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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
MAY 11 2001  
JAMES R. LASSEN, CLERK  
RICHLAND, WASHINGTON DEPUTY

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF WASHINGTON AT SPOKANE

11 EQUAL EMPLOYMENT OPPORTUNITY )  
12 COMMISSION, )

CIVIL NO. CS-99-0169-EFS

13 Plaintiff,

CONSENT DECREE

14 v.

May 10, 2001

15 KAISER ALUMINUM & CHEMICAL )  
16 CORPORATION )

17 Defendant.

18 I. INTRODUCTION

19 1. This action was filed on June 11, 1999, under Title VII of the Civil  
20 Rights Act of 1964, 42 U.S.C. Section 2000 (e) et seq. (as amended), by the Equal  
21 Employment Opportunity Commission (the "Commission" or "EEOC") to  
22 challenge a pre-employment physical strength examination ("PCE") used by  
23 Defendant Kaiser Aluminum & Chemical Corporation (the "Defendant" or  
24 "Kaiser"), on the grounds that the exam unlawfully discriminated against women.  
25 The complaint alleges that Kaiser's Trentwood Washington facility engaged in  
unlawful employment practices through Kaiser's use of a pre-employment, (post-

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MAY 11 2001

CLERK, US DISTRICT COURT  
RICHLAND, WASHINGTON

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
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1 offer medical screening) physical strength examination that had an adverse impact  
2 on female applicants which cannot be justified by business necessity or job  
3 relatedness.

4 2. This action originated with a discrimination charge by Kelly Flynn  
5 (the "Charging Party") filed with the EEOC on June 4, 1997. Flynn alleged that  
6 Kaiser discriminated against her on the basis of Kaiser's PCE, used to screen  
7 applicants seeking entry level positions at Kaiser's Trentwood, Washington  
8 facility.

9 3. The PCE, as used by Kaiser's Trentwood Washington facility, is one  
10 component of the post-offer medical screening process and is administered by a  
11 physical therapist. From 1995 to 1999, the PCE consisted of three segments, the  
12 first two of which were used for "information" only and were not part of the actual  
13 exam. The third segment of the PCE, which was the pass/fail portion of the exam,  
14 consisted of four physical tasks which focused on body strength.

15 4. The EEOC conducted an investigation of the charge and issued a  
16 Letter of Determination on March 26, 1999. Following unsuccessful conciliation  
17 efforts, the EEOC instituted this class action suit challenging Kaiser's use of the  
18 PCE as discriminatory as to Kelly Flynn and a group of similarly situated female  
19 applicants.

20 5. On October 21, 1999, the Court granted Kelly Flynn, April Davis,  
21 and Peggy Miller (collectively "Plaintiff Intervenors"), the right to intervene as a  
22 party Plaintiff to assert individual claims under Title VII.

23 6. The EEOC and Kaiser, (collectively, "The Parties") want to  
24 conclude all claims arising out of the above charges without expending further  
25 resources in litigation. The Parties agree that entry of the Consent Decree will be

1 in the interest of the parties and will further the objectives of equal employment  
2 opportunity as set forth in Title VII. In recognition of Title VII objectives, the  
3 EEOC recognizes that the interests of the unidentified class are best served by a  
4 settlement providing injunctive relief as outlined below in section IV.

5 **II. NONADMISSION OF LIABILITY AND NONDETERMINATION BY**  
6 **THE COURT**

7 7. This Consent Decree is not an admission of wrongdoing nor an  
8 adjudication or finding on the merits of the case. Wherever Kaiser is referred to in  
9 this Consent Decree, it applies only to Kaiser's Trentwood Washington facility.  
10 Wherever applicants are referred to in this Consent Decree it applies only to  
11 hourly production workers at Kaiser's Trentwood Washington facility.

12 **III. GENERAL PROVISIONS**

13 8. Nothing in this Consent Decree shall be construed to limit or reduce  
14 Kaiser's obligation to fully comply with Title VII of the 1964 Civil Rights Act, as  
15 amended, the Equal Pay Act, the Age Discrimination in Employment Act, the  
16 Americans with Disabilities Act, or the regulations promulgated pursuant thereto.

17 9. Kaiser agrees that there will be no retaliation of any kind against any  
18 person who provided information or assistance or filed a charge, participated in  
19 any manner in any proceeding or investigation related to this litigation, or received  
20 relief pursuant to this agreement.

21 10. This Consent Decree in no way affects EEOC's right to process, in  
22 accordance with standard Commission procedures, charges filed by individuals  
23 against Kaiser alleging violations of Title VII. Charges include those pending as  
24 of the effective date of the agreement and those filed in the future. Processing  
25 includes the administrative investigation, conciliation and commencement of civil  
actions on the basis of such charges.

1 11. If the EEOC concludes that Kaiser has failed to comply with this  
2 Consent Decree, the EEOC may bring an action in the U.S. District Court for the  
3 Eastern District of Washington at Spokane to enforce this agreement after  
4 compliance with the terms in Section VIII, Dispute Resolution Procedures.

5 12. If one or more provisions of this Consent Decree are rendered  
6 unlawful or unenforceable by an Act of Congress, a decision of the United States  
7 Supreme Court, or any other court of competent jurisdiction, the parties shall  
8 attempt to agree upon what amendments to the Consent Decree, if any, are  
9 appropriate to effectuate the purposes of the Consent Decree. In any event, the  
10 remaining provisions will remain in full force and effect.

11 13. This Consent Decree constitutes the complete understanding between  
12 Kaiser's Trentwood, Washington facility and the EEOC with respect to matters  
13 herein. No waiver, modification or amendment to any provisions of this Consent  
14 Decree will be effective unless it is agreed to in accordance with provisions of  
15 Section IX, Agreement Amendment Procedures.

16 14. This Consent Decree is the product of negotiation. Concepts  
17 developed and definitions used are solely for the purpose of implementing and  
18 interpreting this Consent Decree.

#### 19 **IV. INJUNCTIVE RELIEF**

##### 20 **A. THE PHYSICAL CAPABILITIES EXAM**

21 15. Kaiser will not administer a PCE exam to any new hourly production  
22 worker applicants during the period that this consent decree is in effect unless  
23 Kaiser has reassessed its needs for a PCE exam through a task and job analysis  
24 study, a validation process, and met all the conditions outlined below. For  
25 purposes of this Consent Decree, "new applicants" are any and all applicants for

1 employment who are not currently subject to, or do not currently possess any  
2 rights to, a recall or preferred hiring pursuant to any collective bargaining  
3 agreement between Kaiser and any collective bargaining unit as of the day of entry  
4 of this Consent Decree.

5 (A) Within three months of the entry of this Consent Decree, the EEOC  
6 and Kaiser shall each identify two industrial experts and exchange Rule 26(a)(2)  
7 expert disclosure information as to each of the two names identified by each party.  
8 The EEOC and Kaiser will each submit their two experts' names to a neutral third  
9 party, John Aslin, a Seattle attorney, who will select one of the experts from the  
10 total of four names submitted to him by the parties. The EEOC and Kaiser may  
11 provide, if they choose, written briefing to John Aslin in support of their proposed  
12 experts.

13 Should Kaiser elect to administer a PCE to new hourly production  
14 worker applicants during the three year period of the Consent Decree, John Aslin  
15 will have final selection authority, binding on the EEOC and Kaiser to appoint an  
16 industrial expert to review and develop a new PCE. The expert selected by John  
17 Aslin will have full access to data and may review the job and task analysis and  
18 validation study required of any new physical strength measurement to be used by  
19 Kaiser as a component of the new PCE. Kaiser will bear the costs of such a  
20 validation study, including the reasonable fees and expenses of such expert.

21 (B) The industrial expert shall review any PCE to be implemented by  
22 Kaiser to new hourly production worker applicants for the purpose of validating  
23 any physical strength selection criteria and shall review all validation conclusions,  
24 including underlying data (in computer ready format), reports, methodological  
25 considerations, disparate impact information, and the consideration of less

1 restrictive alternatives.

2 (C) Kaiser shall incorporate the recommendations made by the  
3 industrial expert in any physical strength exam selected for pre-employment  
4 screening.

5 (D) Any physical strength measurement adopted by Kaiser will be  
6 supported by evidence that it has been validated as a pre-employment selection  
7 device.

8 (E) Any physical strength requirements adopted by Kaiser shall be  
9 measured to determine any disparate impact on females applicants and shall  
10 include all less restrictive alternatives considered by Kaiser and the exam  
11 developers.

12 (F) Kaiser shall incorporate the following recommendations in any  
13 physical strength exam selected for pre-employment screening.

- 14 1. The revised PCE must comply with the Uniform Guidelines on  
15 Employee Selection Procedures (UGESP).
- 16 2. Job relatedness must be established between the job and the PCE  
17 that is created before it is imposed on new hourly production  
18 worker applicants. The job relatedness must be clear, direct and  
19 lead logically, step-by-step, from the findings reported in the job  
20 analyses to the outcome.
- 21 3. The PCE exam must be administered in a consistent manner to  
22 all new hourly production worker applicants at all times. An  
23 exact script and checklist must be developed and exam  
24 administrators must be instructed to follow the script and  
25 checklist without exception.

- 1           4.     All PCE exam administrators must be qualified consistent with  
2           the recommendations of the industrial expert. Qualifications must  
3           be reviewed annually.
- 4           5.     Kaiser shall create a booklet or video for applicants, which  
5           describes in detail the pre-employment, post offer, physical  
6           abilities screening procedures. The booklet or video should  
7           provide examples of activities that will help new applicants  
8           prepare for the physical demands of the PCE exam. This booklet  
9           or video will be made available to applicants at the time of the  
10          employment offer.
- 11          6.     A complaint procedure must be put in place for the review of  
12          complaints from applicants who fail the PCE exam. At the new  
13          applicant's request, a re-test may be scheduled within two (2)  
14          weeks of the initial PCE exam.

15           **B.     TRAINING AND AWARENESS PROGRAM**

16          16.     To further the purposes and requirements of this Consent Decree,  
17          Kaiser will provide training to all staff management employees and to all  
18          personnel in the Kaiser Medical and Human Resources Departments regarding the  
19          applicability of Title VII.

20          17.     The objectives of this training will be to convey Kaiser's commitment  
21          to the personnel policies and procedures established by this Consent Decree and to  
22          provide information and guidance on how to carry out those policies. Each  
23          training session will begin with a presentation by a high-ranking Kaiser official  
24          emphasizing Kaiser's commitment to the provisions of the Consent Decree and to  
25

1 conduct hiring, job assignment, training and promotion practices in a non-  
2 discriminatory manner.

3 18. Kaiser will utilize outside resources to assist with the development of  
4 this training. As soon as possible after the effective date of the Consent Decree,  
5 the Commission, Kaiser, and any other individuals involved in developing the  
6 training will discuss the objectives of the training and the concepts and approaches  
7 to be used. Kaiser will provide to the Commission, within one hundred and  
8 twenty days (120) days of the effective date of this Consent Decree, a detailed  
9 outline of the training to be given. Within thirty (30) days of receipt of the outline  
10 the EEOC may provide any comments to Kaiser with respect to the substance of  
11 the training as outlined, which Kaiser will consider. Kaiser will provide to the  
12 EEOC a copy of the materials to be used in the training. Before conducting any  
13 training under this Consent Decree, Kaiser will provide the EEOC with any  
14 revisions to such materials prior to implementing the revisions. Kaiser will  
15 provide information concerning the scheduled training locations, dates, and times  
16 to the EEOC.

17 19. The training outlined above will be conducted annually during the three  
18 year period of this Consent Decree.

### 19 **C. JOB OPPORTUNITIES**

20 20. Kaiser will create a preferential hiring status for Kelly Flynn, April  
21 Davis and Peggy Miller (Plaintiff Intervenors) for employment at Kaiser's  
22 Trentwood Washington facility. The preferential hiring status will place Flynn,  
23 Davis and Miller ahead of any new applicants for hourly production employment  
24 at the Trentwood plant from the date this consent decree is entered to a period of  
25 two (2) years beyond the expiration of any re-call rights held by Trentwood



1 employees under the Collective Bargaining Agreement in effect at the time of the  
2 entry of this Consent Decree. The preferential hiring status of Plaintiff-Intervenors  
3 extends beyond the three year expiration of this Consent Decree.

4           The parties recognize that as a prerequisite to obtaining employment  
5 with Kaiser, Plaintiff Intervenors must demonstrate their ability to perform the  
6 essential functions of the job at issue, including the successful completion of the  
7 revised Physical Capabilities Exam.

8           21. Within thirty days (30) after entry of this Consent Decree, those Plaintiff  
9 Intervenors interested in employment with Kaiser will contact Kaiser in writing to  
10 express their interest in securing employment and will indicate the position(s) for  
11 which the person desires consideration. Before the time it becomes necessary for  
12 Kaiser to hire any new hourly production worker applicants, a Kaiser  
13 representative will contact Kelly Flynn, Peggy Miller, and April Davis, in writing,  
14 if they have expressed interest in employment with Kaiser, to set up a formal job  
15 interview. Each Plaintiff Intervenor who desires employment with Kaiser will go  
16 through Kaiser's standard interview process, including the revised Physical  
17 Capabilities Exam. In the event that Kaiser decides that a Plaintiff Intervenor is  
18 not qualified for employment for the position(s) for which the Plaintiff-Intervenor  
19 seeks consideration due to a lack of physical ability, the industrial expert selected  
20 by the parties to review and develop the new Physical Capabilities Exam, as  
21 described in Section IV, shall review the rejection of any Plaintiff Intervenor for  
22 employment and resolve any disputes between the parties as to the qualifications  
23 of those Plaintiff Intervenors.

1                    **V. ADMINISTRATION OF THE CONSENT DECREE**

2            22. Kaiser will be fully responsible for implementing this Consent Decree  
3 and has appointed Dave Hamrick, Kaiser's Manager of Human Resources, as its  
4 Consent Decree Administrator.

5            23. To assist the Consent Decree Administrator in assuring compliance  
6 with the Consent Decree, Kaiser will make available outside resources on equal  
7 employment law or practice.

8            24. Kaiser will provide the Consent Decree Administrator with all support  
9 necessary to carry out his duties under the Consent Decree, including:

- 10            a. Preparation of all reports required by the Consent Decree  
11                    Administrator,  
12            b. Administrative and professional support as needed; and,  
13            c. Access to personnel officials, managers, and other employees.

14            25. The Consent Decree Administrator's major areas of responsibility will  
15 include:

- 16            a. Preparation and submission to EEOC of the reports on  
17                    compliance with this Consent Decree as set forth in Section VI,  
18                    Reporting and Record Keeping;  
19            b. Providing information to employees concerning Kaiser's  
20                    obligations under the Consent Decree;  
21            c. Responding to employee inquiries concerning the provisions of  
22                    this Consent Decree;  
23            d. Participating in training sponsored by Kaiser as provided for in  
24                    this Consent Decree;

- e. Investigating complaints regarding possible violations of the Consent Decree and reporting the results of the investigations to appropriate supervisors at Kaiser.
- f. Reporting discipline to supervisors, managers, and any other employees for Consent Decree violations and violations of Kaiser's non-discrimination policy;
- g. Participating in discussions held among the parties to implement the Consent Decree, to resolve disputes under the Consent Decree or to otherwise amend the Consent Decree; and,
- h. Annually reviewing the operation of policies as they relate to this Consent Decree and identifying in writing to EEOC any modifications or enhancements which serve to advance the purposes of this Consent Decree.

**VI. REPORTING, RECORD KEEPING AND COMPLIANCE REVIEW**

26. The reports to be submitted by Kaiser on an annual basis during the three year term of this Consent Decree, as provided in this section, will be forwarded so as to arrive at the EEOC within thirty (30) days after the close of the reporting period.

27. During the term of this Consent Decree, Kaiser will provide the EEOC with the following items:

- a. An annual report that includes sufficient identifying information on new hourly production worker applicants to whom conditional offers of employment were extended and later withdrawn for failure to pass a strength exam or the revised version of the PCE during the annual period. This report shall be due within thirty

1 (30) days of the one-year period following the effective date of  
2 this Consent Decree and within thirty (30) days of the  
3 succeeding one-year periods during the three year pendency of  
4 this Consent Decree.

- 5 b. A report providing the reason(s) for withdrawing the offers of  
6 employment identified in the above subparagraph.
- 7 c. A report explaining the review procedure done by Kaiser's  
8 Human Resources Department and the administrator of the  
9 revised PCE, the assessment made based upon that review, and  
10 any recommendations made by the industrial expert to revise  
11 Kaiser's existing Medical Screening Process.
- 12 d. A report of all training activities held during the three year period  
13 of this Consent Decree.

14 28. For the duration of this Consent Decree, the EEOC shall have the right  
15 to conduct two (2) on-site reviews within any twelve (12) month period, including  
16 conducting interviews, attending training held pursuant to the Consent Decree, and  
17 examining documents and data maintained by Kaiser pursuant to this Consent  
18 Decree and EEOC regulations for the purpose of confirming compliance with this  
19 Consent Decree. The EEOC agrees that it will provide thirty (30) days notice to  
20 Kaiser's attorney before conducting any review.

21 29. After the expiration of this Consent Decree, records will be maintained  
22 by Kaiser as required by law.

## 23 VII. SETTLEMENT NOTICE

24 30. Kaiser shall provide notice to employees of the Medical Department  
25 and the Human Resources Department, in the form attached hereto as Exhibit A,

1 that it has settled this Title VII action and shall distribute a copy of this Consent  
2 Decree to each such employee.

3 31. In any employment advertisements that it may run, Kaiser shall include  
4 information that it is an equal opportunity employer.

### 5 **VIII. DISPUTE RESOLUTION PROCEDURES**

6 32. Any party shall have the right to initiate an action pursuant to the  
7 Court's continuing jurisdiction for an unresolved dispute or for non-compliance  
8 regarding any provision of the Consent Decree, as follows:

- 9 a. If one party believes that there is an issue to resolve, it shall  
10 promptly give notice, in writing, to the other parties regarding (1)  
11 the specific provision which it believes has not been met, and (2)  
12 a complete factual statement of the issue.
- 13 b. The parties shall promptly undertake efforts to resolve the areas  
14 of dispute or alleged non-compliance, through meetings,  
15 mediation or other appropriate means for a period of thirty days.
- 16 c. If one party determines that efforts to resolve the matter have  
17 failed, the party so finding shall notify the other parties in writing  
18 of such failure to resolve the matter.

### 19 **IX. AGREEMENT AMENDMENT PROCEDURES**

20 33. This Consent Decree may be modified only by mutual written  
21 agreement between the EEOC and Kaiser, or by motion to the Court.

22 34. Any modification to the Consent Decree is subject to approval by the  
23 Court.



1 DATED this 10<sup>th</sup> day of May, 2001.

2 A. LUIS LUCERO, JR.  
3 Regional Attorney

GWENDOLYN YOUNG REAMS  
Associate General Counsel

4 BARBARA J. STANDAL  
5 Supervisory Trial Attorney

6 ZULEMA HINOJOS-FALL  
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8 BY: A. Luis Lucero Jr.

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20 BY: \_\_\_\_\_  
21 Attorneys for Defendant

22 BY: \_\_\_\_\_  
23 Attorneys for Defendant

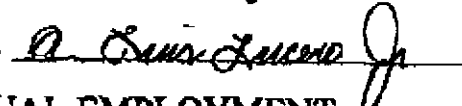
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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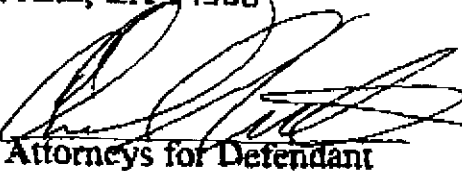
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CONSENT DECREE-- 15

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1 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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25 CONSENT DECREE-- 15


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1                                    ORDER APPROVING CONSENT DECREE

2            The Court having considered the foregoing stipulated agreement of the  
3 parties,

4            IT IS HEREBY ORDERED THAT the foregoing consent decree be, and the  
5 same hereby is, approved as the final decree of this Court in full settlement of this  
6 action. This lawsuit is hereby dismissed with prejudice. The Court retains  
7 jurisdiction of this matter for purposes of enforcing the consent decree approved  
8 herein.

9            DATED this 11<sup>th</sup> day of May, 2001.

10  
11                                      
12                                    UNITED STATES DISTRICT JUDGE

**NOTICE TO ALL EMPLOYEES**

This notice is being posted pursuant to an agreement between Kaiser Aluminum & Chemical Corporation and the Equal Employment Opportunity Commission as the result of a settlement of a lawsuit pending in the federal district court for the Eastern District of Washington, NO. CS-99-0169-EFS.

Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, and the Americans with Disabilities Act of 1990 are enforced by the EEOC and require the following:

That there be no discrimination against any employee or applicant for employment because of the employee's race, sex, color, religion, national origin, age (over age 40), or disability with respect to hiring, firing, compensation, or other terms, conditions or privileges of employment.

It is an unlawful employment practice for an employer to retaliate against any employees or applicants for employment because they have opposed a practice or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under these statutes.

Kaiser Aluminum & Chemical Corporation will maintain a training program to train its managers regarding the requirements of the above statutes.

This notice is being posted because Kaiser Aluminum & Chemical Corporation supports and will comply with these federal laws in all respects and will not take any retaliatory action against employees because they have exercised their rights under the law.

DATED May 10, 2001.

Kaiser Aluminum & Chemical Corporation

By: Michael J. Hiestert