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 Hotel Nikko of San Francisco, Inc., Hotel Nikko
 7 (U.S.A.), Inc., and Datam S.F., LLC.

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

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11 CONNIE ARNOLD,
 12 Plaintiff,
 13 v.
 14 HOTEL NIKKO OF SAN FRANCISCO, INC.;
 HOTEL NIKKO (U.S.A.), INC.; DATAM S.F.,
 15 LLC; and DOES 1 through 10, inclusive,
 16 Defendants.

Case No. 3:15-cv-00137 MEJ

**STIPULATION FOR DISMISSAL OF
 ACTION WITH PREJUDICE AND
 13 ~~PROPOSED~~ ORDER RE:
 ENFORCEMENT OF SETTLEMENT**

Judge: Hon. Maria-Elena James

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INTRODUCTION

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19 1. On January 9, 2015, Plaintiff CONNIE ARNOLD (“Plaintiff”) filed the Complaint
 20 in the above-captioned action (the “Action”) against Defendants Hotel Nikko of San Francisco,
 21 Inc.; Hotel Nikko (U.S.A.), Inc.; Datam S.F., LLC; and DOES 1 through 10 (“Defendants”).
 22 Plaintiff alleged that Defendants, owners and operators of the Hotel Nikko at 222 Mason Street in
 23 San Francisco (the “Hotel”), failed to maintain their facilities in a manner that was accessible to
 24 Plaintiff, who allegedly requires a wheelchair for mobility. Pursuant to Title III of the Americans
 25 with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101 *et seq.*, Plaintiff sought an injunction
 26 from this Court ordering Defendants to alter the hotel facilities to make them accessible, to
 27 modify their policies to provide people with disabilities full and equal access to their services, and
 28 to prohibit operation of Defendants’ hotel until they provide full and equal access to physically

1 disabled persons. Plaintiff also sought monetary relief for violations of her civil rights pursuant
2 to the California Unruh Civil Rights Act, Cal. Civ. Code § 51 *et seq.*, as well as special and
3 consequential damages. Finally, Plaintiff sought an award of attorneys' fees and costs pursuant to
4 Title III of the ADA § 12205, California Civil Code §§ 52 and 55, and California Code of Civil
5 Procedure § 1021.5.

6 2. Defendants deny any wrongdoing and each of Plaintiff's allegations and
7 contentions, including all allegations related to the claimed denial of full and complete enjoyment
8 of and access to the Hotel and its services. Defendants affirmatively assert that the Hotel values
9 its disabled patrons and provides full access to its services, facilities, and amenities to such
10 guests, in full compliance with all applicable access guidelines. Defendants dispute that any
11 injunctive relief is mandated by the provisions of the ADA, the California Civil Code, and/or the
12 California Health & Safety Code, and further dispute the validity of Plaintiff's claims, her
13 standing to sue, and her alleged damages and/or injuries.

14 3. Nonetheless, as a way to avoid further litigation and uncertainty, Plaintiff and
15 Defendant (together, "the Parties") hereby enter into this Stipulation for Dismissal of Action with
16 Prejudice (this "Stipulation") for the purpose of resolving this lawsuit without the need for further
17 litigation.

18 JURISDICTION AND VENUE

19 4. The Parties to this Stipulation agree that the Court has jurisdiction of this matter
20 pursuant to 28 U.S.C. § 1331 for alleged violations of the ADA, and pursuant to supplemental
21 jurisdiction, 28 U.S.C. § 1367, for alleged violations of the Unruh Civil Rights Act.

22 5. The Parties agree that venue is proper in this court pursuant to 28 U.S.C. §
23 1391(b), as the real property which is the subject of the Action is located in the Northern District
24 of California and the Plaintiff's causes of action arose in the Northern District of California.

25 DISMISSAL OF ACTION WITH PREJUDICE

26 6. In consideration of the covenants undertaken herein by Defendants, including,
27 without limitation, the undertakings in Paragraphs 8 and 9 of this Stipulation, and for other
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1 valuable consideration, receipt of which is hereby acknowledged, Plaintiff covenants and agrees,
2 by and through her counsel, that the Action will be dismissed with prejudice.

3 **SETTLEMENT OF INJUNCTIVE RELIEF**

4 7. This Stipulation shall be a full, complete, and final disposition and settlement of all
5 Plaintiff's claims against Defendants, including by way of example but not of limitation, all
6 claims for injunctive relief, damages, attorneys' fees, expenses, and costs that have arisen out of
7 the subject Complaint and Action.

8 8. Defendants will perform the construction work described in Attachment A, and in
9 the time set forth in Attachment A, assuming that the subject property that is currently the Hotel
10 remains a public accommodation as defined by the ADA at such times. The Parties agree and
11 stipulate that all construction performed pursuant to this Stipulation will be performed in
12 compliance with the applicable standards, codes, and regulations for disabled access, unless other
13 standards are specifically set forth in this Stipulation and/or this Court's accompanying Order. In
14 the event that unforeseen difficulties prevent Defendants from completing any of the agreed-upon
15 injunctive relief, Defendants or their counsel will notify Plaintiff's counsel in writing within
16 fifteen (15) business days of discovering the delay. Plaintiff will have thirty (30) calendar days to
17 investigate and meet and confer, and to approve the delay by stipulation or otherwise respond to
18 Defendants' notice. If the Parties cannot reach agreement regarding the delay within an
19 additional fifteen (15) business days of Plaintiff's response, Plaintiff may seek enforcement by
20 the Court. In the event of an alleged breach of this Stipulation, fee-shifting and/or cost-shifting
21 will be available to the parties to the same extent that it would have been available for the same
22 type of claim in the absence of the Stipulation (by way of example, but not of limitation, if the
23 Plaintiff claims that Defendants fail to fully correct Item D.4 on Attachment A, she would be able
24 to seek fee-shifting and/or cost-shifting to the same extent as allowed by law in a case alleging a
25 non-compliant folding seat). Defendants or their counsel will notify Plaintiff's counsel when the
26 corrective work is completed, and in any case will provide a status report to Plaintiff's counsel no
27 later than one hundred and twenty (120) calendar days from the entry of this Stipulation. Plaintiff

1 or her representative shall have an opportunity to inspect the corrective work after completion
2 upon thirty (30) calendar days' written notice sent to counsel for Defendants. The Parties had
3 originally agreed to two other items of injunctive relief – a handrail on the sidewall in the arcade
4 along Mason Street, and rebuilding the Mason Street ramp with a slope not to exceed 8.33% – but
5 in light of other construction being done outside of this Settlement to make the O'Farrell Street
6 entrance accessible to pedestrians, the Parties have agreed that these items need not be done, as
7 the primary accessible entrance for pedestrians will be on O'Farrell Street and the primary
8 accessible entrance for individuals in vehicles will be on Mason Street. Consistent with this
9 intent, Defendants shall install signage at the Mason Street entrance directing disabled pedestrians
10 to the O'Farrell Street entrance.

11 **SETTLEMENT OF DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES,**
12 **AND COSTS**

13 9. The Parties have also reached an agreement regarding Plaintiff's claims for
14 damages, attorneys' fees, litigation expenses, and costs. Defendants shall pay to Plaintiff a total
15 of twenty-one thousand U.S. dollars and no cents (\$21,000.00). This figure is inclusive of all
16 statutory damages, penalties, damages for physical injury, attorneys' fees, litigation expenses, and
17 costs, as well as any other claims whatsoever that Plaintiff may hold or allegedly hold against
18 Defendants. The settlement sum shall be made by a single check, made out to "Metz & Harrison
19 Client Trust Account." Payment of all amounts described in this paragraph are to be made within
20 fifteen (15) calendar days of the date this Court enters the Order approving this Stipulation, and
21 will be delivered to Metz & Harrison, LLP, 139 Richmond Street, El Segundo, CA 90245.

22 **PLAINTIFF'S RELEASE AND WAIVER OF CIVIL CODE SECTION 1452**

23 10. Except for those obligations created by or arising out of this Stipulation, in
24 consideration of the covenants undertaken herein by Defendants, including, without limitation,
25 Defendants' undertakings in Paragraphs 8 and 9 of this Stipulation, and for other valuable
26 consideration, receipt of which is hereby acknowledged, Plaintiff hereby releases, discharges, and
27 covenants not to sue Hotel Nikko of San Francisco, Inc., Hotel Nikko (U.S.A.), Inc., and Datam
28 S.F., LLC, including its and their predecessors, successors, affiliates, parents, subsidiaries, related

1 companies, employees, agents, shareholders, officers, directors, attorneys, insurers, and any other
2 entity that could be jointly liable with them (individually and collectively, “the Hotel Releasees”)
3 from and with respect to any and all actions, causes of action, suits, liabilities, claims, and
4 demands whatsoever, and each of them, whether known or unknown, from the beginning of time
5 to the date of this Stipulation. The Parties intend Plaintiff’s release to be general and
6 comprehensive in nature and to release all claims and potential claims against the Hotel Releasees
7 to the maximum extent permitted at law. Claims being released include specifically, by way of
8 description, but not by way of limitation, any and all claims arising out of or in any way related
9 to: (i) any interactions between Plaintiff and the Hotel Releasees; (ii) any allegation that was
10 raised or could have been raised in the Complaint and/or in the Action; (iii) any allegation that
11 arises out of or is in any way directly or indirectly related to any of the transactions, occurrences,
12 acts, or omissions which happened, or which are alleged to have happened, in connection with the
13 Plaintiff’s stay at the Hotel, as well as any transactions, occurrences, acts, or omissions which
14 happened, or which are alleged to have happened, as a direct or indirect result of said stay; (iv)
15 any constitution, treaty, federal law, state law, local law or ordinance, or common law principle
16 governing or pertaining to the allegations set forth in the Complaint, including but not limited to
17 the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, the Unruh Civil Rights
18 Act, Cal. Civ. Code § 51 *et seq.*, California Civil Code §§ 52 and 55, California Code of Civil
19 Procedure § 1021.5, California tort law, California contract law, the California Civil Code, the
20 California Code of Civil Procedure, and/or any other California statute; (v) any other constitution,
21 statute, law, or ordinance whatever the city, county, state, or country of enactment; (vi) any
22 transactions, occurrences, acts, statements, disclosures, or omissions occurring prior to the date of
23 this Stipulation; (vii) any claims for physical injury and/or emotional injury and/or distress; and
24 (viii) by way of further description, but not by way of limitation, any and all claims arising out of
25 or in any way related to claims for attorneys’ fees, attorneys’ costs/expenses, indemnification,
26 fines, penalties, damages, costs, expenses, interest, restitution, liquidated damages, punitive
27 damages, declaratory relief, and/or injunctive relief allegedly due and owing, whether based on
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1 treatise, permit, statute, lease, contract, ordinance, and/or common law; provided, however, that
2 this Stipulation is not intended to nor does it release or waive any claim which is unwaivable
3 and/or unreleasable as a matter of law; and provided, further, that, with regard to entities other
4 than the named defendants, this Stipulation is not intended to release or waive any claim that is
5 not related, directly or indirectly, to Plaintiff's stay or stays with, and interactions with, the Hotel
6 (the "Released Claims"). Plaintiff acknowledges that she may hereafter discover claims or facts in
7 addition to or different from those which she now knows or believes to exist with respect to the
8 subject matter of this Stipulation and/or the Complaint which, if known or suspected at the time
9 of executing this Stipulation, may have materially affected this release. Nevertheless, Plaintiff
10 hereby waives any right, claim, or cause of action that might arise as a result of such different or
11 additional claims or facts.

12 11. The Parties acknowledge and represent that it is their intention in executing this
13 Stipulation that it should be effective as a bar to each and every claim and cause of action listed in
14 Paragraph 10 of this Stipulation. In furtherance of this intention, Plaintiff hereby expressly waives
15 any and all rights and benefits, if any, conferred upon her by the provisions of SECTION 1542
16 OF THE CALIFORNIA CIVIL CODE, which provides:

**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
OR HER SETTLEMENT WITH THE DEBTOR.**

17 Thus, the parties desire and intend that this Stipulation shall be given full force and effect
18 according to each and all of its express terms and provisions, including those relating to unknown
19 and unsuspected claims, if any, as well as those relating to the claims referred to above.
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MISCELLANEOUS PROVISIONS

24 12. Except as expressly provided for in Paragraph 8 of this Stipulation, Plaintiff agrees
25 not to make a separate claim for attorney's fees, litigation expenses, or costs incurred in
26 connection with the Action as such claims are already incorporated into the undertakings
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1 described by Paragraphs 8 and 9 of this Stipulation, and precluded by Paragraphs 10 and 11 of
2 this Stipulation. The Parties understand and acknowledge that, except as stated expressly herein,
3 each shall bear their own legal expenses and costs incurred in connection with prosecuting or
4 defending against the Action and any of the Released Claims, and neither party shall seek
5 reimbursement thereof from any other party to this Stipulation.

6 13. This Stipulation may be pled as a full-and-complete defense to, and may be used
7 as the basis for an injunction against, any action, suit, or other proceeding which may be instituted
8 or attempted in breach of this Stipulation.

9 14. Plaintiff recognizes and agrees that the Defendants have made no representations
10 about the tax consequences (if any) of this Stipulation, that Plaintiff is responsible for paying any
11 taxes owed by Plaintiff to relevant taxing authorities for the payment pursuant to Paragraph 9 of
12 this Stipulation, and that Defendants have not proffered any tax advice in connection with this
13 Stipulation.

14 15. Plaintiff represents and warrants that she has not filed any complaints, charges,
15 lawsuits, or other legal actions with any court, agency, or other forum relating to the Released
16 Claims. Plaintiff further represents and warrants that she has not assigned or transferred to any
17 person not a party to this Stipulation any released matter. Plaintiff represents and warrants that,
18 other than the Action, she is unaware of any judicial, administrative, or other proceeding which
19 could implicate the Released Claims.

20 16. The Parties acknowledge that, in executing this Stipulation, they are acting on their
21 own, independent judgment informed by legal counsel. Defendants and Plaintiff acknowledge
22 having read this Stipulation, having taken equal part in drafting and negotiating it, and having
23 been advised by attorneys of their choosing as to its meaning and effect. The Parties acknowledge
24 and warrant that execution of this Stipulation is free and voluntary, and that the Stipulation should
25 not be construed more strictly against one party than another on the basis that one party was
26 responsible for drafting it.

27 17. The Parties acknowledge that this Stipulation contains and constitutes the entire
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1 agreement between them with respect to the Released Claims, and supersedes any previous
2 agreements or understandings between them regarding the subject matter herein. The terms of this
3 Stipulation are contractual and not a mere recital. The Parties acknowledge that neither has made
4 representations, express or implied, to induce the other to enter into this Stipulation, other than as
5 expressly set forth herein. This Stipulation may not be modified except by a written document
6 that expressly states an intent to modify this Stipulation and is signed by the party against whom
7 enforcement is sought and approved by this Court

8 18. No aspect of this Stipulation or the settlement which led to it is intended to be nor
9 at any time shall be construed, deemed, or treated in any respect as an admission by Defendants
10 of liability for any purpose. It is expressly understood and agreed by the Parties that this
11 Stipulation does not constitute an admission of the truth or accuracy of any of the allegations
12 made in the Action or of the validity of any or all of the Released Claims, and that Defendants
13 expressly deny the allegations made in the Action, as more fully set forth in the answer and/or
14 other responsive pleadings on file in the Action.

15 19. This Stipulation shall be binding on Plaintiff, Defendants, and any successors-in-
16 interest.

17 20. This Court shall retain jurisdiction of this Action for a period of eighteen (18)
18 months after the date of entry of the order approving this Stipulation, or until the construction
19 work contemplated by this Stipulation is completed, whichever occurs later.

20 21. If any term of this Stipulation is determined by any court to be unenforceable, the
21 other terms of this Stipulation shall nonetheless remain in full force and effect; provided,
22 however, that Paragraphs 10 and 11 are essential terms and if they cannot be enforced the entire
23 Stipulation will be rescinded and will be without force or effect.

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

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Dated: July 31, 2016

PLAINTIFF CONNIE ARNOLD


CONNIE ARNOLD

Dated: July __, 2016

DEFENDANT HOTEL NIKKO OF SAN FRANCISCO, INC.

By: _____

Print name: _____

Title: _____

Dated: July __, 2016

DEFENDANT HOTEL NIKKO (U.S.A.), INC.

By: _____

Print name: _____

Title: _____

Dated: July __, 2016

DEFENDANT DATAM S.F., LLC

By: _____

Print name: _____

Title: _____

APPROVED AS TO CONTENT AND FORM:

Dated: July 31, 2016

METZ & HARRISON, LLP

By:  _____

Jeff A. Harrison
Attorney for Plaintiff
CONNIE ARNOLD

Dated: July __, 2016

O'MELVENY & MYERS LLP

By: _____

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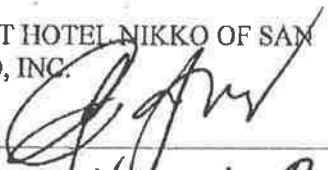
Dated: July __, 2016

PLAINTIFF CONNIE ARNOLD

CONNIE ARNOLD

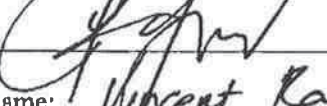
Dated: July 28, 2016

DEFENDANT HOTEL NIKKO OF SAN FRANCISCO, INC.

By: 
Print name: Vincent Rafanan
Title: Chief Financial Officer


Dated: July 29, 2016

DEFENDANT HOTEL NIKKO (U.S.A.), INC.

By: 
Print name: Vincent Rafanan
Title: Chief Financial Officer

Dated: July 27, 2016

DEFENDANT DATAM S.F., LLC

By: 
Print name: Ikuji Yamai
Title: Director

APPROVED AS TO CONTENT AND FORM:

Dated: July __, 2016

METZ & HARRISON, LLP

By: _____
Jeff A. Harrison
Attorney for Plaintiff
CONNIE ARNOLD

Dated: Aug 12, 2016

O'MELVENY & MYERS LLP

By: 

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Adam P. KohSweeney
Attorney for Defendants
HOTEL NIKKO OF SAN FRANCISCO,
INC.; HOTEL NIKKO (U.S.A.), INC.; and
DATAM S.F., LLC

ORDER

Pursuant to stipulation, and for good cause shown, **IT IS SO ORDERED**. This Action is hereby dismissed with prejudice and the Clerk is directed to mark the matter closed.

Dated: August 19, 2016

