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14 **IN THE SUPERIOR COURT OF ARIZONA**

15 **IN AND FOR THE COUNTY OF MARICOPA**

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

18 Plaintiff,

19 vs.

20 THE PHOENIX COUNTRY CLUB,

21 Defendant.
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23
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No. CV2008-022528

SETTLEMENT AGREEMENT

1 Plaintiff, the State of Arizona, through Attorney General Terry Goddard and the Civil
2 Rights Division (collectively "the State"), filed this action against Defendant The Phoenix
3 Country Club ("Defendant), alleging that Defendant was operating as a place of public
4 accommodation and had engaged in sex discrimination and retaliation against Logan and
5 Barbara Van Sittert in violation of Article 3 of the Arizona Civil Rights Act ("ACRA"), A.R.S.
6 §§ 41-1441 to 41-1443, by denying Barbara Van Sittert access to the Defendant's Men's Grill
7 and retaliating against the Van Sitterts after they voiced opposition to the Defendant's refusal
8 to allow Mrs. Van Sittert access to the Men's Grill.

9 Defendant, the Phoenix Country Club, denied each of the claims asserted in the action
10 and warrants and represents that it was not a place of public accommodation but a private club
11 operating as an Arizona not-for-profit corporation at 2901 N. 7th Street, Phoenix, Arizona.

12 The State and Defendant (collectively "the Parties") desire to resolve the issues raised
13 by the Complaint, without the time, expense, and uncertainty of further contested litigation.
14 The Parties expressly acknowledge that this Settlement Agreement is the compromise of
15 disputed claims and that there was no adjudication of any claim. The Parties further
16 acknowledge that Defendant has not admitted nor does it now admit the truth of any claim or
17 liability for any claims made in the Complaint filed in this matter, or otherwise alleged by the
18 State in this lawsuit. Defendant specifically denies that it is a place of public accommodation
19 and claims it is a private club not subject to the requirements of A.R.S. § 41-1442.
20 Notwithstanding their denial of liability, Defendant agrees to be bound by this Settlement
21 Agreement and not to contest that it was validly entered into in any subsequent proceeding to
22 implement or enforce its terms. The Parties, therefore, have consented to this Settlement
23 Agreement waiving trial, findings of fact, and conclusions of law.

24 **RELEASE**

25 1. This Settlement Agreement and the consideration provided therein formally and
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1 finally resolves all issues and claims raised in the State's Complaint filed in this case, and
2 issues and claims whether known or unknown that were required to be raised, or that could
3 have been raised under the ACRA with respect to the administrative public accommodation
4 discrimination complaint filed against Defendant by Logan and Barbara Van Sittert.

5 **THE PHOENIX COUNTRY CLUB'S DINING FACILITIES**

6 2. Defendant's dining facilities, including the Men's and Women's Grills, will, upon
7 the execution of this Agreement and the opening of the Defendant's indoor dining facilities, be
8 open and will continue to be open to all members, members' families or guests during all hours
9 of operation regardless of sex. For purposes of this Settlement Agreement the term "members"
10 includes all persons possessing active or non-active memberships as described in Article I,
11 Sections 1-3 of the By-laws of The Phoenix Country Club (as revised through July 2007) ("By-
12 laws"). The term "members' families" specifically references those persons identified in
13 Article II, Section 1 of the By-Laws. The term "guests" includes all other persons to whom
14 Defendant offers access to its facilities per its By-laws and rules.

15 3. In particular, Defendant shall not, directly or indirectly, refuse to, withhold from, or
16 deny to any members, members' families or guests any dining accommodations, dining
17 advantages, dining facilities or dining privileges of The Phoenix Country Club because of sex.

18 4. Within 30 days of the effective date of this Settlement Agreement, Defendant will
19 provide written notice to all of its members that Defendant's dining facilities, including the
20 Men's and Women's Grills are, without condition, open to all members, members' family
21 members and guests. Defendant, in this notice, shall advise its members that any acts by
22 members, members' families or guests seeking to interfere with this change in policy will be
23 deemed a violation of the Phoenix Country Club Rules of Etiquette. Notices under this section
24 shall be sent in accordance with Article XIV of the By-laws.

25 5. Defendant, within 30 days of the effective date of this Settlement Agreement, will
26

1 amend the "Phoenix Country Club Rules" by deleting existing House Rule I.B.1., and, in its
2 place, inserting the following language:

3 1. Dining Areas

4 Each of the Club's dining areas, including the Men's and Women's
5 Grills, are open, without condition, for the use of men and women of the
6 Club and their guests.

7 **RETALIATION**

8 6. Defendant shall not discriminate against Logan and Barbara Van Sittert because they
9 have opposed any act or practice by the Club made unlawful by A.R.S. §§ 41-1441 through 41-
10 1442, or because they made a charge, testified, assisted, or participated in any manner in an
11 investigation, proceeding, or hearing under the ACRA. Notwithstanding the foregoing, this
12 Settlement Agreement does not prohibit and will not be construed to prohibit the Club from
13 enforcing its written and adopted internal articles, By-laws, and rules, including without
14 limitation its Rules of Etiquette, as to any member, including the Van Sitterts, through such
15 membership actions, including without limitation suspension of and/or expulsion from
16 membership, as the Club determines are appropriate for any reason consistent with such By-
17 Laws and rules, for violations by members, members' families or guests committed subsequent
18 to the effective date of this Settlement Agreement. Nothing herein grants any third-party
19 beneficiary rights to any person, and only the parties to this Agreement shall have the right to
20 assert a breach of the Agreement or seek enforcement of the Agreement.

21 **FUTURE INVESTIGATIONS**

22 7. The Parties acknowledge that the Arizona Civil Rights Division ("Division") has a
23 statutory duty to investigate all charges of discrimination filed with the Division and, as a
24 result of its investigation, either dismiss the charge or issue a reasonable cause determination.
25 The Parties further acknowledge that the Reasonable Cause Determination issued against the
26 Defendant in the underlying administrative investigation which concluded that the Defendant

1 was a place of public accommodation was based, in part, upon the Defendant's past practices
2 regarding its membership selection processes and the use of Defendant's facilities by non-
3 members. Defendant maintains that it is, and has always been, a private club and represents
4 that it has undertaken measures to resolve any ambiguity about whether it is a private club.

5 8. Defendant represents and warrants that it has made, over the recent months, the
6 appropriate changes to its policies, procedures, and practices to ensure that its membership
7 selection process and the use of Defendant's facilities by non-members are now consistent with
8 the policies, procedures, and practices of a private club. The State accepts as accurate, as of
9 the date of the execution of this Settlement Agreement, that representation and warranty.

10 9. Nothing in this Settlement Agreement is intended nor will it be interpreted to intend
11 that the State maintains any continuing jurisdiction over the operations of the Defendant or its
12 facilities beyond that jurisdiction authorized by Arizona law.

13 **DISMISSAL OF ACTION AND COSTS**

14 10. Promptly upon execution of this Settlement Agreement, the Parties shall cause their
15 attorneys to stipulate to a dismissal of this action with prejudice subject to paragraph 6 herein.
16 The Parties shall bear their respective attorneys' fees and costs incurred in this action up to the
17 date of this Settlement Agreement.

18 **NOTICES**

19 11. Defendant's counsel shall provide written notice to the Attorney General's Office
20 of its compliance with Paragraphs 2, 4, and 5 of this Settlement Agreement. Written notices
21 required under the paragraph shall be provided within 10 days of compliance of each
22 respective term of this Settlement Agreement. Written notices required under this paragraph
23 and this Settlement Agreement shall be mailed to Michael M. Walker, Office of the Attorney
24 General, Civil Rights Division, 1275 W. Washington, Phoenix, Arizona 85007, or his
25 successor(s).
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1 **CHOICE OF LAW**

2 12. This Settlement Agreement 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 13. Defendant's obligations under this Settlement Agreement shall be binding upon
6 Defendant's current and future Board of Directors, assigns, successors, successors-in-interest,
7 receivers, trustees in bankruptcy, personal representatives, agents, employees, and all persons
8 in active concert or participation with Defendant.

9 **MODIFICATION**

10 14. There shall be no modification of this Settlement Agreement without the written
11 consent of Defendant and the State. In the event of a material change of circumstances, the
12 Parties agree to make a good faith effort to resolve this matter. If the Parties are unable to
13 reach agreement, either party may ask the court to make such modifications as are appropriate.

14
15 1-21-09
16 Date

TERRY GODDARD
Attorney General

17 By: 

Melanie V. Pate
Chief Counsel
Civil Rights Division
Arizona Attorney General's Office
1275 W. Washington Street
Phoenix, Arizona 85007

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21 1-20-09
22 Date

GALLAGHER & KENNEDY

23 By: 

Donald Peder Johnsen
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Phoenix, Arizona 85016-9225
Attorneys for Defendant

1
2 1.20.2009

3 Date

STINSON MORRISON HECKER LLP

4 By: 

5 Michael C. Manning
6 1850 North Central Avenue, Suite 2100
7 Phoenix, Arizona 85004-4584
8 Attorneys for Defendant

9
10 1/20/2009

11 Date

THE PHOENIX COUNTRY CLUB

12 By: 

13 Michael Krueger, President
14 2901 N. 7th Street
15 Phoenix, Arizona 85014