

1 Center for Disability Access
Amanda Seabock, Esq., SBN 289900
2 Dennis Jay Price, II, Esq., SBN 279082
100 Pine St., Ste 1250
3 San Francisco, CA 94111
Tel: (858) 375-7385; Fax:(888) 422-5191
4 Email: Amandas@potterhandy.com
Attorneys for Plaintiff

5 Christopher K. Eley, Esq., SBN 90897
6 221 Tuxedo Court, Suite E
Stockton, CA 95204
7 Tel: (209) 466-8511; Fax: (209) 466-6340
Email: celevlaw@gmail.com
8 Attorney for Defendant DIGGLER and WAD, LLC

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 **Scott Johnson,**

12 Plaintiff,

13 v.

14 **Diggler & Wad, L.L.C.**, a California
Limited Liability Company;
15 **Hyphy Smokers Club Inc.**, a
California Corporation; and Does 1-
16 10,

17 Defendants.

Case No. 2:14-cv-02296-MCE-KJN

CONSENT DECREE AND ORDER

Hon. Morrison C. England, Jr.
Hon. Kendall J. Newman

18
19 **TO THE COURT, ALL INTERESTED PARTIES AND ATTORNEYS OF RECORD:**

- 20
- 21 1. Plaintiff SCOTT JOHNSON, filed this action (known as Case No. 2:14-cv-02296-
22 MCE-KJN) against Defendants seeking money damages and injunctive relief for,
23 *inter alia*, violations of the Americans with Disabilities Act of 1990 (the "ADA"),
24 Unruh Civil Rights Act and corresponding state law claims, as well as common
25 law claims, in the United States District Court for the Eastern District of
26 California on October 1, 2014. Dkt. 1.
- 27 2. Defendant Hyphy Smokers Club Inc. has been dismissed from this matter. Dkt.
28 15.

1 3. Plaintiff filed a motion for summary judgment against Defendant Diggler & Wad
2 LLC on March 6, 2020, seeking money damages in the amount of \$16,000 and an
3 Order to make the parking, door hardware, transaction counter(s), and restroom(s)
4 accessible.¹ Dkt. 22.

5 4. On March 25, 2020, Defendant filed a statement with the court accepting the
6 \$16,000 award against it. Dkt. 24.

7 Defendant and Plaintiff (collectively sometimes referred to herein as the “Parties” or
8 separately as a “Party”) wish to settle and hereby desire to enter into this Consent Decree. The
9 Parties hereby enter into this Consent Decree and Order for the purpose of resolving the lawsuit
10 without the need for protracted litigation, and without the admission of any liability by either
11 Party whatsoever, including but not limited to liability as to the issues of damages and/or fees.

12 **JURISDICTION:**

13 5. Plaintiff asserts that the Court has jurisdiction of this matter for alleged violations
14 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., pursuant
15 to supplemental jurisdiction under California’s Unruh Civil Rights Act, and 28
16 U.S.C. §1331, §1343(a)(3) and (a)(4) and §1391(b).

17 6. 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 raised in the above-
19 entitled Action. Accordingly, the Parties agree to the entry of the proposed Order
20 related to this Consent Decree without trial or further adjudication of the issues
21 addressed herein.

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

24 ///
25 ///
26 ///

27 _____

28 ¹ This is more fully set forth in Exhibit A, attached hereto.

1 **SETTLEMENT OF INJUNCTIVE RELIEF:**

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

6 8. The Parties agree and stipulate that the corrective work will be performed in
7 compliance with Exhibit “A” attached hereto

8 9. Timing of Injunctive Relief: Exhibit “A” also includes the estimated timeframe
9 for completing the work described therein. In the event that unforeseen difficulties
10 prevent Defendants from completing any of the agreed-upon injunctive relief
11 within the timeframes specified, Defendants or their counsel will notify Plaintiff’s
12 counsel, in writing, within fifteen (15) days after discovering any such difficulties.
13 Defendants, or their counsel, will promptly notify Plaintiff’s counsel when the
14 corrective work is complete, and in any case, will provide a status report on or
15 before December 31, 2022.

16 **ISSUES RELATED TO DAMAGES, ATTORNEYS FEES, LITIGATION**
17 **EXPENSES, AND COSTS:**

18 **10.** Per the Response filed by Defendant and the Joint Motion for Relief, the
19 defendant will pay to plaintiff the amount of \$16,000 in full and complete
20 settlement of all claims for damages and/or fees and costs of any kind
21 whatsoever. This payment shall be made as follows: Defendant will pay to
22 Plaintiff \$1,500 per month, beginning August 15, 2022, and continuing on the
23 15th day of every month thereafter through February 15, 2023; Defendant shall
24 make a final payment to Plaintiff of \$1,000 on March 15, 2023. In the event a
25 payment is not made timely, Plaintiff will notify counsel for Defendant via
26 email. Defendant will have ten (10) days to cure. If Defendant fails to cure, the
27 entire amount will be due immediately. Plaintiff reserves the right to seek all fees
28 and costs related to the enforcement of this Consent Decree and Order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATORIES BIND PARTIES:

- 14. Signatories on the behalf of the Parties represent that they are authorized to bind the Parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts and a facsimile or e-mail signature shall have the same force and effect as an original signature.
- 15. Electronic signatures may also bind the Parties and/or their representative(s) as set forth in all applicable Local Rules. The undersigned counsel for Plaintiff does hereby attest that all electronic signatures are affixed only with the express written permission of the signatory.

Respectfully Submitted,

Dated: July 27, 2022

CENTER FOR DISABILITY ACCESS


By: /s/ Amanda Seabock
Amanda Seabock, Esq.
Attorney for Plaintiff

Dated: July 27, 2022

By: /s/ Christopher K. Eley
Christopher K. Eley, Esq.
Attorney for Defendant
DIGGLER and WAD, LLC

IT IS SO ORDERED.

Dated: August 9, 2022



MORRISON C. ENGLAND, JR.
SENIOR UNITED STATES DISTRICT JUDGE