

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>EQUAL EMPLOYMENT</b>	)	<b>Consolidated Case No. 1:06-CV-02337</b>
<b>OPPORTUNITY COMMISSION, et al.,</b>	)	
	)	<b>JUDGE JOHN R. ADAMS</b>
<b>Plaintiffs,</b>	)	
<b>v.</b>	)	
	)	
<b>SPITZER MANAGEMENT, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**CONSENT DECREE**

**INTRODUCTION**

In this consolidated Action the U.S. Equal Employment Opportunity Commission (the “Commission” or “EEOC”) sued Defendants Spitzer Management, Inc. (“Spitzer Management”), Spitzer Motor City, Inc. (“Spitzer Motor City”), and Spitzer Autoworld Cleveland, LLC. (“Spitzer Autoworld”), for violations of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”). More specifically, the EEOC sued Defendants because the EEOC determined that Defendants subjected their employees to a hostile work environment based on race, national origin, and religion. Further, the EEOC determined that Defendants were unlawfully retaliating against employees Hakim Nuriddin and Dean Okafor. The alleged unlawful retaliation included, but was not limited to, Defendant Spitzer Motor City filing lawsuits against Nuriddin and Okafor because they complained about Defendants’ discriminatory practices. Nuriddin and Okafor (hereinafter “Plaintiff-Intervenors”) are also parties to this Action, having been granted permission to intervene by court order.

In the interest of resolving this matter, and as a result of having engaged in comprehensive negotiations, the EEOC, Plaintiff-Intervenors, and Defendants Spitzer

Management, Spitzer Autoworld, and Spitzer Motor City (the “Parties”) have agreed that this action should be finally resolved by entry of this Decree.

This Consent Decree is entered into by all of the aforementioned Parties. This Decree shall be final and binding upon Defendants Spitzer Autoworld, Spitzer Motor City, Spitzer Management, their directors, officers, agents, employees, successors or assigns and all persons in active concert or participation with them, (hereinafter collectively referred to as “Defendants”).

The EEOC, Plaintiff-Intervenors, and Defendants agree to the entry of this Decree, which resolves claims raised in Civil Action Nos. 1:06-cv-02337, 1:08-cv-1326, and 1:08-cv-01542. Nothing in this Decree shall be construed to limit EEOC’s authority to process, investigate, or litigate any Charge of Discrimination, or other allegation, which has been, or may be, filed against Defendants or any other entity. By entering into this Decree, Defendants state that they have not admitted liability but desire to terminate this litigation and conform to the training requirements of the EEOC.

### **ORDER**

Upon consent of the parties to this action, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. This Decree shall remain in full force and effect for five (5) years from the date on which the Court executed this Decree.
3. Defendants are enjoined from engaging in any employment practice which constitutes unlawful discrimination under Title VII, including subjecting employees to a hostile work environment on the basis of race, national origin, and/or religion.

4. Defendants are enjoined from engaging in any employment practices which retaliate in any manner against any person because that person engaged in any protected activity.

5. Defendants shall not divulge, directly or indirectly, except as required by law, or in response to a lawful subpoena or other legal process, to any employer or potential employer of Toufic Hamdan, David Marek, Hakim Nuriddin, or Dean Okafor, any of the facts or circumstances related to events relating to any of the foregoing individuals' participation in this litigation or its resolution.

6. Defendants shall comply fully with all provisions of Title VII.

7. Defendants shall provide a notice and copy of this Decree to any successors, assigns, subsidiaries, affiliates, purchasers, and to any other corporation or other entity into which Defendants may merge or consolidate, and to any other corporation or entity that purchases or acquires Defendants.

#### **MONETARY RELIEF**

8. Defendants will pay monetary relief in the total amount of \$100,000.00 to satisfy claims asserted by EEOC on behalf of Charging Parties Toufic Hamdan and David Marek. The foregoing amount shall be paid in two separate payments in the amount of \$50,000.00 each. The first \$50,000.00 payment shall be due within fifteen days of the date upon which the Court approves and enters the parties' Consent Decree. The second \$50,000.00 payment shall be made on or before October 15, 2013. Additional monetary relief paid by Defendants for claims that EEOC brought on behalf of Plaintiff-Intervenors Hakim Nurridin and Dean Okafor shall be provided directly to counsel for Plaintiff-Intervenors Nurridin and Okafor. Further, counsel for Plaintiff-Intervenors will advise Defendants with regard to all matters pertaining to the distribution of monetary relief to Plaintiff-Intervenors.

9. The EEOC will determine what portion of the \$ 100,000.00 in monetary relief to be paid to Hamdan and Marek will constitute back pay, non-economic compensatory damages, and interest. Defendants shall deduct from amounts the EEOC designates as back pay all federal, state and local income tax and Social Security withholding or other statutory amounts normally deducted from wages and shall issue IRS W-2 Forms for such payments. Defendants shall deduct nothing from amounts the EEOC designated as non-economic compensatory damages, punitive damages, and/or interest.

10. Payments made pursuant to this Decree with respect to the Hamdan and Marek shall be mailed to them by Certified Mail, Return Receipt Requested, at addresses provided by the EEOC. Defendants shall also send appropriate IRS Forms, as set forth in Paragraph 9, to the EEOC's Claimants at the addresses provided by the EEOC. At the same time Defendants issue payment and/or IRS Forms to Hamdan and Marek, Defendants shall also mail copies of the payments and IRS Forms to the EEOC. Such copies shall be mailed to Solvita A. McMillan, and Jeffrey Stern, Trial Attorneys, EEOC Cleveland Field Office, 1240 East 9th Street, Cleveland, Ohio 44199.

11. Should any check mailed to Hamdan or Marek be returned as undelivered, Defendants shall notify the EEOC immediately in writing and shall provide the EEOC with the envelope in which the check was mailed to the Claimant, along with any explanation(s) provided by the postal authorities. Defendants shall remain liable for any such undelivered payment, but after notifying the EEOC in accordance with this paragraph, may tender any such undelivered payment to Solvita A. McMillan, and Jeffrey Stern Trial Attorneys, EEOC Cleveland Field Office, 1240 East 9th Street, Cleveland, Ohio 44199.

12. Upon Defendants' failure to make payment in accordance with this Decree, Defendants shall be in default and interest shall accrue on the balance of the amounts owing pursuant to this Decree from the date of default to the time of payment at the IRS penalty rate applicable during the period of default.

**ANTI-DISCRIMINATION AND ANTI-HARASSMENT  
POLICIES AND COMPLAINT PROCEDURES**

13. Defendants shall adopt, implement, and effectively enforce written policies ("Defendants' Policies") prohibiting and preventing employment discrimination, including policies prohibiting discrimination on the basis of race, national origin, religion, and retaliation. Such Policies shall also provide an effective complaint process concerning complaints of discrimination and the prevention of discrimination.

14. Defendants' Policies identified in Paragraph 13 shall be distributed to all employees no later than thirty (30) days after the Court executes this Decree. Defendants shall distribute the Policies by requiring one of its management personnel to deliver the Policies, in person, directly to each worker. Defendants shall discuss the Policies with each individual and shall specifically explain to each individual that Defendants' Policies prohibit discrimination on the basis of race, national origin, religion, and retaliation. Defendants shall also encourage employees to oppose and report unlawful discrimination and shall advise employees that Defendants prohibit retaliation against any worker who reports discrimination, opposes discrimination, or participates in any manner in an investigation of alleged discrimination.

15. Defendants shall distribute the Policies identified in Paragraph 13 to all newly hired individuals, and those who begin performing work for Defendants at a future date, on the first day that individual begins to perform work for Defendants. Defendants shall discuss the Policies with each new worker as set forth in Paragraph 14.

16. Defendants shall retain complete records reflecting the date on which its Policies were provided to each worker, confirming that the Policies were discussed and explained to each worker, and identifying the person who provided the Policies to each worker and otherwise complied with Paragraphs 14 and 15.

17. Defendants shall ensure that their Policies are provided and explained to each worker in his or her native language, should any worker so request.

18. Defendants shall distribute their Policies to each worker in paper form. Providing notice to workers that Policies are available for review in electronic form, or that they are otherwise available at a central location, is insufficient and does not comply with this Decree.

19. No later than forty-five (45) days after the Court executes this Decree, Defendants shall provide the EEOC with written certification that Defendants have complied fully with Paragraphs 13 through 18 of this Decree.

20. On an annual basis, Defendants will send to the EEOC a complete copy of all of their Policies prohibiting discrimination, harassment, and retaliation, for the duration of this consent decree.

### **TRAINING**

21. For the duration of this Decree, Defendants shall provide live training to all of their employees, supervisors, and managers, including managers employed at Defendants' Elyria, Ohio headquarters office, with regard to enforcing the following: Defendants' Policies; rights and obligations arising under Title VII with an emphasis on defining, complaining about, and preventing unlawful harassment and prohibiting retaliation; instruction on how to keep Defendants' workplaces free from discrimination; and education about what constitutes unlawful retaliation. During each such training session, Defendants shall advise each attendee that

Defendants encourage workers to oppose and complain about all forms of unlawful discrimination and retaliation. Defendants shall state during each training session that Defendants will not retaliate against any person who participates in any manner whatsoever in opposing discrimination, making a discrimination complaint, and/or participating in an investigation of discrimination. Additionally, such training shall be conducted as follows:

- a. training sessions shall be conducted every twelve (12) months and shall include the redistribution of Defendants' Policies to all attendees;
  - b. a member of Defendants' upper management shall attend each entire training session and shall, during each session, orally reaffirm Defendants' commitment to prevent and stop all discrimination in the workplace and explain the consequences for engaging in unlawful discrimination or retaliation;
  - c. the first training session shall take place within sixty (60) days from the entry of this Decree and, thereafter, additional sessions shall be conducted every twelve (12) months for the duration of this Decree;
  - d. each training session shall last a minimum of two (2) hours, one (1) hour of which shall be devoted solely to the definition of unlawful harassment, Defendants' commitment to stop and prevent such harassment, the means by which workers may complain pursuant to Defendants' Policies, and Defendants' prohibition against retaliation;
  - e. each training session shall be recorded by videotape at Defendants' expense and a copy of each videotaped training, which shall identify the date when the session was provided, shall be provided to the EEOC within five (5) calendar days of each training session;
  - f. each training session shall be conducted by a third-party trainer to which the EEOC agrees, at Defendants' expense, to be identified by Defendants within ten (10) days of the Court's approval and entry of this Decree; and
  - g. Defendants shall ensure that training is provided to each worker in his or her native language, should any worker so request.
22. Defendants shall provide the EEOC with copies of all pamphlets, brochures, outlines or other written materials to be provided to training session attendees no later than ten (10) calendar days before each training session.

23. No later than thirty (30) calendar days before each training session, Defendants shall, in writing, advise EEOC Trial Attorneys Solvita A. McMillan, and Jeffrey Stern of the date, time, and location of the next scheduled training session. The EEOC may, in its discretion, attend each training session.

24. Defendants shall notify EEOC Trial Attorneys Solvita A. McMillan and Jeffrey Stern, in writing, within five (5) calendar days after each training session that the session has occurred and that the session fully complied with this Decree. Such notification shall also include: (i) the date, location, and duration of the training session; (ii) a list of attendees, which shall include the name and position of each person in attendance; and (iii) a list of all current employees, including temporary employees, as of the date of the training.

#### **MANAGEMENT ACCOUNTABILITY**

25. Defendants shall promote management and supervisor accountability concerning discrimination based on race, national origin, and religion, and concerning unlawful retaliation by:

- a. providing mandatory annual anti-discrimination training to all of its supervisory and managerial personnel;
- b. disciplining, up to and including discharge, any supervisor or manager who violates Defendants' Policies or who violates Title VII;
- c. imposing on all managers and supervisory personnel a duty to ensure compliance with Defendants' Policies and with Title VII; and
- d. requiring all managers and supervisors to report to Defendants' upper management any suspected incidents of discrimination or retaliation and/or any complaints about such matters.

#### **REPORTING**

26. Every three (3) months during the course of the Decree, Defendants shall send to the EEOC a report identifying each complaint of any suspected incident of discrimination,

harassment/hostile work environment, and/or retaliation during the previous three (3) months. The report shall include all such suspected incidents even if such incidents were not the subject of a complaint. With each report, Defendants shall also provide to the EEOC copies of all written complaints about discrimination, harassment/hostile work environment, and/or retaliation made during the previous three (3) months, including all attachments (or other tangible item) concerning the complaint. If a complaint is made orally, Defendants shall provide the EEOC with a complete summary of each such complaint. Further, each report shall include: the date each complaint was made; the name, job title, address, and home telephone number/s of each complainant and witness; a description of any investigation conducted by Defendants; and any action Defendants took in response to each complaint.

27. Defendants' reports described herein shall also include Defendants' certification that the Notice required to be posted by this Decree remained posted, as required, during the entire previous three (3) months.

28. During the course of this Decree, Defendants shall make available for interview all persons whom the EEOC identifies (whether by name, job title, or work location) and all persons whom Defendants interviewed in response to each written or oral complaint made during the course of the Decree. Further, Defendants shall permit the EEOC to enter Defendants' premises for the purpose of interviewing any person whom EEOC identifies (whether by name, job title, or work location).

29. Nothing contained in this Decree shall be construed to limit any obligation Defendants may otherwise have under Title VII or any other law or regulation.

**POSTING OF NOTICE**

30. Within ten (10) calendar days after the Court executes this Decree, Defendants shall post 8 x 11 sized laminated copies of the Notice attached as Attachment A at all of Defendants' dealerships in locations easily accessible to all employees. Publishing of the Notice in electronic form in a forum available to workers is not sufficient and will not constitute compliance with this Paragraph. The Notice shall remain posted for five (5) years from the date the Court executes this Decree. Defendants shall provide a copy of the Notice and an indication of the date and location(s) of its posting(s), in writing, to EEOC Trial Attorneys Solvita A. McMillan and Jeffrey Stern no later than five (5) calendar days after such Notices have been posted. Defendants shall permit an EEOC representative to enter Defendants' premises for purposes of verifying compliance with this Paragraph at any time during normal business hours. Defendants shall take all reasonable steps to ensure that the posting(s) are/is not altered, defaced or covered by any other material. Should the posted Notice(s) become defaced, removed, marred, or otherwise illegible, Defendants agrees to post a legible copy in the manner described herein.

**MISCELLANEOUS PROVISIONS**

31. Defendants will satisfy the \$49,000.00 in monetary sanctions awarded to the EEOC pursuant to the Court's May 22, 2013 Order by making payment in full to the U.S. Treasury on or before March 31, 2014. The foregoing extension of time to make the sanctions payment is subject to the Court's approval.

32. This Consent Decree shall be filed in the United States District Court for the Northern District of Ohio and shall continue to be in effect for a period of five (5) years after the Court executes the Decree.

33. The Court retains jurisdiction over this case in order to enforce the terms of the Consent Decree.

ON BEHALF OF DEFENDANTS  
SPITZER AUTOWORLD, LLC.  
SPITZER MOTOR CITY, INC.  
SPITZER MANAGEMENT, INC.

ON BEHALF OF PLAINTIFF  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

DEBRA LAWRENCE  
REGIONAL ATTORNEY

KATE NORTHRUP  
SUPERVISORY TRIAL ATTORNEY

/s/ D. Christopher Cook  
D. CHRISTOPHER COOK (0061073)  
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Tel: (440) 246-2665  
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FOR THE SPITZER DEFENDANTS

/s/ Solvita A. McMillan  
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Cleveland, Ohio 44199  
Tel: (216)522-7676  
Fax: (216)522-7430  
solvita.mcmillan@eoc.gov

**APPROVED AND ENTERED**

date: September 12, 2013

s/John R. Adams

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**JUDGE JOHN R. ADAMS**  
**UNITED STATES DISTRICT COURT**

**ATTACHMENT A**  
**NOTICE TO ALL SPITZER ORGANIZATION EMPLOYEES**

This Notice is posted pursuant to a Consent Decree entered by the United States District Court, Northern District of Ohio in EEOC, et al. v. Spitzer Management, Inc., et al., Case No. 1:06-cv-02337, concerning lawsuits filed by the U.S. Equal Employment Opportunity Commission (“EEOC”) against various Spitzer organization entities (“Spitzer”).

In the lawsuits, the EEOC alleged that Spitzer discriminated against its employees based on race, national origin, and religion and alleged that Spitzer retaliated against employees who complained about discrimination or otherwise engaged in protected conduct.

Title VII is a federal law that prohibits employers from discriminating based on race, color, sex, religion or national origin. Title VII also prohibits retaliation against employees or applicants who exercise their rights under Title VII. For example, an employer cannot retaliate against an employee who complains about employment practices that he or she believes are discriminatory, who files a Charge of Discrimination, or who testifies and/or participates in an internal investigation or in an EEOC investigation. The EEOC investigates charges of unlawful employment discrimination. The EEOC has authority to bring lawsuits in federal court to enforce Title VII.

Spitzer, the EEOC, and individuals who intervened in the lawsuits have entered into a Consent Decree which provides, among other things, that: (1) Spitzer will pay in excess of \$ 100,000,00 in monetary relief to discrimination victims; (2) Spitzer will adopt and vigorously enforce policies prohibiting discrimination and will create effective procedures for employees to report discrimination; (3) Spitzer will not discriminate based on race, color, sex, religion, or national origin; (4) Spitzer will not retaliate against any person because he or she engaged in protected activity; and (5) Spitzer will train all employees concerning its policies prohibiting discrimination and concerning federal anti-discrimination laws.

If you believe you have been discriminated against, you may contact the EEOC at (216) 522-7455. The EEOC charges no fees and has employees who speak languages other than English. **This Notice must remain posted for five (5) years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to Solvita A. McMillan, and Jeffrey Stern, Trial Attorneys, EEOC Cleveland Field Office, AJC Federal Office Building, 1240 East Ninth Street, Suite 3001, Cleveland, Ohio 44199.**

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

Dated:

\_\_\_\_\_  
[INSERT NAME AND JOB TITLE]  
On behalf of SPITZER