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**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS,
UNITED STATES DEPARTMENT
OF LABOR,**

Plaintiff,

v.

GRUMA CORPORATION,

Defendant.

Case No. 2009-OFC-00007

CONSENT DECREE AND ORDER

Pursuant to 41 C.F.R. § 60-30.13, the parties to this action, plaintiff, United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and defendant, Gruma Corporation ("Gruma") have negotiated and executed this Consent Decree and Order ("Decree"), including all attachments hereto. This Decree and Order constitutes a full and final resolution of this action and all issues arising from the compliance evaluation of Gruma Corporation's Mission Foods Facility in Commerce, California ("Mission Foods Facility") initiated by OFCCP in October 2005.

Both OFCCP and Gruma desire to resolve this action and all issues raised herein without the further time and expense of contested litigation. They therefore have entered into a complete and satisfactory compromise and settlement of the claims raised in the Administrative Complaint filed in this matter.

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 OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
 U.S. DEPT. OF LABOR
 1000 K STREET, N.W.
 WASHINGTON, D.C. 20460

I. JURISDICTION AND PROCEDURAL HISTORY

1. This proceeding is authorized by Sections 208 and 209 of Executive Order 11246 and the regulations issued pursuant thereto at 41 C.F.R. Part 60-1, et. seq. and 41 C.F.R. Part 60-30.
2. Gruma is engaged in the manufacture and distribution of corn flour, corn tortillas, wheat tortillas, and related products.
3. At all relevant times, Gruma has maintained its corporate headquarters in Irving, Texas, and has, among its manufacturing plants, the Olympic Plant in Commerce, California.
4. Gruma has 50 or more employees.
5. Gruma has been a Government contractor or subcontractor within the meaning of Executive Order 11246, and is now, and at all relevant times has been, subject to the contractual obligations imposed on Government contractors and subcontractors by Executive Order 11246 and its implementing regulations issued thereunder.
6. Gruma is, and at all relevant times has been, subject to the affirmative action requirements of 41 C.F.R. Part 60-2.
7. The issues resolved by this Decree were initially identified during OFCCP's compliance evaluation of Gruma's Commerce, California facility. OFCCP notified Gruma of its intention to conduct the evaluation by letter dated October 27, 2005. OFCCP alleges that Gruma discriminated against female applicants for Packer and Disco/Palletizer positions during the period from October 1, 2004 through October 31, 2005, and that therefore Gruma did not meet its obligations as a Federal contractor under Executive Order 11246 and its implementing regulations. Gruma denies that it unlawfully discriminated against any applicant for employment

or class of applicants for employment. Gruma has entered into this Decree for its convenience and to avoid the costs and time associated with litigation.

II. GENERAL PROVISIONS

8. This Decree constitutes full and final settlement and resolution of all issues, actions, causes of action and claims arising, or that could have arisen, out of the Administrative Complaint filed herein and shall have the same effect as if made after a full hearing. This Decree shall be binding upon the parties as to all issues, actions, causes of action, and claims within the scope of the Administrative Complaint which have been or could have been advanced by OFCCP.

9. This Decree constitutes settlement of disputed claims and does not constitute an admission by Gruma of any violation of Executive Order 11246 or its implementing regulations or of any violation of any other law, order, or regulation.

10. Subject to the performance by Gruma of all duties and obligations contained in this Decree, all alleged deficiencies which were or could have been raised or identified in the Administrative Complaint shall be deemed fully resolved by this Decree.

11. Nothing herein is intended to relieve Gruma from compliance with the requirements of Executive Order 11246; Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Section 503"); the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 ("VEVRAA"); and their implementing regulations or of any other statute, regulation, or ordinance. Compliance with this Decree shall constitute compliance only with respect to those issues which are within the scope of this Decree.

12. Gruma further agrees not to retaliate against any beneficiary of this Decree, or against any person who has provided information or assistance to OFCCP regarding the issues

resolved in this Decree, or who files a complaint or participates in any manner in any proceeding against Gruma under Executive Order 11246 regarding the issues resolved in this Decree.

13. This Decree shall become final and effective when signed by the Administrative Law Judge ("Effective Date").

III. SPECIFIC PROVISIONS

14. The parties desire to enter into a just and reasonable resolution of this matter without further proceedings. To that end, they have negotiated in good faith and have executed this Decree with the following specific provisions.

A. Affected Class Members

15. For purposes of this Decree, the affected class members are the class of female applicants who 1) applied for Packer and Disco/Palletizer jobs between October 1, 2004 and October 31, 2005; 2) were not hired; and 3) may be otherwise qualified under Gruma's hiring criteria. These persons (hereinafter referred to as "the class" or "class members") are identified on Attachment A, appended hereto and incorporated by reference herein.

16. Gruma shall notify the class members of this settlement within 10 business days of the Effective Date of this Decree. Gruma shall mail by first class mail the Notice of Settlement to Class Members ("Notice," appended hereto as Attachment B) to each class member at her last known address to inform her of the settlement. Such mailing shall include the Notice; an Information Verification and Employment Interest Form ("Interest Form," appended hereto as Attachment C); a Release of Claims ("Release," appended hereto as Attachment D); and a postage-paid return envelope.

17. Gruma will notify OFCCP every two weeks of all letters returned as undeliverable. In addition, within 60 days of the Effective Date of this Decree, Gruma shall

provide to OFCCP a list of class members who have not yet responded to the Notice. After Gruma has provided this list to OFCCP, OFCCP shall conduct a search to attempt to locate those class members who did not respond. If any class member is located through OFCCP's efforts, OFCCP shall provide such information to Gruma and Gruma shall send to such class member another Notice, Interest Form, Release, and postage-paid return envelope within five business days of receiving the class member's address from OFCCP.

18. Within 130 days of the Effective Date of this Decree, Gruma shall provide to OFCCP a Final List of Participating Class Members ("Final List"), which includes all class members who responded to the Notice by submitting a completed Interest Form and an executed Release within 120 days of the Effective Date of this Decree. Within 140 days of the Effective Date of this Decree, OFCCP shall approve the Final List and return the list to Gruma or work with Gruma to revise the Final List so that it can be approved by OFCCP. If a class member is not located and/or does not return a completed Interest Form and Release within 120 days of the Effective Date of this Decree, the class member shall be no longer entitled to any relief pursuant to this Decree.

19. All class members identified on Attachment A who complete and submit an Interest Form and an executed Release in accordance with the provisions of this Decree shall constitute the Final List and will equally share in the monetary settlement. OFCCP and Gruma agree that Gruma shall have no further liability for back pay, interest, or any other relief under this Decree to any class member identified on Attachment A who cannot be located within the time frames enumerated above or who does not complete and submit an Interest Form and an executed Release and is therefore not on the Final List. Gruma agrees to provide copies of executed Releases and Interest Forms to OFCCP upon request.

B. Monetary Relief

20. In settlement of all claims for back pay, interest and other monetary relief, Gruma will pay \$167,000.00 ("Settlement Fund"), comprised of \$125,000.00 principal and \$42,000.00 in interest, to the female class members identified in Paragraphs 15-19 above. Each class member's share of this payment will be reduced by withholding for federal income tax, state and/or local income tax, and the class member's share of FICA. Each class member shall receive an IRS Form W-2 for her share of the back pay and an IRS Form 1099 for her share of this interest amount.

21. Within 30 calendar days after Gruma receives notice of OFCCP's approval of the Final List, Gruma shall distribute the Settlement Fund equally among class members on the Final List who have executed the Release in accordance with the instructions contained in the Notice. This monetary relief is not contingent on a class member's acceptance of any job offer by Gruma.

22. Within five days of Gruma's receipt of a check to an Affected Class Member ("ACM") returned as undeliverable, Gruma shall notify OFCCP of this fact via e-mail or facsimile. OFCCP will attempt to locate the ACM and if OFCCP obtains an alternate address, Gruma will re-mail the check. Any check that remains uncashed within 180 days after the initial date the check was mailed to the ACM shall be void. With respect to the uncashed funds, Gruma shall make a second distribution to all ACMs who cashed their first check if the amount of the uncashed funds would result in a payment of \$30.00 or more to each of the located ACMs. If the total amount of uncashed funds would result in a payment of less than \$30.00 to each located ACM, Gruma shall use those uncashed funds to provide training to managers in equal employment opportunity.

23. The parties may modify any time frame set forth in this Decree by mutual agreement. In addition, OFCCP or Gruma may petition the Administrative Law Judge to extend any of the above time periods for no more than 30 days in order to permit a class member to receive her share of the Settlement Fund, when the interest of justice would be served by such extension and for good cause shown.

C. Non-Monetary Relief

24. As Packer and/or Disco/Palletizer jobs become available, Gruma will offer these positions to qualified class members on the Final List who have returned the Interest Form expressing an interest in employment ("interested class members") and who have executed the Release in accordance with the instructions contained in the Notice until 20 class members are hired into Packer or Disco/Palletizer positions, or until the list of class members expressing an interest in employment is exhausted, whichever occurs first. Class members shall be notified of available Packer and Disco/Palletizer positions in the order that the class members appear on the Final List, which will be arranged according to the date the Interest Form and Release were received by Gruma.

25. Interested class members must meet Gruma's hiring qualifications and criteria before being hired into a position, including 1) completing an updated employment application; 2) completing the interview process; 3) passing a drug test; 4) passing a background check; 5) being eligible for rehire (if a former employee); 6) being eligible to work in the United States; and 7) agreeing to accept the work, hours and overtime, and shift requirements according to Gruma's needs and assignments. If an interested class member is not hired based upon his or her failure to meet any of these job-related qualifications, or for any other job-related reason not listed above, Gruma will provide OFCCP with documentation supporting such non-hire.

26. If the class member successfully meets Gruma's hiring qualifications and criteria as set forth above, Gruma shall give the class member, in writing, a conditional job offer and provide her with a "report to work" date. The "report to work" date may be as early as the day following the class member's completion of the application process or such later date as Gruma deems appropriate, given its business needs. If, however, at the time the class member receives the job offer and "report to work" date, the class member is otherwise employed, Gruma will delay the class member's "report to work" date for a period of up to 14 days from her receipt of Gruma's job offer so as to allow the class member to provide appropriate notice to her other employer.

27. In all cases, if the class member does not report to work on the day designated by Gruma, the job offer shall be considered withdrawn, and the class member will no longer be eligible for employment with Gruma under the Consent Decree. Gruma shall mail to OFCCP a copy of the job offers made within 30 days of each such job offer being made. All hires should be completed within 12 months of the Effective Date of this Decree. Any class member hired by Gruma into the Packer and Disco/Palletizer positions before the signing of this Decree may be counted as a hire made pursuant to this Decree. Should Gruma have fewer than 20 vacancies available in Packer and/or Disco/Palletizer positions during the 12-month period referenced above, Gruma will confirm this fact to OFCCP upon request.

D. Other Provisions

28. Gruma agrees to prepare and submit follow-up Consent Decree Progress Reports bi-annually for a period of 24 months. These reports shall be submitted to: William Smitherman, Pacific Regional Director, OFCCP, 90 Seventh Street, Suite 18-100, San Francisco,

California 94103-1516, on the following dates: July 5, 2011, January 5, 2012, July 5, 2012, and January 5, 2013. These reports shall consist of the following:

- (A) The names of all class members hired, stating the job title, rate of pay, and starting date.
- (B) The names of all class members who refused a bona fide offer of employment or who did not report to work on the date designated by Gruma, the date of the offer, the job position offered, the rate of pay offered, and the date of refusal or failure to report to work.
- (C) For each Packer or Disco/Palletizer position for which a class member was considered but not selected, the reason for the non-selection and any documentation supporting that reason.
- (D) The amount of monetary benefits provided to class members on the Final List. Gruma shall provide the following documentation relating to the monetary benefits provided to class members: 1) a list of each class member receiving a check; 2) the check number; 3) the dollar amount of the check; 4) the date of the check; and 5) the date the check was cashed. OFCCP reserves the right to request copies of cancelled checks disbursed by Gruma to the class members, or other equivalent documentation verifying that class members were paid.
- (E) The total number of applicants and hires for Packer and Disco/Palletizer positions at Gruma during the reporting period with a breakdown by gender, provided in the form of an applicant flow log containing each applicant's name, date of application, gender, job applied for, job hired for (if applicable), date of hire (if applicable), and, if not hired, the reason.
- (F) For Packer and Disco/Palletizer positions at the Mission Foods facility, the results of Gruma's analysis as to whether its total selection process has an adverse impact on any group as defined in 41 C.F.R. § 60-3.4(D). The parties agree that hires made pursuant to this Decree

will not be counted as applicants or hires for purposes of Gruma's adverse impact analysis. If Gruma determines that the selection process has an adverse impact on any group based on gender, the report shall include any remedial actions taken by Gruma.

IV. IMPLEMENTATION AND ENFORCEMENT

29. This Decree shall constitute the final administrative order in this case and shall have the same force and effect as an order made after a full hearing and final review by the Secretary of Labor.

30. The entire record upon which this Decree is based shall consist solely of the Administrative Complaint, the Consent Decree and Order, and Attachments A - D hereto.

31. The parties waive all further procedural steps, including the right to challenge or contest the obligations entered into in accordance with this Decree.

32. The parties waive any right to challenge or contest the validity of the provisions of this Decree.

33. This Decree shall be binding on Gruma, its successors, assigns, divisions and subsidiaries, and on OFCCP and its agents, officers and employees. This Decree is not intended to be admissible evidence in any proceeding other than a proceeding involving this Decree.

34. Each party agrees to pay its own fees, costs, and other expenses incurred at any stage of these proceedings.

35. The Office of Administrative Law Judges shall retain jurisdiction of this proceeding for the sole purpose of enforcing implementation of this Decree in accordance with its terms. The Office of Administrative Law Judges shall retain jurisdiction of this case for a period of two years following the Effective Date of the Decree, or until 30 days after Gruma satisfies its obligations described herein, whichever is later.

36. Gruma agrees that OFCCP may review compliance with this Decree and that Gruma will provide OFCCP with all documents reasonably related to such a review. Gruma also agrees that, upon reasonable notice, OFCCP may come on-site to review compliance with this Decree.

37. If at any time during the term of this Decree OFCCP believes that Gruma has violated any of the terms contained in this Decree, OFCCP shall promptly notify Gruma in writing of its alleged nonperformance. This notification will identify the term(s) of the Decree alleged to have been violated and the facts that demonstrate the violation. Gruma will have 15 days in which to respond in writing to the allegations of violation, except in those circumstances where OFCCP alleges that such a delay would result in irreparable injury.

38. Enforcement proceedings for violation of this Decree may be initiated at any time after the 15-day period has elapsed (or sooner if irreparable injury is alleged), upon filing with the Office of Administrative Law Judges a motion for an order of enforcement and/or sanctions. The Administrative Law Judge may, if he or she deems it appropriate, schedule an evidentiary hearing on the motion. The issues in a hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

39. If a motion for an order of enforcement or clarification is unopposed by OFCCP or Gruma, the motion may be presented to the Administrative Law Judge without hearing and the proposed order may be implemented immediately. If said application or motion is opposed by any party, the party in opposition shall file a written response within 20 days of service of such motion.

40. Violation of this Decree may subject Gruma and its successors, assigns, divisions, or subsidiaries, to the sanctions set forth in the Executive Order and its implementing regulations and other appropriate relief.

WHEREFORE, the parties move that an Order be entered adopting the above Consent Decree as the final disposition of this matter.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____


Administrative Law Judge

AGREED AS TO FORM AND SUBSTANCE:

For Gruma Corporation:

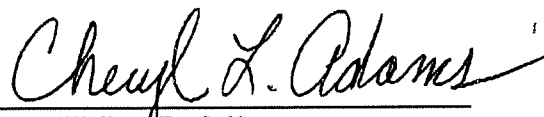
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Attorney for Defendant

Attorneys for Plaintiff

Signed this 14th day of October 2010.

Signed this 20th day of
October 2010.