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11 OPPORTUNITY COMMISSION

**ORIGINAL**  
FILED  
CLERK, U.S. DISTRICT COURT  
OCT 27 2005  
CENTRAL DISTRICT OF CALIFORNIA  
BY [Signature]

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

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

16 Plaintiff,

17 **RECON REFRACTORY &**  
18 **CONSTRUCTION, INC.;** and DOES 1-10  
19 Inclusive,

20 Defendants.

21 CASE NO. CV-04-6078-DDP (CTx)

22 **CONSENT DECREE AND**  
23 **[PROPOSED] ORDER**

- Priority
- Send
- Clsd
- Enter
- JS-6
- JS-2/JS-3
- SCAN ONLY**

24 **DOCKETED ON CM**  
25 **OCT 27 2005**  
26 BY [Signature] 021

27 **I. THE LITIGATION**

28 In this action filed by Plaintiff, United States Equal Employment Opportunity Commission ("EEOC"), the EEOC alleged that Defendant Recon Refractory & Construction, Inc. ("Recon") violated Title VII of the Civil Rights Act of 1964, as amended, by failing to hire Charging Party Lurae Horse (the "Charging Party" or "Horse") and other similarly situated job applicants because of their sex, female. Recon denies liability as to all allegations in the Complaint.

As a result of their having engaged in settlement negotiations, the EEOC and Recon have agreed that this action should be resolved by entry of this Consent Decree.

**II. JURISDICTION**

The Court has jurisdiction over the parties and the subject matter of this lawsuit, pursuant to 28 U.S.C. Sections 451, 1331, 1337, 1343, 1345, 1367 and 42 U.S.C.

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U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

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1 2000e-5(f). The Court shall retain jurisdiction of this action during the duration of the  
2 Consent Decree for the purposes of entering all orders, judgments and decrees which  
3 may be necessary to implement and/or enforce the relief provided herein or to otherwise  
4 effectuate the purposes of the Consent Decree.

5 **III. FINDINGS**

6 Having examined the terms and provisions of this Consent Decree and based on  
7 the pleadings, record and stipulations of the parties, the Court finds the following:

- 8 A. The Court has jurisdiction of the subject matter of this action and of the  
9 parties;
- 10 B. The terms and provisions of this Consent Decree are adequate, fair  
11 reasonable, equitable and just. The rights of Recon, the EEOC and those  
12 for whom the EEOC seeks relief are protected adequately by this Consent  
13 Decree; and
- 14 C. This Consent Decree conforms with the Federal Rules of Civil Procedure  
15 and Title VII, and is not in derogation of the rights and privileges of any  
16 person.

17 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED**

18 **THAT:**

19 **IV. EFFECT OF CONSENT DECREE**

20 This Consent Decree resolves all issues and claims arising out of the Complaint  
21 filed by the EEOC herein alleging unlawful employment practices by Recon in violation  
22 of Title VII of the Civil Rights Act of 1964, as amended, and this Consent Decree shall  
23 be binding and final as to all such issues and claims.

24 This Consent Decree in no way affects the EEOC's rights to process charges  
25 against Recon not otherwise covered by this Consent Decree in accordance with  
26 standard EEOC procedures or to commence civil action on any such charges.

27 Recon shall provide any potential successor with a copy of this Consent Decree  
28 within a reasonable time of not less than sixty (60) days prior to the execution of any

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1 document providing for acquisition or assumption of control of Recon, or any other  
2 material change in corporate structure, and shall simultaneously inform the EEOC of the  
3 same. This Consent Decree shall be binding upon and enforceable against Recon and  
4 its respective successors and assigns.

5 **V. DURATION AND EFFECTIVE DATE OF CONSENT DECREE**

6 The duration of this Consent Decree shall be eighteen (18) months from the date  
7 of entry of the Consent Decree, provided that Recon has substantially complied with the  
8 terms of this Consent Decree. Recon shall be deemed to have substantially complied if  
9 the EEOC has not filed an enforcement action before the expiration of the Consent  
10 Decree. The Consent Decree shall be deemed effective (the "Effective Date") as of the  
11 date upon which the Court executes the Consent Decree.

12 **VI. MONETARY RELIEF**

13 In settlement of this action brought by the EEOC, Recon will pay \$165,000 which  
14 will be allocated to the Charging Party Lurae Horse and to the similarly situated  
15 applicants at the EEOC's sole discretion in resolution of the EEOC's Complaint.

16 The EEOC shall provide in writing to Recon the specific monetary distribution  
17 that is to be provided to the Charging Party and each similarly situated applicant, each  
18 of their tax identification numbers, and their respective addresses to where the checks  
19 should be delivered. Thereafter, Recon shall issue and deliver by certified mail with  
20 return receipt requested, a check and 1099 tax reporting form to each person specified  
21 by the EEOC within fifteen (15) days of receiving notice from the EEOC on the specific  
22 monetary distribution. Within three days of mailing the settlement checks and 1099  
23 forms, Recon shall provide by mail a copy of each check and related correspondence to  
24 the Regional Attorney, United States Equal Employment Opportunity Commission, 255  
25 East Temple Street, 4<sup>th</sup> Floor, Los Angeles, CA 90012.

26 Recon shall prepare and distribute 1099 tax reporting forms to the Charging Party  
27 and similarly situated applicants and shall make appropriate reports to the Internal  
28 Revenue Service and other tax authorities. Recon shall be solely responsible for any

1 costs associated with the issuance and distribution of the 1099 tax reporting forms.  
2 Recon shall distribute the 1099 tax forms with the settlement checks.

3 Any settlement money undistributed will be held to cover any costs associated  
4 with hiring Progressive Management Resources, Inc. as the Equal Employment  
5 Opportunity Consultant ("Consultant"). However, if Recon is not required to hire a  
6 Consultant during the term of this Consent Decree, one half of the undistributed  
7 settlement money shall be donated to a nonprofit organization selected by Recon and  
8 approved by the EEOC and the remaining half will be returned to Recon to effectuate  
9 the terms of the Decree.

## 10 **VII. INJUNCTIVE RELIEF**

11 Recon and its officers, agents, employees, successors and assigns, and all of those  
12 in active concert or participation with them, or any of them, are enjoined from engaging  
13 in any hiring practice which discriminates against women.

14 Recon shall increase diversity in its workforce by undertaking recruitment  
15 activities and implementing hiring practices to promote equal employment opportunities  
16 for women.

17 Recon shall submit EEO-1 Reports if required by law.

18 Recon shall maintain all employment applications and other documents submitted  
19 to Recon by each applicant and/or generated as part of any employee certification and/or  
20 selection process for the duration of the Consent Decree.

21 Recon shall maintain a log that reflects the selection and/or hiring of employees  
22 for each project on a project by project basis. The format of the logs will be as set forth  
23 in Exhibit A to this Consent Decree.

24 Recon, its officers, agents, management (including all supervisory employees),  
25 successors, assigns, and all those in active concert or participation with them, or any of  
26 them, hereby agree not to engage in, implement or permit any action, policy or practice  
27 with the purpose of retaliating against any current or former employee or applicant of  
28 Recon because he or she has in the past, or during the term of this Decree: (a) opposed

1 any practice made unlawful under Title VII; (b) filed a charge of discrimination alleging  
2 such practice; (c) testified or participated in any manner in any investigation (including  
3 without limitation, any internal investigation undertaken by Recon), proceeding in  
4 connection with this case and/or relating to any claim of a Title VII violation; (d) was  
5 identified as a possible witness or claimant in this action; (e) asserted any rights under  
6 this Decree; or (f) sought and/or received any relief in accordance with this Decree.

7 **A. HIRING GOALS**

8 Throughout the period that this Consent Decree is in effect, Recon will use its  
9 best, good faith effort to achieve each of the hiring goals set forth below. None of these  
10 goals will be applied as a quota. Recon's demonstration that it has employed vigorous  
11 efforts, applied in good faith and with adequate resources, will suffice to demonstrate  
12 compliance with the goals set forth in the Consent Decree. Nothing in the Consent  
13 Decree requires Recon to hire or employ any specific individual or entitles any specific  
14 individual to selection or promotion.

15 Recon will use its best efforts in good faith to place women in its laborer  
16 positions in a proportion which is the higher of (1) 13.6% of Recon's total employees in  
17 these positions for the duration of this Consent Decree or (2) the industry standard for  
18 other employers within the North American Industry Classification System ("NAICS")  
19 Code of 3271. However, if the proportion of qualified female applicants for any of  
20 Recon's laborer positions is higher than the industry standard, Recon's hiring goal will  
21 be proportionate to the applicant flow for the annual period or separate project within  
22 the annual period.

23 Should Recon change the Laborer position, it will identify to the EEOC, no later  
24 than thirty (30) days prior, the changes in the position title and/or duties that will be  
25 used in measuring achievement of these goals.

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**B. MONTHLY REPORTS FOR PROJECTS WITH FEWER THAN ONE HUNDRED (100) EMPLOYEES**

Within thirty (30) days after the Effective Date, and the tenth of each calendar month thereafter for the duration of the Consent Decree, Recon will submit to the EEOC a Monthly Report compiling the prior month's data on (a) the list of certified laborers in Recon's pool of potential laborers; (b) the gender of each certified laborer in Recon's pool's of potential laborers; (c) the identity and total number of laborers contacted; (d) an explanation as to why laborers were not hired for that month; and (e) the name, gender, and total laborers hired for that month. Recon will also maintain and submit documents supporting the above categories of data with each Monthly Report.

The Monthly Reports will further indicate why the hiring goal for the preceding quarter and/or project, and, with respect to any goal that was not achieved, by providing: (a) the number and proportion of total selectees by gender; (b) the reasons that the hiring goal was not achieved; (c) its identification of any selection criterion or employment practice that impeded achievement of the goal; (d) any alternative criteria or practices that would facilitate achievement of the goal; (e) plans for implementation of alternative criteria or practices to facilitate achievement of the goal; and (f) reasons for rejection of alternative criteria or practices that would facilitate achievement of the goal.

If the first twelve Monthly Reports demonstrate that Recon has attained its hiring goals set forth in Section VII(A) above, Recon shall submit a total of two (2) Quarterly Reports reflecting the categories listed for the Monthly Reports for the remaining six (6) months of the Decree term.

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**C. PROJECTS WITH GREATER THAN ONE HUNDRED (100) EMPLOYEES, INCLUDING FIFTY (50) OR MORE LABORERS**

**1. NOTICE TO EEOC**

No later than thirty (30) days prior to Recon obtaining a project with more than one hundred (100) potential employees for the project, Recon shall provide written notice to the EEOC of the potential project.

**2. EQUAL EMPLOYMENT OPPORTUNITY CONSULTANT**

Recon shall hire Progressive Management Resources, Inc., approved by the EEOC, as the Consultant for each project for which it hires more than one hundred (100) employees to work on a project site with fifty (50) or more laborers on the project. Recon shall hire the Consultant one (1) week prior to beginning the hiring and/or selection process for any project with one hundred (100) or more employees with fifty (50) or more laborers on the project. Recon shall bear all costs associated with the selection and retention of Progressive Management Resources, Inc. and the performance of the Consultant's duties during the term of the Consent Decree.

The Consultant's responsibilities shall include, but not be limited to reviewing, developing, and/or implementing (a) procedures for non-discriminatory recruiting, screening, and hiring; (b) procedures for maintaining applications and related documents; (c) an applicant flow log procedure; and (d) otherwise ensuring Recon's compliance with this Consent Decree and Title VII.

Any proposed subsequent change in the designation of the Consultant shall be communicated to the EEOC in writing, no later than thirty (30) days prior to such proposed new designation, as follows: Recon shall submit the name and credentials of the proposed Consultant to the EEOC's Los Angeles District Office Regional Attorney for approval. If the Regional Attorney does not approve the Consultant proposed, she shall provide Recon with the opportunity to submit an alternative Consultant for approval. If the Regional Attorney does not approve the alternative Consultant, then the

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1 Regional Attorney shall provide Recon with a list of three acceptable candidates from  
2 which list Recon will select the Consultant.

3 **D. APPLICATION RETENTION & APPLICANT FLOW LOG**  
4 **PROCEDURE**

5 Recon shall develop procedures for maintaining and maintain all employment  
6 applications and documents submitted to Recon by each person who may be considered  
7 for a laborer position from Recon's existing pool of employees and any person who  
8 applies for any position. Recon shall further develop procedures for maintaining all  
9 other documents generated as part of any required employee certification and/or  
10 selection process.

11 Recon will request voluntary disclosure of gender data from applicants for the  
12 limited purpose of assembling data and submitting the applicant flow logs to the EEOC.

13 Recon shall notify the EEOC of any changes to the recruiting, selection, and  
14 hiring procedures and auditing methods for monitoring applicant flow at least forty-five  
15 (45) days prior to implementing such changes.

16 For the projects with less than one hundred (100) employees, Recon shall submit  
17 to the EEOC, Monthly Reports described in Section VII(B). For projects with more  
18 than one hundred (100) employees and fifty (50) laborers, Recon shall submit to the  
19 EEOC, the applicant flow logs on a project by project basis.

20 **E. NOTICE POSTING**

21 Within ten (10) business days of the entry of this Consent Decree, Recon shall  
22 give a copy of the Notice attached as Exhibit "B" to each management employee then  
23 employed by Recon. At the same time, Recon shall conspicuously post a copy of the  
24 Notice at an agreed upon location readily accessible to and commonly frequented by all  
25 Recon employees. The Notice shall remain posted during the term of this Consent  
26 Decree.

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## F. TRAINING

Each Recon employee, including but not limited to, Recon's owners, executives, and dispatchers, involved in the hiring process shall attend at least one training session during the term of the Consent Decree on equal employment laws with an emphasis on non-discriminatory hiring, including the Technical Assistant Program offered by the EEOC or a comparable program approved by the EEOC. Such training shall accurately and completely advise all Recon employees involved in the hiring process of the laws and regulations concerning the prohibitions against discrimination with specific and practical emphasis on applying such legal requirements within Recon's business environment. The training shall also instruct these employees on (1) preventing female applicants from being deterred from applying or completing the application process; (2) proper record-keeping; and (3) how to implement non-discriminatory hiring practices.

Upon completion of such training, Recon shall provide written proof that each Recon employee, including but not limited to, Recon's owners, executives, and dispatchers, involved in the hiring process completed training pursuant to this section. All training material to be used by Recon in training employees on non-discriminatory hiring shall be provided to the EEOC sixty (60) days prior to any such training for the EEOC to review and approve the training. If the EEOC does not approve the training materials, Recon shall schedule and complete training with Progressive Management Resources, Inc. within the term of this Consent Decree.

If Recon's owners, executive, and dispatchers attend the EEOC's February 2006 Technical Assistant Program to satisfy the training requirement of the Consent Decree, Recon need not submit any training materials for the EEOC's approval.

A representative of the EEOC may attend any or all training sessions conducted pursuant to this section, at the EEOC's sole discretion. Recon shall provide the EEOC with written notice of the scheduled training programs, including date, time and location, at least ten (10) business days prior to the scheduled training.

Recon shall bear all costs associated with training under this section.

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**G. OTHER REPORTING ON COMPLIANCE WITH THIS CONSENT DECREE**

1. For the duration of the Consent Decree, Recon agrees to maintain all records as are necessary to demonstrate their compliance with this Consent Decree and to verify that the reports submitted are accurate. Such records shall include and not be limited to, (a) applications, (b) payroll records, (c) logs of applicants/hirees, (d) list of certified potential employees, (e) gender of the persons on the list of certified potential employees, and (f) reasons why persons on the certified list of potential employees was not hired.

Upon ten (10) business days' written notice from the EEOC, Recon shall make such records available to the EEOC and/or the Consultant for inspection and copying.

2. Within sixty (60) days of the Effective Date, Recon shall submit a written report to the EEOC describing its compliance with the terms of this Decree containing the following information:

- a. A copy of Recon's current job description for the Laborer position;
- b. A copy of Recon's policies and procedures on non-discriminatory recruitment, evaluation, and hiring;
- c. Confirmation that Recon is in compliance with the Posting provision of this Decree;
- d. A statement confirming compliance with the terms of the Consent Decree; and
- e. Through the term of this Decree, within thirty (30) days of any changes to (1) the Laborer job description or (2) the policies and procedures on non-discriminatory recruitment, evaluation, and hiring, Recon shall provide such changes to the EEOC.

**VIII. COMPLIANCE AND DISPUTE RESOLUTION**

In the event that the EEOC believes that Recon has failed to comply with any provision of this Consent Decree, the EEOC shall notify Recon's undersigned attorneys

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1 in writing of such belief and the basis for its belief and afford Recon a reasonable period  
2 of not less than twenty (20) business days to remedy the alleged non-compliance.

3 If Recon disagrees that it has failed to comply with a provision of this Consent  
4 Decree, it shall notify the EEOC in writing within ten (10) business days and the EEOC  
5 may then apply to this Court for appropriate relief, including but not limited to a  
6 resolution of the dispute, a determination of whether Recon is in compliance and, if not,  
7 an appropriate order to enforce the provisions of this Consent Decree. If the EEOC  
8 brings a matter before the Court, the opposing party shall be provided with appropriate  
9 notice under the Local Rules of the Court and the Federal Rules of Civil Procedure.

10 **IX. MODIFICATION AND SEVERABILITY**

11 A. This Decree constitutes the complete understanding of the parties. No  
12 waiver, modification or amendment of any provision of this Decree will be effective  
13 unless made in writing and signed by an authorized representative of each of the parties  
14 and approved by the Court.

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

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

23 **X. COSTS OF ADMINISTRATION AND IMPLEMENTATION**  
24 **OF CONSENT DECREE**

25 Recon and the EEOC shall each bear their own costs associated with the  
26 administration and implementation of this Consent Decree.

27 **XI. COURT COSTS AND ATTORNEYS' FEES**

28 Recon and the EEOC shall each bear their own court costs and attorneys' fees.

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**XII. MISCELLANEOUS PROVISIONS**

When this Consent Decree requires the submission by Recon of reports, notices or other materials to the EEOC, such materials shall be mailed to: Regional Attorney, U.S. Equal Employment Opportunity Commission, Los Angeles District Office, 255 East Temple Street, 4th Floor, Los Angeles, California 90012. This Consent Decree may be signed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. A facsimile signature shall have the same force and effect of an original signature or copy thereof.

Date: \_\_\_\_\_, 2005

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

By:   
Anna Y. Park, Regional Attorney  
Attorneys for Plaintiff EEOC

Date: \_\_\_\_\_, 2005

RECON REFRACTORY &  
CONSTRUCTION, INC.

By: \_\_\_\_\_  
Robert D. Bellamy, President

Date: \_\_\_\_\_, 2005

ATKINSON, ANDELSON, LOYA RUUD &  
ROMO

By: \_\_\_\_\_  
Paul Fleck  
Joanna Blake  
Attorneys for Recon Refractory &  
Construction, Inc.

**PROPOSED ORDER**

GOOD CAUSE APPEARING,

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

IT IS SO ORDERED.

Date: \_\_\_\_\_, 2005

\_\_\_\_\_  
Hon. Dean Pregerson  
U.S. DISTRICT COURT JUDGE

SCANNED

1 **XII. MISCELLANEOUS PROVISIONS**

2 When this Consent Decree requires the submission by Recon of reports, notices  
3 or other materials to the EEOC, such materials shall be mailed to: Regional Attorney,  
4 U.S. Equal Employment Opportunity Commission, Los Angeles District Office, 255  
5 East Temple Street, 4th Floor, Los Angeles, California 90012. This Consent Decree  
6 may be signed in one or more counterparts, each of which will be deemed an original  
7 and all of which together will constitute one and the same instrument. A facsimile  
8 signature shall have the same force and effect of an original signature or copy thereof.  
9

10 Date: \_\_\_\_\_, 2005

**U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION**

11  
12 By: \_\_\_\_\_  
Anna Y. Park, Regional Attorney  
Attorneys for Plaintiff EEOC

13 Date: 10/25, 2005

**RECON REFRACTORY &  
CONSTRUCTION, INC.**

14  
15 By: Robert D. Bellamy for  
Robert D. Bellamy, President

16 Date: 10/25, 2005

**ATKINSON, ANDELSON, LOYA RUUD &  
ROMO**

17  
18 By: Paul Fleck  
Paul Fleck  
Joanna Blake  
Attorneys for Recon Refractory &  
Construction, Inc.  
19  
20

21 **[PROPOSED] ORDER**

22 **GOOD CAUSE APPEARING,**

23 The Court hereby retains jurisdiction for the term of this and the provisions of the  
24 foregoing Consent Decree are hereby approved and compliance with all provisions  
25 thereof is fair and adequate.

26 **IT IS SO ORDERED.**

27 Date: 10-27, 2005

28 Hon. Dean Pregerson  
Hon. Dean Pregerson  
U.S. DISTRICT COURT JUDGE