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9 *Attorneys for Plaintiffs and the putative Class*

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF ALAMEDA**

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

16 Plaintiffs,

17  
18 vs.

19 CHIPOTLE MEXICAN GRILL, INC.,

20 Defendant.  
21  
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Case No.: RG21088118  
Assigned for All Purposes to:  
Hon. Evelio Grillo

**DECLARATION OF JEFFREY D.  
KALIEL IN SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES,  
COSTS, AND SERVICE AWARDS**

**[Ex Parte Application to File Memorandum  
Exceeding Page Limit; [Proposed] Order;  
Notice of Motion, Memorandum of Points  
and Authorities In Support Thereof;  
Declaration of Jeffrey D. Kaliel;  
Declaration of Cameron R. Azar; and  
[Proposed] Order filed concurrently  
herewith]**

**Date: July 21, 2022**  
**Time: 10:00 a.m.**  
**Dept.: 21**

Action Filed: February 4, 2021  
Trial Date: None

1 **DECLARATION OF JEFFREY D. KALIEL**

2 I, Jeffrey D. Kaliel, declare and state that:

3 1. I am counsel of record for the named Plaintiffs and the conditionally certified Class  
4 in the above captioned matter against Chipotle Mexican Grill, Inc. (“Defendant” or “Chipotle”).

5 2. I submit this declaration in support of Plaintiffs’ Unopposed Motion for Attorneys’  
6 Fees, Costs, and Service Awards. Unless otherwise noted, I have personal knowledge of the facts  
7 set forth in this declaration and could and would testify competently to them if called upon to do  
8 so.

9 **Background and Procedural History**

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

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

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

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

25 7. In the Amended Complaint, Plaintiffs allege consumer protection claims under  
26 New York and California law and a common law claim for unjust enrichment seeking monetary  
27 damages, restitution, injunctive relief, declaratory relief, and attorneys’ fees on behalf of a  
28

1 nationwide class of consumers—both Non-Rewards Members and Rewards Members—who made  
2 a food delivery order through Chipotle’s App or Website during the Class Period.

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

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

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

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

14 12. The Parties subsequently engaged in confirmatory discovery on class membership  
15 and damages.

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

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

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

1 fees and prices charged customers who purchased food for delivery on Defendant's Website and  
2 App.

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

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

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

12 19. The total lodestar of the firm on this case (including estimated time for completion  
13 of certain tasks shown below) is **\$381,637.50**, broken down by firm as follows:

14 Task	15 Jeff Kaliel	16 Sophia Gold	17 Brittany Casola	18 Neva Garcia
19 <b>Pre-suit investigation, Factual Development, Client Meetings and Correspondence</b> 20 <i>Performed first of its kind industrywide investigation regarding whether restaurants are increasing menu prices for delivery orders; whether restaurants were adding additional delivery-only fees; and the legality of same; researched potential causes of action; researched potentially applicable laws and industry guidance; researched California and New York law; researched consumer complaints on various online forums; researched enforceability of Chipotle arbitration clause, including investigation of sign-up process; researched Chipotle's corporate structure and potential damages; reviewed Chipotle's disclosures and compared to other industry actors;</i>	21 44.0	22 29.0	23 14.2	24 14.0

Task	Jeff Kaliel	Sophia Gold	Brittany Casola	Neva Garcia
<i>interviewed numerous potential class representatives; reviewed paperwork from clients; prepared preservation letter; prepared CLRA letter.</i>				
<b>Strategy, Case Analysis, Class Counsel Conferences</b> <i>Strategy meetings internally at the firm.</i>	13.5	8.5	4.5	
<b>Pleadings</b> <i>Researched, drafted, and edited complaint for both California and New York cases; researched, drafted and edited amended complaint; reviewed answer and researched viability of affirmative defenses.</i>	38.6	22.5	27.2	
<b>Informal Discovery</b> <i>Promulgated arbitration-related discovery requests; promulgated damages-related discovery requests; reviewed documents; conferences with opposing counsel.</i>	36.3	17.3		
<b>Case Management and Other Court Mandated Tasks</b> <i>Prepared case management statements and status reports.</i>	6.7	8		
<b>Settlement</b> <i>Engaged in settlement discussions with opposing counsel; prepared mediation brief and researched arguments made in Chipotle's mediation brief; attended full-day mediation; continued post-mediation settlement discussions; negotiated and finalized settlement agreement and all associated documentation.</i>	91	46		
<b>Preliminary Approval</b> <i>Drafted motion for preliminary approval and motion for conditional certification and accompanying declarations.</i>	22	11		6.0
<b>Class Notice</b> <i>Received and reviewed detailed bids from notice administrators; worked with notice administrator to develop notice plan and find cost-efficiencies;</i>	12.5	9.4		

Task	Jeff Kaliel	Sophia Gold	Brittany Casola	Neva Garcia
<i>oversaw notice process; responded to class member inquiries</i>				
<b>Final Approval, Settlement Execution, Distribution of Common Fund (Estimated)</b> <i>Prepare motion for final approval and all supporting declarations, respond to objections, prepare for and attend final approval hearing, work with settlement administrator to ensure proper distribution of funds to class members, prepare any post-final approval motions.</i>	35	25		6.5
<b>Totals</b>	<b>299.6</b>	<b>176.7</b>	<b>45.9</b>	<b>26.5</b>

20. If the requested fee is awarded, Class Counsel will be receiving a reasonable multiplier on the above lodestar. To date, Class Counsel have expended 548.7 hours of work in this litigation and accumulated a total lodestar of approximately \$381,637.50.

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

22. The costs and expenses were necessary and were an important factor in bringing this matter to a successful conclusion and consist mainly of filing fees and costs to engage an experienced and well-respected mediator.

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

Executed this 25<sup>th</sup> day of April, 2022, in 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, 4<sup>th</sup> Floor, Washington, DC 20005.

5 On **April 25, 2022**, I served the document(s) described as:

6 **DECLARATION OF JEFFREY D. KALIEL IN SUPPORT OF**  
7 **PLAINTIFFS’ MOTION FOR ATTORNEYS’ FEES, COSTS, AND**  
8 **SERVICE AWARDS**

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*  
16 2000 Avenue of the Stars  
17 Suite 400 North Tower  
18 Los Angeles, California 90067-4704

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

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

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

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

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

NEVA R. GARCIA



Signature