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THOMAS C. HORNE
The Attorney General
Firm No. 14000

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

THE STATE OF ARIZONA *ex rel.* THOMAS C.
HORNE, THE ATTORNEY GENERAL; and
THE CIVIL RIGHTS DIVISION OF THE
ARIZONA DEPARTMENT OF LAW,

Plaintiff,

and

MARTHA ZAMORANO, individually,

Intervenor-Plaintiff,

vs.

INTERMOUNTAIN CENTERS FOR HUMAN
DEVELOPMENT, Inc., an Arizona corporation,

Defendant.

NO. 4:11 CV-00479 TUC FRZ

CONSENT DECREE

1 On May 2, 2011, Plaintiff the State of Arizona ("State") filed its Complaint in the above-
2 captioned lawsuit in the Superior Court of Arizona, Pima County, against Defendant
3 Intermountain Centers for Human Development, Inc. ("Intermountain"), alleging that
4 Defendant discriminated against Martha S. Zamorano in violation of A.R.S. §§ 41-1463(B) &
5 (F). On July 20, 2011, Zamorano filed a Complaint in Intervention alleging Defendant violated
6 A.R.S. §§ 41-1463(B) & (F) and analogous federal statutes under Title I of the Americans with
7 Disabilities Act, 42 U.S.C. § 12101 *et seq.* On August 4, 2011, Intermountain removed the
8 case to United States District Court, District of Arizona. Intermountain has denied and
9 continues to deny the State's and Zamorano's (when collectively, "Plaintiffs") allegations.

10 **COMPROMISE OF DISPUTED CLAIMS**

11 Plaintiffs and Intermountain desire to resolve the issues raised in the Complaint and
12 Complaint in Intervention (when collectively, "Complaints") to avoid the time, expense, and
13 uncertainty of further contested litigation. Plaintiffs and Intermountain expressly
14 acknowledge that this Consent Decree is the compromise of disputed claims, that
15 Intermountain denies all the claims, and that there has been no adjudication of any claim or
16 finding of any liability on the part of Intermountain. Intermountain and Plaintiffs agree to be
17 bound by this Consent Decree and to not contest that it was validly entered into in any
18 subsequent proceeding to implement or enforce its terms. The parties therefore have
19 consented to its entry, waiving trial, findings of fact, and conclusions of law.

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

24 **JURISDICTION**

25 1. This Court has jurisdiction over the subject matter of this action and over the parties,
26 and venue in United States District Court, District of Arizona, is proper. The allegations of the
Complaints, if proved, are sufficient to state claims upon which relief could be granted against
Intermountain under the ACRA and the ADA.

1 **RESOLUTION OF THE LAWSUIT**

2 2. This Consent Decree, and a private Settlement Agreement between Zamorano and
3 Intermountain, resolve all issues set forth in the Complaints.

4 **NO RETALIATION**

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

9 **ANTI-DISCRIMINATION POLICIES**

10 4. Intermountain agrees to comply fully with the provisions of the ACRA (A.R.S. § 41-
11 1401 *et seq.*, as amended) and Title I of the ADA (42 U.S.C. § 12101 *et seq.*, as amended) and
12 that all Intermountain's employment practices, including Intermountain's hiring processes, and
13 the terms, conditions and privileges of employment by Intermountain, shall be conducted and
14 maintained in a manner that does not discriminate on the basis of race, national origin, color,
15 disability, sex, religion, genetic testing or age.

16 5. Prior to the entry of this Consent Decree, Intermountain has developed and
17 implemented a comprehensive policy setting forth procedures for providing reasonable
18 accommodation to qualified individuals with disabilities who are employees and applicants for
19 employment.

20 a. This policy incorporates procedures for promptly evaluating and approving
21 requests for reasonable accommodation.

22 b. Intermountain agrees to continue considering the following five (5) factors set out
23 in 29 C.F.R. § 1630.2 (p) when determining whether granting a request for
24 reasonable accommodation for an employee or applicant with a disability would
25 impose an undue hardship: "(i) The nature and net cost of the accommodation
26 needed under this part, taking into consideration the availability of tax credits and
deductions, and/or outside funding; (ii) The overall financial resources of the
facility or facilities involved in the provision of the reasonable accommodation,

1 the number of persons employed at such facility, and the effect on expenses and
2 resources; (iii) The overall financial resources of the covered entity, the overall
3 size of the business of the covered entity with respect to the number of its
4 employees and the number, type and location of its facilities; (iv) The type of
5 operation or operations of the covered entity, including the composition, structure
6 and functions of the workforce of such entity, and the geographic separateness
7 and administrative or fiscal relationship of the facility or facilities in question to
8 the covered entity; and (v) The impact of the accommodation upon the operation
9 of the facility, including the impact on the ability of other employees to perform
10 their duties and the impact on the facility's ability to conduct business."

- 11 c. Intermountain will continue to engage in an interactive process with the
12 applicant/employee requesting reasonable accommodation to find an effective
13 accommodation that includes: (i) analyzing the barrier(s) to equal employment
14 opportunity in the application process, the job, or a benefit or privilege of
15 employment caused by the disability; (ii) consulting with the applicant/employee
16 to identify possible accommodations; (iii) assessing the effectiveness of possible
17 accommodations in eliminating or reducing the identified barrier(s) to equal
18 opportunity in consultation with the applicant/employee; and (iv) considering the
19 preference of the applicant/employee and selecting and implementing the
20 accommodation that is most appropriate for both the applicant/employee and the
21 employer.
- 22 d. Intermountain will communicate directly with the applicant/employee during the
23 interactive process and engage in a good faith exploration of possible
24 accommodations with the shared goal of identifying an accommodation that
25 allows the applicant to participate in the application process effectively, and the
26 employee to perform the job effectively, or enjoy equal benefits and privileges of
employment as are enjoyed by other similarly situated employees without
disabilities.

- 1 e. Intermountain will consider reassignment as one form of reasonable
2 accommodation when (i) no accommodation will enable the employee to perform
3 the essential functions of his or her current job, or (ii) all other reasonable
4 accommodations would impose an undue hardship.

5 **TRAINING**

- 6 6. Intermountain has provided new supervisory training regarding disability
7 discrimination and the reasonable accommodation of disabled persons. Additionally,
8 a. Within ninety (90) days following entry of this Consent Decree, Intermountain
9 will provide a minimum of ninety (90) minutes of live training to all supervisory
10 and management employees, and all employees involved in the hiring process,
11 regarding the company's policies and procedures that relate to the hiring,
12 employment, and reasonable accommodation of persons with disabilities. This
13 information will include, but will not be limited to, the policies described in
14 Paragraphs 3 through 5 above and examples of common reasonable
15 accommodations that can be provided in the workplace and in the job application
16 process, with an explanation that other possible reasonable accommodations may
17 be required. The training will discuss that this is an interactive process. All new
18 supervisory and management employees and all previously-untrained employees
19 involved in the hiring process will receive pre-recorded training on these issues.
20 b. Within ninety (90) days following entry of this decree and every six months
21 thereafter for the term of this Decree, Intermountain will provide a minimum of
22 ten (10) minutes in-service training during regularly scheduled staff meetings for
23 all employees regarding employment discrimination issues, with a focus on
24 Intermountain's commitment to providing reasonable accommodations for
25 employees with disabilities and explaining Intermountain's policies and
26 procedures for receiving and responding to requests for accommodation.
c. All personnel who attend the training referenced in Paragraphs A and B above
will sign an attendance roster. The registry of attendance will be retained by

1 Intermountain for the duration of the Consent Decree.

- 2 d. During the length of the Consent Decree, Defendant will distribute to all
3 supervisory and management employees all policies and procedures developed
4 or modified pursuant to this Decree.

5 **REPORTING**

6 7. Within ten (10) months of the effective date of this Consent Decree, Intermountain
7 will provide in writing to Assistant Attorneys General Ann Hobart or Jennifer M. Larson, or
8 their successors, at the Arizona Attorney General's Office, Civil Rights Division, 1275 W.
9 Washington, Phoenix, Arizona 85007, confirmation that it has complied with the training
10 requirements set forth in paragraph 6, above.

11 **MODIFICATION**

12 8. There will be no modification of this Consent Decree without the written consent of
13 all the parties and the further order of this Court. In the event of a material change of
14 circumstances, Intermountain, the State and Zamorano agree to make a good faith effort to
15 resolve this matter. If the parties are unable to reach agreement, any party may ask the Court to
16 make such modifications as are appropriate.

17 **CONTINUING JURISDICTION OF THE COURT**

18 9. The Court will retain jurisdiction over both the subject matter of this Consent Decree
19 and the State, Zamorano and Intermountain for one (1) year from the date of its entry to
20 effectuate and enforce it. The State may, for good cause shown, petition this Court for
21 compliance with this Consent Decree at any time during the period that this Court maintains
22 jurisdiction over this action. Should the Court determine that Defendant has not complied with
23 its terms, appropriate relief, including extension of this Consent Decree for such period as may
24 be necessary to remedy its non-compliance, may be ordered. In the event the parties have not
25 stipulated and the court has not ordered an extension of this Consent Decree, the Consent
26 Decree shall automatically expire and the Court shall lose jurisdiction over this action one (1)
year after entry of the Consent Decree.

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1 **MONETARY RELIEF TO INTERVENOR-PLAINTIFF**

2 10. Zamorano and Intermountain have entered into a private Settlement Agreement
3 providing for monetary relief to Zamorano.

4 **RELEASE**

5 11. Except for the obligations of Intermountain that are expressly set forth in this
6 Consent Decree, and in the private Settlement Agreement between Intermountain and
7 Zamorano, Intermountain and its past, present, and future officers, employees, agents, affiliates,
8 parents, successors and assigns are released from any and all civil liability to the Plaintiffs for
9 the claims alleged in the Complaints.

10 **MISCELLANEOUS PROVISIONS**

11 12. The Consent Decree will be binding on the Plaintiffs and Intermountain, as well as
12 Intermountain's agents, employees, successors, assigns and all persons in active concert or
13 participation with Intermountain.

14 13. Plaintiffs and Intermountain represent that they have read this Consent Decree in its
15 entirety and are satisfied that they understand and agree to all of its provisions, and represent
16 that they have freely signed this Consent Decree without coercion.

17 14. This Consent Decree will be governed in all respects by the laws of the State of
18 Arizona. Intermountain has agreed to this Consent Decree, but does so without an admission
19 that its previous policies or actions were in violation of existing laws or regulations.

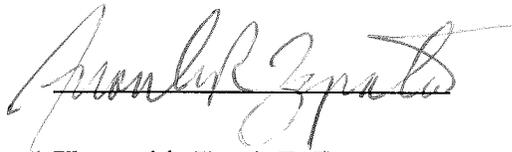
20 15. Plaintiffs and Intermountain shall bear their respective attorneys' fees and costs
21 incurred in this action up to the date of entry of this Consent Decree. In any action brought to
22 assess or enforce Plaintiffs' or Intermountain's compliance with the terms of this Consent
23 Decree, the Court may in its discretion award reasonable costs and attorneys' fees to the
24 prevailing party.

25 **EFFECTUATING CONSENT DECREE**

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

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ENTERED AND ORDERED this 9th day of July 2012.



Honorable Frank Z. Zapata
United States District Court,
District of Arizona

CONSENT TO DECREE

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1. On behalf of Defendant Intermountain Centers for Human Development, Inc., I acknowledge that I have read the foregoing Consent Decree, and that Defendant Intermountain Centers for Human Development, Inc. is aware of its right to a trial in this matter and has waived that right.

2. Defendant Intermountain Centers for Human Development, Inc. agrees to the jurisdiction of the Court, and consents to entry of this Consent Decree.

3. Defendant Intermountain Centers for Human Development, Inc. states that no promise of any kind or nature whatsoever (other than the terms of this Consent Decree) was made to induce it to enter into this Consent Decree, that it has entered into this Consent Decree voluntarily.

4. I, Jan Smith, am Director ^{Human Resources}, and, as such, am authorized by Defendant Intermountain Centers for Human Development, Inc. to enter into this Consent Decree for Defendant Intermountain Centers for Human Development, Inc. and on its behalf.

5. I further state that Defendant Intermountain Centers for Human Development, Inc. has 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 19th day of June, 2012.

Intermountain Centers for Human Development, Inc.

By Jan Smith
Jan Smith, Human Resources Director

Its Human Resources
Director

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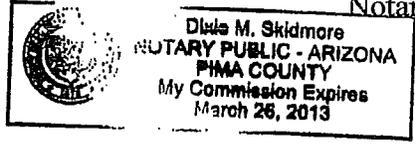
State of Arizona)
) ss.
County of Pima)

SUBSCRIBED AND SWORN to before me this 20th day of June, 2012,
by Jan Smith

Dwight M. Skidmore

Notary Public

My Commission Expires:
3/26/2013



APPROVED AS TO FORM AND CONTENT

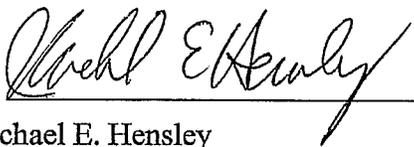
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THOMAS C. HORNE
Attorney General

By 
Ann Hobart
Assistant Attorney General

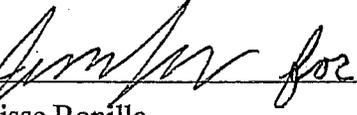
Date 7/5/2012

JONES, SKELTON & HOCHULI, P.L.C.

By 
Michael E. Hensley
Attorneys for Defendant

Date 6-25-12

AWERKAMP & BONILLA PLC

By 
Ivélisse Bonilla
Attorneys for Intervenor-Plaintiff

Date 7/5/2012

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