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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity  
Commission,  
  
Plaintiff,  
  
and  
  
Samuel Darmo; Amer Darmo; and  
Samuel Einhorn,  
  
Intervenors,  
  
vs.  
  
Pinnacle Nissan, Inc., et al.,  
  
Defendants.

CIV 00-1872 PHX MHM

CONSENT DECREE

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

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1 opposing discriminatory practices.

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

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

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

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

13 It is hereby ORDERED, ADJUDGED AND DECREED:

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

23 **GENERAL INJUNCTIVE RELIEF**

24 2. Pinnacle Nissan and its officers, agents, employees, successors,  
25 assigns and all persons in active concert or participation with it, agree for the  
26 duration of the Decree that they will not (a) discriminate based on national origin  
27 or religion, or (b) retaliate against any employee because he or she (i) opposed  
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1 discriminatory practices made unlawful by Title VII, (ii) filed a charge or is  
2 assisting or participating in the filing of a charge of discrimination, or (iii) assisted  
3 or participated in an investigation or proceeding brought under Title VII.

#### 4 **APPOINTMENT OF OMBUDSPERSON**

5 3. Consistent with the purposes of the Decree to avoid discrimination  
6 and enable Pinnacle Nissan to be a model employer in the area of anti-  
7 discrimination and equal employment opportunity, within 60 (sixty) days of the  
8 entry of the Decree, Pinnacle Nissan's President will appoint an Ombudsperson,  
9 with the approval of the Commission, to serve at least during the term of the  
10 Decree. This Ombudsperson shall report directly to Pinnacle Nissan's President  
11 and his or her services may be terminated only for cause.

12 4. The Ombudsperson will be exclusively responsible at Pinnacle  
13 Nissan for (a) reviewing and, if necessary, revising Pinnacle Nissan's anti-  
14 discrimination policies; (b) establishing a meaningful diversity awareness  
15 program, as set forth below; (c) receiving, investigating and maintaining all  
16 records of all complaints of discrimination; (d) disciplining and terminating  
17 employees for violation of Pinnacle Nissan's anti-harassment policies; (e)  
18 evaluating employees in the area of anti-discrimination/equal employment  
19 opportunity, as set forth in Paragraph 10 below; and (f) preparing reports to the  
20 Commission, as required by this Decree.

#### 21 **CORRECTIVE POLICIES AND PRACTICES**

22 5. Pinnacle Nissan will post, for the duration of this Decree, in a  
23 prominent place frequented by its employees at its facilities, the notice attached  
24 as Exhibit A. The notice shall be the same type, style and size as Exhibit A.

25 6. Pinnacle Nissan will institute and carry out policies and practices  
26 that help assure a work environment free from national origin, racial, and religious  
27 discrimination for its employees and that allows employees to raise concerns or  
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1 complaints without retaliation about matters, whether alleged, perceived, or  
2 actual, made unlawful by Title VII.

3 7. Pinnacle Nissan will provide training on national origin, race, and  
4 religious discrimination and retaliation, according to the following terms:

5 A. Pinnacle Nissan will retain and pay for consultant/lecturer(s),  
6 acceptable to the Commission, who will provide consultation and training as set  
7 forth below for a period of two years from the date of this Decree. At least sixty  
8 (60) days prior to the proposed training session, Pinnacle Nissan shall submit the  
9 name(s), address(es), telephone number(s) and resume(s) of the proposed  
10 consultant/lecturer(s), together with the dates of the proposed training session  
11 and an outline of the contents of the training to the Regional Attorney, Equal  
12 Employment Opportunity Commission, 3300 North Central Avenue, Suite 690,  
13 Phoenix, Arizona 85012. The Commission shall have 30 days from the date of  
14 receipt of the information described above to accept or reject the proposed  
15 consultant/lecturer and/or the contents of the seminar. In the event the  
16 Commission does not approve the designated consultant/lecturer and/or the  
17 contents of the training, the Commission and Pinnacle Nissan shall attempt in  
18 good faith to resolve the matter.

19 B. During each of the next two years, the consultant/lecturer(s)  
20 will conduct one live seminar training session each year. The live session shall  
21 be for taping purposes and will be for General Managers, supervisors, human  
22 resource personnel and top management. All of Pinnacle Nissan's supervisory,  
23 human resource, and management employees, who are employed by Pinnacle  
24 Nissan, shall attend the live seminar sessions in each year. All of Pinnacle  
25 Nissan's non-supervisory employees shall watch the videotaped showing of the  
26 live session each year. Pinnacle Nissan shall keep a written record of all  
27 employees who are required to watch the videotaped training and who attend the  
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1 live training. Pinnacle Nissan may at its election have duplicative videotaped  
2 sessions to accommodate staffing needs. Pinnacle Nissan shall be responsible  
3 for any additional costs to provide such duplicative sessions.

4 C. During the first year, the seminar-training session shall be  
5 conducted within four months of the entry of this Decree. For the second year,  
6 the seminar-training session shall be conducted between 8 and 10 months after  
7 the completion of the preceding session.

8 D. The seminar-training sessions shall be no less than three  
9 hours, including 30 minutes of questions and answers. All personnel, designated  
10 in paragraph B, shall both register and attend the seminar-training session. The  
11 registry of attendance shall be retained by Pinnacle Nissan for the duration of the  
12 Decree.

13 E. The seminars will include the subjects of diversity awareness,  
14 what constitutes race, national origin, and religious discrimination, as well as  
15 retaliation for engaging in protected activity under Title VII of the Civil Rights Act  
16 of 1964. This training will cover discrimination in the hiring, firing, compensation,  
17 assignment or other terms, conditions or privileges of employment; the prevention  
18 of discrimination; how to provide a work environment free from discrimination,  
19 harassment and retaliation; and to whom and by what means employees may  
20 complain if they feel they have been subjected to discrimination, harassment or  
21 retaliation in the workplace. The session shall also review and explain the  
22 policies set out in Paragraph 8 of this Decree.

23 F. During the live training sessions, Pinnacle Nissan's  
24 Ombudsperson shall read a letter from the President, if he is not there, and will  
25 speak to the employees about the discipline that can be taken against  
26 supervisors, managers and employees who commit acts of discrimination,  
27 harassment or retaliation or allow discrimination, harassment or retaliation to  
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1 occur in the workplace, the importance of maintaining an environment free of  
2 discrimination, and its anti-discrimination policies, in accordance with Paragraph  
3 8 of this Decree.

4 G. The Commission, at its discretion and with prior notice to  
5 Pinnacle Nissan, may designate Commission representatives to attend in the first  
6 seminar-training session. The representatives shall have the right to fully  
7 participate in the session.

8 8. Within thirty days of the entry of this Decree, Pinnacle Nissan will  
9 review and, if necessary, revise its written policies concerning discrimination and  
10 retaliation to conform with the law and submit the policy for review to the Regional  
11 Attorney of the Phoenix District Office of the EEOC. This written policy must  
12 include at a minimum:

13 A. A strong and clear commitment to a workplace free of  
14 religious, race and national origin discrimination;

15 B. A clear and strong encouragement of persons who believe  
16 they have been discriminated against to come forward;

17 C. A description of the consequences, up to and including  
18 termination, that will be imposed upon violators of the policy;

19 D. A promise of maximum feasible confidentiality for persons who  
20 believe that they have been discriminated against in violation of the policy;

21 E. An assurance of non-retaliation for persons who believe they  
22 have been discriminated against and witnesses;

23 F. That national origin, religious, and racial discrimination by all  
24 persons, including management officials, supervisors, vendors, suppliers, third  
25 parties and customers is prohibited and will not be tolerated;

26 G. The identification of specific alternative individuals, including  
27 the Ombudsperson, with their telephone numbers, to whom employees who have  
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1 been subjected to discrimination can report the discrimination and who have the  
2 authority to investigate allegations of discrimination in a neutral and confidential  
3 manner.

4 H. A written statement that the employee may report the  
5 harassment to designated persons outside of his or her chain of management  
6 should the complainant believe managers in the chain of command have a  
7 conflict of  
8 interest, are implicated in the allegations, or may not adequately investigate the  
9 complaint.

10 I. Assurances that Pinnacle Nissan will investigate allegations  
11 of national origin, race and religious discrimination promptly, fairly, reasonably  
12 and effectively by appropriate investigators and that appropriate corrective action  
13 to make victims whole and to eradicate the discrimination; and

14 J. Information regarding the employee's right to file a charge of  
15 discrimination with the EEOC or the Arizona Civil Rights Division.

16 9. These policies shall be posted in a prominent location at the  
17 dealership. These policies shall be transmitted to Pinnacle Nissan's employees  
18 by its President and distributed to each current employee within thirty days of the  
19 entry of the Decree. These policies shall be distributed to all new employees  
20 when hired. These policies also shall be posted in a prominent place frequented  
21 by the employees.

22 10. Pinnacle Nissan shall institute a procedure which evaluates the  
23 General Manager, managers, supervisors and applicable human resources  
24 personnel on their performance in responding to complaints of discrimination and  
25 for their compliance with EEO laws, including Title VII. The failure of such an  
26 employee to enforce the policies and the anti-discrimination laws must result in  
27 appropriate disciplinary action.

1 11. Pinnacle Nissan shall promptly, reasonably and appropriately  
2 investigate all complaints of national origin, religious, and racial discrimination, as  
3 appropriate. The investigation must include a finding of whether discrimination  
4 occurred, a credibility assessment, interviews of all potential victims and  
5 witnesses identified, and concurrent notes of the investigation, as appropriate.  
6 Pinnacle Nissan shall take immediate appropriate corrective action to make  
7 discrimination victims whole, to discipline violators and to eradicate the  
8 discrimination, as appropriate.

9 12. Pinnacle Nissan shall not retain documents related to any such  
10 investigation referred to in Paragraph 11 in any of the complainant's personnel  
11 files. All disciplinary actions taken against employees for violation of any  
12 aforementioned policy will be retained in the violator's personnel file. In those  
13 cases in which no conclusion could be reached on the allegations, the  
14 investigation documents shall be maintained in a separate file.

15 13. Copies of all complaints of discrimination must be provided to the  
16 Ombudsperson.

17 **REPORTING BY PINNACLE NISSAN AND ACCESS BY EEOC**

18 14. Pinnacle Nissan shall report in writing to the Regional Attorney of the  
19 Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690,  
20 Phoenix, Arizona 85012, beginning six months from the date of the entry of this  
21 Decree, and thereafter every six months for the duration of the Decree the  
22 following information:

23 A. Any changes, modifications, revocations, or revisions to its  
24 policies and procedures which concern or affect the subject of race, national  
25 origin, or religious discrimination, or retaliation.

26 B. The registry of persons attending the live seminars required in  
27 Paragraph 7 of this Decree, a list of current personnel employed by Pinnacle  
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1 Nissan on the days of the seminar-training sessions, and a copy of the written  
2 record required for the videotaped training sessions required in Paragraph 7.

3 C. Confirmation that (i) the Notice required in Paragraph 5 of this  
4 Decree was posted and the locations where it was posted, (ii) the policies  
5 required in Paragraph 8 were distributed to each current and new employee and  
6 posted, and (iii) the expungement from each charging party and class member's  
7 personnel file as required in Paragraph 12 of this Decree took place, the date of  
8 the expungement, and the specific documents expunged.

9 15. The Commission, upon seven (7) days written notice to Pinnacle  
10 Nissan's Ombudsperson, shall have the right to enter and inspect Pinnacle  
11 Nissan's premises to insure compliance with this Decree and Title VII's  
12 prohibition of race, national origin, and religious discrimination, as well as  
13 retaliation.

#### 14 **MONETARY RELIEF**

15 16. Pinnacle Nissan agrees to pay the Commission and Intervenors the  
16 amount of \$ 361,451.00 pursuant to Exhibit B and paragraphs 17 and 18.

17 17. Within fourteen (14) business days of the entry of this Decree,  
18 Pinnacle Nissan shall pay the appropriate settlement amounts separately to each  
19 EEOC charging party and class member by check, cashier's check, or money  
20 order, in accordance with Exhibit B. These payments represent settlement of  
21 compensatory damages. Pinnacle Nissan will issue 1099 forms for all payments.

22 18. The checks provided for in Paragraph 17 of this Decree shall be  
23 mailed directly by Pinnacle Nissan to each charging party and class member at  
24 the addresses supplied by the Commission. Within three business days of  
25 issuance of the checks, Pinnacle Nissan shall submit a copy of each check and  
26 related correspondence to the Regional Attorney, Equal Employment Opportunity  
27 Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012.

1 Issuance and mailing of the checks shall constitute compliance with the payment  
2 obligation set forth herein.

3 19. Within fourteen (14) days of the entry of this Decree, Pinnacle  
4 Nissan shall pay \$ 159,549.00 to Steve Montoya for attorney's fees, in full and  
5 final settlement for any and all claims for attorney's fees and costs associated  
6 with the claims of any class members, including, without limitation, the intervening  
7 class members.

8 20. Pinnacle Nissan will not condition the receipt of the individual relief  
9 on a claimant's agreement to: (a) maintain as confidential the terms of this  
10 Decree; or (b) waive his statutory right to file a charge with any federal or state  
11 anti-discrimination agency.

12 **MISCELLANEOUS NON-MONETARY INDIVIDUAL RELIEF**

13 21. Pinnacle Nissan will expunge from the personnel files of each  
14 charging party and class member all references to the charges of discrimination  
15 filed against Pinnacle Nissan or their participation in this action, and any  
16 derogatory documents which related to complaints or investigation of  
17 discrimination.

18 22. In response to all future employment inquiries regarding charging  
19 parties or class members, Pinnacle Nissan will provide a written reference which  
20 states the dates of employment and does not state that the person was  
21 terminated for cause.

22 **COSTS AND DURATION**

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

25 24. The duration of this Decree will be two years from its entry. This  
26 Court will retain jurisdiction over this action for the duration of the Decree, during  
27 which the Commission may petition this Court for compliance with this Decree.  
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1 Should the Court determine that Pinnacle Nissan has not complied with this  
2 Decree, appropriate relief, including extension of this Decree for such period as  
3 may be necessary to remedy its non-compliance, may be ordered. This Decree  
4 will expire by its own terms at the end of twenty four months from the date of  
5 entry, without further action by the parties.

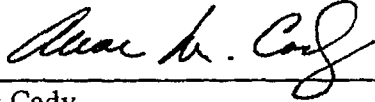
6 26. The parties agree to entry of this Decree and judgment subject to  
7 final approval by the Court.

8  
9 ENTERED AND ORDERED this 20<sup>th</sup> day of February, 2003.

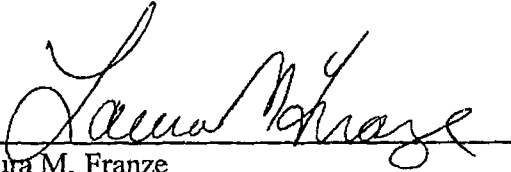
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13 Mary H. Murguia  
14 United States District Court Judge  
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1 APPROVED AND CONSENTED TO:

2 Pinnacle Nissan, Inc., by:

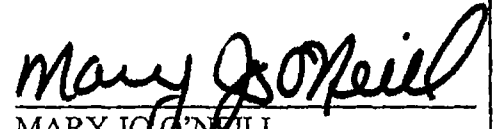
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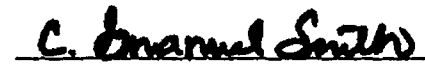
5 Allan Cady  
6 Secretary, Pinnacle Nissan, Inc.

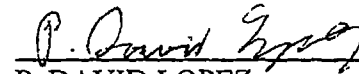
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10 M. Brett Burns  
11 Akin Gump Strauss Hauer & Feld LLP  
12 1700 Pacific Avenue, Suite 4100  
13 Dallas, Texas 75201  
14 Attorneys for Pinnacle Nissan

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

  
MARY JO O'NEILL  
Regional Attorney

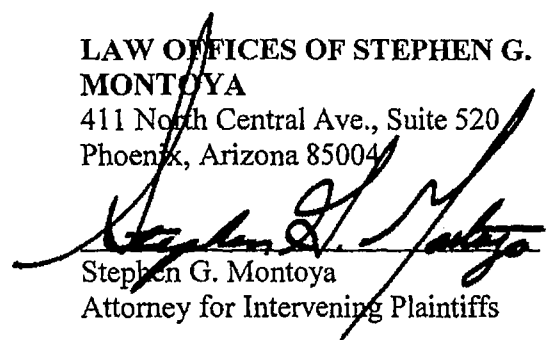
  
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