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****E-Filed 3/17/09****

Attorneys for Defendant
P.F. CHANG'S CHINA BISTRO, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SYLVIA CASTILLO, on behalf of herself
and on behalf of all others similarly
situated and the General Public,

Plaintiff,

vs.

P.F. CHANG'S CHINA BISTRO, INC.,

Defendant.

Case No. C08-01247 RS

Hon. Richard Seeborg

**JOINT STIPULATION OF DISMISSAL
AND [PROPOSED] ORDER THEREON**

1 Plaintiff Sylvia Castillo (“Plaintiff” or “Castillo”) and Defendant P.F. Chang’s China
2 Bistro, Inc. (“Defendant”), by and through their counsel of record named herein, submit this Joint
3 Stipulation of Dismissal (“Dismissal”), and hereby stipulate and agree that:

4 1) All of Plaintiff’s individual and class claims in her complaint filed on January 9,
5 2008 (initially Case No. 108CV102887, after removal, Case No. C08-01247 RS) (the
6 “Complaint”) should be dismissed with prejudice in their entirety.

7 2) All class action allegations in the Complaint should be dismissed without
8 prejudice pursuant to Fed. R. Civ. P. 23(e) and 41.

9 3) Each party shall bear its own attorney fees and costs of suit herein.

10 The parties further stipulate and agree that the Court issue an order holding that the factors
11 identified in *Diaz v. Trust Territory of the Pacific Islands*, 876 F.2d 1401 (9th Cir. 1989), do not
12 weigh in favor of requiring notice to the putative class members in this case because:

13 1) Plaintiff and her counsel represent that the class allegations were not frivolous and
14 were not initially pled for the purpose of extracting a more favorable settlement.

15 2) None of the counsel will be receiving any money, directly or indirectly, of any
16 kind in connection with this Dismissal. Defendant has not promised Plaintiff and her counsel a
17 disproportionate recovery on settlement of Plaintiff’s individual action in exchange for dismissal
18 of the class allegations. Moreover, other than the mutual waiver of attorney’s fees and costs
19 referenced above, Defendant has not made any concessions to Plaintiff or her attorneys in
20 exchange for dismissal of the class allegations.

21 3) This action, including the class allegations, has not received any publicity that
22 would have caused putative class members to refrain from filing their own individual lawsuits.

23 4) The class allegations to be dismissed are for failure to provide meal periods,
24 failure to furnish timely and accurate wage statements and unfair competition. Defendant denies
25 all allegations on the merits. The statute of limitations for these claims varies between one and
26 four years. This action was filed on January 9, 2008. Substantial time remains for most putative

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1 class members to bring the claims asserted in this action. Thus, the likelihood of prejudice to
2 most class members due to the statute of limitations is low.

3 IT IS SO STIPULATED.

4
5 Dated: March 16, 2009

Respectfully Submitted:

6 SYLVIA CASTILLO
By her attorneys,

7
8 /s/ David M. Arbogast

9 David M. Arbogast
10 ARBOGAST & BERNS LLP
19510 Ventura Blvd., Suite 200
11 Tarzana, California 91356-2969
Telephone: (818) 961-2000
12 Facsimile: (818) 867-4820

13 *Attorneys for Plaintiff*

14 Dated: March 16, 2009

P.F. CHANG'S CHINA BISTRO, INC.
By its attorneys,

15
16 /s/ Rebecca Eisen

17 Rebecca Eisen
18 MORGAN, LEWIS & BOCKIUS, LLP
One Market, Spear Street Tower
19 San Francisco, California 94105-1126
Telephone: 415.442.1000
20 Facsimile: 415.442.1001

21 *Attorneys for Defendant*

22
23 **ECF CERTIFICATION**

24 Pursuant to General Order No. 45, § X.B, the filing attorney attests that she has obtained
25 concurrence regarding the filing of this document from each of the signatories to the document.

26
27 Dated: March 16, 2009

By: /s/ Lauren S. Kim
Lauren S. Kim

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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 of Plaintiff's individual and class claims as set forth in her Complaint are dismissed with prejudice in their entirety.
- 2) All class action allegations as set forth in the Complaint are dismissed without prejudice pursuant to Fed. R. Civ. P. 23(e) and 41.
- 3) No party shall be entitled to costs or attorney fees because of this dismissal.
- 4) 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: March 17, 2009



Hon. Richard Seeborg
United States Magistrate Judge