

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

2005 OCT 13 A 10:38

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
VERONICA BOWMAKER )  
v. )  
 )  
Plaintiff Intervenor )  
 )  
AVADO BRANDS, INC. d/b/a DON PABLO'S )  
RESTAURANT )  
 )  
Defendant. )  
\_\_\_\_\_ )

CLERK'S OFFICE  
FEDERAL BUILDING

BY \_\_\_\_\_ DEPUTY

CASE NO: RDB 04-CV-2094

CONSENT DECREE

This action was instituted by Plaintiff, the Equal Employment Opportunity Commission ("the Commission"), on July 8, 2004, against ("Defendant") pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., ("Title VII"). The Complaint alleged that Defendant breached a Negotiated Settlement Agreement it entered into with the Commission and Charging Party Veronica Bowmaker ("Bowmaker") on or about December 1, 2003, in settlement of Charge No. 120-2002-10318, which alleged that Defendant discriminated against Ms. Bowmaker by subjecting her to a racially hostile work because of her race (Black) and discharging her in retaliation for protesting the employer's discriminatory practices under Title VII. Prior to the filing of the instant litigation, Defendant filed a Chapter 11 petition for bankruptcy in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division. Thereafter on November 8, 2004, the Court having been advised by Defendant's

APPROVED this 13<sup>th</sup> day of OCTOBER 2005

Richard D. Bennett  
Richard D. Bennett  
United States District Judge

#15

Suggestion of Bankruptcy, ordered that the case be stayed, subject to reopening upon termination of the bankruptcy proceeding. The Bankruptcy Court thereafter approved Defendant's Joint Plan of Reorganization which became effective on May 19, 2005. The Court reopened this action July 5, 2005.

Accordingly, both the Commission and Defendant desire to resolve this action and all issues raised by the Complaint against said Defendant without the time and expense of contested litigation, and they desire to formulate a plan to be embodied in a Decree which will promote and effectuate the purposes of Title VII. This Decree shall not constitute an adjudication by this Court of the Commission's allegations and shall not be construed as an admission of Defendant or as a waiver by the Commission of any contentions of discrimination.

This Court has fully examined this Decree and finds that it is reasonable and just and in accordance with the Federal Rules of Civil Procedure and Title VII. Therefore, upon due consideration of the record herein, it is ORDERED, ADJUDGED AND DECREED:

1. This Decree resolves all issues and claims arising under Title VII alleged in the Complaint filed against Defendant by the Commission in this action based on breach of the Negotiated Settlement Agreement entered into by Defendant in settlement of a charge of discrimination filed by Veronica Bowmaker, Charge No.120-2002-10318.
2. The Parties agree and the Court finds that this Court has jurisdiction of the subject matter of this action, that venue is proper, and that all statutory and jurisdictional prerequisites to suit have been met. No party shall contest the validity of this Decree, or the jurisdiction of this Court to enforce this Decree and its terms.
3. Defendant, its officers, agents, assigns and all persons acting or claiming to act on

its behalf and interest are hereby enjoined in the state of Maryland from violating Title VII by engaging in any employment practice that discriminates against any person because of race by subjecting them to racial harassment and creating and maintaining a hostile work environment, or retaliation by discharging an employee because of their opposition to any practice made unlawful under Title VII.

4. Defendant shall pay Veronica Bowmaker nine thousand one hundred and sixty six dollars and twenty one cents (\$9,166.21) in monetary relief in accordance with the Defendant's Chapter 11 Joint Plan of Reorganization approved by the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No.04-31555-SAF and made effective May 19, 2005. Accordingly, Defendant recognizes the claim filed against it in the amount of nine thousand one hundred and sixty six dollars and twenty one cents (\$9,166.21) attached hereto as Exhibit A - Proof of Claim. Said claim shall be considered a general unsecured claim in Case No. 04-31555-SAF and is undisputed, admitted, noncontingent and fully liquidated. The payment of said claim shall be made pursuant to the distribution scheme set forth in Defendant's Joint Plan of Reorganization. This general unsecured claim will be paid at the same time and at the same pro rata rate as other general unsecured claims pursuant to said Plan in Case No. 04-31555-SAF. Defendant shall submit promptly to the Commission a complete copy of any plan and disclosure filed pursuant to Chapter 11 of the Bankruptcy Code and all present or future changes or amendments to any such plan or disclosure.

5. Defendant agrees to move and obtain from the U.S. Bankruptcy Court any order approving and authorizing the settlement of this instant controversy, as necessary or required. In the event the Bankruptcy Court does not approve this Consent Decree or issue an order allowing

for payment of this claim as detailed herein, the Commission may reinstate this action against Defendant without the need for filing a new complaint.

6. Within sixty (60) days of the entry of this Decree, Defendant will present no less than two (2) hours training to all management employees at its Maryland facilities concerning racial discrimination and harassment, prohibition against retaliation and other laws enforced by the Commission. The trainer's credentials and an outline of program materials shall be forwarded to the EEOC's attorney of record (30) thirty days prior to such training being conducted and the Commission shall provide any suggestion within ten (10) days of the training. A representative of the Commission shall be invited to attend such training. The training shall include an explanation of Title VII and its prohibitions against racial harassment, the responsibilities of human resources and managerial personnel who are informed or otherwise know of incidents of harassment, including taking prompt corrective action, recognition of harassment, and the prohibition against retaliating against employees who allege an incident of discrimination, race harassment or intimidation. Defendant shall forward to the Commission's attorney of record, at the EEOC's Baltimore District Office a list of all employees who have attended and completed training within ten (10) days of completion of such training. Defendant also agrees to promptly provide to each newly-hired managerial employee at its Maryland facilities an orientation to its race and national origin harassment and equal employment opportunity policies

7. Within ten (10) days after entry of this Consent Decree, Defendant will post in all places where notices to employees are customarily posted in the state of Maryland, and maintain for two years from the date of posting, a copy of the Notice attached hereto as Exhibit B and

made a part hereof. Said Notice shall be signed by a responsible official of Defendant with the date of actual posting shown thereon. Should the Notice become defaced, marred, or otherwise made unreadable, Defendant will ensure that a new readable copy of the Notice is posted in the same manner as heretofore specified. Upon posting, Defendant shall forward to the attorney of record at the Baltimore District Office a copy of the signed Notice and written certification that the Notice has been posted and a statement of the date of posting.

8. If either party to this Decree believes that the other party has breached a material provision of this Decree, it shall so notify the party, in writing, of the alleged breach. Upon receipt of written notice, a party shall have fifteen (15) days to either correct the alleged breach, and so inform the other party, or deny the alleged breach, in writing;

- a. If the parties remain in dispute they shall attempt in good faith to resolve their dispute;
- b. If the parties can not in good faith resolve their dispute, the party alleging a breach may file with the Court a motion to correct and remedy the breach;
- c. Each party shall bear its own costs, expenses and attorney's fees incurred in connection with such action; and
- d. Jurisdiction and venue to resolve any dispute arising under this Decree resides in the United States District Court for the District of Maryland.

9. The Court shall retain jurisdiction of this action to ensure compliance with this Decree. In all other respects, upon approval and entry by the Court of this Decree, this action is dismissed with prejudice and the Clerk of the Court is directed to remove

this action from the Court's calendar.

10. This Decree shall remain in full force and effect for a period of two (2) years from the date of approval and entry of this Decree by the Court

11. The Commission and Defendant shall bear their own costs and attorney's fees incurred in this action

The undersigned counsel of record in the above-captioned action hereby consent, on behalf of their respective clients, to the entry of the foregoing Consent Decree.

**FOR DEFENDANT:**

**REORGANIZED AVADO BRANDS, INC.**





BY THOMAS RICE  
COX SMITH MATTHEWS INCORPORATED  
112 East Pecan Street, Suite 1800  
San Antonio, Texas 78205  
(210) 554-5500

**FOR PLAINTIFF:**

**U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION**

GWENDOLYN YOUNG REAMS  
Associate General Counsel

  
\_GERALD S. KIEL  
Regional Attorney  
\_TRACY HUDSON SPICER  
Supervisory Trial Attorney  
\_CECILE C. QUINLAN  
Senior Trial Attorney  
EQUAL EMPLOYMENT  
OPPORTUNITY

**EXHIBIT "B"**

**NOTICE TO EMPLOYEES**  
**POSTED PURSUANT TO A CONSENT DECREE BETWEEN**  
**THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,**  
**AND AVADO BRANDS INC. d/b/a DON PABLO'S RESTAURANT**

Under Section 703(a) of Title VII of the Civil Rights Act of 1964, it is unlawful for an employer "to discharge any individual, or otherwise discriminate against any individual with respect to his ... terms, conditions, or privileges of employment because of such individual's race...."

Harassment on the basis of race violates Title VII. Ethnic slurs, epithets, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color constitutes unlawful harassment when the conduct creates an intimidating, hostile, or offensive working environment, interferes with the individual's work performance or when an employment decision is based on an employees acceptance or rejection of such conduct.

Under Section 704(a) of Title VII, "it shall be an unlawful employment practice for an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter."

**WE WILL NOT** engage in any acts or practices made unlawful by the above sections.

**WE WILL NOT** engage in any harassment of employees based on race.

**WE WILL NOT** discharge any employee or force an employee to resign based on race.

**WE WILL NOT** retaliate against employees for complaining about harassment, or discharge, or force resignation based on race.

WE WILL enforce our policy on race harassment.

By: \_\_\_\_\_

**Avado Brands, Inc. d/b/a Don Pablo's Restaurant**  
(Employer)

Dated: \_\_\_\_\_

Date Posting Expires: \_\_\_\_\_



**PROOF OF CLAIM**

In Re: Avado Brands, Inc., et al., Debtors  
 Chapter 11 Case No. 04-13555 (SAF) (Jointly Administered)  
 Name of Debtor Against Which Claim is Held: Case No. of Debtor: Case No.: 04-31609(SAF)  
 DON PABLO'S OPERATING CORP.

**NOTE:** This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name and address of Creditor:  
 ABI (MERGE DBF,SCHED\_NO) SCHEDULE #: 609018780\*\*\*\*\*  
 VERONICA BOWMAKER  
 C/O U.S. EEOC  
 BALTIMORE DISTRICT OFFICE  
 10 S. HOWARD ST., 3RD FLOOR  
 BALTIMORE, MD 21201  
 Telephone number: *ATTN: Cecile Quinlan*  
*EEOC Trial Attorney*  
*(410) 932-4239*

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  
*Believe claim also filed by Veronica Bowmaker*  
 Check box if you have never received any notices from the bankruptcy court in this case.  
 Check box if the address differs from the address on the envelope sent to you by the court.  
 Your claim is scheduled by the Debtors as:  
 \$0.00 UNSECURED UNLIQUIDATED DISPUTED CONTINGENT

Account or other number by which creditor identifies debtor:

Check here if this claim:  
 replaces  amends a previously filed claim, dated: \_\_\_\_\_

1. Basis for Claim  
 Goods sold  
 Services performed  
 Money loaned  
 Personal injury/wrongful death  
 Taxes  
 Other *EEOC charge NO. 120-2002-10318 (explain) from CP Veronica Bowmaker in violation of Title VII - Negotiated Settlement Agreement*  
 2. Date debt was incurred:  
*12/1/03*

3. If court judgment, date obtained:  
 Retiree benefits as defined in 11 U.S.C. § 1114(a)  
 Wages, salaries, and compensation (fill out below)  
 Last Four Digits of your SS#: \_\_\_\_\_  
 Unpaid compensation for services performed

4. Total Amount of Claim at Time Case Filed: \$ *9,166<sup>21/100</sup>* (unsecured nonpriority) + \_\_\_\_\_ (secured) + \_\_\_\_\_ (unsecured priority) = *9,166<sup>21/100</sup>* (Total)  
 If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.  
 Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.  
 Check this box if your claim is secured by collateral (including a right of setoff).  
 Brief Description of Collateral:  
 Real Estate  Motor Vehicle  
 Other \_\_\_\_\_  
 Value of Collateral: \$ \_\_\_\_\_  
 Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ \_\_\_\_\_  
 Unsecured Nonpriority Claim: \$ *9,166<sup>21/100</sup>*  
 Check this box if: a) there is no collateral or lien securing your claim, or b) our claim exceeds the value of the property securing it, or if c) none or only part of our claim is entitled to priority.

7. Unsecured Priority Claim.  
 Check this box if you have an unsecured priority claim  
 Amount entitled to priority \$ \_\_\_\_\_  
 Specify the priority of the claim:  
 Wages, salaries or commissions (up to \$4,650), earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).  
 Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).  
 Up to \$2,100 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).  
 Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).  
 Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).  
 Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(\_\_\_\_\_).

Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.  
 Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien.  
 DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.  
 Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.  
 Sign and print the name and title of any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):  
*12/1/04*

THIS SPACE IS FOR COURT USE ONLY  
 FILED / RECEIVED  
 MAY 27 2004  
 BANKRUPTCY SERVICES, LLC

*EXHIBIT A*

EEOC Form 5 (5/01)

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA  
 EEOC

120-2002-10318

**Maryland Commission On Human Relations**

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.) **Veronica Bowmaker** Home Phone No. (Incl Area Code) **(410) 655-8636** Date of Birth **09-13-1959**

Street Address **1709 Casser Road Randallstown, MD 21133** City, State and ZIP Code

Name of Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name **Avado Brands Inc. dba/Don Pablo's Restaurants** No. Employees, Members **500 or More** Phone No. (Include Area Code) **(410) 902-0300**

Street Address **Restaurant Park Owings Mills, MD 21117** City, State and ZIP Code

Name No. Employees, Members Phone No. (Include Area Code)

Street Address City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es))

RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN  
 RETALIATION  AGE  DISABILITY  OTHER (Specify below)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest **11-19-1999** Latest **06-15-2002**

CONTINUING ACTION

IF PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I was hired as a Server on November 19, 1999. I performed in that capacity until my discharge on or about June 15, 2002. Repetitively throughout the day since late in calendar year 2000, and continuing until my discharge, a management official applied racial epithets to me and made degrading racial comments in my presence. In compliance with company policy I put various General Managers on notice that the epithets and comments were offensive; but, they continued. Around early June 2002 I told the harasser that I was sick and tired of his comments. Within a few days I was discharged.

The employer has a harassment policy and procedure. It said I was discharged for repeated tardiness.

I believe I have been discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended, with respect to racial epithets and racial comments. I believe my discharge was because I participated in an activity protected by Section 704(a) of the same Statute.

I intend this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

8/21/02  
Date

*Veronica Bowmaker*  
Charging Party Signature

10-20-03 02:01pm From-EEOC Baltimore DO 410 962 4270 T-652 P.003/004 F-268

**EMPLOYMENT POLICIES AND PRACTICES**

1. **Non-Discrimination Provision**

Respondent agrees not to discriminate on the basis of race, color, gender, religion or national origin in all phases of employment, including recruitment, hiring, job assignment, training and other terms or privileges of employment.

2. **Policy**

- a. Respondent will provide no fewer than two (2) hours of training in federal laws prohibiting harassment and discrimination to its current management/supervisory employees. Respondent will provide equal employment opportunity and anti-harassment training to future management/supervisory employees;
- b. Respondent will furnish EEOC with written documentation, including a signed attendance list, that it has complied with paragraph (a) of this Agreement within five days of compliance;
- c. Respondent will post EEOC's poster in places visually accessible to applicants and employees of the Respondent;

**CHARGING PARTY RELIEF**

- a. Respondent agrees to pay Charging Party nine thousand dollars (\$9,000) in a check payable to Veronica Bowmaker. Respondent will issue a Form 1099 to Charging Party who will be solely responsible for making the appropriate filings with federal, state, and local taxing authorities.
- b. Respondent will not retaliate against the Charging Party or any other person(s) because the individual(s) provided information or assistance, or participated in any other manner, investigation, or proceeding relating to this conciliation agreement.
- c. Eliminate from Bowmaker's employment record any and all documents and entries relating to the facts and circumstances which led to the filing of the instant charge of discrimination and the related events which occurred thereafter.
- d. Respondent agrees to provide Charging Party with a neutral reference letter and also provide a neutral reference with regards to future employment reference inquiries.

7. Avado agrees to provide written notice to the Director of the Baltimore District

"

10/20/03 MON 14:03 [TX/RX NO 7102] 003

10-28-03 01:31pm From-EEOC Baltimore DO Case 1:04-cv-02094-RDB Document 15 Filed 10/12/2005 Page 10 of 13  
10/28/03 12:28 FAX 706 342 9283 Don Pahlon and Hope

10-08-03 08:48am From-EEOC Baltimore DO 410 862 4270 T-610 P 005/005 F-072

Office within 10 days of satisfying the obligation in paragraph (a) of subheading "Charging Party Relief" of the Agreement.

- 8. The parties agree that this Agreement may be specifically enforced in court and may be used as evidence in a subsequent proceeding in which any of the parties allege a breach of the Agreement.
- 9. In reliance on the promises made under subheading "Policy" paragraphs (a), (b), (c) and subheading "Charging Party Relief, paragraph (1) and (3), EEOC agrees to terminate the investigation which it has begun and not use the above referenced charge as the jurisdictional basis for a civil action under Title VII. EEOC does not waive or in any manner limit its right to investigate or seek relief in any other charge including, but not limited to, a charge filed by a member of the Commission against the Respondent

SIGNATURES

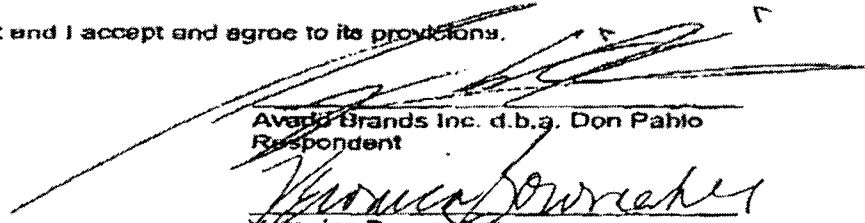
I have read this agreement and I accept and agree to its provisions.

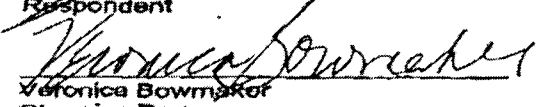
10/23/03  
Date

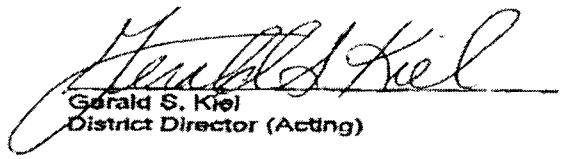
10/29/03  
Date

Approved on Behalf of the Commission:

12-1-03  
Date

  
Avara Brands Inc. d.b.a. Don Pahlon  
Respondent

  
Veronica Bowmaker  
Charging Party

  
Gerald S. Kiel  
District Director (Acting)

10/08/03 WED 08:50 (TX/RX NO 7024) @005

Received 10-28-03 12:25pm From-706 342 9283 To-EEOC Baltimore DO Page 003

Received 11-18-03 02:13pm From-410 821 7740 To-EEOC Baltimore DO Page 002

§ 1 §

# PAYCALC

§ 1 §

a program to calculate backpay with interest

## bowmaker

Interest Due at End of May 2004, compounded monthly *using IRS rates*  
*For calculating interest on unpaid taxes. 20 USC § 6621*

<u>Date</u>	<u>Backpay</u>	<u>Earnings</u>	<u>Net</u>	<u>Interest</u>
<b>bowmaker</b>				
12/2003	\$9,000.00	\$0.00	\$9,000.00	\$166.21
			\$9,000.00	\$166.21
			<b>Total = \$9,166.21</b>	
			\$9,000.00	\$166.21
			<b>Grand Total = \$9,166.21</b>	