IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

CASE NO. 4:09-cv-00193-RH-WCS

Eva Locke, Patricia Anne Levenson, Barbara Banderkolk Gardner, National Federation of Independent Business,

Plaintiffs,

v.

Joyce Shore, in her official capacity as Chair of the Florida Board of Architecture and Interior Design; John P. Ehrig, in his official capacity as Vice-Chair of the Florida Board of Architecture and Interior Design; and Aida Bao-Garciga; Roassana Dolan; Wanda Gozdz; Mary Jane Grigsby; Garrick Gustafson; E. Wendell Hall; Eric Kuritsky; Roymi Membiela and Lourdes Solera, in their official capacities as members of the Florida Board of Architecture and Interior Design,

Defendants.
_____/

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT

Pursuant to rule 56, Fed. R. Civ. P., Defendants move for summary judgment and state:

1. This case constitutes a facial challenge to various provisions of Chapter- 481, Fla. Stat., in which the State of Florida regulates the provision of interior design services in Florida.

2. The statute requires a license for any person to provide interior design services in Florida in non-residential spaces (the "Practice Act") and restricts the use of certain terms to those holding a license (the "Title Act").

3. Plaintiffs' complaint asserts that these laws violate the following provisions of the U.S. Constitution:[1]

a. As to the Title Act: First Amendment, asserting that they are being denied the right to speak truthfully about services they lawfully provide;

b. As to the Practice Act: First Amendment, asserting that the act constitutes a prior restraint upon and threatens to punish a substantial amount of protected commercial speech;

c. As to the Practice Act: Fourteenth Amendment—Equal Protection;

[1] Plaintiffs also initially brought a procedural due process challenge which has been voluntarily dismissed.

d. As to the Practice Act: Fourteenth Amendment—Substantive Due Process;

e. As to the Practice Act: Fourteenth Amendment—Privileges or Immunities; and

f. As to the Practice Act: Article 1, § 8—Commerce Clause.

4. As to each of these claims, as set forth in the accompanying memorandum, the law as applied to the undisputed facts requires a judgment in favor of Defendants on all counts.

WHEREFORE, Defendants respectfully requests that this court issue an order granting their motion for summary judgment and dismissing this case in its entirety.

MEMORANDUM

Florida began regulating the use of the term "interior designer" in 1988 and the practice of interior design in 1994. Section 481.223(c), Fla. Stat., prohibits the "Use the name or title . . . "interior designer" or "registered interior designer," or words to that effect, when the person is not then the holder of a valid license issued pursuant to this part." Plaintiffs assert that this "Title" provision violates the First Amendment because individuals are permitted to provide interior design services for residential properties but cannot "truthfully" describe that which they are permitted to provide. They also assert that the restriction of "words to that effect"

is vague because no one can tell in advance what words are prohibited. Because of the licensure requirement for commercial residential design, referring to one self as an interior designer carries the false implication of licensure and therefore can be prohibited. The statute is not vague because, reading the statute as a whole gives sufficient meaning to the term "words to that effect" by referencing back to the services defined as interior design services by the statute. These would include "reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings." § 481.203(8), Fla. Stat.

In addition to the Title provision, Plaintiffs attack the Practice provisions that require licensure for nonresidential interior design and set forth the requirements for such licensure. Section 481.223(1)(b), Fla. Stat., prohibits the "Practice interior design unless the person is a registered interior designer unless otherwise exempted." One exemption is "A person who performs interior design services or interior decorator services for any residential application, provided that such person does not advertise as, or represent himself or herself as, an interior designer." § 481.229(6)(a), Fla. Stat. In order to become licensed as an interior designer, an applicant must have a combination of 6 years combined education and experience and pass a designated examination. § 481.209, Fla. Stat. Plaintiffs challenge the Practice provisions of the Act alleging violations of various

provisions of the U.S. Constitution. As set forth in detail below, all of these claims must fail and Defendants are entitled to summary judgment.

SUBSTANTIVE DUE PROCESS and EQUAL PROTECTION

Plaintiffs assert that Florida's regulation of interior designers violates their substantive due process rights because it is arbitrary, unreasonable, and unrelated to the advancement of any legitimate government interest. [Complaint ¶45] They further assert that their equal protection rights are violated because the law "arbitrarily prevent[s] some people from providing consultations, studies, or drawings regarding the "interior elements of building" without an interior design license, while allowing other similarly situated nonlicensees to engage in that same conduct." [2] [Complaint ¶53] Because this law does not address fundamental rights or affect a suspect class, the equal protection and substantive due process standards are the same and both of these claims are defeated if there is a rational basis for them. *In re Wood*, 866 F.2d 1367, 1371 (11th Cir.1989) ("The standard for evaluating substantive due process challenges to social and economic legislation is virtually identical to the 'rational relationship' test for evaluating equal protection claims.")

Under the rational basis test, a challenger must defeat the presumption that a rational basis exists and has the burden to negative every conceivable basis which

[2] To the extent Plaintiffs are asserting a right to employment, such rights do "not enjoy substantive due process protection" because such "rights are state-created ..., not 'fundamental' rights created by the Constitution." *McKinney v. Pate*, 20 F.3d 1550, 1560 (11th Cir.1994).

might support it. *Bates v. Islamorada, Village of Islands,* 243 Fed.Appx. 494, 496, 2007 WL 1745870, 1 (11th Cir. 2007), citing *F.C.C. v. Beach Commc'ns,* 508 U.S. 307, 315, 113 S.Ct. 2096, 2102, 124 L.Ed.2d 211 (1993); *accord Bah v. City of Atlanta,* 103 F.3d 964, 967 (11th Cir. 1997) ("[T]he district court inappropriately placed the burden on the City to come forward with evidence showing that public safety in taxicabs was a problem, which is not how the burdens are allocated in rational basis analysis."). Because the legislature is never required to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. *Williams v. Morgan,* 478 F.3d 1316, 1320 -1321 (11th Cir. 2007). In addition, state legislatures are "allowed leeway to approach a perceived problem incrementally, even if its incremental approach is significantly over-inclusive. *Id.* The law survives rational basis review even if it "seems unwise ... or if the rationale for it seems tenuous." *Romer v. Evans,* 517 U.S. 620, 632 (1996). More importantly, there is no need to show that the law specifically promotes safety, so long as it promotes the general welfare or some other legitimate governmental aim. *Leib v. Hillsborough County Public Transp. Com'n,* 558 F.3d 1301, 1309 (11th Cir. 2009). Under rational basis review, a state "has no obligation to produce evidence to sustain the rationality of a statutory classification." *Id.* at 1306 (citing *Heller v. Doe by Doe,* 509 U.S. 312, 320 (1993)); *FCC v. Beach Comm'ns, Inc*., 508 U.S.

307, 315 (1993) ("Thus, the absence of 'legislative facts' explaining the distinction on the record has no significance in rational-basis analysis. In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.")

Under these standards, Defendants are entitled to judgment on the substantive due process and equal protection claims as a matter of law. The rationale for the licensing of interior designers is to protect the health safety and welfare of the public. This is inarguably a legitimate governmental aim. Based on the definition and practice of interior design, it was rational for the legislature to determine that those engaged in this profession (in nonresidential spaces) should be licensed.

Section 481.203(8), Fla. Stat., defines "Interior design" as:

> designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings.

The practice of interior design which includes "space planning" involves layout of interior walls of commercial structures. [Bowden depo, p. 9-10; Locke depo, p.7-8; Levinson depo, p. 7] For example, the design team for an office building might include a licensed architect whose responsibility would include designing the

supporting structure of the building. Also included would be an interior designer who would be responsible for the layout of all interior walls. Viewing this responsibility alone, it must be concluded that the legislature could rationally have concluded that licensing was appropriate. Even if the definition is overinclusive, the rational basis exists. *Williams, supra.* Even in the absence of specific admissible evidence that such regulation is necessary to protect the public, the law survives rational basis review. *Lieb, supra.* The law is presumed rational and no evidence must be presented to justify it.

To the extent Plaintiffs' equal protection claim is based on an allegation of selective enforcement, it also must fail. Of course, only one Plaintiff, Gardner, has standing to make such a claim since only she has been the subject of an enforcement action by the Board. Her claim must fail because there is no allegation or proof that "(1) [s]he was treated differently from other, similarly situated individuals, and (2) "the defendants unequally applied [the statute] for the purpose of discriminating against [the plaintiff]." *GJR Invs., Inc. v. County of Escambia, Fla.,* 132 F.3d 1359, 1367 (11th Cir.1998); *accord Campbell v. Rainbow City,* 434 F.3d 1306, 1314 (11th Cir.2006).

Defendants are entitled to judgment on claims 3 and 4 of Plaintiffs' Complaint.

PRIVILEGES OR IMMUNITIES

Plaintiffs' 6th claim for relief is purportedly based on the Privileges and Immunities Clause of the Fourteenth Amendment. They assert that the law is invalid because "Florida's regulation of interior designers . . . is arbitrary, unreasonable, and unrelated to the advancement of any legitimate government interest." [Complaint ¶59] Defendants are entitled to judgment as a matter of law when judged by the proper standards under this clause. Plaintiffs' allegation here is identical to a substantive due process claim and should be denied for the same reasons as set forth above.

To make out a claim for violation of the Privileges and Immunites Clause of the 14th Amendment, there must be a claim of discrimination based on out of state residency. In *Kirkpatrick v. Shaw*, 70 F.3d 100, 102 -103 (11th Cir. 1995), the court stated:

> Kirkpatrick fails to state a claim under this constitutional provision, because the Florida Bar Rules do not discriminate on the basis of out-of-state residency. *See Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 65, 108 S.Ct. 2260, 2264-65, 101 L.Ed.2d 56 (1988) (disparate treatment of nonresident bar applicants violates Privileges and Immunities Clause); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 288, 105 S.Ct. 1272, 1280, 84 L.Ed.2d 205 (1985) (residency requirement for bar applicants held unconstitutional); *Giannini v. Real*, 911 F.2d 354, 357 (9th Cir.) (requiring out-of-state attorneys to take the California bar does not

> violate the Privileges and Immunities Clause because there is no disparate treatment of nonresidents), *cert. denied*, 498 U.S. 1012, 111 S.Ct. 580, 112 L.Ed.2d 585 (1990). All Florida bar applicants, both residents and nonresidents, must meet the same requirements for admission.

In *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 65 (1988):

> The issue [was] whether the State has burdened the right to practice law, a privilege protected by the Privileges and Immunities Clause, by discriminating among otherwise equally qualified applicants solely on the basis of citizenship or residency.

In *Toomer v. Witsell*, 334 U.S. 385, 398 (1948), the Supreme Court found various South Carolina regulations[3] of the shrimping industry violative of the Privileges and Immunities Clause, holding that "the purpose of that clause . . . is to outlaw classifications based on the fact of non-citizenship."

In this case, there is no allegation that out of state residents are subjected to differing standards with respect to licensing under chapter 481. Review of the statute reveals nothing in the nature of a discrimination against out of state residents. To get a license in Florida, you do not have to be a Florida resident or have an office or any other affiliation to the State. There is no difference in the licensure requirements – an out of state resident must take the same test, complete

[3] As relevant here, the following laws of South Carolina were at issue in *Toomer*: Section 3379, as amended in 1947, requires payment of a license fee of $25 for each shrimp boat owned by a resident, and of $2,500 for each one owned by a non-resident. Another statute, not integrated in the Code, conditions the issuance of non-resident licenses for 1948 and the years thereafter on submission of proof that the applicants have paid South Carolina income taxes on all profits from operations in that State during the preceding year. And s 3414 requires that all boats licensed to trawl for shrimp in the State's waters dock at a South Carolina port and unload, pack, and stamp their catch 'before shipping or transporting it to another State or the waters thereof

the same educational and experience requirements and pay the same fees as a Florida resident. There is also no difference in regulation after the fact of licensure. All that is required by this clause is that citizens of State A be able to do business in State B on terms of substantial equality with the citizens of that State. *Id.* That is the case here and Defendants are entitled to judgment as a matter of law.

ARTICLE 1, § 8—COMMERCE CLAUSE

In Plaintiffs' 7th claim for relief, they claim that Florida's law violates the commerce clause because it has both the purpose and effect of discriminating against out-of-state interior designers and because it impos[es] an undue burden on interstate commerce while providing no demonstrable local benefits. [Complaint ¶¶62 and 63] The Supreme Court has held that "States have a compelling interest in the practice of professions within their boundaries, and ... they have broad power to establish standards for licensing practitioners and regulating the practice of professions....*Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975) The Interior Design licensing law neither discriminates against interstate commerce nor burdens interstate commerce any more than any other professional licensing statute. It is, therefore, valid as a matter of law.

The first question in the Commerce Clause analysis is whether the law "affirmatively or clearly discriminates against interstate commerce on its face or in practical effect." *C & A Carbone, Inc. v. Town of Clarkstown, N. Y.*, 511 U.S. 383, 402 (1994). Discriminatory laws are those that "mandate differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Granholm v. Heald,* 544 U.S. 460, 472 (2005). In this case, there is no difference in treatment between domestic and interstate commerce, either on the face of the statute or in its practical effect. As to the first issue, Plaintiffs cannot point to any language on the face of the statute that is discriminatory. As set forth above under the Privileges and Immunities analysis – the law imposes the same restrictions on all, regardless of their location.

The undisputed facts also show that there is no discrimination against interstate commerce in the law's practical effect. As to the movement of goods in interstate commerce, the testimony shows unequivocally that there is no barrier to the purchase of goods for use in Florida from anywhere. In fact, the testimony showed that much of the custom materials used in Florida have to come from outside the state since there is no other source. [Bowen depo, p. 13]

If it is the Plaintiffs' position is that the law discriminates against out of state interior designers, again there is no basis for such a finding. Anecdotal testimony

that clients are hesitant to hire unlicensed designers from outside the state does not prove the point. There is nothing in the testimony to prove that the same hesitancy will not occur with *in state* unlicensed designers. It is the lack of license, not the location of the designer that causes the hesitancy. [Bowen depo, p. 12-13]

The next step in the commerce clause analysis is to determine whether, in the absence of any discrimination,

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits

Pike v. Bruce Church, Inc, 397 U.S. 137, 142 (1970). In *Pike,* the Court held that it violated the commerce clause to "require a person to go into a local packing business solely for the sake of enhancing the reputation of other producers within its borders." *Id.* at 146.

In the instant case, the putative local benefits are not the rank protectionism of *Pike,* but rather the protection of the health, safety and welfare of the public through the proper design of interior public spaces, a purpose this court should not second guess.

> In assessing a statute's putative local benefits, we cannot "second-guess the empirical judgments of lawmakers concerning the utility of legislation." Rather, we credit a putative local benefit "so long as an examination of the

> evidence before or available to the lawmaker indicates that the regulation is not wholly irrational in light of its purposes."

Allstate Ins. Co. v. Abbott, 495 F.3d 151, 164 (5th Cir. 2007) citing *Ford Motor Co. v. Texas Dept. of Transp*., 264 F.3d 493, 503 (5th Cir. 2001) (Since the court must confine its analysis to the purposes the lawmakers had for maintaining the regulation, the only relevant evidence concerns whether the lawmakers could rationally have believed that the challenged regulation would foster those purposes.) (quoting *Kassel v. Consolidated Freightways Corp*., 450 U.S. 662, 680-81, 101 S.Ct. 1309, 67 L.Ed.2d 580 (1981)). The deference to the legislative judgment here is the same as that required in the rational basis test – the legislature here could rationally have believed that there would be a benefit, other than a prohibited protectionist one, from this regulation.

Given the public health safety and welfare justification, the application of the *Pike* balancing test presents the same predicament for a court that the rational basis test presents. Weighing the public benefit (which cannot be quantified) against a perceived burden on commerce amounts to second guessing the legislative judgment. As long as there is no discrimination and a non-pretextual local benefit, the legislative judgment must prevail. That is the case here anad Plaintiffs' claim, therefore, must fail.

FIRST AMENDMENT (PRACTICE ACT)

In Plaintiffs Second claim for relief, they assert that the Practice Act – the requirement for a license for non-residential interior design – violates the First Amendment because it fails to give people of ordinary intelligence reasonable notice about what expression and/or conduct is permitted and what is forbidden [Complaint ¶49] and because it imposes a prior restraint upon and threatens to punish a substantial amount of protected speech [Complaint ¶50].[4] Plaintiffs' claims here have no merit.

Plaintiffs' first claim is a facial vagueness challenge to a professional regulatory statute. Plaintiffs couch this in terms of the First Amendment in an attempt to ratchet up the level of review. However, this vagueness assertion is in fact a due process challenge. This statute is a professional regulation and does not raise First Amendment issues any more than regulation of beauticians does. While there may be an aesthetic component to the practice of interior design, the regulation of this profession is measured by the same standards as the regulation of any other profession. The definition of interior design is:

> "Interior design" means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design"

[4] In paragraph 53, Plaintiffs assert that section 481.223(c), Fla. Stat., is impermissibly vague. This is a First Amendment attack on the Title Act which will be addressed in the next section of this memo.

> includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings.

In contrast, interior decorator services are:

> the selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings not subject to regulation under applicable building codes.

Purely aesthetic services *are not regulated*. Plaintiffs' claim in this regard is based on an absurd reading of the statute. A license is not required for the selection of art to hang on the walls or for the selection of a color palate for a commercial space. There is no evidence that anyone has ever been cited for these types of services. The court should avoid adopting an absurd reading of the statute in order to find it unconstitutional.

Under the proper standard, Plaintiffs' vagueness challenge must fail.

> Th[e] mere possibility of a constitutional application is enough to defeat a facial challenge to the statute. See *High Ol' Times, Inc. v. Busbee*, 673 F.2d 1225, 1228 (11th Cir.1982) (holding that to be facially unconstitutional, the statute must be unconstitutional "in all of its applications ... [T]he possibility of a valid application necessarily precludes facial invalidity.").

Harris v. Mexican Specialty Foods, Inc. 564 F.3d 1301, 1313 (11th Cir. 2009).

This statute can easily be applied to the provision of interior design services that include the design of interior walls, to a reflected ceiling plan, or plans for the fabrication of interior fixed objects like counters or reception desks of an office. Persons of reasonable intelligence can derive a core meaning from this statute. In *High Ol' Times, Inc. v. Busbee*, 673 F.2d 1225, 1228 (11th Cir. 1982), the court reversed the District Court stating:

> By noting that the statutes apply to some of the objects sold by Georgia Merchants, the district court necessarily declared the statutes void for vagueness because they were unclear in some of their applications. The proper analysis requires the district court to consider only whether the laws are vague in all of their applications.

This statute is not vague in all its applications and Plaintiffs' claim must fail.

Plaintiffs' second claim, that the law imposes a prior restraint and threatens to punish protected speech also must fail based on the definitions of the Act. To the extent Plaintiff want to express themselves with regard to aesthetic considerations in the decorating of a space, nothing in the statute or its established interpretations would prevent it. Only an absurdly broad reading of the statute can get to the Plaintiffs' extreme position, one which the court should avoid..

FIRST AMENDMENT (TITLE ACT)

Finally, Plaintiffs attack the constitutionality of the "Title Act." They allege that the law prohibits the Plaintiffs from accurately describing themselves as

"interior designers"—and from using related terms like "interior design" and "space planning" that accurately describe work they lawfully perform. Assuming the validity of the Practice Act[5], as set forth above, Plaintiffs' claim must fail because, by describing themselves as "interior designers" they are not accurately describing themselves. Without a license, the can only engage in *residential* interior design. Without the limiting description, the use of the term interior design (or space planning) is misleading or potentially misleading and therefore subject to regulation by the State.

Plaintiffs cannot succeed as a matter of law. The commercial speech at issue – Plaintiffs' desire to use the terms "interior designer" and "interior design" when advertising their services – is actually or inherently misleading speech. Florida law gives specific and particular meaning to the designations "interior designer" and "interior design." Individuals who do not meet the statutory requirements to be licensed as interior designers should not be allowed to mislead Florida consumers by using the designation "interior designer." Certifications and licensure communicates information to the consuming public and provides advantages to the holders of such designations. [Bowden depo, p. 6-8] Because the speech Plaintiffs

[5] Because there is a valid licensure requirement for interior designers, this case is distinguishable from *Abramson v. Gonzalez* , 949 F.2d 1567, 1574 (11th Cir. 1992), where the court held: "anyone may currently practice psychology or the allied fields in Florida, but only those who have met the examination/academic requirements of the statutes can say that they are doing so or hold themselves out as psychologists or allied professionals"

seek to engage in implies such licensure, it is inherently misleading and therefore not protected by the First Amendment.

It is undisputed that the speech at issue in this case is "commercial speech," since the regulation applies to advertising, references a specific product or service, and the speaker has an economic motive for engaging in the speech. *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66-67 (1983). Though commercial speech is protected by the First Amendment, it "enjoys only a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, and is subject to modes of regulation that might be impermissible in the realm of noncommercial expression." *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 623 (1995) (internal quotation marks and citations omitted). The Supreme Court has articulated the following four-part framework for analyzing government regulation of commercial speech:

> At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y., 447 U.S. 557,

566 (1980). Under the first part of the analysis, commercial speech that is false, deceptive, or misleading may be prohibited in its entirety by the State without offending the Constitution. *Seabolt v. Texas Bd. of Chiropractic Examiners*, 30 F.Supp.2d 965, 968 (S.D. Tex. 1998). It is only if the speech at issue is protected by the First Amendment that the court must examine the remaining three prongs of the *Central Hudson* test.

The Court's first task is to determine if the speech at issue is protected by the First Amendment. Only non-misleading commercial speech describing lawful activity is constitutionally protected. *Central Hudson*, 447 U.S. at 566. Fraudulent or misleading speech is not protected by the First Amendment. *In re R.M.J.*, 455 U.S. 191, 203 (1982). Even true commercial speech that inherently risks being deceptive is unprotected by the First Amendment. *Id*. "[M]uch commercial speech is not provably false or even wholly false, but only deceptive or misleading. We foresee no obstacle to a State's dealing effectively with this problem. The First Amendment, as we construe it today, does not prohibit the State from insuring that the stream of commercial information flow cleanly as well as freely." *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771-772 (1976). Speech is inherently misleading if it is likely to deceive the public. *In re RMJ*, 455 U.S. at 203 (emphasis added). Use of the terms "interior designer" or

"interior design" by someone who is not a licensed interior designer is inherently misleading.

In contrast to the cases dealing with only title acts, Florida has a licensing provision that limits the practice of interior design in commercial space to those holding a license. For one to call herself an interior designer with no limitation (such as "residential") implies licensure and the ability to work on non-residential projects. The State has an interest in preventing this confusion. Plaintiffs and others similarly inclined can present themselves as "residential interior designers" or "interior decorators." None of the Plaintiffs or their expert could satisfactorily differentiate the terms interior designer from interior decorator. [Bowden depo, p.10; Locke depo, p. 15-16; Levinson depo, p. 11] Therefore it is reasonable to require those without licenses to use the latter term.

CONCLUSION

For the reasons set forth above, Plaintiffs claims all fail as a matter of law and Defendants are entitled to summary judgment on all counts.

Respectfully submitted this 11th day of December, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served by first class mail and e-mail filing with this Court's CM/ECF system this 11th Day of December, 2009, on:

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