

~~CONFIDENTIAL~~

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Shyamala Rajender, on behalf of
herself and a class of academic
non-student employees and
applicants at the University of
Minnesota,

Plaintiff,

and

Phyllis Kahn, Florence K.
Gleason, Silvia Azar, Bertila
Herrera and Carol Gold,

Plaintiff-Intervenors,

-vs-

The University of Minnesota,
and the Regents of the
University of Minnesota,

Defendants.

Civil No. 4-73-435

CONSENT DECREE

Paul C. Sprenger, Eric L. Olson, and Robert L. Shutes; Sprenger, Olson & Shutes, P.A., 540 Midland National Bank Building, Minneapolis, Minnesota 55401, attorneys for Plaintiffs and the class;* and Charles A. Mays and Stephen J. Davidson; Leonard, Street and Deinard, 1200 National City Bank Building, 510 Marquette Avenue, Minneapolis, Minnesota 55402, attorneys for Defendants (hereinafter "the University").

Miles W. Lord, J.

* Terry H. Cosgrove; Johnson, Sands, Lizer, Fricker & McCloskey, Professional Association, 700 First National Bank Building, Minneapolis, Minnesota 55402, were granted leave by Order of the Court to withdraw as co-counsel for the class. Said counsel continue as co-counsel of record for one of the six named plaintiffs.

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INTRODUCTION

Plaintiff filed her Complaint on September 5, 1973, and her Second Amended Complaint on September 26, 1975,* alleging that the Defendants were engaged in employment discrimination based upon sex, national origin, and color in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, as amended, and 42 U.S.C. §§ 1981 and 1983. The Defendants have denied the allegations. This Court has jurisdiction of the parties and of the subject matter in this action.

On February 13, 1978, the Court established a class consisting of all female academic non-student employees at the University of Minnesota with provisions for applicants. On April 24, 1978, the Court commenced a pilot trial of the Rajender claims and the sex-based claims of a subclass consisting of that portion of the class in the University's Chemistry Department on the Twin Cities campus.

This Decree, being issued with the consent of the parties following eleven weeks of trial, shall not constitute an adjudication or finding on the merits of the case, and shall in no manner be construed as an admission by the Defendants or a finding by the Court of any violation of Title VII or of any Civil Rights Laws or of any other wrongful conduct or practices on the part of Defendants or either of them. Rather, it is the intention of the University, in light of its stated policy of promoting equal opportunity in employment, to implement this policy in the most effective and just manner possible and to divert the resources which would otherwise be spent in further contested litigation to this end. ~~Under the intent of the parties to resolve by this Decree all issues raised by the Second Amended Complaint, to correct previous inequities, if any, and to achieve on behalf of women full representation with respect to faculty employment at the University of Minnesota.~~

This Decree shall be binding upon the parties, their agents, servants, employees, and all persons in active concert or participation with them who receive actual or constructive notice of this Decree, and

IT IS HEREBY ORDERED AND DECREED:

1. GENERAL PROSPECTIVE RELIEF:

A. The University is permanently enjoined from discriminating against women on the basis of sex with respect to the terms and conditions of employment, including, without limitation, recruitment, hiring promotion, salary, the renewal of regular appointments, and the granting of tenure, for all academic non-student employees.

B. The University shall establish, by modifying and supplementing existing procedures where necessary, a program of affirmative action for female academic non-student employees and applicants for such positions. "Affirmative action," for the purposes of this Decree, means: (1) procedures designed to advise women of available positions in the University; (2) good faith efforts to employ qualified women at least to the point where the proportion in each academic unit approximates the proportion of women obtaining the requisite advanced degree (and/or meeting the other relevant criteria) in the relevant discipline(s) within the five (5) years prior to the year in which such position is to be filled (for non-tenured positions), and within the ten (10) year period ending five (5) years prior to the year in which such position is to be filled (for tenured positions); and (3) the establishment, to the extent not already existing, of written sex-neutral criteria for evaluating the qualifications of non-student academic employees as required by Part VI of this Decree.

Responsibility for the implementation of University affirmative action policies and procedures rests upon all officers of the University authorized to make decisions and/or recommendations in personnel matters, including, but not limited to, vice presidents, deans, directors, department heads, chairs and equal employment opportunity officers at the central, collegiate, and departmental levels, and upon all members of search committees. Ultimate responsibility for such policies and procedures rests with the Board of Regents of the University.

Affirmative action does not require the University to employ or retain a woman if another person is better qualified than she, provided, however, that where two or more candi-

* On May 16, 1975, Plaintiff's present counsel entered their appearance, and thereafter Plaintiff initially asserted class action allegations in her Second Amended Complaint.

dates are approximately equally well qualified for a position and the hiring unit employs a percentage of women less than the proportion of women obtaining the requisite advanced degree (and/or meeting other relevant criteria) within the five (5) years prior to the year in which such position is to be filled (for non-tenured positions), or within the ten (10) year period ending five (5) years prior to the year such position is to be filled (for tenured positions), affirmative action requires that preference be given to an approximately equally well qualified female candidate over another candidate who is not also a member of a protected class as defined in this Decree.

~~Nothing in this Decree shall be construed to prevent the University, from voluntarily instituting an affirmative action program for protected classes other than women, or to affect in any way the provisions of this Decree for women.~~

C. The University's affirmative action program for women shall be consistent with the provisions of applicable federal statutes and regulations as the same may be modified from time to time and shall take into full consideration the University's obligations to all protected classes.

D. The University will establish a ~~University Committee on Equal Employment Opportunity~~ (hereinafter referred to as "the Committee"), ~~which shall report to the Faculty Senate and the University Senate through the Senate Committee on Faculty Affairs.~~ The Committee shall consist of ~~seven (7) members of the Faculty, of whom~~ seven (7) members of the Faculty, of whom ~~three (3) shall be women, as voting members, and a representative of the Office of the Vice President for Academic Affairs and a representative of the Equal Opportunity/Affirmative Action Office as ex officio, non-voting members.~~ The Committee shall be organized to reflect the general interests of the University in the present ~~and future~~ and future ~~and the special interests of women.~~ For the duration of this Decree, ~~five (5) members shall be appointed in the manner provided for the selection of University Senate Committees.~~ five (5) members shall be appointed in the manner provided for the selection of University Senate Committees. ~~Immediately the plaintiff class shall be represented by one or more members and for a term to be established by the Senate Committee on Faculty Affairs.~~ Immediately the plaintiff class shall be represented by one or more University faculty members or at least one (1) of whom shall be a member of the regular faculty. The Committee shall have the following charge:

The Committee shall ~~review the University's progress in implementing the terms of the decree in Rajender v. University of Minnesota and shall consult with the University Equal Opportunity Officer and the President concerning any problem areas in this regard.~~ review the University's progress in implementing the terms of the decree in Rajender v. University of Minnesota and shall consult with the University Equal Opportunity Officer and the President concerning any problem areas in this regard. It shall ~~also~~ also ~~review the University's affirmative action program for women in all of its academic units. It may recommend to the University to determine whether the program has a disparate impact on women, and may make recommendations to the University administration or to the University Senate, if they do. The Committee shall report to the Senate through the Senate Committee on Faculty Affairs.~~ review the University's affirmative action program for women in all of its academic units. It may recommend to the University to determine whether the program has a disparate impact on women, and may make recommendations to the University administration or to the University Senate, if they do. The Committee shall report to the Senate through the Senate Committee on Faculty Affairs.

The Committee shall be organized as soon as practicable after this Decree becomes a final judgment, but in no event later than the end of the first full academic quarter thereafter.

~~The Committee shall be treated as a positive contribution to the University and to the academic units to which the Committee is assigned.~~ In connection with any decision involving the terms and conditions of employment where contributions to the University or the academic unit are relevant, the University will give the same weight to service on the Committee as it does to service on any other University Senate Committee.

E. 1. The University shall cause each academic unit (normally the department) in which initial hiring decisions are made to set goals and timetables for the hiring of female faculty, periodically, but not less frequently than every two (2) years, in a manner consistent with the then applicable federal regulations. Each such academic unit shall attach to its statement of goals and timetables a copy of the most recent goals and timetables previously set by the academic unit. If those goals and timetables have not been met for women, such academic unit shall also attach a written explanation stating why such goals and timetables have not been met. A copy of any statement of goals and timetables which has such a written

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explanation attached shall be forwarded by the University Equal Opportunity Officer to the Committee established pursuant to Paragraph I.D of this Decree.

2. The University shall also cause each collegiate unit to aggregate the goals of its constituent academic units set pursuant to Paragraph 1.E.1, but this aggregated calculation is for information only and creates no additional goals. The head of each academic unit and collegiate unit shall maintain a copy of the goals and timetables for that unit, and the University Equal Opportunity Officer shall maintain a complete set for all units, and shall make it available for inspection to the Committee or to any member of the class.

3. The University shall also cause each academic unit in which initial hiring decisions are made to identify availability pool data sources pursuant to the procedures outlined in Exhibit A hereto and to follow the Search Procedures outlined in Exhibit B hereto. Such data will be used to determine when an approximately equally well qualified female candidate must be given preference over another candidate who is not also a member of a protected class, pursuant to Paragraph I.B of this Decree, and are not intended to assign a fixed number of places to women.

4. The University shall provide to each academic unit in which initial hiring decisions are made, annually in advance of the commencement of any search procedures by that unit, the following summaries of availability pool data and applicant flow and hiring data:

a. A summary of the statistical availability of women (stated separately for tenured and non-tenured positions) possessing the requisite degree(s) in the discipline(s) identified by the academic unit pursuant to Paragraph 2 of Exhibit A to this Decree. This summary shall be calculated in the manner set forth in Paragraph 2.b of Exhibit B to this Decree.

b. A cumulative summary for the five (5) most recent academic years (stated separately for tenured, tenure-track, and non-regular faculty positions and excluding those positions where no search is required by Paragraph 7 of Exhibit B to this Decree) of (1) the total applications for regular faculty positions received by the academic unit, (2) the total number of such applications received from women, and (3) the percentage of the total applications received from women. This summary shall be calculated from official University documents, which may include Forms 16 and 17 as they may be from time to time modified.

c. A cumulative summary for the five (5) most recent academic years (stated separately for tenured, tenure-track, and non-regular faculty positions and excluding those positions where no search is required by Paragraph 7 of Exhibit B to this Decree) of (1) the total applicants for faculty positions who were "seriously considered," (2) the total number of "seriously considered" applicants who were women, and (3) the percentage of the total applicants "seriously considered" that the women "seriously considered" constituted. This summary shall be calculated from official University documents, which may include Forms 16 and 17 as they may be from time to time modified.

d. A cumulative summary for the five (5) most recent academic years (stated separately for tenured, tenure-track and non-regular faculty positions and excluding those positions where no search is required by Paragraph 7 of Exhibit B to this Decree) of (1) the total number of persons hired, (2) the total number of women hired, and (3) the percentage of total persons hired that were women.

The University will exercise its best efforts to have such summaries and the data upon which they are based in computer readable form within twelve (12) months from the date of entry of this Decree and shall, on the anniversary date of this Decree, report to the Special Master and the Committee what progress has been made in this regard. In the event the Special Master determines that reasonable progress has not been made or that the University has not exercised its best efforts, (s)he shall order the University to take such action deemed necessary to have such summaries and data upon which they are based in computer readable form as promptly as possible. A hard copy of the summaries of such data prepared annually for each academic unit in which initial hiring decisions are made shall be maintained in the office of the University Equal Opportunity Officer for a period of three (3) years and the summaries for a given collegiate unit shall be available for inspection during regular office hours by any applicant for a faculty position in any of its constituent academic units. In addition, all

such summaries shall be available for inspection by any member of the Committee.

5. The University shall, in all solicitations, notices and advertisements for vacancies in academic non-student positions, include the following language: "The University of Minnesota specifically invites and encourages applications from women and minorities."

II. RESOLUTION OF PAST AND FUTURE INDIVIDUAL CLAIMS:

A. Any member of the class who has reason to believe that she has been injured by unlawful sex discrimination in the University's employment practices, policies or procedures as the result of any act or decision which occurred at any time after March 24, 1972, may file a claim with the Special Master as hereinafter provided. The Special Master shall defer action on such claim for up to one hundred eighty (180) days, exclusive of the period of June 16 to September 15. The Special Master shall forward a copy of each such claim to the University.

B. All such claims shall be in the form attached to the Class Notice or in a facsimile thereof. The claim shall: (1) describe the act, decision, employment policy, practice or procedure complained of, (2) state the facts known to the claimant upon which the claim is based, (3) contain such supporting documentation as is then available to her, (4) include a specific allegation of sex discrimination, and (5) state the relief which is requested. Two or more claimants who assert that they have been injured by the same act, decision, policy, practice or procedure may elect to file a single claim.

C. All such claims relating to acts occurring before the effective date of this Decree must be postmarked no later than sixty (60) days from the date of last publication of the Notice required to be published pursuant to this Decree. All such claims relating to acts occurring on or after the effective date of this Decree shall be postmarked no later than sixty (60) days after notice of the action complained of.

D. 1. The Special Master shall defer action on any claim which has not been previously heard and determined by an appropriate University tribunal and shall refer such claim to the University, which may refer the matter to an appropriate internal academic tribunal. This deferral of action by the Special Master shall be for the sole purpose of permitting a final, fully informed, internal judgment by the University on the claim. The report of the internal tribunal, its conclusions, recommendations or any part thereof shall not be admissible in evidence in any subsequent proceeding. This internal proceeding shall not in any way prejudice the Claimant by limiting evidence in further proceedings. However, statements made and evidence submitted in the internal proceeding may be used in any subsequent proceeding to the extent permitted by the Federal Rules of Evidence. The Claimant shall appear as a witness, subject to cross-examination, and shall produce documents and other evidence in her possession or control relevant to her claim and shall present her claim in accordance with the procedural rules of the tribunal. If she fails to assist an appropriate internal tribunal in good faith, sanctions may be imposed as provided in Paragraph 11.D.5. The University shall have the obligation to produce witnesses, subject to cross-examination, shall produce documents and other evidence in its possession or control relevant to the claim, and shall proceed in accordance with the procedural rules of the tribunal. If it fails to do so, sanctions may be imposed as provided in Paragraph 11.D.5.

If the Claimant is entitled to a hearing before a University internal tribunal on any other claim(s) relating to the same subject-matter, she shall have the right to submit such other claim(s) to the same internal tribunal for concurrent consideration by so specifying in writing. If she fails to do so, she will be deemed to have refused to submit such other related claim(s) in a timely way, to have waived the right to an internal hearing on any such claim(s) and to have waived any substantive claim(s) based on the University's failure to offer an opportunity for such a hearing.

The internal tribunal shall forward its report and recommendations to the Claimant and to the President of the University. The President shall make the University's final internal decision on the matter, shall send a copy of that decision to the Claimant, and shall notify the Special Master that (s)he has done so, in the form prescribed in Exhibit C.

The University shall complete any internal review of the matter and the President shall make the final internal decision within:

- (a. one hundred twenty (120) days, in the case of claims brought by unsuccessful

applicants for positions, alleging only sex discrimination, in which the Claimant was not an employee of the University at the time of the act or decision complained of, or

b. one hundred eighty (180) days, in all other cases.)

The applicable period shall run from the date the Special Master sends the Claim to the University. The period from June 16 to September 15 shall not be included in computing the period. If the University has not completed its internal consideration of the matter within the prescribed period, it shall be deemed to have waived further internal consideration of such claim.

2. With respect to any such claim which has been fully heard and determined by an appropriate University tribunal prior to the effective date of this Decree, the President shall, within sixty (60) days of the date the Special Master sends the Claim to the University, either confirm or modify the University's previous decision, shall send a copy of this final decision to the Claimant, and shall notify the Special Master that (s)he has done so, in the form prescribed in Exhibit C.

3. Within sixty (60) days after the date the President sends the University's final internal decision to the Claimant, or the due date thereof, whichever is earlier, the Claimant shall either make a written Request to Proceed or withdraw the claim. If the Claimant has neither filed a Request to Proceed nor withdrawn the claim within sixty (60) days of the date the President sends the Special Master the notice specified in Exhibit C, the Special Master shall notify the Claimant in writing that, unless her Request to Proceed is submitted and postmarked within an additional twenty-one (21) days, her claim will be dismissed.

4. During the period between the filing of the claim and the due date for the Request to Proceed, the Claimant and the University shall be accorded any discovery permitted by the Federal Rules of Civil Procedure and may request assistance of the Special Master in obtaining it. If a Claimant wishes to inspect anything other than summary or statistical data regarding the act or decision which is the subject of her claim, she shall apply to the Special Master (in such form and manner as the Special Master may require) for leave to inspect such other documents or things, and the Special Master shall grant such leave only if (s)he concludes that the documents sought are relevant to the claim being asserted by the Claimant. In determining relevancy, the Special Master shall apply the law relating to discovery in Title VII cases. In the event that the University wishes to inspect any documents or things in the possession or control of the Claimant, the University shall address such a request to the Special Master, who shall apply the same standard of relevance outlined above. The parties shall abide by the discovery decisions of the Special Master and shall be subject to the sanctions provided in the Federal Rules of Civil Procedure for failure to comply with discovery orders. In the event the Special Master grants discovery to either party beyond inspection of summary or statistical data, the party seeking such discovery shall execute a confidentiality agreement in a form prescribed by the Special Master, which shall be substantially similar to that attached hereto as Exhibit D.

5. Upon receiving a written Request to Proceed, the Special Master shall allow a further reasonable period of at least ninety (90) days from the date of the postmark on the Request to Proceed for additional discovery. During this ninety-day period, the Special Master shall direct the claimant and the academic unit involved each to designate one person to sit as a member of the panel to hear the claim. These two persons and the Special Master shall constitute the "Hearing Panel." The Hearing Panel shall promptly hear and determine the claim at the conclusion of the ninety-day discovery period. Claims relating to the same subject matter which have been submitted for concurrent consideration by the University tribunal but which are not based on sex discrimination shall not be heard by the Hearing Panel.

If, on notice and motion, the Special Master determines that the Claimant did not make a good faith effort to comply with the requirements of Paragraph 11.D.1, the Special Master may continue to defer the proceedings until she has done so. If, on notice and motion made at any time during the deferral period, the Special Master determines that the University is not making a good faith effort to refer the matter to an appropriate internal tribunal or has not otherwise complied with Paragraph 11.D.1, the Special Master may shorten the deferral period.

Service on a Hearing Panel shall be treated as a positive contribution to the

University and to the academic unit in which the Hearing Panel member is employed. In connection with any decision involving the terms and conditions of employment where contributions to the University or the academic unit are relevant, the University will give the same weight to service on a Hearing Panel as it does to service on a University Senate Committee. All reasonable out-of-pocket expenses made necessary by a panel member's service on a Hearing Panel shall be paid by the University.

6. If the Special Master finds that more than one (1) claim is made involving appointment or promotion to the same position in the same academic unit, all such claims of sex discrimination shall be consolidated for hearing before a single Hearing Panel and, if the Hearing Panel makes a determination adverse to the academic unit, they shall also determine which of the Claimants, if any, was more qualified for the position than the person hired. In the event that the Hearing Panel finds that more than one of the Claimants was more qualified than the person hired, they shall also determine which of said Claimants was most qualified for the position. The relief provided in Paragraph II.D.9 shall be granted only to one Claimant in the instance of any one position. If the Claimants participating in such a consolidated hearing cannot agree on a single person to designate as their representative on the Hearing Panel, the Special Master shall designate the Claimants' representative.

7. The Special Master shall preside at all non-internal hearings held pursuant to Paragraphs II.D.5 and II.D.6 of this Decree and regulate their course. The parties shall be afforded reasonable opportunity to present their cases to the Hearing Panel by oral testimony and other evidence, to confront and cross-examine witnesses and otherwise to rebut the evidence of the other party. The proceedings before the Hearing Panel shall be governed by the Federal Rules of Evidence and the Federal Rules of Civil Procedure. All evidentiary rulings shall be made by the Special Master. All decisions of the Hearing Panel on the merits of a claim and on other issues shall be made by majority vote of the Panel. The deliberations of the Hearing Panel preceding all such decisions shall be conducted in private.

The Special Master shall have the power to subpoena persons, documents, and things and to administer oaths in connection with proceedings before the Hearing Panel.

The hearing before the Hearing Panel shall be public and shall be reported by stenotype, or recorded on tape, verbatim. This report or recording shall be kept by the Special Master as part of the record in the case. On request of the Claimant or the University, the Special Master shall make a transcript or a copy of the recording available to the requesting party for copying.

8. In all matters heard by a Hearing Panel pursuant to Part II of this Decree, the respective burdens of proof shall be those placed on litigants in civil actions under Title VII. Evidence of statistical disparity or the lack thereof may be introduced in any such hearing and shall be given the weight accorded thereto by statute or judicial decision in employment discrimination cases under Title VII. If the burden of going forward shifts to the University, the University shall have, in addition to the burdens otherwise provided by law, the burden of proving, by the preponderance of the evidence, that the search procedures prescribed by Exhibit B (for hiring decisions or decisions not to fill a faculty position) or the evaluation procedures required by Part VI of this Decree (for tenure and promotion decisions), as appropriate, were followed in good faith.

As to matters heard by the Panel with respect to the Chemistry Department, a Claimant will be deemed to have established a *prima facie* case upon a showing that she unsuccessfully applied for a position in that department or was deterred from applying for such a position by the University's discriminatory practices. The burden shall then be on the University to demonstrate that the Claimant was denied employment opportunity for lawful reasons.

9. In the event a Hearing Panel determines, pursuant to the procedures required in this Decree, that discrimination has occurred, that a particular Claimant should have been hired, granted tenure, contract renewal or promotion, received greater compensation, or that other action should have been taken by the academic unit, and that the Claimant suffered injury as a result thereof, the Hearing Panel shall, consistent with the methods for awarding restitution in Title VII claims, determine the amount of backpay due the Claimant. In determining backpay, the Hearing Panel shall reduce the Claimant's interim earnings by her expenses incurred as a result of the discriminatory action taken by the academic unit, including with-

out limitation, moving expenses and costs incurred in seeking employment. The burden will be upon the Claimant to establish the amount of any claim for backpay, and that she has fully performed any duty she may have under Title VII to mitigate her damages.

In any Claim Proceeding hereunder before a Hearing Panel in which a Claimant finally prevails, she shall receive, in addition to any backpay or other relief to which she may be entitled, her reasonable costs and disbursements which would be recoverable in a Title VII action and a reasonable sum, not exceeding Six Thousand Dollars (\$6,000), for partial attorneys' fees which she incurred because of the proceeding. If University regulations governing internal grievance proceedings are ever amended to provide for an award of attorneys' fees, then any sums received in reimbursement of expenses and as attorneys' fees in any Claim Proceeding shall be in addition to any amount awarded to the Claimant by the University pursuant to such regulations; provided, however, that, in determining the amount of reasonable attorneys' fees in Claim Proceedings, the Special Master shall take into consideration whether the Claimant or her counsel has already been compensated for the same work by the University in connection with the internal grievance proceeding. Any application for reimbursement of expenses and attorneys' fees shall be submitted to the Special Master within twenty-one (21) days after the Claim has been decided and all appeals are exhausted or the time for appeal has expired.

No form of monetary relief other than backpay, reimbursement of expenses, and reasonable attorneys' fees will be granted. The University shall pay each monetary award in full no later than one hundred twenty (120) days after the close of the fiscal year in which the award becomes final. An award of monetary relief will carry interest at the rate of eight percent (8%) from the date of the award.

In addition to any monetary relief, as prescribed above, awarded as a remedy herein, any Claimant who, but for sex discrimination, would have been renewed or hired to fill a vacancy which was filled by a person not a member of a protected class after March 24, 1972, shall be offered the next available position of a substantially equivalent rank for which the Claimant applies in the academic unit involved, in preference to any other person. The academic unit shall notify such Claimant of each faculty position vacancy in that unit occurring over the four (4) years following the Hearing Panel's determination and shall allow the Claimant a reasonable time in which to submit her application for such position. The requirements of this paragraph shall remain in effect for four (4) years. In making an award of an offer of employment, the Court shall retain jurisdiction over the matter if the employment is in the tenure-track or in a nonregular position for a period of three (3) years after termination of employment in the particular academic unit involved or until the Claimant is granted tenure, whichever first occurs.

10. The Special Master shall formulate in writing findings of fact, conclusions of law, and recommendations based solely on the evidence in the record which support the Hearing Panel's determination. The District Court's review of the findings and conclusions of the Special Master shall be governed by Rule 53(e)(2), Federal Rules of Civil Procedure. Upon review of the report of the Special Master on each such claim, the District Court shall enter an appropriate order and make an express determination pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason to delay the entry of final judgment on such claim and shall forthwith cause judgment to be entered thereupon and shall notify the parties to the claim that judgment has been entered. The parties to the claim fully reserve the right to appeal to the Court of Appeals for the Eighth Circuit from any judgment entered by the District Court pursuant to the findings, conclusions, and recommendations of the Special Master.

11. Except as provided in Part III of this Decree, any person who files a Request to Proceed with the Special Master for resolution of her individual claims pursuant to Part II of this Decree will have thereby waived the right to pursue any and all other avenues of relief with respect to those claims, including without limitation those afforded under Federal or State law. Any person who elects not to file such a Request to Proceed with the Special Master may pursue any other avenue of relief existing under Part III of this Decree or under Federal or State law, but will have thereby waived and relinquished the right to pursue any other avenue of relief afforded by the terms of this Decree.

III. RESOLUTION OF PETITIONS FOR DECLARATORY RELIEF:

A. Any fulltime female, non-student academic employee of the University who would have standing to bring an action for a declaratory judgment under 28 U.S.C. § 2201 and who has reason to believe that an employment practice, policy or procedure of the University or any of its constituent units violates the provisions of Title VII or of this Decree, may file a Petition with the Special Master as hereinafter provided. The Special Master shall defer action on such Petition for up to one hundred eighty (180) days, exclusive of the period of June 16 to September 15, as provided herein. The Special Master shall forward a copy of each such Petition to the University.

B. All such petitions shall be in a form attached to the Class Notice or in a facsimile thereof. The Petition shall: (1) describe the employment policy, practice or procedure, claimed to be unlawful, (2) identify the persons affected by such policy, practice or procedure, (3) state the facts known to the Petitioner upon which the Petition is based, (4) contain such supporting documentation as is then available to her, and (5) include a specific allegation of sex discrimination.

C. 1. Within thirty (30) days of the date on which the Special Master sends the copy of the Petition to the University, the President may refer the policies, practices or procedures challenged therein to appropriate University committee(s), administrator(s) or other body(ies) for review. The President shall notify the Petitioner of the reviewing group(s). The reviewing committee(s), administrator(s) or body(ies) shall give the Petitioner an opportunity to present her views and shall notify her of public meeting(s) at which the matter will be considered. The purpose of this review is to give the University an opportunity to review the policies generally before the narrower question of their legality is tried pursuant to the provisions of this Decree. If the President fails to notify the Petitioner within the thirty (30) day period of referral to a reviewing body, the period of deferral shall end.

2. If the President determines not to submit the questions raised in the Petition for internal review, (s)he shall notify the Petitioner and the Special Master within thirty (30) days of the date the Special Master sends the Petition to the University. This will end the period of deferral.

3. If the University completes the internal review before the expiration of the one hundred eighty (180) day period, the President shall notify the Petitioner of the nature of the University's resolution of the matter and shall notify the Special Master that the internal review is concluded. This will end the period of deferral.

D. The period of deferral for University consideration expires on the earliest of:

1. One hundred eighty (180) days after the Special Master sends the Petition to the University, or

2. Thirty (30) days after the Special Master sends the Petition to the University, if the President fails to make a reference as provided in Paragraph III.C.1, or

3. Upon the President's sending notice to the Petitioner and Special Master as provided in Paragraph III.C.2, or III.C.3.

E. No later than sixty (60) days after the expiration of the deferral period, the Petitioner shall either make a written Request to Proceed, or withdraw the Petition. If the Petitioner has not filed a Request to Proceed within the sixty (60) day period, the Special Master shall notify the Petitioner in writing that, unless her Request to Proceed is filed and postmarked within an additional twenty-one (21) days, her Petition will be dismissed.

F. Upon receiving a written Request to Proceed, the Special Master shall allow a reasonable period of at least ninety (90) days from the date of the postmark on the Request to Proceed for discovery. During this period, the Petitioner and the University shall be accorded any discovery permitted by the Federal Rules of Civil Procedure and may request the assistance of the Special Master in obtaining it. If a Petitioner wishes to inspect anything other than summary or statistical data regarding the employment policy, practice or procedure which is the subject of her Petition, she shall apply to the Special Master (in such form and manner as the Special Master may require) for leave to inspect such other documents, and the Special Master shall grant such leave only if (s)he concludes that the documents sought are relevant to the claim being asserted in the Petition. In determining relevancy, the Special Master

shall apply the law relating to discovery in Title VII cases. In the event that the University wishes to inspect any documentation in the possession or control of the Petitioner, the University shall address such a request to the Special Master, who shall apply the same standard of relevance outlined above. The parties shall abide by the discovery decisions of the Special Master and shall be subject to the sanctions provided in the Federal Rules of Civil Procedure for failure to comply with discovery orders. In the event the Special Master grants discovery to either party beyond inspection of summary or statistical data, the party seeking such discovery shall execute a confidentiality agreement in a form prescribed by the Special Master, which shall be substantially similar to that attached hereto as Exhibit D.

G. During the ninety (90) day discovery period, the Special Master shall direct the Petitioner and the academic unit involved each to designate one person to sit as a member of the panel to hear the Petition. These two persons and the Special Master shall constitute the "Hearing Panel." If more than one person has joined in the Petition and Petitioners cannot agree on a single person to designate as their representative on the Hearing Panel, the Special Master shall designate the Petitioners' representative.

Service on a Hearing Panel shall be treated as a positive contribution to the University and to the academic unit in which the Hearing Panel member is employed. In connection with any decision involving the terms and conditions of employment where contributions to the University or the academic unit are relevant, the University will give the same weight to service on a Hearing Panel as it does to service on a University Senate Committee. All reasonable out-of-pocket expenses made necessary by a panel member's service on a Hearing Panel shall be paid by the University.

The Hearing Panel shall promptly hear and determine the Petition at the conclusion of the ninety (90) day discovery period. The Special Master shall preside at all non-internal hearings held pursuant to Part III of this Decree and regulate their course. The parties shall be afforded reasonable opportunity to present their cases to the Hearing Panel by oral testimony and other evidence, to confront and cross-examine witnesses, and otherwise to rebut the evidence of the other party. The proceedings before the Hearing Panel shall be governed by the Federal Rules of Evidence and the Federal Rules of Civil Procedure. All evidentiary rulings shall be made by the Special Master. All decisions of the Hearing Panel on the merits of a Petition and on other issues shall be made by majority vote of the Panel. The deliberations of the Hearing Panel preceding all such decisions shall be conducted in private.

The Special Master shall have the power to subpoena persons, documents, and things and to administer oaths in connection with proceedings before the Hearing Panel.

The hearing before the Hearing Panel shall be public and shall be reported by stenotype, or recorded on tape, verbatim. This report or recording shall be kept by the Special Master as part of the record in the case. On request of the Petitioner or the University, the Special Master shall make a transcript or a copy of the recording available to the requesting party for copying.

In any Petition Proceeding hereunder before a Hearing Panel in which a Petitioner finally prevails, she shall receive her reasonable costs and disbursements which would be recoverable in a Title VII action and a reasonable sum, not exceeding Six Thousand Dollars (\$6,000), for partial attorneys' fees which she incurred because of the proceeding. If University regulations governing internal grievance proceedings are ever amended to provide for an award of attorneys' fees, then any sums received in reimbursement of expenses and as attorneys' fees in any Petition Proceeding shall be in addition to any amount awarded to the Petitioner by the University pursuant to such regulations; provided, however, that, in determining the amount of reasonable attorneys' fees in Petition Proceedings, the Special Master shall take into consideration whether the Petitioner or her counsel has already been compensated for the same work by the University in connection with the internal grievance proceeding. Any application for reimbursement of expenses and attorneys' fees shall be submitted to the Special Master within twenty-one (21) days after the Petition has been decided and all appeals are exhausted or the time for appeal has expired.

H. 1. If the Petition alleges violation of the provisions of Title VII, the respective burdens of proof for the parties in the proceeding shall be the same as those placed upon litigants in civil actions under Title VII. In the event a Hearing Panel determines, pursuant

to the procedures required in this Decree, that an employment practice, policy or procedure violates Title VII, they shall declare that such practice, policy or procedure is unlawful as to the persons identified in the Petition or any subgroup thereof. In the event that the Hearing Panel determines, pursuant to the procedures required in this Decree, that an employment practice, policy or procedure does not violate Title VII, they shall declare that such policy, practice or procedure is lawful as to the persons identified in the Petition or any subgroup thereof.

2. If the Petition alleges violation of the terms of this Decree, which is not also a violation of Title VII, the burden of proof shall be on the Petitioner to establish such violation. In the event a Hearing Panel determines, pursuant to the procedures required in this Decree, that an employment practice, policy or procedure violates the terms of this Decree, they shall so declare. In the event that the Hearing Panel determines, pursuant to the procedures required in this Decree, that an employment practice, policy or procedure does not violate the terms of the Decree, they shall so declare.

3. No question other than the alleged violation of Title VII or the alleged violation of this Decree specified in the Petition shall be within the jurisdiction of the Hearing Panel.

4. No form of relief other than the declarations provided in Paragraphs III.H.1 and III.H.2 shall be granted on any Petition under this Part, provided, however, that nothing in Part III of this Decree shall bar a person from receiving relief provided for in Part II of this Decree if the person complies with the requirements of Part II and is found to be entitled to relief in a proceeding held pursuant to Part II.

I. The Special Master shall formulate in writing findings of fact, conclusions of law, and recommendations based solely on the evidence in the record which support the Hearing Panel's determination. The District Court's review of the findings and conclusions of the Special Master shall be governed by Rule 53(e)(2), Federal Rules of Civil Procedure. Upon review of the report of the Special Master on each such petition, the District Court shall enter an appropriate order and make an express determination pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason to delay the entry of final judgment on such petition and shall forthwith cause judgment to be entered thereon and shall notify the parties that judgment has been entered. The parties to the Petition fully reserve the right to appeal to the Court of Appeals for the Eighth Circuit from any judgment of the District Court entered pursuant to the findings, conclusions, and recommendations of the Special Master.

J. Any Petitioner who files a Request to Proceed with the Special Master pursuant to Part III of this Decree will have thereby waived the right to pursue any and all other avenues of relief relating to the subject-matter of the Petition, including without limitation, those afforded under Federal or State law. A person may, however, file both a Claim under Part II and a Petition under Part III of this Decree. Any Petitioner who elects not to file a Request to Proceed on the Petition with the Special Master may pursue any other avenue of relief existing under Federal or State law or under Part II of this Decree, but will have thereby waived and relinquished the right to pursue any avenue of relief afforded by the terms of Part III of this Decree.

IV. SPECIAL MASTER:

A. Pursuant to the terms of this Decree, the Court shall appoint an attorney who has been agreed upon by both parties and the Court as a Special Master. If the office of Special Master becomes vacant, the Court shall appoint an attorney who has been agreed upon by both parties and the Court as successor Special Master. If the Special Master determines that (s)he needs assistance in performing his/her duties, (s)he may apply to the Court for the appointment of Assistant Special Masters. If the Court determines that one or more such Assistant Special Masters are needed, (s)he shall be appointed upon agreement of the parties and the Court as to the person(s) to serve in that capacity.

B. The Special Master shall periodically submit to the Court accounts of his/her expenses, including a reasonable fee for the services of the Special Master and any Assistants. On order of the Court, made after notice to the University and an opportunity to be heard, such accounts of expenses and reasonable fees as are approved by the Court shall be paid by

draft from the Clerk of Court. The University shall maintain an account with the Clerk of Court sufficient to pay such expenses and fees. The expenses properly reimbursable to the Special Master may include the expense of any and all notices to the class required to be given pursuant to this Decree.

V. DEFINITIONS:

A. For purposes of this Decree:

1. An "academic employee" of the University is one in an academic classification. Academic employees are divided into two categories, faculty members and non-faculty academic employees.

2. A "faculty member" is an academic employee who holds the rank of professor (including Regents' professor), associate professor, assistant professor, instructor, research associate, research fellow or lecturer. A "non-faculty academic employee" is any other academic employee. Faculty members are divided into two categories, regular faculty members and non-regular faculty members.

3. A "regular faculty member" is a faculty member who holds a position designated "regular" according to the University's Regulations Concerning Faculty Tenure. A "non-regular faculty member" is a faculty member who holds a position designated "non-regular," according to those Regulations. Regular faculty members are divided into two categories, tenured and probationary.

4. A "tenured faculty member" is a regular faculty member who holds continuous tenure according to the Regulations Concerning Faculty Tenure. A "probationary faculty member" is a regular faculty member on probationary status according to those Regulations, or a person holding an analogous position under special contract. A "tenure track" position is synonymous with a "probationary faculty" position.

5. A "student employee" is an employee who is a student at the University of Minnesota other than an occasional or part-time student in extension or similar courses not leading to a degree. A "non-student employee" is an employee who is not a student employee.

6. A "full-time academic employee" is an employee who is employed at least two-thirds (2/3) time over the academic year as a whole, i.e., one hundred percent (100%) time for two (2) quarters or sixty-seven percent (67%) time for three (3) quarters or some equivalent combination. A "part-time" employee is an employee who is not a full-time employee.

7. For the purposes of determining availability pursuant to Paragraphs I.B and I.E, and Exhibits A and B only, "non-tenured" faculty members means non-regular faculty members and probationary faculty members. This special definition does not apply elsewhere and in particular does not apply to Part VI (Evaluation Procedures) or to those portions of Exhibit B (Search Procedures) where separate procedures are established for probationary and non-regular faculty.

B. For the purposes of this Decree:

1. An "academic unit" is an administrative subdivision of the University within which initial recommendations and decisions on hiring and tenure take place. It is normally a department, but in some circumstances may be a school, division, college, institute or other subdivision.

2. The "head" of an academic unit is the chief administrative officer of the unit. It is normally a head or chairperson, but in some circumstances may be a dean, director or other officer.

3. The "tenured faculty" of an academic unit consists of the tenured regular faculty members of that unit.

4. A "collegiate unit" is a school, college, institute, campus or similar administrative grouping of academic units, as determined by the University.

5. The "head" of a collegiate unit is the chief administrative officer of that

unit. It is normally a dean, but in some circumstances may be a director, provost or other officer.

C. For the purposes of this Decree "protected class(es)" means any class of persons entitled to affirmative action pursuant to applicable law or regulation (including regulations governing contractors with the federal or state governments) other than any such class of persons which, at the time of a particular employment decision, is statistically either at parity or over-represented in the academic unit according to the calculations used to determine when an approximately equally well qualified female candidate is to be preferred over another candidate who is not a member of a protected class, as set out in Exhibit B to this Decree.

D. For the purposes of this Decree, "Title VII" means Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. § 20003, et seq.

E. Persons appointed as county extension agents by joint action of the University and the county boards of the several counties pursuant to Minnesota Statutes §§ 38.33 through 38.38 shall not be deemed to be "academic employees" of the University for the purposes of this Decree, even if they hold academic titles which might otherwise qualify them as such.

F. In the event of any ambiguity or conflict in the terms or provisions of this Decree, the Decree shall be construed in accord with Title VII.

G. Exhibits A, B, C and D are incorporated into and made part of this Decree.

VI. EVALUATION PROCEDURES

A. For regular faculty positions, each academic unit shall have established, by January 1, 1981, and shall maintain written sex-neutral criteria and evaluation procedures for: (a) hiring; (b) salary review and adjustment; (c) contract renewal; and (d) granting of tenure and promotions. These criteria and evaluation procedures shall be stated and applied as objectively as possible and the academic unit shall also state in writing the proportionate weight or importance which it will attach to each criterion. The weight assigned to different criteria may differ for different positions within the academic unit. Without limitation and by way of example, hiring criteria which an academic unit may adopt could include: (a) effectiveness in teaching; (b) professional distinction in research and writing or artistic production; (c) the personnel needs, programs, policies, priorities, and options of the academic unit concerned and the necessary qualifications of applicants or other available individuals to satisfy them; and (d) contributions, other than teaching, research and writing, to the University, the community, the state, and the nation. Criteria (a) and (b) must be considered primary; satisfaction of criteria (c) and (d) alone would not constitute adequate grounds for hiring in the absence of a satisfactory record with respect to criteria (a) and (b).

B. For regular probationary faculty positions, commencing no later than January 1, 1981:

1. Each academic unit shall maintain written procedures for annual reviews. The head of an academic unit will maintain a file on each such employee in his/her academic unit which will include copies of: (a) appointment and salary correspondence; (b) all previous annual reviews of the employee; (c) an annually revised curriculum vitae of the employee; (d) citations to or copies of his/her scholarly publications; and (e) materials on teaching performance (including University-approved student evaluations to the extent they exist).

2. The head of the relevant academic unit (or other designated faculty member) and each such employee will be responsible for submitting such information within their control, respectively, so that each such employee's file contains up-to-date information. If the information in such files appears incomplete or uninformative, the head of the relevant academic unit (or other designated faculty member) shall make a reasonable effort to obtain additional information from the employee; however, the responsibility for furnishing or withholding complete and accurate information that has been requested must rest upon the employee. The head of the academic unit shall inform the academic employees of the academic unit of their right under Minnesota law (Minnesota Laws, 1975, Chapter 401) to examine or obtain copies of filed data of which they are the subjects and to have the meaning of it explained to them. (S)he shall encourage each such employee to review periodically his/her personnel files and to add materials or observations the em-

ployee thinks are needed to complete or correct the file.

3. The annual review of each such employee will be conducted on a regular annual schedule at a duly called meeting of the tenured faculty for the relevant academic unit. The contents of the employee's file will be reviewed and his/her performance will be evaluated in accordance with the written sex-neutral criteria established by the academic unit pursuant to Paragraph A.

4. A written report containing the evaluation of each such employee will be made under the direction of the head of the academic unit. Upon completion of the report the head of the relevant academic unit (or other designated faculty member) shall arrange to meet with the employee and personally present to him/her the evaluation by the tenured faculty. The report shall then be filed in the employee's file. Within fifteen (15) days of this meeting, the employee may file a written comment in response to his/her evaluation report, and such comment shall be placed in his/her file. Lack of such comment shall not be construed as total agreement with the tenured faculty evaluation.

C. Non-regular faculty positions are for a fixed period of time and carry no promise of renewal or of special consideration for appointment to regular faculty positions and are not intended by the University to create any such expectation. However, each academic unit will give timely notice to all non-regular faculty employees in the unit of vacancies in that unit in the regular faculty and of available non-regular appointments in the unit in any given academic year, and shall give such non-regular faculty employees the opportunity to apply for such positions and to be considered for them on an equal footing with all other applicants. The University may limit the total length of time a person may serve in a non-regular position, provided such limitation is applied in a sex-neutral manner.

D. For non-regular, temporary or part-time faculty appointments, each academic unit shall have established by January 1, 1981, and shall maintain written sex-neutral criteria and evaluation procedures for hiring and salary determination. Such written criteria and evaluation procedures shall be stated and applied in the manner set forth in Paragraph A above, but they may be different from those used for regular faculty in the same unit.

E. By January 1, 1981, each academic unit employing non-faculty academic non-student employees shall develop and maintain written sex-neutral procedures and criteria for hiring, salary, and promotion decisions for such persons.

F. Through the appropriate vice president or provost, all collegiate units will be directed:

1. To develop, by September 1, 1980, specific written instructions for their departments concerning the implementation of the University's affirmative action policies and programs and to submit them to the Vice President for Academic Affairs and the University Equal Opportunity Officer for review and approval; the instructions should address such questions as the composition of search committees, search committee procedures consistent with the terms of this Decree, and the advertising of open positions (including nonregular faculty positions).

2. To provide each department undertaking a search and each search committee copies of the following:

- a. The written instructions developed pursuant to subparagraph 1, Paragraph F, Part VI of this Decree;

- b. Written information concerning the affirmative action goals, including the calculations to be used in granting preferences to women, that have been set for the unit conducting the search and the progress that the unit has made toward the achievement of such goals; and

- c. Written summaries of availability pool data and applicant flow and hiring data computed in accordance with Paragraph I.E.4 of this Decree.

3. To halt, before it is completed, any search that does not follow proper affirmative action procedures.

VII. RECORD KEEPING:

The University and its academic units shall maintain all records relevant to recruitment and hiring for a period of no less than three (3) years. Records relevant to promotion, tenure, and terms and conditions of faculty employment shall be kept for a period of no less than seven (7) years.

VIII. INDIVIDUAL RELIEF:

The defendants, without admitting any liability or wrongdoing, hereby agree to pay to Shyamala Rajender, one of the named plaintiffs, the sum of One Hundred Thousand Dollars (\$100,000) as compensatory damages in consideration for the dismissal and release of all claims, other than those for fees and expenses, asserted or which could have been asserted by her against defendants in this action. In ruling on defendants' Rule 41(b) motion filed at the conclusion of Shyamala Rajender's individual case in chief, the Court found as a prima facie matter that Dr. Rajender (1) "was qualified for a job" in the Chemistry Department of the University's Institute of Technology as a tenure-track assistant professor and (2) she had established a prima facie case of violation of Title VII. (See Memorandum Order dated August 14, 1979, p. 9.) Without admitting any liability or wrongdoing, defendants further agree to purge from University files and records any material inconsistent with these findings.

The defendants hereby agree that the plaintiff-intervenors, Phyllis Kahn, Carol Gold, Berilla Herrera, Florence Gleason and Silva Azar, all of whom were granted the right to intervene on December 27, 1979 (and against whom are pending motions to dismiss, whose claims have not been fully discovered and who are not members of the subclass on trial), shall be entitled to proceed, at their individual options, under A or B below.

A. Proceed pursuant to Part II of this Decree so that each plaintiff-intervenor desiring to pursue her claim shall file with the Special Master a statement of her Claim in the form prescribed by Paragraph II.B of this Decree.

The University waives the 180-day deferral period provided by Paragraph II.A and II.D.1 of this Decree.

The Special Master shall allow ninety (90) days (or more upon request of the plaintiff-intervenor) from the date (s)he received such a Claim for discovery. During this ninety-day or more period the Claimant and the academic unit involved shall select a Hearing Panel pursuant to Paragraph II.D.5 of this Decree.

Upon completion of the discovery period, the claims of plaintiff-intervenors shall be promptly heard and decided pursuant to the provisions of Part II of this Decree. In setting claims for hearing, the Special Master shall give absolute priority to hearing the claims filed by plaintiff-intervenors.

The time periods set forth in this Option A shall commence on the forty-fifth (45th) day after the date this Decree becomes a final judgment in this action.

B. Proceed as a named plaintiff-intervenor in this action without application of any other provision of this Decree. Provided, however, that the defendants agree that the Court may appoint a master under 42 U.S.C. § 2000e-5(5), in which event the provisions at IV.B concerning payment by the University of expenses and reasonable fees of the master shall apply.

Any of the options above shall be exercised by each of named plaintiff-intervenors within forty-five (45) days after the date this Decree becomes a final judgment in this action.

IX. NOTICE:

Upon agreement to this Consent Decree by the parties, it shall be submitted forthwith to the Court for its approval. In the event of approval by the Court, written notice of the terms of this Decree shall be given to all class members by appropriate notice, pursuant to Rule 23 of the Federal Rules of Civil Procedure, in a form and manner agreed upon by the parties and approved by the Court. Within seven (7) days following the Court's approval of this Decree, the parties shall meet and attempt to agree on the details of the form and manner of the Notice; provided, that if they do not agree on these issues the parties shall so advise the Court, and a hearing shall be held as soon as practicable, as a result of which the Court shall order that the Notice be given in such form and manner as it deems appropriate. The

University will pay the cost of giving such notice. If there shall be no objection to the Decree made in response to such Notice, final judgment shall be entered on the Decree. Timely objections to the Decree shall be heard and determined as promptly as feasible. In the event that any objection to the Decree is sustained in whole or in part, or in the event of disapproval of this Consent Decree by the Court, in whole or in part, each of the parties reserves the right to trial of all issues. Provided, further, that none of the benefits or obligations conferred or imposed by the terms of this Decree shall vest until the Decree shall become a final judgment, and none of the procedures provided to implement such benefits and obligations will begin until the Decree is a final judgment.

X. DURATION AND MODIFICATION OF DECREE:

A. This Decree shall continue in effect until January 1, 1989, unless modified or extended as provided in this Part X.

B. If at any time prior to the expiration of this Decree, the University has reason to believe that any of the provisions of this Decree place it in violation of law, the University may apply to the Special Master upon notice and motion, for modification of the Decree, to conform to the law. The Special Master shall recommend modification only if (s)he finds that a provision of this Decree would place the University in violation of law.

C. On or about the first Monday of February, March, April, and May, 1988, the University shall publish a notice in the Minnesota Daily or its equivalent in a manner and form directed by the Special Master designed to give fair and adequate notice of the termination of this Decree. Any female, academic non-student employee of the University (or female applicant for such position) may, on or before September 1, 1988, file with the Special Master a motion for an order extending the operation of this Decree and/or modifying its terms. The University shall have until September 15, 1988 to respond. The Special Master shall recommend extension and/or modification of this Decree upon such motion only if (s)he finds a pattern or practice of employment discrimination in violation of Title VII at the University indicating a continuing need for this Decree. However, in no event shall this Decree extend beyond January 1, 1991.

D. A full and complete record of any such hearing under Paragraph X.B or X.C shall be maintained. On the basis of the record of said hearing, the Special Master shall make findings of fact, conclusions of law, and recommendations to the Court. The District Court's review of the findings and conclusions of the Special Master shall be governed by Rule 53(c)(2) of the Federal Rules of Civil Procedure. Upon review of the report of the Special Master, the District Court shall enter an appropriate order and make an express determination pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason to delay entering a final judgment on the Special Master's report, shall forthwith cause a final judgment to be entered thereon and shall notify the parties that judgment has been entered. The parties fully reserve the right to appeal to the Court of Appeals for the Eighth Circuit from any such judgment entered by the District Court pursuant to the findings, conclusions, and recommendations of the Special Master.

XI. ATTORNEYS' FEES:

The University agrees to and shall pay the reasonable attorneys' fees, costs, and disbursements (including reasonable charges of expert witnesses) incurred by the Plaintiff and class members in this action. Counsel for the Plaintiff and the class shall, within twenty-one (21) days after the initial approval of this Decree by the Court, file their petitions for fees, costs, and disbursements, together with such supportive material as they deem appropriate. The combined hearing on the Consent Decree and the Petitions for fees, costs, and disbursements shall occur not less than ninety (90) days from the date of initial approval of this Decree by the Court, unless otherwise agreed by counsel. The parties reserve all claims and defenses, including appellate rights, with respect to the amounts of reasonable attorneys' fees, costs, and disbursements awarded, whether such award relates to fees, costs, and disbursements incurred prior to or after the date this Decree becomes a final judgment in this action.

Approved as to form and substance:

Shyamala Rajender
Plaintiff - Class Representative

SPRENGER, OLSON & SHUTES, P.A.

By Paul C. Sprenger

And Eric L. Olson

And Robert L. Shutes

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THE UNIVERSITY OF MINNESOTA
THE REGENTS OF THE UNIVERSITY
OF MINNESOTA

By C. Peter Hagrath, President

LEONARD, STREET AND DEINARD

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Dated: April __, 1980.

Miles W. Lord
United States District Judge

EXHIBIT A

Availability Pool Data and Data Sources

1. Set forth below are the procedures to be utilized by each academic unit to identify availability pool data for the purposes set forth in this Decree.
2. The information required by Paragraphs a., b. and c. below must initially be completed and submitted by each academic unit to the University Equal Opportunity Officer within thirty (30) days after this Decree becomes final.
 - a. First, the head of each academic unit shall identify and list the discipline(s) and sub-discipline(s) in which that unit currently employs tenured and/or non-tenured academic non-student employees, as well as those additional disciplines and sub-discipline(s), if any, in which it currently intends to hire tenured and/or non-tenured academic non-student employees.
 - b. Second, for each discipline or sub-discipline identified pursuant to Paragraph a., the head of each academic unit shall identify the minimum requisite advanced degree for each appointment level at which that unit currently employs or intends to hire either tenured or non-tenured academic non-student employees.
 - c. Third, for each requisite degree identified pursuant to Paragraph b. above, the head of each academic unit shall identify one (1) or more reliable sources of data which (individually or in combination) set forth on an annual basis commencing in academic years 1962-63 (for tenured positions) and 1972-73 (for non-tenured positions) the number of women and the total number of persons who obtained such requisite degree. For this purpose, a list of approved data sources shall be made available by the University Equal Opportunity Officer. In the event that any academic unit is unable to identify an appropriate data source for one (1) or more of the years required by this Paragraph, it shall recommend in its submission an alternative method for determining availability pools for such year(s). If approved, the academic unit shall be so advised. If not approved, the academic unit shall make further recommendations until its proposed alternative method is approved by the University Equal Opportunity Officer.
3. The University Equal Opportunity Officer shall develop suitable forms which shall be used by all academic units in submitting the information required by Paragraph 2 above.
4. In the event that an academic unit at any time determines to add or delete any disciplines or sub-discipline(s) to or from those represented by persons then employed or intended to be hired as tenured or non-tenured academic non-student employees in that unit, it may amend its previous submission accordingly upon written notice to and approval by the University Equal Opportunity Officer and may thereafter use the amended submission as the basis for establishing its availability pool data.
5. Should any academic unit, subsequent to its initial submission of availability pool data, secure a source of relevant degree recipient data which is superior (in terms of accuracy, reliability or completeness) to any of those identified in its previous submission, it may apply to the University Equal Opportunity Officer for leave to utilize data from such source, rather than data from the source identified in its previous submission. The University Equal Opportunity Officer shall freely grant such leave upon a showing by the unit that the proposed data are in fact superior. In cases where such leave is granted, the academic unit's previous submission shall be amended accordingly.

EXHIBIT B

Search Procedures

1. The purpose of the affirmative action search required under this Decree is to identify and encourage the maximum possible number of qualified women candidates to apply for an open position. The goal of these search procedures is to identify and encourage applications from qualified women for academic non-student positions to the point where the proportion of applications from women approximates the proportion of women obtaining the requisite advanced degree in the discipline(s) relevant to the open position.

2. a. A written hiring plan (in a form to be approved by the University Equal Opportunity Officer) must be filed with and approved by the University Equal Opportunity Officer before any search or recruitment program is initiated to fill an academic non-student position.

b. The hiring plan shall include or have attached a statement by the head of the academic unit in a standard format to be developed by the University Equal Opportunity Officer setting forth the composition of the present faculty of the unit by gender (separately stated for tenured, tenure-track, and non-regular faculty positions) and the availability pools by gender (separately stated for tenured, tenure-track, and non-regular faculty positions). The calculations are intended, not to assign a fixed number of places to women, but to create an awareness in the units of the nature of the gender "mix" of both the present faculty and the potential applicants for positions on the faculty and, thereby, to enable the units to obtain diversity among the faculty in terms of gender. The calculations shall be made for the academic unit as a whole and not separately by disciplines represented in the academic unit. The availability pool calculation shall be made from the data sources identified pursuant to Exhibit A in the following manner: (i) the sum of the number of women obtaining the requisite degree(s) in each of the relevant years shall be calculated; (ii) the sum of the total number of such degrees granted to men and women in each of the relevant years shall be calculated; and (iii) the sum of the total degrees awarded to women shall be divided by the sum of the total degrees awarded to men and women, and the result shall be reported in the form of a percentage. The two separate percentage calculations for tenured and non-tenured positions shall be reported separately.

(1) For non-tenured positions to be filled in any given year, the appropriate availability pool shall consist of all Ph.D. or other minimum requisite degree recipients in the appropriate discipline(s) for the most recent five (5) year period reported in the data-source identified pursuant to Exhibit A.

(2) For tenured positions, the appropriate availability pool shall consist of all Ph.D. or other minimum requisite degree recipients in the appropriate discipline(s) identified pursuant to Exhibit A for the ten (10) year period ending five (5) years prior to the year in which such position is to be filled. (For example, the appropriate availability pool for a tenured position to be filled by the Department of Chemistry during academic year 1978-79 would be all recipients of Ph.D. degrees in chemistry during the academic years 1963-64 through 1972-73.)

These calculations will be used to determine when an approximately equally well qualified female candidate is to be preferred over another candidate (who is not a member of a protected class) pursuant to Paragraph I.B of this Decree. A preference shall be given to a female candidate over another candidate who is not also a member of a protected class as defined in this Decree where two or more candidates are approximately equally well qualified for a position within a category (i.e., tenured, tenure-track or non-regular) and the hiring unit employs a percentage of women within that category less than the proportion of women obtaining the requisite advanced degree (and/or meeting other relevant criteria) within the five (5) years prior to the year in which such position is to be filled (for non-tenured positions) or within the ten (10) year period ending five (5) years prior to the year in which such position is to be filled (for tenured positions). The calculations are not intended to restrict the academic unit's recruiting to a person, male or female, who received the requisite degree within the designated time period. The University shall treat each applicant for a tenured or non-tenured position, whether male or female, as an individual in the hiring process.

c. The hiring plan shall also include an acknowledgment signed by the head of the

academic unit involved that (s)he understands that the setting of goals for the hiring of women pursuant to applicable federal executive orders or regulations shall not excuse the unit from full compliance with the terms of this Decree or Title VII.

3. A search shall be required to fill any academic non-student position.

a. An academic unit must conduct a nation-wide search to fill a full-time regular academic non-student position, as defined in this Decree.

b. An academic unit must conduct a modified geographical search to fill any non-regular, part-time or temporary academic non-student position.

c. An academic unit must conduct a nation-wide search to fill any position which changes from a non-regular, part-time or temporary to a fulltime regular position. The incumbent faculty member may become a candidate for the changed position along with other qualified candidates, but may not be pre-selected.

4. All nation-wide searches shall be advertised in one or more periodicals and other publications of national circulation in a manner calculated to reach potential women applicants.

If the applicant flow data for the preceding five (5) years (cumulated) for the academic unit conducting a search reveals that either the percentage of women applicants or the percentage of women applicants "seriously considered" for the category of faculty position(s) in question (j.e., tenured, tenure-track or non-regular) is less than the percentage of women with the requisite degree(s) as computed in accordance with Exhibit A of this Decree, then the academic unit conducting the search must also: (1) provide written notice of the vacancy to the appropriate professional association and any committee thereof concerned with the placement of women and place an appropriate advertisement of the vacancy in the Chronicle of Higher Education, The New York Times, and an appropriate professional journal at least two (2) months prior to the time that any on-campus interview is conducted in connection with such search; and (2) provide written notice of each vacancy to all women receiving the requisite degree(s) from the University of Minnesota in the calendar year prior to the year in which the search is being conducted and to all female post-doctoral (or other relevant post-graduate) fellows working at the University of Minnesota in the field(s) in question in the calendar year prior to and in the year in which the search is being conducted; and, in such event, the academic unit will refrain from considering the fact that a female applicant received the requisite degree from or performed post-doctoral (or other relevant post-graduate) work at the University.

5. All requests for applicants and/or suggested candidates and all advertising for open positions shall contain a complete description of the position(s) open, including any sub-field(s) of specialty and interest(s) sought and the fields and levels of teaching competence which are expected of the applicant, if any. Further, all requests for applicants and/or suggested candidates and all advertising shall contain a statement of interest in obtaining women applicants.

6. In the event the requests for applicants and/or suggested candidates and all advertising do not succeed in producing significant applications from women (as determined in good faith by the University Equal Opportunity Officer, considering the available pool of female applicants and the efforts made by the academic unit to attract such applicants), the recruiting period must be extended and further efforts undertaken to bring forth women candidates. The hiring process may continue only if, after extended and further efforts, the University Equal Opportunity Officer determines that further applications from potential women candidates cannot reasonably be secured by further advertising or other efforts.

7. The following exceptions may be allowed, subject to strict adherence to all terms, by the University Equal Opportunity Officer, when an unexpected vacancy does not allow sufficient time to conduct the required search or when a given academic unit wishes to hire a visiting faculty member:

a. To fill an unexpected vacancy (e.g., due to illness, disability, death or resignation), the academic unit must file with the University Equal Opportunity Officer a request for a Personnel Vacancy Authorization as soon as the position is vacated. In no case shall such a position be filled for more than one (1) year without filing a hiring plan and conducting the required search for the position.

b. An academic unit may hire a visiting faculty member without filing a hiring plan or conducting the required search for the position as long as such a position is filled for no more than one (1) year by such an appointment and as long as appropriate documentation is submitted to the University Equal Opportunity Officer confirming the visiting faculty member's qualifications prior to the appointment.

8. Before any offer subject to the approval of the Regents for an academic non-student position is made, the academic unit involved shall submit to the University Equal Opportunity Officer a report (on a form to be approved by the University Equal Opportunity Officer) outlining the recruitment process including: (a) the total number of applicants, (b) the percentage of and total number of female applicants, (c) the total number of applicants invited for an interview or other final stage(s) of the recruitment process, (d) the total number of female applicants invited for an interview or other final stage(s) of the recruitment process, (e) the name, sex, and qualifications of the person nominated for the offer, including his/her subfield(s) of speciality and interest(s), and the subjects and level of courses expected to be taught, if any. If any women were present in the applicant pool for any one position, but not hired, the report shall also contain an explanation of why they were not hired, including (for the three(3) most seriously considered women applicants) their subfield(s) of speciality and interest(s) and the fields and levels of teaching competence each could offer. If no women were among the applicants, their non-availability must be documented in the report, including the names of publications advertised in, dates of all such advertising, and a copy of all such advertising. A copy of this report shall be maintained in the office of the University Equal Opportunity Officer for a period of three (3) years and shall be available for inspection during regular office hours by any unsuccessful female applicant for the position. In the copy available for inspection, the names of the unsuccessful candidates reported shall be deleted.

9. Upon receipt of this report and before any academic non-student appointment is submitted to the Regents for final approval, the University Equal Opportunity Officer will complete a final compliance review to determine whether all the search procedures and the other affirmative action obligations of this Decree have been followed by the academic unit involved. As part of this review, (s)he shall certify to the Board of Regents whether or not the academic unit has complied with these search procedures and the other obligations of this Decree.

10. Unless the appointment qualifies for one of the exceptions set forth in Paragraph 7 of this Exhibit, the payroll copy of the appointment documents for faculty members (defined in Paragraph A.2 of Part V of this Decree) shall not be removed from the appointment documents prior to the time that the proposed appointment has been approved by both the Vice President for Academic Affairs and the University Equal Opportunity Officer. In the event that the appointment qualifies for an exception under Paragraph 7, the faculty member receiving the appointment shall be informed in writing that, notwithstanding the fact that (s)he may be placed on the University payroll, her or his appointment is still conditioned on approval by the Vice President for Academic Affairs, the University Equal Opportunity Officer, and the Regents, if the appointment is subject to approval by the Regents.

11. It shall be the goal of the University to hire qualified women at least to the point where the proportion in its Chemistry Department in its Institute of Technology, along with the other academic units of the University, approximates the proportion of women obtaining the requisite advanced degree in the relevant discipline(s) within the five (5) years prior to the year in which such position is to be filled for tenure-track positions and non-regular positions, and within the ten (10) year period ending five (5) years prior to the year in which such position is to be filled for tenured positions.

As an initial step toward reaching this goal, the University agrees that at least two (2) out of the next five (5) persons hired to fill a regular faculty position in the Chemistry Department will be women. The Court shall retain jurisdiction over the matter where any woman is hired in the Chemistry Department in the tenure-track prior to January 1, 1989, for a period of three (3) years after termination of employment of any woman so hired or until tenure is granted to such woman, whichever first occurs.

EXHIBIT C

Date _____

Dear Special Master:

RE: Claim of Jane Doe
Your File No. _____

I have today sent to the Claimant the University's decision relating to the above Claim.

Sincerely yours,

President

EXHIBIT D

Confidentiality Agreement

Pursuant to Paragraph II.D.4 of the Consent Decree which became a final judgment in Shyamala Rastender, et al. v. The University of Minnesota, et al., U.S. District Court File No. 4-73 Civ. 435, the undersigned, having been granted leave by the Special Master to examine documents which are in the possession, custody or control of _____, hereby agrees as follows:

1. Except and to the extent that such documents have become part of the record of any public hearing held pursuant to said Consent Decree, to hold all such documents and their contents in strict confidence and not to disclose such documents or any of their contents to any person or party except:

a. The attorney(s) (or the direct employees of such attorney(s)) representing the undersigned in the Claim or Petition proceeding in connection with which such examination has been permitted; and

b. Other persons who are requested by the attorney(s) for the undersigned (or by the undersigned if not represented by an attorney) to give testimony, or otherwise to assist in the preparation for such proceeding; provided, however, that any such "other person" shall also execute such a Confidentiality Agreement (which shall be filed with the Special Master forthwith) and be bound by its terms in each and every respect.

2. Upon final termination of the Claim or Petition proceeding, including all appeals therefrom, the undersigned shall assemble and return to _____ all such documents, together with all copies thereof made by the undersigned or by any person described in Paragraph 1 above.

3. Nothing contained in this Agreement shall preclude the undersigned from presenting said documents, in whole or in part, in any hearing or other procedure held or occurring pursuant to said Consent Decree.

4. In the event of violation of any of the terms of this Agreement by the undersigned or by any of the persons described in Paragraph 1 above, the Special Master, in his/her sole discretion, may impose such sanctions as (s)he deems appropriate, including without limitation:

a. Admonition;

b. Exclusion from the record in the proceeding of any documents whose contents have been disclosed in violation of this Agreement; and/or

c. The imposition of other punitive sanctions in such form and/or amount as the Special Master deems appropriate.

I have read the foregoing Confidentiality Agreement and agree to abide by its terms in each and every respect.

Dated: _____, 19__