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JASON K. SINGLETON, State Bar # 166170
SINGLETON LAW GROUP
611 "L" Street, Suite "A"
Eureka, CA 95501
(707) 441-1177
FAX: 441-1533

Attorney for Plaintiff

LODGED
CLERK, U.S. DISTRICT COURT
MAR 14 2002
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
MAR 15 2002
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Send
ENTER
NO 556

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES COLLINS,

Plaintiff,

v.

BANTER, INC., a Nevada corporation,
RTA DESERT, INC., a Delaware
corporation, dba COURTYARD 10
THEATER, and DOES ONE TO TEN,
inclusive,

Defendants.

) Case No. CV-01-07936 R (RZx)

)
)
) STIPULATION FOR GOOD FAITH
) SETTLEMENT UNDER CALIFORNIA CODE
) OF CIVIL PROCEDURE 877.6
) ~~proposed~~ ORDER

ENTERED
CLERK, U.S. DISTRICT COURT
MAR 18 2002
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Comes now Plaintiff who appears by and through his counsel, Jason K. Singleton,
and Defendant, Banter, Inc., who appears by and through their counsel, Kevin T. Collins,
and Defendant, Resort Theater Inc., who appears by and through their counsel, Ann E.
Wells, who hereby agree and stipulate as follows:

1. Plaintiff, James Collins, desires to settle his claims against Banter, Inc., and dismiss
Banter, Inc. from the above action with prejudice, while retaining Plaintiff's claims against
Resort Theater, Inc. The purpose of this stipulation is to affirm the good faith nature of the
settlement between Plaintiff, James Collins, and Defendant, Banter, Inc., for purposes of
Plaintiff's California State Law claims, as such settlement may affect Defendant, Resort

✓ Docketed
✓ Copies KNTC Sent
✓ JS - 5 / JS - 6
— JS - 2 / JS - 3
CLERK

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MAR 18 2002

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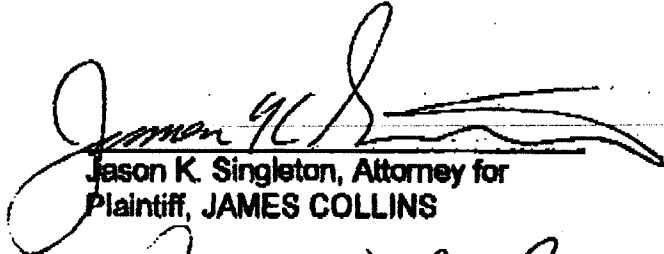
1 Theater, Inc., under California Code of Civil Procedure §877.6.

2 The terms of the settlement between Plaintiff and Defendant Banter, Inc. include
3 payment to Plaintiff and his counsel in the amount of \$15,500.00 and enter a covenant
4 whereby Defendant Banter, Inc. will remove certain barriers to access as is more specifically
5 set forth in the proposed settlement agreement attached hereto as Exhibit "A".

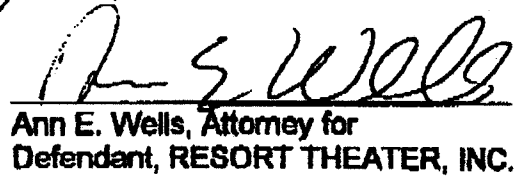
6 Moreover, as to Plaintiff's claims for attorney's fees and costs under the Americans
7 with Disabilities Act, the parties wish to confirm the good faith nature of Plaintiff's settlement
8 with Banter, Inc., and that the remaining Defendant shall receive a set off from the totality of
9 Plaintiff's attorney's fees claim as per *Franklin v Enez* (9th Cir., 1989) 884 F. 2nd 1222.

10 Defendant, Resort Theater, Inc., by and through their counsel, Ann E. Wells, confirms
11 the proposed settlement between Plaintiff, James Collins, and Banter Inc., is in good faith
12 and represents a proportional share of Defendant, Banter Inc.'s liability on Plaintiff's
13 California claims.

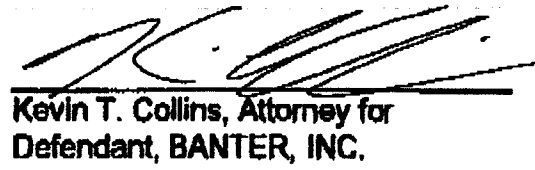
14 Dated January 25, 2002


Jason K. Singleton, Attorney for
Plaintiff, JAMES COLLINS

15 Dated 2/04/ 2002

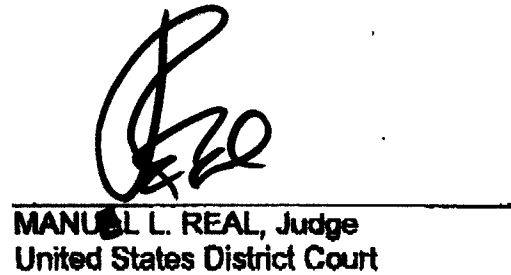

Ann E. Wells, Attorney for
Defendant, RESORT THEATER, INC.

16 Dated 1/25 2002


Kevin T. Collins, Attorney for
Defendant, BANTER, INC.

17 IT IS SO ORDERED.

18 Dated March 15 2002


MANUEL L. REAL, Judge
United States District Court

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release (hereinafter "Agreement") is entered into by and between PLAINTIFF JAMES COLLINS, on behalf of himself, his agents, attorneys, representatives, executors, heirs, successors, and assigns (collectively "PLAINTIFF") on the one hand and DEFENDANT BANTER, INC., on behalf of itself, its parent companies, other affiliated companies, divisions, subsidiaries, insurers, and its officers, directors, employees, agents, attorneys, representatives, successors and assigns (collectively referred herein as "DEFENDANT") on the other hand. PLAINTIFF and DEFENDANT collectively shall be referred to hereinafter as "The Parties." This Agreement is made between the Parties pursuant to the following terms and conditions.

1. PLAINTIFF filed a lawsuit against DEFENDANT in the United States District Court, for the Central District of California, James Collins v. Banter, Inc., et al., Case number CV-01-07936 R (RZx), (the "Action") in which PLAINTIFF sought damages and injunctive relief for, among other things, violation of the Americans With Disabilities Act of 1990, violation of the California Health and Safety Code §§ 19955 *et seq.* and violations of California Civil Code §§ 51, 51.5, 54, 54.1, and 54.3. PLAINTIFF acknowledges that he has no actions at law or administrative proceedings currently pending against DEFENDANT other than the Action described above. The Parties now wish to resolve any and all disputes between them, including any cross-claims, cross-actions or other disputed claims relating to the Action, including issues concerning compliance with the Americans With Disabilities Act, the California Health & Safety Code and the California Civil Code as set forth above and the respective responsibilities of the DEFENDANT to PLAINTIFF.

2. Within ten (10) days after the full execution of this Agreement and the District Court's approval of the Stipulation and Order for Dismissal With Prejudice set forth in paragraph 5, below, DEFENDANT covenants and agrees to pay the total sum of Fifteen Thousand Five Hundred Dollars (\$15,500.00) to Jason K. Singleton and James Collins. PLAINTIFF acknowledges he is not otherwise entitled to the settlement sum and that such payment constitutes sufficient consideration for the Agreement.

3. DEFENDANT shall report the above referenced payment to the Internal Revenue Service ("IRS") as income to PLAINTIFF and/or his attorney by means of a form 1099. DEFENDANT'S taxpayer identification number for purposes of the form 1099 reporting requirement is 68-0259315.

4. PLAINTIFF and his attorney recognize the DEFENDANT is not withholding any federal or state income taxes, FICA, or any other type of deduction from the settlement sum and that no FICA contribution is being made by DEFENDANT on such payment. If at any later date it is claimed or determined by the IRS or any other taxing authority or court

of competent jurisdiction that any sum should have been withheld or deducted from any portion of the settlement sum, PLAINTIFF acknowledges and agrees that the payment of any taxes, interest, or penalties thereby determined to be due shall be PLAINTIFF'S sole responsibility. PLAINTIFF agrees to indemnify and hold harmless DEFENDANT in the event the IRS or taxing authority levies any taxes, penalties, or interest against DEFENDANT as a result of their failure to make tax withholdings on the settlement sum.

5. Simultaneously with the execution of this Agreement, the Parties, by and through their attorneys, shall also execute a Stipulation for Dismissal With Prejudice and Order whereby the Action as to DEFENDANT shall be dismissed with prejudice. After DEFENDANT has delivered the settlement sum to PLAINTIFF, by and through his attorney, PLAINTIFF'S attorney shall file with the court in the Action the fully executed Stipulation for Dismissal With Prejudice and Order. A file endorsed copy of said Stipulation shall be sent to DEFENDANT'S attorney upon receipt.

6. Prior to executing the Agreement, the Parties, through their respective attorneys of record, will file a Stipulation for Good Faith Settlement under California Code of Civil Procedure section 877.6 and Order Thereon ("Stipulation"). This Agreement is expressly conditioned upon the court determining that the Agreement is in good faith pursuant to the Stipulation. In the event that the court does not deem the Agreement in good faith, this Agreement will have no force or effect.

7. The DEFENDANT hereby covenants and agrees to make the following access and/or structural and other modifications to the exterior of the Courtyard 10 Theater located at 789 Tahquitz Canyon Road, Palm Springs, California ("Subject Property"), said modifications, shall be completed on or before June 2003 and shall be made consistent with the requirements of Title III of the Americans With Disabilities Act of 1990 and applicable California Public Accommodations laws:

A. Ensure that alternative avenues for access exists to the parking structure at the Subject Property in compliance with all applicable laws in effect on the date of this Agreement.

B. Ensure that there are at least ten (10) accessible parking spaces that are a minimum of nine (9) feet wide between the defining lines with access aisles a minimum of five (5) feet wide, including the painted lines on each side.

C. Provide two (2) disabled van parking spaces which are not less than eight (8) feet wide including the painted lines on each side with access aisles being a minimum of five (5) feet wide, including the painted lines on each side.

D. All accessible parking spaces shall be located so that they do not compel users

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to travel behind parked vehicles other than their own.

E. Ensure that the call buttons on the elevator to the upper level of the parking structure meet all disability requirements.

F. Ensure that the telephone compartment door inside the elevator to the parking structure does not have a push/pull door.

G. Ensure that the telephone inside the elevator for the parking structure comports with the required visual communication requirements.

H. Ensure that the elevator buttons in the elevator for the parking structure have the required raised characters or grade 2 braille symbols immediately below the raised characters.

I. Ensure that the handrails for the ramp providing access from the parking structure to the theater level comply with code requirements.

J. Ensure that the stairway serving the upper level of the parking structure meet the minimum code requirements, including striping for the visually impaired, enclosing all risers, ensuring that the handrails are located between thirty-two (32) inches and thirty-four (34) inches above the surface.

K. Ensure that stairs from the Tahquitz Canyon Road have the required tread markings and that the handrails meet the code requirements as to height.

L. Provide an accessible path of travel adjacent to the stairs from Tahquitz Canyon Road to the theater entrance, subject expressly upon approval of such path by the appropriate governmental entity.

8. It is understood and agreed by and between the Parties that PLAINTIFF shall completely release, acquit, and forever discharge DEFENDANT from any and all claims of any kind and nature, character known or unknown, disclosed or undisclosed, which PLAINTIFF may now have, may in the future have, or has ever had against DEFENDANT, including, but not limited to, any and all claims, rights, demands, causes of action for arising out of or related to the Action, including alleged violations of the Americans With Disabilities Act of 1990, 42 U.S. C. §§ 12101 *et seq.*, California Health and Safety Code §§ 19955 *et seq.*, the California Unruh Civil Rights Act, Civil Code §§ 51, 51.5, 54, 54.1, and 54.3, violation of any other federal, state, local, or public accommodations statutes, rules, regulations, or ordinances, declaratory relief, injunctive relief, or violation of any other statutes, rules, regulations, or ordinances of any kind, whether state, federal or local, and any claim for retaliation under such laws and any claims for attorney's fees or costs.

SCANNED

9. PLAINTIFF represents and warrants that he has not assigned or subrogated any claim concerning the Action or authorized any person or entity to assert such claim or claims on his behalf.

10. DEFENDANT do not acknowledge or admit by entering into this Agreement that it has violated any law and this Agreement shall not be construed as an admission of liability or wrong doing.

11. PLAINTIFF'S attorney has made a thorough investigation of the Subject Property and represents through PLAINTIFF that he is not aware of any other violations of any laws governing access to the disabled at the Subject Property.

12. Except as noted elsewhere in this Agreement, PLAINTIFF and his attorney, and his attorney's staff shall keep the existence, terms, and conditions of this Agreement and the facts discovered in the course of this matter completely and strictly confidential. PLAINTIFF agrees and understands that the confidentiality provisions of this Agreement are essential terms of the Agreement. Except as provided below, neither the terms nor conditions of this Agreement, nor the fact of existence, shall be disclosed by PLAINTIFF or his attorneys to any person or entity. Upon inquiry regarding this action, PLAINTIFF and his representatives shall state only that "the matter was resolved to the parties satisfaction."

13. Notwithstanding the limitations of the immediately preceding paragraph, PLAINTIFF may disclose the terms and conditions of this Agreement to his spouse, attorneys, accountants, and/or government taxing authorities, but only on the further condition that PLAINTIFF advises such individuals in advance of disclosure that the terms and conditions of the Agreement are strictly confidential and that they agree to be bound by the confidentiality provisions and provided that if such further individuals should then disclose that information or any terms of this Agreement to any other person or entity whomsoever, such disclosure by such individuals shall be deemed to be a breach by such individuals.

14. PLAINTIFF'S attorney agrees he will maintain his files and records relating to this matter in confidence.

15. (a) PLAINTIFF understands and expressly agrees that this Agreement extends to all claims of every kind and nature whatsoever, known or unknown, suspected or unsuspected, past or present, disclosed or undisclosed, which PLAINTIFF has or may have against DEFENDANT; thus, all rights under Section 1542 of the California Civil Code are hereby expressly waived by PLAINTIFF. Such section reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of

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executing the release, which if known by him must have materially affected his settlement with the debtor.

(b) PLAINTIFF acknowledges that he has read this Agreement, including the waiver of California Civil Code § 1542, and that he has consulted counsel about the Agreement and specifically about the waiver of Section 1542 waiver, and so freely and knowingly enters into this Agreement. PLAINTIFF acknowledges that he may hereafter discover facts different from or in addition to those he knows or now believes to be true with respect to the matters released or described in this Agreement, and PLAINTIFF agrees that the releases and agreements contained herein shall be and will remain effective in all respects notwithstanding any later discovery any such different or additional facts. PLAINTIFF hereby assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies described herein or with regard to any facts which are now unknown to PLAINTIFF relating thereto.

16. This Agreement shall be construed and governed by the laws of the State of California. The Parties hereto further agree that if, for any reason, any provision hereof is unenforceable, the remainder of this Agreement shall nonetheless remain binding and in effect.

17. The Parties represent that they were represented by counsel of their own choosing during the negotiation of this Agreement, that they read this Agreement, and that they freely and voluntarily enter into it. Therefore, the normal rule of construction that any ambiguity or uncertainty in a writing shall be interpreted against the party drafting the writing shall not apply to any action on this Agreement.

18. Other than what is set forth above, each party shall be responsible for paying his or her own attorneys' fees and costs.

19. This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior agreements or understanding between the Parties pertaining to any subject matter contained in this Agreement. Any amendments or modifications must be made in writing and signed by all parties.

20. This Agreement may be executed in counterparts. Signatures to this Agreement transmitted and exchanged via facsimile shall, for all purposes, have the same legal force and effect as the original signatures.

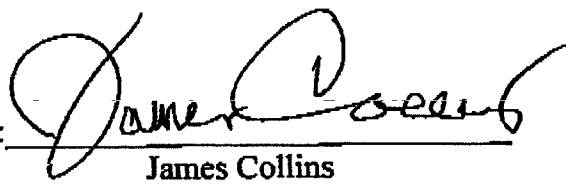
21. Should an action be brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and

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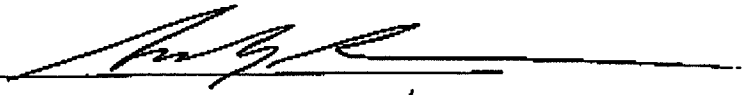
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costs incurred in prosecuting the action.

Dated: February 1, 2002

By: 
James Collins

Dated: 3/6/02


BANTER, INC.
By: 
Its: Executive Vice President

Dated: 3/8/02


By: _____
Its: _____

APPROVED AS TO FORM:

Dated: 1-4-02


JASON K. SINGLETON
Attorney for James Collins

Dated: 3/8/02


KEVIN T. COLLINS
Attorney for BANTER, INC.