

FILED

AUG 27 2009

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY _____
DEPUTY CLERK *[Signature]*

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17 SAVE MORE 98 DISCOUNT STORE

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25 BLIATOUT LLC

Luna v. Hoa Trung Vo dba Save More 98 Discount Store et al

Doc. 24

18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA

21 ANTONIA LUNA,
22 Plaintiff,

CASE NO. 1:08-cv-1962 AWI-SMS
Civil Rights

24 v.

25 HOA TRUNG VO dba SAVE
26 MORE 98 DISCOUNT STORE;
27 BLIATOUT LLC; AND DOES 1-
28 10, INCLUSIVE,

CONSENT DECREE and [REDACTED]
ORDER

Defendants.

1
2 1. Plaintiff ANTONIA LUNA filed a Complaint in this action on
3 August 27, 2008, to obtain recovery of damages for her discriminatory
4 experiences, denial of access, and denial of her civil rights, and to enforce
5 provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.
6 §§ 12101 *et seq.*, and California civil rights laws against Defendants HOA
7 TRUNG VO dba SAVE MORE 98 DISCOUNT STORE; BLIATOUT LLC,
8 relating to the condition of their public accommodations as of Plaintiff's visit on
9 or about October 3, 2008, and continuing. Plaintiff has alleged that Defendants
10 violated Title III of the ADA and sections 51, 52, 54, 54.1, 54.3 and 55 of the
11 California Civil Code, and sections 19955 *et seq.* of the California Health &
12 Safety Code by failing to provide full and equal access to their facilities at the
13 SAVE MORE 98 DISCOUNT STORE in Fresno, California.

14 2. Defendants HOA TRUNG VO dba SAVE MORE 98 DISCOUNT
15 STORE; BLIATOUT LLC deny the allegations in the Complaint and by entering
16 into this Consent Decree and Order do not admit liability to any of the allegations
17 in Plaintiff's Complaint filed in this action. The parties hereby enter into this
18 Consent Decree and Order for the purpose of resolving this lawsuit without the
19 need for protracted litigation and without the admission of any liability.

20 **JURISDICTION:**

21 3. The parties to this Consent Decree agree that the Court has
22 jurisdiction of this matter pursuant to 28 U.S.C. § 1331 for alleged violations of
23 the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* and
24 pursuant to supplemental jurisdiction for alleged violations of California Health
25 & Safety Code §§ 19955 *et seq.*; Title 24, California Code of Regulations; and
26 California Civil Code §§ 51, 52, 54, 54.1, 54.3, and 55.

27 4. In order to avoid the costs, expense, and uncertainty of protracted
28

1 litigation, the parties to this Consent Decree agree to entry of this Order to resolve
2 all claims regarding injunctive relief raised in the Complaint filed with this Court.
3 Accordingly, they agree to the entry of this Order without trial or further
4 adjudication of any issues of fact or law concerning Plaintiff's claims for
5 injunctive relief.

6 WHEREFORE, the parties to this Consent Decree hereby agree and
7 stipulate to the Court's entry of this Consent Decree and Order, which provides as
8 follows:

9
10 **SETTLEMENT OF INJUNCTIVE RELIEF:**

11 5. This Order shall be a full, complete, and final disposition and
12 settlement of Plaintiff's claims against Defendants for injunctive relief that have
13 arisen out of the subject Complaint. The parties agree that there has been no
14 admission or finding of liability or violation of the ADA and/or California civil
15 rights laws, and this Consent Decree and Order should not be construed as such.

16 6. The parties agree and stipulate that the corrective work will be
17 performed in compliance with the standards and specifications for disabled access
18 as set forth in the California Code of Regulations, Title 24-2, and Americans with
19 Disabilities Act Accessibility Guidelines, unless other standards are specifically
20 agreed to in this Consent Decree and Order.

21 a) **Remedial Measures:**

22 (1) Defendant HOA TRUNG VO dba SAVE MORE 98
23 DISCOUNT STORE agrees to perform corrective work
24 at Savemore Discount Store, 4911 E. Kings Canyon
25 Road, Fresno, California. The corrective work agreed
26 upon by the parties is attached here to as **Attachment A.**

27 Defendant HOA TRUNG VO dba SAVE MORE 98
28 DISCOUNT STORE agrees to undertake all of the

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remedial work set forth therein.

(2) Defendant HOA TRUNG VO dba SAVE MORE 98 DISCOUNT STORE agrees to establish and enforce a written policy that disabled persons will be as welcome in the Store as able-bodied persons, and that no disabled person will be excluded from the store due to his or her possession of a wheelchair, cane, and/or other assistive device.

(3) Defendant BLIATOUT LLC agrees to perform corrective work at the parking lot of 4901-4939 E. Kings Canyon Road, Fresno, California. The corrective work agreed upon by the parties is attached here to as **Attachment B**. Defendant BLIATOUT LLC agrees to undertake all of the remedial work set forth therein.

b) **Timing of Injunctive Relief:** For work requiring permits, defendants will submit plans for all corrective work to the appropriate governmental agencies within 30 days of the entry of this consent decree by the Court. Defendants will commence work within 30 days of receiving approval from the appropriate agencies. Defendants will complete the work within 30 days of commencement. For work not requiring building permits, the work will be completed within 60 days of entry of this Consent Decree and Order by the Court. In the event that unforeseen difficulties prevent Defendants from completing any of the agreed-upon injunctive relief, Defendants or their counsel will notify Plaintiff's counsel in writing within 15 days of discovering the delay. Defendants or their counsel will notify Plaintiff's counsel when the corrective work is completed, and in any case will provide a status report no later than 120 days from the entry of this Consent Decree.

1 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS:**

2 7. The parties have not reached an agreement regarding Plaintiff's
3 claims for damages, attorney fees, litigation expenses and costs. These issues
4 shall be the subject of further negotiation, litigation, and/or motions to the Court.
5

6 **ENTIRE CONSENT DECREE AND ORDER:**

7 8. This Consent Decree and Order and Attachments A and B to this
8 Consent Decree, which is incorporated herein by reference as if fully set forth in
9 this document, constitute the entire agreement between the signing parties on the
10 matters of injunctive relief, and no other statement, promise or agreement, either
11 written or oral, made by any of the parties or agents of any of the parties that is
12 not contained in this written Consent Decree and Order shall be enforceable
13 regarding the matters of injunctive relief described herein. This Consent Decree
14 and Order applies to Plaintiff's claims for injunctive relief only and does not
15 resolve Plaintiff's claims for damages, attorney fees, litigation expenses and costs,
16 which shall be the subject of further negotiation and/or litigation.
17

18 **CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN
19 INTEREST:**

20 9. This Consent Decree and Order shall be binding on Plaintiff
21 ANTONIA LUNA ; Defendants HOA TRUNG VO dba SAVE MORE 98
22 DISCOUNT STORE; BLIATOUT LLC; and any successors in interest. The
23 parties have a duty to so notify all such successors in interest of the existence and
24 terms of this Consent Decree and Order during the period of the Court's
25 jurisdiction of this Consent Decree and Order.
26

27 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS
28 TO INJUNCTIVE RELIEF ONLY:**

1 10. Each of the parties to this Consent Decree understands and agrees
2 that there is a risk and possibility that, subsequent to the execution of this Consent
3 Decree, any or all of them will incur, suffer or experience some further loss or
4 damage with respect to the lawsuit which are unknown or unanticipated at the
5 time this Consent Decree is signed. Except for all obligations required in this
6 Consent Decree, the parties intend that this Consent Decree apply to all such
7 further loss with respect to the lawsuit, except those caused by the parties
8 subsequent to the execution of this Consent Decree. Therefore, except for all
9 obligations required in this Consent Decree, this Consent Decree shall apply to
10 and cover any and all claims, demands, actions and causes of action by the parties
11 to this Consent Decree with respect to the lawsuit, whether the same are known,
12 unknown or hereafter discovered or ascertained, and the provisions of Section
13 1542 of the California Civil Code are hereby expressly waived. Section 1542
14 provides as follows:

15 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
16 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
17 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
18 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
19 **OR HER MUST HAVE MATERIALLY AFFECTED HIS**
20 **SETTLEMENT WITH THE DEBTOR.**

21 This waiver applies to the injunctive relief aspects of this action only and does not
22 include resolution of Plaintiff's claims for damages, attorney fees, litigation
23 expenses and costs.

24 11. Except for all obligations required in this Consent Decree, and
25 exclusive of the referenced continuing claims for damages, statutory attorney fees,
26 litigation expenses and costs, each of the parties to this Consent Decree, on behalf
27 of each, their respective agents, representatives, predecessors, successors, heirs,
28 partners and assigns, releases and forever discharges each other Party and all
officers, directors, shareholders, subsidiaries, joint venturers, stockholders,
partners, parent companies, employees, agents, attorneys, insurance carriers,

1 heirs, predecessors, and representatives of each other Party, from all claims,
2 demands, actions, and causes of action of whatever kind or nature, presently
3 known or unknown, arising out of or in any way connected with the lawsuit.
4

5 **TERM OF THE CONSENT DECREE AND ORDER:**

6 12. This Consent Decree and Order shall be in full force and effect for a
7 period of twelve (12) months after the date of entry of this Consent Decree and
8 Order, or until the injunctive relief contemplated by this Order is completed,
9 whichever occurs later. The Court shall retain jurisdiction of this action to
10 enforce provisions of this Order for twelve (12) months after the date of this
11 Consent Decree, or until the injunctive relief contemplated by this Order is
12 completed, whichever occurs later.
13

14 **SEVERABILITY:**

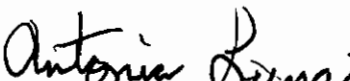
15 13. If any term of this Consent Decree and Order is determined by any
16 court to be unenforceable, the other terms of this Consent Decree and Order shall
17 nonetheless remain in full force and effect.
18

19 **SIGNATORIES BIND PARTIES:**

20 14. Signatories on the behalf of the parties represent that they are
21 authorized to bind the parties to this Consent Decree and Order. This Consent
22 Decree and Order may be signed in counterparts and a facsimile signature shall
23 have the same force and effect as an original signature.
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25 Dated: 8/27, 2009

PLAINTIFF ANTONIA LUNA

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28 ANTONIA LUNA

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Dated: 8-27, 2009

DEFENDANT HOA TRUNG VO dba SAVE MORE 98 DISCOUNT STORE



By: _____
HOA TRUNG VO

Dated: 8-27, 2009

DEFENDANT BLIATOUT LLC



By: _____
For BLIATOUT LLC

APPROVED AS TO FORM:

Dated: 8/27, 2009

PAUL L. REIN
CELIA McGUINNESS
LAW OFFICES OF PAUL L. REIN

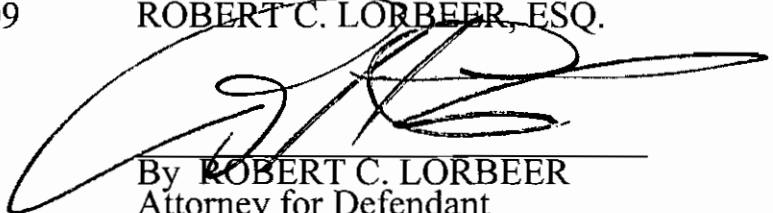
JULIE OSTIL
LAW OFFICE OF JULIE OSTIL



By: _____
Attorneys for Plaintiff
ANTONIA LUNA

Dated: 8/27, 2009

ROBERT C. LORBEER, ESQ.

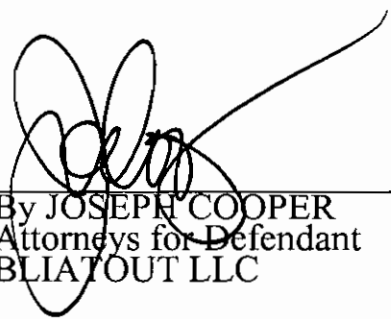


By: _____
ROBERT C. LORBEER
Attorney for Defendant
HOA TRUNG VO dba SAVE MORE 98
DISCOUNT STORE

Dated: 8/27, 2009

COOPER & COOPER

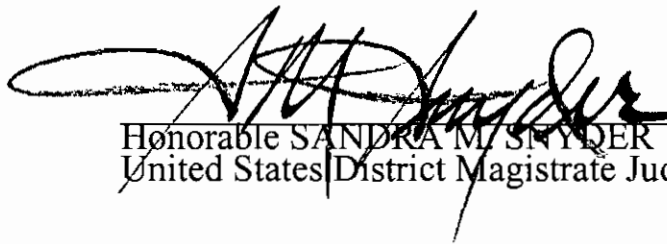
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By JOSEPH COOPER
Attorneys for Defendant
BLIATOUT LLC

ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated: 8/27, 2009


Honorable SANDRA M. SNYDER
United States District Magistrate Judge

ATTACHMENT A

I. STORE:

A. Primary Entry Doors:

1. Add a 10" kick plate at the bottom of push side(s) of entry door that is a smooth uninterrupted surface extending a minimum of 10" above the finished surface;
2. Adjust or replace the entry door closers so push pressure is no more than 5 lbs.;
3. Maintain entry door push pressure at no more than 5 lbs.

B. Interior:

1. Register Counters: Reconfigure or replace the counters to provide a section that has a maximum height of 34" for a minimum run of 36"; or remove the merchandise and set the counter at a maximum height of 36."
2. Circulation:
 - a. Provide and maintain an accessible route that is a minimum of 36" wide along any perimeter wall that is used for the display or sale of merchandise;
 - b. Provide and maintain an accessible route that is a minimum of 36" wide between aisles;
 - c. Remove any object that protrudes into the circulation space more than 4" and is mounted between 27" and 80" from the finished floor.

ATTACHMENT B

I. ACCESSIBLE ROUTE:

- A. Defendants will provide and maintain at least one accessible route between the public right-of-way and the subject property, including all elements of an accessible ramp at the ~~northeast~~^{west} corner of the parking lot;
- B. Defendants will provide ASA signage indicating the accessible path of travel.

SMS
8/27/09

II. PARKING: There are seven designated disabled parking spaces. Defendants will make each of them compliant, including but not limited to:

- A. Provide an accessible path of travel between each designated accessible parking space and all of the facilities on the site;
- B. Install a fully complying curb ramp on the sidewalk where the path of travel crosses a curb line;
- C. Reconfigure or re-grade the parking spaces so that the entire width and length of each parking spot and the loading zone serving it are level within 2% in every direction;
- D. Re-stripe each parking space to provide compliant size and accessible aisles, including unloading zones;
- E. Provide compliant signage;
- F. Ramps: Where ramps serve parking spots, remove or reconfigure each ramp to be fully compliant, including handrails, edge treatment, level landing and tactile warning on the surface.