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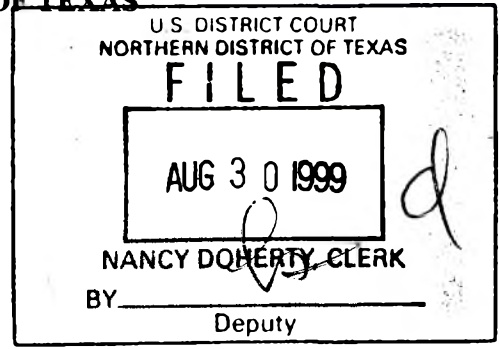
Equal Employment Opportunity Commission v. Monfort, Inc.

Keywords

EEOC, Monfort Inc., 2-98-CV-327, Consent Decree, Sexual Harassment, Hostile Work Environment, Sex, Female, Agriculture, Employment Law, Title VII

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	PLAINTIFF,	}
v.		}
MONFORT, INC.,	DEFENDANT,	}
and		}
MARY TREVINO,	INTERVENOR,	}
v.		}
MONFORT, INC.,	DEFENDANT.	}



CIVIL ACTION NO.
2-98-CV-327

CONSENT DECREE

THIS CONSENT DECREE is made and entered into by and among the Plaintiff, Equal Employment Opportunity Commission ("EEOC"), the Defendant, Monfort, Inc. ("Monfort"), and the Intervenor, Mary C. Trevino ("Trevino"), in the United States District Court for the Northern District of Texas, Amarillo Division, with regard to the EEOC's Complaint filed on September 30, 1998 ("EEOC Complaint"), in Civil Action No. 2-98-CV-327, and Intervenor's Complaint

CONSENT DECREE

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filed October 15, 1998.¹ These Complaints were based upon Charge of Discrimination Number 310-97-1530 filed by Trevino against Monfort.

The above-referenced Complaints allege that Monfort engaged in unlawful employment practices at its Cactus, Texas, facility, in violation of Section 703(a)(1) of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. Section 2000e-2(a)(1), by subjecting Trevino and other similarly situated females to a sexually hostile working environment. The Complaints alleged that this sexually hostile working environment was created and maintained by the conduct of the male co-workers and supervisors, which included lewd comments, sexual gestures and graffiti, improper touching and inappropriate use of animal parts in a sexually suggestive and offensive manner. In addition to alleging Title VII violations, the Intervenor also asserted various state law claims, including Trevino's right to privacy, intentional infliction of emotional distress and assault. Monfort filed its Answer to the EEOC Complaint and the Complaint of the Intervenor, denying the allegations contained in each Complaint.

EEOC, Monfort and Trevino agree to compromise the differences embodied in the Complaints, and intend that the terms and conditions of the compromise be set forth in this Consent Decree ("Consent Decree").

¹This Court granted Trevino's Motion to Intervene on October 20, 1998; Trevino subsequently filed an Amended Complaint on January 21, 1999.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Consent Decree resolves all issues raised in EEOC Charge No. 310-97-1530. This Decree further resolves all issues in the Complaints filed by the EEOC and Trevino in this civil action. The EEOC, Trevino and all individuals identified in Paragraph 22 waive further claims and/or litigation on all issues raised in the above-referenced charge and Complaints. The EEOC does not waive processing charges other than the charge of discrimination specifically referenced above. All subsequently-filed charges of discrimination against Monfort that allege incidents of sexual harassment occurring during the Claim Period, as defined below, will be issued a notice of right-to-sue, only if the individual(s) elect not to file a claim as defined herein. If any of these subsequently-filed charges are not filed within three hundred days of the offending conduct, the notice of right-to-sue will reflect that the charge was statutorily untimely filed.

2. The parties agree that this Consent Decree does not constitute an admission by Monfort of any violation of Title VII or invasion of privacy, intentional infliction of emotional distress or assault. This Consent Decree does not constitute an adjudication and/or finding on the merits of the case, and shall not be used as evidence of liability, res judicata, or collateral estoppel in any other legal proceeding against Monfort or any of its affiliates.

3. Monfort agrees that it shall conduct all employment practices at its Cactus, Texas facility in a manner which does not subject any employee to discrimination under Title VII.

Scope of Consent Decree

4. The duration of this Consent Decree shall be two (2) years from the date of entry of the Consent Decree. During that time, this Court shall retain jurisdiction over this matter and the Parties for purposes of enforcing compliance with the Consent Decree, including such orders as may be required to effectuate its purposes. Accordingly, this Consent Decree shall expire and shall be without force and effect two (2) years from the date of entry of this Consent Decree.

General Provisions

5. Monfort and its officers, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them, or any of them, agree to refrain from: (i) discriminating against women on the basis of sex; (ii) engaging in or being a party to any action, policy or practice that is intended to or is known to them to have the effect of harassing or intimidating any female employee on the basis of her gender; and/or (iii) creating, facilitating or permitting the existence of a work environment at its Cactus, Texas facility that is hostile to female employees.

6. Monfort and its officers, agents, management (including supervisory employees), successors and assigns, and all those in active concert or participation with them, or any of them, agree to refrain from engaging in, implementing or permitting any action, policy or practice with the purpose of retaliating against any current or former employee of Monfort at its Cactus, Texas

facility because he or she opposed any practice of sex discrimination, sexual harassment or sex-based harassment made unlawful under Title VII; filed a Charge of Discrimination alleging any such practice; testified or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by Monfort), proceeding, or hearing in connection with this case and/or relating to any claim of sex discrimination, sexual harassment or sex-based harassment; was identified as a possible witness in this action; asserted any rights under this Consent Decree; or sought and/or received any monetary and/or non-monetary relief in accordance with this Consent Decree.

Non-Monetary Relief

7. Monfort affirms the following "Statement of Zero-Tolerance Policy and Equality Objectives":

Monfort, Inc. is firmly committed to developing and maintaining a zero-tolerance policy concerning sexual harassment, sex-based harassment and retaliation against individuals who report harassment in the company's workplace; to swiftly and firmly responding to any acts of sexual or sex-based harassment or retaliation of which the company becomes aware; to implementing a disciplinary system that is designed to strongly deter future acts of sexual or sex-based harassment or retaliation; and to actively monitoring its workplace in order to endure tolerance, respect and dignity for all people.

Specific Non-Monetary Relief

8. In order to effectuate the objectives embodied in Monfort's Statement of Zero-Tolerance Policy and Equality Objectives and this Consent Decree, Monfort shall make whatever specific modifications are necessary to its existing policies, procedures and practices in order to

ensure that the following policies, procedures and practices at its Cactus, Texas facility are implemented. However, nothing in this Consent Decree shall modify or affect the terms of the collective bargaining agreement between Monfort and Local Union 540, United Food and Commercial Workers International Union, AFL-CIO & CLC ("the Union"). The parties to this Consent Decree recognize that Monfort has certain bargaining obligations with the Union under the provisions of the National Labor Relations Act. Further, the parties agree that this Consent Decree will be administered in a manner consistent with federal labor and employment discrimination laws.

(a) Sexual Harassment Policy.

Monfort agrees that it shall revise its sexual harassment policy, as necessary, in order to: (i) provide examples to supplement the definitions of sexual harassment and sex-based harassment; (ii) include strong non-retaliation language with examples to supplement the definition of retaliation, and provide for substantial and progressive discipline for incidents of retaliation; (iii) provide that complaints of sexual harassment, sex-based harassment and/or retaliation will be accepted by Monfort in writing and orally; (iv) provide a timetable for reporting harassment, for commencing an investigation after a complaint is made or received and for remedial action to be taken upon conclusion of an investigation; and (v) indicate that, promptly upon the conclusion of its investigation of a complaint, Monfort will communicate to the complaining party the results of the investigation and the remedial actions taken or proposed, if any. This policy

shall be published and distributed in both English and Spanish. Monfort further agrees to notify employees that an individual may simultaneously pursue a claim of sexual harassment pursuant to the terms of Monfort's new sexual harassment policy and pursuant to the terms of the collective bargaining agreement between Monfort and the Union.

(b) Complaint Procedures.

Monfort agrees that it shall: (i) revise its complaint procedure as necessary in order to ensure that it is designed to encourage employees to come forward with complaints about violation of its sexual harassment policy. As part of this policy, Monfort agrees that it shall provide its employees with convenient, confidential and reliable mechanisms for reporting incidents of sexual harassment, sex-based harassment and retaliation. Monfort agrees that it shall designate at least two employees from the department charged with investigating such issues as persons who may be contacted, and their names, responsibilities, work locations and telephone numbers shall be routinely and continuously posted. Monfort shall ensure that at least one of these designated individuals speaks Spanish. Also as part of its procedure, Monfort agrees that it take seriously anonymous complaints received. Additionally, as part of its complaint procedure, Monfort agrees that it shall maintain in the plant the presence of personnel charged with handling complaints of sexual harassment, sex-based harassment and retaliation.

(ii) Monfort agrees that it shall revise its policies as necessary to enable complaining parties to be interviewed by Monfort about their complaints in such a manner that permits the complaining party, at such party's election, to remain inconspicuous to all of the employees in such party's work area. Monfort agrees that its complaint procedure shall not impose upon individuals seeking to make a complaint alleging sexual harassment, sex-based harassment and/or retaliation any requirements that are more burdensome than are imposed upon individuals who make other complaints of comparable gravity.

(iii) Monfort agrees that it shall revise its complaint handling and disciplinary procedures at its Cactus, Texas facility as necessary to ensure that all complaints of sexual harassment, sex-based harassment and/or retaliation are investigated and addressed promptly. Specifically, Monfort agrees that it shall make best efforts to investigate all complaints of sexual harassment, sex-based harassment and/or retaliation promptly and to complete investigations within three (3) weeks. Monfort will further make best efforts to prepare its written findings of the results of each investigation and the remedial actions proposed or taken, if any, within seven (7) days after completion of the investigation, and shall thereupon promptly communicate to the complaining party the results of the investigation and the remedial actions taken or proposed, if any.

(iv) Monfort agrees that it shall make best efforts to ensure that appropriate remedial action is taken to resolve complaints and to avoid the occurrence of further

incidents of sexual harassment, sex-based harassment and/or retaliation. Monfort specifically agrees that its complaint procedure shall include the power, in Monfort's sole discretion, to order, during the pendency of the investigation, the immediate transfer of persons accused of having violated Monfort's sexual harassment policy or of persons who claim to have been victims of such violations, as well as the power to order the permanent transfer of employees found to have violated such policy, and, upon the request of the complaining party, the permanent transfer of any complaining party who is found to have been the victim of a violation of Monfort's sexual harassment policy as long as none of the aforementioned transfers alters or affects the rights of other Monfort employees under the collective bargaining agreement or seek to amend the terms of the collective bargaining agreement.

(v) In the event any disciplinary action taken by Monfort is overturned by an arbitrator as a result of a grievance filed with the Union, the decision of the arbitrator shall, to the extent required by law, be final and binding.

(c) Policies Designed to Promote Supervisor Accountability.

(i) Monfort agrees that it shall impose substantial discipline--up to and including termination, suspension without pay or demotion--upon any supervisor or manager who engages in sexual harassment or sex-based harassment or permits any such conduct to occur in his or her work area or among employees under his or her supervision, or who retaliates against any person who complains or participates in any investigation or

proceeding concerning any such conduct. Monfort shall communicate this policy to all of its supervisors and managers.

(ii) Monfort agrees that it shall continue to advise all managers and supervisors of their duty to actively monitor their work areas to ensure employees' compliance with the company's sexual harassment policy, and to report any incidents and/or complaints of sexual harassment, sex-based harassment and/or retaliation of which they become aware to the persons charged with handling such complaints.

(iii) Monfort agrees that it will revise its current supervisor appraisal process to include performance evaluations for the handling of equal employment opportunity issues as an element in supervisor appraisals, and to link such evaluations directly to its supervisor salary/bonus structure.

(iv) Monfort agrees that it shall include "commitment to equal employment opportunity" as a criterion for qualification for supervisory positions.

(d) Sexual Harassment Training

(i) Monfort agrees that it shall provide mandatory annual sexual harassment training to all employees (supervisory and non-supervisory); to provide mandatory sexual harassment training to all new employees during employee orientation; to provide mandatory sexual harassment training to all senior management officials; to provide training to all persons charged with the handling of complaints of sexual harassment, sex-based harassment and/or retaliation related thereto. The training shall be at least two

hours in duration and shall be conducted by experienced sexual harassment educators to educate employees about the problems of sexual harassment in the workplace and the techniques for investigating and stopping sexual harassment.

(ii) The training shall inform employees of the complaint procedure for those individuals who believe they have been sexually harassed or otherwise experienced sex-based discrimination. Further, the training shall advise all employees, including supervisors and managers, of the consequences of violating Title VII and of the importance of working in an environment free of sexual harassment.

(iii) No less than 10 days before the training is conducted, Monfort agrees to give written notice to the EEOC as to the date and location of the training, the name of the person providing the training and the substance of the training.

(iv) Monfort agrees that it shall require a senior management official to introduce all sexual harassment training to communicate Monfort's commitment to its Statement of Zero-Tolerance Policy and Equality Objectives.

(v) Monfort agrees that the sexual harassment training described above shall be presented both in English and in Spanish.

Reporting Requirements

9. For each year the Consent Decree is in effect, Monfort agrees to meet semiannually with EEOC to review all complaints alleging sexual harassment, sex

discrimination, sex-based harassment and/or retaliation, including results of Monfort's investigation and disciplinary response, at the Cactus, Texas facility.

10. Within seven (7) business days prior to each scheduled semiannual meeting, as described in paragraph 9, above, Monfort agrees to forward to the EEOC copies of all complaints alleging sexual harassment, sex-based harassment and/or retaliation, including any notes or other written documentation evidencing Monfort's investigation of the aforementioned complaints and the remedial action taken, if any.

11. During each of these semiannual meetings, Monfort and EEOC will also discuss employee conduct and Monfort's compliance with its Statement of Zero-Tolerance Policy and Equality Objectives and the terms of this Consent Decree.

Posting of Notice

12. Within two (2) weeks after entry of this Consent Decree, Monfort shall post a notice (attached to this Consent Decree as Exhibit "A") in prominent and conspicuous locations throughout its facility in Cactus, Texas. This notice shall be published in both English and Spanish and shall inform employees that sexual harassment, sex-based harassment and/or discrimination and retaliation will not be tolerated and that the first violation thereof will subject the employee found to have violated the company's sexual harassment policy to those disciplinary consequences specified within the policy.

13. The notice shall also inform employees where to report violations of Monfort's sexual harassment policy, the name of the designated company official to whom they should

report said violations, along with the address and telephone number of the Dallas District Office of the EEOC. The notice shall remain posted for the duration of this Consent Decree. In the event that the persons and/or departments to whom individuals should make complaints alleging sexual harassment, sex-based harassment and/or retaliation change during the term of the Consent Decree such that the information contained in the notice is no longer accurate, Monfort shall immediately prepare and post a revised notice that contains the correct information. Monfort shall promptly thereafter forward a copy of the revised notice to the EEOC.

14. Monfort agrees to post a copy of the notice, as described in paragraphs 12-13, above, within fourteen (14) days after entry of this Consent Decree. Monfort will thereafter report to the EEOC that it has complied with this requirement within fourteen (14) days after posting the notice.

Dispute Resolution

15. In the event that either party to this Consent Decree believes that the other party has failed to comply with any provision(s) of the Consent Decree, the complaining party shall notify the alleged non-complying party in writing of such non-compliance and afford the alleged non-complying party ten (10) business days to remedy the non-compliance or satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief. In the event that, upon the expiration date of this Consent Decree, a dispute

is pending pursuant to this paragraph, then the term of this Consent Decree shall be extended, with respect to the issue in dispute only, until such time as such dispute is resolved by the parties or the Court.

Monetary Relief

16. Monfort shall pay the gross sum of NINE HUNDRED THOUSAND DOLLARS, \$900,000.00, of which Mary C. Trevino will receive \$450,000.00. The remaining \$450,000.00 (hereinafter the "Claim Fund"), will be distributed among all Eligible Claimants, as described in Paragraph 17, and to those women identified in Paragraph 22. Monfort will prepare and tender the award checks in accordance with the provisions hereafter noted. Within twenty-one (21) days of the entry of this Consent Decree, Monfort shall issue a check in the amount of \$450,000.00, made payable to Mary C. Trevino and her attorney, William E. Kelly. Also within twenty-one (21) days of the entry of this Consent Decree, Monfort shall place the Claim Fund in an interest-bearing account for the benefit of the Eligible Claimants qualified for monetary relief.

Claims Process and Distribution of Claim Fund

17. The parties agree that Eligible Claimants (specifically including those individuals listed in Paragraph 22) shall be those women who were employed by Monfort at its Cactus, Texas facility between March 17, 1995 and the date of the entry of this Consent Decree (the "Claim Period") who submit credible evidence that subsequent to March 17, 1995, they were (a) subjected to a hostile work environment because of their sex; (b) subjected to sexual harassment or sex-based harassment; and/or (c) retaliated against because they opposed sexual harassment or

participated in any proceeding relating to a complaint of sexual harassment, sex-based harassment or retaliation.

18. The Claim Fund shall be used solely to make payments to those persons described in Paragraph 17, above, who timely submit Claim Forms (attached to this Decree as Exhibit "B") and whom EEOC determines, subject to Court approval, to be eligible to receive monetary relief in this lawsuit. No persons other than Eligible Claimants (specifically including those women listed in Paragraph 22) shall receive any payments from the Claim Fund. No portion of the Claim Fund shall remit to Monfort.

19. Subject only to the approval of the Court (as provided by this Consent Decree), EEOC shall be the sole determiner of eligibility for relief under this Decree and the amount of monetary relief to be received by any Eligible Claimant under this Decree. In making such determinations, EEOC may consider whatever evidence EEOC deems appropriate, including, but not limited to, evidence received by EEOC in its investigation of the charge of discrimination underlying this action, in connection with its litigation of this action, and in connection with the claims received by Eligible Claimants pursuant to this Decree. Monfort will not participate in or object to EEOC's determinations.

20. Acting in its discretion and subject only to final approval by the Court, EEOC shall rank each individual whose Claim Form is timely received by the EEOC and whom EEOC determines to be an Eligible Claimant, approximately reflecting the relative severity of the Eligible Claimants' claims. In evaluating the Eligible Claimants' Claim Forms, EEOC will

consider the following factors: (a) whether Eligible Claimant complained of sexual harassment, sex-based harassment and/or retaliation to Monfort; (b) the number of times Eligible Claimant complained of the harassment and/or retaliation; (c) the severity and duration of harassment and/or retaliation; (d) whether Eligible Claimant's Claim Form alleges an isolated incident or multiple incidents of inappropriate behavior; (e) whether Eligible Claimant's Claim Form identifies any witnesses or other corroborative evidence; (f) extent of harm; (g) whether Eligible Claimant was singled out or otherwise individually targeted for the harassment; and, (e) whether the Eligible Claimant asserts that the harassment and/or retaliation was committed by a supervisor or other management official. (See Evaluation Factors attached to this Consent Decree as Exhibit "C").

Procedures to Determine Eligibility

21. Within fourteen (14) days after entry of this Decree, provided that Monfort supplies the EEOC with the stamped, addressed envelopes, EEOC will mail a Notice of Settlement (in the form of Exhibit "D" attached to this Decree) to all women employed by Monfort at its Cactus, Texas facility during the Claim Period, advising them that a settlement has been reached between Monfort and the EEOC and that a Claim Fund has been set up for Eligible Claimants. The Notice of Settlement shall advise current and former employees that to apply for an award from the Claim Fund they must complete and return the enclosed Claim Form to EEOC so that it is actually received by the EEOC by the close of business sixty (60) days after the

Notices of Settlement are mailed. The Notice of Settlement will also advise that Monfort shall take no adverse action against any current or former employee for filing a Claim Form.

22. The parties hereby stipulate that the following individuals, identified during the investigative and discovery stages associated with EEOC's Complaint and Trevino's Charge of Discrimination, are deemed to have satisfied all of the eligibility requirements set forth in Paragraphs 17-21, above, and are further exempted from complying with the claims procedures described in this Consent Decree, except where specifically included, and will receive payments under this Consent Decree in exchange for releasing Monfort from any and all claims based on the allegations of the Complaint, including claims of sexual harassment, retaliation or constructive discharge, which occurred during the "Claim Period" as defined herein: (a) Vicki Feller; (b) Maria Chavira; (c) Alicia Hernandez; (d) Rosario Diaz; (e) Elva Gallegos; (f) Maria Ortiz; (g) Emma Meraz; (h) Leticia Magallenes; (i) Letitia Espana; (j) Mary Ojeda; (k) Belinda Ortiz; (l) Letitia Medrano; (m) Claudia Sanchez; and (n) Renata Zamudio.

23. As a further means of notifying potential Eligible Claimants of the settlement of this lawsuit and of the claims process described in this Decree, within ten (10) days after entry of this Decree, there will be published a Notice of Lawsuit Settlement in the editorial (not classified) sections of the following local newspapers: Amarillo Globe News, the Amarillo Daily News and the Moore County News Press. The advertisement shall be no smaller than two (2) columns by ten (10) inches in size.

24. ANY PERSON, EXCEPT THOSE INDIVIDUALS SPECIFICALLY IDENTIFIED IN PARAGRAPH 22, ABOVE, FROM WHOM EEOC HAS NOT ACTUALLY RECEIVED A COMPLETED CLAIM FORM BY THE CLOSE OF BUSINESS SIXTY (60) DAYS AFTER THE NOTICES OF SETTLEMENT ARE MAILED SHALL NOT BE ENTITLED TO RECEIVE ANY MONETARY RELIEF UNDER THE CONSENT DECREE, AND SHALL BE DEEMED, WITHOUT FURTHER ACT OR DEED BY ANY PERSON OR THE COURT, TO BE INELIGIBLE FOR AND FOREVER BARRED FROM RECEIVING ANY PAYMENTS UNDER THIS CONSENT DECREE.

25. EEOC Determination of Eligibility and Computation of Claims: Within seven (7) days after the deadline for receipt by EEOC of returned Claim Forms, EEOC shall transmit a list of those persons who have submitted timely Claim Forms to Monfort. Within thirty (30) days after receipt of this list, Monfort shall forward to EEOC the personnel files of each person listed. Within ninety (90) days after the deadline for receipt by EEOC of returned Claim Forms, EEOC shall make its determinations as to the eligibility of each claimant who has timely submitted a Claim Form and the preliminary determination as to the gross amount of monetary relief that will be awarded to each Eligible Claimant. Such preliminary determination may be subject to change based on (a) whether and the extent to which EEOC's determinations as to eligibility and ranking are modified pursuant to the objection process provided for in this Decree, and/or (b) the amount of additional interest that has accrued to the Claim Fund between the date on which EEOC

renders its determinations pursuant to this Paragraph and the date on which the Claim Fund is actually distributed to Eligible Claimants.

26. **Notification of Eligibility:** Within ninety (90) days after the deadline for receipt by EEOC of returned Claim Forms, EEOC shall mail to each person from whom it has received a Claim Form a letter containing the following information: (a) whether she has been designated an Eligible Claimant; (b) if so designated, the preliminary determination as to the gross amount of monetary relief to which such person will be entitled; and (c) her opportunity to object to EEOC's determinations in accordance with the provisions of this Decree. The letter will also inform each Eligible Claimant that any monetary payments she may receive will be subject to mandatory federal income tax. Claim Forms received by EEOC shall be treated as confidential and not disclosed to Monfort or any other person or entity, except that such Claim Forms may be submitted confidentially to the Special Master or the Court in accordance with the claims process set forth in this Decree.

27. **Objection Procedure:** Any claimant whose Claim Form is timely received by EEOC and who desires to object to an EEOC determination concerning eligibility or the preliminary determination as to the gross amount of monetary relief to which such person will be entitled may do so by submitting to EEOC, within twenty-one (21) days after the date of mailing of EEOC's determination, a written objection that specifically states the basis for the objection. Within two (2) weeks after receipt of such written objection, EEOC shall review its determination as to eligibility and/or gross amount of monetary relief and either modify its

determination or deny the objection and submit the objection to a Special Master, who shall be nominated by EEOC, and if acceptable to the Court, approved by the Court.

28. The Special Master shall promptly consider each written objection he or she receives. Within twenty-one (21) days after receiving from EEOC any objections made by a claimant, or as soon thereafter as is practicable, the Special Master shall render a final determination as to whether the objection claimant is an Eligible Claimant and/or the appropriate gross amount of monetary relief to which the objecting claimant should be entitled. The Special Master shall change the gross amount of monetary relief to which the objecting claimant should be entitled only upon finding that EEOC's initial determination for such person constituted a gross deviation from the EEOC's application of the provisions contained in Paragraphs 20-21, above. The Special Master shall notify, in writing, both EEOC and such objecting claimant of that final determination, which shall be binding upon EEOC and the objecting claimant.

29. **Notification of Final Distribution Amount and Release of Claims:** Within twenty-one (21) days after receiving notification of the Special Master's final determinations for all claimants who submitted objections, the EEOC shall mail to each Eligible Claimant, including those individuals specifically identified in Paragraph 22, above, a letter notifying her of the gross (pre-tax) amount of the payment to which such Eligible Claimant was finally determined to be entitled ("the Final Gross Settlement Amount"), and further notifying each Eligible Claimant that in order to receive any monetary payments under this Decree, she must execute and deliver to EEOC a Release (a copy of which is attached hereto as Exhibit "E"). The

letter will inform each Eligible Claimant that such Release must be signed and returned to EEOC so that it is actually received by EEOC no later than thirty (30) days after the date on which EEOC mailed the Releases to such individuals.

30. ANY ELIGIBLE CLAIMANT, INCLUDING THOSE INDIVIDUALS SPECIFICALLY IDENTIFIED IN PARAGRAPH 22, ABOVE, WHOSE EXECUTED RELEASE IS NOT ACTUALLY RECEIVED BY EEOC WITHIN THIRTY (30) DAYS AFTER THE DATE EEOC MAILED SUCH RELEASE TO SUCH ELIGIBLE CLAIMANT WILL BE INELIGIBLE FOR AND FOREVER BARRED FROM RECEIVING ANY MONETARY RELIEF UNDER THIS DECREE OR FROM MONFORT.

31. Within seven (7) days after the time provided for returning Releases to EEOC has expired, EEOC shall mail to Monfort a list of those Eligible Claimants who timely executed a Release, a copy of the signed Release, along with the Final Gross Settlement Amount each such person is entitled to receive. Monfort shall mail Internal Revenue Forms 1099 and settlement checks drawn on the Claim Fund to each person on the EEOC's list within thirty (30) days of receiving the list and the Releases. Within three (3) days after all such payments have been made, a copy of the checks shall be transmitted to the EEOC.

32. All amounts distributed from the Claim Fund constitute "compensatory damages," under the Civil Rights Act of 1991, 42 U.S.C. § 1981a. No payment made pursuant to this Consent Decree shall constitute or be considered to be back-pay.

33. If Monfort fails to tender payment or otherwise fails to timely comply with the terms of Paragraphs 16, 21 and 30, above, Monfort shall:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts; and
- b. Bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the defendant.

34. Neither the EEOC, Trevino nor Monfort shall contest the validity of this Consent Decree nor the jurisdiction of the federal district court to enforce this Consent Decree and its terms or the right of either party to the Consent Decree to bring an enforcement action upon breach of any term of this Consent Decree by either such party. Nothing in this Consent Decree shall be construed to preclude the EEOC from enforcing this Consent Decree in the event that Monfort fails to perform the promises and representations contained herein. The EEOC shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court. The EEOC also reserves the right to seek contempt sanctions for non-payment and non-compliance with this Consent Decree.

Eligible Claimants shall have no independent right to enforce any of the terms of this Consent Decree and nothing in this Consent Decree is intended to confer upon any person or entity other than the EEOC and Monfort the right to seek enforcement of this Consent Decree.

Costs

35. The parties to this Consent Decree agree to bear their own costs associated with the litigation of the above-referenced Complaint and the administration of this Consent Decree.

36. Neither EEOC, Trevino nor Monfort shall seek reimbursement for any outstanding litigation costs.

37. All costs associated with the distribution of the Claim Fund to Eligible Claimants shall be paid by Monfort, including without limitation, all costs associated with the creation of the Claim Fund, all costs related to the issuance and mailing of checks from the Claim Fund. The costs relating to the Special Master shall be paid by Monfort, not to exceed \$15,000.00, and if such costs should exceed the \$15,000.00, then such costs shall be paid from the interest earned from the Claim Fund.

Other General Provisions

38. **Computation of Time Periods:** In computing any period of time prescribed or allowed by this Consent Decree, unless otherwise stated, such computation shall be made consistent with the Federal Rules of Civil Procedure.

39. **Persons Bound by Decree:** The terms of this Consent Decree are and shall be binding upon the EEOC, Mary Trevino, all eligible Claimants, and Monfort, including all of its present and future representatives, agents, directors and officers.

40. **Notices:** Except as otherwise provided for in this Consent Decree, all notification, reports and communications to the parties required under this Consent Decree shall be made in writing and shall be sufficient if hand-delivered or sent by first-class mail to the following persons:

For EEOC: Jeffrey C. Bannon, Regional Attorney
207 South Houston Street, Dallas, Texas 75202

Ronetta J. Francis, Senior Trial Attorney
207 South Houston Street, Dallas, Texas 75202

For Monfort: Billy Wolfe, Esq.
Carr, Hunt, Wolfe & Joy, L.L.P.
1001 Texas Avenue, Lubbock, Texas 79408

A. Stevenson Bogue
McGrath, North, Mullin & Kratz, P.C.
222 South Fifteenth Street, Suite 1400
Omaha, Nebraska 68102

For Trevino: William E. Kelly, Esq.
1401 Fourth Avenue, Canyon, Texas 79015

41. **Construction:** The terms of this Consent Decree are the product of joint negotiations and shall not be construed as having been authored by one party rather than another.

42. **Integration:** This Consent Decree constitutes the entire agreement between Monfort, Trevino and EEOC hereto with respect to the matters herein and it supersedes all negotiations, representations, comments, contracts and writings prior to the date of this Decree.


SO ORDERED, ADJUDGED AND DECREED this 17th day of

August, 1999


U.S. DISTRICT COURT JUDGE

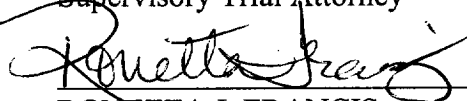
APPROVED AS TO FORM AND SUBSTANCE:

Counsel for the Plaintiff,
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION



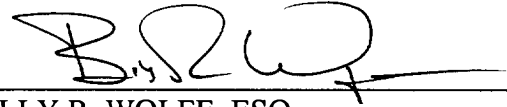
JEFFREY C. BANNON
Regional Attorney
Connecticut State Bar No. 301166

ROBERT A. CANINO
Supervisory Trial Attorney

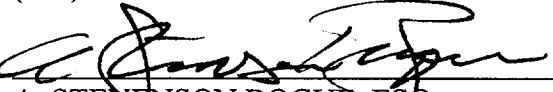


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EXHIBIT A

**NOTICE AS REQUIRED UNDER TITLE VII
OF THE CIVIL RIGHTS ACT OF 1964. AS AMENDED**

This NOTICE to all employees of Monfort, Inc. is being posted at Monfort's Cactus, Texas facility as part of a Consent Decree among Monfort, Inc., Mary C. Trevino and the United States Equal Employment Opportunity Commission.

1. Federal Law requires that there be no discrimination against or harassment of any employee or applicant for employment because of that person's race, color, religion, sex, national origin, age or disability with respect to hiring, compensation, promotion, discharge or other terms, conditions or privileges of employment.
2. Monfort, Inc. strongly supports and will comply with such Federal Law in all aspects and it will not take any action against employees because they have exercised their rights under the law by filing charges with the United States Equal Employment Opportunity Commission.
3. Monfort, Inc. will not tolerate sexual harassment, sex-based harassment and/or discrimination or retaliation in the workplace. Employees are now put on notice that the first violation of the company's sexual harassment policy will subject an employee found to have violated the policy to disciplinary action.
4. Employees may report violations of the company's sexual harassment policy to [designated company official/department/telephone number/extension] and/or the Dallas District Office of the United States Equal Employment Opportunity Commission, 207 South Houston Street, Third Floor, Dallas, Texas 75202 (214-655-3355).
5. This NOTICE will remain posted until [August 31,] 2001, as provided in the Consent Decree.

EXHIBIT B

MONFORT CLAIM FORM

Name:

Current Address:

Dates of Employment with Monfort:

List every job you held while working at Monfort. Please include the dates you worked at each position:

Do you believe that you were sexual harassed while you worked at Monfort?

Describe in detail all incidents of sexual harassment that you experienced while working at Monfort. (use additional sheets of paper if necessary):

Describe what effect these incidents of sexual harassment had on you:

Did you seek counseling or any other medical treatment as a result of how the sexual harassment that you experienced at Monfort made you feel? If so, describe the treatment you received.

Did you report any of these incidents of sexual harassment to any manager, supervisor, union representative, human resource personnel at Monfort or any government agency? If so, for each report, please state the date of the complaint, the person to whom you reported the sexual harassment, the nature of the incident reported, whether the report was in writing and whether any action was taken on report(s) of sexual harassment.

Were there any witnesses to any of the sexual harassment you experienced? If so, please give the name of each witness and what they saw or heard.

If you are no longer working for Monfort, please state the reason(s) why.

If you stopped working for Monfort because you were sexually harassed, please list each job you have had, including how much money you made at each job, since you left Monfort. If at any time after you left Monfort you were unemployed, please state whether or not you were looking for a job.

Do you have any documents that support your claim of sexual harassment. If so, please attach copies of all those documents to this form.

By submitting this form and signing below, I authorize Monfort to release my personnel file to the EEOC. I also agree that the Claim Fund established pursuant to the Consent Decree filed in the United States District Court for the Northern District of Texas, Amarillo Division in EEOC v. Monfort, Inc., Civil Action No. 2-98-CV-327, shall be my exclusive remedy under Title VII of the Civil Rights Act of 1964 on any claim of sexual harassment, sex discrimination and/or retaliation arising between March 17, 1995 and the date indicated below. I also understand that in the event EEOC awards me damages, I will have to execute a release of claims against Monfort in order to receive that award from the Claim Fund.

Claimant

Date

Equal Employment Opportunity Commission v. Monfort, Inc.

Instructions for Completing Claim Form

The attached form must be completed if you are making a claim under the terms of the Consent Decree in EEOC v. Monfort. It is important that each question be answered completely. Use additional sheets of paper, if necessary. If you use additional sheets of paper, please number your responses to correspond to the questions on the Claim Form. The following instructions provide an explanation of the questions asked on the Claim Form. Please read the entire instruction sheet before starting the Claim Form.

Positions Held

Please list the title of each job and each department you have worked in while working at Monfort. Please also list the dates that you worked in those jobs and the pay that you received in each position.

Do you believe that you were sexually harassed while you worked at Monfort?

Federal employment laws prohibit sexual harassment in the workplace. The following are examples of sexual harassment: (1) A supervisor or manager asks you for sex, touches or attempts to touch you in a sexual manner, and tells you that some benefit of your job, such as you getting a raise, promotion or transfer, is dependent upon you agreeing to sex or allowing the supervisor or manager to touch you; (2) Any co-worker uses rude, sexual language at work or touches or attempts to touch you in a sexual manner, or otherwise treats you more harshly because you are a female and this behavior makes it harder for you to come to work and do your job. If what you have experienced at Monfort fits either of these examples, you should answer, "YES."

Describe in detail all incidents of sexual harassment that you experienced while working at Monfort.

In order to assist the EEOC in evaluating your claim, you should describe in as much detail as possible each incident of sexual harassment that you experienced at Monfort. You should include dates, names of witnesses or people you told about the incidents and a description of what happened. Please use additional sheets of paper if necessary.

Describe what effect these incidents of sexual harassment had on you.

If a supervisor requested sexual favors from you, please explain how you responded to the request and what happened to you as a result of your response. If you were subjected to hostile work environment harassment, please describe whether the harassment affected your desire or ability to perform your job. If the sexual harassment you experienced at Monfort had any effect on you at home, or in any other relationships (family, friends, church), please tell us about that also.

Did you seek counseling or any other medical treatment as a result of how the sexual harassment that you experienced at Monfort? If so, describe the treatment you received.

If you experienced sexual harassment, federal employment laws allow for you to receive any money that you spent seeing a doctor or counselor. The EEOC must know the kind of treatment you received and how long you were seeing a doctor or counselor.

Did you report any of these incidents of sexual harassment to any manager, supervisor, union representative, human resource personnel at Monfort or any government agency? If so, for each report, please state the date of the complaint, the person to whom you reported the sexual harassment, the nature of the incident reported, whether the report was in writing and whether any action was taken on report(s) of sexual harassment.

If you complained to Monfort about harassment, the EEOC needs to know how the company responded to your complaint. In order to assist the EEOC, please tell us to whom you complained about the incident, the date you complained, the facts of your complaint and whether Monfort took any action to correct the problem. If you complained to any governmental agency, such as the EEOC, please give us the details of that complaint also.

If you are no longer employed by Monfort, state the reason(s) you left your employment with Monfort.

If the reason you left your employment with Monfort was either resignation or an involuntary termination, you should explain whether the circumstances surrounding the end of your employment with Monfort included your belief that you experienced sexual harassment.

If you stopped working for Monfort because you were sexually harassed, please list each job you have had, including how much money you made at each job, since you left Monfort. If at any time after you left Monfort you were unemployed, please state whether or not you were looking for a job.

If the EEOC determines that you were sexually harassed while you worked at Monfort, you may qualify to participate in the Claim Fund. In order for the EEOC to determine how much money you may be entitled to, please describe your efforts to get another job after you stopped working for Monfort.

Do you have any documents that support your claim of sexual harassment. If so, please attach copies of all those documents to this form.

If you have any documents you believe are in any way related to your claim, you should submit copies to the EEOC along with this Claim Form.

In order to properly evaluate your claim, the EEOC may need to review your personnel file at Monfort. By signing this Claim Form, you authorize Monfort to release your personnel file to the EEOC. Please understand that by signing the Claim Form, you agree that any money you may receive will be the only remedies that you will be entitled to. Further, in order to receive this money, you will have to sign a document, releasing Monfort from any other claims of sexual harassment that you may have.

EXHIBIT C

MONFORT CLAIM EVALUATION FACTORS

- 1) Complained to Management
 - a) If Eligible Claimant complained and company did not respond or otherwise address the problem: 20 points
 - b) If Eligible Claimant complained and company promptly responded to complaint or otherwise acted to address the problem: 5 points
 - c) No Complaint: 0 points

- 2) Seriousness of Harassment
 - a) Aggressive, Assertive Physical Touching (kissing, grabbing, biting, etc.), Use of Fear and/or Intimidation, Use of Animal Body Parts: 20 points
 - b) Passive Physical Touching (Brush-by) or Verbal Only (taunting, cat calls, rude sexual remarks): 0 point

- 3) Number of Times Eligible Claimant Complained of Sexual Harassment
 - a) If Eligible Claimant complained to company two or more times: 15 points
 - b) If Eligible Claimant complained to company less than two times: 0 point

- 4) Repeated Behavior
 - a) If Eligible Claimant asserts repeated behavior in Claim Form: 15 points
 - b) If Eligible Claimant asserts an isolated incident in Claim Form: 0 point

- 5) Corroboration
 - a) Witnesses, Supporting Documentation: 20 points
 - b) None: 0 point

- 6) Emotional Damage
 - a) Reported emotional distress, missed work, sought treatment: 20 points
 - b) No reported distress: 0 point

- 7) Personal Harassment or Harassment by Supervisor
 - a) If Eligible Claimant was singled out or targeted for harassment OR propositioned for sex by her supervisor: 15 points
 - b) If Eligible Claimant was harassed as part of a group or random: 0 point

EXHIBIT D

DATE

NAME
ADDRESS
CITY, STATE, ZIP

Dear _____:

I am writing to inform you that the Equal Employment Opportunity Commission ("EEOC") and Monfort, Inc. have reached a settlement of claims against Monfort for sexual harassment alleged to have occurred at its Cactus, Texas facility. The terms of the settlement are contained in a Consent Decree filed in the United States District Court for the Northern District of Texas, Amarillo Division in EEOC v. Monfort, Inc., Civil Action No. 2-98-CV-327.

As part of the settlement, a Claim Fund has been established to provide monetary relief to victims of discrimination. Current and former female employees who were employed by Monfort at its Cactus, Texas facility between March 17, 1995 and [date of entry of Consent Decree], who believe that they were subjected to a hostile work environment because of their sex are entitled to make an application for an award from this Claim Fund.

To apply for an award from this fund, complete the enclosed Claim Form and return it to the EEOC at the following address: EEOC, 207 S. Houston Street, Third Floor, Dallas, Texas 75202, Attn: Ronetta J. Francis. In order to be eligible for an award, your Claim Form must be received by the EEOC no later than sixty (60) days from the date of this letter. [INSERT DATE OF LETTER]

No adverse action shall be taken by Monfort against any employee or former employee for making a claim to the Claim Fund. Federal law and the Consent Decree prohibit Monfort from retaliating against any person alleging sexual harassment or participating in any manner in this lawsuit.

If you have questions concerning this letter or the settlement, you may contact Ronetta J. Francis, EEOC Senior Trial Attorney at (214) 655-3334, or [Monfort Human Resource Representative] at [telephone number].

Sincerely,

Ronetta J. Francis
Senior Trial Attorney

EXHIBIT E

GENERAL RELEASE

(Employee)

(Address)

(City, State, Zip)

The above-named person shall be referred to in this Release as "Employee."

As a result of the Consent Decree filed in the United States District Court for the Northern District of Texas, Amarillo Division in EEOC v. Monfort, Inc., Civil Action No. 2-98-CV-327, it has been determined that Employee is entitled to a payment in the amount of \$ _____.

In exchange for that payment, Employee hereby releases and discharges Monfort, Inc. and any related or affiliated company or entity, along with their officers, agents and employees (collectively referred to as "Company"), from any and all claims involved in the above-styled and numbered cause arising out of any matter or event occurring contemporaneously with or before the execution of this General Release.

Employee acknowledges that she has been given a reasonable period of time, not to exceed twenty-one (21) days to execute this General Release. Further, as with any other legal document, should Employee wish to consult an attorney, she is free to do so.

THE UNDERSIGNED HAS READ THIS GENERAL RELEASE, FULLY UNDERSTANDS IT AND VOLUNTARILY EXECUTES THIS RELEASE.

EMPLOYEE:

BY: _____

DATE: _____

SUBSCRIBED AND SWORN to before me on this _____ day of _____ 1999.

Notary Public in and for the State of Texas

(Seal)

My commission expires:
