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22 Attorneys for Defendants
 23 FOX & GOOSE PUBLIC HOUSE; A.C.
 24 DALTON, INC.; ALYSON DALTON;
 25 FRED DAVID, as an individual and as
 26 TRUSTEE OF THE DAVID REVOCABLE
 27 INTER VIVOS TRUST

28 UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA

29 JEAN RIKER,
 30
 31 Plaintiff,

CASE NO. 2:08-CV-02090 JAM/DAD
Civil Rights

32 v.

33 FOX & GOOSE PUBLIC HOUSE;
 34 A.C. DALTON, INC.; ALYSON
 35 DALTON; FRED DAVID, as an
 36 individual and as TRUSTEE OF
 37 THE DAVID REVOCABLE INTER
 38 VIVOS TRUST; and DOES 1-10,
 39 inclusive,

CONSENT DECREE and ORDER

40 Defendants.

1 1. Plaintiff JEAN RIKER filed a Complaint in this action on
2 September 5, 2008, to obtain recovery of damages for her discriminatory
3 experiences, denial of access, and denial of her civil rights, and to enforce
4 provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.
5 §§ 12101 *et seq.*, and California civil rights laws against Defendants FOX &
6 GOOSE PUBLIC HOUSE; A.C. DALTON, INC.; ALYSON DALTON; and
7 FRED DAVID, as an individual and as TRUSTEE OF THE DAVID
8 REVOCABLE INTER VIVOS TRUST, relating to the condition of their public
9 accommodations as of Plaintiff's visit on or about March 17, 2008, and
10 continuing. Plaintiff has alleged that Defendants violated Title III of the ADA
11 and sections 51, 52, 54, 54.1, 54.3 and 55 of the California Civil Code, and
12 sections 19955 *et seq.* of the California Health & Safety Code by failing to
13 provide full and equal access to their facilities at the Fox & Goose Public House
14 in Sacramento, California.

15 2. Defendants FOX & GOOSE PUBLIC HOUSE; A.C. DALTON,
16 INC.; ALYSON DALTON; and FRED DAVID, as an individual and as
17 TRUSTEE OF THE DAVID REVOCABLE INTER VIVOS TRUST deny the
18 allegations in the Complaint and by entering into this Consent Decree and Order
19 do not admit liability to any of the allegations in Plaintiff's Complaint filed in this
20 action. The parties hereby enter into this Consent Decree and Order for the
21 purpose of resolving this lawsuit without the need for protracted litigation and
22 without the admission of any liability.

23
24 **JURISDICTION:**

25 3. The parties to this Consent Decree agree that the Court has
26 jurisdiction of this matter pursuant to 28 U.S.C. § 1331 for alleged violations of
27 the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* and
28 pursuant to supplemental jurisdiction for alleged violations of California Health

1 & Safety Code §§ 19955 *et seq.*; Title 24, California Code of Regulations; and
2 California Civil Code §§ 51, 52, 54, 54.1, 54.3, and 55.

3 4. In order to avoid the costs, expense, and uncertainty of protracted
4 litigation, the parties to this Consent Decree agree to entry of this Order to resolve
5 all claims regarding injunctive relief raised in the Complaint filed with this Court.
6 Accordingly, they agree to the entry of this Order without trial or further
7 adjudication of any issues of fact or law concerning Plaintiff's claims for
8 injunctive relief.

9 WHEREFORE, the parties to this Consent Decree hereby agree and
10 stipulate to the Court's entry of this Consent Decree and Order, which provides as
11 follows:

12
13 **SETTLEMENT OF INJUNCTIVE RELIEF:**

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

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

24 a) **Remedial Measures:** The corrective work agreed upon by the
25 parties is attached hereto as Attachment A, the report and recommendations of
26 plaintiff's expert Jonathan Adler. Defendants agree to undertake all of the
27 remedial work as set forth therein.

28 b) **Timing of Injunctive Relief:** Defendants will submit plans

1 for all corrective work to the appropriate governmental agencies within 30 days of
2 the entry of this Consent Decree by the Court. Defendants will commence work
3 within 30 days of receiving approval from the appropriate agencies. Defendants
4 will complete the work within 30 days of commencement. For work not requiring
5 building permits, the work will be completed within 60 days of entry of this
6 Consent Decree and Order by the Court. In the event that unforeseen difficulties
7 prevent Defendants from completing any of the agreed-upon injunctive relief,
8 Defendants or their counsel will notify Plaintiff's counsel in writing within 15
9 days of discovering the delay. Defendants or their counsel will notify Plaintiff's
10 counsel when the corrective work is completed, and in any case will provide a
11 status report no later than 120 days from the entry of this Consent Decree.

12
13 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS:**

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

17
18 **ENTIRE CONSENT ORDER:**

19 8. This Consent Decree and Order and Attachment A to this Consent
20 Decree, which is incorporated herein by reference as if fully set forth in this
21 document, constitute the entire agreement between the signing parties on the
22 matters of injunctive relief, and no other statement, promise or agreement, either
23 written or oral, made by any of the parties or agents of any of the parties that is
24 not contained in this written Consent Decree and Order shall be enforceable
25 regarding the matters of injunctive relief described herein. This Consent Decree
26 and Order applies to Plaintiff's claims for injunctive relief only and does not
27 resolve Plaintiff's claims for damages, attorney fees, litigation expenses and costs,
28 which shall be the subject of further negotiation and/or litigation.

1 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**
2 **SUCCESSORS IN INTEREST:**

3 9. This Consent Decree and Order shall be binding on Plaintiff JEAN
4 RIKER; Defendants FOX & GOOSE PUBLIC HOUSE; A.C. DALTON, INC.;
5 ALYSON DALTON; and FRED DAVID, as an individual and as TRUSTEE OF
6 THE DAVID REVOCABLE INTER VIVOS TRUST; and any successors in
7 interest. The parties have a duty to so notify all such successors in interest of the
8 existence and terms of this Consent Decree and Order during the period of the
9 Court's jurisdiction of this Consent Decree and Order.

10
11 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS**
12 **TO INJUNCTIVE RELIEF ONLY:**

13 10. Each of the parties to this Consent Decree understands and agrees
14 that there is a risk and possibility that, subsequent to the execution of this Consent
15 Decree, any or all of them will incur, suffer or experience some further loss or
16 damage with respect to the lawsuit which are unknown or unanticipated at the
17 time this Consent Decree is signed. Except for all obligations required in this
18 Consent Decree, the parties intend that this Consent Decree apply to all such
19 further loss with respect to the lawsuit, except those caused by the parties
20 subsequent to the execution of this Consent Decree. Therefore, except for all
21 obligations required in this Consent Decree, this Consent Decree shall apply to
22 and cover any and all claims, demands, actions and causes of action by the parties
23 to this Consent Decree with respect to the lawsuit, whether the same are known,
24 unknown or hereafter discovered or ascertained, and the provisions of Section
25 1542 of the California Civil Code are hereby expressly waived. Section 1542
26 provides as follows:

27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
28 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

1 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
2 **OR HER MUST HAVE MATERIALLY AFFECTED HIS**
3 **SETTLEMENT WITH THE DEBTOR.**

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

7 11. Except for all obligations required in this Consent Decree, and
8 exclusive of the referenced continuing claims for damages, statutory attorney fees,
9 litigation expenses and costs, each of the parties to this Consent Decree, on behalf
10 of each, their respective agents, representatives, predecessors, successors, heirs,
11 partners and assigns, releases and forever discharges each other Party and all
12 officers, directors, shareholders, subsidiaries, joint venturers, stockholders,
13 partners, parent companies, employees, agents, attorneys, insurance carriers,
14 heirs, predecessors, and representatives of each other Party, from all claims,
15 demands, actions, and causes of action of whatever kind or nature, presently
16 known or unknown, arising out of or in any way connected with the lawsuit.

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

18 12. This Consent Decree and Order shall be in full force and effect for a
19 period of twelve (12) months after the date of entry of this Consent Decree and
20 Order, or until the injunctive relief contemplated by this Order is completed,
21 whichever occurs later. The Court shall retain jurisdiction of this action to
22 enforce provisions of this Order for twelve (12) months after the date of this
23 Consent Decree, or until the injunctive relief contemplated by this Order is
24 completed, whichever occurs later.

25 **SEVERABILITY:**

26 13. If any term of this Consent Decree and Order is determined by any
27 court to be unenforceable, the other terms of this Consent Decree and Order shall
28

1 nonetheless remain in full force and effect.

2

3 **SIGNATORIES BIND PARTIES:**

4 14. Signatories on the behalf of the parties represent that they are
5 authorized to bind the parties to this Consent Decree and Order. This Consent
6 Decree and Order may be signed in counterparts and a facsimile signature shall
7 have the same force and effect as an original signature.

8

9

10 Dated: _____, 2009 PLAINTIFF JEAN RIKER

11

12

JEAN RIKER _____

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15 Dated: _____, 2009 DEFENDANTS FOX & GOOSE PUBLIC
16 HOUSE; A.C. DALTON, INC.; ALYSON
DALTON

17

18 By: _____

ALYSON DALTON

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20

21 Dated: _____, 2009 DEFENDANT FRED DAVID, as an individual
22 and as TRUSTEE OF THE DAVID
REVOCABLE INTER VIVOS TRUST

23

24 By: _____

FRED DAVID

25 //

26 //

27 //

28 //

1 APPROVED AS TO FORM:

2 Dated: _____, 2009

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

JULIE OSTIL
LAW OFFICE OF JULIE OSTIL

7 By: _____
Attorneys for Plaintiff JEAN RIKER

10 Dated: _____, 2009

JOHN R. HALUCK
LA FOLLETTE, JOHNSON, DE HASS,
FESLER & JAMES

13 By: _____
Attorneys for Defendants
FOX & GOOSE PUBLIC HOUSE;
A.C. DALTON, INC.; ALYSON DALTON;
FRED DAVID, as an individual and as
TRUSTEE OF THE DAVID REVOCABLE
INTER VIVOS TRUST

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ORDER

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

Dated: July 16, 2009

/s/ John A. Mendez
Honorable JOHN A. MENDEZ
United States District Judge