

E-Filing

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 CRAIG YATES, an individual; and
 6 DISABILITY RIGHTS, ENFORCEMENT,
 EDUCATION, SERVICES:HELPING YOU
 7 HELP OTHERS, a California public benefit corporation,

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12 Attorney's for Defendant(s)
 YONG KEE COMPANY, INC., a California corporation,
 13 a.k.a. MIYOSHI SUSHI & GRILL

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA

CASE NO. CV-09-2290-JSW

17 CRAIG YATES, an individual; and
 18 DISABILITY RIGHTS, ENFORCEMENT,
 EDUCATION, SERVICES:HELPING
 YOU HELP OTHERS, a California public
 19 benefit corporation,

~~Proposed~~ CONSENT DECREE

20 Plaintiffs,

21 v.

22 YONG KEE COMPANY, INC., a
 California corporation, a.k.a. MIYOSHI
 23 SUSHI & GRILL,

24 Defendants.

25
 26 WHEREAS, plaintiffs' CRAIG YATES, an individual; and DISABILITY RIGHTS,
 27 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California
 28 public benefit corporation, on behalf of (himself/herself/themselves), has/have filed an action in
 CONSENT DECREE YATES V. YONG KEE COMPANY, INC.

1 the United States District Court, Northern District of California, alleging claims for damages and
2 injunctive relief under the California Health & Safety Code Sections 19955, *et seq.*, California
3 Civil Code Sections 51, 51.5 and 54, *et seq.*, and the Americans with Disabilities Act of 1990
4 (42 U.S.C. §12101, *et seq.*) arising out of plaintiffs' visit to the MIYOSHI SUSHI & GRILL,
5 on February 9, 2009, March 7, 2009, March 27, 2009 and April 10, 2009; and

6 **WHEREAS**, defendant YONG KEE COMPANY, INC., owns and operates MIYOSHI
7 SUSHI & GRILL located at 914 Clement Street, San Francisco, California; and

8 **WHEREAS**, plaintiff(s) CRAIG YATES and DISABILITY RIGHTS,
9 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS and defendant
10 YONG KEE COMPANY, INC., have agreed upon a settlement pursuant to which YONG KEE
11 COMPANY, INC., will perform certain remedial improvements at MIYOSHI SUSHI & GRILL
12 as a result of this litigation to provide access to disabled persons; and

13 **WHEREAS**, plaintiffs' CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT,
14 EDUCATION, SERVICES: HELPING YOU HELP OTHERS and defendant YONG KEE
15 COMPANY, INC., agree that the settlement of this claim is made in good faith and in an effort
16 to avoid expensive and protracted litigation, but without any admission or finding of liability or
17 fault as to any allegation or matter;

18 **NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED** as follows:

19 **I. JURISDICTION**

20 A. The Court has jurisdiction over the subject matter of and the parties to this
21 Consent Decree pursuant to the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.
22 §122101, *et seq.*

23 B. Defendant YONG KEE COMPANY, INC., does not contest and agrees not to
24 contest the Court's jurisdiction to enter into and enforce this Consent Decree..

25 **II. DENIAL OF LIABILITY**

26 Defendant YONG KEE COMPANY, INC., deny(ies) any and all legal or equitable
27 liability under any federal, state or local statute, regulation or ordinance, or the common law, for
28 any damages or claims caused by or arising out of the MIYOSHI SUSHI & GRILL. By entering
CONSENT DECREE YATES V. YONG KEE COMPANY, INC.

1 into this Consent Decree, or by taking any action in accordance with it, defendant YONG KEE
2 COMPANY, INC., does not admit any allegations contained herein or in the complaint, nor does
3 defendant YONG KEE COMPANY, INC., admit any liability for any purpose or admit any issue
4 of law or fact or any responsibility for the alleged noncompliance of the MIYOSHI SUSHI &
5 GRILL with the Americans with Disabilities Act of 1990 (ADA), Americans with Disabilities
6 Act Accessibility Guidelines (ADAAG), Title 24 of the California Building Standards Code, or
7 any other state or federal building code or statute..

8 III. PURPOSE

9 The purpose of this Consent Decree is to resolve amicably the existing dispute between
10 the parties hereto as to whether remedial improvements at the MIYOSHI SUSHI & GRILL are
11 necessary to provide access to persons with disabilities and to settle the claims asserted against
12 defendant YONG KEE COMPANY, INC., in the complaint filed in this matter.

13 IV. BINDING EFFECT

14 A. The undersigned representative of YONG KEE COMPANY, INC., certifies that
15 he/she is an officer or agent of Defendant YONG KEE COMPANY, INC., and is fully authorized
16 to enter into the terms and conditions of this Decree and that he or she is fully authorized to
17 execute this document and legally bind YONG KEE COMPANY, INC., to the provisions of this
18 Decree.

19 B. The undersigned plaintiff's certify that they are fully authorized to enter into the
20 terms and conditions of this Decree and that they have not assigned, transferred or purported to
21 assign or transfer, to any person or entity any claim or other matter which is the subject of this
22 Decree.

23 VI. WORK TO BE PERFORMED

24 A. In general, YONG KEE COMPANY, INC., shall make MIYOSHI SUSHI &
25 GRILL accessible to persons with disabilities in accordance with the "Readily Achievable"
26 standard under 28CFR part 36 in conjunction with ADAAG

27 B. Specifically, Defendants YONG KEE COMPANY, INC., shall undertake remedial
28 measures as set forth in the "MIYOSHI SUSHI & GRILL Remedial Repair List" attached as
CONSENT DECREE YATES V. YONG KEE COMPANY, INC.

1 Exhibit "A" to make the following elements of the MIYOSHI SUSHI & GRILL accessible,
2 which constitutes the removal of architectural barriers as referred to in the ADA 28CFR part36
3 and ADAAG, to persons with disabilities, including:

- 4 1. Provide directional signage to show accessible routes of travel, i.e.
5 entrances;
- 6 2. Provide an accessible entrance due to slope and narrow entry doors;
- 7 3. Provide a handicapped-accessible women's public restroom; and
- 8 4. Provide a handicapped-accessible men's public restroom;

9 C. The work to be performed pursuant to this Consent decree shall be completed by
10 October 30, 2011.

11 D. The remedial work set forth herein meets the "readily achievable" standard of the
12 Americans with Disabilities Act of 1990.

13 VII. MODIFICATION

14 There shall be no modification of this Consent Decree without written approval of both
15 parties hereto.

16 VIII. EFFECTIVE DATE

17 This Consent Decree is effective upon the date of its entry by the Court.

18 IX. CONTINUING JURISDICTION

19 The Court specifically retains jurisdiction over both the subject matter of and the parties
20 to this action for the duration of this Consent Decree for the purpose of issuing such further
21 orders or directions as may be necessary or appropriate to construe, implement, modify, enforce,
22 terminate, or reinstate the terms of this Consent Decree, including but not limited to attorneys'
23 fees, costs and litigation expenses incurred in enforcing this Agreement, or for any further relief
24 as the interest of justice may require.

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X. TERMINATION AND SATISFACTION

A. Upon defendant YONG KEE COMPANY, INC., completion of the work to be performed, as specified, pursuant to this Consent Decree on October 30, 2011, whichever occurs earlier, the Court's jurisdiction of this matter shall terminate unless the parties show good cause for the continuance of this Consent Decree.

The undersigned hereby consent to the foregoing Consent Decree.

For Defendant YONG KEE COMPANY, INC.,

Dated: 12/16/09


NAME OF OFFICER - (Signature)

LAWRENCE C. WONG
PRINTED NAME

TITLE Supervisor

For Plaintiff CRAIG YATES

Dated: _____

CRAIG YATES

For Plaintiff DISABILITY RIGHTS ENFORCEMENT, EDUCATION SERVICES:
HELPING YOU HELP OTHERS

Dated: _____

PATRICK CONNALLY - President

ORDER

IT IS SO ORDERED.

Dated: _____

Honorable Jeffery S. White
United States District Court Judge

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X. TERMINATION AND SATISFACTION

A. Upon defendant YONG KEE COMPANY, INC., completion of the work to be performed, as specified, pursuant to this Consent Decree on April 30, 2010, whichever occurs earlier, the Court's jurisdiction of this matter shall terminate unless the parties show good cause for the continuance of this Consent Decree.

The undersigned hereby consent to the foregoing Consent Decree.
For Defendant YONG KEE COMPANY, INC.,

Dated: _____
NAME OF OFFICER - (Signature)
PRINTED NAME
TITLE _____

For Plaintiff CRAIG YATES

Dated: 2/1/2010

CRAIG YATES

For Plaintiff DISABILITY RIGHTS ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS and defendant FOLEY ESTATES VINEYARD :

Dated: 2/1/2010

PATRICK CONNALLY - President

ORDER

IT IS SO ORDERED. *Plaintiffs shall serve a copy of this order on Defendant.*

Dated: NOV 09 2010

Honorable Jeffery S. White
United States District Court Judge

CONSENT DECREE YATES V. YONG KEE COMPANY, INC.