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6 Attorneys for Plaintiff  
 WALTER DELSON

7 \* *Defendants' counsel listed after the caption*  
 8

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

12 WALTER DELSON,

13 Plaintiff,

14 v.

15 THAI DELIGHT CUISINE  
 COMPANY, LTD.; MICHELLE J.  
 16 SCHWARTZ; and DOES 1-10,  
 Inclusive,

17 Defendants.

Case No. C11-1464 EDL

Civil Rights

**CONSENT DECREE AND  
 [PROPOSED] ORDER**

18 JEFFREY P. WOO, ESQ.  
 HARRISON T. NAM, ESQ.  
 19 COOPER, WHITE & COOPER LLP  
 20 201 California Street, 17<sup>th</sup> Floor  
 San Francisco, CA 94111  
 Telephone: 415/433-1900  
 21 Facsimile: 415/433-5530

22 Attorneys for Defendant  
 THAI DELIGHT CUISINE COMPANY, LTD.  
 23

24 STEPHEN G. PREONAS, ESQ.  
 KATZOFF & RIGGS  
 25 1500 Park Avenue, Suite 300  
 Emeryville, CA 94608  
 26 Telephone: 510/597-1990  
 Facsimile: 510/597-0295  
 27

1 Attorneys for Defendant  
MICHELLE J. SCHWARTZ

2  
3 1. Plaintiff WALTER DELSON filed a Complaint in this action on  
4 March 25, 2011 to obtain recovery of damages for his discriminatory experiences,  
5 denial of access, and denial of his civil rights, and to enforce provisions of the  
6 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and  
7 California civil rights laws against defendants THAI DELIGHT CUISINE  
8 COMPANY, LTD. and MICHELLE J. SCHWARTZ (together sometimes  
9 "Defendants"), relating to the condition of Defendants' public accommodations as  
10 of April 10, 2011, and continuing. Plaintiff has alleged that Defendants violated  
11 Title III of the ADA and sections 51, 52, 54, 54.1, 54.3, and 55 of the California  
12 Civil Code, and sections 19955 *et seq.* of the California Health & Safety Code by  
13 failing to provide full and equal access to their facilities at 1700 Shattuck Avenue,  
14 Berkeley, California.

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19 2. Plaintiff and Defendants (together sometimes the "Parties") hereby  
20 enter into this Consent Decree and Order for the purpose of resolving this lawsuit.

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23 **JURISDICTION:**

24 3. The Parties to this Consent Decree and Order agree that the Court has  
25 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations  
26 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*

1 and pursuant to supplemental jurisdiction for alleged violations of California  
2 Health & Safety Code sections 19955 *et seq.*; Title 24, California Code of  
3 Regulations; and California Civil Code sections 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 all claims raised in the Complaint filed with  
8 this Court. Accordingly, the Parties agree to the entry of this Order without trial or  
9 further adjudication of any issues of fact or law concerning Plaintiff's claims.  
10

11 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate  
12 to the Court's entry of this Consent Decree and Order, which provide as follows:  
13

14  
15 **SETTLEMENT OF INJUNCTIVE RELIEF:**  
16

17 5. This Order shall be a full, complete, and final disposition and  
18 settlement of Plaintiff's claims against Defendants that have arisen out of the  
19 subject Complaint.  
20

21 6. The Parties agree and stipulate that the corrective work will be  
22 performed as follows:  
23

24 a) **Remedial Measures:** Defendants will install an "Employees  
25 Only" sign at the designated "accessible" parking stall and insure all parking stalls  
26 are similarly signed. Defendants will install an automatic door opener at the main  
27 entry to mitigate the slope, landing issues, hardware and strike side issues.  
28

1 Defendants also agree to complete the following items in the report of Peter  
2 Margen attached hereto as **Attachment A**: 3.1, 3.4, 3.9, 3.10 (the folding counter  
3 when deployed will be at a height of 28-34" AFF and a minimum width of 36"),  
4 3.11, 3.12, 3.13, and 4.1-4.17. Mr. Margen's report that is **Attachment A** is  
5 attached and incorporated herewith.  
6

7           b) **Timing of Injunctive Relief:** Defendants will submit plans  
8 for all corrective work requiring permits to the appropriate governmental agencies  
9 within 60 days of the entry of this Consent Decree by the Court. Defendants will  
10 commence work within 60 days of receiving approval from the appropriate  
11 agencies. Defendants will complete all work by December 31, 2012. In the event  
12 that unforeseen difficulties prevent Defendants from completing any of the agreed-  
13 upon injunctive relief, Defendants or their counsel will notify Plaintiff's counsel in  
14 writing within 15 days of discovering the delay. Plaintiff will have thirty (30) days  
15 to investigate and meet and confer, and to approve the delay by stipulation or  
16 otherwise respond to Defendants' notice. If the Parties cannot reach agreement  
17 regarding the delay within an additional fifteen days, Plaintiff may seek  
18 enforcement by the Court. Defendants or their counsel will notify Plaintiff's  
19 counsel when the corrective work is completed, and in any case will provide a  
20 status report to Plaintiff's counsel no later than 120 days from the entry of this  
21 Consent Decree.  
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1           c) Defendants will notify Plaintiff in writing at the end of 120  
2 days from the Parties' signing of this Consent Decree and Order as to the current  
3 status of agreed-to injunctive relief, and every 90 days thereafter until all access is  
4 provided. If Defendants fail to provide injunctive relief on the agreed upon  
5 timetable and/or fail to provide timely written status notification, and Plaintiff files  
6 a motion with the Court to obtain compliance with these terms, Plaintiff reserves  
7 the right to seek additional attorneys' fees for any compliance work necessitated by  
8 Defendants' failure to keep this agreement. If the Parties disagree, such fees shall  
9 be set by the Court. Plaintiff agrees to provide Defendants, through their  
10 undersigned counsel, with at least 5 business days notice to cure any default under  
11 this Consent Decree & Order before seeking relief from the Court to obtain  
12 compliance with the terms of this Consent Decree & Order.  
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18 **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND**  
19 **COSTS:**

20           7. The parties have also reached an agreement regarding Plaintiff's  
21 claims for damages and attorney fees, litigation expenses, and costs. Defendants  
22 shall pay to Plaintiff a total of fifteen thousand dollars and no cents (\$15,000) for  
23 Plaintiff's damages for emotional distress and civil rights violations, with payment  
24 to be made to "PAUL L. REIN IN TRUST FOR WALTER DELSON."  
25 Defendants agree to deliver full payment of Plaintiff's \$15,000 damages to the Law  
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1 Offices of Paul L. Rein, 200 Lakeside Drive, Suite A, Oakland, CA 94612 by  
2 February 22, 2012. Defendants shall pay to Plaintiff a total of thirty two thousand  
3 and eight hundred thirty four dollars and no cents (\$32,834) for Plaintiff's attorney  
4 fees, litigation expenses, and costs, with payment to be made to "PAUL L. REIN."  
5 Defendants agree to make payment of Plaintiff's \$32,834 attorney fees, litigation  
6 expenses, and costs in three installments over three months, the first payment of  
7 \$10,945 to be made by March 8, 2012, the second payment of \$10,945 to be made  
8 by April 8, 2012, and the third payment \$10,944 to be made by May 8, 2012, all  
9 payments to be delivered to the Law Offices of Paul L. Rein, 200 Lakeside Drive,  
10 Suite A, Oakland, CA 94612.  
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15 **ENTIRE CONSENT DECREE AND ORDER:**  
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17 8. This Consent Decree and Order and **Attachment A** constitute the  
18 entire agreement between the signing Parties and no other statement, promise, or  
19 agreement, either written or oral, made by any of the Parties or agents of any of the  
20 Parties that is not contained in this written Consent Decree and Order, shall be  
21 enforceable regarding the matters described herein.  
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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,  
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.  
8

9  
10 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS**  
11 **TO INJUNCTIVE RELIEF ONLY:**

12 10. 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  
15 some further loss or damage with respect to the lawsuit that is 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  
23 Decree with respect to the lawsuit, whether the same are known, unknown, or  
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1 hereafter discovered or ascertained, and the provisions of Section 1542 of the  
2 California Civil Code are hereby expressly waived. Section 1542 provides as  
3 follows:

4  
5 **A GENERAL RELEASE DOES NOT EXTEND TO**  
6 **CLAIMS WHICH THE CREDITOR DOES NOT**  
7 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
8 **FAVOR AT THE TIME OF EXECUTING THE**  
9 **RELEASE, WHICH IF KNOWN BY HIM OR HER**  
10 **MUST HAVE MATERIALLY AFFECTED HIS**  
11 **SETTLEMENT WITH THE DEBTOR.**

12 11. Except for all obligations required in this Consent Decree and Order,  
13 each of the Parties to this Consent Decree and Order, on behalf of each, their  
14 respective agents, representatives, predecessors, successors, heirs, partners, and  
15 assigns, releases and forever discharges each other Party and all officers, directors,  
16 shareholders, subsidiaries, joint venturers, stockholders, partners, parent  
17 companies, employees, agents, attorneys, insurance carriers, heirs, predecessors,  
18 and representatives of each other Party, from all claims, demands, actions, and  
19 causes of action of whatever kind or nature, presently known or unknown, arising  
20 out of or in any way connected with the lawsuit. Notwithstanding the foregoing,  
21 the Defendants do not waive or release, but instead explicitly preserve, their rights  
22 to seek contribution, apportionment, indemnification, and all other appropriate  
23 relief from each other in connection with this Lawsuit and settlement thereof.  
24 Such right shall be the subject of a separate settlement agreement between the  
25 Defendants which shall be independently enforceable as to the Defendants.



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 by the Court, or until the injunctive relief contemplated by this Order is  
5 completed and all payments described in paragraph 7 are made, whichever occurs  
6 later. The Court shall retain jurisdiction of this action to enforce provisions of this  
7 Consent Decree and Order for eighteen (18) months after the date of entry of this  
8 Consent Decree and Order by the Court, or until the injunctive relief contemplated  
9 by this Order is completed and all payments described in paragraph 7 are made,  
10 whichever occurs later.  
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15 **SEVERABILITY:**

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17 13. If any term of this Consent Decree and Order is determined by any  
18 court to be unenforceable, the other terms of this Consent Decree and Order shall  
19 nonetheless remain in full force and effect.  
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21

22 **SIGNATORIES BIND PARTIES:**

23  
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  
26 Decree and Order may be signed in counterparts and a facsimile signature shall  
27 have the same force and effect as an original signature.  
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SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT  
THE END OF THE DOCUMENT.**

1 Dated: 2/8, 2012

PLAINTIFF WALTER DELSON

Walter Delson

WALTER DELSON

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6 Dated: 2/8, 2012

DEFENDANT THAI DELIGHT CUISINE  
COMPANY, LTD.

By: Narong S.

Print name: NARONG SAPSUWAN

Title: President

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12 Dated: 2/8, 2012

DEFENDANT MICHELLE J. SCHWARTZ

Michelle J. Schwartz  
MICHELLE J. SCHWARTZ

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18 APPROVED AS TO FORM:

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20 DATED: 2/8, 2012

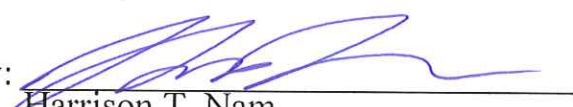
LAW OFFICES OF PAUL L. REIN

By: Catherine M. Cabalo

Catherine M. Cabalo  
Attorneys for Plaintiff  
WALTER DELSON

1 DATED: 2/8, 2012

**COOPER, WHITE & COOPER LLP**

2 By:   
3 Harrison T. Nam  
4 Attorneys for Defendant  
5 THAI DELIGHT CUISINE COMPANY, LTD.

6 DATED: 2/8, 2012

**KATZOFF & RIGGS**

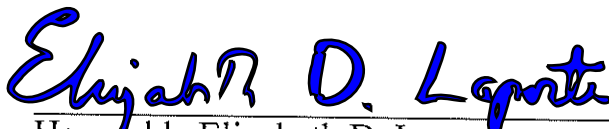
7  
8 By:   
9 Stephen G. Preonas  
10 Attorneys for Defendant  
11 MICHELLE J. SCHWARTZ  
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**ORDER**

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

Dated: February 13, 2012

  
Honorable Elizabeth D. Laporte  
United States Magistrate Judge