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STATE OF INDIANA  
CIVIL RIGHTS COMMISSION

DOCKET NO. EMra06010440  
EEOC NO. 24F-2007-00005

DONALD GILMORE,  
Complainant,

**FILE DATED**

v.

AUG 28 2009

BAKER CONCRETE CONSTRUCTION,  
INC.,

Indiana State Civil Rights Commission

Respondent.

**CONSENT AGREEMENT**

This Agreement between Complainant, Donald Gilmore (hereinafter called "Complainant") and Respondent, Baker Concrete Construction, Inc. (hereinafter called "Respondent"), is hereby entered into in full settlement of any and all claims ~~Complainant has asserted or could assert against Respondent, including the complaint filed by Complainant with the Indiana Civil Rights Commission (hereinafter called "the Commission") as Docket No. EMra06010440, and the charge filed with the U.S. Equal Employment Opportunity Commission (hereinafter called "EEOC") as Charge No. 24F-2007-00005.~~

The parties agree to and do settle the above matter as follows:

1. Complainant and Respondent shall forego their rights to a Public Hearing before the Commission and trial in the United States Federal Court system on Complainant's above-referenced complaint and charge. The parties agree to waive their rights to a formal determination by the Commission on any and all matters that were or might have been alleged as charges settled by this Agreement.

2. In consideration for the payments specified in Paragraph 7 below, Complainant releases Respondent from any cause of action, claim, damages (including exemplary or punitive damages), cost and/or expense (including attorneys' fees) that he has or may have, of any kind, whether legal, equitable or administrative, and whether known or unknown, occurring or arising prior to the date of this Agreement. This Release and Waiver of All Claims covers all possible claims, whether arising under any employment contract or agreement, policies, procedures, or practices of Respondent, state, federal, or local statute or ordinance (including all employment discrimination laws such as but not limited to Title VII of the Civil Rights Act of 1964 and any similar state laws, or common law). This Release is intended and understood to be a general release, meaning that Complainant is releasing every claim of any kind he might have against Respondent that may have occurred prior to the date of this Agreement.

3. Complainant agrees to withdraw, with prejudice, his complaint against Respondent pending before the Commission and the charge he filed with the U.S. Equal Employment Opportunity Commission, as well as any other complaint, charge, grievance, or action of law against Respondent. Complainant agrees that this Agreement, when fully executed, will constitute his request and motion for withdrawal of any such complaint, charge, grievance, or action to any such tribunal or agency.

4. Complainant and Respondent agree that the Commission may review compliance with this Agreement.

5. The parties acknowledge that execution of this Agreement does not constitute any admission on the part of Respondent that it has violated any law or committed any wrongful acts, nor does it constitute any less belief in the correctness of

the Complaint filed by Complainant. Such execution only represents the parties' desire to settle and conciliate this matter without the necessity and burdens of litigation.

6. Respondent agrees that there will be no discrimination or retaliation of any kind against Complainant because of the filing of this complaint with the Commission and charge with the EEOC.

7. On or before July 22, 2009, Respondent agrees to pay Complainant and to deliver to the Commission, as escrow agent, the payments listed below totaling Ten Thousand Dollars and No Cents (\$10,000.00), payable to Complainant only. The payments will be allocated as follows:

a. Five thousand dollars (\$5,000.00), by check made payable to Donald Gilmore, as a compromise amount to compensate him for any ~~alleged lost wages, less all applicable federal, state, and local income taxes~~ (which taxes will be withheld and paid over by Respondent to the respective taxing authorities); and

b. Five thousand dollars (\$5,000.00), by check made payable to Donald Gilmore, to compensate him for any alleged non-wage damages. Respondent will issue to Complainant an IRS Form 1099 for this amount.

8. Complainant agrees that he is solely responsible for any tax liabilities that may result from his receipt of the payments referenced in Paragraph 7(b). Complainant further agrees that Respondent will not be required to pay any further sums to him for any reason even if the tax liabilities to him are assessed in a fashion that he does not presently anticipate.

9. Complainant agrees to keep the terms of this Agreement (including the amount of the payments in paragraph 7 above) strictly confidential and further agrees not to disclose or permit disclosure of any information concerning this Agreement to any other person, company, or other entity of any kind whatsoever. Nothing in this Agreement shall prevent or bar Complainant from discussing the terms of this Agreement with his spouse, if any, the Commission, or as otherwise required by law.

10. Respondent agrees to remove any reference to the circumstances giving rise to Complainant's Charge and Complaint from his personnel file and of the incidents and circumstances which gave rise thereto. Respondent agrees that, in the event of any reference requests or any inquiries by any third party, Respondent shall not include in any reply, written or verbal, any reference to the purged items or any general adverse references or evaluations of Complainant. Respondent further agrees to designate Denise Haaser, Director of Human Resources, as Respondent's official to provide reference information to third parties. Ms. Haaser may be reached by telephone at (513) 539-4032 or by U.S. mail at 900 North Garver Road, Monroe, Ohio 45050-1277. Respondent further agrees to provide Complainant with a neutral letter of reference, the terms of which are attached and incorporated herein as Exhibit A.

11. Respondent represents that it does and will continue to actively recruit, hire, and promote qualified employees without regard to the race, color, sex, disability, religion, ancestry or national origin of the individual. This policy of equal opportunity and non-discrimination encompasses all aspects of the employer-employee relationship including hiring, job assignments, upgrading, promotion, transfer, selection for training, rates of pay, and all other employment benefits.

12. Respondent represents that it does and will continue to post and maintain, on those bulletin boards normally used to disseminate employee information, a bold print statement on non-discrimination and equal employment opportunity.

13. Respondent represents that it does and will continue to distribute an equal employment opportunity and non-discrimination policy statement ---whether in electronic or paper form--- to its new employees.

14. Respondent represents that it does and will continue to train its supervisors on its equal employment opportunity and non-discrimination policies.

**EXHIBIT A**

To Whom It May Concern:

Donald Gilmore was an employee of Baker Concrete Construction, Inc., from May 22, 2006 to October 2, 2006. During this time, he was employed as a Laborer and performed his job satisfactorily.

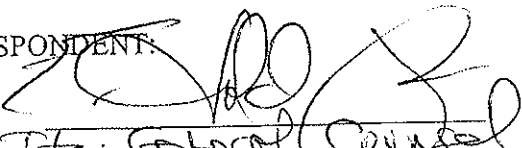
Mr. Gilmore's service is appreciated, and we wish him well in his future endeavors.

Sincerely,

Denise Haaser  
Director of Human Resources



RESPONDENT:

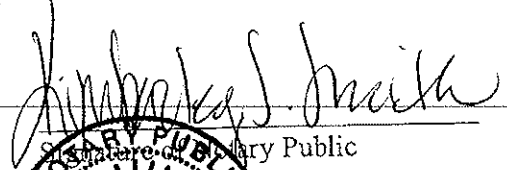
By: 

For: Its: General Counsel  
BAKER CONCRETE CONSTRUCTION, INC.

STATE OF Ohio )

COUNTY OF Warren ) SS:

Before me, a Notary Public in and for said County and State, personally appeared E. Todd Wilkowska, the General Counsel of Baker Concrete Construction, Inc. and acknowledged the execution of the foregoing Consent Agreement, this 13th day of July, 2009.





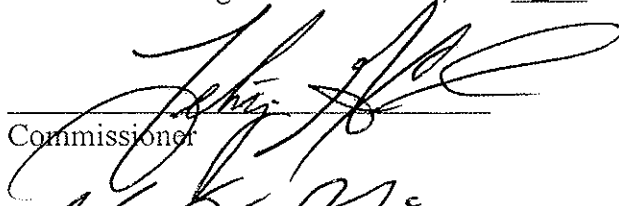
**KIMBERLEY S. SMITH**  
Notary Public, State of Ohio  
My Commission Expires  
December 6, 2011

County of Residence:  
Butler

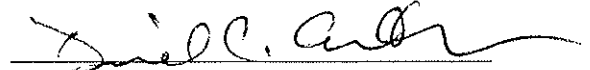
My Commission Expires:  
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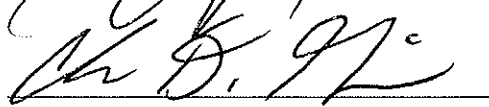
The foregoing Consent Agreement has been signed and entered as record before the Indiana Civil Rights Commission, this 23<sup>rd</sup> day of August 2009.



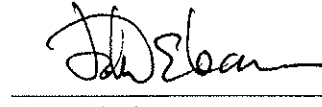
Commissioner



Commissioner



Commissioner



Commissioner

To be served upon the following parties and attorneys:

Donald Gilmore  
4139 N. Graceland Avenue  
Indianapolis, IN 46208

Baker Concrete Construction, Inc.  
900 N. Garver Road  
Monroe, OH 45050

PORTER WRIGHT MORRIS & ARTHUR  
By: Michael J. Underwood, Esq. and  
Jennifer E. Edwards, Esq.  
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Indiana Civil Rights Commission  
100 N. Senate Avenue, Room N103  
Indianapolis, IN 46204