

1 [COUNSEL LISTED ON NEXT PAGE]

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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DINO WILBURN, an individual, on behalf
of himself and others similarly situated,

Case No. 3:08-CV-01249-JSW

11

Complaint Filed: January 14, 2008

12

Plaintiff,

13

vs.

**STIPULATED MOTION AND
~~PROPOSED~~ ORDER FOR DISMISSAL
OF CLASS ACTION ALLEGATIONS
WITHOUT PREJUDICE AND WITHOUT
NOTICE TO PUTATIVE CLASS**

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BLOCKBUSTER INC., and DOES 1
through 25, inclusive,

15

Defendants.

NO HEARING SET

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1 IT IS HEREBY STIPULATED AND MOVED by and between the parties to this action
2 through their designated counsel, as follows:

3 1) Plaintiff Dino Wilburn and Defendant Blockbuster, Inc. continue their efforts to
4 settle and resolve this case. At this time, Plaintiff has decided to proceed with this action as an
5 individual case, and the parties have agreed that the class allegations should be dismissed without
6 prejudice. The parties are conferring with the court-assigned JAMS mediator as part of their
7 attempts to resolve this matter as an individual case.
8

9 2) Accordingly, all class action allegations in the above action should be dismissed
10 without prejudice pursuant to Fed. R. Civ. P. 23(e) and 41. All individual allegations on behalf of
11 Plaintiff Dino Wilburn are to remain as set forth in the Complaint.
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13 3) Each party shall bear its own attorney fees and costs with respect to this dismissal
14 of the class allegations.

15 IT IS HEREBY FURTHER STIPULATED AND MOVED by the parties, that the Court
16 issue an order holding that the factors identified in *Diaz v. Trust Territory of the Pacific Islands*,
17 876 F.2d 1401 (9th Cir., 1989), do not weigh in favor of requiring notice to the putative class
18 members in this case because:

19 1) Plaintiff and his counsel represent that the class allegations were not frivolous and
20 were not initially pled for the purpose of extracting a more favorable settlement.
21

22 2) Defendant has not promised Plaintiff and his counsel a disproportionate recovery
23 on settlement of Plaintiff's individual action in exchange for dismissal of the class allegations.
24 Defendant has not made any concessions to Plaintiff or his attorneys in exchange for dismissal of
25 the class allegations.

26 3) Settlement of Plaintiff's individual claim will not deplete Blockbuster of assets
27 such that Blockbuster would be financially unable to pay any meritorious claims of putative class
28

1 members.

2 4) This action, including the class allegations, has not received any publicity that
3 would have caused putative class members to refrain from filing their own individual lawsuits.
4 Also, this action was filed on January 14, 2008 and has only been pending for about nine months.

5 5) The class allegations to be dismissed are for failure to provide rest and meal
6 periods, failure to pay wages (including minimum and overtime wages), failure to pay reporting
7 time pay, failure to provide properly itemized wage statements, late payment of wages, and
8 requiring the purchase of uniforms as a condition of employment. There are also class allegations
9 based on breach of contract, conversion, and unlawful business practices. Defendant denies all
10 allegations, as stated in its Answer. The statute of limitations for these claims varies between one
11 and four years. Plaintiff's employment with Blockbuster terminated on January 31, 2007. This
12 action was filed January 14, 2008. Substantial time remains for most putative class members to
13 bring most of the claims asserted in this action. Thus, the likelihood of prejudice to most class
14 members due to the statute of limitations is low.
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17 IT IS SO STIPULATED.

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19 Dated: September 25, 2008

BAILEY PINNEY, PC
JOSE R. MATA
SUSAN SIMONS SEEMILLER

20
21 By _____/s/_____
Susan Simons Seemiller
Attorneys for Plaintiff DINO WILBURN

22
23 Dated: September 25, 2008

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DONNA MO
By _____/s/_____
Rebecca D. Eisen
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ORDER

On stipulation of the parties, and good cause appearing therefor,

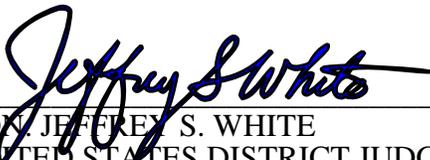
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1) All class action allegations in the above action are hereby dismissed without prejudice. All individual allegations on behalf of Plaintiff Dino Wilburn are to remain as set forth in the current Complaint.

2) No party shall be entitled to costs or attorney fees because of this dismissal.

3) Based on the factors identified in *Diaz v. Trust Territory of the Pacific Islands*, 876 F.2d 1401 (9th Cir., 1989), the above dismissal of the class allegations may be made, and hereby is made, without notice to the putative class.

Dated: September ³⁰____, 2008



HON. JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE