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Attorneys for Phyllis W. Cheng, Director of
The Department of Fair Employment and Housing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHYLLIS W. CHENG, in her official capacity
as DIRECTOR OF THE CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
California, on behalf of Real Parties in Interest
and all Similarly Situated Individuals,

Plaintiff,

v.

WINCO FOODS, LLC; WINCO HOLDINGS,
INC.,

Defendants.

CRISTINA VERDUZCO, an Individual; and
ANGELINA GONZALEZ-DIAZ, an
Individual, and all other similarly situated
individuals,

Real Parties in Interest.

Case No. 3:14-cv-00483 JST

**STIPULATION REGARDING
WITHDRAWAL OF MOTION TO
INTERVENE; ~~PROPOSED~~ ORDER**

VICTORIA STOWERS, an individual

Plaintiff,

vs.

WINCO FOODS, LLC; WINCO HOLDINGS,
INC.; WINCO FOUNDATION, INC.,

Defendants.

Case No. 3:13-cv-02631 TEH

STIPULATION REGARDING WITHDRAWAL OF MOTION TO INTERVENE

Pursuant to Civil Local Rule 7-12, Defendants WINCO FOODS, LLC and WINCO
HOLDINGS, INC. (collectively “Defendants” or “WinCo”) and Plaintiff PHYLLIS W. CHENG,

1 in her official capacity as DIRECTOR OF THE CALIFORNIA DEPARTMENT OF FAIR
2 EMPLOYMENT AND HOUSING (“DFEH”) stipulate to the following:

3 1. On January 17, 2014, DFEH filed a Motion to Intervene in the case entitled *Stowers v.*
4 *WinCo Foods, LLC, et al.*, Case No. 3:13-cv-02631-THE (“*Stowers*”), currently pending before
5 the Northern District of California. On January 24, 2014, DFEH filed an amended Motion to
6 Intervene. In support of its Motion, DFEH argues that it has a protectable interest in enforcing
7 the statutes allegedly violated in *Stowers*, which is not adequately represented by the existing
8 private party and may be impaired if intervention is denied.

9 2. On January 31, 2014, DFEH filed the lawsuit entitled, *Phyllis W. Cheng in her official*
10 *capacity as Director of the California Department of Fair Employment and Housing, v. WinCo*
11 *Foods, LLC and WinCo Holdings, LLC*, case no. CV-14-0483 JST (“*Cheng*”).

12 3. On February 7, 2014, Defendants filed their opposition to DFEH’s Motion to
13 Intervene, arguing that the allegations of DFEH’s Complaint-In-Intervention are different than
14 those alleged in *Stowers*’s Complaint, and DFEH’s Complaint-In-Intervention would
15 impermissibly expand the scope of the *Stowers* litigation.

16 4. On February 14, 2014, DFEH filed its Reply Brief in support of its Motion to
17 Intervene.

18 5. On March 3, 2014, the Court held oral argument on DFEH’s Motion to Intervene. The
19 Court took DFEH’s Motion under submission pending *Stowers*’s filing of an amended
20 complaint.

21 6. DFEH agrees to withdraw its pending Motion to Intervene in *Stowers* without
22 prejudice in exchange for all of the following:

- 23 a. Defendants agree they will not, in the *Cheng* matter or in any other action brought
24 by the DFEH involving the same fully-healed or leave policies the DFEH alleges
25 are unlawful in *Cheng*, cite to, refer to or otherwise use against DFEH or the
26 *Cheng* Real Parties in Interest any determinations made by the *Stowers* Court
27 regarding those allegedly unlawful fully-healed or leave policies (“policy
28 determinations”). However, Defendants may cite or refer to such policy

determinations in direct response to DFEH's or a Real Party in Interest's citation or reference to such policy determinations.

- b. Defendants agree they will not oppose DFEH filing amicus briefs in *Stowers* relating to any issues regarding the allegedly unlawful fully-healed or leave policies described in Paragraph 5.a.
- c. WinCo will send DFEH a courtesy copy of all notices of deposition in the *Stowers* matter and will not object to DFEH's attendance at those depositions. This obligation does not extend to any depositions during which there is no reasonable expectation that the allegedly unlawful fully-healed or leave policies described in Paragraph 5.a. will be a topic of examination. The Parties agree that if DFEH chooses to attend, a maximum of two DFEH attorneys may attend each deposition. DFEH's participation in any such depositions will be limited to attendance and observation only. DFEH may not ask questions of any witnesses during such depositions and will not interpose objections to questions asked during the deposition. The depositions will not count as depositions taken by DFEH in the *Cheng* matter.

7. DFEH and Defendants agree that in the event DFEH were to re-file its Motion to Intervene in *Stowers*, this stipulation would be rendered void.

DATED: April 17, 2014

Respectfully submitted,

SEYFARTH SHAW LLP

By: /s/ Kristina M. Launey
Kristina M. Launey

Attorneys for Defendants
WINCO FOODS, LLC and WINCO
HOLDINGS, INC.

[Signatures continued next page ...]

1 DATED: April 17, 2014

LITTLER MENDELSON

2
3 By: /s/ Michael W. Warren
Michael W. Warren

4 Attorneys for Defendants
5 WINCO FOODS, LLC and WINCO
HOLDINGS, INC.

6 DATED: April 17, 2014

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

8
9 By: /s/ Alexandra Seldin
Alexandra Seldin
10 Julia L. Montgomery

11 Attorneys for Plaintiff
12 PHYLLIS W. CHENG, DIRECTOR OF THE
13 CALIFORNIA DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING

14
15 **SIGNATURE ATTESTATION**

16 Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this
17 document has been obtained from the other signatories.

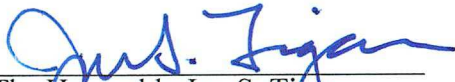
18
19 DATED: April 17, 2014

By: /s/ Kristina M. Launey
Kristina M. Launey

Pursuant to stipulation, IT IS SO ORDERED.


DATED: April 17, 2014

By:


The Honorable Jon S. Tigar
Judge, United States District Court
For the Northern District of California

DATED: April 17, 2014

By:


The Honorable Thelton E. Henderson
Judge, United States District Court
For the Northern District of California

In case number 14-cv-00483, no part of
this order shall be construed as limiting
the authority of Judge Tigar to consider,
rely upon, or cite any decision of
Judge Henderson.

IT IS SO ORDERED.

