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10 Attorneys for Plaintiff
 11 PAMELA KOUSSA

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 14 740 Fourth Street, 2nd Floor
 15 Santa Rosa, California 95404
 16 Telephone: (707) 578-4505

17 Attorney for Defendants
 18 CLAUDIA L. MARTINUCCI TRUST;
 19 PARTICELLI TRUST; LAURA M. PARKER

20 UNITED STATES DISTRICT COURT
 21 FOR THE NORTHERN DISTRICT OF CALIFORNIA

22 PAMELA KOUSSA,
 23 Plaintiff,

24 v.

25 CLAUDIA L. MARTINUCCI TRUST;
 26 PARTICELLI TRUST; LAURA M. PARKER
 27 aka LAURA M. MARTINUCCI; and DOES 1-
 28 10, Inclusive,
 Defendants.

Case No. 3:15-CV-04140 MEJ

Civil Rights

**COURT-ENFORCEABLE
 SETTLEMENT AGREEMENT AND
 [PROPOSED] ORDER FOR
 INJUNCTIVE RELIEF,
 DAMAGES, AND ATTORNEY FEES,
 LITIGATION EXPENSES, AND COSTS**

1 1. Plaintiff PAMELA KOUSSA (sometimes "Plaintiff") filed a Complaint in this
2 action on September 11, 2015, to obtain recovery of damages for her alleged discriminatory
3 experiences, denial of access, and denial of her civil rights, and to enforce provisions of the
4 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and California
5 civil rights laws against defendants CLAUDIA L. MARTINUCCI TRUST, PARTICELLI
6 TRUST, and LAURA M. PARKER aka LAURA M. MARTINUCCI (defendants sometimes
7 referred to together as "Defendants"). Plaintiff has alleged that Defendants violated Title III of
8 the ADA; sections 51, 52, 54, 54.1, and 54.3 of the California Civil Code; sections 19955 *et seq.*
9 of the California Health & Safety Code by failing to provide full and equal access to their
10 facilities at 1220 Trancas St., Napa, California.

11 2. Defendants deny that any conditions at the subject property violate the ADA and
12 California civil rights laws and specifically deny violations of Title III of the ADA; sections 51,
13 52, 54, 54.1, and 54.3 of the California Civil Code; and sections 19955 *et seq.* of the California
14 Health & Safety Code.

15 3. Plaintiff and Defendants (together sometimes the "Parties") hereby enter into this
16 Court-Enforceable Settlement Agreement and Order for the purpose of resolving injunctive
17 relief, damages and attorney fees issues in this lawsuit without the need for protracted litigation.
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19 **JURISDICTION:**

20 4. The Parties to this Court-Enforceable Settlement Agreement (hereinafter also
21 "CESA") agree that the Court has jurisdiction of this matter pursuant to 28 U.S.C. section 1331
22 for alleged violations of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101
23 *et seq.* and pursuant to supplemental jurisdiction for alleged violations of California Health &
24 Safety Code sections 19955 *et seq.*; Title 24, California Code of Regulations; and California
25 Civil Code sections 51, 52, 54, 54.1, and 54.3.

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1 b) **Timing of Injunctive Relief:** Defendants will complete all corrective
2 work by June 1, 2016. In the event that unforeseen difficulties prevent Defendants from
3 completing any of the agreed-upon injunctive relief, Defendants or their counsel will notify
4 Plaintiff's counsel in writing within five days of discovering the delay. Plaintiff will have thirty
5 (30) days to investigate and meet and confer, and to approve the delay by stipulation or
6 otherwise respond to Defendants' notice. If the Parties cannot reach agreement regarding the
7 delay within an additional fifteen days, Plaintiff may seek enforcement by the Court. Defendants
8 or their counsel will notify Plaintiff's counsel when the corrective work is completed, and in any
9 case will provide a status report to Plaintiff's counsel no later than 90 days from the Parties'
10 signing of this CESA and Order.

11 c) Defendants will notify Plaintiff in writing at the end of 90 days from the
12 Parties' signing of this CESA and Order as to the current status of agreed-to injunctive relief, and
13 every 60 days thereafter until all access is provided. If Defendants fail to provide injunctive
14 relief on the agreed upon timetable and/or fail to provide timely written status notification, and
15 Plaintiff files a motion with the Court to obtain compliance with these terms, Plaintiff reserves
16 the right to seek additional attorneys' fees for any compliance work necessitated by Defendants'
17 failure to keep this agreement. If the Parties disagree, such fees, if any, shall be set by the Court.
18

19 **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND COSTS:**

20 8. Defendants agree to pay Plaintiff a total of \$4,000 (Four thousand dollars) for
21 Plaintiff's damages, and \$12,951 (Twelve thousand, nine hundred fifty-one dollars) for Plaintiff's
22 attorney fees, litigation expenses, and costs by check(s) payable to "PAUL L. REIN IN TRUST
23 FOR PAMELA KOUSSA" to be delivered to Plaintiff's counsel's office, located at 200
24 Lakeside Drive, Suite A, Oakland, California 94612, no later than 12 noon, December 24, 2015,
25 as to the \$4,000 damages, and January 25, 2016, as to the \$12,951 attorney fees, litigation
26 expenses and costs.

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1 **ENTIRE COURT-ENFORCEABLE SETTLEMENT AGREEMENT AND ORDER:**

2 9. This CESA and Order constitutes the entire agreement between the signing
3 Parties and no other statement, promise, or agreement, either written or oral, made by any of the
4 Parties or agents of any of the Parties that is not contained in this written CESA and Order, shall
5 be enforceable regarding the matters described herein.

6
7 **COURT-ENFORCEABLE SETTLEMENT AGREEMENT AND ORDER BINDING ON**
8 **PARTIES AND SUCCESSORS IN INTEREST:**

9 10. This CESA and Order shall be binding on Plaintiff, Defendants, and any
10 successors-in-interest. Defendants have a duty to so notify all such successors-in-interest of the
11 existence and terms of this CESA and Order during the period of the Court's jurisdiction of this
12 CESA and Order.

13
14 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542:**

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

27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
28 **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 SETTLEMENT WITH THE DEBTOR.**

12. Except for all obligations required in this CESA and Order, each of the Parties to this CESA and Order on behalf of each, their respective agents, representatives, predecessors, successors, heirs, partners, and assigns, releases and forever discharges each other Party and all officers, directors, shareholders, subsidiaries, joint venturers, stockholders, partners, parent companies, employees, agents, attorneys, insurance carriers, heirs, predecessors, and representatives of each other Party, from all claims, demands, actions, and causes of action of whatever kind or nature, presently known or unknown, arising out of or in any way connected with the lawsuit. Notwithstanding the foregoing, the Defendants do not waive or release, but instead explicitly preserve, their rights to seek contribution, apportionment, indemnification, and all other appropriate relief from each other in connection with this lawsuit and settlement thereof.

**TERM OF THE COURT-ENFORCEABLE SETTLEMENT AGREEMENT AND
ORDER:**

13. This CESA and Order shall be in full force and effect -- and the Court shall retain jurisdiction of this action to enforce provisions of this CESA and Order -- for a period of eighteen (18) months after the date of entry of this CESA and Order by the Court or until the injunctive relief contemplated by this Order is completed and all monetary settlement payments are made, whichever occurs later.

SEVERABILITY:

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

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1 **SIGNATORIES BIND PARTIES:**

2 15. Signatories on the behalf of the Parties represent that they are authorized to bind
3 the Parties to this CESA and Order. This CESA and Order may be signed in counterparts and a
4 facsimile signature shall have the same force and effect as an original signature.

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**END OF PAGE.
SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT THE END OF
THE DOCUMENT.**

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Dated: December 18, 2015

Pamela Koussa
Plaintiff PAMELA KOUSSA

Dated: December 22, 2015

By: [Signature]
for Defendant CLAUDIA MARTINUCCI TRUST

Dated: December 22, 2015

By: [Signature]
for Defendant PARTICELLI TRUST

Dated: December 22, 2015

[Signature]
LAURA M. PARKER aka
LAURA M. MARTINUCCI

Approved as to form:

Dated: December 21, 2015

LAW OFFICES OF PAUL L. REIN
[Signature]
By: PAUL L. REIN, Esq.
Attorneys for Plaintiff
PAMELA KOUSSA

Dated: December , 2015

LAW OFFICES OF ETHAN A. GLAUBIGER
Ethan A.
Glaubiger
By: ETHAN A. GLAUBIGER, Esq.
Attorneys for Defendant
CLAUDIA L. MARTINUCCI TRUST;
PARTICELLI TRUST; LAURA M. PARKER

Digitally signed by Ethan A. Glaubiger
DN: cn=Ethan A. Glaubiger, o=Law
Office of Ethan A. Glaubiger, ou,
email=eag@glaubigerlaw.com, c=US
Date: 2016.01.03 15:10:09 -08'00'

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ORDER

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

January 6, 2016

Dated: ~~December~~ __, 2015



Honorable Maria-Elena James
United States Magistrate Judge

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FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1, I hereby attest that on December __, 2015, I, Paul L. Rein, attorney with The Law Office of Paul L. Rein, received the concurrence of ETHAN A. GLAUBIGER in the filing of this document.

Paul L. Rein