

Sullivan, R.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

-against-

ROSA MEXICANO COMPANY, WEST 62
OPERATING LLC, FENIX RESTAURANT,
INC., and ROSA MEXICANO USQ LLC,

Defendants.

CONSENT DECREE

12 Civ. 7687 (RJS)

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WHEREAS, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181 *et seq.* ("ADA"), provides, among other things, that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation," 42 U.S.C. § 12182(a);

WHEREAS, the United States Attorney's Office for the Southern District of New York (the "United States"), pursuant to its authority under 42 U.S.C. § 12188(b)(1)(A)(i), commenced a compliance review of certain restaurants in New York City to determine whether those restaurants were operating in compliance with Title III of the ADA (the "Compliance Review");

WHEREAS, as part of the Compliance Review, the United States requested information from the owners and operators of the Rosa Mexicano restaurants located at 61 Columbus Avenue, New York, New York ("Rosa Mexicano Lincoln Center"), 1063 First Avenue, New York, New York ("Rosa Mexicano First Avenue"), and 9 East 18th Street, New York, New York ("Rosa Mexicano Union Square") (collectively, the "Restaurants");

WHEREAS, the United States conducted site inspections of Rosa Mexicano Lincoln Center and Rosa Mexicano Union Square on February 2, 2012, and Rosa Mexicano First Avenue on February 3, 2012;

WHEREAS, the owner of the Restaurants is Rosa Mexicano Company, and the operators of the Restaurants are West 62 Operating LLC ("West 62"), Fenix Restaurant, Inc. ("Fenix"), and Rosa Mexicano USQ LLC ("Rosa Mexicano USQ") (collectively, "Defendants");

WHEREAS, the United States commenced this action against Defendants to enforce certain provisions of the ADA under Title III, 42 U.S.C. §§ 12181 *et seq.*;

WHEREAS, the 1991 ADA Standards for Accessible Design ("1991 Standards"), 28 C.F.R. Pt. 36, Appendix D, was used to determine barriers to access that existed in the Restaurants;

WHEREAS, elements that are identified as not complying with the 1991 Standards shall be modified to comply with the 2010 Standards for Accessible Design ("2010 Standards"), which consist of the 2004 ADA Accessibility Guidelines ("ADAAG"), appendices B and D to 36 C.F.R. Pt. 1191, and the requirements contained in subpart D of 28 C.F.R. Pt. 36, 28 C.F.R. § 36.104;

WHEREAS, the complaint alleges that Defendants violated Title III of the ADA, 42 U.S.C. §§ 12181-89, and its implementing regulations, 28 C.F.R. Pt. 36, by, among other things, failing to make alterations in such a manner that, to the maximum extent feasible, made the Restaurants readily accessible to and usable by individuals with disabilities; failing to remove architectural barriers to access where it is readily achievable to do so; failing to use readily achievable alternatives to barrier removal where barrier removal is not readily achievable; and

failing to make reasonable modifications to policies, practices, and procedures to make the goods and services offered at the Restaurants accessible to individuals with disabilities;

WHEREAS, Defendants have consented to the entry of the Consent Decree without trial or adjudication of any issues of fact or law; and

WHEREAS the United States and Defendants agree that settlement of these matters without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188(b)(1)(B) and 28 U.S.C. §§ 1331 and 1345.
2. Venue lies in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) because the Restaurants are located within this District and the acts of discrimination alleged in the complaint occurred in this District.

II. APPLICATION AND PARTIES BOUND

3. This Consent Decree shall be binding on Defendants, their agents, and their employees. This Consent Decree shall also be binding on all of Defendants' successors, as well as any person or entity carrying on the same or similar use of the Restaurants. Defendants must promptly notify, in writing, all successors, as well as any other persons or entities carrying on the same or similar use of the Restaurants, of the existence of this Consent Decree and its contents.
4. The Restaurants are places of public accommodations within the meaning of 42 U.S.C. § 12181(7), because the operation of the Restaurants affects commerce and the

Restaurants are “restaurant[s], bar[s], or other establishment[s] serving food or drink.” 42 U.S.C. § 12181(7)(B); 28 C.F.R. § 36.104.

5. Defendants are governed by Title III of the ADA because they own and/or operate the Restaurants, which are places of public accommodation. *See* 42 U.S.C. § 12182(a); 28 C.F.R. § 36.104. Furthermore, Defendants made alterations subject to the requirements in 28 C.F.R. § 36.304.

III. FACILITIES COVERED BY THIS CONSENT DECREE

6. This Consent Decree shall apply to Rosa Mexicano Lincoln Center, Rosa Mexicano First Avenue, and Rosa Mexicano Union Square. It shall apply to all public use and common areas within the Restaurants. This includes, but is not limited to: public entrances, waiting areas, bar areas, dining areas, stairways, toilet rooms, corridors, and platform lifts.

7. This Consent Decree shall not absolve Defendants or any other person or entity from liability for any violation or potential violation of the ADA concerning any areas within the Restaurants not expressly included within the coverage of this Consent Decree. Nothing in this Consent Decree shall preclude the United States from commencing or continuing any investigation with respect to any facility or establishment not expressly included within the coverage of this Consent Decree, and nothing in this Consent Decree shall preclude the United States from commencing a civil action against any person or entity with respect to any areas of the Restaurants not expressly included in this Consent Decree’s coverage.

IV. GENERAL INJUNCTIVE RELIEF

8. Defendants, as well as their officers, agents, servants, employees, successors, and assigns, shall not discriminate against individuals with disabilities, and are enjoined from violating Title III of the ADA with respect to the Restaurants.

V. BARRIERS TO ACCESS

9. During the course of its investigation of the Restaurants, the United States identified barriers to access within all three Restaurants, which are described more fully below. Defendants shall remedy the barriers to access identified in this Consent Decree in the manner set forth below within 18 months after the date of entry of this Consent Decree, unless otherwise noted.

VI. ROSA MEXICANO LINCOLN CENTER

A. Entrances

10. The space between the two hinged doors in series at the main Columbus Avenue entrance is less than 48 inches, plus the width of the door swinging into space. *See* 1991 Standards §§ 4.1.3(8), 4.1.3(7)(a), 4.13.7.

Consent Decree Requirement: Within 180 days of the date of entry of this Consent Decree, Defendants shall install an automatic sliding door at the main Columbus Avenue entrance. 2010 Standards §§ 206.4 Exception 1, 206.5.1, 404.2.6, 404.3.

11. The route from the Columbus Avenue entrance to the upper level of the Restaurant is via a flight of stairs. Although an alternate entrance to the upper level is provided via the Harmony Atrium on 62nd Street, there is no directional signage at the Columbus Avenue entrance indicating the route to the Harmony Atrium alternate entrance. *See* 1991 Standards §§ 4.1.2(7)(c), 4.1.6(1)(h), 4.30.1, 4.30.2, 4.30.3, 4.30.5.

Consent Decree Requirement: Within 45 days of the date of entry of this Consent Decree, Defendants shall install a directional sign at the Columbus Avenue

entrance indicating the route to the alternate entrance via the Harmony Atrium on 62nd Street. 2010 Standards §§ 216.6, 703.5.

12. The designated accessible entrances to the Harmony Atrium on 62nd Street, from the Harmony Atrium upper level lobby to the rear access corridor, and from the rear access corridor to the upper level of the Restaurant, are not identified with the International Symbol of Accessibility. *See* 1991 Standards §§ 4.1.2(7)(c), 4.30.7.

Consent Decree Requirement: Within 45 days of the date of entry of this Consent Decree, Defendants shall install the International Symbol of Accessibility at the designated accessible entrances to the Harmony Atrium on 62nd Street, from the Harmony Atrium upper level lobby to the rear access corridor, and from the rear access corridor to the upper level of the Restaurant. 2010 Standards §§ 216.6, 404, 703.7.2.1.

13. The elevator hoistway entrances do not have raised and Braille floor designations on both jambs. *See* 1991 Standards §§ 4.1.3(5), 4.10.5.

Consent Decree Requirement: During the pendency of this litigation, Defendants installed raised and Braille floor designations on both jambs, and Defendants shall maintain such designations. 2010 Standards §§ 206.2.3, 206.6, 407.2.3.1, 703.2, 703.4.1.

14. (a) At the designated accessible entrance from the Harmony Atrium upper elevator lobby to the rear access corridor, the push side maneuvering clearance is less than 12 inches on the latch side of the door for a forward approach. *See* 1991 Standards §§ 4.1.3(7)(a), 4.13.6 & Fig. 25(a).

(b) At the designated accessible entrance from the Harmony Atrium upper elevator lobby to the rear access corridor, the pull side maneuvering clearance perpendicular to the door is less than 60 inches for a forward approach. *See* 1991 Standards §§ 4.1.3(7)(a), 4.13.6 & Fig. 25(a).

(c) At the designated accessible entrances from the Harmony Atrium upper elevator lobby to the rear access corridor, and from the rear access corridor to the Restaurant, the pull side maneuvering clearances on the latch sides of the doors are less than 18 inches for a forward approach. *See* 1991 Standards §§ 4.1.3(7)(a), 4.13.6 & Fig. 25(a).

Consent Decree Requirement: Within 90 days of the date of entry of this Consent Decree, Defendants shall install automatic door openers at the designated accessible entrance from the Harmony Atrium upper elevator lobby to the rear access corridor, and from the rear access corridor to the Restaurant. 2010 Standards §§ 206.5.2, 404.2.4, 404.3.

B. Lower Level Bar Area

15. The lower level bar area does not have a 60-inch minimum portion of the main counter located between 28 inches and 34 inches above the finish floor. It also does not have an accessible table. The lower level bar area does have a low folding counter, but the folding counter provides seating space for only one individual. *See* 28 C.F.R. § 36.302(a); 1991 Standards §§ 5.1, 4.1.3(18), 4.32, 4.2.4 & Fig. 45.

Consent Decree Requirement: Defendants shall ensure that, at all times, individuals with disabilities may receive at any table in the restaurant the same goods and services that such individuals would be entitled to receive at the bar, on

the same terms and conditions. *See* 28 C.F.R. § 36.302; 2010 Standards §§ 226.1, 902.2, 305, 306, 902.3.

C. Stairway to Upper Level

16. The stairway from the lower level of the Restaurant to the upper level has open risers. *See* 1991 Standards §§ 4.1.3 (4), 4.9.2.

Consent Decree Requirement: If Defendants complete the remedial measures described in paragraphs 11, 12, and 14 within the time periods specified in those paragraphs, Defendants shall not be required to close the stairway risers. 2010 Standards §§ 210.1.2. If Defendants fail to complete those remedial measures within the specified time periods, Defendants shall close the stairway risers within 120 days. 2010 Standards §§ 210.1, 504.3.

17. The stairway flight from the lower level to the first landing does not have a handrail on both sides. 1991 Standards §§ 4.1.3(4), 4.9.4, 4.26.

Consent Decree Requirement: Within 120 days of the date of entry of this Consent Decree, Defendants shall install a duplicate of the existing handrail on the side of the stairway flight adjacent to the hostess stand leading from the lower level to the first landing. 2010 Standards §§ 210.1, 504.6 and 505.

D. Upper Level Corridor

18. Wall sconces are mounted between 27 inches and 80 inches above the finish floor leading to the edge, and project more than four inches into the circulation path. *See* 1991 Standards §§ 4.1.3(2), 4.4.1.

Consent Decree Requirement: During the pendency of this litigation, Defendants readjusted the wall sconces so that they protrude no more than four inches

horizontally into the circulation path, and Defendants shall maintain this accessibility improvement. 2010 Standards §§ 204.1, 307.2.

E. Toilet Rooms

19. Defendants failed to create any accessible restrooms at the Restaurant. 1991 Standards §§ 4.1.3(11), 4.1.6(e), 4.23. *See also* 2010 Standards §§ 603, 604, 605, 606.

Consent Decree Requirement: Defendants shall ensure that the accessible restroom at the Harmony Atrium is available to all Restaurant patrons at any time the Restaurant is open. If the United States determines, based upon its own testing or receipt of complaints from patrons, that the accessible restroom at the Harmony Atrium has not been available on 6 or more occasions during a one-year period, Defendants shall pay to the United States an additional civil penalty of \$10,000, pursuant to 42 U.S.C. § 12188(b)(2)(C)(i). Furthermore, within 45 days of the date of entry of this Consent Decree, Defendants shall install directional signage at the Columbus Avenue entrance indicating the location of the accessible restroom. 2010 Standards §§ 216.8, 703.5.

20. A sign in raised characters and Braille identifying the men's and women's multi-user toilet rooms located within the Restaurant is not provided. *See* 1991 Standards §§ 4.1.3(16)(a), 4.30.1, 4.30.4, 4.30.5, 4.30.6. A directional sign indicating the location of the nearest accessible restroom is also not provided. *See id.* §§ 4.1.3(16)(b), 4.30.2, 4.30.3, 4.30.5. In addition, the tactile sign identifying the unisex toilet room located in the Harmony Atrium upper elevator lobby is not mounted at exactly 60 inches to the centerline of the sign above the finish floor. *See id.* §§ 4.1.3(16)(a), 4.30.6.

Consent Decree Requirement: Within 45 days of the date of entry of this Consent Decree, Defendants shall install a sign in raised characters and Braille located alongside the door on the latch side at 48 inches minimum above the finish floor, measured from the baseline of the lowest tactile character, and 60 inches maximum above the finish floor, measured from the baseline of the highest tactile character, that identifies the men's and women's multi-user toilet rooms. 2010 Standards §§ 216.2, 703.1, 703.2, 703.3, 703.4, 703.5. Also within 45 days of the date of entry of this Consent Decree, Defendants shall install a directional sign indicating the location of the nearest accessible restroom within the facility that includes the International Symbol of Accessibility. *Id.* §§ 216.8, 703.7.2.1, 703.5.

21. No clear floor space is provided at the toilet seat cover dispenser in the unisex toilet room located in the Harmony Atrium upper elevator lobby. *See* 1991 Standards §§ 4.1.3(11), 4.22.7, 4.27.2, 4.2.4.

Consent Decree Requirement: During the pendency of this litigation, Defendants provided a toilet seat cover dispenser with a clear floor space 30 inches maximum by 48 inches minimum, and Defendants shall maintain this dispenser. 2010 Standards §§ 205.1, 309.2, 305.

VII. ROSA MEXICANO FIRST AVENUE

A. Entrances

22. There is a 4-inch step at the main First Avenue entrance. Although an alternate entrance is provided on 58th Street, there is no directional signage on the weather enclosure at the First Avenue entrance indicating the route to the 58th Street alternate entrance. *See* 1991 Standards §§ 4.1.2(7)(c), 4.1.6(1)(h), 4.30.2, 4.30.3, 4.30.5.

Consent Decree Requirement: Within 45 days of the date of entry of this Consent Decree, Defendants shall provide a directional sign at the First Avenue entrance weather enclosure that indicates the location of the 58th Street entrance. 2010 Standards §§ 216.6, 703.5.

23. The clear opening width of each single leaf of the double leaf door at the 58th Street alternate entrance is less than 32 inches. *See* 1991 Standards §§ 4.1.3(8), 4.1.3(7)(a), 4.13.4, 4.13.5 & Fig. 24(a).

Consent Decree Requirement: Within 120 days of the date of entry of this Consent Decree, Defendants shall modify at least one of the leaves of the double leaf doorway at 58th Street so that it provides a clear opening width of 32 inches minimum. 2010 Standards §§ 206.4.1, 206.5.1, 404.2.2, 404.2.4.

24. Door hardware is not provided on the exterior of the door at the 58th Street alternate entrance. *See* 1991 Standards §§ 4.1.3(8), 4.1.3(7)(a), 4.13.9.

Consent Decree Requirement: Within 120 days of the date of entry of this Consent Decree, Defendants shall install door hardware that is operable with one hand and does not require tight grasping, tight pinching or twisting of the wrist at the 58th Street alternate entrance. 2010 Standards §§ 206.4.1, 206.5.1, 404.2.7, 309.4.

25. The change in level at the door threshold at the 58th Street alternate entrance exceeds ¾ inch and is not beveled. *See* 1991 Standards §§ 4.1.3(8), 4.1.3(7)(a), 4.1.6(3)(d)(ii), 4.13.8, 4.5.2.

Consent Decree Requirement: Within 120 days of the date of entry of this Consent Decree, Defendants shall modify the 58th Street alternate entrance to be

in accordance with sections 206.4.1, 206.5.1, 404.2.5, and 303 of the 2010 Standards. Thresholds shall be ½ inch high maximum. Changes in level of ¼ inch high maximum shall be permitted to be vertical. Changes in level between ¼ inch high minimum and ½ inch high maximum shall be beveled with a slope not steeper than 1:2.

B. Dining Areas

26. There is a 43-inch high drink rail in the bar dining area, but there is no lowered portion of the drink rail. *See* 1991 Standards §§ 5.1, 4.1.3(18), 4.32, 4.2.4 & Fig. 45.

Consent Decree Requirement: Defendants shall ensure that, at all times, individuals with disabilities may receive at any table in the Restaurant the same goods and services that such individuals would be entitled to receive at the bar, on the same terms and conditions. *See* 28 C.F.R. § 36.302; 2010 Standards §§ 226.1, 902.2, 305, 306, 902.3.

27. The head room under the dropped ceiling surrounding the tortilla station is less than 80 inches above the finish floor. *See* 1991 Standards §§ 4.1.3(2), 4.4.2.

Consent Decree Requirement: Within 120 days of the date of entry of this Consent Decree, Defendants shall modify the dropped ceiling surrounding the tortilla station so that the vertical clearance is 80 inches high minimum. 2010 Standards §§ 204.1, 307.4.

C. Toilet Rooms

28. The Restaurant lacks an accessible restroom. 1991 Standards §§ 4.1.3(11), 4.1.6(e), 4.23. *See also* 2010 Standards §§ 603, 604, 605, 606.

Consent Decree Requirement: Within 18 months of the date of entry of this Consent Decree, Defendants shall provide a unisex accessible restroom on an accessible route. Defendants shall submit the architectural plans for the unisex accessible restroom to the undersigned counsel for the United States within 3 months of the date of entry of this Consent Decree. The United States shall have 30 days to review and approve the plans for the unisex accessible restroom. 2010 Standards §§ 206.2.4, 206.5.2, 213, 216.2, 216.8, 404, 603, 604, 605, 606, 703.1, 703.2, 703.3, 703.4, 703.5, 703.7.2.1.

29. Signs with raised characters and Braille identifying the men's and women's toilet rooms¹ are not provided. *See* 1991 Standards §§ 4.1.3(16)(a), 4.30.1, 4.30.4, 4.30.5, 4.30.6.

Consent Decree Requirement: Within 45 days of the date of entry of this Consent Decree, Defendants shall install a sign in raised characters and Braille located alongside the door on the latch side at 48 inches minimum above the finish floor, measured from the baseline of the lowest tactile character and 60 inches maximum above the finish floor, measured from the baseline of the highest tactile character. 2010 Standards §§ 216.2, 703.1, 703.2, 703.3, 703.4, 703.5.

30. An accessible lavatory is not provided in the women's toilet rooms. *See* 1991 Standards §§ 4.1.3(11), 4.22.6, 4.19.

Consent Decree Requirement: Within 18 months of the date of entry of this Consent Decree, Defendants shall provide a unisex accessible restroom with an

¹ There are two women's toilet rooms at Rosa Mexicano First Avenue, both of which are located on the main level. The women's toilet rooms are similar in configuration and dimension, and the violations and Consent Decree requirements listed in this section apply to both toilet rooms unless otherwise noted.

accessible lavatory on an accessible route. 2010 Standards §§ 206.2.3, 213, 213.3.4, 603, 606.

31. The clear opening width of the women's toilet room doors are less than 32 inches.

See 1991 Standards §§ 4.1.3(7)(b), 4.13.5 & Fig. 24(a).

Consent Decree Requirement: The unisex accessible restroom that Defendants shall provide within 18 months of the date of entry of this Consent Decree shall include a door opening that provides a clear width of 32 inches minimum. 2010 Standards §§ 206.5.2, 404.2.3.

32. The pull side maneuvering clearance for the women's toilet rooms is less than 18 inches on the latch side of the door for a forward approach. 1991 Standards §§ 4.1.3(7)(b), 4.13.6 & Fig. 25(a).

Consent Decree Requirement: The unisex accessible restroom that Defendants shall provide within 18 months of the date of entry of this Consent Decree shall include a pull side maneuvering clearance of a minimum of 18 inches on the latch side of the door for a forward approach. 2010 Standards §§ 206.5.2, 404.2.4.

33. The doors to the women's toilet rooms have knob hardware. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.9.

Consent Decree Requirement: The unisex accessible restroom that Defendants shall provide within 18 months of the date of entry of this Consent Decree shall include door hardware that is operable with one hand and does not require tight grasping, tight pinching or twisting of the wrist. 2010 Standards §§ 206.5.2, 404.2.7, 309.4.

34. The women's toilet rooms lack a 60 inch diameter or T-shaped turning space. *See* 1991 Standards §§ 4.1.3(11), 4.22.3, 4.2.3 & Fig. 3.

Consent Decree Requirement: The unisex accessible restroom that Defendants shall provide within 18 months of the date of entry of this Consent Decree shall include a turning space of 60 inches diameter minimum, or a T-shaped space within a 60 inch square minimum with arms and base 36 inches wide minimum. 2010 Standards §§ 213.2, 603.2.2, 304.

35. A 60-inch wide accessible toilet stall is not provided in the women's toilet room. *See* 1991 Standards §§ 4.1.3(11), 4.22.4, 4.16. 4.17.

Consent Decree Requirement: The unisex accessible restroom that Defendants shall provide within 18 months of the date of entry of this Consent Decree shall include an accessible toilet with a side and a rear grab bar. 2010 Standards §§ 213.3.2, 604.1-604.7, 609.

36. The push side maneuvering clearance perpendicular to the door of the left-hand women's toilet room is less than 48 inches for a forward approach. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.6 & Fig. 25(a).

Consent Decree Requirement: The unisex accessible restroom that Defendants shall provide within 18 months of the date of entry of this Consent Decree shall include a minimum of 48 inches perpendicular to the door for a forward approach. 2010 Standards §§ 206.5.2, 404.2.4.

37. The men's toilet room is located down a flight of stairs, and the stairway does not have a handrail on both sides. *See* 1991 Standards §§ 4.1.3(4), 4.9.4, 4.26.

Consent Decree Requirement: Within 60 days of the date of entry of this Consent Decree, Defendants shall provide handrails on both sides of the stairway to the men's toilet room. 2010 Standards §§ 210.1, 504.6, 505.

VIII. ROSA MEXICANO UNION SQUARE

A. Entrances

38. (a) The main entrance to Rosa Mexicano Union Square is located five risers above the sidewalk. An alternate entrance is provided at 9-13 East 18th Street, which requires assistance in opening the exterior building door and the Rosa Mexicano side door, as well as installing two portable ramps—one from the sidewalk to the exterior building door, and another through the Rosa Mexicano side door.¹ The slope of the portable ramp from the sidewalk to the exterior building door at the 9-13 East 18th Street entrance exceeds 1:12. Similarly, a route with a slope greater than 1:20 is considered a ramp, and the slope of the route from the exterior building door to the Rosa Mexicano side door exceeds 1:12. *See* 28 C.F.R. §§ 36.302(a), 36.304(e); 1991 Standards §§ 4.1.2(1), 4.1.3(1), 4.3.7, 4.8.2.

(b) The portable ramp from the sidewalk to the exterior building door lacks a 60-inch long level landing at the top and bottom of the ramp run. *See* 28 C.F.R. §§ 36.302(a), 36.304(e); 1991 Standards §§ 4.1.2(1), 4.3.7, 4.8.4.

(c) The portable ramp from the sidewalk to the exterior building door has a rise greater than 6 inches and does not have handrails on both sides. Handrails also are not provided on both sides of the ramp run between the exterior building door and the Rosa Mexicano side entrance. *See* 28 C.F.R. §§ 36.302(a), 36.304(e); 1991 Standards §§ 4.1.2(1), 4.1.3(1), 4.3.7, 4.8.5.

² There is a two-way intercom system at the main entrance that allows an individual to request assistance from the host station inside the Restaurant.

(d) The edge protection along the drop off for both portable ramps is less than 2 inches high. *See* 28 C.F.R. §§ 36.302(a), 36.304(e); 1991 Standards §§ 4.1.2(1), 4.3.7, 4.8.7 & Fig. 17.

Consent Decree Requirement: Within 18 months of the date of entry of this Consent Decree, Defendants shall use their best efforts to (i) formulate a readily achievable proposal to make either the Restaurant's main entrance or the alternate entrance at 9-13 East 18th Street accessible; (ii) obtain the approvals necessary to implement the proposal from, among others, the New York City Department of Buildings ("DOB"), Landmarks Commission ("Landmarks"), and the Restaurant's landlord; and (iii) implement the proposal to provide an accessible entrance if readily achievable. 28 C.F.R. §§ 36.302(a), 36.304(a), 36.304(e); 2010 Standards §§ 206.2.1, 206.2.4, 206.4.1, Chapter 4. Defendants shall submit the architectural plans for the accessible entrance to the undersigned counsel for the United States within 3 months of the date of entry of this Consent Decree. Defendants' time to comply with this provision of the Consent Decree shall be tolled during the period of the United States' review. The United States shall have 30 days to review and approve the plans for the accessible entrance. In the event there is not a readily achievable solution or Defendants' proposal does not obtain the necessary approval from a state or local agency, Defendants shall, within 90 days, provide portable ramps that comply with subparts (a) through (d), to the extent doing so is readily achievable. 28 C.F.R. § 36.304(a).

39. Both portable ramps have a width of less than 36 inches. *See* 28 C.F.R. §§ 36.302(a), 36.304(e); 1991 Standards §§ 4.1.2(1), 4.3.7, 4.8.3.

Consent Decree Requirement: Within 45 days of the date of entry of this Consent Decree, as an interim measure pending Defendants' completion of an accessible entrance as described in paragraph 38 above, Defendants shall provide portable ramps with a width of at least 36 inches provided that it is readily achievable to do so. Also within 45 days of the date of entry of this Consent Decree, Defendants shall train their employees in the proper deployment, use, and storage of the portable ramps. 28 C.F.R. §§ 36.302(a), 36.304(a), 36.304(e); 2010 Standards §§ 206.2.1, 206.4.1, 402.2, 405.5.

40. The top of the gripping surface of the existing handrail between the exterior building door and the Rosa Mexicano side entrance is between 30 and 32 inches above the ramp surface. In addition, handrails are not provided on both sides of the ramp run. *See* 1991 Standards §§ 4.1.3(1), 4.3.7, 4.8.5, 4.8.5(5).

Consent Decree Requirement: Within 90 days of the date of entry of this Consent Decree, Defendants shall ensure that the top of the gripping surface of the existing handrail is 34 inches minimum and 38 inches maximum vertically above the ramp surface. Also within 90 days of the date of entry of this Consent Decree, Defendants shall install a handrail from the newel post at the stairs to the elevator door, the tops of whose gripping surfaces are 34 inches minimum and 38 inches maximum vertically, provided that it is readily achievable to do so. 28 C.F.R. §36.304(a); 2010 Standards §§ 206.2.4, 206.4.1, 402.2, 405.8, 505, 505.4.

B. Waiting Area

41. A clear floor space for an individual in a wheelchair is not provided in the waiting area. *See* 1991 Standards §§ 4.1.3(18), 4.32.2 & Fig. 45.

Consent Decree Requirement: During the pendency of this litigation, Defendants created a clear floor space 30 inches minimum by 48 inches minimum in the waiting area, and Defendants shall maintain the clear floor space. 28 C.F.R. § 36.302(a); 2010 Standards § 305.

C. Platform Lift to Raised Dining Area

42. Door hardware is not provided on the upper level platform lift door. *See* 1991 Standards §§ 4.1.3(7)(b) and 4.13.9.

Consent Decree Requirement: During the pendency of this litigation, Defendants installed door hardware that is operable with one hand and does not require tight grasping, tight pinching or twisting of the wrist, and Defendants shall maintain this door hardware. 2010 Standards §§ 206.2.4, 206.5.2, 404.2.7, 309.4.

D. Bar Area

43. Neither a 60-inch minimum portion of the main bar counter located between 28 inches and 34 inches above the finish floor nor an accessible table is provided in the bar area. A low counter is provided in the bar area, but the counter is less than 30 inches wide and only provides seating space for one individual. *See* 28 C.F.R. § 36.302(a); 1991 Standards §§ 5.1, 4.1.3(18), 4.32, 4.2.4 & Fig. 45.

Consent Decree Requirement: Defendants shall ensure that, at all times, individuals with disabilities may receive at any table in the Restaurant the same goods and services that such individuals would be entitled to receive at the bar, on the same terms and conditions. *See* 28 C.F.R. § 36.302; 2010 Standards §§ 226.1, 902.2, 305, 306, 902.3.

E. Toilet Rooms

44. For the women's multi-user toilet room, the pull side maneuvering clearance perpendicular to the door is less than 54 inches for a latch side approach. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.6 & Fig. 25(c).

Consent Decree Requirement: Within 120 days of the date of entry of this Consent Decree, Defendants shall install an automatic door opener. 2010 Standards §§ 206.5.2, 404.2.4, 404.3.

45. For the men's multi-user toilet room, the force required to open the toilet room door exceeds 5 pounds. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.11(2)(b).

Consent Decree Requirement: During the pendency of this litigation, Defendants ensured that the force required for pushing or pulling the door does not exceed 5 pounds maximum, and Defendants shall maintain this accessibility improvement. 2010 Standards §§ 206.5.2, 404.2.9.

46. The rim of a typical urinal in the men's multi-user toilet rooms exceeds 17 inches above the finish floor. *See* 1991 Standards §§ 4.1.3(11), 4.22.5, 4.18.2.

Consent Decree Requirement: Within 150 days of the date of entry of this Consent Decree, Defendants shall install a urinal with a rim no more than 17 inches above the finish floor. 2010 Standards §§ 213.3.3, 605.2.

47. Clear floor space at a typical lavatory in the women's multi-user toilet room is less than 30 inches wide. *See* 1991 Standards §§ 4.1.3(11), 4.22.6, 4.19.3 & Fig. 32.

Consent Decree Requirement: Within 150 days of the date of entry of this Consent Decree, Defendants shall ensure that a lavatory in the women's multi-user toilet room has a clear floor space 30 inches minimum by 48 inches

minimum positioned for a forward approach. 2010 Standards §§ 213.3.4, 606.2, 305.

48. Clearance underneath the lavatory aprons in the men's and women's multi-user toilet rooms is less than 29 inches above the finish floor. *See* 1991 Standards §§ 4.1.3(11), 4.22.6, 4.19.2 & Fig. 31.

Consent Decree Requirement: Within 150 days of the date of entry of this Consent Decree, Defendants shall provide a lavatory with knee clearance a minimum of 27 inches above the finish floor. 2010 Standards §§ 213.3.4, 606.2, 306.3.

49. The rim of a typical lavatory in the men's and women's multi-user toilet rooms exceeds 34 inches above the finish floor. *See* 1991 Standards §§ 4.1.3(11), 4.22.6, 4.19.2 & Fig. 31.

Consent Decree Requirement: Within 150 days of the date of entry of this Consent Decree, Defendants shall provide a lavatory with the front of the higher of the rim or counter surface 34 inches maximum above the finish floor. 2010 Standards §§ 213.3.4, 606.3.

50. The hot water and drain pipe under a typical lavatory in the men's and women's multi-user toilet rooms are not insulated or otherwise configured against contact. *See* 1991 Standards §§ 4.1.3(11), 4.22.6, 4.19.4.

Consent Decree Requirement: During the pendency of this litigation, Defendants insulated or otherwise configured against contact the water supply and drain pipes under the men's and women's lavatories, and Defendants shall maintain this insulation. 2010 Standards §§ 213.3.4, 606.5.

51. The mirror above the lavatories in the men's multi-user toilet room is mounted with the bottom edge of the reflecting surface more than 40 inches above the finish floor. *See* 1991 Standards §§ 4.1.3(11), 4.22.6, 4.19.6 & Fig. 31.

Consent Decree Requirement: During the pendency of this litigation, Defendants installed a full-length mirror in the men's multi-user toilet room, and Defendants shall maintain this mirror. 2010 Standards §§ 213.3.5, 603.3.

52. The storage shelves for paper towels in the men's and women's multi-user toilet rooms exceed 48 inches above the finish floor for a forward reach. *See* 1991 Standards §§ 4.1.3(12)(a), 4.25.3, 4.2.5 & Fig. 5.

Consent Decree Requirement: Within 150 days of the date of entry of this Consent Decree, Defendants shall provide storage shelf for paper towels mounted 48 inches maximum above the finish floor for an unobstructed forward reach or 44 inches maximum for an obstructed forward reach. 2010 Standards §§ 213.3.7, 603.4 & 308.

53. A directional sign indicating the location of the nearest accessible restroom is not provided. *See* 1991 Standards §§ 4.1.3(16)(b), 4.30.2, 4.30.3, 4.30.5.

Consent Decree Requirement: Within 45 days of the date of entry of this Consent Decree, Defendants shall install a directional sign indicating the location of the nearest accessible restroom within the facility and including the International Symbol of Accessibility. 2010 Standards §§ 216.8, 703.2.1, 703.5.

54. Men's and women's unisex toilet rooms are located within each multi-user toilet room. For the men's unisex toilet room, the pull side maneuvering clearance on the latch side of

the door is less than 18 inches for a depth of 60 inches for a forward approach. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.6 & Fig. 25(a).

Consent Decree Requirement: Within 120 days of the date of entry of this Consent Decree, Defendants shall install a compliant automatic door opener in the men's unisex toilet room. 2010 Standards §§ 206.5.2, 404.2.4.

55. The locks for the men's and women's unisex toilet room doors require tight pinching and twisting to operate. *See* 1991 Standards §§ 4.1.3(7)(b), 4.13.9.

Consent Decree Requirement: Within 120 days of the date of entry of this Consent Decree, Defendants shall install door hardware that is operable with one hand and does not require tight grasping, tight pinching or twisting of the wrist. 2010 Standards §§ 206.5.1, 404.2.7, 309.4.

56. The rear toilet grab bar in the men's unisex toilet room is less than 36 inches long. *See* 1991 Standards §§ 4.1.3(11), 4.22.4, 4.16.4 & Fig. 29(a).

Consent Decree Requirement: During the pendency of this litigation, Defendants installed a rear wall grab bar that is 36 inches long minimum and extends from the centerline of the water closet 12 inches minimum on one side and 24 inches minimum on the other side, and Defendants shall maintain this grab bar. 2010 Standards §§ 213.3.2, 604.5.2, 609.

57. No clear floor space is provided at the toilet seat cover dispensers in either the men's or women's unisex toilet rooms. *See* 1991 Standards §§ 4.1.3(11), 4.22.7, 4.27.2, 4.2.4.

Consent Decree Requirement: Within 45 days of the date of entry of this Consent Decree, Defendants shall install a toilet seat cover dispenser with a clear floor

space 30 inches minimum by 48 inches minimum. 2010 Standards §§ 205.1, 309.2, 305.

58. The coat hooks in the men's and women's unisex toilet rooms exceed 54 inches above the finish floor for a side reach. See 1991 Standards §§ 4.1.3(12)(a), 4.25.3, 4.2.6 & Fig. 6.

Consent Decree Requirement: During the pendency of this litigation, Defendants installed additional coat hooks in the men's and women's unisex toilets that do not exceed 48 inches above the finish floor for a side reach, and Defendants shall maintain these hooks. 2010 Standards §§ 213.3.7, 603.4, 308.3.

IX. REPORTING AND CERTIFICATION

59. At six-month intervals from the date of entry of this Consent Decree, Defendants shall provide the United States with a written report of their progress in complying with the requirements of this Consent Decree. Within 18 months after the date of entry of this Consent Decree, Defendants shall submit to the United States a certification, under penalty of perjury, stating that they have complied with all obligations of this Consent Decree that are required to be satisfied or completed at that time.

X. RIGHT TO REVIEW COMPLIANCE

60. Upon reasonable advance notice to Defendants (through undersigned counsel), Defendants shall permit the United States and any person acting on its behalf unrestricted access to the Restaurants to review compliance with the ADA and this Consent Decree at a time not interfering with guest services. If the United States believes that Defendants have violated this Consent Decree or are otherwise not in full compliance with the ADA, the United States will

notify Defendants in writing and seek to resolve the matter amicably before applying to the Court for relief.

XI. CIVIL PENALTY

61. Pursuant to 42 U.S.C. § 12188(b)(2)(C)(i), Defendants shall within thirty (30) days of the date of entry of this Consent Decree pay to the Government a civil penalty in the amount of \$30,000.

XII. VIOLATION OF THIS CONSENT DECREE

62. A violation of this Consent Decree shall be deemed a subsequent violation of Title III of the ADA. 42 U.S.C. § 12181 *et seq.*

XIII. MODIFICATION

63. There shall be no modification of this Consent Decree without the written consent of the United States and Defendants, and the approval of the Court.

XIV. ENTIRE AGREEMENT

64. This Consent Decree represents the entire agreement between the United States and Defendants. No prior agreements, oral representations, or statements shall be considered part of this Consent Decree.

XV. RETENTION OF JURISDICTION

65. This Court shall retain jurisdiction of this action for a period of three years from the date of the certification required by paragraph 59 of this Consent Decree to enforce or modify the provisions of this Consent Decree, to resolve any dispute that arises under this Consent Decree, and to entertain any application and issue any orders (including, without limitation, orders directing the modification of policies, practices, and procedures, and orders requiring the removal of barriers to access) as may be necessary or appropriate for the effectuation of its

terms. The parties shall discuss and attempt to negotiate a resolution of any dispute relating to the interpretation or enforcement of this Consent Decree before bringing the matter to the Court's attention for resolution.

XVI. EXECUTION OF CONSENT DECREE

66. This Consent Decree may be executed in counterparts, each of which shall be an original and shall constitute one and the same instrument.


XVII. COSTS AND ATTORNEY FEES

67. All parties shall bear their own costs and attorneys' fees in this action.

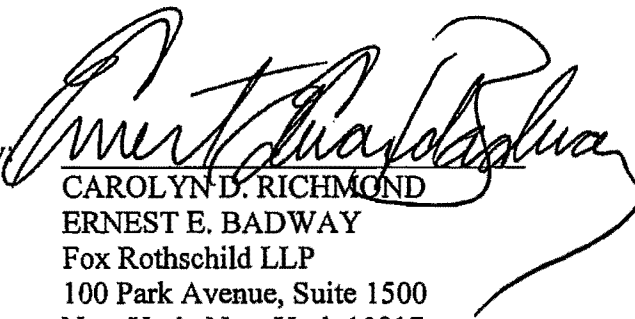
THE PARTIES HEREBY CONSENT to entry of the foregoing Consent Decree:

Dated: New York, New York
January 28, 2013

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States of America

By: 
CHRISTOPHER CONNOLLY
AMY A. BARCELO
CRISTINE IRVIN PHILLIPS
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2761 / 6559 / 2696
Fax: (212) 627-2786
E-mail: christopher.connolly@usdoj.gov
amy.barcelo@usdoj.gov
cristine.phillips@usdoj.gov

Dated: New York, New York
January 28, 2013

By: 
CAROLYN D. RICHMOND
ERNEST E. BADWAY
Fox Rothschild LLP
100 Park Avenue, Suite 1500
New York, New York 10017
Tel.: (212) 878-7900
Fax: (212) 692-0940
E-mail: crichmond@foxrothschild.com
ebadway@foxrothschild.com
Attorneys for Defendants

JUDGMENT IS HEREBY ENTERED in accordance with the foregoing Consent Decree.

Dated: New York, New York
January 29, 2013


HON. RICHARD J. SULLIVAN, U.S.D.J.