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11 Attorneys for Defendants  
12 BRADFORD PRESCOTT, M.D. and  
ALPHA MEDICAL ASSOCIATES LLC

13

14 IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 DAVID RUBSAMEN,  
17 Plaintiff,

CASE NO. C11-1918 LB  
Civil Rights

18 v.  
19 BRADFORD PRESCOTT, M.D.;  
ALPHA MEDICAL ASSOCIATES  
20 LLC; and DOES 1-10, Inclusive,

CONSENT DECREE AND  
[PROPOSED] ORDER

21 Defendants.

22

23 1. Plaintiff DAVID RUBSAMEN filed a Complaint in this action on  
24 April 14, 2011, 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  
26 Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101 *et seq.*,  
27 and California civil rights laws against defendants BRADFORD PRESCOTT,  
28 M.D. and ALPHA MEDICAL ASSOCIATES LLC, relating to the condition of

1 the public accommodation at 100 N. Wiget Lane in Walnut Creek. Plaintiff has  
2 alleged that defendants violated Title III of the ADA, California Civil Code  
3 §§ 51, 52, 54, 54.1, 54.3 and 55, and California Health & Safety Code §§ 19955  
4 *et seq.*, by failing to provide full and equal access to their facilities at the medical  
5 office building at 100 N. Wiget Lane in Walnut Creek, California.

6       2. Defendants BRADFORD PRESCOTT, M.D. and ALPHA  
7 MEDICAL ASSOCIATES LLC, deny the allegations in the Complaint and by  
8 entering into this Consent Decree and Order do not admit liability to any of the  
9 allegations in Plaintiff's Complaint filed in this action. Plaintiff DAVID  
10 RUBSAMEN, defendants BRADFORD PRESCOTT, M.D. and ALPHA  
11 MEDICAL ASSOCIATES LLC, and all other current owners as of the date of  
12 this agreement of the subject property, hereinafter collectively, "the parties,"  
13 hereby enter into this Consent Decree and Order for the purpose of resolving this  
14 lawsuit without the need for protracted litigation and without the admission of  
15 any liability.

16  
17 **JURISDICTION:**

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

24       4. In order to avoid the costs, expense, and uncertainty of protracted  
25 litigation, the parties to this Consent Decree agree to entry of this Order to resolve  
26 all claims regarding injunctive relief, damages, and attorney fees, litigation  
27 expenses, and costs, raised in the Complaint filed with this Court. Accordingly,  
28 they agree to the entry of this Order without trial or further adjudication of any

1 issues of fact or law concerning plaintiff's claims for injunctive relief, damages,  
2 and attorney fees, litigation expenses, and costs.

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

6

7 **SETTLEMENT OF INJUNCTIVE RELIEF:**

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

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

19 7. **Remedial Measures and Timing of Injunctive Relief:**

20 The parties have jointly selected architect George Dedekian based on their  
21 knowledge of and respect for Mr. Dedekian's professional knowledge, abilities,  
22 experience and integrity, and have further agreed to the following procedures, all  
23 to be carried out at defendants' expense:

24 Mr. Dedekian has conducted an access survey of the subject premises  
25 located at 100 N. Wiget Lane in Walnut Creek, California, including the building,  
26 and its adjoining grounds and parking areas, and has prepared a comprehensive  
27 report and recommendations as to what access barrier removal is needed to make  
28 the subject premises fully compliant with current California Title 24 and federal

1 ADAAG access requirements. Defendants will implement all of Mr. Dedekian's  
2 recommendations for removal of all identified access barriers within nine months  
3 of receipt of Mr. Dedekian's report. A copy of this report has been provided to  
4 plaintiff's counsel Paul Rein, and is incorporated into this Consent Decree and  
5 Order as Attachment A.

6 Defendants also agree to thereafter maintain all access features in a safe  
7 and usable condition so long as defendants remain owners, operators, lessors or  
8 lessees of the subject property.

9 In the event that unforeseen difficulties prevent defendants from  
10 completing any of the agreed-upon injunctive relief, defendants or their counsel  
11 will notify plaintiff's counsel in writing within 15 days of discovering the delay.  
12 Defendants or their counsel will notify plaintiff's counsel when the corrective  
13 work is completed, and in any case will provide a status report no later than 120  
14 days from the entry of this Consent Decree and Order.

15

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

17 8. The parties have reached an agreement regarding plaintiff's claims  
18 for damages: defendants have paid \$20,000 to plaintiff in full satisfaction of  
19 plaintiff's claims for all damages, including personal injury, civil rights, and all  
20 other forms of damages. The parties have also reached an agreement regarding  
21 plaintiff's claims for attorney fees, litigation expenses, and costs: defendants will  
22 pay \$17,106 to plaintiff's counsel in full satisfaction of plaintiff's claims for  
23 attorney fees, litigation expenses, and costs. Payments are to be received by  
24 plaintiff's counsel on or before September 26, 2011.

25

26 **ENTIRE AGREEMENT:**

27 9. This Consent Decree and Order constitutes the entire agreement  
28 between the signing parties on the matters of injunctive relief, damages, and

1 attorney fees, litigation expenses, and costs.

2

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

4

5 10. This Consent Decree and Order shall be binding on the parties and  
6 all successors in interest. The parties have a duty to so notify all such successors  
7 in interest of the existence and terms of this Consent Decree and Order during the  
8 period of the Court's jurisdiction of this Consent Decree and Order.

9

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

11

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

27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
**WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**  
**EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**

28

1 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
2 HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH  
THE DEBTOR.

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

## 13 TERM OF THE CONSENT DECREE AND ORDER:

13. This Consent Decree and Order shall be in full force and effect for a  
14 period of twelve (12) months after the date of entry of this Consent Decree and  
15 Order, or until the injunctive relief contemplated by this Consent Decree and  
16 Order is completed, whichever occurs later. The Court shall retain jurisdiction of  
17 this action to enforce provisions of this Consent Decree and Order for twelve (12)  
18 months after the entry of this Consent Decree and Order, or until the injunctive  
19 relief contemplated by this Consent Decree Order is completed, whichever occurs  
20 later.

23 | SEVERABILITY:

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

27 //

28 //

1      **SIGNATORIES BIND PARTIES:**

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

6      Dated: September 15, 2011

7      Plaintiff David Rubsamen

8        
9      David Rubsamen

10     Dated: September \_\_, 2011

11     Defendants Bradford Prescott, M.D., and  
12     Alpha Medical Associates LLC

13     Bradford Prescott, M.D.

14     **APPROVED AS TO FORM:**

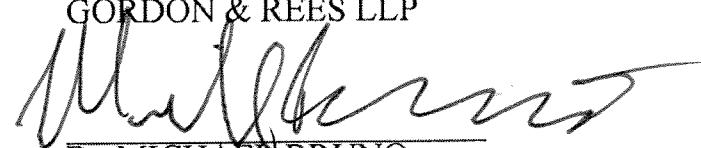
15     Dated: September 14, 2011

16     LAW OFFICES OF PAUL L. REIN

17       
18     By PAUL L. REIN  
19     Attorneys for Plaintiff  
20     DAVID RUBSAMEN

21     Dated: September 15, 2011

22     GORDON & REES LLP

23       
24     By MICHAEL BRUNO  
25     Attorneys for Defendants BRADFORD  
26     PRESCOTT, M.D.; ALPHA MEDICAL  
27     ASSOCIATES LLC

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5 have the same force and effect as an original signature.

6  
7 Dated: September \_\_, 2011

Plaintiff David Rubsamen

8  
9 David Rubsamen

10  
11 Dated: September 21, 2011

12 Defendants Bradford Prescott, M.D., and  
13 Alpha Medical Associates LLC

14 Bradford Prescott, M.D.

15  
16 APPROVED AS TO FORM:

17 Dated: September \_\_, 2011

18  
19 LAW OFFICES OF PAUL L. REIN

20 By PAUL L. REIN  
21 Attorneys for Plaintiff  
22 DAVID RUBSAMEN

23 Dated: September \_\_, 2011

24  
25 GORDON & REES LLP

26 By MICHAEL BRUNO  
27 Attorneys for Defendants BRADFORD  
28 PRESCOTT, M.D.; ALPHA MEDICAL  
ASSOCIATES LLC

## ORDER

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

Dated: October 28   , 2011

