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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JIE YU, ET AL.,

Plaintiffs,

v.

SOUTHLAND TASTE
RESTAURANT, INC., ET AL.,

Defendants.

Case No. C 07-02274 PVT

**ORDER DENYING STIPULATION TO
DISMISS WITH PREJUDICE FOR
FAILURE TO FILE A STATEMENT
SUPPORTING THE FAIRNESS OF THE
SETTLEMENT OR A STIPULATION OF
DISMISSAL UNDER RULE 41(a)(1); AND
ORDER TO SHOW CAUSE**

[Docket No. 50]

On September 18, 2008, the parties stipulated to dismiss with prejudice the above-captioned action. The Fair Labor Standards Act ("FSLA" or "Act") requires employers to pay their employees time and one-half for work exceeding forty hours per week. *See* 29 U.S.C. § 207(a)(1). An employee's claims under the FSLA is non-waivable, and thus may not be settled without supervision of either the Secretary of Labor or a district court. *Yue Zhou v. Wang's Restaurant*, 2007 WL 172308 at *1(N.D. Cal. Jan. 17, 2007); *See also Lynn's Food Stores, Inc. v. United States, et al.*, 679 F. 2d 1350, 1352-53 (11th Cir. 1982); House Report No. 101-664.¹

¹ As used herein, "House Report No. 101-664" refers to House Report No. 101-664, P.I. 101-433, Older Workers Benefit Protection Act, H.R. Rep. 101-664, H.R. Rep. No. 664, 101st Cong., 2nd Sess. 1990, 1990 WL 200383 (1990). This report reflects Congress' intent that FLSA claims may not be waived or compromised without supervision of

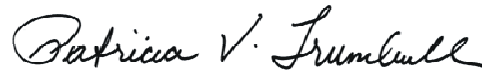
1 Under the FSLA, an award of reasonable fees is mandatory when a settlement of
2 FLSA claims result in a judgment. *See* 29 U.S.C. § 216(b)("the court in such action shall, in
3 addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's
4 fee to be paid by the defendant, and costs of the action."). Rule 54(a) of the Federal Rules of
5 Civil Procedure defines "Judgment" as "decree and any order from which an appeal lies."
6 Thus, even without a document officially entitled "Judgment," the FSLA's mandatory
7 attorney's fees provision is triggered anytime a settlement of FLSA claims results in a final
8 appealable order of the court. Court determination of whether to award attorney's fees, and if
9 so the amount thereof, is appropriate in connection with the court's review of the fairness of
10 the settlement of FLSA claims.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The Stipulation to Dismiss with Prejudice is denied for failure to file a
13 statement supporting the fairness of the settlement or a stipulation of dismissal
14 under Federal Rule of Civil Procedure 41(a)(1);² and
- 15 2. The parties are ordered to show cause on November 18, 2008 at 10AM why
16 they failed to file a statement supporting the fairness of the settlement or a
17 stipulation of dismissal under Federal Rule of Civil Procedure 41(a)(1).

18 IT IS SO ORDERED.³

19 Dated: *October 10, 2008*



20 PATRICIA V. TRUMBULL
21 United States Magistrate Judge

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26 either the Secretary of Labor or a district court.

26 ² Because a stipulation under Rule 41(a)(1) does not involve an order of the court, the provisions of 29
27 U.S.C. § 216(B) requiring attorney's fees is not applicable. The court expresses no opinion as to the enforceability of any
28 settlement conducted without the approval of either the Secretary of Labor or a district court.

³ The holding of this court is limited to the facts and particular circumstances underlying the present motion.

United States District Court
For the Northern District of California

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United States District Court
For the Northern District of California

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