

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

FERMIN COLINDRES, et al.,  
Plaintiffs

§

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and

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JOSE P. ALEMAN, et al.,  
Plaintiffs

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and

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EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

§

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Plaintiff-Intervenor,

§

§

v.

§

CIVIL ACTION NO. H-01-4319  
consolidated with H-01-4323

§

QUIETFLEX MANUFACTURING et al.

§

§

Defendants.

§

**AMENDED CONSENT DECREE**

**I. INTRODUCTION**

This Amended Consent Decree (“Consent Decree” or “Decree”) has been voluntarily entered into by Plaintiffs, the Equal Employment Opportunity Commission (“EEOC”), and Quietflex Manufacturing Company, L.P. (“Quietflex”) for the purpose of finally resolving the litigation between them.

This Consent Decree includes a joint statement of the purposes of the Decree, a description of the history of the litigation, and various substantive provisions agreed upon by the parties. As a result of negotiations, the parties have reached a voluntary agreement that is contained in this Decree.

## II. DEFINITIONS

A. “Best Efforts” means implementing a plan reasonably designed to comply with all the specific objectives to which the best efforts are directed.

B. “Claimants” means every individual, not including Plaintiffs, on whose behalf the EEOC has sought relief in the Consolidated Litigation, including the following individuals named in EEOC’s Rule 26 Disclosures as possible discrimination victims: Andres Alba, Homero Alfaro, Armando Aviles, Henry Aviles, Jorge Ballasteros, Isidoro Barriga, Manuel Barrios, Victor H. Barrios, Teodulo Benavides, Maria J. Betancourt, Manuel Bonilla, Alberto Bravo, Hugo Cabrejos, Juvenal Castro, Richard Cortez, Jose Aramando Cruz, Bacilio Estrada, Jaime Oziel Garcia, Ruben Gonzalez, Digna N. Hernandez, Jose S. Hernandez, Petronilia Hernandez, Marisol B. Loera, Jose A. Miranda, Orlando Perez, Francisco Rivera, Miguel Sanchez, Ricardo de la Mora Sanchez, Timoteo Sanchez, and Oscar Vela.

C. “Consolidated Litigation” means the private civil actions brought in the *Colindres* and *Aleman* lawsuits, and the EEOC’s claims as Plaintiff-Intervenor that are presently before the Court.

D. “Counsel for Plaintiffs” means the Mexican-American Legal Defense and Educational Fund, Inc. (“MALDEF”), counsel of record for the Plaintiffs in the Private Civil Actions.

E. “Court” means the United States District Court for the Southern District of Texas.

F. “Defendants” means Quietflex Manufacturing Company, L.P., Quietflex Holding Company, Goodman Manufacturing Company, L.P. and Goodman Holding Company.

G. “EEOC” means The Equal Employment Opportunity Commission (“EEOC” or “Commission”), Plaintiff-Intervenor in this action.

H. “Effective Date” means the date upon which the last of the three following events occurs: (1) Final Approval of the Decree; (2) the Court approves the settlement of the FLSA claims; and (3) Defendants’ counsel receives signed settlement agreements from all locatable Settlement Group Members.

I. “Final Approval” means the entry of this Decree by the United States District Court for the Southern District of Texas, and either: (1) the expiration of the time for filing of a direct appeal from the Court’s approval of the Decree without the filing of a notice of appeal, or (2) if a timely direct appeal is filed, the final resolution of the appeal (including any requests for rehearing and/or petitions for a writ of certiorari), resulting in final judicial approval of the Consent Decree.

J. “Latino” shall have the same meaning as the definition of “Hispanic” in the definition section of the Employer Information Report EEO-1 instruction booklet, *i.e.*, all persons of Mexican, Puerto Rican, Cuban, Central American, South American or other Spanish culture or origin, regardless of race.

K. “Plaintiffs” means the persons pleaded as Plaintiffs by MALDEF. As named in the most recent complaints, they are Jose Aleman, Moises Alvarez Hernandez, Abel Ancelmo, Ruben Arroyo, Manuel Bautista, Pedro Borja, Marco Careaga, Juan Casanova, Jaime Castro Soto, Fermin Colindres, Gelacio Cuevas Roman, Lidio Delgado, Mario Delgado, Jaime Delgado, Federico Diaz, Ciro Dominguez, Benito Dominguez, Esteban Estrada, Hector Estrada Robles, Abel Flores, Jose Fuentes, Wenceslao Garcia, Eleno Garcia, Victor Garcia, Jose Martin Garcia, Lazaro Garcia, Pedro Garcia Chavez, Pedro Garcia Diaz, Jose Giles Baltazar, Alejandro Giles Baltazar, Jose Angel Gonzalez, Eduardo Gonzalez, Jorge Gonzalez, Fernando Gonzalez, Dora Hernandez, Miguel Hernandez Mendez, Raunir Jacome, Efrain Lezama, Ector Lopez, Mario

Luna, Jose Marquez, Crescencio Martinez, Guadalupe Mondragon, Primitivo Mondragon, Juan Mondragon, Marco Mondragon, Martin Montenegro, Reynaldo Montiel Ortiz, Francisco Moreno, Manuel Munoz Marquez, Benito Palacios, Lorenzo Pastrana, Jose Perez, Francisco Perez, Carlos Quintor, Joaquin Ramos, Victorio Rios, Adrian Rodriguez, Bernardo Rosales, Angel Rosales, Eliseo Rosales, Perfecto Rosas, Reynaldo Sanchez, Juan Sanchez, Jose Luis Sanchez Ortiz, Federico Sandoval, Filadelfo Santillan, Jose Santillan, Rodrigo Santillan, Pedro Santillan, Jose Sazo, Luz Sifuentes, Wilian Sosa, Hector Umanzor, Blas Vasquez, Alejandro Vela, Cesar Vela and Jesus Villegas.

L. "Quietflex" or the "Company" means Quietflex Manufacturing Company, L.P.

M. "Private Civil Actions" means Fermin Colindres, et al. v. Quietflex Manufacturing Co., LP, et al., Case No. H-01-4319, and Jose P. Aleman, et al. v. Quietflex Manufacturing Co., LP, et al., Case No. H-01-4323.

N. "Release" means the Release of Claims set forth in Section IX of the Decree.

O. "Settlement Group Members" means each and every individual Plaintiff described in described in Section II.K of this Decree and Oscar Vela and Orlando Perez.

P. "Term of the Decree," "Period of the Decree" or "Duration of the Decree" is the period from the Effective Date until the expiration of the Decree under Section VI.

### **III. PURPOSES OF THE CONSENT DECREE**

The EEOC, Plaintiffs and Quietflex enter into this Consent Decree as part of a global settlement to achieve the following goals: (1) to resolve all claims asserted in the Lawsuit, including all requests for damages, costs, and attorneys' fees arising therefrom; (2) to enter a Court Order specifying certain relief as to Quietflex to ensure that Quietflex provides all employees, including Plaintiffs, a positive work environment and equal employment opportunities; and (3) to provide finality to the resolution of all claims and defenses asserted in

this matter. Because this Consent Decree has been negotiated as part of a global settlement, the Parties agree that its implementation is contingent upon the receipt of settlement documents executed by each of the Settlement Group Members who can be located and approval by this Court of the settlement of all FLSA claims.

#### IV. LITIGATION BACKGROUND

##### A. The Colindres Lawsuit

On October 10, 2001, Fermin Colindres *et al.* filed a lawsuit against Defendants in the Western District of Texas, alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000h-6 (“Title VII”) and 42 U.S.C. § 1981 (“§ 1981”). The Complaint was brought on behalf of a putative class of Latino individuals who alleged that the defendants discriminated against Latinos on the basis of race, color, and/or national origin, with respect to hiring, firing, job assignment, transfers, compensation and other terms and conditions of employment at the Quietflex plant located at 4518 Brittmoore Road, Houston, Texas 77041, which is operated by Quietflex. By Order entered November 26, 2001, the *Colindres* lawsuit was transferred to the Southern District of Texas, where it was assigned Civil Action No. H-01-4319.

##### B. The Aleman Lawsuit

On December 13, 2001, Jose P. Aleman and approximately eighty other individuals, all former or current employees of Quietflex, filed a lawsuit in the Southern District of Texas against the same defendants as in the *Colindres* lawsuit. The *Aleman* lawsuit alleges that Quietflex violated the Fair Labor Standards Act, 29 U.S.C. § 203, et seq. (“FLSA”) as well as Title VII and Section 1981.

**C. Consolidation of Lawsuits**

By Order entered February 26, 2002, this Court consolidated the *Colindres* and *Aleman* lawsuits.

**D. Subsequent Pleadings and Litigation**

Plaintiffs filed a First Amended Complaint on July 18, 2002. On September 26, 2002, the EEOC filed its proposed Complaint in Intervention, which alleged that Quietflex's hiring, transfer and assignment practices violated Title VII. On November 1, 2002, Plaintiffs filed a Second Amended Complaint. By Order entered December 4, 2002, this Court granted the EEOC's motion to intervene.

Plaintiffs and the EEOC allege that Defendants discriminated against Hispanic employees. They further allege that Defendants engaged in a "pattern or practice" of discrimination. Additionally, Plaintiffs allege that Defendants retaliated against certain Plaintiffs. Finally, Plaintiffs allege that Defendants violated the FLSA.

Defendants have denied and continue to deny all allegations of wrongdoing and liability in this matter. Specifically, Defendants deny that they have discriminated against or retaliated against Hispanic employees, that they have engaged in a pattern or practice of such behavior, or that they have failed to comply with the requirements of the FLSA. Additionally, Defendants deny that any Defendant other than Quietflex employed any of the Plaintiffs, and further deny that any of the other Defendants in combination with Quietflex constitutes an integrated enterprise.

During the litigation, the Parties have engaged in extensive discovery. Additionally, the Court held a multi-day evidentiary hearing in November 2004, and the parties have extensively briefed numerous issues. On August 7, 2003, Plaintiffs filed a motion for class certification, which the Court denied on March 31, 2006, on the basis of the record.

Subsequently, the parties conducted a mediation session in an attempt to resolve the Consolidated Litigation. These discussions, as well as discussions on several subsequent days, have culminated in the settlement agreement which is embodied in this Consent Decree.

**V. JURISDICTION AND FINDINGS**

The Court, having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings and the record in this case, and subject to the Court's findings as set forth in its orders, finds as follows:

A. The Court has jurisdiction over the parties and subject matter of the Consolidated Litigation. If the claims asserted in the complaints filed in these civil actions were proven, the Court would have the authority to grant the equitable and monetary relief set forth in this Consent Decree. Venue is proper in this District. This Court shall retain jurisdiction of this Consolidated Litigation during the duration of the Decree solely for the purpose of entering all orders, authorized hereunder, that may be necessary to implement the relief provided.

B. The terms of this Consent Decree are adequate, fair, reasonable, equitable and just; and

C. This Consent Decree conforms with the Federal Rules of Civil Procedure and is not in derogation of the rights or privileges of any person, or any party. The final approval of this Consent Decree will further the objectives of Title VII and will be in the best interests of the parties.

**VI. EFFECTIVE DATES AND DURATION OF THE DECREE**

A. Unless provided otherwise, the equitable provisions in this Decree are effective immediately upon the Effective Date.

B. All provisions of this Decree shall remain in effect for a period of two and one-half years (30 months) from the Effective Date, but the provisions related to Quietflex's

modification of its internal transfer system, as described below, shall remain in effect for three years (36 months) from the Effective Date. Quietflex agrees that it does not currently have a plan to eliminate the modification to the internal transfer system described below upon the expiration of the three year period; however, nothing in the Consent Decree will prevent it from doing so. Nothing in this Consent Decree will waive any rights by Plaintiffs to bring legal challenges in any forum to any modifications in the internal transfer system that are different from the modifications described in this Consent Decree, or different from the internal transfer system that was the subject of this litigation.

C. Upon the Effective Date, the Consent Decree shall constitute an order of the Court and all of its provisions will become enforceable by the EEOC, Quietflex, and Plaintiffs in the manner set forth in the Consent Decree. The EEOC, Quietflex, and Plaintiffs agree that they shall not appeal from the Consent Decree or the Court's Order.

D. In the event that all three events described in Section II.H. do not occur, nothing in this Decree shall be deemed to waive any of Plaintiffs' or Quietflex's claims, objections or defenses to class certification, liability, or any other issue in the Consolidated Litigation, and this Decree shall then be deemed null and void and not admissible in any court regarding the propriety of class certification, liability, entitlement to monetary or equitable relief or the adequacy of any particular remedy or any other issue in the Consolidated Litigation, the private civil actions, or the EEOC's Complaint in Intervention.

## **VII. MISCELLANEOUS PROVISIONS**

### **A. No Bar to Future Claims**

Nothing in the Decree shall be construed to bar any claims of Settlement Group Members or Plaintiffs against Defendants that arise after the Effective Date.

**B. No Admission of Liability**

This Consent Decree does not constitute a finding or determination by the Court, nor an admission by any party, regarding the merits, validity or accuracy of any of the allegations, claims or defenses asserted in this Consolidated Litigation. Quietflex and the other Defendants do not admit or concede, expressly or impliedly, but instead deny, that they have in any way violated Title VII; § 1981; the FLSA; the common law of any jurisdiction, any federal, state or local law, statute, ordinance, regulation, rule or executive order; or any obligation or duty at law or in equity. Nothing contained in this Consent Decree shall be interpreted or construed as evidence of an admission of liability, or a waiver or release of any claim, except as expressly provided herein.

Nothing in this Consent Decree, nor any action taken in implementation thereof, nor any statements, discussions, or communications, nor any materials prepared, exchanged, issued, or used in negotiations leading to this Consent Decree, is intended by the Parties to, nor shall any of the foregoing constitute, be introduced, be used, or be admissible in any way in this Lawsuit, or in any other judicial, arbitral, administrative, investigative, or other proceeding of any nature against any Defendant as evidence of discrimination or retaliation, or as evidence of any violation of Title VII; § 1981; the FLSA; the common law of any jurisdiction, or any federal, state or local law, statute, ordinance, regulation, rule, or executive order; or any obligation or duty at law or in equity. Notwithstanding the foregoing, the Consent Decree may be used by the EEOC, Plaintiffs or Quietflex in any proceeding in this Court to enforce or implement the Consent Decree or any orders or judgments of this Court entered into in connection therewith.

**C. Modification of the Consent Decree**

Plaintiffs, Quietflex and the EEOC may jointly agree in writing to modify the Decree. In the event that changed or other circumstances make a modification of the Decree necessary to

ensure its purposes are fully effectuated, but good faith negotiations seeking such modifications are unsuccessful, any party to the Decree shall have the right to move the Court to modify this Decree. Such motion shall be granted only upon the movant's proving to the Court by a preponderance of the evidence that changed or other circumstances make such modification necessary.

**D. Duty to Support and Defend the Decree**

Plaintiffs, EEOC and Quietflex each agree to abide by all of the terms of this Decree in good faith and to support it fully, and shall use Best Efforts to defend this Decree from any legal challenge, whether by appeal or collateral attack.

**E. Press Release**

An approved press release is attached as Exhibit A to this Decree. All communications by Defendants, Defendants' counsel, Plaintiffs, Claimants and Plaintiffs' Counsel with the media and third parties shall be consistent with this agreed final press release. "Media" is defined as that term is generally understood, to include among other outlets, newspapers, magazines, billboards, radio, television and the internet (including bloggers).

**F. Managerial Discretion**

Subject to the terms of this Consent Decree, Quietflex shall at all times retain managerial discretion, *inter alia*, to select, hire, assign, transfer, train, promote, compensate, discipline, or terminate any of its employees; to make any and all compensation and promotion decisions affecting its employees; to take disciplinary action against any employee up to and including termination of employment; to modify its existing human resource functions, terms and conditions of employment, programs, procedures, practices, or policies or otherwise adopt any new human resource functions, terms and conditions of employment, programs, procedures, practices, or policies as Quietflex may deem appropriate; and to make any personnel decision

relative to any employee such as displacement, transfer, or bumping any employee from his or her position, provided that such decisions comply with applicable laws, including Title VII, the FLSA, and 42 U.S.C. § 1981. Nothing in this Consent Decree shall require Quietflex to violate any applicable law, ordinance, or regulation.

**G. Headings**

The headings in this Consent Decree are for the convenience of the Parties only and shall not limit, expand, modify, amplify, or aid in the interpretation or construction of this Consent Decree.

**H. Non-Waiver**

The waiver in any one instance by either Plaintiffs, the EEOC or Quietflex of any term, condition, or covenant in this Consent Decree or of the breach of any term, condition, covenant, or representation herein shall not operate as or be deemed to be a waiver of the right to enforce any other term, condition, or representation, nor shall any failure by either Plaintiffs, the EEOC or Quietflex at any time to enforce or require performance of any provision hereof operate as a waiver of or affect in any manner their right at a later time to enforce or require performance of such provisions or of any other provision hereof.

**VIII. EQUITABLE PROVISIONS / PROGRAMMATIC RELIEF**

**A. Scope**

The implementation of the provisions in this section will be limited to the Quietflex manufacturing facility, which is currently located at 4518 Brittmoore Road, Houston, Texas, 77041.

**B. Internal Transfer System**

1. When a full-time vacancy occurs in any non-supervisory position in Department 3910 [formerly known as Department 10 and Department 910], the position will be put up for bid.

2. All job vacancies Quietflex determines to fill in Department 3910 with a regular, full-time employee will be posted in accordance with its current policy, i.e., the positions will be posted on the internal bulletin board for at least three business days (weekend days and holidays are not included as business days).

3. Quietflex agrees that any intra-sectional or intra-departmental seniority preference for open positions in Department 3910 is hereby eliminated.

4. For transfer into any non-supervisory position in Department 3910, successful bidders for vacancies will be applicants with the most plant seniority who meet minimal job qualifications (i.e., they have been in the current department for at least six months; they have not turned down an opportunity to transfer within the past six months; they have an acceptable safety and attendance record; they are not on final warning; and they have passed the communication certification process, as discussed in the next section, which confirms or establishes their ability to communicate in basic terms about job and safety issues). In computing plant seniority, Plaintiffs who were fired in January 2000 and then rehired in January 2000 shall have their seniority determined by reference to their initial hire date at Quietflex.

5. So long as there are no significant changes to the job duties in Department 3910 beyond those that are currently in effect (or those that will be implemented as part of this decree), no additional educational or skill-level requirements shall be required for transfer to Department 3910. Absent a significant technological upgrade to the machinery in Department 3910 (e.g., should Quietflex install machines for which computers control numeric settings,

requiring operators to be proficient in using these computers), any change to the entry requirements for Department 3910 during the term of this Decree would require Court approval. Quietflex warrants that it currently has no plans to make significant technological upgrades to the machines which would increase the educational or skill level requirements necessary to work in Department 3910. Should Quietflex during the term of this Decree decide to make a significant technological upgrade to the machinery in Department 3910 that increases the educational or skill-level requirements necessary to operate the machinery, it will advise Counsel for Plaintiffs and EEOC at least thirty (30) days before the implementation of the upgrade, and explain the additional educational or skill-level requirements necessitated by the impending upgrade. If such a decision to upgrade is made less than 30 days before implementation, Quietflex will inform Counsel for Plaintiffs and EEOC as soon as possible.

6. All postings for Department 3910 positions will clearly state that Quietflex will not consider intra-sectional or intra-department seniority for determining transfers, and that the successful bidders for Department 3910 vacancies will be the applicants with the most plant seniority who meet the minimal job qualifications (as described in paragraph 4 of this Section).

7. Quietflex will not be required to retain in Department 3910 any successful bidder or transferee who fails to meet standard productivity, safety, or disciplinary requirements.

8. Quietflex represents that it has no current plan to eliminate the transfer system set forth in this section subsequent to the expiration of the three-year term of the Decree. Nothing in this Decree, however, prevents Quietflex from making such changes after the expiration of the Decree.

9. Nothing in this Decree waives any rights by Plaintiffs to bring any legal challenges in any forum to any changes in the internal transfer system that are different from the

changes described in this Decree or that are different from the internal transfer system that was a subject of this litigation.

10. Six (6) months after the Effective Date, and every six (6) months thereafter while this Decree is in effect, Quietflex will provide to the EEOC's Houston District Office and the San Antonio Office of MALDEF, copies of any job postings for regular, non-supervisory full-time positions in Department 3910 which were posted during the previous six (6) months. When providing copies of these postings, Quietflex also will provide the name and national origin or race [as self-identified by the employee on any EEO-1 or other form] of the bidders for each position listed in the posting, and the plant seniority of each candidate at the time of the posting. If the successful bidder for any such position does not have the lowest employee number of all candidates who signed the posting sheet, Quietflex additionally will provide an explanation for why the successful candidate was awarded the position.

**C. Communication Certification**

1. The parties will work in good faith with each other and third parties to create a limited number of questions, acceptable answers and a passing score for current employees seeking transfers to Department 3910. These questions will objectively test an employee's ability to understand and communicate basic job-related phrases in English that are necessary for safety and productivity. The term "job-related" is defined as set forth in the EEOC's Uniform Guidelines on Employee Selection.

2. The parties agree that this communication certification process will be developed by David Jones in collaboration with James Herring; Quietflex and Plaintiffs will bear the costs and fees associated with their respective experts. If Dr. Jones and Dr. Herring are unable to agree on each of the elements of the certification process then the parties, with the assistance of the mediator, Hunter Hughes, shall select a qualified neutral industrial psychologist

who will select between the competing positions with respect to matters about which Dr. Jones and Dr. Herring disagree. If the services of a neutral industrial psychologist are required, Quietflex and Plaintiffs shall bear those costs equally.

3. The parties agree that the only purpose of the communication certification process is to verify that employees who seek to transfer into Department 3910 are able to understand or communicate basic job-related phrases in order to communicate with their front line supervisors when necessary to ensure safety and productivity.

4. Dr. Jones and Dr. Herring will be directed to use their best efforts to minimize any written component to the certification process. Quietflex agrees to inform prospective test-takers of the limited job-related phrases that they must understand or be able to communicate in order to pass the certification process as soon as the certification process is finalized.

5. No employee currently in Department 3910 will be required to take a certification test to be eligible to remain in such position, as each of those employees has demonstrated sufficient job-related communication proficiency on the job.

6. The experts will use their best efforts to have the certification process available for implementation within 45 days after the Effective Date. Quietflex will permit Dr. Herring to be on site at the Quietflex facility to observe the initial administration of the test, which shall occur approximately 45 days after the Effective Date. Quietflex will ensure that each administration of the communication certification test thereafter will be conducted in the same or similar manner as that observed by Dr. Herring.

7. Plant employees will be given the option of taking the test prior to seeking a transfer. Quietflex agrees to make the certification process available to all current employees

in Department 3911 and Quietflex Department 256 promptly after the Effective Date and after it is completed and agreed-upon by Plaintiffs, EEOC, and Quietflex. Within thirty (30) days of the initial administration of the communication certification, and every six (6) months thereafter, a list of employees to whom the test has been administered shall be provided to EEOC and Counsel for Plaintiffs; the list shall specify which employees received a passing score and which employees did not.

8. So long as there are no significant changes to the job duties in Department 3910 beyond those currently in effect, then once an employee passes the certification process, no further showing of any communication skills will be required of such employee to be eligible to transfer into or work in Department 3910. Quietflex also will make the process for certification available at least every three months, and any person to this suit not receiving a passing score during testing will be given the opportunity to take the certification test every three months until he passes the test. During the term of this Consent Decree, if a Plaintiff does not receive a passing score on the communication certification test, upon request, Quietflex agrees to provide to that Plaintiff an explanation of the reason(s) for the Plaintiff's failing score

**D. Training**

To ensure that the purposes of this Decree are effected and to affirm Quietflex's commitment to comply with Title VII, Quietflex shall provide training and instruction on compliance with the provisions of the Decree -- within thirty (30) days of the Effective Date -- to all Crew Chiefs and Supervisors within Departments 3910, 3911 and Quietflex Department 256 to ensure that any managerial employee who has any supervisory authority in these departments at Quietflex has been trained to understand and carry out Quietflex's responsibilities under this Decree. If Quietflex disseminates to any of the Crew Chiefs or Supervisors in these Departments the recitations concerning "managerial discretion" described in Section VII. E., above, any such

Crew Chiefs or Supervisors shall receive specific instruction that the improper exercise of “managerial discretion” could violate Title VII. Quietflex will provide to EEOC annual confirmation that its relevant managers understand Quietflex's obligations under this Consent Decree.

**IX. MONETARY RELIEF AND RELEASE OF CLAIMS**

**A. Settlement Group Members**

1. Quietflex agrees to pay the sum of two million, eight hundred thousand dollars (\$2,800,000.00) in full and final settlement of the Consolidated Litigation. Of this amount, one million, nine hundred and thirty three thousand, three hundred and thirty three dollars and eighty cents (\$1,933,333.80) will be paid to provide monetary relief to Settlement Group Members. The remainder of the total amount shall be designated payment for reasonable attorneys' fees and costs as set forth in the following section.

2. Upon the Effective Date, Defendants and their employees, managers, insurers and attorneys shall be fully released and forever discharged from any and all individual and/or class-wide claims, demands, charges, complaints, rights and causes of action arising from the Consolidated Litigation, by the Plaintiffs. Prior to receiving any monetary relief under this Decree, each locatable Plaintiff will be required to execute a full and final general release of all claims against Quietflex which arose prior to the date of his/her signing the release, and each locatable Claimant will be required to execute a release of all claims brought on his/her behalf by the EEOC.

3. Plaintiffs who are former Quietflex employees shall, as part of their respective releases, agree not to re-apply for employment with Quietflex. In exchange for their agreement to this no re-application provision, they shall each be paid an additional monetary sum, which will be a pro rata share of Two Hundred Thousand dollars and eight cents

(\$200,000.08). The Two Hundred Thousand dollars and eight cents (\$200,000.08) to be paid to Plaintiffs no longer employed by Quietflex in exchange for their releasing their right to reapply for employment shall be part of the \$1,933,333.80 allocated to Settlement Group Members.

4. Should any Settlement Group Member refuse to sign a release for a reason other than the fact that he or she cannot be located or is deceased, there is no admission of liability, and this Decree shall then be deemed null and void and not admissible in any court regarding the propriety of class certification, liability, entitlement to monetary or equitable relief or the adequacy of any particular remedy or any other issue in the Consolidated Litigation, the claims of which would then proceed to be adjudicated by the Court and jury.

5. Prior to presentation of this Decree to the Court, Plaintiffs' counsel has supplied Quietflex's counsel with a list that included the proposed allocation of monetary amounts among the Settlement Group members. Counsel for Plaintiffs, in consultation with EEOC, shall have sole discretion for determining the allocation of settlement funds among Settlement Group members, except that allocation of the settlement funds and attorneys' fees and costs in settlement of Plaintiffs' FLSA claims shall be subject to the approval of the Court. This allocation shall be made on a good faith basis, and will use the damage analysis of Plaintiffs' designated economic expert as the reference point for allocating shares. The \$200,000.08 of the settlement fund earmarked for Plaintiffs no longer employed by Quietflex also will be part of the proposed allocation to be included on this list supplied to Quietflex's counsel.

6. No more than thirty (30) days after the Court approves this Decree and approves the settlement of Plaintiffs' FLSA claims, Plaintiffs' counsel shall provide Quietflex's counsel with signed releases from all Plaintiffs who have been located, plus an attestation that any Plaintiffs who have not signed releases cannot be located despite diligent efforts to locate

them. Plaintiffs' counsel and the EEOC agree that they have attempted to locate Plaintiffs and Claimants since this matter was mediated on August 28, 2006, and EEOC agrees that it has attempted to locate Claimants multiple times during the pendency of the Consolidated Litigation; Plaintiffs' counsel and EEOC agree that once thirty (30) days following approval of this Decree and approval of the settlement of Plaintiffs' FLSA claims have elapsed they will have had sufficient time to identify and locate all locatable Plaintiffs and Claimants. The Court will dismiss unlocatable Plaintiffs' claims with prejudice for want of prosecution, and Counsel for Plaintiffs and EEOC will not oppose those dismissals. The unlocatable Claimants' claims will similarly be dismissed in connection with the dismissal of this lawsuit, and the EEOC will seek no further relief on their behalf. Further, for any Settlement Group Members who cannot be located by the date Plaintiffs' counsel provides Quietflex's counsel with the signed releases, the total settlement amount allocated to Settlement Group Members of \$1,933,333.80, shall be reduced by the share those Settlement Group Members had been allocated on the list described in paragraph 5 of this section. Under no circumstances shall the amount for attorneys' fees and related expenses, described below in Section X, be reduced (unless ordered by the Court in connection with settlement of the FLSA claims, or unless the decree is voided as described above in Section IX.A.4).

7. No more than fifty-one (51) days after the Court approves this Decree and approves the settlement of Plaintiffs' FLSA claims, Quietflex shall mail checks to Counsel for Plaintiffs for distribution to Plaintiffs. These checks shall be in the amounts specified on the list described in paragraph 5 of this section. Also no more than fifty-one (51) days after the Court approves this Decree and approves the settlement of Plaintiffs' FLSA claims, Quietflex shall mail directly to Oscar Vela and Orlando Perez, at addresses provided to Quietflex's counsel by

EEOC, checks for their respective portions of the settlement proceeds. Copies of the checks sent to Mr. Vela and Mr. Perez shall be mailed to the EEOC's lead trial counsel in the Houston District Office. Should Quietflex fail to make timely payment as described in this paragraph, the Court may require Quietflex to pay as a penalty for late payment interest from the Effective Date, calculated at the IRS penalty rate, and could hold Defendants in contempt. In the event that Quietflex fails to make timely payment, Plaintiffs' counsel or EEOC may inform the Court of the failure without adhering to the Dispute Resolution and Enforcement Procedures set forth in Section XI, below.

8. The monetary awards, not including the \$200,000.08 designated as consideration for the no rehire provisions, shall be allocated as follows: 40 percent to lost wages, 5 percent to FLSA back pay,<sup>1</sup> 5 percent to FLSA liquidated damages, and 50 percent to compensatory/emotional distress damages. The amounts paid for lost wages and FLSA back pay will be subject to all applicable withholding for federal state, local, Social Security or other applicable deductions, and Quietflex will make the applicable withholdings and issue IRS Form W-2's to Settlement Group Members for those amounts. The amounts paid for compensatory/emotional distress, liquidated damages under the FLSA, and in consideration of the no rehire provisions, as appropriate, shall not be subject to withholding and shall be reported to the IRS on Form 1099-MISC, along with allocated attorneys' fees and costs.

**B. EEOC**

Upon the Effective Date, this Decree shall fully and finally resolve any and all claims, demands, charges, complaints, rights and causes of action of any kind, known or unknown, that

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<sup>1</sup> Claimants Oscar Vela and Orlando Perez will have no amount allocated to FLSA back pay, as they have not raised FLSA claims. Additionally, they are not subject to any no rehire provisions. Their monetary awards will be allocated as follows: 50% to lost wages and 50% to compensatory/emotional distress damages.

the EEOC brought or could have brought on its own behalf or on behalf of all Plaintiffs and all EEOC Claimants, whether or not previously identified, in its Complaint in Intervention arising from incidents occurring prior to the Effective Date. It is the intention of Quietflex and the EEOC that by Quietflex's entering into this Decree, the EEOC terminates all investigations relating to claims previously filed with the EEOC by any of the Plaintiffs or Claimants,<sup>2</sup> and the EEOC agrees that none of Plaintiffs' or Claimants' already-filed charges shall be used by the EEOC as a jurisdictional basis to pursue additional legal relief against any Defendant in the Consolidated Litigation.

**C. DISMISSAL OF LAWSUIT**

All Parties agree that within fourteen days of the mailing of the settlement proceeds, the Parties will file a motion seeking entry of an Order in the form attached hereto as Exhibit C, which dismisses the Consolidated Lawsuit with prejudice, without payment of attorneys' fees or costs to any Party except as expressly provided herein. Defendant Quietflex Manufacturing Company, L.P., continues to be subject to the Consent Decree during the term of the Consent Decree.

**X. ATTORNEYS' FEES, COSTS AND EXPENSES**

**A. Basis for Award of Fees, Costs and Expenses**

1. The parties have agreed that it is appropriate as part of the settlement underlying this Consent Decree for Quietflex to pay to Counsel for Plaintiffs, on behalf of the Plaintiffs, reasonable attorneys' fees, litigation expenses, and costs in this case in the amount of eight hundred and sixty six thousand, six hundred and sixty six dollars and twenty cents (\$866,666.20). This amount fully satisfies any obligation Defendants may have to pay

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<sup>2</sup> A list of EEOC charges is attached as Exhibit B.

reasonable attorneys' fees, litigation expenses, and costs for and on behalf of the Plaintiffs for any and all work performed and costs and expenses incurred through and including the Effective Date. Payment to Counsel for Plaintiffs will be made at the same time and in the same manner as payment to Plaintiffs.

2. For attorneys' fees, litigation expenses, and costs for work pursuant to this Decree and performed after the entry of this Decree, each party to this action shall bear its own costs and attorneys' fees.

#### **XI. DISPUTE RESOLUTION AND ENFORCEMENT PROCEDURES**

A. At the request of Counsel for Plaintiffs, EEOC or Quietflex, the parties shall use Best Efforts to resolve promptly any differences or any disputes regarding the interpretation or implementation of the Consent Decree.

B. Plaintiffs, EEOC or Quietflex shall have the right to initiate steps to resolve any dispute or issue of compliance regarding any provision of the Decree subject to limitations and standards set forth in the Decree.

1. If Counsel for Plaintiffs, EEOC or Quietflex has good reason to believe that a legitimate dispute exists, the initiating party shall first promptly give written notice to the other parties, including: (a) a reference to all specific provisions of the Decree that are involved; (b) a statement of the issue; (c) a statement of the remedial action sought by the initiating party; and (d) a brief statement of the specific facts, circumstances and any other arguments supporting the position of the initiating party;

2. Within fifteen (15) days after receiving such notice, the non-initiating party shall respond in writing to the statement of facts and arguments set forth in the notice and shall provide its written position, including the facts and arguments upon which it relies in support of its position;

3. Counsel for Plaintiffs, EEOC and Quietflex shall undertake good-faith negotiations, including meeting or conferring by telephone or in person and exchanging relevant documents and/or other information, to attempt to resolve the issues in dispute or alleged noncompliance;

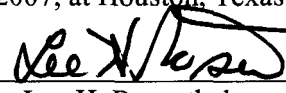
4. If the parties' good-faith efforts to resolve the matter have failed, and after written notice of an impasse by the moving party to the non-initiating party or parties, Counsel for Plaintiffs, EEOC or Quietflex may file a motion with the Court, with a supporting brief, requesting resolution of the dispute or the issues of non-compliance, provided, however, that such motion shall be limited to the dispute(s) and/or issue(s) as to which the parties have met and conferred;

5. The non-moving parties will have fifteen (15) days to respond to any such motion.

C. The provisions of this Section do not prevent Plaintiffs, EEOC or Quietflex from promptly bringing an issue directly before the Court when exigent facts or circumstances require immediate Court action to prevent a serious violation of the terms of this Decree, which otherwise would be without meaningful remedy. The moving papers shall explain the facts and circumstances that allegedly necessitate immediate action by the Court.

D. Only Plaintiffs, EEOC or Quietflex shall have standing to move the Court to enforce, apply, or modify this Decree. Any individual concerned about Quietflex's compliance with this Decree may so notify Counsel for Plaintiffs and/or the EEOC and request that they examine Quietflex's compliance and seek such relief, if any, as may be appropriate.

Signed this 23<sup>rd</sup> day of January, 2007, at Houston, Texas.

  
\_\_\_\_\_  
Lee H. Rosenthal  
United States District Judge

s/ Nina Perales (by permission)

Nina Perales

State Bar No. 24005046

Southern District ID No. 21137

**Mexican American Legal Defense and Educational Fund, Inc.**

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**Attorneys for Defendants**

# **EXHIBIT A**

**Contact Information**

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**For the Defendants:**

Gerald L. Maatman, Jr.  
(312) 460-5965

**MALDEF, Quietflex Manufacturing Company, L.P.,  
Announce Final Approval of Settlement with  
Hispanic Employees on Discrimination Claims**

**Houston, Texas (January \_\_, 2007)** – U.S. District Judge Lee Rosenthal granted final approval today to the settlement of discrimination claims asserted against Quietflex Manufacturing Company, L.P. (“the Company”). Under the terms of the settlement, the Company’s insurer will pay \$2.8 million to 78 current and former Latino Company employees. In addition, the Company has agreed to implement policies and practices to advance equal employment opportunity.

The lawsuit was filed in October 2001 when 78 Latino employees, represented by the Mexican American Legal Defense And Educational Fund, Inc. (“MALDEF”), sued the Company, claiming that it discriminated against them based on their national origin in its transfer and compensation policies. The suit alleged that Latinos were denied entry into a department with jobs which were higher-paying and had better working conditions than the departments in which Latinos worked. They further alleged retaliation based on their terminations stemming from a work stoppage in January 2000. All employees were re-hired shortly thereafter. The Company, which produces flexible air conditioning ducts and component products, has denied and continues to deny all of the allegations in the lawsuit.

The settlement covers all outstanding claims. In reaching a settlement, the parties have avoided the inconvenience, cost and inherent uncertainty of trial. As the case has been settled and no trial was held, the Court made no findings about liability.

“Our clients are very pleased with the settlement. The changes in policy to which the company has committed will give Latino employees a fair opportunity to work in the most desirable and highest paid jobs at the Quietflex plant,” said Nina Perales, MALDEF’s Southwest Regional Counsel.

“While we were fully prepared to present this case at trial, and stand by our position that our client has always followed the laws and regulations related to equal opportunity employment, we are very pleased with this result for our client. This settlement is a fair conclusion for all involved.” said Gerald L. Maatman, Jr., trial counsel at Seyfarth Shaw LLP.

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# **EXHIBIT B**

## ALEMAN AND COLINDRES PLAINTIFFS' EEOC CHARGE STATUS

Last Name	First Name	EEOC Charge No.
Aleman	Jose	330A01121
Ancelmo	Abel	330A01080
Arroyo	Ruben	330A01109
Bautista	Manuel	330A01129
Borja	Pedro	330A01124
Careaga	Mario	330A01222
Casanova	Juan	330A01134
Colindres	Fermin	330A01021
Cuevas	Roman Gelacio	330A01064
Delgado	Lidio	330A01052
Delgado	Mario	330A01061
Diaz	Frederico	330A01114
Dominguez	Benito	330A01108
Dominguez	Ciro	330A01047
Estrada	Esteban	330A01971
Estrada	Hector Robles	330A01131
Flores	Abel	330A01050
Fuentes	Jose	330A01063
Garcia	Eleno	330A01056
Garcia	Jose Martin	330A01116
Garcia	Lazaro	330A01062
Garcia	Pedro Chavez	330A01043
Garcia	Pedro Diaz	330A01043
Garcia	Wenceslao	330A01099
Giles	Alejandro Baltazar	330A01055
Giles	Jose Baltazar	330A01096
Gonzales	Eduardo	330A01132
Gonzalez	Fernando	330A01074
Gonzalez	Jorge	330A01127
Gonzalez	Jose	330A01130
Guerra	J. Jesus Villegas	330A01072
Hernandez	Dora	330A01250
Hernandez	Miguel	330A01086
Hernandez	Moises	330A01120
Jacome	Raumir	330A01101
Lezama	Efrain	330A01085
Lopez	Ector	330A01123
Lopez	Ector	330-2005-3460
Luna	Mario	330A01104
Marquez	Jose A.	330A01067
Martinez	Crescencio	330A01058
Mondragon	Guadalupe	330A01094
Mondragon	Juan	330A01065
Mondragon	Marco	330A01054

<b>Last Name</b>	<b>First Name</b>	<b>EEOC Charge No.</b>
Mondragon	Primitivo	330A01088
Montenegro	Martin	330A01128
Montiel	Reynaldo Ortiz	330A01049
Moreno	Francisco	330A01066
Moreno	Victor Manuel Garcia	330A01113
Munoz	Manuel Marquez	330A01115
Palacios	Benito	330A01081
Pastrana	Lorenzo	330A01051
Perez	Francisco	330A01048
Perez	Jose	330A01070
Quintor	Carlos	330A01119
Ramos	Joaquin	330A01117
Rios	Victorio Perez	330A01098
Rodriguez	Adrian	330A01044
Roque	Jaime Delgado	330A01057
Rosales	Angel Horacio	330A01103
Rosales	Bernardo	330A01126
Rosales	Eliseo	330A01097
Rosas	Perfecto	330A01069
Sanchez	Jose Luis	330A01106
Sanchez	Juan	330A01110
Sanchez	Reynaldo	330A01105
Sandoval	Frederico	330A01084
Santillan	Filadelfo	330A01060
Santillan	Jose	330A01053
Santillan	Pedro	330A01082
Santillan	Rodrigo	330A01100
Sazo	Jose	330A01118
Sifuentes	Luz	330A01435
Sosa	Wilion Antonio	330A01111
Soto	Jaime Castro	330A01102
Umanzor	Hector	330A01089
Vasquez	Blas	330A01447
Vela	Alejandro	330A01083
Vela	Cesar	330A01075
Cortez	Richard	330A01167
Cruz	Jose Armando	330A01073
Garcia	Jaime Oziel	330A01046
De La Mora Sanchez	Richard	330A01095
Hernandez	Jose S.	330A01112
Miranda	Jose A.	330A01071

# **EXHIBIT C**



3. Except where it is noted otherwise in the Consent Decree, the Parties shall bear their own costs and attorneys' fees incurred in this action after the date of entry of the Consent Decree. Furthermore, the Parties agree that there is no "prevailing party" in this action or proceeding.

4. The claims of the following unlocatable Plaintiffs are hereby dismissed for want of prosecution: [].

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Lee H. Rosenthal  
United States District Judge