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Attorneys for Defendant  
CITY OF SANTA ROSA

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FRANCIE MOELLER,

Case No. CV 09-1100 LB

Plaintiff,

Civil Rights

v.

**FULL CONSENT DECREE  
ORDER AND JUDGMENT**

CITY OF SANTA ROSA; and DOES  
1 through 50, Inclusive,

Defendant.

**FULL CONSENT DECREE ORDER AND JUDGMENT**

1. Plaintiff FRANCIE MOELLER is a person with a disability condition that requires the use of a scooter or cane for mobility. Defendant CITY OF SANTA ROSA owns, operates,

1 controls and/or maintains the following public parking lots and  
2 garages within city limits and described at City of Santa Rosa  
3 Downtown Parking Services map (Attachment 1):

- 4 A. Lot L-D at 9 4<sup>th</sup> St.
- 5 B. Lot L-2 at 521 5<sup>th</sup> St.
- 6 C. Lot L-7 at 769 2<sup>nd</sup> St.
- 7 D. Lot L-10 at 730 5<sup>th</sup> St.
- 8 E. Lot L-11 at 540 5<sup>th</sup> St.
- 9 F. Lot L-13 at 200 4<sup>th</sup> St.
- 10 G. Lot L-14 at 200 5<sup>th</sup> St.
- 11 H. Garage G-1 at 521 7<sup>th</sup> St.
- 12 I. Garage G-3 at 735 5<sup>th</sup> St.
- 13 J. Garage G-5 at 635 3<sup>rd</sup> St.
- 14 K. Garage G-9 at 97 D St.
- 15 L. Garage G-12 at 555 1<sup>st</sup> St.

16 Hereafter, the foregoing Public Parking Areas shall  
17 be referred to as the "Subject Parking Lots".)

18 2. Plaintiff FRANCIE MOELLER filed this action for  
19 herself and all other similarly situated members of the public,  
20 and against Defendant CITY OF SANTA ROSA ("Defendant"), to  
21 vindicate the public rights under Title II of the Americans  
22 with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et  
23 seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.  
24 §794; and through corresponding California law, including  
25 Government Code Sections 11135 and 4450-4456; Civil Code  
26 Sections 51, 54 and 54.1, et seq.; and Title 24 of the  
27 California Code of Regulations.

28 3. Plaintiff alleges that Defendant violated these

1 statutes and their corresponding regulations by failing to  
2 provide full and equal access to the Subject Public Parking  
3 Areas. Specific identification of the facilities and their  
4 deficiencies has been identified by Plaintiff through the joint  
5 inspection of the Parties and through Plaintiff's provision to  
6 Defendant of her expert's report.

7 4. Plaintiff alleges that the Subject Public Parking  
8 Areas have undergone construction triggering the requirement of  
9 full compliance with state and federal regulations in the  
10 altered areas, and that a further programmatic obligation is  
11 imposed on these facilities since the City is qualified  
12 government entity regulated by Title II of the ADA, and  
13 additionally pursuant to California Government Code Section  
14 11135 and federal Section 504 of the Rehabilitation Act of  
15 1973, which imposes similar obligations on government entities  
16 that receive federal, state and/or local public funds.

17  
18 **STIPULATIONS**

19 5. **Plaintiff's Qualified Disability.** Plaintiff is a  
20 qualified individual with a physical disability. She requires  
21 the near fulltime use of a scooter, cane or other device for  
22 mobility.

23 6. **Plaintiff's Residence and Status as Aggrieved and**  
24 **Potentially Aggrieved.** Plaintiff alleges she has standing.  
25 She lives in the same county and approximately 20 miles from  
26 the this downtown portion of the City, which is near businesses  
27 and government facilities that she frequents. While the City  
28 does not admit all of the specifics of the foregoing

1 allegations, it agrees that it is aware of sufficient  
2 undisputed facts to support Plaintiff's qualification as  
3 "aggrieved and potentially aggrieved" under the relevant  
4 statutes, and to support her standing under Article III of the  
5 U.S. Constitution.

6       **7. Ownership, Control, Operation and/or Maintenance of**  
7 **the Subject Public Parking Areas.** Defendant CITY OF SANTA ROSA  
8 owns, operates, controls and/or maintains the Subject Public  
9 Parking Areas.

10       **8. Receipt of Federal, State and Local Funding.** For  
11 purposes of this decree, Defendant CITY OF SANTA ROSA admits  
12 that it receives federal, state and local funding, and  
13 additionally that such funding has been used to build, alter  
14 and maintain the relevant portions of the Subject Public  
15 Parking Areas, including the adjoining vehicular roadways  
16 passing under the undercrossing.

17       **9. Construction History.** The parties stipulate that all  
18 facilities in issue have undergone sufficient and recent  
19 alteration and/or new construction to require at least some  
20 level of compliance with the requirements of the 1998 Edition  
21 of Title 24, Part 2, of the California Code of Regulations and  
22 the Americans With Disabilities Act Access Guidelines published  
23 in 1992. The scope of facilities to be corrected under this  
24 Full Consent Decree Order and Judgment are identified in  
25 **paragraph 10.**

26       **10. Scope of Facilities in Issue.** The following are the  
27 facilities affected by this Full Consent Decree Order and  
28 Judgment: The Subject Public Parking Areas.

1           11. **Settlement Agreement between the United States of**  
2 **America and The City of Santa Rosa, California under the**  
3 **Americans with Disabilities Act:** The parties stipulate that the  
4 Department of Justice of the United States of America and the  
5 City entered into a settlement agreement (DOJ Settlement) on  
6 December 19, 2009 relating to compliance of City facilities and  
7 programs with Title II of the Americans with Disabilities Act  
8 of 1990 42 U.S.C. §§12131-12134. (Attachment 2) In relevant  
9 part, the facilities subject to the instant Consent Decree are  
10 subject to the DOJ settlement with City, and mandated plans of  
11 survey, remediation and compliance. In relevant part, City's  
12 proposed plan of remediation is subject to DOJ review and  
13 approval.

14           12. The parties have investigated the allegations in the  
15 Complaint via plaintiff's consultant Karl Danz and City's  
16 consultant certified access specialist Kim Blackseth.

17  
18 **JURISDICTION**

19           13. The facts requisite to federal jurisdiction and venue  
20 are admitted. This Court has jurisdiction pursuant to 28  
21 U.S.C. § 1331 for the alleged violations of the ADA, 42 U.S.C.  
22 §§ 12101, et seq. Article III jurisdiction is proper due to  
23 the Plaintiff's continued exposure and proximity for use of the  
24 Subject Public Parking Areas. Pendant jurisdiction of the  
25 state law claims arises from a common nucleus of fact and is  
26 proper. Venue and intra-district jurisdiction is proper as the  
27 property in issue is located in Sonoma County.

28           14. This Full Consent Decree Order and Judgment is

1 contingent upon Court approval and acceptance of its terms, and  
2 the normal retention of jurisdiction to interpret and enforce  
3 terms.

4 15. The parties agree to entry of this Full Consent  
5 Decree Order and Judgment in order to resolve the below listed  
6 allegations raised in the Complaint filed with this Court on  
7 March 12, 2009. Accordingly, they agree to the entry of this  
8 Full Consent Decree Order and Judgment without trial or further  
9 adjudication of any issues of fact or law concerning the issues  
10 specified herein.

11 WHEREFORE, the parties hereby agree and stipulate to the  
12 Court's entry of this Full Consent Decree Order and Judgment,  
13 which provides as follows:  
14

15 **FULL RESOLUTION OF ISSUES:**

16 16. This Full Consent Decree Order and Judgment shall be  
17 a full, complete, and final disposition and settlement of the  
18 below claims that have been or could have been alleged in the  
19 Complaint, including for injunctive relief, declaratory relief,  
20 statutory and compensatory damages, including personal and  
21 bodily injury, and Plaintiff's claims for reasonable statutory  
22 attorney fees, litigation expenses and costs. This Full  
23 Consent Decree Order and Judgment was reached through  
24 negotiations between the parties. The Court shall retain  
25 jurisdiction of this action to enforce and interpret this Full  
26 Consent Decree Order and Judgment. The parties agree that if  
27 they or any of them seek Court enforcement of this Full Consent  
28 Decree Order and Judgment, any such enforcement will be by

1 noticed motion, application, or contempt citation. With  
2 respect to the injunctive relief and damage claims resolved by  
3 this Order, the parties acknowledge that they waive the  
4 provisions of and any benefits that may be conferred by Civil  
5 Code section 1542 which reads:

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

12  
13          INJUNCTIVE RELIEF

14          17. As a part of a compromise of global liability, the  
15          CITY OF SANTA ROSA ["City"] agrees that it has or will perform  
16          all work identified in the report of Karl Danz at Attachment 3  
17          with following exceptions and clarifications:

18               A.       City will provide an accessible pay station and  
19               related path of travel in each garage. (Danz report items  
20               12.22; 12.23; 12.26; 12.28; 13.29; 13.30; 13.31; 14.18; 15.4;  
21               15.5)

22               B.       Garage G-3, G-5 and G-9 height issues shall be  
23               resolved consistent with the Department of Justice review and  
24               determination of City's presently pending proposal to furnish  
25               accessible on-street parking with no height restrictions with a  
26               design. Part of that proposal includes the provision of an  
27               accessible on street parking location on D Street in the  
28               vicinity of Garage G-9. (Danz report items 13.2; 14.4; 15.2)

1           C.     Lots L-4; L-6 and the lot on the west side of  
2 City Hall are employee-only lots and not subject to this  
3 Consent Decree. (Danz report items 3.0, et seq. and 4.0, et  
4 seq.)

5           D.     Lots and the garage at Santa Rosa Plaza are not  
6 owned, operated, controlled, or maintained by City of Santa  
7 Rosa, and are not subject to this Consent Decree.

8           E.     City will furnish the proper number of  
9 accessible and van parking spaces. (Danz report items 1.1;  
10 7.1; 9.1)

11           In addition to the forgoing, City of Santa Rosa further  
12 agrees that it will survey and furnish accessible facilities at  
13 the following locations:

- 14           i.     Pay kiosks at parking lots
- 15           ii.    Gutter-swale at head of spaces at Lot L-7
- 16           iii.   Landings at elevator doors at Garage G-12
- 17           iv.    Path of travel at southwest corner of  
18 Garage G-9

19           18.   **Compromise of Statutory Obligations.** The parties  
20 stipulate that the forgoing remedial work specified in  
21 **paragraph 17** is strictly a compromise of the City's  
22 programmatic services obligations under Section 202 and 204 of  
23 the ADA [42 USC §§ 12132 and 12134], shall be deemed work to  
24 "Existing Facilities" 28 CFR §35.150, and thus its performance  
25 shall not be treated as triggering any additional duties under  
26 §35.151 ("alterations") or Government Code Section 4456  
27 ("alterations and structural repairs").

28           19.   **Performance Standards.** All of the foregoing



1 facilities specified in **paragraph 17** shall be brought into full  
2 and strict compliance with the performance standards for new  
3 construction of the California Code of Regulations, Title 24-2  
4 (2008), and Americans with Disabilities Act Accessibility  
5 Guidelines, effective January 26, 1992.

6       **20. Conflict in Performance Standards.** The parties  
7 acknowledge that each of the architectural features specified  
8 in **paragraph 177** is regulated in near parallel fashion as  
9 "barriers to disabled access" under both Title 24 and the  
10 Americans with Disabilities Act Guidelines, and the  
11 corresponding statutory remedies. However, in the event of a  
12 conflict between the two sets of regulations identified in the  
13 proceeding paragraph, the provisions that supply maximum  
14 protection and accessibility to the disabled shall apply.

15       **21. Option to Close Facilities.** In lieu of making  
16 modification to any particular facility or amenity called for  
17 by this decree, the Defendant may choose to permanently close  
18 such facility or amenity from public use. Such facilities  
19 shall not be reopened for public use without provision of full  
20 disabled access pursuant to the terms of **paragraph 17**.

21       **22. Time for Compliance.** No later than December 19, 2011  
22 and consistent with its obligations under Paragraph 48 of the  
23 DOJ settlement, City shall survey and report to Department of  
24 Justice the list of access issues identified in Paragraph 17  
25 together with corrective actions and completion dates proposed  
26 to resolve any issues remaining outstanding at that date.  
27 City's intent is that the Department of Justice shall supervise  
28 and determine remediation and compliance. City's obligations

1 under this Consent Decree shall expire concurrently with  
2 expiration of City's obligations under the DOJ Settlement more  
3 fully described in Paragraph 11.

4       23. **Enforcement.** Should Plaintiff in the future become  
5 aware of any facts or conditions relating to the Subject Public  
6 Parking Areas that may give rise to a claim that Defendant has  
7 failed to comply with any of the injunctive relief provisions  
8 set forth herein, Plaintiff shall, prior to seeking enforcement  
9 from this Court, provide notice to the City Attorney's Office.  
10 The Defendant shall have sixty (60) days, following receipt of  
11 such notification to undertake to correct the alleged violation  
12 and/or respond to Plaintiff's allegations. Any response made  
13 by Defendant shall be in writing, addressed to Plaintiff's  
14 counsel, Tim Thimesch of the Thimesch Law Offices, at his then  
15 current address registered with the State Bar. Plaintiff's  
16 counsel agrees to contribute pro bono up to three hours in any  
17 given calendar year toward these informal negotiation efforts.  
18 If Plaintiff determines, in her own good faith discretion, as  
19 constrained by the good faith requirements imposed by Rule 11,  
20 that the matter(s) are not resolved by Defendant' response,  
21 Plaintiff shall be permitted to file a noticed motion under the  
22 current case number of this action seeking enforcement of this  
23 Full Consent Decree Order and Judgment. The prevailing party in  
24 such motion proceedings, whether in full or in part, may be  
25 entitled to an award of reasonable attorney fees, litigation  
26 expenses and costs for such motion, i.e., pursuant to normal  
27 prevailing party standards that applied under the subject civil  
28 rights statutes before entry of this decree.

1     **DECLARATORY RELIEF**

2             24. By this Full Consent Decree Order and Judgment, and  
3 in consideration of the global compromise on liability,  
4 defendants stipulate that the barriers identified herein for  
5 correction, at **paragraph 17**, supra, constitute past and present  
6 violations of Plaintiff's rights under Title II of the  
7 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§  
8 12101 et seq.; Section 504 of the Rehabilitation Act of 1973,  
9 29 U.S.C. §794; and thru corresponding California law,  
10 including Government Code Sections 11135 and 4450-4456; Civil  
11 Code Sections 51, 54 and 54.1, et seq., and Title 24 of the  
12 California Code of Regulations.

13             25. Plaintiff has filed this action as a public interest  
14 lawsuit, specifically alleging on page 1 lines 21 - 22 of her  
15 Complaint that she brings the action "on behalf of herself and  
16 other similarly situated disabled persons". The parties intend  
17 that, this Consent Decree and Order shall additionally be  
18 binding upon all persons with disabilities similarly situated  
19 to Plaintiff, found to be in privity with her, and thus, to  
20 permitted by law, shall have the binding effect of res judicata  
21 and/or collateral estoppel. See Headwaters, Inc. v. U.S. Forest  
22 Service, 399 F.3d 1047 (9th Cir. 2005).

23  
24     **RESOLUTION OF CLAIM FOR REASONABLE STATUTORY DAMAGES:**

25             26. Defendant agrees to pay the amount of \$25, 000  
26 (twenty five thousand dollars) in full\_ satisfaction of  
27 Plaintiff's claims for bodily and personal injury and for  
28 statutory damages under Title II of the ADA, and Civil Code

1 Sections 52 (Unruh Act) and 54.3 (Disabled Persons Act). A  
2 check for this amount shall be made payable to "FRANCIE  
3 MOELLER," and deposited into the U.S. mail and addressed to  
4 plaintiff's counsel within 10 days of approval of the terms and  
5 conditions set out in this form of Consent Decree by the City  
6 Council of the City of Santa Rosa.

7 27. The parties stipulate that the foregoing amount is  
8 intended to be paid in full to Plaintiff, and understand that  
9 no part of it shall be received by Plaintiff's Counsel in  
10 compensation toward Plaintiff's separate claim for reasonable  
11 statutory attorney fees, litigation expenses, and costs.

12 28. FRANCIE MOELLER agrees to pay any and all present or  
13 future liens, claims or demands arising as a result of the  
14 circumstances giving rise to this Action, and FRANCIE MOELLER  
15 will defend, indemnify and save harmless City of Santa Rosa  
16 herein from any loss, claim, expense, demand or cause of action  
17 of any kind or character through the assertion by any assignee  
18 or transferee of a claim, or claims connected with the subject  
19 matter of this Consent Decree.

20  
21 **RESOLUTION OF CLAIM FOR REASONABLE STATUTORY ATTORNEYS FEES,**

22 **LITIGATION EXPENSES AND COSTS:**

23 29. Defendant agrees to pay the amount of \$99,000 (ninety  
24 nine thousand dollars) in full satisfaction of Plaintiff's  
25 claims for interim and final claims for reasonable statutory  
26 attorney fees, litigation expenses and costs, including claims,  
27 under Section 505 of the ADA [42 USC 12205]; Civil Code  
28 Sections 52, 54.3, and 55; Health & Safety Code Section 19953;

1 and Code of Civil Procedure Section 1021.5. A check for this  
2 amount shall be made payable to "TIM THIMESCH, IN TRUST," and  
3 deposited into the U.S. mail and addressed to plaintiff's  
4 counsel within 10 days of approval of the terms and conditions  
5 set out in this form of Consent Decree by the City Council of  
6 the City of Santa Rosa.

7 30. A division, if any, of the aforementioned sum between  
8 TIM THIMESCH and anyone else shall, in no way, affect the  
9 validity of this Consent Decree. TIM THIMESCH will defend,  
10 indemnify and save harmless City of Santa Rosa herein from any  
11 loss, claim, expense, demand, or cause of action of any kind or  
12 character as a result of such division.

13  
14 **FULL CONSENT DECREE ORDER AND JUDGMENT:**

15 31. This Full Consent Decree Order and Judgment  
16 constitutes the entire agreement between the parties on the  
17 matters of Plaintiff's claims for injunctive relief, statutory  
18 and personal injury damages, and reasonable statutory attorney  
19 fees, litigation expenses and costs, and no other statement,  
20 promise, or agreement, either written or oral, made by any of  
21 the parties or agents of any of the parties, that is not  
22 contained in this written Full Consent Decree Order and  
23 Judgment, shall be enforceable regarding the matters described  
24 herein.

25  
26 **FULL CONSENT DECREE ORDER AND JUDGMENT BINDING ON PARTIES AND**

27 **SUCCESSORS IN INTEREST:**

28 32. The parties agree and represent that they have

1 entered into this Full Consent Decree Order and Judgment  
2 voluntarily, under no duress, and wholly upon their own  
3 judgment, belief, and knowledge as to all matters related to  
4 this Full Consent Decree Order and Judgment, after having  
5 received full advice from counsel.

6 33. This Full Consent Decree Order and Judgment shall be  
7 binding on Plaintiff FRANCIE MOELLER, and Defendant CITY OF  
8 SANTA ROSA; and any successors in interest. During the period  
9 of this Full Consent Decree Order and Judgment, the parties  
10 have a duty to so notify all such successors in interest of the  
11 existence and terms of this Full Consent Decree Order and  
12 Judgment during the period of the Court's jurisdiction of this  
13 Full Consent Decree Order and Judgment.

14  
15 **JOINT PREPARATION AND SEVERABILITY:**

16 34. This Full Consent Decree Order and Judgment is deemed  
17 jointly prepared by all parties and shall not be strictly  
18 construed against any party as its drafter. If any term of  
19 this Full Consent Decree Order and Judgment is determined by  
20 any court to be unenforceable, the other terms of this Full  
21 Consent Decree Order and Judgment shall nonetheless remain in  
22 full force and effect.

23  
24 **SIGNATORIES BIND PARTIES:**

25 35. Signatories on the behalf of the parties represent  
26 that they are authorized to bind the parties to this Full  
27 Consent Decree Order and Judgment.

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**SIGNATORIES BIND PARTIES:**

36. This Full Consent Decree Order and Judgment may be executed in counterpart signatures, and such signatures may be attached in counterparts, each of which shall be deemed an original, and which together shall constitute one and the same instrument. Such counterparts may be signed as faxed signatures, which shall have the same force and effect as original signatures.

Dated: 4/6/11

Francie Moeller  
Plaintiff FRANCIE MOELLER

Dated: 4/7/2011

Kathleen Millison  
Print Name: Kathleen Millison  
Title: City Manager  
CITY OF SANTA ROSA

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**APPROVED AS TO FORM and AS TO PARAGRAPHS 29 and 30:**

Dated: April \_\_, 2011

THIMESCH LAW OFFICES  
TIMOTHY S. THIMESCH, ESQ.  
GENE A. FARBER, ESQ. Of Counsel

*Timothy S. Timesch*  
\_\_\_\_\_  
Attorneys for Plaintiff  
FRANCIE MOELLER

**APPROVED AS TO FORM:**

Dated: April 7, 2011

CAROLINE L. FOWLER  
CITY ATTORNEY

JOHN J. FRITSCH  
ASSISTANT CITY ATTORNEY

*John J. Fritsch*  
\_\_\_\_\_  
Attorneys for Defendant  
CITY OF SANTA ROSA

**ORDER**

**IT IS SO ORDERED.** \_\_\_\_\_

Date: April 29, 2011 \_\_\_\_\_

HON. LAUREL FOWLER  
Magistrate Judge  
U.S. District Court

