

5/2/13 FILED 11:00am  
MICHAEL R. JEANES, Clerk  
By: D. Harding  
D. Harding Deputy

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Attorneys for Plaintiff

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
11 IN AND FOR THE COUNTY OF MARICOPA

12 DIAN ROUNDS, a married woman,  
13 Plaintiff,  
14 vs.  
15 ARTHUR J. PORTER, DMD a single man; and  
16 HAMILTON AVENUE LLC, a Nevada limited  
17 liability company, doing business as JOHN A.  
18 PORTER, DMD,  
19 Defendants.

Consolidated cases:  
No. CV2011-013843  
No. CV2011-095476

[PROPOSED] CONSENT DECREE  
(Honorable Katherine Cooper)

18 THE STATE OF ARIZONA ex rel. THOMAS C.  
19 HORNE, the Attorney General, and THE CIVIL  
20 RIGHTS DIVISION OF THE ARIZONA  
21 DEPARTMENT OF LAW,  
22 Plaintiff,

21 vs.  
22 ARTHUR J. PORTER, DMD, a single man; and  
23 HAMILTON AVENUE LLC, a Nevada limited  
24 liability company,  
25 Defendants.

25 On July 22, 2011, Plaintiff the State of Arizona ("State") filed the above-captioned  
26 lawsuit in Maricopa County Superior Court against Defendant John A. Porter, DMD, alleging  
27 that Defendant discriminated against Dian Rounds ("Ms. Rounds") in violation of A.R.S. § 41-  
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1 1463 and retaliated against Ms. Rounds in violation of A.R.S. § 41-1464(A). The complaint  
2 was later amended to add Dr. Porter's true legal name, Arthur J. Porter, and Hamilton Avenue,  
3 LLC (collectively, "Defendants"). Defendants have denied and continue to deny the allegations  
4 of the complaint, as amended ("Complaint").

### 5 **COMPROMISE OF DISPUTED CLAIMS**

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

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

### 18 **JURISDICTION**

19 1. This Court has jurisdiction over the subject matter of this action and over the  
20 parties, and venue in Maricopa County is proper.

### 21 **RESOLUTION OF THE LAWSUIT**

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

### 23 **NO RETALIATION**

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

1           **POSTER**

2           4. Defendants agree to keep posted at all times in a conspicuous, well-lighted  
3 place frequented by its employees and applicants for employment, in each location it  
4 maintains and operates within the State of Arizona, a poster which states, in English and  
5 Spanish, that discrimination in employment based on race, color, religion, age (40 and older),  
6 sex, national origin, results of genetic testing or disability is prohibited.

7           **ANTI-DISCRIMINATION POLICIES**

8           5. Defendants agree to comply fully with the provisions of the ACRA (A.R.S. § 14-  
9 1401, et seq., as amended) and that all Defendants' employment practices, including  
10 Defendants' hiring processes, and the terms, conditions and privileges of employment by  
11 Defendants, will be conducted and maintained in a manner that does not discriminate on the  
12 basis of race, national origin, color, disability, sex, religion, genetic testing or age.

13           6. Defendants agree to discontinue use and enforcement of their current policy  
14 entitled "Sexual Harassment and Abusive Treatment."

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

- 20           i. a strong and clear statement that sexual harassment is against state and federal  
21 law and will not be tolerated in the workplace;
- 22           ii. a statement encouraging persons who believe they have experienced sexual  
23 harassment at work to complain of sexual harassment and that such complaints  
24 may be made to the ACRD;
- 25           iii. the phone number, website, and physical address of the ACRD;
- 26           iv. a statement that unlawful discrimination and/or retaliation violates state and  
27 federal civil rights laws;
- 28

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

4 Also within thirty (30) days of the effective date of this Consent Decree, Defendants  
5 agree to provide a copy of the policy to Jennifer Larson, Assistant Attorney General ("AAG  
6 Larson"), Arizona Attorney General's Office, 1275 W. Washington Street, Phoenix, Arizona  
7 85007, or her successors, for the ACRD's review. Within ten (10) days of receiving the  
8 ACRD's approval, Defendants will disseminate the policy to all employees.

#### 9 TRAINING

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

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

24 9. Within sixty (60) days of the effective date of this Consent Decree, Defendant  
25 Arthur J. Porter will receive training on state and federal prohibitions on employment  
26 discrimination and workplace harassment, including particularly sexual harassment. The  
27 training will consist of at least two (2) hours of instruction by a qualified trainer. If there are  
28 costs associated with such training, Defendants will pay for those costs.

1           Within ten (10) days after the training is completed, Defendants will notify AAG  
2 Larson, or her successor, in writing confirming that Dr. Porter successfully completed the  
3 training. This notice will include a copy of the written materials used during the training, if  
4 any, and the name of the agency or individual providing the training and the resume or  
5 curriculum vitae of the trainer.

#### 6           **PAYMENT OF COSTS**

7           10.    Within thirty (30) days of the effective date of this Consent Decree, Defendants  
8 agree to pay to the State \$2,000.00 as reimbursement for taxable costs. The check will be made  
9 payable to the Public Advocacy & Civil Rights Division of the Arizona Attorney General's  
10 Office, and tendered to AAG Larson, or her successor.

#### 11           **MODIFICATION**

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

#### 17           **CONTINUING JURISDICTION OF THE COURT**

18           12.    The Court will retain jurisdiction over both the subject matter of this Consent  
19 Decree and the State and Defendants for two (2) years from the date of its entry to effectuate  
20 and enforce it. The State may, for good cause shown, petition this Court for compliance with  
21 this Consent Decree at any time during the period that this Court maintains jurisdiction over this  
22 action. Should the Court determine that Defendants have not complied with its terms,  
23 appropriate relief, including extension of this Consent Decree for such period as may be  
24 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 will automatically expire and the Court will lose jurisdiction over this action two (2)  
27 years after entry of the Consent Decree.

1                   **RELIEF TO AGGRIEVED PARTY**

2           13.    *Aggrieved Party Dian Rounds continues to pursue monetary relief in a lawsuit*  
3 *currently pending against Defendants in the Maricopa County Superior Court. The parties*  
4 *acknowledge that nothing in this Consent Decree affects Ms. Rounds' claims or the remedies*  
5 *available to her in her own lawsuit.*

6                   **RELEASE**

7           14.    *Except for the obligations of Defendants that are expressly set forth in this*  
8 *Decree, Defendants and their past, present, and future officers, employees, agents, affiliates,*  
9 *parents, successors and assigns are released from any and all civil liability to the State for the*  
10 *claims alleged in the Complaint.*

11                   **MISCELLANEOUS PROVISIONS**

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

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

18           17.    *This Consent Decree will be governed in all respects by the laws of the State of*  
19 *Arizona.*

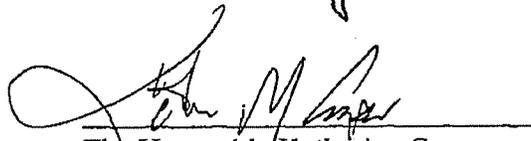
20           18.    *The State and Defendants will bear their own respective attorneys' fees and costs*  
21 *incurred in this action up to the date of entry of this Decree. In any action brought to assess or*  
22 *enforce the State's or Defendants' compliance with the terms of this Decree, the court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

24                   **EFFECTUATING CONSENT DECREE**

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

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ENTERED AND ORDERED this 1st day of May 2013.



The Honorable Katherine Cooper

**HON. KATHERINE COOPER  
JUDGE OF THE SUPERIOR COURT**

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**CONSENT TO DECREE**

1. On behalf of Arthur J. Porter and Hamilton Avenue, LLC, I acknowledge that that I have read the foregoing Consent Decree, and that Defendants Arthur J. Porter and Hamilton Avenue, LLC are aware of their right to a trial in this matter and have waived that right.

2. Defendants Arthur J. Porter and Hamilton Avenue, LLC, agree to the jurisdiction of the Court, and consent to entry of this Consent Decree.

3. Defendants Arthur J. Porter and Hamilton Avenue, LLC, 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, Arthur J. Porter, am Manager, and as such, am authorized by Defendants Arthur J. Porter and Hamilton Avenue, LLC, to enter into this Consent Decree for and on their behalf.

5. I further state that Defendant Arthur John Porter has been represented pro se and Hamilton Avenue, LLC, 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.

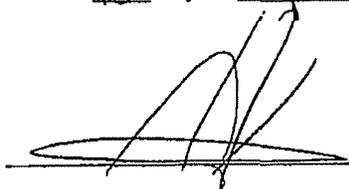
DATED this 10th day of April, 2013.

Hamilton Avenue, LLC  
and Arthur J. Porter, DMD

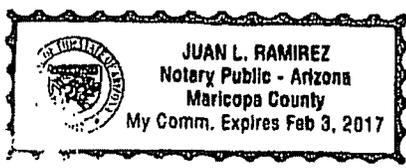
By Arthur J. Porter

1 State of Arizona )  
2 ) ss.  
3 County of Maricopa )  
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6 SUBSCRIBED AND SWORN to before me this 10 day of April, 2013,  
7 By Arthur John Porter

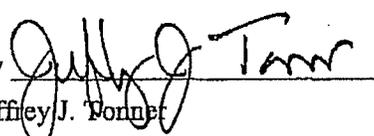
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10 Notary Public  
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13 My Commission Expires:  
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1 APPROVED AS TO FORM AND CONTENT

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<p>THOMAS C. HORNE Attorney General</p> <p>By <u></u> Jennifer Larson Assistant Attorney General</p> <p>Date <u>4/23/2013</u></p>	<p>By <u></u> Arthur J. Porter Defendant Pro Se</p> <p>Date <u>4-10-2013</u></p>
<p>JEFFREY J. TONNER, P.C.</p> <p>By <u></u> Jeffrey J. Tonner Attorney for Defendant Hamilton Avenue, LLC</p> <p>Date <u>April 10, 2013</u></p>	