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CLERK, US DIST. COURT  
EASTERN DIST. OF CALIF  
AT FRESNO

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BY \_\_\_\_\_  
CITY

FRESNO DIVISION

**EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,**

) **CIV. F-02-6199 AWI LJO**

) **Plaintiff,**

) **SPECIAL VERDICT (1)**

) **and**

) **OLIVIA TAMAYO,**

) **Plaintiff-Intervenor,**

) **v.**

) **HARRIS FARMS, INC.**

) **Defendant.**

We, the jury, in the above-entitled action find the following Special Verdict regarding the causes of action on the questions submitted to us:

**PART I - LIABILITY**

**CLAIM I- HOSTILE ENVIRONMENT BY SUPERVISOR**

1. Did the plaintiffs prove by a preponderance of the evidence that at the time of any alleged sexual harassment Rene Rodriguez was Olivia Tamayo's immediate supervisor or a person with successively higher authority over her?

Yes       No

(If your answer is yes, go to question 2)

(If your answer is no, go to question 6, Hostile Environment by Non-immediate Supervisor or Co-worker (Rene Rodriguez))

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2. On the first legal claim, for supervisory harassment, did plaintiffs prove by a preponderance of the evidence that Olivia Tamayo was subjected to a sexually hostile work environment caused by her supervisor, Rene Rodriguez?

Yes      No

(If your answer is yes, go to question 3)

(If your answer is no, go to question 7, Hostile Environment by Non-Immediate Supervisor or Co-Worker (2000/2001))

3. Did the plaintiffs prove by a preponderance of the evidence that Olivia Tamayo suffered a tangible employment action as a result of harassment by her supervisor?

Yes      No

(If your answer is yes, you must find for the plaintiffs on this claim. Go to question 7, Hostile Environment by Non-Immediate Supervisor or Co-Worker (2000/2001))

(If your answer is no, go to question 4)

4. Did Harris Farms prove by a preponderance of the evidence that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior?

Yes      No

(If your answer is yes, go to question 5)

(If your answer is no, you must find for the plaintiffs on this claim. Go to question 7, Hostile Environment by Non-Immediate Supervisor or Co-Worker (2000/2001))

5. Did Harris Farms prove by a preponderance of the evidence that Olivia Tamayo unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or unnecessarily failed to otherwise avoid harm?

Yes      No

(If your answer is yes, you must find for Defendant on this claim. Go to question 7, Hostile Environment by Non-Immediate Supervisor or Co-Worker (2000/2001))

(If your answer is no, you must find for the plaintiffs on this claim. Go to question 7, Hostile Environment by Non-Immediate Supervisor or Co-Worker (2000/2001))

1 **CLAIM II - HOSTILE ENVIRONMENT BY NON-IMMEDIATE SUPERVISOR OR**  
2 **CO-WORKER (RENE RODRIGUEZ)**

3 Answer the following question *only* if you answered "no" to question 1.

4 6. On the second legal claim for hostile environment by non-immediate supervisor or co-  
5 worker (Rene Rodriguez), did the plaintiffs prove by a preponderance of evidence that  
6 Olivia Tamayo was subjected to a sexually hostile work environment caused by Rene  
7 Rodriguez and that Harris Farms' management knew or should have known of the  
8 harassment and failed to take prompt, effective remedial action reasonably calculated to  
9 end the harassment?

10 \_\_\_\_\_ Yes \_\_\_\_\_ No

11 Please go on and answer question 7

12 **CLAIM III- HOSTILE ENVIRONMENT BY NON-IMMEDIATE SUPERVISOR OR**  
13 **CO-WORKER (2000/2001)**

14 7. On the third legal claim for hostile environment by non-immediate supervisor or co-  
15 worker (2000/2001), did the plaintiffs prove by a preponderance of the evidence that  
16 Olivia Tamayo was subjected to a hostile work environment caused by non-immediate  
17 supervisors or co-workers and that Harris Farms' management knew or should have  
18 known of the harassment and failed to take prompt, effective remedial action reasonably  
19 calculated to end the harassment?

20  Yes \_\_\_\_\_ No

21 Please go on and answer question 8.

22 **CLAIM IV- RETALIATION**

23 8. On the fourth legal claim for retaliation, did the plaintiffs prove by a preponderance of the  
24 evidence that Harris Farms retaliated against Olivia Tamayo because she complained that  
25 she was being harassed or facing discrimination?

26  Yes \_\_\_\_\_ No

27 Please go on and answer question 9.

28 **CLAIM V - CONSTRUCTIVE DISCHARGE**

9. On the fifth legal claim for constructive discharge, did the plaintiffs prove by a  
preponderance of the evidence that Olivia Tamayo resigned her employment because her  
working conditions became so intolerable that a reasonable person in her position would  
feel compelled to resign?

Yes \_\_\_\_\_ No

Please go on and answer question 10.

1 **CLAIM VI - SUPERVISORY HARASSMENT (CALIFORNIA LAW)**

2 10. On the sixth legal claim for hostile work environment by supervisors (state law), did  
3 plaintiff, Olivia Tamayo, prove by a preponderance of the evidence that she was subjected  
4 to harassment by a supervisor based on her gender, causing a hostile or abusive work  
5 environment?

6  Yes  No

7 Please go on to question 11

8 **CLAIM VII- HOSTILE WORK ENVIRONMENT BY CO-WORKERS (STATE LAW)**

9 11. On the seventh legal claim for hostile work environment by co-workers (state law), did  
10 plaintiff, Olivia Tamayo, prove by a preponderance of the evidence that she was subjected  
11 harassment based on her gender, causing a hostile or abusive work environment and that  
12 Harris Farms or its supervisors or agents knew or should have known of the conduct and  
13 failed to take immediate and appropriate corrective action?

14  Yes  No

15 Please go on to question 12

16 **CLAIM VIII- CONSTRUCTIVE DISCHARGE (STATE LAW)**

17 12. On the eighth claim for constructive discharge (state law) did plaintiff, Olivia Tamayo,  
18 prove by a preponderance of the evidence that Harris Farms forced her to resign for  
19 reasons that violate public policy?

20  Yes  No

21 If you have found for Defendant on *all* of the claims above, stop here, answer no further  
22 questions and have the presiding juror sign and date this form.

23 If you have found for the Plaintiffs on *any* of the claims above, you must determine whether  
24 Olivia Tamayo is entitled to damages. Please go on to Part II - Damages

25 **PART II- DAMAGES**

26 **ECONOMIC DAMAGES**

27 13. Do you find that Olivia Tamayo is entitled to an award of economic damages?

28  Yes  No

(If your answer is yes, go to question 14)

(If your answer is no, go to question 15, Non-Economic Damages)

1 14. If your answer is yes, what amount of economic damages have been sustained by Olivia  
2 Tamayo?

3 Back pay, including lost wages/benefits: \$ 53,000

4 Future economic loss, including lost wages/benefits: \$ 91,000

5 Please go on to question 15

6 **NON-ECONOMIC DAMAGES**

7 15. Do you find that Olivia Tamayo is entitled to non-economic damages?

8  Yes  No

9 (If your answer is yes, go to question 16)

(If your answer is no go to question 17)

10 16. What amount of non-economic damages do you find was sustained by Olivia Tamayo?

11 Non-economic Damages \$ 350,000

12 Please go on to question 17

13 **DAMAGES (Calif. Fair Employment and Housing Act)**

14 Answer the following questions *only* if you answered yes to question 10, Supervisory Harassment  
15 (State Law)

16 17. Did Harris Farms, Inc. prove by a preponderance of the evidence all of the following:

17 (A) That plaintiff Olivia Tamayo unreasonably failed to use preventive and corrective  
18 measures that Harris Farms provided;

19 (B) That Harris Farms, Inc., took reasonable steps to prevent and correct workplace  
20 harassment; and

21 (C) That the reasonable use of Harris Farms, Inc's procedures would have prevented  
22 some or all of Olivia Tamayo's harm?

23  Yes  No

24 Please go to question 18

25 18. Do you find that Olivia Tamayo is entitled to damages for Hostile Environment by  
26 Supervisor (State Law)?

27  Yes  No

28 (If your answer is yes, go to question 19)

(If your answer is *no* to questions 13, 15 *and* 18, go to question 20, Nominal Damages.  
Otherwise, go to question 21)

1 19. If you answered yes to question 18, what damages if any do you award Olivia Tamayo for:  
2 Back pay, including lost wages/benefits: \$ 53,000  
3 Future economic loss, including lost wages/benefits: \$ 91,000  
4 Non-Economic Damages \$ Cross repair # 16

5  
6 **NOMINAL DAMAGES**

7 (Answer question 20 *only* if you answered *no* to questions 13, 15 *and* 18, that is if you find that  
8 Olivia Tamayo's rights were violated by Harris Farms but that plaintiff failed to provide proof of  
any economic or non-economic damages she suffered.)

9 20. Do you find that Plaintiff is entitled to an award of \$1.00 for nominal damages?  
10  Yes  No

11 (If your answer is yes, go to question 21, Punitive Damages - Title VII)  
12 (If your answer is no, answer no further questions and have the presiding juror sign and  
date this form).

13 **PUNITIVE DAMAGES (TITLE VII)**

14 21. Have the plaintiffs proved by a preponderance of the evidence that Harris Farms acted  
15 with malice or in reckless disregard of Olivia Tamayo's federally protected rights?

16  Yes  No

17 Please go on to question 22

18 **PUNITIVE DAMAGES (Calif. Fair Employment and Housing Act)**

19 22. Has plaintiff, Olivia Tamayo, proven by clear and convincing evidence that Harris Farms  
20 was guilty of oppression or malice in the conduct upon which you base your finding(s) of  
liability?

21  Yes  No

22 **PLEASE REPORT YOUR VERDICT TO THE MARSHAL. PLEASE REMEMBER TO**  
23 **DATE AND SIGN THIS VERDICT SHEET. THANK YOU.**

24 Dated: January 21, 2005

Paul J. Ly  
PRESIDING JUROR