



GEORGE HILLS COMPANY, INC.

Claims and Risk Management Services

41 + 42

10-14-08

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BOARD OF SUPERVISORS
EL DORADO COUNTY
Established 1954

County of El Dorado Liability Claims Administration Office c/o Office of the County Counsel
330 Fair Lane, Placerville, CA 95667 • (530) 621-5627 • FAX (530) 621-2937

November 19, 2008

SUZANNE ALLEN de SANCHEZ
Clerk of the Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

Re: *Edward L. Kemper v. El Dorado County*, U.S. District Court – Eastern District of California Case No. 2:08-CV-00384-FEB-GGH

George S. Louie v California Judicial Council, et al, U.S. District Court – Eastern District of California Case No. 2:07-CV-00878-WBS-KJM

Dear Ms. Allen de Sanchez:

On October 14, 2008, the Board of Supervisors heard the above matters as closed session items 41 and 42, respectively, and approved our request to authorize the Board Chairman to sign on behalf of the County a Proposed Consent Decree in the above entitled matters which will result in the Courts' issuance of a final Consent Decree and Order. I have now been provided with the final version of the proposed order. Please note that the Court requires the parties signatures before it will sign and that the document at paragraph 16 (page 7) provides that the order may be signed in counterpart and facsimile signatures will have the same force and effect [as far as the Court is concerned] as an original signature. Once the Board Chairman's signature is affixed to this order, a copy of the signature page will be faxed to our defense counsel for forwarding to the Court so that the order may issue without undue delay. At some point, the County will have copies of the signatures of all parties. Please do not hesitate to call me with any questions. Thank you for your attention to this matter.

Sincerely,

GEORGE HILLS COMPANY, INC.

JON C. HENDRICKSON
Claims Administrator

JCH: hos



CONTRACT ROUTING SHEET

Date Prepared: 7-25-08

Need Date: _____

PROCESSING DEPARTMENT:

Department: County Counsel
Dept. Contact: Michael J. Ciccozzi
Phone #: 621-5770
Department _____
Head Signature: _____

CONTRACTOR:

Name: None
Address: _____
Phone: _____

CONTRACTING DEPARTMENT: County Counsel

Service Requested: Consent Decree for settlement Kemper / Louie Claims
Contract Term: _____ Contract Value: \$ _____
Compliance with Human Resources requirements? Yes: _____ No: _____
Compliance verified by: _____

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: ✓ Disapproved: _____ Date: 11/23/08 By: [Signature]
Approved: _____ Disapproved: _____ Date: _____ By: _____

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: _____ Disapproved: _____ Date: _____ By: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____

41+42
10-14-08

1 **PORTER | SCOTT**
A PROFESSIONAL CORPORATION
2 Stephen E. Horan, SBN 125241
Jessica M. Walker, SBN 250939
3 350 University Ave., Suite 200
Sacramento, California 95825
4 TEL: 916.929.1481
FAX: 916.927.3706

5 Attorneys for Defendant.
6 COUNTY OF EL DORADO

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 EDWARD KEMPER,
10 Plaintiff,
11 v.

**[PROPOSED] CONSENT DECREE
AND ORDER**
Case No. CV-08-00384 GEB-GGH

12 EL DORADO COUNTY, a municipality,
13 Defendant.
14 _____/

15 GEORGE S. LOUIE,
16 Plaintiff,
17 vs.

Case No. CIV-S-07-00878 KJM

Louie Complaint filed: 5/9/07
Louie Amended Complaint filed: 7/13/07
Kemper Complaint filed: 2/20/08

18 CALIFORNIA JUDICIAL COUNCIL, et
al.,
19 Defendants.
20 _____/

21 **CONSENT DECREE AND ORDER**

22 1. Plaintiff GEORGE LOUIE filed a Complaint on May 9, 2007, and filed an
23 Amended Complaint on July 13, 2007. Plaintiff EDWARD KEMPER filed a Complaint on
24 February 20, 2008. Their Complaints seek to enforce provisions of the Americans with
25 Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101, et seq., § 504 of the Rehabilitation
26 Act of 1973 and California civil rights laws against Defendant, EL DORADO COUNTY
27 (hereafter "Defendant"). GEORGE LOUIE also presented two Government Claims, one
28 dated on or about June 9, 2008, complaining of inaccessible sidewalks and walkways

1 throughout unincorporated EL DORADO COUNTY and another dated on or about June 9,
2 2008, asserting inaccessible COUNTY public buildings and facilities existing throughout the
3 COUNTY. Plaintiffs have alleged that Defendant violated Title II of the ADA and §§ 54 and
4 54.1 of the California Civil Code and §§ 4450, et seq., § 11135 of the California Government
5 Code by failing to provide full and equal access to its services, programs and activities. The
6 parties intend by this Consent Decree to resolve all pending and prospective injunctive relief
7 claims concerning Defendant's programs, services, buildings, facilities, sidewalks, and other
8 public rights of way.

9 2. Defendant EL DORADO COUNTY denies the allegations in the Complaints
10 and by entering into this Consent Decree and Order does not admit liability for any of the
11 allegations in Plaintiffs' Complaints filed in this action. The parties enter into this Consent
12 Decree and Order for the purpose of resolving this lawsuit and prospective lawsuits without
13 the need for protracted litigation, and without the admission of any liability.

14 **JURISDICTION**

15 3. The parties to this Consent Decree agree that the Court has jurisdiction of this
16 matter pursuant to 28 U.S.C. § 1331 for violations of the Americans with Disabilities Act of
17 1990, 42 U.S.C. 12101, et seq. and pendant jurisdiction.

18 4. In order to avoid the costs, expense and uncertainty of protracted litigation, the
19 parties to this Consent Decree agree to entry of this Order to resolve all claims raised in the
20 Complaints and Claims filed with this Court and/or which would be filed with this Court.
21 Accordingly, they agree to the entry of this Order without trial or further adjudication of any
22 issues of fact or law concerning Plaintiffs' claims other than as provided herein.

23 WHEREFORE, the parties to this Consent Decree agree and stipulate to the Court's
24 entry of this Consent Decree and Order, which provides as follows:

25 **SETTLEMENT OF INJUNCTIVE RELIEF**

26 5. This Order shall be a full, complete, and final disposition and settlement of
27 Plaintiff's claims against Defendant, its employees, agents, officers and representatives that
28 have arisen out of the subject Complaints and claims. The parties agree that there has been

1 no admission or finding of liability or violation of the ADA and/or California civil rights
2 laws, and this Consent Decree and Order should not be construed as such.

3 6. The parties agree and stipulate that the corrective work hereafter described will
4 be performed in compliance with the standards and specifications for disabled access as set
5 forth in the California Code of Regulations, Title 24-2 and Americans with Disabilities Act
6 Accessibility Guidelines, unless other standards are specifically agreed to in this Consent
7 Decree and Order.

8 a) Remedial Measures, Physical Work To Be Done: The physical
9 work agreed upon by the Parties is described in "Exhibit A" to this Consent
10 Decree, which is attached hereto and incorporated herein by reference as
11 though fully set forth at length at this place.

12 b) Remedial Measures, Policy Modifications: The policy
13 modifications agreed to by the Parties are described in "Exhibit B" to this
14 Consent Decree which is attached hereto and incorporated herein by reference
15 as though fully set forth at length at this place. The policy will be
16 implemented no more than 180 days following the parties' execution of the
17 Consent Decree and Order.

18 c) Timing of Physical Corrective Work: The timing of the physical
19 work agreed upon by the Parties included in "Exhibit A" will be determined
20 by the COUNTY but in no event, without Court relief, will it take longer than
21 ten (10) years. In the event that unforeseen difficulties prevent Defendant
22 from completing any of the agreed-upon injunctive relief, Defendant, or its
23 counsel, will notify the Court and Plaintiffs through counsel, if any. Plaintiffs
24 will then either stipulate to an extension of time, based on Defendant's
25 showing of good cause, or if the parties cannot agree, require that Defendant
26 make a motion for relief to the Court, preferably before Magistrate Judge
27 Kimberly J. Mueller or if Judge Mueller is unavailable any other Magistrate
28 Judge pursuant to 28 U.S.C. § 636(c). Further Defendant, or its counsel, will

1 make available annual status reports beginning one year from the entry of this
2 Consent Decree.

3 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES, AND COSTS:**

4 7. The parties have reached agreement regarding Plaintiffs' claims for damages,
5 attorney fees, litigation expenses and costs. Defendant shall transmit checks payable as
6 follows: \$16,833.35 to Dale Stephens, Plaintiff GEORGE LOUIE'S ADA Consultant;
7 \$12,000 payable to J. Grant Kennedy, Plaintiff GEORGE LOUIE'S legal advisor; and
8 \$46,166.65 to George Louie; and \$50,000 payable to the Law Offices of Keith Cable and
9 Plaintiff EDWARD KEMPER. These sums are paid in full satisfaction of Plaintiffs' claims
10 for damages for personal injury, civil rights violations, and any other form of damages, as
11 well as satisfaction of Plaintiffs' claims for attorney fees, litigation expenses and costs.

12 **ENTIRE CONSENT ORDER**

13 8. This Consent Decree and Order and Exhibits attached to this Consent Decree,
14 which are incorporated herein by reference as if fully set forth in this document, constitutes
15 the entire agreement between the signing parties, and no other statement, promise or
16 agreement, either written or oral, made by any of the parties or agents of any of the parties,
17 that is not contained in this written Consent Decree and Order, shall be enforceable regarding
18 the matters described herein.

19 **CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST**

20 9. This Consent Decree and Order shall be binding on Plaintiffs GEORGE
21 LOUIE and EDWARD KEMPER, their attorneys and Defendant EL DORADO COUNTY,
22 and any successors in interest. The parties have a duty to so notify all such successors in
23 interest of the existence and terms of this Consent Decree and Order during the period of the
24 Court's jurisdiction of this Consent Decree and Order.

25 **MUTUAL RELEASE AND WAIVE OF CIVIL CODE § 1542:**

26 10. Each of the parties to this Consent Decree understands and agrees that there
27 is a risk and possibility that, subsequent to the execution of this Consent Decree, any or all
28 of them will incur, suffer, or experience some further loss or damage which respect to the

1 lawsuit which are unknown or unanticipated at the time this Consent Decree is signed.
2 Except for all obligations required in this Consent Decree, the parties intend that this Consent
3 Decree apply to all such further loss with respect to the lawsuit, except those caused by the
4 parties subsequent to the execution of this Consent Decree. Therefore, except for all
5 obligations required in this Consent Decree, this Consent Decree shall apply to and cover any
6 and all claims, demands, actions and causes of action by the parties to this Consent Decree
7 with respect to the lawsuit, whether the same are known, unknown or hereafter discovered
8 or ascertained, and the provisions of § 1542 of the California Civil Code are hereby expressly
9 waived. Section 1542 provides as follows:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
11 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
12 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
13 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
14 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
15 HER SETTLEMENT WITH DEBTOR.

11. Except for all obligations required in this Consent Decree, each of the parties
14 to this Consent Decree, on behalf of each, their representative agents, representatives,
15 predecessors, successors, heirs, partners and assigns, releases and forever discharges each
16 other Party and all officers, directors, shareholders, subsidiaries, joint ventures, stockholders,
17 partners, parent companies, employees, agents, attorneys, insurance carriers, heirs,
18 predecessors, and representatives of each other Party, from all claims, demands, actions, and
19 causes of action of whatever kind or nature, presently known or unknown, arising out of or
20 in any way connected with this Lawsuit.

21 **TERM OF THE CONSENT DECREE AND ORDER:**

22 12. This Consent Decree and Order shall be in full force and effect for a period of
23 ten (10) years after the date of entry of this Consent Decree and Order, or until the relief
24 contemplated by this Order is completed, whichever occurs first. The Court shall retain
25 jurisdiction of this action to enforce provisions of this Order for ten (10) years after the date
26 of this Consent Decree, or until the relief contemplated by this Order is completed,
27 whichever occurs first.

28 ///

1 **SEVERABILITY:**

2 13. If any term of this Consent Decree and Order is determined by any court to be
3 unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain
4 in full force and effect.

5 **COVENANT NOT TO SUE**

6 14. Except as provided herein, Plaintiffs GEORGE LOUIE and EDWARD
7 KEMPER and the Law Offices of Keith Cable and the attorneys therein shall for the next ten
8 (10) years from the date of the above-mentioned Order fully refrain from bringing, inducing,
9 encouraging, or assisting in the bringing of any action or proceeding seeking injunctive relief
10 and/or damages against EL DORADO COUNTY, its employees, agents, officers or
11 representatives for any claimed violation, act or omission under the ADA or any of the other
12 laws or statutes asserted in the Complaints and claims referenced herein. "Assisting" does
13 not include mere reference to matters of public record. "Assisting" does include reference
14 to documents, case information, and evidence pertaining to this litigation which are not
15 matters of public record. This covenant not to sue does not preclude the Law Offices of
16 Keith Cable and the attorneys therein from representing a disabled plaintiff who contacts his
17 office after approval of this Consent Decree in damages action only in state court, or from
18 referring the person seeking their assistance to another law firm with regard to a damages
19 action; nor does it preclude Plaintiff or said Law Offices and attorneys from responding to
20 a valid subpoena or Court order requiring unprivileged information.

21 **GOOD CAUSE**

22 15. If during the period covered by the Consent Decree and Order EL DORADO
23 COUNTY is unable to perform one or more of the duties set out in the Consent Decree and
24 Order, and if the parties are unable to reach agreement after notification of Plaintiff's counsel
25 as required in paragraph 6c, then Defendant may seek relief from the Court, specifically the
26 Honorable Magistrate Judge Kimberly J. Mueller, or if she is not available, from any other
27 Magistrate Judge pursuant to 28 U.S.C. § 636(c), and Defendant shall be entitled to such
28 relief upon a showing of good cause.

1 **SIGNATORIES BIND PARTIES:**

2 16. Signatories on the behalf of the parties represent that they are authorized to
3 bind the parties to this Consent Decree and Order. This Consent Decree and Order may be
4 signed in counterparts and a facsimile signature shall have the same force and effect as an
5 original signature.

6
7 Dated: October 17, 2008 By: _____
8 Plaintiff GEORGE LOUIE

9 Dated: October 17, 2008 By: _____
10 Plaintiff EDWARD KEMPER

11 Dated: October 17, 2008 EL DORADO COUNTY
12
13 By: _____
14 **RON BRIGGS**, First Vice Chairman
El Dorado County Board of Supervisors
ATTEST: **SUZANNE ALLEN DE SANCHEZ**,
Clerk of the Board of Supervisors

15 APPROVED AS TO FORM
16 Dated: October 17, 2008 CABLE LAW OFFICES DEPUTY
17

18 By: _____
19 Keith D. Cable, Esq.
20 Attorney for Plaintiff,
EDWARD KEMPER

21
22 **ORDER**

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

24 Dated: _____
25 Kimberly J. Mueller
26 United States District Court

EXHIBIT 'A' TO CONSENT DECREE

EXHIBIT A-1:

ADA upgrade plans for South Lake Tahoe Courthouse prepared by Brian Shinault, AIA.

EXHIBIT A-2:

ADA Resource Associates, Inc.'s report on South Lake Tahoe Courthouse dated August 26, 2008.

EXHIBIT A-3:

ADA Resource Associates, Inc.'s report on Cameron Park Courthouse dated August 26, 2008.

EXHIBIT A-4:

Matrix of recommended facilities modifications updated August 2008.

EXHIBIT 'B' TO CONSENT DECREE

1. Complete evaluation of Placerville Courthouse at Building C on Fair Lane by the first quarter of 2009. The County agrees to make ADA improvements as required and generally anticipates said improvements will be similar to those necessary at South Lake Tahoe and Cameron Park.
2. Diligently pursue negotiations with the State of California regarding the transfer of ownership of the Historic Courthouse at Main Street in Placerville, including agreement on the party responsible for necessary ADA improvements at that location and/or request the administrative office of the Courts to relocate its programs and services to an accessible location elsewhere.
3. Within 180 days review and adopt sidewalk and curb ramp standards which meet current federal and state requirements.
4. Within 180 days complete a survey of existing sidewalks and curb ramps and update the County's transition plan to complete necessary ADA improvement work within a reasonable time but not to exceed ten years unless, on a showing of good cause by the County, the Court grants additional time.
5. Within 180 days designate an ADA coordinator and make the identity of that person and his/her contact information readily available to the public.
6. Within 180 days establish a grievance procedure to address accessibility complaints and concerns with the information on that process readily available to the public.