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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity Commission,	)	No. CIV 02-1608-PHX-EHC
Plaintiff,	)	<b>ORDER</b>
v.	)	
Serrano's Mexican Restaurants, LLC, d/b/a Serrano's Fine Mexican Food Restaurants,	)	
Defendant.	)	

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Plaintiff filed a Motion for Judgment as a Matter of Law or, alternatively, New Trial. Dkt. 207. Defendant responded. Dkt. 210. Plaintiff filed a Notice of Errata (Dkt. 211), an Addendum to the Motion (Dkt. 213), a Reply (Dkt. 215), and a Supplemental Brief. Dkt. 220. Defendant filed a Supplemental Brief. Dkt. 221. The Motion is now fully briefed. On August 10, 2005, the Court held a hearing on the Motion. The parties were present.

Motion for Judgment as a Matter of Law

At the close of evidence, the Court may grant Judgment as a Matter of Law if "there is no legally sufficient evidentiary basis for a reasonable jury to find for [a] party on [a given] issue." Rule 50(a)(1). Plaintiff moved for a directed verdict under Rule 50 at the close of evidence on June 14, 2005; the Court denied the Motion. Dkt. 183. Following the jury's verdict, Plaintiff timely renewed the Motion. The Court may now: "(A) allow

1 the judgment to stand, (B) order a new trial, or (C) direct entry of judgment as a matter of  
2 law." Rule 50(b)(2).

3 The Court's entry of judgment as a matter of law "is appropriate when the evidence  
4 permits only one reasonable conclusion. The evidence must be viewed in the light most  
5 favorable to the nonmoving party, and all reasonable inferences must be drawn in favor of  
6 that party. If conflicting inferences may be drawn from the facts, the case must go to the  
7 jury." LaLonde v. County of Riverside, 204 F.3d 947, 959 (9th Cir. 2000) (citations  
8 omitted). Drawing all reasonable inferences in Defendant's favor, the Court finds that  
9 conflicting inferences may be drawn from the facts. Accordingly, the Court declines to  
10 grant judgment as a matter of law.

11 Inconsistent interrogatories and general verdict

12  
13 The jury returned inconsistent interrogatories and a general verdict. Dkt. 202. The  
14 jury was instructed to make a finding of fact as to whether Terra Naeve had a sincere  
15 religious belief. After making that preliminary finding, which defined what the religious  
16 belief was, the jury was instructed to make a finding of fact as to whether Defendant  
17 reasonably accommodated that belief. Instead, the jury reported that, contrary to the  
18 Court's instructions, it did not reach a decision on the first interrogatory. Without making  
19 this necessary preliminary finding of fact, the jury proceeded to answer the second  
20 interrogatory and entered a verdict in favor of Defendant. The interrogatories were not  
21 properly followed. They are inconsistent, because the second interrogatory requires that  
22 the first interrogatory be answered "yes".

23 Rule 49(b) governs general verdicts accompanied by inconsistent interrogatories:

24 When the answers [to the court's written interrogatories] are inconsistent with each  
25 other and one or more is likewise inconsistent with the general verdict, judgment  
26 shall not be entered, but the court shall return the jury for further consideration of  
its answers and verdict or shall order a new trial.

27 Fed.R.Civ.P.49(b). Counsel did not review the verdict and interrogatories before the jury  
28 was excused. Had that occurred, the jury could have been instructed to continue its

1 deliberations until it reached a unanimous verdict on the first interrogatory. Had the jury  
2 failed to agree on the first interrogatory, a mistrial would have been ordered.

3 Because the jury's responses to the Court's interrogatories are internally  
4 inconsistent, a new trial is required. Zhang v. American Gem Seafoods, Inc., 339 F.3d  
5 1020, 1038 (9th Cir. 2003) (in the case of a general verdict with interrogatories, "only if  
6 there is a conflict within the factual findings would a new trial be required."). There is no  
7 way to "harmonize" the jury's finding of fact on one issue with the jury's failure to make a  
8 required finding of fact on another issue. See El-Hakem v. BJY Inc., No. 03-35514, slip  
9 op. 8567, 8577 (9th Cir. July 21, 2005) ("When confronted by seemingly inconsistent  
10 responses to special verdict interrogatories, a trial court has a duty to harmonize those  
11 responses whenever possible.").

#### 12 Motion for New Trial

13 The Court may grant a new trial under Rule 59 "if the verdict is against the clear  
14 weight of the evidence." Landes Const. Co., Inc. v. Royal Bank of Canada, 833 F.2d  
15 1365, 1371 (9th Cir. 1987) (emphasis added); see also Byrd v. Blue Ridge Rural Elec.  
16 Co-op., Inc., 356 U.S. 525, 540, 78 S.Ct. 893, 902 (1958) ("The trial judge in the federal  
17 system has . . . discretion to grant a new trial if the verdict appears to him to be against  
18 the weight of the evidence.") (emphasis added). The Court finds that a verdict in this case,  
19 based on the jury finding that Defendant reasonably accommodated Terra Naeve's  
20 sincerely held religious beliefs, is against the clear weight of the evidence. The Court will  
21 order a new trial.

22 Accordingly,

23 **IT IS ORDERED DENYING** Plaintiff's Motion for Judgment as a Matter of Law  
24 (Dkt. 207).

25 **IT IS FURTHER ORDERED GRANTING** Plaintiff's Motion for New Trial  
26 (Dkt. 207).

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**IT IS FURTHER ORDERED** vacating the Judgment of June 17, 2005 (Dkt. 204).

**IT IS FURTHER ORDERED** setting a status hearing on **Monday, September 19, 2005 at 4:00 p.m.** to discuss pre-trial deadlines and a trial date.

DATED this 31<sup>st</sup> day of August, 2005.



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Earl H. Carroll  
United States District Judge