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 18 BANK OF AMERICA, NA

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA

21 CHERYL GREEN,
 22 Plaintiff,

23 CASE NO. C09-03682 SBA
 24 Civil Rights

25 v.

26 EASTMONT OAKLAND
 27 ASSOCIATES, LLC;
 28 SCANLANKEMPERBARD
 COMPANIES; BANK OF
 AMERICA, NA; AND DOES 1-40,
 INCLUSIVE,
 Defendants.

**CONSENT DECREE and
 [PROPOSED] ORDER**

1. Plaintiff CHERYL GREEN filed a Complaint in this action on August 12, 2009, to obtain recovery of damages for her discriminatory experiences, denial of access, and denial of her civil rights, and to enforce provisions of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. sections 12101 *et seq.*, and California civil rights laws against Defendants

1 EASTMONT OAKLAND ASSOCIATES, LLC; SCANLANKEMPERBARD
2 COMPANIES; BANK OF AMERICA, NA, relating to the condition of their
3 public accommodations as of plaintiff's visit on or about January 21, 2009, and
4 continuing. Plaintiff has alleged that defendants violated Title III of the ADA and
5 sections 51, 52, 54, 54.1, 54.3 and 55 of the California Civil Code, and sections
6 19955 *et seq.* of the California Health & Safety Code by failing to provide full and
7 equal access to their facilities at the Bank of America in Eastmont Mall, located at
8 6900 Bancroft Avenue in Oakland, California, including visits in the interior of
9 the bank and parking in the parking facilities surrounding the bank.

10 2. Defendant BANK OF AMERICA, NA denies the allegations in the
11 Complaint and by entering into this Consent Decree and Order does not admit
12 liability to any of the allegations in plaintiff's Complaint filed in this action.
13 Plaintiff and defendant BANK OF AMERICA, NA **only** (hereinafter the
14 "Parties") hereby enter into this Consent Decree and Order for the purpose of
15 resolving this lawsuit as to BANK OF AMERICA, NA only without the need for
16 protracted litigation and without the admission of any liability.

17
18 **JURISDICTION:**

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

25 4. In order to avoid the costs, expense, and uncertainty of protracted
26 litigation, the Parties to this Consent Decree and Order agree to entry of this
27 Consent Decree and Order to resolve all claims against defendant BANK OF
28 AMERICA, NA raised in the Complaint filed with this Court. Accordingly, the

1 Parties agree to the entry of this Consent Decree and Order without trial or further
2 adjudication of any issues of fact or law concerning plaintiff's claims against
3 defendant BANK OF AMERICA, NA.

4 WHEREFORE, the Parties to this Consent Decree and Order hereby
5 agree and stipulate to the Court's entry of this Consent Decree and Order, which
6 provides as follows:

7
8 **SETTLEMENT OF INJUNCTIVE RELIEF:**

9 5. This Consent Decree and Order shall be a full, complete, and final
10 disposition and settlement of plaintiff's claims against defendant BANK OF
11 AMERICA, NA for injunctive relief that have arisen out of the subject Complaint.
12 The Parties agree that there has been no admission or finding of liability for
13 violation of the ADA and/or California civil rights laws, and this Consent Decree
14 and Order should not be construed as such.

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

20 a) **Remedial Measures:** The corrective work agreed upon by the
21 Parties comprises the recommendations of plaintiff's expert Barry Atwood in his
22 report, attached hereto as Attachment A, except as to his recommendations
23 concerning the vault. Defendant BANK OF AMERICA, NA agrees to undertake
24 all of the remedial work as set forth therein, except that defendant does not have to
25 modify the entrance to its vault.

26 b) **Timing of Injunctive Relief:** For work not requiring building
27 permits, defendant BANK OF AMERICA, NA will complete the work within 60
28 days of entry of this Consent Decree and Order by the Court. For work requiring

1 building permits, defendant BANK OF AMERICA, NA will complete all
2 corrective work within six months of entry of this Consent Decree and Order by
3 the Court. In the event that unforeseen difficulties prevent Defendant BANK OF
4 AMERICA, NA from completing any of the agreed-upon injunctive relief,
5 defendant BANK OF AMERICA, NA or its counsel will notify plaintiff's counsel
6 in writing within 15 days of discovering the delay. Defendant BANK OF
7 AMERICA, NA or its counsel will notify plaintiff's counsel in writing when all
8 the corrective work is completed, and in any case will provide a status report no
9 later than 120 days from the entry of this Consent Decree and Order.

10 c) Defendant BANK OF AMERICA, NA will notify plaintiff in
11 writing at the end of 120 days as to the current status of agreed-to injunctive relief,
12 and every 90 days thereafter until all access is provided. If defendant BANK OF
13 AMERICA, NA fails to provide injunctive relief on the agreed-to timetable and/or
14 fails to provide timely written status notification, and plaintiff files a motion with
15 the Court to obtain compliance with these terms, plaintiff reserves the right to seek
16 additional attorney fees for all compliance work necessitated by defendant BANK
17 OF AMERICA, NA's failure to keep its agreement.

18
19 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS:**

20 7. Defendant BANK OF AMERICA, NA has also reached agreement
21 with plaintiff for payment of damages and attorney fees, litigation expenses and
22 costs, which settlement will be memorialized in a separate settlement agreement,
23 and, when executed, will constitute a full, complete, and final disposition and
24 settlement of plaintiff's claims against defendant BANK OF AMERICA, NA for
25 damages and attorney fees, litigation expenses and costs with regard to this
26 lawsuit.

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28 **ENTIRE CONSENT ORDER:**

1 8. This Consent Decree and Order and Attachment A to this Consent
2 Decree and Order, which is incorporated herein by reference as if fully set forth in
3 this document, constitute the entire agreement between the signing Parties as to
4 injunctive relief. Other than the aforementioned settlement agreement regarding
5 damages and attorney fees, litigation expenses and costs, no other statement,
6 promise or agreement, either written or oral, made by any of the Parties or agents
7 of any of the Parties that is not contained in this written Consent Decree and Order
8 shall be enforceable regarding the matters of injunctive relief, damages, attorney
9 fees, and/or litigation expenses and costs as to defendant BANK OF AMERICA,
10 NA only. The Parties stipulate that the Court will not dismiss the case, as claims
11 regarding other defendants are still before the Court.

12
13 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**
14 **SUCCESSORS IN INTEREST:**

15 9. This Consent Decree and Order shall be binding on plaintiff
16 CHERYL GREEN and upon defendant BANK OF AMERICA, NA and any
17 successors in interest. Defendant BANK OF AMERICA, NA has a duty to so
18 notify all such successors in interest of the existence and terms of this Consent
19 Decree and Order during the period of the Court’s jurisdiction of this Consent
20 Decree and Order.

21
22 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS**
23 **TO INJUNCTIVE RELIEF ONLY:**

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

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

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

17 This waiver applies to plaintiff's claims against defendant BANK OF AMERICA,
18 NA only.

19 11. Except for all obligations required in this Consent Decree and Order,
20 each of the Parties to this Consent Decree and Order, on behalf of themselves,
21 their respective agents, representatives, predecessors, successors, heirs, partners
22 and assigns, releases and forever discharges each other Party and all officers,
23 directors, shareholders, subsidiaries, joint venturers, stockholders, partners, parent
24 companies, employees, agents, attorneys, insurance carriers, heirs, predecessors,
25 and representatives of each other Party, from all claims, demands, actions, and
26 causes of action of whatever kind or nature, presently known or unknown, arising
27 out of or in any way connected with the lawsuit.

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TERM OF THE CONSENT DECREE AND ORDER:

1 12. This Consent Decree and Order shall be in full force and effect for a
2 period of twelve (12) months after the date of entry of this Consent Decree and
3 Order, or until the injunctive relief contemplated by this Consent Decree and
4 Order is completed and payment for damages, attorney fees, and litigation
5 expenses and costs is made in full, whichever occurs later. The Court shall retain
6 jurisdiction of this action to enforce provisions of this Consent Decree and Order
7 for twelve (12) months after the date of this Consent Decree and Order, or until
8 the injunctive relief contemplated by this Consent Decree and Order is completed
9 and payment for damages, attorney fees, and litigation expenses and costs is made
10 in full, whichever occurs later.

11

12 **SEVERABILITY:**

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

16

17 **SIGNATORIES BIND PARTIES:**

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

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28 Dated: June __, 2010 PLAINTIFF CHERYL GREEN

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CHERYL GREEN

Dated: June __, 2010

DEFENDANT BANK OF AMERICA, NA

By: _____

Print name: _____

Title/position: _____

APPROVED AS TO FORM:

Dated: June __, 2010

LAW OFFICES OF PAUL L. REIN

By PAUL L. REIN
Attorneys for Plaintiff CHERYL GREEN

Dated: June __, 2010

BUCHALTER NENER

By WILLIAM MILLER, ESQ.
Attorneys for Defendant BANK OF AMERICA, NA

ORDER

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Any disputes arising under the Consent Decree and Order, pursuant to paragraph 12 above, shall be referred to the Chief Magistrate Judge or her designee for disposition or report and recommendation, depending on the nature of the relief being sought. Otherwise, pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated: December 20, 2010


HONORABLE SAUNDRA B. ARMSTRONG
United States District Judge