

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	
LUCKY JOY RESTAURANT, INC., and)	
XIAO RONG WU (in his personal capacity))	
)	
Defendants.)	
_____)	

CONSENT JUDGMENT

I. Factual and Procedural Background

1. This Consent Judgment resolves the Complaint filed by Plaintiff United States against Defendants Lucky Joy Restaurant, Inc., and Xiao Rong Wu, which alleges that Defendants violated Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a *et seq.*, by discriminating against practitioners of the Falun Gong spiritual practice.

2. Defendant Xiao Rong Wu is president of Lucky Joy Restaurant, Inc., a New York corporation that owns the Lucky Joy restaurant, an eatery located at 41-10 Main Street, Flushing, NY 11355 (hereinafter “Lucky Joy”).

3. The Complaint alleges that the Defendants have engaged in a pattern and practice of discriminating against Falun Gong practitioners in the use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of Lucky Joy on the grounds of religion through, among other things, Defendants’ repeated, targeted, and unjustified ejections of Falun Gong practitioners from their restaurant.

4. The parties stipulate that, at all times relevant to the allegations in the Complaint, Lucky Joy is and has been a “place of public accommodation” within the meaning of 42 U.S.C. § 2000a(b)(3), and that its operations “affect commerce” within the meaning of 42 U.S.C. § 2000a(c).

5. The Defendants admit liability for all counts alleged and agree that the claims against them should be settled and resolved in order to avoid protracted and costly litigation. Therefore, the United States and Defendants have agreed to the entry of this Judgment.

It is hereby stipulated and agreed that:

II. Injunction

6. All provisions of this Judgment shall apply to each Defendant in the conduct of business at Lucky Joy. Any and all provisions of this Judgment shall also apply to Defendants’ employees, agents, successors, and anyone acting in whole or in part under the direction of any Defendant in connection with Lucky Joy, to the extent they have responsibility for implementation of provisions of this Judgment.

7. Defendants, their agents, employees, and successors, and all others actively participating in the ownership and operation of Lucky Joy, are enjoined from denying any person the full and equal enjoyment of all of the goods, services, facilities, privileges, advantages and accommodations of Lucky Joy because of religion, religious expression, religious dress or association with Falun Gong. Such conduct includes: (a) failing or refusing to serve or admit any person to the premises, or ejecting any person already admitted from the premises, on account of religion, religious expression, religious dress or association with Falun Gong; (b) discriminating in the terms, conditions, privileges or services provided to any patron on account

of religion, religious expression, religious dress or association with Falun Gong; and (c) engaging in practices or procedures designed to discourage any person from patronizing Lucky Joy on account of religion, religious expression, religious dress or association with Falun Gong.

III. Mandatory Training and Certifications

8. Within sixty days of the date of entry of this Judgment, Defendants, and all employees or agents with responsibility for the management or provision of services at Lucky Joy, shall attend a program of educational training concerning the substantive provisions of Title II and their responsibilities under the law. This training, which shall be at least two hours, shall be conducted by an organization with experience in providing training on civil rights issues and that is pre-approved by the United States. The United States will provide assistance in identifying such training organization if requested by Defendants. All costs of this program shall be borne by Defendants. The person conducting the educational program shall certify the complete attendance of all participants in writing.

9. No later than ten days after entry of this Judgment, Defendants shall provide a copy of this Judgment to every agent, partner, and employee (including supervisors, wait staff, bar tenders and hosts) that in any way provides, manages or oversees the provision of food, drink or services to the public at Lucky Joy. The Defendants shall direct each such agent, partner, or employee covered by this paragraph to review and read a copy of this Judgment in English or Chinese. Each agent, partner, or employee covered by this paragraph shall sign a statement in the form of Attachment A, acknowledging that he or she has read and understands this Judgment, and declaring that he or she will perform his or her duties in accordance with this Judgment. For the duration of this Judgment, all new employees shall be provided a copy of this Judgment

when their employment commences, shall be directed to review and read a copy of this Judgment, and shall sign a statement in the form of Attachment A no later than five days following their first day of employment.

IV. Nondiscrimination Policies and Procedures

10. For one year from the date of entry of this Judgment, when placing advertisements in or on television, newspapers, telephone books, or the internet, Defendants shall include information indicating that Lucky Joy is open to all members of the public on an equal basis, without regard to race, color, religion, or national origin. In addition, for the full duration of this Judgment, Defendants shall, in any month when placing radio advertisements, include information in the advertisements indicating that Lucky Joy is open to all members of the public on an equal basis without regard to race, color, religion, or national origin.

11. Nothing in this Judgment shall prevent the management of Lucky Joy from refusing entry to or removing anyone from the premises who engages in violent, indecent, profane or otherwise disorderly conduct, provided that the management of Lucky Joy does so in a manner that does not discriminate on the basis of religion, religious expression, or religious dress.

12. Within fifteen days of the date of entry of this Judgment, Defendants shall erect and maintain at each public entrance to Lucky Joy a printed sign in English and Chinese stating that the establishment is open to all members of the public without regard to religion, religious expression, or religious dress. Such sign shall be printed in dark letters on a contrasting background and shall be located and maintained in a place that is well-lit and clearly visible to all patrons as they enter the premises. The sign shall include a statement, in English and

Chinese, stating that any person who believes he or she has been discriminated against on the basis of religion may speak immediately with a manager, and that he or she may file a written complaint and/or call the United States Department of Justice at (800) 896-7743 Ext. 93 if they believe they have been subjected to discrimination. The text for such sign, and the size of the text, is specified in Attachment B.

13. Defendants shall institute policies that ensure that an individual in a supervisory position is available to review any decision to deny services or eject a person from Lucky Joy. In the review of any decision to eject or deny a person services, that supervisory individual shall give the person ejected or denied an opportunity to respond and shall have the complete authority to permit the patron to enter and/or be served. But if that supervisory individual still denies access to the patron, he or she must offer the patron an incident form, similar to that in Attachment C, in either English or Chinese based on the patron's choice. For the duration of this Judgment, all individuals in a supervisory position shall at all times have access to a supply of the incident forms in the form of Attachment C in both English and Chinese.

14. For the duration of this Judgment, Defendants shall establish and maintain a system of accepting, processing and investigating any complaints regarding a denial of access to or discrimination in services received at Lucky Joy, whether received by way of Attachment C or otherwise.

15. Within 30 days of the receipt of a written complaint, in the form of Attachment C or otherwise, Defendants shall notify the Department of Justice of the complaint and shall provide the Department all documents, photographs, videos and other information related to the complaints if so requested.

V. Mandatory Compliance Testing

16. Defendants, in consultation with the United States, shall develop and implement a testing program to audit and monitor the Defendants' compliance with federal public accommodations laws and this Judgment. As further described below, the testing program will consist of one paired test of Lucky Joy in each year of this Judgment, for a total of 4 paired tests. Defendants shall bear all costs, fees, and expenses associated with the development and implementation of this testing program. The tests shall be designed to determine whether Defendants are providing equal access and treatment to Falun Gong patrons of Lucky Joy.

17. The test procedures shall be developed, and the tests conducted, by a company or organization ("Testing Contractor") wholly independent of Defendants and pre-approved by the United States that has expertise in conducting paired testing for potential civil rights violations, including public accommodations. The United States will provide assistance in identifying such testing company or organization if requested by Defendants.

18. Defendants shall enter into a contract with the Testing Contractor that is consistent with the terms of this Judgment within 90 days after the entry of this Judgment. The contract shall oblige the Testing Contractor to provide an adequate number of trained individuals to serve as testers and to conduct the tests described in paragraphs 16-17.

19. Test procedures developed by the Testing Contractor shall be submitted to the United States for approval before the beginning of the testing program.

20. At no time shall any of Defendants' employees, agents or officers be provided with any information concerning the procedure or test plan prior to the completion of the tests. At no time shall the Testing Contractor disclose to any employee, agent, or officer of Defendants

the identities of individual testers, or any information that would reveal the identities of individual testers; this provision ensures that testers can continue to be used in compliance tests without compromising the integrity of the testing process.

21. The results of all tests conducted by the Testing Contractor pursuant to this section, along with supporting documentation, shall be simultaneously reported to the United States and Defendants within 30 days of the conclusion of each test. Where testing results are inconclusive and indicate the need for follow-up testing, the Testing Contractor shall conduct such follow-up testing. Where testing results indicate a possible violation of this Judgment, Defendants shall conduct an investigation of the facts and circumstances underlying such conduct within 30 days of receiving the testing evidence. Within 15 days of the completion of Defendants' investigation, Defendants shall provide the United States with a report containing the investigation results and Defendants' plans and timetable for implementation of appropriate corrective actions. Defendants shall implement these plans within 15 days of submission to the United States, unless the United States objects, in which case the parties shall use the dispute resolution procedures described in paragraphs 28-29.

22. The United States may provide the Testing Contractor with any information received about customer complaints with the exception of information that would specifically identify the individuals making complaints.

23. The United States may also conduct its own testing of Lucky Joy for the purpose of determining whether Defendants are violating the provisions of Title II of the Civil Rights Act of 1964 and/or the terms of this Judgment.

VI. Reporting Requirements

24. No later than 75 days after the date of entry of this Judgment, Defendants shall serve a report on the United States evidencing their compliance with this Judgment. This report shall include the following:

- a. A photograph of each public entrance to Lucky Joy clearly showing the signs required under paragraph 12 of this Judgment;
- b. A list of all advertisements covered by paragraph 10 of this Judgment, made public in any manner since the entry of this Judgment, together with representative samples of such advertisements;
- c. The statements signed by any and all employees pursuant to paragraph 9 of this Judgment.
- d. Written certification by the person conducting the educational program referred to in paragraph 8.

25. Six months after the date of entry of this Judgment, and every six months thereafter for four years from the date of entry of this Judgment,¹ the Defendant shall serve upon the United States a written report evidencing continuing compliance with this Judgment. This report shall contain the following information:

- a. Representative samples of all advertising for the previous one-year period, as required by paragraph 10 above;
- b. Sworn statements of new employees as required by paragraph 9;

¹ Except that the last report shall be submitted one month before the four year anniversary of the Judgment.

- c. Information regarding any change in name or the location of the Defendants' operation any of its restaurants, including the address of any new location and the dates of operation at that address;
- d. Notification of any new ownership or management interest Defendant Lucky Joy Restaurant, Inc., or Defendant Xiao Rong Wu has acquired or developed in any place of public accommodation, as defined in Title II of the Civil Rights Act of 1964, during the preceding six-month period. Such notification shall include the name of the establishment in which Defendant has acquired or developed such interest, the address of such establishment, the goods and/or services provided by such establishment, and the dates of operation of such establishment;
- e. Notification of any transfer, change in ownership, or ceasing of operation of Lucky Joy or Lucky Joy Restaurant, Inc., during the preceding six-month period;
- f. In the case of sale or transfer of Lucky Joy and/or Lucky Joy Restaurant, Inc., the Defendants shall require the purchaser or transferee, as a condition of the sale or transfer, to agree in writing to perform all obligations and be liable for compliance with Sections II - VII of this Judgment for the duration of this Judgment, with respect to the operation of Lucky Joy.

26. Defendants shall maintain all records relating to implementation of and compliance with all provisions of this Judgment. Upon request, the Defendants shall provide the United States with copies of any records maintained as required by this

Judgment.

27. All documents or other communications required by this Judgment to be sent to counsel for the United States shall be sent either by fax to (202) 514-1116, or by overnight mail to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G. St., NW, Suite 7032, Washington, D.C. 20005.

VII. Dispute Resolution

28. If differences arise between the parties regarding, interpretation of, implementation of, or Defendants' compliance with the terms of this Judgment, the parties shall endeavor to resolve such differences among themselves before seeking the intervention of the Court.

29. In the event any Defendant fails to perform in a timely manner any act required by this Judgment or to otherwise act in conformance with any provision thereof, and if the voluntary dispute resolution procedure described in paragraph 28 is unsuccessful, the United States may move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of any act or deeming any act to have been performed consistent with the terms of this Judgment and an award of any costs and attorney's fees that may have been occasioned by the Defendants' violation and/or failure to perform.

VIII. Duration of Consent Judgment

30. This Court shall retain jurisdiction of this case for purposes of enforcing this Judgment, which shall be effective for a period of 48 months following the date of

entry by the Court. The United States may move the Court to extend the duration of the Judgment in the interests of justice.

It is so **ORDERED** this _____ day of _____, 2010.

UNITED STATES DISTRICT JUDGE

For the United States:

Dated this _____ day of _____, 2010.

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For Defendants Xiao Rong Wu and Lucky Joy Restaurant, Inc.:

Dated this _____ day of _____, 2010.

NAME
ADDRESS
Tel.:
Fax:

NAME
ADDRESS
Tel.:
Fax:

ATTACHMENT A

EMPLOYEE / AGENT CERTIFICATION

I have reviewed and read a copy, either in English or Chinese, of the Judgment entered in *United States of America v. Lucky Joy Restaurant Inc., and Xiao Rong Wu*, Civil Action No. ____ in the United States Court for the Eastern District of New York. I understand the terms of that Judgment, and I further understand that Federal law guarantees that no person may be denied, on account of their religion, religious expression, or religious dress, the full use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place such as the Lucky Joy restaurant. With that understanding, I agree that I shall not discriminate in any manner on account of religion, religious expression, or religious dress in the provision of goods and/or services on behalf of Lucky Joy or any other place of public accommodation owned or managed by Xiao Rong Wu or Lucky Joy Restaurant, Inc. If I violate the terms of the Judgment, I understand that I may be fired or subject to other disciplinary action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Printed Name

Home Address

Home Telephone Number

ATTACHMENT B

N O T I C E

**LUCKY JOY RESTAURANT
IS OPEN TO ALL MEMBERS OF THE PUBLIC
WITHOUT REGARD TO RELIGION, RELIGIOUS EXPRESSION,
OR RELIGIOUS DRESS**

**IF YOU FEEL YOU HAVE BEEN
UNLAWFULLY DENIED ACCESS OR SERVICE
YOU MAY TALK TO A MANAGER NOW,
AND/OR YOU MAY FILE A COMPLAINT, BY PHONE OR BY MAIL, WITH:**

**The United States Justice Department Housing and Civil Enforcement Section
Civil Rights Division, 950 Pennsylvania Ave. Washington, D.C. 20530**

(800) 896-7743 Extension 93

ATTACHMENT B

(in Chinese)

ATTACHMENT C

INCIDENT FORM

Name:

Address:

Telephone number:

E-mail address:

Date and time that you were refused service or ejected from Lucky Joy:

What reason do you believe motivated the management and/or wait staff in refusing to serve or seat you at Lucky Joy?

What reason(s), if any, did the manager and/or wait staff give you for refusing to serve or seat you at Lucky Joy?

Name of the manager you talked with:

NOTE: If you believe that you have been discriminated against, you have the right to contact the United States Department of Justice at 1-800-896-7743, Ext. 93 to lodge a complaint. You are also entitled to a copy of this incident form.

To be filled out by Lucky Joy management

Name of manager:

Reason(s) for refusing entrance or service:

ATTACHMENT C

(in Chinese)