

1 PAUL L. REIN, Esq. (SBN 43053)  
2 CELIA MCGUINNESS, Esq. (SBN 159420)  
3 CATHERINE M. CABALO, Esq. (SBN 248198)  
4 LAW OFFICES OF PAUL L. REIN  
5 200 Lakeside Drive, Suite A  
6 Oakland, CA 94612  
7 Telephone: 510/832-5001  
8 Facsimile: 510/832-4787  
9 reinlawoffice@aol.com

6 Attorneys for Plaintiffs  
7 CONNIE MARTINEZ and  
8 JOSE MARTINEZ

9 SCOTT E. COFER, Esq.  
10 GREVE, CLIFFORD, WENGEL & PARAS, LLP  
11 2870 Gateway Oaks Drive, Suite 210  
12 Sacramento, CA 95833  
13 Telephone: 916/443-2011  
14 Facsimile: 916/441-7457

12 Attorneys for Defendants  
13 SCC FLORIN ROAD BINGO, SACRAMENTO  
14 CONSOLIDATED CHARITIES, KEVIN BEERS,  
15 AND SHAWN MARTINEZ

15 IN THE UNITED STATES DISTRICT COURT

Martinez, et al., SCC Florin Road Bingo, et al. IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

Doc. 48

18 CONNIE MARTINEZ and  
19 JOSE MARTINEZ,

20 Plaintiffs,

21 v.

22 SCC FLORIN ROAD BINGO;  
23 SACRAMENTO  
24 CONSOLIDATED CHARITIES;  
25 KEVIN BEERS; SHAWN  
26 MARTINEZ; ARC PROPERTIES,  
27 INC.; AND DOES 1-10,  
28 INCLUSIVE,

Defendants.

Case No. 2:10-cv-01647 GEB-GGH

Civil Rights

**CONSENT DECREE AND  
~~PROPOSED~~ ORDER AS TO  
DEFENDANTS SCC FLORIN  
ROAD BINGO, SACRAMENTO  
CONSOLIDATED CHARITIES,  
KEVIN BEERS, AND SHAWN  
MARTINEZ RELATED TO  
INJUNCTIVE RELIEF ONLY**

CONSENT DECREE &  
[PROPOSED] ORDER

Case No. 2:10-cv-01647 GEB-GGH

S:\CASES\F\FLORIN RD BINGO\PLEADINGS\Consent Decree & Order\FRB Defendants\20110822 Consent Decree & Order RE FRB only (FINAL).doc

1           1.     Plaintiffs CONNIE MARTINEZ and JOSE MARTINEZ (together  
2     “Plaintiffs”) filed a Complaint in this action on June 28, 2010, to obtain recovery  
3     of damages for their discriminatory experiences, denial of access, and denial of  
4     their civil rights, and to enforce provisions of the Americans with Disabilities Act  
5     of 1990 (“ADA”), 42 U.S.C. §§ 12101 *et seq.*, and California civil rights laws  
6     against Defendants SCC FLORIN ROAD BINGO; SACRAMENTO  
7     CONSOLIDATED CHARITIES; KEVIN BEERS; SHAWN MARTINEZ; and  
8     ARC PROPERTIES, INC., relating to the condition of Defendants’ public  
9     accommodations as of October 4, 2009, and continuing. Plaintiffs have alleged  
10    that Defendants violated Title III of the ADA and sections 51, 52, 54, 54.1, 54.3  
11    and 55 of the California Civil Code, and sections 19955 *et seq.* of the California  
12    Health & Safety Code by failing to provide full and equal access to their facilities  
13    at 2350 and 2326 Florin Road, Sacramento, California.  
14  
15

16           2.     Plaintiffs and defendants SCC FLORIN ROAD BINGO;  
17     SACRAMENTO CONSOLIDATED CHARITIES; KEVIN BEERS; SHAWN  
18     MARTINEZ only (these defendants together hereinafter the “Defendants” and  
19     Plaintiffs and Defendants hereinafter the “Parties”) hereby enter into this Consent  
20     Decree and Order for the purpose of resolving this lawsuit as to Defendants  
21     without the need for protracted litigation.  
22  
23  
24  
25  
26  
27

1           3. Defendants have denied, and continue to deny, Plaintiffs' claims, and  
2 deny that Defendants have any legal or equitable responsibility for the damages  
3 alleged by Plaintiffs. After considering the substantial expense and uncertainty  
4 associated with litigation, the Parties desire to settle all claims and disputes  
5 Plaintiffs may have with the "Released Parties." The "Released Parties" shall  
6 collectively include each of Defendants and their respect employees, attorneys,  
7 agents, officers, directors, successors, predecessors, subsidiaries, divisions,  
8 affiliates, individuals, firms, insurance companies, reinsurance companies and  
9 third-party administrators. The Released Parties and Plaintiff shall be referred to  
10 together as the "Parties."  
11  
12  
13

14  
15 **JURISDICTION:**  
16

17           4. The Parties to this Consent Decree and Order agree that the Court has  
18 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations  
19 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*,  
20 and pursuant to supplemental jurisdiction for alleged violations of California  
21 Health & Safety Code sections 19955 *et seq.*; and California Civil Code sections  
22 51, 52, 54, 54.1, 54.3, and 55.  
23  
24

25           5. In order to avoid the costs, expense, and uncertainty of protracted  
26 litigation, the Parties to this Consent Decree and Order agree to entry of this  
27

1 Consent Decree and Order to resolve injunctive relief claims against Defendants  
2 raised in the Complaint filed with this Court and any claims relating to the subject  
3 facility which could have been raised in the Complaint and asserted against any of  
4 defendants SCC FLORIN ROAD BINGO; SACRAMENTO CONSOLIDATED  
5 CHARITIES; KEVIN BEERS; SHAWN MARTINEZ. Accordingly, the Parties  
6 agree to the entry of this Consent Decree and Order without trial or further  
7 adjudication of any issues of fact or law concerning Plaintiffs' injunctive relief  
8 claims against Defendants.  
9

11 WHEREFORE, the Parties to this Consent Decree and Order hereby agree  
12 and stipulate to the Court's entry of this Consent Decree and Order, which  
13 provides as follows:  
14

15  
16  
17 **SETTLEMENT OF INJUNCTIVE RELIEF:**

18 6. This Consent Decree and Order shall be a full, complete, and final  
19 disposition and settlement of Plaintiffs' claims against Defendants for injunctive  
20 relief that have arisen out of the subject Complaint. Plaintiffs expressly waive any  
21 claims for any further alterations to the subject property against Defendants which  
22 could have been brought prior to the effective date of this Consent Decree.  
23

24  
25 7. The Parties agree and stipulate that the corrective work will be  
26 performed in compliance with the standards and specifications for disabled access  
27

1 as set forth in the California Code of Regulations, Title 24-2, and Americans with  
2 Disabilities Act Accessibility Guidelines, unless other standards are specifically  
3 agreed to in this Consent Decree and Order.  
4

5 a) **Remedial Measures:** Defendants will perform corrective work  
6 at 2350 Florin Road, Sacramento, California. The corrective work agreed upon by  
7 the Parties is set forth in **Attachment A**, attached and incorporated herewith.  
8 Defendants agree to undertake all of the respective remedial work as set forth  
9 therein. Defendants further agree to policy changes set forth in **Attachment B**,  
10 attached and incorporated herewith.  
11

12 b) **Timing of Injunctive Relief:** Defendants will submit any  
13 necessary plans for the corrective work to the appropriate governmental agencies  
14 within 60 days of the entry of this Consent Decree by the Court. Defendants will  
15 commence work within 30 days of receiving approval from the appropriate  
16 agencies. Defendants will complete all work within 120 days of commencement of  
17 work. In the event that unforeseen difficulties prevent Defendants from  
18 completing any of the agreed-upon injunctive relief, Defendants or their counsel  
19 will notify Plaintiffs' counsel in writing within 15 days of discovering the delay.  
20 Defendants or their counsel will notify Plaintiffs' counsel when the corrective  
21 work is completed, and in any case will provide a status report no later than 120  
22 days from the entry of this Consent Decree.  
23  
24  
25  
26  
27

1 c) If Defendants fail to provide injunctive relief on the agreed-to  
2 timetable and/or fail to provide timely written status notification, and Plaintiffs file  
3 a motion with the Court to obtain compliance with these terms, Plaintiffs reserve  
4 the right to seek additional attorney fees for all compliance work necessitated by  
5 Defendants' failure to keep their agreement.  
6

7  
8  
9 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS:**

10 8. The Parties have not reached any agreement regarding Plaintiffs'  
11 claims for damages, attorneys' fees, litigation expenses and costs. These matters  
12 will be the subject of future negotiation or litigation as necessary. The Parties  
13 jointly stipulate and request that the Court not dismiss the case as these significant  
14 issues remain unresolved.  
15  
16

17  
18 **ENTIRE CONSENT ORDER:**

19 9. This Consent Decree and Order, **Attachment A**, and **Attachment B**  
20 constitute the entire agreement between the signing Parties on the matters of  
21 injunctive relief, and no other statement, promise or agreement, either written or  
22 oral, made by any of the Parties or agents of any of the Parties that is not contained  
23 in this written Consent Decree and Order shall be enforceable regarding the  
24 matters of injunctive relief described herein. This Consent Decree and Order  
25  
26  
27

1 applies to Plaintiffs' claims for injunctive relief only and does not resolve  
2 Plaintiffs' claims for damages, attorney fees, litigation expenses and costs, which  
3 shall be the subject of further negotiation and/or litigation. The Parties stipulate  
4 that all Parties request that the Court not dismiss the case, as issues of statutory  
5 damages, attorney fees, litigation expenses, and costs are still before the Court.  
6

7  
8  
9 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND  
SUCCESSORS IN INTEREST:**

10 10. This Consent Decree and Order shall be binding on Plaintiffs and  
11 upon Defendants and any successors in interest. Defendants have a duty to so  
12 notify all such successors in interest of the existence and terms of this Consent  
13 Decree and Order during the period of the Court's jurisdiction of this Consent  
14 Decree and Order.  
15  
16

17  
18 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS  
19 TO INJUNCTIVE RELIEF ONLY:**

20 11. Each of the Parties to this Consent Decree and Order understands and  
21 agrees that there is a risk and possibility that, subsequent to the execution of this  
22 Consent Decree and Order, any or all of them will incur, suffer or experience some  
23 further loss or damage with respect to the lawsuit which are unknown or  
24 unanticipated at the time this Consent Decree and Order is signed. Except for all  
25 obligations required in this Consent Decree and Order, the Parties intend that this  
26  
27  
28

1 Consent Decree and Order apply to all such further loss with respect to the lawsuit,  
2 except those caused by the Parties subsequent to the execution of this Consent  
3 Decree and Order. Therefore, except for all obligations required in this Consent  
4 Decree and Order, this Consent Decree and Order shall apply to and cover any and  
5 all claims, demands, actions and causes of action by the Parties to this Consent  
6 Decree and Order with respect to the lawsuit, whether the same are known,  
7 unknown or hereafter discovered or ascertained, and the provisions of Section  
8 1542 of the California Civil Code are hereby expressly waived. Section 1542  
9 provides as follows:  
10  
11

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

20 This waiver applies to the injunctive relief aspects of this action only and does not  
21 include resolution of Plaintiffs' claims for damages, attorney fees, litigation  
22 expenses and costs.

23 12. Except for all obligations required in this Consent Decree and Order –  
24 and exclusive of the referenced continuing claims for damages, statutory attorney  
25 fees, litigation expenses and costs – each of the Parties to this Consent Decree and  
26 Order, on behalf of themselves, their respective agents, representatives,  
27 predecessors, successors, heirs, partners and assigns, releases and forever



1 discharges each other Party and all officers, directors, shareholders, subsidiaries,  
2 joint venturers, stockholders, partners, parent companies, employees, agents,  
3 attorneys, insurance carriers, heirs, predecessors, and representatives of each other  
4 Party, from all claims, demands, actions, and causes of action of whatever kind or  
5 nature, presently known or unknown, arising out of or in any way connected with  
6 the lawsuit.  
7  
8  
9

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

11 13. This Consent Decree and Order shall be in full force and effect for a  
12 period of eighteen (18) months after the date of entry of this Consent Decree and  
13 Order, or until the injunctive relief contemplated by this Consent Decree and Order  
14 is completed and payment for damages, attorney fees, and litigation expenses and  
15 costs is made in full, whichever occurs later. The Court shall retain jurisdiction of  
16 this action to enforce provisions of this Consent Decree and Order for eighteen  
17 (18) months after the date of this Consent Decree and Order, or until the injunctive  
18 relief contemplated by this Consent Decree and Order is completed and payment  
19 for damages, attorney fees, and litigation expenses and costs is made in full,  
20 whichever occurs later.  
21  
22  
23  
24

25  
26 //

1 **SEVERABILITY:**

2 14. If any term of this Consent Decree and Order is determined by any  
3 court to be unenforceable, the other terms of this Consent Decree and Order shall  
4 nonetheless remain in full force and effect.  
5

6  
7 **SIGNATORIES BIND PARTIES:**

8  
9 15. Signatories on the behalf of the Parties represent that they are  
10 authorized to bind the Parties to this Consent Decree and Order. This Consent  
11 Decree and Order may be signed in counterparts and a facsimile signature shall  
12 have the same force and effect as an original signature.  
13

14 **END OF PAGE.**  
15 **SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT**  
16 **THE END OF THE DOCUMENT.**  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: 8-23, 2011 PLAINTIFF CONNIE MARTINEZ

Connie Martinez  
CONNIE MARTINEZ

Dated: 8-23, 2011 PLAINTIFF JOSE MARTINEZ

Jose Martinez  
JOSE MARTINEZ

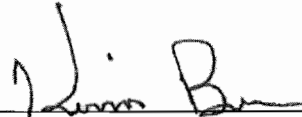
Dated: Aug 23, 2011 DEFENDANT SCC FLORIN ROAD BINGO

By: Kevin Beers  
Print name: Kevin Beers  
Title: President


Dated: Aug. 23, 2011 DEFENDANT SACRAMENTO CONSOLIDATED CHARITIES

By: Kevin Beers  
Print name: Kevin Beers  
Title: President

1 Dated: Aug. 23, 2011 DEFENDANT KEVIN BEERS

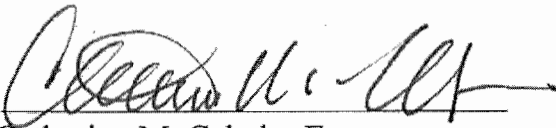
2  
3   
4 KEVIN BEERS

5 Dated: Aug 23, 2011 DEFENDANT SHAWN MARTINEZ

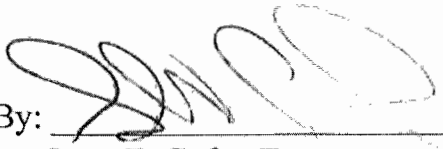
6  
7   
8 SHAWN MARTINEZ

9 APPROVED AS TO FORM:

10  
11 Dated: 8/23, 2011 LAW OFFICES OF PAUL L. REIN

12  
13  
14 By:   
15 Catherine M. Cabalo, Esq.  
16 Attorneys for Plaintiffs  
17 CONNIE MARTINEZ and JOSE MARTINEZ  
18

19  
20 Dated: Aug 23, 2011 GREVE, CLIFFORD, WENGEL & PARAS, LLP

21  
22 By:   
23 Scott E. Cofer, Esq.  
24 Attorneys for Defendants  
25 SCC FLORIN ROAD BINGO;  
26 SACRAMENTO CONSOLIDATED  
27 CHARITIES; KEVIN BEERS; and SHAWN  
28 MARTINEZ

