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6 Attorneys for Plaintiffs
 EDWARD FORBES and MATTHEW FORBES, minors,
 7 by JENNIFER FORBES as their Guardian Ad Litem

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 EDWARD FORBES and
 11 MATTHEW FORBES, minors,
 by JENNIFER FORBES as their
 12 Guardian Ad Litem,

CASE NO. C11-05336 PSG
Civil Rights

13 Plaintiffs,

14 v.

15 VIVE SOL; HECTOR SOL AND
 HELENA SOL dba VIVE SOL;
 16 ESKANDER SARRAF; BRIGITTE
 W. SARRAF; and DOES 1-10,
 17 Inclusive,

**CONSENT DECREE and
 [PROPOSED] ORDER REGARDING
 INJUNCTIVE RELIEF, DAMAGES
 and ATTORNEY FEES, LITIGATION
 EXPENSES AND COSTS**

18 Defendants.

19 _____ /
 20 1. Plaintiffs EDWARD FORBES and MATTHEW FORBES, minors,
 21 by JENNIFER FORBES as their Guardian Ad Litem, filed a Complaint in
 22 this action on November 16, 2011, to obtain recovery of damages for their
 23 discriminatory experiences, denial of access, and denial of their civil rights,
 24 and to enforce provisions of the Americans with Disabilities Act of 1990
 25 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and California civil rights laws
 26 against Defendants VIVE SOL, HECTOR SOL AND HELENA SOL dba
 27 VIVE SOL, ESKANDER SARRAF, and BRIGITTE W. SARRAF
 28 (collectively "Defendants"), relating to the condition of Defendants' public

1 accommodations as of July 10, 2011, and continuing. Plaintiffs have
2 alleged that Defendants violated Title III of the ADA, sections 51, 52, 54,
3 54.1, 54.3, and 55 of the California Civil Code, and section 19955 *et seq.* of
4 the California Health & Safety Code by failing to provide full and equal
5 access to the facilities located at Vive Sol Restaurant, 2020 West El
6 Camino Real, Mountain View, California.

7 2. Plaintiffs and Defendants (collectively “the Parties”) hereby enter into this
8 Consent Decree and Order for the purpose of resolving the injunctive relief,
9 damages and attorneys fees aspects of this lawsuit without the need for
10 protracted litigation.

11

12 **JURISDICTION:**

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

19 4. In order to avoid the costs, expense, and uncertainty of protracted litigation,
20 the Parties to this Consent Decree and Order agree to entry of this Consent
21 Decree and Order to resolve all claims regarding injunctive relief, damages
22 and attorney fees raised in the Complaint filed with this Court.
23 Accordingly, the Parties agree to the entry of this Order without trial or
24 further adjudication of any issues of fact or law concerning Plaintiffs’
25 claims for injunctive relief and damages.

26

27 WHEREFORE, the Parties to this Consent Decree hereby agree and
28 stipulate to the Court’s entry of this Consent Decree and Order, which

1 provide as follows:
2

3 **SETTLEMENT OF INJUNCTIVE RELIEF:**

4 5. This Order shall be a full, complete, and final disposition and settlement of
5 all of Plaintiffs' claims against Defendants that have arisen out of the
6 subject Complaint.

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

12
13 a.) **Remedial Measures:** The corrective work agreed upon by the Parties is
14 set forth in the report of Plaintiffs' access consultant, Jonathan Adler,
15 attached and incorporated herewith as **Attachment A**. Defendants agree to
16 undertake all of the remedial work as set forth therein, except for those item
17 numbers expressly waived by plaintiffs described in **Attachment B**.

18
19 b.) **Timing of Injunctive Relief:** Defendants will complete corrective
20 work not requiring permits within 30 days of the entry of this Consent
21 Decree and Order by the Court. Defendants will submit plans for all
22 corrective work requiring permits to the appropriate governmental agencies
23 within 30 days of the entry of this Consent Decree by the Court.

24 Defendants will commence permitted work within 20 days of receiving
25 approval from the appropriate agency. Defendants will complete all work
26 by March 31, 2013. In the event that unforeseen difficulties prevent
27 Defendants from completing any of the agreed-upon injunctive relief,
28 Defendants or their counsel will notify Plaintiffs' counsel in writing within

1 five (5) days of discovering the delay. Plaintiffs will have thirty (30) days
2 to investigate and meet and confer, and to approve the delay by stipulation
3 or otherwise respond to Defendants' notice. If the Parties cannot reach
4 agreement regarding the delay within an additional fifteen (15) days,
5 defendants have the right to seek relief from the Court. Plaintiffs have the
6 right to oppose the request for relief from the terms of the Consent Decree.

7
8 c.) **Notification:** Defendants or their counsel will notify Plaintiffs' counsel
9 when the corrective work is completed. The will provide a status report at
10 the end of 90 days from the Parties' signing of this Consent Decree and
11 Order, and every 90 days thereafter until all access is provided. If
12 Defendants fail to provide injunctive relief on the agreed upon timetable
13 and/or fail to provide timely written status notification, and Plaintiffs file a
14 motion with the Court to obtain compliance with these terms, Plaintiffs
15 reserve the right to seek additional attorney fees for any compliance work
16 necessitated by Defendants' failure to keep this agreement. If the Parties
17 disagree, such fees shall be set by the Court.

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

20 7. The Parties have reached an agreement as to plaintiffs' damages.
21 Defendants shall pay to Plaintiffs the amount of \$40,000, \$25,000 to be
22 paid in trust for Matthew Forbes (who suffered a fall), age 15, and \$15,000
23 for Edward Forbes, age 16, subject to a minors' compromise approval by
24 the Court, as full and final resolution of Plaintiffs' claims for all civil
25 rights, statutory, actual, and personal injury damages, including, but not
26 limited to, general, compensatory, and special damages. Payment shall be
27 made by one check made payable to "Paul L. Rein in Trust for EDWARD
28 FORBES and MATTHEW FORBES, minors, by JENNIFER FORBES as

1 their Guardian Ad Litem” Payment shall be received at the Law Offices of
2 Paul L. Rein, 200 Lakeside Drive, Suite A, Oakland, CA 94612, no later
3 than December 28, 2012.

4 8. Defendants shall also pay and deliver a total of \$60,000 for Plaintiffs’
5 attorney fees, litigation expenses, and costs, including expert consultant
6 fees of \$9,465, with payment to be made to “PAUL L. REIN,” and received
7 at the Law Offices of Paul L. Rein, 200 Lakeside Drive, Suite A, Oakland,
8 CA 94612, no later than December 28, 2012. Plaintiffs’ may distribute the
9 above funds immediately upon the Court’s approval of the Minors’
10 Compromise Motion filed concurrently with this Consent Decree.

11
12 **ENTIRE CONSENT DECREE AND ORDER:**

13 9. This Consent Decree and Order and **Attachment A** and **Attachment B**
14 constitute the entire agreement between the signing Parties and no other
15 statement, promise, or agreement, either written or oral, made by any of the
16 Parties or agents of any of the Parties that is not contained in this written
17 Consent Decree and Order, shall be enforceable regarding the matters
18 described herein.

19
20 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**
21 **SUCCESSORS IN INTEREST:**

22 10. This Consent Decree and Order shall be binding on Plaintiffs, Defendants,
23 and any successors-in-interest. Defendants have a duty to so notify all such
24 successors-in-interest of the existence and terms of this Consent Decree and
25 Order during the period of the Court’s jurisdiction of this Consent Decree
26 and Order.

27 //
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1 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS**
2 **TO INJUNCTIVE RELIEF ONLY:**

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

19 **A GENERAL RELEASE DOES NOT EXTEND TO**
20 **CLAIMS WHICH THE CREDITOR DOES NOT**
21 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**
22 **FAVOR AT THE TIME OF EXECUTING THE**
23 **RELEASE, WHICH IF KNOWN BY HIM OR HER**
24 **MUST HAVE MATERIALLY AFFECTED HIS**
25 **SETTLEMENT WITH THE DEBTOR.**

26 This waiver applies to all aspects of this action, including injunctive relief,
27 damages, and attorney fees, litigation expenses, and costs.

28 12. Except for all obligations required in this Consent Decree and Order each
of the Parties to this Consent Decree and Order, on behalf of each, their
respective agents, representatives, predecessors, successors, heirs, partners,
and assigns, releases and forever discharges each other Party and all

1 officers, directors, shareholders, subsidiaries, joint venturers, stockholders,
2 partners, parent companies, employees, agents, attorneys, insurance
3 carriers, heirs, predecessors, and representatives of each other Party, from
4 all claims, demands, actions, and causes of action of whatever kind or
5 nature, presently known or unknown, arising out of or in any way
6 connected with the lawsuit. Notwithstanding the foregoing, the Defendants
7 do not waive or release, but instead explicitly preserve, their rights to seek
8 contribution, apportionment, indemnification, and all other appropriate
9 relief from each other in connection with this Lawsuit and settlement
10 thereof.

11
12 **TERM OF THE CONSENT DECREE AND ORDER:**

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

19
20 **SEVERABILITY:**

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

24
25 **SIGNATORIES BIND PARTIES:**

26 15. Signatories on the behalf of the Parties represent that they are authorized to
27 bind the Parties to this Consent Decree and Order. This Consent Decree
28 and Order may be signed in counterparts and a facsimile signature shall

1 have the same force and effect as an original signature.
2

3 Dated: December 21, 2012

PLAINTIFFS EDWARD FORBES and
MATTHEW FORBES, minors,
by JENNIFER FORBES as their Guardian
Ad Litem

4
5
6 *Jennifer Forbes*
7 By JENNIFER FORBES as Guardian Ad
Litem for EDWARD FORBES and
8 MATTHEW FORBES, minors

9 Dated: December ____, 2012

DEFENDANT VIVE SOL

10 By: _____
11 Print name: _____
12 Title: _____
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14 Dated: December ____, 2012

DEFENDANT HECTOR SOL dba
VIVE SOL

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18 Dated: December ____, 2012

DEFENDANT HELENA SOL dba
VIVE SOL

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22 Dated: December ____, 2012

DEFENDANT ESKANDER SARRAF

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26 Dated: December ____, 2012

DEFENDANT BRIGITTE W. SARRAF

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have the same force and effect as an original signature.

Dated: December __, 2012

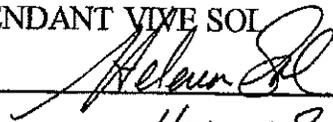
PLAINTIFFS EDWARD FORBES and
MATTHEW FORBES, minors,
by JENNIFER FORBES as their Guardian
Ad Litem

By JENNIFER FORBES as Guardian Ad
Litem for EDWARD FORBES and
MATTHEW FORBES, minors

Dated: December 21, 2012

DEFENDANT VIVE SOL

By:



Print name:

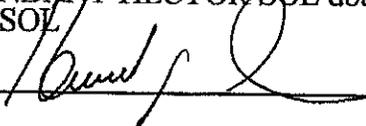
HELENA SOL

Title:

OWNER ~

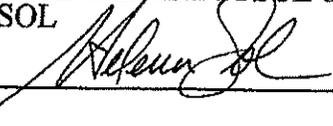
Dated: December 21, 2012

DEFENDANT HECTOR SOL dba
VIVE SOL



Dated: December 21, 2012

DEFENDANT HELENA SOL dba
VIVE SOL



Dated: December __, 2012

DEFENDANT ESKANDER SARRAF

Dated: December __, 2012

DEFENDANT BRIGITTE W. SARRAF

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

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Dated: December ____, 2012

PLAINTIFFS EDWARD FORBES and
MATTHEW FORBES, minors,
by JENNIFER FORBES as their Guardian
Ad Litem

By JENNIFER FORBES as Guardian Ad
Litem for EDWARD FORBES and
MATTHEW FORBES, minors

Dated: December ____, 2012

DEFENDANT VIVE SOL

By: _____
Print name: _____
Title: _____

Dated: December ____, 2012

DEFENDANT HECTOR SOL dba
VIVE SOL

Dated: December ____, 2012

DEFENDANT HELENA SOL dba
VIVE SOL

Dated: December ES, 2012 ✓

DEFENDANT ESKANDER SARRAF

Eskander Sarraf

Dated: December 13, 2012 ✓

DEFENDANT BRIGITTE W. SARRAF

Brigitte W. Sarraf

1 APPROVED AS TO FORM:

2 Dated: December 31, 2012

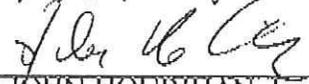
LAW OFFICES OF PAUL L. REIN


By: PAUL L. REIN, Esq.
Attorney for Plaintiffs
EDWARD FORBES and MATTHEW
FORBES, minors by JENNIFER FORBES
as their Guardian Ad Litem

9 Dated: December 14, 2012

STRATMAN, PATTERSON & HUNTER

With exception to part of paragraph 7 (line 27, page 4), payment might be made with more than one check. A


By: JOHN HOURIHAN, Esq.
Attorney for Defendants
VIVE SOL; HECTOR SOL AND
HELENA SOL dba VIVE SOL

15 Dated: December __, 2012

LAW OFFICES OF JASON T. BAKER

By: JASON T. BAKER, Esq.
Attorney for Defendants
ESKANDER SARRAF AND BRIGITTE
W. SARRAF

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ORDER

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

January 14, 2013

Dated: ~~December _____, 2012~~


PAUL SINGH GREWAL
United States Magistrate Judge