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6 Attorneys for Plaintiff
 PETER MENDOZA

8 **Defendants and their respective are counsel listed after the caption.*

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 PETER MENDOZA,
 13
 14 Plaintiff,

Case No. C09-04122 CW
 Civil Rights

15 v.

**CONSENT DECREE AND
 ORDER**

16 MCDONALD’S CORPORATION;
 MICHAEL D. MAGRUDER;
 17 SYED HUSSAIN; and DOES 1-10,
 Inclusive,

18 Defendants.

19 _____/

21 CATHY L. ARIAS, ESQ. (SBN 141989)
 ANDREW R. SHALAUTA, ESQ. (SBN 186821)
 22 BURNHAM BROWN
 P.O. Box 119
 23 Oakland, CA 94604
 1901 Harrison St # 1100
 24 Oakland, CA 94612-3643
 Telephone: 510/444-6800
 25 Facsimile: 510/835-6666

26 Attorneys for Defendant
 27 SYED ALI HUSAIN

28

1 BENJAMIN M. GLICKMAN, ESQ. (SBN 247907)
2 GIBSON, DUNN & CRUTCHER LLP
3 1881 Page Mill Road
4 Palo Alto, CA 94304
5 Telephone: 650/849-5300
6 Facsimile: 650/849-5333

7 Attorneys for Defendant
8 MCDONALD'S CORPORATION

9
10 1. Plaintiff PETER MENDOZA filed a Complaint in this action on
11 September 4, 2009, to obtain recovery of damages for his discriminatory
12 experiences, denial of access, and denial of his civil rights, and to enforce
13 provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§
14 12101 *et seq.*, and California civil rights laws against Defendants MCDONALD'S
15 CORPORATION and SYED HUSAIN (collectively referred to as "Defendants"),
16 relating to the condition of Defendants' public accommodations as of June 14,
17 2009, and continuing. Plaintiff has alleged that Defendants violated Title III of the
18 ADA and sections 51, 52, 54, 54.1, 54.3 and 55 of the California Civil Code, and
19 sections 19955 *et seq.* of the California Health & Safety Code by failing to provide
20 full and equal access to their facilities at 7340 Redwood Blvd., Novato, California.
21 Defendants do not concede liability in this Action.

22
23 2. The parties hereby enter into this Consent Decree and Order for the
24 purpose of resolving this lawsuit without the need for protracted litigation. The
25 parties fully understand that this Action involves arguable and disputed questions
26 of fact and law, that the liability of Defendants for the alleged occurrences,
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1 transactions, or events, is doubtful and disputed and that the agreement for relief
2 herein is not to be construed as an admission of liability, which is expressly denied,
3 and that this Agreement arises from compromise.
4

5 **JURISDICTION:**

6 3. The parties to this Consent Decree and Order agree that the Court has
7 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations
8 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*
9 and pursuant to supplemental jurisdiction for alleged violations of California
10 Health & Safety Code sections 19955 *et seq.*; Title 24, California Code of
11 Regulations; and California Civil Code sections 51, 52, 54, 54.1, 54.3, and 55.
12

13
14 4. In order to avoid the costs, expense, and uncertainty of protracted
15 litigation, the parties to this Consent Decree and Order agree to entry of this
16 Consent Decree and Order to resolve all claims raised in the Complaint filed with
17 this Court. Accordingly, the parties agree to the entry of this Order without trial or
18 further adjudication of any issues of fact or law concerning Plaintiff's claims.
19
20

21 WHEREFORE, the parties to this Consent Decree hereby agree and stipulate
22 to the Court's entry of this Consent Decree and Order, which provide as follows:
23

24 **SETTLEMENT OF INJUNCTIVE RELIEF:**

25 5. This Order shall be a full, complete, and final disposition and
26 settlement of Plaintiff's claims against Defendants for injunctive relief that have
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1 arisen out of the subject Complaint.

2 6. The parties agree and stipulate that the corrective work will be
3 performed in compliance with the standards and specifications for disabled access
4 as set forth in the California Code of Regulations, Title 24-2, and Americans with
5 Disabilities Act Accessibility Guidelines, unless other standards are specifically
6 agreed to in this Consent Decree and Order.
7

8 a) **Remedial Measures:** Defendant McDonald's Corporation (or
9 one of its affiliates) will perform the corrective work at 7340 Redwood Blvd.,
10 Novato, California. The scope of the corrective work is:
11

12 i. Site Access:

- 13 (1) Replace 3-foot-long section where asphalt meets the
14 sidewalk to comply with slope requirements;
15 (2) Paint a 48"-wide path from the sidewalk on the north side
16 of the driveway adjacent to Redwood Blvd. to connect to
17 the curb ramp leading to the front entrance marking the
18 path of travel.
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22 ii. Parking

- 23 (1) Install "Tow Away" signage specified in California
24 Building Code ("CBC") 1129B.4.
25 (2) Relocate the speed bump that is next to one of the two
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1 accessible parking spaces or remove that portion of the
2 bump where it borders the accessible parking space.

3 iii. Front Entrance:

- 4 (1) Adjust the door opener or replace it if necessary so that the
5 door reaches a fully open position no faster than four (4)
6 seconds total time, from fully closed to fully open.
7
8 (2) Install power door signage required by CBC 1133B.2.3.2.
9
10 (3) Remove floor mats.

11 iv. Men's Restroom:

- 12 (1) Adjust the door closer or replace it if necessary so that
13 maximum effort to operate the exterior and interior doors
14 do not exceed five (5) pounds.
15
16 (2) Adjust the door closer or replace it if necessary so that the
17 door closes no faster than three (3) seconds from an open
18 position of 70 degrees to a point 3-inches from the latch.
19
20 (3) Replace toilet fixture so that it is between 17" and 19"
21 above the finished floor measured to the top of the toilet
22 seat.
23
24 (4) Replace the toilet paper dispenser with a smaller unit in
25 order to ensure that the grab bar can be freely grasped and
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1 the toilet paper can be grasped at a height no lower than
2 19" above the floor, providing at least a 1-1/2" clearance
3 around the grab bar.
4

5 (5) Lower the lavatory to a height between 28" to 34" above
6 the finished floor and provide 29" of knee space.

7 v. Women's Restroom:
8

9 (1) Adjust the door closer or replace it if necessary so that
10 maximum effort to operate the exterior and interior doors
11 do not exceed five (5) pounds.
12

13 (2) Adjust the door closer or replace it if necessary so that the
14 door closes no faster than three (3) seconds from an open
15 position of 70 degrees to a point 3-inches from the latch.
16

17 (3) Replace the toilet paper dispenser with a smaller unit in
18 order to ensure that the grab bar can be freely grasped and
19 the toilet paper can be grasped at a height no lower than
20 19" above the floor, providing at least a 1-1/2" clearance
21 around the grab bar.
22

23 vi. Exterior Playground: Exterior playground will be removed.
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25 b) **Timing of Injunctive Relief:** Defendant McDonald's

26 Corporation (or one of its affiliates) will perform the corrective work based on
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1 McDonald's position that the Franchise Agreement for the restaurant at 7340
2 Redwood Blvd., Novato, California expired on December 26, 2009, which Syed
3 Ali Husain disputes and does not agree with including as set forth in his filings in
4 Husain v. McDonald's Corporation, Case No. 096177, Marin Superior Court of the
5 State of California. Defendant McDonald's Corporation (or one of its affiliates)
6 will submit plans for all corrective work to the appropriate governmental agencies
7 within 90 (ninety) days of the entry of this Consent Decree by the Court.
8

9
10 Defendant McDonald's Corporation (or one of its affiliates) will commence work
11 within 90 (ninety) days of receiving approval from the appropriate agencies.
12

13 Defendant McDonald's Corporation (or one of its affiliates) will complete all work
14 within 120 (one hundred and twenty) days of commencement. In the event that
15 unforeseen difficulties prevent Defendant McDonald's Corporation (or one of its
16 affiliates) from completing any of the agreed-upon injunctive relief, Defendant
17 McDonald's Corporation or its counsel will notify Plaintiff's counsel in writing
18 within 15 days of discovering the delay. Defendant McDonald's Corporation or its
19 counsel will notify Plaintiff's counsel in writing when the corrective work is
20 completed.
21
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23 c) If the corrective work is not completed according to the terms
24 of this agreement, then Plaintiff reserves the right to file a motion to obtain
25 compliance and seek available remedies.
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1 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS:**

2 7. The parties have also reached an agreement regarding Plaintiff's
3 claims for damages, attorneys' fees, litigation expenses and costs. Defendant Syed
4 Husain ("Husain") shall pay to Plaintiff a total of \$12,500 for Plaintiff's alleged
5 damages for personal injuries and civil rights violations, with payment to be made
6 to "PAUL L. REIN IN TRUST FOR PETER MENDOZA." Defendant Husain
7 shall also pay a total of \$70,000 for Plaintiff's attorney fees, litigation expenses,
8 and costs, with payment to be made to "PAUL L. REIN." Defendant Husain
9 agrees to deliver full payment of Plaintiff's \$12,500 damages and \$70,000 for
10 Plaintiff's attorney fees, litigation expenses, and costs to the Law Offices of Paul
11 L. Rein, 200 Lakeside Drive, Suite A, Oakland, CA 94612 on or before April 29,
12 2011.

13 **ENTIRE CONSENT DECREE AND ORDER:**

14 8. This Consent Decree and Order constitutes the entire agreement
15 between the signing parties on the matters of injunctive relief, damages, attorney
16 fees, litigation expenses and costs and no other statement, promise or agreement,
17 either written or oral, made by any of the parties or agents of any of the parties that
18 is not contained in this written Consent Decree and Order shall be enforceable
19 regarding the matters of injunctive relief, damages, attorney fees, litigation
20 expenses, and/or costs described herein.
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2 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**
3 **SUCCESSORS IN INTEREST:**

4 9. This Consent Decree and Order shall be binding on Plaintiff;
5 Defendants MCDONALD'S CORPORATION and SYED HUSAIN to the extent
6 of their obligations as set forth herein; and any successors in interest. Defendants
7 have a duty to so notify all such successors in interest of the existence and terms of
8 this Consent Decree and Order during the period of the Court's jurisdiction of this
9 Consent Decree and Order.
10

11 **RELEASE AND WAIVER OF CIVIL CODE SECTION 1542:**

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

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

8 11. Effective upon Plaintiff's receipt of the payments required under
9 paragraph 7, and except for all obligations required in this Consent Decree and
10 Order, , Plaintiff and his respective agents, representatives, predecessors,
11 successors, heirs, partners and assigns, releases and forever discharges and holds
12 harmless Defendants and their officers, directors, shareholders, subsidiaries, joint
13 venturers, stockholders, partners, parent companies, affiliates, employees, agents,
14 attorneys, insurance carriers, heirs, predecessors, and representatives from all
15 claims, demands, actions, and causes of action of whatever kind or nature,
16 presently known or unknown, arising out of or in any way connected with the
17 lawsuit.
18

21 12. Effective upon Plaintiff's receipt of the payments required under
22 paragraph 7, and except for all obligations required in this Consent Decree and
23 Order, Defendants and their officers, directors, shareholders, subsidiaries, joint
24 venturers, stockholders, partners, parent companies, affiliates, employees, agents,
25 attorneys, insurance carriers, heirs, predecessors, and representatives release, hold
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1 harmless and forever discharge Plaintiff and his respective agents, representatives,
2 predecessors, successors, heirs, partners and assigns from all claims, demands,
3 actions, and causes of action of whatever kind or nature, presently known or
4 unknown, arising out of or in any way connected with the lawsuit.
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6 13. This Consent Decree and Order, and settlement, does not apply to
7 claims, causes of action, demands, accounts, obligations, proceedings, losses, or
8 liabilities, whether now known or unknown, whether based on contract, tort,
9 statute, or other legal or equitable theory of recovery, which McDONALD'S
10 CORPORATION and SYED HUSAIN can, shall or may have against each other.
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12 **TERM OF THE CONSENT DECREE AND ORDER:**
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14 14. This Consent Decree and Order shall be in full force and effect for a
15 period of eighteen (18) months after the date of entry of this Consent Decree and
16 Order by the Court, or until the injunctive relief contemplated by this Order is
17 completed, whichever occurs later. The Court shall retain jurisdiction of this
18 action to enforce provisions of this Consent Decree and Order for eighteen (18)
19 months after the date of entry of this Consent Decree and Order by the Court, or
20 until the injunctive relief contemplated by this Order is completed, whichever
21 occurs later.
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25 **SEVERABILITY:**

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

3 **SIGNATORIES BIND PARTIES:**

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5 16. Signatories on the behalf of the parties represent that they are
6 authorized to bind the parties to this Consent Decree and Order. This Consent
7 Decree and Order may be signed in counterparts and a facsimile signature shall
8 have the same force and effect as an original signature.
9

10 Dated: May ____, 2011 PLAINTIFF PETER MENDOZA

11
12 _____
13 PETER MENDOZA

14
15 Dated: May ____, 2011 DEFENDANT MCDONALD'S CORPORATION

16
17 By: _____

18 Print name: _____

19 Title: _____
20

21
22 Dated: May ____, 2011 DEFENDANT SYED ALI HUSAIN

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24 _____
25 SYED ALI HUSAIN
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APPROVED AS TO FORM:

Dated: May ____, 2011

LAW OFFICES OF PAUL L. REIN

By: _____

Catherine M. Cabalo, Esq.
Attorneys for Plaintiff
PETER MENDOZA

Dated: May ____, 2011

GIBSON, DUNN & CRUTCHER LLP

By: _____

Benjamin M. Glickman, Esq.
Attorneys for Defendant
McDonald's Corporation

Dated: May ____, 2011

BURNHAM BROWN

By: _____

Cathy L. Arias, Esq.
Attorneys for Defendant
Syed Ali Husain

ORDER

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

Dated: June 24, 2011



Honorable CLAUDIA WILKEN
United States District Court Judge

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