



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NEWPORT NEWS DIVISION

RONALD W. WALDEN JR., )  
an individual )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CITY OF HAMPTON, VIRGINIA )  
A Municipal Corporation )  
 )  
Defendant. )  
/

CASE NO.: 4:10-cv-00127-RAJ -FBS

**CONSENT ORDER**

**THIS CONSENT ORDER** is entered into by and RON W. WALDEN, JR., (“Plaintiff”), on the one hand, and CITY OF HAMPTON, VIRGINIA, A MUNICIPAL CORPORATION, (“Defendant”) on the other hand, hereinafter collectively the “Parties,” and entered by the Court.

**IT IS HEREBY** stipulated and agreed by and between the Plaintiff and Defendant as follows; and the Court so finds:

**WHEREAS**, the Plaintiff filed this action against Defendant for alleged violations of Title II ~~II~~ of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.* (“Title II” of the “ADA”), the Rehabilitation Act, 29 C.F.R. 794, *et seq.* and Virginia state civil rights claims pursuant to which the Plaintiff sought a permanent injunction and attorneys’ and expert’s fees, expenses and costs;

**WHEREAS**, Defendant does not admit, and expressly denies, a violation of any federal, state or local statute (including, but not limited to, the ADA), and state or municipal fire safety or building code, or any other wrongdoing or liability whatsoever;

**WHEREAS**, Plaintiff and Defendant have agreed to a resolution of this action;

**WHEREAS**, the Parties desire to avoid further expense, time, effort and uncertainty in regards to this action;

**WHEREAS**, this Agreement concerns the property owned by Defendant at 1000 Coliseum Drive, Hampton, Virginia 23666 (the "Property"); and

**WHEREAS**, it is the intent of the Parties to improve access to the Property for persons with disabilities, taking into consideration the age of the Property and Defendant's limited resources, consistent with the ADA Accessibility Guidelines for Buildings and Facilities;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants and undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree, and the Court **ORDERS**, the following terms and conditions as full and complete resolution of this action.

**ADA ACCESSIBILITY AND BARRIER REMOVAL**

1. The above recitals constitute part of this Consent Order. Plaintiff alleges in the Complaint filed in this action that certain physical barriers to access exist at the Property that restrict and/or limit his access to the Property.<sup>1</sup> In response to the allegations contained in Plaintiff's Complaint and all other allegations brought or which could have been brought in this action with respect to this Property, the Court **Orders** Defendant to cause the barrier removal, alterations, and modifications set forth in this Court Order be made to the Property and **Finds** that such barrier removal, alterations, and modifications are in full satisfaction of Defendant's

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<sup>1</sup> For the purposes of this Consent Order, the following abbreviations shall apply (1) ADAAG refers to the ADA Accessibility Guidelines, 28 C.F.R. Pt. 36 App. A.

obligations under the ADA. More specifically, Defendant will perform the barrier removal, alterations, and modifications as set forth herein:

1(a). With regard to the three ramps which provide access to the seating level the City of Hampton shall purchase a cart that can be used by wheelchair users who will be able to remain in their wheelchairs as they are transported up the ramp in the cart. Those guests that require assistance in reaching the seating level but are not using a wheelchair for mobility shall be able use said cart, as well. If demand requires the City shall offer those carts currently in use for guests that require assistance in reaching the seating level but are not using a wheelchair for mobility. In the event of inclement weather the City will allow those waiting in line to wait inside under cover until a cart is available to transport them up the ramp.

1(b). With regard to accessible permanent concession stands the City of Hampton shall modify those areas used by patrons of the Coliseum to purchase food and beverage so that said permanent concession stands shall be ADA compliant. Notwithstanding the time period set forth in Paragraph 2 below, all modifications to be undertaken pursuant to this subparagraph shall be completed or under contract for construction within fourteen (14) months of the date this Consent Order is fully executed.

1(c). With regard to the access points from the west parking lot (also known as the I-64 or Interstate 64 parking lot) which cross the roadway with the 17 spaces along said roadway and are used to go from said street and access the sidewalk leading to the main plaza in front of the Coliseum, the City of Hampton shall modify said ramps to be ADA compliant.

1(d). With regard to ADA compliant signage in the parking lots as well as the bathrooms, as identified in that certain report entitled "AMERICANS WITH DISABILITIES

Act Title II Compliance Observations & Findings”, a copy of which is attached hereto as Exhibit A, the City of Hampton shall provide ADA compliant signage.

1(e). With regard to accessible parking spaces the City of Hampton shall convert ten (10) parking spaces, which although they are ADA compliant but not currently being used as handicapped accessible parking spaces, into handicapped accessible parking spaces. Conversely those spaces which are identified in Exhibit A as failing to meet ADA requirements shall be converted by the City of Hampton into parking spaces which are not designated as handicapped accessible.

1(f). Specifically exempted from this Consent Order are those items identified as Items 035 through 040, Items 043 through 046, Item 048, Items 051 through Item 054, Item 056 through 059, Item 069, Items 071 through 078 Items 083 through 086, Items 088 through 092 and Item 094 as identified in that certain document entitled "ADA Inspection Report Confidential" prepared by Michael Clark and attached to Exhibit A. A copy of said Inspection Report is attached hereto as Exhibit B. Each of the Parties to this Consent Order agree that they have considered, reviewed, and investigated whether the aforesaid items fail to be ADA compliant and have agreed, determined, and concluded that the aforesaid items are not in violation of the ADA and so represent to the Court, except however that with regard to items 041, 047, 055, 060, 079 and 087 the City shall install an additional grab bar in the location it deems to best meet the aspirational goals of the ADAAG.

2. All modifications to be undertaken pursuant to this Consent Order shall be completed within fourteen (14) months of the date this Consent Order is fully executed, except as otherwise expressly provided in Subparagraph 1(b) above. The Parties hereto acknowledge and stipulate, and the Court finds, that the barrier removal, alterations and modifications in this

Consent Order constitute, pursuant to and for the purposes of Title III of the ADA, its implementing regulations, and Standards, that which is readily achievable and technically feasible measures for the removal of existing architectural barriers to access at the Property.

3. The barrier removal, alterations and modifications required hereby shall be completed in all respects within the time frame set forth in Paragraph 2. The time period for completion by Defendant shall be subject to acts of God, *force majeure*, compliance with the Virginia Public Procurement Act or events beyond the control of Defendant such as inability to obtain building or zoning permits, failure of the city inspectors to make inspections, contractor defaults or work stoppages. In the event of such unforeseen circumstances, the time period for completion of the barrier removal, alterations and modifications provided in Paragraph 1 will be extended by the number of days reasonably attributable to such delay-causing event, as long as Defendant provide written notice by certified or registered mail or by facsimile to Plaintiff's counsel (see paragraph 17(b) below) of the delay, the specific reasons therefore, the estimate time for completion and makes a good faith effort to effect implementation as soon as reasonably possible thereafter.

#### **RIGHT OF INSPECTION**

4. Upon the completion of the accessibility requirements and barrier removal requirements set forth in Paragraph 1, Defendant shall provide written notice by certified or registered mail or by facsimile to Plaintiff's counsel (see paragraph 17(b) below) of such completion and shall afford Plaintiff and Plaintiff's representatives reasonable access to the Property to verify completion of the work required hereby. Nothing herein shall be construed to restrict or limit Plaintiff and/or his representatives from otherwise visiting or accessing the Property. Defendant's failure to provide timely notice to the Plaintiff as required in this

among Plaintiff's attorneys, Plaintiff's expert witness, Plaintiff or any other persons with claims to said settlement amount. Except as set forth herein, each party to this action shall bear their own fees, expenses and costs related to this action.

The Parties acknowledge that this provision of the Consent Order was and is a material inducement for Plaintiff to enter into this Consent Order.

#### **NON-DISPARAGEMENT**

9. The Parties agree that they will not make any disparaging, denigrating, demeaning or untrue statements about the other party or any person associated with the other party, including any officer, director, member, consultant, expert, or legal representative of the other party with respect to any of the issues raised, or which could have been raised in the above-captioned action.

#### **NON-DISCRIMINATION/ RETALIATION**

10. Defendant agrees that it, its agents, and employees will not discriminate against any individual because that individual has opposed any act or practice made unlawful by the ADA, or because any individual has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing regarding this matter or under the ADA, nor will Defendant coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of, his or her having exercised or enjoyed, or on account of, his or her aid or encouragement of any other individual in the exercise or enjoyment of, any right granted or protected by the ADA, in compliance with the mandates of 28 C.F.R. Section 36.206 thereof.

#### **RELEASE OF CLAIMS**

11. Plaintiff, by his signature below, hereby releases Defendant (and Defendant's divisions, predecessors, successors, assigns, directors, officers, employees, agents, attorneys, and lessors of and lessees at the Property) from any and all claims, causes, damages, demands, liabilities, equities and any and all other claims, whether known or unknown, from the beginning of the world to the date of this Consent Order, including, without limitation, any and all claims pursuant to Title II III of the ADA regarding the Property (and any other federal, state or local law governing physical access features for persons with disabilities at public accommodations) such as the claims that were asserted, or could have been asserted, in the above-captioned action, *provided that*, this release shall in no way limit Plaintiff's or the Court's ability to monitor and enforce Defendant's compliance with the terms of this Consent Order.

Defendant by its authorized signature, below, hereby releases, acquits, remises and forever discharges Plaintiff from any and all claims, causes, damages, demands, liabilities, equities and any and all other claims, whether known or unknown, from the beginning of the world to the date of this Consent Order, relating in any way to this Property.

These releases do not limit either party's ability to enforce the other party's compliance with the terms of this Consent Order.

12. Within five (5) days of the date this Consent Order is entered by the Court, the Parties shall file a stipulation for dismissal with prejudice of this action. The stipulation for dismissal with prejudice shall request that the Court retain jurisdiction to enforce this Consent Order.

#### **SEVERABILITY**

13. This Consent Order cannot be modified, amended or revoked except by the express written consent of all Parties and agreement of the Court.

**WAIVER**

14. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of such rights.

**EXECUTION**

15. The Parties have read and understood this Consent Order, have had the opportunity to discuss same with legal counsel, and have voluntarily agreed to sign the Consent Order and agree to be bound thereby and as Ordered by the Court.

16. Each person executing this Consent Order on each party's behalf has been duly authorized to sign on behalf of the respective party and to bind each to the terms of the Consent Order.

**NOTICE**

17. Any notice, correspondence, payment or other communication contemplated by or connected with this Consent Order shall be directed as follows:

(a) **If to Defendant:** Jeffrey A. Sachs  
Hampton City Attorney's Office  
22 Lincoln Street  
Hampton VA 23669  
  
Telephone (757) 727-6127  
Facsimile (757) 727-6788  
Email: [jsachs@hampton.gov](mailto:jsachs@hampton.gov)

With a copy to  
Joe Tsao, Director, Hampton Coliseum  
1000 Coliseum Drive,  
Hampton, VA 23666  
Telephone (757) 896-1235  
Facsimile (757) 838-2595

(b) **If to Plaintiff:** Louis Mussman, Esq.  
Ku & Mussman, P.A.



12550 Biscayne Blvd., Suite 406  
Miami, Florida 33181  
Telephone (305) 891-1322  
Facsimile (305) 891-4512  
E-mail: [louis@kumussman.com](mailto:louis@kumussman.com)

IN WITNESS WHEREOF, the Parties have hereunto signed their names on the day and year written below.

WE ASK FOR THIS:

RON W. WALDEN, JR.,  
Plaintiff

HAMPTON PARKS AND RECREATION,  
Defendant

By: S. Khalili  
*Counsel for Plaintiff*  
Shabnam Khalili (VSB # 78681)  
E-mail: skhalili7@gmail.com  
Ku & Mussman, P.A.  
3110 Mount Vernon Avenue, #1108  
Alexandria, VA 22305  
Phone: 202/573-7070

By: Jeffrey A. Sachs  
*Counsel for Defendant*  
Jeffrey A. Sachs (VSB#24609)  
E-mail: jsachs@hampton.gov  
Hampton City Attorney  
22 Lincoln Street  
Hampton, VA 23669  
Phone: 757 727-6127

Date: 5/31/11 Date: \_\_\_\_\_

SEEN AND AGREED WITH RESPECT TO PARAGRAPHS 8 and 11.

Ronald W. Walden Jr. 6/2/11  
RON W. WALDEN, JR. Date

\_\_\_\_\_  
CITY OF HAMPTON, Date  
VIRGINIA, A MUNICIPAL  
CORPORATION

S. Khalili 5/31/11  
Ku and Mussman, P.A. Date

By Mayor Spunt 6/2/11  
City Manager

By Chudn 6/2/11  
City Attorney Date

It is so ORDERED.

Raymond A. Jackson  
Raymond A. Jackson, Judge  
UNITED STATES DISTRICT JUDGE

6/8/11  
DATE