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9 Attorneys for Plaintiff
10 MIKEL HARRIS

11 * *Defendants' counsel listed after the caption*

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 MIKEL HARRIS,

15 Plaintiffs,

16 v.

17 JT HOSPITALITY, INC., dba DAYS INN
18 & SUITES SANTA CRUZ; PRAVIN
19 PATEL; NAINA PATEL; WYNDHAM
20 WORLDWIDE, INC.; and DOES 1-10,
21 INCLUSIVE,

22 Defendants.

Case No. 5:16-cv-04392 BLF
Civil Rights

**CONSENT DECREE AND ~~PROPOSED~~
ORDER FOR INJUNCTIVE RELIEF,
DAMAGES, AND ATTORNEY FEES,
LITIGATION EXPENSES, AND COSTS**

Action Filed: August 4, 2016

23 1. Plaintiff Mikel Harris filed a Complaint in this action (the "Action") on
24 August 4, 2016, 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 and to obtain recovery
26 of damages for discriminatory experiences, denial of access, and denial of civil rights against,
27 among others, Defendant Wyndham Worldwide Corporation relating to disability
28 discrimination at the Days Inn® hotel located at 600 Riverside Avenue Santa Cruz, CA as of
March 31, 2016, and continuing. Plaintiff has alleged that the defendants in the Action
violated Titles III of the ADA; sections 51, 52, 54, 54.1, 54.3, and 55 of the California Civil
Code; Penal sections 365.5 and 365.6; and sections 19955 *et seq.* of the Health and Safety

1 Code by unreasonably excluding his service dog from the facilities at 600 Riverside Avenue,
2 Santa Cruz, California (sometimes called "Hotel"). Although not alleged in the Complaint,
3 Plaintiff asserted additional allegations against Wyndham Worldwide Corporation in the
4 Action including, without limitation, claims with respect to the Wyndham online, consumer-
5 accessible reservation system.

6 2. Wyndham Worldwide Corporation filed an Answer to the Complaint on
7 November 19, 2016, in which it contested liability for any acts or omissions with respect to
8 the Hotel's public accommodations and Plaintiff's stay at the Hotel. Plaintiff has dismissed
9 Wyndham Worldwide Corporation from the Action and added Wyndham Hotel Group, LLC
10 as a defendant (sometimes hereinafter referred to as "Defendant").

11 3. Without agreeing to the truth of any of Plaintiff's allegations as set forth
12 above in the operative pleading or otherwise in this Action, which allegations Defendant
13 expressly denies, Plaintiff and Defendant agree that it is in the Parties' best interests, and
14 Plaintiff believes it is in the public interest, to fully and finally resolve this Action on
15 mutually agreeable terms without resort to protracted litigation. Therefore, Plaintiff and
16 Defendant hereby agree and stipulate to the following Consent Decree ("Consent Decree"),
17 which the Court will retain jurisdiction to enforce for twenty-four (24) months after the date
18 it is signed.

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

21 **JURISDICTION AND VENUE:**

22 4. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§1331 and
23 1345, and 42 U.S.C. §12188(b). Venue is appropriate in this District pursuant to 28 U.S.C.
24 §1391.

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

1 6. It is understood and agreed that this settlement is the compromise of a
2 disputed claim, and that the payment made is not to be construed as an admission of liability
3 on the part of the party or parties hereby released, and that said released deny liability
4 therefor and intend merely to avoid litigation and buy their peace. Neither this Consent
5 Decree nor any payment pursuant thereto shall be construed as an admission of any liability,
6 such being expressly denied, nor as a waiver by or an estoppel of any of the parties herein
7 released to make claim for any damages which they sustained, their claims and causes of
8 action with respect thereto being expressly reserved. Defendant's agreement to enter into
9 this Consent Decree cannot be used as evidence of a violation of the ADA.

10 7. Within Twenty-Four Months from the entry of this order, Defendant shall
11 complete the necessary modifications to their infrastructure, policies and procedures to fully
12 implement each of the requirements in attached Exhibit A.

13 8. Within fourteen (14) days of the entry of this Consent Decree, Defendant shall
14 pay to Plaintiff and his counsel of record the sum of fifty-thousand dollars (\$50,000) (the
15 "Settlement Amount") payable in a single check made payable to the Law Offices of Paul
16 Rein Trust Account. Plaintiff understands and acknowledges that third parties may be
17 indemnifying Defendant and, to that end, these third parties may be responsible to pay
18 Defendant all or any portion of the Settlement. Notwithstanding this indemnification,
19 Defendant is responsible to deliver the Settlement Amount to Plaintiff irrespective of the
20 timing of receipt of the contribution by others to the Settlement Amount.

21 9. Each of the Parties to this Consent Decree and Order understands and agrees
22 that there is a risk and possibility that, subsequent to the execution of this Consent Decree
23 and Order, any or all of them will incur, suffer, or experience some further loss or damage
24 with respect to the Action that is unknown or unanticipated at the time this Consent Decree
25 and Order is signed. Except for all obligations required in this Consent Decree and Order, the
26 Parties intend that this Consent Decree and Order apply to all such further loss with respect
27 to the Action, except those caused by the Parties subsequent to the execution of this Consent
28 Decree and Order. Therefore, except for all obligations required in this Consent Decree and

1 Order, this Consent Decree and Order shall apply to and cover any and all claims, demands,
2 actions, and causes of action by the Parties to this Consent Decree with respect to the Action,
3 whether the same are known, unknown, or hereafter discovered or ascertained, and the
4 provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section
5 1542 provides as follows:

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

10 10. Except for all obligations required in this Consent Decree and Order, each of
11 the Parties to this Consent Decree and Order, on behalf of each, their respective agents,
12 representatives, predecessors, successors, heirs, partners, and assigns, releases and forever
13 discharges each other Party and all officers, directors, shareholders, subsidiaries, affiliates,
14 joint venturers, stockholders, partners, parent companies, employees, agents, attorneys,
15 insurance carriers, heirs, predecessors, and representatives of each other Party, from all
16 claims, demands, actions, and causes of action of whatever kind or nature, presently known
17 or unknown, arising out of or in any way connected with the Action.
18

19 11. This Consent Decree constitutes the entire Consent Decree between Plaintiff and
20 Defendant. No other statement, promise, or Consent Decree, either written or oral, made by any
21 Party or agents of any Party, that is not contained in or contradicts this written Consent Decree
22 shall be enforceable.

23 12. Each Party to this Consent Decree represents, warrants, and agrees as to himself
24 or itself as follows:

25
26 A. No Party to this Consent Decree has made any statement or representation to
27 any other Party to this Consent Decree regarding any fact relied upon by any other Party in
28 entering into this Consent Decree, and each Party has not relied upon any statement,
representation, or promise of any other Party (or of any representative or attorney of or for the
other Party), in executing this Consent Decree, or in making the settlement provided for herein,
except as expressly stated in this Consent Decree.

1 B. Each Party to this Consent Decree has made such investigation of the facts
2 pertaining to the matters addressed in this Consent Decree and this Consent Decree and of all the
3 matters pertaining thereto as it deems necessary.

3 C. Each Party has read this Consent Decree and understands the contents
4 hereof, and has executed this Consent Decree voluntarily and without duress or undue influence
5 on the part of or on behalf of any other Party.

6 13. Each Party has not heretofore assigned, transferred, or granted, or purported to
7 assign, transfer, or grant, any of the claims, demands, and cause or causes of action released or
8 waived by this Consent Decree including, without limitation, any claims, demands or causes of
9 action relating to the Action.

10 14. The Parties, and each of them, covenant and agree never to commence, or in any
11 way, prosecute or cause or permit to be commenced or prosecuted any action or proceeding
12 based on any claims which are released or intended to be released, waived or otherwise resolved,
13 pursuant to this Consent Decree, only except to the extent necessary to enforce the terms of this
14 Consent Decree

15 15. If any provision of this Consent Decree is held by a court of competent
16 jurisdiction to be void, voidable, unlawful or unenforceable for any reason, in whole or in part,
17 the remaining portions of this Consent Decree will nevertheless continue with full force and
18 effect, and the Parties agree a court of competent jurisdiction will have jurisdiction to reform
19 such provision(s) to the extent necessary to cause it to give maximum legal effect to the intention
20 of the Parties as expressed herein and the Parties agree to be bound by such reformation.

21 16. The Parties acknowledge that their respective attorneys have reviewed and drafted
22 this Consent Decree, and the normal rule of construction to the effect that any ambiguities are to
23 be resolved against the drafting Party shall not be employed in the interpretation of this Consent
24 Decree.

25 17. This Consent Decree may be executed in counterparts, including electronic
26 signatures and electronic copies such as PDFs, which, when counterparts have been executed by
27 all of the Parties, shall constitute this Consent Decree.
28

1 18. The individuals signing this Consent Decree represent that they are authorized to
2 bind their respective Party to this Consent Decree.

3 19. THIS CONSENT DECREE REPRESENTS THE FINAL AGREEMENT
4 AMONG THE PARTIES WITH RESPECT TO RESOLUTION OF THE SUBJECT MATTER
5 HEREOF, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR,
6 CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS AMONG THE
7 PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

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**END OF PAGE.
SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT THE END
OF THE DOCUMENT.**

1 Dated: 1-30-, 2018

PLAINTIFF MIKEL HARRIS

Mikel Harris

5 Dated: 2-9, 2018

WYNDHAM HOTEL GROUP, LLC

By: [Signature]
Print name: Mark Merrin
Title: Group Vice President - Litigation

10 Approved as to form:

12 Dated: Feb 7, 2018

DERBY, McGUINNESS & GOLDSMITH, LLP

[Signature]
STEVEN L. DERBY, ESQ.
Attorneys for Plaintiff
MIKEL HARRIS

18 Dated: Feb 13, 2018

BRYAN CAVE LLP

[Signature]
KEITH D. KLEIN, ESQ.
Attorneys for Defendant
WYNDHAM HOTEL GROUP, LLC

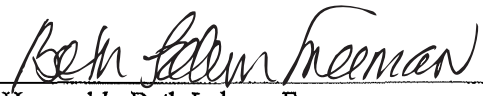
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ORDER

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

Dated February 20, 2018



Honorable Beth Labson Freeman
United States District Court Judge

EXHIBIT A

POLICY TO BE EMPLOYED WITHIN TWENTY-FOUR (24) MONTHS REGARDING
THE WYNDHAM HOTEL RESERVATIONS SYSTEM

Within the time frames set forth below, Wyndham Hotel Group, LLC (“Wyndham”) shall take steps to comply with the requirements at 28 C.F.R. Section 36.302(e) with regard to the Wyndham Reservations System (the “Reservations System”). For purposes of this Exhibit A, the term Reservations System shall only refer to the internal reservations system controlled by Wyndham and shall not apply to any systems, websites or other interfaces that are not controlled exclusively by Wyndham and/or any of its affiliates. For the avoidance of doubt, Reservations System shall exclude any website for which Wyndham does not have final and complete control over the display of any content or information. Wyndham’s compliance with these steps shall constitute full compliance with this regulation.

I. Wyndham shall identify and describe accessible features in the hotels and accessible guest rooms offered through the Reservations System in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or accessible guest room meets his or her accessibility needs. Wyndham shall meet this obligation by taking the following actions:

A. With regard to accessible guest rooms, Wyndham will request that each hotel in the Reservations System provide to Wyndham an updated room inventory that identifies by room type which rooms are accessible, and for each such room type, which of the following accessibility or other features it has:

1. Number of beds
2. Size of bed(s)
3. Roll-in shower or accessible tub with grab bars
4. Visual alarms and devices for the deaf or hard of hearing
5. Suite (if applicable)
6. Kitchen/kitchenette (if applicable)
7. View, if a particular hotel charges more for a room based on the view.

Wyndham shall meet the requirements of this Section I.A within 90 days of entry of the Consent Decree. For the term of this Consent Decree, Wyndham will request in a writing (electronic or otherwise, expressly acknowledging that a communication through any property owner-accessible or franchisee-accessible portal is sufficient) that each hotel update the information collected pursuant to this paragraph I.A. upon any material reconfiguration of room types.

B. With regard to information concerning the accessibility of hotel facilities, Wyndham shall request each hotel on the Reservations System to answer in substance the following questions:

1. Is the hotel's public entrance accessible?
2. Is the route from hotel's accessible public entrance to the following areas accessible? (a) accessible guestrooms; (b) all venues serving food and drink; (c) meeting room/ballroom area; (d) fitness center accessible; (e) swimming pools; (f) spas; (g) accessible parking spaces?
3. Are the following areas accessible: (a) restaurants; (b) fitness center; (c) swimming pools; (d) spas; and (e) business center.
4. Do the accessible guest rooms for guests with mobility disabilities have doorways that provide at least 32" of clear width?
5. Is there accessible parking for cars in the self-parking facility?
6. Is there van accessible parking in the self-parking facility?
7. If provided, does the hotels and valet parking service accept vehicles specially outfitted for wheelchair users?
8. If the hotel provides transportation services, is it accessible for wheelchair users?
9. Does the hotel have TTYs for guest use?
10. Does the hotel provide assistive listening devices for meetings upon request?
11. Do the hotel's guest room televisions have closed captioning?

Wyndham shall maintain the information obtained through such inquiries on the Reservations System and shall, at a minimum, display on its websites the areas of hotel that reported as accessible. If there are areas or aspects of a hotel that are reported as not accessible, Wyndham may either identify those areas or aspects on the Reservations System or include a statement on the Reservations System to the following effect: "There may be some aspects of the facility that are not fully accessible. For more information, please contact the hotel directly." Wyndham shall take the actions set forth in this section I.B. within eighteen months of entry of the Consent Decree for the hotels it manages ("Managed Hotels"), and within two years of entry of the Consent Decree for franchised hotels ("Franchised Hotels").

II. Within two years of entry of the Consent Decree, Wyndham shall ensure that accessible guest rooms at Managed Hotels are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type. Wyndham will make available to franchisees and owners of

Managed Hotels information regarding ADA requirements and compliance within 90 days of entry of the Consent Decree but shall not be responsible for their compliance.

III. Wyndham shall not be responsible for any third party reservation service's failure to provide information concerning accessible guest rooms or the accessibility of the hotels on the Reservations System provided that any information that it does provide to such third party reservation services is accurate.

IV. Within one year of Consent Decree entry, Wyndham will guarantee that the specific accessible guest room reserved through the Reservation System is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others. Wyndham shall remind Franchised Hotels in a writing (electronic or otherwise, expressly acknowledging that a communication through any property owner-accessible or franchisee-accessible portal is sufficient) of this legal requirement within 90 days of Consent Decree Entry but shall not be responsible for their compliance.

V. At Managed Hotels, if blocks of rooms allocated for specific groups do not contain accessible rooms and a member of the group requires an accessible room, Wyndham will, upon request, include an accessible room meeting that group member's needs in the room block, if one is available. Wyndham will charge the same rate for the accessible room as for a comparable non-accessible room. Wyndham shall remind Franchised Hotels in a writing (electronic or otherwise, expressly acknowledging that a communication through any property owner-accessible or franchisee-accessible portal is sufficient) of this legal requirement within 90 days of Consent Decree Entry but shall not be responsible for their compliance.

VI. At Managed Hotels that offer non-accessible rooms with two-beds but do not offer accessible rooms with two beds, Wyndham will provide guests with disabilities seeking to reserve an accessible room with two beds an additional room, free of charge. The additional room does not need to be accessible. Wyndham shall remind Franchised Hotels in a writing (electronic or otherwise, expressly acknowledging that a communication through any property owner-accessible or franchisee-accessible portal is sufficient) of this legal requirement within 90 days of Consent Decree Entry but shall not be responsible for their compliance.

VII. The requirements in paragraphs IV through VI of this section do not apply to reservations for individual guest rooms or other units not owned or substantially controlled by the entity that owns, leases, or operates the overall facility.