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October 3, 2011

Civil Division Court Manager  
Caledonia Superior Court  
1126 Main Street :Suite 1  
St Johnsbury, VT 05819

Re: Baker and Linsley v. Wildflower Inn a/k/a DOR Associates LLP  
Docket No. 183-7-11 Cacv

Dear Sandra:

Please accept for filing with the Court the enclosed Motion to Intervene in the above referenced matter filed by the Vermont Human Rights Commission. I have mailed a copy of the Motion to counsel of record in this matter.

I appreciate your cooperation in this matter.

Sincerely yours,

Robert Appel  
Executive Director

Enc.

Cc: Attorney Dan Barrett (w/enc.)  
Attorney Norman Smith (w/enc.)

VERMONT SUPERIOR COURT  
STATE OF VERMONT

CIVIL DIVISION  
CALEDONIA COUNTY

Katherine Baker and Ming-Lien Linsley, )	
Plaintiffs )	
	) Docket No. 187-7-11 Cacv
v. )	
	)
Wildflower Inn a/k/a DOR Associates, )	
Defendant )	

**MOTION TO INTERVENE**

**NOW COMES** the proposed Intervener, the Vermont Human Rights Commission ("Commission" or "HRC") by and through its counsel, Robert Appel, and pursuant to V.R.C.P. 24 hereby respectfully MOVES the Court to allow the Commission to intervene in the above referenced matter. In support of this Motion, the Intervener submits the following.

**MEMORANDUM OF LAW**

I. Intervention as a Matter of Right

Vermont Rule of Civil Procedure 24(a) provides for intervention as a matter of right:

when the applicant claims an interest relating to the property or transaction which is the subject of the action and applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Intervener asserts that its application meets this standard for intervention as a right due to the fact that the Commission is the state agency statutorily charged with

enforcing Vermont's Fair Housing and Public Accommodations Act ("VFHPAA"), the act underlying the instant action. The VFHPAA defines a "'Place of public accommodation' [to] mean any school, restaurant, store, establishment or other facility at which services, facilities, goods, privileges, advantages, benefits or accommodations are offered to the general public." See 9 V.S.A. 4501(1). The Commission believes that a ruling in the instant matter favorable to the defendant on constitutional grounds would have a profoundly negative effect on its on-going enforcement program.

The defendant in the instant action is alleging constitutionally based affirmative defenses to the plaintiffs' discrimination claims<sup>1</sup> alleging that:

applying the VFHPAA against Defendant in this specific situation where Defendant would be forced to host expressive events, violates Defendant's and its owners' ...

- C. free-exercise rights under Article 3 of the Vermont Constitution, and the Free Exercise Clause of the First Amendment to the United States Constitution ...
- D. freedom from compelled speech or expression under the Free Speech Clause of the First Amendment to the United State Constitution and Article 13 of the Vermont Constitution... [and]
- E. freedom of expressive association under the First Amendment to the United States Constitution and Article 13 of the Vermont Constitution.

This constitutional assault on the underpinnings of the VFHPAA is of acute concern to the Commission that is charged with administrative and legal enforcement of the Act.

Without questioning the ability and the skill of plaintiffs' counsel in this matter, it is clear that the Intervener's interest is not "adequately represented by the existing parties." V.R.C.P. 24(a). VHRC's interest in this matter is to successfully defend these

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<sup>1</sup> See defendant's answer filed on or about August 23, 2011 at pages 3 and 4 by its listing of affirmative defenses.

statutory prohibitions against discrimination from constitutional attack, a separate and distinct objective in the original action which is to secure relief for the individuals harmed by the defendant's unlawful acts. See Vermont Human Rights Commission Act at 9 V.S.A. §4553(a)(6)(A) which empowers the Commission to "enforce ...prohibitions against discrimination by bringing an action in the name of the commission seeking ... temporary or permanent injunctive relief in the public interest." Thus, the Intervener's interests are broader than those of the individual named plaintiffs.

## II. Permissive Intervention

If the Court rejects this application of V.R.C.P. 24(a) to the instant circumstances, in the alternative the Intervener argues that it be permitted to intervene pursuant to subsection (b) of Rule 24. First, it is clear that the Intervener's VFHPAA claims "and the main action have a question of law or fact in common," V.R.C.P.24(b), as there is considerable overlap in both the facts and law of the two distinct claims. Therefore, the interests of judicial economy mitigate in favor of granting the Intervener's Motion rather than having the Commission file a separate and distinct action against the defendant.


Second, as referenced above, the Intervener is "an agency of the State of Vermont" authorized by §4553(a)(6) of the Vermont Human Rights Commission Act, 9 V.S.A. Chapter 141, as well as §4506(c) of VFHPAA to enforce the provisions of that Act. As such, the following provision of V.R.C.P. 24(b) applies, "[W]hen a party to an action relies for ground of claim... upon any statute... administered by a ... state

governmental ... agency,... the agency upon timely application may be permitted to intervene in the action.” The rule provides that the court should consider “whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Defendant only recently filed its Answer to the Plaintiffs’ Complaint, and upon information and belief, neither the parties nor the court have yet to devise a discovery schedule. Therefore, granting the Intervener’s Motion will not substantially delay the proceedings nor cause prejudice to the original parties.

WHEREFORE, pursuant to V.R.C.P. 24, the Plaintiff respectfully REQUESTS the Court to GRANT the REQUEST OF THE VERMONT HUMAN RIGHTS COMMISSION to INTERVENE with respect to the Vermont Fair Housing and Public Accommodations Act claim.

Dated at Montpelier, Vermont this 3rd day of October, 2011.

**VERMONT HUMAN RIGHTS COMMISSION**

By:   
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