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12 **UNITED STATES DISTRICT COURT**

13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 **EQUAL EMPLOYMENT**
15 **OPPORTUNITY COMMISSION,**

16 **Plaintiff,**

17 **v.**

18 **LEXUS OF SERRAMONTE, SONIC**
19 **AUTOMOTIVE, INC., AND FIRST**
20 **AMERICA AUTOMOTIVE,**

21 **Defendants.**

22 Case No. C-05-0962 SBA (JL)

23 **CONSENT DECREE**

24 **I. INTRODUCTION**

25 Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC”) and Defendants Lexus
26 of Serramonte (“Lexus”), First America Automotive, Inc., and Sonic Automotive, Inc. (all three
27 collectively “Defendants”), hereby stipulate and agree to entry of this Consent Decree to resolve the
28 EEOC’s Complaint filed under Title VII of the Civil Rights Act of 1964, as amended, Section 706
(f) (1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f) (1)
and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a (“Title VII”).

29 **II. JURISDICTION**

30 The Court has jurisdiction over the parties and the subject matter of this lawsuit, pursuant to
31 28 U.S.C. Sections 451, 1331, 1337, 1343, 1345, 1367, and 42 U.S.C. Section 2000e-5(f). The
32 Court shall retain jurisdiction of this action during the duration of the Decree for the purposes of
33 entering all orders, judgments and decrees which may be necessary to implement and/or enforce the
34 relief provided herein or to otherwise effectuate the purposes of the Decree. The EEOC and

1 Defendants consent to the assignment of Magistrate Judge Larson to resolve any disputes that may
2 arise between the parties regarding this Decree.

3 **III. PURPOSES AND SCOPE OF THE CONSENT DECREE**

4 **A.** The parties to this Consent Decree (“Decree”) are the EEOC, and Defendants
5 (collectively the “Parties”). This Decree shall be binding on and enforceable against all named
6 defendants and their officers, directors, agents, successors and assigns. All Defendants are bound by
7 the injunctive relief outlined in Sections VIII (A), (B) and (H) only as to any current or former Lexus
8 employee, and as to any claimant or witness that participated in this suit or the EEOC investigation
9 underlying this suit. It is further understood, agreed and ordered that the injunctive relief listed in
10 Sections VIII (C)-(G) shall be carried out at the Colma, California dealership operating as Lexus of
11 Serramonte and no other location, or facility. All three Defendants are parties to the terms of this
12 Decree, but the requirements can be satisfied by one Defendant, or any of them.

13 **B.** As a result of having engaged in comprehensive settlement negotiations, the Parties have
14 agreed that this action should be finally resolved by entry of this Decree for the following purposes:

- 15 **1.** To avoid expensive and protracted costs incident to litigation;
- 16 **2.** To provide a final and binding settlement upon the Parties as to all claims alleged
17 in the Complaint;
- 18 **3.** To provide monetary and injunctive relief;
- 19 **4.** To ensure that Lexus’ employment policies and procedures comply with Title
20 VII;
- 21 **5.** To ensure training for Lexus’ employees with respect to their obligations under
22 Title VII;
- 23 **6.** To prevent and correct discrimination in the workplace;
- 24 **7.** To provide effective responses to discrimination complaints; and
- 25 **8.** To prevent retaliation against employees who engage in protected activities under
26 Title VII.

27 **IV. EFFECTIVE DATE AND DURATION OF DECREE**

28 **A.** The provisions and agreements contained herein are effective immediately upon the date

1 on which this Decree is entered by the Court (“the Effective Date”).

2 **B.** Except as otherwise provided herein, the Decree shall remain in effect for 2 years after
3 the Effective Date.

4 **V. FINDINGS**

5 Having examined the terms and provisions of this Decree and based on the pleadings, record
6 and stipulation of the Parties, the Court finds the following:

7 **A.** The Court has jurisdiction over the Parties and the subject matter of this action. The
8 Complaint asserts claims that, if proven, would authorize the Court to grant the relief set forth in this
9 Decree.

10 **B.** The terms and provisions of this Decree are adequate, fair, reasonable, equitable and just.
11 The rights of the Parties and the public interest for which the EEOC seeks redress are protected
12 adequately by this Decree.

13 **C.** This Decree conforms to the Federal Rules of Civil Procedure and Title VII and is not in
14 derogation of the rights and privileges of any person. The entry of this Decree will further the
15 objectives of Title VII and will be in the best interest of the Parties.

16 **VI. RESOLUTION OF CLAIMS**

17 **A.** The Parties agree that this Decree constitutes a complete resolution of EEOC Charge No.
18 370A300314 and the complaint filed in this action. The Decree also constitutes a complete
19 resolution of any and all claims under Title VII that were made or could have been made by the
20 EEOC in this action. It is agreed and ordered that the settlement herein settles any and all claims that
21 could have been included by EEOC in this suit spanning March 2, 2002 to the present.

22 **B.** This Decree in no way affects the EEOC’s right to bring, process, investigate or litigate
23 other charges that may be in existence or may later arise against Defendants in accordance with
24 standard EEOC procedure.

25 **C.** Nothing in this Decree shall be construed to limit or reduce Defendants’ obligation to
26 comply fully with Title VII or any other federal employment statute.

27 **D.** Nothing in this Decree shall be construed to preclude the EEOC or Defendants from
28 enforcing this Decree pursuant to its terms in the event any party has failed to perform the promises

1 and representations contained herein.

2 **VII. MONETARY RELIEF**

3 **A. For Identified Class Members**

4 Within thirty (30) business days after the Effective Date, or as soon as possible thereafter, the
5 EEOC shall give Defendants written notice of the specific monetary distribution that is to be
6 provided to charging party Annie Wei and class member Salma Downing, and their respective
7 addresses where the check should be delivered. The monetary distribution paid to charging party
8 Annie Wei and claimant Salma Downing collectively shall not exceed Three Hundred Seventy-Five
9 Thousand Dollars \$375,000.00. Within three (3) business days of the issuance of each check,
10 Defendants shall submit a copy of each check and related correspondence to Elizabeth Esparza-
11 Cervantes, Trial Attorney, United States Equal Employment Opportunity Commission, 350 The
12 Embarcadero, Suite 500, San Francisco, CA 94105. In any event, Defendants shall pay the amount
13 determined by the EEOC constituting damages via overnight mail within ten (10) days of receiving
14 the EEOC's written notice of the specific monetary distribution that is to be provided to charging
15 party Annie Wei and class member Salma Downing.

16 Lexus shall prepare and distribute any corresponding 1099 tax reporting forms to the
17 Charging Party (Ms. Wei) and Ms. Downing (or to any other payee) and shall make appropriate
18 reports to the Internal Revenue Service and other tax authorities. Defendants shall be solely
19 responsible for any costs associated with the issuance and distribution of the 1099 tax reporting
20 forms to Ms. Wei and Ms. Downing. Ms. Wei and Ms. Downing shall be solely responsible for
21 taxes payable, if any, on their respective portion of settlement proceeds reported in the 1099 tax
22 reporting forms, and Defendants shall not deduct for taxes out of the settlement funds. As a
23 condition of the payment to Ms. Downing and, Ms. Wei, Ms. Wei must sign a general release, and
24 Ms. Downing must sign the release of her federal employment discrimination claims attached
25 herewith as Exhibit A.

26 **B. For Unidentified Class Members**

27 In addition to the amount to be paid to the Identified Claimants, above, Defendants agree to
28 pay the difference in the amount paid to Ms. Wei and Ms. Downing and the sum of Three Hundred

1 Seventy-Five Thousand Dollars \$375,000.00 in damages (“Settlement Fund”) to be distributed to
2 class members at the EEOC’s discretion. For example, if Ms. Wei and Ms. Downing were paid
3 \$75,000.00, the Settlement Fund would be \$300,000.00.

4 **1. Settlement Fund Account**

5 Within thirty (30) days after the deadline for filing claims by Eligible Claimants (“Claim
6 Deadline”), Lexus shall establish and maintain a segregated account for the Settlement Fund in
7 accordance with generally accepted accounting principles. Only withdrawals authorized by this
8 Decree shall be made from the account.

9 The Settlement Fund shall be used to make payments to Eligible Claimants whom the
10 Commission determines to be eligible to receive monetary relief in this action (such persons are
11 hereinafter referred to as “Eligible Claimants”).

12 **2. Procedures to Identify Eligible Claimants**

13 The EEOC shall contact and interview employees to determine if they are Eligible Claimants
14 from the list of employees provided by Lexus to EEOC as ordered by Magistrate Larson, and as
15 agreed between the parties for females employed at Lexus of Serramonte from January 1, 2003 to
16 the present. Within five (5) days of the Effective Date, Defendants shall produce to the EEOC
17 Lexus of Serramonte’s female employee contact information spanning January 1, 2003 to the
18 present. The female employee contact information spanning January 1, 2003 to the present shall
19 provide the following contact information for each employee: name; last known address(es); last
20 known telephone number(s); social security number, date of birth, hire date, termination date, and
21 position held while employed at Lexus.

22 **3. The Commission’s Determination of Eligibility and Computation of Claims**

23 Eligible Claimants shall include only those Eligible Claimants who satisfy each and all of the
24 following criteria:

25 a) The Commission received credible evidence that the Claimant was
26 subjected to sexual harassment as defined by Title VII and could have filed a timely claim of
27 harassment with the EEOC on or about December 27, 2002; and

28 b) The Claimant has not previously signed a release which would cover the

1 actions complained of by the Claimant.

2 Acting in its discretion and subject only to final approval by the Court, if the Court requires
3 it, the Commission shall exclusively determine the eligibility of Claimants for relief under this
4 Decree. In determining eligibility, the Commission shall consider the following factors: (a) severity
5 of the harassment, (b) duration of the harassment, and (c) extent of harm suffered as a result, (e.g.
6 whether the Claimant was subjected to unwelcome physical touching of a sexual nature or to
7 unwelcome sexually charged comments).

8 Acting in its discretion and subject only to final approval by the Court regarding objections
9 as provided below, the Commission shall determine the portion of the Settlement Fund that will be
10 allocated to each of the Eligible Claimants. The amounts allocated to each Eligible Claimant shall
11 reflect the factors enumerated above. This Decree contemplates that there will be differences in
12 awards to Eligible Claimants.

13 Within 120 days after the Effective Date of this decree, the Commission shall make its final
14 determination as to the eligibility of each Eligible Claimant (“Final Determination Date”).
15 Defendants shall have 30 days after the Preliminary Determination Date to investigate the
16 circumstances and file objections with the EEOC to the final determination as to particular
17 Claimants. Defendants may only raise the following limited objections to the EEOC’s preliminary
18 determination as to the eligibility and damages of each Claimant:

19 a) Lexus may disagree as to the timeliness of the claim.

20 b) Lexus may disagree on awarding money to a claimant who has previously
21 signed a comprehensive settlement precluding further recover for the same claims.

22 If a timely objection is made by Defendants, and the EEOC disagrees with the objection,
23 Defendants may present their objection, by way of motion, to the Federal District Court who shall
24 have authority to determine the right to such an award, per the criteria set herein.

25 **4. Notification of Eligibility**

26 Within thirty (30) days after the Commission’s Final Determination Date, or if any objection
27 is filed as to particular Claimants within thirty (30) days after the resolution of the objection by the
28 Court, as described above, the Commission shall mail to each person whom it has determined is

1 entitled to monetary relief, a letter containing the following information: (1) whether he or she has
2 been designated as eligible to be awarded relief; and (2) the preliminary determination as to the gross
3 (pre-tax) amount of monetary relief to which such person will be entitled. The letter will also inform
4 each Eligible Claimant that any monetary payments received from the Settlement Fund may be
5 subject to mandatory federal, state and local income tax withholding.

6 **5. Executed Release by Claimant**

7 Each Eligible Claimant who receives notice that she is entitled to monetary relief, will accept
8 such relief by executing the Claimant Release attached hereto as Exhibit A.

9 **6. Calculation and Distribution of Final Settlement Amounts**

10 Within fourteen (14) days after receipt of each Claimant Release Form, Defendants shall
11 deliver payment to each Eligible Claimant. Payment shall be mailed directly to each Eligible
12 Claimant to an address supplied by the Commission. Within three business days of the issuance,
13 Defendants shall submit a copy of each check and related correspondence to the Regional Attorney,
14 United States Equal Employment Opportunity Commission, 350 The Embarcadero, Suite 500, San
15 Francisco, CA 94105. In addition, Defendants shall prepare and distribute 1099 tax reporting forms
16 to each Eligible Claimant and shall make appropriate reports to the Internal Revenue Service and
17 other tax authorities. Claimants are responsible for the payment of their own taxes on the settlement
18 funds and Defendants shall not deduct for taxes out of the settlement funds. Defendants shall notify
19 the Commission in writing of any checks that are returned. The Commission may take further steps
20 to track those Eligible Claimants who did not receive their settlement checks provided that the award
21 to any Eligible Claimant who cannot be found will expire six months after the initial attempt at
22 distribution and any amount not paid to such Claimant shall be distributed to organizations
23 addressing women's rights and employee rights as set forth below.

24 **8. Allocation to Charitable, Non-Profit or Not-For-Profit Organization**

25 If the Settlement Fund is not completely depleted after the procedures outlined in the above
26 paragraphs, the remainder of the Settlement Fund will be given to an organization addressing
27 women's rights and/or employee's rights chosen by the Commission, subject to Defendants'
28 approval, which approval shall not be unreasonably withheld.

1 9. Costs Associated with Distribution of the Settlement Fund

2 C. All costs associated with the distribution of the Settlement Fund to Eligible Claimants
3 shall be paid by Lexus, including without limitation, all costs associated with the creation and
4 maintenance of the Settlement Fund, and all costs related to the issuance and mailing of checks from
5 the Settlement Fund, except as set forth herein. Under no circumstances are Lexus to use the
6 principal from the Settlement Fund to pay any costs associated with the distribution of the
7 Settlement Fund or any other costs associated with their obligations under this Decree.

8 **VIII. INJUNCTIVE RELIEF**

9 **A. Non-Discrimination**

10 Defendants, their officers, agents, management (including all supervisory employees),
11 successors, assigns, and all those in active concert or participation with any of them, hereby agree
12 (1) not to engage in sexual harassment or other form of sex discrimination; (2) to prevent and correct
13 any harassment or other discrimination on the basis of sex; and (3) to ensure that employees who
14 complain about or resist discrimination on the basis of sex are not subjected to any tangible
15 employment actions.

16 **B. Anti-Retaliation**

17 Defendants, their officers, agents, management (including all supervisory employees),
18 successors, assigns, and all those in active concert or participation with them, or any of them, hereby
19 agree not to retaliate against any current or former employees for: (a) opposing any practice made
20 unlawful under Title VII; (b) engaging in protected activity under Title VII; (c) filing a charge of
21 discrimination; (d) participating in any manner in any investigation (including any internal
22 investigation undertaken by defendants) or proceeding relating to any alleged Title VII violation; (f)
23 asserting any rights under this Decree; or (g) receiving any relief under this Decree.

24 **C. Posting**

25 Within ten business days after the Effective Date and throughout the term of this Decree,
26 Defendants shall post a full-sized copy of the Notice attached hereto as Exhibit B, in at least two
27 clearly visible locations frequented by Lexus employees, including the conference room frequented
28 by sales employees at Lexus of Serramonte. Said notice shall also be distributed individually to each

1 employee, at Lexus of Serramonte, immediately after entry of the Consent Decree.

2 **D. Equal Employment Opportunity Consultant**

3 Within thirty business days after the Effective Date, Defendants shall notify the EEOC of
4 their proposed choice for an Equal Employment Opportunity Consultant (“Consultant”) who shall
5 possess demonstrated experience in implementing sex harassment policies and procedures,
6 conducting investigations, and monitoring compliance with Title VII and the provisions of this
7 Decree. The Consultant chosen shall be subject to the EEOC’s approval, which shall not be
8 unreasonably withheld. If the EEOC does not approve Defendants’ proposed Consultant, the EEOC
9 shall provide Defendant with a list of at least three suggested candidate acceptable to the EEOC from
10 which defendants must choose and retain one within fifteen (15) days of receipt of the list.
11 Defendants shall bear all costs associated with the selection and retention of the Consultant and the
12 performance of his/her duties during the term of the Decree.

13 The Consultant’s responsibilities shall include:

- 14 1. Determine whether Lexus’ policies and procedures are drafted to ensure effective
15 investigations of discrimination and retaliation complaints;
- 16 2. Suggest modifications to Lexus’ training materials, training methods and methods
17 of handling workplace discrimination, if necessary to comply with Title VII;
- 18 3. Conduct training for all employees on Lexus’ policies and procedures against
19 discrimination and retaliation, and conduct training for supervisors on recognizing discrimination
20 and retaliation and responding to such complaints as required by law.
- 21 4. Verify that Lexus has a system of making and processing complaints of
22 discrimination or harassment that provides feasible and practical avenues of complaint that are made
23 known to all employees. This system may include multiple avenues of filing complaints, including a
24 third party employee hotline system;
- 25 5. Review Lexus’ response to any complaints or inquiries regarding sexual
26 harassment, and make suggestions on proper handling;
- 27 6. Monitoring to prevent retaliation against employees who complain or inquire
28 about discrimination or retaliation;

1 7. Verify Lexus' discipline policies hold managers and employees accountable for
2 failing to take appropriate action and/or for engaging in other conduct prohibited under this Decree
3 and Title VII; and

4 8. Ensure that all reports required by this Decree are accurately compiled and timely
5 submitted; and

6 **E. Revision of Policies Concerning Discrimination and Retaliation**

7 With the assistance of the Consultant, Lexus shall review, and if necessary revise its policy
8 on discrimination and retaliation. A copy of the policy shall be submitted to the EEOC and
9 distributed to all of Lexus' employees within sixty (60) days of the Effective Date. The revised
10 policy shall include:

- 11 1. A strong and clear commitment to a workplace free of discrimination.
- 12 2. A clear and comprehensive description, including concrete examples, of
13 prohibited sexual harassment and retaliation.
- 14 3. A description of the possible consequences that will be imposed upon violation of
15 the policy against discrimination and retaliation;
- 16 4. A statement encouraging employees to come forward if they believe that they
17 have been discriminated against or retaliated against for complaining about discrimination;
- 18 5. An assurance that persons who in good faith complain about discrimination or
19 retaliation they experienced or witnessed will not be subject to retaliation;
- 20 6. A clearly described complaint process that provides accessible avenues of
21 complaint;
- 22 7. Assurance that the employer will protect the confidentiality of discrimination
23 complaints to the extent possible on a need-to-know basis.
- 24 8. A complaint process that provides prompt, thorough, and impartial investigations;
- 25 9. A system for tracking and providing follow-up on complaints and/or inquiries
26 regarding sexual harassment and/or retaliation such as the employee hotline;
- 27 10. Assurance that Lexus will take immediate and appropriate correction action if
28 they determine that discrimination or retaliation has occurred.

1 **11.** A statement that Lexus’ policy against discrimination and retaliation applies to
2 all of Lexus’ management officials, supervisors, vendors, suppliers, third parties, and customers;

3 **12.** The contact information of persons both internal (e.g. human resources personnel
4 or managers) and external to Defendants to whom employees may report discrimination and
5 retaliation;

6 **13.** A clear and comprehensive description of the specific responsibilities of Lexus’
7 supervisory employees when they witness discrimination and/or retaliation and/or receive a
8 complaint and/or inquiry regarding discrimination and/or retaliation; and

9 **14.** A clear and comprehensive description of the specific responsibilities of Lexus’
10 supervisory employees who fail to perform their responsibilities when they witness discrimination
11 and/or retaliation and/or receive a complaint and/or inquiry regarding discrimination and/or
12 retaliation

13 **F. Training**

14 **1.** Within sixty days after hiring the Consultant, Lexus shall submit their training
15 materials on sexual harassment and retaliation to the EEOC.

16 **2.** Within sixty days after approval by the EEOC of the training materials submitted,
17 all of Lexus’ managerial and staff/hourly employees shall be required to attend training on their
18 obligations and responsibilities under Lexus’ policies and procedures provided by the Consultant.

19 **3.** All employees’ training shall include coverage of equal employment opportunity
20 rights and responsibilities, harassment, retaliation, and Lexus’ revised policies and procedures for
21 reporting and handling complaints of harassment and retaliation. The training shall last at least one
22 hour.

23 **4.** The training of supervisory employees shall additionally include training on how
24 to recognize, prevent and correct sexual harassment, how to take preventative and corrective
25 measures against sexual harassment, and how to receive and investigate or report to designated
26 officials complaints of sexual harassment, discrimination or retaliation.

27 **5.** For the remainder of the term of this Decree, all new employees and all
28 employees recently promoted from a staff/hourly to managerial position shall receive the managerial

1 or staff/hourly employee training, as appropriate, within thirty days of hire or promotion. This
2 training may be done in person or electronically and does not have to be performed by the
3 Consultant, provided the training is approved by the EEOC.

4 6. After the initial training as specified above, all employees shall receive the
5 training at least annually thereafter for the remainder of the term of this Decree.

6 **G. Complaint Procedure**

7 Within sixty (60) days of the Effective Date, Defendants shall ensure that their internal
8 Complaint procedure provides for the filing, investigation and, if appropriate, remedying of
9 complaints of discrimination or retaliation. Defendants shall establish a toll-free number or internet-
10 based reporting system that shall be disseminated to all Lexus of Serramonte employees informing
11 them that a complaint can be lodged at any time. The toll-free number or internet-based reporting
12 system shall be administered by a third-party provider. All calls or reports shall be tracked by the
13 third-party during the term of the Decree. The provider must be approved by the EEOC and may be
14 changed from time to time with EEOC approval.

15 Defendants shall (1) publicize the complaint procedure; (2) track and collect all complaints
16 filed thereunder; (3) investigate and resolve such complaints in a timely and effective manner; and
17 (4) retain records regarding resolution of all such complaints.

18 The Consultants shall track and collect all complaints filed thereunder and retain all records
19 regarding resolution of all such complaints. The Consultants shall also ensure that Defendants
20 publicize the complaint procedure and shall review Defendants' investigation and resolution of such
21 complaints.

22 The internal complaint procedure shall incorporate the following elements:

- 23 1. A description of how investigations will be conducted;
- 24 2. A prompt commencement and thorough investigation by persons trained to
25 conduct such investigations;
- 26 3. A statement that an investigation should include interviews of all relevant
27 witnesses, including the complainant, and reviews of all relevant documents;
- 28 4. A written record of all investigatory steps, and any findings and conclusions, and

1 any actions taken;

2 5. Provision for the reasonably prompt resolution of such complaints;

3 6. An opportunity for the complainant to review and respond to tentative findings,
4 except in those circumstances in which it is necessary to take immediate action;

5 7. Confidentiality of the complaint and investigation to the extent possible;

6 8. Communication of the final conclusions of the investigation to the complainant;

7 9. An appeal procedure to an appropriate representative for defendants, should the
8 complainant be dissatisfied with the results of the investigation;

9 10. A statement that it is unacceptable to retaliate against anyone for using the
10 complaint procedure, for assisting in the investigation of a complaint, or for otherwise assisting in
11 the utilization of the procedure.

12 **H. Neutral References**

13 Defendants shall hereafter give a neutral reference for Ms. Wei, Ms. Downing and each
14 similarly situated employee identified by the EEOC upon inquiry by any prospective employers,
15 which includes the following information: date of hire, position held, and date of departure. Ms.
16 Wei, Ms. Downing and each similarly situated employee identified by the EEOC shall list the
17 following as their reference for employment at Lexus: Vicki Sylvia, Director of Associate
18 Development, 7000 Las Vegas Blvd. North, Suite 200, Las Vegas, Nevada 89115; and telephone
19 (702) 632-3315

20 **IX. RECORD KEEPING AND REPORTING**

21 **A. Record Keeping**

22 The Consultant shall establish a record keeping procedure that provides for the centralized
23 tracking of complaints of sexual harassment and the monitoring of such complaints to prevent
24 retaliation. The records to be maintained during the period of this Consent Decree shall include:

25 1. All documents generated in connection with any complaint, investigation into, or
26 resolution of every complaint of sexual harassment or retaliation for the duration of the Decree and
27 the identities of the parties involved, including, but not limited to, the complainant, alleged
28 perpetrator, investigator(s), witness(es) and decision-maker(s);

1 2. All forms acknowledging employees' receipt of defendants' revised
2 discrimination and anti-retaliation policy and complaint procedure;

3 3. All documents verifying the occurrence of all training sessions and names and
4 positions of all attendees for each session as required under this Decree; and

5 4. All documents demonstrating the monitoring of employees against whom
6 Defendants' investigation substantiated a complaint of sex harassment and/or retaliation.

7 **B. Reporting**

8 1. Lexus shall provide the written reports to the EEOC as follows:

9 a) Within 120 days after the Effective Date, Defendants shall submit to the
10 EEOC an initial report which contains:

11 (i) A copy of the policy against sexual harassment, discrimination and
12 retaliation and any revisions to the policy thereafter;

13 (ii) A summary of the procedures and record keeping methods
14 developed by the Consultant for handling, tracking, and monitoring of complaints of discrimination
15 and retaliation;

16 (iii) A statement confirming that the Notice required by this Decree and
17 the revised policy have been posted and distributed; and

18 (iv) A statement confirming that all employees have received the
19 revised policy.

20 2. Lexus shall also provide a report within one year of the effective date and a final
21 report within 90 days before the termination of this Decree which includes:

22 a) A list of the names and positions of employment of each employee who
23 attended each training required and provided under this Decree (categorized by supervisory versus
24 non-supervisory staff);

25 b) A list of the names and positions of each employee who failed to attend
26 the training, the reason training was not attended, and written confirmation that those employees
27 who missed training were trained within thirty (30) days of the missed training; and,

28 c) A brief description of all sexual harassment and/or retaliation complaints

1 made since the submission of the immediately preceding report required by this Consent Decree or
2 the Effective Date, whichever is most recent. This description shall include the names of the
3 individual alleging sex harassment or retaliation, the nature of the sex harassment or retaliation
4 alleged, the names of the alleged perpetrators, the dates of the alleged acts of sex harassment or
5 retaliation, a brief summary of how each complaint was resolved, the identity of the person(s) who
6 investigated and resolved each complaint, and a confidential statement from Consultant to the EEOC
7 regarding his or her assessment of the investigation and resolution. If a complaint of discrimination
8 or retaliation has not been resolved as of the time of the report, the result shall be included in the
9 next report.

10 **X. MODIFICATION AND SEVERABILITY**

11 **A.** This Decree constitutes the complete understanding of the Parties with respect to the
12 Matters contained herein. No waiver, modification or amendment of any provision of this Decree
13 will be effective unless made in writing and signed by an authorized representative of each of the
14 Parties.

15 **B.** If one or more provisions of the Decree are rendered unlawful or unenforceable, the
16 Parties shall make good faith efforts to agree upon appropriate amendments to this Decree in order to
17 effectuate the purposes of the Decree. In any event, the remaining provisions will remain in full
18 force and effect unless the purposes of the Decree cannot, despite the Parties' best efforts, be
19 achieved.

20 **C.** By mutual agreement of the Parties, this Decree may be amended or modified in the
21 interest of justice and fairness in order to effectuate the provisions of this Decree.

22 **XI. COMPLIANCE AND DISPUTE RESOLUTION**

23 **A.** The Parties expressly agree that if the EEOC has reason to believe that Defendants have
24 failed to comply with any provisions of this Consent Decree, the EEOC may petition this Court, or if
25 the Court has deferred dispute issues to Magistrate Judge Larson, to Magistrate Judge Larson
26 (hereafter "this Court") to enforce the Decree. Prior to initiating such petition, the EEOC will notify
27 Defendants and their legal counsel of record, in writing, of the nature of the dispute. This notice
28 shall specify the particular provision(s) that the EEOC believes has/have been breached. Absent a

1 showing by either party that the delay will cause irreparable harm, Defendants shall have sixty days
2 to attempt to resolve or cure the breach.

3 **B.** The Parties agree to cooperate with each other and use their best efforts to resolve any
4 dispute referenced in the EEOC notice.

5 **C.** After sixty days have passed with no resolution or agreement to extend the time further,
6 the EEOC may petition this Court for compliance with this Decree, seeking all available relief,
7 including, but not limited to, the imposition of attorneys' fees and costs and an extension of the term
8 of the Decree for such period of time as Defendants are shown to be in breach of the Decree.

9 **XII. ADMINISTRATIVE AND IMPLEMENTATION OF CONSENT DECREE**

10 Defendants shall bear all costs associated with their obligations under this Consent Decree,
11 except as set forth herein.

12 **XIII. COSTS AND ATTORNEYS' FEES**

13 Each party shall bear its own costs of suit and attorneys' fees.

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XIV. COUNTERPARTS AND FACSIMILE SIGNATURES

This Decree may be signed in counterparts. A facsimile signature shall have the same force and effect of an original signature or copy thereof.

Respectfully submitted,

January 11, 2006

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
William R. Tamayo, Regional Attorney
David F. Offen-Brown, Supervisory Trial Attorney
Elizabeth Esparza-Cervantes, Trial Attorney

BY: _____
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Attorneys for Plaintiff EEOC

December 29, 2006

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John Boggs, Esq.
David Hosilyk, Esq.

BY: _____
John Boggs, Esq.

Attorneys for Defendants LEXUS OF SERRAMONTE,
SONIC AUTOMOTIVE, INC., and FIRST AMERICA
AUTOMOTIVE, INC.

ORDER

The Court hereby retains jurisdiction. The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is fair and adequate.

1/22/07



UNITED STATES DISTRICT JUDGE

1 **Exhibit A-Claimant Release**

2 **RELEASE OF CLAIMS**

3 In consideration for \$_____ paid to me by Lexus of Serramonte ("Lexus") in
4 connection with the resolution of *Equal Employment Opportunity Commission v. Lexus of*
5 *Serramonte, et al*, Case Number Case Number C-05-00962-SBA-JL, I am voluntarily waiving my
rights as set forth in this Release of Claims.

6 1. **Claims released.** I understand that I am releasing the "Lexus Releasees"
7 defined below from any claim for sexual harassment that occurred on or before my execution of this
release.

8 2. **Laws affected.** I understand that the claims released include claims for sexual
9 harassment under Title VII of the Civil Rights Act of 1964, as amended, and 42 U.S.C. §§2000e-
10 5(f)(1). I understand that this means I am agreeing not to sue the Lexus Releasees with respect to the
claims I am releasing.

11 3. **Persons and entities released.** I understand that the "Lexus Releasees" being
12 released includes the following entities and persons: Lexus of Serramonte, FAA Serramonte, L Inc.,
13 FirstAmerica Automotive, Inc. and Sonic Automotive, Inc., and, as the case may be, each of their
associates; owners; stockholders; affiliates; divisions; subsidiaries; parent companies, predecessors;
successors; heirs; assigns; agents; directors; officers; partners; employees; insurers; representatives;
lawyers; and all persons acting by, through, under or in concert with them, or any of them.

14 4. **Right to consult counsel.** I understand that the Equal Employment
15 Opportunity Commission is only charged with administering federal discrimination laws. I
16 acknowledge that, prior to signing this Release of Claims, I have been provided an opportunity to be
advised by counsel regarding my release of claims.

17 5. **Right to file a charge with the EEOC.** I understand that this release covers
18 claims for sexual harassment. I understand my right to file a charge at any time with the EEOC for
claims not covered by this Release.

19 Print Name:

20 Signature:

21 Date:
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1 **Exhibit B-TO BE PLACED ON EEOC LETTERHEAD**

2 **NOTICE OF SETTLEMENT**

3 **TO: ALL LEXUS OF SERRAMONTE EMPLOYEES**

4 The U.S. Equal Employment Opportunity Commission (“EEOC”) sued Lexus of
5 Serramonte and other related entities in federal court, *Equal Employment Opportunity*
6 *Commission v. Lexus of Serramonte, et al*, Case Number C-05-00962-SBA-JL. The
7 EEOC claimed that female employees were sexually harassed. Lexus of Serramonte
8 denied all of these allegations. To avoid protracted litigation, the parties have settled the
9 case. Under a court signed consent decree, Lexus of Serramonte agreed to pay monetary
relief to the women in the lawsuit and to provide a process by which the EEOC can
search for and obtain relief for other women who were not included in the lawsuit.
Lexus further agreed to take further measures to ensure that it maintains a
discrimination-free workplace, including additional training of all employees on how to
correct and prevent unlawful workplace harassment and retaliation.

10 Lexus of Serramonte will not tolerate sex harassment or discrimination against any
11 persons because of their sex, national origin, age, race, color, religion, or disability; and
12 will not tolerate retaliation that violates federal employment discrimination laws. If you
harass or discriminate against any Lexus of Serramonte employee you may be disciplined
and fired.

13 If you think that you have been harassed or retaliated against based on your sex,
14 national origin, age, race, color, religion, or disability, you can complain to the human
resources department by contacting Vicki Sylvia, Director of Associate Development,
15 7000 Las Vegas Blvd. North, Suite 200, Las Vegas, Nevada 89115, telephone: (702)
632-3315 or their confidential hotline at 1 (877) 888-0002.

16 Even if you complain to Lexus of Serramonte, you have a right to file a
17 discrimination charge with the EEOC within 300 days of the discrimination. You can
call the EEOC at (800) 669-4000.

18 Federal law prohibits sex harassment, retaliation and discrimination against any
19 employee or applicant for employment because of the person’s age, disability, race, sex,
color, religion or national origin.