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Hendrik Block v. Vartanian et al

As a result of Plaintiff, HENDRIK BLOCK ("PLAINTIFF"), and Defendants, GARY CHRISTIAN; BONNIE M. CHRISTIAN; and AMANDA FLOREZ dba PUBLIC AUCTION R US ("DEFENDANTS," and together with PLAINTIFF, "the PARTIES"), having engaged in settlement negotiations, the PARTIES agree that this action should be finally resolved by entry of this CONSENT DECREE. This instant CONSENT DECREE was entered into by the PARTIES as an amicable way of resolving liability, and PLAINTIFF'S claims for injunctive relief and damages.

NOW, THEREFORE, without adjudication of any issue of fact or law, and with the consent of the PARTIES, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

- 1. This Consent Decree is predicated on the Complaint, filed on May 9, 2016, and subsequent pleadings filed in this action in the United States District Court for the Eastern District of California seeking injunctive relief for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181-12189 ("ADA") and parallel California access laws; damages under state law; and the recovery of attorneys' fees, costs and litigation expenses as permitted by both state and federal law. DEFENDANTS filed their Answer to the Complaint on August 23, 2016.
- 2. DEFENDANTS and PLAINTIFF wish to settle the portion of the case relating to the issues of liability, injunctive relief, and damages, and hereby desire to enter into this CONSENT DECREE. The PARTIES hereby enter into this CONSENT DECREE for the purpose of resolving PLAINTIFF' lawsuit without the need for further litigation, and to reserve for further settlement discussions or a motion to the Court the amount of attorneys' fees, costs, and litigation expenses to which PLAINTIFF is entitled.

JURISDICTION

3. All PARTIES agree that the present Court has jurisdiction of this matter for the alleged violations of the ADA under 28 U.S.C. §§ 1331 and 1343, as well as supplemental jurisdiction under 28 U.S.C. §§ 1367, 2201, and 2202 for the alleged violations of California law.

CONSENT DECREE

4. In an effort to expedite resolution of the issues, and avoid costs and expenses of ongoing litigation, the PARTIES agree to entry of this Proposed Order to resolve the claims regarding injunctive relief raised in the above-entitled action. Accordingly, the PARTIES agree to the entry of the Proposed Order related to this CONSENT DECREE without trial or further adjudication of the issues addressed here, with the exception of the motion for attorneys' fees and costs, pursuant to paragraph 10 of this CONSENT DECREE.

RETENTION OF JURISDICTION FOR FEES MOTION

5. As previously stated, the amount of PLAINTIFF'S entitlement to attorneys' fees, costs, and litigation expenses remains in contention and, accordingly, the PARTIES request that the Court retain jurisdiction over this matter solely to resolve such claims.

SETTLEMENT OF INJUNCTIVE RELIEF, DAMAGES, AND LIABILITY ISSUES

- 6. The CONSENT DECREE shall be a full and complete, final disposition and settlement of all PLAINTIFF'S claims against the DEFENDANTS for injunctive relief according to the issues that were addressed and pled in the Second Amended Complaint. Moreover, DEFENDANTS agree to pay statutory damages to PLAINTIFF in the amount of four thousand dollars (\$4,000.00). The Settlement Payment shall be made payable to the Mission Law Firm, A.P.C. Trust Account and tendered to the Mission Law Firm, A.P.C., 332 North Second Street, San Jose, California 95112 within ten (10) days of execution of the entry of this CONSENT DECREE and shall be in the form of a cashier's check. This agreement shall serve as an admission of liability for the alleged ADA violation on the part of the DEFENDANTS.
- 7. DEFENDANTS agree that all corrective work required hereunder will be performed in compliance with the standards and specifications set forth in the 2010 ADA Standards for Accessible Design and according to California Code of Regulations, Title 24, Part 2, Chapter 11B (known as the California Building Code), unless otherwise specified and agreed to in this CONSENT DECREE.

CONSENT DECREE

8. DEFENDANTS agree to undertake all of the remedial work identified as a "Required Modification" as set forth on Exhibit "A" hereto (the Plaintiff's CASp Inspection Report).

9. The remedial measures set forth on Exhibit A shall be completed within six months of the date that this CONSENT DECREE is signed by the Court. In the event that unforeseen difficulties arise and prevent the DEFENDANTS from completing the remedial work within the specified timeframes, DEFENDANTS or their counsel will notify Plaintiff's counsel, in writing, within thirty (30) days after discovering any such difficulty. Any such notification will only excuse a delay in the timeframe to complete the remedial work, and will not excuse the performance of the remedial work. DEFENDANTS will promptly notify Plaintiff's counsel upon completion of the corrective work.

UNRESOLVED ATTORNEYS' FEES, COSTS, AND LITIGATION EXPENSES

- 10. DEFENDANTS acknowledge that PLAINTIFF is the prevailing party in the action for purposes of his entitlement to attorneys' fees, costs, and litigation expenses, and agree that they will not dispute PLAINTIFF'S entitlement to such fees, costs, and litigation expenses in opposition to any motion PLAINTIFF may bring for same.
- amount of PLAINTIFF's attorneys' fees, costs, and litigation expenses incurred in this action, and which may hereafter be incurred. These unresolved issues shall be subject to further negotiation, settlement, and/or motion to the Court. Should the PARTIES reach an agreement as to the amount of PLAINTIFF'S attorneys' fees, costs and litigation expenses, the terms of such agreement will be set forth in a new and separate settlement agreement. Nothing set forth here seeks to, in any way, limit the PLAINTIFF'S past, present, or future rights or remedies to recover his attorneys' fees, costs, and litigation expenses in connection with the allegations set forth in the Second Amended Complaint or otherwise.

CONSENT DECREE

1	The PARTIES agree, and the Court hereby orders, that the Plaintiff may
2	file a motion for attorneys' fees, costs, and litigation expenses at any time up to ninety (90)
3	days following the entry of the Court's Order hereon.
4	
5	FULL CONSENT ORDER
6	13. This CONSENT DECREE, including Exhibit "A," which is incorporated by
7	reference as fully set forth herein, constitutes the entire agreement between the signing
8	PARTIES on all matters of injunctive relief, damages, and liability. No other statement,
9	promise, or agreement, whether oral or written, made by the PARTIES not contained in this
10	CONSENT DECREE shall be enforceable regarding matters of injunctive relief and liability.
11	
12	DURATION OF CONSENT DECREE
13	14. This CONSENT DECREE shall be in full force and effect for a period of twelve
14	(12) months after the date of entry of this CONSENT DECREE or until the injunctive relief
15	contemplated by this CONSENT DECREE is completed, whichever occurs later. The Court
16	shall retain jurisdiction of this action to enforce this CONSENT DECREE for twelve (12)
17	months after the date of this CONSENT DECREE, or until the relief contemplated by this
18	CONSENT DECREE is completed, whichever occurs later. The Stipulation as to Liability set
19	forth in Paragraph 6 of this pleading shall survive the termination of the Court's jurisdiction
20	hereunder.
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22	<u>SEVERABILITY</u>
23	15. If any term of this CONSENT DECREE is determined by the Court to be
24	unenforceable, all other terms contained herein shall remain nonetheless in full force and
25	effect.
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	CONSENT DECREE
	CONSENT DECREE

1	SIGNATORIES BINDING PARTIES
2	16. Signatories on behalf of the PARTIES represent that they are authorized to bind
3	the PARTIES to this CONSENT DECREE. This CONSENT DECREE may be signed in
4	counterparts and a facsimile or e-mail signature shall have the same force and effects as an
5	original signature.
6	
7	AGREEMENT BINDING ON SUCCESSORS
8	17. The PARTIES agree that the terms of this CONSENT DECREE shall bind them
9	as well as their heirs, assigns, and successors in interest.
10	
11	FINAL JUDGMENT
12	18. Upon approval and entry of this CONSENT DECREE by the Court, this
13	CONSENT DECREE shall constitute a final judgment of the Court in favor of PLAINTIFF
14	under Fed. R. Civ. P. 54 and 58.
15	
16	Entered this 10thday of April , 2017.
17	/s/ Lawrence J. O'Neill
18	UNITED STATES DISTRICT JUDGE
19	
20	APPROVED AND CONSENTED TO BY THE PARTIES:
$\begin{bmatrix} 20 \\ 21 \end{bmatrix}$	
	DATED: April 4, 2017 /s/ Michael L. Elder
22	MICHAEL L. ELDER, ESQ. Attorney for Defendants,
23	Gary Christian; Bonnie M. Christian; and
24	Amanda Florez dba Public Auction R Us
25	DATED: April 4, 2017 MISSION LAW FIRM, A.P.C.
26	/s/ Zachary M. Best
27	ZACHARY M. BEST
	Attorneys for Plaintiff,
28	Hendrik Block
	CONSENT DECREE