

FILED
4:00 PM 12-13-07
MICHAEL K. JEANES, Clerk
By L. Muhammad
Deputy
COPY

1 TERRY GODDARD
2 The Attorney General
3 Firm No. 14000

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5 Assistant Attorney General
6 Civil Rights Division
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8 Phoenix, AZ 85007
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10 CivilRights@azag.gov
11 Attorneys for Plaintiff

CERTIFIED COPY

12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
13 IN AND FOR THE COUNTY OF MARICOPA

14 THE STATE OF ARIZONA *ex rel.* TERRY
15 GODDARD, the Attorney General; and THE
16 CIVIL RIGHTS DIVISION OF THE ARIZONA
17 DEPARTMENT OF LAW,

No. CV2007-010711

CONSENT JUDGMENT

18 Plaintiff,

(Assigned to Hon. Glenn M. Davis)

19 vs.

20 VERMILLION CANDY SHOPPE; BYGNAL
21 DUTSON and JANE DOE DUTSON,
22 husband and wife,

23 Defendants.

24 Plaintiff, the State of Arizona, through Attorney General Terry Goddard and the Civil
25 Rights Division (collectively "the State"), filed this action against Defendants Vermillion
26 Candy Shoppe, Bygnal Dutson and Jane Doe Dutson whose true name is Marjorie Dutson
(collectively "Defendants"), alleging that they engaged in religious discrimination against
Andrew Chatwin, Isaac Wyler, Michelle Chatwin, Levi Chatwin and William Daniel Chatwin

1 at the Vermillion Candy Shoppe, a place of public accommodation located in Colorado City,
2 Arizona, in violation of Article 3 of the Arizona Civil Rights Act ("ACRA"), A.R.S. §§ 41-
3 1441 to 41-1443, on multiple occasions by, among other things, asking them to leave the
4 restaurant without eating food they had purchased, refusing to take their orders, denying them
5 food and/or requesting that the Colorado City Marshal's Office escort them out of the
6 Vermillion Candy Shoppe.
7

8 Defendant Bygnal Dutson warrants and represents that he is the sole proprietor of the
9 business known as Vermillion Candy Shoppe located at 70 N. Central in Colorado City,
10 Arizona, and all of the assets of that business, with the sole exception of the real property upon
11 which it is located, which real property belongs to the United Effort Plan Trust.
12

13 Defendant Bygnal Dutson further warrants and represents that at all relevant times he
14 was and is legally married to Defendant Jane Doe Dutson whose true name is Marjorie Dutson.
15

16 Defendants warrant and represent that they are the sole owners, and have not transferred
17 any ownership interest or assets of the Vermillion Candy Shoppe restaurant.
18

19 The State and Defendants (collectively "the Parties") desire to resolve the issues raised
20 by the Complaint, without the time, expense and uncertainty of further contested litigation.
21 The Parties expressly acknowledge that this Consent Judgment is the compromise of disputed
22 claims and that there was no adjudication of any claim. The Parties further acknowledge that
23 Defendants have not admitted nor do they now admit the truth of any claim or liability for any
24 claims made in the Complaint filed in this matter, or otherwise alleged by the State in this
25 lawsuit. Notwithstanding their non-admission of liability, Defendants agree to be bound by
26 this Consent Judgment and not to contest that it was validly entered into in any subsequent

1 proceeding to implement or enforce its terms. The Parties, therefore, have consented to the
2 entry of this Consent Judgment, waiving trial, findings of fact, and conclusions of law.

3 It appearing to the Court that entry of this Consent Judgment will further the objectives
4 of the Arizona Civil Rights Act, and that this Consent Judgment fully protects the Parties and
5 the public with respect to the matters within the scope of this Consent Judgment,
6

7 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as
8 follows:

9
10 **JURISDICTION**

11 1. This Court has jurisdiction over the subject matter of this action and over the
12 Parties hereto, and venue in Maricopa County is proper.

13
14 **RELEASE**

15 2. This Consent Judgment and the consideration provided therein resolves all
16 issues and claims raised in the State's Complaint filed in this case, and issues and claims
17 whether known or unknown that were required to be raised, or that could have been raised
18 under the Arizona Civil Rights Act with respect to the administrative public accommodation
19 discrimination complaint filed against Defendants by Andrew Chatwin. By his signature
20 approving the form and content of this Consent Judgment, Andrew Chatwin, has released any
21 claims, whether known or unknown, that he may have against the Defendants relating to the
22 alleged discrimination at Vermillion Candy Shoppe, his administrative public accommodation
23 complaint against Defendants, or this lawsuit, except for Defendants' performance of
24 obligations under this Consent Judgment.
25
26

INJUNCTION

1
2 3. Defendants are enjoined from violating the public accommodation provisions of
3 the Arizona Civil Rights Act, and shall not engage in public accommodation discrimination
4 based upon religion, race, color, sex, national origin, familial status, or disability.
5

6 4. In particular, Defendants shall not, directly or indirectly, refuse to, withhold
7 from, or deny to any person any accommodations, advantages, facilities or privileges of
8 Vermillion Candy Shoppe because of religion, race, color, sex, national origin, ancestry or
9 disability. Defendants further shall not make any distinction with respect to any person based
10 on religion, race, color, sex, national origin, familial status, or disability with respect to the
11 price or quality of any item or the goods or services offered by or at Vermillion Candy Shoppe
12 or any other place of public accommodation which Defendants may own, lease, operate,
13 manage or serve as proprietor, superintendent, agent or employee. Defendants are expressly
14 enjoined from discriminating against any person at Vermillion Candy Shoppe because that
15 person does not observe the Fundamentalist Church of Jesus Christ of Latter Day Saints
16 ("FLDS") religion, is not a currently accepted FLDS member in good standing, or is
17 considered to be an apostate by FLDS members.
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21 5. Defendants shall not, directly or indirectly, engage in retaliation of any kind
22 against Andrew Chatwin, Isaac Wyler, Michelle Chatwin, Levi Chatwin and William Daniel
23 Chatwin or against any other person because of the matters raised in the State's Complaint or
24 because he or she has opposed any practice reasonably believed by him or her to be unlawful
25 under A.R.S. §§ 41-1441 through 41-1442, or because he or she has given testimony or
26

1 assistance, been listed as a potential witness in this lawsuit, or participated in any manner in
2 any investigation or proceeding under the Arizona Civil Rights Act.

3 COSTS

4 6. The Parties shall bear their respective attorneys' fees and costs incurred in this
5 action up to the date of entry of this Consent Judgment. In any action brought to assess or
6 enforce Defendants' compliance with the terms of this Consent Judgment, the Court in its
7 discretion may award reasonable costs and attorneys' fees to the prevailing party.
8

9 NON-DISCRIMINATION POLICY AND PROCEDURES

10 7. Within thirty (30) days from the effective date of this Consent Judgment,
11 Defendants shall adopt a written Non-Discrimination Policy ("the Policy"), approved by the
12 State. Within fifteen (15) days following the State's approval of the Policy, Defendants shall
13 distribute the Policy to all of their employees who shall sign and date an acknowledgement of
14 receipt of the Policy. Within thirty (30) days following the State's approval of the Policy,
15 Defendants shall provide the State with copies of the written acknowledgements of all
16 employees to whom Defendants distributed the Policy. Thereafter, Defendants shall distribute
17 the Policy to all new employees in their new hire paperwork, and shall retain copies of the
18 acknowledgements of receipt of the Policy signed by the new employees.
19

20 8. The Policy shall include the following provisions: (a) a statement that, in
21 accordance with Arizona law and the provisions of this Consent Judgment, Vermillion Candy
22 Shoppe will not engage in or tolerate discrimination against any person at its restaurant based
23 on religion, race, color, sex, national origin, ancestry or disability; (b) instructions that
24 employees of Vermillion Candy Shoppe shall not refuse to serve, refuse to admit, or otherwise
25
26

1 discriminate against any person based on religion, race, color, sex, national origin, ancestry or
2 disability, including, but not limited to, any person who does not observe the FLDS religion, is
3 not a currently accepted FLDS member in good standing, or is considered to be an apostate by
4 FLDS members; (c) a provision informing all employees that failure to comply with the Policy
5 will result in discipline up to and including termination of employment.
6

7 9. Defendants shall retain records regarding any alleged violation of the Policy, and
8 discipline imposed by Defendants for violations. Defendants shall send copies of such records
9 to the State commencing six (6) months after the effective date of this Consent Judgment and
10 every six (6) months thereafter until five (5) years after the effective date of this Consent
11 Judgment.
12

13 10. Defendants shall maintain written records of any and all incidents in which they
14 refuse service to any person or refuse to admit any person to Vermillion Candy Shoppe for any
15 reason including, but not limited to the following reasons: believed to be under the influence of
16 alcohol or narcotics, guilty of boisterous behavior, of lewd or immoral character, physically
17 violent, or violated any regulation of Vermillion Candy Shoppe which applies to all persons
18 regardless of religion, race, color, sex, national origin, ancestry or disability. The incident
19 reports shall include: (a) the date and time of the incident; (b) the name of all persons denied
20 service; (c) the identity of all employee and non-employee witnesses, including names,
21 addresses and telephone numbers; (d) the reason for denial of service; and (e) a description of
22 the incident including all facts supporting the denial of service. Defendants shall send copies
23 of the written incident reports to the State commencing six (6) months after the effective date
24
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1 of this Consent Judgment and every six (6) months thereafter until five (5) years after the
2 effective date of this Consent Judgment.

3 **NON-DISCRIMINATION NOTICES**

4 11. / Within fifteen (15) days of the effective date of this Consent Judgment,
5 Defendants shall post a notice on the front door of Vermillion Candy Shoppe which shall state
6 the following in no less than 14 pt. bold font: "Vermillion Candy Shoppe does not
7 discriminate against anyone based on religion, race, color, sex, national origin, ancestry or
8 disability. To report discrimination at any restaurant or other place of public accommodation
9 in Arizona, contact the Civil Rights Division of the Arizona Attorney General's Office at 877-
10 491-5742 or by email at civilrightsinfo@azag.gov." Defendants shall keep the notice posted
11 on the front door of Vermillion Candy Shoppe for ninety (90) days. Thereafter, Defendants
12 shall keep the notice posted, but may move it to a conspicuous, well lit area, readily visible to
13 customers and employees near the front door of Vermillion Candy Shoppe.
14

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17 12. / Within fifteen days of the effective date of this Consent Judgment, Defendants
18 shall post notices identical to the notice referred to in Paragraph 11, on the bulletin boards at
19 the Colorado City Post Office and General Coop Store, and shall keep those notices posted for
20 90 days. /
21

22 **TRAINING**

23
24 13. / Within ninety (90) days of the effective date of this Consent Judgment,
25 Defendants and their employees shall attend a minimum of two hours of training provided by
26 the State in Colorado City, Arizona, regarding the anti-discrimination provisions of the Arizona

1 Civil Rights Act and the Policy. The training session may also be made available to owners,
2 operators and employees of other place of public accommodation in Colorado City.

3 **MONITORING**

4 14. The State shall monitor Defendants' performance for compliance with
5 Paragraphs 3, 4, 5, 7, 8, 9, 10, 11, 12 and 13 of this Consent Judgment.
6

7 **NOTICES**

8 15. When this Consent Judgment requires the submission of reports, notices or
9 materials for review to the State, they shall be mailed to: Sandra R. Kane, Assistant Attorney
10 General, Office of the Attorney General, Civil Rights Division, 1275 W. Washington, Phoenix,
11 Arizona 85007, or her successor(s).
12

13 **CONTINUING JURISDICTION OF THE COURT**

14 16. The Court shall retain jurisdiction over both the subject matter of this Consent
15 Judgment and the parties. If the State believes that the Defendants are violating any of the
16 provisions of Paragraphs 3, 4, 5, 7, 8, 9, 10, 11, 12 or 13 of this Consent Judgment, the Parties
17 will engage in good faith efforts to resolve the matter. For purposes of this Paragraph, good
18 faith efforts shall mean that the State shall notify Defendants in writing of the alleged failure to
19 comply with the Consent Judgment. The Defendants shall then have 15 days to respond in
20 writing and to reach an agreement with the State to cure the alleged failure to comply with the
21 Consent Judgment. If, however, the good faith efforts do not resolve the State's concerns, the
22 State may bring the matter to the attention of the Court and, if appropriate, request sanctions
23 for contempt, including but not limited to a liquidated penalty of \$10,000 for each violation,
24 plus an award of attorneys' fees and costs to the prevailing party.
25
26

1 **CHOICE OF LAW**

2 17. This Consent Judgment shall be governed in all respects whether as to validity,
3 construction, capacity, performance or otherwise by the laws of the State of Arizona.

4 **CONTINUING OBLIGATIONS**

5 18. Defendants' obligations under this Consent Judgment shall be binding upon
6 Defendants' heirs, assigns, successors, successors-in-interest, receivers, trustees in bankruptcy,
7 personal representatives, agents, employees, and all persons in active concert or participation
8 with Defendants.
9

10 **MODIFICATION**

11 19. There shall be no modification of this Consent Judgment without the written
12 consent of Defendants and the State and the further order of this Court. In the event of a
13 material change of circumstances, the Parties agree to make a good faith effort to resolve this
14 matter. If the Parties are unable to reach agreement, either party may ask the Court to make
15 such modifications as are appropriate.
16
17

18 **EFFECTUATING JUDGMENT**

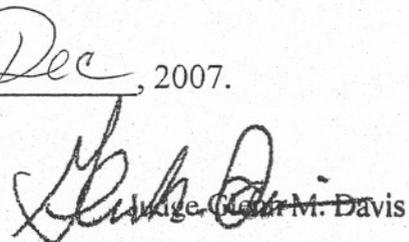
19 20. The Parties agree to the entry of this Consent Judgment upon final approval by
20 the Court. The effective date of this Consent Judgment shall be the date that it is entered by
21 the Court.
22

23 ENTERED AND ORDERED this 13 day of Dec, 2007.

24 The foregoing instrument is a full, true and correct copy
25 of the original on file in this office.

26 Attest Dec 13 20 07
MICHAEL K. JEANES, Clerk of the Superior Court of the
State of Arizona, in and for the County of Maricopa.

111 By L. Muhammed Deputy


Judge, Glenn M. Davis

Honorable Glenn M. Davis
Judge, Maricopa County Superior Court

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CONSENT TO JUDGMENT

1. As sole proprietor of Defendant Vermillion Candy Shoppe, I acknowledge that I have read the foregoing Consent Judgment, and that Defendant Vermillion Candy Shoppe is aware of its right to a trial or default judgment hearing in this matter and has waived those rights.

2. Defendant Vermillion Candy Shoppe agrees to the jurisdiction of the Court, and consents to entry of this Consent Judgment.

3. Defendant Vermillion Candy Shoppe states that no promise of any kind or nature whatsoever (other than the terms of this Consent Judgment) was made to induce it to enter into this Consent Judgment, that it has entered into this Consent Judgment voluntarily, and that this Consent Judgment constitutes the entire agreement between Defendants and the State.

4 I am expressly authorized to enter into this Consent Judgment for and on behalf of Vermillion Candy Shoppe.

VERMILLION CANDY SHOPPE,
an Arizona sole proprietorship,

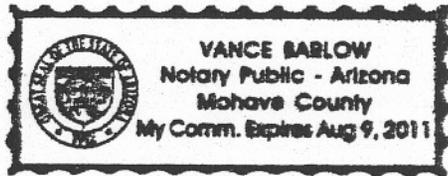
By *Bygnal Dutson*
Bygnal Dutson
Proprietor

State of Arizona)
) SS.
County of Mohave)

SUBSCRIBED AND SWORN to before me this 9th day of November, 2007, by Bygnal Dutson.

Vance Barlow
Notary Public

My Commission Expires:
August 9, 2011



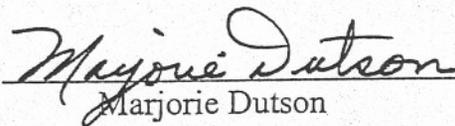
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CONSENT TO JUDGMENT

1. I acknowledge that I have read the foregoing Consent Judgment, and that I am aware of my right to a trial in this matter and have waived that right.

2. I agree to the jurisdiction of the Court, and consent to entry of this Consent Judgment.

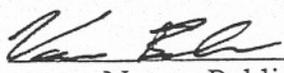
3. I hereby state that no promise of any kind or nature whatsoever (other than the terms of this Consent Judgment) was made to induce me to enter into this Consent Judgment, that I have entered into this Consent Judgment voluntarily, and that this Consent Judgment constitutes the entire agreement between Defendants and the State.



Marjorie Dutson

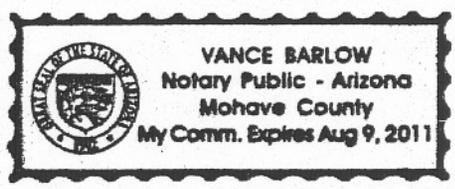
13 State of Arizona)
14 County of *Mohave*) SS.

15
16 SUBSCRIBED AND SWORN to before me this 9th day of November,
17 2007, by Marjorie Dutson.

18
19 

Notary Public

20 My Commission Expires:
21 August 9, 2011



1 APPROVED AS TO FORM AND SUBSTANCE:

2
3 TERRY GODDARD
4 Attorney General

5 12-3-07
6 Date

7 By Sandra R. Kane
8 Sandra R. Kane
9 Assistant Attorney General
10 Arizona Attorney General's Office
11 Civil Rights Division
12 1275 W. Washington Street
13 Phoenix, Arizona 85007
14 Attorneys for Plaintiff

15 ASPEY, WATKINS & DIESEL, P.L.L.C.

16
17
18
19
20 Date

21 By Fredrick M. "Fritz" Aspey
22 Bruce S. Griffen
23 123 North San Francisco, Suite 300
24 Flagstaff, Arizona 86001
25 Attorneys for Defendants

26
11-25-07
Date

By Andrew Chatwin
Andrew Chatwin

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