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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN
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 MILL VALLEY, MILL VALLEY CITY
COUNCIL, MILL VALLEY BUILDING
18 DEPARTMENT, AND DOES ONE THROUGH
FIFTY,
19 Defendants,
20

Case No.: CV 040386

**STIPULATION FOR ENTRY OF
JUDGMENT**

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22 **GENERAL PROVISIONS**

23 1. In this action, plaintiff, the People of the State of California by Bill Lockyer, Attorney General
24 of the State of California (“Attorney General”) has filed a First Amended Petition for Writ of Mandate and
25 First Amended Complaint for Injunctive Relief (“petition”) against the City of Mill Valley, the Mill Valley
26 City Council and the Mill Valley Building Department (hereafter collectively referred to as “Mill Valley”),
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1.

1 for a writ of mandate ordering Mill Valley to carry out its mandatory enforcement responsibilities pursuant
2 to Government Code section 4450 et seq., Health and Safety Code section 19955 et seq., and its
3 mandatory duty to comply with Civil Code section 54 and for the appointment of a monitor to ensure that
4 Mill Valley complies with the Judgment entered in this action, and for costs of suit, and other equitable and
5 legal relief as the Court deems appropriate.

6 2. In the petition, the Attorney General alleges that, after conducting an investigation, he concluded
7 that, because of defective or inadequate policies, practices, procedures and training, Mill Valley has failed
8 to carry out its mandatory duty to enforce Government Code section 4450 et seq., Health and Safety Code
9 section 19955 et seq., and Title 24, Part 2, Volume 1 of the California Code of Regulations and its
10 mandatory duty to comply with Civil Code section 54 (hereafter collectively “state disabled access laws
11 and regulations”). The Attorney General further alleges that Mill Valley’s failure to carry out that duty has
12 resulted in violations of those statutes and regulations, and that such failure poses an unreasonable risk that
13 violations of those statutes and regulations will occur in the future.

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

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

1 Entry of Judgment.

2 5. Mill Valley denies each and every allegation of the First Amended Petition for Writ of Mandate
3 and First Amended Complaint for Injunctive Relief that is to be filed concurrently with this Stipulation for
4 Entry of Judgment. Nothing in this Stipulation for Entry of Judgment shall be construed as an
5 acknowledgment, admission, or evidence of liability under any federal, state, or local law, including but not
6 limited to Government Code section 4450 et seq., Health and Safety Code section 19955 et seq., Civil
7 Code section 54, or Title 24.

8 6. The Attorney General and Mill Valley, and their attorneys of record, stipulate and agree that
9 the Court may enter judgment in this action pursuant to this Stipulation. The injunction that is set forth in
10 this Stipulation shall remain in effect for a period of two years from the date of entry of judgment, unless
11 such period of time is extended upon the motion of the Attorney General and by order of the Court for
12 good cause shown. Upon Mill Valley's full compliance with the terms of the Judgment, Mill Valley and the
13 Attorney General shall enter into, and submit to the Court for its approval, a stipulation that dissolves the
14 permanent injunction that is set forth in the Judgment.

15 7. The Attorney General and Mill Valley may jointly stipulate to make changes, modifications, and
16 amendments to this Stipulation and to the judgment which will be entered pursuant to this Stipulation, which
17 shall be effective 30 days after a joint motion is filed by the parties and granted by the Court.

18 8. This Stipulation shall constitute the entire integrated agreement of the parties. No prior drafts
19 or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes
20 of determining the meaning of any provisions herein in any litigation or any other proceeding.

21 9. This Stipulation is binding upon the parties hereto by and through their officials, agents,
22 employees, and successors. This Stipulation and the judgment to be issued pursuant to this Stipulation are
23 enforceable only by the parties. No person or entity is intended to be a third-party beneficiary of the
24 provisions of this Stipulation and the judgment to be issued pursuant to this Stipulation for purposes of any
25 civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as
26 a beneficiary or protected class under this Stipulation and the judgment to be issued pursuant to this

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1 Stipulation.

2 **DUTIES AND RESPONSIBILITIES**

3 10. All plans, policies or procedures that are required to be developed and implemented by this
4 Stipulation shall be developed by Mill Valley and then shall be submitted to the Attorney General for his
5 review and approval. The Attorney General agrees that he shall not arbitrarily or capriciously deny
6 approval of any plan, policy or procedure submitted by Mill Valley. If Mill Valley believes that the
7 Attorney General has arbitrarily or capriciously denied approval of any plan, policy, or procedure, it may
8 move the Court for an order approving the plan, policy, or procedure. The Court shall only approve the
9 plan, policy, or procedure if it determines that the Attorney General has abused his discretion in refusing
10 to grant such approval. All plans and/or policies or procedures that are required to be developed and
11 implemented by this Stipulation are subject to the requirements and procedures set forth in this paragraph
12 and paragraph 11.

13 11. If Mill Valley desires to extend the time within which it must submit any plan, policy, or
14 procedure to the Attorney General for his approval, it shall make such request to the Attorney General in
15 writing. The Attorney General shall not arbitrarily or capriciously refuse to grant any request for a
16 reasonable extension of time within which Mill Valley must submit any plan, policy, or procedure for his
17 approval. If Mill Valley believes that the Attorney General has arbitrarily or capriciously denied any such
18 request, it may apply to the Court for an order extending time. The Court shall only grant such application
19 if it determines that the Attorney General has abused his discretion in refusing to grant Mill Valley's request
20 for an extension of time within which to submit a plan, policy, or procedure.

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

2 a. Mill Valley investigate such complaints and that such investigations be completed within
3 30 days of the receipt of the complaints;

4 b. Mill Valley take all actions necessary to correct any deviation from the state disabled
5 access laws and regulations which it confirms as a result of any investigation within 90 days of the
6 confirmation of such deviation, unless the deviation or deviations are so substantial that they cannot
7 reasonably be corrected within 90 days of confirmation. In such circumstances, the deviations shall be
8 corrected within a reasonable period of time;

9 c. Mill Valley inform the person who has lodged the complaint of the progress being
10 made during the investigation and provide the complainant with a letter advising the complainant of the final
11 resolution of the complaint. In any such instance where Mill Valley determines that any of the violations
12 alleged in a complaint are unfounded, Mill Valley shall include in such letter the factual and legal basis for
13 such determination; and

14 d. Where the owner of a privately funded public accommodation whose building or
15 facilities are subject to the provisions of Health and Safety Code section 19955 et seq. fails to correct a
16 deviation found to exist by Mill Valley, Mill Valley shall refer the matter to its legal counsel for appropriate
17 action.

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

25 14. Mill Valley agrees, within 60 days of entry of judgment, to develop and submit to the Attorney
26 General a plan to provide an initial training course on the enforcement of state disabled access laws and
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1 regulations to all persons who have responsibilities related to Mill Valley's enforcement of those laws and
2 regulations. The plan shall be implemented by Mill Valley immediately upon its approval by the Attorney
3 General. All persons who have responsibilities related to Mill Valley's enforcement of state disabled access
4 laws and regulations on the date on which the Attorney General approves this plan shall attend the initial
5 training course required by the plan within 45 days of such approval. All persons who in the future assume
6 responsibilities related to Mill Valley's enforcement of state disabled access laws and regulations shall
7 attend a training course that is comparable to the initial training course required by this plan. This plan shall
8 require that, in addition to the initial training course to be provided under the plan, all persons having
9 responsibilities related to Mill Valley's enforcement of state disabled access laws and regulations shall
10 attend additional training courses on those laws and regulations. Such additional training shall be provided
11 by Mill Valley every two years. This plan shall also include a provision that all persons who take the
12 training courses required by the plan shall sign an acknowledgment form that documents that he or she has
13 received the training. Copies of these signed acknowledgment forms shall be sent to the Attorney General
14 within 30 days of the completion of the training described in this paragraph.

15 15. Mill Valley agrees, within 90 days of entry of judgment, to develop and submit to the Attorney
16 General a plan to systematically evaluate and audit its enforcement of Government Code section 4450 et
17 seq., Health and Safety Code section 19955 et seq., and Title 24; its compliance with Civil Code section
18 54; and the implementation of the procedures required by paragraphs 12 and 13. This plan shall be
19 implemented by Mill Valley immediately upon its approval by the Attorney General.

20 16. Mill Valley agrees, within six months of entry of judgment, to take all action that is necessary
21 to correct the deviations from state disabled access laws and regulations that are alleged, in paragraphs 15
22 through 26 of the petition, to exist at publicly owned buildings and facilities, except as provided in this
23 paragraph. The parties agree that the Attorney General has determined that, as of the date of entry of
24 Judgment, the following deviations from state disabled access laws and regulations that are alleged in
25 paragraphs 15 through 26 of the petition relating to publicly owned buildings and facilities are in substantial
26 compliance with Title 24 and that Mill Valley is not required to take any further corrective action pursuant

1 to this stipulation: (1) the exterior route between the two buildings at the Community Center; (2) the
2 identification of individual lockers as disabled accessible in the locker rooms at the Community Center; and
3 (3) the placement of the International Symbol of Accessibility on the tactile sign at the Mill Valley Library.

4 17. Mill Valley agrees, within six months of entry of judgment, to take all action that is necessary
5 to correct the deviations from state disabled access laws and regulations that are alleged in paragraphs 15
6 through 26 of the petition to exist at privately funded public accommodations. In determining what action
7 to take to correct any deviation, Mill Valley may exercise any discretion vested in it by California law. If
8 the Attorney General determines that Mill Valley has abused its discretion in the process of correcting or
9 failing to correct any deviation, or in applying state disabled access laws and regulations in the process of
10 correcting or failing to correct any such deviation, Mill Valley shall, within 30 days of the receipt of written
11 notification from the Attorney General that Mill Valley has abused its discretion, correct the deviation to
12 the Attorney General's satisfaction or move the Court for an order declaring that Mill Valley has not abused
13 its discretion.

14 18. During the time within which the judgment to be entered pursuant to this stipulation remains
15 in effect, Mill Valley may exercise any discretion vested in it by California law in taking whatever actions
16 that may be necessary to correct, or in applying state disabled access laws and regulations in determining
17 what actions to take to correct, any deviation from state disabled access laws and regulations that is not
18 alleged in the petition, but is after entry of judgment in this action determined to exist at any public building
19 or facility or privately funded public accommodation located within the jurisdiction of Mill Valley by either
20 Mill Valley or the Attorney General. However, if the Attorney General determines that Mill Valley has
21 abused its discretion in taking any action to correct or failing to correct any deviation, or in applying state
22 disabled access laws and regulations in the process of correcting or failing to correct any such deviation,
23 Mill Valley shall, within 30 days of the receipt of written notification from the Attorney General that Mill
24 Valley has abused its discretion, correct the deviation to the Attorney General's satisfaction or move the
25 Court for an order declaring that Mill Valley has not abused its discretion.

26 19. Mill Valley agrees to pay the cost of a consultant to be employed by the Attorney General to
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1 assist him in monitoring compliance with the judgment that is to be entered pursuant to this Stipulation. Mill
2 Valley agrees to cooperate with the Attorney General's consultant, whose duties shall include:

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

6 b. to monitor for two years Mill Valley'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 Mill Valley's
9 compliance with the judgment entered in this action.

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

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

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

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

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

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1 laws and regulations.

2 21. Nothing in this Stipulation shall be construed to limit the powers vested in the Attorney
3 General by the California Constitution and state statutory law, including Government Code section 11180
4 et seq., which he may use to monitor Mill Valley's compliance with the terms of this Stipulation and the
5 judgment that will be entered pursuant to this Stipulation.

6 22. Mill Valley shall pay for all costs incurred by the Attorney General for the services of his
7 consultant. Within ten days of entry of judgment, Mill Valley shall deposit with the California Department
8 of Justice the sum of \$20,000, which shall be held in an interest-bearing account. The Attorney General
9 shall pay his consultant from this account. The Attorney General shall notify Mill Valley, in writing, any time
10 that the balance in the account falls below \$10,000, and Mill Valley shall, within ten days of receiving such
11 notice, deliver to the California Department of Justice sufficient funds to return the account's balance to
12 \$20,000. When the monitoring period specified in paragraph 6 of this Stipulation expires, all funds
13 remaining in this account shall be returned to Mill Valley. The Attorney General's costs for the services
14 of his consultant shall not exceed \$20,000 for any one-year period. However, the Court shall retain
15 jurisdiction to increase that amount for good cause shown and established by the Attorney General.

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

20 24. Mill Valley agrees to reimburse the Attorney General, within 30 days of the entry of judgment,
21 the sum of \$15,000 for attorney's fees and costs incurred prior to the entry of judgment in this case.

22 25. Neither Mill Valley nor the Attorney General shall be deemed to be in violation of the
23 Stipulation or the judgment to be entered pursuant thereto by reason of the failure to perform any of its
24 obligations hereunder to the extent that such failure is due to unforeseen circumstances, including strikes,
25 acts of God, acts of a court of competent jurisdiction, weather conditions, riots, civil disobedience, fire,
26 insurrection, war, or any similar circumstances for which neither Mill Valley nor the Attorney General is

1 responsible and which are within neither Mill Valley's nor the Attorney General's control.

2 26. Mill Valley agrees to 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 the judgment to be entered
4 pursuant to this Stipulation.

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

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17 IT IS SO STIPULATED.

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City of Mill Valley

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20 Dated:

By _____

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Attorney for City of Mill Valley

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23 Dated:

By _____

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Mayor of City of Mill Valley

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BILL LOCKYER, Attorney General
of the State of California

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LOUIS VERDUGO, JR.
Senior Assistant Attorney General
SUZANNE AMBROSE
Supervising Deputy Attorney General

Dated:

By _____
KATHLEEN W. MIKKELSON
Deputy Attorney General
Attorneys for Plaintiff People of the State of
California ex rel. Bill Lockyer, Attorney
General of the State of California