MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.PAra12061267

ALLISON SMITH,
Complainant,

v.

DOTS, LLC,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred. 910 IAC 1-3-2(b).

On June 11, 2012, [redacted] ("Complainant") filed a Complaint with the Commission against Dots, LLC ("Respondent") alleging discrimination on the basis of race, in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue before the Commission is whether the Complainant was denied full and equal enjoyment of Respondent's services, goods and facilities. In order to prevail, she must prove that 1) she is a member of a protected class; 2) she was qualified to receive services offered by Respondent in accordance with its terms and conditions; 3) she was denied equal service; and 4) Respondent provided more favorable terms and conditions to similar situated individuals of a different race.

Complainant is protected by virtue of her race and the Respondent is a women's retail business, a place of public accommodation. There is no dispute that the Complainant was able to enter Respondent's establishment and shop freely. However, there is a question as to whether Respondent complied with its own loss prevention policy when dealing with the Complainant, an African-American customer, as it would with other similarly situated customers of a different

100 NORTH SENATE AVENUE, *Room N103* | INDIANAPOLIS, INDIANA *46204*
317.232.2600 *office* | 317.232.6580 *facsimile* | 800.628.2909 *toll free* | WWW.IN.GOV/ICRC

race, thereby denying the Complainant full and equal enjoyment of Respondent's goods and facilities.

On May 2, 2012, Complainant entered Respondent's establishment with her sisters and began shopping. Later, an unidentified customer allegedly approached Respondent's Assistant Manager, [redacted] (hereafter referred to as "[redacted]"), who is Caucasian, stating that "those ladies (referring to the Complainant and her sisters) are robbing you blind and layering clothes under their clothes." [redacted] called the police and requested they conduct a "walk through" of the store. However, upon exiting the store, the Complainant and her sisters were surrounded by police and questioned. Subsequently, it was discovered that the Complainant and her sisters had not removed any merchandise from the store that they had not already purchased. Immediately after the incident, Complainant returned the items she purchased from the Respondent's establishment. Ultimately, Respondent sent the Complainant (and her sisters) $75.00 gift cards to the store.

Pursuant to Respondent's loss prevention policy (and Respondent's testimony), a staff member is required to witness an individual take or conceal merchandise before taking any action including, but not limited to, contacting the police. Yet, [redacted] called the police without witnessing theft, in violation of Respondent's policy. She, nor any other member of Respondent's staff, witnessed Complainant or her sisters take or conceal merchandise prior to contacting the police. While Respondent could not control the aggressive actions of the police, but for Respondent's act of calling the police to report that Complainant and her sisters were shoplifting, Complainant would not have been handcuffed, searched, and detained. There is insufficient evidence to show that any other customer of a different race was subject to the same or similar treatment raising an inference of discrimination. Therefore, the available evidence establishes that there is reasonable cause to believe that the Indiana Civil Rights Law has been violated as alleged.

Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice may have occurred. A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

March 7, 2013
Date

Akia Haynes
Akia A. Haynes, Esq.
Deputy Director
Indiana Civil Rights Commission