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12 Attorneys for Plaintiffs:
13 NICOLE BROWN-BOOKER and
14 JANA OVERBO

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 NICOLE BROWN-BOOKER, JANA
18 OVERBO,

CASE NO. C07-04397 SI
Civil Rights

19 Plaintiffs,

20 v.

**PLAINTIFFS' MOTION FOR
ADMINISTRATIVE RELIEF
REQUESTING THAT THE PARTIES BE
RELEASED FROM GENERAL ORDER 56**

21 APPLE INC.; DEKA IMMOBILIEN
22 INVESTMENT GMBH, LLC; and
23 DOES 1-10, inclusive,

24 Defendants.

25 _____ /
26 **1. FACTUAL AND PROCEDURAL BACKGROUND; RELIEF SOUGHT**

27 **A. Statement Of Facts**

28 This case involves the denial of accessible sales establishment facilities, including denial of accessible entrance, path of travel, teaching theater seating, elevator, and restroom facilities, to plaintiffs NICOLE BROWN-BOOKER and JANA OVERBO and other disabled persons at the Apple Store, located at One Stockton Street, San Francisco, California. Plaintiffs NICOLE BROWN-BOOKER and JANA OVERBO are each a “person with a disability” or “physically handicapped person.” Plaintiffs require the use of a motorized wheelchair for

1 locomotion and are unable to use portions of public facilities which are not accessible to
2 disabled persons who require the use of a wheelchair. On May 12, 2007 and July 28, 2007, and
3 continuing, plaintiffs were denied their rights to full and equal access at these facilities, and
4 were denied their civil rights under both California law and federal law, as hereinbelow
5 described, because these facilities were not, and are not now, properly accessible to physically
6 disabled persons who use wheelchairs. Plaintiffs seek injunctive relief to require defendants to
7 make these facilities accessible to disabled persons and to ensure that any disabled person who
8 attempts to use the facilities will be provided accessible facilities, including: entry, paths of
9 travel, display counters, “teaching theater” seating, “genius bar” service, checkout counters,
10 and accessible and usable sanitary facilities. Plaintiffs also seek recovery of damages for their
11 discriminatory experiences, and denial of access and of their civil rights, which denial is
12 continuing as a result of defendants’ failure and refusal to provide disabled accessible facilities.
13 Plaintiffs also seek recovery of reasonable attorney fees, litigation expenses and costs,
14 according to statute.

15 **B. Procedural History, Request for Relief**

16 Pursuant to General Order 56, which governs this case, the parties have held a
17 site inspection, the parties’ respective access experts have met to discuss the injunctive relief
18 and have reported back to their respective counsel. The parties have held extensive mediation
19 proceedings, including two full-day in-person sessions, with mediator Catherine Yanni.
20 However, the case has failed to settle. While plaintiffs remain willing to engage in further
21 settlement discussions with defendants, it appears clear that the case does not have a reasonable
22 likelihood of settling without discovery and litigation being undertaken.

23 Accordingly, under General Order 56, plaintiffs are filing this Motion for
24 Administrative Relief seeking advancement of the Case Management Conference currently set
25 for November 7, 2008 before this Court. Plaintiffs also request that discovery be opened at this
26 time so that they can prove their claims.

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2. CONCLUSION

At this time, plaintiffs request that the Court advance the currently scheduled Case Management Conference, currently set for November 7, 2008. Plaintiffs further request that discovery be opened immediately so that they can take necessary depositions and propound written discovery to prove their claims.

Dated: October 15, 2008

Respectfully Submitted,

PAUL L. REIN
CELIA MCGUINNESS
LAW OFFICES OF PAUL L. REIN

JULIE A. OSTIL
LAW OFFICE OF JULIE A. OSTIL

____/s/ Celia McGuinness_____
Attorneys for Plaintiff
GUY JONES

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16 NORTHERN DISTRICT OF CALIFORNIA

17 NICOLE BROWN-BOOKER, JANA
18 OVERBO,

CASE NO. C07-04397 SI
Civil Rights

19 Plaintiffs,

20 v.

**[PROPOSED] ORDER GRANTING
21 PLAINTIFFS' MOTION FOR
22 ADMINISTRATIVE RELIEF
23 REQUESTING THAT THE PARTIES BE
24 RELEASED FROM GENERAL ORDER 56**

25 APPLE INC.; DEKA IMMOBILIEN
26 INVESTMENT GMBH, LLC; and
27 DOES 1-10, inclusive,

28 Defendants.

IT IS HEREBY ORDERED that Plaintiff's Motion for Administrative Relief Requesting that
the Parties be Released from General Order 56 is GRANTED and advances the currently
scheduled Case Management Conference, currently set for November 7, 2008 to _____.

The Court allows discovery be opened immediately so that the parties can take necessary
depositions and propound written discovery to prove their claims.

Dated: _____

HON. SUSAN ILLSTON
U.S. DISTRICT JUDGE

**[Proposed] Order Granting Plaintiffs' Motion for
Administrative Relief: Case No. C07-4397 SI**

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JANA OVERBO
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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
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14 NICOLE BROWN-BOOKER
and JANA OVERBO,

CASE NO. C07-04397 SI
Civil Rights

15 Plaintiffs,

16
17 v.

**DECLARATION OF CELIA
McGUINNESS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ADMINISTRATIVE RELIEF THAT THE
PARTIES BE RELEASED FROM
GENERAL ORDER 56**

18
19 APPLE, INC.; DEKA
20 IMMOBILIEN INVESTMENT
GMBH, LLC; and DOES 1-10,
21 Inclusive,

22 Defendants.
23 _____/

24 I, CELIA McGUINNESS, declare as follows:

25 1. I am an attorney licensed to practice in the courts of California and in
26 the United States District Court for the Northern, Eastern and Central Districts of
27 California, and have been in practice as an attorney for more than sixteen years.

28 2. On October 8, 2008, I sent an e-mail message to David Walsh and

1 Jeff Michalowski, counsel for defendant **Apple, Inc.**. I sent the e-mail in the
2 ordinary course of business through Microsoft Outlook to
3 davidwalsh@paulhastings.com and jeffmichalowski@paulhastings.com, which I
4 am informed and believe are the correct e-mail addresses for both men. I
5 enquired whether their client would stipulate to relief from General Order 56
6 under Northern District Local Rule 7-11.

7 3. Since October 8, 2008, I have checked my e-mail message in-box
8 several times per day. I am informed and believe that my e-mail system has been
9 functioning during this time because I have received numerous other e-mail
10 messages.

11 4. As of the date of this declaration, I have received no response to my
12 message from either Mr. Walsh or Mr. Michalowski.

13 5. On October 14, 2008, I phoned Mr. Walsh and asked him if he would
14 stipulate to being relieved from General Order 56. He told me that he had “no
15 objection in principle” to stipulating but wanted to talk to the mediator before
16 giving me an answer. As of the filing of this declaration he has not called me
17 back.

18 6. I am informed and believe that Mr. Walsh spoke with my co-counsel
19 Julie Ostil on October 14, 2008, as well. Based on what Ms. Ostil told me, I am
20 informed and believe that he did not mention relief from General Order 56 to her.

21
22 I declare the above statement to be true and correct to the best of my
23 knowledge except as to those matters averred upon information and belief; and as
24 to those matters I believe them to be true to the best of my ability; and so declare
25 under penalty of perjury and under the law of the State of California, on October
26 15, 2008, in the City of Oakland, California.

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Law Offices of Paul L. Rein

/s/ Celia McGuinness

CELIA McGUINNESS
Attorney for Plaintiffs
NICOLE BROWN-BOOKER and
JANA OVERBO

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24 Defendants.

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
ADMINISTRATIVE RELIEF
REQUESTING THAT THE PARTIES BE
RELEASED FROM GENERAL ORDER 56**

25 _____ /
26 IT IS HEREBY ORDERED that Plaintiff's Motion for Administrative Relief Requesting that
27 the Parties be Released from General Order 56 is ~~GRANTED~~ ^{DENIED} and advances the currently
28 scheduled Case Management Conference, currently set for November 7, 2008 to _____.
The Court allows discovery be opened immediately so that the parties can take necessary
depositions and propound written discovery to prove their claims.

29 Dated: _____



30 _____
31 HON. SUSAN ILLSTON
32 U.S. DISTRICT JUDGE

33 [Proposed] Order Granting Plaintiffs' Motion for
34 Administrative Relief: Case No. C07-4397 SI