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 14 *Attorneys for Defendant*
 15 *Hiddenbrooke LLC*

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

16 ABDUL NEVAREZ and PRISCILLA
 17 NEVAREZ,
 18 Plaintiffs,
 19 v.

20 HIDDENBROOKE LLC, ACEPEX
 21 MANAGEMENT CORPORATION, BILLY
 22 CASPER GOLF, and DOES 1-10, Inclusive,
 23 Defendants.

) Case No. 4:17-cv-04156-DMR
)
) Civil Rights
)
) **CONSENT DECREE AND ~~PROPOSED~~**
) **ORDER AS TO INJUNCTIVE RELIEF**
) **ONLY**
)
) Complaint Filed: July 21, 2017
) Trial Date: Not assigned

23 1. Plaintiffs ABDUL NEVAREZ and PRISCILLA NEVAREZ filed a Complaint in
 24 this action on July 21, 2017 for injunctive and declaratory relief, damages, attorneys' fees,
 25 litigation expenses, costs, and other restitution for their alleged discriminatory experiences,
 26 denial of access, and denial of civil rights, and to enforce provisions of the Americans with
 27 Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, and California civil rights laws

28
 CONSENT DECREE AND ~~PROPOSED~~ ORDER
 CASE NO: 4:17-cv-04156-DMR

1 against defendants HIDDENBROOKE LLC (“Hiddenbrooke”), ACEPEX MANAGEMENT
2 CORPORATION, and BILLY CASPER GOLF (together “Defendants”), in connection with or
3 arising out of the condition of the Hiddenbrooke Golf Club, located at or about 1095
4 Hiddenbrooke Parkway, Vallejo, CA, and related properties and buildings (the “Club”) as of
5 September 6, 2016 and continuing. Plaintiffs have alleged, and Hiddenbrooke denies, that
6 Defendants violated Title III of the Americans with Disabilities Act (“ADA”) and the Unruh
7 Civil Rights Act (“Unruh”) by failing to provide full and equal access to the disabled at the Club.
8

9 2. Plaintiffs and Defendant Hiddenbrooke (together the “Parties”) hereby enter into
10 this Consent Decree and Order for the purpose of resolving injunctive relief issues in this lawsuit
11 without the need for protracted litigation. Issues of damages and attorneys’ fees, costs, and
12 expenses are addressed by separate agreement, attached hereto as Exhibit A and made a part of
13 this Consent Decree. The parties desire the Court’s jurisdiction to follow California contract law
14 in interpreting Exhibit A.
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18 **JURISDICTION:**

19 3. The Parties to this Consent Decree and Order agree that the Court has jurisdiction
20 of this matter pursuant to 28 U.S.C. section 1331 for alleged violations of the Americans with
21 Disabilities Act of 1990 (“ADA”), 42 U.S.C. sections 12101 *et seq.* and pursuant to
22 supplemental jurisdiction for alleged violations of Unruh, pursuant to California law. The
23 interpretation of Exhibit A shall be governed by California contract law.
24

25 4. To avoid the costs, expense, and uncertainty of litigation, the Parties to this
26 Consent Decree and Order agree to entry of this Consent Decree and Order and Exhibit A to
27 resolve all claims and causes of action raised in the Complaint. Nothing in this Consent Decree
28

1 and Order should be considered an admission of liability by Hiddenbrooke; liability is expressly
2 disclaimed. Accordingly, the Parties agree to the entry of this Consent Decree and Order without
3 trial or further adjudication of any issues of fact or law.
4

5 WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate to the
6 Court's entry of this Consent Decree and Order, which provide as follows:
7

8 **SETTLEMENT OF ALL CLAIMS:**

9 5. This Order shall be a full, complete, and final disposition and settlement of
10 Plaintiffs' injunctive relief claims against Hiddenbrooke that have arisen out of the subject
11 Complaint.
12

13 6. **Remedial Measures:**

14 a. **ParaGolfer adaptive golf cart:** Hiddenbrooke agrees to make available
15 at the Course a ParaGolfer adaptive golf cart ("ParaGolfer") within six (6) months of issuance of
16 the Order by the Court approving this Consent Decree. This ParaGolfer will be rented to
17 disabled golfers consistent with the Course's practices of providing golf carts to able-bodied
18 golfers, including on a first-come, first-served basis, kept in good working condition in
19 accordance with the ParaGolfer's manufacturer's specifications and the Course's practices and
20 schedule of maintaining carts for able-bodied golfers, and will be for the *sole use* of the Course
21 (i.e. it will not be lent out to other golf courses). Plaintiffs acknowledge that training regarding
22 the proper use of the ParaGolfer may be required by Hiddenbrooke as a condition prior to rental
23 or use of the ParaGolfer and shall not constitute a violation of this Consent Decree and Order.
24 Nothing in this Consent Decree in any way restricts Defendants from designating areas within
25 Hiddenbrooke to be off limits to users of the ParaGolfer because of bona fide safety concerns,
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1 such as areas of Hiddenbrooke that exceed the manufacturer's technical specifications.

2 b. **Delay or impossibility:** Plaintiffs acknowledge that if any of the remedial
3 measures set forth above in paragraph 6.a. are rendered impossible by conditions beyond their
4 control; force majeure; and/or any action, occurrence, denial, or other restriction imposed by any
5 governmental, quasi-governmental agency, authority, board, body, department, commission,
6 bureau or official, which are not under Hiddenbrooke's control, Hiddenbrooke will not be
7 deemed to have violated this Consent Decree and Order, so long as Hiddenbrooke makes and
8 continue to make a good faith effort to secure the necessary approvals, permits, or explore
9 alternative measures that would resolve the issue or issues causing the unavailability of the
10 ParaGolfer. Further, if, in the exercise of its good faith business judgment pursuant to California
11 law and based on objective evidence, Hiddenbrooke determines that the use of the ParaGolfer
12 results in increased accidents or injuries, Hiddenbrooke has the option to cease making the
13 ParaGolfer available to golfers. The Parties further agree that any delays in complying with the
14 terms of paragraph 6. a. caused by third parties, including but not limited to, the manufacturer of
15 the specified golf cart, shippers, inspectors and others will not be deemed to violate the
16 compliance date set forth herein as long as Hiddenbrooke makes a good faith effort at
17 implementation as soon as reasonably possible thereafter. The Parties further agree that
18 difficulty in financing the purchase of the ParaGolfer is not within the scope of this paragraph 6.
19

20
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22 b..

23 c. **Compliance:** Hiddenbrooke or its counsel will notify Plaintiffs' counsel
24 when the ParaGolfer has been ordered and when the Course has received the ParaGolfer by
25 emailing Plaintiffs' counsel directly at ccabalo@pwcklegal.com. If unforeseen difficulties
26 prevent Hiddenbrooke from ordering the ParaGolfer, Hiddenbrooke or its counsel will notify
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1 Plaintiffs' counsel in writing within five (5) days of discovering the delay. Plaintiffs will have
2 twenty (20) days to investigate and meet and confer, and to approve the delay by stipulation or
3 otherwise respond to Hiddenbrooke's notice. If the Parties cannot reach agreement regarding the
4 delay within an additional twenty (20) days, Plaintiffs may seek enforcement by the Court and
5 reserve the right to seek reasonable attorney's fees from Hiddenbrooke for any legal work
6 directly related to this matter necessitated by the failure of Hiddenbrooke to abide by this
7 Consent Decree and Order. If the Parties disagree on the amount of reasonable attorney's fees,
8 such fees shall be determined by the Court.
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12 **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND COSTS:**

13 7. The Parties' agreement related to Plaintiffs' claims for damages, attorneys' fees,
14 litigation expenses, and costs can be found in the attached Exhibit A.
15
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17 **ENTIRE CONSENT DECREE AND ORDER:**

18 8. This Consent Decree and Order constitute the entire agreement between the
19 signing Parties as to injunctive relief and no other statement, promise, or agreement, either
20 written or oral, made by any of the Parties or agents of any of the Parties that is not contained in
21 this written Consent Decree and Order, shall be enforceable regarding the matters described
22 herein. There are no intended third-party beneficiaries to this Agreement other than those
23 expressly set forth in this Agreement.
24
25

26 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND SUCCESSORS IN
27 INTEREST:**
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1 9. This Consent Decree and Order and Exhibit A shall be binding on Plaintiffs,
2 Hiddenbrooke, and any successors-in-interest. Hiddenbrooke has a duty to so notify all such
3 successors-in-interest of the existence and terms of this Consent Decree and Order during the
4 period of the Court's jurisdiction of this Consent Decree and Order.
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6
7 **MUTUAL RELEASE AND WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542**
8 **AS TO ALL CLAIMS**

9 10. Each of the Parties to this Consent Decree and Order understands and agrees that
10 there is a risk and possibility that, subsequent to the execution of this Consent Decree and Order,
11 any or all of them will incur, suffer, or experience some further loss or damage with respect to
12 the lawsuit that is unknown or unanticipated at the time this Consent Decree and Order is signed.
13 Except for all obligations required in this Consent Decree and Order, the Parties intend that this
14 Consent Decree and Order apply to all such further loss with respect to the lawsuit, except those
15 caused by the Parties subsequent to the execution of this Consent Decree and Order. Therefore,
16 except for all obligations required in this Consent Decree and Order, this Consent Decree and
17 Order shall apply to and cover any and all claims, demands, actions, and causes of action by the
18 Parties to this Consent Decree and Order and the attached Exhibit A, with respect to the lawsuit,
19 whether the same are known, unknown, or hereafter discovered or ascertained, and the
20 provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section
21 1542 provides as follows:
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25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
26 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
27 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
28 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**
 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
 WITH THE DEBTOR.

1
2 11. Except for all obligations required in this Consent Decree and Order and the
3 attached Exhibit A, each of the Parties to this Consent Decree and Order and on behalf of their
4 respective agents, representatives, predecessors, successors, heirs, partners, and assigns, releases
5 and forever discharges each other Party and all officers, directors, shareholders, subsidiaries,
6 joint venturers, stockholders, partners, parent companies, employees, agents, attorneys, insurance
7 carriers, heirs, predecessors, and representatives of each other Party, from all claims, demands,
8 actions, and causes of action of whatever kind or nature, presently known or unknown, arising
9 out of or in any way connected with the lawsuit.
10

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

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

19 **SEVERABILITY:**

20 13. If any term of this Consent Decree and Order is determined by any court to be
21 unenforceable, the 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
26 the Parties to this Consent Decree and Order and Exhibit A. This Consent Decree and Order
27 may be signed in counterparts and a facsimile signature shall have the same force and effect as
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1 an original signature.

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END OF PAGE.

**SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT THE END OF
THE DOCUMENT.**

1 Dated: _____, 2018

PLAINTIFF ABDUL NEVAREZ

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ABDUL NEVAREZ

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6 Dated: _____, 2018

PLAINTIFF PRISCILLA NEVAREZ

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PRISCILLA NEVAREZ

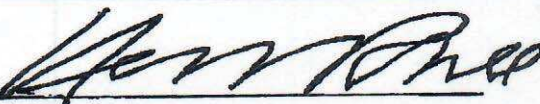
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11 Dated: 12/31, 2018

DEFENDANT HIDDENBROOKE LLC

12

13

By: 

14

15

Print Name: HENRY C. RHEE

16

APPROVED AS TO FORM:

Title: Manager

17

18 Dated: _____, 2018

PEIFFER WOLF CARR & KANE

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20

By: _____
Catherine Cabalo
Attorneys for Plaintiffs
ABDUL NEVAREZ and PRISCILLA
NEVAREZ

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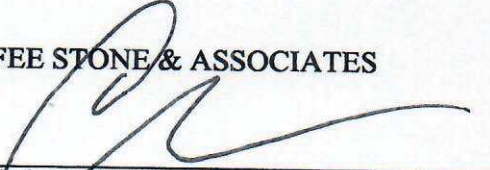
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23 Dated: 12-31-18, 2018

CORFEE STONE & ASSOCIATES

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By: 
Catherine M. Corfee
Attorney for Defendant
HIDDENBROOKE LLC

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1 Dated: 12/28, 2018

PLAINTIFF ABDUL NEVAREZ

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3 Abdul Nevarez
4 _____
5 ABDUL NEVAREZ

6 Dated: 12/28, 2018

PLAINTIFF PRISCILLA NEVAREZ

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8 Priscilla
9 _____
10 PRISCILLA NEVAREZ

11 Dated: _____, 2018

DEFENDANT HIDDENBROOKE LLC

12 By: _____

13 Print Name: _____

14 Title: _____

15 APPROVED AS TO FORM:

16
17 Dated: _____, 2018

PEIFFER WOLF CARR & KANE

18
19 By: _____
20 Catherine Cabalo
21 Attorneys for Plaintiffs
22 ABDUL NEVAREZ and PRISCILLA
23 NEVAREZ

24 Dated: _____, 2018

CORFEE STONE & ASSOCIATES

25 By: _____
26 Catherine M. Corfee
27 Attorney for Defendant
28 HIDDENBROOKE LLC

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Dated: _____, 2018

PLAINTIFF ABDUL NEVAREZ

ABDUL NEVAREZ

Dated: _____, 2018

PLAINTIFF PRISCILLA NEVAREZ

PRISCILLA NEVAREZ

Dated: _____, 2018

DEFENDANT HIDDENBROOKE LLC

By: _____

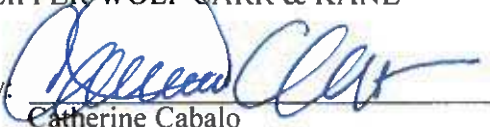
Print Name: _____

Title: _____

APPROVED AS TO FORM:

Dated: December 28, 2018

PEIFFER WOLF CARR & KANE

By: 
Catherine Cabalo
Attorneys for Plaintiffs
ABDUL NEVAREZ and PRISCILLA
NEVAREZ

Dated: _____, 2018

CORFEE STONE & ASSOCIATES

By: _____
Catherine M. Corfee
Attorney for Defendant
HIDDENBROOKE LLC

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FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1, I hereby attest that on January 3, 2019, 2018, I, Catherine Cabalo, attorney with Peiffer Wolf Carr & Kane, received the concurrence of Catherine M. Corfee of Corfee Stone and Associates in the filing of this document.



Catherine Cabalo

ORDER

Pursuant to stipulation, and for good cause shown, **IT IS SO ORDERED.**

Dated: January 17, 2018

