

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EQUAL EMPLOYMENT OPPORTUNITY))	
COMMISSION,))	
Plaintiff,))	Civil Action No. 1:11-cv-00799-JCH/RHS
v.))	
EARLY BIRD MANAGEMENT))	
GROUP, LLC))	
d/b/a ABC Cake Shop & Bakery))	
Defendant.))	

CONSENT DECREE

I. RECITALS

1. This matter was instituted by Plaintiff, Equal Employment Opportunity Commission (“Commission” or “Plaintiff” or “EEOC”), an agency of the United States government, alleging that Defendant, Early Bird Management Group, LLC d/b/a ABC Cake Shop & Bakery subjected female employees to sexual harassment by an owner and forced some women to resign their employment because of the hostile work environment based on sex.
2. The Parties signatory hereto are the Plaintiff EEOC, and the Defendant, Early Bird Management Group, LLC d/b/a ABC Cake Shop & Bakery.
3. The Parties, desiring to settle this action by an appropriate Consent Decree (“Decree”), agree to the jurisdiction of this Court over the Parties and the subject matter of this action, and agree to the power of this Court to enter a Consent Decree enforceable against Defendant.

4. As to the issues resolved, this Decree is final and binding upon the Parties and their successors and assigns.

5. For the purpose of amicably resolving disputed claims, the Parties jointly request this Court to adjudge as follows:

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION

6. The Parties stipulate to the jurisdiction of the Court over the Parties and subject matter of this action, and have waived the entry of findings of fact and conclusions of law.

III. TERM AND SCOPE

7. **Term:** The duration of this Decree shall be four (4) years from the date of signing by the Court.

8. **Scope:** The terms of this Decree shall apply to all of Defendant's retail stores or facilities in New Mexico.

IV. ISSUES RESOLVED

9. This Decree resolves the claims alleged in the above-captioned lawsuit, and constitutes a complete resolution of all of the Commission's claims of unlawful employment practices under Title VII that arise from Charge of Discrimination Numbers 543-2009-01200C; 543-2009-01289C; and 543-2010-00095C, filed by Charging Parties Olivia Gatwood, Haven Avila, and Maureen Roskom.

10. The parties agree that this Consent Decree constitutes a complete resolution of the Charge of Discrimination currently pending with EEOC by Erica Escarcega, Charge No. 543-2012-00844. As a result of this settlement and Consent Decree providing relief to Ms. Escarcega, the EEOC investigation of the foregoing charge will be administratively closed as

“Settled with Benefits,” which closure will not result in Notices of Right to Sue being issued to Charging Party Escarcega.

11. Defendant and its officers, agents, employees, successors, and all other persons in active concert or participation with any of them will not interfere with the relief herein ordered, but shall cooperate in the implementation of this Decree.

V. MONETARY RELIEF

12. Defendant shall pay the gross sum of Two Hundred, Twenty Thousand (\$220,000) Dollars, (“the settlement amount”) to be distributed to Olivia Gatwood, Haven Avila, Maureen Roskom [Charging Parties], and a class of aggrieved females identified by EEOC as individuals entitled to relief pursuant to this Decree [Class Members]. The settlement amount of \$220,000 shall be paid pursuant to the terms of this Paragraph 12 and Paragraph 14. The first payment of One Hundred Twenty Thousand (\$120,000) Dollars shall be distributed to the Charging Parties and Class Members within ten (10) business days after receiving EEOC's Final Class Distribution List pursuant to Paragraphs 14.4 - 14.7 of this Decree. The second payment of One Hundred Thousand (\$100,000) Dollars shall be made in monthly installment payments and distributed to the Charging Parties and Class Members pursuant to this Paragraph and Paragraph 14.4 - 14.7 of this Decree. The monthly payments shall be made in equal installments of \$2,800 per month for thirty-five (35) months and one final payment of \$2,000, with each installment due on the fifth (5th) day of each month, beginning January 5, 2013, according the attached schedule of payments, Exhibit E and the EEOC’s Final Class Distribution List. The monthly payments required by this Decree will be secured by a stipulated judgment whereas the EEOC may retain judgment in the amount of \$100,000 in addition to any monies paid under this Consent Decree in the event Defendant fails to make any of the payments required by this Decree.

13. Defendant will not condition the receipt of individual relief upon Charging Parties Olivia Gatwood, Haven Avila, and Maureen Roskom, Erica Escarcega, or the class of aggrieved females' agreement to: (a) maintain as confidential the terms of this Decree or the facts of the case; or (b) waive their statutory right to file a charge with any federal or state anti-discrimination agency; or (c) promise not to reapply for a position at ABC Cake & Bakery.

14. EEOC retains the sole discretion to determine allocations of monetary relief to back-pay and compensatory damages and to determine each Class Member's individual allocations according to the claims process described below:

14.1. Class Distribution List. After notice to the Charging Parties and Class Members entitled to relief under this Decree and an opportunity for appeal (as provided in Paragraphs 14.3 B. and D. below), EEOC will provide Defendants, via email, a Final Class Distribution List in the form of an Excel spreadsheet, containing the following information for Charging Parties and each Class Member: name, mailing address, total claim share amount allocated for back-pay and for compensatory damages, and the amounts allocated for payment by the first payment under this Decree and any amounts due the Charging Parties or Class Members under the monthly installment schedule of payments.

14.2. Releases. In order to receive a settlement payment pursuant to this Decree, the Charging Parties and Class Members must sign a Release in the form attached as Exhibit D, and return the signed Release to EEOC by the acceptance/appeal deadline established by EEOC, or if appealed, within ten (10) business days after final resolution of the appeal by EEOC (as provided in Paragraph 14.3 B. below).

Class Members who fail to timely return the signed Release may be deemed to have rejected the settlement amount designated for their claims and will not be entitled to receive any payment from the settlement fund.

14.3. Appeals Process. A Charging Party or Class Member may appeal the EEOC's determination of claim share amount. Such appeals are limited to challenging the EEOC's application of the criteria set forth in Paragraph 14.3 A. below. Charging Parties and Class members may not challenge the Consent Decree or any of the terms herein.

A. Criteria. EEOC will determine claim shares for Charging Parties and Class Members based on the following criteria: (a) the Charging Parties' and Class Member's age or other vulnerability factors at the time of the alleged discrimination and/or constructive discharge; (b) the nature and extent to which the Charging Parties or Class Member was subjected to a hostile work environment based on sex; (c) the severity of any sexual harassment to which the Charging Party or Class Member was subjected; (d) the length of time the Charging Party or Class Member worked in the sexually hostile environment; (e) whether the Charging Party or Class Member made efforts to complain about the hostile conditions of employment; (f) whether the Charging Party or Class Member was actually or constructively terminated; (g) the nature and extent of emotional injury to the Charging Party or Class Member; (h) the specificity and verifiability of the Charging Party or Class Member's allegations; and (i) the extent to which the Charging Party or Class Member participated in and contributed to the EEOC's litigation effort.

B. Written Appeal to EEOC. A Charging Party or Class Member may appeal by delivering to EEOC's Regional Attorney Mary Jo O'Neill c/o Equal Employment

Opportunity Commission, Albuquerque Area Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102 or by Facsimile to (505) 248-5217, a written explanation of the basis for the appeal within the time period specified by the EEOC in the Notice(s) of Settlement provided to class members after entry of this Decree.

C. Informal Resolution Process. EEOC will consider and attempt to resolve each appeal and may undertake any additional investigation it deems necessary to resolution. If EEOC is able to resolve an appeal, EEOC will provide the appealing Charging Party or Class Member with a revised Release, if necessary, (Exhibit D), and the Charging Party or Class Member will have ten (10) business days to return a signed Release. The informal resolution process provided in this Paragraph 14.3.C will not continue for longer than ninety (90) days after entry of this Consent Decree. If there are no unresolved appeals, EEOC will provide Defendants with a Final Class Distribution List (as set forth in Paragraph 14.3 A. above), and will file a Notice that EEOC has provided Defendants a Final Class Distribution List.

14.4. Final Distribution of Class Settlement Fund. Within ten (10) business days after receiving EEOC's Final Class Distribution List, Defendant will send payments to class members in the amounts specified, and to the addresses specified in the EEOC's Final Class Distribution List. Beginning January 5, 2013 and continuing through January 5, 2016, Defendant will send the monthly installment payments to Charging Parties and class members according to the amounts specified for such monthly payments in EEOC's Final Class Distribution List.

14.5. Within three (3) business days after payments are mailed to payees, Defendant shall submit to EEOC a copy of the checks issued.

14.6. Tax Forms. Defendants shall issue an IRS Form W-2 for amounts designated as back-pay and a form 1099 to each Charging Party and Class Member for their settlement amounts designated as compensatory damages, and mail the form(s) to the Charging Party or Class Member at the address provided by EEOC on the Final Class Distribution List, unless otherwise notified by EEOC of a class member address change.

14.7. Administrative Costs. Defendant shall pay all of Defendant's administrative costs for the process of distributing the settlement fund to the Charging Parties and Class Members under this Consent Decree, including, but not limited to, postage, supplies, clerical services, accounting services, and tax return preparation incurred by Defendant in performing their duties under this Consent Decree.

VI. OTHER INDIVIDUAL RELIEF

15. To the extent necessary, Defendant shall expunge from the Charging Parties and class members' personnel files (a) any and all references to the allegations of discrimination filed against Defendant that formed the basis of this action; (b) any and all references to Charging Parties and class members' participation in this action; and (c) any and all documents that refer, make reference to, or relate to any alleged performance deficiencies documented after Charging Parties and class members' filed a charge of discrimination or otherwise indicated a desire to participate in EEOC's investigation of Defendant.

16. Within ten (10) days after entry of this Decree, Defendant shall provide a positive letter of reference in the form attached as Exhibit A.

17. Within ten (10) days after entry of this Decree, Defendant shall provide a sincere letter of regret to the Charging Parties and class members on company letterhead in the form attached as Exhibit B.

VII. EQUITABLE RELIEF

A. Injunctive Relief

18. Defendant, its officers, agents, successors, and other persons in active concert or participation with it, or any of them, shall not and will not engage in any employment practice which discriminates on the basis of sex.

19. Defendant, its officers, agents, successors and other persons in active concert or participation with them, or any of them, shall not and will not engage in reprisal or retaliation of any kind against any person because of such person's opposition to any practice made unlawful under the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Equal Pay Act, or the Genetic Information Nondiscrimination Act of 2008. Defendant shall not retaliate against a person because such person brings an internal complaint of discrimination with the Defendant; because such person files or causes to be filed a charge of discrimination with the Commission, or whose statements serve as the basis of a charge; or because such person testifies or participates in the investigation or prosecution of an alleged violation of these statutes. Defendant shall not retaliate in any manner against individuals identified as witnesses in this action or who assisted in the investigation giving rise to this action. Nor shall Defendant retaliate against any such persons identified as a witness or possible witnesses of discrimination in future investigations or proceedings.

20. Defendant will not require any employee to wear a uniform or any part of a uniform which contains any sexual language or pictures that is offensive to the employee. For example, an employee may object to wearing a shirt bearing the phrase "let go of my **Butt**-er cream" or some similar sexual phrase or picture. Employees will have the option to wear a shirt with no

comment, picture, or lettering other than “ABC Cake.”

B. EEO Policy Review

21. Within sixty (60) days of the entry of this Decree, the Defendant shall, in consultation with an outside consultant experienced in the area of employment discrimination law (“Consultant”), review its existing EEO policies to conform with the law and revise, if necessary.

The written EEO policies must include at a minimum:

- 21.1.** A strong and clear commitment to preventing unlawful sex discrimination and retaliation;
- 21.2.** A clear and complete definition of disparate treatment based on sex and retaliation;
- 21.3.** A statement that discrimination based on sex or retaliation is prohibited and will not be tolerated;
- 21.4.** A clear and strong encouragement of persons who believe they have been discriminated or retaliated against to report such concerns;
- 21.5.** The identification of specific individuals, with telephone numbers, to whom employees can report their concerns about discrimination, harassment, or retaliation in the workplace;
- 21.6.** The identification of specific individuals, with telephone numbers, to whom employees can report their concerns about discrimination, harassment, or retaliation in the workplace when such conduct is committed by owners, managers or supervisory personnel;
- 21.7.** An assurance that Defendant will investigate allegations of unlawful discrimination promptly, fairly, reasonably and effectively, using appropriate

investigators, and that appropriate corrective action will be taken by Defendant to make victims whole and to eradicate the unlawful conduct;

21.8. A description of the consequences, up to and including termination, that will be imposed upon violators of Defendant's anti-discrimination policies;

21.9. A promise of maximum feasible confidentiality for persons who report unlawful discrimination, harassment, and/or retaliation, or who participate in an investigation into allegations of discrimination, harassment and/or retaliation; and

21.10. An assurance of non-retaliation for persons who report unlawful discrimination, harassment and/or retaliation, and for witnesses.

22. The written EEO policies, reviewed and revised under Paragraph 21 above, shall be posted in a prominent location frequented by employees, at Defendant's facilities in Albuquerque, New Mexico and distributed to each current employee within thirty (30) days of the Court's entry of the Consent Decree. The written EEO policies shall be distributed to all new employees when hired. Defendant shall make the written EEO policies available in alternative formats as necessary for persons with cognitive and print disabilities that may prevent them from reading the policies. Alternative formats will include but not be limited to an audiotape format.

C. Investigations of Discrimination

23. Defendant shall promptly, reasonably, and appropriately investigate all complaints of discrimination, including complaints of sexual harassment in the workplace. The investigation must include at a minimum the following: (a) a finding of whether discrimination occurred; (b) a credibility assessment as appropriate; (c) interviews of all potential victims and witnesses identified, including the individual(s) alleged to have participated in or condoned the unlawful conduct; and (d) concurrent notes of the investigation, as appropriate. Defendant shall take

immediate appropriate corrective action to make discrimination victims whole, to discipline violators, and to eradicate the discrimination, as appropriate.

24. Defendant shall not retain documents related to the investigation in any of the complainant's personnel files. All disciplinary actions taken against employees for violation of Defendant's anti-discrimination policy will be retained in the violator's personnel file. In those cases in which no conclusion could be reached on the allegations, the investigation documents shall remain in the alleged violator's file.

D. Training

25. At least annually for the duration of the Consent Decree, Defendant shall provide EEO training for all its employees. Under this provision, employees will be trained at a minimum in the following areas: (a) the Defendant's policy and procedures for reporting alleged discrimination; (b) understanding the kind of conduct which may constitute unlawful discrimination or harassment; (c) the penalties of engaging in discriminatory behavior; and (d) Defendant's non-retaliation policy. All training under this Paragraph 25 shall be at Defendant's selection and expense. Training may be by live presentation, on-line interactive training, and/or computer training, or a combination of the foregoing. The training will be conducted as follows:

25.1. Non-managerial Employees: Defendant will provide non-managerial employees six bi-monthly, fifteen (15) minute meetings regarding Title VII's prohibitions on discrimination in employment at each of its locations during the first year of this Decree; four quarterly meetings the second year; three tri-annual meetings the third year and two bi-annual meetings the fourth year. Attendance will be mandatory for every employee on the days of such training. Each of these meetings will focus on Title VII's prohibitions on sex discrimination, sexual harassment and retaliation. This training for

all non-managerial employees may be conducted by a qualified outside vendor. In no circumstances, may any owner of Defendant conduct the training under this Paragraph 25.1.

25.2. Managerial and Supervisory Employees: Defendant will require all individuals who work in a managerial or supervisory capacity, including all owners or other individuals who have hiring authority, to receive at least eight (8) hours of training annually regarding Title VII and other federal anti-discrimination laws. Four (4) of the eight (8) hours must directly address sex discrimination, including sexual harassment, and two (2) of the eight (8) hours must be instruction in the proper methods of receiving, communicating, investigating (where applicable), and ameliorating discrimination.

Defendant shall emphasize with managerial and supervisory employees that, because of their position of power, such employees must be particularly vigilant not to discriminate, either consciously or because they rely on subconscious stereotypes; that they must be sensitive of how their actions or words might be perceived by subordinate employees; and that they must avoid the temptation to retaliate if a complaint is made, or might be made, against them. Additionally, Defendant will require employees newly hired or promoted into a managerial or supervisory position to complete the requisite two (2) hours of complaint-handling training and two (2) hours of sex discrimination-related training within thirty (30) days of being hired or promoted. The training under this Paragraph 25.2 must be provided by qualified outside vendors.

25.3. Individuals with Ownership Interest: All individuals who have an ownership interest in ABC Cake Shop & Bakery shall attend at least three hours of EEO training to be completed within six (6) months after entry of this Decree. Such training will be

conducted live by an outside vendor, not employed by Defendant. The trainer must be a qualified professional with the requisite skills and experience to acquaint the owners with the effects of actual and/or perceived sexual harassment upon the victim. Defendant shall be responsible for paying all fees associated with this training requirement. In addition, all owners shall receive four additional hours of training annually for the duration of the Decree relating to the proper methods of receiving, communicating, investigating (where applicable), and ameliorating discrimination, including the proper procedures for documenting and preserving evidence of discrimination, archiving the corporation's investigation of complaints, as well as detailing the consequences and result of the investigation where discrimination is found. The training under this Paragraph 25.3 must be provided by qualified outside vendors.

25.4. Training on Investigative Techniques: All employees with responsibility for responding to or investigating complaints of discrimination, shall be provided ten (10) additional hours of annual training instructing on accepted professional standards for receiving and investigating complaints of discrimination, including such matters as witness interview techniques, other evidence-gathering techniques, maintaining investigation notes and records, legal analysis of the evidence, and methods for eliminating and ameliorating violations of antidiscrimination law. The training under this Paragraph 25.4 must be provided by outside vendors.

26. Defendant agrees that the first such training session for each employee group identified in Paragraph 25 above, will take place within sixty (60) days after the Court's entry of this Decree. Defendant agrees that all personnel shall both register and attend the training sessions.

27. The Commission, at its discretion, may designate one or more Commission representatives to attend any of the training sessions described above, and the Commission representatives shall have the right to attend, observe, and fully participate in all of the sessions. Defendant shall provide the Commission with thirty-days (30) notice that a training session will be conducted.

E. Notice Posting

28. Within five (5) business days after the Court's entry of this Consent Decree, Defendant shall post in each of its stores, in a conspicuous place frequented by employees, the Notice attached as Exhibit C to this Decree. The Notice shall be the same type, style, and size as set forth in Exhibit C. The Notice shall remain posted for the duration of this Decree. If the Notice becomes defaced or illegible, Defendant will replace it with a clean copy. Defendant shall certify to the Commission, in writing, within ten (10) days of entry of this Decree that the Notice has been properly posted and shall provide recertification in each of the semi-annual reports required under the Reporting provisions of this Consent Decree.

VIII. Record Keeping and Reporting Provisions

29. For the duration of this Consent Decree, Defendant shall maintain all records concerning implementation of this Consent Decree, including all of the following:

- 29.1. Personnel files;
- 29.2. Payroll records;
- 29.3. Job Postings;
- 29.4. Work schedules; and
- 29.5. Complaints of sex discrimination and records documenting investigation of such complaints, including witness statements, documents compiled, findings, and remedial

steps.

30. The Commission shall have the right to interview any personnel employed by Defendant for the purpose of determining Defendant's compliance with the terms of this Consent Decree.

To ensure the free flow of information and that all conversations remain confidential, Defendant is not entitled to have a representative present at the interview of non-managerial employees.

31. For the duration of the Decree, Defendant shall provide semi-annual reports for each six-month period following the entry of the Decree. The reports shall be due thirty (30) days following the respective six-month period, except the final report which shall be submitted to the Commission eight weeks prior to the date on which the Consent Decree is to expire.

32. Reporting Requirements: Each report shall provide the following information:

32.1 Reports of Discrimination

For purposes of this Paragraph 32, the term "report of discrimination" will include any written or verbal complaint which alleges discrimination, or the witnessing of discrimination, based on sex, the suffering or witnessing of conduct which a supervisor or manager recognizes as presenting an allegation of sex discrimination, even if such terminology is not used by the complainant. For example, if a female employee reports that a male employee has made an offensive sexual comment, this should be recognized as a complaint of sexual harassment and/or gender discrimination even though the employee does not use the terms "harassment" or "discrimination," and regardless of whether the complaint is made orally or in writing. The report will include:

- a. The name, address and telephone number of each person making a complaint of sex discrimination to Defendant or to any federal, state, or local government agency.

- b. The name, address and telephone number of each person identified as a potential witness to the incident of discrimination.
- c. A brief summary of each complaint, including the date of the complaint, the name of the individual(s) who allegedly engaged in the discriminatory conduct, the Defendant's investigation and response to the complaint, the name of the person who investigated or responded to the complaint, and what, if any resolution was reached; and
- d. Copies of all documents memorializing or referring to the complaint, investigation, and/or resolution thereof.

32.2 Complaints of Retaliation

For purposes of this Paragraph, the term "complaint of retaliation" will include any written or verbal complaint which alleges retaliation for activity that is protected under the ADEA, the ADA, Title VII, the EPA, or GINA, or alleges retaliation for conduct which the Defendant recognizes as protected activity under any of those statutes even if the complainant does not use such terminology. The report shall include:

- a. The name, address and telephone number of each person making a complaint of retaliation to Defendant or to any federal, state, or local government agency.
- b. The name, address and telephone number of each person identified as a potential witness to the incident of retaliation.
- c. A brief summary of each complaint, including the date of the complaint, the name of the individual(s) who allegedly engaged in the retaliatory conduct, the Defendant's investigation and response to the complaint, the name of the

person who investigated or responded to the complaint, and what, if any resolution was reached; and

d. Copies of all documents memorializing or referring to the complaint, investigation, and/or resolution thereof.

32.3 Training

a. For each training program required under Paragraphs 25.1 conducted during the reporting period, Defendant shall submit a registry of attendance.

b. For each training program required under Paragraphs 25.2 and 25.3, and completed during the reporting period, Defendant shall provide a certificate of completion.

c. For each training program conducted by a trained and qualified vendor, Defendant will provide the following information: (a) a copy of the program agenda; and (b) the identity of the vendor; and (c) a summary of his or her qualifications.

32.4 Posting of Notice: Defendant shall recertify to the Commission that the Notice required to be posted under Section VII.G. of this Consent Decree has remained posted during the reporting period, or, if removed, was promptly replaced.

32.5 Policy Review: Defendant shall report on the status of the EEO policy review process required under Paragraph VII. B, above.

IX. RETENTION OF JURISDICTION AND ENFORCEMENT OF DECREE

33. This Court shall retain jurisdiction of this cause for purposes of compliance with this Decree and entry of such further orders or modifications as may be necessary or appropriate to effectuate equal employment opportunities for employees.

34. There is no private right of action to enforce Defendant's obligations under the Decree and only the Commission, or its successors or assigns may enforce compliance herewith.

35. The Commission may petition this Court for compliance with this Decree at any time during which this Court maintains jurisdiction over this action where the Commission has determined in good faith there is a question regarding compliance. Prior to any such filing, the Commission shall contact Defendant and explain their concern and provide fifteen (15) days to resolve the concern. 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.

36. Absent extension, this Decree shall expire by its own terms at the end of the 48 months from the date of entry without further action by the Parties.

X. EEOC AUTHORITY

37. With respect to matters or charges outside the scope of this Decree, this Decree shall in no way limit the powers of the Commission to seek to eliminate employment practices or acts made unlawful by any of the statutes over which the EEOC has enforcement authority, and do not arise out of the claims asserted in this lawsuit.

XI. COSTS AND ATTORNEY'S FEES

38. Each party shall be responsible for and shall pay its own costs and attorney's fees.

XII. NOTICE

Unless otherwise indicated, any notice, report, or communication required under the provisions of this Decree shall be sent by certified mail, postage prepaid, as follows:

For Plaintiff:

Loretta Medina
Senior Trial Attorney

D'Ontae Sylvertooth
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Albuquerque Area Office
505 Marquette Ave. NW, Ste. 900
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Telephone: (505) 248-5230
loretta.medina@eoc.gov
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For Defendant:

S. Charles Archuleta

LAW FIRM OF KELEHER & MCLEOD
201 Third St. NW, 12th Floor
Albuquerque, NM 87102
Telephone: (505) 346-4646
sca@keleher-law.com

XIII. SIGNATURES

39. The parties agree to the entry of this Decree subject to final approval by the Court.

SO ORDERED this 3rd day of January, 2013.

BY THE COURT:



United States District Judge

BY CONSENT:

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

Early Bird Management Group, LLC
d/b/a ABC Cake Shop & Bakery

By: _____
Mary Jo O'Neill
Regional Attorney

By: _____
Paul Bendiskas
Manager, Partner

Date: _____

Date: _____

APPROVED AS TO FORM:

Loretta Medina
Senior Trial Attorney

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sca@keleher-law.com

Attorney for Defendant

EXHIBIT A (Letters of Reference)

To Whom It May Concern:

_____ [Insert Charging Party or Class Member name] worked for Early Bird Management Group, LLC d/b/a ABC Cake Shop & Bakery (“ABC Cake”), in Albuquerque, New Mexico in _____ [Insert months/years of employment]. Ms. _____ held the position of _____ during her tenure with ABC Cake. Ms. _____ was a good employee of ABC Cake.

ABC Cake further thanks Ms. _____ for the contributions made while employed at ABC Cake and we wish her success in her future endeavors.

Sincerely,

Early Bird Management Group, LLC Official

EXHIBIT B (Letter of Apology)

RE: Early Bird Management Group, LLC d/b/a ABC Cake Shop & Bakery, CIV 1:11-cv-00799 JEC/RHS (D.NM).

Dear _____ :

On behalf of Early Bird Management Group, LLC d/b/a ABC Cake Shop & Bakery, (“ABC Cake”), I wish to express my sincere regret that you found your experience, while employed at ABC Cake, to be offensive and hostile to women.

Thank you for the contributions you made while employed at ABC Cake and we wish you success in your future endeavors.

Sincerely,

Early Bird Management Group, LLC
d/b/a ABC Cake Shop & Bakery
Paul Bendinkas, Owner

ATTACHMENT EXHIBIT C

NOTICE

The following notice is being posted pursuant to the terms of a Consent Decree reached between the Parties in EEOC v. Early Bird Management Group, LLC d/b/a ABC Cake Shop & Bakery (“ABC Cake”) filed in the United States District Court for the District of New Mexico, Civil Action No. 1:11-cv-00799

Management of ABC Cake wishes to emphasize the company’s fundamental policy of providing equal employment opportunity in all of its operation and in all areas of employment practices. ABC Cake seeks to ensure that there shall be no discrimination against any employee or applicant for employment on the grounds of race, color, religion, sex, pregnancy, national origin, age or disability. This policy extends to insurance benefits and all other terms, conditions and privileges of employment.

Pursuant to Title VII of the Civil Rights Act of 1964, it is unlawful for an employer to discriminate based upon the sex of an applicant or employee. Further, it is unlawful for any employer to retaliate against an employee because he or she has requested reasonable accommodation for disability or religion, opposed discriminatory employment practices, or because he or she has filed a charge of discrimination with any municipal, state or federal equal employment opportunity agency, or because he or she has participated in an investigation of a charge of discrimination.

ABC Cake respects the right of its employees and applicants for employment to work in an environment free from discrimination. Accordingly, ABC Cake reaffirms its commitment to complying with the strictures of Title VII of the Civil Rights Act of 1964, in that it is our policy to prohibit all discrimination based on sex.

Any employee who believes that he/she has suffered discrimination on the basis of sex, age, race, color, religion, pregnancy, national origin, or disability, has the right to contact the EEOC directly at 1-800-669-4000. In compliance with federal law, no official at ABC Cake will retaliate against an employee who makes an internal complaint of discrimination or who contacts the EEOC or its state counterpart.

This Notice shall remain posted for the term of four (4) years.

Early Bird Management Group, LLC d/b/a ABC Cake Shop & Bakery

By: _____

_____ Date

EXHIBIT D

CLASS MEMBER RELEASE

In consideration for \$_____ paid to me by Early Bird Management Group, LLC d/b/a ABC Cake Shop & Bakery, in connection with the resolution of *EEOC v. Early Bird Management Group, LLC d/b/a ABC Cake Shop & Bakery*, Civil Action No. 1:11-cv-00799, I waive my right to recover for any claims of sex discrimination arising under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, that I had against ABC Cake Shop & Bakery prior to the date of this release and that were included in the Title VII sex discrimination claims alleged in EEOC's complaint in *EEOC v. Early Bird Management Group, LLC d/b/a ABC Cake Shop & Bakery*, Civil Action No. 1:11-cv-00799 in the United States District Court for the District of New Mexico.

Date: _____

Signature: _____

EXHIBIT E

Schedule of payments per Paragraph 12.

	DATE	PAYMENT	BALANCE
			\$100,000.00
1	1/5/2013	\$2,800.00	\$97,200.00
2	2/5/2013	\$2,800.00	\$94,400.00
3	3/5/2013	\$2,800.00	\$91,600.00
4	4/5/2013	\$2,800.00	\$88,800.00
5	5/5/2013	\$2,800.00	\$86,000.00
6	6/5/2013	\$2,800.00	\$83,200.00
7	7/5/2013	\$2,800.00	\$80,400.00
8	8/5/2013	\$2,800.00	\$77,600.00
9	9/5/2013	\$2,800.00	\$74,800.00
10	10/5/2013	\$2,800.00	\$72,000.00
11	11/5/2013	\$2,800.00	\$69,200.00
12	12/5/2013	\$2,800.00	\$66,400.00
13	1/5/2014	\$2,800.00	\$63,600.00
14	2/5/2014	\$2,800.00	\$60,800.00
15	3/5/2014	\$2,800.00	\$58,000.00
16	4/5/2014	\$2,800.00	\$55,200.00
17	5/5/2014	\$2,800.00	\$52,400.00
18	6/5/2014	\$2,800.00	\$49,600.00
19	7/5/2014	\$2,800.00	\$46,800.00
20	8/5/2014	\$2,800.00	\$44,000.00
21	9/5/2014	\$2,800.00	\$41,200.00
22	10/5/2014	\$2,800.00	\$38,400.00
23	11/5/2014	\$2,800.00	\$35,600.00
24	12/5/2014	\$2,800.00	\$32,800.00
25	1/5/2015	\$2,800.00	\$30,000.00
26	2/5/2015	\$2,800.00	\$27,200.00
27	3/5/2015	\$2,800.00	\$24,400.00
28	4/5/2015	\$2,800.00	\$21,600.00
29	5/5/2015	\$2,800.00	\$18,800.00
30	6/5/2015	\$2,800.00	\$16,000.00
31	7/5/2015	\$2,800.00	\$13,200.00
32	8/5/2015	\$2,800.00	\$10,400.00
33	9/5/2015	\$2,800.00	\$7,600.00
34	10/5/2015	\$2,800.00	\$4,800.00
35	11/5/2015	\$2,800.00	\$2,000.00
36	12/5/2015	\$2,000.00	\$0.00