IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA Equal Employment Opportunity Commission, CIV 00-1872 PHX MHM Plaintiff, and **CONSENT DECREE** Samuel Darmo; Amer Darmo; and Samuel Einhorn, Intervenors. VS. Pinnacle Nissan, Inc., et al., Defendants.

The United States Equal Employment Opportunity Commission ("the Commission" or "EEOC") filed this action against Pinnacle Nissan, Inc. to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In the Commission's Amended Complaint, the Commission alleges that Pinnacle Nissan has subjected a class of employees to a hostile work environment due to their national origin and subjected Samuel Einhorn to a hostile work environment due to his religion. In

addition, the Commission alleges that employees were retaliated against for opposing discriminatory practices.

Pinnacle Nissan has timely filed answers to the Amended Complaint and at all times denied the allegations in the Amended Complaint.

It is understood that this Consent Decree does not constitute an admission by Pinnacle Nissan of any violation under Title VII of the Civil Rights Act of 1964, as amended, and that all allegations of liability are expressly denied by Pinnacle Nissan.

The parties to this Consent Decree have decided to resolve this matter on the following terms.

The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law and to a jury trial.

It is hereby ORDERED, ADJUDGED AND DECREED:

1. This Decree resolves all claims by the Commission and Intervenors, including all claims asserted by the Commission on behalf of class members Bassam Abazly, Claudio Guzelli, Sal De Luna, Mike Madrid, Sam Darmo, Amer Darmo, and Samuel Einhorn and Intervenors Sam Darmo, Amer Darmo, and Samuel Einhorn against Pinnacle Nissan, including claims for discrimination, harassment, constructive discharge, retaliation, back pay, compensatory damages, punitive damages, interest, declaratory relief, injunctive relief, attorney's fees and costs arising out of the issues in this lawsuit and its underlying and related charges.

GENERAL INJUNCTIVE RELIEF

2. Pinnacle Nissan and its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, agree for the duration of the Decree that they will not (a) discriminate based on national origin

or religion, or (b) retaliate against any employee because he or she (i) opposed discriminatory practices made unlawful by Title VII, (ii) filed a charge or is assisting or participating in the filing of a charge of discrimination, or (iii) assisted or participated in an investigation or proceeding brought under Title VII.

APPOINTMENT OF OMBUDSPERSON

- 3. Consistent with the purposes of the Decree to avoid discrimination and enable Pinnacle Nissan to be a model employer in the area of anti-discrimination and equal employment opportunity, within 60 (sixty) days of the entry of the Decree, Pinnacle Nissan's President will appoint an Ombudsperson, with the approval of the Commission, to serve at least during the term of the Decree. This Ombudsperson shall report directly to Pinnacle Nissan's President and his or her services may be terminated only for cause.
- 4. The Ombudsperson will be exclusively responsible at Pinnacle Nissan for (a) reviewing and, if necessary, revising Pinnacle Nissan's anti-discrimination policies; (b) establishing a meaningful diversity awareness program, as set forth below; (c) receiving, investigating and maintaining all records of all complaints of discrimination; (d) disciplining and terminating employees for violation of Pinnacle Nissan's anti-harassment policies; (e) evaluating employees in the area of anti-discrimination/equal employment opportunity, as set forth in Paragraph 10 below; and (f) preparing reports to the Commission, as required by this Decree.

CORRECTIVE POLICIES AND PRACTICES

- 5. Pinnacle Nissan will post, for the duration of this Decree, in a prominent place frequented by its employees at its facilities, the notice attached as Exhibit A. The notice shall be the same type, style and size as Exhibit A.
- 6. Pinnacle Nissan will institute and carry out policies and practices that help assure a work environment free from national origin, racial, and religious

discrimination for its employees and that allows employees to raise concerns or complaints without retaliation about matters, whether alleged, perceived, or actual, made unlawful by Title VII.

- 7. Pinnacle Nissan will provide training on national origin, race, and religious discrimination and retaliation, according to the following terms:
- A. Pinnacle Nissan will retain and pay for consultant/lecturer(s), acceptable to the Commission, who will provide consultation and training as set forth below for a period of two years from the date of this Decree. At least sixty (60) days prior to the proposed training session, Pinnacle Nissan shall submit the name(s), address(es), telephone number(s) and resume(s) of the proposed consultant/lecturer(s), together with the dates of the proposed training session and an outline of the contents of the training to the Regional Attorney, Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012. The Commission shall have 30 days from the date of receipt of the information described above to accept or reject the proposed consultant/lecturer and/or the contents of the seminar. In the event the Commission does not approve the designated consultant/lecturer and/or the contents of the training, the Commission and Pinnacle Nissan shall attempt in good faith to resolve the matter.
- B. During each of the next two years, the consultant/lecturer(s) will conduct one live seminar training session each year. The live session shall be for taping purposes and will be for General Managers, supervisors, human resource personnel and top management. All of Pinnacle Nissan's supervisory, human resource, and management employees, who are employed by Pinnacle Nissan, shall attend the live seminar sessions in each year. All of Pinnacle Nissan's non-supervisory employees shall watch the videotaped showing of the live session each year. Pinnacle Nissan shall keep a written record of all

employees who are required to watch the videotaped training and who attend the live training. Pinnacle Nissan may at its election have duplicative videotaped sessions to accommodate staffing needs. Pinnacle Nissan shall be responsible for any additional costs to provide such duplicative sessions.

- C. During the first year, the seminar-training session shall be conducted within four months of the entry of this Decree. For the second year, the seminar-training session shall be conducted between 8 and 10 months after the completion of the preceding session.
- D. The seminar-training sessions shall be no less than three hours, including 30 minutes of questions and answers. All personnel, designated in paragraph B, shall both register and attend the seminar-training session. The registry of attendance shall be retained by Pinnacle Nissan for the duration of the Decree.
- E. The seminars will include the subjects of diversity awareness, what constitutes race, national origin, and religious discrimination, as well as retaliation for engaging in protected activity under Title VII of the Civil Rights Act of 1964. This training will cover discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment; the prevention of discrimination; how to provide a work environment free from discrimination, harassment and retaliation; and to whom and by what means employees may complain if they feel they have been subjected to discrimination, harassment or retaliation in the workplace. The session shall also review and explain the policies set out in Paragraph 8 of this Decree.
- F. During the live training sessions, Pinnacle Nissan's

 Ombudsperson shall read a letter from the President, if he is not there, and will speak to the employees about the discipline that can be taken against supervisors, managers and employees who commit acts of discrimination,

harassment or retaliation or allow discrimination, harassment or retaliation to occur in the workplace, the importance of maintaining an environment free of discrimination, and its anti-discrimination policies, in accordance with Paragraph 8 of this Decree.

- G. The Commission, at its discretion and with prior notice to Pinnacle Nissan, may designate Commission representatives to attend in the first seminar-training session. The representatives shall have the right to fully participate in the session.
- 8. Within thirty days of the entry of this Decree, Pinnacle Nissan will review and, if necessary, revise its written policies concerning discrimination and retaliation to conform with the law and submit the policy for review to the Regional Attorney of the Phoenix District Office of the EEOC. This written policy must include at a minimum:
- A. A strong and clear commitment to a workplace free of religious, race and national origin discrimination;
- B. A clear and strong encouragement of persons who believe they have been discriminated against to come forward;
- C. A description of the consequences, up to and including termination, that will be imposed upon violators of the policy;
- D. A promise of maximum feasible confidentiality for persons who believe that they have been discriminated against in violation of the policy;
- E. An assurance of non-retaliation for persons who believe they have been discriminated against and witnesses;
- F. That national origin, religious, and racial discrimination by all persons, including management officials, supervisors, vendors, suppliers, third parties and customers is prohibited and will not be tolerated;

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- G. The identification of specific alternative individuals, including the Ombudsperson, with their telephone numbers, to whom employees who have been subjected to discrimination can report the discrimination and who have the authority to investigate allegations of discrimination in a neutral and confidential manner.
- Η. A written statement that the employee may report the harassment to designated persons outside of his or her chain of management should the complainant believe managers in the chain of command have a conflict of interest, are implicated in the allegations, or may not adequately investigate the complaint.
- I. Assurances that Pinnacle Nissan will investigate allegations of national origin, race and religious discrimination promptly, fairly, reasonably and effectively by appropriate investigators and that appropriate corrective action to make victims whole and to eradicate the discrimination; and
- J. Information regarding the employee's right to file a charge of discrimination with the EEOC or the Arizona Civil Rights Division.
- 9. These policies shall be posted in a prominent location at the dealership. These policies shall be transmitted to Pinnacle Nissan's employees by its President and distributed to each current employee within thirty days of the entry of the Decree. These policies shall be distributed to all new employees when hired. These policies also shall be posted in a prominent place frequented by the employees.
- 10. Pinnacle Nissan shall institute a procedure which evaluates the General Manager, managers, supervisors and applicable human resources personnel on their performance in responding to complaints of discrimination and for their compliance with EEO laws, including Title VII. The failure of such an

employee to enforce the policies and the anti-discrimination laws must result in appropriate disciplinary action.

- 11. Pinnacle Nissan shall promptly, reasonably and appropriately investigate all complaints of national origin, religious, and racial discrimination, as appropriate. The investigation must include a finding of whether discrimination occurred, a credibility assessment, interviews of all potential victims and witnesses identified, and concurrent notes of the investigation, as appropriate. Pinnacle Nissan shall take immediate appropriate corrective action to make discrimination victims whole, to discipline violators and to eradicate the discrimination, as appropriate.
- 12. Pinnacle Nissan shall not retain documents related to any such investigation referred to in Paragraph 11 in any of the complainant's personnel files. All disciplinary actions taken against employees for violation of any aforementioned 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 be maintained in a separate file.
- 13. Copies of all complaints of discrimination must be provided to the Ombudsperson.

REPORTING BY PINNACLE NISSAN AND ACCESS BY EEOC

- 14. Pinnacle Nissan shall report in writing to the Regional Attorney of the Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690, Phoenix, Arizona 85012, beginning six months from the date of the entry of this Decree, and thereafter every six months for the duration of the Decree the following information:
- A. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subject of race, national origin, or religious discrimination, or retaliation.

- B. The registry of persons attending the live seminars required in Paragraph 7 of this Decree, a list of current personnel employed by Pinnacle Nissan on the days of the seminar-training sessions, and a copy of the written record required for the videotaped training sessions required in Paragraph 7.
- C. Confirmation that (i) the Notice required in Paragraph 5 of this Decree was posted and the locations where it was posted, (ii) the policies required in Paragraph 8 were distributed to each current and new employee and posted, and (iii) the expungement from each charging party and class member 's personnel file as required in Paragraph 12 of this Decree took place, the date of the expungement, and the specific documents expunged.
- 15. The Commission, upon seven (7) days written notice to Pinnacle Nissan's Ombudsperson, shall have the right to enter and inspect Pinnacle Nissan's premises to insure compliance with this Decree and Title VII's prohibition of race, national origin, and religious discrimination, as well as retaliation.

MONETARY RELIEF

- 16. Pinnacle Nissan agrees to pay the Commission and Intervenors the amount of \$ 361,451.00 pursuant to Exhibit B and paragraphs 17 and 18.
- 17. Within fourteen (14) business days of the entry of this Decree, Pinnacle Nissan shall pay the appropriate settlement amounts separately to each EEOC charging party and class member by check, cashier's check, or money order, in accordance with Exhibit B. These payments represent settlement of compensatory damages. Pinnacle Nissan will issue 1099 forms for all payments.
- 18. The checks provided for in Paragraph 17 of this Decree shall be mailed directly by Pinnacle Nissan to each charging party and class member at the addresses supplied by the Commission. Within three business days of issuance of the checks, Pinnacle Nissan shall submit a copy of each check and

related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012. Issuance and mailing of the checks shall constitute compliance with the payment obligation set forth herein.

- 19. Within fourteen (14) days of the entry of this Decree, Pinnacle Nissan shall pay \$ 159,549.00 to Steve Montoya for attorney's fees, in full and final settlement for any and all claims for attorney's fees and costs associated with the claims of any class members, including, without limitation, the intervening class members.
- 20. Pinnacle Nissan will not condition the receipt of the individual relief on a claimant's agreement to: (a) maintain as confidential the terms of this Decree; or (b) waive his statutory right to file a charge with any federal or state anti-discrimination agency.

MISCELLANEOUS NON-MONETARY INDIVIDUAL RELIEF

- 21. Pinnacle Nissan will expunge from the personnel files of each charging party and class member all references to the charges of discrimination filed against Pinnacle Nissan or their participation in this action, and any derogatory documents which related to complaints or investigation of discrimination.
- 22. In response to all future employment inquiries regarding charging parties or class members, Pinnacle Nissan will provide a written reference which states the dates of employment and does not state that the person was terminated for cause.

COSTS AND DURATION

23. Each party will bear its costs and attorney's fees, except as provided herein, incurred as a result of this action through the filing of this Decree.

24. The duration of this Decree will be two years from its entry. This						
Court will retain jurisdiction over this action for the duration of the Decree, during						
which the Commission may petition this Court for compliance with this Decree.						
Should the Court determine that Pinnacle Nissan 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. This Decree						
will expire by its own terms at the end of twenty four months from the date of						
entry, without further action by the parties.						

	26.	The parties	agree to	entry	of this	Decree	and	judgment	subjec	t to
final	approva	al by the Cou	urt.							

ENTERED AND ORDERED this _	day of	, 2003.
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Mary H. Murguia United States District Court Judge

1	APPROVED AND CONSENTED TO:					
2	Pinnacle Nissan,Inc., by:	EQUAL EMPLOYMENT OPPORTUNITY COMMISSION				
3						
4	Allan Cady	MARY JO O'NEILL				
5	Secretary, Pinnacle Nissan, Inc.	Regional Attorney				
6						
7		C. EMANUEL SMITH Supervisory Trial Attorney				
8	Laura M. Franze M. Brett Burns	oupervisory Than Attorney				
10	Akin, Gump, Strauss, Hauer & Feld, L.L.P.	P. DAVID LOPEZ Trial Attorney				
11	1700 Pacific Avenue, Suite 4100 Dallas, Texas 75201					
12	Attorneys for Pinnacle Nissan					
13		SALLY C. SHANLEY Trial Attorney				
14		Phoenix District Office 3300 North Central Avenue, Suite				
15		690 Phoenix, Arizona 85012				
16		Attorney's for Plaintiff				
17						
18						
19		LAW OFFICES OF STEPHEN G. MONTOYA				
20		411 North Central Ave., Suite 520 Phoenix, Arizona 85004				
21		T HOCHIX, AHZOHA 00004				
22						
2324		Stephen G. Montoya Attorney for Intervening Plaintiffs				
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EXHIBIT A 1 2 NOTICE TO ALL EMPLOYEES OF PINNACLE NISSAN 3 This Notice is posted pursuant to a Consent Decree entered into between Pinnacle Nissan and the Equal Employment Opportunity Commission (EEOC). 4 It is unlawful under federal law Title VII of the Civil Rights Act and state law to 5 discriminate against an employee on the basis of national origin and religion. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC. 6 7 Pinnacle Nissan will not discriminate against any employee on the basis of national origin or religion, and will not retaliate against any employee. 8 If you believe you have been discriminated against by Pinnacle Nissan, you have 9 the right to seek assistance from: 10 EEOC, 3300 North Central Avenue, Suite 690, Phoenix, (1) Arizona 85012, (602) 640-5000; or 11 Arizona Civil Rights Division (ACRD) of the Attorney General's (2) 12 Office, 1275 W. Washington, Phoenix, Arizona, 85007, (602) 255-5263. 13 or have the right to file a charge with the EEOC or ACRD if you believe you are 14 being discriminated against. 15 No Retaliation Clause. No action may be taken against you by any supervisory or management official of Pinnacle Nissan for (1) opposing discriminatory practices 16 made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory 17 actions be taken against you, you should immediately contact the EEOC or the 18 ACRD and the address or telephone numbers listed above. 19 20 THIS NOTICE MUST REMAIN POSTED UNTIL 21 22 Dated: 23 President of Pinnacle Nissan 24 25 26 27

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Sam Einhorn \$ 168,000.00 Sam Darmo \$ 126,000.00 Amer Darmo \$ 24,000.00 Mike Madrid \$ 23,450.00 Bassam Abazly \$ 6,667.00 Claudio Guzelli \$ 6,667.00 Sal De Luna \$ 6,667.00

EXHIBIT B