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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16 U.S. EQUAL EMPLOYMENT OPPORTUNITY  
17 COMMISSION,

18 Plaintiff,

19 vs.

20 **PETERS' BAKERY,**

21 Defendant.

Case No.: 5:13-cv-04507 BLF

**PLAINTIFF EEOC'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Date: April 14, 2016  
Time: 9:00 a.m.  
Ctrm: 3, 5<sup>th</sup> floor

22 **I. INTRODUCTION**

23 Through this motion, Plaintiff Equal Employment Opportunity Commission (EEOC) seeks an  
24 adjudicatory finding that, as a matter of law, Defendant Peters' Bakery retaliated against Charging  
25 Party Marcela Ramirez when Defendant's owner, Charles Peters, filed a defamation action against  
26 Ms. Ramirez because she filed a discrimination charge with Plaintiff EEOC against Defendant. Mr.  
27 Peters readily admitted in his deposition that he filed the defamation lawsuit because of Ms.  
28 Ramirez's EEOC charge. Therefore there are no material facts in dispute concerning this issue in  
dispute, and a finding of discriminatory retaliation in violation of Title VII of the Civil Rights Act of  
1964 as a matter of law is appropriate.

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## II. STATEMENT OF THE FACTS

Charles Peters (hereinafter “Peters”) is the majority owner of Defendant Peters’ Bakery, having a 75% ownership interest in the bakery. Plaintiff EEOC’s Statement of Undisputed Facts, Undisputed Fact #1. On September 27, 2011, Marcela Ramirez filed a Charge of Discrimination against Defendant Peters’ Bakery; the charge alleges that she was discriminated against based on her race and national origin, and retaliated against for having engaged in protected activity. Undisputed Fact #2. On April 19, 2012, Peters filed a defamation claim against Ramirez in California Superior Court, Small Claims Division. Undisputed Fact #4. On the face of said defamation claim, Mr. Peters asserted that Ms. Ramirez owed him \$10,000.00 for “defame of character.” *Id.* Mr. Peters stated that the date of the alleged defamation was “November 3, 2011.” Undisputed Fact #5. The service date on the notice of Ms. Ramirez’s charge of discrimination is November 3, 2011. Undisputed Fact #3.

In his deposition, Mr. Peters was asked the basis for his filing the defamation action. Undisputed Fact #6. Peters responded that he filed the defamation action because of Ms. Ramirez’s charge of discrimination with the EEOC. *Id.* Peters cited language from the EEOC charge as allegedly defamatory, specifically objecting that the charge identified him as “Chuck Peters, Portuguese, owner,” (Peters objected to the word “Portuguese,” in that he asserted that he was just of Portuguese descent), and asserting that the charge said that he was “racist,” presumably because the charge alleges race and national origin discrimination. *Id.*

## III. STANDARDS FOR PARTIAL SUMMARY JUDGMENT

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A moving party is entitled to partial summary judgment if based on the pleadings, depositions, answers to interrogatories, and/or any affidavits submitted, there is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In response to a properly submitted partial summary judgment motion, the burden shifts to the opposing party to set forth specific facts showing that there is a genuine issue for trial. *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055-56 (9th Cir. 2002). The nonmoving party “may not rely on denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery material, to show that the dispute exists.” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991). Defendant Peters’ Bakery cannot meet this standard, and Plaintiff

1 EEOC's motion for partial summary judgment should be granted.

2 **IV. ARGUMENT**

3 **A. As Owner Of Defendant Peters' Bakery, Mr. Peters's Retaliatory Actions Against Ms. Ramirez Are Attributed To Defendant.**

4 If the perpetrator of a discriminatory action which violates Title VII holds a position  
5 sufficiently high in a company's management hierarchy, that person's actions are attributed to the  
6 company. As recognized by the Supreme Court in *Faragher v. City of Boca Raton*, 524 U.S. 775,  
7 789, 118 S.Ct 2275, 2284 (1998), such an official may be treated as the employer's proxy for Title  
8 VII liability purposes. *Faragher* recognized numerous cases where such attribution of liability was  
9 not in dispute, including *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 114 S.Ct. 367 (1993) ("[T]he  
10 individual charged with creating the abusive atmosphere was the president of the corporate  
11 employer, 510 U.S., at 19, who was indisputably within that class of an employer organization's  
12 officials who may be treated as the organization's proxy."); *Burns v. McGregor Electronic*  
13 *Industries, Inc.*, 955 F.2d 559, 564 (8<sup>th</sup> Cir. 1992) (employer-company liable where harassment was  
14 perpetrated by its owner); and *Torres v. Pisano*, 116 F.3d 625, 634-635, and n. 11 (2d Cir. 1997)  
15 (noting that a supervisor may hold a sufficiently high position "in the management hierarchy of the  
16 company for his actions to be imputed automatically to the employer"), cert. denied, 522 U.S. 997,  
17 118 S.Ct. 563 (1997).

18 Pursuant to the above case law, because he is 75% owner of Defendant Peters' Bakery, Mr.  
19 Peters' action of filing a state court defamation claim against Ms. Ramirez based on her having filed  
20 a charge of discrimination with the EEOC is attributed to Defendant.

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22 **B. Mr. Peters's Filing Of The Defamation Claim Against Ms. Ramirez Because Of Her**  
23 **Having Filed A Discrimination Charge With The EEOC Is Unlawful Retaliation**  
24 **Violating Title VII.**

25 Section 704(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-3(a) provides,  
26 in relevant part:

27 It shall be an unlawful employment practice for an employer to discriminate  
28 against any of his employees . . . because he has made a charge, testified, assisted, or  
participated in any manner in an investigation, proceeding, or hearing under this  
subchapter.

1 In the instant case, Defendant Peters' Bakery engaged in unlawful retaliation against  
2 Charging Party Marcela Ramirez, in violation of this provision of Title VII, when its owner filed the  
3 defamation action against her because of her EEOC charge.

4 The United States Supreme Court has recognized abuse of the judicial system as a form of  
5 actionable retaliation. *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 63, 126 S.Ct.  
6 2405, 2412 (2006), *citing Berry v. Stevinson Chevrolet*, 74 F.3d 980, 984, 986 (10th Cir. 1996)  
7 (finding actionable retaliation where employer filed false criminal charges against former employee  
8 who complained about discrimination). Courts have found that this principle is not only applicable  
9 to attempted criminal prosecution, but also to civil complaints, including defamation actions. *See*  
10 *e.g. Cozzi v. Pepsi-Cola Bottlers Inc.*, 1997 WL 312048, at \*3 (N.D. Ill. June 6, 1997), *citing*  
11 *Harmar v. United Airlines, Inc.* 1996 WL 199734 (N.D.Ill.), at \*1 (filing of lawsuit against employee  
12 who filed EEOC claim, may serve as basis for retaliation); *Urquiola v. Linen Supermarket, Inc.*,  
13 1995 WL 266583, at \*1 (M.D.Fla. Mar. 23, 1995) (filing state court defamation suit may serve as  
14 basis for Title VII retaliation claim). In *EEOC v. Levi Strauss & Co.*, 515 F. Supp. 640, 643-44  
15 (N.D. Ill. 1981), the court declined to dismiss an action by the EEOC to enjoin a defamation action  
16 in state court, holding: "There is little doubt that a state court defamation action filed in retaliation  
17 for having engaged in conduct protected by § 704(a), including the filing of a charge with the  
18 Commission, violates this section. A literal reading of the statute obviously outlaws all retaliatory  
19 acts including lawsuits filed in state tribunals."

20 When it is shown that the filing of the state court defamation action is clearly in retaliation  
21 for engaging in protected activity under Title VII, courts have granted summary judgment on the  
22 issue. In *EEOC v. Virginia Carolina Veneer*, 495 F.Supp. 775 (W.D.Va. 1980), the defendant had  
23 asserted that the charging party had defamed it by making "certain written allegations . . . that she  
24 had been discriminated against by Virginia Carolina Veneer Corporation because of her sex" to the  
25 U.S. Department of Labor and the EEOC. The court noted that "no other defamatory writings,  
26 statements or actions were alleged in defendant's state court action," and "defendant has not alleged  
27 any other basis for its state court suit." *Id.* at 776. The district court granted summary judgment as  
28 a matter of law in favor of Plaintiff EEOC, holding that "defendant's action in filing the state court

1 defamation action was unquestionably retaliatory in nature.” *Id.* at 778.

2 In the instant case, as in *Virginia Carolina Veneer*, there is no question that the defamation  
3 suit against Ms. Ramirez was filed in retaliation for her EEOC charge: The defamation complaint  
4 states that the date of the alleged defamation is November 3, 2011, the date of the service of the  
5 EEOC charge. In his deposition, Mr. Peters specifically stated that he filed the defamation action  
6 because of Ms. Ramirez’s EEOC charge. When asked in his deposition what he found defamatory in  
7 the charge, Mr. Peters could only respond that the charge identified his national origin as  
8 “Portuguese,” and that, the charge says that he is “racist,” presumably because the charge alleges  
9 discrimination based on race and national origin.<sup>1</sup>

10 As stated by the court in *Virginia Carolina Veneer*, “There exists an absolute privilege for  
11 the filing of a discrimination charge. Such absolute privilege is required to ensure the policy of  
12 nondiscrimination under Title VII. . . . A charge is required to initiate the enforcement of Title VII. .  
13 . . To insure uninhibited access to Title VII’s enforcement mechanism, Congress included Section  
14 704(a) in the Act prohibiting employer retaliation in any form against an employee who ‘has made a  
15 charge . . . or has participated in any manner in a . . . proceeding, or hearing under this (Title).’” *Id.*  
16 at 777. The court emphasized that the protection from retaliation for filing a charge is so paramount  
17 that it applies even if statements in the charge are false:

18 The courts have been most vigilant in maintaining the “policy of keeping people  
19 completely free from coercion in making complaints” that initiate agency

20 <sup>1</sup> Q. [By Ms. O’Hara, Counsel for EEOC] Mr. Peters, did you file an action in small claims court  
21 against Ms. Ramirez?

22 A. [By Charles “Chuck” Peters] I did, yes. The bakery didn’t.

23 Q. Okay. But you did that personally?

24 A. Yes.

25 Q. And why did you do that?

26 A. Defamation of character.

27 Q. Okay. And what did you believe that was defamation of character?

28 A. The things she said on that statement about me being racist. And I’m not a racist. She said, she  
claims that I’m Portuguese. I am not Portuguese. I am Portuguese descent, but I’m an American. I  
wasn’t in the Portuguese Army. I was drafted into the American Army.

Q. And so it was the things that she said when you said “the statement,” you’re talking about the  
EEOC charge, Exhibit 1 there; is that right?

A. Yeah. And I’ve also got a copy and I’m sure it’s in the file there.

(Undisputed Fact Undisputed Fact # 6, O’Hara Dec., Exh. 1 at TR 78:18 - 79:12)

1 proceedings. [citations omitted] The importance of maintaining free access to the  
2 Commission is so great that the truth or falsity of a charge, may not be considered  
in providing protection to a person for filing a charge. The Ninth Circuit, in *Sias v.*  
*City Demonstration Agency*, 588 F.2d 692, 695 (9th Cir., 1978), found that:

3 The purpose of the latter (the participation clause) in Section 704(a),  
4 prohibiting, among other things, retaliation for making a charge) is  
5 to protect the employee who utilizes the tools provided by Congress  
6 to protect his rights. If the availability of that protection were to turn  
on whether the employees charge were ultimately found to be  
meritorious, resort to the remedies provided by the Act would be  
severely chilled.

7 Additionally, courts have held that Section 2000e-3(a) of Title 42 U.S.C. protects  
8 employees from employer retaliation for filing complaints with the Commission,  
even if the charges alleged are false or malicious. *Pettway v. American Cast Iron*  
*Pipe Co.*, 411 F.2d 998 (5th Cir. 1969). As was held in *Cooper v. Pic-Walsh*  
*Freight Co.*, 19 E.P.D. 8994 (E.D. Mo. January 23, 1976):

10 To entertain claims in the nature of malicious prosecution for the  
11 filing of a single Title VII complaint would seriously undermine the  
12 clear policy of Section 2000e-3(a) to protect an employee who  
utilizes the procedures provided by Congress for the vindication of  
his right to be free from unlawful discrimination in employment.

13 *Id.* at 778.

14 Mr. Peters does not contest that he filed the defamation action specifically because of Ms.  
15 Ramirez's EEOC charge. His allegations that the charge was defamatory – that it states that he was  
16 Portuguese (rather than of Portuguese descent) and that it alleges discrimination based on race and  
17 national origin (which in his mind apparently equate to calling him “racist”) – would, as explained in  
18 *Virginia Carolina Veneer* and the cases cited therein, be protected even if they were “false or  
19 malicious,” which they are not.

20 In these circumstances, as in *Virginia Carolina Veneer*, where there is no dispute that the  
21 defamation action was filed in retaliation for Ms. Ramirez having filed an EEOC charge, a finding of  
22 partial summary judgment on this issue is appropriate.

## 23 V. CONCLUSION

24 For all the foregoing reasons, the Court should grant Plaintiff EEOC's Motion for Summary  
25 Adjudication, and issue and Order that, as a matter of law, Defendant Peters' Bakery retaliated  
26 against Marcela Ramirez in violation of Title VII of the Civil Rights Act of 1964 when Defendant's

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1 majority owner, Charles Peters, filed a defamation claim in California State Court against Ms.  
2 Ramirez because of her EEOC Charge of Discrimination.

3 Dated: March 10, 2016

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

4 /S/ Cindy O'Hara  
5 Cindy O'Hara

6 Counsel for Plaintiff EEOC  
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