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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MATT STRONG,

12 Plaintiff,

13 vs.

14 DIANA E. JOHNSON, TRUSTEE OF
15 THE DIANA E. JOHNSON TRUST
16 DATED JULY 25, 2013,

17 Defendant.
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19 DOROTHY WHITE,

20 Plaintiff,

21 vs.

22 DIANE E. JOHNSON, TRUSTEE OF
23 THE DIANE E. JOHNSON TRUST
24 DATED JULY 25, 2013,

25 Defendant.
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CASE NOS. 16cv1289-LAB (JMA) and
16cv2524-LAB (JMA)

**ORDER GRANTING MOTION TO
CONTINUE STAY; AND**

**DIRECTIONS TO PARTIES
REGARDING THE COURT'S
EXPECTATIONS**

27 The Court stayed these consolidated actions and ordered the parties to jointly file a
28 status report by July 7. The report was to have shown whether conditions in the Miss Donuts
parking lot at 9729 Camp Road in Spring Valley were now ADA-compliant.

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1 The parties instead each filed their own status report. Defendant hired a contractor
2 to resurface the parking space and to remediate ADA violations. It appears Plaintiff's
3 counsel then visited the facility and looked at the parking lot. Plaintiff now agrees the
4 signage complies with the ADA. But the parties disagree about whether the slope of the
5 parking space is ADA-compliant.

6 According to both reports, an attorney from Plaintiff's firm who admittedly is a non-
7 expert measured the slope using only a 24-inch digital level. Plaintiff's report suggests this
8 is the method recommended by the government. That is not accurate; the government
9 recommends several methods, which include hiring a surveyor or using a digital slope meter
10 or other sophisticated electronic instrument. A less-accurate option involves using a
11 carpenter's level. But this method requires use of a tape measure and bracing the level with
12 an object such as a pencil.¹ Defendant says its contractor's work is still under warranty,
13 implying that Defendant stands ready to make any further changes that are needed, as long
14 as Plaintiff is prepared to show the contractor what is wrong.

15 The Court's orders contemplated that the parties would rely on measurements or
16 observations by someone with expertise in determining ADA compliance. See *Rush v.*
17 *Islands Restaurants, LP*, 2012 WL 4849016, at *2 and n.1 (S.D. Cal., Oct. 11, 2012)
18 (observing that it was much more appropriate for a disability claimant to hire someone with
19 training in surveying, architecture, construction, or some allied field rather than having an
20 attorney measure parking lot slope using a carpenter's level).

21 The Court also expects Plaintiff's counsel to send someone to inspect and measure
22 the parking lot who has experience and training in such matters. If the parking lot is still out
23 of compliance, that person should be able to demonstrate to Defendant's contractor what
24 is wrong, so that Defendant can get the work redone. Or if it is now ADA-compliant, the
25 person Plaintiff designates should confirm that so that this case can continue towards
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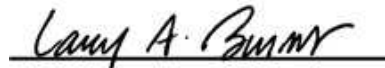
27 ¹ See [https://www.access-board.gov/research/completed-research/](https://www.access-board.gov/research/completed-research/dimensional-tolerances/part-iii-appendices)
28 [dimensional-tolerances/part-iii-appendices](https://www.access-board.gov/research/completed-research/dimensional-tolerances/part-iii-appendices) ("Carpenter's levels are used for setting level and
plumb only. To determine angles the level must be used with a measuring tape to determine
slope.").

1 resolution. The parties are directed to work together, to avoid the need for any further
2 extensions or parallel filings.

3 The joint motion is **GRANTED** in part. No later than **14 calendar days from the date**
4 **this order is issued**, Plaintiff shall designate someone with appropriate training in
5 determining a parking lot's compliance with the ADA, who shall promptly meet and confer
6 with Defendant's contractor. No later than **30 days from the date this order is issued**, the
7 parties shall submit a joint status report giving the current status of the parking lot, as
8 previously ordered.

9 **IT IS SO ORDERED.**

10 DATED: July 7, 2017

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12 **HONORABLE LARRY ALAN BURNS**
13 **United States District Judge**