

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

SUFFOLK, ss.

Civil Action No. 17-4020F

MARTA ROMERO, FABIANA
SANTOS, GLADYS FUENTES,
SANTIAGO CRUZ, and MILAGRO
ALVAREZ,

Plaintiffs

v.

McCORMICK & SCHMICK
RESTAURANT CORP. d/b/a
McCORMICK & SCHMICK'S
SEAFOOD RESTAURANT,

Defendants



COMPLAINT AND JURY DEMAND

Introduction

1. This lawsuit is brought by five Latina women who were sexually harassed while working for the McCormick & Schmick's restaurant at Faneuil Hall. The women worked in low-wage jobs, in positions such as dishwashers, cleaners, or prep cooks. All five were subjected to a humiliating and sexually offensive work environment, which included repeated incidents of unwanted fondling and other lewd behavior, including, for example, having male workers grab women's breasts or a supervisor saying words to the effect of, "this is your food" while grabbing his crotch.

2. Many of the incidents contributing to the abusive work environment were perpetrated by supervisors at McCormick & Schmick's. Other incidents of harassment

by a co-worker were reported to the restaurant's General Manager, who failed to take appropriate action. Eventually, McCormick & Schmick's Human Resources department was made of aware of Plaintiffs' experiences and conducted its own investigation. McCormick & Schmick's claims to have taken some remedial actions, even while discrediting Plaintiffs' accounts and denying that Plaintiffs suffered sexual harassment. According to its own statements, which demonstrate an utter failure to grasp the dynamics of sexual harassment, McCormick & Schmick's has been guided in part by a belief that certain conduct was unlikely to have been sexual in nature because one of the perpetrators was substantially younger than some of the Plaintiffs.

Parties

3. Plaintiff Marta Romero is an adult resident of Chelsea, Massachusetts. From 2011 until 2015, Romero was employed by McCormick & Schmick's as a dishwasher at the Faneuil Hall location.

4. Plaintiff Fabiana Santos is an adult resident of Revere, Massachusetts. From 2002 until 2015, Santos was employed by McCormick & Schmick's as a prep cook at the Faneuil Hall location.

5. Plaintiff Gladys Fuentes is an adult resident of East Boston, Massachusetts. From 2015 until 2017, Fuentes was employed by McCormick & Schmick's as a prep cook at the Faneuil Hall location.

6. Plaintiff Santiago Cruz is an adult resident of Somerville, Massachusetts. From 2004 until 2017, Cruz was employed by McCormick & Schmick's as a janitor, a dishwasher, and a prep cook at the Faneuil Hall location.

7. Plaintiff Milagro Alvarez is an adult resident of Revere, Massachusetts. From 2011 until the present, Alvarez has been employed by McCormick & Schmick's as a dishwasher at the Faneuil Hall location.

8. Defendant McCormick & Schmick Restaurant Corp. operates McCormick & Schmick's. McCormick & Schmick Restaurant Corp. is a foreign corporation that does business in Massachusetts, with a principal place of business at 1 Faneuil Hall Marketplace, Boston, Massachusetts. According to its website, McCormick & Schmick's has about 51 locations across the country. On information and belief, McCormick & Schmick's is a subsidiary or affiliated entity of Landry's, Inc., which operates more than 500 restaurants across the United States and in other countries, under brands such as Landry's Seafood, Chart House, Oceanair, Saltgrass Steak House, Bubba Gump Shrimp Co., Claim Jumper, Morton's The Steakhouse, McCormick & Schmick's, Mastro's Restaurants, and Rainforest Café.

Facts

9. On or around December 2013, Roman Buruca began working for McCormick & Schmick's at the Faneuil Hall location as a Sous Chef, which is a managerial position.

10. Jesus Vasquez Lopez began working for McCormick & Schmick's at the Faneuil Hall location in April 2014 as a dishwasher.

11. Barry Young served as the General Manager at McCormick & Schmick's Faneuil Hall location from December 2014 until June 2015.

12. Executive Chef Aaron Hopp transferred to the Faneuil Hall location in May 2015.

13. David Wilson became the General Manager at the Faneuil Hall location in June 2015.

Marta Romero's Experience of Sexual Harassment

14. The first time Chef Buruca touched Ms. Romero inappropriately, at some point in 2014, she was loading dishes. He came up to her, rubbed her lower back, and put his hand around her waist. She said to him, in Spanish, words to the effect of, "Roman, what is happening?" He laughed. This happened after Chef Buruca had been working at McCormick & Schmicks for approximately six months.

15. From that point onward, Chef Buruca frequently touched Ms. Romero in inappropriate and sexual ways. When Chef Buruca saw Ms. Romero, he would put his arms around her or pat her on the bottom.

16. Chef Buruca also frequently made comments to Ms. Romero in Spanish, including words to the effect of, "Ay, here comes the one who will be mine," or words to the effect of, "Ay, how I suffer." Once he said to her words to the effect of, "Ay mami, do not lose faith, one day you will marry me."

17. In or around May 2015, Chef Buruca told Ms. Romero to go to the walk-in to organize the wines. She followed his instructions. Once there, Chef Buruca put his arms around her and touched her breast. Ms. Romero said to him, in Spanish, words to the effect of, "You do not have any respect."

18. After that incident, Chef Buruca groped Ms. Romero's breast on at least one other occasion.

19. In or around June 2015, Ms. Romero went to the bathroom to change her clothes. When she opened the door to the bathroom, Chef Buruca was standing there and he said to her, in Spanish, words to the effect of, "Enter and lock the door. Nobody is going to know anything."

20. Ms. Romero regularly witnessed Chef Buruca touching other women inappropriately while at work.

21. Ms. Romero twice attempted to report Chef Buruca's behavior to Barry Young, the General Manager, but both times Mr. Young was busy and told her to come back later.

22. The sexual harassment Ms. Romero experienced while working at McCormick & Schmick's made her feel as if she was an object, or an animal, and that Chef Buruca could do whatever he wanted to her with impunity.

23. The sexual harassment caused Ms. Romero significant emotional distress.

Fabiana Santos' Experience of Sexual Harassment

24. At some point in 2014, Ms. Santos was changing in the women's bathroom. Chef Buruca knocked on the door and said, in Spanish, words to the effect of, "It is me, I swear I am not going to tell anyone what I see inside." Ms. Santos responded, in Spanish, words to the effect of, "I will, I will tell [my husband]." She then opened the door and said to Chef Buruca words to the effect of, "Don't joke with me about this." Chef Buruca answered with words to the effect of, "Ok, mami."

25. Ms. Santos also witnessed Chef Buruca touching her female co-workers in inappropriate ways and making sexually suggestive comments. For example, she frequently witnessed Chef Buruca touching Ms. Romero inappropriately, even though Ms. Romero told him to stop. Once, she heard Chef Buruca tell Ms. Romero to go to the walk-in. Ms. Santos had a suspicious feeling about the interaction, so she went to the walk-in and opened the door. Chef Buruca was standing behind Ms. Romero, touching her up and down. Ms. Romero appeared to Ms. Santos to be very uncomfortable in the situation.

26. Ms. Santos also witnessed Chef Buruca kissing and hugging a female co-worker named Maria.

27. Mr. Vasquez, one of the dishwashers, frequently made vulgar, sexual comments to Ms. Santos in Spanish, sometimes using dirty words in her native language of Portuguese. These comments included words to the effect of, "Ay, my love, I want to touch your [vulgar word for vagina in Portuguese]" and words to the effect of, "Ay my love, I want to eat your [vulgar word for vagina in Portuguese]."

28. Sometimes Mr. Vasquez made the vulgar comments to Ms. Santos in the presence of Chef Buruca. Ms. Santos would say to Chef Buruca, in Spanish, words to the effect of, "See how he is talking to me"? But Chef Buruca always brushed these comments off. On one occasion, Chef Buruca's only response was words to the effect of, "Careful, her husband is fierce."

29. In or around December 2014, Mr. Vasquez came up to Ms. Santos and said to her, in Spanish, words to the effect of, "Hello, my love," and grabbed her left breast.

She pushed him back and said words to the effect of, "Hey, what are you doing"? He responded with words to the effect of, "Ay, I like you." She told him that this was the last time and that she would tell the office about it next time.

30. One night in or around March 2015, Mr. Vasquez said to Ms. Santos, in Spanish, words to the effect of, "I want to touch your [vulgar word for vagina in Portuguese]." She reported the incident to Chef Buruca and said, in Spanish, words to the effect of, "What is going on!" Chef Buruca responded, in Spanish, with words to the effect of, "Don't worry, he is on his final warning." But the sexually explicit comments continued.

31. Then, on or around June 6, 2015, Ms. Santos was standing next to a table, when Mr. Vasquez came up behind her and pushed her into the table with his groin. She screamed, yelling words to the effect of, "Don't touch me." She was so upset she started crying. She told Chef Buruca what had happened, and Chef Buruca told Chef Hopp. It seemed to Ms. Santos that neither of them intended to take any action, so Ms. Santos also reported the incident to Mr. Young, the General Manager. Mr. Young said that he would talk to Mr. Vasquez. Later that day, Chef Hopp came up to Ms. Santos, put his hand on her shoulder and said words to the effect of, "Sorry, Fabi, there is nothing we can do, we are very busy." Later, Chef Buruca told Ms. Santos that Mr. Young had spoken to Mr. Vasquez.

32. Chef Buruca continued to make sexually inappropriate comments even after the June incident with Mr. Vasquez. For example, Ms. Santos was present when her co-worker Ms. Cruz was standing at a table. Mr. Vasquez had bent down to get

some boxes next to her legs. Chef Buruca said, in Spanish, words to the effect of, "Take advantage of the fact that Jesus does not have his teeth and the oral sex will be very good - he will not bite you." Then he looked at Ms. Santos and said words to the effect of, "Yes or no, Fabi"? Ms. Santos responded with words to the effect of, "Really, Roman? After all that has happened between me and Jesus?"

33. The sexual harassment Ms. Santos experienced made her feel dirty, disgusted, and nauseous. She thought about it all the time.

34. The sexual harassment caused Ms. Santos significant emotional distress.

Gladys Fuentes' Experience of Sexual Harassment

35. Shortly after Ms. Fuentes began working at McCormick & Schmick's, she asked Chef Hopp if any food was available because she was hungry. Chef Hopp pointed to his groin with both hands and said, in Spanish, words to the effect of, "Eat here, this is your food."

36. Ms. Fuentes also witnessed on many occasions Chef Buruca touching her female co-workers in inappropriate ways and making sexually suggestive comments.

37. In late May 2015, during a conversation with Chef Buruca, Ms. Fuentes explained to him that she is an adult and that she does not believe that it is appropriate to have sexual relationships with people at work. He laughed at her.

38. Then, in early June 2015, Ms. Fuentes was standing at a table doing her work when Mr. Vasquez walked by her and rubbed his groin against her bottom. "You are abusive," Ms. Fuentes said to him in Spanish, or words to that effect. He responded

with words to the effect of, "I am just doing my work." Ms. Fuentes said to him, in Spanish, words to the effect of, "If you do it again, I will report it to the office."

39. On or around June 22, 2015, Ms. Fuentes was in the walk-in when Chef Hopp came up behind her and put his arms around her. He put his tongue in her ear. She said, in Spanish, words to the effect of, "Stop, are you crazy"? He responded with words to the effect of, "I am not crazy," also in Spanish.

40. About a week later, on or around June 30, 2015, Ms. Fuentes was working and when she looked up, Chef Hopp was grabbing his crotch with both hands and looking at her. She kept working. Then Chef Hopp came up behind her and rubbed his hands over her face. As he walked away, he said words to the effect of, "You don't want more hours"? Ms. Fuentes responded with words to the effect of, "No, I don't want more hours." He then said words to the effect of, "You are an asshole," in Spanish. A little later, Chef Hopp said to Ms. Fuentes words to the effect of, "Go home, go home to your house. I don't want to see your face any more. Your face is ugly." Ms. Fuentes left, even though she had more work to finish.

41. The sexual harassment made Ms. Fuentes feel humiliated, nervous, and afraid.

42. The sexual harassment caused Ms. Fuentes significant emotional distress.

Santiago Cruz's Experience of Sexual Harassment

43. Ms. Cruz was present when she and her co-worker Ms. Fuentes asked Chef Hopp if there was anything to eat because they were hungry. Chef Hopp pointed at his groin and said, in Spanish, words to the effect of, "This is your food."

44. On another occasion, Chef Hopp told Ms. Cruz words to the effect of, "Tomorrow is my day off. I have five girls in my house waiting for me."

45. Ms. Cruz also witnessed on many occasions Chef Buruca touching her female co-workers in inappropriate ways and making sexually suggestive comments.

46. For example, Ms. Cruz saw Chef Buruca hug her co-worker Maria many times. When he hugged her, he sometimes touched her breasts, even when others were watching.

47. Ms. Cruz also witnessed Chef Buruca trying to hug and touch Ms. Romero, even though Ms. Romero told him not to and was very clearly uncomfortable.

48. Around the middle of June 2015, Ms. Cruz was working at a table. Mr. Vasquez, a dishwasher, was bent over next to her, putting things away. Chef Buruca said to Ms. Cruz in Spanish, words to the effect of, "Don't be afraid. He is not going to bite you, he is only going to suck you because he does not have any teeth." It was very clear to Ms. Cruz that he was referring to oral sex. She was shocked.

49. Chef Buruca also once said to Ms. Cruz, when she was standing next to a stove, words to the effect of, "Take care so your [vulgar word for vagina] does not catch on fire," in Spanish.

50. Mr. Vasquez also made sexually inappropriate comments to Ms. Cruz. He frequently said in passing words to the effect of, "How much do you want?" It was clear to her that he was referring to paying her for sex. He even said once, in Spanish, words to the effect of, "Do you want money? I am going to pay you so you give me

your ass.” She responded with words to the effect of, “No, do not joke with me like that.”

51. Ms. Cruz felt humiliated by the sexually offensive work environment.

52. The sexual harassment she experienced caused Ms. Cruz significant emotional distress.

Milagro Alvarez’s Experience of Sexual Harassment

53. Ms. Alvarez witnessed on many occasions Chef Buruca touching her female co-workers in inappropriate ways and making sexually suggestive comments.

54. Ms. Alvarez primarily worked in the dishwashing room with her co-worker Ms. Romero and with Mr. Vasquez. Ms. Alvarez frequently observed Chef Buruca coming to the dishwashing room to bother Ms. Romero. She witnessed him trying to put his arms around her and touch her. It was apparent to Ms. Alvarez that this treatment made Ms. Romero feel very uncomfortable.

55. Ms. Alvarez also witnessed Chef Buruca with his arms around a co-worker named Maria on many occasions.

56. As a result of the sexually offensive environment, Ms. Alvarez became afraid to go to work because she was worried that someone might try to touch her.

57. The sexual harassment caused Ms. Alvarez significant emotional distress.

Human Resources Investigation

58. On July 2, 2015, Ms. Romero, Ms. Santos, Ms. Fuentes, Ms. Cruz, and Ms. Alvarez met with the new General Manager of McCormick & Schmick’s, David Wilson,

and an assistant manager, and informed them about the sexual harassment they had experienced. Mr. Wilson said that the company would investigate their complaints.

59. On information and belief, McCormick & Schmick's Human Resources staff then conducted interviews with all involved parties as part of its investigation.

60. On information and belief, McCormick & Schmick's issued a Disciplinary Action Report to Mr. Young for failing to notify Human Resources of Ms. Santos' complaint about Mr. Vasquez.

61. On information and belief, McCormick & Schmick's issued a Disciplinary Action Report to Chef Hopp for unprofessional behavior. However, according to McCormick & Schmick's, "[w]hen weighing discipline for Mr. Hopp, the Company considered that Mr. Hopp is in his mid-twenties and that several of the complaining employees were nearly 25 years older than Mr. Hopp. While the allegations were certainly plausible, in weighing all the evidence, the likelihood that Mr. Hopp interacted with the Complainant(s) in a way that was intended to offend them in a sexual manner did not seem credible."

62. On information and belief, McCormick & Schmick's suspended Chef Buruca for one week without pay. According to McCormick & Schmick's, "the Company found that Mr. Buruca used nicknames to address employees, hugged certain employees in greeting, and engaged in an incident involving horseplay with 2 employees. In addition, the Company found that Mr. Buruca provided false information to the Human Resources Department during the investigation by minimizing his role in the horseplay incident. These issues, combined with Mr. Buruca's failure to address

inappropriate behavior that he witnessed caused the Company to issue him a [Disciplinary Action Report] and suspend him for 1 week without pay.”

63. On information and belief, McCormick & Schmick’s terminated Mr. Vasquez’s employment in July 2015 because of his “lack of credibility and unprofessional demeanor during questioning, combined with his prior warnings for unprofessional behavior.”

64. Despite the disciplinary actions taken, McCormick & Schmick’s has vehemently denied that the conduct of Chef Hopp, Chef Buruca, and Mr. Vasquez constituted sexual harassment.

Exhaustion of Administrative Remedies

65. On or about July 21, 2015, Plaintiffs filed complaints with the Massachusetts Commission Against Discrimination and the United States Equal Employment Opportunity Commission (“EEOC”). Ultimately, the EEOC took the lead role in investigating the case. On or about May 23, 2017, following its investigation, the EEOC determined that there was reasonable cause to believe that McCormick & Schmick’s discriminated against the Plaintiffs on the basis of their sex.

Count I: Discrimination M.G.L. c. 151B

66. Plaintiffs allege and incorporate by reference paragraphs 1 to 65.

67. The conduct of McCormick & Schmick’s constitutes unlawful discrimination against the Plaintiffs in violation of M.G.L. c. 151B, § 4. The conduct included sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. The Plaintiffs’ submission to or rejection of such advances,

requests, or conduct was made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions. In addition, such advances, requests, or conduct had the purpose or effect of unreasonably interfering with the Plaintiffs' work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment. The conduct was subjectively and objectively offensive, and all of the conduct was unwelcome to Plaintiffs. With respect to the conduct of non-supervisory men, McCormick & Schmick's knew or should have known of the harassment and failed to take prompt and effective remedial action. This claim is brought pursuant to M.G.L. c. 151B, § 9.

WHEREFORE, Plaintiffs respectfully request this Court to:

- A. Award damages to Plaintiffs for their emotional and mental distress;
- B. Award punitive damages to Plaintiffs;
- C. Award attorneys' fees and costs to Plaintiffs;
- D. Award pre- and post-judgment interest to Plaintiffs; and
- E. Grant such other relief as is just and proper.

JURY DEMAND

Plaintiffs request a trial by jury.

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