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6 Attorneys for Plaintiff
 WALTER DELSON

7
 8 **Defendants and their counsel listed after the caption.*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 WALTER DELSON,
 13 Plaintiff,

Case No. C11-1280 MEJ
Civil Rights

14 v.

15 WARSZAWA BUILDING
 16 PARTNERSHIP; CAFÉ
 GRATITUDE, LLC; AND DOES
 17 1-10, INCLUSIVE,
 18 Defendants.

**CONSENT DECREE AND
~~PROPOSED~~ ORDER AS TO
 INJUNCTIVE RELIEF ONLY**

19 _____
 JASON GONG, Esq.
 20 LAW OFFICE OF JASON G. GONG
 21 2121 N. California Blvd., Ste. 290
 Walnut Creek, CA 94596
 Telephone: 925/735-3800
 22 Facsimile: 925/735-3801

23 Attorneys for Defendants
 WARSZAWA BUILDING PARTNERSHIP
 24 And CAFÉ GRATITUDE, LLC

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27
 28 CONSENT DECREE & [PROPOSED] ORDER
 AS TO INJUNCTIVE RELIEF ONLY

1 and pursuant to supplemental jurisdiction for alleged violations of California
2 Health & Safety Code sections 19955 *et seq.*; and California Civil Code sections
3 51, 52, 54, 54.1, 54.3, and 55.

4
5 4. In order to avoid the costs, expense, and uncertainty of protracted
6 litigation, the Parties to this Consent Decree and Order agree to entry of this
7 Consent Decree and Order to resolve injunctive relief claims against Defendants
8 raised in the Complaint filed with this Court. Accordingly, the Parties agree to the
9 entry of this Consent Decree and Order without trial or further adjudication of any
10 issues of fact or law concerning Plaintiff's injunctive relief claims against
11 Defendants.
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13
14 WHEREFORE, the Parties to this Consent Decree and Order hereby agree
15 and stipulate to the Court's entry of this Consent Decree and Order, which
16 provides as follows:
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19 **SETTLEMENT OF INJUNCTIVE RELIEF:**

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21 5. This Consent Decree and Order shall be a full, complete, and final
22 disposition and settlement of Plaintiff's claims against Defendants for injunctive
23 relief that have arisen out of the subject Complaint.
24

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

4
5 a) **Remedial Measures:** Defendants will perform corrective work
6 at 1730 Shattuck Ave., Berkeley, California. The corrective work agreed upon by
7 the Parties is as follows:

8
9 i. North Entrance:

- 10 1) Lower the menu board to approximately 51” to the
11 bottom and use a larger font size.
12
13 2) Replace the door hardware with lever hardware or
14 a conventional door pull handle.
15
16 3) Remove the metal door stop at the base of the door
17 on the push side and maintain this space at the base
18 of the door so that it is a “smooth and uninterrupted
19 surface” to a height of 10”.
20
21 4) Secure the interior walk-off mat to the floor.
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23 5) Provide a tactile exit sign for this exit.

24 ii. South Entrance

- 25 1) Provide a tactile exit sign for this exit.
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2) Adjust and maintain door pressure to no more than 5 pounds maximum.

iii. Restrooms

1) At the geometric sign on the door, the triangle does not contrast with the circle as per the CBC requirements (CBC section 1115B.6.3). Provide a compliant sign.

2) The Braille on the sign adjacent to the door does not meet the California requirements for spacing and dot height. Provide a compliant sign.

3) Adjust and maintain door pressure to no more than 5 pounds maximum.

4) Relocate the toilet paper dispenser so that it is no greater than 36" from the rear wall.

iv. Seating

1) One of the interior tables has 36" of clear space behind the clear floor area. Provide the required 48" clear space when seating is located in an alcove.

1 will be the subject of future negotiation or litigation as necessary. The Parties
2 jointly stipulate and request that the Court not dismiss the case as these significant
3 issues remain unresolved.
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6 **ENTIRE CONSENT ORDER:**

7 8. This Consent Decree and Order constitute the entire agreement
8
9 between the signing Parties on the matters of injunctive relief, and no other
10 statement, promise or agreement, either written or oral, made by any of the Parties
11 or agents of any of the Parties that is not contained in this written Consent Decree
12 and Order shall be enforceable regarding the matters of injunctive relief described
13 herein. This Consent Decree and Order applies to Plaintiff's claims for injunctive
14 relief only and does not resolve Plaintiff's claims for damages, attorney fees,
15 litigation expenses and costs, which shall be the subject of further negotiation
16 and/or litigation. The Parties stipulate that all Parties request that the Court not
17 dismiss the case, as issues of statutory damages, attorney fees, litigation expenses,
18 and costs are still before the Court.
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23 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**
24 **SUCCESSORS IN INTEREST:**

25 9. This Consent Decree and Order shall be binding on Plaintiff and upon
26 Defendants and any successors in interest. Defendants have a duty to so notify all
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1 such successors in interest of the existence and terms of this Consent Decree and
2 Order during the period of the Court's jurisdiction of this Consent Decree and
3 Order.
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6 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS**
7 **TO INJUNCTIVE RELIEF ONLY:**

8 10. Each of the Parties to this Consent Decree and Order understands and
9 agrees that there is a risk and possibility that, subsequent to the execution of this
10 Consent Decree and Order, any or all of them will incur, suffer or experience some
11 further loss or damage with respect to the lawsuit which are unknown or
12 unanticipated at the time this Consent Decree and Order is signed. Except for all
13 obligations required in this Consent Decree and Order, the Parties intend that this
14 Consent Decree and Order apply to all such further loss with respect to the lawsuit,
15 except those caused by the Parties subsequent to the execution of this Consent
16 Decree and Order. Therefore, except for all obligations required in this Consent
17 Decree and Order, this Consent Decree and Order shall apply to and cover any and
18 all claims, demands, actions and causes of action by the Parties to this Consent
19 Decree and Order with respect to the lawsuit, whether the same are known,
20 unknown or hereafter discovered or ascertained, and the provisions of Section
21 1542 of the California Civil Code are hereby expressly waived. Section 1542
22 provides as follows:
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A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

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

11. Except for all obligations required in this Consent Decree and Order – and exclusive of the referenced continuing claims for damages, statutory attorney fees, litigation expenses and costs – each of the Parties to this Consent Decree and Order, on behalf of themselves, their respective agents, representatives, predecessors, successors, heirs, 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, heirs, predecessors, and representatives of each other Party, from all claims, demands, actions, and causes of action of whatever kind or nature, presently known or unknown, arising out of or in any way connected with the lawsuit.

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

2 12. This Consent Decree and Order shall be in full force and effect for a
3 period of eighteen (18) months after the date of entry of this Consent Decree and
4 Order, or until the injunctive relief contemplated by this Consent Decree and Order
5 is completed and payment for damages, attorney fees, and litigation expenses and
6 costs is made in full, whichever occurs later. The Court shall retain jurisdiction of
7 this action to enforce provisions of this Consent Decree and Order for eighteen
8 (18) months after the date of this Consent Decree and Order, or until the injunctive
9 relief contemplated by this Consent Decree and Order is completed and payment
10 for damages, attorney fees, and litigation expenses and costs is made in full,
11 whichever occurs later.
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17 **SEVERABILITY:**

18 13. If any term of this Consent Decree and Order is determined by any
19 court to be unenforceable, the other terms of this Consent Decree and Order shall
20 nonetheless remain in full force and effect.
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23 **SIGNATORIES BIND PARTIES:**

24 14. Signatories on the behalf of the Parties represent that they are
25 authorized to bind the Parties to this Consent Decree and Order. This Consent
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27

1 Decree and Order may be signed in counterparts and a facsimile signature shall
2 have the same force and effect as an original signature.
3
4

5 Dated: February 27, 2012

PLAINTIFF WALTER DELSON

6 Walter Delson
7
8 WALTER DELSON

9 Dated: February 27, 2012

DEFENDANT WARSZAWA BUILDING
PARTNERSHIP

10
11
12 By: Amy Pieni
13 Print name: Andrej Pieniach
14 Title: partner owner
15
16

17 Dated: February 27, 2012

DEFENDANT CAFÉ GRATITUDE, LLC

18
19 By: Henri E. Norris
20 Print name: Henri E. Norris
21 Title: Owner
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1 APPROVED AS TO FORM:

2 Dated: February 27, 2012

LAW OFFICES OF PAUL L. REIN

3
4
5 By: 

6 Catherine Cabalo, Esq.
7 Attorneys for Plaintiff
8 WALTER DELSON

9 Dated: February 27, 2012

LAW OFFICE OF JASON G. GONG

10
11 By: 

12 Jason Gong, Esq.
13 Attorneys for Defendants
14 WARSZAWA BUILDING PARTNERSHIP
15 and CAFÉ GRATITUDE, LLC
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ORDER

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

Dated: March 1, 2012



Honorable MARIA-ELENA JAMES
United States Magistrate Judge