

1 KEITH D. CABLE (SBN 170055)
2 CABLE LAW OFFICES
3 101 Parkshore Drive, Suite 100
4 Folsom, CA 95630
5 Telephone: (916) 608-7995
6 Facsimile: (916) 984-5775

7 DANIEL L. LEYTON (Florida Bar No. 0061824)
8 CHARLES D. FERGUSON (Florida Bar No.
9 0741531)
10 DE LA O, MARKO, MAGOLNICK & LEYTON
11 3001 S. W. 3rd Avenue
12 Miami, FL 33129
13 Telephone: (305) 285-2000
14 Facsimile: (305) 285-5555

15 Attorneys for Plaintiffs
16 EDWARD L. KEMPER
17 CONNIE J. ARNOLD

18 DOWNEY BRAND LLP
19 RHONDA CATE CANBY (Bar No. 171571)
20 ELIZABETH B. STALLARD (Bar No. 221445)
21 621 Capitol Mall, Eighteenth Floor
22 Sacramento, CA 95814
23 Telephone: (916) 444-1000
24 Facsimile: (916) 444-2100

25 Attorneys for Defendant
26 CATHOLIC HEALTHCARE WEST

27 UNITED STATES DISTRICT COURT

28 EASTERN DISTRICT OF CALIFORNIA

29 EDWARD L. KEMPER and CONNIE J.
30 ARNOLD, for themselves and all others
31 similarly situated,

32 Plaintiffs,

33 v.

34 CATHOLIC HEALTHCARE WEST, a
35 California corporation, et. al.

36 Defendants.

Case No. 2:06-CV-00295-LKK-EFB

**CLASS SETTLEMENT AGREEMENT
AND CONSENT DECREE**

1 Edward L. Kemper and Connie J. Arnold (the “Named Plaintiffs”), acting on behalf of a
2 nationwide class of disabled persons (the “Class”), as defined in the Court’s October 2, 2006,
3 Order Granting Class Certification (the “Certification Order”), and Defendant, Catholic
4 Healthcare West (“CHW”), hereby enter into the following Settlement Agreement and Consent
5 Decree (the “Consent Decree”).

6 **RECITALS**

7 On May 19, 2006, the Named Plaintiffs – both of whom have disabilities as defined by
8 42 U.S.C. § 12102(2) – filed a proposed class action captioned *Edward L. Kemper and Connie*
9 *J. Arnold, for themselves and all others similarly situated v. Catholic Healthcare West*, United
10 States District Court for the Eastern District of California, Sacramento Division, Case No. 2:06-
11 CV-00295-LKK-PAN (JFM), alleging inaccessible architectural barriers at CHW hospital
12 campuses. CHW owns and/or operates more than forty (40) hospitals and other health care
13 facilities in Arizona, California, and Nevada, including, e.g., acute care hospitals, outpatient
14 care facilities, freestanding surgery and diagnostic centers, behavioral health hospitals, clinics,
15 medical office buildings, and long term care and skilled nursing facilities.

16 On October 2, 2006, the Court entered the Certification Order, certifying the Class as
17 follows:

18 All people in the United States with disabilities as that term has been defined by 42
19 U.S.C. §12102(2) - including those persons that have a physical mobility impairment
20 that substantially limits a major life function - who have and who were, prior to the filing
21 of the Class Action Complaint through the pendency of this action, denied the full and
equal enjoyment of the goods, services, programs, facilities, privileges, advantages, or
accommodations of any of CHW’s Facilities, because of their respective disabilities.

22 The Certification Order also certified counsel for the Named Plaintiffs as counsel for the Class
23 (“Class Counsel”). The Named Plaintiffs and the Class are collectively referred to herein as
24 “Plaintiffs.” CHW and CHW Affiliates are collectively referred to herein as the “CHW Group.”
25 The CHW Group and Plaintiffs are collectively referred to herein as the “Parties,” and
26 individually herein as a “Party.”

27 The CHW Group denies any and all liability to Plaintiffs. Specifically, the CHW Group
28 denies that it has violated any laws – federal, state or local – regarding access to its Facilities or

1 discrimination against disabled persons. Nevertheless, the Parties want to resolve their
2 differences by:

3 (a) achieving improvements to access at the Facilities in a manner that satisfies
4 CHW Group obligations under the laws governing physical access for persons with
5 disabilities as defined by applicable Disability Laws;

6 (b) addressing access issues at the Facilities in a broad-based, uniform manner, so
7 that CHW Group obligations will be clearly and cohesively defined, and thereby
8 avoiding the risks associated with piecemeal actions against individual Facilities.
9 Piecemeal litigation produces uneven and unsatisfactory results for Plaintiffs and creates
10 the risk that the CHW Group would be subject to conflicting standards regarding
11 compliance with Disability Laws at its Facilities; and

12 (c) avoiding the uncertainty and cost of further or future litigation for the Parties.

13 NOW THEREFORE, the Parties have agreed to the following terms:

14 **GENERAL PROVISIONS**

15 1. **Definitions.** In addition to the terms defined elsewhere in this Consent Decree, the
16 following terms shall have the meanings set forth below. Any terms not defined herein shall
17 have the meaning ascribed to them in the ADA and in its implementing regulations.

18 1.1. “ADA” means the Americans With Disabilities Act, as contained in 42 U.S.C.
19 Section 12101, *et seq.*, and its implementing regulations.

20 1.2. “CHW Affiliates” are entities wholly or partially owned or controlled by CHW,
21 that have become bound by this Consent Decree in accordance with paragraph 16.2.

22 1.3. “Class Members” means members of the Class.

23 1.4. “Consent Decree” means this document, including any attached exhibits as of the
24 date of its approval or attached in the future in accordance with paragraph 16.1.

25 1.5. “Disability Laws” means: (1) the ADA; (2) Section 504 of the Rehabilitation
26 Act of 1973, as amended, 29 U.S.C. §§ 701, *et seq.*; (3) the California Disabled Persons
27 Act, Cal. Civ. Code §§ 54 *et seq.*; (4) any other provision of California law to the extent
28 it grants a right of action for alleged violations of the foregoing; (5) any state or local

1 law, statute, administrative rule, regulatory or code provision that either directly
2 incorporates Title III of the ADA or any of its implementing regulations, or sets forth
3 standards or requirements that are equivalent to Title III of the ADA or any of its
4 implementing regulations; and (6) any other federal, state, local, or administrative
5 statute, rule, or regulation relating to access for the disabled or prohibiting public
6 accommodations from discriminating on the basis of disability.

7 1.6. "Expert" or "Experts" means persons designated by either Plaintiffs or CHW,
8 pursuant to this Consent Decree, in connection with the formulation of, and compliance
9 with, Facility Modification Plans. All Experts shall have the qualifications identified in
10 paragraph 13.5 below.

11 1.7. "Facility" or "Facilities" means public accommodations owned and/or operated
12 by the CHW Group which are identified in Exhibit A to this Consent Decree or in
13 supplements to Exhibit A. A Facility includes all areas open to and available for use by
14 the public, including, but not limited to, the parking spaces and sidewalks that serve
15 these areas, so long as the CHW Group has a legal right of alteration or control over
16 these areas. In the case of an acute care hospital, Facility includes all buildings related
17 to the hospital's function, or otherwise located contiguous with or adjacent to the
18 hospital, sharing parking lots or garages or other common areas; such groups of
19 buildings and common areas may be referred to herein as a "Hospital Facility Campus."

20 1.8. "Facility Consent Decree" means a judgment approved by the Court regarding a
21 Facility Modification Plan.

22 1.9. "Facility Modification Plan" means a plan developed by the Parties identifying
23 the barriers to be removed and/or other modifications to be made pursuant to Disability
24 Laws for a Facility.

25 1.10. "Facility Site Inspections" are initial inspections to identify potential barriers,
26 and the needed barrier removal or other modifications necessary to make a Facility
27 compliant with Disability Laws.
28

1 1.11. "Fairness Hearing" means a Court hearing during which a Facility Consent
2 Decree is evaluated by the Court and any objections to a proposed Facility Consent
3 Decree are heard by the Court. If the Court is satisfied that the Facility Consent Decree
4 is fair to Plaintiffs, the Court shall approve the Facility Consent Decree in accordance
5 with the procedures set forth in paragraphs 14.4 and 14.5 below.

6 1.12. "Fees and Costs" means the attorneys' fees, experts' fees and recoverable costs
7 reasonably incurred by Plaintiffs in this action, including fees and costs incurred in the
8 administration of this Consent Decree.

9 1.13. "Medical Equipment" means equipment that assists in providing disabled
10 patients access to diagnostic and treatment services (including examination tables,
11 examination chairs, and lifts), scales, and patient beds.

12 1.14. "Noncompliance" means that more than five percent (5%) of all applicable line
13 items identified in an approved Facility Consent Decree have not been completed
14 adequately, after applying all acceptable dimensional tolerances, construction tolerances,
15 acceptable variations, and equivalent facilitations cited in the Facility Consent Decree.

16 1.15. "Post Compliance Inspection" means a survey conducted by Plaintiffs, through
17 their Expert(s), to determine whether Noncompliance exists at a Settlement Corrected
18 Facility.

19 1.16. A "Settlement Corrected Facility" is a Facility that has completed barrier
20 removal or other modifications pursuant to an approved Facility Consent Decree.

21 1.17. A "Settlement Corrected Facility Order" is a Court order determining that the
22 CHW Group's obligations with respect to a Settlement Corrected Facility have been
23 fulfilled, in accordance with the procedures described in paragraph 19.

24 2. **Conditions.** This Consent Decree is effective only upon approval by the Court in
25 accordance with Fed. R. Civ. P. 23(e).

26 3. **Nonadmission/Nondetermination.**

27 3.1. This document constitutes a settlement agreement pursuant to Federal Rule of
28 Evidence 408. Entering into this Consent Decree or any Facility Consent Decree (as

1 defined in paragraph 1.8) does not constitute an admission by the CHW Group, express
2 or implied, that the CHW Group has in any way violated any Disability Laws. This
3 Consent Decree, or any Facility Consent Decree, does not contain, and will not be
4 interpreted or construed as containing, any such admission.

5 3.2. The Court has made no findings concerning the alleged violations of any
6 Disability Laws. Accordingly, this Consent Decree, or any Facility Consent Decree,
7 does not constitute, and will not be used in this or any other case or action, as evidence
8 of any such violation of any Disability Laws. If for any reason this Consent Decree is
9 not executed, no evidence of this proposed Consent Decree will be admissible for any
10 purpose in this or any other action.

11 4. **No Third Party Beneficiaries/Plaintiffs' Right to Enforce.** For purposes of interpreting
12 or enforcing this Consent Decree, any Facility Consent Decree, or any Settlement Corrected
13 Facility Order, individual Class Members shall not be deemed to be third-party
14 beneficiaries. Individual unnamed Class Members may not bring any action for any alleged
15 violation of this Consent Decree, any Facility Consent Decree, or any Settlement Corrected
16 Facility Order. Only the Named Plaintiffs and Class Counsel have the authority to bring an
17 action to enforce this Consent Decree, any Facility Consent Decree, or any Settlement
18 Corrected Facility Order.

19 5. **Facility Consent Decrees Incorporating Facility Modification Plans.**

20 5.1. This Consent Decree contemplates, and sets forth procedures to achieve the
21 disposition of Plaintiffs' claims for injunctive relief against each Facility via approval of
22 individual Facility Consent Decrees by the Court as to each Facility. The process by
23 which Facility Consent Decrees will be approved is described in greater detail in
24 paragraphs 14.4 and 14.5.

25 5.2. The Court shall retain continuing jurisdiction of this action for the following
26 purposes:

- 27 (a) to resolve disputes as to the formation of a Facility Modification Plan for a given
28 Facility;

- 1 (b) to consider and approve each Facility Consent Decree;
2 (c) to issue each Settlement Corrected Facility Order; and
3 (d) to supervise and, to the extent necessary, enforce the Parties' compliance with
4 this Consent Decree, each Facility Consent Decree, and each Settlement
5 Corrected Facility Order.

6 5.3. Each Facility Consent Decree and each Settlement Corrected Facility Order shall
7 constitute a final judgment within the meaning of Fed. R. Civ. P. 54(b), and will be
8 independently subject to all rights of judicial review provided by law for judgments of
9 this Court, without awaiting the conclusion of this action as to other Facilities.

10 6. **Exclusivity of this Consent Decree.** Plaintiffs, either individually or collectively, may not
11 now, or at any time in the future, maintain any legal action contending that a Facility that
12 has been addressed, or will be addressed, by this Consent Decree is required, under the legal
13 theories asserted in this action, to make additional or different modifications beyond those
14 agreed to pursuant to this Consent Decree or a Facility Consent Decree.

15 7. **Term.** This Consent Decree shall have a term ("Term") that expires when the Court's
16 jurisdiction terminates as to the last of the Facilities.

17 8. **Entire Consent Decree.** This Consent Decree constitutes the complete understanding
18 between the Parties, may not be changed orally, and supersedes any and all prior agreements
19 or understandings between the Parties. Each Party acknowledges that no other Party, nor
20 any representative of a Party, has made any representations or promises other than as set
21 forth herein. No other promises, agreements, or modifications to this Consent Decree shall
22 be binding unless in writing and signed by all Parties. The Parties further agree that if any
23 term of this Consent Decree is held to be void, voidable, unlawful or unenforceable, the
24 remaining portion of the Consent Decree shall remain in full force and effect.

25 **INJUNCTIVE RELIEF**

26 9. **Procedures For Communicating Concerns.**

27 9.1. Within ninety (90) days of the approval of this Consent Decree, CHW will
28 implement a policy for communicating complaints or concerns respecting access for

1 disabled persons to a Facility, and for Facility management and personnel to follow in
2 reviewing the complaint or concern, in a form agreed to by CHW and Plaintiffs, through
3 Class Counsel. Any disagreements between the Parties regarding the policy will be
4 handled in accordance with the process outlined in paragraph 20.

5 9.2. When the policy referred to in paragraph 9.1 is implemented, CHW will
6 simultaneously post a notice of the policy in a conspicuous and otherwise appropriate
7 location frequented by patients and invitees of each Facility.

8 **10. Medical Equipment Review**

9 10.1 Within **ninety (90) days** of approval of this Consent Decree, CHW will provide
10 Plaintiffs' counsel with a proposed questionnaire (hereinafter, the "Medical Equipment
11 Questionnaire") detailing the information CHW will seek from each Facility regarding
12 its Medical Equipment. The Medical Equipment Questionnaire will be used to evaluate
13 the adequacy of the Medical Equipment onsite, policies for obtaining Medical
14 Equipment not currently onsite, and training and policies regarding the use of Medical
15 Equipment and providing access to treatment for persons with disabilities. Plaintiffs will
16 be given an opportunity to comment on the Medical Equipment Questionnaire, and
17 CHW will address any comments in good faith, with the end result being a final Medical
18 Equipment Questionnaire.

19 10.2 Thereafter, and contemporaneous with the Facility Site Inspection at a given
20 Facility, CHW will use the Medical Equipment Questionnaire to engage in a review of
21 the Medical Equipment at that Facility and prepare a report on its findings. This report
22 (hereinafter, the "Medical Equipment Report") will identify the status of the items
23 addressed in the Medical Equipment Questionnaire at the Facility, as well as proposed
24 actions to be taken at the Facility to address any issues raised in the Medical Equipment
25 Report.

26 10.3 When CHW first responds to the Facility Modification Plan created by Plaintiffs'
27 Expert(s) for a given Facility or CHW Affiliate (as described in Paragraph 14.1), CHW
28 will provide the Medical Equipment Report for that Facility. Following Class Counsel's

1 opportunity to review and comment on the Medical Equipment Report, the Parties will
2 stipulate that the Medical Equipment Report resolves all issues concerning Medical
3 Equipment at the Facility, subject to Paragraph 20 herein.

4 10.4 Any Facility surveyed prior to the finalization of the Medical Equipment
5 Questionnaire will have its review of Medical Equipment performed within twelve (12)
6 months of the finalization of the Medical Equipment Questionnaire. Such Facility's or
7 CHW Affiliate's Medical Equipment Report will be finalized within twenty four (24)
8 months of the finalization of the Medical Equipment Questionnaire.

9 **11. Limited Discovery Prior to Facility Site Inspections.**

10 11.1. Plaintiffs will conduct limited written discovery to determine the current status of
11 each of the Facilities as it relates to compliance with Disability Laws. This discovery is
12 limited to that set forth in the pre survey questionnaire ("PSQ") attached as Exhibit B to
13 this Consent Decree.

14 11.2. CHW will provide responses to the PSQ regarding each Facility no less than
15 fifteen (15) days prior to the Facility Site Inspection for the Facility.

16 11.3. Any disagreements between the Parties regarding the PSQ will be handled in
17 accordance with the process outlined in paragraph 20.

18 **12. Other Discovery.** This Consent Decree, and specifically paragraph 11.1, is designed to
19 provide orderly, expeditious and efficient discovery in connection with the Facility Site
20 Inspections and the development and fulfillment of Facility Modification Plans without
21 undue burden on the Parties or the Court. A Party may seek permission of the Court for
22 additional discovery with respect to a Facility on a showing of extraordinary need, by clear
23 and convincing evidence that (a) any such requested discovery is directly relevant to a
24 Facility Site Inspection and/or the formulation of a Facility Modification Plan; (b) the
25 information sought will not be made available via the informal discovery contemplated in
26 paragraph 11.1; and (c) a Party has refused to voluntarily respond. Any and all additional
27 discovery shall be subject to the standards of this Consent Decree, the Federal Rules of Civil
28 Procedure and the Local Rules of this Court. Requests for additional discovery will be

1 handled in accordance with the process outlined in paragraph 20.

2 **13. Facility Site Inspection Schedule and Protocol.**

3 13.1. The Parties have already participated in multiple Facility Site Inspections and are
4 in the process of finalizing Facility Modification Plans for those surveyed Facilities.

5 The Parties will finalize any Facility Modification Plans begun prior to the approval of
6 this Consent Decree in accordance with the procedures outlined in this Consent Decree.

7 13.2. During the pendency of this Consent Decree, CHW will provide Class Counsel
8 with a schedule of Facility Site Inspections to take place in the following calendar year
9 at least one (1) month prior to the start of that calendar year. This process will repeat
10 itself annually until all Facility Site Inspections are completed.

11 13.3. The Parties will negotiate in good faith to determine a schedule for Facility Site
12 Inspections that will be reasonably calculated to provide for seven (7) to nine (9)
13 inspections each calendar year, and to provide for completion of Facility Site Inspections
14 within six (6) years of the date of the approval of this Consent Decree.

15 13.4. The schedule described in paragraph 13.2 may be revised from time to time as
16 appropriate. Circumstances justifying a revision in the schedule include, but are not
17 limited to: the need to comply with applicable building codes and applicable local, state,
18 and federal laws and regulations (including amendments or other changes thereto);
19 changes in medical science or technology; developments in patient care or related
20 services; the operational needs of the Facilities; the timing of existing or projected
21 construction and alteration schedules for the Facilities unrelated to the Facility
22 Modification Plan; and the professional schedules of all counsel and Experts.

23 13.5. **Selection of Experts.** All Experts will have substantial professional experience
24 in architecture and engineering disciplines, as well as experience applied to hospitals and
25 other health care facilities and in facility access requirements pursuant to Title III of the
26 ADA.

27 13.6. **Facility Site Inspections.** The Parties will cooperate in good faith regarding the
28 inspection of each Facility by an Expert or Experts with a view toward providing

1 reasonable advance notice of such inspection, arranging for a mutually convenient time
2 for such inspection, making available to Plaintiffs relevant information in advance
3 concerning the Facility to be inspected, and conforming to the schedule for inspections
4 described in paragraph 13.2.

5 13.7. At CHW's discretion, one or more of CHW's Experts, defense counsel and/or
6 Facility personnel shall accompany Plaintiffs' Expert and Class Counsel throughout any
7 Facility Site Inspection.

8 **14. Facility Modification Plans and Facility Consent Decrees.**

9 14.1. Within forty-five (45) days following a Facility Site Inspection, Plaintiffs'
10 Expert(s) will deliver to CHW a proposed Facility Modification Plan specifying with
11 particularity any and all alleged barriers, the manner in which Plaintiffs contend barriers
12 should be removed and other action Plaintiffs contend shall be taken pursuant to
13 Disability Laws as to the Facility.

14 14.2. Facility Modification Plans will be sensitive to, and attempt to account for: the
15 need to comply with applicable building codes and applicable local, state, and federal
16 laws and regulations (including amendments or other changes thereto); changes in
17 medical science or technology; developments in patient care or related services; the
18 operational needs of the Facilities; the timing of existing or projected construction and
19 alteration schedules for the Facilities unrelated to the Facility Modification Plan; and
20 other changed circumstances materially affecting the Facility Modification Plan or its
21 underlying assumptions. Facility Modification Plans will also take into account the
22 dimensional tolerances agreed to by the Parties. These agreed-upon tolerances are
23 detailed in a separate stipulation.

24 14.3. Within ninety (90) days of receipt of a Facility Modification Plan, CHW will
25 review the proposed Facility Modification Plan and provide a written response to it,
26 including any objections. The Parties will thereafter negotiate in good faith to reach
27 agreement regarding a final Facility Modification Plan. If the Parties cannot agree on the
28

1 terms of a final Facility Modification Plan within six (6) months thereafter, they will
2 submit the disputed issues to the ADR process outlined in paragraph 20.

3 14.4. All final Facility Modification Plans, whether reached by agreement of the
4 Parties or by determination pursuant to the procedures outlined in paragraph 20, will
5 then be submitted to the Court as proposed Facility Consent Decrees. In the interest of
6 efficiency, proposed Facility Consent Decrees will be submitted to the Court in groups
7 rather than individually. These submissions will be made on a regular basis by the
8 Parties as needed, and in any event, at least once per calendar year.

9 14.5. Each Facility Consent Decree will be effective only upon the occurrence of the
10 following events:

- 11 (a) Approval by the Court in accordance with Fed. R. Civ. P. 23(e); and
12 (b) Entry of judgment in accordance with the terms of this Consent Decree and the
13 Facility Consent Decree at issue.

14 14.6. The deadlines set forth in this section can be extended by agreement of the
15 Parties. If agreement cannot be reached, the Party seeking the extension can request it
16 from the Court in accordance with the Federal Rules of Civil Procedure and the Local
17 Rules of this Court.

18 **15. Barrier Removal and Other Modifications.**

19 15.1. CHW will make good faith efforts, including, but not limited to, meeting and
20 conferring with Class Counsel as necessary, to have all remediation and changes
21 completed at a Facility within three (3) years of the date the Court approves the Facility
22 Consent Decree for that Facility, subject to a stipulated or court-approved extension.

23 15.2. The Parties acknowledge that such good faith efforts will be sensitive to, and
24 attempt to account for: the need to comply with applicable building codes and applicable
25 local, state, and federal laws and regulations (including amendments or other changes
26 thereto); changes in medical science or technology; developments in patient care or
27 related services; the operational needs of the Facilities; the timing of existing or
28 projected construction and alteration schedules for the Facilities unrelated to the Facility

1 Modification Plan; or other changed circumstances materially affecting the Facility
2 Consent Decree or its underlying assumptions.

3 15.3. A Party may, at any time, propose amendments to a Facility Consent Decree if,
4 in the view of the Party proposing the amendment, an amendment is necessary or
5 appropriate to accommodate changes or developments identified in paragraph 15.2, or to
6 further the objectives of the Facility Consent Decree. Unresolved differences
7 concerning such proposals for resolution may be submitted to ADR as set forth in
8 paragraph 20. Any recommended resolution of differences obtained pursuant to the
9 process set forth in paragraph 20 may also be appealed by any Party to the Court
10 pursuant to the process set forth in paragraph 20. Amendments to a Facility Consent
11 Decree shall be submitted to the Court for hearing and, if appropriate, approval in
12 keeping with the process employed for approval of Facility Consent Decrees.

13 **16. Amendment of Pleadings; Status Reports; Final Hearings.**

14 16.1. CHW may at any time submit a supplement to Exhibit A to this Consent Decree,
15 thereby adding additional Facilities to the procedures provided for in this Consent
16 Decree. The Parties agree to stipulate to CHW's supplements to Exhibit A for this
17 purpose, and such stipulation shall be filed with the supplemental Exhibit A in support of
18 CHW's request for the Court's approval. The Parties also agree to stipulate to Plaintiffs
19 amending the operative Complaint annually in accordance with any changed information
20 provided in a supplemental Exhibit A, and such stipulation shall be filed with the
21 amended Complaint in support of Plaintiffs' motion for leave to amend. Any Facility
22 identified in a supplemental Exhibit A is entitled to the same protections as though it
23 were identified in Exhibit A at the time this Consent Decree is approved.

24 16.2. CHW Affiliates may become subject to this Consent Decree by furnishing a
25 written agreement to be included and bound by this Consent Decree. CHW Affiliates
26 that furnish this agreement to CHW will be promptly identified in a supplement to
27 Exhibit A and will be subject to all provisions of this Consent Decree, unless expressly
28 indicated otherwise in this Consent Decree or the exhibits hereto.

1 16.3. The Parties will file an annual Joint Status Report to keep the Court informed as
2 to the Parties' progress under this Consent Decree. The first Joint Status Report will be
3 filed on or before March 23, 2010..

4 **17. Post Compliance Inspections.**

5 17.1. Plaintiffs' Expert(s) shall conduct Post Compliance Inspections of all Settlement
6 Corrected Facilities.

7
8 17.2. CHW will notify Class Counsel in writing within ninety (90) days after a Facility
9 becomes a Settlement Corrected Facility. Following this notification, the Parties will
10 cooperate to arrange for a Post Compliance Inspection of the Settlement Corrected
11 Facility on reasonable notice and at a mutually convenient time. **Each Post Compliance**
12 **Inspection will be scheduled so that inspections will occur within ninety (90) days of**
13 **CHW's notice.**

14 **18. Procedures for Addressing Alleged Noncompliance in Post Compliance Inspections.**

15 18.1. Within sixty (60) days of conducting any Post Compliance Inspection, Class
16 Counsel will notify CHW in writing if Plaintiffs assert Noncompliance with the
17 corresponding Facility Consent Decree. The written notice shall identify with
18 particularity the basis for any alleged Noncompliance. If no written Notice of
19 Noncompliance is received by CHW within 90 days after a Post Compliance Inspection
20 is completed, CHW's modifications will be deemed accepted by Class Counsel so that
21 CHW may seek court approval of the inspected facility under section paragraph 19.1
22 below.

23 18.2. Within sixty (60) days of receipt of the written notice described in paragraph
24 18.1, CHW will respond in writing to Class Counsel. The Parties will then meet and
25 confer over any alleged noncompliance within forty-five (45) days after Class Counsel
26 receives CHW's response.
27
28

1 18.3. Within thirty (30) days after the meeting described in paragraph 18.2, any
2 remaining unresolved differences as to a Facility will be referred to the Court or, if the
3 Parties so agree, resolved by ADR as set forth in paragraph 20.

4 18.4. The Court or a Special Master is entitled to provide appropriate relief upon a
5 showing of Noncompliance as to a Facility Consent Decree. Relief may include, but is
6 not limited to, enforcement of the Facility Consent Decree, and extension of this Consent
7 Decree for such period as may be necessary to remedy Noncompliance.

8 18.5. Any Party may petition the Court for relief from the provisions of this Consent
9 Decree or of a Facility Consent Decree upon a showing of supervening obligations or
10 events that are unforeseeable or beyond the control of the Parties, including, but not
11 limited to: changes in state or local building codes or ordinances; other legal or
12 administrative requirements; problems in the financial credit or bond financing markets
13 or the occurrence of natural disasters that may prevent timely compliance with the
14 injunctive relief provisions set forth herein.

15 **19. Final Hearings Regarding Settlement Corrected Facilities.**

16 **19.1.** Once a Facility becomes a Settlement Corrected Facility, and: (1) after any
17 disputes over alleged Noncompliance as to the Settlement Corrected Facility are
18 resolved as described in section 18 above; or (2) sixty (60) days after Class Counsel has
19 waived a Post-Compliance Inspection or (3) ninety (90) days after the Facility's Post
20 Compliance Inspection is deemed accepted because Class Counsel has not provided the
21 written notice described in paragraph 18.1 above, CHW may seek, via motion, a
22 Settlement Corrected Facility Order finding that CHW's obligations with respect to the
23 Settlement Corrected Facility have been fulfilled and that CHW has complied with the
24 applicable Facility Consent Decree.

25 19.2. Within fifteen (15) days of CHW filing the motion described in paragraph 19.1,
26 Plaintiffs may request an evidentiary hearing on CHW's motion. It is in the Court's
27 discretion to grant or deny the request.
28

1 19.3. If the Court finds, as to the Facility at issue, that CHW's obligations with respect
2 to the Settlement Corrected Facility have been fulfilled and that CHW has complied with
3 the applicable Facility Consent Decree, the Court will enter a Settlement Corrected
4 Facility Order to that effect with regard to the Facility.

5 **20. Alternative Dispute Resolution; Special Masters.**

6 20.1. The Parties want to resolve any disputes that may arise concerning the
7 administration of this Consent Decree expeditiously and without undue expense, and
8 hereby agree to the alternative dispute resolution procedures set forth in this section
9 (hereinafter, "the ADR"). This Consent Decree will be supervised by the Court or, to
10 the extent this Consent Decree provides, and the Parties subsequently agree, by a Special
11 Master.

12 20.2. The first time the Parties agree to submit a dispute to a special master, the Parties
13 shall meet and confer to select three or more persons to jointly nominate to serve as
14 potential special masters. They shall advise the Court of their nominations,
15 accompanied by resumes identifying qualifications of the nominees.

16 20.3. The Court, in its discretion, shall then appoint one or more of the Parties'
17 nominees who, on acceptance of the appointment, shall serve as special masters in this
18 action (hereinafter, the "Special Masters").

19 20.4. Thereafter, either of the Parties may request in writing that one of the Special
20 Masters resolve a dispute in accordance with this Consent Decree. The parties shall
21 direct this written request directly to the designated Special Master.

22 20.5. Each party will cooperate in submitting disputes to the Special Master, but if the
23 subject is something that can't be resolved by a special master, then the Parties can
24 submit the dispute to the Magistrate Judge. Fee disputes, for example, will be submitted
25 to the Magistrate Judge.

26 20.6. Any Party may request an evidentiary hearing on a disputed matter under this
27 section. It is in the discretion of the Court, Magistrate Judge, or Special Master to grant
28 or deny the request.

1 20.7. Rulings by Special Masters may be appealed by any Party to the Court. Rulings
2 by Magistrate Judges may be challenged in the manner set forth in the Federal Rules of
3 Civil Procedure and Local Rules of this Court.

4 20.8. Nothing in this Consent Decree constitutes a waiver of any otherwise available
5 right of judicial review.

6 **21. Stay of Similar Disputes Pending Resolution.**

7 21.1. In the interest of judicial economy and to reduce the risk of inconsistent
8 determinations concerning disputed issues, the Parties agree that once a particular
9 dispute as to a particular Facility has been submitted for resolution in the manner set
10 forth in paragraph 20, all disputes over the same or a substantially similar issue that have
11 arisen or may arise in connection with other Facilities will be stayed to the extent
12 necessary or appropriate to avoid prejudice to any Party and to avoid needless
13 expenditures and unnecessary litigation.

14 21.2. Notwithstanding the foregoing, the Parties agree to use their best efforts to:

- 15 (a) proceed in good faith with their obligations under this Consent Decree to
16 the greatest extent possible while a disputed issue is being resolved; and
17 (b) expedite resolution of all disputed issues by every method available in
18 accordance with this Consent Decree.

19 **RELEASES OF CLAIMS FOR INJUNCTIVE RELIEF AND COVENANT NOT TO SUE**

20 22. **Release.** As of the date this Consent Decree is approved, and in consideration for the relief
21 provided herein, the sufficiency of which is expressly acknowledged, Plaintiffs, and each of
22 their heirs, executors, administrators, successors, assigns, administrators, agents and
23 representatives (collectively, the "Injunctive Releasing Parties"), unconditionally release,
24 acquit and forever absolutely discharge the CHW Group, as well as its principals, successors
25 and assigns, including, without limitation, board members, corporate members, officers,
26 employees and agents of CHW, from the Released Injunctive Claims.

27 23. "Released Injunctive Claims" are any and all claims, rights, demands, charges, complaints,
28 actions, suits and causes of action, whether known or unknown, certain or speculative,

1 asserted or unasserted, accrued or unaccrued, for injunctive, declaratory or other non-
2 monetary relief, however described, based on the conduct preceding final approval of this
3 Consent Decree that were brought, could have been brought, or could be brought now or in
4 the future relating in any way to the accessibility of Facilities to Plaintiffs in accordance
5 with Disability Laws.

6 24. The "Released Injunctive Claims" also include all claims, rights, demands, charges,
7 complaints, actions, suits and causes of action for injunctive, declaratory or other non-
8 monetary relief, however described, based on conduct that occurs after final approval of this
9 Consent Decree and during the Term of this Agreement to the extent that they arise out of or
10 relate to actions, omissions or conduct (including physical conditions at Facilities) that are
11 within the contemplated scope and terms of this Consent Decree.

12 25. **Covenant Not To Sue.** As of the date this Consent Decree is approved, and in
13 consideration for the relief provided herein, the sufficiency of which is expressly
14 acknowledged, the Injunctive Releasing Parties covenant and agree never to file or institute
15 against CHW or any member of the CHW Group any claim, right, demand, charge,
16 complaint, suit, cause of action, action or proceeding of any kind whatsoever, whether at law,
17 in equity or otherwise, in or before any court, administrative agency, arbitral panel or other
18 tribunal wherever situated, asserting, directly or indirectly, any Released Injunctive Claim.

19 26. **California Civil Code Section 1542.** The Injunctive Releasing Parties hereby knowingly
20 and willingly waive any and all rights and benefits afforded by the provisions of Section
21 1542 of the California Civil Code or any analogous state or federal law or regulation, to the
22 extent it would apply to this Consent Decree. Section 1542 provides as follows:

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

BINDING EFFECT; NO NOTICE

1
2 27. Once the Court approves this Consent Decree or any individual Facility Consent Decree, or
3 enters any Settlement Corrected Facility Order, the Consent Decree, Facility Consent
4 Decree, or Settlement Corrected Facility Order is a final decree binding the Parties.

5 28. Any final decree referenced in paragraph 27 is a final judgment pursuant to Fed. R. Civ. P.
6 54, subject to all rights of judicial review provided by law for judgments of this Court.

7 29. In accordance with Fed. R. Civ. P. 23(b)(2), because the Complaint seeks injunctive relief
8 only, and in keeping with the Court's order dated October 6, 2008, no individual notice to
9 the Class will be required prior to approval of this Consent Decree.

10 **ATTORNEYS' FEES, EXPERT FEES AND LITIGATION EXPENSES/COSTS**

11 30. Upon Court approval of this Consent Decree, Plaintiffs will be the prevailing parties for
12 purposes of determining entitlement to attorneys' fees and costs under Title III of the ADA,
13 42 U.S.C. § 12205.

14 31. CHW will pay Plaintiffs' reasonable Fees and Costs, which will be paid according to the
15 terms set forth below:

16 31.1. **Up To The Time This Consent Decree is Approved.** The Court approves the
17 payment of \$524,995.71 to Class Counsel for all Fees and Costs through the approval of
18 this Consent Decree, which shall be paid by CHW to Plaintiffs within forty-five (45)
19 days of approval of this Consent Decree.

20 31.2. **After This Consent Decree is Approved.** All Fees and Costs incurred by Class
21 Counsel and Plaintiffs' Experts shall be paid as set forth in the Fee and Cost Stipulation
22 Agreement, attached hereto as Exhibit C.

23 31.3. If a Party believes that another Party has vexatiously litigated any matter in this
24 case, the allegedly aggrieved Party may petition this Court to modify any fee award, or
25 otherwise sanction any Party found to have engaged in such vexatious conduct.
26
27
28

1 DATED: March 26, 2009

DE LA O, MARKO, MAGOLNICK & LEYTON

2

3

By: /s/David Marko

4

DAVID MARKO
Attorneys for Named Plaintiffs and the Class

5

6 DATED: March 26, 2009

DOWNEY BRAND LLP

7

8

By: /s/Rhonda C. Canby

9

RHONDA C. CANBY
Attorneys for Defendant
CATHOLIC HEALTHCARE WEST

10

11

12

IT IS SO ORDERED.

13

14

15

DATED: April 21, 2009

16

17

18



19

LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

20

21

22

23

24

25

26

27

28

Exhibits available upon request.