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6 Attorney for Plaintiff
 WALTER DELSON

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 Oakland, CA 94610
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11 Attorney for Defendants
 THE BARRON EGG SHOP OF MONTCLAIR
 12 dba THE MONTCLAIR EGG SHOP; EDWARD
 BAKER; MIGUEL A. BARRON; JORGE DOE;
 13 and DOES 2-10, Inclusive

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 WALTER DELSON,
 18 Plaintiff,

CASE NO. C12-6454 RS
Civil Rights

19 v.

**CONSENT DECREE AND
 [PROPOSED] ORDER**

20 THE BARRON EGG SHOP OF
 21 MONTCLAIR dba THE
 MONTCLAIR EGG SHOP;
 22 EDWARD BAKER; MIGUEL A.
 BARRON; JORGE DOE; and DOES
 23 2-10, Inclusive,

24 Defendants.

26 1. Plaintiff WALTER DELSON filed a Complaint in this action on
 27 December 20, 2012, to obtain recovery of damages for his discriminatory
 28 experiences, denial of access, and denial of his civil rights, and to enforce

1 provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42
2 U.S.C. sections 12101 *et seq.*, and California civil rights laws against
3 Defendants THE BARRON EGG SHOP OF MONTCLAIR dba THE
4 MONTCLAIR EGG SHOP; EDWARD BAKER; MIGUEL A. BARRON;
5 and JORGE DOE, relating to the condition of their public accommodations
6 as of November 25, 2012, and continuing. Plaintiff has alleged that
7 Defendants violated Title III of the ADA and sections 51, 52, 54, 54.1, and
8 54.3 of the California Civil Code, and sections 19955 *et seq.* of the
9 California Health & Safety Code by failing to provide full and equal access
10 to their facilities at the Montclair Egg Shop, 6126 Medau Place, Oakland,
11 California (hereafter, "Restaurant"). Defendants admit that the Restaurant
12 was not accessible on the date of plaintiff's visit. Plaintiff and defendants
13 (collectively "the parties") hereby enter into this Consent Decree and Order
14 for the purpose of resolving the injunctive relief **and damages** issues in
15 this lawsuit without the need for protracted litigation.
16

17 **JURISDICTION:**

- 18 2. The parties to this Consent Decree agree that the Court has jurisdiction of
19 this matter pursuant to 28 U.S.C. section 1331 for alleged violations of the
20 Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101, *et seq.*,
21 and pursuant to supplemental jurisdiction for alleged violations of
22 California Health & Safety Code sections 19955, *et seq.*; Title 24,
23 California Code of Regulations; and California Civil Code sections 51, 52,
24 54, 54.1, and 54.3, and Business and Professions Code section 17200, *et*
25 *seq.*
26 3. In order to avoid the costs, expense, and uncertainty of protracted litigation,
27 the parties to this Consent Decree agree to entry of this Order to resolve all
28

1 claims regarding **injunctive relief and damages** raised in the Complaint
2 filed with this Court. Accordingly, they agree to the entry of this Order
3 without trial or further adjudication of any issues of fact or law concerning
4 Plaintiff's claims for **injunctive relief and damages. Issues of attorney**
5 **fees, litigation expenses, and costs have not been resolved and will be**
6 **the subject of further negotiation and/or litigation.**

7
8 WHEREFORE, the parties to this Consent Decree hereby agree and stipulate to
9 the Court's entry of this Consent Decree and Order, which provides as follows:
10

11 **SETTLEMENT OF INJUNCTIVE RELIEF:**

12 4. This Order shall be a full, complete, and final disposition and settlement of
13 Plaintiff's claims against Defendants for injunctive relief that have arisen
14 out of the subject Complaint.

15 5. The parties agree and stipulate that the corrective work will be performed
16 in compliance with the standards and specifications for disabled access as
17 set forth in the California Code of Regulations, Title 24-2, and the
18 Americans with Disabilities Act Standards, unless other standards are
19 specifically agreed to in this Consent Decree and Order.

20 6. **Remedial Measures:**

21 Defendants THE BARRON EGG SHOP OF MONTCLAIR dba THE
22 MONTCLAIR EGG SHOP; EDWARD BAKER; and MIGUEL A.
23 BARRON agree to perform corrective work at 6126 Medau Place, Oakland,
24 California. The scope of the corrective work agreed upon by the parties is
25 detailed in the Draft Access Inspection and Report of Gary Waters, RA,
26 NCARB, CASp, dated May 9, 2013, and incorporated herewith as
27 **Attachment A.**
28

1 **7. Timing of Injunctive Relief:**

- 2 a. **Defendants will engage a contractor within 30 days of signing**
3 **this Consent Decree. Their contractor will apply for any**
4 **necessary building permits within 15 days of engagement. All**
5 **corrective work required in paragraph 6 will be completed**
6 **within six months of receiving permits from the appropriate**
7 **agency(ies).**
- 8 b. In the event that unforeseen difficulties prevent Defendants from
9 completing any of the agreed-upon injunctive relief, Defendants or
10 their counsel will notify Plaintiff's counsel in writing within 15 days
11 of discovering the delay. The parties will meet and confer for at least
12 30 days to resolve the issues informally. If the parties cannot agree
13 after that time, either party may make a motion to the Court for relief
14 or to enforce this Consent Decree and [proposed] Order. If plaintiffs
15 make a successful motion to enforce the Consent Decree and Order,
16 defendants will pay their reasonable attorney fees incurred in
17 enforcing the Order.

- 18
- 19 **8. Monitoring:** Defendants or their counsel will notify Plaintiff's counsel
20 when the modifications are completed, and in any case will provide a status
21 report no later than 45 days from the entry of this Consent Decree and
22 [Proposed] Order, and every 180 days thereafter until corrective work is
23 complete.

24

25 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS:**

- 26 **9. Damages:** Defendants will pay plaintiff's damages in the amount of
27 **\$7,500.00 (seven thousand, five hundred dollars and no cents).**
28

1 will be made within 30 days of signing this Consent Decree. Payment
2 will be made by a check payable to Paul L. Rein in Trust for Walter
3 Delson.

4 10. No agreement has been reached on the issue of attorney fees, litigation
5 expenses, and costs. These issues will be the subject of further
6 negotiation and/or litigation. The parties jointly stipulate and request
7 that the Court not dismiss the case as these significant issues remain
8 unresolved.

9
10 **ENTIRE CONSENT ORDER:**

11 11. This Consent Decree and [Proposed] Order and Attachment A to this
12 Consent Decree, which are incorporated herein by reference as if fully set
13 forth in this document, constitute the entire agreement between the signing
14 parties on the matters of injunctive relief and damages. Issues of attorney
15 fees, litigation expenses, and costs are specifically excluded and shall be
16 the subject of further negotiations and/or litigation.

17
18 **CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN**
19 **INTEREST:**

20 12. This Consent Decree and Order shall be binding on the parties and all
21 successors in interest. The parties have a duty to so notify all such
22 successors in interest of the existence and terms of this Consent Decree and
23 Order during the period of the Court's jurisdiction of this Consent Decree
24 and Order.

25
26 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS**
27 **TO INJUNCTIVE RELIEF ONLY:**

28

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

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

19 14. **Except for attorney fees, litigation expenses and costs, as well as the**
20 **repair and damages obligations stated in this Consent Decree, each of**
21 **the parties to this Consent Decree, on behalf of each, their respective**
22 **agents, representatives, predecessors, successors, heirs, partners and**
23 **assigns, releases and forever discharges each other Party and all officers,**
24 **directors, shareholders, subsidiaries, joint venturers, stockholders, partners,**
25 **parent companies, employees, agents, attorneys, insurance carriers, heirs,**
26 **predecessors, and representatives of each other Party, from all claims,**
27 **demands, actions, and causes of action of whatever kind or nature,**
28

1 presently known or unknown, arising out of or in any way connected with
2 the lawsuit.

3
4 **TERM OF THE CONSENT DECREE AND ORDER:**

5 15. This Consent Decree and Order shall be in full force and effect for a period
6 of twenty-four (24) months after the date of entry of this Consent Decree
7 and Order, or until the injunctive relief contemplated by this Order is
8 completed, whichever occurs later. The Court shall retain jurisdiction of
9 this action to enforce provisions of this Order for twenty-four (24) months
10 after the date of this Consent Decree, or until the injunctive relief
11 contemplated by this Order is completed, whichever occurs later.

12
13 **SEVERABILITY:**

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

17
18 **SIGNATORIES BIND PARTIES:**

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

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28 Dated: 9/3, 2013

PLAINTIFF WALTER DELSON

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By: Walter Delson
WALTER DELSON

Dated: 9/3, 2013

DEFENDANT THE BARRON EGG SHOP dba
MONTCLAIR EGG SHOP and DEFENDANT
MIGUEL A. BARRON as an individual

By: Miguel Barron
MIGUEL A. BARRON

Dated: 9/3, 2013

DEFENDANT EDWARD BAKER

By: Edward Baker
EDWARD BAKER

APPROVED AS TO FORM:

Dated: 9/3, 2013

PAUL L. REIN
CELIA McGUINNESS
LAW OFFICES OF PAUL L. REIN

By: Celia McGuinness
CELIA McGUINNESS, Esq.
Attorneys for Plaintiff
WALTER DELSON

Dated: 9/3, 2013

LAW OFFICE OF ARCOLINA PANTO

By: Arcolina Panto
ARCOLINA PANTO, Esq.
Attorney for Defendant
BARRON EGG SHOP OF MONTCLAIR

dba MONTCLAIR EGG SHOP

ORDER

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

Dated: 9/12/, 2013



Honorable Richard Seeborg
United States Magistrate Judge
District

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