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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RAY PIZARRO, et al.,

Plaintiffs,

vs.

INTERNATIONAL COFFEE &  
TEA, LLC.,

Defendant.

**Case No. CV 06-7448 (PSG)**

**SETTLEMENT AGREEMENT**

1. INTRODUCTION

- 1.1 The Settlement Agreement (“Agreement”) is entered into by and between International Coffee & Tea, LLC (“Coffee Bean”) and Ray Pizarro, Mayra Espinoza, Deborah Robinson, and American Disability Institute (collectively “Named Plaintiffs”), individually and on behalf of themselves and a class of persons similarly situated (hereinafter referred to as the “Settlement Class” and defined below). Coffee Bean and the Named Plaintiffs (individually and on behalf of the Settlement Class) shall individually be referred to as a “Party” and jointly as the “Parties.”
- 1.2 Coffee Bean owns and operates approximately One Hundred and Ninety Coffee Bean Stores (as defined below) within the State of California. A list of these stores as of November 2, 2007 is attached as Exhibit “1.”

- 1 1.3 This Agreement applies to all Coffee Bean Stores (as defined below). The  
2 provisions of Paragraphs 13, 14, 23.2 and 23.3 of this Agreement also apply to  
3 Closed Coffee Bean Stores (as defined below).
- 4 1.4 Named Plaintiff Pizarro uses a wheelchair or scooter for mobility and is a person  
5 with a disability as that term is used in the Americans with Disabilities Act.  
6 Deborah Robinson is hearing impaired and is a person with a disability as that  
7 term is used in the Americans with Disabilities Act. Mayra Espinoza is vision  
8 impaired and is a person with a disability as that term is used in the Americans  
9 with Disabilities Act (collectively, the “Individual Named Plaintiffs”). Named  
10 Plaintiff American Disability Institute is an advocacy organization that has  
11 members who are mobility impaired and also use wheelchairs or scooters for  
12 mobility as well as members who suffer from other disabilities including vision or  
13 hearing impairments. Named Plaintiffs and some of their membership patronize  
14 Coffee Bean Stores and intend to continue doing so in the future.
- 15 1.5 The Named Plaintiffs have brought suit in the United States District Court for the  
16 Central District of California (the “Court”), Civil Action No. CV 06-7448 PSG  
17 (JTLx) (the “Lawsuit”), in which they allege that Coffee Bean violated Title III of  
18 the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*, the Unruh Civil  
19 Rights Act, California Civil Code Section 51 *et seq.* (“Unruh Act”), and the  
20 California Disabled Persons Act, California Civil Code Section 54 *et seq.*  
21 (“CDPA”) at its stores in the State of California.
- 22 1.6 The Parties now wish to effect a complete resolution and settlement of all claims,  
23 disputes and controversies existing between Coffee Bean and Named Plaintiffs,  
24 and the Settlement Class, and to resolve their differences and disputes by settling  
25 the Lawsuit.
- 26 1.7 The terms of all Exhibits attached hereto are fully incorporated into this  
27 Agreement and are an integral part thereof. The terms of this Agreement, where  
28 applicable, are fully incorporated into all Exhibits and are, where applicable, an  
integral part thereof. To the extent that there are any conflicts or inconsistencies  
between the terms of this Agreement and any of the Exhibits, the terms of the  
Agreement shall control.
- 1.8 This Agreement and all Exhibits are binding on Coffee Bean’s subsidiaries,  
successors and assigns.

2. **No Admission of Liability.** By agreeing to and voluntarily entering into this Agreement, there is no admission or concession by Coffee Bean, direct or indirect, express or implied, that Coffee Bean Stores are in any way inaccessible or that Coffee Bean has violated the America with Disabilities Act, or any other federal, state, or local law, or building code, regulation, order, or rule. Nothing in this Agreement shall operate as an admission by Coffee Bean in any context other than within the settlement of this Lawsuit that any particular standard or standards are applicable under the ADA or any other federal or state law to any Coffee Bean Store.

3. **Definitions** In addition to the terms defined elsewhere in the Agreement, the following terms shall have the meanings set forth below. Any terms not defined herein shall have

1 the meaning ascribed to them in the ADA and/or the Standards. In the event of a conflict  
2 between definitions, the definitions contained in this agreement prevail.

3 3.1 “Accessible Route” means an unobstructed path that complies with Section 4.3 of  
4 the Standards.

5 3.2 “ADA” means Title III of the Americans with Disabilities Act, 42 U.S.C. §§  
6 12181 *et. seq.*, and its implementing regulations.

7 3.3 “Agreement” means this agreement and the exhibits hereto.

8 3.4 “Architectural Barrier” is a defined term only for the purpose of allocating  
9 monetary relief provided herein and means an impediment to accessibility to  
10 persons who are vision or hearing impaired, or mobility impaired who use  
11 wheelchairs or scooters for mobility of a structural feature at a Coffee Bean Store,  
12 including but not limited to, restrooms, store entrances, parking facilities, and any  
13 other fixed features within the stores that are regulated by the ADA.

14 3.5 “Claim Form” means mutually agreed upon documents provided to the Settlement  
15 Class which members of the Settlement Class may fill out and return to the  
16 Claims Administrator pursuant to Paragraph 13.4 *et seq.* below.

17 3.6 “Class Counsel” means Evan J. Smith, Esquire, Brodsky & Smith, LLC. The  
18 Parties and Class Counsel agree that the primary attorney who will perform work  
19 on behalf of the Settlement Class after Final Approval is Evan J. Smith.

20 3.7 “Closed Coffee Bean Store” means a store operated under the Coffee Bean name  
21 at any time between October 25, 2005 and the end of the Term of this Agreement  
22 (approximately December 2010) that ceased to be operated as a Coffee Bean  
23 Store prior to (December 10, 2007). The Closed Coffee Bean Stores are listed in  
24 Exhibit “6.”

25 3.8 “Coffee Bean Store” means all Coffee Bean owned *The Coffee Bean & Tea Leaf*®  
26 retail coffeehouses within the State of California opened for business on or before  
27 preliminary approval of this Settlement, whether presently operating or no longer  
28 operating. The Coffee Bean Stores are set forth on the attached Exhibit “1” and  
the term Coffee Bean Store shall include all elements and facilities on the site of  
each Coffee Bean Store that are open to and available for use by the public  
including but not limited to those Parking Lots that Coffee Bean owns or leases or  
over which Coffee Bean has a right of alteration or control. The term Coffee Bean  
Store does not include franchised stores.

3.9 “Costs” means all out-of-pocket expenses reasonably incurred and shall include  
(but not be limited to) amounts payable to experts.

3.10 “Damages Settlement Fund” means a fund consisting of five hundred thousand  
dollars (\$500,000.00) in cash that will be distributed in accordance with the terms  
of this Agreement.

3.11 “Dispute Resolution” means the process described in Paragraph 18 hereof.

3.12 “District” means the territorial division of Coffee Bean, for administrative  
purposes, which includes specific Coffee Bean Stores and is separated into special  
geographical areas as defined in Exhibit “2.”

- 1 3.13 “Final Approval” means the approval of this Agreement by a United States  
2 District Judge by signature of an order in a form substantially similar to that  
3 submitted by the Parties that, among other things, attaches this Agreement as an  
4 exhibit, retains jurisdiction for the Court for the Term of this Agreement in order  
5 to enforce this Agreement, and has become final and non-appealable. The  
6 Proposed Final Approval Order and Judgment is attached hereto as Exhibit “8.”
- 7 3.14 “Coffee Bean Management Personnel” means all persons who are employed by  
8 Coffee Bean who have managerial responsibility for the operations, layout or  
9 design of Coffee Bean Stores. This shall include but not be limited to all Coffee  
10 Bean Store general managers and district or regional managers who oversee  
11 multiple Coffee Bean Stores or regions.
- 12 3.15 “Coffee Bean Retail Personnel” means all persons who are employed at a Coffee  
13 Bean Store, including all sales personnel.
- 14 3.16 “Coffee Bean Settlement Contact” means a Coffee Bean employee designated as  
15 the initial point of contact for Class Counsel with respect to issues concerning this  
16 Agreement. Coffee Bean shall notify Class Counsel in writing of the person  
17 designated as the Coffee Bean Settlement Contact within ten (10) days of Final  
18 Approval. Coffee Bean will also notify Class Counsel in writing should a new  
19 individual be designated as the Coffee Bean Settlement Contact during the Term  
20 of this Agreement.
- 21 3.17 “Named Plaintiff(s)” mean(s) Ray Pizarro, Mayra Espinoza, Deborah Robinson  
22 and/or American Disability Institute.
- 23 3.18 “Notice” means the procedure for notifying the Settlement Class of this  
24 Agreement and its terms which will be published as set by the Court as part of the  
25 Preliminary Approval process. A Proposed Notice Plan is attached hereto as  
26 Exhibit “9.”
- 27 3.19 “Notice Deadline” means the deadline for publishing notice to be set by the Court  
28 as part of the Preliminary Approval process.
- 3.20 “Opt-Out Statements” means those statements sent to the Claims Administrator  
by Settlement Class Members pursuant to Paragraph 15 of this Agreement,  
whereby Settlement Class Members opt out of this Agreement.
- 3.21 “Other Barrier” means non-Architectural Barriers specifically prohibited by the  
Standards, including, (1) improper positioning of shelves, tables, chairs, vending  
machines, display racks, and other furniture as may be required by the Standards;  
(2) improper placement of public telephones if required by the Standards; (3) non-  
operable flashing alarm lights, where required by the Standards; (4) inaccessible  
door hardware that does not comply with the Standards; (5) inadequate or missing  
insulation on lavatory pipes under sinks per the requirements of the Standards; (6)  
the lack of designated accessible parking spaces if required by the Standards; and  
(7) the lack of proper accessibility signage as may be required by the Standards.
- 3.22 “Parking Lots” shall mean parking facilities, parking spaces, parking lots and  
exterior paths of travel, including the Accessible Route to a Coffee Bean Store  
therefrom.

- 1 3.23 “Preliminary Approval” means the initial approval by the Court of the terms of  
2 this Agreement, which shall occur prior to any notice being provided in  
3 accordance with Paragraphs 19 and 20 of this Agreement. The Proposed Order for  
4 Preliminary Approval is attached hereto as Exhibit “7.”
- 5 3.24 “Settlement Class” means the class of all persons who are represented by Class  
6 Representatives Ray Pizarro, Mayra Espinoza, Deborah Robinson and ADI and,  
7 at any time from October 24, 2005 through the Term of this Agreement, were  
8 mobility impaired, used, use or will use wheelchairs or scooters for mobility, or  
9 were vision or hearing impaired and who patronized any Coffee Bean Store or  
10 any Closed Coffee Bean Store or who allege they would or would have patronized  
11 at one or more Coffee Bean Stores or Closed Coffee Bean Stores but for allegedly  
12 being denied on the basis of disability the full and equal enjoyment of the goods,  
13 services, facilities, privileges, advantages, or accommodations of such Coffee  
14 Bean Store(s) or Closed Coffee Bean Store(s).
- 15 3.25 “Settlement Class Member” means any member of the Settlement Class.
- 16 3.26 “Standards” means the Standards for Accessible Design, 28 C.F.R. Part 36,  
17 Appendix A. The version of the Standards in existence at the time of Final  
18 Approval of this Agreement shall be the version to which this term refers except  
19 that, if amendments to or a different version of the Standards are adopted by the  
20 Department of Justice, that different version shall govern any actions taken or  
21 required to be taken after the effective date thereof, including all conventional  
22 building industry tolerances allowed by the Standards. Coffee Bean shall not be  
23 required to make alterations to any work it has done pursuant to this Agreement  
24 prior to that effective date.
- 25 3.27 “Statutory Minimum Damages” means any minimum damages available in a  
26 specified amount by operation of or pursuant to the following state statutes or  
27 codes that may be recovered regardless of the amount of actual damages proved:  
28 California – Cal. Civil Code §§ 52, 54.3; and any other statute, code or law (as  
previously or presently codified, or as they may be codified in the future)  
providing for minimum damages in a specified amount in California for violations  
of these statutes.
- 3.28 “Statutory Minimum Damages Amount” means the minimum amount of Statutory  
Damages available in a specified amount pursuant to statute or code in the State  
of California.
- 3.29 “Statutory Minimum Damages State” means California.
- 3.30 “Structurally Impracticable” means only those rare circumstances when the  
unique characteristics of the building’s structure or terrain prevent the  
incorporation of accessibility features.
- 3.31 “Subsequently Acquired Store” means any facility that begins operation as a  
Coffee Bean Store after Final Approval of this Agreement.
- 3.32 “Subsequently Relinquished Stores” means any Coffee Bean Store that ceases to  
operate before the expiration of the Term of this Agreement as defined in  
Paragraph 5, below.

1 3.33 “Technically Feasible” means with respect to an alteration of a building or a  
2 facility, that it has little likelihood of being accomplished because existing  
3 structural conditions would require removing or altering a load-bearing member  
4 which is an essential part of the structural frame; or because other existing  
5 physical or site constraints prohibit modification or addition of elements, spaces,  
6 or features which are in full and strict compliance with the minimum requirements  
7 for new construction and which are necessary to provide accessibility.

8 4. Conditions Precedent. This Agreement shall be conditioned upon and shall be effective  
9 only upon the occurrence of all of the events set forth in this Paragraph 4. Prior to the  
10 occurrence of the following events, the Parties’ only obligations pursuant to this  
11 Agreement shall be those set forth in Paragraphs 19.1, 20 and 21.

12 4.1 Class Counsel shall request preliminary approval of this Settlement.

13 4.2 Class Counsel shall move for, and Coffee Bean shall not oppose, an Order  
14 Granting Preliminary Approval of this Agreement, Preliminarily Certifying the  
15 Class for injunctive relief for Settlement Purposes Only, Preliminarily Certifying  
16 the Class for Damages for Settlement Purposes Only, Preliminarily Enjoining  
17 potential Settlement Class Members from Asserting Any Claims to be Released  
18 by the Agreement, and Approving Issuance of Notice in Accordance with the  
19 Procedures for Providing Notice Submitted by the Parties and such motions are  
20 granted by the Court. The Proposed Order for preliminary approval is attached  
21 hereto as Exhibit “7.”

22 4.3 Upon Preliminary Approval of this Agreement and approval of the Notice and the  
23 procedures for providing notice, Notice shall be provided to the Settlement Class  
24 in accordance with the procedures for providing Notice approved by the Court  
25 pursuant to Paragraphs 19 and 20, below. The Proposed Notice Plan is attached  
26 hereto as Exhibit “9.” Notice shall be included in the costs of administration and,  
27 in any event, Defendant will pay for the cost of all Notice approved or ordered by  
28 the Court.

4.4. A Fairness Hearing for Final Approval of Settlement shall be held in accordance  
with Paragraph 19 below.

4.5 The Court shall grant Final Approval of this Agreement, enjoin Settlement Class  
Members from bringing any claims released by this Agreement, and enter  
Judgment in accordance with the terms set forth herein after a Fairness Hearing  
has been conducted, and all such orders and approvals have become final and  
non-appealable. The Judgment shall finally resolve all issues raised in this  
proceeding. The Proposed Final Order and Judgment is attached hereto as Exhibit  
“8.”

5. Term of Agreement. This Agreement shall have a term (“Term”) that expires thirty (30)  
months after the Court grants Final Approval of this settlement.

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- 1 6. Coffee Bean Stores to Comply with the Standards.
- 2 6.1 Subject to all of the other provisions of this Paragraph and prior to the expiration
- 3 of the Term, Coffee Bean agrees to bring into compliance with the Standards or
- 4 Title 24 of the California Code of Regulations, to the extent that such regulations
- 5 relate to accessibility for people with disabilities who are vision or hearing
- 6 impaired or are mobility impaired and use a wheelchair or scooter for mobility,
- 7 whichever standard requires greater accessibility. To the extent that the following
- 8 provisions of Paragraph 6 use the terms the “Standards,” that term shall be
- 9 deemed to mean the “Standards and/or Title 24 of the California Code of
- 10 Regulations” for the purposes of Coffee Bean Stores.
- 11 6.1.1: Coffee Bean, at its own cost and expense, will ensure that its website is
- 12 accessible to universally used software for visually impaired individuals to access
- 13 the website.
- 14 6.1.2 Although the Standards do not presently require Coffee Bean to install and
- 15 maintain visual and auditory alarms in all Coffee Bean Stores, Coffee Bean agrees
- 16 that in at least 10 Coffee Bean Stores to be selected by Coffee Bean, Coffee Bean
- 17 will install and maintain visual and auditory alarms, which will include at least
- 18 two Long Beach, CA stores and two Los Angeles, CA area stores. The store
- 19 located on Figueroa Street in downtown Los Angeles and the store located on
- 20 West Century Boulevard in Inglewood, CA will be considered first for said
- 21 installment and will be included as part of the 10 additional stores so long as there
- 22 are no architectural concerns preventing said installation.
- 23 6.2 In no event will Coffee Bean be required to do more than comply with the
- 24 Standards.
- 25 6.3 Notwithstanding the Standards, The Coffee Bean’s compliance with this
- 26 Paragraph 6 shall be measured in accordance with industry tolerances for field
- 27 conditions.
- 28 6.4 Departures from particular technical and scoping requirements of the Standards
- by the use of other designs and technologies are permitted where the alternative
- designs and technologies used will provide substantially equivalent or greater
- access to and usability of the facility.
- 6.5 Coffee Bean is not required to bring any element in any Coffee Bean Store into
- compliance if doing so would be Structurally Impracticable.
- 6.6 Coffee Bean is not required to bring any element into compliance if doing so
- would be Technically Infeasible, provided that where compliance is Technically
- Infeasible, Coffee Bean shall provide access to the maximum extent feasible.
- 6.7 Parking: This section applies to Parking Lots owned or controlled by another
- entity or used in common with a Coffee Bean Store. Notwithstanding any other
- provisions hereof to the contrary, Coffee Bean’s obligation to inspect, remediate,
- and bring Parking Lots into compliance with the ADAAG will be limited to those
- Parking Lots which Coffee Bean owns or over which a Coffee Bean Store has
- exclusive authority and control. Each Parking Lot that is attached, affixed, joined
- or connected to other retail or business establishments over which Coffee Bean
- does not control, or which is shared by a Coffee Bean Store and a Coffee Bean
- Store’s neighboring tenant(s), shall be deemed outside of a Coffee Bean Store’s

1 exclusive authority and control and shall not be subject to the terms and  
2 conditions contained herein.

3 6.7.1 For Parking Lots that are outside the exclusive authority and  
4 control of Coffee Bean Stores, Coffee Bean shall make a good faith effort to have  
5 the other entity make the remediations to each such Parking Lot appurtenant to  
6 the Coffee Bean Stores listed on Exhibit "1."

7 6.8 Exterior paths of travel and shared restrooms: This section applies to exterior  
8 paths of travel and shared restrooms owned or controlled by another entity or used  
9 in common with a Coffee Bean Store. Notwithstanding any other provisions  
10 hereof to the contrary, Coffee Bean's obligation to inspect, remediate, and bring  
11 exterior paths of travel and shared restrooms into compliance with the Standards  
12 will be limited to those exterior paths of travel and shared restrooms which Coffee  
13 Bean owns or over which a Coffee Bean Store has exclusive authority and  
14 control. Each exterior path of travel and shared restroom that is attached, affixed,  
15 joined or connected to other retail or business establishments over which Coffee  
16 Bean does not control, or which is shared by a Coffee Bean Store and a Coffee  
17 Bean Store's neighboring tenant(s), shall be deemed outside of a Coffee Bean  
18 Store's exclusive authority and control and shall not be subject to the terms and  
19 conditions contained herein.

20 6.8.1 For exterior paths of travel and shared restrooms that are outside  
21 the exclusive authority and control of Coffee Bean Stores, Coffee Bean shall  
22 make a good faith effort to have the other entity make the remediations to each  
23 such exterior paths of travel and shared restrooms appurtenant to the Coffee Bean  
24 Stores listed on Exhibit "1."

25 6.9 When renegotiating with a current landlord regarding a lease applicable to any  
26 Coffee Bean Store, i.e., negotiations regarding a renewed or existing leases,  
27 Coffee Bean shall make good faith efforts to include term(s) that require that a  
28 site, building, premises or facility, or part thereof, which does not fall within the  
exclusive control of Coffee Bean as described in Sections 6.7 and 6.8, above, be  
modified by the landlord, at the landlord's expense, sufficient to achieve  
compliance with the Standards for the areas, specifically including areas over  
which the landlord has exclusive authority and control, including, but not limited  
to, the entrance, Parking Lots, exterior and interior paths of travel, and shared  
restrooms (if any).

6.9.1 In the event Coffee Bean is renegotiating with a current landlord regarding  
a lease for any Coffee Bean Store and such lease provides Coffee Bean with  
exclusive authority and control over such Coffee Bean Store's entrance, Parking  
Lot, exterior and interior paths of travel and shared restrooms (if any), Coffee  
Bean shall make good faith efforts to ensure that the lease provides that Coffee  
Bean or any subtenant may make modifications to the premises necessary to  
comply with the Standards if the landlord fails to do so, and that for any structural  
changes, the landlord will not withhold consent unreasonably. Coffee Bean shall  
not be liable for any failure by the landlord to comply with any of its obligations  
under the ADA, notwithstanding such good faith efforts.



- 1 7.2 Coffee Bean's Expert discussed in Paragraph 7.1, above, in conjunction with  
2 Plaintiffs' expert, Frank Ferreiro, shall prepare an Evaluation Report form and  
3 instructions for use by Coffee Bean Stores, within thirty (30) days of the  
4 preliminary approval of this agreement, or as soon as is practicable thereafter.  
5 Coffee Bean's Expert, in consultation with the Plaintiffs, will provide advice and  
6 assistance in connection with the evaluation and remediation program. Coffee  
7 Bean will consult with the Plaintiffs with regard to the evaluation and remediation  
8 program. From time to time, in consultation with the Plaintiffs, Coffee Bean may  
9 select, retain, and train other or additional individuals to perform the evaluations.
- 10 7.3 Coffee Bean shall require Coffee Bean's Expert to complete fully the Evaluation  
11 Report for each Coffee Bean Store to determine whether Architectural or non-  
12 Architectural Barriers to access or violations of the Standards exist. Coffee Bean  
13 and Plaintiffs shall pay their respective costs developing and implementing the  
14 Evaluation Program, i.e., Plaintiffs will be responsible for their Expert, and  
15 Coffee Bean will be responsible for Coffee Bean's Expert and Coffee Bean Store  
16 compliance.
- 17 7.4 Coffee Bean's Expert shall conduct the ADA evaluation coincident with the time  
18 frame established for the remainder of the Remodeling Program. All ADA  
19 evaluations will be completed within the Term of this Agreement. Coffee Bean's  
20 Expert shall complete the Evaluation Report and promptly deliver such Report to  
21 Coffee Bean headquarters along with other submissions related to the Remodeling  
22 Program. Upon the completion of the reports for an entire District, Coffee Bean  
23 will notify Plaintiffs' counsel of such completion, and Plaintiffs' counsel will  
24 have 30 days to request the District's reports, and another 30 days to request and  
25 complete a visual inspection of any store within the District. If additional time is  
26 requested by Plaintiffs to conduct the visual inspection, a one time reasonable  
27 extension of up to 30 days will be given in order for Plaintiffs to complete the  
28 review of all Coffee Bean Stores within the District from which they request  
additional time. The Parties agree to act in good faith regarding the scheduling of  
any agreed upon audit of a Coffee Bean Store that falls within a completed  
District, and agree that inspections will not take place between the hours of 7:00  
a.m. and 10:00 a.m.
- 7.5 Coffee Bean shall review the remediations made under the Remodeling Program  
within a reasonable period after their completion, in consultation with Coffee  
Bean's Expert. Upon completion, Coffee Bean shall also require that Coffee  
Bean's Expert complete a final inspection of the Coffee Bean Stores with respect  
to compliance with the Standards. Said inspection may include photographs of all  
applicable portions of the Coffee Bean Store. Coffee Bean shall retain the  
completed Certifications of ADA Compliance and any photographs (or electronic  
versions thereof) for the Term of this Agreement. These Certifications of ADA  
Compliance and photographs shall be provided to the Plaintiffs' counsel upon  
their request.
- 7.6 For remediations that are outside the authority and control of Coffee Bean as set  
forth in Sections 6.7 and 6.8 above, such as parking, exterior routes, and shared  
restrooms owned or controlled by another entity or used in common with a Coffee  
Bean Store, Coffee Bean will make a good faith effort to have the other entity  
make the remediations as listed on the Evaluation Report, as provided above.

- 1 8. Permits and Consent.
- 2 8.1 Coffee Bean may be required to obtain building or other permits or consent for  
3 some of the measures required to comply with Paragraph 6 or Paragraph 7.  
4 Coffee Bean shall use its reasonable best efforts to obtain such permits or consent,  
5 including drafting applications in good faith to enhance the possibility of  
6 approval.
- 7 8.2 If a permit for a measure required by Paragraph 6 or Paragraph 7 is issued on a  
8 conditional basis or is denied outright, Coffee Bean shall notify Class Counsel of  
9 the conditions or denial within 30 days of the denial. Coffee Bean agrees to  
10 inform the Court of such denial. The Parties agree that if a permit is denied, and  
11 Coffee Bean notifies both Plaintiffs' counsel and the Court, Coffee Bean is under  
12 no further obligation to obtain such permit through the appeal process.
- 13 9. Subsequently Relinquished Stores.
- 14 9.1 Each Subsequently Relinquished Store shall cease to be subject to only the  
15 remodeling terms of this Agreement as of the date it becomes a Subsequently  
16 Relinquished Store. Nothing herein will prohibit Coffee Bean from selling,  
17 closing or otherwise terminating operations at any location. If a Subsequently  
18 Relinquished Store has not yet been brought into compliance with Paragraph 6  
19 and Paragraph 7 hereof at the time of its closing, it will not affect the Release of  
20 Claims as identified in Paragraph 23 *et seq.* below.
- 21 9.2 Annually beginning no later than one year after Final Approval of this  
22 Agreement, Coffee Bean shall provide Class Counsel with a list of Subsequently  
23 Relinquished Stores.
- 24 10. Maintenance of Access. Coffee Bean agrees to maintain in operable and working  
25 condition those elements of Coffee Bean Stores that are covered by this Agreement and its  
26 Exhibits in the condition required by this Agreement and its Exhibits, provided, however, that  
27 nothing in this Agreement shall prohibit isolated or temporary interruptions in service or access  
28 due, for example, to maintenance or repair.
11. Policies, Practices and Procedures.
- 11.1 Coffee Bean will, upon final approval of this Action, implement a new internal  
policy for all retail stores regarding compliance with all ADA requirements  
referenced in this Agreement. A copy of this policy will be maintained at every  
Coffee Bean Store for current employees to review. All retail employees in  
Coffee Bean Stores hired after the date which this policy is created and finalized  
by Coffee Bean will be provided a copy of the policy. Said policy will be  
memorialized in Coffee Bean's employee handbook and operations manuals.
12. Monitoring of Compliance.
- 12.1 The Parties shall monitor Coffee Bean's compliance with Paragraph 11 as more  
fully described in this Paragraph.

1 12.2 Class Counsel shall be entitled to visit any Coffee Bean Store at any time during  
2 the Term with at least five (5) days notice for the purpose of evaluating compliance with  
3 Paragraph 11. Class Counsel will not take any photographs, take measurements or  
undertake similar activities.

4 12.4 Coffee Bean shall maintain its toll-free telephone number, such that customers  
5 may call to report suspected violations of this Agreement, and an accessible website that  
customers may use to convey to Coffee Bean their comments concerning the accessibility  
of Coffee Bean Stores.

6 12.4.1 During the Term of this Agreement, Coffee Bean shall post and maintain  
7 signs prominently throughout each Coffee Bean Store, informing customers who  
8 use wheelchairs or scooters that it is soliciting for their comments, and providing  
9 both the toll-free telephone number and the website address. The signs shall be  
10 substantially in the form of Exhibit "3" hereto and shall be posted in at least the  
following locations so as to be visible to individuals who use wheelchairs or  
scooters: at each exit (facing in); and at the outside of restroom(s) doors (facing  
the customer).

11 12.4.2 The website shall pose specific questions covering substantially the areas  
12 listed in the Long Form Notice, attached as Exhibit "4" hereto, as well as provide  
13 an opportunity for individuals to make comments in their own words. Coffee  
14 Bean will provide a link to the website on its main page (currently  
<http://www.CoffeeBean.com/home.jsp>) that is close enough to the top of the page  
to be visible in the first frame.

15 13 Monetary Relief and Claims Procedure.

16 13.1 Monetary Settlement Funds

17 13.1.1 To satisfy and settle all claims for damages of the Named Plaintiffs in the  
18 Lawsuit, and all claims for Statutory Minimum Damages of the Settlement Class,  
19 Coffee Bean will pay five hundred thousand dollars (\$500,000.00) in cash,  
comprising the Damages Settlement Fund, to be allocated among the Settlement  
Class in the manner set forth in Paragraph 13.5.

20 Coffee Bean will also pay the Named Plaintiffs any court approved incentive  
21 award up to an amount of \$10,000.00 each as follows: (a) ten thousand dollars  
22 (\$10,000.00) to Named Plaintiff Pizarro; (b) ten thousand dollars (\$10,000.00) to  
23 Named Plaintiff Espinoza; (c) ten thousand dollars (\$10,000.00) to Named  
24 Plaintiff Robinson (collectively, (a), (b) and (c) will be referred to as the "Named  
Plaintiff Fund"). This amount will be paid separately from the Damages  
Settlement Fund and as set forth in Paragraph 13.2 below.

25 13.1.2 Creation of Damages Settlement Fund.

26 13.1.2.1 Within ten (10) days after the Preliminary Approval of this  
27 Agreement or by January 18, 2008, whichever is later, Coffee Bean shall  
28 transfer to an interest-bearing trust account (the "Account") the sum of  
five hundred thousand dollars (\$500,000.00) representing the cash portion  
of the Damages Settlement Fund. All interest earned on the Account  
between the time the Damages Settlement Fund is deposited and the time

1 the Damages Settlement Fund is distributed to the Settlement Class, less  
2 taxes owed on such interest, shall be used to pay the Settlement Class in  
3 accordance with the provisions of this Agreement as set forth in Paragraph  
4 14.5. Within ten (10) days after the Preliminary Approval of Plaintiffs'  
5 Award of Attorneys' Fees and Costs or by January 18, 2008, whichever is  
6 later, Coffee Bean shall transfer to Brodsky & Smith, LLC, the amount  
7 awarded to be held in an interest bearing account by Brodsky & Smith,  
8 LLC until all appeals are exhausted. All interest shall be maintained by  
9 Brodsky & Smith, LLC, unless the award is reversed and no fee is  
10 approved. At the sole discretion of Coffee Bean, if Coffee Bean Provides  
11 five (5) calendar days notice to Class Counsel, Coffee Bean may exercise  
12 a one-time option to defer payment of the Damages Settlement Fund and  
13 the Award of Attorneys' Fees and Costs until April 18, 2008, or ninety  
14 (90) days after Preliminary Approval, whichever is later. If Coffee Bean  
15 exercises this option, in lieu of the interest which may have accrued during  
16 this deferral, Coffee Bean will make a one-time payment of ten thousand  
17 dollars (\$10,000.00) to be proportionally split between the Damages  
18 Settlement Fund and the Award of Attorneys' fees and Costs.

13.1.2.2 Coffee Bean shall retain an independent claims  
12 administrator (the "Claims Administrator"), who is mutually selected by  
13 the Parties, to (1) distribute Notice and Claims Forms; (2) receive and  
14 track returned Claims Forms; (3) obtain supplemental information from  
15 Settlement Class Members who complete and return Claim Forms (the  
16 "Claimants"), as necessary; (4) receive and forward to the Parties and the  
17 Court Opt-Out Statements and objections; (5) verify the validity of each  
18 Claim Form submitted and certify those Settlement Class Members who  
19 are Eligible Claimants as provided in Paragraph 13.3, below, (6)  
20 administer and disburse awards from the Settlement Fund; and (7) perform  
21 such other duties as agreed by the Parties that are necessary to carry out  
22 the provisions of the Agreement. The Claims Administrator shall be an  
23 organization or entity experienced and qualified in the administration of  
24 class action monetary settlement distribution and/or claims proceedings.  
25 Coffee Bean shall be responsible for all reasonable fees, expenses, and  
26 costs incurred by the Claims Administrator. Coffee Bean shall provide the  
27 Claims Administrator check-writing authority on the Account as necessary  
28 and appropriate to satisfy its responsibilities under this Agreement.

13.2 Incentive Award: Incentive Award Payments to Named Plaintiffs Ray Pizarro,  
22 Mayra Espinoza, and Deborah Robinson. The Named Plaintiffs will apply to the Court  
23 for an incentive award not to exceed \$10,000.00 of which will be paid by Defendants  
24 outside of the Settlement Fund if approved by the Court. Such an incentive award must  
25 be approved by the Court in order for this award to be paid. Within thirty-five (35) days  
26 after Final Approval of the Agreement, or the exhaustion of all appeals, the Claims  
27 Administrator shall make the Court approved incentive award not to exceed \$10,000 to  
28 the Named Plaintiffs from the Named Plaintiff Fund, not from the Damages Settlement  
Fund.

The Claims Administrator shall mail, return receipt requested, a check in the amount  
specified in this Paragraph and a 1099 form to the Individual Named Plaintiffs.

1 13.3 Eligibility for Payments from the Damages Settlement Fund. To be an “Eligible  
2 Claimant” and be eligible for an award from the Damages Settlement Fund, a Settlement  
Class Member must satisfy each and all of the following criteria;

3 13.3.1 Return a completed “Claim Form” (in a form substantially similar to that  
4 attached hereto as Exhibit “5”) that is postmarked by no later than the deadline  
stated in the Claim Form;

5 13.3.2 State under oath that he/she is an individual who is mobility impaired,  
6 used or uses a wheelchair or scooter for mobility or who is vision or hearing  
7 impaired, and who has been to a Coffee Bean Store or Closed Coffee Bean Store  
located in the State of California between October 24, 2005, and the deadline for  
Opt-Out Statements;

8 13.3.3 State under oath the approximate location(s) of the Coffee Bean Store(s)  
9 or Closed Coffee Bean Store(s) that he or she went to, including at a minimum the  
city(ies) which the Store(s) are located;

10 13.3.4 State under oath that, during a visit to one of the Coffee Bean Stores or  
11 Closed Coffee Bean Stores, (a) he/she encountered an Architectural Barrier that  
12 hindered his/her access at the store or (b) he/she encountered an Other Barrier that  
hindered his/her access at the Store.

13 13.3.5 Not previously have released his/her claims against Coffee Bean; and

14 13.3.6 Not have validly opted out of any claim for damages as permitted by  
Paragraph 14 of this Agreement.

15 13.4 Claims Determination Process

16 13.4.1 Distribution of Claim Forms. Commencing with the Notice Deadline set  
17 by the Court and continuing through the deadline to file a claim (“Claim-Filing  
18 Deadline”) provided in Paragraph 13.4.2 herein, the Claims Administrator shall  
19 mail a Claim Form to each potential Settlement Class Member who makes a  
20 written or telephone request therefor. For any request for a Claim Form received  
21 prior to fourteen (14) days before the Claim-Filing Deadline, the Claims  
22 Administrator shall mail the Claim Form within seven (7) days after receiving a  
23 written or telephone request. Thereafter, and until the Claim-Filing Deadline, the  
24 Claims Administrator shall mail a Claim Form within three (3) business days after  
25 receiving a written or telephone request for a Claim Form from a potential  
Settlement Class Member. Any written request for Claim Forms received by  
Class Counsel or Coffee Bean’s counsel shall be forwarded to the Claims  
Administrator by electronic mail or facsimile within forty-eight (48) hours  
(excluding weekends and holidays) of its receipt, and within three (3) business  
days of receipt by the Claims Administrator, the Claims Administrator shall mail  
a Claim Form to the potential Claimant. Any potential Claimant who contacts  
Class Counsel or Coffee Bean’s counsel by telephone and requests a Claim Form  
shall immediately be referred to the Claims Administrator.

26 13.4.2 Filing of Completed Claims Forms. All claims for monetary payment  
27 from the Damages Settlement Fund shall be made in writing using the Claim  
28 Form. All Claim Forms must be signed by the Claimant under penalty of perjury.  
Each potential Settlement Class Member, including minors, must submit his/her  
own Claim Form. A parent, legal guardian or next of kin may complete and sign

1 a Claim Form on behalf of a minor. A designated representative may complete  
2 and sign a Claim Form on behalf of a Claimant who, because of disability, cannot  
3 sign his or her name. If a potential Settlement Class Member experienced more  
4 than one discriminatory Incident, all such incidents must be detailed on one (1)  
5 Claim Form. All Claim Forms must be mailed to the Claims Administrator and  
6 postmarked by no later than the date that is thirty (30) days before the Fairness  
7 hearing.

8 13.4.3 Review of Claim Forms. The Claims Administrator shall initially review  
9 all Claim Forms to determine if the form is filled out completely and is signed  
10 properly. If the Claim Form is incomplete or is not signed properly, the Claims  
11 Administrator shall return the Claim Form to the Claimant and the Claimant shall  
12 be given thirty (30) days from the date of that mailing within which to return to  
13 the Claims Administrator the Claim Form completed and/or signed properly. The  
14 failure of a Claimant to complete, sign and return his or her Claim Form within  
15 thirty (30) days shall result in a denial of his or her claim.

16 13.4.4 Approval of Claims. The Claims Administrator shall then conduct a  
17 review of all Claims Forms to determine whether they present valid claims in  
18 accordance with the terms and provisions of this Agreement. All Claimants  
19 whose claims are determined to be valid by the Claims Administrator shall be  
20 eligible for an award from the Damages Settlement Fund.

21 13.4.5 Disputed Claims. If upon initial review of the Claim Form, the Claims  
22 Administrator is unable to determine the validity of the claim, the Claims  
23 Administrator shall so notify the Claimant in writing and state the reasons why the  
24 information contained on the Claim Form is insufficient to determine the validity  
25 of the claim. The Claimant shall be given thirty (30) days from the date of mailing  
26 of the notification in which to supplement or amend the Claim Form or provide  
27 such other information he or she wishes to assist the Claims Administrator in  
28 determining the validity of the claim. Upon further review of the Claim Form,  
including such additional information as may be submitted by the Claimant, the  
Administrator shall (i) approve the claim, in which case, the Claimant is eligible  
for an award from the Damages Settlement Fund; or (ii) reject the claim.

13.4.6 Rejected Claims. If the Claims Administrator rejects a claim as not  
meeting the terms or provisions of this Agreement, the Administrator shall so  
notify the Claimant in writing.

13.4.7 Deadline for Administrative Review of All Claims. The Claims  
Administrator shall complete its review and issue a determination as to claim  
eligibility of all Claim Forms within ninety (90) days of the deadline for  
submission of Claim Forms set forth in Paragraph 13.4.2.

13.4.8 Determination – Final and Binding. All determinations of the Claims  
Administrator shall be final, binding and non-appealable. Coffee Bean shall have  
no responsibility for or role in the claims determination process.

### 13.5 Class Monetary Distribution.

13.5.1 The purpose of this Paragraph is to distribute the Damages Settlement  
Fund by: distributing the Specific Fund to Eligible Claimants who visited Coffee  
Bean Stores or Closed Coffee Bean Stores in that state.

1 13.5.2 Determining Statutory Damages.

2 13.5.2.1 The purpose of this Paragraph is to determine amount of  
3 statutory damages that each class member is entitled to as a result of their  
4 visit to Coffee Bean Stores and Closed Coffee Bean Stores.

5 13.5.3 Distribution of Funds.

6 13.5.3.1 The Damages Settlement Fund will be distributed only to  
7 Eligible Claimants who visited, or attempted to visit, one or more Coffee  
8 Bean Stores or Closed Coffee Bean Stores within that State of California.

9 13.5.3.2 Each Eligible Class member shall receive a Pro Rata share  
10 of the Damages Settlement Fund up to a maximum of \$4,000.00. For  
11 example, if there are 125 Eligible Claimants, each shall receive \$4,000 out  
12 of the Damages Settlement Fund. However, if there are 1,000 Eligible  
13 Claimants each shall receive \$500.00 out of the Damages Settlement Fund

14 13.5.3.3 In the event that the Damages Settlement Fund is not  
15 completely disbursed to Eligible Claimants, all remaining Damages  
16 Settlement Fund monies shall be used to increase accessibility at the  
17 Coffee Bean Stores. Coffee Bean agrees to use all of the aforementioned  
18 monies within 24 months after Final Approval and will provide Class  
19 Counsel with an accounting within thirty days after any remaining Class  
20 Fund is spent.

21 13.5.3.4 No later than ten (10) days after the deadline for  
22 completion of the claims determination process set forth in Paragraph  
23 13.4.7, the Claims Administrator shall provide Class Counsel and Coffee  
24 Bean with a list of the names, addresses, telephone numbers, email  
25 addresses, a copy of the claims forms, and the pro rata amount of the  
26 validated claim from the Damages Settlement Fund, of all persons who  
27 have submitted claims in connection with the above-captioned lawsuit.

28 13.5.3.7 Not later than thirty (30) business days after Final Approval  
of this Settlement, unless an appeal is filed, the Claims Administrator shall  
cause to be mailed, via certified mail, return receipt requested, checks in  
the amounts specified in the claims determination process, and 1099 forms  
to Eligible Claimants. All checks shall be negotiable for no more than one  
(1) year from the date of mailing.

13.5.3.8 All returned checks of Claimants for whom no additional  
address is obtained shall be held by the Claims Administrator for sixty  
(60) days. If no claim is made for such checks during this time period, the  
funds from such checks shall become part of the funds to be allocated in  
accordance with Paragraph 13.5.3.2 of this Agreement.

14. Opt-Out Right.

14.1 Any potential Settlement Class Member (but not a Named Plaintiff) may request  
exclusion from the class for purposes of monetary relief only. Potential Settlement Class  
Members who wish to opt out of the class for purposes of participation in the monetary  
portion of the settlement must submit a written and signed request for exclusion (“Opt-

1 Out Statement”) to the Claims Administrator. Opt-Out Statements must be postmarked  
2 and mailed to the Claims Administrator no later than sixty (60) days after the Notice  
3 Deadline set by the Court. The Opt-Out Statement shall, at minimum, contain the  
4 following language:

4 I wish to opt out of the money portion of the settlement of this case. I  
5 understand that by requesting to be excluded from the class monetary  
6 settlement, I will receive no money from the settlement funds created in  
7 accordance with the Agreement entered into by Coffee Bean. I understand  
8 that if I am excluded from the class monetary settlement, I may bring a  
9 separate action seeking damages. I understand that in any separate  
10 lawsuit, I may receive nothing or less than I would have received if I had  
11 filed a claim under the monetary provisions of this Agreement. I also  
12 understand that I may not seek exclusion from the non-monetary relief set  
13 forth in the Agreement, and that I will be bound by the class injunctive  
14 provisions of the Agreement entered into by Coffee Bean if the Agreement  
15 is approved by the Court.

11 14.2 To the extent a potential Settlement Class Member submits an Opt-Out Statement  
12 with language that differs from the foregoing, either party reserves the right to seek  
13 review of the Court to have the Opt-Out Statement declared valid or invalid. All  
14 potential Settlement Class Members who do not timely opt out of the damages provisions  
15 of this Agreement shall be bound by the resolution of any and all issues arising in  
16 connection with the Settlement Class claims for damages and attorneys’ fees.

14 14.3 No Settlement Class Member may opt out of the injunctive relief provisions of  
15 this Agreement. No Named Plaintiff may opt out of any of the provisions of this  
16 Agreement.

16 14.4 The Claims Administrator shall stamp the date received on the original of any  
17 Opt-Out Statement it receives and serve copies of the Opt-Out Statement on Class  
18 Counsel and Coffee Bean’s counsel no later than three (3) business days after receipt  
19 thereof and shall file the date-stamped originals of any Opt-Out Statements with the  
20 Clerk of the Court no later than ten (10) business days prior to the date set for the  
21 Fairness Hearing. The Claims Administrator shall retain copies of all Opt-Out  
22 Statements in its files until such time as the Claims Administrator is relieved of its duties  
23 and responsibilities under this Agreement.

21 14.5 In the event that the number of Opt-Out Statements either exceeds seventy five  
22 (75) individuals or exceeds the number of Claimants, Coffee Bean or Plaintiffs may, at  
23 either’s sole discretion, elect to void this Agreement and resume litigation. A Party  
24 electing to void the Agreement pursuant to this Paragraph is required to give notice of its  
25 intent to void the Agreement within fourteen (14) days of the close of the claims period.

25 15 Additional Information to Class Counsel.

26 15.1 Class Counsel may reasonably request additional information regarding any  
27 matter covered by this Agreement if such additional information is necessary to  
28 determine whether or not Coffee Bean is in compliance with this Agreement.

1 15.2 Coffee Bean shall provide such additional information or state its objection to  
2 providing such information within fourteen (14) days of its receipt of a written request by  
Class Counsel.

3 15.3 If either Party disagrees concerning information to be provided pursuant to  
4 Paragraph 15, either Party may submit the matter to Dispute Resolution.

5 16 Periodic Meetings between the Parties and Annual Report to the Court.

6 16.1 Class Counsel and Coffee Bean will meet once every ninety (90) days until the  
7 first anniversary of Final Approval, and once every one hundred twenty (120) days  
8 thereafter, to discuss and review the implementation of this Agreement. Such meetings  
may be either in person or by telephone, as the Parties agree.

9 16.2 Each year during the Term of the Agreement on the anniversary of the date of  
10 Final Approval, the Parties shall submit a report to the Court, stating the status of the  
11 implementation of this Agreement and identifying any outstanding issues on which the  
Parties are then in disagreement.

12 17 Dispute Resolution.

13 The Parties shall address disputes relating to the provisions of this Agreement as  
14 follows:

15 17.1 Informal dispute resolution

16 17.1.1 If either Party believes that a dispute exists relating to the provisions of  
17 this Agreement, it shall notify the other Party in writing, describing the dispute.  
The other Party shall respond in writing to such notice within fifteen (15) business  
days of receipt of the notice.

18 17.1.2 Within fifteen (15) business days of receipt of the response described in  
19 Paragraph 17.1.1, counsel for both Parties shall meet and confer by telephone or  
20 in person and attempt to resolve the issue informally. If the Parties believe it  
would be useful to enter mediation on the issue in dispute, they may agree to do  
so.

21 17.1.3 Each party shall be responsible for its own attorneys' fees and Costs  
incurred in pursuing informal dispute resolution pursuant to Paragraph 17.1.

22 17.2 Submission to the Court.

23 17.2.1 If the meet and confer process pursuant to Paragraph 17.1 above does not  
24 result in a resolution of the dispute within a reasonable time, any Party may make  
a motion for resolution of the dispute by any United States District Judge who  
may be assigned to the case.

25 17.2.2 In the event either Party finds that it is necessary to seek resolution of the  
26 dispute by the Court, the Court shall award reasonable attorneys' fees and Costs  
27 incurred in pursuing dispute resolution as set forth in this Paragraph 17.2 of the  
Agreement in accordance with the prevailing party standards under the ADA.  
28

1 18. Attorneys' Fees and Costs. Subject to Court approval, Coffee Bean shall pay Class  
2 Counsel's reasonable attorneys' fees incurred or that will be incurred in connection with this  
3 matter, including Class Counsel's prospective obligations under this Agreement, in the amount  
4 of \$170,000.00. Coffee Bean shall also pay Class Counsel's reasonable costs including expert  
5 fees incurred or that will be incurred in connection with this matter, including the prospective  
6 obligations under this Agreement in the amount of \$80,000.00. Coffee Bean shall pay the  
amount on account of attorneys' fees and costs within ten (10) days of Final Approval as set  
forth in Paragraph 13.1.2.2 above and shall be placed in a separate escrow account with the  
Claims Administrator pending the Final Approval and exhaustion of any appeals.

7 19. Preliminary Approval, Objections and Fairness Hearing.

8 19.1 Promptly after execution of this Agreement, Plaintiffs shall promptly file  
9 preliminary approval papers, and in no event later than November 15, 2007, or as  
10 extended by the Court which shall request the Court to preliminarily approve the  
11 Agreement, preliminarily certify the Class for settlement purposes only, preliminarily  
enjoin Settlement Class Members from bringing any claims to be released pursuant to  
this Agreement, and approve the proposed form of Notice and plan for providing Notice  
submitted by the Parties.

12 19.2 Class Counsel shall ask the Court to schedule a fairness hearing for final approval  
13 of the Agreement (the "Fairness Hearing") for thirty (30) days after the Claims Deadline  
set by the Court, or as soon thereafter as the Court may set the hearing.

14 19.3 Class Counsel and Coffee Bean shall ask the Court to order the following  
15 procedures for objections: Any Settlement Class Member may object to the proposed  
16 Agreement by filing, within sixty (60) days after the Notice Deadline set by the Court,  
17 written objections with the Clerk of the Court by stating the disability the objector has,  
18 the date, time and location of the Coffee Bean store the objector went to, the grounds for  
the objection, and the case name, docket number and court in which the objector and  
his/her attorney has filed an objection to a class settlement in the past three years.  
19 Objections must comply with this paragraph or will waive the right to object to this  
20 Settlement. Only such objecting Settlement Class Members shall have the right, and only  
if they expressly seek it in their objection, to present objections orally at the Fairness  
Hearing. Responses by Coffee Bean and Class Counsel to any timely-filed objections  
21 shall be made no less than five (5) days before the Fairness Hearing.

22 20. Notice: At Coffee Bean's expense, notice of this Agreement (the "Notice"), which shall  
23 be in a form agreed to by the Parties, will be provided to the Settlement Class, informing  
24 Settlement Class Members of at least the following: (1) a general description of the terms  
25 of this Agreement; (2) their right to object to the Agreement; (3) their right to opt out of  
the damages provisions of this Agreement; and (4) the prerequisites for recovery from the  
Damages Settlement Fund. The Notice and the plan for providing the Notice must satisfy  
26 the requirements of Federal Rule of Civil Procedure 23 and applicable legal precedent,  
and must be approved by the Court. In their motion seeking preliminary approval of the  
27 Agreement, the Parties will propose a Notice Deadline and the proposed Notice Deadline  
will be as soon as reasonably possible. The Proposed Notice Plan is attached hereto as  
28 Exhibit "9."

1 21. Judgment, Final Approval and Dismissal.

2 21.1 At the time of the Fairness Hearing, Coffee Bean and Class Counsel shall jointly  
3 request that the Court enter a Final Judgment and Order in a form agreeable to the Parties  
4 granting Final Approval of this Agreement, finally certifying the Class for settlement  
5 purposes only, and enjoining Settlement Class Members from asserting any Released  
6 Injunctive Claims or Released Damages Claims. Among other things, the Final  
7 Judgment and Order shall attach this Agreement as an exhibit and shall provide that the  
8 Court retains jurisdiction through the Term of this Agreement in order to enforce this  
9 Agreement.

10 21.2 This Lawsuit shall be dismissed with prejudice pursuant to Rule 41 of the Federal  
11 Rules of Civil Procedure, no later than thirty (30) days following the expiration of the  
12 Term of this Agreement.

13 22. Terms Not Confidential; Communication with the Press.

14 22.1 The terms of this Agreement shall not be confidential.

15 22.2 At a time mutually agreeable to the parties, Brodsky & Smith, LLC, on behalf of  
16 Class Counsel, may discuss this settlement on its website.

17 23. Releases:

18 23.1 Release of Claims for Injunctive Relief

19 23.1.1 Effective on the date of Final Approval, Named Plaintiffs and all  
20 Settlement Class Members and each of their executors, successors, heirs, assigns,  
21 administrators, agents and representatives (collectively, the “Injunctive Releasing  
22 Parties”), in consideration of the relief set forth herein, the sufficiency of which is  
23 expressly acknowledged, unconditionally and forever do fully and finally release,  
24 acquit, and discharge Coffee Bean and its present and former parents and  
25 subsidiaries and each of their respective present, former or future officers,  
26 directors, employees, shareholders, administrators, executors, affiliates, successors  
27 and assigns (collectively, the “Coffee Bean Parties”) from the Released Injunctive  
28 Claims as defined below.

23.1.2 The “Released Injunctive Claims” are any and all claims, rights, demands,  
charges, complaints, actions, suits and causes of action, whether known or  
unknown, suspected or unsuspected, accrued or unaccrued, for injunctive,  
declaratory or other non-monetary relief, however described, based on conduct  
preceding Final Approval of this Agreement that were brought, could have been  
brought or could be brought now or in the future that relate in any way to the  
accessibility of Coffee Bean Stores to persons who are vision or hearing impaired  
or are mobility impaired or who use wheelchairs or scooters under:

23.1.2.1 Title III of the Americans with Disabilities Act, 42 U.S.C.  
§§ 12181 et seq., and all rules and regulations promulgated thereunder;

23.1.2.2 Cal. Code Regs., Title 24 and all rules and regulations  
promulgated thereunder, and any other provision of California law to the  
extent it grants a right of action for alleged violations of the foregoing; and

1 23.1.2.3 Any state or local statutory, administrative, regulatory or  
2 code provisions, including, but not limited to Cal. Civ. Code §§ 51 & 54 et  
3 seq., that either (a) directly incorporate Title III of the Americans with  
4 Disabilities Act or any of the rules or regulations promulgated thereunder  
5 or (b) set forth standards or obligations coterminous with or equivalent to  
6 Title III of the Americans with Disabilities Act or any of the rules or  
7 regulations promulgated thereunder.

8 23.1.3 The “Released Injunctive Claims” also include all claims, rights, demands,  
9 charges, complaints, actions, suits, causes of action or liabilities of any kind for  
10 injunctive, declaratory or other non-monetary relief, however described,  
11 (collectively, for this subparagraph, “claims”) based on conduct that occurs after  
12 Final Approval of this Agreement and during the Term of this Agreement to the  
13 extent that such claims arise out of or relate to actions, omissions, or conduct  
14 (including physical conditions at Coffee Bean Stores) that are in compliance with  
15 the terms of this Agreement.

16 23.1.4 Covenant Not to Sue: Effective on the date of Final Approval, the  
17 Injunctive Releasing Parties, in consideration of the relief set forth herein, the  
18 sufficiency of which is expressly acknowledged, covenant and agree never to file  
19 or institute against Coffee Bean any claim, right, demand, charge, complaint, suit,  
20 cause of action, action or proceeding of any kind or nature whatsoever, whether at  
21 law, in equity or otherwise, in or before any court, administrative agency, arbitral  
22 panel or other tribunal wherever situated, asserting, directly or indirectly, any  
23 Released Injunctive Claim or any claim, demand, cause or right of action of any  
24 kind or nature whatsoever, whether known or unknown, contingent or absolute,  
25 suspected or unsuspected, disclosed or undisclosed, hidden or concealed, based  
26 upon or arising out of the Released Injunctive Claims.

## 27 23.2 Release of Claims for Statutory Minimum Damages

28 23.2.1 Effective on the date of Final Approval, Named Plaintiffs and all  
Settlement Class Members and each of their executors, successors, heirs, assigns,  
administrators, agent and representatives (collectively, the “Damages Releasing  
Parties”), in consideration of the relief set forth herein, the sufficiency of which is  
expressly acknowledged, unconditionally and forever do fully and finally release,  
acquit, and discharge the Coffee Bean Parties from the Released Damages Claims  
as defined below.

23.2.2 The “Released Damages Claims” are any and all claims, rights, demands,  
charges, complaints, actions, suits, causes of action, and liabilities of any kind,  
whether known or unknown, suspected or unsuspected, accrued or unaccrued, for  
Statutory Minimum Damages based upon conduct preceding Final Approval of  
this Agreement that were brought, could have been brought or could be brought  
now or in the future that relate in any way to the accessibility of Coffee Bean  
Stores or Closed Coffee Bean Stores to persons who are mobility impaired, who  
use wheelchairs or scooters for mobility, or who are vision or hearing impaired.

23.2.3 The “Released Damages Claims” also include all claims, rights, demands,  
charges, complaints, actions, suits, causes of action or liabilities of any kind for  
Statutory Minimum Damages (collectively, for this subparagraph, “claims”) based  
upon conduct that occurs after Final Approval of this Agreement and during the

1 Term of this Agreement to the extent that such claims arise out of or relate to  
2 actions, omissions, or conduct (including physical conditions at Coffee Bean  
Stores) that are in compliance with the terms of this Agreement.

3 23.2.4 The Released Damages Claims do not include any claims, rights,  
4 demands, charges, complaints, actions, causes of action or liabilities for any  
damages other than Statutory Minimum Damages.

5 23.2.5 Covenant Not to Sue: Effective on the date of Final Approval, the  
6 Damages Releasing Parties, in consideration of the relief set forth herein, the  
7 sufficiency of which is expressly acknowledged, covenant and agree never to file  
8 or institute against any of the Coffee Bean Parties any claim, right, demand,  
9 charge, complaint, suit, cause of action, action, liability or proceeding of any kind  
10 or nature whatsoever, whether at law, in equity or otherwise, in or before any  
11 court, administrative agency, arbitral panel or other tribunal wherever situated,  
asserting, directly or indirectly, any Released Damages Claim or any claim,  
demand, cause or right of action of any kind or nature whatsoever, whether known  
or unknown, contingent or absolute, suspected or unsuspected, disclosed or  
undisclosed, hidden or concealed, based upon or arising out of the Released  
Damages Claim.

12 23.3 Known or Unknown Claims. The Damages Releasing Parties and the Injunctive  
13 Releasing Parties shall collectively be referred to as the "Releasing Parties." The  
14 Releasing Parties understand and expressly agree that this AGREEMENT extends to all  
15 claims of every nature and kind, known or unknown, suspected or unsuspected, past,  
16 present, or future, arising from or attributable to any conduct of the Coffee Bean Parties,  
17 whether known by the Releasing Parties or whether or not any Releasing Party believes  
he or she may have any claims, and that any and all rights granted to the Releasing Party  
under Section 1542 of the California Civil Code or any analogous state law or federal law  
or regulations, are hereby expressly WAIVED, if applicable. Said Section 1542 of the  
California Civil Code reads as follows:

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

22 24. No Third Party Beneficiaries.

23 24.1 Nothing in this Agreement, express or implied, is intended to or shall confer upon  
24 any person or entity not a Party to this Agreement any right, benefit or remedy of any  
nature whatsoever under or by reason of this Agreement.

25 24.2 For purposes of interpreting or enforcing this Agreement, individual Settlement  
26 Class Members shall not be deemed to be third-party beneficiaries of this Agreement.  
27 Only the Named Plaintiffs through Class Counsel may seek to enforce the terms of this  
28 Agreement through the Dispute Resolution process provided for herein or before the  
Court. To the extent individual Settlement Class Members have complaints regarding  
Coffee Bean's implementation of the terms of this Agreement; they should bring them to  
the attention of the Named Plaintiffs and/or Class Counsel.

- 1 25. Entire Agreement. This Agreement contains all the agreements, conditions, promises and  
2 covenants among Coffee Bean, Named Plaintiffs, Class Counsel, the Settlement Class,  
3 regarding matters set forth in it and supersedes all prior or contemporaneous  
4 agreements, drafts, representations or understandings, either written or oral, with respect  
5 to the subject matter of the present Agreement.
- 6 26. Communications to Coffee Bean and Class Counsel. All notices or communications  
7 required by this Agreement to counsel of record shall be in writing by facsimile and U.S.  
8 Mail or overnight delivery service addressed as follows:
- 9 26.1 To Class Counsel:  
10 Evan J. Smith  
11 Brodsky & Smith, LLC  
12 Two Bala Plaza, Suite 602  
13 Bala Cynwyd, PA 19004
- 14 26.2 To Coffee Bean:  
15 Keith A. Jacoby  
16 Littler Mendelson  
17 2049 Century Park East  
18 Fifth Floor  
19 Los Angeles, California 90067.
- 20 28. Modification. Prior to Final Approval, this Agreement can only be amended by written  
21 agreement of the Parties hereto. Following Final Approval, no modification of this  
22 Agreement shall be effective unless it is pursuant to Court Order.
- 23 29. Severability. If any provision or any part of this Agreement thereof shall at any time be  
24 held unlawful, or inconsistent with applicable law, in whole or in part, under any federal,  
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[Remainder of Page Left Blank Intentionally]

1 state, county, municipal or other law, ruling or regulation, then the remaining provisions  
2 of this Agreement shall remain effective and enforceable.

3 30. Drafting of this Agreement. This Agreement is deemed to have been drafted by all  
4 Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all  
5 Parties have contributed to the preparation of this Agreement, it shall not be construed  
6 more strictly against one Party than another.

7 31 Execution by Facsimile and in Counterparts. This Agreement may be executed by the  
8 Parties hereto by facsimile and in separate counterparts, and all such counterparts taken  
9 together shall be deemed to constitute one and the same agreement.

10 32 Duty to Support and Defend Agreement. Named Plaintiffs, Class Counsel and Coffee  
11 Bean each agree to abide by all of the terms of this Agreement in good faith and to  
12 support it fully, and shall use their best efforts to defend this Agreement from any legal  
13 challenge, whether by appeal or collateral attack.

14 33 Continuing Jurisdiction. The Parties agree that the United States District Court for the  
15 Central District of California shall have continuing jurisdiction throughout the Term of  
16 this Agreement to interpret and enforce this Agreement.

17 34 Deadlines. The Parties and Court recognize that from time to time unforeseen events,  
18 such as exigent business circumstances, labor disputes, natural disasters, personnel issues,  
19 and negotiations with third parties, cause delays in the accomplishment of objectives no  
20 matter how well intentioned and diligent the Parties may be. Accordingly, with regard to  
21 the provision for this Agreement that require that certain acts be taken within specified  
22 periods, the Parties understand and agree that Court approval shall not be required for  
23 reasonable extensions of deadlines. In the event that any Party determines that an action  
24 required by this Agreement cannot be taken within the specified time period, that Party  
25 shall promptly notify the other Parties that it anticipates a delay, the reasons for the delay  
26 and a proposed alternative deadline. The Parties shall endeavor to cooperate in  
27 reasonably rescheduling such deadlines. However, if the other Party does not agree to the  
28 proposed delay, the Parties shall submit the matter to Dispute Resolution.

19 **APPROVED AS TO CONTENT:**

20 Dated:

21 By: \_\_\_\_\_  
22 RAY PIZARRO, Plaintiff

23 I, Mayra Espinoza, being visually impaired, hereby acknowledge that my attorney, Evan J.  
24 Smith, Esquire, read this document to me and explained the terms therein at length to my  
25 satisfaction before signing this document. Plaintiff Ray Pizarro and California Director of  
26 American Disability Institute, Jesse Murillo, were also present when the document was read and  
27 explained to me.

28 Dated:

By: \_\_\_\_\_  
MAYRA ESPINOZA, Plaintiff

1 Dated:

2

By: \_\_\_\_\_  
DEBORAH ROBINSON, Plaintiff

3 Dated:

4

By: \_\_\_\_\_  
AMERICAN DISABILITY INSTITUTE,  
Plaintiff

6 Dated:

7

By: \_\_\_\_\_  
For Defendant INTERNATIONAL COFFEE & TEA, LLC  
Its \_\_\_\_\_

10

11 **APPROVED AS TO FORM AND CONTENT:**

12 Dated:

BRODSKY & SMITH, LLC

13

By: \_\_\_\_\_  
JASON BRODSKY  
Class Counsel

16 Dated:

BRODSKY & SMITH, LLC

17

By: \_\_\_\_\_  
EVAN SMITH  
Class Counsel

20 Dated:

LITTLER MENDELSON, P.C.

21

By: \_\_\_\_\_  
KEITH A. JACOBY  
LITTLER MENDELSON  
A Professional Corporation  
Attorneys for Defendant  
INTERNATIONAL COFFEE & TEA,  
LLC

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