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12
 13 UNITED STATES DISTRICT COURT
 14 EASTERN DISTRICT OF CALIFORNIA

15 SCOTT JOHNSON

16 Plaintiff,

17 vs.

18 DALE SUMMERS, in his individual and
 19 representative capacity as Trustee—
 Dale F. & Patricia M. Summers Trust;
 20 PATRICIA SUMMERS, in her individual
 and representative capacity as Trustee—
 21 Dale F. & Patricia M. Summers Trust;
 ASH KHALILI;
 22 AUGUSTINE RAMOS MARTINEZ; and
 23 Does 1-10,

Defendants.

Case No. 2:14-CV-01268-JAM-KJN

CONSENT DECREE AND ORDER

Judge: Honorable John A. Mendez

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-01268-
 27 JAM-KJN) against Defendants seeking money damages and injunctive relief for, *inter alia*,
 28 violations of the Americans with Disabilities Act of 1990 (the "ADA") and corresponding state law

CONSENT DECREE AND [PROPOSED] ORDER

Page 1 of 5

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 DALE SUMMERS, PATRICIA SUMMERS, ASH
3 KHALILI & AUGUSTINE RAMOS MARTINEZ ("Defendants") filed his Answer to the Complaint
4 on July 7, 2014.

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

12
13 **JURISDICTION:**

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

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

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

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

26 **WHEREFORE**, the Parties hereby agree and stipulate to the Court's entry of this Consent
27 Decree and Order, which provides as follows:

1 **SETTLEMENT OF INJUNCTIVE RELIEF:**

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

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

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

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

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19 **ISSUES RELATED TO DAMAGES, ATTORNEYS FEES, LITIGATION EXPENSES,**
20 **AND COSTS REMAIN UNRESOLVED:**

21 10. The Parties have not reached an agreement regarding Plaintiff’s claims for damages,
22 attorneys’ fees, litigation expenses and costs in this Action (collectively, the “Unresolved Issues”).
23 These Unresolved Issues shall be the subject of further negotiation, settlement, litigation, and/or
24 motions to the Court. Should the Parties later reach an agreement regarding the Unresolved Issues,
25 the terms of that agreement will be set forth in a separate settlement agreement. Nothing set forth
26 herein shall be deemed to in any way limit or effect a waiver of either of Plaintiff’s past, present, or
27 future rights and/or remedies to recover damages, attorneys’ fees, litigation expenses, or costs in
28

1 connection with each of his alleged losses, costs, damages, claims, and causes of action as set forth
2 in each of the operative Complaints or otherwise.

3
4 **ENTIRE CONSENT ORDER:**

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

11
12 **TERM OF THE CONSENT DECREE AND ORDER:**

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

19 **SEVERABILITY:**

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

23
24 **SIGNATORIES BIND PARTIES:**

25 14. Signatories on the behalf of the Parties represent that they are authorized to bind the
26 Parties to this Consent Decree and Order. This Consent Decree and Order may be signed in
27 counterparts and a facsimile or e-mail signature shall have the same force and effect as an original
28 signature.

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Respectfully Submitted,

Dated: December 11, 2015

CENTER FOR DISABILITY ACCESS

By: /s/ Teresa Allen
TERESA ALLEN
Counsel for Plaintiff
SCOTT JOHNSON

Dated: December 11, 2015

MICHAEL WELCH + ASSOCIATES

By: /s/ Michael D. Welch
MICHAEL D. WELCH
Counsel for Defendants
DALE SUMMERS, PATRICIA SUMMERS,
ASH KHALILI &
AUGUSTINE R. MARTINEZ

IT IS SO ORDERED.

Dated: December 14, 2015

/s/ John A. Mendez
HONORABLE JOHN A. MENDEZ
United States District Court Judge