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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA

18 RICHARD SKAFF

CASE NO.: CV-08-4229-VRW

19 PLAINTIFF

Civil Rights

20 v.

*(Related Case: D'Lil v. Speedway
 Motorsports, Inc., et al., Case No. 08-cv-
 04691)*

21 SPEEDWAY MOTORSPORTS INC.;
 SPEEDWAY SONOMA LLC; LEVY
 22 PREMIUM FOOD SERVICE LIMITED;
 INTERNATIONAL SPEEDWAY, INC.;
 23 MOTORSPORTS AUTHENTICS, LLC; And
 DOES 1 through 35, INCLUSIVE,

Honorable Judge Vaugh R. Walker

24 DEFENDANTS.

**CONSENT DECREE AND ~~PROPOSED~~
 ORDER FOR SETTLEMENT
 BETWEEN PLAINTIFFS AND
 DEFENDANT LEVY PREMIUM FOOD
 SERVICE LIMITED PARTNERSHIP OF
 PLAINTIFFS' CLAIMS FOR
 INJUNCTIVE RELIEF**

No trial date set: General Order 56

26 CONSENT DECREE AND ORDER

1 1. Plaintiffs RICHARD SKAFF and HOLLYN D'LIL ("Plaintiffs") filed their
2 respective Complaints in this action on September 8, 2008, and October 9, 2008 to enforce
3 certain provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§
4 12101 et seq., and California Civil Code §§ 51; 54; and 54.1, and Health & Safety Code §§
5 19952 and 19955 *et seq.*, against Defendants SPEEDWAY MOTORSPORTS INC.;
6 SPEEDWAY SONOMA LLC; LEVY PREMIUM FOODSERVICE LIMITED
7 PARTNERSHIP; INTERNATIONAL SPEEDWAY, INC.; and MOTORSPORTS
8 AUTHENTICS, LLC ("Defendants"), and DOES 1-35, Inclusive. Plaintiffs alleged that
9 Defendants violated Title III of the ADA and California civil rights laws and statutes by failing
10 to provide full and equal access to its facilities, services and accommodations at the
11 INFINEON RACEWAY located at 29355 Arnold Drive in Sonoma County, California
12 ("Infineon"). Defendant LEVY PREMIUM FOOD SERVICE LIMITED PARTNERSHIP
13 ("Levy") and Plaintiffs now seek to settle all of Plaintiffs' claims for injunctive relief against
14 Levy, and agree that the terms of this Consent Decree will satisfy all of Plaintiffs' claims for
15 injunctive relief.

16 2. Defendant Levy denies all of the allegations in the Complaints filed by
17 Plaintiffs, and by entering into this Consent Decree and Order, does not admit liability to any of
18 the allegations in Plaintiffs' separate Complaints filed against Levy. Plaintiffs and Defendant
19 Levy hereby enter into this Consent Decree and Order for the purpose of entering into an early
20 settlement of Plaintiffs' claims for injunctive relief without the need for protracted litigation,
21 and without the admission of any liability for any allegations in Plaintiffs' separate Complaints.

22 **JURISDICTION:**

23 3. Plaintiffs and Levy hereby agree that the Court has jurisdiction of Plaintiffs'
24 Complaints pursuant to 28 USC §1331 for alleged violations of the Americans with Disabilities
25 Act of 1990, 42 USC 12101 *et seq.* and for supplemental jurisdiction for California civil rights
26 laws and regulations.

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

1 parties to this Consent Decree agree to entry of this Order to resolve all of Plaintiffs' claims
2 regarding injunctive relief against Defendant Levy at Infineon and its related facilities.
3 Accordingly, the parties agree to the entry of this Order without trial or further adjudication of
4 any issues of fact or law concerning Plaintiffs' claims for injunctive relief as set forth in the
5 two separate Complaints filed by Plaintiffs with this Court.

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

8 **SETTLEMENT OF PLAINTIFFS' CLAIMS FOR INJUNCTIVE RELIEF:**

9 5. The parties have reached an agreement regarding Plaintiffs Richard Skaff and
10 HolLyn D'Lil's claims for injunctive relief as requested in their separate Complaints before this
11 Court. Attached as **Attachments A** are all of the terms of the settlement for injunctive relief as
12 agreed to between the parties fully set out. Said Attachment is hereby referenced as if fully set
13 forth herein as the full and complete agreement between the Parties for settlement of all of
14 Plaintiffs' claims for injunctive relief as requested in Plaintiffs two separate Complaints.

15 **ENTIRE CONSENT ORDER:**

16 6. This Consent Decree and Order constitutes the entire agreement between the
17 signing parties on the matter of Plaintiffs' claims for monetary and injunctive relief against
18 Defendant Levy, and no other statement, promise, or agreement, either written or oral, made by
19 any of the parties or agents of any of the parties, that is not contained in this written Consent
20 Decree and Order, shall be enforceable regarding the matters described herein. This Consent
21 Decree and Order applies to Plaintiffs' claims for injunctive relief in the action before this
22 Court.

23 **CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:**

24 7. This Consent Decree and Order shall be binding on Plaintiffs RICHARD
25 SKAFF and HOLLY D'LIL, and Defendant LEVY PREMIUM FOOD SERVICE LIMITED
26 PARTNERSHIP and any successors in interest. The Parties have a duty to so notify all such
27 successors in interest of the existence and terms of this Consent Decree and Order during the
28 period of the Court's jurisdiction of this Consent Decree and Order.

1 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS TO**
2 **PLAINTIFFS' CLAIMS FOR INJUNCTIVE RELIEF:**

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

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

20 This waiver applies to Plaintiffs' claims for injunctive relief in the two separate Complaints
21 before this Court.

22 9. Except for all obligations required in this Consent Decree, each of the Parties to
23 this Consent Decree, on behalf of each, their respective agents, representatives, predecessors,
24 successors, heirs, partners and assigns, releases and forever discharges each other Party and all
25 officers, employees, agents, attorneys, insurance carriers, heirs, predecessors, and
26 representatives of each other Party, from all claims, demands, actions, and causes of action of
27 whatever kind or nature, presently known or unknown, arising out of or in any way connected
28 with the Lawsuit.

TERM OF THE CONSENT DECREE AND ORDER:

1 10. This Consent Decree and Order shall be in full force and effect on February 1,
2 2010. The Court shall retain jurisdiction of this action to enforce provisions of this Order in the
3 event that Plaintiffs allege that Defendant has failed to comply with all of the terms of this
4 Consent Decree for a period of three years from the date the Court approves this Consent
5 Decree. The terms of injunctive relief, as set forth in Attachment A, are meant to be permanent
6 changes in the manner that Defendant Levy and its subcontractors offer food and beverages to
7 persons with disabilities, and may be enforced by Plaintiffs for three years from the date the
8 Court approves this Consent Decree. In the event that Plaintiffs believe that Defendant Levy
9 has not complied with the terms of this Consent Decree at any time, Plaintiffs' counsel shall
10 inform Defendant Levy's counsel in writing and give Defendant Levy 30 days to correct any
11 alleged violations. Plaintiffs may seek Court enforcement of the terms and conditions of this
12 Consent Decree in the event the parties are unable to reach an agreement regarding any alleged
13 breaches of the Consent Decree.

14 **SEVERABILITY:**

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

18 **SIGNATORIES BIND PARTIES:**

19 11. Signatories on the behalf of the parties represent that they are authorized to bind
20 the parties to this Consent Decree and Order. This Consent Decree and Order may be signed in
21 counterparts and a facsimile signature shall have the same force and effect as an original
22 signature.

23 APPROVED AS TO FORM:

24 Dated: October 3^{PB}, 2009

PATRICIA BARBOSA
BARBOSA GROUP

JORDON METZ
MARGARET BYRNE IKEDA
GOODMAN & METZ

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D. Barbosa

Attorneys for Plaintiffs
RICHARD SKAFF and HOLLYN D'LIL

Dated: October 5, 2009

JOHN JULIUS III
LITTLER MENDELSON

J. Julius III

Attorneys for Defendant
LEVY PREMIUM FOODSERVICE, L.P.

Dated: October 5, 2009

Richard Skaff
Plaintiff
RICHARD SKAFF

Dated: October 5, 2009

Hollyn D'Lil
Plaintiff
HOLLYN D'LIL

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ORDER

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

Dated: November 13, 2009

