

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

9 Attorneys for Plaintiff  
 10 JEFF STIVERS

11 JAMES ROSE, ESQ. (SBN 109726)  
 12 KATHERINE HELDT FALACE, ESQ. (SBN 222744)  
 13 LAW OFFICES OF JAMES R. ROSE  
 14 1500 Railroad Ave.  
 15 St. Helena, CA 94574  
 16 Telephone: 707/967-9656  
 17 Facsimile: 707/963-0771  
 18 [roselawinc@sbcglobal.net](mailto:roselawinc@sbcglobal.net)

19 Attorneys for Defendants  
 20 ALDO NUNEZ dba LA PRIMA PIZZA;  
 21 ELIZABETH NUNEZ; ADAMS ASSOCIATES,  
 22 A LIMITED PARTNERSHIP;  
 23 SMITH FAMILY TRUST

24 UNITED STATES DISTRICT COURT  
 25 NORTHERN DISTRICT OF CALIFORNIA

26 JEFF STIVERS,  
 27 Plaintiff,

28 CASE NO. C-08-05188 CW  
Civil Rights

v.

CONSENT DECREE AND ORDER

ALDO NUNEZ dba LA PRIMA  
 PIZZA; ELIZABETH NUNEZ;  
 ADAMS ASSOCIATES, A  
 LIMITED PARTNERSHIP; SMITH  
 FAMILY TRUST; and DOES 1-10,  
 inclusive,

Defendants.

1. Plaintiff JEFF STIVERS filed a Complaint in this action on  
 November 17, 2008, to obtain recovery of damages for his discriminatory  
 experiences, denial of access, and denial of his civil rights, and to enforce

1 provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.  
2 sections 12101 *et seq.*, and California civil rights laws against Defendants ALDO  
3 NUNEZ dba LA PRIMA PIZZA; ELIZABETH NUNEZ; ADAMS  
4 ASSOCIATES, A LIMITED PARTNERSHIP; and SMITH FAMILY TRUST,  
5 relating to the condition of their public accommodations as of Plaintiff's visit on or  
6 about August 26, 2008, and continuing. Plaintiff has alleged that Defendants  
7 violated Title III of the ADA and sections 51, 52, 54, 54.1, 54.3 and 55 of the  
8 California Civil Code, and sections 19955 *et seq.* of the California Health &  
9 Safety Code by failing to provide full and equal access to their facilities at La  
10 Prima Pizza restaurant located at 1010 Adams St. in St. Helena, California.

11 2. Defendants ALDO NUNEZ dba LA PRIMA PIZZA; ELIZABETH  
12 NUNEZ; ADAMS ASSOCIATES, A LIMITED PARTNERSHIP; and SMITH  
13 FAMILY TRUST deny the allegations in the Complaint and by entering into this  
14 Consent Decree and Order do not admit liability to any of the allegations in  
15 Plaintiff's Complaint filed in this action. The parties hereby enter into this  
16 Consent Decree and Order for the purpose of resolving this lawsuit without the  
17 need for protracted litigation and without the admission of any liability.  
18

19 **JURISDICTION:**

20 3. The parties to this Consent Decree and Order agree that the Court has  
21 jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations  
22 of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.*,  
23 and pursuant to supplemental jurisdiction for alleged violations of California  
24 Health & Safety Code sections 19955 *et seq.*; California Civil Code sections 51,  
25 52, 54, 54.1, 54.3, and 55; and Title 24, California Code of Regulations.

26 4. In order to avoid the costs, expense, and uncertainty of protracted  
27 litigation, the parties to this Consent Decree and Order agree to entry of this  
28 Consent Decree and Order to resolve all claims regarding injunctive relief raised

1 in the Complaint filed with this Court. Accordingly, they agree to the entry of this  
2 Consent Decree and Order without trial or further adjudication of any issues of  
3 fact or law concerning Plaintiff's claims for injunctive relief.

4 WHEREFORE, the parties to this Consent Decree and Order hereby  
5 agree and stipulate to the Court's entry of this Consent Decree and Order, which  
6 provides as follows:

7  
8 **SETTLEMENT OF INJUNCTIVE RELIEF:**

9 5. This Consent Decree and Order shall be a full, complete, and final  
10 disposition and settlement of Plaintiff's claims against Defendants for injunctive  
11 relief that have arisen out of the subject Complaint. The parties agree that there  
12 has been no admission or finding of liability or violation of the ADA and/or  
13 California civil rights laws, and this Consent Decree and Order should not be  
14 construed as such.

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

20 a) **Remedial Measures:** The parties agree that defendants will  
21 make the following remediations:

- 22 i. Provide one van-accessible parking space with all the  
23 required pavement, ISA and towing notification signage.  
24 ii. Develop and accessible entrance to the restaurant at the  
25 entry door from the parking lot.  
26 iii. Post signage on the Adams Street entry to the facility,  
27 indicating the location of the accessible entrance to the  
28 facility.

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

- iv. Reconfigure the exterior landing of the door from the parking lot in order to provide 34" minimum of strike side clearance on the pull side of the door, or install an automatic door opener.
- v. Lower the hardware on the entry door from the parking lot to comply with the California Building Code.
- vi. Install a kick plate, or remove the folding hardware, on the entry door from the parking lot.
- vii. Post an ISA sign at the entry door from the parking lot.
- viii. Install tactile exit signs at each exit.
- ix. Lower a 36" minimum long section of the main service counter to between 28"-24" above the finished floor.
- x. Lower the jukebox or install a fixed item underneath so that it is no longer a protruding object.
- xi. Provide contrast striping on the stairs as required by the California Building Code.
- xii. Provide handrails on the stairs in compliance with the California Building Code and ADAAG requirements.
- xiii. On the upstairs patio door, replace or adjust the closer to provide a maximum 5 lbs push pressure.
- xiv. Provide a minimum of four wheelchair seating spaces on the ground floor.
- xv. Construct an accessible restroom and path of travel in compliance with subparagraph ( c ) below.

b) **Timing of Injunctive Relief:** For work not requiring building permits, defendant will complete the work within 60 days of entry of this Consent Decree and Order by the Court. For work requiring building permits, defendants

1 will submit plans for all corrective work to the appropriate governmental agencies  
2 within 30 days of the entry of this Consent Decree and Order by the Court.  
3 Defendants will commence work within 30 days of receiving approval from the  
4 appropriate agencies. Defendants will complete the permitted work within 60  
5 days of commencement. In the event that unforeseen difficulties prevent  
6 Defendants from completing any of the agreed-upon injunctive relief, Defendants  
7 or their counsel will notify Plaintiff's counsel in writing within 15 days of  
8 discovering the delay. Defendants or their counsel will notify Plaintiff's counsel  
9 in writing when all the corrective work is completed, and in any case will provide  
10 a status report no later than 120 days from the entry of this Consent Decree and  
11 Order.

12 c) **Construction of accessible restroom:**

13 I. Defendant shall apply to the City of St. Helena for  
14 permits, variances and/or hardship exceptions allowing defendant to construct an  
15 accessible restroom in conformity with paragraph 6, above. Defendant shall make  
16 such applications within 21 days of October 1, 2009. Defendant shall in good  
17 faith process all required applications to achieve and meet the City's requirements  
18 constructing such restroom.

19 ii. In the event defendants are denied permits or other  
20 approvals by the City of St. Helena necessary to construct the restroom,  
21 defendants shall notify plaintiff within 10 days of such denials. Plaintiffs may  
22 elect to pursue legal recourse against the City of St. Helena at such time. Neither  
23 the plaintiff nor defendants shall have any obligation to initiate legal action against  
24 the City. Both plaintiff and defendant will stipulate to the filing of an action  
25 against the City if requested by the other party.

26 iii. In the event that the cost of providing an accessible  
27 restroom is not "readily achievable" in the opinion of defendants, defendants  
28

1 expressly reserve the right to litigate the issue of whether constructing an  
2 accessible restroom is readily achievable as a matter of law. Such decision by  
3 defendants shall not affect the other terms of this Consent Decree, which shall  
4 remain in full force and effect.

## 5 6 **SETTLEMENT OF DAMAGES**

7  
8 7. Defendants will pay damages in the sum of \$14,000.00 payable to the  
9 order of Paul L. Rein in trust for Jeff Stivers, within 30 days of October 1, 2009.  
10 Defendants are jointly and severally liable for the total amount of the damages.

## 11 12 **SETTLEMENT OF ATTORNEY FEES, LITIGATION EXPENSES AND 13 COSTS:**

14 8 The parties have not reached an agreement regarding Plaintiff's  
15 claims for attorney fees, litigation expenses and costs. These issues shall be the  
16 subject of further negotiation, litigation, and/or motions to the Court.

## 17 18 **COMPLIANCE**

19  
20 9. If defendants fail to comply with any provision of this Consent  
21 Decree they will pay plaintiff's reasonable attorney fees, costs and litigation  
22 expenses incurred in enforcing the terms of this Consent decree, in addition to  
23 reasonable attorney fees, costs and litigation expenses incurred in litigating the  
24 other aspects of this case.

## 25 26 **ENTIRE CONSENT ORDER:**

27 10. This Consent Decree and Order constitutes the entire agreement  
28 between the signing parties on the matters of injunctive relief and damages. No

1 other statement, promise or agreement, either written or oral, made by any of the  
2 parties or agents of any of the parties that is not contained in this written Consent  
3 Decree and Order shall be enforceable regarding the matters of injunctive relief  
4 described herein. This Consent Decree and Order applies to Plaintiff's claims for  
5 injunctive relief and damages only and does not resolve Plaintiff's claims for  
6 attorney fees, litigation expenses and costs.

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

10 11. This Consent Decree and Order shall be binding on Plaintiff JEFF  
11 STIVERS and upon all defendants, including ALDO NUNEZ dba LA PRIMA  
12 PIZZA; ELIZABETH NUNEZ; ADAMS ASSOCIATES, A LIMITED  
13 PARTNERSHIP; SMITH FAMILY TRUST; and any successors in interest.  
14 Defendants have a duty to so notify all such successors in interest of the existence  
15 and terms of this Consent Decree and Order during the period of the Court's  
16 jurisdiction of this Consent Decree and Order.

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

20 12. 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, and excluding plaintiff's  
26 pending claims for statutory damages, attorney fees, litigation expenses and costs,  
27 the parties intend that this Consent Decree and Order apply to all such further loss  
28 with respect to the lawsuit, except those caused by the parties subsequent to the

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

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

14 This waiver applies to the injunctive relief aspects of this action only and does not  
15 include resolution of Plaintiff's claims for damages, attorney fees, litigation  
16 expenses and costs.

17 13. Except for all obligations required in this Consent Decree and Order,  
18 and exclusive of the referenced continuing claims for attorney fees, litigation  
19 expenses and costs, each of the parties to this Consent Decree and Order, on  
20 behalf of themselves, their respective agents, representatives, predecessors,  
21 successors, heirs, partners and assigns, releases and forever discharges each other  
22 Party and all officers, directors, shareholders, subsidiaries, joint venturers,  
23 stockholders, partners, parent companies, employees, agents, attorneys, insurance  
24 carriers, heirs, predecessors, and representatives of each other Party, from all  
25 claims, demands, actions, and causes of action of whatever kind or nature,  
26 presently known or unknown, arising out of or in any way connected with the  
27 lawsuit.

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

14. This Consent Decree and Order shall be in full force and effect for a



1 period of twelve (12) months after the date of entry of this Consent Decree and  
2 Order, or until the injunctive relief and attorney fees, costs and litigation expenses  
3 contemplated by this Consent Decree and Order is completed, whichever occurs  
4 later. The Court shall retain jurisdiction of this action to enforce provisions of this  
5 Consent Decree and Order for twelve (12) months after the date of this Consent  
6 Decree and Order, or until the injunctive relief and attorney fees, costs and  
7 litigation expenses contemplated by this Consent Decree and Order is completed,  
8 whichever occurs later.

9

10 **SEVERABILITY:**

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

14

15 **SIGNATORIES BIND PARTIES:**

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

20

21 Dated: \_\_\_\_\_, 2009 PLAINTIFF JEFF STIVERS

22

23 \_\_\_\_\_  
24 JEFF STIVERS

25

26

27

28 Dated: \_\_\_\_\_, 2009 DEFENDANTS ALDO NUNEZ dba LA PRIMA  
PIZZA; ELIZABETH NUNEZ; ADAMS

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

ASSOCIATES, A LIMITED PARTNERSHIP;  
SMITH FAMILY TRUST

By: \_\_\_\_\_

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2009

PAUL L. REIN, ESQ.  
CELIA McGUINNESS, ESQ.  
LAW OFFICES OF PAUL L. REIN

By: \_\_\_\_\_  
Attorneys for Plaintiff JEFF STIVERS

Dated: \_\_\_\_\_, 2009

JAMES ROSE, ESQ.  
KATHERINE HELD FALACE, ESQ.  
LAW OFFICES OF JAMES R. ROSE

By: \_\_\_\_\_  
Attorneys for Defendants ALDO NUNEZ dba LA  
PRIMA PIZZA; ELIZABETH NUNEZ; ADAMS  
ASSOCIATES, A LIMITED PARTNERSHIP;  
SMITH FAMILY TRUST

**ORDER**

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

Dated: Oct. 5, 2009

  
\_\_\_\_\_  
Honorable CLAUDIA WILKEN  
United States District Judge