

1 BILL LOCKYER
Attorney General
2 LOUIS VERDUGO, JR.
Senior Assistant Attorney General
3 SUZANNE M. AMBROSE
Supervising Deputy Attorney General
4 GLORIA L. CASTRO,
Deputy Attorneys General
5 300 South Spring Street, Room 5212
Los Angeles, California 90013-1230
6

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8 Attorneys for the Plaintiff People of the State of California ex rel.
Bill Lockyer, Attorney General of the State of California
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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO
12

13 PEOPLE OF THE STATE OF CALIFORNIA ex rel.
BILL LOCKYER, ATTORNEY GENERAL OF THE
14 STATE OF CALIFORNIA,

15 Plaintiff,

16 v.

17 CITY OF DEL MAR CITY COUNCIL, AND DOES
1 THROUGH 50, INCLUSIVE,

18 Defendants,
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Case No.:

[PROPOSED] JUDGMENT

(Pursuant to Stipulation)

**[Fees Exempt, Gov. Code, §§ 6103
and 6103.5]**

Filed concurrently with:

- 1) Petition for Writ of Mandate and Complaint;
- 2) Stipulation for Entry of Judgment.

Date:

Time:

Place:

Dept.:

HON.

23 Pursuant to the Stipulation for Entry of Judgment (“Stipulation”) filed in this matter, IT IS
24 ORDERED that judgment be entered in favor of the People of the State of California by Bill
25 Lockyer, Attorney General of the State of California, and against defendant Del Mar City Council
26 (“Del Mar”) as follows:
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1 **GENERAL PROVISIONS**

2 1. The injunction that is set forth in this Judgment shall remain in effect for a period of
3 two years from the date of entry of judgment, unless such period of time is extended upon the
4 motion of the Attorney General and by order of the Court for good cause shown. Upon Del
5 Mar’s full compliance with the terms of this Judgment, Del Mar and the Attorney General shall
6 enter into, and submit to the Court for its approval, a stipulation that dissolves the permanent
7 injunction that is set forth in this Judgment.

8 2. The Attorney General and Del Mar may jointly stipulate to make changes,
9 modifications, and amendments to this Judgment which shall be effective 30 days after a joint
10 motion is filed by the parties and granted by the Court.

11 3. This Judgment is binding upon the parties hereto by and through their officials, agents,
12 employees, and successors. It is the intent of the parties that this Judgment is enforceable only by
13 the parties. No person or entity is intended to be a third-party beneficiary of the provisions of this
14 Judgment or Stipulation For Entry of Judgment on file herein for purposes of any civil, criminal,
15 or administrative action. It is the further intent of the parties that no person or entity may assert
16 any claim or right as a beneficiary or protected class under this Judgment or the Stipulation For
17 Entry of Judgment on file herein.

18 4. The term “state disabled access laws and regulations” in this Judgment means
19 Government Code section 4450 et seq., Health and Safety Code section 19955 et seq., and Title
20 24, Part 2, Volume 1 of the California Code of Regulations (“Title 24”).

21 **DUTIES AND RESPONSIBILITIES**

22 Defendant Del Mar IS HEREBY ENJOINED TO TAKE THE FOLLOWING ACTIONS:

23 5. All plans, policies or procedures that are required to be developed and implemented by
24 this Judgment shall be developed by Del Mar and then shall be submitted to the Attorney General
25 for his review and approval. The Attorney General agrees that he shall not arbitrarily or
26 capriciously deny approval of any plan, policy or procedure submitted by Del Mar. If Del Mar
27 believes that the Attorney General has arbitrarily or capriciously denied approval of any plan,
28 policy, or procedure, it may move the Court for an order approving the plan, policy, or

1 procedure. The Court shall only approve the plan, policy, or procedure if it determines that the
2 Attorney General has abused his discretion in refusing to grant such approval. All plans and/or
3 policies or procedures that are required to be developed and implemented by this Judgment are
4 subject to the requirements and procedures set forth in this paragraph and paragraph 6.

5 6. If Del Mar desires to extend the time within which it must submit any plan, policy, or
6 procedure to the Attorney General for his approval, it shall make such request to the Attorney
7 General in writing. The Attorney General shall not arbitrarily or capriciously refuse to grant any
8 request for a reasonable extension of time within which Del Mar must submit any plan, policy, or
9 procedure for his approval. If Del Mar believes that the Attorney General has arbitrarily or
10 capriciously denied any such request, it may apply to the Court for an order extending time. The
11 Court shall only grant such application if it determines that the Attorney General has abused his
12 discretion in refusing to grant Del Mar's request for an extension of time within which to submit a
13 plan, policy, or procedure.

14 7. Del Mar shall, within 45 days of the entry of judgment, develop and submit to the
15 Attorney General a written procedure for processing and resolving complaints lodged with Del
16 Mar which allege a violation of state disabled access laws and regulations with respect to publicly
17 funded buildings, structures, sidewalks, curbs and related facilities that are constructed or altered
18 with municipal funds, and with respect to privately funded public accommodations and facilities
19 that are subject to the jurisdiction of Del Mar. The written procedure shall be implemented by
20 Del Mar immediately upon approval by the Attorney General. The written procedure shall include
21 requirements that:

22 a. Del Mar investigate such complaints and that such investigations be completed
23 within 30 days of their receipt;

24 b. Del Mar take all actions necessary to correct any deviation from the state
25 disabled access laws and regulations which it confirms as a result of any investigation within 90
26 days of the confirmation of such deviation, unless the deviation or deviations are so substantial
27 that they cannot be corrected within 90 days of confirmation. In such circumstances, the
28 deviations shall be corrected within a reasonable period of time;

1 c. Del Mar inform the person who has lodged the complaint of the progress being
2 made during the investigation and provide the complainant with a letter advising the complainant
3 of the final resolution of the complaint. In any such instance where Del Mar determines that any
4 of the violations alleged in a complaint are unfounded, Del Mar shall include in such letter the
5 factual and legal basis for such determination; and

6 d. Where the owner of a privately funded public accommodation whose building
7 or facilities are subject to the provisions of Health and Safety Code section 19955 et seq. fails to
8 correct a deviation found to exist by Del Mar, Del Mar shall refer the matter to its legal counsel
9 for appropriate action.

10 8. Del Mar shall, within 45 days of entry of judgment, develop and submit to the
11 Attorney General a written procedure for granting applications submitted to Del Mar for
12 exceptions that are authorized by Health and Safety Code section 19957, and for granting
13 exceptions for publicly funded buildings and facilities that are authorized by Government Code
14 section 4451, subdivision (f). The written procedure shall be implemented by Del Mar
15 immediately upon its approval by the Attorney General. The procedure shall comply with
16 Government Code section 4450 et seq., Health and Safety Code section 19955 et seq., and Title
17 24.

18 9. Del Mar shall, within 60 days of entry of judgment, develop and submit to the
19 Attorney General a plan to provide an initial training course on the enforcement of state disabled
20 access laws and regulations to all persons who have responsibilities related to Del Mar's
21 enforcement of those laws and regulations. The plan shall be implemented by Del Mar
22 immediately upon its approval by the Attorney General. All persons who have responsibilities
23 related to Del Mar's enforcement of state disabled access laws and regulations on the date on
24 which the Attorney General approves this plan shall attend the initial training course required by
25 the plan within 45 days of such approval. All persons who in the future assume responsibilities
26 related to Del Mar's enforcement of state disabled access laws and regulations shall attend a
27 training course that is comparable to the initial training course required by this plan. This plan
28 shall require that, in addition to the initial training course to be provided under the plan, all

1 persons having responsibilities related to Del Mar's enforcement of state disabled access laws and
2 regulations shall attend additional training courses on those laws and regulations. Such additional
3 training shall be provided by Del Mar every two years. This plan shall also include a provision
4 that all persons who take the training courses required by this plan shall sign an acknowledgment
5 form that documents that he or she has received the training. Copies of these signed
6 acknowledgment forms shall be sent to the Attorney General within 30 days of the completion of
7 the training described in this paragraph.

8 10. Del Mar shall, within 90 days of entry of judgment, develop and submit to the
9 Attorney General a plan to systematically evaluate and audit enforcement of Government Code
10 section 4450 et seq. and Health and Safety Code section 19955 et seq., and the implementation of
11 the procedures required by paragraphs 7 and 8. This plan shall be implemented by Del Mar
12 immediately upon its approval by the Attorney General.

13 11. Del Mar shall, within 90 days of entry of judgment, repeal Del Mar Municipal Code
14 ("DMMC") section 23.12.020A insofar as it adopts and incorporates the 1993 version of the
15 Uniform Building Code, and it shall adopt and incorporate into its Municipal Code the most
16 current version of the Uniform Building Code. Del Mar shall notify the Attorney General in
17 writing and certify that these changes to the Municipal Code have been made. Del Mar shall take
18 whatever action that is necessary to ensure that its Municipal Code incorporates the most current
19 version of the Uniform Building Code in the future.

20 12. Del Mar shall, within six months of entry of judgment, either establish a City of Del
21 Mar Building Department or contract for the services of a building official to enforce Health and
22 Safety Code section 19955 et seq. as required by Health and Safety Code section 19958.

23 13. Del Mar shall, within six months of entry of judgment, take all action that is necessary
24 to correct the deviations from state disabled access laws and regulations that are alleged in the
25 petition and complaint on file in this action.

26 14. Del Mar shall pay the cost of a consultant to be employed by the Attorney General to
27 assist him in monitoring compliance with this Judgment for a two-year period. Del Mar shall
28 cooperate with the Attorney General's consultant, whose duties shall include:

1 a. to work jointly with the Attorney General and Del Mar to monitor Del Mar's
2 compliance with the terms of this Judgment, including development of all required
3 plans, policies and procedures;

4 b. to monitor Del Mar's implementation and compliance with all plans required by
5 this Judgment; and

6 c. to prepare and submit to the Attorney General reports assessing Del Mar's
7 compliance with this Judgment.

8 15. Del Mar shall cooperate with the Attorney General's consultant in monitoring
9 compliance with this Judgment. Del Mar shall allow the Attorney General's consultant:

10 a. to interview, on a confidential basis or otherwise, any person who has
11 responsibilities related to Del Mar's enforcement of state disabled access laws and regulations. If
12 the consultant in the performance of his or her duties finds it necessary to interview any Del Mar
13 employee other than a person who has responsibilities related to Del Mar's enforcement of state
14 disabled access laws and regulations, the Attorney General shall seek Del Mar's authorization to
15 conduct such interview. Del Mar shall not unreasonably withhold such authorization. Del Mar
16 shall provide suitable facilities and shall arrange for such interviews to be conducted under
17 conditions satisfactory to the Attorney General's consultant;

18 b. to request and obtain from Del Mar the compilation of statistics, reports
19 and/or information that may be directly related to the matters that are set forth in this Judgment;

20 c. to request and obtain access to the records, files, building plans, permits,
21 applications and other documents maintained by Del Mar to the extent that such access is directly
22 related to the matters that are set forth in this Judgment. The Attorney General's consultant may
23 obtain copies of all such relevant records, files, and papers; and

24 d. to request and obtain Del Mar's assistance in accessing public and private
25 property to conduct inspections to determine whether those properties are in compliance with
26 state disabled access laws and regulations.

27 16. Nothing in paragraph 15 nor in any other provision of this Judgment shall be
28 construed to limit the powers vested in the Attorney General by the California Constitution and

1 state statutory law, including Government Code section 11180 et seq., which he may use to
2 monitor Del Mar's compliance with the terms of this Judgment.

3 17. Del Mar shall, under the terms set forth in this paragraph, pay for the costs incurred
4 by the Attorney General for the services of his consultant during the two-year period of
5 monitoring specified in the Judgment in this action. These costs shall not exceed \$40,000 for the
6 two-year period. However, the Court shall retain jurisdiction to increase that amount for good
7 cause established by the Attorney General. For purposes of this paragraph, "good cause" means
8 that Del Mar has acted in bad faith and that such bad faith has caused the Attorney General to
9 incur costs for the services of his monitor that exceed the \$40,000 limitation imposed by this
10 paragraph. Within 30 days of the entry of Judgment, Del Mar shall deposit with the California
11 Department of Justice the sum of \$25,000 which shall be held in an interest-bearing account.
12 Within one year of the entry of Judgment, Del Mar shall deposit an additional \$15,000 in this
13 account. The Attorney General shall pay his consultant from this account.

14 18. Upon full compliance with any provision of this Judgment, Del Mar may request in
15 writing that the Attorney General confirm that Del Mar has complied. If the Attorney General
16 agrees that Del Mar has fully complied, he shall confirm that determination in writing to Del Mar.

17 19. Del Mar shall pay to the Attorney General, within 60 days of the entry of Judgment,
18 the sum of \$15,000 for costs of investigation, including expert fees, and for attorney's fees
19 incurred in the investigation and prosecution of this matter. Additionally, when the two-year
20 monitoring period specified in the Judgment in this action expires, any funds remaining in the
21 account identified in paragraph 17 shall pass to the Attorney General for costs of investigation,
22 including expert fees, and for attorney's fees incurred in the investigation and prosecution of this
23 matter.

24 20. Neither Del Mar nor the Attorney General shall be deemed to be in violation of this
25 Judgment by reason of the failure to perform any of its obligations hereunder to the extent that
26 such failure is due to unforeseen circumstances, including strikes, acts of God, acts of a court of
27 competent jurisdiction, weather conditions, riots, civil disobedience, fire, insurrection, war, or any
28 similar circumstances for which neither Del Mar nor the Attorney General is responsible and

1 which are within neither Del Mar's nor the Attorney General's control.

2 21. Del Mar shall pay the Attorney General's costs and attorney's fees for any successful
3 enforcement action brought by the Attorney General to obtain compliance with this Judgment.

4 IT IS SO ORDERED.

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6 Dated: _____ By: _____
7 Judge of the San Diego County Superior Court

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