

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
MODESTO HERNANDEZ,
an individual, :

Plaintiff, :

vs. :

WILDLIFE CONSERVATION SOCIETY,
A New York Non-Profit Corporation, :
NEW YORK CITY DEPARTMENT OF :
PARKS AND RECREATION, :
a division of the City of New York, and :
CITY OF NEW YORK :

Defendants. :
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STIPULATED SETTLEMENT AND ORDER

No. 10-CV-4916 (DLC)

ECF CASE

This Stipulated Settlement and Order is entered into by and between Plaintiff **Modesto Hernandez** ("Plaintiff"), and Defendants **Wildlife Conservation Society** ("WCS") and the **City of New York** ("the City") (collectively, "Defendants"), on the date last executed below, and subsequently approved by this Court.

WHEREAS, WCS operates the Bronx Zoo ("Bronx Zoo") located at 2300 Southern Boulevard, Bronx, NY 10460 and other similar facilities (collectively, "the Facilities") in New York City parkland;

WHEREAS, on June 24, 2010, Plaintiff filed an action against WCS and the New York City Department of Parks and Recreation in the United States District Court for the Southern District of New York (the "Court"), Civil Action No. 10-CV-4916 (DLC), on October 6, 2010, Plaintiff filed an Amended Complaint naming the City of New York as an additional defendant, and, on January 13, 2011, Plaintiff voluntarily dismissed his claims against the New York City Department of Parks and Recreation, with prejudice;

WHEREAS, Plaintiff's Amended Complaint alleges the existence of architectural barriers at the Bronx Zoo and seeks relief for alleged violations of Title II and Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq., the New York State Human Rights Law, N.Y. Exec. Law § 290, et seq., and the New York Civil Rights Law, N.Y. Civ. Rights § 40, et seq.;

WHEREAS, the parties desire to fully and finally resolve all matters relating to the allegations in Plaintiff's Amended Complaint which were or which could have been asserted against the Defendants ("the Claims");

WHEREAS, the parties have reached agreement as to certain readily achievable and program access modifications and other remedies to address the Claims;

NOW, THEREFORE, in consideration for fully and finally resolving the Claims, the parties have agreed to compromise and settle this suit upon the following terms and conditions:

1. Subject to the Court approving and ratifying this Stipulated Settlement, the parties hereby agree and will request the Court to enter a final order of dismissal with prejudice as to all the Claims, providing retention of jurisdiction by the Court to enforce, as necessary, the terms of this Stipulated Settlement.

2. This Stipulated Settlement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and/or assigns. The parties shall perform their obligations under the Stipulated Settlement in good faith.

3. WCS shall make reasonable efforts to complete all applicable modifications and program enhancements referenced in the attached ADA Accessibility Plan, which is incorporated herein by reference, within twenty-four (24) months from the date this Stipulated Settlement is entered by the Court. Any delays in making such modifications that are caused by third parties, including but not limited to acts of God, construction contractors, or building officials, inspectors, or permitting departments, will not be deemed to violate the compliance date as long as WCS makes a good faith effort to effect implementation as soon as reasonably possible thereafter.

4. In addition to the modifications referenced in the attached ADA Accessibility Plan, WCS shall, within twelve (12) months from the date this Stipulated Settlement is entered by the Court, establish an ADA consultative process. The purpose of this process shall be to review accessibility at all Facilities, to engage in disability community outreach, and to consider and implement, if appropriate and readily achievable, additional modifications and/or ideas for program enhancements other than those set forth in the attached ADA Accessibility Plan. WCS shall keep the City apprised of matters under consideration and the results of the ADA consultative process and the City may provide advice and consultation to WCS in connection with such process. WCS shall consider the recommendations from the ADA consultative process when undertaking improvements or modifications to the Facilities, but WCS shall not be obligated to implement any recommendation from the ADA consultative process.

5. Plaintiff, for and in consideration for the benefits described in this Stipulated Settlement, and intending to be legally bound, hereby releases, covenants not to sue, and forever discharges Defendants and their trustees, officers, employees, agents, administrators, insurers, or successors, and any department, agency, establishment, or facility of any Defendant, and any trustees, officers, employees, agents, insurers, or successors of any such department, agency, establishment, or facility from all causes of action, suits, debts, claims, and demands whatsoever, in law or in equity, which Plaintiff, his heirs, executors, or administrators ever had, now have, or may have, by reason of any matter, cause, or thing whatsoever, whether known or unknown,

from the beginning of time until the date the Court approves this Stipulated Settlement including, without limitation, all the Claims which were or could have been asserted in the Amended Complaint at the time it was filed, and all claims arising under Title II or Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq., the New York State Human Rights Law, N.Y. Exec. Law § 290, et seq., and the New York Civil Rights Law, N.Y. Civ. Rights § 40, et seq., with the sole exception of claims arising under the express provisions of this Agreement.

6. No party to this Stipulated Settlement shall be responsible for implementing or performing any obligation or responsibility of any other party under this Stipulated Settlement.

7. Neither this Stipulated Settlement nor any order approving this Stipulated Settlement is or shall be construed as an admission by any Defendant of the truth of any allegation or the validity of any claim asserted in Plaintiff's Amended Complaint, or of any Defendant's liability therefor, nor as a concession or an admission of any fault or omission of any act or failure to act, or of any statement, written document, or report heretofore issued, filed or made by any Defendant, nor shall this Stipulated Settlement nor any confidential papers related hereto and created for settlement purposes only, nor any of the terms of either, be offered or received as evidence of discrimination in any civil, criminal, or administrative action or proceeding, nor shall they be construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of any Defendant, nor as an admission by any party to this Stipulated Settlement that the consideration to be given hereunder represents the relief which could be recovered after trial. However, nothing herein shall be construed to preclude the use of this Stipulated Settlement in order to effectuate the consummation, enforcement, or modification of its terms.

8. This Stipulated Settlement shall not become binding if it fails to be approved by the Court or if for any reason it is rendered ineffective in any judicial proceeding before initially taking effect. Should it fail to become binding, this Stipulated Settlement shall become null and void and shall have no further force and effect, except for the obligations of the parties under this Paragraph 8. Further, in that event: this Stipulated Settlement; all negotiations in connection herewith; all internal, private discussions among the Defendants conducted in furtherance of the settlement process to determine the advisability of approving this Stipulated Settlement and all statements made by the parties or submitted to the Court shall be without prejudice to any person or party to this Stipulated Settlement, and shall not be deemed or construed to be an admission by any party to this Stipulated Settlement of any fact, matter, or proposition.

9. This Stipulated Settlement may be executed in any number of counterparts, and with facsimile signatures, with the same effect as if all of the parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

10. Prior to final approval by the Court, this Stipulated Settlement may only be modified by the written agreement of the parties. Upon and following final approval by the Court, this Stipulated Settlement may only be modified by Court order. No verbal representations of conduct of any kind shall be considered in connection with the interpretation of this Agreement.

NOW, THEREFORE, THE PARTIES HAVE REACHED FULL AND FINAL AGREEMENT AS TO THE MODIFICATIONS AND COMPROMISES SET FORTH IN

THIS STIPULATED SETTLEMENT AND THE ATTACHED ADA ACCESSIBILITY PLAN AND THE COURT SPECIFICALLY FINDS THAT THIS AGREEMENT IS JUST, PROPER, AND REASONABLE.

So ordered.

Janice Cole

February 15, 2011

IN WITNESS WHEREOF, THE PARTIES SIGN THIS STIPULATION OF SETTLEMENT ON THE DATES SET FORTH UNDER THEIR NAMES:

Modesto Hernandez

By: [Signature]
Printed Name: MODESTO HERNANDEZ
Title: Plaintiff
Date: 1-20-11

AND By: [Signature]
Printed Name: BEAN KU
Title: Attorney
Date: 1-21-11

Wildlife Conservation Society

By: [Signature]
Printed Name: _____
Title: _____
Date: February 4, 2011

Patricia Calabrese
EXECUTIVE VICE PRESIDENT FOR ADMINISTRATION
AND CHIEF FINANCIAL OFFICER

City of New York

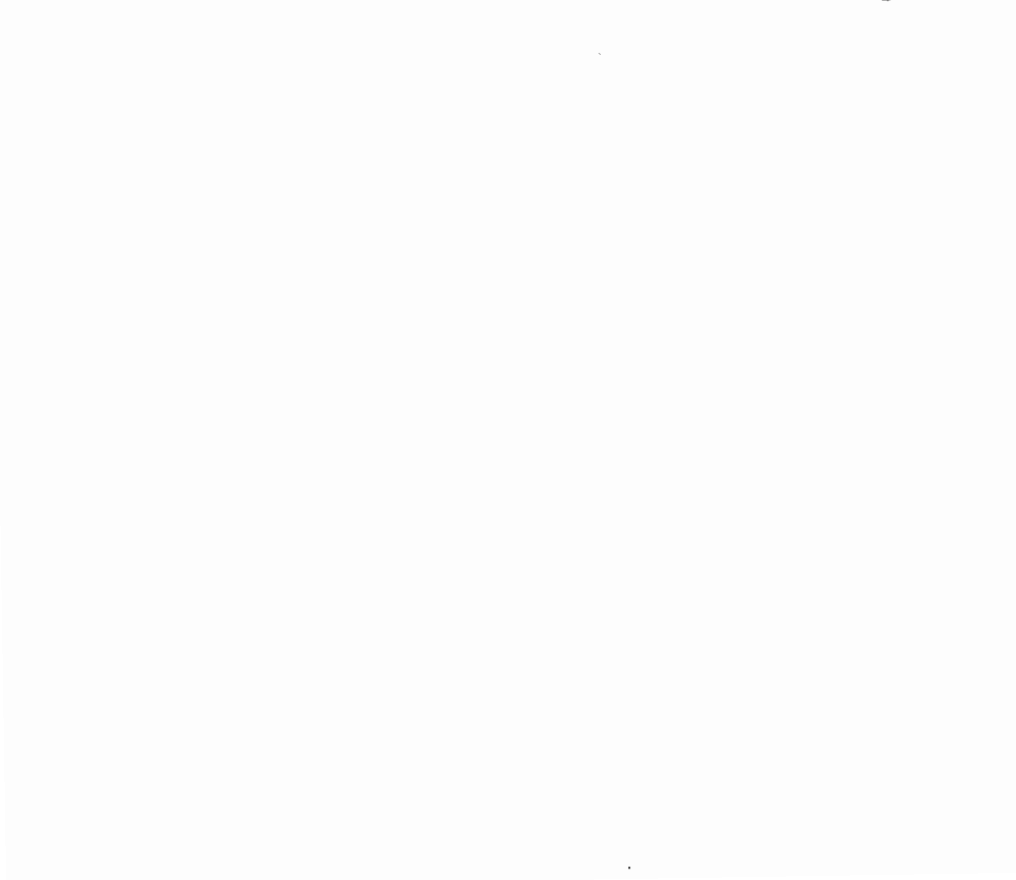
By: _____
Printed Name: _____
Title: _____
Date: _____

MICHAEL A. CARDEZO
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But [Signature]
Emily Sweet
Assistant Corporation
Counsel

1/31/11



BRONX ZOO ADA ACCESSIBILITY PLAN – HERNANDEZ v. WILDLIFE CONSERVATION SOC'Y, ET AL., Case No. 10-CV-4916 (DLC)

Item	Category	Location	Proposed Modification(s)
1	Exhibits	African Plains	Require vendor to install accessible binoculars to complement existing binoculars.
2	Exhibits	Baboon Reserve	Install accessible telescope(s) at wildlife viewing areas, modify existing telescope(s) to permit access by wheelchair users, or remove inaccessible telescope(s).
3	Exhibits	Bug Carousel	Provide clipboard(s) for use at ticket booth.
4	Exhibits	Butterfly Garden	Provide clipboard(s) for use at ticket booth.
5	Exhibits	Camel Ride (Asia Plaza)	Provide clipboard(s) for use at ticket booth.
6	Exhibits	Children's Zoo	Eliminate excessive change(s) in level at transition points between paved, wooden boardwalk, and mulch-covered segments of primary path of travel through Children's Zoo.
7	Exhibits	Congo Gorilla Forest	Eliminate excessive change(s) in level at transition points between paved, wooden boardwalk, and gravel-covered segments of primary path of travel through exhibit.
8	Exhibits	Congo Gorilla Forest	Install sign(s) identifying accessible exit from Congo Gorilla Forest movie theater.
9	Exhibits	Congo Gorilla Forest	Provide clipboard(s) for use at ticket booth.
10	Exhibits	Dora the Explorer Theater	Install sign(s) identifying accessible entrance to Dora the Explorer theater.
11	Exhibits	Dora the Explorer Theater	Provide clipboard(s) for use at ticket booth.
12	Exhibits	JungleWorld	Modify safety lock on old ticket gate at interior accessible entrance to permit wheelchair access, or remove old ticket gate.
13	Exhibits	JungleWorld	Install educational signage at viewing area along primary path of travel to replicate educational signage at lower-level viewing area for fish/turtle exhibit.
14	Exhibits	Madagascar	Install accessible telescope(s), modify existing telescope(s) to permit access by wheelchair users, or remove inaccessible telescope(s).
15	Exhibits	Tiger Mountain	Eliminate excessive change(s) in level at transition points between paved and mulch-covered segments of primary path of travel to and through Tiger Mountain.
16	Exhibits	Tiger Mountain	Install educational signage, either at upper level of first enclosed tiger viewing area on primary path of travel through Tiger Mountain exhibit or at accessible part in lower level of viewing area, to replicate educational signage at inaccessible part of lower level of viewing area.
17	Exhibits	World of Birds	Install accessible water fountain, modify existing water fountain to permit access by wheelchair users, or remove water fountain.

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18	Exhibits	World of Birds	Install pull handles on exterior doors at entrances to exhibit building so that doors may open away from vestibules, thereby providing sufficient vestibule space.
19	Exhibits	World of Reptiles	Smooth uneven ledges on accessible ramp or replace ramp.
20	Exhibits	World of Reptiles	Reduce height of existing handrail to 38" or less, or replace with ADAAG-compliant handrail.
21	Exhibits	World of Reptiles	Modify or replace entrance doors and interior vestibule doors to achieve 36" entry width.
22	Exhibits	World of Reptiles	Eliminate excessive ledge through installation of a short ramp or other modification at threshold to main entrance door.
23	Food Service	Dancing Crane Café	Adjust height or location of condiment and utensil dispensers to comply with ADAAG height and reach requirements.
24	Food Service	Dancing Crane Café	Adjust height or location of condiment dispensers so that operable parts comply with ADAAG height and reach requirements.
25	Food Service	Food Service (All Locations)	Adjust height or location of condiment and utensil dispensers to comply with ADAAG height and reach requirements.
26	Food Service	Snack Bar (Asia Plaza)	Adjust height or location of condiment dispensers so that operable parts comply with ADAAG height and reach requirements.
27	Food Service	Snack Bar (Northern Ponds)	Rearrange table placement to achieve 36" entry width to seating area.
28	Food Service	Snack Bar (Northern Ponds)	Install sufficient number of accessible tables to ensure that at least 5% of seating spaces are accessible.
29	Food Service	Snack Bar (Northern Ponds)	Provide clipboard(s) for use at service counter.
30	Food Service	Samba Village	Install sufficient number of accessible tables to ensure that at least 5% of seating spaces are accessible.
31	Food Service	Terrace Café (Southern Blvd.)	Install sufficient number of accessible tables to ensure that at least 5% of seating spaces are accessible.
32	Monorail	Monorail	Update description on Zoo's printed and online ADA accessibility maps to more clearly indicate that monorail is accessible using airplane-style wheelchair that may be obtained at monorail entrance and used free-of-charge by monorail patrons.
33	Monorail	Monorail Station (Asia Plaza)	Provide clipboard(s) for use at ticket booth.
34	Other Public Areas	Asia Plaza	Relocate sign indicating location of accessible route to be closer to decision point where patrons must decide whether to take stairs or seek an alternate path to Asia Plaza.
35	Other Public Areas	Pepsi Pavilion	Install sufficient number of accessible tables at each of the three pavilion areas to ensure that an least 5% of seating spaces at each pavilion area are accessible.

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36	Other Public Areas	Pepsi Pavilion	Install accessible telescope(s), modify existing telescope(s) to permit access by wheelchair users, remove inaccessible telescope(s), or install signage directing patrons to existing accessible telescope located on path from pavilion around flamingo pond.
37	Other Public Areas	Somba Village	Require vendor to install accessible binoculars to complement existing binoculars.
38	Other Structures	Gift Shop (Asia Plaza)	Provide clipboard(s) for use at service counter.
39	Other Structures	Gift Shop (Congo)	Install accessible water fountain, modify existing water fountain to permit access by wheelchair users, or remove water fountain.
40	Parking Lots	Parking Lots (All)	Increase height of signs identifying accessible parking spaces so that base of each sign is at least 60" above ground level.
41	Parking Lots	Parking Lots (All)	Re-stripe existing accessible parking spaces so that at least 1/6 of required number of accessible spaces in each public parking lot is at least 132" wide.
42	Parking Lots	Parking Lots (All)	Re-stripe existing accessible parking spaces so that all required accessible spaces are at least 96" wide and all van-accessible spaces are at least 132" wide.
43	Parking Lots	Parking Lots (All)	Re-stripe existing access aisles and/or paint new access aisles so that all required access aisles are at least 60" wide.
44	Parking Lots	Parking Lots (All)	Install signage identifying van-accessible parking spaces.
45	Pathways and Trails	Throughout zoo	(1) Create and define a preferred area for accessible entry to the Zoo (at the Southern Boulevard gate) which provides the easiest access to the broadest range of Zoo exhibits and facilities, and (2) offer electric scooter rental or other forms of motorized transportation to facilitate access to Zoo exhibits and facilities.
46	Restrooms	Restrooms (Asia Plaza)	Reinstall accessible stall in men's restroom with correct dimensions.
47	Restrooms	Restrooms (Asia Plaza)	Reinstall door with short partition furthest from toilet or, as necessary, reinstall accessible stall in men's restroom with door in correct location.
48	Restrooms	Restrooms (Asia Plaza)	Wrap exposed pipes underneath accessible sinks with insulation.
49	Restrooms	Restrooms (Asia Plaza)	Lower existing mirrors so that base of reflecting surface is no more than 40" above floor level or install additional mirrors in restrooms with base of reflecting surface no more than 35" above floor level.
50	Restrooms	Restrooms (Asia Plaza)	Reinstall grab bar on correct side wall of men's accessible stall and at correct distance from rear wall or, as necessary, reinstall accessible stall with grab bar in correct location.
51	Restrooms	Restrooms (Asia Plaza)	Eliminate excessive ledge through additional paving of approach path or other modification at threshold to main entrance door.

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52	Restrooms	Restrooms (Asia Plaza)	Replace one existing urinal in men's restroom with an accessible urinal, with rim no more than 17" above floor level.
53	Restrooms	Restrooms (Congo)	Reinstall door partition on men's accessible stall so that it is no more than 4" from the corner of the stall or, as necessary, reinstall accessible stall.
54	Restrooms	Restrooms (Congo)	Install accessible water fountain, modify existing water fountain to permit access by wheelchair users, or remove water fountain.
55	Restrooms	Restrooms (Congo)	Wrap exposed pipes underneath accessible sinks with insulation.
56	Restrooms	Restrooms (Congo)	Reinstall flush control on correct side of toilet in men's accessible stall or, as necessary, replace existing manual flush control with an automatic or push-button flush control.
57	Restrooms	Restrooms (Congo)	Lengthen side grab bar in men's accessible stall so that it extends at least 54" from rear wall of stall.
58	Restrooms	Restrooms (Congo)	Reinstall toilet paper dispenser in men's accessible stall either at proper separation from grab bar or in a different location in stall.
59	Restrooms	Restrooms (Dancing Crane Café)	Reinstall door to men's accessible stall to open outward from accessible stall.
60	Restrooms	Restrooms (Dancing Crane Café)	Reinstall flush control on correct side of toilet in men's accessible stall or, as necessary, replace existing manual flush control with an automatic or push-button flush control.
61	Restrooms	Restrooms (Dancing Crane Café)	Install an automatic door opener to achieve accessible maneuvering space inside restroom entrance doors.
62	Restrooms	Restrooms (Dancing Crane Café)	Reinstall or replace toilet in men's accessible stall so that seat is at least 17" above floor level.
63	Restrooms	Restrooms (EcoRestroom)	Eliminate excessive ledge through additional paving of approach path or other modification at thresholds to main entrance doors.
64	Restrooms	Restrooms (EcoRestroom)	Lower existing mirrors so that base of reflecting surface is no more than 40" above floor level or install additional mirrors in restrooms with base of reflecting surface no more than 35" above floor level.
65	Restrooms	Restrooms (EcoRestroom)	Lower height of dispensers so that operable parts are no more than 48" above floor level, or remove dispensers.
66	Restrooms	Restrooms (EcoRestroom)	Lower countertop height for one sink bowl so that it is no more than 34" above floor level.
67	Restrooms	Restrooms (EcoRestroom)	Reinstall toilet paper dispenser in women's accessible stall so that the distance from the front of the toilet to the centerline of the dispenser is no greater than 9".

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68	Restrooms	Restrooms (Madagascar!)	Lower existing mirrors so that base of reflecting surface is no more than 40" above floor level or install additional mirrors in restrooms with base of reflecting surface no more than 35" above floor level.
69	Restrooms	Restrooms (Madagascar!)	Lengthen side grab bar in women's accessible stall so that it extends at least 54" from rear wall of accessible stall.
70	Restrooms	Restrooms (Madagascar!)	Reinstall toilet paper dispenser in women's accessible stall so that the distance from the front of the toilet to the centerline of the dispenser is no greater than 9".
71	Restrooms	Restrooms (Madagascar!)	Remove trash can from accessible stall in women's restroom.
72	Restrooms	Restrooms (Outside World of Darkness)	Wrap exposed pipes underneath accessible sinks with insulation.
73	Restrooms	Restrooms (Throughout Zoo)	Install signage throughout Zoo properly indicating location of and directing patrons to nearest accessible restroom.
74	Restrooms	Restrooms (Tiger Mountain)	Wrap exposed pipes underneath accessible sinks with insulation.
75	Signage	Throughout Zoo	Install signage throughout Zoo properly indicating location of accessible or preferred paths of travel.
76	Water Fountains	Water Fountains (Throughout Zoo)	Install signage throughout Zoo properly indicating location of and directing patrons to nearest accessible water fountain.
77	Water Fountains	Water Fountains (Throughout Zoo)	Identify locations of accessible water fountains on Bronx Zoo's printed and online ADA accessibility maps.
78	Zoo Entrances	Asia Gate	Provide clipboard(s) for use at ticket booth.
79	Zoo Entrances	Bronx River Gate	Provide clipboard(s) for use at Guest Relations and Zoo Photo booths.
80	Zoo Entrances	Southern Boulevard Gate	Redesign map or install separate accessibility map to show locations of accessible restrooms, food service areas, and pathways, as well as other accessibility information; Make similar modifications to online accessibility map.
81	Zoo Shuttle	Shuttle Station (Asia Plaza)	Provide clipboard(s) for use at ticket booth.
82	Zoo Shuttle	Shuttle Station (Asia Plaza)	Modify existing signage or install new signage to indicate that Zoo Shuttle is accessible and that mobility-impaired patrons may queue and board shuttle without using corral area.
83	Zoo Shuttle	Shuttle Station (Southern Blvd.)	Provide clipboard(s) for use at ticket booth.
84	Zoo Shuttle	Shuttle Station (Southern Blvd.)	Modify existing signage or install new signage to indicate that Zoo Shuttle is accessible and that mobility-impaired patrons may queue and board shuttle without using corral area.