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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

**EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

**Plaintiff,**

**OLIVIA TAMAYO,**

**Plaintiff-Intervenor,**

**v.**

**HARRIS FARMS, INC.,**

**Defendant.**

**CIV F 02-6199 AWI LJO**

**ORDER ON PLAINTIFF'S  
MOTION TO AMEND  
JUDGMENT TO INCLUDE  
EQUITABLE RELIEF AND  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

After a 23 day jury trial that began in December 2004 and ended in January 2005, a jury awarded Plaintiff-Intervenor Olivia Tamayo (“Tamayo” or “Ms. Tamayo”) approximately \$1 million. Plaintiffs now seek a permanent injunction that has roughly 10 facets. Plaintiffs have also submitted 94 proposed findings of fact and 8 conclusions of law, which are intended to be the basis for the injunctive relief requested.<sup>1</sup> The 10 facets of injunctive relief requested against

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<sup>1</sup>Defendant has filed a general objection against the proposed findings of fact in which it argues that findings and conclusions are inappropriate as a jury has already made all necessary findings. The Court does not find Defendant’s objection persuasive because a jury may decide some issues while the court may decide others, and 42 U.S.C. § 2000e-5(g)(1) is premised on a finding of intentional conduct by the Court. See 42 U.S.C. § 2000e-5(g)(1); Rutherford v. Harris County, 197 F.3d 173, 177-79 (5th Cir. 1999); Gotthardt v. National Railroad Passenger Corp., 191 F.3d 1148, 1152-53 (9th Cir. 1999); EEOC v. E.I Du Pont de Numours & Co., 2005 U.S. Dist. LEXIS 46 (E.D. La. January 4, 2005); Sherman v. Kasotakis, 314 F.Supp.2d 843, 848, 880 (N.D. Iowa 2004); Reiter

1 Defendant are: (1) General injunction against Defendant prohibiting sex discrimination and  
2 retaliation; (2) Hire an independent consultant (“IC”) with Title VII experience to enforce  
3 Defendant’s harassment policy; (3) Revision of the sex harassment policy through the IC w/in 45  
4 days of injunction; (4) Creation of complaint procedure w/in 45 days through the IC that  
5 encourages employees to report harassment; (5) Force Defendant to impose “substantial  
6 discipline” on any supervisor or manager who engaged in or permitted “harassment”; (6)  
7 Harassment/Retaliation training for employees w/in 90 days, 4 hours for employees and 8 hours  
8 for supervisor; (7) Use an independent, certified translator for complaints and training; (8) For  
9 five years and twice every year, send reports and documentation to the EEOC; (9) Post the terms  
10 of the injunction; and (10) Duration of the injunction shall be 5 years and all costs shall be borne  
11 by Defendant.

12 After denials of Defendant’s post trial motions, the Court requested additional  
13 information from Defendant in order to resolve Plaintiff’s motion for injunctive relief.  
14 Specifically the Court requested that Defendant explain its current policies and procedures, who  
15 administers the policies, and that person’s qualifications. Defendant has now submitted the  
16 additional requested information.

17 The Court will grant in part Plaintiffs’ motion as described below.

18  
19 **INJUNCTION STANDARDS**

20 As part of the remedies available to a successful Title VII plaintiff, the court may impose  
21 an injunction against the employer/defendant. In relevant part, 42 U.S.C. § 2000e-5(g)(1) reads:

22 If the court finds that the respondent has intentionally engaged in or is  
23 intentionally engaging in an unlawful employment practice charged in the  
24 complaint, the court may enjoin the respondent from engaging in such unlawful  
25 employment practice, and order such affirmative action as may be appropriate,  
26 which may include, but is not limited to, reinstatement or hiring of employees,  
with or without back pay (payable by the employer, employment agency, or labor  
organization, as the case may be, responsible for the unlawful employment

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v. Metropolitan Trans. Auth. of New York, 2003 U.S. Dist. LEXIS 17391 (S.D. N.Y. September 30, 2003).

1 practice), or any other equitable relief as the court deems appropriate.

2 42 U.S.C. § 2000e-5(g)(1).

3 The decision to award or deny injunctive relief is reviewed for an abuse of discretion and  
4 the application of correct legal principles. EEOC v. Hacienda Hotel, 881 F.2d 1504, 1518 (9th  
5 Cir. 1989). Although referencing racial discrimination, the Supreme Court has admonished that  
6 district courts have “not merely the power but the duty to render a decree which will so far as  
7 possible eliminate the discriminatory effects of the past as well as bar like discrimination in the  
8 future.” Albermarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975). Thus, once intentional  
9 discriminatory or unlawful employment conduct is found, “district courts have broad equitable  
10 powers to fashion relief for violations of Title VII that will eliminate the effects of past  
11 discrimination.” Bouman v. Block, 940 F.2d 1211, 1233 (9th Cir. 1991); see also Ilona of  
12 Hungary, 108 F.3d at 1578. However, the court’s discretion in fashioning injunctive is not  
13 unlimited and provisions of an injunction may be improper “if they are broader than necessary to  
14 remedy the underlying wrong.” EEOC v. HBE Corp., 135 F.3d 543, 557 (8th Cir. 1998) (citing  
15 Easley v. Anheuser-Busch, Inc., 758 F.2d 251, 263 (8th Cir. 1985)). Because the EEOC acts to  
16 vindicate the public interest and to protect similarly situated employees from retaliation and  
17 unlawful discrimination, the EEOC need only identify one or a mere handful of aggrieved  
18 employees in order to obtain injunctive relief. See EEOC v. Frank’s Nursery & Crafts, Inc., 177  
19 F.3d 448, 467-468 (6th Cir. 1999); see also Hacienda Hotel, 881 F.2d at 1519. “The EEOC may  
20 obtain a permanent injunction even where it does not allege a pattern or policy of  
21 discrimination.” Frank’s Nursery, 177 F.3d at 468.

22 “Permanent injunctive relief is warranted where . . . defendant’s past and present  
23 misconduct indicates a strong likelihood of future violations.” Orantes-Hernandez v.  
24 Thornburgh, 919 F.2d 549, 564 (9th Cir. 1990). “In seeking a permanent injunction, the moving  
25 party must convince the court that relief is needed: ‘The necessary determination is that there  
26 exists some cognizable danger of recurrent violation, something more than the mere possibility

1 which serves to keep the case alive.” Cummings v. Connell, 316 F.3d 886, 898 (9th Cir. 2003)  
2 (quoting United States v. W.T. Grant Co., 345 U.S. 629, 633 (1953)); see also HBE Corp., 135  
3 F.3d at 558 (holding specific injunction provision was unnecessary as it only addressed  
4 “speculative future harm”). A determination that danger of reoccurrence exists must “be based  
5 on appropriate findings supported by the record.” United States v. Laerdal Mfg. Corp., 73 F.3d  
6 852, 854-855 (9th Cir. 1995); Federal Election Comm’n v. Furgatch, 869 F.2d 1256, 1263 (9th  
7 Cir. 1989); see also Fed. R. Civ. P. 65(d). Evidence relied on to show a cognizable danger of  
8 recurrent violation should not be “stale” or too far removed from the present. See Webb v.  
9 Missouri Pacific Railroad Co., 98 F.3d 1067, 1068-69 (8th Cir. 1996) (and cases cited therein)  
10 (holding that past conduct cannot support an injunction issued five years after the close of  
11 evidence). In making this finding, the court may consider “the degree of scienter involved; the  
12 isolated or recurrent nature of the infraction; the defendant’s recognition of the wrongful nature  
13 of his conduct; the extent to which the defendant’s professional and personal characteristics  
14 might enable or tempt him to commit future violations; and the sincerity of any assurances  
15 against future violations.” Laerdal Mfg. Corp., 73 F.3d at 854-855; Furgatch, 869 F.2d at 1263  
16 n.5.

17 A defendant may resist an injunction by showing that “there is no reasonable expectation  
18 that the wrong will be repeated;” in other words, the issue or claim is moot. W.T. Grant, 345  
19 U.S. at 633; see also Hacienda Hotel, 881 F.2d at 1518-19; EEOC v. Goodyear Aerospace Corp.,  
20 813 F.2d 1539, 1544 (9th Cir. 1987). However, the burden of showing no reasonable expectation  
21 of repeating the wrong is heavy. See W.T. Grant, 345 U.S. at 633. Generally, victims of  
22 employment discrimination are entitled to an injunction against future discrimination unless the  
23 employer proves it is unlikely to repeat the practice. See Hacienda Hotel, 881 F.2d at 1819;  
24 Goodyear Aerospace, 813 F.2d at 1544. Moreover, an “employer that takes curative actions only  
25 after it has been sued fails to provide sufficient assurances that it will not repeat the violation to  
26 justify denying an injunction.” Hacienda Hotel, 881 F.2d at 1519; Goodyear Aerospace, 813

1 F.2d at 1544. Where individuals who are found to have discriminated remain as a defendant's  
2 primary decision maker, injunctive relief may be justified. Ilna of Hungary, 108 F.3d at 1579.

3 If a court issues an injunction, the court must *inter alia* set forth the reasons for issuance.

4 Federal Rule of Civil Procedure 65(d) reads:

5 Every order granting an injunction and every restraining order shall set forth the  
6 reasons for its issuance; shall be specific in terms; shall describe in reasonable  
7 detail, and not by reference to the complaint or other document, the act or acts  
8 sought to be restrained; and is binding only upon the parties to the action, their  
officers, agents, servants, employees, and attorneys, and upon those persons in  
active concert or participation with them who receive actual notice of the order by  
personal service or otherwise.

9 Fed. R. Civ. Pro. 65(d).

### 10 TRIAL

11 The EEOC brought suit in this Court on September 30, 2002, and Olivia Tamayo filed  
12 her complaint in intervention on January 1, 2004. Trial began on November 29, 2004, and ended  
13 on January 21, 2005, with a jury verdict. The matters presented to the jury for resolution were  
14 Plaintiff's claims as to liability and economic damages, non-economic damages, and punitive  
15 damages. The jury found in favor of Plaintiffs on both Title VII and California Fair Employment  
16 and Housing Act claims. Specifically, the jury found:

- 17 a. hostile environment sexual harassment by her supervisor, Rene Rodriguez;
- 18 b. hostile environment sexual harassment by co-workers through sexual  
19 rumors/gossip in late 2000/early 2001;
- 20 c. retaliation against Tamayo for complaining of co-worker sexual harassment; and
- 21 d. constructive discharge.

22 The jury awarded Tamayo \$350,00 in compensatory damages, \$53,000 in front pay, and  
23 \$91,000 in back pay. The jury further found that Defendant acted with malice or in reckless  
24 disregard of Tamayo's federally protected rights and awarded \$500,000, which was later reduced  
25 to \$300,000, in punitive damages.

26 This Court now enters the following findings of fact and conclusions of law regarding  
27

1 injunctive relief in accordance with 42 U.S.C. § 2000e-5(g)(1) and Rule 65(d). To the extent that  
2 any findings of fact are included under conclusions of law, they shall be deemed findings of fact.  
3 To the extent that any conclusions of law are included under findings of fact, they shall be  
4 deemed conclusions of law.

5 **FINDINGS OF FACT**<sup>2</sup>

6 1. The Court adopts the jury's verdict as its findings with respect to Defendant's  
7 liability under Title VII. Further, in February and March 2001, Defendant took adverse  
8 employment actions against Tamayo by refusing to reassign her to a position where she would  
9 not be required to work alone, by refusing to supply her with a radio, by suspending her for one  
10 day, and for issuing her a final written warning. These adverse actions were in retaliation for  
11 Tamayo's complaints of co-worker harassment in 2001. Although Defendant argued that  
12 Tamayo had participated in inappropriate sexual gossip and comments, the real reason was  
13 retaliation.

14 2. Tamayo was subjected to a hostile work environment created by sexual assault  
15 (which occurred between 1993 and 1994), physical assault, repeated unwelcome comments and  
16 sexual advances, and threats of bodily injury by her supervisor, Rene Rodriguez ("Rodriguez").

17 3. Tamayo first complained about Rodriguez to the Harris Farms front office on July  
18 26, 1999.<sup>3</sup> Tamayo complained that Rodriguez grabbed her in a violent manner while she was  
19 working in a field because she had been talking to another man. Tamayo did not complain that  
20 Rodriguez had raped her.

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22 <sup>2</sup>Plaintiffs have proposed many findings of facts. However, Plaintiffs do not provide an adequate basis for  
23 the court to adopt each of the proposed findings or conclude that the proposed findings are accurate since there are  
24 no citations to the record or to transcripts, to other evidence, or to declarations for support. To the extent that a  
proposed finding is not utilized, the Court finds that either insufficient support has been presented/cited or that the  
proposed finding is unnecessary to the resolution of this motion.

25 <sup>3</sup>Plaintiffs propose findings of fact that Tamayo had complained in late 1998 to her then supervisor, Audelio  
26 Corona, that Rodriguez would bother her every time Rodriguez came around her. However, Tamayo's complaint to  
27 Corona was ambiguous at best. Tamayo complained to Corona about Rodriguez's placement of portable toilets for  
the agriculture crew and that Rodriguez would bother her by asking about where her crew would be moving.  
28 Tamayo's complaint to Corona did not indicate sexual harassment.





1 around the Almond Department and that Human Resources needed to investigate.

2 19. In 2000, Gomez was appointed the full time Human Resources Director at  
3 Harris Farms. Gomez was originally hired by Harris Farms as a Human Resources Assistant in  
4 May 1999. One of her primary duties when hired in 1999 was to translate Spanish to English and  
5 vice versa. Gomez has taken some college level courses, but does not have a college degree and  
6 is not a certified interpreter/translator. While Ollech was the human resources consultant,  
7 Gomez was not a decision maker and did not have authority to discipline employees, but would  
8 take a complaint and schedule a meeting if Ollech was not available. Prior to working at Harris  
9 Farms, Gomez had conducted one harassment investigation that was unrelated to discrimination.

10 20. On February 2, 2001, without having heard from the front office, Tamayo went to  
11 the office in order to talk to Chrisco. Tamayo complained of the sexual gossip and threats  
12 directed towards her.<sup>4</sup> Tamayo revealed that she had been working alone and was frightened.  
13 Gomez acknowledged knowing about the problems.

14 21. On February 3, 2001, Gomez began investigating. Gomez drove out to the  
15 Almond Department, accompanied by the department manager, and conducted interviews in the  
16 field, where other workers could possibly observe the interviews. Gomez had not yet  
17 interviewed Tamayo and the department manager knew of no reason why interviews of Almond  
18 Department employees could not have been conducted in the office. Gomez did not interview  
19 each of the potential witnesses in the Almond Department.

20 22. Also on February 3, 2001, Gomez informed Tamayo that Gomez had spoken with  
21 Chrisco and that Tamayo's request not to work alone was denied.

22 23. Sometime after February 3, 2001, Tamayo requested that she and two witnesses  
23 (Gustavo and Lourdes Ramirez) meet with Chrisco.

24 24. Between February 3 and 21, the work vehicles of Gustavo and Lourdes Ramirez  
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26 <sup>4</sup>The gossip and rumors involved Tamayo's sexual habits and a threat that Rene Rodriguez was going to pay  
27 people money to drug Tamayo and then take naked pictures of Tamayo so as to break up Tamayo's marriage.

1 were vandalized. The hydraulic brake line of Lourdes's vehicle was severed and the rear tires of  
2 Gustavo's truck were punctured.

3 25. Chrisco did not meet with Tamayo and the Ramirezes until February 21, 2001.  
4 Although Chrisco knew about the nature of the rumors and gossip, he did not meet with Tamayo  
5 sooner because he wanted Human Resources to be present and Gomez was unavailable for  
6 personal reasons. No other person filled in for Gomez while she was unavailable with regard to  
7 Tamayo's harassment complaint.

8 26. At the February 21, 2001, meeting, the nature of the gossip and threats against  
9 Tamayo were explained and the Ramirezes told about the vandalism and that co-workers had  
10 threatened retaliation.

11 27. After the meeting, Chrisco recommended suspending everyone involved in  
12 the complaint for two weeks irrespective of culpability.

13 28. Gomez concluded that there was a lot of "he said/she said," and that there were  
14 two groups involved: one group was Tamayo and the Ramirezes, the second group was made of  
15 employees Mosqueda, Mendoza, and Hernandez. Gomez also concluded that everyone in both  
16 groups engaged in inappropriate behavior and should be disciplined.

17 29. Mosqueda, Mendoza and Lourdes Ramirez were all terminated as they had prior  
18 final written warnings.

19 30. Hernandez and Gustavo Ramirez were given final written warnings and  
20 Hernandez was suspended.

21 31. On March 12, 2001, Gomez informed Tamayo that, as a result of the  
22 investigation, Tamayo was suspended for one day and given a final written warning. The final  
23 written warning indicated that it was for harassment.

24 32. Gomez refused to answer Tamayo's question about what would happen to the  
25 other employees involved in the complaint.

26 33. At trial, Gomez testified that Tamayo had been disciplined for participating in  
27

1 sexual gossip. However, no documentation was introduced that supported this conclusion.  
2 Additionally, Gomez indicated that some of her documentation was intended for her personal use  
3 only and was not intended to be read by others.

4 34. Approximately six weeks elapsed from the time of Tamayo's complaint in late  
5 January to resolution on March 12, 2001. Part of the reason for delay was that Gomez was  
6 unavailable because of other duties and personal reasons.

7 35. Hermalinda Reyes ("Reyes"), who is currently employed in a supervisory position  
8 at Harris Farms, testified that she had heard gossip about concerning Tamayo. However, Reyes  
9 testified that she believed that she did not have an obligation to report harassment in the  
10 workplace and that it is the responsibility of the "harassee" to complain.

11 36. The operative anti-harassment policy for both Tamayo's 1999 and 2001  
12 complaints was adopted in 1989, and had not been updated. The 1989 policy was printed in both  
13 English and Spanish in the Employee Handbook.

14 37. Among other things, the 1989 harassment policy did not describe prohibited  
15 conduct, contain any confidentiality guarantee, contain an anti-retaliation provision, state that  
16 employees who violate the policy would be disciplined, and required that reports be made to the  
17 "executive director or the manager" even though it is unclear who those persons are.

18 38. The Human Resources consultants used by Harris Farms between 1996 and 1999  
19 were supposed to have updated that 1989 harassment, but failed to do so. Both the President,  
20 John Harris, and the then Vice-President, Erick Johnson, knew that the 1989 policy should be  
21 updated.

22 39. Tamayo participated in sexual harassment training seminars twice in 1996.  
23 Although the programs were translated into Spanish, Tamayo recalled that there were times that  
24 she did not understand all of the words that were used.

25 40. Both Ollech and Kelle Butler (the human resources consultant from 1996  
26 to 1999) acknowledged that the education level of many Harris Farms employees was low.



1 Department of Fair Employment and Housing (“DFEH”). The pamphlet discusses violence and  
2 sexual harassment, gives examples of harassment, explains an employer’s obligations and  
3 possible liability, and provides information for contacting the DFEH. See Exhibit P.

4 47. The “Harris Farms Sexual Harassment Policy” in the orientation packet reads:

5 Harris Farms, Inc., is committed to providing a work environment free of  
6 unlawful harassment. Company policy prohibits harassment because of sex (which  
7 includes sexual harassment, gender harassment and harassment due to pregnancy,  
8 childbirth or related medical conditions) and harassment because of race, religious creed,  
9 color national origin or ancestry, physical or mental disability, medical condition, marital  
10 status, age, sexual orientation or any other basis protected by federal, state, or local law,  
11 ordinance or regulation. ALL SUCH HARASSMENT IS UNLAWFUL.

12 The Company’s anti-harassment policy applies to all persons involved in the  
13 operation of Harris Farms, Inc., and prohibits unlawful harassment by any employee of  
14 the Company.

15 Prohibited unlawful harassment because of sex (sexual harassment, gender  
16 harassment and harassment due to pregnancy, childbirth or related medical conditions),  
17 race, religious creed, color, national origin or ancestry, physical or mental disability,  
18 medical condition, marital status, age, sexual orientation, or any other protected basis  
19 includes, but is not limited to the following behavior:

- 20 a. Verbal conduct such as epithets, derogatory jokes or comments, slurs or  
21 unwanted sexual advances, invitations or comments; (Examples: name  
22 calling belittling, sexually explicit or degrading words to describe an  
23 individual, sexually explicit jokes, comments about an employee’s  
24 anatomy and/or dress, sexually oriented noises or remarks, questions about  
25 a person’s sexual practices, verbal abuse, graphic verbal commentaries  
26 about the body.) and
- 27 b. Visual conduct such as derogatory and/or sexually-oriented posters,  
28 photography, cartoons, drawings or gestures; (Examples: displaying sexual  
pictures, writings or objects, obscene letters or invitations, staring at an  
employee’s anatomy, leering, sexually oriented gestures, mooing,  
unwanted love letters or notes.) and
- c. Physical conducts such as assault, unwanted touching, blocking normal  
movement or interfering with work because of sex, race or any other  
protected basis; (Examples: touching, pinching, patting, grabbing, rubbing  
against or poking another employee’s body, hazing or initiation that  
involves a sexual component, requiring an employee to wear sexually  
suggestive clothing.) and
- d. Threats and demands to submit to sexual requests as a condition to  
continued employment, or to avoid some other loss, and offers  
employment benefits in return for sexual favors; (Examples: continued  
requests for dates, any threat of demotion, termination etc., if requested  
favors are not given making king or threatening reprisals after a negative

1 response to sexual advances, propositioning an employee.) and

- 2 e. Retaliation for having reported or threatened to report harassment.  
3 Prohibited retaliation includes but is not limited to: demotion, suspension,  
4 failure to hire or consider for hire, failure to give equal consideration in  
5 making employment decisions, failure to make impartial employment  
6 recommendations, adversely affecting working conditions or otherwise  
7 denying any employment benefit to an individual.

8 If any employee believes that he or she is the victim of any type of harassment,  
9 including sexual harassment, that employee should immediately report the incident to  
10 their Supervisor. If an employee is uncomfortable in reporting the incident to their  
11 Supervisor, the incident should be reported to the Human Resource Department. The  
12 Company will promptly and clearly inform the employee of his or her rights to assistance  
13 and how to protect and preserve those rights.

14 Harris Farms, Incl, will fully and effectively investigate any such report and will  
15 take whatever corrective action is deemed necessary, including disciplining or  
16 discharging any individual who is believed to have violated this prohibition against  
17 harassment. The complaining employee will be informed of the action taken. The  
18 Company will also take action to protect the complaining employee and to prevent further  
19 harassment for retaliation. Finally, the complainant will be made whole to the extent  
20 possible, for his or her losses.

21 The Company clearly does not tolerate harassment on the basis of any of the  
22 categories discussed in this policy and will take appropriate disciplinary action whenever  
23 such harassment is demonstrated. **Any individuals engaging in such conduct contrary  
24 to Company policy may be personally liable in any legal action brought against  
25 them.**

26 The Company encourages all employees to report any incidents of harassment  
27 forbidden by this policy so that complaints can be quickly and fairly resolved. It is  
28 important that employees utilize this internal procedure.

Exhibit P (emphasis in original).

48. The "Procedures for Reporting Harassment" in the orientation packet reads:

Any form of harassment or discrimination in our workplace is contrary to Harris Farms, Inc. personnel policies. We will take prudent and continual action to prevent any harassment or discrimination from occurring in our workplace. However, if you believe that you have been unlawfully harassed or discriminated, we urge you to report the incident immediately so that your complaint can be resolved quickly and fairly. We recommend that you take the following steps in such a case:

1. When possible, confront the harasser and request him/her to stop.
2. Inform your supervisor, or any other Company supervisor, manager or representative of the Company, as soon as possible. To the extent possible, include all details on the incident(s), names of individuals involved, and the names of any witnesses.

- 1           3. Supervisors will refer any harassment or discrimination complaints to the  
2           Human Resources Department. The Company will immediately undertake  
3           a thorough and objective investigation of the harassment allegations.
- 4           4. If the Company determines that any unlawful harassment has occurred, it  
5           will take effective remedial action as warranted by the circumstances. Any  
6           employee the Company determines to be responsible for unlawful  
7           harassment will be subject to appropriate disciplinary action, up to and  
8           including termination.
- 9           5. The Company will take appropriate action to remedy any loss to you  
10          resulting from harassment.
- 11          6. The Company will not retaliate against you for filing a complaint and will  
12          not tolerate or permit retaliation by any Company management, employee,  
13          or co-workers.
- 14          7. As an alternative to the above notification procedures, we have established  
15          the Harris Farms Employee Assistance Hot Line . . . . You can leave a  
16          confidential message on this special telephone line with any appropriate  
17          information 24 hours per day, 365 days per year. Upon receipt of  
18          information into our Hot Line we will immediately follow-up with you and  
19          proceed with any appropriate investigations and actions as the situation  
20          may warrant.
- 21          8. Additionally, you may contact Sylvia Gomez, Human Resources Manger  
22          at any time with any question or concerns on these or other issues. Her  
23          telephone number is . . . ext. . . ; her pager number is . . . .

24 Exhibit P.

25 49. The "Open Door Policy" in the orientation packet reads:

26 Harris Farms, Inc., has an open door policy and encourages all employees to contact their  
27 immediate supervisor or the Human Resources Department with any concerns, conflicts,  
28 or issues they have regarding their work environment, assignments or treatment.  
Alternatively, employees should also feel free to contact the Farm Manager, the Farms  
Controller, or the Company President with such issues if they so prefer.

The Company recognizes that from time to time there will be conflicts and employees  
will disagree with a management decision. We believe that open communications are the  
best way to resolve differences and to promote a positive work environment and working  
relationship. Issues brought forward will be dealt with in an objective, fair and  
professional manner. No employee will be retaliated against for utilizing this policy.

Numbers of contacts:

Harris Farms, Inc. . . .

Steve Ozuna – Farm Manager . . .

Sylvia Gomez – Human Resources office . . .

29 Exhibit P.

1 50. The “Policy Against Harassment” in the orientation packet reads:

2 Harris Farms, Inc. Is committed to providing a workplace free of sexual harassment as  
3 well as harassment based on such factors as race, color religion, national origin, ancestry,  
4 age, medical condition, marital status, disability or veteran status. Harris Farms, Inc.  
5 Strongly disapproves of and will not tolerate the harassment of employees by managers,  
6 supervisors or co-workers. Harris Farms, Inc. Will also attempt to protect employees  
7 from harassment by non-employees in the workplace.

8 Harassment includes verbal, physical, and visual conduct that creates an intimidating,  
9 offensive or hostile working environment or that interferes with work performance.  
10 Some examples include racial slurs, ethnic jokes, posting of offensive statements, posters  
11 or cartoons or other similar conduct. Unwelcome sexual advances, requests for sexual  
12 favors and other verbal or physical conduct of a sexual nature constitute sexual  
13 harassment when (1) submission to conduct is made either explicitly or implicitly a term  
14 or condition of an individual employment; (2) submission to or rejection of such conduct  
15 of an individual is used as the basis for employment decisions affecting such individual;  
16 or (3) such conduct has the purpose or effect of unreasonably interfering with an  
17 individual’s work performance or creating an intimidating, hostile or offensive working  
18 environment.

19 Any incident of harassment including work-related harassment by any company personnel  
20 or any other agent of the company should be reported promptly to the employee’s  
21 supervisor or to the Human Resources Department. Managers who receive complaints or  
22 who observe harassing conduct must inform the Human Resources Department or the  
23 Farm Manager immediately. Harris Farms, Inc. Emphasizes that an employee is not  
24 required to complain to his/her supervisor if that supervisor is the individual who is  
25 harassing the employee.

26 Every complaint of harassment that is reported to company management will be  
27 investigated thoroughly, promptly and in a confidential manner. In addition, Harris  
28 Farms, Inc. Will not tolerate retaliation against any employee for making a complaint, or  
for participating in an investigation of harassment.

If harassment is established, Harris Farms, Inc. will discipline the offender. Disciplinary  
action for the violation of this policy can range from verbal or written warning up to and  
including immediate, depending upon the circumstances (With regard to acts of  
harassment by customers or vendors, corrective action will be taken after consultation  
with the appropriate management personnel). Employees who knowingly make false  
claims of harassment will be faced with disciplinary action and possible termination.

**REMEMBER . . . . . The SAFE WAY is always the BEST WAY to work!**

Exhibit P (emphasis in original).

51. The “Policy Against Harassment,” “Harris Farms Sexual Harassment Policy,”  
“Policy for Reporting Harassment or Discrimination,” and “Open Door Policy” found in the  
orientation packet are provided in both English and Spanish. See Exhibit P.

52. The “Open Door Policy” is also found in the 2003 and 2005 Employee Handbook.

1           53.     The “Harris Farms Sexual Harassment Policy,” is found in the 2003 and 2005  
2 Employee Handbook, but is entitled “Policy Against Harassment and Discrimination.” The  
3 sexual harassment policy in the 2005 handbook contains two additional sentences, compared to  
4 the 2003 Employee Handbook and the 2004 orientation packet:

5           a.     “The Company will attempt to keep the investigation as confidential as an  
6 effective investigation allows.”

7           b.     “The Company cannot do anything to stop offensive conduct if you do not  
8 report it.”

9 Cf. Exhibit P with Bates No. 1078-1080.

10          54.     The 2005 Employee Handbook contains the “Procedure for Reporting Harassment  
11 or Discrimination,” but is entitled “Complaint Procedure.” See Exhibit P.

12          55.     Defendant’s Employee Handbook is provided in both English and Spanish. See  
13 Exhibit P; see also Bates No. 1043-1100.

14          56.     Since Tamayo’s constructive discharge in March 2001, Defendant has instituted,  
15 with the aide of counsel, the following practices and policies for preventing and deterring  
16 harassment:

17          a.     At initial employment, every employee receives an orientation packet which  
18 includes the Harris Farms Sexual Harassment Policy, Procedures for Reporting  
19 Harassment or Discrimination, Harris Farms Open Door Policy, a pamphlet on  
20 harassment and discrimination from the California DFEH, the employee  
21 handbook, and general orientation materials.<sup>6</sup> The materials were prepared in  
22 2004, and the employee handbook was updated in 2005 and contains the  
23 harassment policy and reporting procedures.<sup>7</sup> A “Complaint Procedure” card is  
24 also distributed to employees, which provides contact information and states that  
25 Defendant will not retaliate or tolerate retaliation against an employee who makes

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23                   <sup>6</sup>The orientation packet is attached as Exhibit P.

24                   <sup>7</sup>Defendant’s sexual harassment and retaliation policies are reviewed annually and revised with the  
25 assistance of Alaniz & Schraeder. See Alaniz Declaration at ¶ 14. Richard Alaniz is a partner in Alaniz &  
26 Schraeder, a Houston, Texas based law firm that specializes in labor and employment issues. Mr. Alaniz is board  
27 certified in labor and employment law and he and his firm regularly advises clients regarding harassment issues,  
28 provides counsel for policies and procedures and investigation, presents seminars and training on harassment issues,  
conducts investigations for clients. See id. at ¶¶ 3-10.

1 a complaint.<sup>8</sup>

2 b. After the policies and procedures are reviewed with the employee, the employee is  
3 shown a video made by Farm Employers Labor Service on sexual harassment.<sup>9</sup>

4 c. Every January, each employee is again given materials relating to sexual  
5 harassment and reporting to remind them of the policies and procedures.

6 d. Posters regarding harassment and discrimination, as well as the reporting  
7 procedure, are posted at four different bulletin boards and the portable toilets in  
8 the fields.

9 e. Each manager and supervisor undergoes annual training on harassment prevention  
10 and deterrence, the most recent being April 2005.<sup>10</sup> Alaniz & Schraeder has  
11 provided similar training for many years and will continue to train managers and  
12 supervisors on a regular basis.<sup>11</sup>

13 f. Additionally, employees attend regular meetings and “tail-gate” training on  
14 different topics, including sexual harassment. The most recent training occurred  
15 in May 2005, and included a sexual harassment video, training on violence and  
16 sexual harassment, company policies, and interactive scenarios. The employees  
17 were provided information on the law prepared by the DFEH, as well as a card  
18 containing contact information and emergency numbers.<sup>12</sup> This type of training  
19 has been utilized by Harris Farms since 2002. Training on sexual harassment and  
20 other employment issues will occur at a minimum of three times per year, with the  
21 next “tail-gate” training session to occur in October 2005.

22 Gomez Declaration at ¶ 14.

23 57. Since June 2002, Defendant has conducted approximately 14 “tail-gate” safety  
24 meetings in which sexual harassment is a topic for discussion. See Exhibit T.

25 58. The content of the tail-gate meetings and the person who conducts each of the tail-  
26 gate meetings is unclear, although Gomez has conducted several tail-gate meetings. See id.

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27 <sup>8</sup>See Gomez Declaration at ¶ 13(a); Exhibit I.

28 <sup>9</sup>The video is attached as Exhibit Q. Defendant initially submitted Exhibit Q as a DVD disk, but the Court and Plaintiffs were unable to view the disk for technical reasons. Defendant has resubmitted Exhibit Q in the form of a VHS video-cassette and no further technical problems have been encountered to the Court’s knowledge.

<sup>10</sup>See Alaniz Declaration at ¶ 17.

<sup>11</sup>The certificates of completion and sign-in sheets are attached as Exhibit R and the materials presented at the training sessions are attached as Exhibit S.

<sup>12</sup>The contact card is Exhibit U.

1 Additionally, the law firm of Alaniz & Schraeder have assisted in the design and implementation  
2 of the tail-gate meetings. See Alaniz Declaration at ¶ 10.

3 59. Notes behind the May 2004 tailgate meetings show that it was discussed that a  
4 victim does not have to be of the opposite sex/the harasser may be man or woman; the harasser  
5 may be a supervisor, an agent of the employer, a supervisor of another area, a co-worker, or a  
6 non-employee; the victim does not necessarily have to be the one who is harassed, but could be  
7 anyone affected by the offensive conduct; sexual harassment may occur without economic injury  
8 or discharge; and the harasser's actions must be unwelcome. See Exhibit T.

9 60. Defendant has provided the sign-in sheets for each of the tail-gate meetings from  
10 June 2002 to the present. Behind nearly every sign-in sheet for these tail-gate meetings is some  
11 combination (in both Spanish and English) of Harris Farms's harassment policy, a DFEH sexual  
12 harassment pamphlet with DFEH contact information, and a Farm Employer Labor Services  
13 handout on harassment.<sup>13</sup> The Court concludes that the documents behind the sign-in sheets are  
14 copies of documents distributed to Defendant's employees at these meetings.<sup>14</sup> See Exhibit T.

15 61. Additionally, at the most recent tail-gate meeting in May 2005, Defendant  
16 distributed emergency contact numbers to its employees. The telephone numbers for the Farm  
17 Manager, the Shop Manager, Human Resources, the Irrigation Manager, the Almond Manager,  
18 the Tomato Manager, and the Vegetable Manager are all included and the card is in both English  
19 and Spanish. See Gomez Declaration at ¶ 15; Exhibit U.

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21 <sup>13</sup>Behind the most recent tail-gate meeting sign-in sheet (May 2005), is a memorandum that indicates the  
22 Sexual Harassment Policy, the Open Door Policy, the Complaint Procedure, State of California handout on  
23 harassment, and an emergency contact card was distributed and a video was played. See Exhibit T.

24 <sup>14</sup>The supplemental information, including the contents of Exhibit T, were prepared by Defendant's  
25 counsel, Alaniz & Schraeder of Houston, Texas. At oral argument, Defendant was represent by local counsel from  
26 McCormick, Barstow, Sheppard, Wayte & Carruth. The Court asked local counsel whether the documents behind  
27 the sign-in sheets were distributed at the tail-gate meetings. Local counsel replied that he did not know. However,  
given that there is some combination of the documents behind the sign-in sheets, and the same combinations are not  
behind the sheets, and given that Gomez declares that sexual harassment training occurs and that materials were  
distributed in the most recent tail-gate meeting (May 2005), see Gomez Declaration at ¶ 15, the Court believes that  
the documents behind the tail-gate sign-in sheets were distributed to Defendant's employees.

1           62.     Since Tamayo reported co-worker harassment in January 2001, no evidence has  
2 been presented that there have been any other complaints of sexual harassment at Harris Farms to  
3 date.

4           63.     There has been no evidence presented that any conduct similar to that of  
5 Rodriguez by any other Harris Farms employee has occurred since Rodriguez's retirement in  
6 December 1999. Further, no evidence has suggested that Rodriguez's conduct was in any way  
7 typical of other supervisors or employees at Harris Farms.

8           64.     Since Tamayo's constructive discharge in March 2001, Defendant has developed  
9 the following procedures for investigating harassment complaints:

- 10           a.     If a complaint is brought, an interview with the complaint is set up as  
11 promptly as possible, ideally on the same day. The interview is to take  
12 place in a comfortable, confidential place away from other employees. If  
13 the employee is not comfortable with an interview on the premises, an off-  
14 site location will be arranged. At the beginning of the interview, it is first  
15 determined whether the employee requires a translator. If a translator is  
16 needed, the employee is give the choice of having Gomez or someone else  
17 to translate for them. Any written translations of statements will be  
18 prepared by Oscar Olvera.<sup>15</sup>
- 19           b.     The employee is asked whether he or she is comfortable having their  
20 interview tape-recorded.<sup>16</sup>
- 21           c.     Once those preliminary matters are taken care of, the employee is assured  
22 of the confidentiality of his or her statements and participation, and  
23 reminded that there will be no retaliation resulting from that participation.
- 24           d.     The employee is interviewed, using the guidelines provided by the 2005  
25 California Chamber of Commerce Harassment Investigation Checklist<sup>17</sup>  
26 and Interview Guidelines,<sup>18</sup> as well as the interview questionnaire  
27 developed by Harris Farms.<sup>19</sup>

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28           <sup>15</sup>The election of translators form is Exhibit J.

<sup>16</sup>The tape-recording form is Exhibit K.

<sup>17</sup>The chamber of commerce investigation checklist is Exhibit L.

<sup>18</sup>The chamber of commerce interview guidelines are Exhibit M.

<sup>19</sup>The Harris Farms questionnaire is Exhibit N (questions for complainant) and Exhibit O (questions for  
alleged harasser).

- e. After the preliminary interview, counsel is contacted if significant issues or potential problems are revealed.
- f. All potential witnesses, including the accused harasser, are interviewed in a like manner.
- g. Follow-up interviews are conducted as necessary in order to clarify, corroborate, or obtain additional information.
- h. After all potential witnesses and employees with knowledge of facts are interviewed and re-interviewed, any additional investigation is conducted at that time, using the above-referenced guidelines and the guidelines provided by the seminars. Additional evidence, if any, is gathered and counsel is consulted with issues and concerns.
- i. A follow-up conversation is had with the complaining employee and the results of the investigation are discussed.
- j. The situation continues to be monitored to ensure that no retaliation or retribution results from the investigation or subsequent action.

Gomez Declaration at ¶ 13.<sup>20</sup>

65. Gomez is the person primarily responsible for investigation of harassment complaints and will consult labor and employment attorneys (Alaniz & Schraeder) when she believes it is necessary. See Gomez Declaration at ¶ 12.

66. Since July 2004, Gomez has taken seven classes and/or seminars regarding the prevention and investigation of sexual harassment.

67. In July 2004, Gomez completed:

- a. an 18 hour course on internal investigation presented by the Council on Education Management, in association with George Washington University School of Business. The course's focus was conducting harassment investigations and preventing harassment and retaliation.<sup>21</sup>
- b. an 18 hour certificate program for human resources generalists, also presented by the Council on Education Management, in association with George Washington University School of Business. The subject matter included discrimination, harassment and retaliation investigation and

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<sup>20</sup>Plaintiffs have made no criticisms about the substantive provisions of this investigative procedure. Rather, Plaintiffs primary complaint is that Gomez will be the person conducting the investigations.

<sup>21</sup>The course materials and certificate of completion are Exhibit A.

1 prevention.<sup>22</sup>

- 2 c. a 12 hour continuing education course entitled *Employment*  
3 *Discrimination Law Update*, presented by the National Employment Law  
4 Institute. The subject matter of the course included significant  
developments in the law of harassment, training on conducting  
investigations, and preventing harassment and discrimination.<sup>23</sup>

5 See Gomez Declaration at ¶¶ 4-6.

6 68. In 2005, Gomez completed

- 7 a. a program entitled *AB 1825: California Training Mandate for Supervisors*,  
8 presented by TPO Human Resources Management. The program focused  
9 directly on harassment law, investigation and prevention.<sup>24</sup> (February  
10 2005)
- 11 b. a training program presented by Alaniz & Schraeder, L.L.P., entitled  
12 *Sexual Harassment Training for Managers and Supervisors*. The training  
13 focused on sexual harassment investigation and prevention.<sup>25</sup> (April 2005)
- 14 c. an interactive course entitled *Sexual Harassment Prevention and Training*,  
15 presented by the California Department of Fair Employment and Housing  
16 (“DFEH”). The training included prohibition, prevention, and correction  
17 of harassment.<sup>26</sup> (July 2005)

18 See Gomez Declaration at ¶¶ 7-9.

19 69. Also in July 2005, Gomez attended a seminar entitled *EEOC @ 40*, presented by  
20 the San Francisco office of the EEOC. The subject matter of the course included prevention and  
21 investigation of harassment complaints.<sup>27</sup> See Gomez Declaration at 10.

22 70. If Gomez is unavailable, Steve Warren, the Human Resources Director for Harris  
23 Ranch Restaurant, will conduct an investigation. See Gomez Declaration at ¶ . Warren’s  
24 qualifications are not described other than his title with Harris Ranch Restaurant and that he

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25 <sup>22</sup>The course materials and certificate of completion are Exhibit B.

26 <sup>23</sup>The course materials and certificate of completion are Exhibit C.

27 <sup>24</sup>The course materials are Exhibit D.

28 <sup>25</sup>The course materials and certificate of completion are Exhibit E.

<sup>26</sup>The course materials and certificate of completion are Exhibit F.

<sup>27</sup>The course materials and certificate of completion are Exhibit G.

1 attend in July 2005 the EEOC seminar described above. See September 2005 Declaration of  
2 Marcia Mitchell at ¶ 8.

3 71. Ms. Gomez is quoted in a February 4, 2005, article in The Produce News as  
4 saying that it had appeared that Rodriguez and Tamayo were having an affair, that some 30  
5 employees supported this view, that Tamayo's story kept changing, that Tamayo was not  
6 credible, that Tamayo was suspended for one day in March 2001, and that Tamayo then quit. In  
7 the same article, John Harris, the President of Harris Farms, echoed similar sentiments through  
8 an e-mail provided to The Produce News. The e-mail was purportedly sent to employees of  
9 Harris Farms on January 24, 2005. See Exhibit B to Plaintiffs's Motion to Amend Judgment to  
10 Include Equitable Relief.

11 72. Chrisco has retired and no longer is employed by Defendant.

12 73. Other than the Spanish language August 18, 1999, memorandum, no further  
13 specific examples or specific evidence of nonsensical translations have been presented to or  
14 identified for the Court.<sup>28</sup>

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17 <sup>28</sup>EEOC has submitted the declaration of Evangelina Hernandez. Hernandez was a co-counsel for the  
18 EEOC at trial. In her declaration, Hernandez declares that she is fluent in Spanish, as it is her first language, and  
19 took graduate level Spanish courses in the 1980's. Hernandez then translates a Harris Farms's permission to tape-  
20 record form. Hernandez indicates that there are grammatical and spelling mistakes. However, unlike the court  
21 interpreter/translator who translated the August 18, 1999, memo, there is no indication that Hernandez is approved  
22 by all parties or is a certified translator. If Plaintiff believes that Defendant's Spanish translations are  
23 incomprehensible or grossly mistranslated, then it should provide a translation from a certified translator or a  
24 translator whom the parties stipulate as being qualified. That Ms. Hernandez may speak Spanish and have taken  
25 graduate level Spanish classes approximately twenty-years ago does not mean that she is qualified to translate  
26 documents or offer an opinion on the quality of a translation. Indeed, there is no indication that Ms. Hernandez  
27 translates or has experience translating documents on any basis. Additionally, Ms. Hernandez objected to the quality  
28 of the court interpreter's translation in front of the jury at trial, an interpreter supplied by the EEOC and whom  
Defendant agreed was qualified. As the EEOC supplied the interpreters/translators during trial, there is no apparent  
reason why these interpreters/translators could not also review documents that EEOC believed to be mistranslated or  
poorly translated. An interpreter is subject to the rules of evidence relating to expert witnesses, see Fed. R. Evid.  
604, and the "trial court has broad discretion in determining the fitness and qualifications of interpreters." Chee v.  
United States, 449 F.2d 747, 748 (9th Cir. 1971). As such, the Court will disregard that portion of Hernandez's  
declaration. However, even if considered, the translation of the recording form is not incomprehensible. The  
translation could be "smoother," but the two translated sections by Ms. Hernandez indicate that either the employee  
will consent to giving a tape-recorded statement or will instead give an unrecorded statement. The permission to  
tape-record form is not nearly as poor as the August 18, 1999, memorandum.

1 **CONCLUSIONS OF LAW**

2 Based on the above findings, the Court makes the following conclusions of law:

3 1. Tamayo was retaliated against by Defendant in February/March 2001 for  
4 complaining about sexual harassment and the retaliation was committed by Chrisco and Gomez.  
5 Given the lack of support for a conclusion that Tamayo was herself engaging in inappropriate  
6 sexual gossip/comments, the Court concludes that the retaliation was intentional for purposes of  
7 42 U.S.C. § 2000e-5(g)(1).

8 2. Defendant’s conduct with respect to Tamayo’s 1999 and 2001 complaints of  
9 sexual harassment was lacking and, at most, was negligent or reckless. The Court cannot  
10 conclude, however, that Defendant engaged in intentional unlawful employment practices for  
11 purposes of 42 U.S.C. § 2000e-5(g)(1).

12 3. The written sexual harassment policy in effect during Tamayo’s employment (the  
13 1989 policy) was out of date. However, as of 2003, Defendant has adopted a much improved  
14 written sexual harassment policy. The Ninth Circuit has held that a defendant’s harassment  
15 policy may satisfy the first prong of the *Faragher/Ellerth* defense where those policies: (1)  
16 defined sexual harassment; (2) set forth a reporting procedure; (3) stated that employees who  
17 violated the policy would be disciplined; and (4) assured employees that no reprisals would be  
18 made against those who complain. Nichols v. Azteca Restaurant Ent., 256 F.3d 864, 877 (9th  
19 Cir. 2001); Montero v. AGCO Corp., 192 F.3d 856, 862 (9th Cir. 1999). The “Harris Farms  
20 Sexual Harassment Policy,” found in the 2004 orientation packet, and the “Policy Against  
21 Harassment and Discrimination,” found in the 2003 and 2005 employee handbooks, exceed the  
22 characteristics found to be reasonable in *Nichols* and *Montero*.

23 4. The examples of improper or harassing conduct described in the “Harris Farms  
24 Sexual Harassment Policy” and the “Policy Against Harassment and Discrimination,” include  
25 conduct that formed the basis of Tamayo’s 1999 and 2001 complaint, i.e. verbal conduct,  
26 derogatory comments, questions about a person’s sexual practices, sexually oriented remarks,  
27

1 physical conduct, assault, unwanted touching, and grabbing. See Exhibit P.

2 5. Since 2003, Defendant has regularly distributed its Sexual Harassment Policy,  
3 materials from the DFEH and the Farm Employers Labor Service, and its open door policy.  
4 Since 2004, Defendant has regularly distributed its procedures for making a complaint.  
5 Following the policies and complaint procedures would eliminate the harassing conduct that  
6 formed the basis of Tamayo's 1999 and 2001 complaints.

7 6. There has been no, or at least no sufficiently persuasive, evidence identified or  
8 presented that shows that Defendant's employees do not understand or do not comprehend the  
9 reporting procedures, the DFEH materials, the Open Door Policy, or the Sexual Harassment  
10 Policy. The only evidence of non-comprehension was in 1996, when Tamayo did not understand  
11 all of the words at the March 1996 harassment training. There is no current or recent evidence,  
12 and the single 1996 evidence is stale.

13 7. Other than the August 18, 1999, memorandum, there has been no, or at least no  
14 sufficiently persuasive, evidence identified or presented that shows Defendant mistranslates  
15 documents or memorandum so poorly that the poor translations render anti-harassment efforts or  
16 investigations inadequate or unreasonable. There is no current or recent evidence of poor or  
17 nonsensical translations, and the single 1999 memo is stale.

18 8. Rodriguez has not worked for Defendant since December 1999. There has  
19 been no, or at least no sufficiently persuasive, evidence presented or identified that shows  
20 Rodriguez's conduct was typical of supervisors at Harris Farms. Given the new policies that are  
21 in place and regularly distributed, the extreme nature of Rodriguez's conduct, Rodriguez's  
22 absence from Harris Farms for nearly six years, and no indication that Rodriguez's conduct was  
23 symptomatic of other supervisors, the Court cannot conclude that there is a reasonably  
24 cognizable danger of harassment like Rodriguez's of recurring at Harris Farms.<sup>29</sup> See W.T.

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25  
26 <sup>29</sup>Similarly, although the Court has found that Defendant did not engage in intentional conduct that was  
27 unlawful, given the extensive changes in policies, procedures, and investigative guidelines; the frequency with which  
28 Defendant's employees are given information regarding harassment, complaint procedures, the Defendant's policies,

1 Grant Co., 345 U.S. at 633; Cummings, 316 F.3d at 898; HBE Corp., 135 F.3d at 558; Webb, 98  
2 F.3d at 1068-69. Orantes-Hernandez, 919 F.2d at 564; Hacienda Hotel, 881 F.2d at 1819.

3 9. The procedures for investigating harassment have been in development since  
4 2001. The substance of Defendant's investigative procedures are unchallenged by Plaintiffs and  
5 reasonably and adequately address the criticisms and shortcomings of Defendant's 1999 and  
6 2001 harassment investigations.

7 10. As shown by Reyes, at least some of Defendant's supervisors do not  
8 realize that they have a duty and obligation to report harassment that they witness, even though  
9 the "Policy Against Harassment" found in the 2004 orientation packet expressly states this  
10 obligation. See Exhibit P.

11 11. Gomez remains in a high, decision-making capacity at Harris Farms. As Human  
12 Resources Director, Gomez is responsible for sexual harassment investigation. Since the 2001  
13 investigation, Gomez has undergone additional training with three of the classes/seminars alone  
14 totaling 48 hours worth of instruction. Nevertheless, Gomez is responsible for investigation and  
15 will still play a significant, if not dispositive, role in discipline. Furthermore, the quotes  
16 appearing in The Produce News do not indicate remorse, nor has Gomez indicated remorse in her  
17 September 2005 declaration. Injunctive relief is appropriate where the individual who has  
18 discriminated remain a primary decision makers. See Ilona of Hungary, 108 F.3d at 1579.

19 \_\_\_\_\_  
20 and are encouraged to make complaints; the termination of two of the three individuals who gossiped/threatened  
21 Tamayo, and the absence of complaints since 2001, the Court concludes that recurrence of conduct forming the basis  
22 of Tamayo's 2001 complaint of sexual harassment is speculative and not reasonably cognizable. See W.T. Grant  
Co., 345 U.S. at 633; Cummings, 316 F.3d at 898; HBE Corp., 135 F.3d at 558; Webb, 98 F.3d at 1068-69. Orantes-  
23 Hernandez, 919 F.2d at 564; Hacienda Hotel, 881 F.2d at 1819. Although some of the changes are recent, the  
24 changes in investigation protocol began in 2001, changes in the harassment policy have been in place for  
25 approximately two years, Defendant frequently distributes these policies and procedures and raises harassment issues  
26 during tail-gate meetings which occur approximately three times per year, Defendant did have an anti-harassment  
27 policy (although out of date) during 2001, Defendant successfully addressed Martinez's 1996 complaint of sexual  
28 harassment, and Defendant provided sexual harassment training seminars for management/supervisors in 1996,  
2001, and 2005. The Court does not believe that Defendant's conduct is the type of suspect, "last minute" changes  
condemned in Goodyear Aerospace. Cf. Goodyear Aerospace, 813 F.2d at 1544-45 (holding that a company that  
stopped discriminating against an employee, who had filed two complaints with the EEOC, by promoting the  
employee and promising not to retaliate a second time did not provide sufficient assurance that further discrimination  
and retaliation would not occur).

1 Although Defendant’s policies encourage reporting and state numerous times that the Defendant  
2 will not retaliate or permit retaliation, Gomez still remains responsible for investigations and  
3 plays a role in discipline, has not shown remorse, and Defendant has not shown any “checks or  
4 balances” over Gomez. Given these considerations, the Court finds that there is cognizable  
5 danger of retaliation for making complaints. See Ilona of Hungary, 108 F.3d at 1579; Hacienda  
6 Hotel, 881 F.2d at 1819.

7 13. Injunctive relief is appropriate to remedy an unlawful employment practice where  
8 the defendant has intentionally engaged in that unlawful employment practice. See 42 U.S.C. §  
9 2000e-5(g)(1).

10 14. In order to make out a prima facie case of retaliation under Title VII, a plaintiff  
11 must show that (1) she engaged in a protected activity; (2) she suffered an adverse employment  
12 action; and (3) there was a causal link between her activity and the employment decision. Elvig  
13 v. Calvin Presbyterian Church, 375 F.3d 951, 965 (9th Cir. 2004). Proximity of time between  
14 protected conduct and an adverse employment action may support an inference of causation, but  
15 the timing may not exceed three months. See Mannatt v. Bank of America, 339 F.3d 792, 802  
16 (9th Cir. 2003) (citing Clark County Sch. Dist. v. Breeden, 532 U.S. 268, 273 (2001) for the  
17 proposition that a lapse of three to four months between protected activity and adverse action was  
18 insufficient to establish causation); Yartsoff v. Thomas, 809 F.2d 1371, 1376 (9th Cir. 1987)  
19 (lapse of under 3 months sufficient to raise inference of causal connection). Conduct “is  
20 cognizable as an adverse employment action if it is reasonably likely to deter employees from  
21 engaging in protected activity.” Elvig, 375 F.3d at 965; Ray v. Henderson, 271 F.3d 1234, 1243  
22 (9th Cir. 2000).

23 15. Defendant intentionally engaged in an unlawful employment practice by  
24 retaliating against Tamayo in 2001 for her complaint of sexual harassment, and Defendant has  
25 not provided sufficient assurances that there is no reasonably cognizable danger of retaliation  
26 recurring. See Ilona of Hungary, 108 F.3d at 1579; Hacienda Hotel, 881 F.2d at 1819.



1           b.       At all further “tail-gate” meetings or other training sessions, which occur at least  
2 three times per year as per company policy, see Gomez Declaration at ¶ 15(f), the current Farm  
3 Manager or another upper level management official other than Ms. Gomez, will appear,  
4 encourage employees to make a harassment complaint if they have one, and assure the employees  
5 that the Defendant will not retaliate or permit retaliation against them.<sup>30</sup>

6                   **2.       Record Keeping and Reporting**

7           a.       Defendant will keep records of its investigation into, and copies of documents  
8 related to, complaints of sexual harassment. Defendant will also keep records regarding whether  
9 a person who has complained about harassment or who has participated as a witness in an  
10 investigation of sexual harassment has been disciplined.<sup>31</sup> Defendant will inform the EEOC in  
11 writing regarding an employee if discipline occurs within three months of that employee’s sexual  
12 harassment complaint or participation as a witness in a sexual harassment investigation.  
13 Defendant will so inform the EEOC on the first day of May and November. If the EEOC  
14 reasonably believes that retaliation may have occurred, the EEOC may make additional written  
15 requests for the documents/records relevant to the harassment investigation and the disciplined  
16 employee. Defendant will make this information available to the EEOC within fourteen (14)  
17 days of such written requests.

18           b.       Defendant will also provide documentation that, as part of Defendant’s annual  
19 harassment prevention and deterrence training, it has expressly informed its managers and  
20 supervisors that they are obligated, and have the duty, to report any retaliation or harassment that  
21 they witness, irrespective of whether the harassee makes a complaint. Defendant is to send this  
22 documentation to the EEOC within fourteen (14) days of completion of the annual training.

23           c.       Defendant will also provide documentation that, at all further “tail-gate”  
24

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25                   <sup>30</sup>This is not to say that Gomez may not conduct the employee training meetings. Rather, an additional  
26 member of Defendant’s upper management must also appear.

27                   <sup>31</sup>For purposes of this order, a person accused of harassing behavior as part of an initial sexual harassment  
28 complaint is not considered a witness who participated in a sexual harassment investigation.

1 meetings or other training sessions, which occur at least three times per year as per company  
2 policy, the current Farm Manager or another upper management official other than Ms. Gomez,  
3 appeared, encouraged employees to make a harassment complaint if they had one, and assured  
4 the employees that the Defendant will not retaliate or permit retaliation against them. Defendant  
5 is to send this documentation to the EEOC within fourteen (14) days of completion of the tail-  
6 gate meetings or scheduled harassment training session.

7 **3. Posting**

8 Defendant will post the following notice, or a notice agreed upon by Defendant and the  
9 EEOC, in both the English and Spanish languages in a clearly visible location frequented by  
10 employees at each location owned and/or operated by Defendant within fourteen (14) days from  
11 entry of this Order:

12  
13 NOTICE TO ALL EMPLOYEES

14 This notice is being posted by order of the Court in a lawsuit brought against Harris  
15 Farms, Inc. by the Equal Employment Opportunity Commission and Olivia Tamayo. [CIV F 02-  
16 6199 AWI LJO] On January 21, 2005, a federal jury determined that Harris Farms violated Title  
17 VII of the Civil Rights Act of 1964 by subjecting Ms. Tamayo to a sexually hostile work  
18 environment, retaliating against her when she complained, and constructively discharging her.

19 Under the Court's Judgment, Harris Farms has been ordered not to retaliate against  
20 employees who make a complaint of sexual harassment or participate as a witness in a sexual  
21 harassment investigation.

22 Should you have any complaints of retaliation, you can contact the Fresno Office of the

23 EEOC at: Fresno Local Office  
24 1265 W. Shaw Ave., Suite 103  
25 Fresno, CA 93711  
26 Tel: (559) 487-5793  
27 Fax: (559) 487-5053  
28 Toll Free: (800) 669-4000

The EEOC charges no fees for its services, and has employees that speak languages other

1 than English, including Spanish.

2 THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

3  
4 **4. Cost and Duration of Injunctive Relief**

5 Defendant will bear the costs of all injunctive relief. The duration of the specific  
6 injunctive relief under this order is five (5) years from the entry of this order. The general  
7 injunctive relief is permanent.

8  
9 Accordingly, IT IS HEREBY ORDERED that the Plaintiffs' Motion to Amend Judgment  
10 to include Equitable Relief is GRANTED in part. The judgment is hereby amended to include  
11 the injunctive relief described under the "Equitable Relief" section of this order.

12  
13 IT IS SO ORDERED.

14 **Dated: September 30, 2005**  
15 0m8i78

/s/ Anthony W. Ishii  
UNITED STATES DISTRICT JUDGE