

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
 2 A Limited Liability Partnership  
 3 Including Professional Corporations  
 4 HAYLEY S. GRUNVALD, Cal. Bar No. 227909  
 5 hgrunvald@sheppardmullin.com  
 6 501 West Broadway, 19th Floor  
 7 San Diego, California 92101-3598  
 8 Telephone: 619-338-6500  
 9 Facsimile: 619-234-3815

10 Attorneys for Defendant  
 11 PARK MANAGEMENT CORP., dba SIX  
 12 FLAGS DISCOVERY KINGDOM

13 UNITED STATES DISTRICT COURT  
 14 EASTERN DISTRICT OF CALIFORNIA

15 CAROL MURRAY,  
 16 Plaintiff,  
 17 v.  
 18 PARK MANAGEMENT CORP., dba  
 19 SIX FLAGS DISCOVERY  
 20 KINGDOM,  
 21 Defendant.

22 Case No. 2:15-cv-02105-TLN-KJN  
 23 **CONSENT DECREE.**  
 24 Complaint filed: October 8, 2015

I.

**BACKGROUND AND SCOPE OF CONSENT DECREE**

1  
2  
3 1. Plaintiff Carol Murray (“Plaintiff”) filed a Complaint in this action on  
4 October 8, 2015 (“the Action”), alleging violations of the Americans with  
5 Disabilities Act of 1990 (“ADA”), 42 U.S.C. sections 12101 et seq., California’s  
6 Unruh Civil Rights Act, California Civil Code section 51, and California’s Health  
7 and Safety Code sections 19955(a), 19959 and 19953, against Defendant Park  
8 Management Corp., dba, Six Flags Discovery Kingdom (“Defendant,” and together  
9 with Plaintiff, “the Parties”) relating to, *inter alia*, physical and policy barriers to  
10 access at Six Flags Discovery Kingdom as of April 9, 2015, and continuing.  
11 Specifically, Plaintiff alleged that Defendant failed to provide her full and equal  
12 access to its amusement park located at: 1001 Fairgrounds Drive, Vallejo, CA 94589  
13 (“the Park”). Defendant denies the allegations in the Complaint and by entering into  
14 this Consent Decree does not admit liability to any of the allegations in Plaintiff’s  
15 Complaint filed in the Action. The Parties hereby enter into this Consent Decree for  
16 the purpose of resolving the injunctive relief issues in this lawsuit without the need  
17 for protracted litigation and without the admission of any liability. The Parties have  
18 entered into a separate settlement agreement resolving all of Plaintiff’s monetary  
19 claims.

20 II.

21 **JURISDICTION**

22 2. The Parties to this Consent Decree agree that the Court has jurisdiction  
23 over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 for alleged violations of the  
24 Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*, and  
25 pursuant to supplemental jurisdiction for alleged violations of California law  
26 pursuant to 28 U.S.C. § 1367.  
27  
28



1 consideration of the Park's season and the need to conduct many of the remediations  
2 when the Park is closed to the public.

3 8. Entire Consent Decree: This Consent Decree and Exhibit A hereto,  
4 which is incorporated herein by reference as if fully set forth in this document,  
5 constitute the entire consent agreement between the signing parties on all issues  
6 relating to injunctive relief in this Action.

7 9. Terms of the Consent Decree: This Consent Decree and shall be in  
8 full force and effect, and the Court shall retain jurisdiction of this Action to enforce  
9 provisions of this Consent Decree, through December 21, 2021, or whenever  
10 remediation is complete, whichever comes later.

11 10. Force Majeure: Defendant shall be excused from performance and  
12 shall not be in default in respect of any obligation hereunder to the extent that the  
13 failure to perform such obligation is due to a Force Majeure Event as defined  
14 Section 11.

15 11. Force Majeure Event: Force Majeure Event means an event beyond  
16 the control of Defendant, which prevents Defendant from complying with its  
17 obligations under this Consent Decree, including, but not limited to:

18 11.1.1 act of God (such as, but not limited to, fires, explosions,  
19 earthquakes, drought, tidal waves and floods);

20 11.1.2 war, hostilities (whether war be declared or not), invasion, act of  
21 foreign enemies, mobilization, requisition, or embargo;

22 11.1.3 rebellion, revolution, insurrection, or military or usurped power,  
23 or civil war;

24 11.1.4 contamination by radio-activity from any nuclear fuel, or from  
25 any nuclear waste from the combustion of nuclear fuel, radio-active toxic  
26 explosive, or other hazardous properties of any explosive nuclear assembly or  
27 nuclear component of such assembly;

1 11.1.5 riot, commotion, strikes, go slows, lock outs or disorder;  
2 11.1.6 acts or threats of terrorism; or  
3 11.1.7 a governmental authority's refusal to grant to Defendant the  
4 required permits to conduct work required in Exhibit A to this Consent  
5 Decree.

6 12. Extension of Time for Compliance: To the extent a circumstance  
7 arises which makes compliance with the deadlines set forth in Exhibit A impossible,  
8 Defendant may request and Plaintiff will reasonably grant Defendant an extension  
9 of time.

10 13. Severability: If any term of this Consent Decree is determined by  
11 any court to be unenforceable, the other terms of this Consent Decree shall  
12 nonetheless remain in full force and effect.

13 14. Attorneys' Fees. In the event that future and additional litigation is  
14 reasonably required by the Parties, either individually or collectively, to remedy a  
15 breach of this Agreement and/or to enforce the Parties' respective rights pursuant to  
16 this Consent Decree, the prevailing party or parties as determined by a court of  
17 competent jurisdiction shall be entitled to recover from the non-prevailing party as  
18 also determined by a court of competent jurisdiction all reasonable costs, attorneys'  
19 fees, and expenses reasonably incurred in such future and additional litigation.

20 15. Signatories and Binding Parties: Signatories on behalf of the  
21 Parties represent that they are authorized to bind the Parties to this Consent Decree.  
22 This Consent Decree may be signed in counterparts and a facsimile shall have the  
23 same force and effect as an original signature.

24 16. Consent Decree Void if Not Entered into by Court within 30 Days.  
25 The Parties agree that their consent to this Consent Decree is contingent upon the  
26 Court's approval within 30 days of its filing with the Court. Should the Court not  
27 sign the Consent Decree within 30 days of its filing with the Court, or should the  
28

1 Court decline to enter the Consent Decree, the Parties' consent hereto shall be  
2 deemed immediately withdrawn and this Consent Decree shall have no force or  
3 effect.

4  
5 IT IS SO ORDERED.

6  
7 Dated: June 5, 2017

8  
9  
10   
11 Troy L. Nunley  
12 United States District Judge

13 CONSENT GIVEN AND DECREE APPROVED BY THE PARTIES:

14 Dated: May 31, 2017

MISSION LAW FIRM, A.P.C.

TANYA E. MOORE

Attorneys for Plaintiff  
CAROL MURRAY

15  
16  
17  
18 Dated May 2, 2017

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

HAYLEY S. GRUNVALD

Attorneys for Defendant  
PARK MANAGEMENT CORP., dba SIX  
FLAGS DISCOVERY KINGDOM

## **EXHIBIT A TO CONSENT DECREE**

### **Work To Be Completed by 2017**

Post appropriate directional signage readily visible directing mobility impaired patrons to bypass turnstiles and metal detectors to an entry/exit with a clear width of at least 32".

Provide and maintain proper clear width between queue control barriers at the ticket services pedestrian queue.

Provide appropriate signage at non-accessible ticket sales counters indicating the location of the nearest accessible ticket sales counter.

Either relocate or replace the ATM located in the park entrance/ticket sales area to ensure it has operable parts within 48" of the finished ground surface.

Either relocate or replace the ATM located in the park entrance/ticket sales area to ensure there is a proper clear level area.

Properly secure or remove all unsecured floor mats within public areas of the Park.

### **Work To Be Completed by 2018**

If portable toilet units are provided at the patron parking lot(s), at least 5% of the total number of portable toilet units shall be fully accessible, which shall include proper level maneuvering clearances at the entry/exit floor, proper level space inside the portable toilet room, properly positioned toilets, properly configured and positioned grab bars, properly positioned accessories, and properly configured door hardware.

All designated accessible counters at the park entrance ticket/season pass sales area shall have their countertops surface within 34" of the finished ground surface. Remove accessible signage from ticket counters which are not accessible.

Provide properly configured and identified accessible routes of travel throughout all public areas of the Park, connecting all public elements (e.g. ride entry/exits, assembly spaces, exhibit areas, store entrances, dining areas, concessions service counters, restrooms, etc.). On such accessible routes of travel with excessive running slopes, cross slopes and vertical changes in level, place signage directing mobility impaired patrons to the most accessible path of travel. Properly smooth all gaps in the walking surface and cut back all vegetation which restricts the required clear width of the accessible routes.

Provide at least one properly identified and configured accessible entry/exit to each public building throughout the Park, including, but not limited to, proper clear level door landings, maneuvering clearances, door threshold, door hardware, uninterrupted smooth surface on the bottom of the push side of the door, and door operating pressure and closing period. Provide directional signage at all non-accessible entry/exits indicating the location of the nearest accessible entry/exit to the same building.

The gumball machine near the park entrance merchandise store, unless it is removed, shall not require tight grasping, pinching, and/or twisting to operate.

Where pedestrian routes of travel exceed 5% in slope up to 8.33%, provide signage directing mobility impaired patrons to least sloped route of travel. Also, create Park map to be kept in the Park's guest services/guest relations, which details the leased sloped path of travel for mobility impaired patrons.

Provide sufficient clear width along routes of travel between all line control barriers.

Provide and maintain proper clear width of the routes of travel through all merchandise stores in the Park.

Where accessible unloading areas also serve as accessible loading areas, provide proper signage indicating the location of the accessible loading and unloading areas at the entrance to the ride's queue.

Provide a proper clear floor space for a wheelchair in the First Aid building waiting area.

If a service counter/window is present in the First Aid building, then provide a properly configured accessible portion.

Provide at Guest Services a Park map which delineates the best path of travel for mobility impaired persons.

### **Work To Be Completed by 2019**

Provide at least one properly configured and identified accessible portion of the counter at each sales/service counter, concession stand, booth, dining facility or other element containing sales or service counters. At all non-accessible counters, post proper signage indicating the location of the nearest accessible counter serving that element. This shall specifically include the following dining facilities: California Crepes, Chop Six (formally Panda), Cold Stone Creamery, Dare Devil Grill, JB's Sports Bar & Grill, Johnny Rockets Express, Macho Nacho Burritos, Montego Bay Market, Oasis Club, Odin's Snack Shack, Outpost Café, Paddle Handle Corn Dogs, Paradise Snacks, Pirate Popcorn, Port of Call, Primo's Pizzeria, Seamoore Cott's Fish & Fries, Seaside Soft Serve and Funnel Cake, Sharkey's Snack Shack, Six Below, Totally Kickin' Chicken and Dippin Dots.

At all self-service stations, items, elements, and operable parts, at least one of each type shall be within proper reach ranges. This shall include food/beverage items and dispensers, vending machines, napkin dispensers, ATMs, interactive exhibits and touch screens.

Where bar counter seating is provided, provide a properly configured accessible portion of the counter with proper clear floor space and knee/toe clearances.

Provide at least one properly configured and positioned hand washing sink(s), drinking fountain(s), soap dispenser(s), and paper towel dispenser(s) at the Seal Cove feeding area.

Provide proper clear level floor space at each rider height check pole.

Provide proper wheelchair storage areas at each ride's accessible loading/unloading area.

Provide operational platform lifts at the Medusa roller coaster and Kong roller coaster.

Train employees on providing timely access to lifts at both Medusa and Kong rollercoasters.

Provide a properly configured and identified accessible route of travel to the designated accessible First Aid building entry/exit.

Provide and maintain proper maneuvering clearances at the entrance to the women's restroom in the First Aid building.

Provide a properly configured women's or unisex restroom in the First Aid building, including, but not limited to, proper maneuvering clearance at the toilet, properly positioned lavatory, properly insulated lavatory plumbing, properly configured and positioned grab bars, and properly positioned accessories.

Provide at least one properly configured accessible drinking fountain at all single drinking fountains or groupings of drinking fountains, including, but not limited to, proper knee clearance, proper mounting height, proper water flow, and proper clear level floor space.

### **Work To Be Completed by 2020**

The path of travel to the shark tunnel moving walkway shall be free of excessive vertical height changes and gaps in the walking surface.

If stand-alone booth game/attractions ("Carnival Games") are not removed, for each type of Carnival Game, provide at least one of each type which is properly configured and identified as accessible. Provide proper signage at all non-accessible Carnival Games indicating the location of the nearest equivalent accessible Carnival Game. Provide proper clear floor space at each Carnival Game, and ensure that the Carnival Games' operable parts are positioned within proper reach ranges. Carnival Games specifically includes, but is not limited to, all of the following: "Top Glow," "Weight Guessing Game," and the "Photo Booth."

Provide properly configured routes of travel to the designated accessible ride loading/unloading areas.

### **Work To Be Completed by 2021**

Provide the required number of properly configured and identified accessible/van-accessible parking stalls within the Guest Parking Lot.

Each accessible/van-accessible parking stall and adjacent access aisle shall have properly configured level surfaces, free of excessive gaps and vertical height changes.

Provide properly configured pavement markings at the access aisles adjacent to the designated accessible parking stalls.

Provide a properly configured and identified accessible route of travel from each of the designated accessible parking stalls to the park entrance, which shall not require travel behind vehicles other than one's own, and which shall be free of excessive slopes, gaps, and vertical height changes

Provide a properly configured accessible route of travel from each of the designated accessible parking stalls/van accessible parking stalls in the Guest Parking Lot to the shuttle pick up, which shall not require travel behind vehicles other than one's own, and shall be free of excessive slopes, gaps, and vertical height changes. Relocate or remove portable toilets, guardrails, trash cans and other obstacles which obstruct the required clear width of such routes of travel

Make available at least one shuttle bus which is properly configured for accessibility, including properly configured wheelchair loading/unloading ramp or lift, proper clear width of the route from the bus entry/exit to the wheelchair seating space, and proper clear floor space for wheelchairs clear of the route of travel within the bus. Said bus(es) shall either run on a regular cycle not to exceed 30 minutes between pick-ups which schedule shall be posted at all shuttle bus pick-up sites, or be available to pick up and transport disabled patrons between the Guest Parking Lot and the Park entrance within a reasonable period of time upon request.

Provide proper clear level floor spaces at all public elements. This shall specifically include all photo booths/kiosks, vending machines, exhibit information displays, exhibit viewing areas, drinking fountains, sales/service counters, ATMs, locker rental machines and lockers. If it is not possible to provide proper clear level floor space at the abovementioned public elements, then either remove and/or relocate said elements to an accessible area

Provide the required number of properly configured accessible seating spaces, including proper clear level floor space at wheelchair accessible seating spaces, at each grouping of dining areas where tables and chairs are provided for patron dining in the Park.

Provide a proper clear, level wheelchair seating space adjacent to each bench or grouping of benches (e.g. park bench style benches provided for the purpose of waiting/resting), or provide signage at all bench seating which lacks a clear level wheelchair space indicating the location of the nearest accessible wheelchair area.

Either remove sting ray exhibit or provide a properly configured accessible portion of the sting ray exhibit viewing area. If sting ray exhibit is not removed, make exhibit non-interactive.

At all animal encounters open to the public, and for which Plaintiff meets the Safety and Accessibility Guide to participate and has paid any applicable additional fees required, ensure properly configured accessible viewing area to include level clear floor space and/or provide an equivalent experience. Animal encounters shall include, but are not limited to: Butterfly Habitat, Dolphin Discovery, Elephant Encounter, Giraffe Encounter, Kingdom Stage, Seal Cove, Sharks in the Dark, Trainer for a Day, and Wildlife Discovery.

Provide a properly configured women's or unisex restroom in the ticket booth area, including, but not limited to, properly positioned lavatory, proper self-closing mechanism and door hardware on toilet compartment door, properly positioned accessories, and a properly configured accessible route to the restroom.

Provide properly configured and identified accessible unisex restrooms and/or the proper number of accessible toilet compartments and lavatories in each grouping of restrooms, including but not limited to, proper door maneuvering clearances, proper level floor spaces, proper lavatory knee clearances, proper lavatory counter heights, proper lavatory plumbing insulation, proper positioning of accessories, proper configuration of sanitary product dispensers' operable parts, proper size and configuration of accessible toilet compartments, proper self-closing mechanisms and door hardware on accessible toilet compartment doors, properly configured and positioned toilets including location of flush mechanism, properly configured and positioned grab bars, properly positioned baby changing stations, and properly positioned coat hooks.

At each entertainment venue in the Park which is open to the public, provide the proper number of wheelchair accessible seating spaces, and adjacent companion seating spaces, which provide an equivalent experience.

On accessible routes of travel to entertainment venues in the Park, properly smooth all gaps in the walking surface and cut back all vegetation which restricts the clear width of the accessible route. If, in light of natural topography of the Park's grounds, an accessible route of travel includes an excessive running slope, cross slope and/or vertical change in level, place signage directing mobility impaired patrons to the most accessible path of travel. Entertainment Venues specifically include, but are not limited to: Sea Lion Stadium, Dolphin Harbor, Odin's Temple of the Tiger, Toyota Stadium and Discovery Theatre. Also specifically included are Explorer's Outpost, Guest Services/Guest Relations and First Aid.

Where specialized seating is provided at an entertainment venue (e.g. "Splash Zone," "Flash Pass," "VIP Tours," "Explorer Outpost," etc.), provide the proper number of wheelchair accessible seating spaces, and adjacent companion seating spaces, which provide an equivalent experience.

Retrain employees on accessibility requirements relevant to their specific job assignment.