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12 South First Street, Suite 413
San Jose, CA 95113
Telephone: (408) 295-0137
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Attorneys for SHELBY GAIL HEIFETZ, Plaintiff

** Defendants and their counsel are listed after the caption*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

)	Case No. 4:15-cv-01780-KAW
SHELBY GAIL HEIFETZ,)	
Plaintiff,)	CONSENT DECREE AND
)	ORDER
vs.)	
)	
HEALTH & TASTE INVESTMENT)	
GROUP, LLC, a California limited liability)	
company d/b/a THE ORIGINAL)	
PANCAKE HOUSE; RODRIGUES)	
HOLDINGS, LLC, a California limited)	
liability company; GARY E. RODRIGUES,)	
an individual; and DOES 1-10, Inclusive,)	
Defendants.)	

Brian K. Nagatani, State Bar Number 208632
HIXSON NAGATANI LLP
4655 Old Ironsides Drive, Suite 420
Santa Clara, CA 95054
Telephone: +1.408.486.9955
Facsimile: +1.408.727.6617
Attorneys for Defendant,
HEALTH & TASTE INVESTMENTS GROUP, LLC

Neil Turner Medeiros, State Bar Number 256734
Buchman Provine Brothers Smith LLP
2033 N Main St., Suite 720
Walnut Creek, Ca 94596

1 Telephone: 925-944-9700
2 Fax: 925-944-9701
3 Attorneys for Defendants,
4 RODRIGUES HOLDINGS, LLC
5 and GARY E. RODRIGUES

6 1. On April 20, 2015 SHELBY GAIL HEIFETZ ("Plaintiff") filed a Complaint in this
7 action, and on January 20, 2016, Plaintiff filed a First Amended Complaint. Plaintiff alleges that
8 Defendants HEALTH & TASTE INVESTMENT GROUP, LLC, a California limited liability
9 company d/b/a THE ORIGINAL PANCAKE HOUSE; RODRIGUES HOLDINGS, LLC, a
10 California limited liability company; and GARY E. RODRIGUES, an individual (collectively
11 "Defendants"), violated Title III of the ADA; sections 51, 52, 54, 54.1, and 54.3 of the California
12 Civil Code; sections 19955 *et seq.* of the California Health & Safety Code; and sections 17200,
13 *et seq.* and 17500 *et seq.* of the California Business and Professions Code by failing to provide
14 full and equal access to their facilities at or about 2059 Contra Costa Blvd in Pleasant Hill,
15 California 94523 ("Subject Property").

16 2. Defendants at all times denied any violation of law and nothing in this Consent Order
17 constitutes an admission by Defendants of any violation of Title III of the Americans with
18 Disabilities Act, its enabling regulations, California state law, or of any of the allegations made
19 by Plaintiff in this lawsuit.

20 3. Plaintiff and Defendants (collectively the "Parties") hereby enter into this Consent
21 Decree and Order for the purpose of resolving injunctive relief issues in this lawsuit without the
22 need for protracted litigation.

23 JURISDICTION:

24 4. The Parties to this Consent Decree and Order agree that the Court has jurisdiction of this
25 matter pursuant to 28 U.S.C. section 1331 for alleged violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.* and pursuant to supplemental
27 jurisdiction for alleged violations of California Health & Safety Code sections 19955 *et seq.*;
28 California Business and Professions Code sections 17200 *et seq.* and 17500 *et seq.*; Title 24,
California Code of Regulations; and California Civil Code sections 51, 52, 54, 54.1, and 54.3.

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

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SETTLEMENT OF INJUNCTIVE RELIEF:

5. This Order shall be a full, complete, and final disposition and settlement of Plaintiff's injunctive relief claims against Defendants. The Parties agree that there is no admission or finding of liability, guilt or violation of the law, and that this Consent Decree and Order should be not be construed as such.

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

a) **Remedial Measures:** Defendants shall perform the following remedial work pursuant to ADAAG and Title 24 at the Subject Property:

Parking Lot

- a. Install wheel stops to prevent encroachment of cars over the required width of walkways.
- b. Restripe parking area so that each parking stall is at least 18 feet in length.
- c. Provide blue border at the loading and unloading parking access aisle
- d. Rearrange parking spaces so ramps do not encroach into any accessible parking space or access aisle.
- e. Paint the words "No Parking" on the ground within each access aisle.
- f. Provide continued detectable warning (aka truncated domes) in all areas where walkway crosses or adjoins a vehicular way and the walking surfaces are not separated by curbs, railings or other elements between the pedestrian and vehicular areas.

Exit and Entry Doors

- a. Adjust all exit and entry doors so that they close in no less than 5 seconds.
- b. Anchor or replace door mats to eliminate tripping hazard.
- c. Provide California grade II Braille exit signs at latch side of door at all exit doors

1 Women's Restroom

- 2 a. Provide ADA approved contrasting signage on Restroom door to direct
3 users to an accessible restroom.
4 b. Provide California grade II tactile signage with Braille writing installed
5 on the wall adjacent to the latch side of the door.
6 c. Adjust door closer to allow door to close from a 90 degree open position
7 to 3 in. from the latch in no less than 5 seconds.

8 Stairways and Steps

- 9 a. Provide handrails on both sides of the stairway
10 b. Ensure that the handrail gripping surface is 34 – 38 inches above the
11 nosing of the treads.
12 c. Extend handrails 12 inches beyond the top nosing and 12 inches plus the
13 tread width beyond the bottom nosing.
14 d. Install contrasting stripes on nose of the step or upper approach.
15 e. Create a drain and pipe it under the concrete path to street to prevent
16 water leakage that poses a slipping hazard by garbage/stair area.
17 f. Cast new steps so that all risers are sloped at or at least 60 degrees from
18 the horizontal.

- 19 b) **Timing of Injunctive Relief:** The work to be performed pursuant to this
20 Consent Decree shall be completed by December 31, 2016. In the event that
21 unforeseen difficulties prevent Defendants from completing any of the agreed-
22 upon injunctive relief, Defendants or their counsel will notify Plaintiffs' counsel
23 in writing within 30 days of discovering the delay. Plaintiffs will have thirty
24 (30) days to investigate and meet and confer, and to approve the delay by
25 stipulation or otherwise respond to Defendants' notice. Plaintiffs will not
26 unreasonably withhold consent for a reasonable extension of time to complete
27 remediation. If the Parties cannot reach agreement regarding the delay within an
28 additional fifteen days, Plaintiffs may seek enforcement by the Court.
Defendants or their counsel will notify Plaintiffs' counsel when the corrective
work is completed.

1 c) If Defendants fails to complete the corrective work on the agreed upon
2 timetable, Plaintiff may file a motion with the Court to compel compliance with
3 these terms only after first meeting and conferring in good faith with
4 Defendants. Plaintiff reserves the right to seek reasonable attorneys' fees in
5 connection with bringing such motion to compel compliance. Defendants
6 reserve the right to oppose Plaintiffs' request for fee on the grounds that such
7 fees are unnecessary, duplicative or otherwise not reasonable.

8 **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND COSTS:**

9 7. The Parties have reached a separate settlement agreement regarding Plaintiff's claim for
10 damages, attorneys' fees, and litigation expenses.

11 **ENTIRE CONSENT DECREE AND ORDER:**

12 8. This Consent Decree and Order constitutes the entire agreement between the signing
13 Parties with respect to injunctive relief and no other statement, promise, or agreement, either
14 written or oral, made by any of the Parties or agents of any of the Parties that is not contained in
15 this written Consent Decree and Order, shall be enforceable regarding the matters described
16 herein.

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

19 9. This Consent Decree and Order shall be binding on Plaintiff, Defendants, and any
20 successors-in-interest. The Parties have a duty to so notify all such successors-in-interest of the
21 existence and terms of this Consent Decree and Order during the period of the Court's
22 jurisdiction of this Consent Decree and Order.

23 10. Plaintiff understands and agrees that there is a risk and possibility that, subsequent to the
24 execution of this Consent Decree and Order, she will incur, suffer, or experience
25 some further loss or damage with respect to the lawsuit that is unknown or unanticipated at the
26 time this Consent Decree and Order is signed. Except for all obligations required in this Consent
27 Decree and Order, the Parties intend that this Consent Decree and Order applies to all such
28 further loss by Plaintiff with respect to the lawsuit, except those caused by Defendants

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

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

12 11. Except for all obligations required in this Consent Decree and Order Plaintiff forever
13 releases and discharges Defendants, and each of them, and all officers, directors, shareholders,
14 subsidiaries, joint venturers, stockholders, partners, parent companies, employees, agents,
15 attorneys, insurance carriers, heirs, predecessors, successors, assigns, and representatives of
16 Defendants, from all claims, demands, actions, damages, and causes of action of whatever kind
17 or nature, presently known or unknown, arising out of or in any way connected with the lawsuit
18 or relating to the Subject Property.

19 **TERMINATION AND SATISFACTION:**

20 12. This Consent Decree and Order Shall be in full force and effect for a period of six months
21 after the injunctive relief contemplated by this Order is completed. The Court shall retain
22 jurisdiction of this action to enforce provisions of this Order during the aforementioned term.

23 **SEVERABILITY:**


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

27 **EXECUTION OF THIS CONSENT DECREE:**

28 14. This Consent Decree 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

1 constitute one and the same instrument. Such counterparts may be signed as faxed signatures,
2 which shall have the same force and effect as original signatures. The undersigned hereby
3 consent to the foregoing Consent Decree.
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5 Date: 6/20/2016

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SHELBY GAIL HEIFETZ

Date: _____

HEALTH & TASTE INVESTMENT GROUP, LLC, a
California limited liability company d/b/a THE ORIGINAL
PANCAKE HOUSE

By: _____

_____, as a duly authorized officer

Date: _____

RODRIGUES HOLDINGS, LLC, a California limited
liability company

By: _____

_____, as a duly authorized officer

Date: _____

By: _____

GARY E. RODRIGUES

Approved as to form:

Date: 06.22.16

By: 

IRENE KARBELASHVILI,
Attorney for Plaintiff SHELBY GAIL HEIFETZ

1 constitute one and the same instrument. Such counterparts may be signed as faxed signatures,
2 which shall have the same force and effect as original signatures. The undersigned hereby
3 consent to the foregoing Consent Decree.

4
5 Date: _____

By: _____
SHELBY GAIL HEIFETZ

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9 Date: 6/24/16

HEALTH & TASTE INVESTMENT GROUP, LLC, a
California limited liability company d/b/a THE ORIGINAL
PANCAKE HOUSE

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11 By: _____

K.T. Combs, as a duly authorized officer

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15 Date: _____

RODRIGUES HOLDINGS, LLC, a California limited
liability company

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17 By: _____

_____, as a duly authorized officer

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21 Date: _____

By: _____
GARY E. RODRIGUES

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24 Approved as to form:

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26 Date: _____

By: _____
IRENE KARBELASHVILI,
Attorney for Plaintiff SHELBY GAIL HEIFETZ

1 constitute one and the same instrument. Such counterparts may be signed as faxed signatures,
2 which shall have the same force and effect as original signatures. The undersigned hereby
3 consent to the foregoing Consent Decree.

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5 Date: _____

By: _____
SHELBY GAIL HEIFETZ

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9 Date: _____

HEALTH & TASTE INVESTMENT GROUP, LLC, a
California limited liability company d/b/a THE ORIGINAL
PANCAKE HOUSE

By: _____

_____, as a duly authorized officer

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15 Date: 22 Jan 16

RODRIGUES HOLDINGS, LLC, a California limited
liability company

By:  _____

PRESDT, as a duly authorized officer

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20 Date: 22 Jan 16

By:  _____

GARY E. RODRIGUES

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24 Approved as to form:

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26 Date: _____

By: _____

IRENE KARBELASHVILI,
Attorney for Plaintiff SHELBY GAIL HEIFETZ

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Date: 6/22/16

By: B. Nagatani

BRIAN K. NAGATANI,
Attorney for Defendant HEALTH & TASTE
INVESTMENT GROUP, LLC

Date: _____

By: _____

NEIL T. MEDEIROS
Attorney for Defendants RODRIGUES
HOLDINGS, LLC and GARY E. RODRIGUES

ORDER

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

Dated: _____

Honorable Kandis A. Westmore
United States Magistrate Judge

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Date: _____

By: _____

BRIAN K. NAGATANI,
Attorney for Defendant HEALTH & TASTE
INVESTMENT GROUP, LLC

Date: 6-23-2016

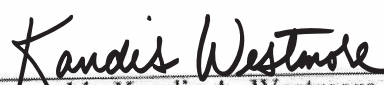
By:  _____

NEIL T. MEDEIROS
Attorney for Defendants RODRIGUES
HOLDINGS, LLC and GARY E. RODRIGUES

ORDER

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

Dated: 7/20/16

 _____
Honorable Kandis A. Westmore
United States Magistrate Judge