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9 *Attorneys for Plaintiffs and the Class*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF ALAMEDA**

12 AARON ASELTINE and JOHN DUNDON,
13 on behalf of themselves and all others
14 similarly situated,

15 Plaintiffs,

16 v.

17 CHIPOTLE MEXICAN GRILL, INC.,

18 Defendant.

Case No. RG21088118
Assigned for All Purposes to:
Hon. Evelio Grillo

19 **CLASS ACTION**

20 **DECLARATION OF JEFFREY D. KALIEL
IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

21 **[Notice of Unopposed Motion for Final
Approval; Memorandum of Points and
Authorities; Supplemental Declaration of
Cameron R. Azari; [Proposed] Order filed
concurrently herewith]**

22 Hearing Date: July 12, 2022
23 Time: 10:00 a.m.
24 Department: 21
Reservation No. 277454712648

25 Action filed: February 4, 2021
26 Trial date: None

1 **DECLARATION OF JEFFREY D. KALIEL**

2 I, Jeffrey D. Kaliei, declare as follows:

3 1. I am counsel of record of Plaintiffs John Dundon and Aaron Aseltine and Class
4 Counsel for the settlement Class in the above-captioned matter. I submit this declaration in support
5 of Plaintiff’s Unopposed Motion for Final Approval of Class Action Settlement. I have personal
6 knowledge of the facts set forth in this declaration and could and would testify competently to them
7 if called upon to do so.

8 2. Plaintiffs’ class action claims arise out of allegations that Chipotle unfairly obscures
9 its true delivery costs by falsely marketing “free” or “\$1” delivery to consumers for food purchases
10 placed on its App and Website in two ways. First, in May 2020, Chipotle began assessing an
11 additional charge on delivery food orders called a “service charge” that amounts to 10% more for
12 the same food received by non-delivery customers.

13 3. Second, beginning in August 2020, Chipotle began charging higher menu prices for
14 online delivery, ranging from 7% to 13% and, depending on the time period and the store from
15 which the purchase was made, at times 10.5% or 17%.

16 4. To illustrate, Plaintiff Dundon alleges that he placed an order on the Chipotle App
17 that was advertised as having a \$1.00 delivery fee, but was actually much higher than represented
18 because his purchase included a “Service Charge” of \$2.86 and the prices of the items he ordered
19 were 12-15% higher, each increased cost allegedly representing a hidden delivery fee markup.

20 5. Plaintiffs allege that by omitting, concealing, and misrepresenting material facts about
21 Chipotle’s delivery service, Defendant deceives consumers into making online food purchases they
22 otherwise would not make.

23 6. In the Amended Complaint, Plaintiffs allege consumer protection claims under New
24 York and California law and a common law claim for unjust enrichment seeking monetary damages,
25 restitution, injunctive relief, declaratory relief, and attorneys’ fees on behalf of a nationwide class
26 of consumers—both Non-Rewards Members and Rewards Members—who made a food delivery
27 order through Chipotle’s App or Website during the Class Period.

1 7. On June 4, 2021, the Parties attended a full-day mediation before Bruce A. Friedman
2 of JAMS.

3 8. In preparation for mediation and for several months throughout the settlement
4 negotiations, the Parties engaged in informal discovery. Plaintiff requested, and Defendant
5 provided, voluminous information regarding Chipotle’s policies, practices, and procedures related
6 to the marketing and pricing of delivery orders during the Class Period.

7 9. . Chipotle also provided detailed data analysis regarding delivery orders, users, and
8 fees.

9 10. After reviewing the documents and data, the Parties continued lengthy negotiations
10 and ultimately agreed to the material terms of settlement, resulting in the Agreement now before the
11 Court.

12 11. The Parties subsequently engaged in confirmatory discovery on class membership and
13 damages.

14 12. As noted above, the settlement was aggressively negotiated with the assistance of
15 Bruce A. Friedman, a well-respected mediator who presided over an arm’s-length mediation
16 between capable and experienced class action counsel on both sides.

17 13. The Parties engaged in a significant amount of informal and confirmatory discovery
18 in order to assist Class Counsel in vetting and assessing the claims of Settlement Class Members
19 and Chipotle’s defenses to those claims prior to reaching this Agreement.

20 14. The information provided included, but was not limited to, the nature, timing,
21 geographic scope and implementation of Defendant’s advertisements, marketing materials, and
22 disclosures on its Website and App regarding delivery fees, service fees, and menu prices; Plaintiff
23 Dundon’s participation in Chipotle’s Rewards Program and both Plaintiffs’ purchasing history with
24 Chipotle; Chipotle’s Terms of Use for its Website and App and Chipotle Rewards Terms &
25 Conditions; the number of customers who purchased food for delivery on Defendant’s Website and
26 App, broken down by Rewards members and non-Rewards members; and the approximate fees and
27 prices charged customers who purchased food for delivery on Defendant’s Website and App.
28

1 15. Importantly, the Parties did not discuss attorneys' fees and costs, nor any potential
2 service awards, until they first agreed on the material terms of the settlement, including the
3 definition of the Class, notice, class benefits, and scope of the release.

4 16. The Parties have entered into the Agreement, which completely resolves this action
5 and the New York Action, which the Parties and the New York court have agreed will be stayed
6 while approval of this proposed settlement is pending.

7 17. Class Counsel believes that the contemplated benefits addressed below adequately
8 compensate Settlement Class Members for the harm they suffered and, in light of the risks of
9 litigation, represent an excellent result for Settlement Class Members.

10 18. As set forth above, the *Dunk* presumption in favor of approval applies as the
11 settlement was reached through arm's-length negotiation with the assistance of an experienced
12 mediator.

13 19. Class Counsel is experienced in similar litigation.

14 20. Class counsel believes the settlement is an excellent one for the class.

15 21. While Plaintiffs would have strongly opposed a demurrer, there was a great deal of
16 uncertainty on these novel claims. There were also genuine risks that Plaintiffs might not prevail
17 at class certification, at trial, or on appeal. Given these risks, a settlement that provides members of
18 the Settlement Class with a major change to Defendant's allegedly deceptive practice as well a
19 substantial monetary benefit falls within the range of possible approval. There are no grounds to
20 doubt the Agreement's fairness.

21 22. The monetary benefits are also robust. The \$1 million cash Settlement Fund to be
22 distributed equally to Non-Rewards Subclass Members who submit a valid claim represents
23 approximately 43% of Class Counsel's estimate of the most likely damages at trial, were Plaintiffs
24 to prevail.

25 23. The vouchers for Rewards Subclass Members is an excellent recovery, providing up
26 to 350,000 claimants with a full price entrée, without the need for any additional purchase.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of May 2022, at Washington, D.C.



JEFFREY D. KALIEL

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 I am employed in the District of Columbia. I am over the age of 18 and not a party to the
4 within action. My business address is 1100 15th Street NW, 4th Floor, Washington, DC 20005.

5 On **May 16, 2022**, I served the document(s) described as:

6 **DECLARATION OF JEFFREY D. KALIEL IN SUPPORT OF PLAINTIFFS’**
7 **UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION**
8 **SETTLEMENT**

9 on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof
10 [✓] to interested parties as follows [or] [] as stated on the attached service list:

11 **DLA PIPER LLP (US)**
12 ANGELA C. AGRUSA (SBN 131337)
13 *angela.agrusa@us.dlapiper.com*
14 SHANNON E. DUDIC (SBN 261135)
15 *shannon.dudic@us.dlapiper.com*
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, California 90067-4704

Attorneys for Defendant,
**CHIPOLTE MEXICAN
GRILL, INC.**

16 [] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
17 for mailing in the ordinary course of business at Los Angeles, California. I am “readily
18 familiar” with this firm’s practice of collection and processing correspondence for
mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal
Service that same day in the ordinary course of business with postage thereon fully
prepaid at Los Angeles, California.

19 [X] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
20 California, by e-mail delivery on the parties listed herein at their most recent known e-
mail address or e-mail of record in this action.

21 [] **BY FAX:** I hereby certify that this document was served from Los Angeles, California,
22 by facsimile delivery on the parties listed herein at their most recent fax number of
record in this action.

23 [] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope,
24 by hand to the offices of the addressee(s) named herein.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct. Executed this **May 16, 2022**, at Los Angeles, California.

27 NEVA R. GARCIA


28 _____
Signature