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19 PECHINEY CAST PLATE, INC.

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FILED
CLERK, U.S. DISTRICT COURT
OCT - 3 2001
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]*

ENTERED
CLERK, U.S. DISTRICT COURT
OCT 3 - 2001
2001
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

20 U.S. EQUAL EMPLOYMENT)
21 OPPORTUNITY COMMISSION,)
22)
23 Plaintiff,)
24)
25 v.)
26)
27 PECHINEY CAST PLATE, INC.,)
28)
29 Defendant.)

CASE NO. 01-08448 MMM (Ex)

[PROPOSED] CONSENT DECREE;
ORDER

- Docketed
- Copies / NTC Sent
- JS - 5 / JS - 6
- JS - 2 / JS - 3
- CLSD

I.

INTRODUCTION

Plaintiff U.S. Equal Employment Opportunity Commission (the "EEOC" or "Commission") and Defendant Pechiney Cast Plate, Inc. (hereafter, "Pechiney") hereby stipulate and agree to entry of this Consent Decree to resolve the Commission's complaint, filed

OCT 3 2001

3

CLERK, U.S. DISTRICT COURT
SEP 28 2001
CENTRAL DISTRICT OF CALIFORNIA
BY

1 contemporaneously, under Title VII of the Civil Rights Act of
2 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"),
3 alleging that since at least 1999, Pechiney has operated the
4 plant located at Vernon, California as a successor to two
5 previous owner-employers, and as successor is a proper party
6 Defendant hereto. The Commission does not allege that Pechiney
7 discriminated on the basis of national origin, or that Pechiney
8 has violated Title VII. Rather, the Commission alleges that
9 Pechiney is a necessary party Defendant as a successor and
10 current owner/operator of the facility at Vernon, California, in
11 order to provide full relief as described further below.

12 **II.**

13 **PURPOSES AND SCOPE OF THE CONSENT DECREE**

14 A. The "parties" to this Consent Decree are EEOC and
15 Pechiney. The scope of this Decree is the Pechiney facility in
16 Vernon, California.

17 B. The parties have entered into this Consent Decree
18 ("Decree") for the following purposes:

- 19 1. To provide appropriate relief to the Charging
20 Parties;
- 21 2. To ensure that Pechiney's employment practices
22 comply with federal law;
- 23 3. To avoid expensive and protracted costs incident
24 to this litigation; and
- 25 4. To provide a final and binding settlement upon the
26 parties as to all Title VII claims alleged by the
27 Commission in the Complaint filed in this action.

28 ///

1 C. Pechiney has also resolved any liability on its part
2 resulting from the filing of the following charges by the
3 following individuals, hereafter referred to as "Charging
4 Parties":

5 CHARGING PARTIES EEOC CHARGE NUMBERS

6 Edward Leon	340991107
7 Alfonso Gaona	340991108
8 Victor Vazquez	340991109
9 Fernando F. Flores	340991110
10 Domingo Botello, Jr.	340991111
11 Richard S. Baez	340991112
12 Jose L. Garcia	340991113
13 Otto A. Magana	340991114
14 Homero M. Chavez	340991115
15 David Arbizo	340991116
16 Albert Ledesma	340991117
17 Christine C. Crummey	340991118
18 Herman Luna	340991119
19 Jesus O. Aguilar	340991120
20 Lauro V. Trejo	340991121
21 Hugo P. Iturrizaga	340991122
22 Joel Gonzalez	340991123
23 Gerard R. Vasquez	340991124
24 Dennis T. Monson	340991125
25 Oscar Santana	340991193
26 Johnny Lopez	340991194
27 Arthur M. Gasparra	340991195
28 Daniel Fernandez	340991196

1 George Rodriguez 340991197, 340A00569
2 Jose E. Romero 340991198
3 Gilbert D. Santana 340991288
4 Frank Magana Jr. 340991289
5 James Nunez 340991340
6 Gilbert Rodriguez 340991730.

7 D. This Decree does not resolve or bar any claims filed by
8 the Charging Parties against any former owner/operator of the
9 Pechiney facility in Vernon, California, and specifically does
10 not bar any lawsuit based upon the above-referenced charges as to
11 any employer other than Pechiney.

12 III.

13 RELEASE OF CLAIMS

14 A. This Decree fully and completely resolves all issues,
15 claims and allegations, as to Pechiney, which were raised in the
16 Charges of discrimination filed by the Charging Parties and the
17 Complaint filed in this action in the United States District
18 Court, Central District of California on September 28, 2001,
19 captioned U.S. Equal Employment Opportunity Commission v.
20 Pechiney Cast Plate, Inc. (the "Complaint").

21 B. The Commission shall dismiss the Complaint with
22 prejudice and shall not initiate any further action against
23 Pechiney based upon events and conduct which were, or could have
24 been, alleged in the Charges as to Pechiney, the investigation
25 into said events and conduct, or the allegations of said events
26 and conduct contained in the Complaint, for the time period of
27 September 1999 through the Effective Date, provided that neither
28 predecessor owner-operator of the facility at Vernon, California

1 is intended to be a third-party beneficiary of this agreed
2 Consent Decree. Nothing in this Decree shall be construed to
3 preclude the Commission, any aggrieved person, or Pechiney from
4 bringing suit to enforce this Decree in the event that any party
5 hereto fails to perform the promises and representations
6 contained herein.

7 IV.

8 JURISDICTION

9 The Court has jurisdiction over the parties and the subject
10 matter of this lawsuit. The Complaint asserts claims that, if
11 proven, would authorize the Court to grant the equitable relief
12 set forth in this Decree. The terms and provisions of this
13 Decree are fair, reasonable and just. This Decree conforms with
14 the Federal Rules of Civil Procedure and Title VII and is not in
15 derogation of the rights and privileges of any person. The Court
16 shall retain jurisdiction of this action during the duration of
17 the Decree for the purposes of entering all orders, judgments and
18 decrees which may be necessary to implement the relief provided
19 herein.

20 V.

21 EFFECTIVE DATE AND DURATION OF DECREE

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

25 B. Except as otherwise provided herein, the Decree shall
26 remain in effect for three (3) years from the Effective Date.

27 ///

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1 VI.

2 MODIFICATION AND SEVERABILITY

3 A. This Decree constitutes the complete understanding of
4 the parties with respect to the matters contained herein. No
5 waiver, modification or amendment of any provision of this Decree
6 will be effective unless made in writing and signed by an
7 authorized representative of each of the parties.

8 B. If one or more provisions of the Decree are rendered
9 unlawful or unenforceable, the parties shall make good faith
10 efforts to agree upon appropriate amendments to this Decree in
11 order to effectuate the purposes of the Decree. In any event,
12 the remaining provisions will remain in full force and effect
13 unless the purposes of the Decree cannot be achieved.

14 C. By mutual agreement of the parties, this Decree may be
15 amended or modified in the interests of justice and fairness in
16 order to effectuate the provisions of this Decree.

17 VII.

18 DISPUTE RESOLUTION

19 A. It is expressly agreed that if the Commission has reason
20 to believe that the Decree has been breached, the Commission may
21 bring an action before this Court to enforce the Decree. Prior
22 to initiating such action, the Commission will notify Pechiney
23 and its legal counsel of record, in writing, of the nature of the
24 dispute. This notice shall specify the particular provision(s)
25 that the Commission believes has/have been breached, and a
26 concise factual statement of the issues in dispute. A thirty
27 (30) day dispute resolution period will be provided from the date
28 of notice prior to the institution of any legal proceeding,

1 absent a showing by either party that the delay will cause
2 irreparable harm.

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

6 C. After the expiration of the thirty (30) day dispute
7 resolution period, the Commission may initiate an enforcement
8 action in this Court, seeking all available relief, including an
9 extension of the Decree for such time as Pechiney is shown to be
10 out of compliance.

11 VIII.

12 NON-ADMISSION OF LIABILITY

13 A. This Decree represents the compromise of disputed
14 claims which the parties recognize would require protracted and
15 costly litigation. Pechiney's entry into this Decree is not, and
16 may not be used by any person as, an admission or evidence that
17 Pechiney has engaged in discriminatory employment practices,
18 which Pechiney expressly denies, and EEOC does not allege.

19 B. It is and has been Pechiney's policy not to discriminate
20 or allow harassment on the basis of national origin; Pechiney,
21 its officers, agents, managers, and supervisory employees shall
22 not discriminate against any employee or applicant for employment
23 on the basis of national origin. Pechiney, its officers, agents,
24 managers, and supervisory employees will continue to afford
25 Hispanic employees equal employment opportunities in terms and
26 conditions of employment, including but not limited to,
27 assignment to jobs, performance appraisals, and promotions, as
28 Pechiney affords similarly situated non-Hispanics.

1 C. It is Pechiney's policy not to retaliate unlawfully;
2 Pechiney, its officers, agents, managers, and supervisory
3 employees will continue to enforce its policy not to allow any
4 adverse action or retaliate against any person because that
5 person has exercised his or her rights under Title VII.

6 IX.

7 GENERAL INJUNCTIVE RELIEF

8 A. Equal Employment Opportunity Coordinator

9 Within thirty (30) days of the Effective Date and for the
10 duration of the Decree, Pechiney shall designate the Equal
11 Employment Opportunity Coordinator ("EEO Coordinator") with EEO
12 training, including training on avoiding national origin
13 discrimination and unlawful harassment, and fluency in Spanish,
14 to coordinate Pechiney's compliance with Title VII and with the
15 provisions of this Decree at its Vernon, California facility
16 ("Vernon plant"). The EEO Coordinator's responsibilities shall
17 include the following:

- 18 1. serve as intake person and document an employee's
19 EEO complaints;
- 20 2. present the EEO complaint to Pechiney's Partnering
21 Committee currently comprised of representatives
22 of management and the union representing employees
23 at the Vernon plant (or any similar committee
24 established by Pechiney); and
- 25 3. serve as liaison between the Partnering Committee
26 and complaining employee regarding the EEO
27 complaint.

28 Any changes in the designation of the EEO Coordinator shall

1 be communicated, in writing to the Commission, within thirty (30)
2 days of such designation.

3 Pechiney will investigate and resolve any national origin
4 complaints pursuant to the policies and processes described in
5 Parts B and C of this Section XI, below.

6 B. Anti-Discrimination Policy

7 1. Within thirty (30) days of the Effective Date,
8 Pechiney agrees to distribute a written policy in English and
9 Spanish, signed by its President, prohibiting national origin
10 discrimination made unlawful pursuant to Title VII to its Vernon
11 plant employees. This policy sets out a procedure for making
12 complaints and reporting discrimination, including national
13 origin discrimination, and advises employees of their rights to
14 file internal complaints with Pechiney, as well as administrative
15 charges with the EEOC and/or the California Department of Fair
16 Employment and Housing. The policy also states that Pechiney
17 will not tolerate retaliation against anyone who complains of
18 discrimination or who participates in an investigation.

19 2. Copies of the policy shall be distributed to each
20 actively employed Vernon plant employee of Pechiney within thirty
21 (30) days of the Effective Date. Thereafter, during the term of
22 this Decree, a copy of the policy shall be distributed to each
23 new employee of Pechiney at the time of hire. Each employee
24 shall be required to sign an acknowledgment of receipt.
25 Acknowledgment forms shall be retained by Pechiney in employee
26 personnel files and made available for review upon request by the
27 Commission during the duration of the Decree. Employees or
28 applicants subsequently hired will be required to comply with and

1 sign a statement which acknowledges receipt of said policy.

2 C. Complaint Procedure

3 1. Pechiney agrees to institute an internal complaint
4 procedure by which Vernon plant employees may register complaints
5 of discrimination. This complaint procedure is independent of
6 and not intended to conflict with any grievance procedure set
7 forth in any applicable collective bargaining agreement. At a
8 minimum, the complaint procedure will provide for the
9 investigation of employee claims of discrimination and for timely
10 and effective complaint resolution. Pechiney agrees to submit
11 the format of the EEO Complaint Reporting Procedure to the EEOC
12 for review and comment within thirty (30) days from the Effective
13 Date, and the EEOC will make any comment within forty-five (45)
14 days from the Effective Date. Pechiney agrees to implement the
15 new procedure within sixty (60) days from the Effective Date of
16 this Decree.

17 2. For the duration of this Decree, copies of all EEO
18 complaints, all documents compiled during the course of the
19 investigation of each complaint, the name and title of each
20 employee involved in the investigative process and the resolution
21 of each complaint, will be preserved and made available for EEOC
22 inspection pursuant to paragraph XII, D, below.

23 D. Training

24 1. Within one hundred twenty (120) days of the
25 Effective Date, Pechiney shall provide training to all
26 supervisors and managers at the Vernon plant regarding
27 discrimination, generally, national origin discrimination in
28 particular and supervisory responsibilities for compliance with

1 Title VII. At a minimum, the subjects to be covered by the
2 training shall include: (i) Title VII and cases defining how
3 national origin discrimination is prohibited thereunder; (ii) the
4 identity, role and responsibilities of agencies established to
5 enforce Title VII and state law, and the principles and
6 objectives underlying these laws including but not limited to
7 prohibited harassment, and disparate treatment and impact; (iii)
8 the application of equal employment opportunity law to typical
9 employment situations, including but not limited to development
10 and completion of employee performance appraisals, proper
11 disciplinary techniques, making promotion decisions, work
12 assignments, training and other career advancement opportunities,
13 and making compensation decisions; (iv) general supervision of an
14 ethnically diverse workforce; (v) review of the internal
15 complaint procedure; (vi) prevention of employment
16 discrimination; and (vii) supervisory follow-up of EEO
17 complaints, including but not limited to prohibition against
18 retaliation, working with the complainant and consideration of
19 appropriate discipline of the offender. Such program shall
20 provide an opportunity for participants to comment and ask
21 questions of the trainer(s). Refresher training shall be
22 provided by the conclusion of two (2) years from the Effective
23 Date. Supervisors and managers who are newly hired or promoted
24 during the term of this Decree shall receive the substance of
25 this training within six (6) months of their date of
26 hire/promotion.

27 2. Pechiney agrees that it will provide EEO/Diversity
28 training to all non-management Pechiney Vernon Plant employees.

1 The course will emphasize Pechiney's non-discriminatory
2 employment policies and procedures and employee rights under this
3 Decree. The course will include, but not be limited to, the
4 topics of national origin discrimination, non-discriminatory
5 promotion practices and hostile work environment. All actively
6 employed employees must be required to complete the course within
7 six (6) months from the effective date of this Decree. The
8 course will be conducted on an annual basis thereafter for
9 employees subsequently hired or recalled who have not previously
10 received training, for the duration of this Decree.

11 Notwithstanding the requirement for training on an annual basis,
12 no training session shall be required until there are at least 10
13 employees for whom training is required.

14 3. Pechiney shall provide to the Commission the
15 curriculum or a description of the content of such training
16 program as part of its first compliance report pursuant to
17 Section XII(E) of this Decree.

18 4. Pechiney agrees that the Commission may audit any
19 EEO training program conducted pursuant to this section.

20 Pechiney agrees to provide the Commission with notice of all
21 scheduled EEO training programs.

22 E. Translations

23 Pechiney agrees to prepare Spanish language translations of
24 the following documents within 90 days of the Effective Date,
25 except that the translations of the Personal Protective Equipment
26 Policies and Lockout and tag out procedures shall be prepared
27 within 120 days of the Effective date: Job postings; Pechiney
28 Policies, such as, anti-discrimination policy, EEO complaint

1 procedure, attendance and discipline policies, Personal
2 Protective Equipment Policies; Lockout and tag out procedures;
3 and Safety Signs. For the duration of the Decree, Pechiney shall
4 post all job postings in English and Spanish.

5 F. EEO-1 Reports

6 Pechiney shall submit annual EEO-1 reports for Pechiney
7 pursuant to applicable law, and to the EEOC Los Angeles District
8 Office as provided below in section XII. Pechiney shall
9 establish procedures to verify the accuracy of the EEO-1 data and
10 shall maintain supporting documentation (i.e. names, positions
11 and national origin) for at least 5 years.

12 X.

13 RECORD KEEPING AND REPORTING

14 A. For the duration of the Decree, Defendant Pechiney
15 agrees to maintain records required by federal regulation.

16 B. For the duration of the Decree, Defendant agrees to
17 post all promotional opportunities and to maintain an Applicant
18 Log, which shall include:

- 19 1. date of posting;
- 20 2. name, and national origin of applicant;
- 21 3. date of application;
- 22 4. position(s) for which applicant applied;
- 23 5. position(s) for which applicant was considered;
- 24 6. final action with respect to application:
 - 25 a. if a position was offered, title, salary; and
 - 26 whether position was accepted;
 - 27 b. if the applicant was rejected, state the
 - 28 reason;

- 1 7. date of final action; and
- 2 8. name, national origin and title of all
- 3 recommending and selecting official(s).

4 C. For the duration of the Decree, Pechiney agrees to
5 maintain a Discipline Log of all written discipline issued to
6 employees. The Discipline Log shall include:

- 7 1. name, national origin and title of disciplined
8 employee;
- 9 2. date of discipline;
- 10 3. reason for discipline;
- 11 4. whether there was a union grievance filed
12 concerning the discipline and, if so, the result;
13 and
- 14 5. name, national origin and title of all
15 recommending and approving official(s).

16 D. For the duration of the Decree, Pechiney agrees to
17 maintain such records as are reasonably necessary to demonstrate
18 its compliance with this Decree, including the posting,
19 applications and disciplinary records. Within a reasonable
20 period of time after receipt of a written request from the
21 Commission to Pechiney and its legal counsel. Pechiney shall
22 make available to the EEOC any requested postings, applications
23 and discipline logs.

24 E. Every six (6) months from the Effective Date through the
25 date on which the Decree is set to expire, Pechiney shall submit
26 a written Compliance report describing its compliance with the
27 terms of each section of this Decree to the Los Angeles District
28 Office of the U.S. Equal Employment Opportunity Commission at 255

1 East Temple Street, 4th Floor, Los Angeles, California 90012,
2 Attention: Regional Attorney (or other individual subsequently
3 designated as Regional Attorney). The first report shall also
4 contain the following information:

- 5 1. the name, business address, telephone number of
6 the Pechiney manager responsible for such report;
- 7 2. confirmation that the anti-discrimination policy
8 has been timely distributed to all employees;
- 9 3. a copy of Pechiney's internal complaint procedure;
- 10 4. confirmation of the posting of the "Notice of
11 Consent Decree"; and
- 12 5. a complete copy of the EEO/Diversity Training and
13 a list of the employees who attended the
14 EEO/Diversity Training and the date of the
15 EEO/Diversity Training.

16 **XI.**

17 **NOTICE AND PUBLIC ANNOUNCEMENTS/DISCLOSURES**

18 A. Pechiney agrees to sign and conspicuously post copies of
19 the "Notice of Non-Discrimination" within thirty (30) days of the
20 effective date of the Decree in areas accessible to all workers
21 at the Vernon plant, in English and Spanish. The Notice shall
22 remain posted for the duration of this Decree.

23 B. The parties have agreed that the EEOC may issue a press
24 release attached as Exhibit A to this agreement.

25 C. Further, nothing herein shall affect or limit the
26 Commission's ability to provide information it is legally
27 mandated to provide to a member of the public under the Freedom

28 ///


1 of Information Act or with a member of Congress in response to a
2 request for information from Congress.

3 XII.

4 COSTS AND ATTORNEYS' FEES

5 Each party shall bear its own costs and attorneys' fees.

6
7
8 9/29/01
9 Dated _____

By: 

U.S. Equal Employment
Opportunity Commission

10 ANNA Y. PARK
11 DANA C. JOHNSON

12 Attorneys for Plaintiff
13 U.S. EQUAL EMPLOYMENT
14 OPPORTUNITY COMMISSION

15 _____
Date

By: _____
MARGARET ROSENTHAL
Jenkins & Gilchrist, LLP

17 Attorneys for Defendant
18 Pechiney Cast Plate, Inc.

19 (PROPOSED) ORDER

20 The provisions of the foregoing Consent Decree are hereby
21 approved and compliance with all provisions thereof is HEREBY
22 ORDERED.

23 Dated: _____

24 _____
Judge, United States District
25 Court


1 or Information Act or with a member of Congress in response to a
2 request for information from Congress.

3 XII.

4 COSTS AND ATTORNEYS' FEES

5 Each party shall bear its own costs and attorneys' fees.

6
7
8 9/28/01
9 Dated

By: 
U.S. Equal Employment
Opportunity Commission

10 ANNA Y. PARK
11 DANA C. JOHNSON

12 Attorneys for Plaintiff
13 U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

14 9/28/01
15 Date

By: Margaret Rosenthal
MARGARET ROSENTHAL
Jenkins & Gilchrist, LLP

17 Attorneys for Defendant
18 Pechiney Cast Plate, Inc.

19 (PROPOSED) ORDER

20 The provisions of the foregoing Consent Decree are hereby
21 approved and compliance with all provisions thereof is HEREBY
22 ORDERED.

23 Dated: OCT 2 2001

Margaret M. Morrow
Judge United States District
Court



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Los Angeles District Office**

255 E TEMPLE STREET, 4TH FLOOR
LOS ANGELES, CALIFORNIA 90012
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(213)894-1000
TDD (213) 894-1121
FAX (213) 894-1118

FOR IMMEDIATE RELEASE
September 28, 2001

Anna Y. Park, Regional Attorney
(213) 894-1080

**EEOC AND PECHINEY CAST PLATE RESOLVE
DISCRIMINATION SUIT BROUGHT AGAINST FORMER OWNERS**

Los Angeles -The United States Equal Employment Opportunity Commission (EEOC) today announced an agreement with Pechiney Cast Plate, Inc. to resolve discrimination charges based on national origin (Hispanic) filed by twenty-nine current and former employees against two (2) companies which had operated Pechiney's Vernon, California plant prior to Pechiney acquiring the plant in September, 1999. The agreement, to be presented to the court for approval, provides wide-ranging injunctive relief to be monitored by the EEOC over the duration of the three - year Consent Decree. The suit does not charge Pechiney with discriminating against its Hispanic employees, but does provide on-going protections to address the charges against the previous owners of the Vernon, California plant.

The Consent Decree, filed concurrently with the EEOC's lawsuit, provides for implementation of policies to prevent discrimination based on national origin; procedures to resolve complaints and conduct investigations; mandatory anti-discrimination and anti-retaliation training for management and other employees; designating a new Equal Employment Opportunities Coordinator; and reporting to the EEOC for the next three years.

Olophius Perry, Acting Director of the EEOC's Los Angeles District Office commented that, "This settlement puts in place appropriate mechanisms to help prevent discrimination in the future. We believe that Pechiney, which inherited the claims from its predecessors, is committed to a policy of non-discrimination."

Remarking on the cooperation between the EEOC and Pechiney's counsel in resolving the longstanding employee claims, Anna Y. Park, Regional Attorney of EEOC's Los Angeles District Office, said: "The Commission congratulates counsel for the employees and Pechiney, the company that acquired the Vernon operation during the pendency of the EEOC's investigation, for working with EEOC counsel and investigator Marla Stern cooperatively."

In addition to enforcing the Equal Pay Act and Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex or national origin, the EEOC enforces the Age Discrimination in Employment Act, Title I of the American with Disabilities Act, and sections of the Civil Rights Act of 1991. Further information about the Commission is available on the agency's web site at www.eeoc.gov.