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1
   WILLIAM R. TAMAYO
                        SBN 84965 (CA)
   JONATHAN T. PECK
                        SBN 12303 (VA)
 2
   FRANCISCO CANCINO
                        SBN 35862
                                   (CA)
   EQUAL EMPLOYMENT OPPORTUNITY
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     COMMISSION
   San Francisco District Office
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   San Francisco, California
               (415) 356-5081
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   Attorneys for Plaintiff
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                       SBN 126099 (CA)
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   NORIEGA ALEXANDER & BRADSHAW, LLP
   1801 - 18TH Street
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   Bakersfield, CA 93301
   Telephone: (805) 327-5492
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                 Defendant
   JAN 2 9 1999
                       UNITED STATES DISTRICT COURT
   K, U.S. DISTRICT COURT
    DISTRICT OF CALIFORNIA
                      EASTERN DISTRICT OF CALIFORNIA
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   EQUAL EMPLOYMENT OPPORTUNITY
   COMMISSION,
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                                            CIVIL ACTION NO.
                   Plaintiff,
                                            CIV-F-98-5047 OWW/DLB
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             v.
                                            CONSENT DECREE
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   NALBANDIAN SALES, INC.,
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                   Defendant.
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                            INTRODUCTION
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        On January 13, 1998, Plaintiff Equal Employment Opportunity
   Commission filed this action pursuant to Title VII of the Civil
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   Rights Act of 1964 (hereinafter "Title VII"), 42 U.S.C. §2000e et
   seq., and Title I of the Civil Rights Act of 1991, 42 U.S.C.
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§1981A, alleging that, since at least May 1995, Defendant

CONSENT DECREE CIV-F-98-5047-OWW/DLB

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Nalbandian Sales, Inc., engaged in and continued to engage in unlawful retaliation by failing to hire or rehire Mr. Rodger Benavidez (hereinafter, "Charging Party") and other similarly situated persons because of their association with or relationship to a person who had filed employment discrimination charges against the Defendant. Plaintiff also alleged that the unlawful employment practices complained of above were intentional and were done with malice and/or with reckless indifference to the federally protected rights of the Charging Party and the other similarly situated persons.

On March 19, 1998, Defendant filed a Notice of Motion and Motion to Dismiss for Failure to State A Claim Upon Which Relief Can Be Granted pursuant to Fed. Rules of Civ. Procedure 12(b)(6). On April 6, 1998, Plaintiff filed Plaintiff's Opposition to Defendant's Motion to Dismiss. On April 10, 1998, Defendant filed Defendant's Memorandum of Points and Authorities in Reply to Plaintiff's Opposition to Motion to Dismiss. On April 20, 1998, after hearing Defendant's Motion to Dismiss, the Court issued a Memorandum Opinion denying the Defendant's Motion to Dismiss.

On September 17, 1998, a Settlement Conference was conducted by Magistrate Judge Dennis L. Beck.

Following discovery by both parties, and in order to avoid the additional expense, delay, and uncertainty that would result from further litigation of this lawsuit, the parties agree to the entry of a Consent Decree. The parties now seek to resolve this

action without further contested litigation. This Consent Decree is entered into with the consent of the parties.

By its agreement to the entry of this Consent Decree,
Defendant does not admit to the allegations made in the
complaint. This Consent Decree is not to be interpreted as any
admission of liability for those matters at issue in this
litigation.

This Court has reviewed the terms of this Consent Decree in light of the pleadings, the record herein, and the applicable law, and now approves the Consent Decree in its entirety.

Therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

SECTION I. GENERAL PROVISIONS

- 1. This Court has jurisdiction of the subject matter and the parties to this action.
- 2. This Consent Decree constitutes a full resolution of the Plaintiff's complaint.
- 3. This Consent Decree shall become effective upon its entry by the Court.
 - 4. Each party shall bear its own costs and attorneys' fees.

SECTION II. INJUNCTIVE RELIEF

1. Defendant agrees that there shall be no discrimination or retaliation of any kind against the Charging Party or the other similarly situated employees because of their filing a charge or their giving of testimony and participation in any manner in the investigation of the charge and the lawsuit.

1. The Defendant will pay to Charging Party Rodger Benavidez and the other employees the sum total of thirty thousand dollars (\$30,000.00) in full settlement of their compensatory damage claims resulting from emotional pain, suffering and mental anguish.

- 2. The thirty thousand dollars (\$30,000) amount paid to the Charging Party and the other employees are being paid in complete compromise of all disputed issues arising out of matters raised in Civil Action No. CIV-F-98-5047-OWW/DLB, U.S. District Court, Eastern District of California.
- 3. The Settlement Amount shall be payable in three (3) installments. All installments shall be made payable by the Defendant in the form of a cashier's check or certified check made payable and mailed to the Charging Party and the other similarly situated employees at their respective addresses:
 - Ms. Rodger Benavidez, 1821 Kern St., Corpus Christi TX 78412
 - Mr. Yolanda Hernandez, 1316 Haven Drive, Arvin CA 93203
- Mr. Paul Pierce, 4500 Adidas Ct., Bakersfield CA 93313

 The Defendant will make these payments by certified mail, return receipt requested, and will send a copy of each check, after it is mailed to each Charging Party, to Counsel for the Plaintiff EEOC.
- 4. The Defendant shall pay the three (3) installments to Charging Party Benavidez, Ms. Hernandez and Mr. Pierce as follows:

- a. Within ten (10) days of entry of this Consent

 Decree, Defendant will mail a check to Charging Party Benavidez
 in the amount of two thousand, six hundred and sixty-six dollars
 (\$2,666.00), a check to Ms. Yolanda Hernandez in the amount of
 six thousand, six hundred and sixty-seven dollars (\$6,667.00),
 and a check to Mr. Paul Pierce of six hundred and sixty-seven
 dollars (\$667.00). This first installment will total ten
 thousand dollars (\$10,000.00) paid by Defendant to the Charging
 Party and the other employees.
- b. On or before February 1, 2000, Defendant will mail a check to Charging Party Benavidez in the amount of two thousand, six hundred and sixty-six dollars (\$2,666.00), a check to Ms. Yolanda Hernandez in the amount of six thousand, six hundred and sixty-seven dollars (\$6,667.00), and a check to Mr. Paul Pierce of six hundred and sixty-seven dollars (\$667.00). This second installment will total ten thousand dollars (\$10,000.00) paid by Defendant to the Charging Party and the other employees.
- c. On or before February 1, 2001, Defendant will mail a check to Charging Party Benavidez in the amount of two thousand, six hundred and sixty-six dollars (\$2,666.00), a check to Ms. Yolanda Hernandez in the amount of six thousand, six hundred and sixty-seven dollars (\$6,667.00), and a check to Mr. Paul Pierce of six hundred and sixty-seven dollars (\$667.00). This third installment will total ten thousand dollars (\$10,000.00) paid by Defendant to the Charging Party and the other employees.

- 5. Defendant may, upon notice to Plaintiff, prepay any amount required to be paid under the terms of this Consent Decree.
- 6. In the event that either of the first two installment payments to the Charging Party, Ms. Hernandez, or Mr. Pierce are untimely, and following ten (10) days written notice to Defendant by Plaintiff EEOC of the untimely payments, the remaining unpaid balance of the settlement amount becomes immediately due and owing to Charging Party Benavidez, Ms. Hernandez and Mr. Pierce.
- 7. Any untimely payment to Charging Party Benavidez, Ms. Hernandez or Mr. Pierce of the third and final installment payment will immediately result in ten percent (10%) in accrual of the unpaid balance.

SECTION IV. RETENTION OF JURISDICTION AND EXPIRATION OF CONSENT DECREE

- 1. In the event of a material breach of this Consent

 Decree, the Plaintiff may elect to bring an action to enforce its

 terms and conditions, and/or for any appropriate relief.
- 2. This Court shall retain jurisdiction over this action for the purposes of enforcing the provisions of this Consent Decree.

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CONSENT DECREE
CIV-F-98-5047-OWW/DLB

1	3. This Consent Decre	e shall expire on February 14, 2001.
2		t .
3	On Behalf of Plaintiff:	On Behalf of Defendant:
4	December 1	
5	WILLIAM R. TAMAYO	ROBERT J. NORIEGA
6	Regional Attorney EQUAL EMPLOYMENT	NORIEGA ALEXANDER & BRADSHAW, LLP Attorneys at Law
7	OPPORTUNITY COMMISSION	Accorneys at haw
8	1 4 50	
9	JONATHAN T. PECK	
10	Supervisory Trial Attorney EQUAL EMPLOYMENT	
11	OPPORTUNITY COMMISSION	
12	The same	
13	FRANCISCO CANCINO	
14	Trial Attorney EQUAL EMPLOYMENT	
15	OPPORTUNITY COMMISSION	
16		
17	IT IS SO ORDERED:	
18	2-5-99	N1. MM
19	DATED: X-3-11	OLIVER W. WANGER
20		Judge, United States District Court
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27	CONSENT DECREE	
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CIV-F-98-5047-OWW/DLB

CERTIFICATE OF SERVICE

I am a citizen of the United States, employed in the County of San Francisco, over the age of 18 years, and not a party to this action. My business address is the office of the Equal Employment Opportunity Commission, San Francisco District Office, 901 Market Street, Suite 500, San Francisco, California 94103.

On the date below, I placed a copy of:

Civil No. CV-F-98-5047-OWW/DLB (E.D. Cal.)

Consent Decree

in a franked envelope which I deposited in the United States Mail addressed to:

Robert J. Noriega NORIEGA, ALEXANDER & BRADSHAW, LLP 1801 18th Street Bakersfield, CA 93301

I certify under penalty of perjury that the above is true and correct.

Robert H. Tains

DATED: January 27, 1999

United States District Court for the Eastern District of California February 9, 1999

* * CERTIFICATE OF SERVICE * *

1:98-cv-05047

EEOC

v.

Nalbandian Sales Inc

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on February 9, 1999, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

OWW/DLB

F Cancino Equal Employment Opportunity Commission San Francisco District Office 901 Market Street Suite 500 San Francisco, CA 94103

Robert J Noriega Noriega and Alexander Post Office Box 1431 1801 18th Street Bakersfield, CA 93301

Jack L. Wagner, Clerk

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