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## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA RESTAURANT  
 ASSOCIATION,

Plaintiff,

v.

THE CITY AND COUNTY OF SAN  
 FRANCISCO and THE SAN FRANCISCO  
 DEPARTMENT OF PUBLIC HEALTH,

Defendants.

Case No. CV-08-3247 (CW) and  
 Case No. CV-08-03685 (CW)

### STIPULATION AND ORDER RE DISMISSAL

Honorable Claudia Wilken

1 CALIFORNIA RESTAURANT )  
ASSOCIATION, )  
2 )  
Plaintiff, )  
3 )  
THE COUNTY OF SANTA CLARA AND )  
4 THE SANTA CLARA COUNTY PUBLIC )  
HEALTH DEPARTMENT, )  
5 )  
Defendants. )

6 **STIPULATION**

7 WHEREAS, on March 24, 2008, the City and County of San Francisco ("San  
8 Francisco") enacted Ordinance No. 40-08 (as amended by Ordinance No. 195-08), amending San  
9 Francisco Health Code Sections 468 through 468.8, which requires covered restaurants to provide  
10 nutritional information on menus and menu boards (the "San Francisco Menu Labeling  
11 Ordinance");

12 WHEREAS, on June 24, 2008, the County of Santa Clara ("Santa Clara") enacted  
13 Ordinance No. NS-300.793, adding Chapter XXII to Division A18 of the Santa Clara County  
14 Ordinance Code, which requires covered restaurants to provide nutritional information on menus  
15 and menu boards (the "Santa Clara Menu Labeling Ordinance");

16 WHEREAS, the California Restaurant Association ("CRA") filed the above-  
17 captioned actions to challenge the San Francisco Menu Labeling Ordinance (the "*San Francisco*  
18 *action*") and the Santa Clara Labeling Ordinance (the "*Santa Clara action*") on federal and State  
19 constitutional grounds;

20 WHEREAS, on September 30, 2008, the Governor signed into law California Senate  
21 Bill 1420 ("SB 1420"), which requires menu labeling state-wide and contains a preemption clause;

22 WHEREAS, pursuant to the Parties' prior stipulations, enforcement of fines and  
23 penalties under the San Francisco Menu Labeling Ordinance and the Santa Clara Menu Labeling  
24 Ordinance has been ordered stayed at all times in which the Ordinances have been effective and  
25 until January 1, 2009, when SB 1420 goes into effect;

1 WHEREAS, on November 25, 2008, the City and County of San Francisco enacted  
2 Ordinance No. 260-08, which suspends, effective December 25, 2008, Sections 468.3 through 468.8  
3 of the San Francisco Menu Labeling Ordinance;

4 WHEREAS, on November 18, 2008, the Santa Clara Board of Supervisors enacted  
5 Ordinance No. NS-300.795, which repeals, effective December 18, 2008, the Santa Clara Menu  
6 Labeling Ordinance; and

7 WHEREAS, in light of the repeal of the Santa Clara Menu Labeling Ordinance and  
8 the suspension of Sections 468.3 through 468.8 of the San Francisco Menu Labeling Ordinance,  
9 CRA has agreed to dismiss the *Santa Clara* action with prejudice and to dismiss the *San Francisco*  
10 action without prejudice to its being refiled in the event that the San Francisco Menu Labeling  
11 Ordinance comes into force in the future;

12 WHEREAS, a case management conference is currently scheduled for January 20,  
13 2009, and a joint case management conference statement is due on January 9, 2009;

14 WHEREAS, in light of the entry of this Stipulation, the case management conference  
15 scheduled for January 20, 2009 is no longer necessary and would be a waste of judicial resources;

16 IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff and  
17 Defendants, subject to approval of the Court, that:

18 1. CRA shall file a Notice of Voluntary Dismissal with prejudice of the *Santa Clara*  
19 action under Fed. R. Civ. P. 41 within five court days of the Court's entry of this Order;

20 2. CRA shall file a Notice of Voluntary Dismissal without prejudice of the *San*  
21 *Francisco* action under Fed. R. Civ. P. 41 within five court days of the Court's entry of this Order;

22 3. The *San Francisco* and *Santa Clara* actions shall be stayed pending dismissal, with  
23 all dates and deadlines vacated including, but not limited to, the case management statement due on  
24 January 9, 2009 and the case management conference scheduled for January 20, 2009; and

25 //

26 //

4. Each party shall bear its own costs and fees in the *San Francisco* and *Santa Clara* actions.

Dated: January \_\_, 2009

DENNIS J. HERRERA  
City Attorney  
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FRANCESCA GESSNER  
TARA M. STEELEY  
Deputy City Attorneys

By: \_\_\_\_\_  
Francesca Gessner

Attorneys for Defendant  
CITY AND COUNTY OF SAN FRANCISCO

Dated: January \_\_, 2009

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COUNTY OF SANTA CLARA

Dated: January \_\_, 2009

ARNOLD & PORTER LLP

By: \_\_\_\_\_  
Trenton H. Norris

Attorneys for Plaintiff  
CALIFORNIA RESTAURANT ASSOCIATION

**PURSUANT TO THE STIPULATION, IT IS SO ORDERED:**

Dated: 1/7/09



HONORABLE CLAUDIA WILKEN  
UNITED STATES DISTRICT COURT JUDGE