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13 Attorney for Defendants

14  
 15 UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA

16 SCOTT JOHNSON  
 17 Plaintiff,

Case No. 2:14-CV-01256-TLN-KJN

18 vs.

**CONSENT DECREE AND ORDER**

19 DARLENE RAE DOWNES; in her  
 20 individual capacity and representative  
 capacity as Trustee—Darlene Rae Downes  
 21 Trust; JEFFRA McGOWAN;  
 MICHAEL McGOWAN; Does 1-10,  
 22  
 23 Defendants.

Judge: Honorable Troy L. Nunley

24 **TO THE COURT, ALL INTERESTED PARTIES AND ATTORNEYS OF RECORD:**

25  
 26 1. Plaintiff SCOTT JOHNSON filed this action (known as Case No. 2:14-CV-01256-  
 27 TLN-KJN) against Defendants seeking money damages and injunctive relief for, *inter alia*,  
 28 violations of the Americans with Disabilities Act of 1990 (the "ADA"), corresponding state law

CONSENT DECREE AND ORDER

1 claims as well as common law claims in the United States District Court for the Eastern District of  
2 California on May 22, 2014. Defendants DARLENE RAE DOWNES, JEFFRA McGOWAN and  
3 MICHAEL McGOWAN ("Defendants") filed their Answer to the Complaint on June 6, 2014.

4 2. Defendants and Plaintiff (collectively sometimes referred to herein as the "Parties" or  
5 separately as a "Party") wish to settle the portion of the cases relating to issues of injunctive relief  
6 and hereby desire to enter into this Consent Decree. The Parties hereby enter into this Consent  
7 Decree and Order for the purpose of resolving certain specified aspects of the lawsuit without the  
8 need for protracted litigation, and without the admission of any liability as to: (a) the amount of  
9 damages to which Plaintiff may be entitled or (b) the amount of attorneys' fees to which Plaintiff  
10 may be entitled.

11  
12 **JURISDICTION:**

13 3. The Parties agree that the Court has jurisdiction of this matter for alleged violations of  
14 the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq. and pursuant to supplemental  
15 jurisdiction under 28 U.S.C. §1367(a) for alleged violations of California Civil Code §§51 and 54. *et.*  
16 *seq.*

17 4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the  
18 Parties agree to entry of this Order to resolve all claims regarding injunctive relief raised in the  
19 above-entitled Actions. Accordingly, the Parties agree to the entry of the proposed Order related to  
20 this Consent Decree without trial or further adjudication of the issues addressed herein.

21  
22 **NO DISMISSAL OF ACTION REQUESTED:**

23 5. As noted herein, monetary issues are still at issue and accordingly the Parties do not  
24 request that the Honorable Court dismiss the action as these issues may still proceed to trial.

25 ///  
26 ///  
27 ///  
28 ///

1           **WHEREFORE**, the Parties hereby agree and stipulate to the Court’s entry of this Consent  
2 Decree and Order, which provides as follows:

3  
4           **SETTLEMENT OF INJUNCTIVE RELIEF:**

5           6.       This Order shall be a full, complete, and final disposition and settlement of Plaintiff’s  
6 claims against Defendants and any other parties for injunctive relief that have arisen out of the acts  
7 and/or omissions alleged, or which could have been alleged, in the subject Complaint.

8           7.       The Parties agree and stipulate that the corrective work will be performed in  
9 compliance with the standards and specifications for disabled access as set forth in the California  
10 Code of Regulations, Title 24-2 and the 2010 Americans with Disabilities Act Standards, unless  
11 other standards are specifically agreed to in this Consent Decree and Order.

12           8.       Remedial Measures: The corrective work agreed upon by the Parties is attached here  
13 to as Exhibit “A”. Defendants agree to undertake all of the remedial work set forth therein.

14           9.       Timing of Injunctive Relief: Exhibit “A” also includes the estimated timeframe for  
15 completing the work described therein. In the event that unforeseen difficulties prevent Defendants  
16 from completing any of the agreed-upon injunctive relief within the timeframes specified,  
17 Defendants or their counsel will notify Plaintiff’s counsel, in writing, within fifteen (15) days after  
18 discovering any such difficulties. Defendants, or their counsel, will promptly notify Plaintiff’s  
19 counsel when the corrective work is complete, and in any case, will provide a status report on or  
20 before May 1, 2016.

21  
22           **ISSUES RELATED TO DAMAGES, ATTORNEYS FEES, LITIGATION EXPENSES,**  
23 **AND COSTS REMAIN UNRESOLVED:**

24           10.      The Parties have not reached an agreement regarding either of the Plaintiff’s claims  
25 for damages, attorneys’ fees, litigation expenses and costs in this Action (collectively, the  
26 “Unresolved Issues”). These Unresolved Issues shall be the subject of further negotiation,  
27 settlement, litigation, and/or motions to the Court. Should the Parties later reach an agreement  
28 regarding the Unresolved Issues; the terms of that agreement will be set forth in a separate settlement

1 agreement. Nothing set forth herein shall be deemed to in any way limit or effect a waiver of either  
2 of Plaintiffs' past, present or future rights and/or remedies to recover damages, attorneys' fees,  
3 litigation expenses or costs in connection with each of their alleged losses, costs, damages, claims  
4 and causes of action as set forth in each of the operative Complaints or otherwise.

5  
6 **ENTIRE CONSENT ORDER:**

7 11. This Consent Decree and Order and Exhibit "A" to the Consent Decree, which is  
8 incorporated herein by reference as if fully set forth in this document, constitute the entire agreement  
9 between the signing Parties on all matters of injunctive relief, and no other statement, promise, or  
10 agreement, either written or oral, made by any of the Parties or agents of any of the Parties, that is  
11 not contained in this written Consent Decree and Order, shall be enforceable regarding the matters of  
12 injunctive relief specifically described herein.

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14 **TERM OF THE CONSENT DECREE AND ORDER:**

15 12. This Consent Decree and Order shall be in full force and effect for a period of twenty  
16 four (24) months after the date of entry of this Consent Decree and Order, or until the injunctive  
17 relief contemplated by this Order is completed, whichever occurs later. The Court shall retain  
18 jurisdiction of this action to enforce provisions of this Order for twenty four (24) months after the  
19 date of this Consent Decree, or until the relief contemplated by this Order is completed, whichever  
20 occurs later.

21 **SEVERABILITY:**

22 13. If any term of this Consent Decree and Order is determined by any court to be  
23 unenforceable, all other terms of this Consent Decree and Order shall nonetheless remain in full  
24 force and effect.

25  
26 **SIGNATORIES BIND PARTIES:**

27 14. Signatories on the behalf of the Parties represent that they are authorized to bind the  
28 Parties to this Consent Decree and Order. This Consent Decree and Order may be signed in

1 counterparts and a facsimile or e-mail signature shall have the same force and effect as an original  
2 signature.

3 Respectfully Submitted,

4  
5 Dated: February 5, 2016

CENTER FOR DISABILITY ACCESS

6  
7 By: /s/ Teresa Allen  
TERESA ALLEN  
8 Counsel for Plaintiff  
9 SCOTT JOHNSON

10 Dated: February 5, 2016

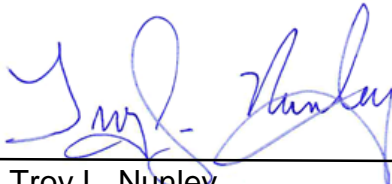
MICHAEL WELCH + ASSOCIATES

11  
12 By: /s/ Michael D. Welch

13 MICHAEL D. WELCH  
14 Counsel for Defendants  
DARLENE RAE DOWNES, JEFFRA  
15 McGOWAN and MICHAEL McGOWAN

16 **IT IS SO ORDERED.**

17 Dated: February 8, 2016

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20 Troy L. Nunley  
21 United States District Judge  
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