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# EEOC and Derek Davis, et al. v. J & R Baker Farms, LLC, J & R Farms Partnership, Jerod Baker, and Rodney Baker

Judge Hugh Lawson

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# EEOC and Derek Davis, et al. v. J & R Baker Farms, LLC, J & R Farms Partnership, Jerod Baker, and Rodney Baker

## **Keywords**

eeoc, derek davis, J & R Baker Farms, jerod baker, rodney baker, 7:14-cv-00136-HL, agriculture, national origin, race, african-american, hiring, termination, terms and conditions, disparate treatment, consent decree, Title VII, employment law

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

<b>EQUAL EMPLOYMENT</b>	)	
<b>OPPORTUNITY COMMISSION</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIVIL ACTION NO.</b>
	)	<b>7:14-CV-136</b>
<b>and</b>	)	
	)	
<b>DEREK DAVIS, ET. AL.</b>	)	
	)	
<b>Plaintiff-Intervenors,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>J &amp; R BAKER FARMS, LLC,</b>	)	
<b>J &amp; R FARMS PARTNERSHIP,</b>	)	
<b>JEROD BAKER, and RODNEY BAKER,</b>	)	
	)	
<b>Defendants.</b>	)	
<hr style="border: 1px solid black;"/>		

**CONSENT DECREE**

The Equal Employment Opportunity Commission (the “Commission”) instituted this action pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-5(f)(1) and (3) (“Title VII”), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. The Commission’s complaint alleged that J & R Baker Farms, LLC, and J & R Farms Partnership discriminated against American workers on the basis of their national origin and against African-American workers on the basis of their race and national origin. Thereafter, Plaintiff-Intervenors intervened through counsel, alleging violations of Title VII, 42 U.S.C. §1981 (“§1981”), and claims arising under the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §1801, *et seq.* (“AWPA”), and added Jerod Baker

and Rodney Baker as Defendants, such that J & R Baker Farms, LLC, J & R Farms Partnership, Jerod Baker, and Rodney Baker are collectively referred to herein as Defendants.

J & R Baker Farms, LLC, and J & R Farms Partnership completely deny that it discriminated in any way against American workers on the basis of their national origin and against African-American workers on the basis of their race and national origin and deny that it violated Title VII, §1981, AWPAA or any other applicable law or regulation. Likewise, the Commission does not disavow the allegations in the Complaint.

The Parties agree that settlement of these matters is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving this civil action. The Parties agree that this Decree is voluntarily entered into by the Parties and that it shall not constitute a finding on the merits of the case and shall not be construed as an admission by Defendants that they violated any laws.

The Parties agree that this Decree fairly resolves all of the issues raised in the Complaint and Complaint in Intervention. This Decree constitutes a complete resolution of any and all claims that have been made or could have been made by the Commission and Plaintiff-Intervenors in this action related to any employment-law issues arising under Title VII, §1981, AWPAA and all other claims of employment discrimination based on national origin or race at Defendants' operations from the Fall 2010 season to the present.

The Commission, Plaintiff-Intervenors, and Defendants hereby stipulate to jurisdiction of the Court over the parties and agree that the subject matter of this action is properly before the Court.

It is therefore the finding of this Court, made on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the

purpose and provisions of Title VII will be promoted and effectuated by the entry of the Consent Decree; and (3) this Consent Decree resolves all matters in controversy between the parties as provided in the paragraphs below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

**I. GENERAL PROVISIONS**

1. Defendants shall not discriminate against any person on the basis of national origin, race or any other protected category within the meaning of Title VII, including by discriminating in the hiring, termination, or terms and conditions of employment.

2. Defendants shall not discriminate or retaliate against any person because of opposition to any practice made unlawful under Title VII, or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding or hearing under that statute.

3. All claimants shall have the right to apply for and be considered for a job with Defendants without retaliation for participating in this action. Defendants represent that they have a normal business practice of excluding from employment any individual who was previously terminated for failing Defendants' drug tests.

4. "Claimant" or "Claimants" as used herein shall mean any of the individuals for whom EEOC seeks relief in this litigation, including Charging Parties, individuals represented by Georgia Legal Services, and non-represented individuals in the EEOC's identified class of aggrieved individuals.

5. This Decree is final and binding upon the Defendants, their successors and assigns.

**II. MONETARY RELIEF**

6. Defendants admit and stipulate to the entry of judgment against them in the amount of Two Hundred and Five Thousand Dollars (\$205,000) in favor of Plaintiff and Plaintiff-Intervenors as detailed in the attached Exhibit A. Defendants will make payments according to the schedule below:

- a. Within ten (10) days after the entry of the Consent Decree, Plaintiff-Intervenor counsel will provide Defendants and EEOC with a list of Claimant names, addresses, and payment amounts for Defendants' first payment totaling \$22,500. Defendants will make this payment within ten (10) days after Defendants receive this list from Plaintiff-Intervenor counsel.
- b. Within thirty (30) days after the entry of the Consent Decree, EEOC will provide Defendants with a payment schedule ("Payment Schedule") containing information for all subsequent payments under this Decree, including the name of the Claimants to be paid; the amount of each Claimant's payment; and an address to which the payment for each named Claimant should be sent.
- c. Subsequent payments will be made on or before the following dates in the following total amounts:

i.	November 30, 2016	\$22,500
ii.	May 1, 2017	\$22,500
iii.	November 30, 2017	\$22,500
iv.	May 1, 2018	\$25,000
v.	November 30, 2018	\$22,500
vi.	May 1, 2019	\$22,500
vii.	November 30, 2019	\$22,500
viii.	May 1, 2020	\$22,500.

7. The parties agreed that the payments made pursuant to the payment schedule as detailed in Exhibit A are compensatory damages under Title VII and also include AWPA statutory damages for the Intervenors and accordingly no wage payment withholding is

necessary. Defendants shall be responsible for any required tax reporting and will prepare 1099 forms each year in the amounts indicated in Exhibit A to this Consent Order.

8. If any checks mailed to one or more Claimants are returned to Defendants as undeliverable, Defendants shall notify EEOC (for all Claimants who did not intervene in this lawsuit) or Plaintiff-Intervenor counsel (for all Claimants who intervened in this lawsuit) within ten (10) business days of receiving the returned check. Upon notice from Defendants, the Commission and/or Plaintiff-Intervenor counsel shall have thirty (30) days to provide to Defendants a new address for the Claimant whose check was returned so Defendant may re-mail the check. Thereafter, Defendants shall mail each Claimant's check to the updated address provided by EEOC or Plaintiff-Intervenor's counsel within ten (10) business days of receipt of the updated address. If the check is returned undeliverable after the second mailing, Defendants shall have no obligation to attempt further delivery of the check for that scheduled payment, and the funds represented by the check shall become a part of the "undistributed settlement funds" referenced herein.

9. If any check sent by Defendants under this Decree is not returned to Defendants or is not cashed or otherwise negotiated within ninety (90) days of mailing to a Claimant, said check shall be cancelled and the funds to be paid pursuant to that check will become a part of the "undistributed settlement funds" referenced herein.

10. For any undistributed settlement funds which are not paid under the provisions set forth herein, the undistributed settlement funds will be paid to Southwest Georgia Community Action Council ("SGCAC"), a charity designated by EEOC for receipt of the undistributed settlement funds from this consent decree. Undistributed settlement funds from each scheduled payment must be paid to the charity by the first of the month preceding the next scheduled

payment under paragraph 6.c., so that undistributed settlement funds from payments made on or before November 30 of any year of the consent decree, will be paid to the charity on the following April 1, and undistributed settlement funds from payments made on or before May 1 of any year of the consent decree, will be paid to the charity on the following October 1. Defendants shall mail EEOC a copy of any checks mailed to or otherwise delivered to SGCAC within five days of mailing or delivery to SGCAC.

**III. EQUAL OPPORTUNITY IN HIRING**

11. Defendants shall ensure an equal opportunity for American and African-American employees to apply for all job openings, including for positions as tractor drivers, bus drivers, forklift drivers, packers, graders, and managers.

12. Defendants shall not automatically fill any jobs or positions at Defendants' facility with H-2A workers without giving full consideration to American workers for those positions. Defendants shall offer free barrack housing to U.S. and foreign applicants.

13. For each season through the completion of calendar year 2018 in which Defendants apply for an H-2A contract, Defendants will extend offers of employment as provided under the H-2A regulations to any Claimant. The obligations set forth in this Decree related to interviewing at the Georgia Department of Labor shall only apply to Defendants when they utilize workers imported under the H-2A program.

14. For all seasonal job vacancies at Defendants through the end of calendar year 2018, Defendants shall make the vacancies known to the general public, including through job postings at the Georgia Department of Labor locations with postings placed in Moultrie, Tifton and Sylvester GDOL offices and two (2) other locations to be specified by counsel for Plaintiff-Intervenors. The job postings, as well as any job orders submitted to the Georgia DOL, shall

prominently display the following language: “All positions identified in this job order are open to all applicants regardless of race, national origin or ethnicity. All persons are encouraged to apply. When the packing shed is in operation, packing shed positions are open to local applicants.”

15. Defendants shall accept and consider employment applications submitted by the general public for all job vacancies and will make jobs available without regard to race or national origin of the applicant.

16. Throughout the completion of calendar year 2018, for each H-2A contract Defendants shall interview applicants at the Georgia Department of Labor (“Georgia DOL”) on at least one day a week for two weeks before the start of each H-2A season.

17. During the course of any H-2A contract for work at Defendants’ operations and, at a minimum for not less than four months each calendar year through the end of year 2018, Defendants shall provide one motor vehicle of sufficient seating capacity to transport employees roundtrip between Moultrie, Georgia, and Defendants’ facility on work days. The vehicle will pick up workers in Moultrie, Georgia, with a single stop at the Walmart parking lot, or at another site in or near Moultrie acceptable to Plaintiff-Intervenors if Walmart objects to the use of their parking lot. Throughout each H-2A season, the vehicle will make stops at the identified site and will return the workers to that same site promptly at the end of each work day. Defendants will make one trip in the morning from the pickup site and one trip at the end of the work day for those riding the vehicle to work.

18. Defendants shall establish a time for the pick-up of employees at each site identified pursuant to paragraph 17 *supra* at the start of each week. The time for the pick-up shall be communicated to each incumbent employee and each new hire on the Thursday, and

repeated on the Friday, of the preceding week. The time for pick-up shall also be posted at the Georgia Department of Labor by close of business on Thursday of the preceding week.

**IV. EQUAL OPPORTUNITY FOR TRAINING AND ACCLIMATION**

19. For each season through calendar year 2018, Defendants shall provide each employee with 40 work hours of acclimation to the work, including training, before applying any production standard to the employee or otherwise subjecting the employee to adverse employment actions based the employee's productivity.

20. If production standards are utilized by Defendants, said production standards shall be equally applied to all employees performing the same work.

21. If Defendants apply a production standard to any field worker through the end of calendar year 2018, Defendant shall provide every employee with written notice of the production standard at the time of his or her hire. The notice will specifically state that Defendants will not terminate any employee for failing to meet a production standard during the employee's first forty hours of work.

22. Defendants shall not terminate any employee for failing to meet production standards unless the employee has failed to meet the standards as measured across a full pay period that occurs after the employee's first 40 work hours during the season.

**V. PROHIBITION AGAINST SEGREGATED WORKFORCE**

23. All buses and other transportation provided by Defendants at, to or from its farm shall be operated without segregation of workers based on race or national origin.

24. Except as provided in Paragraphs 17 and 18 *supra*, all of Defendants' field workers, including those staying in Defendants' housing, shall board the buses in the area by the bucket trailers and away from locations directly adjacent to the barrack housing located on the

farm. Defendants' shall instruct bus drivers to allow workers onto the busses only at the above location.

25. All job assignments shall be made without regard to race or national origin, including those assignments involving field and packing shed work.

**VI. NON-DISCRIMINATION POLICY AND RELATED TRAINING**

26. No later than August 1, 2016, Defendants shall adopt, implement, and distribute a formal, written anti-discrimination policy, which shall include but not be limited to the following: an explanation of the requirements of the federal equal employment opportunity laws, including Title VII and its prohibition against discrimination based on race or on national origin; procedures for reporting discrimination; and a procedure for the thorough and immediate investigation of employee complaints of discrimination. The policy will be drafted in both English and Spanish. Defendants shall distribute to each current employee a copy of the policy in the language of the employee's choice, no later than August 1, 2016. Defendants shall also distribute the policy to all persons hired for each season, in the language of the employee's choice, within five (5) business days of the start of each season. Through the end of calendar year 2018, Defendants shall distribute the policy to all new employees who are hired after the start of the H-2A season and review it with them at the time of hire.

27. Through the end of calendar year 2018, Defendants shall post a copy of both translations of the policy described in paragraph 26 in their office and the barracks at J & R Baker Farms location off Roundtree Bridge Road, Norman Park, Georgia, and shall also keep a copy of both translations of the policy posted in close proximity to Defendants' electronic timekeeping machine(s) (see paragraph 33 herein) in a place where it is visible to employees. If the policy becomes defaced or unreadable, Defendants shall replace it by posting another copy of

the policy. Within one hundred (100) days after the Consent Decree is entered, Defendants shall post the policy in accordance with this paragraph and notify the Commission that it has been posted.

28. Through calendar year 2018, Defendants shall provide an annual training program to all of its managers, supervisors and administrative employees in its Norman Park, Georgia office. The first training program for managers, supervisors, and administrative employees shall be completed no later than August 1, 2016. The training program shall include an explanation of the requirements of Title VII of the Civil Rights Act of 1964 and its prohibition against race and national origin discrimination in the workplace. Each training program shall also include an explanation of Defendants' policy referenced in paragraph 26 above, and an explanation of the rights and responsibilities of employees and managers under the policy. Defendants will make the training materials and a list of attendees to the Commission within 15 days of each training.

29. Through calendar year 2018, Defendants shall train all employees within ten (10) days of the start of each H-2A season. The first training for field employees shall be completed no later than September 30, 2016. Each subsequent training program shall be conducted at approximately one-year intervals. Each training program shall also include an explanation of Defendants' policy referenced in paragraph 26 above, and an explanation of the rights and responsibilities of employees and managers under the policy. Defendants shall provide a copy of training materials and a list of attendees to the Commission with 15 days of each training session.

30. Through calendar year 2018, in addition to the field employee training noted in Paragraph 29 above, Defendant shall also distribute a handout to all field employees within ten (10) days of the start of each H-2A season. The handout shall be provided in both English and

Spanish and will include an explanation of the requirements of Title VII of the Civil Rights Act of 1964 and its prohibition against race and national origin discrimination in the workplace.

Defendants will provide a copy of the handout and related reports to EEOC to confirm its compliance with this paragraph within 15 days of the start of each H-2A season.

**VII. POSTING OF EMPLOYEE NOTICE**

31. Beginning within thirty (30) days after the entry of this Consent Decree by the Court, and continuing throughout the end of calendar year 2018, Defendants shall conspicuously post the attached Employee Notice, marked Exhibit B, hereby made a part of this Consent Decree, in a place where it is visible to employees at its Norman Park facility. Exhibit B shall also be included in the body of all job postings, including but not limited to jobs posted through or at the Georgia DOL offices in Moultrie, Georgia. If a posted Notice, job posting or job order containing the Notice becomes defaced or unreadable, Defendants shall replace it by posting another copy of the Notice or job posting. Within forty-five (45) days after entry of this Consent Decree, Defendants shall notify the Commission that the Notice has been posted at its Norman Park facility pursuant to this provision. Within fourteen (14) days after Defendants submit a job posting or job order to any employment office or entity, including but not limited to the Georgia DOL, Defendants shall notify the Commission of the job posting or job order and state that the Notice was included in the text of the posting or order.

**VIII. SEASONAL REPORTING TO EEOC**

32. During the term of this Consent Decree, Defendants will maintain the following information and will make it readily available to the Commission upon request:

- A. List of persons hired by Defendants during the immediately preceding season, including name, address, phone number, race, national origin, and position(s) for which they were hired;
- B. List of applicants who applied for work but were not hired during the immediately preceding season, including name, address, phone number, race, national origin, position(s) applied for; date of denial, and reason for denial of employment;
- C. List of employees terminated by Defendants during the immediately preceding season, including name, address, phone number, race, national origin, position(s) held, date of termination and reason for termination; and
- D. List of workers or applicants who has raised any claim of discrimination based on race or national origin during the reporting period, including name, address, phone number, race, national origin, position(s) held, if any, description of the claim of discrimination, and statement of any resolution of the claim by Defendants.

**IX. ADDITIONAL RELIEF**

33. By August 1, 2016, Defendants will purchase and implement an electronic timekeeping system that tracks each individual field, packing, or tractor operator's work time using an individually assigned timekeeping card bearing a unique barcode or numerical code identifier, or other system that allows each worker to clock in/out and to accurately track his or her work hours. Defendants shall ensure that each worker is clocked in upon arrival to the place of work at the beginning of the workday and clocked out at the end of the workday, using the electronic timekeeping system. All timekeeping records shall be maintained for the Decree term and shall be made available to the EEOC for inspection and copying upon request.

34. Using the electronic timekeeping system, Defendants will properly record and compensate for all compensable work performed, including all compensable time spent planting or harvesting, time spent traveling between fields or work locations, and time that workers are engaged to wait, under either the applicable wage rate of the Fair Labor Standards Act, 29 U.S.C. § 206(a), or the H-2A program's Adverse Effect Wage Rate, 20 C.F.R. § 655.122(1), whichever rate is applicable during the given agricultural season.

35. Defendants agree that if they receive any inquiry about any Claimant from a potential employer, Defendants shall provide only data as to the dates of employment and position held.

**X. MONITORING PROVISIONS**

36. The Commission may review compliance with this Consent Decree. As part of such review, the Commission may inspect Defendants' facilities, buses and fields, as well as interview employees and examine and copy documents. The Commission agrees to coordinate with Defendants on conducting inspections of Defendants' premises. Specifically, the Commission will notify Defendants at least 72 hours prior to conducting any inspection of Defendants' facilities, buses and/or fields, or interviewing employees and examining documents. Notification shall be made to Jarod Baker via telephone at 229-324-8834 or Tina Lowery via email at tina3285@gmail.com. The Commission will also check in with Defendants' office prior to conducting any such inspection. The parties agree that Defendants may be present during any such inspection.

37. If at any time during the term of this Consent Decree, the Commission or Intervenors believes that Defendants are in violation of the Consent Decree, the Commission or Intervenors shall give notice of the alleged violation to Defendants. Defendants shall have five

(5) days in which to investigate and respond to the allegations. Thereafter, the parties shall then have a period of five (5) days or such additional period as may be agreed upon by them, in which to engage in negotiation regarding such allegations before the Commission or Intervenors exercises any remedy provided by law.

38. All notices to Defendants by the Commission pursuant to this Consent Decree shall be sent by electronic mail to: tina3285@gmail.com. If at any time during the term of this Consent Decree Defendants' designated point of contact changes, Defendants shall notify the Commission and provide contact information for a new designated point of contact within ten (10) days of the change.

39. All reports or other documents sent to the Commission by Defendants pursuant to this Consent Decree shall be sent by electronic mail to: (1) EEOC-ATDO-decree-monitoring@eoc.gov; or (2) if by regular mail to Regional Attorney, Equal Employment Opportunity Commission, Atlanta District Office, 100 Alabama Street SW, Suite 4R30, Atlanta, GA 30303.

**XI. TERM OF DECREE AND JURISDICTION**

40. The term of this Consent Decree shall be to the end of calendar year 2018 except as to the payment provisions which shall end upon full payment of the amount due under this Decree.

**July 6, 2016**  
\_\_\_\_\_  
Date

***s/ Hugh Lawson***  
\_\_\_\_\_  
Judge, U.S. District Court  
Middle District of Georgia

The parties jointly request that the Court approve and enter the Consent Decree:

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, Plaintiff

P. DAVID LOPEZ  
General Counsel

JAMES L. LEE  
Deputy General Counsel

GWENDOLYN YOUNG REAMS  
Associate General Counsel

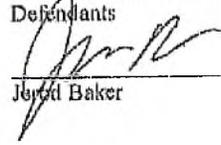
Ottell Ferrell-Edwards Bar # 141979  
Lynette A. Barnes  
Regional Attorney  
Equal Employment Opportunity Commission  
Atlanta District Office  
100 Alabama Street SW, Suite 4R30  
Atlanta, GA 30303  
*(For & with express permission of Lynette Barnes)*

GEORGIA LEGAL SERVICES

Dawson Morton  
Dawson Morton  
Georgia Bar No. 525985  
Lisa J. Krisher  
Georgia Bar No. 429762  
Isaac Raisner  
Georgia Bar No. 925103  
104 Marietta Street NW, Suite 250  
Atlanta, Georgia 30303  
Tel.: 404-463-1633  
Fax.: 404-463-1623

*Counsel for Plaintiff-Intervenors*

For J & R Baker Farms, LLC, J & R Farms Partnership, Jerod & Rodney Baker,  
Defendants

  
\_\_\_\_\_  
Jerod Baker