

1 PAUL L. REIN, Esq. (SBN 43053)
 CELIA MCGUINNESS, Esq. (SBN 159420)
 2 CATHERINE M. CABALO, Esq. (SBN 248198)
 LAW OFFICES OF PAUL L. REIN
 3 200 Lakeside Drive, Suite A
 Oakland, CA 94612
 4 Telephone: 510/832-5001
 Facsimile: 510/832-4787
 5 reinlawoffice@aol.com

6 Attorneys for Plaintiff
 WALTER DELSON

7

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

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

11

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,

**CONSENT DECREE AND
~~PROPOSED~~ ORDER AS TO
 DAMAGES, ATTORNEY FEES,
 LITIGATION EXPENSES, AND
 COSTS**

18

Defendants.
 _____/

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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28 CONSENT DECREE & [PROPOSED] ORDER
 AS TO DAMAGES, ATTORNEY FEES,
 LITIGATION EXPENSES, AND COSTS
 Case No. C11-1280 MEJ

1 1. Plaintiff WALTER DELSON ("Plaintiff") filed a Complaint in this
2 action on March 16, 2011, to obtain recovery of damages for his discriminatory
3 experiences, denial of access, and denial of his 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 WARSZAWA
6 BUILDING PARTNERSHIP and CAFÉ GRATITUDE, LLC (together referred to
7 as "Defendants"), relating to the condition of Defendants' public accommodations
8 as of October 13, 2010, and continuing. Plaintiff has alleged that Defendants
9 violated Title III of the ADA and sections 51, 52, 54, 54.1, 54.3 and 55 of the
10 California Civil Code, and sections 19955 *et seq.* of the California Health & Safety
11 Code by failing to provide full and equal access to their facilities at 1730 Shattuck
12 Avenue, Berkeley, California.

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16 2. Plaintiff and Defendants (Plaintiff and Defendants hereinafter the
17 "Parties") hereby enter into this Consent Decree and Order for the purpose of
18 resolving Plaintiff's claims for damages, attorney fees, litigation expenses, and
19 costs without the need for protracted litigation.
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23 **JURISDICTION:**
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25 3. The Parties to this Consent Decree and Order agree that the Court has
26 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations
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1 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*,
2 and pursuant to supplemental jurisdiction for alleged violations of California
3 Health & Safety Code sections 19955 *et seq.*; and California Civil Code sections
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5 51, 52, 54, 54.1, 54.3, and 55.

6 4. In order to avoid the costs, expense, and uncertainty of protracted
7 litigation, the Parties to this Consent Decree and Order agree to entry of this
8 Consent Decree and Order to resolve Plaintiff's claims for damages, attorney fees,
9 litigation expenses, and costs against Defendants raised in the Complaint filed with
10 this Court. Accordingly, the Parties agree to the entry of this Consent Decree and
11 Order without trial or further adjudication of any issues of fact or law concerning
12 Plaintiff's claims against Defendants.
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15 WHEREFORE, the Parties to this Consent Decree and Order hereby agree
16 and stipulate to the Court's entry of this Consent Decree and Order, which
17 provides as follows:
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21 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS:**

22 5. Defendants shall pay to Plaintiff a total of \$20,000 for Plaintiff's
23 alleged damages for personal injuries and civil rights violations, with payment to
24 be made to "PAUL L. REIN IN TRUST FOR WALTER DELSON." Defendants
25 agree to deliver payment of Plaintiff's \$20,000 damages on or before March 27,
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1 2012. Defendants shall also pay an additional total of \$26,635 for Plaintiff's
2 attorney and expert fees, litigation expenses and costs, with payment to be made to
3 "PAUL L. REIN." Defendants agree to deliver a first installment of \$3,317.50 in
4 payment for Plaintiff's attorney and expert fees, litigation expenses and costs on or
5 before March 27, 2012; and a second and final installment of \$23,317.50 by May
6 28, 2012. Defendants agree to deliver all payments described in this paragraph to
7 the Law Offices of Paul L. Rein, 200 Lakeside Drive, Suite A, Oakland, CA
8 94612.

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13 **ENTIRE CONSENT ORDER:**

14 6. This Consent Decree and Order constitute the entire agreement
15 between the signing Parties on the matters of Plaintiff's damages, attorney fees,
16 litigation expenses, and costs, and no other statement, promise or agreement, either
17 written or oral, made by any of the Parties or agents of any of the Parties that is not
18 contained in this written Consent Decree and Order – other than the Consent
19 Decree and Order as to Injunctive Relief Only -- shall be enforceable regarding
20 the matters described herein. The Parties stipulate that all Parties request that the
21 Court not dismiss the case until injunctive relief is completed and damages,
22 attorney fees, litigation expenses, and costs are paid in full.
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1 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**
2 **SUCCESSORS IN INTEREST:**

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

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

6 **A GENERAL RELEASE DOES NOT EXTEND TO**
7 **CLAIMS WHICH THE CREDITOR DOES NOT**
8 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**
9 **FAVOR AT THE TIME OF EXECUTING THE**
10 **RELEASE, WHICH IF KNOWN BY HIM OR HER**
11 **MUST HAVE MATERIALLY AFFECTED HIS**
12 **SETTLEMENT WITH THE DEBTOR.**

13 9. Except for all obligations required in this Consent Decree and Order
14 and the Consent Decree and Order as to Injunctive Relief Only, each of the Parties
15 to this Consent Decree and Order, on behalf of themselves, their respective agents,
16 representatives, predecessors, successors, heirs, partners and assigns, releases and
17 forever discharges each other Party and all officers, directors, shareholders,
18 subsidiaries, joint venturers, stockholders, partners, parent companies, employees,
19 agents, attorneys, insurance carriers, heirs, predecessors, and representatives of
20 each other Party, from all claims, demands, actions, and causes of action of
21 whatever kind or nature, presently known or unknown, arising out of or in any way
22 connected with the lawsuit.
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1 **TERM OF THE CONSENT DECREE AND ORDER:**

2 10. 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 11. 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 12. 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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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.
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5 Dated: February 27, 2012 PLAINTIFF WALTER DELSON

6
7 Walter Delson
8 WALTER DELSON

9 Dated: February 27, 2012 DEFENDANT WARSZAWA BUILDING
10 PARTNERSHIP

11
12 By: Henry Pieni
13 Print name: ANDRZEJ PIERACKI
14
15 Title: owner partner

16
17 Dated: February 27, 2012 DEFENDANT CAFÉ GRATITUDE, LLC

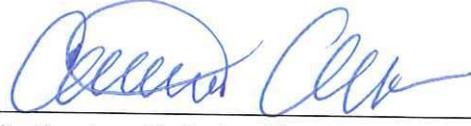
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19 By: Henri E. Norris
20 Print name: Henri E. Norris
21
22 Title: Owner

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1 APPROVED AS TO FORM:

2 Dated: February 27, 2012

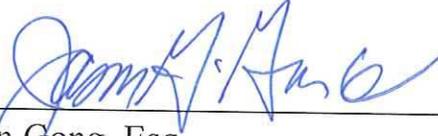
LAW OFFICES OF PAUL L. REIN

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.
The Clerk of Court shall close the file.

Dated: March 1, 2012



Honorable MARIA-ELENA JAMES
United States Magistrate Judge