RICHARD R. TRUJILLO
MARY JO O'NEILL #005924
LAUREN ELISABETH EILER #007378
TRISHA KIRTLEY #013905
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
PHOENIX DISTRICT OFFICE
3300 NORTH CENTRAL AVENUE, SUITE 690
PHOENIX, ARIZONA 85012-9688
TELEPHONE: (602) 640-5020

Attorneys for Plaintiff

FILED X LODGED
RECEIVED COPY
OCT 26 1998
CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY D DEPUTY

X FILED LODGED
RECEIVED COPY
NOV 05 1998
CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. SOUTHWEST SUPERMARKETS, INC.; SOUTHWEST SUPERMARKETS, LLC; SOUTHWEST SUPERMARKETS, LIMITED PARTNERSHIP, Defendants.	CIV 97-1940 PHX PGR **CONSENT DECREE**

THIS DOCUMENT IS NOT IN PROPER FORM ACCORDING TO FEDERAL AND/OR LOCAL RULES AND PRACTICES AND IS SUBJECT TO RESTRICTION BY THE COURT.
REFERENCE: LR 1.7(c)(2)
(Rule Number/Section)

The United States Equal Employment Opportunity Commission (the Commission or EEOC) filed this action against Southwest Supermarkets, Inc., Southwest Supermarkets, L.L.C., Southwest Supermarkets, Limited Partnership (collectively "Southwest"or "the Company") to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In the complaint the Commission alleged that certain Southwest employees sexually harassed a class of female employees, retaliated against some employees who complained about the sexual harassment, and that as a result of the sexual harassment and retaliation, a class of female

NOV 05 1998

212

employees was constructively discharged and/or terminated from their employment in violation of Title VII. Southwest filed its answer on December 1, 1997 and its amended answer on December 22, 1997 denying the allegations contained in the complaint.

The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law. This decree shall constitute neither an admission by defendants to any violation of Title VII, nor an adjudication by this Court on the merits of the allegations in the complaint.

In the interest of resolving this matter and as a result of having engaged in comprehensive settlement negotiations the parties have agreed that this action should be finally resolved by entry of this Decree.

It is hereby ORDERED, ADJUDGED AND DECREED;

1. This decree resolves all claims of the Commission against defendant Southwest, including back pay, compensatory and punitive damages, interest, injunctive relief, and attorney's fees and costs arising out of the issues in this lawsuit. The EEOC covenants that in exchange for the promises of Southwest in this Consent Decree, the EEOC will not seek relief on behalf of any woman for sexual harassment who was employed by Southwest in the State of Arizona from January 1, 1994 to the date this Consent Decree is entered by the Court, who has an untimely sexual harassment allegation[1], or who has a timely charge of sexual harassment and is identified as a claimant in Attachment A or a potential claimant in Attachment B.

INJUNCTION

2. Southwest, and its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, are permanently enjoined for the duration of the decree from (a) sexually harassing any employee and (b) retaliating against any employee because he or

---

[1] Pursuant to §706(e) of Title VII an "untimely sexual harassment allegation" is defined as a charge not filed within 300 days after the alleged unlawful employment practice occurred.

she (i) opposed discriminatory practices made unlawful by Title VII, (ii) filed a charge or is assisting or participating in the filing of a charge of sexual harassment, or (iii) assisted or participated in an investigation or proceeding brought under Title VII.

MONETARY RELIEF

3. Judgment is entered in favor of the Commission and against Southwest in the amount of One Million Dollars ($1,000,000). Southwest shall pay the gross sum of Eight Hundred Thousand Dollars ($800,000) to be distributed among eligible claimants as defined in Attachment A. The $800,000 is to paid to the identified claimants on the latter of October 15, 1998 or within six business days after the Parties receive notice this consent decree has been entered by the court.

4. Southwest shall place the remaining sum of Two Hundred Thousand Dollars ($200,000) in an escrow account no later than ten (10) business days after the entry of the Consent Decree, to later be distributed to any other eligible claimants identified pursuant to Paragraph 14. None of this $200,000 shall revert to Southwest if the $200,000 is not entirely distributed by payments to claimants in Attachment B. In that event, any remaining money shall be distributed at the direction of the EEOC.

5. Southwest shall pay the settlement amount separately to each class member by check, cashier's check, or money order, in accordance with paragraph six. These payments represent settlement of compensatory damages. The defendant will issue 1099 forms for all payments.

6. The checks provided for in paragraph five of this decree shall be mailed directly by Southwest to each class member at the addresses supplied by the Commission. Within three business days of issuance of the checks, Southwest shall submit a copy of each check and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012.

. . .

. . .

OTHER RELIEF

7. Southwest shall expunge from the personnel files of each class member all references to the charges of discrimination filed against defendant or their participation in this action, derogatory documents which related to complaints or investigation of complaints of sexual harassment. The Company agrees to destroy the two Notices of Termination sent to class members "J.S." and "R.P" and to remove those documents from their personnel files. The Company also agrees to remove a no re-hire notation from the file of T.H.

8. Southwest shall provide each class member in Attachment A and all eligible class members to be identified in Attachment B with the written apology attached as Exhibit C, signed and printed on Southwest letterhead.

9. Southwest shall institute and carry out policies and practices that help assure a work environment free from sexual harassment of its employees and that allow employees to raise concerns or complaints without retaliation about matters, whether alleged, perceived or actual, made unlawful by Title VII. To assist Southwest in its efforts to assure a work environment free of sexual harassment and retaliation, Southwest shall take the actions provided in ¶¶10-19.

DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES

10. Southwest shall post for the duration of this decree, in a prominent place frequented by its employees at its facilities, the notice attached as Exhibit D in both English and Spanish. The Spanish translation must be prepared by a court certified Spanish translator. The notice shall be the same type, style and size as Exhibit D.

11. Southwest shall provide training in both English and Spanish on sexual harassment and retaliation, according to the following terms:

A. Southwest shall retain and pay for a consultant/lecturer who shall provide consultation and training for a period of two years from the date of this decree. During each of the next two years, the consultant/lecturer shall conduct one live seminar training session each year. Southwest has identified Rebecca Winterscheidt as its consultant/trainer. If Ms. Winterscheidt is not available, Southwest will obtain the EEOC's approval for a replacement.

The live session in year one shall be for taping purposes and the live session in year two will be for executives and top management. All Southwest employees shall attend the seminar session or the videotaped showing of the live session in both years. Southwest may at its election have duplicative videotaped sessions to accommodate staffing needs. Southwest shall be responsible for any additional costs to provide such duplicative sessions. Mariely Burgess and/or the Administrator in ¶ 14 will attend and help facilitate the videotaped sessions.

B. During the first year, 1998, the seminar-training session shall be conducted within four months of the entry of this decree. For the second year, the seminar-training session shall be conducted between 10 and 13 months after the completion of the preceding session.

C. The seminar-training sessions shall be no less than one and a half hours, plus 15-30 minutes of questions and answers. All personnel, designated in paragraph A, shall both register and attend the seminar-training session. The registry of attendance shall be retained by Southwest for the duration of the decree.

D. The seminars shall include the subject of what constitutes sexual harassment and retaliation; that sexual harassment and retaliation in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment violates Title VII; how to prevent sexual harassment and retaliation; how to provide a work environment free from sexual harassment and retaliation; and to whom and by what means employees may complain if they feel they have been subjected to sexual harassment or retaliation in the workplace. The session shall also review and explain Southwest's policies set out in paragraph fifteen of this decree.

E. During the live training session, defendant's Chief Executive Officer shall speak to the employees about the discipline that can be taken against supervisors, managers and employees at Southwest who commit acts of sex harassment or retaliation or allow sex harassment or retaliation to occur in the workplace, the importance of maintaining an environment free of sexual harassment and retaliation, and Southwest's policy in regard to sexual harassment and retaliation referred to in paragraph fifteen of this decree.

. . .

12. The Commission, at its discretion, may designate Commission representatives to attend and participate in the seminar-training sessions, and the representatives shall have the right to attend and fully participate in the sessions. The EEOC will provide Southwest reasonable notice of its intent to attend the training session.

13. Southwest shall continue to retain for the duration of this Consent Decree an organization or person(s) external to Southwest to receive and forward complaints of discrimination from its employees. The organization or person(s) must have the ability to process complaints both in English and in Spanish.

14. Southwest shall hire a person (administrator) whose responsibilities shall include administration of this Consent Decree and the process for identifying and compensating potential claimants in Attachment B. The administrator shall report directly to the CEO of Southwest. This position shall be filled for at least two years. Within sixty days of the entry of this Decree, the administrator shall be responsible for sending out a letter to all potential claimants in Attachment B notifying them that the Company wants anyone who believes she has been sexually harassed from January 1, 1994 to the present to come forward and provide information about the harassment without fear of reprisal. The administrator shall be in charge of investigating these claims and making preliminary determinations about who has a viable claim and the dollar amount (from the total available amount of $200,000) the claimant should receive.

The administrator shall then contact the EEOC (Regional Attorney or his designee) to determine if the EEOC wants to review the preliminary determination of the administrator. If the EEOC chooses to review Southwest's preliminary determinations, it will have no more than sixty days to do so. The EEOC will have the final determination on the allocation of the $200,000 to the Class B claimants. The EEOC shall have access to all relevant information utilized by the administrator to make the preliminary determination. The EEOC will have sixty days from the date the preliminary determination is received by it to make the final allocation decision. No payment of any money shall be made to any class member from attachment B until that class member has executed and complied with the terms of a release agreement.

15. Within thirty days of the entry of this decree, Southwest shall revise its written policy concerning sexual harassment and retaliation to conform with the law and submit the policy for review to the Regional Attorney of the Phoenix District Office of the EEOC. This written policy must include at a minimum:

A. A strong and clear commitment to a workplace free of sexual harassment;

B. A clear and complete definition of sexual harassment both quid pro quo and environmental, with many relevant examples;

C. A clear and strong encouragement of persons who believe they have been harassed to come forward;

D. A description of the consequences, up to and including termination, that will be imposed upon violators of the policy;

E. A promise of maximum feasible confidentiality for persons who believe that they have been harassed;

F. An assurance of non-retaliation for persons who believe they have been sexually harassed and witnesses;

G. That sexual harassment by all persons, including management officials, supervisors, vendors, suppliers, third parties and customers is prohibited and will not be tolerated;

H. The identification of specific individuals, internal and external to Southwest, with their telephone numbers, to whom employees who have been sexually harassed can report the sexual harassment, including a written statement that the employee may report the harassment to designated persons outside of their chain of management. At least one of the designated persons must be Spanish-speaking to facilitate communication with Spanish speaking employees;

I. That employees are not to discuss sexual conduct and/or sexual jokes while at work;

. . .

. . .

J. That no sexually oriented materials or objects shall be brought on the premises of Southwest;

K. Assurances that Southwest will investigate sexual harassment allegations promptly, fairly, reasonably and effectively by appropriate investigators and that appropriate corrective action will be taken by Southwest to make victims whole and to eradicate the sexual harassment;

These policies shall be transmitted to Southwest employees by its CEO and distributed to each current employee within thirty days of the entry of the decree. These policies shall be distributed to all new employees when hired and reissued to each employee once a year for the term of this Decree. These policies also shall be posted in both English and Spanish in a prominent place frequented by the employees.

16. Southwest shall institute a procedure which evaluates supervisors, managers and applicable human resources personnel on their performance in responding to complaints of sexual harassment. The failure of such an employee to enforce the sexual harassment policy must result in disciplinary action.

17. Southwest shall promptly and appropriately investigate all complaints of sexual harassment. The investigation must include a finding of whether sexual harassment occurred, a credibility assessment, if necessary; interviews of all potential victims and witnesses identified; and concurrent notes of the investigation. Southwest shall take immediate appropriate corrective action to make sexual harassment victims whole , to discipline harassers and to eradicate the sexual harassment.

18. Southwest shall not retain documents related to the investigation in any of the victims' personnel files. All disciplinary actions taken against employees for violation of Southwest's sexual harassment policy will be retained in the harasser's personnel file. In those cases in which no conclusion could be reached on the allegations, the investigation documents shall remain in the alleged harasser's file.

. . .

19. Southwest shall inform its vendors and suppliers of its sexual harassment policy and that failure to conform to the policy may result in prohibitions from conducting business with Southwest Supermarkets and on its premises.

REPORTING BY DEFENDANT AND ACCESS BY EEOC

20. Southwest shall report in writing and in affidavit form to the Regional Attorney of the Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690, Phoenix, Arizona 85012, beginning six months from the date of the entry of this decree, and thereafter every six months for the duration of the decree the following information:

A. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subject of sexual harassment or retaliation.

B. The name, address, position, social security number and telephone number of any individual who has brought allegations of sexual harassment and/or retaliation against Southwest personnel, formal or informal, including, but not limited to, management officials, vendors, agents, employees and/or customers, during the six months preceding the report. The nature of the complaint, investigatory efforts made by Southwest and the corrective action taken, if any, shall be specified.

C. The registry of persons attending the seminar required in paragraph eleven of this decree and a list of current personnel employed by Southwest on the day of the seminar-training session.

D. Confirmation that (i) the Notice required in paragraph ten of this decree was posted in both English and Spanish and the locations where it was posted, (ii) the policies required in paragraph fifteen were distributed to each current and new employee in both English and Spanish and posted, and (iii) the expungement from the class members' personnel files required in paragraph seven of this decree took place, the date of the expungement, and the specific documents expunged.

E. A copy of the revised policy in both English and Spanish required in paragraph fifteen.

F. A copy of each apology letter mailed pursuant to paragraph eight.

21. The Commission, upon reasonable notice, shall have the right to enter and inspect Southwest's premises to insure compliance with this decree and Title VII's prohibition of sexual harassment and retaliation.

COSTS AND DURATION

22. Each party shall bear its costs and attorney's fees incurred as a result of this action through the filing of this decree.

23. The duration of this decree shall be two years from its entry. This Court shall retain jurisdiction over this action for the duration of the decree, during which the Commission may petition this Court for compliance with this decree. Should the Court determine that defendant has not complied with this decree, appropriate relief, including extension of this decree for such period as may be necessary to remedy its non-compliance, may be ordered. This decree shall expire by its own terms at the end of twenty-four months from the date of entry, without further action by the parties.

24. The parties agree to entry of this decree and judgment subject to final approval by the Court.

ENTERED AND ORDERED this 5th day of Nov., 1998.

HONORABLE PAUL G. ROSENBLATT
UNITED STATES DISTRICT COURT JUDGE

APPROVED AND CONSENTED TO:

C. GREGORY STEWART
General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507

MARK SELLERS
Chief Executive Officer
Southwest Supermarkets, Inc.
Southwest Supermarkets, LLC
Southwest Supermarkets, Limited Partnership

RICHARD R. TRUJILLO
Regional Attorney

MARY JO O'NEILL
Supervisory Trial Attorney

REBECCA WINTERSCHEIDT
SNELL & WILMER, L.L.P.
One Arizona Center
Phoenix, Arizona 85004-0001

TRISHA KIRTLEY
Trial Attorney

LESLIE GORDON FAGEN, ESQ.
PAUL, WEISS, RIFKIND, WHARTON & GARRISON
1285 Avenue of the Americas
New York, New York 10019-6064

Attorneys for Defendant

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
3300 North Central Ave., Suite 690
Phoenix, Arizona 85012
(602) 640-5029

Attorneys for Plaintiff