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obtained and  
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14 APPLE INC.;  
DEKA IMMOBILIEN INVESTMENT GMBH, LLC

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 NICOLE BROWN-BOOKER and  
18 JANA OVERBO,

CASE NO. 3:07-CV-4397-SI  
Civil Rights

19 Plaintiffs,

**CONSENT DECREE AND [PROPOSED]  
ORDER**

20 v.

21 APPLE INC.; DEKA IMMOBILIEN  
22 INVESTMENT GMBH, LLC; and  
DOES 1-10, inclusive,

23 Defendants.

24 **CONSENT DECREE AND ORDER**

25 1. Plaintiffs NICOLE BROWN-BOOKER and JANA OVERBO ("Plaintiffs"),  
26 filed a Complaint in this action on August 24, 2007, to recover damages and to enforce  
27 provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et  
28

1 seq., and California civil rights laws against Defendants APPLE INC., DEKA IMMOBILIEN  
2 INVESTMENT GMBH, LLC, and DOES 1-10, inclusive, (the "Complaint"). In the  
3 Complaint, Plaintiffs allege that Defendants violated Title III of the ADA and sections 51, 52,  
4 54, 54.1, 54.3 and 55 of the California Civil Code, and sections 19955 *et seq.*, of the California  
5 Health and Safety Code by failing to provide full and equal access to their facilities at the  
6 Apple Store located at 1 Stockton Street, San Francisco, California (the "Apple Retail Store").  
7 The parties to this Consent Decree are Plaintiffs and Apple Inc. (the "Parties").

8 2. APPLE INC., DEKA IMMOBILIEN INVESTMENT GMBH, LLC, and DOES  
9 1-10, have denied and continue to deny the allegations made in the Complaint. By entering  
10 into this Consent Decree and Order, Apple Inc. does not admit liability with respect to any of  
11 the allegations in the Complaint. The Parties hereby enter into this Consent Decree for the  
12 purpose of resolving this lawsuit without the need for protracted litigation, and without the  
13 admission of any liability.

14  
15 **JURISDICTION:**

16 3. The Parties agree that the Court has jurisdiction over this matter pursuant to 28  
17 USC §1331 for alleged violations of the Americans with Disabilities Act of 1990, 42 USC  
18 12101 *et seq.* and pursuant to supplemental jurisdiction for alleged violations of California  
19 Health & Safety Code §19955 *et seq.*, including §19959; Title 24 California Code of  
20 Regulations; and California Civil Code §§51; 52; 54; 54.1; §54.3; and 55.

21 4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the  
22 Parties agree to the entry of the proposed Order to resolve all claims regarding injunctive relief  
23 raised in the Complaint. Accordingly, they agree to the entry of this Order without trial or  
24 further adjudication of any issues of fact or law concerning Plaintiffs' claims for injunctive  
25 relief.

26 WHEREFORE, the Parties hereby agree and stipulate to the Court's entry of this  
27 Consent Decree and Order, which provides as follows:  
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1 **SETTLEMENT OF INJUNCTIVE RELIEF:**

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

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

12 a) Remedial Measures: The corrective work agreed upon by the Parties is attached  
13 here to as Exhibit A. Apple Inc. agrees to undertake all of the remedial work set forth therein.

14 b) Timing of Injunctive Relief: Apple Inc. will submit plans for all corrective work  
15 to the appropriate governmental agencies within 30 days of entry of this Consent Decree and  
16 Order by the court, will commence work within 30 days of receiving approval from the  
17 appropriate agencies, and will complete all work within 30 days of commencement. For  
18 corrective work not requiring building permits, the work will be completed within 60 days of  
19 entry of this Consent Decree and Order by the Court. In the event that unforeseen difficulties  
20 prevent Apple Inc. from completing any of the agreed-upon injunctive relief, Apple Inc. or its  
21 counsel will notify Plaintiffs' counsel in writing within 15 days of discovering the delay.  
22 Apple Inc. or its counsel will notify Plaintiffs' counsel when the corrective work is completed,  
23 and in any case will provide a status report no later than 120 days from the entry of this  
24 Consent Decree. Notwithstanding the foregoing, the training of the Retail Associates in the  
25 Apple Retail Store as provided for in Paragraphs 6, 7 and 8 of Exhibit A shall be completed by  
26 or before June 30, 2009; the Outreach training of all of Apple's Retail Associates provided for  
27 at Paragraph 9 of Exhibit A shall be completed by or before December 31, 2009; and the  
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1 Website Modification provided for at Paragraph 10 of Exhibit A shall be implemented after the  
2 completion of that Outreach training.

3

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

5 7. The Parties have reached a separate agreement regarding Plaintiffs' claims for  
6 damages, attorney fees, litigation expenses and costs.

7

8 **ENTIRE CONSENT ORDER:**

9 8. This Consent Decree and Order and Exhibit A to this Consent Decree, which is  
10 incorporated herein by reference as if fully set forth in this document, constitutes the entire  
11 agreement between the signing Parties on the matters of injunctive relief, and no other  
12 statement, promise, or agreement, either written or oral, made by any of the Parties or agents of  
13 any of the Parties, that is not contained in this written Consent Decree and Order, shall be  
14 enforceable regarding the matters of injunctive relief described herein. This Consent Decree  
15 and Order applies to Plaintiffs' claims for injunctive relief only. The Parties have reached a  
16 separate agreement with respect to Plaintiffs' claims for damages, attorney fees, litigation  
17 expenses and costs.

18

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

20 9. This Consent Decree and Order shall be binding on Plaintiffs NICOLE  
21 BROWN-BOOKER, JANA OVERBO; Defendants APPLE INC. and any of their respecting  
22 successors in interest. The Parties have a duty to so notify all such successors in interest of the  
23 existence and terms of this Consent Decree and Order during the period of the Court's  
24 jurisdiction of this Consent Decree and Order.

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

3 10. Plaintiffs understand and agree that there is a risk and possibility that,  
4 subsequent to the execution of this Consent Decree, either or both of them will incur, suffer, or  
5 experience some further loss or damage with respect to the matters alleged in the Complaint  
6 which are unknown or unanticipated at the time this Consent Decree is signed. Except for all  
7 obligations required in this Consent Decree, the Parties intend that this Consent Decree apply to  
8 all such further loss with respect to the matters alleged in the Complaint, except those caused  
9 by actions of the Parties subsequent to the execution of this Consent Decree. Therefore, except  
10 for the obligations required in this Consent Decree, this waiver and release shall apply to and  
11 cover any and all claims, demands, actions and causes of action by the Plaintiffs that were or  
12 could have been alleged in or are related to the allegations made in the Complaint, whether the  
13 same are known, unknown or hereafter discovered or ascertained, and the provisions of Section  
14 1542 of the California Civil Code are hereby expressly waived. Section 1542 provides as  
15 follows:

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

21 This waiver applies to the injunctive relief aspects of this action only and does not include  
22 resolution of Plaintiffs' claims for damages, attorney fees, litigation expenses and costs.

23 11. Except for the obligations required in this Consent Decree, and exclusive of the  
24 referenced continuing claims for damages, statutory attorney fees, litigation expenses and costs,  
25 Plaintiffs, on behalf of each, their respective agents, representatives, predecessors, successors,  
26 heirs, partners and assigns, releases and forever discharges Apple Inc. and all its officers,  
27 directors, shareholders, subsidiaries, joint venturers, stockholders, partners, parent companies,  
28 employees, agents, attorneys, insurance carriers, predecessors, and representatives from all

1 claims, demands, actions, and causes of action of whatever kind or nature, presently known or  
2 unknown, arising out of or in any way connected with the matters alleged in the Complaint.

3  
4 **RELEASE OF DEFENDANT DEKA IMMOBILIEN INVESTMENT GMBH, LLC:**

5 12. Plaintiffs, on behalf of each, their respective agents, representatives,  
6 predecessors, successors, heirs, partners and assigns, releases and forever discharges Deka  
7 Immobilien Investment GMBH, LLC, its officers, directors, shareholders, subsidiaries, joint  
8 venturers, stockholders, partners, parent companies, employees, agents, attorneys, insurance  
9 carriers, predecessors, and representatives from all claims, demands, actions, and causes of  
10 action of whatever kind or nature, presently known or unknown, arising out of or in any way  
11 connected with the matters alleged in the Complaint.

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

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

20  
21 **SEVERABILITY:**

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

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26 **SIGNATORIES BIND PARTIES:**

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

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counterparts and a facsimile signature shall have the same force and effect as an original signature.

Dated: February 11, 2009

*x Nicole Brown-Booker*  
Plaintiff NICOLE BROWN-BOOKER

Dated: February 11, 2009

*x Jana Overbo*  
Plaintiff JANA OVERBO

Dated: February , 2009

Defendant APPLE INC.

APPROVED AS TO FORM:

Dated: February 11, 2009

PAUL L. REIN  
JULIE A. OSTIL  
LAW OFFICES OF PAUL L. REIN

*Paul L. Rein*  
Attorneys for Plaintiffs  
NICOLE BROWN-BOOKER and JANA OVERBO

1 counterparts and a facsimile signature shall have the same force and effect as an original  
2 signature.

3  
4 Dated: February , 2009

5  
6 Plaintiff NICOLE BROWN-BOOKER

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8 Dated: February , 2009

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10 Plaintiff JANA OVERBO

11 Dated: February 12, 2009

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14 Defendant APPLE INC.

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16 APPROVED AS TO FORM:

17 Dated: February , 2009

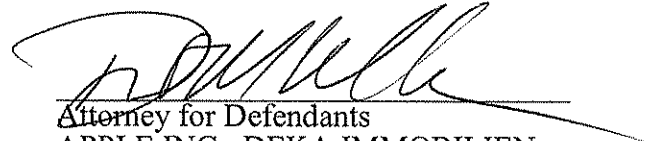
18 PAUL L. REIN  
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21 Attorneys for Plaintiffs  
22 NICOLE BROWN-BOOKER and JANA OVERBO

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Dated: February 13, 2009

DAVID M. WALSH  
JEFF MICHALOWSKI



Attorney for Defendants  
APPLE INC.; DEKA IMMOBILIEN  
INVESTMENT GMBH, LLC

# **EXHIBIT “A”**

**Exhibit A**

Apple shall perform the obligations listed in paragraphs 1 through 8 in this Exhibit "A" in order to enhance the accessibility of the Apple Retail Store located at One Stockton Street, San Francisco, California (the "Apple Retail Store") within the time frames prescribed in the Consent Order, subject to the issuance of building permits by appropriate authorities, as necessary.

1. Front Door (Main Entrance): Apple will periodically (not less than monthly) monitor, make necessary adjustments to and otherwise maintain the "push pressure" necessary to open the front door of the Apple Retail Store at levels acceptable under the ADAAG and Title 24.
2. West End Corridor (at rear of first floor): Apple will install an ADAAG and Title 24 compliant handrail in this corridor in the Apple Retail Store reaching from threshold to threshold.
3. Apple Retail Store Unisex Bathroom (first floor): Apple shall:
  - (a) periodically (not less than monthly) monitor, make necessary adjustments to and otherwise maintain the "push pressure" necessary to open the bathroom door in the Apple Retail Store at levels acceptable under the ADAAG and Title 24;
  - (b) install an automatic, motion activated light switch in the bathroom in the Apple Retail Store;
  - (c) install an ADAAG and Title 24 compliant coat hook (between 30" and 48" above the finished floor) on the interior side of the bathroom door in the Apple Retail Store;
  - (d) adjust the toilet location in the bathroom in the Apple Retail Store by 1/8" so that it is located 18" from the wall on center;

- 1 (e) monitor the toilet paper dispenser in the bathroom in the Apple Retail Store and  
2 insure that an adequate supply of toilet paper is placed in the upper dispenser.
- 3
- 4 4. Elevator (at each Door Jamb): Apple shall install ADAAG and Title 24 compliant Braille  
5 signage at each elevator landing in the Apple Retail Store.
- 6 5. Theatre (second floor): Apple shall remove the existing wheelchair seating spaces (located  
7 in the first row) in the theatre in the Apple Retail Store and install two (2) new ADAAG  
8 and Title 24 compliant wheelchair seating spaces and designated permanent adjacent  
9 companion seating in the back row of the theatre.
- 10
- 11 6. Accessible Ground Floor Route: Apple shall provide mandatory training (at time of hire  
12 and not less than annually thereafter) to its employees regarding the need to and will  
13 maintain an accessible path of travel through the first floor of the Apple Retail Store.
- 14 7. Kids' Computer Table: Apple shall make the children's computer programs playing on the  
15 computers located at the Apple Retail Store's Kids' Computer Table (and only the  
16 programs playing on those computers at the time of a request) available on another  
17 computer (which computer will be placed upon an accessible table) upon request by a  
18 wheelchair using customer.
- 19
- 20 8. Genius Bar: Apple shall provide mandatory training (at time of hire and not less than  
21 annually thereafter) to its Apple Retail Store employees regarding the removal of the  
22 desktop computer monitors located on the accessible tables at either end of the Genius Bar  
23 when serving a wheelchair using customer. Apple Retail Associates will offer to relocate  
24 the desktop monitors when serving a wheelchair using customer at the accessible tables.
- 25 9. Outreach: Apple shall provide mandatory training (at time of hire and not less than  
26 annually thereafter) regarding offering assistance to wheelchair using customers, and  
27 Apple's Retail Associates will:
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- (a) approach and greet wheelchair using customers and offer assistance in accessing products;
- (b) offer to assist wheelchair using customers with the operation of control mechanisms for products displayed throughout the Apple Store; and
- (c) offer to move products to specified locations on existing 34" high tables upon the request of wheelchair using customers.

10. Website Modification: Apple shall publish the following language on the accessibility page of its website ([www.apple.com/accessibility](http://www.apple.com/accessibility)): "As part of our commitment to accessibility, our Retail Associates are specially trained to serve customers with disabilities. Please ask an Associate for assistance if you have difficulty viewing a product when you visit an Apple Retail Store. They will be happy to assist you by moving displayed products to more accessible locations if possible."

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13 Attorney for Defendants  
APPLE INC.;  
14 DEKA IMMOBILIEN INVESTMENT GMBH, LLC

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 NICOLE BROWN-BOOKER and  
18 JANA OVERBO,

19 Plaintiffs,

20 v.

21 APPLE INC.; DEKA IMMOBILIEN  
22 INVESTMENT GMBH, LLC; and  
DOES 1-10, inclusive,

23 Defendants.  
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CASE NO. 3:07-CV-4397-SI  
Civil Rights

**[PROPOSED] ORDER ON STIPULATED  
CONSENT DECREE**

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 The Court, having considered the Stipulated Consent Decree filed by the parties hereto,  
3 and good cause otherwise showing therefor, hereby adopts the terms of the Stipulated Consent  
4 Decree and enters the Stipulated Consent Decree as its Order.

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**IT IS SO ORDERED.**

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Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Susan Illston  
United States District Judge

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LEGAL\_US\_W # 61056093.1

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