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13 PERRY FORD OF SAN LUIS OBISPO

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FILED
CLERK, U.S. DISTRICT COURT
OCT 17 2006
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
OCT 18 2006
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LOGGED

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U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

HYSEN-JOHNSON FORD, INC dba
PERRY FORD OF SAN LUIS
OBISPO,

Defendant(s).

Case No.: CV 05-6695 DSF (CWx)

~~[PROPOSED]~~ CONSENT
DECREE; ORDER

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d)

DOCKETED ON CM
OCT 18 2006
BY 003

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I.

INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (“EEOC” or “Commission”) and Defendant Hysen-Johnson Ford, d/b/a Perry Ford, (“Perry Ford”) hereby stipulate and agree to entry of this Consent Decree to resolve the Commission’s Complaint (the “Complaint”), filed under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (“Title VII”). This Consent Decree resolves all issues raised by the EEOC in the present lawsuit involving the Charging Party, Claimant Chris E. Francis, (the “Claimant”).

II.

PURPOSES AND SCOPE OF THE CONSENT DECREE

A. The parties to this Consent Decree (“Decree”) are EEOC and Perry Ford. The scope of this Decree includes Perry Ford’s operations at its San Luis Obispo, California facility. This Decree shall be binding on and enforceable against Perry Ford and its officers, directors, agents, successors and assigns, and against the Commission for the effective period of the Decree as noted in Section V.

- B. The parties have entered into this Decree for the following purposes:
 - I. To provide relief agreed upon for the Claimant;
 - II. To ensure that Perry Ford’s employment practices comply with federal law;
 - III. To avoid expensive and protracted costs incident to litigation;
 - IV. To provide a final and binding settlement upon the parties and Claimant as to all claims alleged by the Commission in the Complaint filed in this action.

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III.

RELEASE OF CLAIMS

A. This Decree fully and completely resolves all issues, claims, and allegations made by the EEOC and/or Claimant against Perry Ford that are raised in the Complaint filed in this action in the United States District Court, Central District of California on September 28, 2004, captioned U.S. Equal Employment Opportunity Commission v. Hysen-Johnson Ford d/b/a Perry Ford and DOES 1 to 10, Inclusive, Case No. CV 05-6695 DSF (CWx).

B. Nothing in this Decree shall be construed to preclude the Commission from bringing suit to enforce this Decree in the event that any party hereto fails to perform the promises and representations contained herein.

C. Nothing in this Decree shall be construed to limit or reduce Perry Ford's obligation to comply fully with Title VII or any other federal employment statute.

D. This Decree in no way affects the EEOC's right to bring, process, investigate, or litigate other charges that may be in existence or may later arise against Perry Ford in accordance with standard EEOC procedures.

E. The existence of this Consent Decree or settlement of the claims in the Commission's Complaint, in general, may not be construed in any way as an admission of any liability on Perry Ford's part.

IV.

JURISDICTION

A. The Court has jurisdiction over the parties and the subject matter of this lawsuit pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1345, 1367 and 42 U.S.C. § 2000e-5(f). The Complaint asserts that, if proven, would authorize the Court to grant the equitable relief set forth in this Decree. The terms and provisions of this Decree are fair, reasonable, and just. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges

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1 of any person. The entry of this Decree will further the objectives of Title VII and
2 will be in the best interests of Perry Ford, the Commission, and those for whom the
3 Commission alleges relief is appropriate (the Claimant).

4 B. The Court shall retain jurisdiction of this action during the duration of
5 the Decree for the purposes of entering all orders, judgments and decrees that may
6 be necessary to implement the relief provided herein.

7 V.

8 **EFFECTIVE DATE AND DURATION OF DECREE**

9 A. The provisions and agreements contained herein are effective
10 immediately upon the date which this Decree is entered by the Court ("the
11 Effective Date").

12 B. The duration of this Consent Decree shall be two years from the date
13 of the Effective Date.

14 VI.

15 **MODIFICATION AND SEVERABILITY**

16 A. This Decree constitutes the parties' complete understanding with
17 respect to the matters contained herein. By the parties' mutual agreement, this
18 Decree may be amended or modified in the interests of justice and fairness in order
19 to effectuate the provisions of the Decree. No waiver, modification, or amendment
20 of any provision of this Decree will be effective unless made in writing and signed
21 by an authorized representative of each of the parties.

22 B. If one or more provisions of the Decree are rendered unlawful or
23 unenforceable, the parties shall make good faith efforts to agree upon appropriate
24 amendments to this Decree in order to effectuate the purposes of the Decree. In
25 any event, the remaining provisions will remain in full force and effect unless the
26 purposes of the Decree cannot, despite the parties' best efforts, be achieved.

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VII.

COMPLAINCE AND DISPUTE RESOLUTION

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A. The parties expressly agree that if the Commission has a reason to believe that Perry Ford has failed to comply with any provision of this Consent Decree, the Commission may file a motion before this Court to enforce the Decree. Prior to initiating such action, the Commission will notify Perry Ford and its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the Commission believes has/have potentially been breached. Absent a showing by either party that the delay will cause irreparable harm, Perry Ford shall have thirty (30) days to attempt to resolve or cure the breach in a manner satisfactory to both parties.

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

C. After thirty days have passed with no resolution or agreement to extend the time further, the Commission may petition this Court for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree for such period of time as Perry Ford is shown to be in breach of the Decree and the Commission's costs incurred in securing compliance with the Decree.

VIII.

MONETARY RELIEF

Perry Ford, in settlement of this dispute, shall pay to the Claimant the following amounts as provided herein.

A. Perry Ford shall pay a total of \$13,000.00 as alleged damages to the Claimant. Within ten business days after the Effective Date, Perry Ford shall mail to the Commission at the address listed above, via certified mail, a check payable to the Claimant, subject to any required offsets, taxes or other required deductions.

B. As the parties agree that the \$13,000.00 total payment represents

1 compensatory damages under Title VII, Perry Ford is not required to make any
2 employer contributions. Perry Ford will provide confirmation of the issuance of a
3 1099 form or the equivalent as required by law for the payment made to the
4 Claimant. SCANNING

5 C. A copy of the check and accompanying transmittal papers shall be
6 contemporaneously forwarded to the EEOC, c/o Regional Attorney Anna Park,
7 255 E. Temple Street, 4th Floor, Los Angeles, CA 90012.

8 **IX.**

9 **GENERAL INJUNCTIVE RELIEF**

10 **A. Non-Discrimination**

11 **1. Discrimination Based on Race**

12 Defendant, its officers, agents, management (including all supervisory
13 employees), successors, assigns, and all those in active concert or participation
14 with them, or any of them, hereby agree not to: (a) discriminate against persons on
15 the basis of race in the terms and conditions of employment; and (b) engage in or
16 be a party to any action, policy or practice that is intended or is known to them to
17 have the effect of discrimination, harassment or intimidating any employee on the
18 basis of his/her race; and (c) create, facilitate or permit the existence of a work
19 environment that is hostile to employees due to their race.

20 **2. Retaliation**

21 Defendant, its officers, agents, management (including all supervisory
22 employees), successors, assigns, and all those in active concert or participation
23 with them, or any of them, hereby agree not to engage in, implement or permit any
24 action, policy or practice with the purpose of retaliating against any current or
25 former employee because he or she has in the past, or during the term of this
26 Decree: (a) opposed any practice made unlawful under Title VII; (b) filed a charge
27 of discrimination alleging such practice; (c) testified or participated in any manner
28 in any investigation (including without limitation, any internal investigation

1 undertaken, proceeding in connection with this case and/or relating to any claim of
2 a Title VII violation; (d) was identified as a possible witness or claimant in this
3 action; (e) asserted any rights under this Decree; or (f) sought and/or received any
4 relief in accordance with this Decree.

5 A. Revision of Policies Concerning Discrimination

6 Defendant shall provide its current written policy on discrimination within
7 ninety (90) days of the Effective Date. Thereafter, within twenty (20) days of
8 receipt of Defendant's written policy on discrimination, the Commission shall
9 notify Defendant of the need to revise its policy if necessary to comply with the
10 provisions of this Consent Decree. Defendant shall provide a copy of any revised
11 policy to the Commission within twenty (2) ^{0 DSF} days of receipt of the Commission's
12 notice. Defendant's policy shall include:

- 13 1. A clear explanation of prohibited conduct;
- 14 2. A clearly described complaint process that provides accessible
15 and confidential avenues of complaint with contact information including address,
16 and telephone number of persons both internal (i.e., human resources) and external
17 to it ("EEOC") to whom employees may report discrimination.
- 18 3. Assurance that the employer will protect the confidentiality of
19 the discrimination complaints to the extent possible;
- 20 4. A complaint process that provides a prompt, thorough, and
21 impartial investigation;
- 22 5. A procedure for communicating with the complainant regarding
23 the status of the complaint/investigation, results of the investigation, and whether
24 remedial action was taken; and
- 25 6. Assurance that defendant will take immediate and appropriate
26 corrective action when it determines that discrimination has occurred.

27 B. Training

28 By February 28, 2007, managers shall attend a training program of a

1 minimum of 3.0 hours for managerial employees. Non-managerial employees
2 shall be trained for a minimum of 1.5 hours. The training shall be mandatory and
3 can be done via video-conference, and for non-managerial employees can be done
4 via videotape.

5 1. All employee training shall include coverage of the subjects of
6 equal employment opportunity rights and responsibilities, discrimination,
7 harassment, retaliation, and Defendant's policies and procedures for reporting and
8 handling complaints of discrimination, including any revisions made to such
9 policies and procedures.

10 2. The training of managerial employees shall additionally include
11 training on how to properly handle and investigate complaints of discrimination in
12 a neutral manner, how to take preventive and corrective measures against
13 discrimination, and how to recognize and prevent discrimination.

14 3. For the remainder of the term of this Decree, all new employees and
15 all employees recently promoted from a staff/hourly to a managerial position shall
16 receive the managerial or staff/hourly employee training, as required herein,
17 within thirty (30) days of hire or promotion. This training may be conducted by
18 videotaped presentation.

19 4. After the initial training as specified above, all employees shall
20 receive a refresher training annually thereafter for the remainder of the term of this
21 Decree.

22 5. All employees required to attend such training shall verify their
23 annual attendance in writing. Any managerial employees who fail to attend the
24 live training shall be trained within 30 days of their return to work. This training
25 may be conducted by videotaped presentation.

26 6. Within forty-five (45) days after the execution of the Consent Decree,
27 Defendant shall submit to the EEOC a description of the training to be provided
28 and an outline of the curriculum developed for the trainees, which complies with

1 this Decree.

2 7. A complainant shall not be required to first report the complaint to a
3 person who the complainant has accused of the inappropriate conduct to invoke the
4 Internal Complaint Procedure.

5 8. The Internal Complaint Procedure is not intended to supplant the right
6 of any employee to file a charge or complaint of discrimination or retaliation under
7 any available municipal, state, or federal law.

8 **X.**

9 **RECORD KEEPING AND REPORTING**

10 **A. Record Keeping**

11 Defendant shall establish a record-keeping procedure that provides for the
12 centralized tracking of discrimination complaints and the monitoring of such
13 complaints to prevent retaliation. The records to be maintained shall include:

- 14 1. All documents generated in connection with any complaint,
15 investigation into, or resolution of every complaint of discrimination for the
16 duration of the Decree and the identities of the parties involved;
- 17 2. All forms acknowledging employees' receipt of Perry Ford's
18 discrimination policy, along with any required revisions;
- 19 3. All documents verifying the occurrence of all training sessions
20 and names and positions of all attendees for each session as required under this
21 Decree; and
- 22 4. Documents tracking and analyzing complaints filed against the
23 same employee and location.

24 *X* The EEOC shall have the right to inspect documents as required under this
25 Decree. EEOC shall give twenty days notice prior to requesting the documents.

26 **B. Reporting**

27 1. Within ninety (90) days after the first presentation of defendant's
28 training program described above, a report shall be submitted to the EEOC which

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1 contains:

- 2 a. A copy of the discrimination policy, along with any required
- 3 revisions;
- 4 b. A summary of the procedures and record-keeping methods for
- 5 centralized tracking of discrimination complaints and the monitoring of such
- 6 complaints;
- 7 c. Copies of all employee acknowledgment forms indicating
- 8 receipt of the revised discrimination and anti-retaliation policy; and
- 9 d. Training materials, including video-tapes.

10 2. Defendant shall thereafter inform the EEOC annually as of the

11 Effective Date, for the duration of the Consent Decree, of the following:

- 12 a. Compliance with the training requirements under the Decree;
- 13 b. Notice of any revisions to the policies and procedures;
- 14 c. An analysis of the monitoring done for repeat complaints by
- 15 employees and by location; and
- 16 d. copies of all training materials, including video-tapes, if it
- 17 differs from the initial reporting.

18 **XI.**

19 **COSTS OF ADMINISTRATION AND IMPLEMENTATION**

20 **OF CONSENT DECREE**

21 Perry Ford shall bear all costs associated with its administration and

22 implementation of its obligations under this Consent Decree.

23 **XII.**

24 **COSTS AND ATTORNEYS' FEES**

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

26 **XIII.**

27 **MISCELLANEOUS PROVISIONS**

28 A. During the term of this Consent Decree, Perry Ford shall provide any

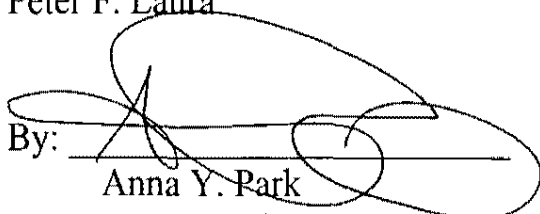
1 potential successor-in-interest with a copy of this Decree within a reasonable time
2 of not less than thirty days prior to the execution of any agreement for acquisition
3 or assumption of control of any or all of Perry Ford's operations in San Luis
4 Obispo, or any other material change in corporate structure at that location, and
5 shall simultaneously inform the EEOC of same.

6 B. During the term of this Consent Decree, Perry Ford and its successors
7 shall assure that each of its officers, managers, and supervisors is aware of any
8 term in this Decree which is related to his/her job duties.

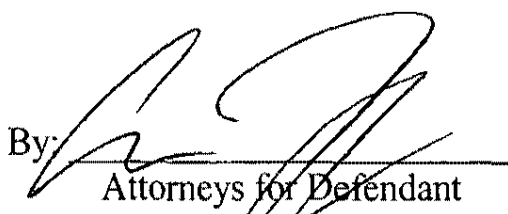
9 C. The parties agree to entry of this Decree and judgment subject to final
10 approval by the Court.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Anna Y. Park
Peter F. Laura

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15 Date: 10/13/06

By: 
Anna Y. Park
Attorneys for Plaintiff


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19 Date: 10/11/06

By: 
Attorneys for Defendant
AARON JACOBY
VENABLE LLP

[PROPOSED] ORDER

23 The Provisions of the foregoing Consent Decree are hereby approved and
24 compliance with all provisions thereof is **HEREBY ORDERED.**

25
26
27 Date: 10-17-06


The Honorable Dale S. Fischer
United States District Judge