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6 Attorneys for Defendant P.F. CHANG’S  
 CHINA BISTRO, INC.  
 7

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION.

11 ANNA MARIE PHILLIPS, on behalf of  
 herself and others similarly situated,  
 12

13 Plaintiffs,

14 vs.

15 P.F. CHANG’S CHINA BISTRO, INC., an  
 Arizona corporation, and Does 1  
 16 through 50, inclusive,

17 Defendants.

CASE No. 5:15-cv-00344

**DEFENDANT P.F. CHANG’S CHINA  
 BISTRO, INC.’S NOTICE OF REMOVAL  
 OF CLASS ACTION**

Santa Clara Sup. Ct. No. 114CV274263

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1 PLEASE TAKE NOTICE that Defendant P.F. Chang’s China Bistro, Inc. (“P.F.  
2 Chang’s”), through its undersigned counsel, hereby removes the above-captioned  
3 action from the Superior Court of the State of California, for the County of Santa  
4 Clara, to the United States District Court for the Northern District of California, San  
5 Jose Division, under 28 U.S.C. §§ 1331-1332, 1441, 1446, and 1453. In support of  
6 this Notice of Removal, P.F. Chang’s states:

7 1. On or about December 24, 2013, plaintiff Anna Marie Phillips  
8 (“plaintiff”) commenced this putative class action against P.F. Chang’s by filing a  
9 Class Action Complaint (“Complaint”) in the Superior Court of the State of  
10 California, for the County of Santa Clara, bearing case number 114CV274263. The  
11 Complaint asserts five causes of action for (1) Violation of California’s Unruh Civil  
12 Rights Act (Cal. Civ. Code § 51, et seq.); (2) Violation of California’s Disabled  
13 Persons Act (Cal. Civ. Code § 54, et seq.); (3) Unfair Business Practices (Cal. Bus.  
14 & Prof. Code § 17200, et seq.); (4) Unlawful Business Practices (Cal. Bus. & Prof.  
15 Code § 17200, et seq.); and (5) Restitution Based on Quasi-Contract/Unjust  
16 Enrichment.

17 2. The U.S. Supreme Court recently affirmed that a defendant needs only  
18 to plausibly allege the requirements for federal jurisdiction to remove. That is, a  
19 defendant only needs to file in the federal forum a notice of removal “containing a  
20 short and plain statement of the grounds for removal”; no evidentiary submissions  
21 need to be submitted. *Dart Cherokee Basin Operating Co. v. Owens*, 574 U. S.  
22 \_\_\_\_ (2014) (slip op., at 1-2) (citing 28 U. S. C. §1446(a)), *available at*  
23 [http://www.supremecourt.gov/opinions/14pdf/13-719\\_8mjp.pdf](http://www.supremecourt.gov/opinions/14pdf/13-719_8mjp.pdf).

24 3. As more fully set out below, this case is properly removed to this  
25 Court under 28 U.S.C. § 1441 because P.F. Chang’s has satisfied the procedural  
26 requirements for removal, and because this Court has subject matter jurisdiction  
27 over this action under 28 U.S.C. §§ 1331-1332.

28

**I. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE MET.**

4. Upon information and belief, plaintiff served the Complaint on P.F. Chang’s on December 24, 2013. Accordingly, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

5. The Superior Court of the State of California, for the County of Santa Clara, is located in the Northern District of California, San Jose Division. Thus, venue is proper under 28 U.S.C. § 84 because this is the “district and division embracing the place where such action is pending.” See 28 U.S.C. § 1441(a).

6. No previous application has been made for the relief requested herein.

7. Under 28 U.S.C. 1446(a), a copy of all process, pleadings, and orders served upon P.F. Chang’s are attached as Exhibit 1 to this Notice of Removal.

Under 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for plaintiff, and copy is being filed with the clerk of the Superior Court of the State of California, for the County of Santa Clara.

**II. REMOVAL IS PROPER BECAUSE THIS COURT HAS JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT.**

8. This case is subject to removal under the Class Action Fairness Act of 2005. Pub. L. No. 109-2, 119 Stat. 4 (codified in various sections of 28 U.S.C.) (“CAFA”).

9. Plaintiff purports to bring this suit on behalf of “the following *classes* [sic]: All persons who (1) have been diagnosed with celiac disease, or an intolerance or allergy to gluten; and (2) who purchased items from P.F. Chang’s gluten-free menu in California within four years prior to the filing of the Complaint and continuing to the present.” Comp.¶ 18 (emphasis added). “Classes” appears to be a typographical error.

10. As set forth below, this is a putative class action in which (1) there are 100 or more members in plaintiff’s proposed class; (2) at least some members of the proposed class have a different citizenship from P.F. Chang’s; and (3) the aggregate

1 amount in controversy exceeds \$5 million. Thus, this Court has subject matter  
2 jurisdiction under 28 U.S.C. § 1332(d), and § 1453(b).

3 **A. Diversity of Citizenship.**

4 11. At least one member of the proposed class is a citizen of a state  
5 different from P.F. Chang's. 28 U.S.C. § 1332(d)(2)(A).

6 12. A corporation like P.F. Chang's is a citizen of every state by which it  
7 has been incorporated and of the state where it has its principal place of business. 28  
8 U.S.C. § 1332. Here, P.F. Chang's has been incorporated in Delaware and has its  
9 principal place of business in Scottsdale, Arizona.

10 13. Plaintiff brings this suit on behalf of a California class. Comp.¶ 18.  
11 Plaintiff alleges she "visited P.F. Chang's in Santa Clara County during the past four  
12 years" and "[s]he ordered items from P.F. Chang's gluten free menu." Based on this,  
13 and upon information and belief, plaintiff is a California citizen residing in Santa  
14 Clara County.

15 14. The diversity of citizenship between plaintiff and P.F. Chang's  
16 satisfies the diversity requirements of CAFA, which requires only that the  
17 citizenship of "any member of a class" be diverse from "any defendant." Because  
18 the named plaintiff is a California resident, and P.F. Chang's is a citizen of  
19 Delaware and Arizona, the "minimal diversity" requirement under CAFA is met. 28  
20 U.S.C. § 1332(d)(2)(A).

21 **B. The Amount-in-Controversy Requirement Is Satisfied.**

22 15. The aggregate amount in controversy, exclusive of interests and costs,  
23 exceeds \$5,000,000. 28 U.S.C. §§ 1332(d)(2), 1332(d)(6). *P.F. Chang's disputes*  
24 *that the proposed class could ever be certified or that P.F. Chang's is liable for any*  
25 *of the claims plaintiff asserts in the Complaint.* Although plaintiff does not plead a  
26 specific amount of damages, P.F. Chang's can demonstrate that the aggregate  
27 amount in controversy here exceeds \$5,000,000. *Dart Cherokee Basin Operating*  
28 *Co. v. Owens*, 574 U. S. \_\_\_\_ (2014) (slip op., at 1) ("When the plaintiff's complaint

1 does not state the amount in controversy, the defendant's notice of removal may do  
2 so.") (citing 28 U.S.C. §1446(c)(2)(A)).

3 16. P.F. Chang's is a casual dining restaurant with locations across the  
4 country. There are approximately 36 P.F. Chang's restaurants in California.<sup>1</sup>

5 17. P.F. Chang's offers a gluten free menu at its restaurants,<sup>2</sup> which is the  
6 subject of this suit.

7 18. Plaintiff alleges that it is medically necessary for her and other  
8 individuals to avoid consuming foods that contain or are exposed to gluten. Comp.¶  
9 2. Plaintiff alleges that P.F. Chang's gluten-free menu charges one additional dollar  
10 per item. Comp.¶ 14. Plaintiff thus alleges that P.F. Chang's discriminates against  
11 consumers with celiac disease and those with an intolerance or allergy to gluten.  
12 Comp.¶ 15-16, 18.

13 19. Plaintiff seeks the following relief on behalf of the putative class, in  
14 relevant part:

- 15 • For restitution of the surcharges that Plaintiff and putative class members
- 16 paid for gluten-free menu items, or restitutionary disgorgement of the
- 17 profits Defendants have obtained from those transactions;
- 18 • For compensatory damages for all causes of action for which they are
- 19 available; For treble damages under California Civil Code § 52(a) or *for a*
- 20

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21  
22 <sup>1</sup> 1. Anaheim, 2. Bakersfield, 3. Beverly Center, 4. Burbank, 5. Carlsbad, 6.  
23 Chino Hills, 7. Chula Vista, 8. Corte Madera, 9. El Segundo, 10. Emeryville, 11.  
24 Fremont 12. Fresno, 13. Irvine, 14. La Jolla, 15. Long Beach, 16. Mission Viejo, 17.  
25 Monterey, 18. Newport, 19. Oakridge Mall, 20. Palo Alto, 21. Pasadena, 22.  
26 Pleasanton, 23. Rancho Cucamonga, 24. Rancho Mirage, 25. Riverside, 26.  
27 Roseville, 27. Sacramento, 28. San Diego, 29. Santa Monica, 30. Sherman Oaks, 31.  
28 Sunnyvale, 32. Temecula, 33. Thousand Oaks, 34. Torrance, 35. Walnut Creek, 36.  
Woodland Hills.

<sup>2</sup> [www.pfchangs.com/menu/PrinterFriendlySection.aspx?menu=191&mid=16](http://www.pfchangs.com/menu/PrinterFriendlySection.aspx?menu=191&mid=16).

1            *minimum \$4,000 per violation under California Civil Code § 52(a)*

2            [emphasis added];

- 3            • For punitive damages for causes of action for which they are available;
- 4            • For a declaration and order enjoining Defendants from charging a higher
- 5            price for gluten-free menu items than for non-gluten free menu items
- 6            under California Civil Code § 55 and California Business & Professions
- 7            Code § 17203;
- 8            • For an order awarding reasonable attorneys' fees and the costs of suit
- 9            herein; and
- 10           • For an award of pre- and post-judgment interest. Comp. at pp.13-14.

11

12           20.        As emphasized above, plaintiffs' request \$4,000 per violation under

13 Civil Code § 52(a). Plaintiff claims that each time a putative class member was

14 surcharged while dining at a P.F. Chang's location for ordering a gluten free item(s),

15 the putative class member is entitled to \$4,000. Given this \$4,000 statutory

16 minimum, the amount and controversy can be met by making reasonable

17 assumptions about the putative class.

18           21.        Per the U.S. Census, California had an estimated population of

19 38,332,521 in 2013.<sup>3</sup>

20           22.        The putative class includes those with celiac disease. Comp. ¶ 18. It's

21 common medical knowledge that celiac disease affects approximately 1% of the

22 population.<sup>4</sup>

23 \_\_\_\_\_

24           <sup>3</sup> <http://quickfacts.census.gov/qfd/states/06000.html>.

25           <sup>4</sup> See, e.g., *The National Foundation for Celiac Awareness*,

26 <http://www.celiaccentral.org/ceciac-disease/facts-and-figures/>; *National Institutes of*

27 *Health*, [www.celiac.nih.gov/FAQ.aspx](http://www.celiac.nih.gov/FAQ.aspx); *WebMD*, [http://www.webmd.com/digestive-](http://www.webmd.com/digestive-disorders/news/20131212/ceciac-disease-gluten-sensitive)

28 [disorders/news/20131212/ceciac-disease-gluten-sensitive](http://www.webmd.com/digestive-disorders/news/20131212/ceciac-disease-gluten-sensitive).

1           23.     The putative class also includes those with an intolerance or allergy to  
2 gluten. Comp. ¶ 18. Some experts describe this as “non-celiac gluten sensitivity,” or  
3 NCGS.<sup>5</sup> NCGS affects as many as 6% of the population.<sup>6</sup>

4           24.     Assuming 1% of the California population has celiac disease or an  
5 intolerance or allergy to gluten, this equates to approximately 383,325 people  
6 (38,332,521\*.01).

7           25.     The market for gluten-free products is growing rapidly and is expected  
8 to surpass \$6.2 billion worldwide by 2018.<sup>7</sup>

9           26.     Given the popularity of gluten free products in general, and the 36 P.F.  
10 Chang’s locations statewide, it is safe to assume that 1% of those California citizens  
11 with celiac disease or gluten intolerance have dined at P.F. Chang’s in California in  
12 the past four years. The hypothetical putative class in this case can thus be estimated  
13 at *3,833 putative class members* (383,325\*.01).

14           27.     To reach the \$5 million amount in controversy, there would only have  
15 to be 1,250 putative class members (\$5,000,000 / \$4,000 (minimum damage amount  
16 under Civil Code § 52(a)).

17           28.     Here, however, there is an estimated 3,833 putative class members. In  
18 light of this analysis, the aggregate amount in controversy is in excess of  
19 \$5,000,000. This analysis is not even including plaintiff’s other claims for relief,  
20 such as treble and punitive damages.

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24 \_\_\_\_\_  
25           <sup>5</sup> *WebMD*, [http://www.webmd.com/digestive-](http://www.webmd.com/digestive-disorders/news/20131212/celiac-disease-gluten-sensitive)  
26 [disorders/news/20131212/celiac-disease-gluten-sensitive](http://www.webmd.com/digestive-disorders/news/20131212/celiac-disease-gluten-sensitive).

27           <sup>6</sup> *Id.*

28           <sup>7</sup> *Id.*

1           **C. Class Action Consisting of More Than 100 Members.**

2           29. As explained above, the aggregate number of class members in  
3 plaintiff’s proposed class—estimated at approximately 3,833—is greater than 100  
4 for purposes of 28 U.S.C. § 1332(d)(5)(B).

5           **III. THIS COURT ALSO HAS FEDERAL-QUESTION JURISDICTION.**

6           30. This case is subject to removal under 28 U.S.C. § 1331, as plaintiff’s  
7 Disabled Persons Act Claim (Civ. Code § 54 et seq.) (“DPA”) arises under federal  
8 law.

9           31. For her DPA claim, plaintiff correctly alleges a violation of the federal  
10 Americans with Disabilities Act also constitutes a violation of the DPA. Comp. ¶ 40  
11 (citing Cal. Civ. Code § 54.1(d)). Plaintiff goes on to allege P.F. Chang’s violated  
12 the ADA by putting a surcharge on gluten-free items. Comp. ¶¶ 41-48. Plaintiff  
13 concludes that because P.F. Chang’s conduct violates the ADA, it also violates the  
14 DPA. Comp. ¶ 48. Based on this ADA violation, plaintiff seeks an injunction  
15 enjoining further surcharges by P.F. Chang’s on gluten-free orders by persons with  
16 celiac disease or gluten sensitivities. Comp. ¶ 49. Plaintiff does not allege that P.F.  
17 Chang’s violated the DPA standard itself. Instead, she alleges that P.F. Chang’s  
18 violated the ADA, which by operation of law violates the DPA.

19           32. Plaintiffs do not request the minimum damages of \$1,000 under the  
20 DPA (Civ. Code § 54.3(a)) presumably because plaintiff seeks to collect the  
21 minimum \$4,000 under § 52(a) instead. See Civ. Code § 54.3(c) (limiting recovery  
22 to one section or the other).

23           33. Federal question jurisdiction will lie over state law claims that “really  
24 and substantially” involve a dispute or controversy respecting the validity,  
25 construction or effect of federal law. *Grable & Sons Metal Prods. v. Darue Eng’g*  
26 *& Mfg.*, 545 U.S. 308, 314 (2005). This case presents a federal issue of first  
27 impression—whether a surcharge for gluten-free items at a restaurant is a violation  
28 of the ADA. The facts in this case pass the *Grable & Sons’* test: first, this DPA state

1 law claim necessarily raises a federal issue under ADA that is actually disputed;  
2 second, the federal interest in the issue is substantial (issue of first impression); and  
3 third, the exercise of federal jurisdiction would not disturb “any congressionally  
4 approved balance of federal and state judicial responsibilities.” See *Grable & Sons*  
5 *Metal Products, Inc.*, 545 U.S. at 314.

6 34. Plaintiff’s DPA state law claim for injunctive relief is premised solely  
7 on a violation of the ADA. This DPA claim then is no different than a federal ADA  
8 claim. Federal-question jurisdiction thus exists here. “Simply by incorporating the  
9 ADA into state law, state legislatures cannot divest the federal courts of original  
10 jurisdiction over state claims that are, for all intents and purposes, federal ADA  
11 claims.”<sup>8</sup>

12 35. Thus, the Court has original jurisdiction over the DPA state claim for  
13 injunctive relief, and supplemental jurisdiction (28 U.S.C. § 1367) over the other  
14 claims.

15 **IV. THE REQUIREMENTS OF 28 U.S.C. § 1446 ARE MET.**

16 36. *Timeliness.* A notice of removal may be filed within 30 days after the  
17 defendant receives a copy of the initial pleading, motion, or other papers from it  
18 may be ascertained that the case is removable. 28 U.S.C. § 1446(b). P.F. Chang’s  
19 designated agent for receipt of service of process first received a copy of the  
20 Complaint on December 24, 2013. Therefore, P.F. Chang’s received a copy of the  
21 document from which it was ascertained that the case is removable, at the earliest,  
22 on December 24, 2013. Therefore, the Notice of Removal is timely filed.

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24 ///

25  
26 <sup>8</sup> *Pickern v. Best W. Timber Cove Lodge Marina Resort*, 194 F. Supp. 2d  
27 1128, 1131 n.5 (E.D. Cal. 2002) (emphasis added).

1           37.     *Removal to Proper Court.* This Court is part of the district and  
2 division in which the action was filed – Santa Clara County, California. 28 U.S.C.  
3 § 1446(a).

4           38.     *Procedural Requirements.* As required by 28 U.S.C. § 1446(d), P.F.  
5 Chang’s will file an appropriate notice in the state court action, and will serve on all  
6 counsel of record a true and correct copy of this Notice of Removal. Section  
7 1446(a) also requires a removing party to provide this Court a copy of all “process,  
8 pleadings, and order” served on it in the state court action. A true and correct copy  
9 of the Complaint and all papers served with the Complaint is attached hereto as  
10 Exhibit 1.

11           Therefore, defendant P.F. Chang’s respectfully removes this action from the  
12 Superior Court of the State of California, for the County of Santa Clara, bearing case  
13 number 114CV274263, to this Court under 28 U.S.C. §§ 1331-1332 and 1441.

14  
15 DATED: January 23, 2015

LEWIS BRISBOIS BISGAARD & SMITH LLP

16  
17  
18 By:           /s/ Michael K. Grimaldi            
19 Jon P. Kardassakis  
20 Michael K. Grimaldi  
21 Attorneys for Defendant P.F. CHANG’S  
22 CHINA BISTRO, INC.  
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***EXHIBIT “1”***

**NATIONAL REGISTERED AGENTS, INC**

**LEGAL**

DEC 26 2014

**RECEIVED**

**SERVICE OF PROCESS SUMMARY TRANSMITTAL FORM**

To: JENNIFER TYRRELL  
P.F. CHANG'S CHINA BISTRO, INC.  
7676 E Pinnacle Peak Rd  
Scottsdale, AZ 85255-3404

SOP Transmittal # 526301728

602-381-9104 - Telephone

Entity Served: P.F. CHANG'S CHINA BISTRO, INC. (Domestic State: DELAWARE)

Enclosed herewith are legal documents received on behalf of the above captioned entity by National Registered Agents, Inc or its Affiliate in the State of ARIZONA on this 24 day of December, 2014. The following is a summary of the document(s) received:

- 1. **Title of Action:** Anna Marie Phillips, on behalf of herself and others similarly situated, Pltfs. vs. P.F. Chang's China Bistro, Inc., etc., et al., Dfts.
- 2. **Document(s) Served:** Other: Proof of Service, Notice, Summons, Cover Sheet, Class Action Complaint, Information Sheet
- 3. **Court of Jurisdiction/Case Number:** Santa Clara - Superior Court, CA  
Case # 114CV274263

4. **Amount Claimed, if any:** N/A

5. **Method of Service:**

- Personally served by:       Process Server      \_\_\_ Deputy Sheriff      \_\_\_ U. S Marshall
- \_\_\_ Delivered Via:                      \_\_\_ Certified Mail      \_\_\_ Regular Mail      \_\_\_ Facsimile
- \_\_\_ Other (Explain):

6. **Date and Time of Receipt:** 12/24/2014 12:38:00 PM CST

7. **Appearance/Answer Date:** Within 30 days (Document(s) may contain additional answer dates)

8. **Received From:** Anthony J. Orshansky  
Counselone, P.C.  
9301 Wilshire Blvd  
Suite 650  
Beverly Hills, CA 90210  
310-277-9945

9. **Federal Express Airbill #**

10. **Call Made to:** Not required

11. **Special Comments:**

SOP Papers with Transmittal, via Fed Ex 2 Day  
Image SOP  
Email Notification, JENNIFER TYRRELL JENNIFER.TYRRELL@PFCB.COM  
Email Notification, LIBBY PITRE Libby.Pitre@pfc.com

**NATIONAL REGISTERED AGENTS, INC**

**CopiesTo:**

Transmitted by Issis Gonzalez

The information contained in this Summary Transmittal Form is provided by National Registered Agents, Inc for informational purposes only and should not be considered a legal opinion. It is the responsibility of the parties receiving this form to review the legal documents forwarded and to take appropriate action.

ORIGINAL

1238

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER:  DEFENDANT/RESPONDENT:	CASE NUMBER:  114CV274263
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a.  summons
  - b.  complaint
  - c.  Alternative Dispute Resolution (ADR) package
  - d.  Civil Case Cover Sheet (served in complex cases only)
  - e.  cross-complaint
  - f.  other (specify documents):
3. a. Party served (specify name of party as shown on documents served): *CT Corporation, Registered Agent For P.F. Changs China Bistro, Inc.*
  - b.  Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served: *2390 E. Camelback Rd., Phoenix AZ 85016*
5. I served the party (check proper box)
  - a.  by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): \_\_\_\_\_ (2) at (time): \_\_\_\_\_
  - b.  by substituted service. On (date): \_\_\_\_\_ at (time): \_\_\_\_\_ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
    - (1)  (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2)  (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3)  (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4)  I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): \_\_\_\_\_ from (city): \_\_\_\_\_ or  a declaration of mailing is attached.
    - (5)  I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

5. c.  by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): \_\_\_\_\_ (2) from (city): \_\_\_\_\_
- (3)  with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
- (4)  to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d.  by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a.  as an individual defendant.
- b.  as the person sued under the fictitious name of (specify):
- c.  as occupant.
- d.  On behalf of (specify): P. F. Chang's China Bistro, Inc.  
under the following Code of Civil Procedure section:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. Person who served papers

- a. Name: Antoine Phil Cobb
- b. Address: 5025 N. Central Ave Suite 228, Phoenix, AZ 85012
- c. Telephone number: 602-888-3237
- d. The fee for service was: \$ 60<sup>00</sup>

e. I am:

- (1)  not a registered California process server.
- (2)  exempt from registration under Business and Professions Code section 22350(b).
- (3)  a registered California process server:
- (i)  owner  employee  independent contractor.
- (ii) Registration No.:
- (iii) County:

8.  I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9.  I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 12-24-2014

Antoine Phil Cobb Antoine Phil Cobb  
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

Antoine Phil Cobb  
(SIGNATURE)

ATTACHMENT CV-5012

**CIVIL LAWSUIT NOTICE**

Superior Court of California, County of Santa Clara  
191 N. First St., San Jose, CA 95113

CASE NUMBER:

**114CV274263****PLEASE READ THIS ENTIRE FORM**

**PLAINTIFF** (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

**DEFENDANT** (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons and Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

**RULES AND FORMS:** You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Noire Dame Avenue, San Jose (408-882-2900 x-2926), [www.sccselfservice.org](http://www.sccselfservice.org) (Select "Civil") or from:

- State Rules and Judicial Council Forms: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) and [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules)
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Peter Kirwan Department: 1

The 1<sup>st</sup> CMC is scheduled for: (Completed by Clerk of Court)

Date: APR 10 2015 Time: 10:00am in Department: 1

The next CMC is scheduled for: (Completed by party if the 1<sup>st</sup> CMC was continued or has passed)

Date: \_\_\_\_\_ Time: \_\_\_\_\_ in Department: \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.sccsuperiorcourt.org/civil/ADR/](http://www.sccsuperiorcourt.org/civil/ADR/) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

ENDORSED  
FILED  
SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

P.F. CHANG'S CHINA BISTRO, INC., an Arizona corporation, and  
DOES 1 through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ANNA MARIE PHILLIPS, on behalf of herself and others similarly  
situated,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

DEC 10 2014

David H. Yamasaki, Clerk  
County of Santa Clara, California

Deputy Clerk

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desachar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Santa Clara Superior Court  
191 North First Street  
San Jose, California 95113

CASE NUMBER:  
(Número del Caso): 114CV274263

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
CounselOne, P.C., 9301 Wilshire Blvd. Suite 650, Beverly Hills, CA 90210, tel. (310) 277-9945

DATE: DEC 10 2014  
(Fecha) DAVID H. YAMASAKI Clerk, by Chief Executive Officer, Clerk (Secretario) Deputy (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
  - as the person sued under the fictitious name of (specify):
  - on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
  - by personal delivery on (date):

ENDORSED  
FILED

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Anthony J. Orshansky (Cal. Bar No. 199364) CounselOne, P.C. 9301 Wilshire Boulevard Suite 650 Beverly Hills, California 90210 TELEPHONE NO.: (310) 277-9945 FAX NO.: (424) 277-3727		FOR COURT USE ONLY  DEC 10 2014  Deane H. ... Superior Court County of Santa Clara, California By: _____ Court Clerk  Warden
ATTORNEY FOR (Name): Plaintiff		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Complex Litigation Department		
CASE NAME: PHILLIPS, et al. v. P.F. CHANG'S CHINA BISTRO, INC., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: <b>114CV274263</b>  JUDGE:  DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p><b>Auto Tort</b></p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p><b>Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) <p><b>Non-PI/PD/W/D (Other) Tort</b></p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/W/D tort (35) <p><b>Employment</b></p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p><b>Contract</b></p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p><b>Real Property</b></p> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p><b>Unlawful Detainer</b></p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p><b>Judicial Review</b></p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b></p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p><b>Enforcement of Judgment</b></p> <input type="checkbox"/> Enforcement of judgment (20) <p><b>Miscellaneous Civil Complaint</b></p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p><b>Miscellaneous Civil Petition</b></p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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BY FAX

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence  | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision   |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): 5
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 9, 2014  
 Anthony J. Orshansky

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**CIVIL CASE COVER SHEET**



1 Plaintiff Anna Maria Phillips (“Plaintiff”), on behalf of herself and all others similarly  
2 situated, complains of P.F. Chang’s China Bistro, Inc., an Arizona corporation (“P.F. Chang’s”),  
3 and DOES 1 through 50, inclusive, as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this action pursuant to Code of Civil Procedure § 382 against  
6 Defendants P.F. Chang’s and Does 1 through 50, inclusive (“Defendants”), on behalf of all  
7 consumers in California within four years of the filing of this lawsuit who have purchased items  
8 from P.F. Chang’s Gluten Free menu and paid a higher price for the menu item than for the non-  
9 gluten free version of the item on P.F. Chang’s regular menu.

10 2. It is medically necessary for individuals, like Plaintiff, to avoid consuming foods  
11 that contain gluten or have been exposed to gluten. Plaintiff has dined at P.F. Chang’s restaurants  
12 in California between 2010 and 2014. When Plaintiff visited P.F. Chang’s restaurants, she  
13 ordered items on the gluten-free menu.

14 3. Throughout the class period, Defendants have provided a gluten free menu at their  
15 restaurants throughout California and nationwide. The gluten free menu consists of a subset of the  
16 items on P.F. Chang’s regular, non-gluten menu, including appetizers and entrees. The gluten free  
17 items mirror their non-gluten free counterparts in name, content, and ingredients, with only small  
18 changes to make them gluten free. Each item on P.F. Chang’s gluten free menu is priced at \$1  
19 more than the same item on the regular, non-gluten free menu.

20 4. P.F. Chang’s claims that it “offer[s] an array of vegetarian dishes and [is] able to  
21 modify dishes to accommodate our customers with special dietary needs, including an extensive  
22 gluten-free menu.” However, while P.F. Chang’s does not impose a surcharge for making dietary  
23 accommodations to its regular menu items, it charges extra for each item on its separate “gluten-  
24 free” menu.

25 5. Consumers with celiac disease have no choice but to order gluten-free menu items.  
26 If they consume items on the non-gluten free menu, they will become sick. Customers with celiac  
27 disease are therefore charged an excessively high price for the same food that non-disabled  
28 customers purchase.



1 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of  
2 each defendant are legally attributable to the other Defendants.

3 12. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 395.5  
4 because the obligations giving rise to liability occurred in part in the County of Santa Clara, State  
5 of California.

### 6 **BACKGROUND**

7 13. P.F. Chang's charges more for products on its gluten-free menu than the same  
8 items prepared non-gluten free on its regular menu. For instance, on its regular starters menu, P.F.  
9 Chang's offers "Chang's Chicken Lettuce Wraps," its "signature appetizer" containing "wok-  
10 seared chicken, mushrooms, green onions and water chestnuts over crispy rice sticks, with crisp  
11 lettuce cups," at a price of \$8.95. P.F. Chang's offers a gluten-free version of the same appetizer  
12 for \$9.95: "GF Chang's Chicken Lettuce Wraps" its "signature appetizer," containing "wok-  
13 seared chicken, mushrooms, green onions and water chestnuts over crispy rice sticks, with crisp  
14 lettuce cups." Similarly, P.F. Chang's offers a regular menu "Mongolian Beef" made of "[s]weet,  
15 soy-glazed flank steak wok-seared with scallions and garlic" for \$15.95. The gluten-free version  
16 is the same but costs a dollar more, \$16.95: "GF Mongolian Beef," consisting of "[s]weet, soy-  
17 glazed flank steak wok-seared with scallions and garlic."

18 14. This one-dollar additional cost per item is repeated for most items on the gluten-  
19 free menu. This surcharge for the gluten-free items occurs even where the items at issue may  
20 naturally be gluten free such as vegetable dishes. For instance, P.F. Chang's offers a side of  
21 "Spinach With Garlic" consisting of "[t]ender leaves stir-fried with chopped garlic" for \$2.95 for a  
22 small dish and \$4.95 for a large dish. Its gluten-free menu offers the same item: "GF Spinach  
23 Stir-Fried With Garlic," consisting of "[t]ender leaves stir-fried with chopped garlic" at \$3.95 for a  
24 small dish and \$5.95 for a large dish. Similarly, P.F. Chang's offers its regular menu "Buddha's  
25 Feast" with "[s]avory soy sauce tossed with baked tofu, asparagus, shiitake mushrooms, broccoli  
26 and carrots" and offers it "steamed or stir fried," for \$8.95. P.F. Chang's offers the gluten-free  
27 "Buddha's Feast" without soy sauce or tofu (i.e., two fewer ingredients than the regular menu  
28 item) and offers it steamed, an option available on its regular menu, but charges \$9.95.



**CLASS ALLEGATIONS**

1  
2 18. Plaintiff brings this action on behalf of herself and those similarly situated  
3 as a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent the  
4 following classes: All persons who (1) have been diagnosed with celiac disease, or an intolerance  
5 or allergy to gluten; and (2) who purchased items from P.F. Chang’s gluten-free menu in  
6 California within four years prior to the filing of the Complaint and continuing to the present.

7 19. The class excludes counsel representing the class, governmental entities,  
8 Defendants, any entity in which Defendants have a controlling interest, Defendants’ officers,  
9 directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and  
10 assigns, any judicial officer presiding over this matter, the members of their immediate families  
11 and judicial staff, and any individual whose interests are antagonistic to other putative class  
12 members.

13 20. Plaintiff reserves the right under California Rule of Court 3.765 to amend or  
14 modify the class description with greater particularity or further division into subclasses or  
15 limitation to particular issues.

16 21. This action has been brought and may properly be maintained as a class  
17 action under the provisions of Code of Civil Procedure § 382 because there is a well-defined  
18 community of interest in the litigation and the class is easily ascertainable.

19 **A. Numerosity**

20 22. The potential members of the class as defined are so numerous that joinder  
21 of all members of the class is impracticable. Although the precise number of putative class  
22 members has not been determined at this time, Plaintiff is informed and believes that the proposed  
23 classes include thousands of members.

24 **B. Commonality**

25 23. There are questions of law and fact common to the class that predominate  
26 over any questions affecting only individual putative class members. These common questions of  
27 law and fact include:  
28

- 1 a. Whether Defendants' conduct was an "unfair practice" within the meaning of the  
2 UCL in that it offended established public policy and is immoral, unethical,  
3 oppressive, unscrupulous or substantially injurious to consumers;
- 4 b. Whether Defendants' conduct was an "unlawful" practice within the meaning of  
5 the UCL;
- 6 c. Whether Defendants violated California's Unruh Civil Rights Act, California  
7 Civil Code § 51, *et seq.*;
- 8 d. Whether Defendants violated California's Disabled Persons Act, California Civil  
9 Code § 54, *et seq.*;
- 10 e. Whether Plaintiff and members of the putative class are entitled to damages, civil  
11 penalties, restitution, injunctive, declaratory and/or other equitable relief;
- 12 f. Whether Plaintiff and the members of the class sustained monetary loss.

13 **C. Adequacy of Representation**

14 24. Plaintiff will fairly and adequately represent and protect the interests of the  
15 class. Counsel who represent Plaintiff and putative class members are experienced and competent  
16 in litigating class actions.

17 **D. Superiority of Class Action**

18 25. A class action is superior to other available means for the fair and efficient  
19 adjudication of this controversy. Individual joinder of putative class members is not practicable,  
20 and questions of law and fact common to putative class members predominate over any questions  
21 affecting only individual putative class members. Each putative class member has been damaged  
22 and is entitled to recovery by reason of Defendants' illegal policies or practices affecting all  
23 similarly situated persons.

24 26. Class-action treatment will allow those persons similarly situated to litigate  
25 their claims in the manner that is most efficient and economical for the parties and the judicial  
26 system. Plaintiff is unaware of any difficulties in managing this case that should preclude class  
27 action.

28 ///

**FIRST CAUSE OF ACTION**

**Violation of California’s Unruh Civil Rights Act, Cal. Civ. Code § 51, et seq.**

27. Plaintiff incorporates by reference each allegation set forth above.

28. California’s Unruh Act provides, “All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.” Cal. Civ. Code § 51(b).

29. The Unruh Act prohibits businesses from engaging in unreasonable, arbitrary or invidious discrimination, including through the unequal treatment of patrons. For example, businesses may not offer discounts to some classes of patrons but require payment of full price from other classes of patrons, where the price difference is based on arbitrary, class-based generalizations (such as gender).<sup>1</sup>

30. The Unruh Act provides that whoever “denies, aids or incites a denial, or makes any discrimination or distinction contrary to [the Act]” is liable for each and every offense, up to three times the amount of actual damages but in no case less than \$4,000, plus attorneys’ fees. *Id.* at § 52(a).

31. Defendants’ conduct constitutes a violation of California’s Unruh Act, Cal. Civ. Code § 51, et seq. As alleged above, Defendants practiced price discrimination against customers with celiac disease in California throughout the class period.

32. Defendants’ practice of surcharging gluten-free menu items purchased by consumers with celiac disease (or gluten sensitivities) constitutes price discrimination in violation of the Unruh Act.

33. As a direct and proximate cause of Defendants’ violation of the Unruh Act, Plaintiff and class members have suffered injury, including but not limited to the violation of their statutory rights and loss of money as the result of price discrimination. Therefore they are entitled to damages.

---

<sup>1</sup> See, e.g., *Pizarro v. Lamb’s Players Theatre*, 135 Cal.App.4th 1171, 1174 (2006); *Angelucci v. Century Supper Club*, 41 Cal.4th 160, 164, 178 (2007); *Koire v. Metro Car Wash*, 40 Cal.3d 24, 39 (1985).



1 goods, services, facilities, privileges, advantages, or accommodations to individuals with  
2 disabilities[.]” 28 C.F.R. § 36.302(a).

3 41. Importantly, the ADA provides that a “public accommodation may not impose a  
4 surcharge on a particular individual with a disability or any group of individuals with disabilities  
5 to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives  
6 to barrier removal, and reasonable modifications in policies, practices, or procedures, that are  
7 required to provide that individual or group with the nondiscriminatory treatment required by the  
8 Act or this part.” 28 C.F.R. §36.301.

9 42. If an establishment already makes alterations or modifications, or takes special  
10 orders for its customers, it must do so for disabled customer requests as well. *See* 28 C.F.R.  
11 §36.307(a) & (b) (“A public accommodation shall order accessible or special goods at the request  
12 of an individual with disabilities, if, in the normal course of its operation, it makes special orders  
13 on request for unstocked goods, and if the accessible or special goods can be obtained from a  
14 supplier with whom the public accommodation customarily does business.”). Special foods are  
15 expressly included among special orders. 28 C.F.R. 36.307(c) (“Examples of accessible or special  
16 goods include items such as Brailled versions of books, books on audio cassettes, closed-captioned  
17 video tapes, special sizes or lines of clothing, *and special foods to meet particular dietary*  
18 *needs.*”)(emphasis added).

19 43. Under the ADA, disability means: “(A) a physical or mental impairment that  
20 substantially limits one or more major life activities of such individual; (B) a record of such an  
21 impairment; or (C) being regarded as having such an impairment.” “[M]ajor life activities include,  
22 but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating,  
23 sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating,  
24 thinking, communicating, and working,” as well as “the operation of a major bodily function,  
25 including but not limited to, functions of the immune system, normal cell growth, digestive,  
26 bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive  
27 functions.” 42 U.S.C. § 12102(1) and (2).

28 ///

1           44.     Celiac disease affects a major life activity of eating and impacts the digestive  
2 system. These are bodily systems expressly included under the ADA.

3           45.     P.F. Chang's is a public accommodation within the meaning of the ADA. *See* 42  
4 U.S.C. § 12181(7)(B).

5           46.     P.F. Chang's must offer modifications to make its menu items gluten free in order  
6 to make its restaurants accessible to patrons with celiac disease and gluten sensitivities. Even  
7 though persons with celiac disease can physically enter the restaurants, they cannot eat anything  
8 sold in the restaurants unless the items are modified to remove gluten from their preparation  
9 and/or ingredients. P.F. Chang's menus are otherwise inaccessible to persons with celiac disease,  
10 and these persons are deprived of the opportunity to dine out like non-disabled persons.

11           47.     In its annual report to shareholders, P.F. Chang's boasts that it modifies menu  
12 orders upon patrons' request, and that it accommodates persons with food sensitivities.<sup>3</sup> Given its  
13 publicly declared practice of modifying orders to suit customers' needs, it must do so for persons  
14 with celiac disease who require gluten-free orders, without penalizing these disabled patrons by  
15 imposing a surcharge.

16           48.     P.F. Chang's conduct constitutes a violation of the ADA. Because it violates the  
17 ADA, P.F. Chang's conduct also constitutes a violation of California's Disabled Persons Act, a  
18 part of the Unruh Act.

19           49.     Plaintiff and class members are entitled to an injunction enjoining further  
20 surcharges by P.F. Chang's on gluten-free orders by persons with celiac disease and gluten  
21 sensitivities. Cal. Civ. Code § 55.

22           50.     The aforementioned acts of Defendants were willful, wanton, malicious, intentional,  
23 oppressive, and despicable, and were done in willful and conscious disregard of the rights of  
24 Plaintiffs, and were done by managerial agents and employees of Defendants, or with the express  
25 knowledge, consent, and ratification of managerial employees of Defendants, and thereby justify  
26 the awarding of punitive and exemplary damages in an amount to be determined at the time of  
27 trial.

28 <sup>3</sup> *See* P.F. Chang's China Bistro, Inc. 2011 Annual Report, available at  
<http://www.pfcb.com/docs/AnnualReports/PFCBAnnualReport2011.pdf>.

**THIRD CAUSE OF ACTION**

**Unfair Business Practices in Violation of**

**Business & Professions Code § 17200, et seq.**

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51. Plaintiff incorporates by reference each allegation set forth above.

52. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice. Cal. Bus. & Prof. Code § 17200.

53. A business act or practice is “unfair” under the UCL if the reasons, justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

54. Defendants’ conduct as set forth herein constitutes unfair business acts and practices.

55. Defendants discriminated against customers with celiac disease and gluten sensitivities by surcharging them for purchasing gluten-free menu items. Defendants took advantage of these disabled customers, who had no alternative but to purchase gluten-free items at the higher price because they medically are unable to tolerate items that contain or were exposed to gluten.

56. Plaintiff and the members of the putative class suffered a substantial injury by virtue of buying Defendants’ gluten-free menu items at the surcharged prices, which additional costs they would not have paid absent Defendants’ illegal conduct.

57. The consequences of Defendants’ conduct as set forth herein outweigh any justification, motive, or reason therefor. Defendants’ conduct is and continues to be unlawful, unscrupulous and contrary to public policy, and is substantially injurious to Plaintiff and the members of the putative class.

58. As a result of Defendants’ conduct, Plaintiff and the members of the putative class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendants, and such other orders and judgments which may be necessary to disgorge Defendants’ ill-gotten gains and restore money paid to Defendants in

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1 connection with purchases of gluten-free menu items by Plaintiff and the members of the putative  
2 class.

3 **FOURTH CAUSE OF ACTION**

4 **Unlawful Business Practices in Violation of**  
5 **Business and Professions Code § 17200, et seq.**

6 59. Plaintiff incorporates by reference each allegation set forth above.

7 60. Defendants' conduct as set forth herein constitutes unlawful business  
8 practices under California Business and Professions Code sections § 17200, *et seq.*

9 61. Defendants sold its surcharged gluten-free menu items in California during  
10 the class period.

11 62. Defendants' price discrimination against disabled consumers with celiac  
12 disease and gluten sensitivities was unlawful because it violated the Unruh Act, California Civil  
13 Code § 51, *et seq.*, and the Disabled Persons Act, Cal. Civ. Code § 54(a).

14 63. As a result of Defendants' conduct as set forth herein, Plaintiff and each  
15 member of the putative class, pursuant to Business and Professions Code § 17203, are entitled to  
16 an order enjoining such future conduct by Defendants, and such other orders and judgments which  
17 may be necessary to disgorge Defendants' ill-gotten gains and restore money paid to Defendants  
18 in connection with purchases of gluten-free menu items by Plaintiff and the members of the  
19 putative class.

20 **FIFTH CAUSE OF ACTION**

21 **Restitution Based On Quasi-Contract/Unjust Enrichment**

22 64. Plaintiff incorporates by reference each allegation set forth above. Plaintiff  
23 pleads this cause of action in the alternative.

24 65. Defendants' conduct in surcharging Plaintiff and putative class members for  
25 purchasing gluten-free menu items is unlawful because it constitutes arbitrary and unequal  
26 treatment of disabled patrons in violation of the Unruh Act and DPA. Defendants' took additional  
27 monies from Plaintiff and members of the putative class for gluten-free menu items that were  
28 substantially identical to non-gluten free menu items except for the presence of gluten based solely



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I. For an order requiring an accounting for, and imposition of, a constructive trust upon all monies received by Defendants as a result of the price discrimination; and

J. Such other and further relief as may be deemed necessary or appropriate.

Respectfully submitted,

DATED: December 9, 2014

COUNSELONE, PC

By   
Anthony J. Orshansky  
Justin Kachadoorian  
Attorneys for Plaintiff Anna Marie  
Phillips and the Putative Class

**JURY DEMAND**

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: December 9, 2014

COUNSELONE, PC

By   
Anthony J. Orshansky  
Justin Kachadoorian  
Attorneys for Plaintiff Anna Marie  
Phillips and the Putative Class

ATTACHMENT CV-5012

**CIVIL LAWSUIT NOTICE**

Superior Court of California, County of Santa Clara  
191 N. First St., San Jose, CA 95113

CASE NUMBER:

**114CV274263****PLEASE READ THIS ENTIRE FORM**

**PLAINTIFF** (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

**DEFENDANT** (The person sued): You must do each of the following to protect your rights:

1. You must file a **written response** to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within **30 days** of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

**Warning:** If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

**RULES AND FORMS:** You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), [www.sccselfservice.org](http://www.sccselfservice.org) (Select "Civil") or from:

- State Rules and Judicial Council Forms: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) and [www.courtinfo.ca.gov/rules](http://www.courtinfo.ca.gov/rules)
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

**CASE MANAGEMENT CONFERENCE (CMC):** You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

*You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.*

Your Case Management Judge is: Peter Kirwan Department: 1

The 1<sup>st</sup> CMC is scheduled for: (Completed by Clerk of Court)

Date: APR 10 2015 Time: 10:00am in Department: 1

The next CMC is scheduled for: (Completed by party if the 1<sup>st</sup> CMC was continued or has passed)

Date: \_\_\_\_\_ Time: \_\_\_\_\_ in Department: \_\_\_\_\_

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at [www.sccsuperiorcourt.org/civil/ADR/](http://www.sccsuperiorcourt.org/civil/ADR/) or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

**WARNING:** Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

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**SANTA CLARA COUNTY SUPERIOR COURT  
ALTERNATIVE DISPUTE RESOLUTION  
INFORMATION SHEET**

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Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

***What is ADR?***

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

***What are the advantages of choosing ADR instead of litigation?***

ADR can have a number of advantages over litigation:

- ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

***What are the main forms of ADR offered by the Court?***

Mediation is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

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Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

***What kind of disputes can be resolved by ADR?***

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

***Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?***

**Contact:**

Santa Clara County Superior Court  
ADR Administrator  
408-882-2530

Santa Clara County DRPA Coordinator  
408-792-2784

**FEDERAL COURT PROOF OF SERVICE**  
***Phillips, et al. v P.F. Chang's, et al.*** - File No. New-Number

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, California 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On January 23, 2015, I served the following document(s): **DEFENDANT P.F. CHANG'S CHINA BISTRO, INC.'S NOTICE OF REMOVAL OF CLASS ACTION**

on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Anthony J. Orshansky, Esq.  
Justin Kachadoorian, Esqa.  
COUNSELONE, P.C.  
9301 Wilshire Boulevard, Suite 650  
Beverly Hills, CA 90210  
Anthony@counselonegroup.com  
Justin@counselonegroup.com  
T: (310) 277-9945  
F: (424) 277-3727  
*Attorneys for Plaintiffs*

The documents were served by the following means:

(BY OVERNIGHT DELIVERY) Based on an agreement of the parties to accept service by overnight delivery, I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

(BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on January 23, 2015, at Los Angeles, California.

  
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Cora Ruvalcaba