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6

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8 Bill Lockyer, Attorney General of the State of California  
9

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,

Plaintiff,

15 v.  
16

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

18 Defendants,  
19  
20  
21  
22

Case No.:

**STIPULATION FOR ENTRY OF  
JUDGMENT**

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

Filed concurrently with:  
1) Petition for Writ of Mandate;  
2) [Proposed] Judgment.

Date:  
Time:  
Place:  
Dept.:

**HON.**

23 **GENERAL PROVISIONS**

24 1. In this action, plaintiff, the People of the State of California by Bill Lockyer, Attorney  
25 General of the State of California (“Attorney General”) has filed a Petition for Writ of Mandate  
26 (“petition”) against the Del Mar City Council (hereafter “Del Mar”) for a writ of mandate ordering  
27 Del Mar to carry out its mandatory enforcement responsibilities pursuant to Government Code  
28 section 4450 et seq. and Health and Safety Code section 19955 et seq., for the appointment of a

1 monitor to ensure that Del Mar complies with the Judgment entered in this action, and to recover  
2 costs of the investigation and prosecution of the action, and for other equitable and legal relief as the  
3 Court deems appropriate.

4         2. In the petition, the Attorney General alleges that, after conducting an investigation, he  
5 concluded that, because of defective or inadequate policies, practices, procedures and training, and  
6 because Del Mar has adopted, applies and has incorporated into its Municipal Code an obsolete  
7 version of the Uniform Building Code, Del Mar has failed to carry out its mandatory duty to enforce  
8 Government Code section 4450 et seq., Health and Safety Code section 19955 et seq., and Title 24,  
9 Part 2, Volume 1 of the California Code of Regulations (hereafter collectively “state disabled access  
10 laws and regulations”). The Attorney General further alleges that Del Mar’s failure to carry out that  
11 duty has resulted in violations of those statutes and regulations, and that such failure poses an  
12 unreasonable risk that violations of those statutes and regulations will occur in the future.

13         3. Although Del Mar denies all allegations in the petition, the parties wish to resolve their  
14 differences expeditiously, and without the burden, expense, and delay of litigation. Therefore, they  
15 have entered into this Stipulation for Entry of Judgment. Del Mar acknowledges the jurisdiction and  
16 constitutional authority of the Attorney General to maintain this action and does not contest the  
17 Attorney General’s authority to obtain the relief sought in the petition. Del Mar further agrees that  
18 the San Diego County Superior Court of the State of California has subject matter jurisdiction over  
19 the matters alleged in the petition.

20         4. This Stipulation for Entry of Judgment represents a fair, reasonable and equitable  
21 settlement of this action. For purposes of this Stipulation, nothing herein shall be construed as an  
22 acknowledgment, admission, or evidence of liability by Del Mar of any violation of law or of any issue  
23 of law or fact, and, except as expressly provided herein, nothing herein shall prejudice, waive, or  
24 impair any right, remedy, or defense that Del Mar may have in any legal proceeding other than a  
25 proceeding brought by the Attorney General to enforce the terms of the Judgment to be entered in  
26 this action pursuant to this Stipulation for Entry of Judgment.

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1 it may move the Court for an order approving the plan, policy, or procedure. The Court shall only  
2 approve the plan, policy, or procedure if it determines that the Attorney General has abused his  
3 discretion in refusing to grant such approval. All plans and/or policies or procedures that are  
4 required to be developed and implemented by this Stipulation are subject to the requirements and  
5 procedures set forth in this paragraph and paragraph 11.

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

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

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

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

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1 reasonably be corrected within 90 days of confirmation. In such circumstances, the deviations shall  
2 be corrected within a reasonable period of time;

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

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

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

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

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

8 15. Del Mar agrees, within 90 days of entry of judgment, to develop and submit to the  
9 Attorney General a plan to systematically evaluate and audit its 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 12 and 13. This plan shall be implemented by Del Mar  
12 immediately upon its approval by the Attorney General.

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

20 17. Del Mar agrees, within six months of entry of judgment, to either establish a City of Del  
21 Mar Building Department or to 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 18. Del Mar agrees, within six months of entry of judgment, to 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 on file in this action.

26 19. Del Mar agrees to pay the cost of a consultant to be employed by the Attorney General  
27 to assist him in monitoring compliance with the judgment that is to be entered pursuant to this

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1 Stipulation. Del Mar agrees to cooperate with the Attorney General's consultant, whose duties shall  
2 include:

3 a. to work jointly with the Attorney General and Del Mar to monitor Del Mar's  
4 compliance with the terms of the judgment entered in this action, including development of all plans,  
5 policies and procedures required by this Stipulation;

6 b. to monitor for two years Del Mar's implementation and compliance with all plans  
7 required by this Stipulation; and

8 c. to prepare and submit to the Attorney General reports assessing Del Mar's  
9 compliance with the judgment entered in this action.

10 20. Del Mar agrees to cooperate with the Attorney General's consultant in monitoring  
11 compliance with the judgment. Del Mar agrees to allow the Attorney General's consultant:

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

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

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

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

1           21. Nothing in paragraph 20 nor in any other provision of this Stipulation shall be construed  
2 to limit the powers vested in the Attorney General by the California Constitution and state statutory  
3 law, including Government Code section 11180 et seq., which he may use to monitor Del Mar's  
4 compliance with the terms of this Stipulation and the judgment that will be entered pursuant to this  
5 Stipulation.

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

17           23. Upon full compliance with any provision of this Stipulation and the corresponding  
18 provision in the Judgment that is to be entered pursuant to this Stipulation, Del Mar may request in  
19 writing that the Attorney General confirm that Del Mar has so complied. If the Attorney General  
20 agrees that Del Mar has fully complied, he shall confirm that determination in writing to Del Mar.

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

27           25. Neither Del Mar nor the Attorney General shall be deemed to be in violation of the  
28 Stipulation or the judgment to be entered pursuant thereto by reason of the failure to perform any of

1 its obligations hereunder to the extent that such failure is due to unforeseen circumstances, including  
2 strikes, acts of God, acts of a court of competent jurisdiction, weather conditions, riots, civil  
3 disobedience, fire, insurrection, war, or any similar circumstances for which neither Del Mar nor the  
4 Attorney General is responsible and which are within neither Del Mar's nor the Attorney General's  
5 control.

6 26. Del Mar agrees to pay the Attorney General's costs and attorney's fees for any successful  
7 enforcement action brought by the Attorney General to obtain compliance with the judgment to be  
8 entered pursuant to this Stipulation.

9 27. A judgment that is consistent with this Stipulation for Entry of Judgment shall be  
10 submitted to this Court for its consideration, signature, and entry in the form attached as Exhibit 1  
11 hereto.

12 IT IS SO STIPULATED.

13 City of Del Mar City Council

14  
15 Dated: \_\_\_\_\_ By \_\_\_\_\_

16 - DAVID DRUCKER, Mayor of the City of Del Mar

17  
18 Dated: \_\_\_\_\_ By \_\_\_\_\_

19 TAMARA SMITH, City Attorney of the City of Del Mar

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

21 BILL LOCKYER, Attorney General  
22 of the State of California  
23 LOUIS VERDUGO, JR.  
24 Senior Assistant Attorney General  
25 SUZANNE M. AMBROSE  
26 Supervising Deputy Attorney General

27 By \_\_\_\_\_

28 GLORIA L. CASTRO  
Deputy Attorney General  
Attorneys for Plaintiff People of the State of  
California ex rel. Bill Lockyer, Attorney  
General of the State of California

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