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 ZACHARY T. WOODFORD
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8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

11 ZACHARY T. WOODFORD,
 12 Plaintiff,
 13 vs.

CASE NO. C09-00443 PVT

**CONSENT DECREE AND /XXXXXXXXXXXXXXXXXXXX
 ORDER**

14 SAV-ON GASOLINE; ABBAS ALI
 NAZEMI dba SAV-ON GASOLINE; AND
 15 DOES 1-10, INCLUSIVE,
 16 Defendants.

17
 18
 19 **CONSENT DECREE AND ORDER**

20 1. Plaintiff ZACHARY T. WOODFORD ("Plaintiff") filed a Complaint in this action
 21 on January 30, 2009, to obtain recovery of damages for his alleged discriminatory experiences,
 22 denial of access, denial of civil rights, and to enforce provisions of the Americans with Disabilities
 23 Act of 1990 ("ADA"), 42 U.S.C. §§12101 et seq., and California civil rights laws against
 24 Defendants SAV-ON GASOLINE and ABBAS ALI NAZEMI dba SAV-ON GASOLINE
 25 ("Defendants"); relating to the condition of the public accommodations at Sav-On Gasoline,
 26 located at 1415 Ocean Street, Santa Cruz, California. Plaintiff has alleged that Defendants
 27 violated Title III of the ADA and §§51, 52, 54, 54.1, 54.3 and 55 of the California Civil Code, and
 28 §§19955 et seq. of the California Health and Safety Code, by failing to provide full and equal

1 access to the facilities at Sav-On Gasoline.

2 2. Defendants deny the allegations in the Complaint and by entering into this Consent
3 Decree and Order do not admit liability to any of the allegations in Plaintiff's Complaint filed in
4 this action. The parties hereby enter into this Consent Decree and Order for the purpose of
5 resolving this lawsuit without the need for protracted litigation, and without the admission of any
6 liability.

7 **JURISDICTION**

8 3. The parties to this Consent Decree and Order agree that the Court has jurisdiction
9 of this matter pursuant to 28 USC §1331 for alleged violations of the ADA, 42 U.S.C. §§12101 et
10 seq. and pursuant to supplemental jurisdiction for alleged violations of California Health & Safety
11 Code §§19955 et seq., including §19959; Title 24 California Code of Regulations; and California
12 Civil Code §§51, 52, 54, 54.1, 54.3 and 55.

13 4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the
14 parties to this Consent Decree and Order agree to entry of this Order to resolve all claims raised in
15 the Complaint filed with this Court. Accordingly, they agree to the entry of this Order without
16 trial or further adjudication of any issues of fact or law concerning Plaintiff's claims.

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

19 **SETTLEMENT OF INJUNCTIVE RELIEF**

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

25 6. Remedial Measures: The corrective work agreed upon by the parties is as set forth
26 in Attachment A.

27 7. The parties agree and stipulate that the corrective work will be performed in
28 compliance with the standards and specifications for disabled access as set forth in the California

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

3 8. Timing of Injunctive Relief: Defendants will complete all work within 120 days of
4 notice of entry of this order. In the event that unforeseen difficulties prevent Defendants from
5 completing any of the agreed upon injunctive relief, Defendants or their counsel will notify
6 Plaintiff's counsel in writing within 15 days of discovering the delay. Defendants or their counsel
7 will notify Plaintiff's counsel when the corrective work is completed, and, in any case, will
8 provide a status report no later than 120 days from the entry of this Consent Decree and Order.

9 **DAMAGES, ATTORNEYS FEES, LITIGATION EXPENSES AND COSTS**

10 9. The parties have reached an agreement regarding Plaintiff's claims for damages,
11 attorneys fees, litigation expenses and costs. Defendants will collectively pay the amount of
12 \$4,000.00 within 30 days of entry of this order by the Court. This payment shall be in full
13 satisfaction of Plaintiff's claims for all damages, including personal injury, civil rights, and all
14 other forms of damages. Payments shall be made by check payable to "Paul L. Rein in Trust for
15 Zachary T. Woodford." Plaintiff's statutory attorneys fees shall be determined upon noticed
16 motion, which may be filed not sooner than 45 days and not later than 150 days from the entry of
17 this Order by the Court.

18 **ENTIRE CONSENT ORDER**

19 10. This Consent Decree and Order, and Attachment A to this Consent Decree and
20 Order, which is incorporated herein by reference as if fully set forth in this document, constitute
21 the entire agreement between the signing parties, and no other statement, promise, or agreement,
22 either written or oral, made by any of the parties or agents of any of the parties, that is not
23 contained in this written Consent Decree and Order, shall be enforceable regarding the matters
24 described herein.

25 **CONSENT DECREE AND ORDER**

26 **BINDING ON PARTIES AND SUCCESSORS IN INTEREST**

27 11. This Consent Decree and Order shall be binding on Plaintiff and Defendants, and
28 any successors in interest. The parties have a duty to so notify all such successors in interest of

1 the existence and terms of this Consent Decree and Order during the period of the Court's
2 jurisdiction of this Consent Decree and Order.

3 **MUTUAL RELEASE AND WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542**

4 12. Each of the parties to this Consent Decree and Order understands and agrees that
5 there is a risk and possibility that, subsequent to the execution of this Consent Decree and Order,
6 any or all of them will incur, suffer, or experience some further loss or damage with respect to the
7 lawsuit which are unknown or unanticipated at the time this Consent Decree and Order is signed
8 by the parties. Except for all obligations required in this Consent Decree and Order, the parties
9 intend that this Consent Decree and Order apply to all such further loss with respect to the lawsuit,
10 except those caused by the parties subsequent to the execution of this Consent Decree and Order.
11 Therefore, except for all obligations required in this Consent Decree and Order, this Consent
12 Decree and Order shall apply to and cover any and all claims, demands, actions and causes of
13 action by the parties to this Consent Decree and Order with respect to the lawsuit, whether the
14 same are known, unknown or hereafter discovered or ascertained, and the provisions of Section
15 1542 of the California Civil Code are hereby expressly waived. Section 1542 provides as follows:

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

22 13. Except for all obligations required in this Consent Decree and Order, each of the
23 parties to this Consent Decree and Order, on behalf of their respective agents, representatives,
24 predecessors, successors, heirs, partners and assigns, releases and forever discharges each other
25 party and all officers, directors, shareholders, subsidiaries, joint venturers, stockholders, partners,
26 parent companies, employees, agents, attorneys, insurance carriers, heirs, predecessors, and
27 representatives of each other party, from all claims, demands, actions, and causes of action of
28 whatever kind or nature, presently known or unknown, arising out of or in any way connected

1 with the lawsuit.

2 **TERM OF THE CONSENT DECREE AND ORDER**

3 14. This Consent Decree and Order shall be in full force and effect for a period of 12
4 months after the date of entry of this Consent Decree and Order, or until the injunctive relief
5 contemplated by this Order is completed, whichever occurs later. The Court shall retain
6 jurisdiction of this action to enforce provisions of this Consent Decree and Order for 12 months
7 after the date of this Consent Decree and Order, or until the injunctive relief contemplated by this
8 Consent Decree and Order is completed, whichever occurs later.

9 **SEVERABILITY**

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

13 **SIGNATORIES BIND PARTIES**


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

18
19 NOW THEREFORE, IT IS HEREBY STIPULATED as follows:

20 DATED: _____, 2009

21
22 By: _____
Plaintiff ZACHARY T. WOODFORD

23 DATED: 7-22, 2009

24
25 By: 
26 Defendants SAV-ON GASOLINE and ABBAS
27 ALI NAZEMI dba SAV-ON GASOLINE

28 ///

1 whatever kind or nature, presently known or unknown, arising out of or in any way connected
2 with the lawsuit.

3 **TERM OF THE CONSENT DECREE AND ORDER**

4 14. This Consent Decree and Order shall be in full force and effect for a period of 12
5 months after the date of entry of this Consent Decree and Order, or until the injunctive relief
6 contemplated by this Order is completed, whichever occurs later. The Court shall retain
7 jurisdiction of this action to enforce provisions of this Consent Decree and Order for 12 months
8 after the date of this Consent Decree and Order, or until the injunctive relief contemplated by this
9 Consent Decree and Order is completed, whichever occurs later.

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11 15. If any term of this Consent Decree and Order is determined by any court to be
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16 parties to this Consent Decree and Order. This Consent Decree and Order may be signed in
17 counterparts, and a facsimile signature shall have the same force and effect as an original
18 signature.

19 NOW THEREFORE, IT IS HEREBY STIPULATED as follows:

20 DATED: 8-4-09, 2009

21
22 By: 
23 Plaintiff ZACHARY T. WOODFORD

24 DATED: _____, 2009

25
26 By: _____
27 Defendants SAV-ON GASOLINE and ABBAS
28 ALI NAZEMI dba SAV-ON GASOLINE

1 APPROVED AS TO FORM:

2 DATED: 8/4, 2009

LAW OFFICES OF PAUL L. REIN
LAW OFFICE OF JULIE OSTIL

3
4
5 By: Paul L. Rein

6 PAUL L. REIN
7 Attorneys for Plaintiff ZACHARY T.
8 WOODFORD

9 **ORDER**

10 Pursuant to stipulation, and for good cause shown,

11 **IT IS SO ORDERED:**

12 DATED: 9/28, 2009

13 Patricia V. Trumbull

14 PATRICIA V. TRUMBULL
15 United States Magistrate Judge

ATTACHMENT A

1. Accessible Parking

- a. Reserve one 9-ft wide by 18-ft long parking space for persons with disabilities, on a level surface pursuant to California Building Codes.
- b. Mark an 8-ft wide by 18-ft long access aisle on the passenger's side of the vehicle space.
- c. Provide wall and pavement signage per California Building Code Section 1129B.

2. Accessible Route to the Store

- a. Widen walkway in front of the store to ensure a minimum 5-ft deep landing at the entry door.
- b. Install a curb ramp at the north end of the widened, front walkway. Ensure conformance with California Building Code Section 1127B, including, but not limited to, the following:
 - Curb ramp slopes no steeper than 8.33%.
 - Finish of the curb ramp contrasts with the finish of the front walkway.
 - 12" wide grooved border at the top, level surface of the curb ramp landing.
 - Guide curbs that rise 2-inches above the ramp surface on both sides of the new curb ramp.
 - Detectable warning material at the bottom of the ramp.

3. Restroom

- a. Reversal of the direction of the door.
- b. Installation of a 30" grab bar attached to the inside face of the door.
- c. The restroom shall be closed to the public. In the event the restroom is opened to the public, it shall be brought into full compliance with the ADA and applicable building codes.
- d. A sign shall be posted conspicuously at the entrance to the restroom identifying that it is for "employees only."