicators in their January 27, 2023, meeting. Ms. Lima and Ms. Gallardo also described the incident where Mr. Diaz touched Ms. Gallardo's buttocks.

48. Mr. Diaz pled guilty to misdemeanor assault and battery in Fairfax County General District Court based on these facts and was sentenced to 180 days, 179 of which were suspended.<sup>5</sup>

49. As a result of Defendants' unlawful action and inaction, Ms. Lima and Ms. Gallardo have suffered economic and non-economic damages, including, but not limited to, lost wages and other benefits of employment, as well as significant emotional distress.

50. Mr. Diaz's sexual harassment and assault, as well as the Defendants' failure to stop his actions and the subsequent retaliation the women suffered after speaking up, has caused Ms. Lima and Ms. Gallardo great distress. It has put a strain on Ms. Lima's romantic relationship, to

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<sup>5</sup> No. GC23019687-00 (Fairfax Cnty. Gen. Dist. Ct.).

the point that she has since left her partner. Ms. Gallardo has experienced anguish and stress and, as a result, has withdrawn from her relationships with family and friends. To this day, both women live with the heavy emotional consequences of this entire experience.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

51. On or about February 14, 2023, Ms. Lima timely submitted a Charge of Discrimination against Eastern Applicators to the Equal Employment Opportunity Commission (“EEOC”).

52. On or about June 12, 2023, Ms. Lima timely submitted a Charge of Discrimination against Munguia Construction regarding her mistreatment by Defendants with the EEOC. On June 20, 2023, Ms. Lima submitted an Amended Charge of Discrimination.

53. On or about February 14, 2023, Ms. Gallardo timely submitted a Charge of Discrimination against Eastern Applicators to the EEOC.

54. On or about June 12, 2023, Ms. Gallardo timely submitted a Charge of Discrimination against Munguia Construction regarding her mistreatment by Defendants with the EEOC. On June 20, 2023, Ms. Gallardo submitted an Amended Charge of Discrimination.

55. Plaintiffs’ charges of discrimination against Defendants allege that they were subjected to discrimination and harassment because of their sex and retaliation for engaging in protected conduct in the workplace in violation of federal and state anti-discrimination laws.

56. More than 180 days have elapsed since Ms. Lima filed a complaint with the EEOC alleging discrimination against Eastern Applicators (February 14, 2023) and Munguia Construction (June 12, 2023). 29 C.F.R. § 1601.28.

57. More than 180 days have elapsed since Ms. Gallardo filed a complaint with the EEOC alleging discrimination against Eastern Applicators (February 14, 2023) and Munguia

Construction (June 12, 2023). 29 C.F.R. § 1601.28.

58. On April 19, 2024, Ms. Gallardo and Ms. Lima requested their Notices of Right to Sue from the EEOC. These notices were issued on May 3, 2024.

**CAUSES OF ACTION**

**COUNT ONE**

***(Sexual Harassment, in Violation of Title VII of the Civil Rights Act of 1964, As Amended)  
(Against Eastern Applicators)***

59. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as fully set forth herein.

60. Ms. Lima and Ms. Gallardo suffered unwelcome sexual harassment when, within the workplace, Luis Diaz subjected them to frequent unwanted touching, assault, and verbal harassment that was sexual in nature.

61. Mr. Diaz's conduct affected the terms, conditions, and privileges of Ms. Lima and Ms. Gallardo's employment. Mr. Diaz's conduct was sufficiently severe or pervasive to alter the conditions of Ms. Lima and Ms. Gallardo's employment and create an abusive and hostile working environment.

62. Ms. Lima and Ms. Gallardo did not tacitly or explicitly welcome this harassing conduct. Instead, they repeatedly attempted to stand up for themselves to Mr. Diaz and other employees of Defendants.

63. Mr. Diaz's actions against Ms. Lima and Ms. Gallardo were taken because of their female gender. Many of his actions, like inappropriate touching of intimate areas of their bodies, were explicitly sexual in nature.

64. Eastern Applicators, upon receiving Ms. Lima and Ms. Gallardo's complaints of Mr. Diaz's unwelcome conduct, failed to take corrective action to remediate and prevent the

harassment of Plaintiffs.

65. Eastern Applicators' harassing conduct and its lack of adequate response constitutes a discriminatory hostile work environment in violation of 42 U.S.C. § 2000e.

66. Because of this hostile work environment, Ms. Lima and Ms. Gallardo have suffered, and in the future will continue to suffer, irreparable loss and injury, including, but not limited to, humiliation, embarrassment, and mental and emotional distress.

67. Plaintiffs demand compensatory and punitive damages in amounts to be determined at trial, interest, and such other legal and equitable relief as the Court may provide.

## **COUNT TWO**

### ***(Retaliation, in Violation of Title VII of the Civil Rights Act of 1964, As Amended) (Against Eastern Applicators)***

68. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as fully set forth herein.

69. In violation of Title VII, Eastern Applicators unlawfully deprived Plaintiffs of their compensation and benefits to which they were due in response to their reports and complaints about Mr. Diaz's unlawful sexual harassment.

70. As a result of their reports, protected activity under Title VII, Eastern Applicators took adverse actions against Ms. Lima and Ms. Gallardo, including, but not limited to, involuntarily transferring Ms. Lima to a location 75 miles away from her prior work location and terminating Ms. Gallardo.

71. Eastern Applicators unlawfully retaliated against Ms. Lima and Ms. Gallardo in violation of 42 U.S.C. § 2000e-3(a) by taking a materially adverse employment action against them in response to protected activity.

72. As a result of Eastern Applicator's discriminatory and retaliatory actions, Ms. Lima

and Ms. Gallardo have suffered humiliation, embarrassment, and mental and emotional distress.

73. Plaintiffs demand compensatory and punitive damages in amounts to be determined at trial, interest, and such other legal and equitable relief as the Court may provide.

**COUNT THREE**

***(Gender Discrimination, in Violation of the Virginia Human Rights Act)  
(Against Eastern Applicators)***

74. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as fully set forth herein.

75. Ms. Lima and Ms. Gallardo were subjected to discrimination when, within the workplace, Luis Diaz subjected them to frequent unwanted touching, assault, and verbal harassment that was sexual in nature.

76. Mr. Diaz's actions against Ms. Lima and Ms. Gallardo were taken because they are women. Many of his actions, like inappropriate touching of intimate areas of their bodies, were explicitly sexual in nature.

77. Ms. Lima and Ms. Gallardo did not tacitly or explicitly welcome this harassing conduct. Instead, they repeatedly attempted to stand up for themselves to Mr. Diaz.

78. Mr. Diaz's actions against Ms. Lima and Ms. Gallardo were taken because they are women. Many of his actions, like inappropriate touching of intimate areas of their bodies, were explicitly sexual in nature.

79. Eastern Applicators, upon receiving Ms. Lima and Ms. Gallardo's complaints of Mr. Diaz's unwelcome conduct, failed to take corrective action to remediate and prevent the harassment of Plaintiffs.

80. Eastern Applicators' lack of adequate response to Mr. Diaz's harassment and failure to protect Ms. Lima and Ms. Gallardo created a discriminatory hostile work environment in

violation of the Virginia Human Rights Act. Va. Code Ann. § 2.2-3905.

81. Because of this discriminatory and hostile work environment, Ms. Lima and Ms. Gallardo have suffered, and in the future will continue to suffer, irreparable loss and injury, including, but not limited to, humiliation, embarrassment, and mental and emotional distress.

82. Plaintiffs demand compensatory and punitive damages in amounts to be determined at trial, interest, and such other legal and equitable relief as the Court may provide.

#### **COUNT FOUR**

##### ***Unlawful Discharge, in Violation of the Virginia Human Rights Act (Against all Defendants)***

83. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as fully set forth herein.

84. In violation of the Virginia Human Rights Act, Defendants unlawfully discharged Ms. Lima and Ms. Gallardo after they reported Mr. Diaz's harassment on the basis of sex.

85. Shortly after reporting the discriminatory harassment, Defendants constructively discharged Ms. Lima when they involuntarily transferred her to a location 75 miles away from her prior worksite.

86. Shortly after reporting the discriminatory harassment, Defendants directly terminated Ms. Gallardo's employment following her complaints of Mr. Diaz's sexual harassment.

87. Defendants' unlawful discharge of Ms. Lima and Ms. Gallardo constituted discrimination on the basis of their sex in violation of the Virginia Human Rights Act. Va. Code Ann. § 2.2-3905.

88. As a result of the Defendants' discriminatory and retaliatory actions, Ms. Lima and Ms. Gallardo have suffered humiliation, embarrassment, and mental and emotional distress.

89. Plaintiffs demand compensatory and punitive damages in amounts to be determined

at trial, interest, and such other legal and equitable relief as the Court may provide.

**COUNT FIVE**

***Battery  
(Against Eastern Applicators)***

90. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as fully set forth herein.

91. As alleged above, Luiz Diaz was Eastern Applicators' employee, agent, servant, workman, partner, and/or joint venture.

92. Eastern Applicators' requirement and expectation for Mr. Diaz's job was that he supervised Ms. Lima and Ms. Gallardo on the job site, including directing and inspecting their work.

93. At all relevant times, Mr. Diaz was acting within the course and scope of his employment and engaged in workplace duties or functions.

94. Mr. Diaz's wrongful acts were committed while he was performing his duties as a supervisor in the execution of the services for which Eastern Applicators employed him. Mr. Diaz exercised supervisory authority to assign Ms. Lima and Ms. Gallardo to areas of the job site so that they were separated from other female workers and each other. As their supervisor, Mr. Diaz frequently monitored and checked in on Plaintiffs, during which he subjected both to unwanted touching without their consent.

95. Eastern Applicators is vicariously liable for Mr. Diaz's wrongful acts.

96. As a result of the Defendant's wrongful acts, Ms. Lima and Ms. Gallardo have suffered humiliation, embarrassment, and mental and emotional distress.

97. Plaintiffs demand compensatory and punitive damages in amounts to be determined



at trial, interest, and such other legal and equitable relief as the Court may provide.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against the Defendants and enter an order:

- A. Declaring that the Defendants' conduct complained of by Plaintiffs is in violation of the in violation of U.S.C. § 2000e-5(f)(3), the Virginia Human Rights Act, and Virginia common law;
- B. Awarding Plaintiffs full and fair compensation for their injuries, pain, suffering, emotional, and mental distress to the fullest extent permitted under federal and Virginia law;
- C. Awarding pre-judgment interest and post-judgment interest, together with an award of fees incurred in this case (including attorneys' fees), expenses, disbursements, and costs arising from this action;
- D. Awarding Plaintiffs punitive damages; and
- E. Awarding such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all counts so triable.

Dated: May 7, 2024

Respectfully Submitted,

/s/ Jackson D. Toof

Jackson D. Toof, Esq. (VSB# 48842)

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