

I. SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement” or the “Agreement”) is made and entered into by and between Plaintiffs John Dundon and Aaron Aseltine, individually and on behalf of the Settlement Class (“Plaintiffs” or “Class Representatives”), on the one hand, and Defendant Chipotle Mexican Grill, Inc. (“Chipotle” or “Defendant”), on the other hand, in the action entitled *John Dundon and Aaron Aseltine v. Chipotle Mexican Grill, Inc.*, Superior Court of the State of California for the County of Alameda, Case No. RG21088118.

II. DEFINITIONS

As used in this Agreement and all related documents, the following terms have the following meanings:

A. “Action” means collectively the claims asserted in *John Dundon v. Chipotle Mexican Grill, Inc.*, U.S.D.C. N.D.N.Y., Case No. 4:16-cv-02200-HSG and *Aaron Aseltine et. al. v. Chipotle Mexican Grill, Inc.*, Superior Court of California, County of Alameda, Case No. RG21088118.

B. “Administration Fund” means a fund that Defendant will pay or cause to be paid to the Class Action Settlement Administrator.

C. “CAFA Notice” refers to the notice requirements imposed by 28 U.S.C. § 1715(b).

D. “Class Counsel” means KalielGold PLLC.

E. “Class Period” means the period within the applicable statute of limitations preceding the filing of the Action to the date of conditional certification of the Settlement Class.

F. “Claim(s)” or “Claim Form(s)” means the claim form submitted by a Settlement Class Member, in the form attached hereto as “**Exhibit 1**”, to receive a Settlement Award pursuant to Sections IV.D and E.

G. “Claim Period” means the time period in which Settlement Class Members may submit a Claim Form.

H. “Claims Process” means the process for Settlement Class Members to submit Claims, as described in Sections III.D. and E.

I. “Class Notice” means all types of notice that will be provided to the Settlement Class, as described in Section V of the Agreement, which includes electronic mail notice and website notice, as well as any additional notice that might be ordered by the Court.

J. “Class Action Settlement Administrator” means the third-party agent or administrator agreed to by the Parties and appointed by the Court.

K. “Effective Date” means (a) if no objection is raised to the proposed Settlement at the Fairness Hearing, including with respect to Class Counsel’s attorneys’ fees and any incentive awards, the date on which the Final Approval Order and Judgment is entered; or (b) if any objections are raised to the proposed Settlement at the Fairness Hearing or thereafter through third-party intervention or otherwise, including with respect to Class Counsel’s attorneys’ fees and any incentive awards, the latest of: (i) the expiration date of the time for filing or notice of any appeal from the Final Approval Order and Judgment, (ii) the date of final affirmance of any appeal of the Final Approval Order and Judgment, (iii) the expiration of the time for, or the denial of, a petition for writ of certiorari to review the Final Approval Order and Judgment and, if certiorari is granted, the date of final affirmance of the Final Approval Order and Judgment following review pursuant to that grant; or (iv) the date of final dismissal of any appeal from the Final Approval Order and Judgment or the final dismissal of any proceeding on certiorari to review the Final Approval Order and Judgment.

L. “Fairness Hearing” means the hearing at or after which the Court will make a final decision whether to approve this Agreement and the Settlement set forth herein as fair, reasonable, and adequate and entry by the Court of the Final Approval Order.

M. “Final Approval” means the date the Court finally approves the Settlement of this Action, including but not limited to, the terms and conditions of this Agreement.

N. “Final Approval Order” means the order and judgment that the Court enters upon finally approving the Settlement in connection with the Fairness Hearing, the proposed form of which is attached hereto as “**Exhibit 2**”.

O. “Long Form Notice” means notice of the proposed Settlement to be provided to Settlement Class Members substantially in the form attached hereto as “**Exhibit 3**”.

P. “Notice Deadline” or “Notice Date” means the date on which the notice described in Section V of the Agreement is first issued, which shall be no later than thirty (30) calendar days following entry of Preliminary Approval.

Q. “Objection/Exclusion Deadline” means the date one hundred and twenty (120) days after Preliminary Approval, which shall in no event be less than sixty (60) calendar days after the Notice Deadline.

R. “Parties” mean the Class Representatives and Defendant.

S. “Preliminary Approval” means the date the Court preliminarily approves the Settlement of the Action, including but not limited to, the terms and conditions of this Agreement.

T. “Preliminary Approval Order” means the order to be submitted to the Court in connection with the preliminary approval hearing on the Settlement, the proposed form of which is attached hereto as “**Exhibit 4**”.

U. “Released Claims” means all claims to be released pursuant to Section IV.C of this Agreement.

V. “Non-Rewards Member Settlement Subclass” means all persons in the United States who were not members of Chipotle’s Rewards Program and ordered food delivery through Defendant’s App or Website during the Class Period and were charged a service fee and/or increased menu prices pursuant to disclosures Plaintiffs allege were deficient (“Non-Rewards Subclass Member”). Excluded from the Non-Rewards Member Settlement Subclass are all persons who validly opt out of the Settlement in a timely manner; governmental entities; counsel of record (and their respective law firms) for the Parties; Defendant and any of its parents, affiliates, subsidiaries, independent service providers and all of its respective employees, officers, and

directors; the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff; and any natural person or entity that entered into a release with Defendant prior to the Effective Date concerning Defendant's pricing or advertisements when ordering food delivery through Defendant's App or Website.

W. "Rewards Member Settlement Subclass" means all persons in the United States who were members of Chipotle's Rewards Program and ordered food delivery through Defendant's App or Website during the Class Period and were charged a service fee and/or increased menu prices pursuant to disclosures Plaintiffs allege were deficient ("Rewards Subclass Member"). Excluded from the Rewards Member Settlement Subclass are all persons who validly opt out of the Settlement in a timely manner; governmental entities; counsel of record (and their respective law firms) for the Parties; Defendant and any of its parents, affiliates, subsidiaries, independent service providers and all of its respective employees, officers, and directors; the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff; and any natural person or entity that entered into a release with Defendant prior to the Effective Date concerning Defendant's pricing or advertisements when ordering food delivery through Defendant's App or Website.

X. "Settlement Award" means either: (1) for Non-Rewards Subclass Members, an electronic payment via PayPal, Venmo, or other electronic means pursuant to Section IV.D. or (2) at the election of the Rewards Subclass Members, a voucher for a free entrée from the Chipotle menu pursuant to Section IV.E.

Y. "Settlement Class Member" means any member of the settlement subclasses.

Z. "Settlement Class" means all persons who made a food delivery order through Chipotle's App or Website during the Class Period, including persons who are part of the Non-Rewards Member Settlement Subclass and the Rewards Member Settlement Subclass.

AA. "Settlement Costs" means (a) any award of attorneys' fees and costs to Class Counsel approved by the Court; (b) any incentive awards to Plaintiffs approved by the Court; (c) costs of the Class Action Settlement Administrator for providing notice to persons in the Non-

Rewards Settlement Subclass and Rewards Settlement Subclass (including, but not limited to electronic mail or website notice and any additional notice that might be ordered by the Court); (d) costs of the Class Action Settlement Administrator for administering the Settlement, including, but not limited to, the cost of providing Settlement Awards, Claim Forms, and the cost of processing Claim Forms; and (e) the fees, expenses and all other costs of the Class Action Settlement Administrator.

BB. “Settlement Website” means the website to be established by the Class Action Settlement Administrator for purpose of providing notice, Claim Forms, the electronic submission of Claim Forms, and other information regarding this Agreement, as described in Section V.B.

III. LITIGATION BACKGROUND

A. Plaintiffs allege that they purchased food products for delivery through Defendant’s App and Website during the Class Period. Plaintiffs further allege that Defendant’s representations regarding its delivery fees, service fees, and menu prices on its delivery orders during the Class Period were false or misleading. Plaintiffs Mr. Dundon and Mr. Aseltine each filed putative class action lawsuits. On January 29, 2021, Plaintiff Aaron Aseltine, a resident of the State of California and a nonmember of Chipotle’s customer loyalty program, filed his action on behalf of all California consumers who purchased food for delivery from Chipotle beginning on or about May 2020 and alleging violations of California’s Unfair Competition Law and of California’s Consumer Legal Remedies Act. (*Aaron Aseltine et. al. v. Chipotle Mexican Grill, Inc.*, Superior Court of California, County of Alameda, Case No. RG21088118.) On March 3, 2021, Plaintiff John Dundon, a resident of the State of New York and a member of Chipotle’s customer loyalty program, filed his action on behalf of all consumers nationwide (and a subclass of New York consumers) who purchased food for delivery from Chipotle beginning on or about May 2020 and alleging claims for relief for violation of New York’s Deceptive Acts and fraud in the inducement. (*John Dundon v. Chipotle Mexican Grill, Inc.*, U.S.D.C. N.D.N.Y., Case No. 4:16-cv-02200-HSG). Both Plaintiffs seek monetary damages, restitution, injunctive relief, and declaratory relief. Chipotle maintains that at all material times, in order to receive the benefits afforded members of

Chipotle's customer loyalty program (Chipotle's "Rewards Program"), program members were required to agree to Chipotle's Rewards Terms & Conditions and Terms Use, each of which contains an arbitration and class action waiver clause. Plaintiffs do not admit or concede the application of the arbitration and class action waiver clause to their claims.

B. For settlement purposes, the Parties have agreed that Plaintiffs will file an amended complaint in *Aaron Aseltine and John Dundon v. Chipotle Mexican Grill, Inc.*, Superior Court of the State of California for the County of Alameda, Case No. RG21088118, contemporaneous with filing a motion for preliminary approval, redefining the class definition to be consistent with the Settlement Class described herein and including adding John Dundon as a named Plaintiff and Class Representative.

C. Defendant expressly denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, and further contends that, for any purpose other than Settlement, the Action is not appropriate for class treatment. Defendant does not admit or concede any actual or potential fault, wrongdoing, or liability against it in the Action or any other actions. Defendant maintained during the entire pendency of the Action, and continues to maintain, that the challenged representations are, in fact, true, and are therefore not deceptive or misleading as a matter of law.

D. Counsel for the Parties engaged in a full day mediation before Bruce A. Friedman of JAMS, as well as many meetings, discussions, and conference calls thereafter with Mr. Friedman before finally resolving these matters. The result was a Settlement of the Action in its entirety, culminating with this Agreement on the above-outlined litigation. Based on the above-outlined litigation, the current state of the law, the expense, burden and time necessary to prosecute the Action through trial and possible appeals, the risks and uncertainty of further prosecution of the Action considering the defenses at issue, the sharply contested legal and factual issues involved, and the relative benefits to be conferred upon Plaintiffs and the Settlement Class Members pursuant to this Agreement, Class Counsel has concluded that a Settlement with Defendant on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class in light of all known facts and circumstances.

E. Prior to mediation and for several months throughout the settlement negotiations, the Parties engaged in informal discovery and Defendant provided voluminous information regarding Defendant's policies, practices, and procedures as they relate to the marketing and pricing of delivery orders during the Class Period. Information provided included but was not limited to the nature, timing, geographic scope and implementation of Defendant's advertisements, marketing materials, and disclosures on its Website and App regarding delivery fees, service fees, and menu prices; Plaintiff Dundon's participation in Chipotle's customer loyalty program and both Plaintiffs purchasing history with Chipotle; Chipotle's Terms of Use for its Website and App and Chipotle Rewards Terms & Conditions; the number of customers who purchased food for delivery on Defendant's Website and App, broken down by Rewards members and non-Rewards members; and the approximate fees and prices charged customers who purchased food for delivery on Defendant's Website and App. As a result of Defendant's production of documents and data, and the lengthy negotiation period, Class Counsel was able to thoroughly review, vet and assess the claims of the Settlement Class Members and Defendant's defenses to said claims prior to reaching this Agreement. In addition, and in order to further verify documents and data provided by Defendant during settlement negotiations, Class Counsel performed confirmatory discovery in the months after the Parties reached an agreement in principle to resolve these matters.

F. Defendant and Defendant's counsel recognize the expense and length of continued proceedings necessary to continue the Action through trial and through possible appeals. Defendant also recognizes that the expense and time spent pursuing the Action has and will further detract from resources that may be used to run Defendant's business. While Defendant denies any wrongdoing or liability arising out of any of the facts or conduct alleged in the Action and believes that it has valid defenses to Plaintiffs' claims, Defendant has determined that the Settlement is fair, adequate and reasonable.

G. Based on the foregoing, which the Parties expressly incorporate as material terms of the Agreement, it is the desire of the Parties to fully, finally, and forever settle, compromise,

and discharge all disputes and claims arising from or related to the Action which exist between the Parties. Therefore, it is the intention of Plaintiffs and the Settlement Class that this Agreement shall constitute a full and complete Settlement and release of the Released Claims against Defendant.

IV. TERMS OF SETTLEMENT

In consideration of the mutual covenants and promises set forth herein, and subject to Court approval, the Parties agree as follows:

A. Conditional Certification of Class. For Settlement purposes only, and without any finding or admission of any wrongdoing or fault by Defendant, and solely pursuant to the terms of this Agreement, the Parties consent to and agree to the establishment of a conditional certification of the nationwide Settlement Class, pursuant to California Civil Code § 382.

B. Certification is Conditional. This certification is conditional on the Court's approval of this Agreement. In the event the Court does not approve all terms of the Agreement, or if the Agreement is voluntarily or involuntarily terminated for any reason, then certification of the Settlement Class shall be void and this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy. And, in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Agreement, and Defendant shall not be deemed to have waived any opposition or defenses it has to any aspect of the claims asserted herein or to whether those claims are amenable to class-based treatment.

C. Releases.

1. Release of Chipotle. Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, and in consideration for the Settlement benefits described in this Agreement, Plaintiffs and the Settlement Class shall fully release and discharge

Defendant and all its present and former parent companies, subsidiaries, shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, affiliates, successors, personal representatives, heirs and assigns, retailers, suppliers, distributors, endorsers, consultants, and any and all other entities or persons upstream and downstream in the production/distribution channels (together, the “Discharged Parties”) from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiffs or Settlement Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Discharged Parties in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to Defendant’s marketing and charges for delivery orders through Defendant’s App or Website during the Class Period and the claims alleged in the operative complaint in the Action, and, more particularly, but without in any way limiting the generality of the foregoing, arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the complaint in the Action, including, but not limited to, communications, disclosures, nondisclosures, representations, statements, claims, omissions, messaging, marketing, labeling, advertising, promotion, packaging, displays, brochures, studies, manufacture, distribution, operation, performance, functionality, notification, providing, offering, dissemination, replacement, any claims for rescission, restitution or unjust enrichment for all damages of any kind, violations of any state’s deceptive, unlawful and/or unfair business and/or trade practices, false, misleading or fraudulent advertising, consumer fraud and/or consumer protection statutes, any violation of the Uniform Commercial Code, any breaches of express, implied and/or any other warranties, any similar federal, state or local statutes, codes, damages, costs, expenses, extracontractual damages, compensatory damages, exemplary damages, special

damages, penalties, punitive damages and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees and costs against the Discharged Parties pertaining to or relating to the claims alleged in the operative complaint in the Action, notwithstanding that Plaintiffs and the Settlement Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Released Claims herein.

Plaintiffs expressly understand and acknowledge, and all Settlement Class Members will be deemed by the Final Judgment to acknowledge, that certain principles of law, including but not limited to Section 1542 of the Civil Code of the State of California, provide that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules or legal principles, to the extent they are found to be applicable herein are hereby knowingly and voluntarily waived, relinquished and released by Plaintiffs and all Settlement Class Members.

2. Release of Class Representatives and Class Counsel. Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, and in consideration for the Settlement benefits described in this Agreement, Defendant shall fully release and discharge Class Representatives, Settlement Class Members, and Class Counsel from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Defendant ever had,

now has, may have, or hereafter can, shall or may ever have against Class Representatives, Settlement Class Members, and Class Counsel in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to the institution or prosecution of the Action, notwithstanding that Defendant acknowledges that it may hereafter discover facts in addition to or different from those that it now knows or believes to be true concerning the subject matter of the Action and/or the Released Claims herein.

Defendant expressly understands and acknowledges that certain principles of law, including but not limited to Section 1542 of the Civil Code of the State of California, provide that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Defendant hereby agrees that the provisions of all such principles of law or similar federal or state laws, rights, rules or legal principles, to the extent they are found to be applicable herein are hereby knowingly and voluntarily waived, relinquished and released by Defendant.

D. Compensation to the Non-Rewards Member Settlement Subclass.

1. Non-Rewards Member Settlement Fund. In settlement of the claims of Mr. Aseltine and the Non-Rewards Member Settlement Subclass, Defendant shall establish a Non-Rewards Member Settlement Fund of One Million Dollars (\$1,000,000 USD). Defendant shall pay the Non-Rewards Member Settlement Fund on the following schedule and subject to the following provisions:

- a. Within fourteen (14) calendar days of Preliminary Approval, Defendant shall deposit all administration costs into the Administration Fund, an

escrow account established by the Class Action Settlement Administrator (“Administration Payment”).

- b. Within thirty (30) calendar days of the Effective Date, Defendant shall pay the \$1,000,000 USD less the Administration Payment previously deposited into the escrow account established by the Class Action Settlement Administrator (“Fund Payment”). The Fund Payment shall be used to pay Settlement Costs and all Settlement Awards to Non-Rewards Subclass Members. Subject to Court approval and oversight, the account receiving the Fund Payment shall be an interest-bearing account mutually agreed to by the Parties and controlled by the Class Action Settlement Administrator. Any interest earned on any amounts in the account shall be allocated to pay Settlement Costs.

2. Claim Process. Non-Rewards Subclass Members may make a Claim for a Settlement Award by submitting a valid Claim Form to the Class Action Settlement Administrator by mail or via a web form on the Settlement Website during the Claim Period. Non-Rewards Subclass Members who submit a valid claim shall share the amount of the Net Settlement Fund equally. Settlement Awards to Non-Rewards Subclass Members who submit a valid Claim will be paid within one hundred and eighty (180) days of the Effective Date, by electronic payment.

3. Pro Rata Distribution. If the total amount of Non-Rewards Member Settlement Awards would exceed the Cash Award Fund, the Non-Rewards Member Settlement Awards will be reduced *pro rata* so that the total payment in the aggregate to Non-Rewards Subclass Members for Settlement Awards does not exceed the Cash Award Fund. For the avoidance of doubt, the Cash Award Fund is the Non-Rewards Member Settlement Fund less the amount of all Settlement Costs, and in no event will Defendant be obligated to pay in cash more than the Non-Rewards Member Settlement Fund.

E. Compensation to the Rewards Member Settlement Subclass. In settlement of the claims of Mr. Dundon and the Rewards Member Settlement Subclass, Defendant shall offer vouchers for one free entrée from the Chipotle menu, subject to the following provisions:

1. Claim Process. Rewards Subclass Members may make a Claim for a Settlement Award by submitting a valid Claim Form to the Class Action Settlement Administrator via a web form on the Settlement Website (a link to which shall be provided in the Notice sent to Rewards Members Subclass) during the Claim Period. Settlement Awards to Rewards Subclass Members who submit a valid Claim will be provided via email, within one hundred and eighty (180) days of the Effective Date, a redemption code for a free regularly priced entrée from the Chipotle menu.

2. Redemption Limit. The total vouchers to Rewards Subclass Members shall not exceed Three Million Dollars (\$3,000,000 USD) in retail value. Defendant shall have no obligation to honor any claims of reimbursement made by Rewards Subclass Members once Defendant has issued Three Million Dollars (\$3,000,000 USD) in retail value worth of vouchers in the aggregate to Rewards Subclass Members. Retail value shall be calculated using an average entrée value of \$8.50.

F. Final Tally. Within seven (7) calendar days after the close of the Claim Period, the Class Action Settlement Administrator shall provide the Parties with the number of valid and timely Claims received.

G. Remediation. Beginning as of April 2, 2021, Chipotle has revised the disclosures on its App and Website to a) state expressly that menu prices may be higher for delivery orders; and b) state that service charges are separate from and in addition to delivery fees, including, without limitation, the statement presented to consumers on both Chipotle's Website and App during the online ordering process, but prior to purchasing food for delivery: "Menu pricing for delivery is higher and fees apply"; the statement presented to consumers on both Chipotle's

Website and App at checkout, but prior to purchasing food for delivery: “Delivery includes higher menu prices and additional fees to help offset the costs of delivery”; and the Offer Terms included with advertising of promotional pricing offers for delivery orders. These disclosures are intended to remediate the issues identified by Plaintiffs and fairly and adequately inform customers of these food delivery-related charges in compliance with applicable laws. As a material term of this Agreement, Chipotle agrees to keep these or substantially similar remediation measures in place as long as they are applicable to delivery orders.

H. Attorneys’ Fees/Costs and Class Representative Enhancement.

1. Plaintiffs shall move the Court for an award of attorneys’ fees, plus costs, to be paid to Class Counsel, which shall be noticed for the same date as the Fairness Hearing and filed at least thirty-five (35) days before the Objection/Exclusion Deadline. Defendant shall not object to such a motion so long as the total amount requested for attorneys’ fees is less than or equal to Six Hundred and Fifty Thousand Dollars (\$650,000 US). If approved by the Court, Three Hundred and Thirty-Three Thousand Dollars (\$333,000 USD), which is 33.3% of the Non-Rewards Member Settlement Fund, plus any costs and fees requested by Class Counsel and approved by the Court, will be paid out of the Non-Rewards Member Settlement Fund, and Defendant will pay the additional Three Hundred Twelve Thousand Dollars (\$312,000 USD) separately. Court approval of attorneys’ fees and costs, or their amount, will not be a condition of the Settlement. If the Court reduces the attorneys’ fee by any amount, the attorneys’ fee amount paid from the Non-Rewards Member Settlement Fund and the attorneys’ fee amount separately paid by Defendant shall each be reduced in proportion to the reduction in the total attorneys’ fee request. In addition, Class Counsel shall not be entitled to interest on such amount at any time.

2. Class Counsel further agrees that it will apply to the Court for an incentive award to each Class Representative in an amount not to exceed Five Thousand Dollars (\$5000 USD) each, for their participation as Class Representatives, for taking on the risks of litigation, and for Settlement of their individual claims as Settlement Class Members in this Action. Court approval of the incentive awards, or their amount, will not be a condition of the Settlement. If

approved by the Court, the incentive award for Mr. Aseltine will be paid out of the Non-Rewards Subclass Settlement and the incentive award for Mr. Dundon will be paid separately by Defendant. For the avoidance of doubt, Defendant will not be liable for any costs, fees, incentive awards, or any other fees, expenses, or payments beyond the Non-Rewards Member Settlement Fund, the Three Hundred Twelve Thousand Dollars (\$312,000 USD) for attorneys' fees, and the incentive award for Plaintiff Dundon.

3. The Court approved attorneys' fees shall be paid within forty-five (45) calendar days of the Effective Date. The Class Action Settlement Administrator shall deliver to KanielGold LLP, at the address set forth below, a check payable to "KanielGold LLP Client Trust Account" in the total amount actually awarded by the Court as attorneys' fees, expenses, costs, and incentive awards for the fees attributed to the Non-Rewards Member Settlement. Chipotle shall deliver to KanielGold LLP, at the address set forth below, a check payable to "KanielGold LLP Client Trust Account" in the total amount actually awarded by the Court as attorneys' fees, expenses, costs, and incentive awards for the fees attributed to the Rewards Member Settlement. Plaintiffs and Class Counsel agree to provide all identification information necessary to effectuate the payment of the fees and costs including, but not limited to, Taxpayer Identification Number(s), and completed Internal Revenue Service Form W-9(s).

4. Except for the fees and costs to be paid to Class Counsel and Plaintiffs as specifically provided in this subsection H and elsewhere in this Agreement, Defendant does not agree to pay and shall not be responsible or liable for the payment of any attorneys' fees and expenses of Class Counsel, Plaintiffs, the Settlement Class, and Settlement Class Members, any person or entity that may object to the Agreement, or any attorney who may represent any person or entity that may object to the Agreement, in connection with the Action or in connection with any claim that was or could have been alleged in the Action.

V. NOTICE TO THE SETTLEMENT CLASS

The Class Action Settlement Administrator shall provide Class Notice in the forms approved by the Court, as detailed below, no later than the Notice Deadline.

A. Electronic Mail Notice. The Class Action Settlement Administrator shall provide direct Electronic Mail Notice to all Settlement Class Members, using email addresses provided by Defendant from its business records, the proposed form is attached hereto as “Exhibit 5”.

B. Website Notice. The Class Action Settlement Administrator will establish and maintain the Settlement Website (e.g. www.deliveryfeesettlement.com). The Settlement Website will be dedicated to the Settlement. On the Settlement Website will be posted the Long Form Notice, the Claim Form, a copy of this Agreement, the Preliminary Approval Order, and any other materials the Parties agree to include. The Settlement Website shall also provide for online submission of Claim Forms, and instructions on how to access the case docket via PACER or in person at any of the court’s locations. The Settlement Website shall also state the date of the Fairness Hearing, that the date may change without further notice, and that Settlement Class Members should be advised to check the Settlement Website or the Court’s PACER site to confirm that the date has not been changed. These documents and information shall be available on the Settlement Website no later than the Notice Deadline and remain at least until Final Approval. The Settlement Website shall not include any advertising and shall not bear or include Chipotle’s logo or trademarks.

C. Toll-Free Number. The Class Action Settlement Administrator shall establish and host a case specific toll-free number to allow Class Members to learn more and to request further information about the Action.

D. CAFA Notice. Defendant shall be responsible for timely compliance with all CAFA notice requirements.

VI. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION FROM SETTLEMENT

A. Objections. Only Settlement Class Members may object to the Settlement. A Settlement Class Member who wishes to object to the Settlement must do so in writing by the Objection/Exclusion Deadline. All written objections and supporting papers must (a) clearly identify the case name and number; and (b) be submitted to the Class Action Settlement Administrator at the addresses listed in the Class Notice. Written objections must also contain: (1) the full name, address and telephone number of the Settlement Class Member; (2) a written statement of all grounds for the objection accompanied by any legal support for the objection (if any); (3) copies of any papers, briefs or other documents upon which the objection is based; (4) a list of all persons who will be called to testify in support of the objection (if any); (5) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; (6) proof of membership in the Class; (7) a list of all objections filed by the objector and his or her counsel to class action settlements in the last ten years; and (8) the signature of the Settlement Class Member and her or his counsel, if any. No Settlement Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through separate counsel) unless written notice of the Settlement Class Member's intention to appear at the Fairness Hearing, and copies of any written objections or briefs, have been timely submitted to the Court. The date of the postmark on the mailing envelope or a legal proof of service accompanied by a file-stamped copy of the submission shall be the exclusive means used to determine whether an objection and/or notice of intention to appear has been timely filed and served. In the event that the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it is received by the Court within two (2) calendar days of the Objection/Exclusion Deadline. Settlement Class Members who fail to timely submit a written objection in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Class Counsel shall, at least fourteen (14) calendar days (or such other number of days as the Court shall specify) before the Fairness Hearing, file any responses to any written

objections submitted to the Court by Settlement Class Members in accordance with this Agreement.

B. Procedure for Requesting Exclusion. Settlement Class Members who wish to opt out of this Settlement must submit a written statement to the Class Action Settlement Administrator by the Objection/Exclusion Deadline. To be valid, each request for exclusion must: (a) state the Settlement Class Member's name, address, and phone number; (b) be personally signed by the Settlement Class Member and not the Settlement Class Member's attorney or anyone acting on the Settlement Class Member's behalf; and (c) include the statement "I/we request to be excluded from the class settlement in *John Dundon and Aaron Aseltine v. Chipotle Mexican Grill, Inc.*, Superior Court of the State of California for the County of Alameda, Case No. RG21088118." Requests to opt-out that do not include all required information and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Settlement Class Member's opt-out/exclusion request has been timely submitted. In the event that the postmark is illegible, the opt-out/exclusion request shall be deemed untimely unless it is received by the Class Action Settlement Administrator within two (2) calendar days of the Objection/Exclusion Deadline. Any Settlement Class Member who properly opts out of the Settlement Class using this procedure will not be entitled to any Settlement Award, will not be bound by the Settlement, and will not have any right to object, appeal or comment thereon. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the Settlement and any final judgment entered in this litigation if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the Settlement.

C. Termination Right. In its sole discretion and at its sole option, Defendant has the unconditional right, but not the obligation, to terminate this Agreement if the total number of opt-outs exceeds 10,000 persons in the Settlement Class.

D. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Members to object to the Settlement or request exclusion from participating as a Settlement Class Member, or encourage any Settlement Class Member to appeal from the final judgment.

VII. PRELIMINARY APPROVAL OF SETTLEMENT

Following full execution of this Agreement, and no later than October 29, 2021, Plaintiffs will move the Court for entry of the Preliminary Approval Order, which shall specifically include provisions that: (a) preliminarily approve the Settlement as fair, adequate and reasonable to the Settlement Class, and within the reasonable range of possible final approval; (b) conditionally certify the Settlement Class for Settlement purposes only and appoint Class Counsel as counsel for the Settlement Class for Settlement purposes only; (c) approve the forms of Class Notice and find that the notice constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and California Civil Code § 382; (d) direct that notice be provided to the Settlement Class, in accordance with this Agreement, by the Notice Deadline; (e) establish a procedure for persons in the Settlement Class to object to the Settlement or exclude themselves from the Settlement Class by the Objection/Exclusion Deadline, after which no one shall be allowed to object to the Settlement or exclude himself or herself from the Settlement Class or seek to intervene; (f) approve the Claim Form and the Claims Process described herein, and set a deadline for timely submission of claims; (g) pending final determination of whether the Settlement should be approved, bar all persons in the Settlement Class, directly, on a representative basis or in any other capacity, from commencing or prosecuting against any of the Discharged Parties any action, arbitration, or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims; (h) pending final determination of whether the Settlement should be approved, stay all proceedings in the Action except those related to effectuation of the Settlement; (i) schedule the Fairness Hearing on Final Approval of the Settlement, which shall be one hundred and eighty (180) days after

Preliminary Approval (or such other date ordered by the Court); and (j) providing that, in the event the proposed Settlement set forth in this Agreement is not approved by the Court, or in the event that this Agreement becomes null and void pursuant to its terms, this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy; and that in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Agreement. In the event the Court does not enter the Preliminary Approval order described herein, or decides to do so only with modifications, then this entire Agreement shall become null and void, unless the Parties hereto agree in writing to proceed with this Agreement as modified.

VIII. FINAL APPROVAL OF SETTLEMENT

Not later than 60 days before the Fairness Hearing, Class Counsel shall file a Motion for Final Approval of the Settlement. Plaintiffs shall request that the Court enter the Final Approval Order, which shall specifically include provisions that: (a) finally approve the Settlement as fair, reasonable and adequate to the Settlement Class Members; (b) find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; (c) approve the plan of distribution of the compensation to the Settlement Class Members; (d) finally certify the Settlement Class; (e) confirm that Plaintiffs and the Settlement Class Members have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims against the Discharged Parties; and (f) dismiss the Action with prejudice, without costs to any Party, except as provided in this Agreement, and subject to the Court's retaining continuing jurisdiction over the Parties and the Settlement Funds for the purpose of enforcement of the terms of this Agreement.

IX. PARTIES' AUTHORITY

The signatories represent that they are fully authorized to enter into this Agreement and bind the Parties to its terms and conditions.

X. MUTUAL FULL COOPERATION

The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and the taking of such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement. As soon as practicable after execution of this Agreement, Class Counsel, with the assistance and cooperation of Defendant and its counsel, shall take all necessary steps to secure the Court's final approval of this Agreement. Defendant agrees that it will not attempt to discourage Settlement Class Members from filing claims.

XI. NO ADMISSION

This Agreement is not to be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all liability for claims asserted in the Action. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a Settlement document and shall, pursuant to Fed. R. Evid. 408 and related or corresponding state evidence laws, be inadmissible in evidence in any proceeding in order to establish liability. The preceding sentence shall not apply to an action or proceeding to approve or enforce this Agreement.

XII. NOTICES

Unless otherwise specifically provided, all notices, demands or other communications in connection with this Agreement shall be in writing and shall be deemed served on the date of mailing by United States registered or certified mail, return receipt requested, addressed as follows:

<u>For The Class</u>	<u>For Defendant</u>
Jeffrey D. Kaliel KALIELGOLD PLLC 1100 15 th Street NW, 4th Floor Washington, D.C. 20005	Angela C. Agrusa, Esq. DLA PIPER LLP (US) 2000 Avenue of the Stars Suite 400 North Tower Los Angeles, CA 90067

XIII. CONSTRUCTION

The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties, and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement.

XIV. MATERIAL TERMS; CAPTIONS

Each term of this Agreement is a material term of the Agreement not merely a recital, and reflects not only the intent and objectives of the Parties but also the consideration to be exchanged by the Parties hereunder.

Paragraph titles or captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any of its provisions.

XV. INTEGRATION CLAUSE

This Agreement contains the entire agreement between the Parties relating to the Settlement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are extinguished.

XVI. PUBLIC STATEMENTS

The Parties and their counsel shall issue no public statements and shall make no comments to media or press with respect to the Action or the Agreement at any time (including but not limited to press releases via PR Newswire), except as required by law. In addition, the Parties and their counsel shall not make, publish, circulate or cause to be made, published or circulated any statements that represent or suggest any wrongdoing by Defendant, or that this Agreement or any

order by the Court regarding the Settlement or this Agreement represents or implies any wrongdoing by, or any admission of liability by, Defendant, or a finding by the Court of liability or wrongdoing.

XVII. NON-EVIDENTIARY USE

Neither this Agreement nor any of its terms shall be offered or received into evidence in the Action, or in any other action or proceeding; provided, however, that nothing contained in this section “non-evidentiary use” shall prevent this Agreement from being used, offered, or received in any proceeding to enforce, construe, or finalize this Agreement.

XVIII. NO COLLATERAL ATTACK

This Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices to the Settlement Class after the judgment and dismissal is entered. Such prohibited collateral attacks shall include claims that a Settlement Class Member’s Settlement Award was improperly calculated or adjusted or that the Settlement Class Member failed to receive timely notice of the procedure for disputing the calculation of the individual Settlement Award or failed to submit a timely dispute letter for any reason.

XIX. AMENDMENTS

The terms and provisions of this Agreement may be amended only by a written agreement, which is both (1) signed by the Parties who have executed this Agreement and (2) approved by the Court.

XX. ASSIGNMENTS

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any party or Settlement Class Member without the express written consent of each other Party hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and Settlement Class Members under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

XXI. GOVERNING LAW

This Agreement shall be governed by, construed, and interpreted and the rights of the Parties determined in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

XXII. BINDING ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

XXIII. CONFIDENTIALITY

Class Counsel and Plaintiffs' counsel of record in the Action warrant and represent that they have not shared any information regarding this Settlement or confidential information learned in the Action with any third-party, beyond what was permitted under the stipulated protective order in the Action. Class Counsel and Plaintiffs' counsel of record in the Action warrant and represent that they will not in the future share any confidential information learned in the Action with any third parties.

XXIV. CLASS COUNSEL SIGNATORIES

It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each member of the class execute this Agreement. The notice plan set forth herein will advise Settlement Class Members of all material terms of this Agreement, including the binding nature of the releases and such shall have the same force and effect as if this Agreement were executed by each Settlement Class Member.

XXV. SETTLEMENT TIMELINE

For the Court's and the Parties' convenience, the pertinent deadlines contained in this Agreement are listed below.

<u>Item</u>	<u>Deadline</u>
Filing of Motion for Preliminary Approval	October 29, 2021
Administration Payment	14 days after Preliminary Approval

Notice Deadline/Notice Date	30 days after Preliminary Approval
Plaintiffs' Motion for Attorneys' Fees and Incentive Awards	60 days after Preliminary Approval
Objection/Exclusion Deadline	90 days after Preliminary Approval
Motion for Final Approval	60 days prior to date of Fairness Hearing
Responses to Motion for Attorneys' Fees and Incentive Awards and Motion for Final Approval	25 days prior to Fairness Hearing
Responses to Objections/Motions	14 days prior to Fairness Hearing
Deadline to File Claims	14 days prior to Fairness Hearing
Final Tally	7 days prior to Fairness Hearing
Fairness Hearing	150 days after Preliminary Approval (or such other date set by the Court)
Effective Date	Date of Final Approval (assuming no objections)
Fund Payment	30 days after Effective Date
Distribution of Attorneys' Fees and Incentive Awards	45 days after Effective Date
Distribution of Settlement Awards	60 days after Effective Date
Post-Distribution Accounting	21 days after distribution of Settlement Awards

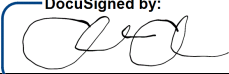
XXVI. COUNTERPARTS

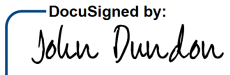
This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties and the Settlement Class.


IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the dates indicated below:

[Signatures on following page.]

CLASS REPRESENTATIVES AND CLASS COUNSEL:

10/29/2021
Dated: October __, 2021
By: 
62DDFC43432D475...
Aaron Aseltine, individually and on behalf of the Settlement Class

10/29/2021
Dated: October __, 2021
By: 
D1DFA217329D43B...
John Dundon, individually and on behalf of the Settlement Class

Dated: October 29, 2021
Kaliel LLP
By: 
Jeffrey D. Kaliel
Attorney for Plaintiffs

DEFENDANT AND COUNSEL FOR DEFENDANT:

Dated: October __, 2021
CHIPOTLE MEXICAN GRILL INC.
By: _____
Michael McGawn
Chipotle Mexican Grill Inc.

Dated: October __, 2021
DLA PIPER LLP (US)
By: _____
Angela C. Agrusa
Attorney for Defendant Chipotle Mexican Grill Inc.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the dates indicated below:

[Signatures on following page.]

CLASS REPRESENTATIVES AND CLASS COUNSEL:

Dated: October __, 2021

By: _____
Aaron Aseltine, individually and on
behalf of the Settlement Class

Dated: October __, 2021


By: _____
John Dundon, individually and on
behalf of the Settlement Class

Dated: October __, 2021

Kaliel LLP
By: _____
Jeffrey D. Kaliel
Attorney for Plaintiffs

DEFENDANT AND COUNSEL FOR DEFENDANT:

Dated: October __, 2021

CHIPOTLE MEXICAN GRILL INC.
By:  _____
Michael McGawn
Chipotle Mexican Grill Inc.

Dated: October __, 2021

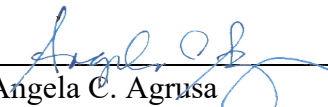
DLA PIPER LLP (US)
By:  _____
Angela C. Agrusa
Attorney for Defendant Chipotle Mexican
Grill Inc.

Exhibit 1

Exhibit 2

Exhibit 3

Exhibit 4

Exhibit 5