

1 THOMAS E. FRANKOVICH (State Bar No. 074414)
THOMAS E. FRANKOVICH,
2 *A Professional Law Corporation*
4328 Redwood Hwy, Suite 300
3 San Rafael, CA 94903
Telephone: 415/444-5800
4 Facsimile: 415/674-9900

5 Attorneys for Plaintiff
DAREN HEATHERLY; and IRMA RAMIREZ

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 DAREN HEATHERLY; and IRMA)
RAMIREZ,)
11 Plaintiffs,)
12 v.)
13 KIRIN RESTAURANT/CHU'S FAMILY;)
14 CHU'S FAMILY CORPORATION, a)
California Corporation dba KIRIN)
15 RESTAURANT; and S&N COMPANY -)
16 ANNADEL LTD., a California Limited)
Partnership,)
17 Defendants.)
18 _____)

CASE NO. CV-11-5292-EDL
STIPULATION AND ~~PROPOSED~~
ORDER RESETTING CASE
MANAGEMENT CONFERENCE SET FOR
JUNE 19, 2012

19
20 The parties, by and through their respective counsel, stipulate to continue the Case
21 Management Conference set for June 19, 2012, at 10:00 a.m.

22 **Whereas**, the parties have reached an agreement on the injunctive component of this case
23 (attached as Exhibit "A" is the executed Equitable Agreement); and

24 **Whereas**, on May 29, 2012, plaintiff filed a notice of need for mediation; and

25 **Whereas**, the parties are actively attempting to negotiate a settlement on the monetary
26 component in the above-referenced case, and wish to reduce fees, costs and litigation expenses in
27 so doing. The parties are hopeful that they will be able to reach an agreement; and

28 ///

1 Dated: 6-13, 2012

CLEMENT, FITZPATRICK & KENWORTHY PC

2
3 By: 

4 Peter C. De Golia, Esq.

5 Attorney for Defendants KIRIN CHU'S FAMILY
6 CORPORATION, a California Corporation dba
7 KIRIN RESTAURANT; and S&N COMPANY -
8 ANNADEL LTD., a California Limited Partnership

9
10 **ORDER**

11
12 **IT IS SO ORDERED** that the Case Management Conference set for Tuesday, June 19,
13 2012 at 10:00 a.m., is vacated and/or continued to September 25, 2012, at
14 10:00 a.m./~~p.m.~~ The parties shall file a Joint Case Management Statement
15 no later than seven (7) days prior to the Conference.

16
17
18 Dated: June 14, 2012



19 Honorable Elizabeth D. Laporte
20 United States Magistrate Judge

EXHIBIT "A"

REC'D JAN 26 2012

KIRIN
Cowesp.

EQUITABLE SETTLEMENT AGREEMENT AND RELEASE

THIS EQUITABLE SETTLEMENT AGREEMENT AND RELEASE is entered into by and between IRMA RAMIREZ, an individual, and DAREN HEATHERLY, an individual, (hereinafter referred to as "RAMIREZ/HEATHERLY"), on the one hand and CHU'S FAMILY CORPORATION, a California Corporation dba KIRIN RESTAURANT; and S&N COMPANY - ANNADEL LTD., a California Limited Partnership, (hereinafter referred to as "2700 KIRIN PARTIES"), on the other hand, to resolve the equitable relief sought, arising out of and relating to the action entitled *DAREN HEATHERLY and IRMA RAMIREZ v. KIRIN RESTAURANT/CHU'S FAMILY; CHU'S FAMILY CORPORATION, a California Corporation dba KIRIN RESTAURANT; and S&N COMPANY - ANNADEL LTD., a California Limited Partnership*, U.S. District Court, Northern District of California Case No. CV-11-5292-EDL.

RECITALS:

A. Plaintiffs filed on October 31, 2011, an action entitled *DAREN HEATHERLY and IRMA RAMIREZ v. KIRIN RESTAURANT/CHU'S FAMILY; CHU'S FAMILY CORPORATION, a California Corporation dba KIRIN RESTAURANT; and S&N COMPANY - ANNADEL LTD., a California Limited Partnership* in the United States District Court for the Northern District of California, docketed as Case No. CV-11-5292-EDL (the "Action"). The complaint in the Action alleges causes of action for violation of the Americans with Disabilities Act of 1990; California Civil Code §§51, 51.5, 52(a), 52.1, 54, 54.1, 54.2, 54.3; California Health & Safety Code §19955, *et seq.*; and California Business & Professions Code §17200, *et seq.*

The complaint seeks, amongst other relief, the removal of architectural barriers and/or changes to policies, practices and procedures.

B. The parties desire to settle and compromise all equitable claims, only as they relate to injunctive relief, that were or could have been raised in the subject action.

GENERAL TERMS

C. Whenever the singular is used in this Equitable Settlement Agreement and Release, it includes the plural. Whenever the masculine gender is used, it includes the feminine or neuter gender. Whenever the words "complaint," "action" or "lawsuit" are used, they include any and all amended complaints, amendments to complaints, cross-complaints, amended cross-complaints, amendments to cross-complaints, complaints in intervention, amended complaints in intervention, and amendments to complaints in intervention. Whenever the word "lien" is used, it includes any and all liens of any type and kind, including but not limited to those provided by law and by contract.

D. HEATHERLY/RAMIREZ in executing this Equitable Settlement Agreement and Release, shall be deemed to have executed this Release for himself/herself and his/her heirs, executors, administrators, successors and assigns, and anyone else who may purport to claim an interest by or through them.

E. Whenever the name of a party released and discharged is used, it shall include the shareholders, directors, officers, agents, representatives, employees, affiliated entities, parent companies, partners, attorneys, insurers, heirs, executors, beneficiaries, administrators, successors and assigns of the party and all other persons for whose acts and omissions said party may be held liable.

AGREEMENT

1. The above Recitals and General Terms are incorporated into this Agreement.

2. **Monetary Relief**

The issues of damages, attorneys' fees, costs and litigation expenses remain before the court.

3. **Equitable Relief**

As to the equitable relief demanded by HEATHERLY/RAMIREZ, HEATHERLY/RAMIREZ, agree that as consideration for the settlement, CHU'S FAMILY CORPORATION, a California Corporation dba KIRIN RESTAURANT; and S&N COMPANY - ANNADEL LTD., a California Limited Partnership shall cause modifications to be constructed in compliance with the more restrictive requirements of either California Building Code or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.* to ensure complying access to the public accommodation known as Kirin Restaurant, located at/near 2700 Yulupa Avenue, Suite 3, Santa Rosa, California 95405, and thereafter, to maintain such access as follows:

- a. provide an accessible entrance;
- b. provide an accessible men's restroom;
- c. provide an accessible women's restroom;
- d. provide clear path(s) of travel within and throughout the restaurant; and
- e. provide an accessible dining area; 5% compliance requirement.

4. **Completion of Work**

2700 KIRIN PARTIES shall complete the modifications to the premises, which shall render the premises fully accessible as set forth herein, by **May 19, 2012**.

5. **Notification of Completion of Remedial Access Measures**

2700 KIRIN PARTIES shall notify plaintiff's counsel, Thomas E. Frankovich, in writing, addressed to 4328 Redwood Highway, Suite 300, San Rafael, CA 94903, when the modifications have been completed to make the premises fully accessible as set forth in paragraph 3.

6. **Release of Future Claims for Equitable Relief**

HEATHERLY/RAMIREZ, for himself/herself and his/her/their heirs, successors and anyone else who may purport to have an interest by or through them, further agree that no claim will be made in the future for equitable relief or remedial measures to be undertaken as a result of any alleged discrimination and/or other wrongful conduct by 2700 KIRIN PARTIES and release each of the Released Parties from any such equitable relief claims arising out of HEATHERLY/RAMIREZ visits to the subject KIRIN RESTAURANT located at 2700 Yulupa Avenue, Suite 3, Santa Rosa, California 95405, from the beginning of time, up to and including the date of this executed agreement.

7. **No Admission of Liability**

The parties agree that the liability for all claims alleged in the Action is denied by the Released Parties.

8. **Waiver of Section 1542 of the Civil Code**

HEATHERLY/RAMIREZ agree that the provisions of Section 1542 of the Civil Code of the State of California are hereby expressly waived, and they understand that said section provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

9. **HEATHERLY/RAMIREZ Agree To Execute All Necessary Documents**

HEATHERLY/RAMIREZ agree to execute any and all documents necessary to carry out the terms and provisions of this Agreement.

10. **No Reliance**

This Equitable Settlement Agreement and Release is executed without reliance upon representation by either the Settling Parties or any of their representatives.

11. **Opportunity to Consult with Counsel**

The parties hereto acknowledge that they have had an opportunity to consult with counsel to review this Agreement prior to entering into it. The parties further acknowledge that they have executed this Agreement after having obtained such counsel, or having waived their right and opportunity to do so with a full understanding of the legal effect of this Agreement.

12. **Co-Participation in the Drafting of This Agreement**

Each of the parties hereto represents that he or she fully participated in the drafting and terms of this Agreement.

Accordingly, any ambiguities in the terms of this Agreement shall not be construed against any of the parties hereto and any doctrine of law regarding interpretation of any such ambiguities in the terms and provisions of this Agreement against the party drafting this Agreement shall not be applicable.

13. **HEATHERLY/RAMIREZ Have Read Release or Has Had Release Read to HIM/HER**

HEATHERLY/RAMIREZ have carefully read (or has had read to him/her) each and every term of this Equitable Settlement Agreement and Release and has received advice of counsel as to the nature and extent of each of the terms and provisions hereof.

14. **Court Retains Jurisdiction**

It is expressly understood and agreed by and between the parties that the court in the above-referenced action will retain jurisdiction over the settlement of this action if necessary to carry out the terms of this Equitable Settlement Agreement and Release, a true and correct copy of which shall be attached to the order of dismissal.

It is further expressly understood and agreed by and between the parties that the court shall also retain jurisdiction to determine the amount of attorneys' fees and litigation expenses, if any, to be awarded to counsel for HEATHERLY/RAMIREZ for their services should 2700 KIRIN PARTIES fail to timely meet the terms of this Equitable Settlement Agreement and Release. In such event, the fee provisions under the Americans with Disabilities Act of 1990 (42 USC 12181, *et seq.*) and/or California Civil Code sections 51, *et seq.*, and 54, *et seq.* shall govern.

15. **Agreement of CHU'S FAMILY CORPORATION, a California Corporation dba KIRIN RESTAURANT; and S&N COMPANY - ANNADEL LTD., a California Limited Partnership to Carry Out the Terms**

(a) The undersigned officer/agent of CHU'S FAMILY CORPORATION, a California Corporation dba KIRIN RESTAURANT has carefully read this Equitable Settlement Agreement and Release and agrees to execute any and all documents to carry out the terms and provisions set forth herein and that he/she has the authority to execute any and all documents to carry out the terms and provisions set forth herein as such terms and provisions apply to CHU'S FAMILY CORPORATION, a California Corporation dba KIRIN RESTAURANT and will, in fact, carry out the terms.

(b) The undersigned officer/agent of S&N COMPANY - ANNADEL LTD., a California Limited Partnership has carefully read this Equitable Settlement Agreement and Release and agrees to execute any and all documents to carry out the terms and provisions set forth herein and that he/she has the authority to execute any and all documents to carry out the terms and provisions set forth herein as such terms and provisions apply to S&N COMPANY - ANNADEL LTD., a California Limited Partnership and will, in fact, carry out the terms.

16. **Integration**

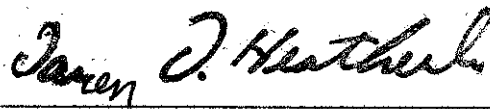
No promises, inducements or representations regarding the subject matter of this Equitable Settlement Agreement and Release have been made by any party other than those set forth in this document or incorporated by reference.

This Equitable Settlement Agreement and Release supersedes all prior negotiations and understandings concerning the subject matter of this Equitable Settlement Agreement and Release and contains all terms and provisions of the agreement between the parties regarding its subject matter. There are no oral understandings, statements or stipulations bearing on the effect of the Equitable Settlement Agreement and Release that have not been incorporated in this Agreement. This Agreement shall not be amended, supplemented or abrogated other than by a written instrument executed by each of the parties. ...

17. Counterparts

This Agreement may be executed in counterparts, all of which together shall constitute one in the same Agreement.

IN WITNESS WHEREOF, DAREN HEATHERLY, has hereunto set his hand this 27
day of January, 2012.



Daren Heatherly

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, IRMA RAMIREZ, has hereunto set her hand this 27 day
of January, 2012.

Irma Ramirez
Irma Ramirez

IN WITNESS WHEREOF, _____ as an
officer of CHU'S FAMILY CORPORATION, a California Corporation dba KIRIN
RESTAURANT, has hereunto set his/her hand this ___ day of _____, 2012.

Print Name: _____

IN WITNESS WHEREOF, _____, as
an officer of S&N COMPANY - ANNADEL LTD., a California Limited Partnership, has
hereunto set his/her hand this ___ day of _____, 2012.

Print Name: _____

IN WITNESS WHEREOF, IRMA RAMIREZ, has hereunto set her hand this ___ day of _____, 2012.

Irma Ramirez

IN WITNESS WHEREOF, ALEX CHIU as an officer of CHU'S FAMILY CORPORATION, a California Corporation dba KIRIN RESTAURANT, has hereunto set his/her hand this 23rd day of January, 2012.

Alex Chiu

Print Name: ALEX CHIU

IN WITNESS WHEREOF, _____, as an officer of S&N COMPANY - ANNADEL LTD., a California Limited Partnership, has hereunto set his/her hand this ___ day of _____, 2012.

Print Name: _____


IN WITNESS WHEREOF, IRMA RAMIREZ, has hereunto set her hand this ___ day of _____, 2012.

Irma Ramirez

IN WITNESS WHEREOF, _____ as an officer of CHU'S FAMILY CORPORATION, a California Corporation dba KIRIN RESTAURANT, has hereunto set his/her hand this ___ day of _____, 2012.

Print Name: _____

IN WITNESS WHEREOF, Kenneth Niles, as an officer of S&N COMPANY - ANNADEL LTD., a California Limited Partnership, has hereunto set his/her hand this 25 day of January, 2012.


Print Name: Kenneth Niles