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FILED
Clerk of the Superior Court

FEB 22 2019

By: C. Beutler, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

HARLEY SEEGERT, individually; on behalf of herself and all others similarly situated,	}	CASE NO. 37-2017-00016131-CU-MC-CTL
Plaintiffs,		CLASS ACTION
vs.	}	[PROPOSED] PRELIMINARY APPROVAL AND PROVISIONAL CLASS CERTIFICATION ORDER
P.F. CHANG'S CHINA BISTRO, INC., a Delaware Corporation, and DOES 1 through 20 inclusive,		
Defendants.		

On [date], this Court heard plaintiff Harley Seegert's ("Plaintiff") unopposed motion for preliminary approval of class settlement and provisional class certification under California Rule of Court, Rule 3.769(c) and (d). This Court reviewed the motion, including the Settlement Agreement and Release ("Agreement" or "Settlement"). Based on this review and the findings below, the Court finds good cause to GRANT the motion.

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1 **FINDINGS:**

2 1. Unless otherwise specified, defined terms in this Preliminary Approval and
3 Provisional Class Certification Order have the same definition as the terms in the Agreement.

4 2. For settlement purposes only, the Class is so numerous that joinder of all Class
5 Members is impracticable, Plaintiff's claims are typical of the Class's claims, there are questions
6 of law and fact common to the Class, which predominate over any questions affecting only
7 individual Class Members, and Class certification is superior to other available methods for the
8 fair and efficient adjudication of the controversy.

9 3. The Court finds that (a) the Long-Form Notice, Publication Notice, and Email
10 Notice constitute the best notice practicable under the circumstances, (b) they constitute valid, due,
11 and sufficient notice to all members of the Class, and (c) they comply fully with the requirements
12 of California Code of Civil Procedure section 382, California Rules of Court, Rules 3.766 and
13 3.769, the California and United States Constitutions, and other applicable law.

14 4. The Agreement falls within the range of possible approval as fair, reasonable and
15 adequate.

16 **IT IS ORDERED THAT:**

17 1. **Settlement Approval.** The Agreement, including the Long-Form Notice,
18 Publication Notice, Email Notice, and Claim Form attached to the Agreement as Exhibits B-E, is
19 preliminarily approved.

20 2. **Provision of Class Notice.** Defendant P.F. Chang's China Bistro, Inc., will notify
21 Class Members of the Settlement in the manner specified under paragraph 4.1 of the Agreement.

22 3. **Claim Form.** Pursuant to paragraphs 2.2(d), 4.2 and 6.3 of the Agreement and
23 subject to the occurrence of the Final Settlement Date, to be qualified to receive a check under the
24 Settlement, Class Members must complete a valid and timely Claim Form and deliver that Claim
25 Form to the Settlement Administrator no later than one hundred and five (105) days after the entry
26 of this Order.

27 4. **Objection to Settlement.** Class Members who have not submitted a timely written
28 exclusion request pursuant to paragraph 6 below and who want to object to the Agreement must

1 deliver a written objection to the Settlement Administrator, no later than one hundred and five
2 (105) days after the entry of this Order. The delivery date is deemed to be the date the objection
3 is deposited in the U.S. Mail as evidenced by the postmark. Written objections must include (a)
4 the name and case number of the Action, "*Seegert v. P.F. Chang's China Bistro, Inc.*, San Diego
5 Superior Court Case No. 37-2017-00016131-CU-MC-CTL"; (b) the full name, address, email
6 address, and telephone number of the person objecting; (c) the words "Notice of Objection" or
7 "Formal Objection;" and (d) in clear and concise terms, the legal and factual arguments supporting
8 the objection, including an attestation under the penalty of perjury of facts demonstrating that the
9 person objecting is a Class Member. The objection will not be valid if it only objects to the
10 Action's appropriateness or merits. Any Class Member who submits a written objection, as
11 described in this paragraph, has the option to appear at the Fairness Hearing, either in person or
12 through personal counsel hired at the Class Member's expense, to object to the Settlement
13 Agreement. However, Class Members or their attorneys intending to make an appearance at the
14 Fairness Hearing, must also deliver to the Settlement Administrator a Notice of Intention to
15 Appear, which may be combined with the written objection, no later than one hundred and five
16 (105) days after the entry of this Order. Only Class Members who submit timely Notices of
17 Intention to Appear may speak at the Fairness Hearing.

18 **5. Failure to Object to Settlement.** Class Members who fail to object to the
19 Agreement in the manner specified above will (a) be deemed to have waived any objections to the
20 Agreement; (b) be foreclosed from objecting (whether by a subsequent objection, intervention,
21 appeal, or any other process) to the Agreement; and (c) not be entitled to speak at the Fairness
22 Hearing.

23 **6. Requesting Exclusion.** Class Members who want to be excluded from the
24 Settlement must send a signed letter or postcard to the Settlement Administrator stating (a) the
25 name and case number of the Action, "*Seegert v. P.F. Chang's China Bistro, Inc.*, San Diego
26 Superior Court Case No. 37-2017-00016131-CU-MC-CTL"; (b) the full name, address, email
27 address, and telephone number of the person requesting exclusion; and (c) a statement that he/she
28 does not wish to participate in the Settlement, postmarked no later than one hundred and five (105)

1 days after the entry of this Order. If a Class Member submits a Claim Form and a request for
2 exclusion, the request for exclusion will be deemed invalid.

3 **7. Provisional Certification.** The Class is provisionally certified for settlement
4 purposes only as a class of all persons who engaged in a credit card transaction at a California P.F.
5 Chang's Restaurant during the Class Period, during which Defendant provided a Credit Card
6 Transaction Form that contained a space that allowed the credit cardholder to fill in his or her
7 personal identification information. The term "Class Period" means May 3, 2016 until entry of
8 this Order. The term "California P.F. Chang's Restaurant" means any P.F. Chang's branded
9 restaurant located in the State of California. Excluded from the Class are Defendant, its officers,
10 directors, employees, and attorneys, and the judge presiding over the Action.

11 **8. Appointment of Class Representative and Class Counsel.** Plaintiff Harley
12 Seegert is conditionally certified as the class representative to implement the Parties' Settlement
13 in accordance with the Agreement. Carlson, Lynch, Sweet, Kilpela & Carpenter, LLP and
14 Stonebarger Law, APC are appointed as Class Counsel. Plaintiff and Class Counsel must fairly
15 and adequately protect the Class's interests.

16 **9. Appointment of Settlement Administrator.** JND Legal Administration is hereby
17 appointed as the claims administrator for this case.

18 **10. Termination.** If the Agreement terminates for any reason, the following will
19 occur: (a) Class certification will be automatically vacated; (b) Plaintiff will stop functioning as
20 the Class Representative and Class Counsel will stop functioning as class counsel; and (c) this
21 Action will revert to its previous status in all respects as it existed immediately before the Parties
22 executed the Agreement. This Order will not waive or otherwise impact the Parties' rights or
23 arguments.

24 **11. No Admissions.** Nothing in this Order is, or may be construed as, an admission or
25 concession on any point of fact or law by or against any Party.

26 **12. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and
27 deadlines, are stayed and suspended until further notice from the Court, except for such actions as
28 are necessary to implement the Agreement and this Order.

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13. Fairness Hearing. On 2/2 2019, at 1:30 ^{PM} [~~between one hundred and forty (140) and one hundred and fifty (150) calendar days after entry of the Preliminary approval order, subject to the Court's availability~~], this Court will hold a Fairness Hearing to determine whether the Agreement should be finally approved as fair, reasonable, and adequate. All papers supporting final approval of the Agreement must be filed no later than seven (7) calendar days before the Fairness Hearing. This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the Parties will not be required to provide additional notice to Class Members.

DATED: 2/2/19



JUDGE OF THE SUPERIOR COURT
KATHERINE A. BACAL