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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

KEVIN BORDEN,)	NO. 1:08-CV-01061-AWI
)	
Plaintiff,)	
)	
v.)	CONSENT ORDER
)	
CITY OF MODESTO, et al.,)	
)	
Defendants.)	

IT IS HEREBY ORDERED AND DECREED:

1. Defendants agree that they will permanently comply with the terms of the Preliminary Injunction, as set out below.
2. Defendants agree they will not exclude Kevin Borden, or any similarly situated individual, from the Tenth Street Plaza when it is not being rented for a private event closed to the public unless there is probable cause to believe the individual has violated a valid federal law, state law, or local ordinance.
3. An event “closed to the public” for purposes of this order is one that either (a) is held in a defined area to which only those individuals attending that particular event are permitted to enter or (b) involves the expression of a particular message such that allowing other expression within the permitted area would compromise the First Amendment rights of the permittee, as discussed in *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995).

1 4. This consent order shall not be construed to mean that Kevin Borden, or similarly
2 situated individuals, are entitled to anything more than equal access to the Tenth Street Plaza (or
3 any particular spot within the Tenth Street Plaza) as a traditional public forum, or that he is
4 entitled to attend any event within the Tenth Street Plaza that is closed to the public.

5 5. In satisfaction of Plaintiff's claims for damages, Defendants agree to pay Plaintiff
6 one dollar (\$1) in nominal damages.

7 6. In satisfaction of Plaintiff's claims for attorneys' fees and costs under 42 U.S.C. §
8 1988, Defendants agree to pay the sum of \$35,000 in attorneys' fees and costs to Plaintiff's
9 counsel.

10 7. The aforesaid actions by Defendants in Paragraphs 5 and 6 shall be completed
11 within thirty (30) days from the entry of this Order.

12 8. In exchange, Plaintiff shall execute and provide to Defendants' attorneys, within
13 ten (10) days of entry of this Order, a Release of All Claims arising out of the facts that are the
14 basis of this lawsuit.

15 9. This Consent Order is made in full satisfaction of Plaintiff's claims contained in
16 this Verified Complaint.

17 10. Pursuant to this Order, Plaintiff's Verified Complaint will be dismissed with
18 prejudice, each party to bear own costs (except as set forth in ¶ 5 and 6 of this Order),
19 immediately upon the entry of this Order.

20 11. This Court retains jurisdiction of this action solely for the purpose of enforcing
21 this Order, should such need arise.

22
23 IT IS SO ORDERED.

24 **Dated:** March 17, 2009

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE