FILED
PATRICIA A. HOLAND
SUPERIOR COURT
12 APR 23 PM 5:00
J. WHITNELL, DEPUTY

THOMAS C. HORNE
The Attorney General
Firm No. 14000

Ann Hobart, No. 019129
Leslie Ross, No. 027207
Assistant Attorneys General
Civil Rights Division
1275 West Washington Street
Phoenix, AZ 85007
Telephone: (602) 542-8608
CivilRights@azag.gov
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA *ex rel.* THOMAS C. HORNE, the Attorney General, and THE CIVIL RIGHTS DIVISION OF THE ARIZONA DEPARTMENT OF LAW, Plaintiff, v. DENTAL SMILE SPA, INC., an Arizona corporation, d/b/a Smile Spa, DR. MICKEL MALEK, a single man, owner, Defendant.	No. C20117703 **~~[PROPOSED]~~ CONSENT DECREE** Honorable Ted B. Borek

On October 31, 2011, Plaintiff the State of Arizona ("State") filed the above-captioned lawsuit in Pima County Superior Court against Defendants Dental Smile Spa, Inc. d/b/a Smile Spa and Dr. Mickel Malek, alleging that Defendants discriminated against Tressa Sawyer, Regina Jenkins, Krystal Grinde, and Tamara Bailey (collectively "Aggrieved Parties") in violation of A.R.S. § 41-1463 and retaliated against Aggrieved Parties in violation of A.R.S. § 41-1464(A). Defendants have denied and continue to deny the allegations of the Complaint.

COMPROMISE OF DISPUTED CLAIMS

The State and Defendants desire to resolve the issues raised in the Complaint to avoid the time, expense, and uncertainty of further contested litigation. The State and Defendants expressly acknowledge that this Consent Decree is the compromise of disputed claims, that Defendants deny all the claims, and that there has been no adjudication of any claim or finding of any liability on the part of Defendants. Defendants and the State agree to be bound by this Consent Decree and to not contest that it was validly entered into in any subsequent proceeding to implement or enforce its terms. The parties therefore have consented to its entry, waiving trial, findings of fact, and conclusions of law.

It appearing to the Court that entry of this Consent Decree will further the objectives of the Arizona Civil Rights Act ("ACRA"), and that its terms fully protect the parties and the public with respect to the matters within its scope, **IT IS SO ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

JURISDICTION

1. This Court has jurisdiction over the subject matter of this action and over the parties, and venue in Pima County is proper. The allegations of the Complaint, if proved, are sufficient to state claims upon which relief could be granted against Defendants under the ACRA.

RESOLUTION OF THE LAWSUIT

2. This Consent Decree resolves all issues set forth in the Complaint.

NO RETALIATION

3. Defendants will not retaliate against any person in any way for that person's opposition to a practice made unlawful by the ACRA, or for their participation in the State's proceedings or litigation, and will make any future employment decisions concerning parties and witnesses on a nondiscriminatory basis.

POSTER

4. Respondent agrees to keep posted at all times in a conspicuous, well-lighted place frequented by its employees and applicants for employment, in each location it maintains and operates within the State of Arizona, a poster which states, in English and

Spanish, that discrimination in employment based on race, color, religion, age (40 and older), sex, national origin, results of genetic testing or disability is prohibited.

ANTI-DISCRIMINATION POLICIES

5. Defendants agree to comply fully with the provisions of the ACRA (A.R.S. § 14-1401, et seq., as amended) and that all Defendants' employment practices, including Defendants' hiring processes, and the terms, conditions and privileges of employment by Defendants, will be conducted and maintained in a manner which does not discriminate on the basis of race, national origin, color, disability, sex, religion, genetic testing or age.

6. Within thirty (30) days of the effective date of this Consent Decree, Defendants will create a written policy, subject to review by the Arizona Civil Rights Division ("ACRD"), prohibiting sexual harassment as defined by federal and Arizona law, and setting out a procedure for complaining of allegations of sexual harassment without suffering retaliation. At a minimum, this policy will contain:

i. a strong and clear statement that sexual harassment is against state and federal law and will not be tolerated in the workplace;

ii. a statement encouraging persons who believe they have experienced sexual harassment at work to complain of sexual harassment and that such complaints may be made to the Civil Rights Division of the Arizona Attorney General's Office ("ACRD");

iii. the phone number, website, and physical address of the ACRD;

iv. a statement that unlawful discrimination and/or retaliation violates state and federal civil rights laws;

v. a statement of assurance of non-retaliation for persons who believe they have been subjected to sexual harassment and for witnesses interviewed during an investigation into allegations of harassment.

Also within thirty (30) days of the effective date of this Consent Decree, Defendants agree to provide a copy of the policy to Ann Hobart, Assistant Attorney General ("AAG Hobart"), Arizona Attorney General's Office, 1275 W. Washington Street, Phoenix, Arizona

85007, or her successors, for the ARCD's review. Within ten (10) days of receiving the ARCD's approval, Defendants will disseminate the policy to all employees.

TRAINING

7. Within 60 (sixty) days of the effective date of this Consent Decree, Defendants will provide training for all employees in Defendants' anti-discrimination and anti-retaliation policies and reporting procedures. Thereafter, Defendants will provide such training for all newly hired employees within thirty (30) days of hire. The training will consist of at least one (1) hour of instruction. If there are costs associated with such training, Defendants will pay for those costs. "Hire" for purposes of this agreement includes the first day that an employee begins employment and/or a working interview with Defendants.

Within ten (10) days of the completion of the training for existing employees, Defendants will provide written notice to AAG Hobart, or her successor, that they have complied with the terms of this paragraph. Thereafter, Defendants will provide AAG Hobart, or her successor, an annual report stating that all new hires in the preceding 12 months were given the required training for two (2) years after the effective date of this Consent Decree. These annual reports will be due on the first and second anniversary of the effective date of this Consent Decree.

8. Within sixty (60) days of the effective date of this Consent Decree, Defendant Mickel Malek will receive training on state and federal prohibitions on employment discrimination and workplace harassment, including particularly sexual harassment. The training will consist of at least two (2) hours of instruction. If there are costs associated with such training, Defendants will pay for those costs.

Within ten (10) days after the training is completed, Defendants will notify AAG Hobart, or her successor, in writing confirming that Dr. Malek successfully completed the training. This notice will include a copy of the written materials used during the training.

MODIFICATION

9. There will be no modification of this Consent Decree without the written consent of all the parties and the further order of the Court. In the event of a material change of circumstances, Defendants and the State agree to make a good faith effort to resolve this matter.

If the parties are unable to reach agreement, either party may ask the Court to make such modifications as are appropriate.

CONTINUING JURISDICTION OF THE COURT

10. The Court will retain jurisdiction over both the subject matter of this Consent Decree and the State and Defendants for two (2) years from the date of its entry to effectuate and enforce it. The State may, for good cause shown, petition this Court for compliance with this Consent Decree at any time during the period that this Court maintains jurisdiction over this action. Should the Court determine that Defendants have not complied with its terms, appropriate relief, including extension of this Consent Decree for such period as may be necessary to remedy its non-compliance, may be ordered. In the event the parties have not stipulated and the court has not ordered an extension of this Consent Decree, the Consent Decree will automatically expire and the Court will lose jurisdiction over this action two (2) years after entry of the Consent Decree.

MONETARY RELIEF TO AGGRIEVED PARTIES

11. Aggrieved Parties Sawyer, Bailey and Grinde have privately settled and dismissed their separate lawsuits against Defendants with prejudice. Aggrieved Party Jenkins continues to pursue monetary relief in a lawsuit currently pending against Defendants in the Pima County Superior Court. The parties acknowledge that nothing in this Consent Decree affects Ms. Jenkins' claims or the remedies available to her in her own lawsuit.

MONITORING

12. Defendants will pay the ACRA the sum of one thousand five hundred dollars ($1,500) for monitoring compliance costs associated with the terms or this Consent Decree and for the general advancement of civil rights within thirty (30) days of this Consent Decree. The check will be made payable to the Arizona Civil Rights Division and tendered to AAG Hobart, or her successor.

RELEASE

13. Except for the obligations of Defendants that are expressly set forth in this Decree, Defendants and their past, present, and future officers, employees, agents, affiliates,

parents, successors and assigns are released from any and all civil liability to the State for the claims alleged in the Complaint.

MISCELLANEOUS PROVISIONS

14. The Consent Decree will be binding on the State and Defendants, as well as Defendants' agents, employees, successors, assigns and all persons in active concert or participation with Defendants.

15. The State and Defendants represent that they have read this Consent Decree in its entirety and are satisfied that they understand and agree to all of its provisions, and represent that they have freely signed this Consent Decree without coercion.

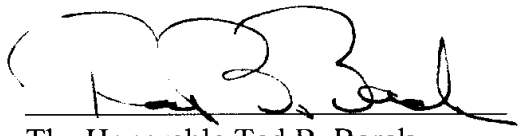
16. This Consent Decree will be governed in all respects by the laws of the State of Arizona.

17. The State and Defendants will bear their respective attorneys' fees and costs incurred in this action up to the date of entry of this Decree. In any action brought to assess or enforce the State's or Defendants' compliance with the terms of this Decree, the court may in its discretion award reasonable costs and attorneys' fees to the prevailing party.

EFFECTUATING CONSENT DECREE

18. The parties agree to the entry of this Consent Decree upon final approval by the Court. The effective date of this Consent Decree will be the date that it is entered by this Court.

ENTERED AND ORDERED this 23 day of April 2012.



The Honorable Ted B. Borek

CONSENT TO DECREE

1. On behalf of Defendants Dental Smile Spa, Inc. d/b/a Smile Spa and Dr. Mickel Malek, I acknowledge that that I have read the foregoing Consent Decree, and that Defendants Dental Smile Spa, Inc. d/b/a Smile Spa and Dr. Mickel Malek are aware of their right to a trial in this matter and have waived that right.

2. Defendants Dental Smile Spa, Inc. d/b/a Smile Spa and Dr. Mickel Malek, agree to the jurisdiction of the Court, and consent to entry of this Consent Decree.

3. Defendants Dental Smile Spa, Inc. d/b/a Smile Spa and Dr. Mickel Malek, state that no promise of any kind or nature whatsoever (other than the terms of this Consent Decree) was made to induce them to enter into this Consent Decree, that they have entered into this Consent Decree voluntarily, and that this Consent Decree constitutes the entire agreement between the parties.

4. I, Dr, Mickel Malek, am the President of Dental Smile Spa Inc., and as such, am authorized by Defendants Dental Smile Spa, Inc. d/b/a Smile Spa and Dr. Mickel Malek, to enter into this Consent Decree for and on their behalf.

5. I further state that Defendants Dental Smile Spa, Inc. d/b/a Smile Spa and Dr. Mickel Malek, have been represented by counsel in this case, and that the terms of this Consent Decree have been explained to me to my satisfaction, and are fully understood by me.

DATED this 17th day of April, 2012.

Dental Smile Spa, Inc. d/b/a Smile Spa
and Dr. Mickel Malek

By _____

BEST COPY

State of Arizona)

) ss.

County of Pima)

SUBSCRIBED AND SWORN to before me this 17th day of April, 2012,

By Mickel Malek.

Kelly C. Littleton

Notary Public

My Commission Expires:

Jan 11, 2016

KELLY C LITTLETON
Notary Public - Arizona
Pima County
My Comm. Expires Jan 11, 2016

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APPROVED AS TO FORM AND CONTENT

THOMAS C. HORNE Attorney General By _____ Ann Hobart Assistant Attorney General Date 4/12/12	BOLAND LAW GROUP, PLLC By _____ James Arrowood Attorney for Defendants Date 4/16/12