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7 Attorneys for Plaintiff
 8 MARK BECKWITH

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11 Attorneys for Defendant
 12 TSA STORES, INC. dba SPORTS AUTHORITY

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 MARK BECKWITH,
 16 Plaintiff,

CASE NO. C09-04058 CW
Civil Rights

17 v.

**CONSENT DECREE AND ORDER AS
 TO DEFENDANT TSA STORES, INC.
 dba SPORTS AUTHORITY ONLY**

18 TSA STORES, INC. dba SPORTS
 19 AUTHORITY; EMERYVILLE RETAIL
 20 PROPERTIES, L.P.; AND DOES 1-10,
 INCLUSIVE,

21 Defendants.
 22 _____/

23 1. Plaintiff MARK BECKWITH filed a Complaint in this action on
 24 November 1, 2009, to obtain recovery of damages for his discriminatory experiences,
 25 denial of access, and denial of his civil rights, and to enforce provisions of the Americans
 26 with Disabilities Act of 1990 ("ADA"), 42 U.S.C. sections 12101 *et seq.*, and California
 27 civil rights laws against Defendants TSA STORES, INC. dba SPORTS AUTHORITY
 28

1 (“TSA”); and EMERYVILLE RETAIL PROPERTIES, L.P. (“ERP”) relating to the
2 condition of their public accommodations as of Plaintiff's visit on or about January 6,
3 2009, and continuing. Plaintiff has alleged that Defendants violated Title III of the ADA
4 and sections 51, 52, 54, 54.1, 54.3 and 55 of the California Civil Code, and sections
5 19955 *et seq.* of the California Health & Safety Code by failing to provide full and equal
6 access to their facilities at The Sports Authority retail store (hereinafter sometimes the
7 “Store” or “Sports Authority”) and the East Bay Bridge Shopping Center at 3839 Emery
8 Street, Emeryville, California.

9 2. Defendant TSA denies the allegations in the Complaint and by entering
10 into this Consent Decree and Order does not admit liability to any of the allegations in
11 Plaintiff's Complaint filed in this action. Plaintiff and defendant TSA (“the parties”)
12 hereby enter into this Consent Decree and Order for the purpose of resolving this lawsuit
13 without the need for protracted litigation and without the admission of any liability.
14

15 **JURISDICTION:**

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

22 4. In order to avoid the costs, expense, and uncertainty of protracted
23 litigation, the parties to this Consent Decree and Order agree to entry of this Consent
24 Decree and Order to resolve all claims raised in the Complaint filed with this Court.
25 Accordingly, they agree to the entry of this Consent Decree and Order without trial or
26 further adjudication of any issues of fact or law concerning Plaintiff's claims.

27 WHEREFORE, the parties to this Consent Decree and Order hereby agree
28 and stipulate to the Court's entry of this Consent Decree and Order at to TSA only, which

1 provides as follows:
2

3 **SETTLEMENT OF INJUNCTIVE RELIEF:**

4 5. This Consent Decree and Order shall be a full, complete, and final
5 disposition and settlement of Plaintiff's claims against Defendant TSA for injunctive
6 relief that have arisen out of the subject Complaint. The parties agree that there has been
7 no admission or finding of liability or violation of the ADA and/or California civil rights
8 laws against TSA, and this Consent Decree and Order should not be construed as such.

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

14 a) **Remedial Measures:** The parties agree that defendants will make
15 the remedial measures specified in Attachment A, incorporated herewith by reference.

16 b) **Timing of Injunctive Relief:** For work not requiring building
17 permits, defendant TSA will complete the work within 30 days of entry of this Consent
18 Decree and Order by the Court. For work requiring building permits, defendant will
19 submit plans for all corrective work to the appropriate governmental agencies within 30
20 days of the entry of this Consent Decree and Order by the Court. Defendant will
21 commence work within 30 days of receiving approval from the appropriate agencies.
22 Defendant will complete the permitted work within 30 days of commencement. In the
23 event that unforeseen difficulties prevent Defendant from completing any of the
24 agreed-upon injunctive relief, Defendant or its counsel will notify Plaintiff's counsel in
25 writing within 15 days of discovering the delay. Defendant or its counsel will notify
26 Plaintiff's counsel in writing when all the corrective work is completed, and in any case
27 will provide a status report no later than 120 days from the entry of this Consent Decree
28

1 and Order.
2

3 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS:**

4 7. The parties have reached an agreement regarding plaintiff's claims for
5 damages, attorney fees, litigation expenses and costs. Defendant will pay damages,
6 including personal injury and statutory damages, in the amount of \$14,000. Defendant
7 will pay \$37,260 for plaintiff's attorneys fees, litigation expenses and costs. Payment
8 will be made in one check in the amount of \$51,260 payable to Paul L. Rein in Trust for
9 Mark Beckwith, no later than close of business on January 5, 2011.
10

11 **COMPLIANCE**

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13 8. If plaintiff contends that any or some portion of the corrective work to be
14 completed under this Consent Decree has not been carried out correctly or in a timely
15 manner, plaintiff will provide written notice to defendant detailing in what respects
16 plaintiff contends the remediation is not compliant. Within 14 calendar days of receiving
17 the notice defendant will respond in writing to plaintiff. The parties will meet and confer
18 within 30 days of the plaintiff's written notice and use their best efforts to resolve the
19 dispute. If the dispute is not resolved, plaintiff will make a motion to the Court.
20

21 9. If defendant fail to comply with any provision of this Consent Decree they
22 will pay plaintiff's reasonable attorney fees, costs and litigation expenses incurred in
23 enforcing the terms of this Consent decree, in addition to reasonable attorney fees, costs
24 and litigation expenses incurred in litigating the other aspects of this case.
25

26 **ENTIRE CONSENT ORDER:**

27 10. This Consent Decree and Order constitutes the entire agreement between
28 the signing parties. No other statement, promise or agreement, either written or oral,

1 made by any of the parties or agents of any of the parties that is not contained in this
2 written Consent Decree and Order shall be enforceable regarding the matters described
3 herein.
4

5 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND SUCCESSORS**
6 **IN INTEREST:**

7 11. This Consent Decree and Order shall be binding on Plaintiff MARK
8 BECKWITH and upon defendant TSA and any successors in interest. Defendant has a
9 duty to so notify all such successors in interest of the existence and terms of this Consent
10 Decree and Order during the period of the Court's jurisdiction of this Consent Decree and
11 Order.
12

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

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

1 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
2 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
3 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
4 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**
5 **HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE**
6 **DEBTOR.**

7 13. Except for all obligations required in this Consent Decree and Order, and
8 exclusive of the referenced continuing claims for attorney fees, litigation expenses and
9 costs, each of the parties to this Consent Decree and Order, on behalf of themselves, their
10 respective agents, representatives, predecessors, successors, heirs, partners and assigns,
11 releases and forever discharges each other Party and all officers, directors, shareholders,
12 subsidiaries, joint venturers, stockholders, partners, parent companies, employees,
13 agents, attorneys, insurance carriers, heirs, predecessors, and representatives of each
14 other Party, from all claims, demands, actions, and causes of action of whatever kind or
15 nature, presently known or unknown, arising out of or in any way connected with the
16 lawsuit.

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

18 14. This Consent Decree and Order shall be in full force and effect for a period
19 of twenty-four months after the date of entry of this Consent Decree and Order or until
20 the injunctive relief, damages and attorney fees, litigation expenses and costs payments
21 contemplated by this Consent Decree and Order are completed, whichever occurs later.

22 **SEVERABILITY:**

23 15. If any term of this Consent Decree and Order is determined by any court to
24 be unenforceable, the other terms of this Consent Decree and Order shall nonetheless
25 remain in full force and effect.
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SIGNATORIES BIND PARTIES:

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

Dated: December 17, 2010 PLAINTIFF MARK BECKWITH

_____/s/ Mark Beckwith_____
MARK BECKWITH

Dated: December 16, 2010 DEFENDANT TSA STORES, INC. dba SPORTS AUTHORITY

By: ___/s/ _Douglas Garrett_____

Printed Name: ___Douglas Garrett_____

Title: ___Vice President and General Counsel_____

APPROVED AS TO FORM:

Dated: December 17, 2010 PAUL L. REIN, ESQ.
CELIA McGUINNESS, ESQ.
LAW OFFICES OF PAUL L. REIN

By: ___/s/ Celia McGuinness_____
Attorneys for Plaintiff MARK BECKWITH

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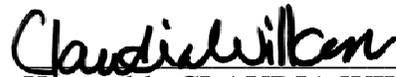
Dated: December 15, 2010 ROBERT STUMPF, Esq.
HAYLEY SINGER GRUNVALD, Esq.
SHEPPARD MULLIN LLP

By: ___/s/ Bob Stumpf_____
Attorneys for Defendant
TSA STORES, INC. dba SPORTS AUTHORITY

ORDER

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

Dated: January 14, 2010



Honorable CLAUDIA WILKEN
United States District Judge