

1 PAUL L. REIN, State Bar No. 43053
 CELIA MCGUINNESS, State Bar No. 159420
 2 CATHERINE M. CABALO, State Bar No. 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
 NICOLE BROWN-BOOKER

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

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

12 NICOLE BROWN-BOOKER,
 13 Plaintiff,

14 v.

15 FOREVER 21 RETAIL, INC.; SPI
 COMMERCIAL PARK, L.P.; SPI IH
 16 II, LP; and DOES 1-10, Inclusive,
 17 Defendants.

Case No. C12-6565 MEJ

Civil Rights

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

18 LITTLER MENDELSON, PC
 MICHAEL LEGGIERI, ESQ. (State Bar No. 253791)
 19 500 Capitol Mall, Suite 2000
 Sacramento, CA 95814
 20 Telephone: 916/830-7200
 Facsimile: 916/848-0200
 21 MLeggieri@littler.com

22 LITTLER MENDELSON, PC
 MAUREEN A. RODGERS, ESQ. (State Bar No. 245846)
 23 650 California Street, 20th Floor
 San Francisco, CA 94108
 24 Telephone: 415/433.1940
MRodgers@littler.com

25 Attorneys for Defendant
 26 FOREVER 21 RETAIL, INC.

27
 28 CONSENT DECREE & ORDER AS TO
 INJUNCTIVE RELIEF ONLY

1 RING HUNGER HOLLAND & SCHENONE LLP
2 STEVE HOLLAND, ESQ. (State Bar No. 132321)
3 985 Moraga Road, Suite 210
4 Lafayette, CA 94549
5 Telephone: 925/226-8248
6 Facsimile: 925/550-8509
7 sholland@rhhsllaw.com

8 Attorneys for Defendants
9 SPI COMMERCIAL PARK, L.P. and
10 SPI IH II, LP

11
12 1. Plaintiff NICOLE BROWN-BOOKER filed a Complaint in this action
13 on December 28, 2012 to obtain recovery of damages for her alleged discriminatory
14 experiences, denial of access, and denial of her civil rights, and to enforce
15 provisions of the Americans with Disabilities Act of 1990 ("**ADA**"), 42 U.S.C.
16 §§ 12101 *et seq.*, and California civil rights laws against Defendants FOREVER 21
17 RETAIL, INC.; SPI COMMERCE PARK, L.P.; SPI IH II, LP (all defendants
18 sometimes referred to as "**Defendants**"), relating to the condition of Defendants'
19 public accommodations as of October 11, 2011 and continuing. Plaintiff alleges
20 that Defendants violated Title III of the ADA and sections 51, 52, 54, 54.1, 54.3,
21 and 55 of the California Civil Code, and sections 19955 *et seq.* of the California
22 Health & Safety Code by failing to provide full and equal access to their facilities at
23 7 Powell St., San Francisco, California.

24 2. Plaintiff and Defendants (together sometimes the "**Parties**") hereby
25 enter into this Consent Decree and Order for the purpose of resolving this lawsuit
26 without the need for protracted litigation. Issues of damages and attorneys' fees,
27

1 costs, and expenses will be the subject of further negotiations and litigation, if
2 necessary.

3
4
5 **JURISDICTION:**

6 3. The Parties to this Consent Decree and Order agree that the Court has
7 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations
8 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*
9 and pursuant to supplemental jurisdiction for alleged violations of California
10 Health & Safety Code sections 19955 *et seq.*; Title 24, California Code of
11 Regulations; and California Civil Code sections 51, 52, 54, 54.1, 54.3, and 55.

12
13
14 4. In order to avoid the costs, expense, and uncertainty of protracted
15 litigation, the Parties to this Consent Decree and Order agree to entry of this
16 Consent Decree and Order to resolve all injunctive relief claims raised in the
17 Complaint filed with this Court. Accordingly, the Parties agree to the entry of this
18 Order without trial or further adjudication of any issues of fact or law concerning
19 Plaintiff's claims for injunctive relief, Defendants expressly doing so without
20 admitting any wrongdoing, liability, or any of the allegations pled by Plaintiff.

21
22
23 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate
24 to the Court's entry of this Consent Decree and Order, which provide as follows:
25
26
27

1 **SETTLEMENT OF INJUNCTIVE RELIEF:**

2 5. This Order shall be a full, complete, and final disposition and
3 settlement of Plaintiff's injunctive relief claims against Defendants that have arisen
4 out of the subject Complaint.
5

6 6. The Parties agree and stipulate that the corrective work set forth in
7 Exhibit A will be performed in compliance with the standards and specifications
8 for disabled access as set forth in the California Code of Regulations, Title 24-2,
9 and Americans with Disabilities Act Standards for Accessible Design, unless other
10 standards are specifically agreed to in this Consent Decree and Order.
11

12 a) **Remedial Measures:** The corrective work agreed upon by the
13 Parties is set forth in **Attachment A**, which is attached and incorporated herewith.
14

15 b) **Timing of Injunctive Relief:** Defendant SPI will submit plans
16 for all corrective work requiring permits to the appropriate governmental agencies
17 within 60 days of the entry of this Consent Decree by the Court. Defendants will
18 complete all corrective work by December 31, 2013, except for the primary
19 entrance ramp, which shall be completed by May 31, 2014. In the event that
20 unanticipated difficulties prevent Defendants from completing any of the agreed-
21 upon injunctive relief, Defendants or their counsel will notify Plaintiff's counsel in
22 writing within 10 business days of discovering the delay. Plaintiff will have thirty
23 (30) days to investigate and meet and confer, and to approve the delay by
24
25
26
27

1 stipulation or otherwise respond to Defendants' notice. If the Parties cannot reach
2 agreement regarding the delay within an additional fifteen days after meet and
3 confer efforts are concluded, or as otherwise stipulated, any party to this agreement
4 may seek enforcement by the Court. Defendants or its counsel will notify
5 Plaintiff's counsel when the corrective work is completed.
6

7
8
9 c) If Defendants fail to provide injunctive relief on the agreed
10 upon timetable and Plaintiff files a motion with the Court to obtain compliance
11 with these terms, Plaintiff reserves the right to seek additional attorneys' fees for
12 any compliance work necessitated by Defendants' failure to keep this agreement if
13 and to the extent allowed under applicable laws. If the Parties disagree, such fees
14 shall be set by the Court
15

16
17 **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND**
18 **COSTS:**

19 7. The Parties have not reached any agreement regarding Plaintiff's
20 claims for damages, attorneys' fees, litigation expenses, and costs. These matters
21 will be the subject of future negotiation or litigation as necessary. The Parties
22 jointly stipulate and request that the Court not dismiss the case in its entirety as
23 these issues remain unresolved.
24
25
26
27

1 **ENTIRE CONSENT DECREE AND ORDER:**

2 8. This Consent Decree and Order and **Attachment A** constitute the
3 entire agreement between the signing Parties and no other statement, promise, or
4 agreement, either written or oral, made by any of the Parties or agents of any of the
5 Parties that is not contained in this written Consent Decree and Order, shall be
6 enforceable regarding the matters described herein.
7

8
9
10 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**
11 **SUCCESSORS IN INTEREST:**

12 9. This Consent Decree and Order shall be binding on Plaintiff,
13 Defendants, and any successors-in-interest. Defendants have a duty to so notify all
14 such successors-in-interest of the existence and terms of this Consent Decree and
15 Order during the period of the Court's jurisdiction of this Consent Decree and
16 Order.
17

18
19 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS**
20 **TO INJUNCTIVE RELIEF ONLY:**

21 10. Each of the Parties to this Consent Decree and Order understands and
22 agrees that there is a risk and possibility that, subsequent to the execution of this
23 Consent Decree and Order, any or all of them will incur, suffer, or experience
24 some further loss or damage with respect to the lawsuit that is unknown or
25 unanticipated at the time this Consent Decree and Order is signed. Except for all
26
27

1 obligations required in this Consent Decree and Order, the Parties intend that this
2 Consent Decree and Order apply to all such further loss with respect to the lawsuit,
3 except those caused by the Parties subsequent to the execution of this Consent
4 Decree and Order. Therefore, except for all obligations required in this Consent
5 Decree and Order, this Consent Decree and Order shall apply to and cover any and
6 all claims, demands, actions, and causes of action by the Parties to this Consent
7 Decree with respect to the lawsuit, whether the same are known, unknown, or
8 hereafter discovered or ascertained, from the beginning of time to the date of entry
9 of this Consent Decree, and the provisions of Section 1542 of the California Civil
10 Code are hereby expressly waived. Section 1542 provides as follows:

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

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

22 11. Except for all obligations required in this Consent Decree and Order --
23 and exclusive of the referenced continuing claims for damages, attorneys' fees,
24 litigation expenses, and costs -- each of the Parties to this Consent Decree and
25 Order on behalf of each, their respective agents, representatives, predecessors,
26

1 successors, heirs, partners, and assigns, releases and forever discharges each other
2 Party and all officers, directors, shareholders, subsidiaries, joint venturers,
3 stockholders, partners, parent companies, employees, agents, attorneys, insurance
4 carriers, heirs, predecessors, and representatives of each other Party, from all
5 claims, demands, actions, and causes of action of whatever kind or nature,
6 presently known or unknown, arising out of or in any way connected with the
7 lawsuit. Notwithstanding the foregoing, the Defendants do not waive or release,
8 but instead explicitly preserve, their rights to seek contribution, apportionment,
9 indemnification, and all other appropriate relief from each other in connection with
10 this lawsuit and settlement thereof.
11
12

13
14 In the event Plaintiff believes at any time in the future that the conditions at
15 the Forever 21 store involved in this lawsuit, or the conditions at any Forever 21
16 facility located in the United States, constitute a violation of Title III of the
17 Americans with Disabilities Act or similar California state laws, regulations, or
18 codes, including but not limited to the Unruh Civil Rights Act, Title 24 of the
19 California Code of Regulations, the California Health & Safety Code, and the
20 California Disabled Persons Act, Plaintiff shall provide written notice to outside
21 counsel for Forever 21 and Forever 21's Legal Department, 3880 North Mission
22 Road Room 3110, Los Angeles, 90031, by certified or registered mail, and counsel
23 for SPI, if applicable, detailing the claimed violation(s). Defendant(s) thereafter
24
25
26
27

1 shall have 120 days from the receipt of the notice to cure any such violation(s)
2 before Plaintiff may institute any proceeding to compel compliance.
3
4

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

6 12. This Consent Decree and Order shall be in full force and effect -- and
7 the Court shall retain jurisdiction of this action to enforce provisions of this
8 Consent Decree and Order -- for a period of eighteen (18) months after the date of
9 entry of this Consent Decree and Order by the Court or until the injunctive relief
10 contemplated by this Order is completed, whichever occurs later.
11
12
13

14 **SEVERABILITY:**

15 13. If any term of this Consent Decree and Order is determined by any
16 court to be unenforceable, the other terms of this Consent Decree and Order shall
17 nonetheless remain in full force and effect.
18
19
20

21 **SIGNATORIES BIND PARTIES:**

22 14. Signatories on the behalf of the Parties represent that they are
23 authorized to bind the Parties to this Consent Decree and Order. This Consent
24 Decree and Order may be signed in counterparts and a facsimile signature shall
25 have the same force and effect as an original signature.
26
27

1
2 **NO ADMISSION OF LIABILITY:**

3 15. Defendants deny all allegations contained in the Action. The Parties
4 expressly represent, understand, and assent that this Agreement is a compromise of
5 disputed claims and shall not be construed as an admission of liability by the
6 released Parties. Nor shall any acts, omissions or statements by the Parties be
7
8 construed as an admission of liability.
9

10
11
12
13 **END OF PAGE.**
14 **SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT**
15 **THE END OF THE DOCUMENT.**
16
17
18
19
20
21
22
23
24
25
26
27

1 Dated: _____, 2013

PLAINTIFF NICOLE BROWN-BOOKER

Nicole Booker

NICOLE BROWN-BOOKER

2
3
4
5
6 Dated: 9/11, 2013

DEFENDANT FOREVER 21 RETAIL, INC.

7
8 By: *Maxwell Norman*

9 Print name: Maxwell Norman

10 Title: Senior Counsel - Employment

11
12 Dated: 9/11, 2013

DEFENDANT SPI COMMERCE PARK, L.P.

13
14 By: *Gary Miranda*

15 Print name: Gary Miranda

16 Title: Principal

17
18 Dated: 9/11, 2013

DEFENDANT SPI IH II, LP

19
20 By: *Gary Miranda*

21 Print name: Gary Miranda

22 Title: Principal

23 //

24 //

25 //

26 //

27 //

28 //

1 APPROVED AS TO FORM:

2
3 Dated: 9/11, 2013

LAW OFFICES OF PAUL L. REIN

4 By: 
5 Catherine Cabalo, Esq.
6 Attorneys for Plaintiff
7 NICOLE BROWN-BOOKER

8 Dated: Sept 11, 2013

LITTLER MENDELSON, PC

9
10 By: 
11 Maureen Rodgers, Esq.
12 Attorneys for Defendant FOREVER 21
13 RETAIL, INC.

14 Dated: Sept. 11, 2013

**RING HUNTER HOLLAND &
SCHENONE, LLP**

15
16 By: 
17 Steve Holland, Esq.
18 Attorneys for Defendants
19 SPI COMMERCIAL PARK, L.P.; SPI IH II,
20 LP

ORDER

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 9/18/2013, 2013

Honorable
United States



Nicole Brown-Booker v. Forever 21 Retail, Inc., et al.

Case No. 12-6565 MEJ

United States District Court, Northern District of California

**ATTACHMENT A TO CONSENT DECREE AND ORDER
AS TO INJUNCTIVE RELIEF ONLY**

Defendants Forever 21, Retail, Inc. and SPI Commercial Park, L.P., and SPI IH II, LP (together "Defendants") recognize that they are jointly and severally liability for the alleged violations provided in Barry Atwood's report.

Forever 21 agrees to undertake and complete the following remedial work. Unless expressly stated otherwise, all work described will fully comply with 2010 ADA Standards and the California Building Code Title 24-2:

1. Replace or modify the handrails on the back (west) entrance ramp so that they extend at least 12 in (305 mm) beyond the top and bottom of the ramp segment.
2. Forever 21 will ensure that the bench inside the first floor dressing room is 24 inches by 48 inches. Additionally, the first floor dressing room will provide clear floor space that is a minimum of 60 inches in width and length. Forever 21 will reasonably maintain designated accessible dressing rooms to provide the necessary clear floor space to enter the space, make a 180 degree turn, and exit the room.
3. Remove the coat hangers on the wall directly behind the bench in the first floor dressing room.
4. Remove the handicap accessible sign from the west register and mount it by the accessible east-end register.
5. Remove the IBM receipt printer from the accessible east-end register.
6. Remove the drinking fountain.

W
MAR
[Signature]

7. Adjust or replace the door closer in the women's restroom so the maximum force required to open the door is 5 lbs. of pressure.
8. Remove the Dyson hand dryer from the women's restroom to provide the necessary turn-around space.
9. Reconfigure or replace the p-trap in the women's restroom so the front face of the p-trap is mounted within 6" of the wall that the sink is mounted upon.
10. Remove the trash can from the accessible stall in the women's restroom and will reasonably maintain the bathroom so the minimum distance between the side of the toilet and any other semi-permanent fixture complies with the CBC/ADAAG requirements.
11. Reconfigure the rear grab bar in the accessible stall in the women's restroom so that it extends from the centerline of the water closet 12" minimum on one side and 24" on the other side.
12. Relocate the toilet paper dispenser in the accessible stall in the women's restroom so the leading edge is set at a max. 36" from the face of the wall behind the toilet.
13. Adjust or replace the door closer in the men's restroom so the maximum force required to open the door is 5 lbs. of pressure.
14. Remove the Dyson hand dryer from the men's restroom.
15. Reconfigure or replace the p-trap in the men's restroom so the front face of the p-trap is mounted within 6" of the wall that the sink is mounted upon.
16. Reconfigure the rear grab bar in the men's restroom so that it extends from the centerline of the water closet 12" minimum on one side and 24" on the other side.
17. Relocate the toilet paper dispenser in the men's restroom so the leading edge is set at a max. 36" from the face of the wall behind the toilet.


MAR


SPI Commerce Park, LP, and SPI IH II, LP, agree to undertake and complete the following remedial work. Unless expressly stated otherwise, all work described will fully comply with 2010 ADA Standards and the California Building Code Title 24-2:

1. Reconfigure the ramp at the main (south) entrance so it has no slope greater than 8.33% along its entire route.
2. Insure handrails extend at least 12 in (305 mm) beyond the top of the ramp segment at the main (south) entrance.

①
MAR
